

“(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; and¹

(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.

¹ So in original. The word “and” probably should not appear.

(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 off-shore 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.

§ 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