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§ 3701. Establishment and purposes of Foundation

(a) Establishment

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

(b) Purposes

The purposes of the Foundation are—

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

of the fish, wildlife, and plant resources of other countries.

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

AMENDMENTS

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

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

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

SHORT TITLE OF 2000 AMENDMENT

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

SHORT TITLE OF 1998 AMENDMENT

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

SHORT TITLE OF 1994 AMENDMENT

Section 101 of title I of Pub. L. 103-232 provided that: "This title [amending this section and sections 3702 and 3709 of this title and enacting provisions listed in a table of National Environmental Centers set out under section 668dd of this title and provisions set out as notes under section 3702 of this title] may be cited as the 'National Fish and Wildlife Foundation Improvement Act of 1994'."

SHORT TITLE OF 1990 AMENDMENT

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

SHORT TITLE

Section 1 of Pub. L. 98-244 provided that: "This Act [enacting this chapter] may be cited as the 'National Fish and Wildlife Foundation Establishment Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3703, 3706, 3743 of this title.

§ 3702. Board of Directors of Foundation

(a) Establishment and membership

(1) In general

The Foundation shall have a governing Board of Directors (referred to in this chapter as the "Board"), which shall consist of 25 Directors appointed in accordance with subsection (b) of this section, 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 di-

verse 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 this section, 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 November 1, 2000, 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.

(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.

(4) Vacancies

(A) In general

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

(B) Term of appointments to fill unexpired terms

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

(5) Reappointment

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

(6) Request for removal

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

(7) Consultation before removal

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

(c) Chairman

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

(d) Quorum

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

(e) Meetings

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

(f) Reimbursement of expenses

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

(g) General powers

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

(A) appointing officers and employees;

(B) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this chapter; and

(C) undertaking of other such acts as may be necessary to carry out the provisions of this chapter.

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

(A) 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 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.

(Pub. L. 98-244, § 3, Mar. 26, 1984, 98 Stat. 107; Pub. L. 101-593, title I, § 110(b), Nov. 16, 1990, 104 Stat. 2959; Pub. L. 103-232, title I, § 103(a)(1), (b), Apr. 11, 1994, 108 Stat. 336; Pub. L. 106-408, title II, § 203(a), (b), Nov. 1, 2000, 114 Stat. 1777, 1778.)

REFERENCES IN TEXT

Provisions of title 5 governing appointments in competitive service, referred to in subsec. (g)(2)(A), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

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

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

“(2) 4 of whom must be educated and experienced in the principles of fish and wildlife management. The membership of the Board, to the extent practicable, shall represent diverse points of view relating to fish and wildlife conservation. The Director of the United States Fish and Wildlife Service shall be an ex officio nonvoting member of the Board. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.”

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

Section 103(a)(2) of Pub. L. 103-232 provided that: “The amendment made by paragraph (1) [amending this

section] shall apply to appointments of Directors of the Board of Directors of the National Fish and Wildlife Foundation made after the date of the enactment of this Act [Apr. 11, 1994].”

INITIAL TERMS OF SIX NEW DIRECTORS

Section 103(c) of Pub. L. 103-232 provided that: “Of the Directors on the Board of Directors of the National Fish and Wildlife Foundation first appointed pursuant to the amendment made by subsection (b)(1) [amending this section], notwithstanding the second sentence of section 3(b) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702(b))—

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

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

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

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

COMPLETION OF APPOINTMENTS

Section 103(d) of Pub. L. 103-232 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

Section 103(e) of Pub. L. 103-232 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].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3704, 4403 of this title.

§ 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

To carry out its purposes under 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—