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National Fish and Wildlife Foundation (NFWF): History, Function, and Funding

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Summary

The National Fish and Wildlife Foundation (NFWF) was chartered by Congress in 1984 to aid in the conservation of plants, animals, and ecosystems; many of its projects involve work with federal agencies. By statute, NFWF is a "charitable and nonprofit corporation and is not an agency or establishment of the United States." Registered under the Internal Revenue Code (IRC) Section 501(c)(3), NFWF is not a part of the Fish and Wildlife Service (FWS, Department of the Interior), though it does have certain links to that agency, as well as to the National Oceanic and Atmospheric Administration (NOAA).

NFWF offers opportunities to individuals and corporations to make tax-deductible contributions to promote plant, animal, and ecosystem conservation in peer-reviewed projects. It also allows federal agencies to seek partners who wish to aid in such projects, and it sometimes serves as a conduit for the management of fines or funds resulting from court settlements to mitigate damage to fish and wildlife. NFWF projects may benefit conservation on federal lands, but other ownerships also may receive benefits. NFWF differs from such other federal foundations as the National Park Foundation and the National Forest Foundation in having much more tenuous links to federal agencies; many NFWF projects have no link to any federal agency.

If Congress considers legislation to create additional foundations associated with the missions of other federal land agencies, such as the Bureau of Land Management (BLM)—or for other purposes, such as Indian education—NFWF and the two foundations noted above offer three different models for such an effort.

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Introduction

The National Fish and Wildlife Foundation (NFWF) was chartered by Congress in 1984.[1] Although many of NFWF's projects involve work with federal agencies, under the Internal Revenue Code (IRC) Section 501(c)(3), it is a "charitable and nonprofit corporation and is not an agency or establishment of the United States."[2] According to its enabling legislation, NFWF supplements not only the work of the Fish and Wildlife Service (FWS, in the Department of the Interior [DOI]) and the National Oceanic and Atmospheric Administration (NOAA, in the Department of Commerce) but also the conservation of the nation's plants, animals, and ecosystems more generally. This broad mission is specified in the purposes of the foundation:

> (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.[3]

NFWF activities are supported through gifts of property and capital and through funds arising from regulatory actions or from requirements for project mitigation or legal settlements. These contributions come from a variety of sources, both federal and nonfederal.[4] (See "NFWF Projects and Partners: Recent Examples," below, for various examples of funding sources.) Since its inception through FY2015, NFWF has managed a total of $3.5 billion in grants. In FY2015, NFWF provided $87.6 million in support from various federal agencies; $0.4 million in other public funds; $38.0 million in private funds; and $132.4 million in directed funds, primarily related to an oil spill in the Gulf of Mexico. (See "Legal Settlements: Example of Gulf Environmental Benefit Fund", below.)

In addition to FWS, two other federal land agencies have associated foundations. The work of the Forest Service (FS, in the U.S. Department of Agriculture) is supplemented by the National Forest Foundation (NFF), and that of the National Park Service (NPS, in DOI) is supplemented by the National Park Foundation (NPF). The fourth federal land management agency, the Bureau of Land Management (BLM, in DOI) has no associated foundation. If Congress were to establish a foundation to support the work of BLM or to create other foundations supporting the work of other federal agencies, NFWF, NFF, and NPF might serve as three different examples of how to structure additional foundations.

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[1] National Fish and Wildlife Foundation (NFWF) Establishment Act, P.L. 98-244, 16 U.S.C. §§3701-3710.

[2] 16 U.S.C. §3701(a). For more information on tax-exempt organizations generally, CRS Report 96-264, *Frequently Asked Questions About Tax-Exempt Organizations*, by Erika K. Lunder. For information on federally chartered organizations, see CRS Report RS22230, *Congressional or Federal Charters: Overview and Enduring Issues*, by Henry B. Hogue.

[3] 16 U.S.C. §3701(b).

[4] The Charity Navigator, an independent organization that rates charitable organizations on the basis of financing, accountability, and transparency, rates NFWF at four stars (of a possible four). See https://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=4178.

NFWF Structure

The NFWF Board of Directors has 30 members who are approved by the Secretary of the Interior. The director of FWS and the Under Secretary of Commerce for Oceans and Wildlife are included as ex officio voting members of the board. The members of the board are to "represent diverse points of view relating to conservation and management of fish, wildlife, plants, and other natural resources."[5] The chairman is elected by the board for a two-year term. Membership on the board, by itself, does not constitute federal employment, although some federal employees are members of the board.

Early Years

When NFWF was chartered in 1984, the Secretary of the Interior was authorized to provide NFWF with personnel, facilities, and other administrative services, including per diem expenses at federal government rates, for up to five years after enactment.[6] After that authorization expired in 1989, DOI was authorized to continue such services or facilities but only based on available space and with reimbursement by NFWF of DOI costs. The foundation moved out of its offices at DOI after the five-year authorization expired, and it no longer receives direct administrative support from DOI.[7]

Current Links Between NFWF and Federal Agencies

As noted above, one of the three purposes of NFWF is to work with both FWS and NOAA in the conservation of plants and animals; the chartering act specifically authorized funding for DOI and the Department of Commerce to carry out the purposes of the act. The most recent funding level was set at $25 million for DOI and $5 million for the Department of Commerce to be used in matching grants for wildlife conservation related to the mission of both departments.[8] NFWF also is authorized to work on projects to benefit wildlife with other federal agencies in addition to FWS and NOAA, when such agencies seek nonfederal partners to carry out the activity. Projects with federal participation need not necessarily occur on federal lands. The act specifies that funds provided to NFWF from all federal agencies are to be administered by NFWF as matching grants, with the federal funds constituting no more than half of the grant and the nonfederal partner(s) providing at least half.[9] Federal funds may not be used to pay salaries, travel, or other overhead expenses of the foundation.[10] When these projects are funded, their federal contributions are part of the sponsoring agency's budget rather than that of FWS or NOAA. NFWF projects with no

[5] 16 U.S.C. §3702(a)(2).

[6] 16 U.S.C. §3704(a).

[7] When grants are issued, NFWF may recover overhead costs for administering the grant. Some grants may come in part from federal agencies; in that sense, NFWF still receives some federal support. NFWF now occupies commercial offices in Washington, DC, and has five additional regional offices.

[8] 16 U.S.C. §3709(a). Appropriations for the NFWF have been authorized repeatedly, with the most recent provision extended through FY2010. However, Congress has continued to appropriate funds for the DOI and Commerce set-asides in succeeding years. The statute refers to funding allocated to the two departments. In the case of DOI, the special set-aside funds could then be allocated not only to FWS but also to any other DOI agency. In the case of Department of Commerce, NOAA—and within NOAA, the National Marine Fisheries Service—has fish and wildlife responsibilities.

[9] 16 U.S.C. §3709(a)(4).

[10] 16 U.S.C. §3709(a). If such expenses are essential to the NFWF grant, the prohibition suggests that the nonfederal donor must fund them.

federal grant funds may occur on federal lands, state or tribal lands, or private lands. Any project supported by NFWF funds must undergo peer review.

NFWF Projects and Partners: Recent Examples

The range of projects sponsored by NFWF is broad. These projects have governmental and nongovernmental partners. When a taxable nonfederal entity provides matching funds to NFWF, a 501(c)(3) organization, the funds are tax-deductible to the extent allowed by law.

The following examples illustrate various donors and types of partnerships and are quoted from NFWF's most recent annual report.

State Partner

> A colossal effort to rebuild and restore 13 miles of coastline along the Gulf of Mexico ranks as the largest conservation project ever undertaken by the state of Louisiana and NFWF. This massive conservation project is unfolding on the Caminada Headlands, a beach and marsh system that serves as a barrier between the Gulf of Mexico and Port Fourchon, Louisiana's southernmost port and one of the nation's most important energy hubs.... When the NFWF-funded portion of the project is complete, workers will have dredged more than 5 million cubic yards of sand from Ship Shoal, an 8,000-year old submerged barrier island 27 miles away in the Gulf of Mexico. Sand fencing and planting of native vegetation will help stabilize the new dunes, providing stopover sites for migrating songbirds and nesting habitats for shorebirds. The historic project has been divided into two stages; NFWF funded the second phase with $144.5 million from its Gulf Environmental Benefit Fund in 2014. A significant portion of the dredging and construction work for this phase was accomplished in 2015.[11]

Multiple Federal Agency and Nongovernmental Partners

> In the spring of 2015, NFWF and one of its largest federal partners, the U.S. Fish and Wildlife Service, developed a bold plan to quickly address the causes of the [monarch butterfly's] decline. The federal agency committed $1.2 million in 2015 so that NFWF could create the Monarch Butterfly Conservation Fund and begin guiding conservation investments across the insect's U.S. range. Through a variety of private- and public-sector partners, including Monsanto, NFWF quickly leveraged this initial commitment and more than doubled the funding immediately available. Working with monarch experts, the Foundation then launched a competitive grant program to increase vital monarch habitat. By early fall ... NFWF had received 115 proposals and awarded $3.3 million in grants to 22 of the most promising projects, in the process drawing another $6.7 million in matching contributions for a total conservation impact of $10 million in its first year.[12]

Nongovernmental Donors Only

> The [Acres for America conservation] program began in 2005, when Walmart made an initial $35-million commitment to purchase and preserve one acre of wildlife habitat in the United States for every acre of land developed by the company—about 100,000 acres today. The program has far surpassed that 10-year goal, protecting an area 10 times larger. In fact, by conserving private lands that connect national forests, parks and other protected

[11] NFWF *2015 Annual Report*, Washington, DC, 2016, p. 17. Available from http://www.nfwf.org/whoweare/mediacenter/Pages/home.aspx#.WBJd8VL0dsk. Hereinafter cited as *NFWF 2015 Report*.

[12] *NFWF 2015 Report*. p. 9.

> lands, the program has benefited wildlife habitats and migration corridors over an even larger area—more than 10 million acres. In fiscal year 2015, Acres for America awarded grants that will protect more than 235,000 acres of forest, riparian and coastal habitats in Alabama, California, Florida, Texas and Washington. Including these latest projects, the program has funded 61 projects in 33 states, the District of Columbia and Puerto Rico. In addition to permanently protecting some of the country's most important wildlife habitats, these projects have provided new public access to some of America's most pristine natural areas, all the while ensuring that ranchers, farmers and foresters can continue to work their lands.[13]

As these examples illustrate, some grants have no direct federal funding involvement, although federal lands may benefit from NFWF projects.

In addition to voluntary contributions, NFWF may be chosen by a range of interested parties—whether federal, state, local, or private—to manage funds to support mitigation requirements for projects that harm fish or wildlife. NFWF also may receive funds that are settlements or penalties resulting from lawsuits that find damage to fish and wildlife resources. In the history of NFWF, by far the largest such settlement occurred as a result of the *Deepwater Horizon* oil spill.

Legal Settlements: Example of Gulf Environmental Benefit Fund

When damage has been sustained to public fish and wildlife resources and a legal settlement for remediation involves monetary damages, these damages are sometimes awarded to NFWF. NFWF then manages the award, often with additional partners, to address habitat restoration in the area of the damage. By far the largest instance of such an award occurred after the *Deepwater Horizon* oil spill in the Gulf of Mexico in 2010. Pursuant to the criminal settlements between BP and the Department of Justice (DOJ) and between Transocean and DOJ in early 2013, NFWF is to receive more than $2.54 billion for Gulf Coast restoration over the five-year period from 2013 to 2017, for disbursal in each succeeding year.[14] (See **Table 1**.) The funds are placed in the Gulf Environmental Benefit Fund (GEBF). Both criminal plea documents direct NFWF to use the GEBF funds in the following manner:

- 50% (approximately $1.27 billion) of the funds are to support the creation or restoration of barrier islands off the coast of Louisiana and the implementation of river diversion projects to create, preserve, or restore coastal habitats. These projects will "remedy harm to resources where there has been injury to, or destruction of, loss of, or loss of use of those resources resulting from the [*Deepwater Horizon*] oil spill." (The Louisiana project cited in "State Partner," above, was supported by these funds.)
- 50% of the funds are to support projects that "remedy harm to resources where there has been injury to, or destruction of, loss of, or loss of use of those resources resulting from the [*Deepwater Horizon*] oil spill." NFWF will support such projects in the other Gulf states based on the following proportions: Alabama, 28% ($356 million); Florida, 28% ($356 million); Mississippi, 28% ($356 million); and Texas, 16% ($203 million).

[13] *NFWF 2015 Report*. p.13.

[14] The Transocean monies are scheduled to be disbursed over a two-year period, and the BP monies are scheduled to be provided to NFWF over a five-year period.

Of these funds, the vast majority are expected to be made available to NFWF in the fourth and fifth years (2017 and 2018). The payment schedule and allocations to individual states are shown below in **Table 1**. For both the BP and Transocean settlement allocations, NFWF is directed to consult with "appropriate state resource managers, as well as federal resource managers that have the statutory authority for coordination or cooperation with private entities, to identify projects and to maximize the environmental benefits of such projects."[15] For the Louisiana projects, NFWF is directed to consider the State Coastal Master Plan, as well as the Louisiana Coastal Area Mississippi River Hydrodynamic and Delta Management Study, as appropriate.[16] Once funds become available, NFWF obligates them according the terms of the settlement.

Table 1. Schedule of Payments to NFWF Gulf Environmental Benefit Fund

($ in millions)

Date	Louisiana	Alabama	Florida	Mississippi	Texas	Total Payment
April 2013	79.0	22.1	22.1	22.1	12.6	**158.0**
February 2014	176.5	49.4	49.4	49.4	28.2	**353.0**
February 2015	169.5	47.5	47.5	47.5	27.1	**339.0**
February 2016	150.0	42.0	42.0	42.0	24.0	**300.0**
February 2017	250.0	70.0	70.0	70.0	40.0	**500.0**
February 2018	474.0	125.2	125.2	125.2	71.5	**894.0**
Totals	**1,272.0**	**356.2**	**356.2**	**356.2**	**203.5**	**2,544.0**

Source: National Fish and Wildlife Foundation (NFWF), "Gulf Environmental Benefit Fund: Timetable," at http://www.nfwf.org/gulf/Pages/GEBF-Timetable.aspx; viewed on Nov. 16, 2016.

Comparison of Three Foundations

Two other federal land agencies have associated foundations that support their work: the National Park Foundation supports the work of the National Park Service, and the National Forest Foundation supports the work of the Forest Service.[17] These two foundations and NFWF are similar in that all three are federally chartered as 501(c)(3) organizations. All three have managing boards that include specified federal employees as ex officio members; those federal employees do not constitute a majority of the board. No board is chaired by a federal employee. However, the three foundations have important differences in their missions and approaches, reflecting the various missions and histories of the three federal agencies.

NPF's mission is to accept gifts "either absolutely or in trust of real or personal property or any income therefrom or other interest therein for the benefit of or in connection with, the National Park Service, its activities, or its services.... "[18] Of the three agencies, NPS is the one whose activities and responsibilities are most closely tied to the lands it manages in the National Park

[15] Plea agreement with BP, provision 37; plea agreement with Transocean, provision 4(c). Both plea agreements may be found at http://www.nfwf.org/gulf/Pages/plea-agreements.aspx.

[16] More information about the fund is available at NFWF, "Gulf Environmental Benefit Fund," at http://www.nfwf.org/gulf/Pages/home.aspx.

[17] The Bureau of Land Management does not currently have an associated foundation.

[18] P.L. 90-209, Sec. 3; 54 U.S.C. §101111.

System. Although NPS may solicit the input of state, tribal, or local governments or local organizations, it typically does not share management of National Park System lands with other organizations, nor does it have as many responsibilities apart from those lands as do the other two agencies.[19] Reflecting this mission, the NPF primarily manages donations that support the National Park System in various ways, either directly on NPS lands or indirectly on projects that affect NPS lands.

In contrast, NFF's mission is somewhat more similar to the multifaceted purposes of NFWF. FS manages the National Forest System; cooperates extensively with state and private forestry interests; and works on forestry research, wildland fires, range and watershed protections, and other programs related to the nation's forests and grasslands, whether federal or not. This broader mission of FS is reflected in the three statutory purposes of the NFF:

> (1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture;
>
> (2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and
>
> (3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.[20]

Only the second of these purposes is tied directly to the National Forest System; the other two are clearly related to the agency but not necessarily related to the forests and grasslands in the National Forest System.

In contrast to the management of forest resources and national parks, the management and conservation of the nation's fish and wildlife has long been a widely shared responsibility, with many efforts predating the existence of FWS. Every state has an agency responsible for managing its sport fisheries and its game species. Most states also play some role in managing nongame species, and many have some program for the conservation of rare species. In addition, tribal managers work to conserve resident fish and wildlife, particularly those with sacred or ceremonial functions. Moreover, the wildlife and fish species move across all of these jurisdictions; a foundation focused on the species under only one federal jurisdiction would lose many opportunities to advance conservation. NFWF was created by Congress with statutory purposes that reflect the administrative complexity of fish and wildlife conservation. As noted above (see "Introduction"), the first of these purposes ties NFWF to both FWS and NOAA. The remaining two purposes are not tied to these agencies or to any other federal agency. In that respect, NFWF is substantially different from NPF and NFF, and NFWF's name suggests a stronger connection to a federal agency than actual fact.

Congress may consider legislation to create additional foundations for other agencies.[21] In particular, BLM is the only federal land agency without an associated foundation. Congress also

[19] A significant exception is the state grant program under the Land and Water Conservation Fund. See CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent. Other exceptions include the NPS's responsibilities for grants to states from the Historic Preservation Fund; its administration of nonfederal historic designations, including the National Historic Landmarks Program and the National Register of Historic Places; and its assistance to nonfederal heritage areas.

[20] 16 U.S.C. §583j(b).

[21] In the 114th Congress, H.R. 3844 to create a foundation for BLM was passed by the House, but no Senate action was

may consider creating foundations for purposes other than federal land management, such as Indian education, for example.[22] NFWF and the other two existing foundations offer three different models for such an effort.

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taken.

[22] The Omnibus Indian Advancement Act (P.L. 106-568), enacted in 2000, directed the Secretary of the Interior to establish a charitable, nonprofit foundation called the American Indian Education Foundation, later renamed the National Fund for Excellence in American Indian Education, to further the educational opportunities of American Indians who attend a Bureau of Indian Education-funded school. Although established in 2004, ultimately the fund did not become operational.