

NATIONAL FISH AND WILDLIFE FOUNDATION
ESTABLISHMENT ACT AMENDMENTS OF 1998

APRIL 21, 1998.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2376]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2376) to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; AMENDMENT REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the “National Fish and Wildlife Foundation Establishment Act Amendments of 1998”.

(b) AMENDMENT OF NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3701 et seq.).

SEC. 2. MEMBERSHIP OF BOARD OF DIRECTORS OF THE FOUNDATION.

(a) AMENDMENTS.—Section 3 (16 U.S.C. 3702) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “15” and inserting “22”;

(B) in paragraph (1), by striking “six” and inserting “4”, and by striking “and” after the semicolon at the end;

(C) in paragraph (2) by striking the period at the end and inserting “; and”;

(D) by inserting after paragraph (2) the following:

“(3) 4 of whom must be knowledgeable and experienced in ocean and coastal resource conservation.”; and

(E) in the material following paragraph (3) (as so added), by striking “shall be” and inserting “and the Under Secretary of Commerce for Oceans and Atmosphere shall each be”; and

(2) by amending subsection (b) to read as follows:

“(b) APPOINTMENT AND TERMS.—

“(1) IN GENERAL.—The Secretary of the Interior (in this Act referred to as the ‘Secretary’) shall appoint the Directors of the Board, after considering recommendations from the Board under paragraph (4). The Secretary of the Interior shall consult with the Under Secretary of Commerce for Oceans and Atmosphere before appointing any Director of the Board.

“(2) TERMS.—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, 2 Directors to a term of 4 years, and 2 Directors to a term of 6 years. No individual may serve more than 2 consecutive full terms as a Director.

“(3) VACANCIES.—A vacancy on the Board shall be filled within 60 days after the occurrence of the vacancy. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

“(4) NOMINATION OF APPOINTEES.—The Board may recommend to the Secretary individuals to be appointed as Directors of the Board.”.

(b) APPLICATION.—The amendments made by subsection (a) shall apply to any appointment of a Director of the Board of the National Fish and Wildlife Foundation on or after the date of the enactment of this Act.

(c) APPOINTMENT OF ADDITIONAL MEMBERS.—

(1) NOMINATIONS.—The Board of Directors on the National Fish and Wildlife Foundation shall submit any recommendations of individuals for appointment to positions on the Board created by the amendment made by subsection (a)(1) by not later than 60 days after the date of the enactment of this Act.

(2) STAGGERED TERMS.—Of the Directors on the Board of Directors of the National Fish and Wildlife Foundation first appointed pursuant to the amendment made by subsection (a)(1)—

(A) 3 shall be appointed to a term that expires December 31, 1999;

(B) 2 shall be appointed to a term that expires December 31, 2001; and

(C) 2 shall be appointed to a term that expires December 31, 2003,

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

SEC. 3. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.

(a) INVESTMENT AND DEPOSIT OF FEDERAL FUNDS.—Section 4(c) (16 U.S.C. 3703(c)) is amended—

(1) by redesignating paragraphs (3) through (7) in order as paragraphs (8) through (12); and

(2) by inserting after paragraph (2) the following:

“(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 provide Federal funds for the purpose of entering into cooperative agreements with willing private landowners for restoration and enhancement of fish, wildlife, and other natural resources on public or private land, or both, if such cooperative agreements—

“(A) provide general conservation benefits; or

“(B) benefit fish, wildlife, or other natural resources on public land;

“(7) to accept and manage funds provided by any Federal agency under any other law when it is in the public interest;”.

(b) AGENCY APPROVAL OF ACQUISITIONS OF PROPERTY.—Section 4(e) (16 U.S.C. 3703(e)) is amended—

(1) by amending paragraph (1)(B) to read as follows:

“(B) the Foundation notifies the Federal agency that administers the program under which the funds were provided of the proposed acquisition, and the agency fails to object in writing to the proposed acquisition within 60 days after the date of that notification.”; and

(2) in paragraph (2), by striking “the Director” and inserting “the head of the Federal agency that administers the program under which the funds were provided”.

(c) REPEAL.—Section 304 of Public Law 102–440 (16 U.S.C. 3703 note) is repealed.

(d) AGENCY APPROVAL OF CONVEYANCES AND GRANTS.—Section 4(e)(3)(B)(ii) (16 U.S.C. 3703(e)(3)(B)(ii)) is amended to read as follows:

“(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 head of the agency fails to object in writing to such proposed conveyance or provision of Federal funds within 60 days after the date of that notification.”.

(e) RECONVEYANCE OF REAL PROPERTY.—Section 4(e)(5) (16 U.S.C. 3703(e)(5)) is amended to read as follows:

“(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 notifies the Federal agency that administers the Federal program under which the funds were provided, and the agency fails to disagree within 60 days after the date of that notification, that—

“(A) the property 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 proceeds of the conveyance for authorized activities of the Foundation.”.

(f) TERMINATION OF CONDEMNATION LIMITATION; EXPENDITURES FOR PRINTING OR CAPITAL EQUIPMENT.—Section 4(d) (16 U.S.C. 3703(d)) is amended to read as follows:

“(d) EXPENDITURES FOR PRINTING OR CAPITAL EQUIPMENT.—The Foundation may not make an expenditure of Federal funds for printing 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. 4. MATCHING REQUIREMENT.

Section 10(b)(1) (16 U.S.C. 3709(b)(1)) is amended by striking “matching, in whole or in part,” and inserting “matching, on a one-to-one basis.”.

SEC. 5. RESTRICTIONS ON USE OF GRANTS PROVIDED BY FOUNDATION.

Section 10(b) (16 U.S.C. 3709(b)) is amended by adding at the end the following:

“(3)(A) Amounts provided as a grant by the Foundation shall not be used for—

“(i) expenses related to litigation; or

“(ii) any activity the purpose of which is to influence legislation pending before the Congress.

“(B) Subparagraph (A)(ii) shall not be considered to prohibit officers or employees of the Foundation from communicating to Members or staff of Congress requests for legislation that they consider necessary for the efficient conduct of the business of the Foundation or that relates to the authority of the Foundation, appropriations for use by the Foundation, or use of Federal funds by the Foundation.

“(4) Amounts provided as a grant by the Foundation shall not be used for any activity related to the introduction of wolves or grizzly bears in Idaho, Montana, Utah, or Wyoming.”.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 10(a) (16 U.S.C. 3709(a)) is amended to read as follows:

“(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of the Interior and the Secretary of Commerce, in the aggregate, \$25,000,000 for fiscal year 1999.”.

(b) REPEAL.—Section 10(c) (16 U.S.C. 3709(c)) is repealed.

PURPOSE OF THE BILL

The purpose of H.R. 2376 is to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act.

BACKGROUND AND NEED FOR LEGISLATION

On March 26, 1984, President Ronald Reagan signed H.R. 2809 into law, thus establishing the National Fish and Wildlife Foundation. Public Law 98-244, the National Fish and Wildlife Foundation Establishment Act, states that

The Foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States. 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
- (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.

The National Fish and Wildlife Foundation Establishment Act also stipulated that the Foundation would be governed by a Board of Directors, consisting of nine U.S. citizens appointed by the Secretary of the Interior who are educated, experienced, and knowledgeable in fish and wildlife conservation; the members of the Board would serve for a maximum of 12 years without pay, but would be eligible for travel and subsistence expenses; the Foundation would be audited on a yearly basis; and the Foundation would be authorized to receive up to \$1 million in U.S. taxpayers' funds for a ten-year period beginning on October 1, 1983. The Foundation was required to match, on a one-for-one-basis, any appropriated funds.

In 1988, the Congress increased the authorization for the National Fish and Wildlife Foundation to \$5 million a year (Public Law 100-240). It also repealed the one-for-one matching fund requirement.

In 1990, the Congress again extended the Foundation's ability to obtain U.S. taxpayer support for an additional three years by increasing the \$5 million authorization ceiling to \$15 million in Fiscal Year (FY) 1991, \$20 million in FY 1992, and \$25 million in FY 1993. Furthermore, the legislation prohibited the Foundation from using any federal funds for its administrative expenses, including salaries, travel, transportation, and other overhead expenses.

Finally, four years ago, Congress enacted the National Fish and Wildlife Improvement Act of 1994 (Public Law 103-232). This law contained several provisions including: expanding the Foundation's Board of Directors from nine to 15 members; providing explicit authority for the Foundation to work with the National Oceanic and Atmospheric Administration on marine conservation projects; and authorizing federal appropriations of \$25 million per year for Fiscal Years 1994, 1995, 1996, 1997 and 1998.

Since its creation in 1984, the Foundation has received \$105.7 million in federal funds. In FY 1998 the Foundation received \$17.7 million in appropriated monies. Below is a chart that reflects the amount of federal support the Foundation has received.

NATIONAL FISH AND WILDLIFE FOUNDATION				
FISCAL YEAR	AUTHORIZED APPROPRIATION	PRESIDENT'S REQUEST*	INTERIOR/FWS APPROPRIATION	OTHER APPROPRIATION
1987	\$1M over 10 Yrs.	\$0	\$250,000	---
1988	\$5M	\$0	\$500,000	---
1989	\$5M	\$0	\$5,000,000	\$2,000,000
1990	\$5M	\$0	\$4,961,300	---
1991	\$15M	\$3M	\$4,961,300	\$500,000
1992	\$20M	\$3M	\$4,863,000	---
1993	\$25M	\$5M	\$4,957,000	\$750,000
1994	\$25M	\$7.5M	\$7,500,000	---
1995	\$25M	\$7.5M	\$5,490,000	\$3,010,000
1996	\$25M	\$8M	\$4,000,000	\$12,171,000
1997	\$25M	\$5M	\$5,000,000	\$15,000,000
1998	\$25M	\$5M	\$6,000,000	\$11,750,000

*Reflects only U.S. Fish and Wildlife Service.

With these funds and monies raised from the private sector, the National Fish and Wildlife Foundation has financed more than 2,382 conservation projects throughout the United States and in 33 other countries. By using a partnership and challenge grant approach, conservation projects worth more than \$298 million have been funded. This is a ratio of \$2.34 of non-federal money for each federal dollar appropriated to the Foundation. The Foundation has conducted these projects with 15 federal agencies, 65 state and local agencies, 64 colleges and universities, and 468 different conservation groups, including the Cape May Bird Observatory, Chesapeake Bay Foundation, Defenders of Wildlife, Ducks Unlimited, Inc., Rocky Mountain Elk Foundation, International Association of Fish and Wildlife Agencies, The Nature Conservancy, New Jersey Conservation Foundation, the Peregrine Fund and Zoo Atlanta.

The fundamental goals of these conservation projects have been to promote habitat conservation, environmental education, and natural resource management. The Foundation awards grant money and funds conservation projects within five broad category areas. These are:

Wetlands and Private Lands Initiative.—This program works through the North American Waterfowl Management Plan, the Wetlands Reserve Program, and the North American Wetlands Partnership to cooperatively undertake projects between the U.S., Canada, and Mexico to protect and restore both publicly and privately owned wetlands. This initiative has approved 439 projects totaling \$104.7 million, driven by \$43.5 million in federal funds.

Conservation Education Initiative.—This program gives educators access to conservation materials and programs, encourages youths to pursue conservation careers, funds community-based conservation programs, and supports leadership training for conservation professionals. This initiative also focuses on bringing conservation education to under-served and multi-cultural communities. A total of 299 projects have been funded by \$25.2 million, using \$7.6 million in federal funds.

Neotropical Migratory Bird Conservation Initiative.—This program brings public and private partners together in efforts to conserve migratory songbirds and the habitats on which they depend. One example is “Partners in Flight,” an effort to protect and prevent the decline of migratory birds that breed in North America and winter in Central and South America. The initiative has undertaken 382 projects totaling \$32.7 million, driven by \$11.6 million in federal funds.

Fisheries Conservation and Management Initiative.—This program addresses resource and habitat depletion issues for marine, estuarine, and inland fisheries. The Foundation has been active in the New England fishery crisis, involved with coral reef conservation, restored aquatic ecosystems in the Southeast, and is supporting salmon conservation in California and the Pacific Northwest. A total of 533 projects have been funded by \$58.9 million, using \$15.9 million in federal funds.

Wildlife and Habitat Management Initiative.—This program encompasses broad issues in fish, wildlife, and plant conservation, including threatened and endangered species recovery, habitat conservation and big game management. It has supported grants to

better understand the impact and management of invasive exotic species. The Initiative has undertaken 699 projects totaling \$65.7 million, driven by \$18.6 million in federal funds.

The National Fish and Wildlife Foundation also has a Conservation Policy Group that publishes Fisheries and Wildlife Assessments annually for Congressional Representatives and staff, the Executive Branch, and conservation organizations. These documents provide comprehensive, nongovernmental budget analysis of the major federal agencies with significant natural resource management and stewardship responsibilities.

During the past three years, the National Fish and Wildlife Foundation has also been involved in several high profile conservation efforts. The first was a joint effort between the Foundation and the Exxon Corporation to establish the "Save the Tiger Fund." The purpose of this Fund is to "generate awareness and raise funds for the tiger's fight for survival, while also providing an independent vehicle for public contributions to support ongoing conservation projects."¹

Specifically, the Save the Tiger Fund supports a high-tech tiger census that uses remote cameras, collars that emit radio signals, and map-linked databases to track tiger movements; assists in the protection and acquisition of critical tiger habitats; trains wildlife managers and government authorities in Asian countries; and is establishing a global gene pool to assist the small, isolated populations of tigers that exist today. To accomplish these goals, the Exxon Corporation has pledged to donate \$5 million to tiger conservation, and the Foundation has already spent \$3.5 million on 48 Siberian tiger conservation projects.

The Fund is overseen by an independent council consisting of eight of the world's leading zoologists, conservationists, and tiger authorities, and it is operated by the National Fish and Wildlife Foundation. The council is charged with the responsibility of monitoring the various tiger projects, reviewing proposals to fund new ones, and suggesting alternative solutions that may be required in the future.

The second conservation effort involves an agreement signed by the Foundation and the U.S. Fish and Wildlife Service on October 17, 1997. Under the terms of this agreement, the Foundation will manage polar bear trophy fees that are paid by sport hunters who legally import a polar bear into the United States from Canada. These fees were established by the Marine Mammal Protection Act Amendments of 1994 (Public Law 103-238). It is expected that the Foundation will match this money, which is now about \$80,000, with privately raised contributions. All of these funds will be used exclusively for polar bear conservation programs in Alaska and Russia.

While the majority of the 2,382 grants have been for worthwhile projects, the Foundation has funded controversial efforts to reintroduce grizzly bears and wolf populations into Idaho, Montana, Wyo-

¹ Of the eight subspecies of tigers, only five exist today and three of those species—the South China tiger (30 animals), the Sumatran tiger (400–500 animals) and the Siberian tiger (447–500 animals) are critically endangered. In fact, the World Conservation Union has stated that these three species of tigers face a 50 percent probability of extinction within two tiger generations, which is about 20 years.

ming and other states. In addition, the Foundation financially supported the Nature Conservancy's Florida Keys Public Awareness Program that, according to an October 1, 1996, General Accounting Office (GAO) report, engaged in illegal lobbying activities. These activities included attempts to prevent a local referendum on the Florida Keys National Marine Sanctuary and efforts to influence federal and state legislation. GAO pointed out that the Nature Conservancy's reports to the Foundation did not adequately describe its activities, and that the Foundation, prior to the controversy surrounding this grant, had changed its reporting requirements.

These projects were extensively discussed in the Subcommittee's two hearings on the Foundation and remedial language was incorporated within H.R. 2376.

COMMITTEE ACTION

H.R. 2376 was introduced on August 1, 1997, by Congressman Jim Saxton (R-NJ), Chairman, Subcommittee on Fisheries Conservation, Wildlife and Oceans, and Congressman Neil Abercrombie (D-HI), Ranking Minority Member, Subcommittee on Fisheries Conservation, Wildlife and Oceans. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans.

On September 25, 1997, the Subcommittee on Fisheries Conservation, Wildlife and Oceans held a hearing on H.R. 2376. Testimony on the bill was heard from the Honorable Helen Chenoweth; Ms. Jamie Rappaport Clark, Director, U.S. Fish and Wildlife Service; Ms. Sally Yozell, Deputy Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration; Mr. Amos Eno, Executive Director, National Fish and Wildlife Foundation; Mr. Gary Taylor, Legislative Director, International Association of Fish and Wildlife Agencies; Mr. Edward F. Ahnert, President, Exxon Education Foundation; Mr. Don Glaser, Executive Director, Western Water Policy Review Advisory Commission; Mr. Don R. Taylor, Vice President, Sustainability and Stewardship, Champion International Corporation; Mr. William C. Miller, Jr., President, Malpai Borderlands Group; Mr. Jonathan Adler, Director of Environmental Studies, Competitive Enterprise Institute; and Ms. Lois Van Hoover, Idaho Multiple Land Use Coalition.

On October 23, 1997, the Subcommittee on Fisheries Conservation, Wildlife and Oceans met to mark up H.R. 2376. Mr. Saxton offered two amendments, en bloc, to the legislation. The amendment stipulated that none of the money the Foundation provides to a grantee may be used for political lobbying or litigation of any kind, designated that the Department of Commerce's ex officio member of the Foundation's Board of Directors would be the Under Secretary for Oceans and Atmosphere, and shortened the authorization period for the Foundation to September 30, 2000. The amendment was adopted by voice vote. The bill was then ordered favorably reported to the full Resources Committee by voice vote.

On March 11, 1998, the Full Committee met to consider H.R. 2376. At that time, Mrs. Chenoweth offered two amendments. The first amendment stipulated that a recipient of a Foundation grant could not use those monies for any activity related to the introduc-

tion of wolves or grizzly bears in Idaho, Montana, Utah, or Wyoming. The amendment was adopted by voice vote. The second amendment by Mrs. Chenoweth reduced the reauthorization period to one year. The amendment was adopted by a vote of 18 to 9 as follows:

**Committee on Resources
U.S. House of Representatives
105th Congress**

Full Committee

Date 3-11-98

Roll No. 1

Bill No. H.R. 2376 Short Title National Fish & Wildlife Foundation

Amendment or matter voted on: Establishment Act

Chenoweth #2 Amendment

	Y	N	EX	MEMBER	Y	N	EX
Mr. Young (Chairman)	X			Mr. Miller		X	
Mr. Tauzin	X			Mr. Markey			
Mr. Hansen				Mr. Rahall			
Mr. Saxton		X		Mr. Vento			
Mr. Gallegly	X			Mr. Kildee			
Mr. Duncan	X			Mr. DeFazio			
Mr. Hefley	X			Mr. Faleomavaega		X	
Mr. Doolittle	X			Mr. Abercrombie			
Mr. Gilchrest		X		Mr. Ortiz			
Mr. Calvert	X			Mr. Pickett	X		
Mr. Pombo	X			Mr. Pallone			
Mrs. Cubin	X			Mr. Dooley			
Mrs. Chenoweth	X			Mr. Romero-Barcelo		X	
Mrs. Linda Smith				Mr. Hinchey		X	
Mr. Radanovich	X			Mr. Underwood			
Mr. Jones		X		Mr. Farr		X	
Mr. Thornberry	X			Mr. Kennedy			
Mr. Shadegg	X			Mr. Adam Smith			
Mr. Ensign				Mr. Delahunt			
Mr. Bob Smith				Mr. John			
Mr. Cannon	X			Ms. Green		X	
Mr. Brady				Mr. Kind			
Mr. Peterson				Mr. Doggett			
Mr. Hill	X						
Mr. Schaffer							
Mr. Gibbons	X						
Mr. Crapo	X			TOTAL	18	9	

The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE. AMENDMENT REFERENCES

This Act may be cited as the “National Fish and Wildlife Foundation Establishment Act Amendments of 1998.” Amendments in this Act are to the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3701 et seq.).

SECTION 2. MEMBERSHIP OF BOARD OF DIRECTORS OF THE FOUNDATION

Section 2(a) of the bill would increase the number of members of the Board of Directors from 15 to 22. This section would also require that four members of the Foundation’s Board be knowledgeable and experienced in ocean and coastal resource conservation and that the Department of Commerce’s ex officio member of the Board be the Under Secretary for Oceans and Atmosphere. This section also includes procedures for the appointment of Board members, their terms of service, the filling of any Board vacancies, and the establishment of staggered terms for the seven new members of the Foundation’s Board of Directors.

This is the second time that the size of the Foundation’s Board of Directors has been increased. In 1994, Congress expanded the Board from 9 to 15 members, and they became the Foundation for the National Oceanic and Atmospheric Administration. While the Committee did not endorse the notion that the Foundation’s Board members should be self-appointed, this section does formalize the current practice where the Foundation provides the Secretary of the Interior with recommendations on who would be an appropriate person to serve on its Board. The Secretary shall retain the authority to appoint the members of the Board, except for the two ex officio members.

SECTION 3. RIGHTS AND OBLIGATIONS OF THE FOUNDATION

Section 3(a) authorizes the Foundation to invest funds in U.S. securities, to make use of any interest earned, to enter into cooperative agreements with willing private landowners for restoration and enhancement of fish, wildlife and other natural resources, and to accept and manage funds provided by a federal agency when it is in the public interest.

Section 3(b) authorizes the Foundation to acquire property with federal funds after notifying the appropriate agency in writing and the agency does not object.

Section 3(c) repeals Section 304 of Public Law 102–440 (Wild Bird Conservation Act of 1992) to remove an outdated audit requirement. The Foundation would be subjected to the general government audit threshold of \$300,000.

Section 3(d) authorizes the Foundation to convey property acquired with federal funds and to provide federal funds to private individuals to acquire land after notifying the appropriate agency in writing and the agency does not object.

Section 3(e) allows the Foundation to convey, at not less than fair market value, property no longer valuable for fish and wildlife conservation or management after notifying the appropriate agency in writing and the agency does not object.

The fundamental purpose of Sections 3(b), 3(d), and 3(e) 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 U.S. Fish and Wildlife Service must determine in writing that the Foundation may acquire, convey, or sell certain property before the transaction can be undertaken. This has caused time-consuming and unnecessary delays in the Foundation's acquisition process. The notification requirement contained in this Act is an acceptable alternative for the U.S. Fish and Wildlife Service.

Section 3(f) repeals Section 4(d) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3703(d)) which stipulates that no lands or water, or interests therein, that are controlled by the Foundation and are determined by the Director of the U.S. Fish and Wildlife Service or the Migratory Bird Conservation Commission 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. This bill will remove this condemnation shield and will treat these lands like other private property. This section also stipulates that the Foundation must seek approval from the appropriate federal agency for the purchase of any capital equipment or printing costs greater than \$10,000. Current law requires approval of all purchases of capital equipment and printing costs regardless of the amount.

SECTION 4. MATCHING REQUIREMENT

This section reestablishes the requirement of Public Law 98-244 creating the National Fish and Wildlife Foundation, but subsequently repealed, that the Foundation match, at a minimum, on a one-to-one basis, private contributions for each dollar they receive in appropriations from the Federal Government. In determining eligibility of contributed funds for the purposes of matching federal dollars, the Foundation shall ensure that such contributed funds are: (1) specific to the project(s) being funded by the Foundation; (2) non-federal in nature; and (3) third party, which means they are derived from a source other than the grantee.

SECTION 5. RESTRICTIONS ON GRANTS PROVIDED BY FOUNDATION

This section stipulates that none of the money the Foundation provides to a grantee to conduct a conservation project may be used for political lobbying or litigation of any kind. This section is not intended to prohibit the officers or employees of the Foundation from communicating with Congress on matters relating to the authority of the Foundation or the use of their appropriated federal funds.

This section is consistent with a requirement that the Foundation already places on its grantees. Currently, every individual or organization that obtains funding from the Foundation to participate or conduct a fish and wildlife conservation project must sign a contract stipulating that none of the money it receives, either

with Foundation federal or non-federal matching funds, will be used for political advocacy or litigation of any kind.

This section also stipulates that a recipient of a grant from the Foundation may not use those monies for any activity related to the introduction of wolves or grizzly bears in Idaho, Montana, Utah, or Wyoming.

SECTION 6. AUTHORIZATION OF APPROPRIATIONS

This section extends the current authorization of appropriations level of \$25 million for the Foundation for Fiscal Year 1999. The Foundation's current authorization expires on September 30, 1998. This section includes specific authority for the Secretary of Commerce to receive appropriated funds. To minimize additional paperwork and administrative burden, the Committee intends that the Foundation shall receive advanced payment of the entire award amounts at the time award agreements are executed. It also repeals Section 10(c) (16 U.S.C. 3709(c)) which stipulates that "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."

Section 10(c) was enacted in Public Law 103-232, the National Fish and Wildlife Foundation Improvement Act of 1994. The Committee believes that this section is no longer appropriate and that language in Section 3(a)(7) of the National Fish and Wildlife Foundation Establishment Act will ensure that the Foundation may "accept and manage funds provided by any Federal agency when it is in the public interest."

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the advisory committee reauthorized in H.R. 2376 are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 2376.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2376. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the

Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2376 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2376.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2376 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 31, 1998.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2376, the National Fish and Wildlife Foundation Establishment Act Amendments of 1997.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 2376—National Fish and Wildlife Foundation Establishment Act Amendments of 1997

Summary: H.R. 2376 would authorize the appropriation of \$25 million for fiscal year 1999 to the Departments of Commerce and the Interior 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 bill provisions, 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. H.R. 2376 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and

would have no significant impact on the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: Assuming appropriations of the authorized amount, CBO estimates that the Departments of Commerce and the Interior would pay the NFWF a total of \$25 million in the first quarter of fiscal year 1999. The authorized payment is the same as the current annual authorization (which expires at the end of this fiscal year) but is \$19 million higher than the amount appropriated for the NFWF for 1998. The estimated budgetary impact of H.R. 2376 is shown in the following table. The costs of this legislation fall within the budget function 300 (natural resources and environment).

	By fiscal years, in millions of dollars—					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority ¹	6	0	0	0	0	0
Estimated Outlays	6	0	0	0	0	0
Proposed Changes:						
Authorization Level	0	25	0	0	0	0
Estimated Outlays	0	25	0	0	0	0
Spending Under H.R. 2376:						
Authorization Level ¹	6	25	0	0	0	0
Estimated Outlays	6	25	0	0	0	0

¹ The 1998 level is the amount appropriated for that year.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 2376 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.

Estimate approved by: Paul N. Van De Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 2376 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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**

* * * * *

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]** 22 Directors, each of whom shall be a United States citizen and—

- (1) ~~【six】~~ 4 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~~【.】~~; and
- (3) 4 of whom must be knowledgeable and experienced in ocean and coastal resource conservation.

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】~~ and the Under Secretary of Commerce for Oceans and Atmosphere shall each 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.

~~【(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) IN GENERAL.—The Secretary of the Interior (in this Act referred to as the “Secretary”) shall appoint the Directors of the Board, after considering recommendations from the Board under paragraph (4). The Secretary of the Interior shall consult with the Under Secretary of Commerce for Oceans and Atmosphere before appointing any Director of the Board.~~

~~(2) TERMS.—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, 2 Directors to a term of 4 years, and 2 Directors to a term of 6 years. No individual may serve more than 2 consecutive full terms as a Director.~~

~~(3) VACANCIES.—A vacancy on the Board shall be filled within 60 days after the occurrence of the vacancy. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.~~

~~(4) NOMINATION OF APPOINTEES.—The Board may recommend to the Secretary individuals to be appointed as Directors of the Board.~~

* * * * *

SEC. 4. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.

(a) * * *

* * * * *

(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) * * *

* * * * *

(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 provide Federal funds for the purpose of entering into cooperative agreements with willing private landowners for restoration and enhancement of fish, wildlife, and other natural resources on public or private land, or both, if such cooperative agreements—*

(A) *provide general conservation benefits; or*

(B) *benefit fish, wildlife, or other natural resources on public land;*

(7) *to accept and manage funds provided by any Federal agency under any other law when it is in the public interest;*

[(3)] (8) *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)] (9) *to borrow money and issue bonds, debentures, or other debt instruments;*

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

[(6)] (11) *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)] (12) *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.

[(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 Con-

servations 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.】

(d) *EXPENDITURES FOR PRINTING OR CAPITAL EQUIPMENT.*—*The Foundation may not make an expenditure of Federal funds for printing 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.*

(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 fails to object in writing to the proposed acquisition within 60 days after the date of that 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】 *the head of the Federal agency that administers the program under which the funds were provided*, 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) * * *

* * * * *

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

(i) * * *

【(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 head of the agency fails to object in writing to such proposed conveyance or provision of Federal funds within 60 days after the date of that notification.

* * * * *

【(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) *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 notifies the Federal agency that administers the Federal program under which the funds were provided, and the agency fails to disagree within 60 days after the date of that notification, that—*

(A) the property 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 proceeds of the conveyance for authorized activities of the Foundation.

* * * * *

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

[(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.]

(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of the Interior and the Secretary of Commerce, in the aggregate, \$25,000,000 for fiscal year 1999.

(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,] *matching, on a one-to-one basis,* 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.

(3)(A) Amounts provided as a grant by the Foundation shall not be used for—

(i) expenses related to litigation; or

(ii) any activity the purpose of which is to influence legislation pending before the Congress.

(B) Subparagraph (A)(ii) shall not be considered to prohibit officers or employees of the Foundation from communicating to Members or staff of Congress requests for legislation that they consider necessary for the efficient conduct of the business of the Foundation or that relates to the authority of the Foundation, appropriations for use by the Foundation, or use of Federal funds by the Foundation.

(4) Amounts provided as a grant by the Foundation shall not be used for any activity related to the introduction of wolves or grizzly bears in Idaho, Montana, Utah, or Wyoming.

[(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.]

SECTION 304 OF THE WILD BIRD CONSERVATION ACT OF 1992

[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.】

DISSENTING VIEWS

It is with great regret that we find ourselves in the position of opposing H.R. 2376 as reported by the Committee. Historically, the excellent programs of the National Fish and Wildlife Foundation have had the strong support of Members of Congress on both sides of the aisle since the Foundation's inception in 1984.

We supported H.R. 2376 as introduced and as reported by the Subcommittee on Fisheries Conservation, Wildlife, and Oceans last October 23. Unfortunately, the amendments adopted by the full Resources Committee have transformed what should have been a straightforward reauthorization of a popular program into a partisan platform with the objective of undermining the Endangered Species Act (ESA).

One of the amendments adopted by the Committee would prohibit the Foundation from funding any activities related to the reintroduction of wolves or grizzly bears in Idaho, Montana, Utah, and Wyoming. The other amendment would reduce the authorization period for the Foundation to one year. Both seriously undermine the fundamental integrity of the Foundation's ability to do its job.

The National Fish and Wildlife Foundation is an established, competitive grant-making organization with a long history of funding successful conservation projects throughout the United States. It has never, to our knowledge, been accused of anything but objective selection of its projects. Moreover, the Foundation has always had broad, bipartisan support, until the last Congress, when a few Members began investigating any activities related to the Endangered Species Act.

Ironically, the Foundation has not funded any grizzly bear reintroduction efforts, though it has funded research and education programs on the prevention of human/grizzly bear interactions. In addition, the Foundation has awarded less than \$100,000 worth of projects related to the reintroduction of wolves.

However, the point of our concern is not whether the Foundation has funded a particular project or the amount of the grant in question, but whether Members of Congress should be second-guessing a competitive grant-making process that has resulted in more than 2000 successful projects over the past 14 years with virtually no controversy. The review of scientifically based conservation funding should not be the role of Congress, but the role of peer reviewers, as both the supporters and the critics of the Endangered Species Act have stressed throughout the ESA reauthorization debate. If Congress establishes the dangerous precedent of choosing those programs that are and are not acceptable for funding, the integrity of the grant making process is permanently compromised. If the sponsors of this amendment have concerns about the reintroduction

of wolves and grizzly bears pursuant to the ESA, they should frame that debate within the context of the reauthorization of that law.

Reducing the reauthorization of the Foundation to one year is likely to have a severely detrimental effect on the Foundation's ability to conduct its programs. While the proponents of this measure argue that it is merely a tool to provide Congress with greater oversight of the Foundation, its practical effect will be to restrict the fund-raising and grant-making capabilities of the Foundation.

As we know, an expiring authorization is not necessary to prompt oversight. As an example, the Resources Committee conducted an oversight hearing into the operations of the Foundation in 1996, two years before the implementing legislation was set to expire and at the behest of the Members that sponsored these weakening amendments. While this amendment does not provide any additional oversight capability, it does make it difficult—if not impossible—for the Foundation to conduct any long term planning or to leverage private dollars.

Over the past fourteen years the Foundation has matched federal dollars with private donations on a two-to-one basis, ensuring that federal appropriations have a far greater impact. With only a one year reauthorization, it will be difficult for the Foundation to demonstrate the long term planning needed to raise private matching funds, seriously limiting grant-making programs, including programs that may have some direct or indirect relationship to endangered species. We suspect that this is the real goal of the amendment.

In conclusion, the Foundation has always experienced broad, bipartisan support on both sides of the aisle and throughout the U.S. for doing the job it was established to do in a fair and unbiased manner. It is unnecessary to adopt these measures now as part of the reauthorization legislation, thereby sending the signal that the Congress is suddenly planning to second-guess the good work that the Foundation has done.

If this institution wants to debate the merits of the Endangered Species Act and its related programs, we should do it within the context of that law, not this legislation. Therefore, while we continue to support the underlying goal of reauthorizing the Foundation and its programs, we must reluctantly oppose the bill reported by the Committee.

GEORGE MILLER.
NEIL ABERCROMBIE.
MAURICE D. HINCHEY.
FRANK PALLONE, Jr.
SAM FARR.
BRUCE F. VENTO.
EDWARD J. MARKEY.
ENI FALEOMAVAEGA.
PATRICK J. KENNEDY.