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SENATE

{ REPORT
{ 112-215

NATIONAL FISH AND WILDLIFE FOUNDATION REAUTHORIZATION ACT OF 2011

SEPTEMBER 19, 2012.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 1494]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1494) to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act, having considered the same, reports favorably thereon and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

The National Fish and Wildlife Foundation Reauthorization Act of 2012 reauthorizes the National Fish and Wildlife Foundation (NFWF), which was established by Congress in 1984 to catalyze private investments to conserve fish, wildlife, and their habitats.

Since inception, NFWF has leveraged \$576 million in federal funds into \$2 billion for conservation through more than 11,600 grants in the United States and abroad. NFWF is currently working with 14 federal agencies and more than 50 corporations, foundations, and other private organizations to coordinate and leverage funds for conservation through competitive grant programs. The stated 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

(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.

Congress has reauthorized and modified the program on multiple occasions—1988 (P.L. 100–240), 1990 (P.L. 101–593), 1994 (P.L. 103–232), 2000 (P.L. 106–408), 2002 (P.L. 107–141), 2006 (P.L. 109–363). These reauthorizations have increased and extended the program authorization, modified the membership of the board of directors, and added various requirements for the expenditure of funds.

S. 1494 again extends the Foundation’s authorization and provides the following authorizations of appropriations—Secretary of the Interior (\$15 million); Secretary of Agriculture (\$5 million); and Secretary of Commerce (\$5 million) for FY2012–FY2017. The bill also clarifies and makes modifications to the Foundation’s authority in a number of areas—

- Clarifies NFWF’s authority 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, provided that the amounts are received or administered for purposes that further the conservation and management of fish, wildlife, plants, and other natural resources.

- Clarifies NFWF’s authority to enter into contracts, agreements, and other partnerships with Federal departments, agencies, or instrumentalities, State or local government agencies, tribal governments, or other entities.

- Clarifies NFWF’s authority to receive funds from Federal departments, agencies, or instrumentalities.

- Authorizes NFWF to assess and collect fees for the management of amounts received from federal agencies, and to use such federal funds for matching contributions made by private persons, state and local agencies, and other entities.

- Authorizes NFWF to make available to Federal departments, agencies, or instrumentalities any gifts, devises, or bequests of amounts or other property that it receives.

- Repeals provisions authorizing NFWF to establish a national whale conservation endowment fund.

OBJECTIVES OF THE LEGISLATION

The National Fish and Wildlife Foundation Reauthorization Act of 2011 (S. 1494) extends the authorization of appropriations for the National Fish and Wildlife Foundation through FY 2017 and clarifies the Foundation’s authorities.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the ‘National Fish and Wildlife Foundation Reauthorization Act of 2011’.

Section 2. Board of Directors of the Foundation

Section 2 modifies the education and experience qualifications for members of the Board of Directors. Section 2 also clarifies that the Foundation shall have an executive director who shall serve as the

chief executive officer of the Foundation. A conforming amendment to the North American Wetlands Conservation Act is included because the Foundation's executive director serves on the North American Wetlands Conservation Council.

Section 3. Rights and obligations of the foundation

Section 3 clarifies that the Foundation may receive and administer funds arising from legal settlements, mitigation payments and similar funds for the conservation and management of fish, wildlife, plants and other natural resources. A savings clause is also included stating that the acceptance and administration of such funds does not alter, supersede, or limit any regulatory or statutory requirement associated with those amounts.

This section also eliminates the National Whale Conservation Endowment Fund (Fund) because it is not funded and no longer exists at the Foundation. The Foundation supports whale conservation in partnership with the National Oceanic and Atmospheric Administration (NOAA) and other federal agencies.

Section 4. Authorization of appropriations

Section 4 extends the authorization of appropriations to the Secretaries of Interior, Agriculture and Commerce until fiscal year 2017. The amount authorized for the Secretary of the Interior (\$15 million per year) is a \$10 million per year reduction from current authorization levels.

Section 4 clarifies that federal agencies may provide funds to the Foundation to further the conservation and management of fish, wildlife, plants and other natural resources. This section also allows Federal agencies to grant these funds to the Foundation in an advance lump sum, rather than on a reimbursable basis. Section 4 allows the Foundation to charge a management fee to administer these advanced federal funds.

Section 4 authorizes Federal agencies to grant funds to the Foundation in an expedited manner (without competition) to address an environmental emergency or to reduce administrative costs and expedite conservation and management of fish, wildlife, plants, and other natural resources. The Foundation is required to report on the use of this authority in its annual report to Congress.

Section 4 clarifies that the Foundation may provide, and the federal agencies may accept, funds from the Foundation for fish and wildlife conservation.

Section 5. Limitation on authority

Section 5 modifies Section 11 of the National Fish and Wildlife Foundation Establishment Act to clarify that the Foundation can work with the National Park Service unless it is the exclusive authority of the National Park Foundation.

LEGISLATIVE HISTORY

S. 1494 was introduced by Sen. Barbara Boxer on August 2, 2011. The bill has 13 co-sponsors. The bill was received, read twice, and referred to the Committee on Environment and Public Works. On July 25, 2012, the full Committee on Environment and Public Works met to consider the bill. The bill was ordered reported favorably without amendment by voice vote.

HEARINGS

On April 24th, 2012, the Water and Wildlife Subcommittee of the Senate Environment and Public Works Committee held a legislative hearing on multiple bills, including S. 1494.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1494 on July 25, 2012. An amendment offered by Sen. Boxer was adopted by voice vote. The bill, as amended, was ordered reported favorably by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1494 does not create any additional regulatory burdens, nor will it cause 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 noted that the Congressional Budget Office has found, “S. 1494 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act UMRA and would not affect the budgets of state, local, or tribal governments.”

AUGUST 2, 2012.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1494, the National Fish and Wildlife Foundation Reauthorization Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1494—National Fish and Wildlife Foundation Reauthorization Act of 2012

Summary: S. 1494 would authorize appropriations totaling \$25 million a year to support the National Fish and Wildlife Foundation. The foundation is a nonprofit corporation established by federal law to provide grants for activities related to conserving and managing fish, wildlife, plants, and other natural resources. Assuming appropriation of the authorized amounts, CBO estimates that implementing the legislation would cost \$125 million over the 2013–2017 period.

Enacting S. 1494 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1494 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1494 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

For this estimate, CBO assumes that the bill will be enacted in 2012 and that the authorized amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for grants to the National Fish and Wildlife Foundation.

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|------|------|------|------|-----------|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2013–2017 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹ | | | | | | |
| Authorization Level | 25 | 25 | 25 | 25 | 25 | 125 |
| Estimated Outlays | 25 | 25 | 25 | 25 | 25 | 125 |

¹ CBO estimates that the Department of the Interior and the Forest Service will spend about \$14 million in fiscal year 2012 to support the activities of the National Fish and Wildlife Foundation.

Intergovernmental and private-sector impact: S. 1494 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Jeff LaFave; Impact on state, local, and tribal governments: Melissa Merrill; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, 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**

* * * * *

SECTION 1. SHORT TITLE.

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

* * * * *

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(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.—

(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 six shall be educated or experienced in fish, wildlife, or other natural resource conservation;

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

[(iii) at least four 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 the enactment of this paragraph shall continue to serve until the expiration of their terms.

[(ii) NEW DIRECTORS.—Subject to paragraph (3), the Secretary of the Interior shall appoint eight new Directors.]

(2) *IN GENERAL.*—*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 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.—

[(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)(ii), the Secretary shall appoint, in fiscal year 2001, three Directors for a term of 6 years.

[(C) SUBSEQUENT APPOINTMENTS TO NEW MEMBER POSITIONS.—Of the Directors appointed by the Secretary of the Interior under paragraph (2)(B)(ii), the Secretary shall appoint, in fiscal year 2002—

[(i) two Directors for a term of 2 years; and

[(ii) three Directors for a term of 4 years.]

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

* * * * *

(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]

(A) *IN GENERAL.*—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.]]

(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.

* * * * *

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]

(c) POWERS.—

(1) IN GENERAL.—To carry out the purposes described in 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)] *(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;*

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

[(3)] *(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;*

[(4)] *(D) 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] at 1 or more financial institutions that are members of the Federal Deposit Insurance Corporation or the Securities Investment Protection Corporation;*

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

[(6)] *(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;*

[(7)] *(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;*

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

[(9)] *(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;*

[(10)] *(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 functions[; and];*

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

(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 any and all acts necessary and proper to carry out the purposes of the Foundation.

【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.**】**

(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.—* * *

* * * * *

【(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)] (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.

[(i)] (g) NOTICE TO MEMBERS OF CONGRESS.—The Foundation shall not make a grant of funds 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.

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SEC. 10. 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 2001 through 2005—

[(A) \$25,000,000 to the Department of the Interior; and

[(B) \$5,000,000 to the Department of Commerce.]

(1) IN GENERAL.—*There are authorized to be appropriated to carry out this Act for each of fiscal [years 2011 through 2015]*

[(A) \$20,000,000 to the Secretary of the Interior;]

years 2012 through 2017—

(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.

(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.】

(1) AMOUNTS FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—*In addition to the amounts authorized to be appropriated under 【subsection (a), the Foundation may accept Federal funds from Federal departments, agencies, or instrumentalities for use by the Foundation,】 subsection (a), Federal departments, agencies, or instrumentalities may provide Federal funds to the Foundation, 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 【FUNDS】 AMOUNTS ACCEPTED FROM FEDERAL AGENCIES.—Federal funds provided to the Foundation under paragraph (1) 【shall be used】 *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 【and State and local government agencies】, *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 of that 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 7(b) 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.

SEC. 11. LIMITATION ON AUTHORITY.

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

NORTH AMERICAN WETLANDS CONSERVATION ACT

* * * * *

SECTION 1. [16 U.S.C. 4401 note] SHORT TITLE.

This Act may be cited as the “North American Wetlands Conservation Act”.

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SEC. 4. [16 U.S.C. 4403] ESTABLISHMENT OF NORTH AMERICAN WETLANDS CONSERVATION COUNCIL.

(a) COUNCIL MEMBERSHIP.—(1) There shall be established a North American Wetlands Conservation Council (hereinafter in this Act referred to as the “Council”) which shall consist of nine members who may not receive compensation as members of the Council. Of the Council members—

(A) one shall be the Director of the United States Fish and Wildlife Service, who shall be the responsible Federal official for ensuring Council compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

(B) one shall be the [Secretary of the Board] *Executive Director of the Board* of the National Fish and Wildlife Foundation appointed pursuant to section 3(g)(2)(B) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702);

* * * * *