National Fish Habitat Conservation Through Partnerships Section (Title II) of the America’s Conservation Enhancement Act (S. 3051).

SEC. 201. PURPOSE.

(4)(B) “to integrate socioeconomic data in the analysis to improve the lives of humans in a manner consistent with fish habitat conservation goals;”

**Comment**: As far as I know, this the first time that “integrating socioeconomic data in the analysis” is identified as a primary purpose of the National Fish Habitat Partnership (NFHP). Nonetheless, the EBTJV has adopted a [methodology](https://easternbrooktrout.org/groups/steering-committee/estimating-the-socioeconomic-benefits-derived-from-ebtjv-brook-trout-conservation-projects/view) for estimating the socioeconomic benefits derived from EBTJV Brook Trout conservation projects and our partnership has been using these estimates as part of its reporting about these projects that have received FWS-NFHAP funds. Additionally, NFHP developed an [economic calculator](http://gentnergroup.com/NFHAP/) (user name: NFHAP; password: economic), which requires project costs to be broken out into three categories: Administration/Technical Services Expenditures; Construction Materials Expenditures; and, Construction Labor Expenditures. While the EBTJV has listed these types in its project applications, applicants usually do not provide a clear delineation of these three cost types.

SEC. 203. NATIONAL FISH HABITAT BOARD.

(a)(1)(D) “to review and make recommendations regarding fish habitat conservation projects.”

**Comment**: The legislation designates this responsibility to the National Fish Habitat Board (Board) whereas Fish Habitat Partnerships (FHPs) had played a pivotal role in reviewing and prioritizing fish habitat conservation projects that they then submitted to the FWS for funding by its NFHAP budget appropriations. I believe FHPs will still be reviewing and establishing their priority list of projects, which will be submitted to the Board for further considerations rather than to the FWS.

SEC. 204. FISH HABITAT PARTNERSHIPS.

(a) “The Board may recommend to Congress the designation of Fish Habitat Partnerships in accordance with this section.”

(f) “Congress shall have the exclusive authority to designate or modify a Partnership.”

(g)(1) “Not later than 5 years after the date of enactment of this Act, any partnership receiving Federal funds as of the date of enactment of this Act shall be subject to a designation review by Congress in which Congress shall have the opportunity to designate the partnership under subsection (f).”

**Comment**: Prior to passage of this legislation, the Board possessed the responsibility for formally designating FHPs. The EBTJV was formed as a “partnership” in 2004, the EBTJV was formally recognized by the Board as an FHP in 2007. Now that Congress possesses the duty of designating FHPs, it appears that under (g)(1) existing FHPs will need to be designated an FHP by Congress within the next 5 years.

(b) “The purposes of a Partnership shall be—"

(b)(1) “to work with other regional habitat conservation programs to promote cooperation and coordination to enhance fish populations and fish habitats,”

**Comment**: The EBTJV has been working with regional programs (e.g. Chesapeake Bay Program) but it appears this type of collaborative effort may need to become more front and center in the EBTJV’s operations; meaning there may be a need to specifically identify all of the regional programs the EBTJV is, and has been, involved with.

(b)(4) “to develop…achievable implementation plan…”

**Comment**: While the EBTJV has a set Range-wide Habitat Goals with measurable Objectives, the partnership has not developed a specific plan describing how we intend to achieve those objectives.

(b)(6) “…including evaluation of project success and functionality:”

**Comment**: The EBTJV has not been directly involved with evaluating the success and functionality of the Brook Trout conservation projects receiving FWS-NFHAP funding support so this represents a new operational task that will need to be addressed.

(b)(7) “to develop appropriate local or regional habitat evaluation and assessment measures and criteria that are compatible with national habitat condition measures;”

**Comment**: I’m not aware that national habitat condition measures have been developed, though once they are the EBTJV will need to ensure its habitat evaluation and assessment measures and criteria are compatible.

(b)(8) “to implement local and regional priority projects that improve conditions for fish and fish habitat.”

**Comment**: The EBTJV has essentially filled the role of facilitating projects that improve fish habitat conditions for Brook Trout so it needs to be determined if the term “implement” includes facilitation as opposed to taking actual project actions.

(c) CRITERIA FOR DESIGNATION.—An entity seeking to be designated by Congress as a Partnership shall—

(2) demonstrate to the Board that the entity has—

(c)(2)(E) “a strategic plan that details required investments for fish habitat conservation that addresses the strategic fish habitat priorities of the Partnership and supports and meets the strategic priorities of the Board;

**Comment**: The EBTJV’s strategic plan doesn’t currently include a section that **details required investments** that address its strategic Brook Trout habitat priorities.

(c)(2) (F) the ability to develop and implement fish habitat conservation projects that address strategic priorities of the Partnership and the Board; and

**Comment**: Here again, the scope of what “implement” means needs to be determined.

(c)(2) (G) “… the ability to measure the effectiveness of fish habitat projects of the Partnership, and a clear plan as to how Partnership science and data components will be integrated with the overall Board science and data effort.”

**Comment**: To date, the EBTJV has not had direct involvement in measuring the effectiveness of Brook Trout conservation projects that have received FWS-NFHAP funding support. The EBTJV will have to undertake a planning effort to link its science and data components with the national effort.

SEC. 205. FISH HABITAT CONSERVATION PROJECTS.

(a) SUBMISSION TO BOARD.—Not later than March 31 of each year, each Partnership shall submit to the Board a list of priority fish habitat conservation projects recommended by the Partnership for annual funding under this title.

(b) RECOMMENDATIONS BY BOARD.—Not later than July 1 of each year, the Board shall submit to the Secretary a priority list of fish habitat conservation projects that includes a description, including estimated costs, of each project that the Board recommends that the Secretary approve and fund under this title for the following fiscal year.

**Comment**: This project funding approval process is much longer than what the EBTJV has experienced in the past and it involves the Board and the Department of Interior’s Secretary rather than just the US Fish and Wildlife Service (Service) and its Director. Previously, the EBTJV would submit its annual workplan and accomplishment report to the Service in early January. Our partnership would then receive its funding level designation from the Service’s Director typically in April/May and then the Service would execute project agreements in June/July. The whole project funding process would take place within the current federal fiscal year.

The process stipulated by the legislation sets a March 31 deadline for FHPs to submit its priority fish habitat conservation projects to the Board and, the Board then must submit its “master” priority list of projects to the Secretary by July 1 and those projects will receive funding in the following federal fiscal year (essentially a 2-month+ delay). So, this means the FY21 funding available to support fish habitat conservation projects won’t be obligated before October 1, 2021. The process the Secretary will use to execute project agreements is unclear.

At this point, the Board doesn’t have a formal process for FHP submission of its priority projects, nor does the Board have a formal process for reviewing and establishing its priority list of projects it will submit to the Secretary for funding. Questions to be answered include; will all priority projects submitted by the FHPs be competing with each other, which could result in an FHP getting all its projects funded and another FHP having none of their projects funded; or, will the available funds be allocated in some fashion so that all FHPs receive at least some portion of the funds that would then allow at least one of their projects to be funded. The details of these two processes will need to be worked out before July 1, 2021.

(c) CRITERIA FOR PROJECT SELECTION.

(c)(1) A recommendation of the Partnership that is, or will be, participating actively in implementing the fish habitat conservation project.

**Comment**: “…participating actively in implementing…” The meaning of “actively” is key here as the EBTJV has not had direct involvement with the Brook Trout conservation projects receiving FWS-NFHAP funds unless it was related to the partnership’s operations. So its possible the EBTJV will need to expand its operations to include active participation in project activities rather than playing the role of facilitating project implementation.

(c)(3)(D) “identifies appropriate monitoring and evaluation measures and criteria that are compatible with national measures;”

**Comment**: While the EBTJV requires Brook Trout conservation project proposals include a monitoring plan, it has not gone through the formal development of appropriate monitoring and evaluation measures and criteria; and, national measures don’t currently exist so until they do any attempts to ensure compatibility is difficult to complete.

(c)(3)(D) “provides a well-defined budget linked to deliverables and outcomes;”

**Comment**: The EBTJV has not previously required Brook Trout conservation project applicants to link its budget specifically to project deliverables and outcomes.

(c)(3)(H) “includes an outreach or education component that includes the local or regional community.”

**Comment**: The EBTJV has not previously required Brook Trout conservation project applicants to specifically include an outreach or education component.

(c)(4) “The availability of sufficient non-Federal funds to match Federal contributions for the fish habitat conservation project, as required by subsection (e).”

**Comment**: Previously, the EBTJV required project partner contributions be at least a 1:1 to the amount of FWS-NFHAP funds being requested without differentiating between the level of the project partner contribution being non-federal vs. federal. Under this legislation, the project must include an amount of non-federal funds being ≥ the amount of funds being requested.

(5) The extent to which the fish habitat conservation project—

(A) will increase fish populations in a manner that leads to recreational fishing opportunities for the public;

**Comment**: The EBTJV has not previously been involved with determining the extent that Brook Trout conservation projects increased Brook Trout populations in a manner that led to increased angling opportunities.

(5)(C) “increases public access to land or water for fish and wildlife-dependent recreational opportunities;”

**Comment**: The EBTJV has not previously been involved with determining the extent that Brook Trout conservation projects increased public access.

(d) LIMITATIONS.—

(1) REQUIREMENTS FOR EVALUATION.—No fish habitat conservation project may be recommended by the Board under subsection (b) or provided financial assistance under this title unless the fish habitat conservation project includes an evaluation plan designed using applicable Board guidance—

(B) to reflect appropriate changes to the fish habitat conservation project if the assessment substantiates that the fish habitat conservation project objectives are not being met;

(C) to identify improvements to existing fish populations, recreational fishing opportunities, and the overall economic benefits for the local community of the fish habitat conservation project; and

(D) to require the submission to the Board of a report describing the findings of the assessment.

**Comment**: These represent new evaluation plan requirements that will need to be instituted by the EBTJV when its soliciting and prioritizing Brook Trout projects seeking funding.

(e) NON-FEDERAL CONTRIBUTIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), no fish habitat conservation project may be recommended by the Board under subsection (b) or provided financial assistance under this title unless at least 50 percent of the cost of the fish habitat conservation project will be funded with non-Federal funds.

(2) NON-FEDERAL SHARE.—Such non-Federal share of the cost of a fish habitat conservation project—

(A) may not be derived from another Federal grant program;

**Comment**: This represents a new condition for project funding.

SEC. 212. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) FISH HABITAT CONSERVATION PROJECTS.—There is authorized to be appropriated to the Secretary $7,200,000 for each of fiscal years 2021 through 2025 to provide funds for fish habitat conservation projects approved under section 205(f), of which 5 percent is authorized only for projects carried out by Indian Tribes.

**Comment**: While the legislation authorizes a $7.2 million appropriation for each of the next 5 federal fiscal years, which represents a $5 million/ffy increase over the amount the Service allocated to Fish Habitat Conservation Projects, there is no mention that support of FHP operations is available from these appropriations.