

**CHAPTER 57—NATIONAL FISH AND WILDLIFE FOUNDATION**

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**§3701. Establishment and purposes of Foundation**

**(a) Establishment**

There is established the National Fish and Wildlife Foundation (hereinafter in this chapter referred to as the "Foundation"). The Foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

**(b) Purposes**

The purposes of the Foundation are—

- (1) to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, to further the conservation and management of fish, wildlife, plants, and other natural resources;
- (2) to undertake and conduct such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions, for present and future generations of Americans; and
- (3) to participate with, and otherwise assist, foreign governments, entities, and individuals in undertaking and conducting activities that will further the conservation and management of the fish, wildlife, and plant resources of other countries.

(Pub. L. 98–244, §2, Mar. 26, 1984, 98 Stat. 107; Pub. L. 100–240, §1(a), Jan. 11, 1988, 101 Stat. 1785; Pub. L. 103–232, title I, §102, Apr. 11, 1994, 108 Stat. 336; Pub. L. 106–408, title II, §202, Nov. 1, 2000, 114 Stat. 1777.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2000**—Subsec. (b)(1). Pub. L. 106–408 added par. (1) and struck out former par. (1) which read as follows: "to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration;"

**1994**—Subsec. (b)(1). Pub. L. 103–232 inserted before semicolon at end "and the National Oceanic and Atmospheric Administration".

**1988**—Subsec. (b)(3). Pub. L. 100–240 added par. (3).

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**SHORT TITLE OF 2008 AMENDMENT**

Pub. L. 110–281, §1, July 21, 2008, 122 Stat. 2617, provided that: "This Act [amending section 3702 of this title] may be cited as the 'National Fish and Wildlife Foundation Establishment Act Amendment of 2008'."

**SHORT TITLE OF 2006 AMENDMENT**

Pub. L. 109–363, title II, §201, Oct. 17, 2006, 120 Stat. 2075, provided that: "This title [amending sections 3703 and 3709 of this title] may be cited as the 'National Fish and Wildlife Foundation

### **SHORT TITLE OF 2000 AMENDMENT**

Pub. L. 106–408, [title II, §201, Nov. 1, 2000](#), 114 Stat. 1777, provided that: "This title [enacting section 3710 of this title, amending this section and sections 3702, 3703, 3705, 3706, and 3709 of this title, and repealing provisions set out as a note under section 3703 of this title] may be cited as the 'National Fish and Wildlife Foundation Establishment Act Amendments of 2000'."

### **SHORT TITLE OF 1998 AMENDMENT**

Pub. L. 105–277, [div. A, §101\(b\) \[title IX, §901\], Oct. 21, 1998](#), 112 Stat. 2681–50, [2681–119](#), provided that: "This title [amending section 3703 of this title and enacting provisions set out as a note under section 3703 of this title] may be cited as the 'National Whale Conservation Fund Act of 1998'."

### **SHORT TITLE OF 1994 AMENDMENT**

Pub. L. 103–232, [title I, §101, Apr. 11, 1994](#), 108 Stat. 336, provided that: "This title [amending this section and sections 3702 and 3709 of this title and enacting provisions listed in a table of National Environmental Centers set out under section 668dd of this title and provisions set out as notes under section 3702 of this title] may be cited as the 'National Fish and Wildlife Foundation Improvement Act of 1994'."

### **SHORT TITLE OF 1990 AMENDMENT**

Pub. L. 101–593, [title I, §110\(a\), Nov. 16, 1990](#), 104 Stat. 2959, provided that: "This section [amending sections 3702 and 3709 of this title] may be cited as the 'National Fish and Wildlife Foundation Establishment Act Amendments of 1990'."

### **SHORT TITLE**

Pub. L. 98–244, [§1, Mar. 26, 1984](#), 98 Stat. 107, provided that: "This Act [enacting this chapter] may be cited as the 'National Fish and Wildlife Foundation Establishment Act'."

## **§3702. Board of Directors of Foundation**

### **(a) Establishment and membership**

#### **(1) In general**

The Foundation shall have a governing Board of Directors (referred to in this chapter as the "Board"), which shall consist of 30 Directors appointed in accordance with subsection (b), each of whom shall be a United States citizen.

#### **(2) Representation of diverse points of view**

To the maximum extent practicable, the membership of the Board shall represent diverse points of view relating to conservation and management of fish, wildlife, plants, and other natural resources.

#### **(3) Not Federal employees**

Appointment as a Director of the Foundation shall not constitute employment by, or the holding of an office of, the United States for the purpose of any Federal law.

### **(b) Appointment and terms**

#### **(1) Agency heads**

The Director of the United States Fish and Wildlife Service and the Under Secretary of Commerce for Oceans and Atmosphere shall be Directors of the Foundation.

#### **(2) Appointment of Directors**

After consulting with the Secretary of Commerce and considering the recommendations submitted by the Board, the Secretary of the Interior shall appoint 28 Directors who, to the maximum extent practicable, shall—

(A) be knowledgeable and experienced in matters relating to the conservation of fish, wildlife, or other natural resources; and

(B) represent a balance of expertise in ocean, coastal, freshwater, and terrestrial resource conservation.

#### **(3) Terms**

Each Director (other than a Director described in paragraph (1)) shall be appointed for a term of 6 years.

#### **(4) Vacancies**

##### **(A) In general**

The Secretary of the Interior shall fill a vacancy on the Board.

##### **(B) Term of appointments to fill unexpired terms**

An individual appointed to fill a vacancy that occurs before the expiration of the term of a Director shall be appointed for the remainder of the term.

**(5) Reappointment**

An individual (other than an individual described in paragraph (1)) shall not serve more than 2 consecutive terms as a Director, excluding any term of less than 6 years.

**(6) Request for removal**

The executive committee of the Board may submit to the Secretary of the Interior a letter describing the nonperformance of a Director and requesting the removal of the Director from the Board.

**(7) Consultation before removal**

Before removing any Director from the Board, the Secretary of the Interior shall consult with the Secretary of Commerce.

**(c) Chairman**

The Chairman shall be elected by the Board from its members for a two-year term.

**(d) Quorum**

A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

**(e) Meetings**

The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with subsection (b).

**(f) Reimbursement of expenses**

Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

**(g) General powers**

(1) The Board may complete the organization of the Foundation by—

- (A) appointing officers and employees;
- (B) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this chapter; and
- (C) undertaking of other such acts as may be necessary to carry out the provisions of this chapter.

(2) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

**(A) In general**

Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

**(B) Executive Director**

The Foundation shall have an Executive Director who shall be—

- (i) appointed by, and serve at the direction of, the Board as the chief executive officer of the Foundation; and
- (ii) knowledgeable and experienced in matters relating to fish and wildlife conservation.

(Pub. L. 98–244, §3, Mar. 26, 1984, 98 Stat. 107; Pub. L. 101–593, title I, §110(b), Nov. 16, 1990, 104 Stat. 2959; Pub. L. 103–232, title I, §103(a)(1), (b), Apr. 11, 1994, 108 Stat. 336; Pub. L. 106–408, title II, §203(a), (b), Nov. 1, 2000, 114 Stat. 1777, 1778; Pub. L. 110–281, §2, July 21, 2008, 122 Stat. 2617; Pub. L. 116–188, title I, §107(a)(1), Oct. 30, 2020, 134 Stat. 917.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2020**—Subsec. (b)(2). Pub. L. 116–188, §107(a)(1)(A)(i), added par. (2) and struck out former par. (2) which related to appointment of directors by the Secretary of the Interior.

Subsec. (b)(3). Pub. L. 116–188, §107(a)(1)(A)(ii), added par. (3) and struck out former par. (3) which related to terms of directors.

Subsec. (g)(2)(A). Pub. L. 116–188, §107(a)(1)(B)(i), inserted subpar. heading and struck out first sentence which read as follows: "Officers and employees may not be appointed until the Foundation has sufficient funds to pay them for their service."

Subsec. (g)(2)(B). Pub. L. 116–188, §107(a)(1)(B)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: "The first officer or employee appointed by the Board shall be the Secretary of the Board who (i) shall serve, at the direction of the Board, as its chief operating officer, and (ii) shall be knowledgeable and experienced in matters relating to fish and wildlife conservation."

**2008**—Subsec. (a)(1). Pub. L. 110–281 added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The Foundation shall have a governing Board of Directors (referred

to in this chapter as the 'Board'), which shall consist of 25 Directors appointed in accordance with subsection (b) of this section, each of whom shall be a United States citizen."

**2000**—Subsec. (a). Pub. L. 106-408, §203(a), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "The Foundation shall have a governing Board of Directors (hereinafter referred to in this chapter as the 'Board'), which shall consist of 15 Directors, each of whom shall be a United States citizen and—

"(1) six of whom must be knowledgeable or experienced in fish and wildlife conservation; and

"(2) 4 of whom must be educated and experienced in the principles of fish and wildlife management.

The membership of the Board, to the extent practicable, shall represent diverse points of view relating to fish and wildlife conservation. The Director of the United States Fish and Wildlife Service shall be an ex officio nonvoting member of the Board. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law."

Subsec. (b). Pub. L. 106-408, §203(b), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: "By December 31, 1984, the Secretary of the Interior (hereinafter referred to in this chapter as the 'Secretary') shall appoint the Directors of the Board. The Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint three Directors to a term of two years, three Directors to a term of four years, and three Directors to a term of six years. A vacancy on the Board shall be filled within sixty days of said vacancy in the manner in which the original appointment was made. No individual may serve more than two consecutive terms as a Director. The Secretary of the Interior shall consult with the Under Secretary of Commerce for Oceans and Atmosphere before appointing any Director of the Board."

**1994**—Subsec. (a). Pub. L. 103-232, §103(b), substituted "15 Directors" for "nine Directors" in introductory provisions and "4" for "three" in par. (2).

Subsec. (b). Pub. L. 103-232, §103(a)(1), inserted at end "The Secretary of the Interior shall consult with the Under Secretary of Commerce for Oceans and Atmosphere before appointing any Director of the Board."

**1990**—Subsec. (g)(2)(A). Pub. L. 101-593 struck out ", except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule" after "General Schedule pay rates".

#### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-232, [title I, §103\(a\)\(2\), Apr. 11, 1994](#), 108 Stat. 336, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to appointments of Directors of the Board of Directors of the National Fish and Wildlife Foundation made after the date of the enactment of this Act [Apr. 11, 1994]."

#### INITIAL TERMS OF SIX NEW DIRECTORS

Pub. L. 103-232, [title I, §103\(c\), Apr. 11, 1994](#), 108 Stat. 336, provided that: "Of the Directors on the Board of Directors of the National Fish and Wildlife Foundation first appointed pursuant to the amendment made by subsection (b)(1) [amending this section], notwithstanding the second sentence of section 3(b) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702(b))—

"(1) 2 shall be appointed to a term of 2 years;

"(2) 2 shall be appointed to a term of 4 years; and

"(3) 2 shall be appointed to a term of 6 years;

as specified by the Secretary of the Interior at the time of appointment."

#### COMPLETION OF APPOINTMENTS

Pub. L. 103-232, [title I, §103\(d\), Apr. 11, 1994](#), 108 Stat. 337, provided that: "The Secretary of the Interior shall appoint the additional members of the Board of Directors of the National Fish and Wildlife Foundation authorized by the amendment made by subsection (a) [(b)] [amending this section], by not later than 60 days after the date of the enactment of this Act [Apr. 11, 1994]."

#### AUTHORITY OF BOARD NOT AFFECTED

Pub. L. 103-232, [title I, §103\(e\), Apr. 11, 1994](#), 108 Stat. 337, provided that: "The authority of the Board of Directors of the National Fish and Wildlife Foundation to take any action otherwise authorized by law shall not be affected by reason of the Secretary of the Interior not having completed the appointment of Directors of the Board of Directors of the National Fish and Wildlife Foundation pursuant to the amendment made by subsection (b)(1) [amending this section]."

## **§3703. Rights and obligations of Foundation**

### **(a) In general**

The Foundation—

- (1) shall have perpetual succession;
- (2) may conduct business throughout the several States, territories, and possessions of the United States and abroad;
- (3) shall have its principal offices in the District of Columbia or in a county in the State of Maryland or Virginia that borders on the District of Columbia; and
- (4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The serving of notice to, or service of process upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

### **(b) Seal**

The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

### **(c) Powers**

#### **(1) In general**

To carry out the purposes described in section 3701 of this title, the Foundation shall have, in addition to the powers otherwise given it under this chapter, the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

- (A) to accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;
- (B) to acquire by purchase or exchange any real or personal property or interest therein, subject to subsection (e);
- (C) to invest any funds provided to the Foundation by the Federal Government in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States;
- (D) to deposit any funds provided to the Foundation by the Federal Government into accounts at 1 or more financial institutions that are members of the Federal Deposit Insurance Corporation or the Securities Investment Protection Corporation;
- (E) to make use of any interest or investment income that accrues as a consequence of actions taken under subparagraph (C) or (D) to carry out the purposes of the Foundation;
- (F) to use Federal funds to make payments under cooperative agreements entered into with willing private landowners to provide substantial long-term benefits for the restoration or enhancement of fish, wildlife, plants, and other natural resources on private land;
- (G) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;
- (H) to borrow money and issue bonds, debentures, or other debt instruments;
- (I) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the Directors of the Foundation shall not be personally liable, except for gross negligence;
- (J) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its function; and <sup>1</sup>
- (K) to receive and administer restitution and community service payments, amounts for mitigation of impacts to natural resources, and other amounts arising from legal, regulatory, or administrative proceedings, subject to the condition that the amounts are received or administered for purposes that further the conservation and management of fish, wildlife, plants, and other natural resources; and
- (L) to do acts necessary to carry out the purposes of the Foundation.

#### **(2) Treatment of real property**

##### **(A) In general**

For purposes of this Act, an interest in real property shall be treated as including easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historic, scientific, educational, inspirational, or recreational resources.

##### **(B) Encumbered real property**

A gift, devise, or bequest may be accepted by the Foundation even though the gift, devise, or bequest is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest in the gift, devise, or bequest is for the benefit of the Foundation.

#### **(3) Savings clause**

The acceptance and administration of amounts by the Foundation under paragraph (1)(K) does not alter, supersede, or limit any regulatory or statutory requirement associated with those amounts.

### **(d) Certain lands, waters, and interests not subject to condemnation**

No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Director of the United States Fish and Wildlife Service or the Migratory Bird Conservation Commission, as the case may be, to



be valuable for purposes of fish and wildlife conservation or management shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

**(e) Acquisition, management, and disposal of real property**

(1) The Foundation may only use Federal funds for the acquisition of interests in real property if—

(A) the interest is a long-term property interest, and

(B) the Foundation notifies the Federal agency that administers the program under which the funds were provided of the proposed acquisition, and the agency does not object in writing to the proposed acquisition within 60 calendar days after the date of the notification.

(2) The Foundation shall convey to the United States Fish and Wildlife Service for inclusion within the National Wildlife Refuge System any real property acquired by the Foundation in whole or in part with Federal funds if the Director, within one year after the date on which the property was acquired by the Foundation, requests the conveyance in writing.

(3)(A) Subject to subparagraph (B), the Foundation may—

(i) convey to another person any real property acquired in whole or in part with Federal funds and not conveyed under paragraph (2); and

(ii) grant or otherwise provide Federal funds to another person for purposes of assisting that person to acquire real property in whole or in part with such funds.

(B) The Foundation may only make a conveyance or provide Federal funds under subparagraph (A) if—

(i) the conveyance or provision is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation and management of fish and wildlife and in a manner that will provide for appropriate public access and use; and

(ii) the Foundation notifies the Federal agency that administers the Federal program under which the funds were provided of the proposed conveyance or provision of Federal funds, and the agency does not object in writing to the proposed conveyance or provision of Federal funds within 60 calendar days after the date of the notification.

(4) All real property acquired by the Foundation in whole or in part with Federal funds and held by it shall be administered for the conservation and management of fish and wildlife and in a manner that will provide for appropriate public access and use.

(5) RECONVEYANCE OF REAL PROPERTY.—The Foundation shall convey at not less than fair market value any real property acquired by the Foundation in whole or in part with Federal funds if the Foundation notifies the Federal agency that administers the Federal program under which the funds were provided, and the agency does not disagree within 60 calendar days after the date of the notification, that—

(A) the property is no longer valuable for the purpose of conservation or management of fish, wildlife, plants, and other natural resources; and

(B) the purposes of the Foundation would be better served by use of the proceeds of the conveyance for other authorized activities of the Foundation.

**(f) Expenditures for printing services or capital equipment**

The Foundation shall not make any expenditure of Federal funds in connection with any one transaction for printing services or capital equipment that is greater than \$10,000 unless the expenditure is approved by the Federal agency that administers the Federal program under which the funds were provided.

**(g) Notice to Members of Congress**

The Foundation shall not make a grant of Federal funds in an amount greater than \$10,000 unless, by not later than 30 days before the grant is made, the Foundation provides notice of the grant to the Member of Congress for the congressional district in which the project to be funded with the grant will be carried out.

(Pub. L. 98–244, §4, Mar. 26, 1984, 98 Stat. 108; Pub. L. 100–240, §§1(b), 2(a), (b)(1), Jan. 11, 1988, 101 Stat. 1785, 1786; Pub. L. 105–277, div. A, §101(b) [title IX, §903], Oct. 21, 1998, 112 Stat. 2681–50, 2681–120; Pub. L. 106–408, title II, §§203(c)(1), 204(a)–(c), (e)–(g), 206, Nov. 1, 2000, 114 Stat. 1779, 1780; Pub. L. 109–363, title II, §203, Oct. 17, 2006, 120 Stat. 2075; Pub. L. 116–188, title I, §107(b), Oct. 30, 2020, 134 Stat. 918.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This Act, referred to in subsec. (c)(2)(A), is Pub. L. 116–188, [Oct. 30, 2020](#), 134 Stat. 905, known as the America's Conservation Enhancement Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

**AMENDMENTS**

**2020**—Subsec. (c). Pub. L. 116–188, §107(b)(1)(A), (B), (G), designated introductory provisions as par. (1), inserted heading, substituted "To carry out the purposes described in" for "To carry out its purposes under", redesignated former pars. (1) to (11) as subpars. (A) to (K), respectively, of par. (1), realigned margins, and struck out concluding provisions which read as follows: "For purposes of this chapter, an interest in real property shall be treated as including, among other things, easements or

other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historic, scientific, educational, inspirational, or recreational resources. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation."

Subsec. (c)(1)(D). Pub. L. 116–188, §107(b)(1)(C), substituted "at 1 or more financial institutions that are members of the Federal Deposit Insurance Corporation or the Securities Investment Protection Corporation" for "that are insured by an agency or instrumentality of the United States".

Subsec. (c)(1)(E). Pub. L. 116–188, §107(b)(1)(D), substituted "subparagraph (C) or (D)" for "paragraph (3) or (4)".

Subsec. (c)(1)(K), (L). Pub. L. 116–188, §107(b)(1)(E), (F), added subpars. (K) and (L) and struck out former subpar. (K) which read as follows: "to do any and all acts necessary and proper to carry out the purposes of the Foundation."

Subsec. (c)(2), (3). Pub. L. 116–188, §107(b)(1)(G), added pars. (2) and (3).

Subsecs. (f) to (i). Pub. L. 116–188, §107(b)(2), (3), redesignated subsecs. (h) and (i) as (f) and (g), respectively, and struck out former subsecs. (f) and (g) which related to establishment of national whale conservation endowment fund and consultation, respectively.

**2006**—Subsec. (i). Pub. L. 109–363 substituted "grant of Federal funds in an amount greater than \$10,000" for "grant of funds".

**2000**—Subsec. (a)(3). Pub. L. 106–408, §204(a), inserted "or in a county in the State of Maryland or Virginia that borders on the District of Columbia" after "the District of Columbia".

Subsec. (c)(3), (4). Pub. L. 106–408, §204(b)(2), added pars. (3) and (4). Former pars. (3) and (4) redesignated (7) and (8), respectively.

Subsec. (c)(5). Pub. L. 106–408, §204(b)(2), added par. (5). Former par. (5) redesignated (9).

Pub. L. 106–408, §203(c)(1), substituted "Directors of the Foundation" for "Directors of the Board".

Subsec. (c)(6) to (11). Pub. L. 106–408, §204(b), added par. (6) and redesignated former pars. (3) to (7) as (7) to (11), respectively.

Subsec. (e)(1)(B). Pub. L. 106–408, §204(c), added subpar. (B) and struck out former subpar. (B) which read as follows: "the Director of the United States Fish and Wildlife Service (hereafter in this subsection referred to as the 'Director') consents to the acquisition in writing."

Subsec. (e)(3)(B)(ii). Pub. L. 106–408, §204(e), added cl. (ii) and struck out former cl. (ii) which read as follows: "the Director finds that conveyance or provision of Federal funds meets the requirements of clause (i) and consents to it in writing."

Subsec. (e)(5). Pub. L. 106–408, §204(f), added par. (5) and struck out former par. (5) which read as follows: "The Foundation shall convey at not less than fair-market value any real property acquired by it in whole or in part with Federal funds if the Foundation and the Director determine, in writing, that—

"(A) the land is no longer valuable for the purposes of fish and wildlife conservation or management, and

"(B) the purposes of the Foundation would be better served by the use of the Federal funds for other authorized activities of the Foundation."

Subsec. (h). Pub. L. 106–408, §204(g), added subsec. (h).

Subsec. (i). Pub. L. 106–408, §206, added subsec. (i).

**1998**—Subsecs. (f), (g). Pub. L. 105–277 added subsecs. (f) and (g).

**1988**—Subsec. (a)(2). Pub. L. 100–240, §1(b), inserted "and abroad" after "United States".

Subsec. (c)(2). Pub. L. 100–240, §2(b), inserted ", subject to subsection (e)" after "therein".

Subsec. (e). Pub. L. 100–240, §2(a), added subsec. (e).

#### STATUTORY NOTES AND RELATED SUBSIDIARIES

### CONGRESSIONAL FINDINGS—NATIONAL WHALE CONSERVATION

Pub. L. 105–277, [div. A, §101\(b\) \[title IX, §902\]](#), [Oct. 21, 1998](#), 112 Stat. 2681–50, [2681-119](#), provided that: "Congress finds that—

"(1) the populations of whales that occur in waters of the United States are resources of substantial ecological, scientific, socioeconomic, and esthetic value;

"(2) whale populations—

"(A) form a significant component of marine ecosystems;

"(B) are the subject of intense research;

"(C) provide for a multimillion dollar whale watching tourist industry that provides the public an opportunity to enjoy and learn about great whales and the ecosystems of which the whales are a part; and

"(D) are of importance to Native Americans for cultural and subsistence purposes;

"(3) whale populations are in various stages of recovery, and some whale populations, such as the northern right whale (*Eubaleana glacialis*) remain perilously close to extinction;

"(4) the interactions that occur between ship traffic, commercial fishing, whale watching vessels, and other recreational vessels and whale populations may affect whale populations adversely;

"(5) the exploration and development of oil, gas, and hard mineral resources, marine debris, chemical pollutants, noise, and other anthropogenic sources of change in the habitat of whales may affect whale populations adversely;

"(6) the conservation of whale populations is subject to difficult challenges related to—

"(A) the migration of whale populations across international boundaries;

"(B) the size of individual whales, as that size precludes certain conservation research procedures that may be used for other animal species, such as captive research and breeding;

"(C) the low reproductive rates of whales that require long-term conservation programs to ensure recovery of whale populations; and

"(D) the occurrence of whale populations in offshore waters where undertaking research, monitoring, and conservation measures is difficult and costly;

"(7)(A) the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, has research and regulatory responsibility for the conservation of whales under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.); and

"(B) the heads of other Federal agencies and the Marine Mammal Commission established under section 201 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1401) have related research and management activities under the Marine Mammal Protection Act of 1972 or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

"(8) the funding available for the activities described in paragraph (8) [(7)] is insufficient to support all necessary whale conservation and recovery activities; and

"(9) there is a need to facilitate the use of funds from non-Federal sources to carry out the conservation of whales."

#### **DRAW DOWN OF FEDERAL FUNDS; EXEMPTION FROM AUDIT REQUIREMENTS**

Pub. L. 102–440, [title III, §304, Oct. 23, 1992](#), 106 Stat. 2235, which provided that the National Fish and Wildlife Foundation could continue to draw down Federal funds when matching requirements had been met, that interest earned on funds already drawn down was to be used to fund all activities as approved by the Board of Directors, and that Foundation subgrantees would be exempt from the audit reporting and compliance requirements of OMB Circular A–133, for all grants of \$100,000 or less, was repealed by Pub. L. 106–408, [title II, §204\(d\), Nov. 1, 2000](#), 114 Stat. 1779.

<sup>1</sup> *So in original. The word "and" probably should not appear.*

### **§3704. Administrative services and support**

#### **(a) Provision of services**

The Secretary may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under section 3702 of this title, not to exceed then current Federal Government per diem rates, for a period of up to five years from March 26, 1984.

#### **(b) Reimbursement**

The Foundation may reimburse the Secretary for any administrative service provided under subsection (a). The Secretary shall deposit any reimbursement received under this subsection into the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

Notwithstanding any other provision of this section, the Secretary of the Interior is authorized to continue to provide facilities, and necessary support services for such facilities, to the National Fish and Wildlife Foundation after March 26, 1989, on a space available, reimbursable cost basis.

(Pub. L. 98–244, [§5, Mar. 26, 1984](#), 98 Stat. 109; Pub. L. 100–240, [§3, Jan. 11, 1988](#), 101 Stat. 1786; Pub. L. 100–653, [title IX, §903, Nov. 14, 1988](#), 102 Stat. 3834.)

#### **EDITORIAL NOTES**

#### **AMENDMENTS**

**1988**—Pub. L. 100–653 inserted provision at end authorizing Secretary of the Interior to continue to provide facilities and necessary support services to National Fish and Wildlife Foundation after Mar. 26, 1989, on space available, reimbursable cost basis.

Pub. L. 100–240 designated existing provisions as subsec. (a), inserted heading, and struck out ", and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services" after "March 26, 1984", and added subsec. (b).



### **§3705. Volunteer status**

The Secretary of the Interior or the Secretary of Commerce may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Department of the Interior or the Department of Commerce, as volunteers in the performance of the functions authorized herein, in the manner provided for under section 742f(c) of this title.

(Pub. L. 98–244, §6, Mar. 26, 1984, 98 Stat. 109; Pub. L. 106–408, title II, §203(c)(2), Nov. 1, 2000, 114 Stat. 1779.)

#### **EDITORIAL NOTES**

#### **AMENDMENTS**

**2000**—Pub. L. 106–408 substituted "Secretary of the Interior or the Secretary of Commerce" for "Secretary" and inserted "or the Department of Commerce" after "Department of the Interior".

### **§3706. Audits, report requirements, and petition of Attorney General for equitable relief**

#### **(a) Audits**

For purposes of section 10101 of title 36, the Foundation shall be treated as a Corporation in part B of subtitle II of title 36.

#### **(b) Report**

The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments; and a description of all acquisition and disposal of real property that is subject to section 3703(e) of this title. The report shall include a detailed statement of the recipient, amount, and purpose of each grant made by the Foundation in the fiscal year.

#### **(c) Relief with respect to certain Foundation acts or failure to act**

If the Foundation—

- (1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its purposes set forth in section 3701(b) of this title; or
- (2) refuses, fails, or neglects to discharge its obligations under this chapter, or threatens to do so;

the Attorney General of the United States may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

(Pub. L. 98–244, §7, Mar. 26, 1984, 98 Stat. 110; Pub. L. 100–240, §2(b)(2), Jan. 11, 1988, 101 Stat. 1786; Pub. L. 106–408, title II, §205, Nov. 1, 2000, 114 Stat. 1780.)

#### **EDITORIAL NOTES**

#### **CODIFICATION**

In subsec. (a), "section 10101 of title 36" substituted for "the Act entitled 'An Act for audit of accounts of private corporations established under Federal law', approved August 30, 1964 (Public Law 88–504, 36 U.S.C. 1101–1103)" and "a corporation in part B of subtitle II of title 36" substituted for "a private corporation established under Federal law" on authority of Pub. L. 105–225, §5(b), Aug. 12, 1998, 112 Stat. 1499, the first section of which enacted Title 36, Patriotic and National Observances, Ceremonies, and Organizations.

#### **AMENDMENTS**

**2000**—Subsec. (b). Pub. L. 106–408 substituted "the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate" for "Congress" and inserted at end "The report shall include a detailed statement of the recipient, amount, and purpose of each grant made by the Foundation in the fiscal year."

**1988**—Subsec. (b). Pub. L. 100–240 inserted "; and a description of all acquisition and disposal of real property that is subject to section 3703(e) of this title" before period at end.

## CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

## TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (b) of this section is listed on page 203), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

### **§3707. United States release from liability**

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

(Pub. L. 98–244, §8, Mar. 26, 1984, 98 Stat. 110.)

### **§3708. Reservation of right to amend or repeal chapter**

The Congress expressly reserves the right to repeal or amend this chapter at any time.

(Pub. L. 98–244, §9, Mar. 26, 1984, 98 Stat. 110.)

### **§3709. Authorization of appropriations**

#### **(a) Authorization of appropriations**

##### **(1) In general**

There are authorized to be appropriated to carry out this Act for each of fiscal years 2021 through 2025—

- (A) \$15,000,000 to the Secretary of the Interior;
- (B) \$5,000,000 to the Secretary of Agriculture; and
- (C) \$5,000,000 to the Secretary of Commerce.

##### **(2) Requirement of advance payment**

The amount made available for a fiscal year under paragraph (1) shall be provided to the Foundation in an advance payment of the entire amount on October 1, or as soon as practicable thereafter, of the fiscal year.

##### **(3) Use of appropriated funds**

Subject to paragraph (4), amounts made available under paragraph (1) shall be provided to the Foundation for use for matching, on a 1-to-1 basis, contributions (whether in currency, services, or property) made to the Foundation, or to a recipient of a grant provided by the Foundation, by private persons and State and local government agencies.

##### **(4) Prohibition on use for administrative expenses**

No Federal funds made available under paragraph (1) shall be used by the Foundation for administrative expenses of the Foundation, including for salaries, travel and transportation expenses, and other overhead expenses.

#### **(b) Additional authorization**

##### **(1) Amounts from Federal agencies**

###### **(A) In general**

In addition to the amounts authorized to be appropriated under subsection (a), Federal departments, agencies, or instrumentalities are authorized to provide funds to the Foundation through Federal financial assistance grants and cooperative agreements, subject to the condition that the amounts are used for purposes that further the conservation and management of fish, wildlife, plants, and other natural resources in accordance with this Act.

###### **(B) Advances**

Federal departments, agencies, or instrumentalities may advance amounts described in subparagraph (A) to the Foundation in a lump sum without regard to when the expenses for which the amounts are used are incurred.

###### **(C) Management fees**

The Foundation may assess and collect fees for the management of amounts received under this paragraph.

##### **(2) Use of amounts accepted from Federal agencies**

Federal funds provided to the Foundation under paragraph (1) may be used by the Foundation for matching, in whole or in part, contributions (whether in currency, services, or property) made to the Foundation by private persons, State and local government agencies, and other entities.

### **(3) Administration of amounts**

#### **(A) In general**

In entering into contracts, agreements, or other partnerships pursuant to this Act, a Federal department, agency, or instrumentality shall have discretion to waive any competitive process applicable to the department, agency, or instrumentality for entering into contracts, agreements, or partnerships with the Foundation if the purpose of the waiver is—

- (i) to address an environmental emergency resulting from a natural or other disaster; or
- (ii) as determined by the head of the applicable Federal department, agency, or instrumentality, to reduce administrative expenses and expedite the conservation and management of fish, wildlife, plants, and other natural resources.

#### **(B) Reports**

The Foundation shall include in the annual report submitted under section 3706(b) of this title a description of any use of the authority under subparagraph (A) by a Federal department, agency, or instrumentality in that fiscal year.

#### **(c) Prohibition on use of grant amounts for litigation and lobbying expenses**

Amounts provided as a grant by the Foundation shall not be used for—

- (1) any expense related to litigation; or
- (2) any activity the purpose of which is to influence legislation pending before Congress.

#### **(d) Use of gifts, devises, or bequests of money or other property**

Any gifts, devises, or bequests of amounts or other property, or any other amounts or other property, transferred to, deposited with, or otherwise in the possession of the Foundation pursuant to this Act, may be made available by the Foundation to Federal departments, agencies, or instrumentalities and may be accepted and expended (or the disposition of the amounts or property directed), without further appropriation, by those Federal departments, agencies, or instrumentalities, subject to the condition that the amounts or property be used for purposes that further the conservation and management of fish, wildlife, plants, and other natural resources.

(Pub. L. 98–244, §10, Mar. 26, 1984, 98 Stat. 110; Pub. L. 100–240, §4, Jan. 11, 1988, 101 Stat. 1786; Pub. L. 101–593, title I, §110(c), Nov. 16, 1990, 104 Stat. 2960; Pub. L. 103–232, title I, §104, Apr. 11, 1994, 108 Stat. 337; Pub. L. 106–408, title II, §207, Nov. 1, 2000, 114 Stat. 1781; Pub. L. 107–141, §6, Feb. 12, 2002, 116 Stat. 14; Pub. L. 109–363, title II, §§202, 204, Oct. 17, 2006, 120 Stat. 2075; Pub. L. 116–188, title I, §107(c), Oct. 30, 2020, 134 Stat. 919.)

### **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This Act, referred to in subsecs. (a)(1), (b)(1)(A), (3)(A), and (d), is Pub. L. 116–188, [Oct. 30, 2020](#), 134 Stat. 905, known as the America's Conservation Enhancement Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

### **AMENDMENTS**

**2020**—Subsec. (a)(1). Pub. L. 116–188, §107(c)(1), added par. (1) and struck out former par. (1) which related to authorization of appropriations for fiscal years 2006 through 2010.

Subsec. (b)(1). Pub. L. 116–188, §107(c)(2)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "In addition to the amounts authorized to be appropriated under subsection (a), the Foundation may accept Federal funds from a Federal agency under any other Federal law for use by the Foundation to further the conservation and management of fish, wildlife, plants, and other natural resources in accordance with the requirements of this chapter."

Subsec. (b)(2). Pub. L. 116–188, §107(c)(2)(B), substituted, in heading, "amounts" for "funds" and, in text, "may be used" for "shall be used" and ", State and local government agencies, and other entities" for "and State and local government agencies".

Subsec. (b)(3). Pub. L. 116–188, §107(c)(2)(C), added par. (3).

Subsec. (d). Pub. L. 116–188, §107(c)(3), added subsec. (d).

**2006**—Subsec. (a)(1). Pub. L. 109–363, §202, substituted "fiscal years 2006 through 2010" for "fiscal years 2001 through 2005".

Subsec. (a)(3). Pub. L. 109–363, §204, inserted ", or to a recipient of a grant provided by the Foundation," after "made to the Foundation".

**2002**—Subsec. (a)(1). Pub. L. 107–141, §6(1), substituted "2005" for "2003".

Subsec. (a)(1)(A). Pub. L. 107–141, §6(2), substituted "\$25,000,000" for "\$20,000,000".

**2000**—Pub. L. 106–408 added text of section and struck out former text which read as follows: "(a) AUTHORIZATION.—There are authorized to be appropriated to the Department of the Interior \$25,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998."

"(b) USE OF AMOUNTS APPROPRIATED.—(1) Subject to paragraph (2), amounts appropriated under this section shall be made available to the Foundation for use for matching, in whole or in part, contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local government agencies.

"(2) No Federal funds authorized under this section shall be used by the Foundation for administrative expenses of the Foundation, including for salaries, travel and transportation expenses, and other overhead expenses.

"(c) ADDITIONAL AUTHORIZATION.—The amounts authorized to be appropriated under this section are in addition to any amounts provided or available to the Foundation under any other Federal law."

**1994**—Subsec. (a). Pub. L. 103–232, §104(a)(1), substituted "\$25,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998" for "not to exceed \$15,000,000 for fiscal year 1991, not to exceed \$20,000,000 for fiscal year 1992, and not to exceed \$25,000,000 for fiscal year 1993".

Subsec. (b). Pub. L. 103–232, §104(b), substituted "paragraph (2)" for "paragraphs (2) and (3)".

Subsec. (c). Pub. L. 103–232, §104(a)(2), added subsec. (c).

**1990**—Pub. L. 101–593 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to the Department of the Interior for each of fiscal years 1988 through 1993, inclusive, not to exceed \$5,000,000 to be made available to the Foundation—

"(1) to match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local government agencies; and

"(2) to provide administrative services under section 3704 of this title."

**1988**—Pub. L. 100–240 amended section generally. Prior to amendment, section read as follows: "For the ten-year period beginning on October 1, 1984, there are authorized to be appropriated to the Department of the Interior not to exceed \$1,000,000 to be made available to the Foundation—

"(1) to match, on a one-for-one basis, private contributions made to the Foundation; and

"(2) to provide administrative services under section 3704 of this title."

## **§3710. Limitation on authority**

Nothing in this chapter authorizes the Foundation to perform any function the exclusive authority for which is provided to the National Park Foundation by subchapter II of chapter 1011 of title 54.

(Pub. L. 98–244, §11, as added Pub. L. 106–408, [title II, §208, Nov. 1, 2000](#), 114 Stat. 1781; amended Pub. L. 113–287, [§5\(d\)\(35\), Dec. 19, 2014](#), 128 Stat. 3267; Pub. L. 116–188, [title I, §107\(d\), Oct. 30, 2020](#), 134 Stat. 920.)

### **EDITORIAL NOTES**

### **AMENDMENTS**

**2020**—Pub. L. 116–188 inserted "exclusive" before "authority".

**2014**—Pub. L. 113–287 substituted "subchapter II of chapter 1011 of title 54" for "Public Law 90–209 (16 U.S.C. 19e et seq.)".