117TH CONGRESS
2D SESSION

S. 5134

To establish the United States Foundation for International Conservation to promote long-term management of protected and conserved areas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2022

Mr. COONS (for himself, Mr. GRAHAM, Mr. BOOZMAN, Mr. WHITEHOUSE, Mr. HEINRICH, Mr. BURR, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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A BILL

To establish the United States Foundation for International Conservation to promote long-term management of protected and conserved areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘United States Foundation for International Conservation Act of 2022’’.

SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Appropriations of the Senate;

(B) the Committee on Foreign Relations of the Senate;

(C) the Committee on Appropriations of the House of Representatives; and

(D) the Committee on Foreign Affairs of the House of Representatives.

(2) BOARD.—The term "Board" means the Board of Directors established under section 4 (a).

(3) DIRECTOR.—The term "Director" means—

(A) an initial member of the Board appointed pursuant to section 4(a)(2)(C); or

(B) a member of the Board selected to fill a vacancy pursuant to section 4(a)(3)(B).

(4) ELIGIBLE COUNTRY.—The term "eligible country" means any of the countries described in section 7(b).

(5) ELIGIBLE PROJECT.—The term "eligible project" means any of the projects described in section 7(a)(2).

(6) EXECUTIVE DIRECTOR.—The term ‘‘Executive Director’’ means the Executive Director of the Foundation hired pursuant to section 4(b).

(7) FOUNDATION.—The term ‘‘Foundation’’ means the United States Foundation for International Conservation established under section 3(a).

(8) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of State.

SEC. 3. UNITED STATES FOUNDATION FOR INTERNATIONAL CONSERVATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish the United States Foundation for International Conservation.

(2) INDEPENDENCE.—The Foundation is not an agency or instrumentality of the United States Government.

(3) TAX-EXEMPT STATUS.—The Board shall take all necessary and appropriate steps to ensure that the Foundation is an organization described in subsection (c) of section 501 of the Internal Revenue Code of 1986, which exempts the organization from taxation under subsection (a) of such section.

(b) PURPOSES.—The purposes of the Foundation are—

(1) to promote effective, long-term management of protected and conserved areas and their contiguous buffer zones in eligible countries;

(2) to advocate for, incentivize, accept, and administer governmental and nongovernmental funds, including donations from the private sector, to increase the availability and predictability of financing for long-term management of protected and conserved areas;

(3) to close critical gaps in public international conservation efforts by—

(A) increasing private sector investment, including investments from philanthropic entities; and

(B) collaborating with partners providing bilateral and multilateral financing to support enhanced coordination;

(4) to identify and financially support implementation-ready projects—

(A) that promote long-term management of protected and conserved areas and their contiguous buffer zones in eligible countries, including supporting the management of terrestrial, coastal, freshwater, and marine protected areas, parks, community conservancies, indigenous reserves, conservation easements, and biological reserves; and

(B) that provide effective area-based conservation measures, consistent with internationally recognized best practices and standards for environmental and social safeguards; and

(5) to coordinate with, and otherwise support and assist, foreign governments, private sector entities, local communities, Indigenous Peoples, and other stakeholders in undertaking biodiversity conservation activities—

(A) to achieve sustainable biodiversity conservation outcomes; and

(B) to improve local security, governance, food security, and economic opportunities.

SEC. 4. GOVERNANCE OF THE FOUNDATION.

(a) BOARD OF DIRECTORS.—

(1) GOVERNANCE.—The Foundation shall be governed by a Board of Directors.

(2) COMPOSITION.—

(A) IN GENERAL.—The Board shall be composed of—

(i) the ex-officio nonvoting Directors described in subparagraph (B); and

(ii) the voting Directors appointed pursuant to subparagraph (C).

(B) EX-OFFICIO DIRECTORS.—The ex-officio Directors shall be the following individuals or designees of such individuals:

(i) The Secretary of State.

(ii) The Administrator of the United States Agency for International Development.

(iii) The Secretary of the Interior.

(iv) The Chief of the United States Forest Service.

(v) The Administrator of the National Oceanic and Atmospheric Administration.

(C) INITIAL MEMBERS.—The Secretary, in consultation with the other ex-officio Directors, shall appoint as Directors of the Board—

(i) 4 private-sector committed donors; and

(ii) 5 independent experts who represent diverse points of view, to the maximum extent practicable.

(D) QUALIFICATIONS.—Each independent expert appointed pursuant to subparagraph (C)—

(i) shall be knowledgeable and experienced in matters relating to—

(I) international development;

(II) protected area management and the conservation of global biodiversity, fish and wildlife, ecosystem restoration, adaptation, and resilience; and

(III) grantmaking in support of international conservation.

(E) CHAIRPERSON.—The Board shall elect, from among its Directors, a Chairperson, who shall serve for a 2-year term.

(3) TERMS; VACANCIES.—

(A) TERMS.—

(i) IN GENERAL.—The term of service of each appointed Director shall be not more than 5 years.

(ii) INITIAL APPOINTED DIRECTORS.—Of the initial Directors appointed pursuant to paragraph (2)(C)—

(I) 5 Directors, including at least 2 private-sector committed donors, shall serve for 4 years; and

(II) 4 Directors shall serve for 5 years, as determined by the Chairperson of the Board.

(B) VACANCIES.—Any vacancy in the membership of the appointed Directors of the Board—

(i) shall be filled in accordance with the bylaws of the Foundation by a private-sector committed donor or an independent expert who meets the qualifications under subparagraph (C)(ii)(A), as applicable, as represented by the vacating Director;

(ii) shall not affect the power of the remaining appointed Directors to execute the duties of the Board; and

(iii) shall be filled by an individual selected by the Board.

(4) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of Foundation business.

(5) MEETINGS.—

(A) IN GENERAL.—The Board shall meet at the call of the Chairperson not less frequently than annually.

(B) INITIAL MEETING.—Not later than 60 days after the Board is established pursuant to section 3(a), the Secretary shall convene a meeting of the ex-officio Directors and the appointed Directors of the Board to incorporate the Foundation.

(C) REMOVAL.—Any Director who misses 3 consecutive regularly scheduled meetings may be removed from the Board.

(6) REIMBURSEMENT OF EXPENSES.—Directors of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred in the performance of the duties of the Foundation.

(7) NOT FEDERAL EMPLOYEES.—Appointment as a Director of the Board shall not constitute employment by, or the holding of an office of, the United States for purposes of any Federal law.

(8) DUTIES.—The Board shall—

(A) establish bylaws for the Foundation in accordance with paragraph (9);

(B) provide overall direction for the activities of the Foundation and establish priority activities;

(C) carry out any other necessary activities of the Foundation;

(D) evaluate the performance of the Executive Director; and

(E) not less frequently than annually, consult and coordinate with stakeholders qualified to provide advice, assistance, and information regarding effective protected and conserved area management.

(9) BYLAWS.—

(A) IN GENERAL.—The bylaws established pursuant to paragraph (8)(A) may include—

(i) policies for the selection of Directors of the Board and officers, employees, agents, and contractors of the Foundation;

(ii) policies, including ethical standards, for—

(I) the acceptance, solicitation, and disposition of donations and grants to the Foundation; and

(II) the disposition of assets of the Foundation;

(iii) policies that subject all employees, fellows, trainees, and other agents of the Foundation (including ex-officio Directors and appointed Directors of the Board) to conflict of interest standards; and

(iv) the specific duties of the Executive Director.

(B) REQUIREMENTS.—The Board shall ensure that the bylaws of the Foundation and the activities carried out under those bylaws do not—

(i) reflect unfavorably on the ability of the Foundation to carry out activities in a fair and objective manner; or

(ii) compromise, or appear to compromise, the integrity of any governmental agency or program, or any officer or employee employed by, or involved in, a governmental agency or program.

(b) EXECUTIVE DIRECTOR.—The Board shall hire an Executive Director of the Foundation, who shall serve, at the pleasure of the Board, as the chief executive officer of the Foundation.

(c) FOUNDATION STAFF.—Officers and employees of the Foundation—

(1) may not be employees of, or hold any office in, the United States Government; and

(2) shall be appointed without regard to the provisions of—

(A) title 5, United States Code, governing appointments in the competitive service; and

(B) chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(d) LIMITATION AND CONFLICTS OF INTERESTS.—

(1) POLITICAL PARTICIPATION.—The Foundation may not participate or intervene in any political campaign on behalf of any candidate for public office in any country.

(2) FINANCIAL INTERESTS.—Any Director of the Board or officer or employee of the Foundation is prohibited from participating, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of such Director, officer, or employee; and

(B) the interests of any corporation, partnership, entity, or organization in which such Director, officer, or employee has any fiduciary obligation or direct or indirect financial interest.

SEC. 5. CORPORATE POWERS AND OBLIGATIONS OF THE FOUNDATION.

(a) GENERAL AUTHORITY.—

(1) IN GENERAL.—The Foundation—

(A) shall have perpetual succession unless dissolved by an Act of Congress;

(B) may conduct business throughout the States, territories, and possessions of the United States and in foreign countries;

(C) shall have its principal offices in the Washington, DC, metropolitan area; and

(D) shall continuously maintain a designated agent in Washington, DC, who is authorized to accept notice or service of process on behalf of the Foundation.

(2) NOTICE AND SERVICE OF PROCESS.—The serving of notice to, or service of process upon, the agent referred to in paragraph (1)(D), or mailed to the business address of such agent, shall be deemed as service upon, or notice to, the Foundation.

(3) SEAL.—The Foundation shall have an official seal, which shall be selected by the Board and judicially noticed.

(b) AUTHORITIES.—In addition to powers explicitly authorized under this Act, the Foundation, in order to carry out the purposes described in section 3(b), shall have the usual powers of a corporation headquartered in Washington, DC, including the authority—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income derived from such gift or property, or other interest in such gift or property;

(2) to acquire by donation, gift, devise, purchase, or exchange any real or personal property or interest in such property;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income derived from such property;

(4) to borrow money and issue bonds, debentures, or other debt instruments;

(5) to 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) to enter into contracts or other arrangements with public agencies, private organizations,

and persons and to make such payments as may be necessary to carry out the purposes of such contracts or arrangements; and

(7) to award grants for eligible projects, in accordance with section 7.

(c) PROPERTY INTERESTS.—

(1) INTEREST IN REAL PROPERTY.—In this subsection, an interest in real property includes—

(A) mineral and water rights;

(B) rights of way; and

(C) easements appurtenant or in gross.

(2) IN GENERAL.—The Foundation may acquire, hold, and dispose of lands, waters, and other interests in real property by donation, gift, devise, purchase, or exchange.

(3) LIMITS TO PROPERTY RIGHTS.—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.

(4) TAX EXEMPTION.—

(A) IN GENERAL.—The Foundation, any income or property received or owned by the Foundation, and all transactions relating to such income or property shall be exempt from all Federal, State, and local taxation.

(B) EXEMPT ORGANIZATIONS.—Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(d) FEDERAL FUNDS.—

(1) IN GENERAL.—The Foundation may—

(A) hold Federal funds made available, but not immediately disbursed; and

(B) use any interest or other investment income earned on such Federal funds to carry out the purposes of the Foundation under this Act.

(2) LIMITATION.—Investments made pursuant to paragraph (1)(B) may only be made in—

(A) interest-bearing obligations of the United States; or

(B) obligations guaranteed as to both principal and interest by the United States.

(e) LIMITATION OF PUBLIC LIABILITY.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

SEC. 6. SAFEGUARDS AND ACCOUNTABILITY.

(a) SAFEGUARDS.—The Foundation shall develop, and incorporate into any agreement for support provided by the Foundation, appropriate safeguards, policies, and guidelines, consistent with internationally recognized best practices and standards for environmental and social safeguards.

(b) INDEPENDENT ACCOUNTABILITY MECHANISM.—

(1) IN GENERAL.—The Foundation shall establish a transparent and independent accountability mechanism, which shall provide—

(A) a compliance review function that assesses whether Foundation-supported projects adhere to the requirements described in subsection (a);

(B) a dispute resolution function for resolving concerns between complainants and project implementers regarding the impacts of specific Foundation-supported projects with respect to such standards; and

(C) an advisory function that reports to the Foundation on projects, policies, and practices.

(2) DUTIES.—The accountability mechanism shall—

(A) report annually to the Board and to the appropriate congressional committees regarding the Foundation's compliance with internationally recognized best practices and standards in accordance with paragraph (1)(A);

(B)(i) have permanent staff to conduct compliance reviews and dispute resolutions; or

(ii) maintain a roster of experts to serve such roles, to the extent needed; and

(C) hold a public comment period lasting not fewer than 60 days regarding the initial design of the accountability mechanism.

SEC. 7. PROJECTS AND GRANTS.

(a) PROJECT FUNDING REQUIREMENTS.—

(1) IN GENERAL.—The Foundation shall—

(A) fund eligible projects that support its mission to provide long-term funding for the effective management of protected and conserved areas and their contiguous buffer zones in eligible countries; and

(B) recognize the importance of a landscape or seascape approach to conservation that includes buffer zones, wildlife dispersal and corridor areas, and other effective area-based conservation measures.

(2) ELIGIBLE PROJECTS.—Eligible projects shall include projects that—

(A) focus on supporting—

(i) long-term management of protected or conserved areas and their contiguous buffer zones in countries described in subsection (b), including terrestrial, coastal, and marine-protected or conserved areas, parks, community conservancies, indigenous reserves, conservation easements, and biological reserves; and

(ii) other effective area-based conservation measures;

(B) are cost-matched from sources other than the United States Government;

(C) have host country and local population support, as evidenced by a long-term binding memorandum of understanding signed by the host government that respects free, prior, and informed consent of affected communities;

(D) incorporate a set of key performance indicators;

(E) demonstrate robust local community engagement, with the completion of appropriate environmental and social due diligence, including—

(i) free, prior, and informed consent of Indigenous Peoples and consultation with relevant local communities;

(ii) equitable governance structures; and

(iii) effective grievance mechanisms;

(F) create economic opportunities for local communities, through activities such as—

(i) equity and profit-sharing;

(ii) employment activities; and

(iii) other economic growth activities;

(G) provide stable baseline funding for the effective management of the protected or conserved area project;

(H) are implementation-ready; and

(I) where possible, demonstrate a plan to strengthen the capacity of, and transfer skills to, local institutions to manage the protected or conserved area before or after grant funding is exhausted.

(b) ELIGIBLE COUNTRIES.—

(1) IN GENERAL.—Before awarding any grants or entering into any project agreements for a given fiscal year, the Board shall conduct a review of countries in which the Foundation shall be eligible to fund projects to determine which countries—

(A) are low-income, lower middle-income, or upper-middle-income economies (as defined by the International Bank for Reconstruction and Development and the International Development Association;

(B) have—

(i) a high degree of biological diversity; or

(ii) species or ecosystems of significant importance; and

(C) have demonstrated a commitment to conservation through actions, such as protecting lands and waters through the gazettement of national parks, community conservancies, marine reserves and protected areas, forest reserves, and other legally recognized forms of place-based conservation.

(2) IDENTIFICATION OF ELIGIBLE COUNTRIES.—Not later than 5 days after the date on which the Board determines which countries are eligible countries for a given fiscal year, the Executive Director shall—

(A) submit a report to the appropriate congressional committees that includes—

(i) a list of all such eligible countries; and

(ii) a justification for such eligibility determinations; and

(B) publish the information contained in the report described in paragraph (A) in the Federal Register.

(c) GRANTMAKING.—

(1) IN GENERAL.—In order to maximize its program effects, the Foundation should—

(A) seek to coordinate with other international public and private donors to the extent possible;

(B) seek additional financial and nonfinancial contributions and commitments for its projects from host governments; and

(C) strive to generate a partnership mentality among all participants, including public and private funders, host governments, local protected areas authorities, and private and nongovernmental organization partners.

(2) GRANT CRITERIA.—Foundation grants—

(A) shall fund the management of well-defined protected or conserved areas and the systems of such conservation areas in eligible countries;

(B) should provide adequate baseline funding for at least 10 years, without replacing or duplicating existing baseline funding, for each protected and conserved area and the system that supports that area in an amount sufficient to maintain the effective management of the area over the long term;

(C) should, during the grant period, demonstrate progress in achieving clearly identified key performance indicators (as defined in the grant agreement), which may include—

(i) the protection of biological diversity;

(ii) the protection of native flora and habitats, such as trees, forests, grasslands, mangroves, coral reefs, and sea grass;

(iii) community-based economic growth indicators, such as improved land tenure, increases in beneficiaries participating in economic growth activities, and sufficient income from conservation activities being directed to communities in project areas;

(iv) improved management of the protected or conserved area covered by the project, as documented through the submission of strategic plans or annual reports to the Foundation; and

(v) the identification of additional revenue sources or sustainable financing mechanisms to meet the recurring costs of management of the protected or conserved areas; and

(D) may be terminated if the Board determines that the project is not meeting applicable requirements under this Act or making progress in achieving the key performance indicators defined in the grant agreement.

SEC. 8. ANNUAL REPORT.

Not later than 360 days after the date of the enactment of this Act, and annually thereafter while the Foundation continues to function, the Executive Director of the Foundation shall submit a report to the appropriate congressional committees that describes—

(1) the goals of the Foundation;

(2) the programs, projects, and activities supported by the Foundation;

(3) private and governmental contributions to the Foundation; and

(4) the standardized criteria utilized to determine the programs and activities supported by the Foundation, including baselines, targets, desired outcomes, measurable goals, and extent to which those goals are being achieved for each project.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated, for each of the fiscal years 2023 through 2032, such sums as may be necessary for the administrative expenses of the Foundation.

(b) PROGRAM FUNDS.—

(1) AUTHORIZATION.—There are authorized to be appropriated $100,000,000 for each of the fiscal years 2023 through 2032 to carry out section 7.

(2) COST MATCHING REQUIREMENT.—Amounts appropriated pursuant to paragraph (1) may only be made available to grantees to the extent such grant-

ees secure funding for an eligible project from sources other than the United States Government in an amount that is not less than the amount received in grants for such project pursuant to section 7.