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SENATE

{ REPORT
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NATIONAL FISH AND WILDLIFE FOUNDATION
ESTABLISHMENT ACT AMENDMENTS OF 1999

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MARCH 6, 2000.—Ordered to be printed
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Mr. SMITH of New Hampshire, from the Committee on
Environment and Public Works, submitted the following

REPORT

[to accompany S. 1653]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

BACKGROUND

In 1984, Congress passed and President Reagan signed into law a bill creating the National Fish and Wildlife Foundation. The Foundation is a Federally chartered, charitable, nonprofit corporation established to accept and administer gifts from private citizens for fish, wildlife and plant conservation. The Foundation develops private sector support for selected programs and activities of the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (“NOAA”) that traditionally have not been adequately funded through annual appropriations. The Foundation awards grants in five major categories: conservation education, wetlands and private lands, neotropical migratory bird conservation, fisheries conservation and management, and wildlife and habitat management.

Since its creation in 1984, the Foundation has been very successful in establishing public and private partnerships to conserve fish, wildlife and plants using Federal funds matched by private donations. On average, the Foundation has brought in more than two private sector dollars for every Federal dollar appropriated. With these funds, the Foundation has financed more than 3,500 conservation projects throughout the United States and in 35 other countries. Together with partnerships and challenge grants, the Foundation has provided \$441 million for conservation projects. To fund these projects, the Foundation has entered into partnerships with a wide range of State and local agencies, academic institutions, conservation groups, and businesses including the Franklin Mint, the Phillips Petroleum Company, Chevrolet, the Chesapeake Bay Foundation, Ducks Unlimited, Bass Pro Shops, the International Association of Fish and Wildlife Agencies, the Salvation Army, and the National Audubon Society.

OBJECTIVES OF LEGISLATION

This legislation makes several significant changes to the Foundation's enabling legislation. First, it expands board membership on the Foundation from the current number of 15 to 25. Second, the bill expands the Foundation's jurisdiction to include additional agencies within the Department of the Interior or the Department of Commerce to further the conservation and management of fish, wildlife, plants and natural resources. Third, it authorizes annual appropriations through fiscal year 2004 to the Department of the Interior of \$30 million and to the Department of Commerce of \$10 million. The Foundation's current authorization expired on September 30, 1998.

Legislation similar to S. 1653 passed the Senate by unanimous consent during the 105th Congress.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 designates the bill as the "National Fish and Wildlife Foundation Establishment Act Amendments of 1999".

Sec. 2. Purposes

Section 2 amends the National Fish and Wildlife Foundation Establishment Act by providing authority for the Foundation to accept and administer private gifts of property in connection with the work of agencies within the Department of the Interior and the Department of Commerce. Under current law, the Foundation is only authorized to accept and administer private gifts of property in connection with the Fish and Wildlife Service and NOAA. In some cases, it may be appropriate for the Foundation also to work with other agencies within the Departments of the Interior and Commerce as long as the projects administered by those agencies further the conservation and management of fish, wildlife, plants and natural resources. For example, it may be appropriate for the Foundation to work with the Bureau of Land Management to reduce sedimentation and improve habitat in river systems by restor-

ing riparian barriers and enhancing upland habitat diversity. S. 1653 will allow the Foundation to undertake such work.

Sec.3. Board of Directors of the Foundation

Section 3 makes several changes to the structure of the Board of Directors. Section 3(a) increases the number of directors on the board from 15 to 25 to assist the Foundation in carrying out its responsibilities.

Section 3(b) requires the Board to include the Director of the Fish and Wildlife Service and the Under Secretary of Commerce for Oceans and Atmosphere. The bill provides the Board an opportunity to make recommendations to the Secretary of the Interior on potential candidates for the Board, but retains the current requirement that those appointments be made by the Secretary. The Executive Committee of the Board is authorized to request that the Secretary of the Interior, in consultation with the Secretary of Commerce, remove a Board member if that member is not performing the required duties. This section also includes qualification criteria, terms of service, the establishment of staggered terms for new directors, and procedures for filling Board vacancies. It is not anticipated that there will be a need for further changes in either the appointment process or the size or structure of the Board.

Section 3(c) makes several technical amendments.

Sec. 4. Rights and Obligations of the Foundation

Section 4(a) authorizes the Foundation to have its principal offices in the greater Washington D.C. metropolitan area. Current law requires the Foundation's principal offices to be located in the District of Columbia. This precludes the Foundation from accepting donated office space or renting more economically priced office space in the immediate area outside of the District of Columbia.

Section 4(b) authorizes the Foundation to invest Federal funds in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States; to deposit Federal funds into accounts insured by the United States; to make use of the interest or investment income earned; and to use Federal funds in cooperative agreements with willing private landowners for restoration or enhancement of fish, wildlife and plant resources on private land.

Section 4(c) authorizes the Foundation to acquire property with Federal funds after notifying the appropriate agency, provided that the agency does not object in writing within 60 days.

Section 4(d) repeals Section 304 of Public Law 102-440 (Wild Bird Conservation Act of 1992) to remove an outdated audit requirement. The Foundation would be subject to the general government audit threshold of \$300,000.

Section 4(e) authorizes the Foundation to convey property acquired with Federal funds or to provide Federal funds for acquiring property to persons, other than the Fish and Wildlife Service, after notifying the Federal agency whose funds are being utilized, provided that the agency does not object in writing within 60 days.

Section 4(f) directs the Foundation to convey, at not less than fair market value, property acquired by the Foundation with Federal funds if the Foundation notifies the appropriate agency and

the agency does not disagree within 60 days that the property is no longer valuable for conservation or management of fish, wildlife and plants and the proceeds could be better used for other authorized activities.

The purpose of Sections 4(c), 4(e) and 4(f) is to improve the operation of the Foundation and to maximize the use of its funds for fish and wildlife conservation projects. Under current law, the Director of the Fish and Wildlife Service must consent in writing before the Foundation may acquire or convey certain property. This has caused time-consuming and unnecessary delays.

Sec. 5. Authorization of Appropriations

Section 5(a) authorizes appropriations of \$40 million per year to implement the Act through Fiscal Year 2004, of which \$30 million would go to the Department of the Interior and \$10 million would go to the Department of Commerce. General appropriations granted under the authority of Section 5(a) must be matched on a one-to-one basis with nonfederal contributions. The Foundation also is prohibited from using any Federal funds appropriated under Section 5(a) for administrative expenses, including salaries, travel and transportation expenses, and other overhead expenses. To minimize additional paperwork and administrative burden, the Foundation shall receive the entire appropriation on October 1, or as soon as practicable thereafter, of each fiscal year.

Section 5(b) authorizes the Foundation to accept Federal funds from a Federal agency under any other Federal law provided that those funds are used by the Foundation to conserve and manage fish, wildlife, plant and natural resources in accordance with the requirements of this Act. Federal funds the Foundation receives from a Federal agency outside of the authority granted in Section 5(a) have to be matched to some degree by nonfederal contributions.

Section 5(c) prohibits grant recipients from using Federal appropriations under this Act to engage in activities relating to lobbying or litigation.

Sec. 6. Limitation of Authority

Section 6 clarifies that nothing within S. 1653 authorizes the Foundation to perform activities that are within the jurisdiction of the National Park Foundation (16 U.S.C. 19e et seq.).

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill. The reported bill will have no regulatory impact. This bill will not have any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 1653 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of the bills directives are imposed on

Federal agencies. The bill does not directly impose any private sector mandates.

LEGISLATIVE HISTORY

On September 28, 1999, Senator John H. Chafee introduced S. 1653, a bill to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act. No hearings were held on this bill. On Wednesday, February 9, 2000, the Committee on Environment and Public Works held a business meeting to consider this bill. S. 1653 was favorably reported by the committee by voice vote.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 24, 2000.

Hon. ROBERT C. SMITH, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1653, the National Fish and Wildlife Foundation Establishment Act Amendments of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 1653, National Fish and Wildlife Foundation Establishment Act
Amendments of 1999, As ordered reported by the Senate Com-
mittee on Environment and Public Works on February 9, 2000*

Summary

S.1653 would authorize the appropriation of \$40 million annually over the 2000-2004 period to the Department of the Interior (\$30 million annually) and the Department of Commerce (\$10 million annually) for making payments to the National Fish and Wildlife Foundation (NFWF). The payments would be available to the foundation to match contributions received from private, State, and local organizations to carry out various wildlife programs. Other provisions of the bill, which would amend the National Fish and Wildlife Foundation Establishment Act, would have no impact on Federal spending. Many of these provisions would clarify existing laws regarding the foundation's investment and use of federally appropriated funds.

The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 1653 contains no

intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of State, local, or tribal governments.

Estimated Cost to the Federal Government

Assuming appropriation of the authorized amounts, CBO estimates that Federal agencies would make payments totaling \$40 million to the NFWF in fiscal year 2000 and in each of the following four years. The amounts that would be authorized to be appropriated for payment to the NFWF under S. 1653 are \$15 million higher than the previous annual authorization (which expired at the end of fiscal year 1998) and \$33 million higher than the amount appropriated for payments to the NFWF for 2000. The estimated budgetary impact of S. 1653 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority ^a	7	0	0	0	0	0
Estimated Outlays	6	1	0	0	0	0
Proposed Changes:						
Authorization Level	33	40	40	40	40	0
Estimated Outlays	33	40	40	40	40	0
Spending Under S. 1653:						
Authorization Level	40	40	40	40	40	0
Estimated Outlays	39	41	40	40	40	0

^a The 2000 level is the amount appropriated for that year.

Pay-as-You-Go Considerations: None.

Intergovernmental and Private-Sector Impact

S. 1653 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no significant impact on the budgets of State, local, or tribal governments.

Estimate Prepared by: Deborah Reis (226–2860).

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

**NATIONAL FISH AND WILDLIFE FOUNDATION
ESTABLISHMENT ACT**

AN ACT To establish a National Fish and Wildlife Foundation.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Fish and Wildlife Foundation Establishment Act”.

(16 U.S.C. 3701 note)

SEC. 2. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) **ESTABLISHMENT.**—There is established the National Fish and Wildlife Foundation (hereinafter in this Act 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;]

(1) to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the Department of the Interior and the Department of Commerce 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.

(16 U.S.C. 3701)

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

[(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to in this Act 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.】

(a) *ESTABLISHMENT AND MEMBERSHIP.*—

(1) *IN GENERAL.*—*The Foundation shall have a governing Board of Directors (referred to in this Act as the ‘Board’), which shall consist of 25 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.*—By December 31, 1984, the Secretary of the Interior (hereinafter referred to in this Act as the “Secretary”) shall appoint the Directors of the Board. The Directors shall be appointed for terms of 6 years; except that the Secretary, in making the initial appointments to the Board, shall appoint 3 Directors to a term of 2 years, 3 Directors to a term of 4 years, and 3 Directors to a term of 6 years. A vacancy on the Board shall be filled within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 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.】

(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) *APPOINTMENTS BY THE SECRETARY OF THE INTERIOR.*—

(A) *IN GENERAL.*—*Subject to subparagraph (B), after consulting with the Secretary of Commerce and considering the recommendations submitted by the Board, the Secretary of the Interior shall appoint 23 Directors who meet the criteria established by subsection (a), of whom—*

(i) *at least 6 shall be educated or experienced in fish, wildlife, or other natural resource conservation;*

(ii) *at least 4 shall be educated or experienced in the principles of fish, wildlife, or other natural resource management; and*

(iii) *at least 4 shall be educated or experienced in ocean and coastal resource conservation.*

(B) *TRANSITION PROVISION.*—

(i) *CONTINUATION OF TERMS.*—*The 15 Directors serving on the Board as of the date of enactment of this paragraph shall continue to serve until the expiration of their terms.*

(ii) *NEW DIRECTORS.*—*The Secretary of the Interior shall appoint 8 new Directors. To the maximum extent practicable, those appointments shall be made not later*

than 45 calendar days after the date of enactment of this paragraph.

(3) *TERMS.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), each Director (other than a Director described in paragraph (1)) shall be appointed for a term of 6 years.

(B) *INITIAL APPOINTMENTS TO NEW MEMBER POSITIONS.*—Of the Directors appointed by the Secretary of the Interior under paragraph (2)(B)(i), the Secretary shall appoint—

- (i) 2 Directors for a term of 2 years;
- (ii) 3 Directors for a term of 4 years; and
- (iii) 3 Directors for a term of 6 years.

(4) *VACANCIES.*—

(A) *IN GENERAL.*—The Secretary of the Interior shall fill a vacancy on the Board. To the maximum extent practicable, a vacancy shall be filled not later than 45 calendar days after the occurrence of the vacancy.

(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 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 shall consult with the Secretary of Commerce.

(c) *CHAIRMAN.*—The Chairman shall be elected by the Board from its members for a 2-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 3 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 Act; and
- (C) undertaking of other such acts as may be necessary to carry out the provisions of this Act.

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

(A) Officers and employees may not be appointed until the Foundation has sufficient funds to pay them for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, 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) 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.

SEC. 4. RIGHTS AND OBLIGATIONS OF THE 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.—To carry out its purposes under section 2, the Foundation shall have, in addition to the powers otherwise given it under this Act, the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) 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;

(2) to acquire by purchase or exchange any real or personal property or interest therein, subject to subsection (e);

(3) 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;

(4) to deposit any funds provided to the Foundation by the Federal Government into accounts that are insured by an agency or instrumentality of the United States;

(5) to make use of any interest or investment income that accrues as a consequence of actions taken under paragraph (3) or (4) to carry out the purposes of the Foundation;

(6) 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;

[(3)] (7) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

[(4)] (8) to borrow money and issue bonds, debentures, or other debt instruments;

[(5)] (9) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the [Directors of the Board] *Directors of the Foundation* shall not be personally liable, except for gross negligence;

[(6)] (10) 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 functions; and

[(7)] (11) to do any and all acts necessary and proper to carry out the purposes of the Foundation.¹

For purposes of this Act, 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.

(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 Director of the United States Fish and Wildlife Service (hereinafter in this subsection referred to as the “Director”) consents to the acquisition in writing.]

(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

¹ Stipulated in reauthorizing language in P.L. 102-440: “Beginning in fiscal year 1993 and hereafter, the National Fish and Wildlife Foundation may continue to draw down Federal funds when matching requirements have been met: *Provided*, That interest earned by the Foundation and its subgrantees on funds drawn down to date, but not immediately disbursed, shall be used to fund all activities as approved by the Board of Directors: *Provided further*, That the Foundation’s subgrantees shall be exempt from the audit reporting and compliance requirements of OMB Circular A-133, for all grants of \$100,000 or less. The Foundation shall amend its grant contracts to ensure that its subgrantees are advised and certify that they will comply with all applicable Federal laws and regulations imposed on individuals or organizations receiving Federal funds.”

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 1 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 Director finds that conveyance or provision of Federal funds meets the requirements of clause (i) and consents to it in writing.]

(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) 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.]

(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)(1) In carrying out the purposes under section 2(b), the Foundation may establish a national whale conservation endowment fund, to be used by the Foundation to support research, management activities, or educational programs that contribute to the protection, conservation, or recovery of whale populations in waters of the United States.

(2)(A) In a manner consistent with subsection (c)(1), the Foundation may—

(i) accept, receive, solicit, hold, administer, and use any gift, devise, or bequest made to the Foundation for the express purpose of supporting whale conservation; and

(ii) deposit in the endowment fund under paragraph (1) any funds made available to the Foundation under this subparagraph, including any income or interest earned from a gift, devise, or bequest received by the Foundation under this subparagraph.

(B) To raise funds to be deposited in the endowment fund under paragraph (1), the Foundation may enter into appropriate arrangements to provide for the design, copyright, production, marketing, or licensing, of logos, seals, decals, stamps, or any other item that the Foundation determines to be appropriate.

(C)(i) The Secretary of Commerce may transfer to the Foundation for deposit in the endowment fund under paragraph (1) any amount (or portion thereof) received by the Secretary under section 105(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(a)(1)) as a civil penalty assessed by the Secretary under that section.

(ii) The Directors of the Board shall ensure that any amounts transferred to the Foundation under clause (i) for the endowment fund under paragraph (1) are deposited in that fund in accordance with this subparagraph.

(3) It is the intent of Congress that in making expenditures from the endowment fund under paragraph (1) to carry out activities specified in that paragraph, the Foundation should give priority to funding projects that address the conservation of populations of whales that the Foundation determines—

(A) are the most endangered (including the northern right whale (*Eubaleana glacialis*)); or

(B) most warrant, and are most likely to benefit from, research management, or educational activities that may be funded with amounts made available from the fund.

(g) In carrying out any action on the part of the Foundation under subsection (f), the Directors of the Board shall consult with the Administrator of the National Oceanic and Atmospheric Administration and the Marine Mammal Commission.

(h) EXPENDITURES FOR PRINTING SERVICES OR CAPITAL EQUIPMENT.—The Foundation shall not make any expenditure of Federal funds in connection with any 1 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.

SEC. 5. 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 3, not to exceed the current Federal Government per diem rates, for a period of up to five years from the date of enactment of this Act.

(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.

SEC. 6. VOLUNTEER STATUS.

The [Secretary] *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 7(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)).

SEC. 7. AUDITS, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) **AUDITS.**—For purposes of the Act entitled “An Act for audit accounts of private corporations established under Federal law” approved August 30, 1964 (Public Law 88–504, 36 U.S.C. 1101–1103), the Foundation shall be treated as a private corporation established under Federal law.

(b) **REPORT.**—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress 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 4(e).

(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 2(b); or

(2) refuses, fails, or neglects to discharge its obligations under this Act, or threatens to do

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.

SEC. 8. 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.

SEC. 9. AMENDMENT AND REPEAL.

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

SEC. 10. [AUTHORIZATION OF APPROPRIATIONS.] FUNDING.

[(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.]

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this Act for each of fiscal years 2000 through 2004—

(A) \$30,000,000 to the Department of the Interior; and

(B) \$10,000,000 to the Department 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 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) IN GENERAL.—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 Act.

(2) USE OF FUNDS ACCEPTED FROM FEDERAL AGENCIES.—Federal funds provided to the Foundation under paragraph (1) shall 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 and State and local government agencies.

(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.

SEC. 11. LIMITATION ON AUTHORITY.

Nothing in this Act authorizes the Foundation to perform any function the authority for which is provided to the National Park Foundation by Public Law 90–209 (16 U.S.C. 19e et seq.).

WILD BIRD CONSERVATION ACT OF 1992

AN ACT To promote the conservation of wild exotic birds, to provide for the Great Lakes Fish and Wildlife Tissue Bank, to reauthorize the Fish and Wildlife Conservation Act of 1980, to reauthorize the African Elephant Conservation Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Wild Bird Conservation Act of 1992”.

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[SEC. 304. NATIONAL FISH AND WILDLIFE FOUNDATION.

[Beginning in fiscal year 1993 and hereafter, the National Fish and Wildlife Foundation may continue to draw down Federal funds when matching requirements have been met: *Provided*, That interest earned by the Foundation and its subgrantees on funds drawn down to date, but not immediately disbursed, shall be used to fund all activities as approved by the Board of Directors: *Provided further*, That the Foundation’s subgrantees shall be exempt from the audit reporting and compliance requirements of OMB Circular A–133, for all grants of \$100,000 or less. The Foundation shall amend its grant contracts to ensure that its subgrantees are advised and certify that they will comply with all applicable Federal laws and regulations imposed on individuals or organizations receiving Federal funds.**]**

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