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Federal Lands and Related Resources: Overview and Selected Issues for the 118th Congress

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SUMMARY

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Federal Lands and Related Resources: Overview and Selected Issues for the 118th Congress

The U.S. Constitution grants Congress the authority to acquire, dispose of, and manage federal property. The 118th Congress faces multiple policy issues related to federal lands and the natural, cultural, and historical resources they contain. These issues include how much and which land the government should own and how federal lands and resources should be used and managed. These issues affect local communities, industries, ecosystems, and the nation.

There are approximately 640 million surface acres of federally owned land in the United States. Four agencies administer 607 million surface acres (~95%) of federal lands: the Forest Service (FS) in the Department of Agriculture and the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service, and National Park Service, all in the Department of the Interior (DOI). The federal government also manages the federal mineral estate, consisting of federal mineral rights onshore and offshore. BLM manages the 714 million acres of the onshore mineral estate. The Bureau of Ocean Energy Management, also in DOI, manages access to almost 2.5 billion offshore acres in federal waters on the U.S. outer continental shelf for energy leasing and other purposes. DOI, primarily through the Bureau of Indian Affairs, also is responsible for the administration and management of 56 million surface acres and 59 million acres of subsurface mineral estate held in trust by the United States for Indian tribes and individual tribal members.

Congress has considered many broad themes and issues when addressing federal and tribal land policy and resource management. These include questions about the extent and location of the federal estate. For example, Congress typically considers measures to authorize and fund the acquisition of additional lands as well as measures to convey some land out of federal ownership or management. Other questions pertain to the levels, terms, and types of funding provided for federal land management generally. Further issues for Congress include whether certain lands or resources should have additional protections, for example, through designation as wilderness or national monuments, or protection of endangered species and their habitat.

Additional policy questions involve how federal land should be used and managed. Congress has specified in statute the management mission and authorized uses for different types of federal lands. For example, the dominant-use mission of the National Wildlife Refuge System is the conservation of fish, wildlife, and plant resources and associated habitats for the benefit of current and future Americans. The dual-use mission of the National Park System is to conserve unique resources and provide for their use and enjoyment by the public. BLM and FS lands, however, have a statutory mission to balance multiple uses: recreation, grazing, timber, habitat and watershed protection, and energy production, among others. Conflicts arise as users and land managers attempt to balance these uses. Congress often considers bills to clarify, prioritize, and alter land uses, such as timber harvesting, livestock grazing, and recreation (motorized and nonmotorized). With respect to energy uses, in addition to questions about balancing energy production against other uses, some questions include how to balance traditional and alternative energy production on federal lands. Other questions of interest pertain to the identification, evaluation, documentation, and treatment of cultural and historic resources.

Additional issues of debate include whether, how, or how much to charge for access and use of federal resources and lands; how to use any funds collected; and whether or how to compensate local governments for the presence of untaxed federal lands within their borders. Congress also faces questions about wildfire management on both federal and nonfederal lands, including questions of risk management and funding suppression efforts.

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Introduction

Federal land management decisions influence the U.S. economy, environment, and social welfare. These decisions determine how the nation's federal lands are acquired or disposed of, developed, managed, and protected. Their impact may be local, regional, or national. This report discusses selected federal land policy issues that the 118th Congress may consider through oversight, authorizations, or appropriations. The report also identifies CRS products that provide more detailed information.

The federal government manages roughly 640 million acres of surface land, approximately 28% of the 2.4 billion acres of land in the United States.[1] Four agencies (referred to as the federal land management agencies, or FLMAs) administer a total of 607 million acres (~95%) of these federal lands:[2] the Forest Service (FS) in the Department of Agriculture (USDA), and the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS), all in the Department of the Interior (DOI). Most of these lands are in the West and Alaska, where the percentage of federal ownership is significantly higher than elsewhere in the nation (see **Figure 1**). Other agencies manage federal land but are not discussed in this report.[3]

The federal government also manages the federal mineral estate, consisting of federal mineral rights onshore and offshore. BLM manages the 714 million acres of the federal onshore mineral estate. The Bureau of Ocean and Energy Management (BOEM), also in DOI, manages access to almost 2.5 billion offshore acres located beyond state coastal waters, referred to as the U.S. outer continental shelf (OCS).

DOI, primarily through the Bureau of Indian Affairs (BIA), also is responsible for the administration and management of 56 million surface acres and 59 million acres of subsurface mineral estate held in trust by the United States for Indian tribes and individual tribal members. The federal trust responsibility includes a duty on the part of the United States to protect treaty rights, lands, assets, and other resources on behalf of tribes and tribal members and manage such resources for the benefit of tribes.[4] This unique relationship is a key difference between the *federal management of tribal lands* and the *management of federal lands*.[5] Therefore, this report includes a separate section on tribal lands and resources.

[1] Total federal land acreage in the United States is not definitively known and estimates vary, in part based on the inclusion of water bodies. As of September 30, 2018, the four major federal land management agencies (FLMAs) managed a total of 607 million acres in the 50 states, District of Columbia, and U.S. territories. Estimates in this paragraph generally exclude lands in marine protected areas and ownership of interests in lands (e.g., subsurface minerals, easements). For additional information on acres managed by the four FLMAs and the Department of Defense (DOD), by state, see CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent and Laura A. Hanson.

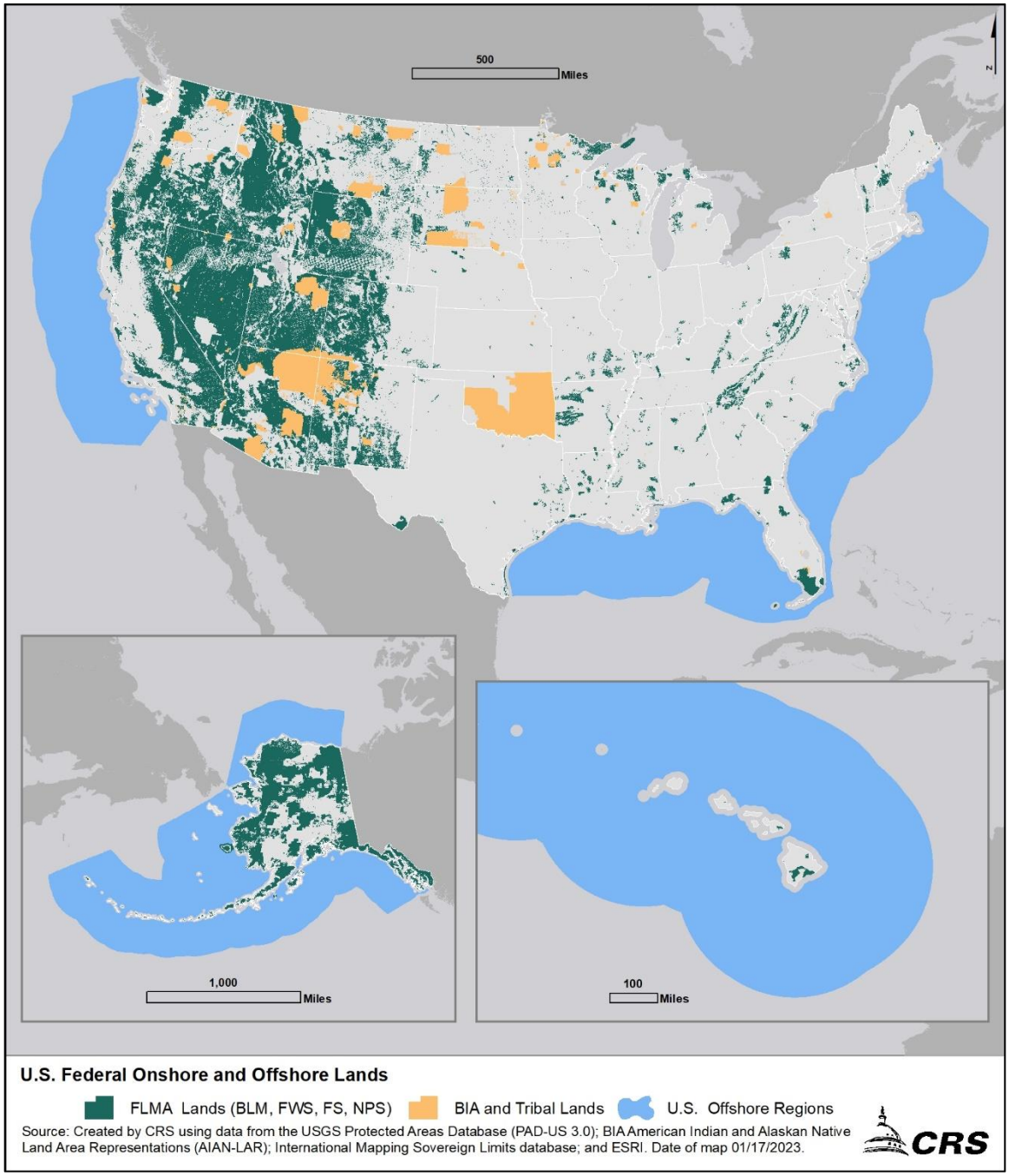
[2] In this report, the term *federal land* is used to refer to any land owned and managed by the federal government, regardless of its mode of acquisition or managing agency, excluding tribal lands or lands administered by a federal agency under easements, leases, contracts, or other arrangements (unless otherwise stated). Where appropriate, the term may also include the submerged federal lands managed by the Bureau of Ocean and Energy Management.

[3] For example, as of the most recent estimate (September 30, 2017), the DOD administers approximately 9 million acres in domestic military bases, training ranges, and more (though excluding land managed by the U.S. Army Corps of Engineers); and other agencies administer the remaining federal acreage.

[4] Bureau of Indian Affairs (BIA), *Budget Justifications and Performance information, Fiscal Year 2023*, p. 91, at https://www.doi.gov/sites/doi.gov/files/fy2023-bia-greenbook.pdf.

[5] For the purposes of this report, *tribal lands* are considered lands or interests in land owned by an Indian tribe or individual tribal member that are held in trust by the federal government or restricted from alienation (sale or transfer). Statutory and regulatory text may use another term instead of tribal land, such as the term *Indian land*. Often, statutory

Figure 1. U.S. Federal Lands, Tribal Lands, and U.S. Outer Continental Shelf



Notes: BIA = Bureau of Indian Affairs; BLM = Bureau of Land Management; FS = Forest Service; FWS = Fish and Wildlife Service; NPS = National Park Service; USGS = U.S. Geological Survey. This map shows a generalized image of the U.S. offshore planning regions administered by the Department of the Interior and the surface acres of federal land administered by the federal land management agencies (FLMAs) in the 50 states and the District of Columbia (territories are not shown). This map also shows BIA and tribal lands, which reflect lands held in trust by the United States, federal Indian reservations, and other types of tribal land, but is not inclusive of all tribal land holdings, statuses, or designations.

or regulatory text will specifically define what constitutes tribal land or Indian land for its purposes; thus, it is important to consult the particular statute or regulation for exact definitions in specific statutory contexts.

Federal land policy and management issues generally fall into several broad thematic questions: Should federal land be managed to prioritize national, regional, or local benefits, and how should these potentially competing interests be weighed? How should current uses be balanced with future resources and opportunities? Should current uses, management, and protection programs be replaced with alternatives? Who decides how federal land resources should be managed, and how are the decisions made?

The interests and parties involved in federal land management vary widely. Some stakeholders seek to maintain or enlarge the federal estate, while others seek to divest the federal estate to nonfederal (e.g., state or private) ownership. Some issues, such as forest management and fire protection, involve both federal and nonfederal (state, local, or privately owned) land. In many cases, policy positions on federal land issues do not divide along clear political lines. Instead, they may be split along the lines of rural-urban, eastern-western, and coastal-interior interests.

Several committees in the House and Senate have jurisdiction over federal land issues, and some issues cross multiple committee jurisdictions. Among the primary authorizing committees are the Committee on Agriculture and the Committee on Natural Resources in the House, and the Committee on Agriculture, Nutrition and Forestry, the Committee on Energy and Natural Resources, and the Committee on Environment and Public Works in the Senate.[6] The Committee on Indian Affairs in the Senate and the Committee on Natural Resources in the House—through its Subcommittee on Indian and Insular Affairs—have jurisdiction over most tribal land and resource issues. In addition, federal and tribal land issues often are addressed during consideration of annual appropriations for the FLMAs, BIA, and BOEM. These agencies typically receive appropriations through annual Interior, Environment, and Related Agencies appropriations laws.

This report introduces selected federal land issues, many of which are complex and interrelated.[7] The discussions herein are broad and aim to introduce the range of issues regarding federal land management, while providing references to more detailed and specific CRS products. The issues are grouped into the broad categories of

- Federal Estate Ownership,
- Funding Issues Related to Federal Lands,
- Climate Policy and Federal Land Management,
- Cultural Resource Management,
- Energy and Minerals Resources,
- Forest Management,
- Other Federal Land Designations,
- Range Management,
- Recreation,
- Species Management,
- Tribal and Alaska Native Lands and Resources Management, and
- Wildfire Management.

[6] Senate and House committee jurisdictions are not parallel. For example, in the Senate, the Committee on Environment and Public Works has general jurisdiction over endangered species issues, although in the House, the Committee on Natural Resources has general jurisdiction.

[7] This report does not address the management of surface or groundwater resources on federal lands. For more information on those issues, see CRS Report R46712, *Water Resource Issues in the 117th Congress*.

Federal Estate Ownership[8]

Federal land ownership began when the original 13 states ceded title to some of their land to the newly formed central government. As the United States expanded and formed new states, more lands were brought into federal ownership, generally as a condition of statehood.[9] Debates about federal land ownership often involve constitutional provisions such as the Property Clause and the Supremacy Clause. The Property Clause of the U.S. Constitution gives Congress authority over the lands, territories, or other property of the United States.[10] This provision provides Congress broad authority over lands owned by the federal government. The U.S. Supreme Court has described Congress's power over federal lands under the Constitution as "without limitations."[11] When Congress exercises its authority over federal land, federal law overrides conflicting state laws under the Supremacy Clause of the U.S. Constitution.[12]

The ownership and use of federal lands has been and continues to be controversial. The early federal policy was to dispose of federal land to generate revenue and encourage western settlement and development. In the late 1800s, as priorities changed, Congress adjusted this policy and began to withdraw, reserve, and protect federal land through the creation of national parks and forest reserves. This "reservation era" laid the foundation for the current federal land management agencies, whose primary purpose is to manage natural resources on federal lands.

One key area of debate is the extent of the federal estate, or, in other words, how much land the federal government should own. A related area of debate is the purposes for which the federal government should own land, whether for protection and conservation, recreation, open space, or resource development purposes, for example. These debates include questions about whether some federal lands should be disposed to state or private ownership, or whether additional land should be acquired for recreation, conservation, open space, or other federal purposes. For lands retained in federal ownership, discussion has focused on whether to curtail or expand certain land designations (e.g., national monuments proclaimed by the President or wilderness areas designated by Congress) and whether current management policies and procedures should be changed. A separate issue is how to ensure the security of international borders while protecting the federal lands and resources along the border, which are managed by multiple agencies with their own missions.[13]

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[8] This report does not address the history between tribes and the United States—dating back centuries—and the historical framework that plays a role in current land issues for tribes. For more information on the historical framework, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Mariel J. Murray.

[9] The method by which the federal government obtained lands contributed to a distinction in law between types of lands. Public domain lands include lands ceded by the original states or obtained from a foreign sovereign (via purchase, treaty, or other means). Acquired lands include those obtained from a state or individual by exchange, purchase, condemnation, or gift. Most federal lands are public domain lands. Many laws were enacted that related only to public domain lands. Even though the distinction has lost most of its underlying significance today, different laws may still apply depending on the original nature of the lands involved.

[10] The Property Clause grants Congress authority over the lands, territories, or other property of the United States: "the Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (U.S. Const. Article IV, Section 3, cl. 2).

[11] See United States v. San Francisco, 310 U.S. 16, 29 (1940) and Kleppe v. New Mexico, 426 U.S. 529, 542-43.

[12] U.S. Const. Article VI, cl. 2.

[13] This report does not address border security issues related to federal land management. For more information on these issues, congressional clients may access CRS's Border Security reports at http://www.crs.gov/iap/homeland-security-and-immigration.

CRS Products

CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent and Laura A. Hanson

CRS Report R44267, *State Management of Federal Lands: Frequently Asked Questions*, by Carol Hardy Vincent

Agencies Managing Federal and Tribal Lands

The four FLMAs administer most federal lands (surface and subsurface) and BOEM administers most U.S. offshore areas. These agencies were created at different times, with different missions and purposes, as discussed below. Each of the agencies, however, faces similar challenges related to balancing the sometimes competing uses and priorities for federal land and resource management.

- **Forest Service**, in the Department of Agriculture, manages the 193 million acre National Forest System under a multiple-use mission, including livestock grazing, energy and mineral development, recreation, timber production, watershed protection, and wildlife and fish habitat.[14]
- **Bureau of Land Management**, in DOI, manages 244 million acres of public lands, also under a multiple-use mission of livestock grazing, energy and mineral development, recreation, timber production, watershed protection, and wildlife and fish habitat, among other resources and values.[15] BLM also manages the 714 million acres of the federal subsurface mineral estate.[16]
- **U.S. Fish and Wildlife Service**, in DOI, administers 89 million acres as part of the National Wildlife Refuge System (NWRS) as well as additional surface, submerged, and offshore areas.[17] FWS manages the NWRS through a dominant-use mission—to conserve plants and animals and associated habitats for the benefit of present and future generations.[18] In addition, FWS administers each

[14] As authorized by the Multiple-Use and Sustained-Yield Act of 1960 (P.L. 86-517), 16 U.S.C. §§528-531 and the Federal Land Policy and Management Act of 1976 (FLPMA; P.L. 94-579), 43 U.S.C. §§1761-1771 et seq. The acreage figure is taken from Forest Service (FS), *Land Areas Report (LAR) - as of September 30, 2022*, Table 1, at https://www.fs.usda.gov/land/staff/lar/LAR2022/LARTable1.pdf.

[15] As authorized by FLPMA (P.L. 94-579), 43 U.S.C. §§1701 et seq.

[16] The Bureau of Land Management (BLM) manages the federal subsurface mineral estate in consultation with the other FLMAs or other private surface owners as needed. The acreage figures are taken from BLM, *Public Land Statistics 2021*, Table 1-3 and Table 1-4, at https://www.blm.gov/sites/default/files/docs/2022-07/Public_Land_Statistics_2021_508.pdf.

[17] This figure only includes National Wildlife Refuge System (NWRS) federal lands within the 50 U.S. states under the primary jurisdiction of the U.S. Fish and Wildlife Service (FWS), including lands managed as Waterfowl Production Areas (WPAs) and Coordination Areas. It does not include lands and waters in the U.S. territories, areas administered under secondary or shared jurisdiction, marine national monuments outside of national wildlife refuges, or acres administered by FWS but not owned by the government (e.g., acres administered or managed pursuant to easements or leases). In total, FWS administers, through primary or secondary jurisdiction, co-management, easements, and other agreements, 837 million acres of lands and waters within the NWRS. In addition, FWS administers an additional 19 million acres through other authorities that are not included within the NWRS. For more information, see FWS, "Statistical Data Tables for Fish & Wildlife Service Lands (as of 9/30/2021)," at https://www.fws.gov/sites/default/files/documents/2021-annual-report-of-lands-with-data-tables_2.pdf.

[18] The NWRS mission is established in the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. §668dd(a)(2).

unit of the NWRS pursuant to any additional purposes specified for that unit.[19] Other uses are permitted only to the extent that they are compatible with the conservation mission of the NWRS and any purposes identified for individual units.[20]

- **National Park Service**, in DOI, manages 80 million acres in the National Park System.[21] NPS has a dual mission—to conserve the resources in the system and to provide for their enjoyment by the public.[22] NPS laws, regulations, and policies emphasize the conservation of park resources in conservation/use conflicts.
- **Bureau of Ocean Energy Management**, also in DOI, manages energy resources in areas of the OCS covering almost 2.5 billion acres located beyond state waters.[23] These areas are defined in the Submerged Lands Act and the Outer Continental Shelf Lands Act (OCSLA).[24] BOEM's mission is to balance energy independence, environmental protection, and economic development through responsible, science-based management of offshore conventional and renewable energy resources.[25] BOEM schedules and conducts OCS oil and gas lease sales, issues leases for deploying renewable energy technologies, and administers existing leases, among other responsibilities.

Tribal lands and resources are administered primarily through one lead agency.

- **Bureau of Indian Affairs**, in DOI, is responsible for the administration and management of 56 million surface acres and 59 million acres of subsurface mineral estate held in trust by the United States for Indian tribes and individual tribal members.[26] In addition to its land management responsibilities, BIA administers programs for tribal governments, social services, law enforcement, infrastructure, and probate, among others.[27] BIA's mission is "to enhance the quality of life, to promote economic opportunity, and to carry out the

[19] For example, P.L. 115-97 amended the purpose of the Arctic National Wildlife Refuge to "provide for an oil and gas program on the Coastal Plain." For more information on the Arctic National Wildlife Refuge, see CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): An Overview*, by Laura B. Comay, Michael Ratner, and R. Eliot Crafton.

[20] In the case where the NWRS mission and a unit's purpose are in conflict, the unit's purpose takes priority (16 U.S.C. §668dd(a)(4)(D)).

[21] The acreage figure is taken from National Park Service (NPS), "National Park Service Acreage Reports," 9-30-2022 version, at https://www.nps.gov/subjects/lwcf/acreagereports.htm. An additional 5 million acres lie within the National Park System but are managed by entities other than NPS, including other federal agencies and nonfederal landowners.

[22] The National Park Service Organic Act of 1916, 54 U.S.C. §100101.

[23] The acreage figure is taken from Bureau of Ocean Energy Management (BOEM), "About BOEM Fact Sheet," at https://www.boem.gov/sites/default/files/documents/newsroom/fact-sheets/BOEM_About.pdf.

[24] 43 U.S.C. §§1301 et seq. and 43 U.S.C. §1331 et seq. Generally, the outer continental shelf (OCS) begins 3-9 nautical miles from shore (depending on the state) and extends 200 nautical miles outward, or farther if the continental shelf extends beyond 200 miles.

[25] BOEM, "About BOEM: Our Mission," at https://www.boem.gov/about-boem.

[26] BIA, *Budget Justifications and Performance information, Fiscal Year 2023*, at https://www.doi.gov/sites/doi.gov/files/fy2023-bia-greenbook.pdf.

[27] This report addresses only BIA's land and resource management responsibilities to tribes and individual tribal members and does not discuss other programs and services administered by BIA.

responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives."[28]

CRS Products

CRS In Focus IF10585, *The Federal Land Management Agencies*, by Katie Hoover

CRS Video WVB00399, *Introduction to Federal Lands*, by Mark K. DeSantis and Katie Hoover

CRS Report R42656, *Federal Land Management Agencies and Programs: CRS Experts*, by R. Eliot Crafton

CRS Report R45340, *Federal Land Designations: A Brief Guide*, coordinated by Laura B. Comay

CRS In Focus IF10832, *Federal and Indian Lands on the U.S.-Mexico Border*, by Carol Hardy Vincent and James C. Uzel

CRS Report R45265, *U.S. Fish and Wildlife Service: An Overview*, by R. Eliot Crafton

CRS Report RS20158, *National Park System: Establishing New Units*, by Laura B. Comay

CRS Report R43872, *National Forest System Management: Overview, Appropriations, and Issues for Congress*, by Katie Hoover and Anne A. Riddle

CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Mariel J. Murray

CRS In Focus IF11944, *Tribal Lands: An Overview*, by Mariel J. Murray

CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress*, by Mariel J. Murray

Agency Acquisition and Disposal Authorities

Congress has granted the FLMAs various authorities to acquire and dispose of land. The extent of this authority differs considerably among the agencies. BLM has relatively broad authority for both acquisitions and disposals under the Federal Land Policy and Management Act of 1976 (FLPMA).[29] By contrast, NPS has no general authority to acquire land to create new park units or to dispose of park lands. FS authority to acquire lands is limited mostly to lands within or contiguous to the boundaries of a national forest, including the authority to acquire access corridors to national forests across nonfederal lands.[30] The agency has various authorities to dispose of land, but they are relatively constrained. FWS has various authorities to acquire lands, but no general authority to dispose of its lands.[31]

The current acquisition and disposal authorities form the backdrop for consideration of measures to establish, modify, or eliminate authorities, or to provide for the acquisition or disposal of particular lands. Congress also addresses acquisition and disposal policy in the context of debates on the role and goals of the federal government in owning and managing land generally.

[28] BIA, "Mission Statement," at https://www.bia.gov/bia.

[29] 43 U.S.C. §§1701 et seq.

[30] 43 U.S.C. §1715(a).

[31] An example of FWS acquisition authority is the Migratory Bird Conservation Act of 1929 (16 U.S.C. §§715 et seq.), which grants FWS authority to acquire land for the National Wildlife Refuge System under specified procedures.

CRS Product

CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, by Carol Hardy Vincent et al.

Funding Issues

Funding for FLMA land and natural resource programs, BIA, and BOEM presents an array of issues for Congress. The FLMAs, BIA, and BOEM receive discretionary appropriations through Interior, Environment, and Related Agencies appropriations laws. Each year, Congress considers questions related directly to the amounts and terms of discretionary appropriations for these agencies. Also, various statutes within the jurisdiction of the respective authorizing committees provide mandatory (permanent) appropriations for some of these agencies. Congress sometimes considers proposals to establish, amend, and repeal authorities for mandatory appropriations.

The 117th Congress enacted legislation providing additional discretionary and mandatory appropriations for the FLMAs, BIA, and BOEM, in some cases for future fiscal years. The monies were provided for a range of activities related to disaster relief, restoration, climate, and infrastructure, among other activities.[32] How these additional funds are utilized and/or prioritized, and how they impact considerations of annual discretionary appropriations, may be of focus during the 118th Congress.

Some funding questions pertain to particular programs and activities, three of which are highlighted below. They are the Land and Water Conservation Fund (LWCF), which provides monies for land acquisition by federal agencies, outdoor recreation needs of states, and other purposes; the maintenance of assets by the agencies, particularly the *deferred maintenance* (DM); and the sharing of revenue with states or counties or otherwise compensating them for the presence of nontaxable federal lands and resources.

CRS Products

CRS Report R47253, Interior, Environment, and Related Agencies: Overview of FY2023 Appropriations, by Carol Hardy Vincent

CRS In Focus IF12187, Bureau of Land Management: FY2023 Appropriations, by Carol Hardy Vincent

CRS In Focus IF12224, U.S. Fish and Wildlife Service: FY2023 Appropriations, by Pervaze A. Sheikh and Elisabeth Lohre

CRS In Focus IF12112, National Park Service: FY2023 Appropriations, by Laura B. Comay

CRS Report R42757, National Park Service (NPS) Appropriations: Ten-Year Trends, by Laura B. Comay

CRS In Focus IF12141, Forest Service: FY2023 Appropriations, by Katie Hoover

CRS Report R46557, *Forest Service Appropriations: Ten-Year Data and Trends (FY2011-FY2020)*, by Katie Hoover

[32] Such laws included P.L. 117-2, the American Rescue Plan Act of 2021; P.L. 117-43, the Extending Government Funding and Delivering Emergency Assistance Act; P.L. 117-58, the Infrastructure Investment and Jobs Act (IIJA); and P.L. 117-169, often referred to as the Inflation Reduction Act of 2022 (IRA).

CRS Report R45994, *Federal Land Management Agencies' Mandatory Appropriations Accounts*, coordinated by Carol Hardy Vincent

CRS In Focus IF12204, *Offshore Energy Agency Appropriations, FY2023*, by Laura B. Comay

Land and Water Conservation Fund

The Land and Water Conservation Fund Act of 1965 was enacted to help preserve, develop, and assure access to outdoor recreation facilities to strengthen the health of U.S. citizens.[33] The law created the Land and Water Conservation Fund in the U.S. Treasury as a funding source to implement its outdoor recreation purposes. The LWCF traditionally has been the principal source of monies for land acquisition for outdoor recreation by the four FLMAs.[34] LWCF funding also supports a matching grant program to assist states with outdoor recreational needs and other federal programs with purposes related to lands and resources.[35]

The 116th Congress made major changes to the operation of the LWCF. One law permanently extended the provisions of the LWCF Act that provide for $900 million in specified revenues to be deposited in the fund annually.[36] Nearly all of the revenues are derived from oil and gas leasing on the OCS. Another law changed the appropriations under the LWCF Act from discretionary to mandatory spending and prescribed procedures for the President and Congress to allocate the monies among LWCF purposes.[37] Since then, for each of FY2021-FY2023, annual appropriations laws have provided for the allocation of $900 million in mandatory appropriations among agencies, programs, and projects.[38] Before these changes to the law (i.e., before FY2021), Congress had determined the level of discretionary appropriations for LWCF Act purposes each year, and yearly appropriations had fluctuated widely since the origin of the program. The LWCF outdoor recreation state grant program also receives additional mandatory appropriations under the Gulf of Mexico Energy Security Act of 2006 (GOMESA).[39]

An area of potential focus for the 118th Congress is implementation of the aforementioned changes, especially the allocation of mandatory appropriations. Some issues center on the authority of the President and Congress to allocate monies among accounts, programs, and projects. Others pertain to the division of monies among federal land acquisition and state grant programs (e.g., outdoor recreation grants to states). Congress also has considered whether to authorize in law the Outdoor Recreation Legacy Partnership Program and the terms and conditions of any such authorization.[40] Under this program, NPS uses LWCF appropriations to make competitive grants to states for outdoor recreation.

[33] P.L. 88-578; 54 U.S.C. §§200301, et seq.

[34] 54 U.S.C. §200306.

[35] 54 U.S.C. §200305.

[36] John D. Dingell Jr. Conservation, Management, and Recreation Act (P.L. 116-9, §3001). Hereinafter referred to as the *Dingell Conservation Act*.

[37] These changes were included in the Great American Outdoors Act (GAOA; P.L. 116-152, §3), P.L. 116-260.

[38] For example, the allocation of the $900 million in mandatory spending for FY2023 was set out in the Consolidated Appropriations Act, 2023 (P.L. 117-328, Division G) and the accompanying explanatory statement.

[39] P.L. 109-432. The maximum is $125.0 million annually (except in FY2021 and FY2022, when the maximum was $162.5 million).

[40] The Outdoor Recreation Legacy Partnership Program is administered by NPS. It is not expressly authorized in statute, but has received appropriations since FY2014.

CRS Products

CRS In Focus IF12256, *Land and Water Conservation Fund (LWCF): Frequently Asked Questions*, by Carol Hardy Vincent

CRS In Focus IF11636, *The Great American Outdoors Act (P.L. 116-152)*, by Carol Hardy Vincent, Laura B. Comay, and Bill Heniff Jr.

CRS Report R46563, *Land and Water Conservation Fund: Processes and Criteria for Allocating Funds*, coordinated by Carol Hardy Vincent

CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent

Deferred Maintenance

The FLMAs are responsible for maintaining their buildings, roads and trails, recreation sites, and other infrastructure. Congress continues to focus on the agencies' *deferred maintenance and repairs*, defined as "maintenance and repairs that were not performed when they should have been or were scheduled to be and which are put off or delayed for a future period."[41] The agencies assert that deferring maintenance of facilities accelerates their rate of deterioration, increases their repair costs, and decreases their value and safety.

Over the most recent five-year period for which deferred maintenance (DM) estimates are available—FY2017-FY2021—the estimate for the FLMAs nearly doubled, from $18.4 billion in FY2017 to $35.2 billion in FY2021.[42] In the last two years alone, the DM estimate increased by 73% (from $20.3 billion in FY2019 to $35.2 billion in FY2021), in large part due to changes in estimation methodologies used by BLM and NPS.

Congressional and administrative attention has centered on the NPS backlog, which has continued to increase from an FY1999 estimate of $4.3 billion. For FY2021, DOI estimated DM for NPS at $22.8 billion. Nearly half of the backlogged maintenance is for roads, bridges, and other transportation infrastructure. The other FLMAs have varying amounts of the $35.2 billion total FY2021 maintenance backlog. DOI estimated BLM's backlog at $4.4 billion and FWS's backlog at $1.8 billion. FS estimated its backlog for FY2021 at $6.3 billion, with approximately two-thirds for roads, bridges, and other transportation infrastructure. Thus, the four agencies together had a combined FY2021 backlog estimated at $35.2 billion, as noted.

A perennial issue for Congress is the sufficiency of funding for DM and other capital improvement projects. The 116th Congress established a new fund with mandatory spending—the National Parks and Public Land Legacy Restoration Fund (LRF)—to augment funding for DM needs of FLMAs (and the Bureau of Indian Education).[43] For each of FY2021-FY2025, the fund is to receive up to $1.9 billion from specified energy revenues. Most of the money (70%) is designated for NPS. Over the five-year term of the fund, at least 65% of the monies for each agency must be allocated "non-transportation" projects.

[41] This definition is taken from the Statement of Federal Financial Accounting Standards 42: Deferred Maintenance and Repairs, p. 1464 (pdf) of the *FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended*, as of June 30, 2019, available on the website of the Federal Accounting Standards Advisory Board at FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended.

[42] Deferred maintenance (DM) estimates in this section are in nominal dollars. They were provided to CRS by DOI and FS in recent years. For instance, the estimates of DM of DOI agencies were provided to CRS by DOI on April 8, 2022, and the estimate of FS DM was provided to CRS by FS on April 7, 2022.

[43] GAOA (P.L. 116-152, §2), 54 U.S.C. §§200401 et seq.

Some issues of focus center on the LRF. They pertain to the amounts of revenue deposited in the fund, the authority of the President and Congress to allocate the monies, the processes for prioritizing projects, and the extent to which the spending is reducing critical DM. Other questions relate to agency changes in DM estimation methodologies and the effect of such changes. A separate issue involves determining the total funding provided for DM each year, because annual presidential budget requests and appropriations documents have not identified and aggregated funds for FLMA DM. Still other issues pertain to the balance of maintenance of existing infrastructure with the acquisition of new assets and the priority of maintaining infrastructure relative to other government functions.

CRS Products

CRS Report R43997, Deferred Maintenance of Federal Land Management Agencies: FY2011-FY2020 Estimates and Issues, by Carol Hardy Vincent

CRS In Focus IF11636, *The Great American Outdoors Act (P.L. 116-152)*, by Carol Hardy Vincent, Laura B. Comay, and Bill Heniff Jr.

CRS Report R44924, *National Park Service Deferred Maintenance: Frequently Asked Questions*, by Laura B. Comay

Federal Payment and Revenue-Sharing Programs

As a condition of statehood, most states forever waived the right to tax federal lands within their borders. Some assert that states or counties should be compensated for services related to the presence of federal lands, such as fire protection, police cooperation, or construction and maintenance of longer roads to skirt the federal property. Under federal law, state and local governments receive payments through various programs due to the presence of federally owned land in their jurisdictions.[44] The basis, distribution, recipients, and authorized uses of these payments vary greatly among programs. Some of these programs are run by specific agencies and apply only to that agency's land. Many of the payment programs are based on revenue generated from specific land uses and activities, while other payment programs are based on acreage of federal land and other factors. The adequacy, coverage, equity, and sources of the payments for all of these programs are recurring issues for Congress.

The most widely applicable program, administered by DOI, applies to many types of federally owned land and is called Payments in Lieu of Taxes (PILT).[45] Each eligible county's PILT payment is calculated using a complex formula based on five factors, including federal acreage and population. Counties containing eligible lands administered by the four FLMAs, as well as eligible federal lands managed by certain other agencies, may receive PILT payments.

Counties containing certain types of federal lands may receive other types of payments in addition to a PILT payment. For example, FWS has an additional payment program for certain refuge lands, known as the Refuge Revenue Sharing program. FS and BLM lands also receive payments based primarily on receipts from revenue-producing activities on their lands. One

[44] For example, a program commonly referred to as Impact Aid supports local schools based on the presence of children of federal employees, including military dependents. It provides some support to local governments, however, and to some extent it compensates for lost property-tax revenue when military families live on federally owned land. For more information, see CRS Report R45400, *Impact Aid, Title VII of the Elementary and Secondary Education Act: A Primer*, by Rebecca R. Skinner.

[45] As authorized by the Payments in Lieu of Taxes Act (P.L. 94-565), 31 U.S.C. §§6901-6907.

program (Secure Rural Schools, or SRS) compensates counties with FS lands or certain BLM lands in Oregon for declining timber harvests.[46] The authorization for the SRS program is set to expire after the FY2023 payments are disbursed in FY2024.[47] Some of the payments from these other programs are offset in the county's PILT payment in the following year.

The federal government shares the revenue from mineral and energy development, both onshore and offshore, according to statutory formulas. The allocations vary based on a number of factors. For example, revenue collected (rents, bonuses, and royalties) from onshore mineral leases is shared 50% with the states under the Mineral Leasing Act (MLA) of 1920.[48] Alaska generally receives 90% of revenues collected on federal onshore leases under the MLA, but some statutes specific to certain areas—including the National Petroleum Reserve in Alaska (NPR-A) and the Coastal Plain of the Arctic National Wildlife Refuge (ANWR)—provide for a 50% revenue share with the state.[49] As another example, revenues from geothermal resources developed on federal lands are shared 50% with states and 25% with counties.[50] Revenues from other mineral resources and energy developments (e.g., solar, wind, biomass, mineral materials) generally follow other allocation schemes.

Revenue collected from offshore mineral and energy development on the OCS is shared in many cases with the coastal states, albeit at a lower rate than onshore. The OCSLA allocates 27% of the revenue generated from certain near-shore federal leases to the coastal states.[51] Separately, the Gulf of Mexico Energy Security Act of 2006 (GOMESA) provides for revenue sharing from qualified Gulf of Mexico leases at a rate of 37.5% for four coastal states, up to a collective cap.[52] Some coastal states have advocated for a greater share of OCS revenues based on the impacts oil and gas projects have on coastal infrastructure and the environment, while other states and stakeholders have contended that more of the revenue should go to the general fund of the Treasury or to other federal programs. Congress also has debated whether revenue from offshore renewable energy development (such as offshore wind) should be shared with coastal states and, if so, under what terms.[53]

CRS Products

CRS Report R46260, *The Payments in Lieu of Taxes (PILT) Program: An Overview*, by Katie Hoover

CRS In Focus IF11772, *Payments in Lieu of Taxes (PILT): Section 6902 Payments*, by Katie Hoover

[46] Secure Rural Schools and Community Self-Determination Act of 2000 (SRS, P.L. 106-393), 16 U.S.C. §§7101-7153.

[47] Section 41202 of the Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58) made program modifications and reauthorized SRS payments through the FY2024 payment.

[48] 30 U.S.C. §191. Disbursements to states are subject to an administrative fee and sequestration.

[49] 42 U.S.C. §6506a(*l*); 16 U.S.C. §3143 note.

[50] 30 U.S.C. §1019. Disbursements from geothermal resources to states are subject to a 2% administrative fee and sequestration; disbursements to counties are subject to sequestration.

[51] 43 U.S.C. §1337(g). The shared revenues are those from leases on tracts that lie within 3 nautical miles of the seaward boundary of a coastal state.

[52] P.L. 109-432. The four states are Alabama, Louisiana, Mississippi, and Texas. The cap is $500 million annually through FY2055, except in FY2020 and FY2021, when the cap is $650 million (P.L. 115-97).

[53] For more information, see the section on "Offshore Wind Revenues" in CRS Report R46970, *Offshore Wind Energy: Federal Leasing, Permitting, Deployment, and Revenues*, by Laura B. Comay and Corrie E. Clark.

CRS Report R41303, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues*, by Katie Hoover

CRS Report R42404, *Fish and Wildlife Service: Compensation to Local Governments*, by Christopher R. Field

CRS Report R42951, *The Oregon and California Railroad Lands (O&C Lands): Issues for Congress*, by Katie Hoover

CRS Report R46537, *Revenues and Disbursements from Oil and Natural Gas Production on Federal Lands*, by Brandon S. Tracy

CRS Report R46195, *Gulf of Mexico Energy Security Act (GOMESA): Background and Current Issues*, by Laura B. Comay

CRS Report R46970, *Offshore Wind Energy: Federal Leasing, Permitting, Deployment, and Revenues*, by Laura B. Comay and Corrie E. Clark

CRS Report R42439, *Compensating State and Local Governments for the Tax-Exempt Status of Federal Lands: What Is Fair and Consistent?*, by Katie Hoover

Climate Policy and Federal Land Management

Scientific evidence shows that the United States' climate has been changing in recent decades.[54] This poses several interrelated and complex issues for the management of federal lands and their resources, including efforts related to mitigation, adaptation, and resiliency. Overall, climate change is introducing uncertainty about conditions previously considered relatively stable and predictable. Given the diversity of federal lands and resources, concerns are wide-ranging and include invasive species, sea-level rise, wildlife habitat changes, and increased vulnerability to extreme weather events, as well as uncertainty about the effects of these changes on tourism and recreation. Some specific observed effects of climate change include persistent drought in some areas and changes to the timing, duration, and intensity of wildfire seasons; warmer winter temperatures, which allow for a longer tourism season but also for various insect and disease infestations to persist in some areas; and habitat shifts, which affect the status of sensitive species but may also increase forest productivity.[55] Another concern is how climate change may affect

[54] For more discussion of climate change science, see D.J. Wuebbles et al., eds., *Climate Science Special Report: Fourth National Climate Assessment*, U.S. Global Change Research Program, vol. I, Washington, DC, 2017.

[55] See for example, Becky Brice, et al., "The Impacts of Climate Change on Natural Areas Recreation: A Multi-Region Snapshot and Agency Comparison," *Natural Areas Journal* 37 (2017); C.J. Fettig et al., "Changing Climates, Changing Forests: A Western North American Perspective," *Journal of Forestry*, vol. 111, no. 3 (2013), pp. 214-228; Elaine M. Brice, et al., "Impacts of climate change on multiple use management of Bureau of Land Management land in the Intermountain West, USA," *Ecosphere* 11 (November 2020); Emily J. Wilkins, et al., "Climate change and the demand for recreational ecosystem services on public lands in the continental United States," *Global Environmental Change* 70 (September 2021); Jessica E. Halofsky, et al., "Understanding and Managing the Effects of Climate Change on Ecosystem Services in the Rocky Mountains," *Mountain Research and Development* 37 (August 2017); Jocelyn L. Aycrigg, et al., "Wilderness areas in a changing landscape: changes in land use, land cover, and climate," *Ecological Applications* 32 (January 2022); Michael S. Hand, et al., "Effects of Climate Change on Outdoor Recreation," chapter 10 in Jessica E. Halofsky, et al., *Climate change vulnerability and adaptation in the Intermountain Region, Part 2* (Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Gen. Tech. Rep. RMRS-GTR-375, 2018); William R.L. Anderegg, et al., "Future climate risks from stress, insects and fire across US forests," *Ecology Letters* 25 (June 2022).

some iconic federal lands, such as the diminishing size of the glaciers at Glacier National Park in Montana and several parks in Alaska, or the flooding of some national wildlife refuges.[56]

The FLMAs have taken a variety of approaches to address the impacts of climate change on the lands and resources they manage. Most agencies have issued policies and guidance to inform how programs and staff should or may incorporate climate change adaptation considerations into agency programs, among other activities. For example, certain agencies have published guidance documents and reports that outline how adaptation should be interwoven into on-the-ground administration of agency resources (e.g., the National Park System and the National Wildlife Refuge System) and programs (e.g., the conservation of species listed as threatened or endangered under the Endangered Species Act [16 U.S.C. §§1531 et seq.]).[57]

Still, the role of the FLMAs in responding to climate change is an issue under debate. Some stakeholders are concerned that a focus on climate change adaptation may divert resources and attention from other agency activities and near-term challenges. Others see future climate conditions as representing an increased risk to the effective performance of agency missions and roles, including the implications for agencies' multiple-use mandates.

A related debate concerns the impact of energy resources and production on federal lands. Both traditional (i.e., conventional) sources of energy (e.g., nonrenewable fossil fuels such as oil, gas, and coal) and alternative (i.e., renewable) sources of energy (e.g., solar, wind, and geothermal) are available on some federal lands. A 2018 report from the U.S. Geological Survey estimated that greenhouse gas emissions resulting from the extraction and use of fossil fuels produced on federal lands and waters accounted for, on average, approximately 24% of national emissions for carbon dioxide, 7% for methane, and 1.5% for nitrous oxide.[58] This, along with other factors, has contributed to questions among observers about the extent to which the agencies should provide access to and promote different sources of energy production on federal lands based on the effects on climate from that production. Since fossil fuel emissions contribute to climate change, some stakeholders concerned about climate change assert that the agencies should prioritize renewable energy production on federal lands over traditional energy sources. Others assert that, even with renewable energy growth, conventional sources will continue to be needed in the foreseeable future, and that the United States should pursue a robust traditional energy program to ensure U.S. energy security and remain competitive with other nations, including continuing to make fossil fuel production available on federal lands.

On January 27, 2021, President Biden issued Executive Order (E.O.) 14008, stating the Administration's policy "to organize and deploy the full capacity of its agencies to combat the climate crisis."[59] The executive order calls on agencies—including the FLMAs—to implement an approach that, among other things, "increases resilience to the impacts of climate change; protects

[56] See for example, Patrick Gonzalez et al., "Disproportionate Magnitude of Climate Change in United States National Parks," *Environmental Research Letters*, vol. 13, no. 10 (2018); Gregory T. Pederson, Stephen T. Gray, and Daniel B. Fagre, *Long-Duration Drought Variability and Impacts on Ecosystem Services: A Case Study from Glacier National Park, Montana*, U.S. Geologic Survey, Earth Interactions, vol. 10, paper 4, January 2006.

[57] For example, see NPS, *Climate Change Response Strategy*, September 2010; FWS, *Rising to the Urgent Challenge: Strategic Plan for Responding to Accelerating Climate Change*, September 2010; and National Fish, Wildlife, and Plants Climate Adaptation Partnership, *National Fish, Wildlife, and Plants Climate Adaptation Strategy*, 2012.

[58] See, for example, Matthew D. Merrill, Benjamin M. Sleeter, and Philip A. Freeman, et al., *Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005-14*, United States Geological Survey, 2018-5131, 2018.

[59] Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," 86 *Federal Register* 7619, January 27, 2021. Hereinafter referred to as *E.O. 14008*.

public health; conserves our lands, waters, and biodiversity; delivers environmental justice."[60] Some in Congress are interested in the degree to which agencies can manage federal lands to both adapt to and mitigate climate change impacts. This has included proposals to require emissions reductions strategies, publication of emissions information from public lands and waters, and limitations on or expansions of new fossil fuel leasing and/or permitting. Others have focused their attention on streamlining permitting processes to reduce potential obstacles to building additional energy infrastructure on federal lands.[61] In addition, the 117th Congress provided funding to certain FLMAs and other agencies for a range of climate mitigation, resiliency, and restoration activities on federal lands.[62] The 118th Congress may consider maintaining or adjusting that funding, or conducting oversight of federal funds already obligated to agencies for these purposes.

CRS Products

CRS Report R43915, *Climate Change Adaptation by Federal Agencies: An Analysis of Plans and Issues for Congress*, coordinated by Jane A. Leggett

CRS Report R46694, *Climate Change Adaptation: Department of the Interior*, by Laura B. Comay et al.

CRS Report R46454, *Climate Change Adaptation: U.S. Department of Agriculture*, coordinated by Genevieve K. Croft

Cultural Resource Management

Federal lands contain a wide array of cultural and historical resources. Although there is no single statutory definition of what constitutes a *cultural resource*, the term generally refers to material remains of past human life or activities. This can include archaeological resources, cultural landscapes, structures or buildings, and objects of cultural patrimony.

To varying degrees, the laws governing federal land management require agencies to account for the preservation of these resources.[63] In addition, a number of statutes and government-wide policies impose specific requirements on agencies related to the identification, evaluation, documentation, and treatment of cultural and historic resources. These include the National Historic Preservation Act (NHPA),[64] the Archaeological Resources Protection Act (ARPA),[65] and the Native American Graves Protection and Repatriation Act (NAGPRA),[66] the three primary federal statutes governing the treatment and protection of historical cultural resources.[67] Among

[60] E.O. 14008, §201.

[61] For example, see Josh Siegel, "House Republicans to introduce climate change strategy with eye on midterms," *POLITICO*, June 1, 2022.

[62] This includes regular and supplemental appropriations provided through the Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58) and P.L. 117-169, often referred to as the Inflation Reduction Act of 2022.

[63] For example, the National Park Service Organic Act, as amended, requires that NPS "conserve the scenery, natural and *historic* objects [emphasis added], and wild life in the System units and to provide for the enjoyment of the scenery, natural and *historic* objects [emphasis added], and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (54 U.S.C. § 100101).

[64] 54 U.S.C. §§300101 et seq.

[65] 16 U.S.C. §§470aa-470mm.

[66] 25 U.S.C. §§3001-3013.

[67] Other federal statutes also may provide for the protection of historic or cultural properties, such as the Antiquities

its provisions, the NHPA requires federal agencies to manage and preserve their historic properties and creates a process (known as the *Section 106 process*) for federal agencies to follow when their projects may affect a historic property. ARPA governs the excavation of archaeological sites on federal and Indian lands in the United States, and the removal and disposition of archaeological collections from those sites. NAGPRA describes the rights of Native American lineal descendants, Indian tribes, and Native Hawaiian organizations with respect to the treatment, repatriation, and disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

Issues related to cultural resource management are of perennial interest to Congress. Some of these issues relate to the federal government's compliance with cultural resource laws, including the ability of agencies to conduct inventories and/or document resources located on lands under their jurisdiction.[68] Other issues under debate pertain to environmental and cultural resource review processes for federal projects, particularly the Section 106 process required under the NHPA. The efficacy and enforcement of criminal penalties under ARPA and NAGPRA have also been of interest, including whether or not legislation is needed to provide additional legal protection for tribal and cultural objects that might be subject to international export and trafficking. Many agree that some additional protection is warranted, with some stakeholders suggesting that the existing penalties for selling protected cultural items are not sufficient and that prosecutions are too infrequent to deter potential theft.[69]

Another related issue has been access to and protection of sacred sites located on federal lands. For indigenous communities (American Indians, Alaska Natives, and Native Hawaiians), certain places, physical features, and objects on federal lands hold deep cultural and spiritual significance. Whether or to what degree federal land management agencies must protect and, in certain circumstances, allow access to such resources for traditional or religious use has also been of interest to Congress.[70]

More generally, Congress has also considered the appropriate level of funding for cultural resource management. Of particular concern is the level of funding provided to the relevant agencies to facilitate timely and efficient environmental reviews and authorizations, including reviews of cultural resource impacts. How funding for cultural resource management is utilized and/or prioritized may be an ongoing focus of congressional oversight. In addition, the funding and capacity of states and tribes to fulfill their duties under NHPA Section 106 has been an

Act (54 U.S.C. §§320301-320303), which authorized the President to proclaim national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest; and the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq.), which requires federal agencies to identify and evaluate impacts of "major Federal actions significantly affecting the quality of the human environment."

[68] For example, see U.S. Congress, Senate Committee on Indian Affairs, *The Long Journey Home: Advancing the Native American Graves Protection and Repatriation Act's Promise After 30 Years of Practice*, 117th Cong., 2nd sess., February 2, 2022, S. Hrg. 117-339 (Washington: GPO, 2022).

[69] U.S. Congress, Senate Committee on Indian Affairs, *The Theft, Illegal Possession, Sale, Transfer, and Export of Tribal Cultural Items*, 114th Cong., 1st sess., October 18, 2016, S. Hrg. 114-535 (Washington: GPO, 2017).

[70] The American Indian Religious Freedom Act (P.L. 95-341) sets out a policy for the United States "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." Federal agencies are also guided by Executive Order (E.O.) 13007, Indian Sacred Sites, issued by President Clinton in May 1996. E.O. 13007 requires federal agencies, in managing land, "to accommodate access to and ceremonial use of Indian sacred sites," to the extent practicable (E.O. 13007, "Indian Sacred Sites," 61 Federal Register 26771, May 29, 1996). Congress has considered whether these authorities are sufficient or if additional protections are necessary to protect sacred sites.

ongoing concern, with some suggesting that increases in annual appropriations have not kept pace with the increase in tribes' federally delegated responsibilities.

CRS Products

CRS Report R45800, *The Federal Role in Historic Preservation: An Overview*, by Mark K. DeSantis

Energy and Mineral Resources

Much of the onshore federal estate has been open to energy and mineral exploration and development, including many BLM and FS lands, under these agencies' multiple use missions. This includes both traditional (nonrenewable, conventional) and alternative (renewable) energy production. However, many NPS lands and designated wilderness areas, as well as certain other federal lands, have been specifically withdrawn from exploration and development. Most federal areas offshore also have been available for energy leasing, although DOI has typically offered leases only in selected available areas.[71] DOI is responsible for mineral resource developments on all federal lands: BLM manages the onshore federal mineral estate (in consultation with the surface management agency or with the nonfederal surface owner in cases of split estate), and BOEM manages the offshore federal estate.

For onshore development, statutory authorities create three general mineral categories: leasable minerals, mineral materials, and locatable minerals. Leasable minerals, such as oil, natural gas, coal, phosphate, potassium, and sodium, among others, are governed by the Mineral Leasing Act of 1920.[72] The development of leasable minerals requires an approved lease and royalty payments. Mineral materials (or salable minerals) are defined by the Materials Act of 1947 and include low-value minerals and materials, such as sand, gravel, stone, and clay, among others.[73] Mineral materials removed from federal lands are sold (or disposed) at market value for the quantity purchased. Locatable (or hardrock) minerals are defined by the General Mining Law of 1872 and are those minerals not defined by other statutes; typical examples include gold, silver, copper, and gemstones.[74] Mining of locatable minerals on onshore federal lands is not subject to royalties or a leasing process. Offshore, OCSLA governs all mineral development on the OCS, consisting primarily of oil and gas development.[75]

Many federal lands and waters also are open for the development of renewable energy resources pursuant to various laws and authorities. For example, FLPMA authorizes BLM and FS to issue rights-of-way on federal land that is considered suitable for renewable energy generation,

[71] For more information, see CRS Report R44504, *Five-Year Offshore Oil and Gas Leasing Program: History and Background*, by Laura B. Comay and Adam Vann.

[72] Mineral Leasing Act (MLA; P.L. 66-146, 30 U.S.C. §§181 et seq.). The MLA applies only to public domain lands; the Mineral Leasing Act for Acquired Lands generally extends the MLA to acquired lands (P.L. 80-382, 30 U.S.C. §§351 et seq.).

[73] P.L. 80-291.

[74] 17 Stat. 91. If otherwise locatable minerals are found on acquired lands, they are defined as leasable minerals..

[75] 43 U.S.C. §§1331-1356b. Although the primary offshore mineral commodities are oil and gas, operators also have produced salt and sulphur from offshore leases, and BOEM also manages a sand and gravel leasing program (BOEM, "Competitive Leasing of OCS Marine Minerals," at https://www.boem.gov/Leasing-C-Marine-Minerals).

including wind, solar, and biomass development.[76] Under the OCSLA, BOEM has issued leases for offshore wind development in the Atlantic and Pacific regions of the OCS.[77]

Traditional and renewable energy development on federal lands contributes to total U.S. energy production. For example, in 2021, as a percentage of total U.S. production, approximately 25% of crude oil and 10% of natural gas production came from federal lands (onshore and offshore combined).[78] In 2021, coal produced on federal leases contributed 45% of total domestic coal production.[79] Another example is geothermal electricity generation; its capacity on federal lands in 2021 represented over 64% of U.S. total geothermal electricity generation capacity.[80]

Issues related to the availability of onshore and offshore federal lands for energy and mineral development are of perennial interest to Congress. Debates include how to balance energy and mineral development with environmental protection and other uses of federal lands and waters. Some seek to open more federal lands for traditional and/or renewable energy development, whereas others have sought to increase restrictions for areas they consider too sensitive or inappropriate for development. Some oppose fossil fuel extraction as incompatible with goals for environmental protection and climate change mitigation, while others contend that natural gas can be part of a clean energy transition. Support for the extraction of these fuels is often based on their role in the economy and enhanced U.S. energy security. Opponents of the extraction of these fuels often note that some costs, such as costs related to environmental damage and human health, are not included in their market price, and they contend that U.S. energy security could be achieved through other means. Some see existing markets as providing fair market value, while others contend that some public concerns (e.g., related to greenhouse gas emissions) stem from the production of these resources but are not included in their market prices. Also debated is whether or to what extent the federal government should incentivize certain types of development (e.g., through tax credits). Other issues that may be of interest to Congress include optimal royalty rates, state administration of federal resources, revenue sharing, improving leasing processes, and leasing lands in the Arctic National Wildlife Refuge in northeastern Alaska.

CRS Products

CRS Report R46537, *Revenues and Disbursements from Oil and Natural Gas Production on Federal Lands*, by Brandon S. Tracy

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[76] 43 U.S.C. §1761(a). This report does not cover hydroelectric resources on federal lands. Of the total U.S. installed hydroelectric capacity, approximately 49% (39,000 MW) is federally owned and operated, primarily by the U.S. Army Corps of Engineers and the Bureau of Reclamation (U.S. Department of Energy, *Hydropower Vision*, 2016, p. 11). For more information on this topic, see CRS Report R42579, *Hydropower: Federal and Nonfederal Investment*, by Kelsi Bracmort, Adam Vann, and Charles V. Stern.

[77] For more information, see CRS Report R46970, *Offshore Wind Energy: Federal Leasing, Permitting, Deployment, and Revenues*, by Laura B. Comay and Corrie E. Clark.

[78] CRS calculations using production data from the Office of Natural Resources Revenue (ONRR), at https://revenuedata.doi.gov/query-data, and the U.S. Energy Information Administration (EIA), at https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm and https://www.eia.gov/dnav/ng/ng_prod_sum_a_epg0_fgw_mmcf_a.htm. Excludes production data from ONRR's category "Native American" lands.

[79] CRS calculations using production data from ONRR and EIA, "Coal Data Browser," at https://www.eia.gov/coal/data/browser. Excludes production data from ONRR's category "Native American" lands.

[80] CRS calculations using data from BLM, "Geothermal Energy," at https://www.blm.gov/programs/energy-and-minerals/renewable-energy/geothermal-energy; and GlobalData, "Power Generation and Cumulative Capacity of Geothermal Power Plants in United States of America (2017-2021), at https://www.globaldata.com/data-insights/power-and-utilities/power-generation-and-cumulative-capacity-of-geothermal-power-plants-in-united-states-of-america-2017-2021/.

CRS In Focus IF11785, *Potential State Impacts of a Pause on Federal Onshore Oil and Natural Gas Leases*, by Brandon S. Tracy

CRS Report R44504, *Five-Year Offshore Oil and Gas Leasing Program: History and Background*, by Laura B. Comay and Adam Vann

CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief*, by Laura B. Comay

CRS Report R46195, *Gulf of Mexico Energy Security Act (GOMESA): Background and Current Issues*, by Laura B. Comay

CRS In Focus IF11909, *Offshore Oil and Gas: Leasing "Pause," Federal Leasing Review, and Current Issues*, by Laura B. Comay

CRS Report R46970, *Offshore Wind Energy: Federal Leasing, Permitting, Deployment, and Revenues*, by Laura B. Comay and Corrie E. Clark

CRS Report R40175, *Wind Energy: Offshore Permitting*, by Adam Vann

CRS Insight IN11980, *Offshore Wind Provisions in the Inflation Reduction Act*, by Laura B. Comay, Corrie E. Clark, and Molly F. Sherlock

CRS Report R42579, *Hydropower: Federal and Nonfederal Investment*, by Kelsi Bracmort, Adam Vann, and Charles V. Stern

CRS Report R46278, *Policy Topics and Background Related to Mining on Federal Lands*, by Brandon S. Tracy

CRS In Focus IF12006, *Arctic National Wildlife Refuge: Status of Oil and Gas Program*, by Laura B. Comay

CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): An Overview*, by Laura B. Comay, Michael Ratner, and R. Eliot Crafton

CRS Report R46723, *U.S. Energy in the 21st Century: A Primer*, coordinated by Melissa N. Diaz

Forest Management

FS and BLM are the two primary entities involved in forest management. FS manages 144.9 million acres of forests and woodlands in the National Forest System (NFS) under the principles of multiple use and sustained yield.[81] In FY2021, approximately 2.8 billion board feet of timber and other forest products were harvested from NFS lands, at a value of $152.4 million.[82] BLM manages approximately 37.6 million acres of forest and woodlands.[83] The vast majority are public domain forests, managed under the principles of multiple use and sustained yield as established by FLPMA.[84] The 2.6 million acres of Oregon & California (O&C) Railroad Lands and Coos Bay Wagon Road lands in western Oregon, however, are managed primarily by BLM under a statutory direction for permanent forest production, as well as watershed protection, recreation, and

[81] 16 U.S.C. §§528-531. Statistics from Sonja Oswalt et al., *Forest Resources of the United States, 2017: A Technical Document Supporting the Forest Service 2020 Update of the RPA Assessment*, USDA, FS, 2017.

[82] Forest Service, *Cut and Sold Reports, FY2021*, at http://www.fs.fed.us/forestmanagement/products/sold-harvest/cut-sold.shtml.

[83] *Forest Resources of the United States*, 2017.

[84] 43 U.S.C. §§1701 et seq.

contribution to the economic stability of local communities and industries.[85] In FY2021, approximately 250.0 million board feet of timber and other forest products were harvested from BLM lands, at a value of $16.5 million.[86] NPS and FWS have limited authorities to cut, sell, or dispose of timber from their lands and have established policies to do so only in certain cases, such as controlling for insect and disease outbreaks.

Management of federal forests presents several policy questions for Congress. For instance, there are questions about the appropriate level of timber harvesting on federal forest lands, particularly FS and BLM lands, and how to balance timber harvesting against the other statutory uses and values for these federal lands. Further, Congress may debate whether or how the agencies use timber harvesting or other forest management activities to achieve various resource-management objectives, such as improving wildlife habitat or improving a forest's resistance and resilience to *disturbance events* (e.g., wildfires, ice storms). Congress also may debate the role of federal forests in mitigating climate impacts, such as whether and how to balance forest carbon sequestration considerations against other statutory uses and whether post-disturbance reforestation activities on federal lands are sufficient.

One issue of concern for Congress is the ecological condition of the federal forests. Many contend that federal forests are ecologically degraded and overstocked with biomass (*fuels*) that are susceptible to disturbance events, such as insect and disease outbreaks and wildfires. Many also contend that federal forests are unable to recover from such disturbances due to the increasing severity and frequency of these events. The 117th Congress enacted numerous provisions intended to increase the pace and scale of forest restoration projects on federal lands and adjacent areas, including authorizing significant, multi-year funding increases.[87] Many provisions focused on reducing wildfire risk on federal lands by reducing hazardous fuels and improving wildfire response capabilities. Others focused on expanding reforestation efforts, including increasing funding and increasing post-disturbance revegetation rates. Oversight of the agencies' implementation of these provisions is another issue that may be considered in the 118th Congress.

Though there appears to be broad agreement that action is needed, there is debate about the nature, scale, and implementation of actions required to improve or restore forest conditions. Some have identified administrative process barriers as impeding the agencies' progress toward forest restoration goals. Past Congresses have enacted provisions intended to expedite the required planning processes, including environmental and cultural reviews, for specific forest management projects on federal land and to encourage forest restoration projects across larger areas, including projects which involve nonfederal landowners.[88] Others contend that the process established for expediting projects reduces public oversight of government actions or that expanding the application of some types of forest management activities may result in environmental impacts that exacerbate forest health concerns. Other forest health concerns relate to the extent federal forests are vulnerable to climate-related impacts.

[85] 43 U.S.C. §§2601 et seq.

[86] Timber harvested from BLM lands generates a higher per unit value than timber harvested from NFS land due to a variety of factors, including the mix of timber types managed by each agency and the markets in which they operate. BLM, *Bureau Wide Timber Data Fourth Quarter Transactions, FY2021*, https://www.blm.gov/programs/natural-resources/forests-and-woodlands/timber-sales/bureau-wide-timber-data.

[87] These provisions were enacted as part of the Infrastructure Investment and Jobs Act (P.L. 117-58) and the budget reconciliation measure known as the Inflation Reduction Act (P.L. 117-169).

[88] These provisions were enacted as part of the Agriculture Improvement Act of 2018 (P.L. 115-334, also known as the 2018 farm bill, Title VIII) and the Consolidated Appropriations Act, 2018 (P.L. 115-141, Division O).

CRS Products

CRS Report R45688, *Timber Harvesting on Federal Lands*, by Anne A. Riddle

CRS Report R43872, *National Forest System Management: Overview, Appropriations, and Issues for Congress*, by Katie Hoover and Anne A. Riddle

CRS Report R42951, *The Oregon and California Railroad Lands (O&C Lands): Issues for Congress*, by Katie Hoover

CRS In Focus IF11179, *Stewardship End Result Contracting: Forest Service and Bureau of Land Management*, by Anne A. Riddle

CRS In Focus IF11658, *The Good Neighbor Authority on Federal Lands*, by Anne A. Riddle

CRS Report R46312, *Forest Carbon Primer*, by Katie Hoover and Anne A. Riddle

CRS Report R46313, *U.S. Forest Carbon Data: In Brief*, by Katie Hoover and Anne A. Riddle

CRS Report R45696, *Forest Management Provisions Enacted in the 115th Congress*, by Katie Hoover et al.

CRS Report R47201, *Legal and Practical Implications of the Ninth Circuit's Cottonwood Environmental Law Center v. U.S. Forest Service Decision Under the Endangered Species Act*, by Erin H. Ward, Pervaze A. Sheikh, and Katie Hoover

Other Land Designations

Congress, the President, and some executive branch officials may establish individual designations on federal lands.[89] Although many designations are unique, some have been more commonly applied, such as national monument, national recreation area, and national scenic area. Congress and previous Administrations also have designated certain offshore areas as marine national monuments or sanctuaries. Controversial issues involve the types, locations, and management of such designations, which could include restrictions on some uses within the designated area. Other issues include the extent to which some designations should be altered, expanded, or reduced.

In addition, Congress has created three cross-cutting systems of land designations to preserve or emphasize particular values or resources, or to protect the natural conditions for biological, recreation, or scenic purposes. These systems are the National Wilderness Preservation System, the National Wild and Scenic Rivers System, and the National Trails System. The units of these three systems can be on federal lands under the jurisdiction of one or more agencies' lands. In addition, units of the National Wild and Scenic Rivers System and the National Trails System may be designated on nonfederal lands. Administering agencies manage them within parameters set in statute. Congress has debated establishing additional cross-cutting land systems, which could consist of new or existing designations.

CRS Products

CRS Report R45340, *Federal Land Designations: A Brief Guide*, coordinated by Laura B. Comay

[89] Congress has conferred designations on some nonfederal lands, such as national heritage areas, to commemorate, conserve, and promote important natural, scenic, historical, cultural, and recreational resources. For more information, see CRS Report RL33462, *Heritage Areas: Background, Proposals, and Current Issues*, by Mark K. DeSantis.

National Monuments and the Antiquities Act

The Antiquities Act of 1906 authorizes the President to proclaim national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of natural, historic, or scientific interest.[90] The President may reserve land as part of designating national monuments so long as it is "the smallest area compatible with the proper care and management of the objects to be protected."[91] Eighteen of the 21 Presidents since 1906 have used this authority to establish, enlarge, diminish, or make other changes to proclaimed national monuments. Most recently, the Trump Administration and the Biden Administration each proclaimed one new monument. Both Administrations also reviewed and modified the boundaries and/or management of three national monuments proclaimed by prior administrations.[92]

Since the enactment of the Antiquities Act, presidential establishment and modification of monuments sometimes has been contentious. Controversies have centered on the extent of the President's authority to establish and modify monuments, the size of the areas, the types of protected resources, the inclusion of nonfederal lands within monument boundaries, and restrictions on land uses that may result from monument designation, among other issues. Most recently, President Biden's and President's Trump's changes to the size and/or management of three previously-established monuments have generated legislative proposals and/or court challenges. Congress has taken a variety of actions related to presidentially proclaimed monuments. For instance, Congress has affirmed, modified, or abolished some monuments and changed some proclaimed monuments to other designations (e.g., national park). Congress also has created monuments under its own authority.

Congress continues to consider the role of the President in proclaiming monuments. Some seek to impose restrictions on the President's authority to proclaim monuments. Among the bills considered in recent Congresses are those to block monuments from being declared in particular states; limit the size or duration of withdrawals; require the approval of Congress, the pertinent state legislature, or the pertinent governor before a monument could be proclaimed; or require the President to follow certain procedures prior to proclaiming a new monument.

Others promote the President's authority to act promptly to protect valuable resources on federal lands that may be vulnerable, and they note that Presidents of both parties have used the authority for over a century. They favor the Antiquities Act in its present form, asserting that the courts have upheld monument designations and that large segments of the public support monument designations for the recreational, preservation, and economic benefits that such designations can bring.

CRS Products

CRS Report R41330, *National Monuments and the Antiquities Act*, by Carol Hardy Vincent

CRS Report R45718, *The Antiquities Act: History, Current Litigation, and Considerations for the 116th Congress*, coordinated by Erin H. Ward

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[90] 54 U.S.C. §320301. Specifically, to be eligible for designation as a national monument, the objects must be "situated on land owned or controlled by the Federal Government."

[91] 54 U.S.C. §320301(b).

[92] Both Administrations reviewed and modified the same three national monuments: Grand Staircase-Escalante National Monument (UT), Bears Ears National Monument (Utah), and Northeast Canyons and Seamounts Marine National Monument (off the coast of New England).

National Marine Sanctuaries and Marine National Monuments

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration (NOAA), to designate specific areas for protection of their conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or aesthetic qualities.[93] The national marine sanctuary (NMS) designation process can be an administrative action or directed through congressional action. In either case, the designation process typically includes public scoping, public comment, and congressional and state review prior to the Secretary of Commerce's approval of the designation.

The NOAA Office of National Marine Sanctuaries serves as the trustee for the 15 existing NMSs that have been designated under NMSA.[94] Sanctuaries are located in waters under state or federal jurisdiction. Most NMSs are located in marine areas, but freshwater or estuarine exceptions include Thunder Bay NMS (Lake Huron), Wisconsin Shipwreck Coast NMS (Lake Michigan), and Mallows Bay-Potomac River NMS.[95] Sites are designated for specific reasons, such as protecting cultural artifacts (e.g., sunken vessels), particular species (e.g., humpback whales), or unique areas and entire ecosystems (e.g., Monterey Bay). On August 16, 2021, Wisconsin Shipwreck Coast NMS become the most recent NMS designation.[96] NOAA is considering additional areas for NMS designation.[97]

The NMSA requires the development and implementation of management plans for each sanctuary, providing the basis for protection through managing or limiting incompatible activities. For most NMSs, questions related to developing or amending management plans have focused on identifying and limiting incompatible activities (e.g., use of personal watercraft).

Presidents have designated five marine national monuments under the Antiquities Act, the most recent being the Northeast Canyons and Seamounts Marine National Monument in 2016, the first designated in the Atlantic Ocean.[98] All five marine national monuments are managed cooperatively by DOI (FWS) and the Department of Commerce (NOAA).[99] Within the monuments, the removing, taking, harvesting, possessing, injuring, or damaging of monument resources is prohibited except as provided under regulated activities. Some designations have made exceptions for certain activities, such as recreational fishing and subsistence use, within certain marine national monuments. For example, both the Trump Administration and the Biden Administration modified an existing marine national monument with regard to commercial fishing.[100]

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[93] 16 U.S.C. §1431 et seq.

[94] NOAA, "National Marine Sanctuary System," at https://sanctuaries.noaa.gov/. Hereinafter NOAA, "Marine Sanctuary System."

[95] NOAA, "Marine Sanctuary System."

[96] National Oceanic and Atmospheric Administration (NOAA), "History of the Wisconsin Shipwreck Coast NMS Designation," at https://sanctuaries.noaa.gov/wisconsin/about/.

[97] NOAA, "Marine Sanctuary System."

[98] U.S. President Barack Obama, "Proclamation 9496, Northeast Canyons and Seamounts Marine National Monument," 81 *Federal Register* 65161-65167, September 21, 2016. For more information on the Antiquities Act, see "National Monuments and the Antiquities Act."

[99] The Department of Defense, Department of State, American Samoa, State of Hawaii, and the Commonwealth of the Northern Mariana Islands are also management partners for some specific monuments.

[100] NOAA, "Northeast Canyons and Seamounts Marine National Monument," at https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/northeast-canyons-and-seamounts-marine-national.

Stakeholders have varied opinions about NMSs and marine national monument designations. Some stakeholders from extractive industries, such as the fishing industry, have voiced concerns that the national monument designation process does not provide opportunities to examine the tradeoffs between resource protection and resource use.[101] Others have argued that the Antiquities Act does not provide the authority to designate ocean areas or to limit extractive activities in marine monuments.[102] By contrast, some environmentalists have voiced concerns regarding the low number of NMS designations and what they see as inadequate protection of some sanctuary resources, such as fish populations.[103] Some observers question whether the overriding purpose of the NMSA is to preserve and protect marine areas or to create multiple use management areas.[104] The designation and management of national marine sanctuaries and marine national monuments may continue to inspire debate over the role and the costs and benefits of marine protected areas.[105]

CRS Products

CRS In Focus IF12188, *What Is the Blue Economy?*, by Caitlin Keating-Bitonti and Eva Lipiec

Wilderness and Related Designations

In 1964, the Wilderness Act created the National Wilderness Preservation System, with statutory protections that emphasize preserving certain areas in their natural states.[106] Units of the system can be designated only by Congress. Many bills to designate wilderness areas have been introduced in each Congress. As of February 1, 2023, there were 803 wilderness areas, totaling approximately 112 million acres in 44 states (and Puerto Rico) and managed by all four of the FLMAs.[107] A wilderness designation generally prohibits commercial activities, motorized access, and human infrastructure in wilderness areas, subject to valid existing rights.

Designation of new wilderness areas can be controversial, and questions persist over the management of areas being considered for wilderness designation. Advocates propose wilderness designations to preserve the generally undeveloped conditions of the areas. Opponents see such

[101] For example, see statement from Rod Moore, Executive Director of the West Coast Seafood Processors Association, as part of U.S. Congress, House Committee on Natural Resources, Subcommittee on Water, Power and Oceans, *The Potential Implications of Pending Marine National Monument Designations*, committee print, prepared by U.S. Government Publishing Office, 114th Cong., 1st sess., September 29, 2015, Serial No. 114-21 (Washington: GPO, 2016).

[102] For example, see Chris Chase, "US fishermen file another lawsuit challenging Northeast Seamounts monument," April 14, 2022, *Seafood Source,* at https://www.seafoodsource.com/news/environment-sustainability/fishermen-sue-once-again-over-recreation-of-northeast-seamounts-monument.

[103] For example, see Zainab Mirza, Alexandra Carter, and Amy Kenney, "To Protect 30 Percent of the Ocean, the United States Must Invest in the National Marine Sanctuaries Program," December 16, 2021, *Center for American Progress*, at https://www.americanprogress.org/article/to-protect-30-percent-of-the-ocean-the-united-states-must-invest-in-the-national-marine-sanctuaries-program/.

[104] William L. Chandler and Hannah Gillelan, "The History and Evolution of the National Marine Sanctuaries Act," *Environmental Law Reporter*, vol. 34 (2004), pp. 10506-10565.

[105] For example, see Concepción Marcos et al., "Reviewing the Ecosystem Services, Societal Goods, and Benefits of Marine Protected Areas," *Frontiers in Marine Science*, vol. 8 (2021), pp. 1-37; and The Nature Conservancy, "Sea of Change: Costs and Benefits of Marine Protected Areas," 2022, at https://www.nature.org/content/dam/tnc/nature/en/documents/TNC_SeaChange_CostBenefit_MPA.pdf.

[106] Wilderness Act, P.L. 88-577, 16 U.S.C. §§1131 et seq.

[107] The 116th Congress enacted one bill that designated new wilderness areas or additions, the Dingell Conservation Act (P.L. 116-9).

designations as preventing certain uses and potential economic development in rural areas where such opportunities are relatively limited.

BLM manages approximately 12 million acres of lands identified as *wilderness study areas* (WSAs).[108] Many WSAs were designated under Section 603 of FLPMA, which required BLM to review its lands for wilderness potential and make recommendations to Congress regarding the lands' suitability for designation as wilderness.[109] BLM is required by FLPMA to protect the wilderness characteristics of these WSAs until they are acted upon by Congress, meaning that many uses in these areas are restricted or prohibited. Congress has designated some WSAs as wilderness, and has also included legislative language releasing BLM from the requirement to protect the wilderness characteristics of other WSAs. Questions persist over the management and designation of the remaining WSAs, including whether they should be released for multiple use or be permanently protected, either as WSAs or through other federal land designations.

FS reviews the wilderness potential of NFS lands during the forest planning process and recommends any identified potential wilderness areas for congressional consideration.[110] FS may restrict management activities or uses that may reduce the wilderness potential of a recommended wilderness area.[111]

FS also manages approximately 58 million acres of lands identified as *inventoried roadless areas*.[112] Inventoried roadless areas are not part of the National Wilderness Preservation System, but road construction, road reconstruction, and timber harvesting are restricted on these lands, with some exceptions. The Clinton and George W. Bush Administrations each promulgated different roadless area regulations. Both were heavily litigated; however, the Clinton policy (*Roadless Rule*) to prohibit many activities on roadless areas remains applicable to most states after the Supreme Court declined to review a lower court's 2012 decision striking down the Bush rule.[113]

In 2020, the Trump Administration excepted the Tongass National Forest in the state of Alaska from the Roadless Rule.[114] In 2023, the Biden Administration proposed to repeal the Trump rule, restoring applicability of the Roadless Rule to the Tongass.[115] Critics of the exception contend that allowing timber harvesting or road works may harm the Tongass's unique ecological qualities or regional industries, such as tourism and commercial fishing. Proponents of the exception contend it will help rural economies, particularly the timber industry, and allow more local decisionmaking regarding forest management.

[108] BLM, "Public Land Statistics 2019," June 2020. P.L. 94-579.

[109] 43 U.S.C. §1782. BLM also has identified WSAs under other authorities, such as through its ongoing land planning process, and Congress has established some WSAs through statute on BLM, FWS, and FS lands.

[110] 36 C.F.R. §219.7(c)(v).

[111] 36 C.F.R. §219.10(b)(iv).

[112] Forest Service, "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska," 86 *Federal Register* 68688, October 29, 2020.

[113] Wyoming v. Department of Agriculture, 133 S.Ct. 417 (2012). The Roadless Rule does not apply to Colorado or Idaho; roadless areas within the national forests within those states are subject to statewide regulations developed pursuant to the Administrative Procedures Act (P.L. 79-404).

[114] Forest Service, "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska," 88 *Federal Register* 5252, January 27, 2023.

[115] Forest Service, "Roadless Area Conservation: National Forest System Lands in Alaska," 86 *Federal Register* 66498, November 23, 2021.

CRS Products

CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Anne A. Riddle and Katie Hoover

CRS Report R41610, *Wilderness: Issues and Legislation*, by Anne A. Riddle, Katie Hoover, and Eric P. Nardi

CRS Report R47322, *Bureau of Land Management Wilderness Study Areas: In Brief*, by Anne A. Riddle

CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann

CRS Report R46505, *The Alaska Roadless Rule: Eliminating Inventoried Roadless Areas (IRAs) in the Tongass National Forest*, by Anne A. Riddle

The National Wild and Scenic Rivers System

Congress established the National Wild and Scenic Rivers System with the passage of the Wild and Scenic Rivers Act (WSRA) of 1968.[116] The act established a policy of preserving designated free-flowing rivers for the benefit and enjoyment of present and future generations. Under the act, the federal government cannot permit, fund, or otherwise assist projects that would cause specified negative impacts to a designated river's free flow or values. The WSRA requires that river units designated as part of the system be classified as wild, scenic, or recreational rivers, based on the condition of the river, the amount of existing development in the river or on the shorelines, and the degree of accessibility by road or trail at the time of designation. The system contains both federal and nonfederal river segments. Typically, rivers are added to the system by an act of Congress. Rivers may also be added after protection by a state legislature, nomination by the state's governor and approval of the Secretary of the Interior. As of February 1, 2023, there are 226 river units with roughly 13,400 miles in 41 states and Puerto Rico, administered by all four FLMAs or by state, local, or tribal governments.[117]

River designation and management has been controversial in some cases. Issues include concerns about the effect of designation or management actions on private property rights and water rights within designated river corridors. Controversies have arisen over projects that were prohibited within a corridor, such as construction of major highway crossings, bridges, or other activities that were deemed to affect the flow or character of the designated river segment. The extent of local input in developing river management plans is another recurring issue.

CRS Products

CRS Report R45890, *Wild and Scenic Rivers: Designation, Management, and Funding*, by Anne A. Riddle

CRS Report R46369, *Section 7 of the Wild and Scenic Rivers Act: In Brief*, by Anne A. Riddle

[116] P.L. 90-542; 16 U.S.C. §1271 et seq.

[117] These figures were calculated by CRS using figures reported in legislative text and river management plans, as available, and reflect additions to the system by the Dingell Conservation Act (P.L. 116-9).

The National Trails System

The National Trails System Act of 1968 authorized a national system of trails, across federal and nonfederal lands, to provide additional outdoor recreation opportunities and to promote access to the outdoor areas and historic resources of the nation.[118] The system consists of four types of trails: (1) national scenic trails (NSTs), which display significant physical characteristics of U.S. regions; (2) national historic trails (NHTs), which follow travel routes of national historical significance; (3) national recreation trails (NRTs), which provide outdoor recreation accessible to urban areas; and (4) connecting or side trails, which provide access to the other types of trails. National trails can be found in all 50 states, the District of Columbia, and Puerto Rico. NSTs and NHTs are administered by NPS, FS, and BLM, in cooperation with appropriate state and local authorities.[119] As of January 2023, the system includes 11 NSTs and 21 NHTs that cover roughly 58,300 miles. [120] Most recreation uses are permitted on segments located on federal lands, as are other uses or facilities that do not substantially interfere with the nature and purposes of the trail.[121] All trail management activity on nonfederal land is strictly voluntary and, in general, designation of a national trail does not place any federal restrictions or requirements on private landowners. Still, nonfederal segments of national trails may be protected through cooperative and certification agreements, easements, and other actions by a range of entities, including nonprofit organizations.

Ongoing issues for Congress include whether to designate additional trails, whether or how to balance trail designation with other potential land uses, what activities should be permitted on trails, and what portion of trail funding should be from federal versus nonfederal sources. Issues related to interagency trail management have also been the subject of congressional interest and litigation in recent years.[122] Some Members have expressed interest in new types of trails for the system, such as "national discovery trails," which would be interstate trails connecting representative examples of metropolitan, urban, rural, and backcountry regions.

CRS Products

CRS Report R43868, *The National Trails System: A Brief Overview*, by Mark K. DeSantis

[118] P.L. 90-543; 16 U.S.C. §1241 et seq.

[119] Some national recreation trails (NRTs) and connecting and side trails are also located on federal lands and are therefore also administered by the respective agency; however, the majority of these trails are located on nonfederal land and are administered by nonfederal entities.

[120] Personal communication from Peter Bonsall, GIS Specialist, NPS, September 2020. According to NPS, these data are reflective of the mileage figures in enabling legislation. Figure 1 reflects the recent trail extensions enacted as part of P.L. 116-9 and the estimated mileage of the Butterfield Overland NHT (3,292 miles) and the Chilkoot NHT (16.5 miles) established in the 117th Congress.

[121] In general, federal segments of NSTs are closed to motor vehicle use pursuant to Section 7(c) of the National Trails System Act. Exceptions include when it is necessary to meet emergencies, where the authorized officer determines that the adjacent landowners and land users have a need for reasonable access, or on roads that are a designated segment of the trails and are posted as open to motorized vehicles.

[122] For example, in 2020, the U.S. Supreme Court ruled that FS had the authority to grant a right-of-way for the construction of a natural gas pipeline to cross the Appalachian National Scenic Trail (NST) under the Mineral Leasing Act of 1920 (MLA) even though the overall administration of the Appalachian NST was delegated to NPS and lands administered by NPS as part of the National Park System are excluded from the right-of-way authority under the MLA (see *United States Forest Serv. v. Cowpasture River Pres. Ass'n*, 140 S. Ct. 1837 (2020)).

Range Management

Livestock Grazing

Nearly all livestock grazing on federal lands occurs on BLM and FS lands. Both agencies divide areas of their lands into allotments to provide access for grazing of private livestock. They issue to livestock operators permits and/or leases that specify the terms and conditions for grazing. To qualify for a permit or lease, a livestock operator needs to own (FS) or own or control (BLM) livestock and base property (e.g., land capable of supporting livestock). Permits and leases generally cover a 10-year period and may be renewed.

Management of federal rangelands for livestock grazing presents an array of policy matters for Congress. There is debate about the appropriate fee that should be charged for grazing private livestock on BLM and FS lands, including what criteria should prevail in setting the fee. Today, these federal agencies charge fees under a formula that was established by law in 1978 and then continued indefinitely through an executive order issued by President Reagan in 1986.[123] The 2023 grazing fee charged by BLM and FS is $1.35 per animal unit month (AUM) for grazing on their lands.[124] Conservation groups, among others, generally seek increased fees to recover program costs or approximate market value, whereas livestock producers who use federal lands generally want to keep fees low to sustain ranching and rural economies.

Congress has considered proposals to foster livestock grazing as well as proposals to limit grazing. For example, to foster livestock grazing, some past proposals would extend the permit/lease length (e.g., to 20 years) to strengthen the predictability and continuity of operations. Longer permit terms have been opposed as potentially reducing the opportunities to analyze the impact of grazing on lands and resources. To limit livestock grazing due to concerns about the impact of grazing on rangelands, some past proposals would authorize the voluntary retirement of permits and leases and subsequent closure of the allotments to grazing.[125] These efforts have been opposed by those who assert that ranching can benefit rangelands and who support ranching on federal lands for not only environmental but lifestyle and economic reasons. Another focus of the discussion on range health and productivity is the spread of invasive and noxious weeds. (See "Invasive Species" section, below.)

Wild Horses and Burros

There is continued congressional interest in management of wild horses and burros, which are protected on BLM and FS lands under the Wild Free-Roaming Horses and Burros Act of 1971.[126]

[123] P.L. 95-514, 92 Stat. 1803; 43 U.S.C. §§1901, 1905. Executive Order 12548, 51 *Federal Register* 5985. February 19, 1986.

[124] The 2023 grazing fee is in effect from March 1, 2023, through February 29, 2024. This is the same fee as charged by the agencies for 2022 (in effect through February 28, 2023). That fee is in effect from March 1, 2023, through February 29, 2024. BLM defines an Animal Unit Month (AUM), for fee purposes, as a month's use and occupancy of the range by one animal unit, which includes one yearling, one cow and her calf, one horse, or five sheep or goats (43 C.F.R. §4130.8-1(c)). FS uses a similar measurement, head-month (HD-MO), for use and occupancy of FS lands for livetock grazing (36 C.F.R. §222.50(c)). AUM is used in this report to cover both HD-MO and AUM.

[125] Provisions of law have been enacted to provide for voluntary retirement of grazing permits in certain areas. See, for example, P.L. 111-11, §1402 pertaining to the Cascade-Siskiyou National Monument and §1503 pertaining to certain BLM lands in wilderness areas Idaho.

[126] 16 U.S.C. §§1331 et seq.

Under the act, the agencies inventory wild horse and burro populations on their lands to determine appropriate management levels (AMLs). Most of the animals are on BLM lands, although both BLM and FS have populations exceeding their national AMLs. BLM estimates the maximum AML at 26,785 wild horses and burros, and it estimates population on the range at 82,384.[127] Furthermore, off the range, BLM provides funds to care for 64,369 additional wild horses and burros in short-term corrals, long-term (pasture) holding facilities, and ecosanctuaries.[128] FS estimates AML at about 2,500 and population at about 10,100 wild horses and burros for lands managed by the agency.[129]

Congress has authorized BLM and FS to remove excess animals from the range, and in practice the agencies use a variety of methods in seeking to meet AML.[130] This includes programs to adopt and sell animals, to care for animals off-range, to administer fertility control, and to establish ecosanctuaries. Questions facing Congress center on the sufficiency of these authorities and programs for managing wild horses and burros. One focus is on development and application of better methods of fertility control. A controversial question is whether the agencies should humanely destroy excess animals, as required under the 1971 law, or whether Congress should continue to prohibit the agencies from using funds to slaughter healthy animals. Such prohibitions have been included in recent annual discretionary appropriations laws.[131] Additional topics of discussion relate to the costs of management, particularly the relatively high cost of caring for animals off-range.[132] Other options focus on keeping animals on the range, such as by expanding areas for herds and/or changing the method for determining AML.

CRS Products

CRS Report RS21232, *Grazing Fees: Overview and Issues*, by Carol Hardy Vincent

CRS In Focus IF11060, *Wild Horse and Burro Management: Overview of Costs*, by Carol Hardy Vincent

Recreation

The abundance and diversity of recreational uses of federal lands and waters present management challenges. One issue is how—or whether—fees should be collected for recreational activities on federal lands. The Federal Lands Recreation Enhancement Act (FLREA) established a recreation fee program for the four FLMAs and the Bureau of Reclamation.[133] The authorization has been

[127] These figures were current as of March 1, 2022. See BLM, *Herd Area and Herd Management Area Statistics, as of March 1, 2022*, at https://www.blm.gov/sites/default/files/docs/2022-04/2022_HAHMA_Stats_4.12.2022.pdf.

[128] BLM, *Off-Range Holding (as of November 2022)*, at https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-data.

[129] These estimates are taken from "USDA Forest Service Wild Horse and Burro Program," at https://www.blm.gov/sites/default/files/docs/2022-09/USFS%20Update.pdf. This document is posted on the BLM website for the National Wild Horse and Burro Advisory Board, under "Materials from Past Advisory Board Meetings, USDA Forest Service Update."

[130] 16 U.S.C. §1333.

[131] See, for example, the prohibition on FY2023 funding for these activities in the Consolidated Appropriations Act, 2023 (P.L. 117-328, Division G, §417(e)).

[132] For example, in FY2022, about 60% of BLM's overall expenditures for wild horses and burros were used to care for animals off-range. BLM, *Program Expenditures*, at https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-data.

[133] Federal Lands Recreation Enhancement Act (FLREA; P.L. 108-447), 16 U.S.C. §§6801-6814.

extended by a series of laws and is currently set to expire on October 1, 2023.[134] FLREA authorizes the agencies to charge, collect, and spend fees for recreation on their lands, with most of the money remaining at the collecting site.

With FLREA set to expire at the end of FY2023, the 118th Congress may consider whether to let lapse, extend, make permanent, or amend the program. Some support new or increased fees or full extension of the program to other agencies, especially the U.S. Army Corps of Engineers. Others oppose recreation fees generally or for certain agencies or types of lands; assert that the fee structure should be simplified; or favor using more of the fees to reduce agency maintenance backlogs. Current oversight issues for Congress relate to various aspects of agency implementation of the fee program, including the determination of fee changes and use of collected revenue, for example. Other issues relate to reservation services under FLREA, through Recreation.gov, for recreational activities on federal lands. They include questions on managing access and charging processing, lottery, or cancellation fees.

In recent years, FLMAs generally have experienced increase demand for more access to and options for diverse recreational experiences. One area of focus is the extent to which federal lands and programs foster accessibility by all sectors of the public (sometimes referred to as "equitable access.").[135] A second area of focus is access for particular types of activities on federal lands. In particular, the extent to which the public has access to hunting, fishing, recreational shooting (e.g., at shooting ranges), and off-highway vehicle (OHV) use on federal lands is of perennial interest to Congress.[136] OHVs include all-terrain vehicles, snowmobiles, and personal watercraft and are popular particularly on BLM and FS lands. A third area is how to manage access to address the general increase in visitation to federal lands in recent years. Some FLMAs have developed and revised transportation plans to manage congestion and have instituted reservation systems in some areas to spread visitation.[137] Questions for Congress relate to the balance among different recreational uses; the sufficiency of agency infrastructure for diverse and generally increasing visitation; and the effects of visitation and recreational use on lands, law enforcement, public safety, and agency funding.

Other issues are specific to commercial recreation providers—and specifically, commercial guides and outfitters—operating on federal lands. One focus is whether and how to modify the permitting framework under which guides and outfitters generally obtain permits to conduct business on federal lands or use federal resources. Some stakeholders view the differing policies across the four FLMAs as an administrative and financial hindrance, particularly to small businesses and entities whose operations cross multiple federal jurisdictions. Others view fostering guide and outfitter operations through permit adjustments as potentially detrimental to noncommercial visitor use. Issues include whether to establish multi-jurisdictional permits, adjust

[134] The most recent extension was provided in P.L. 117-103, Division G, §421.

[135] For example, appropriations laws since FY2014 have provided funding for an Outdoor Recreation Legacy Partnership Program. As managed by NPS, the program has provided competitive grants to states to increase outdoor recreation in disadvantaged urban areas. See, for example, the NPS website at https://www.nps.gov/subjects/lwcf/outdoor-recreation-legacy-partnership-grants-program.htm.

[136] Regarding hunting, fishing, and recreational shooting, see, for example, P.L. 116-9, Title IV, "Sportsmen's Access and Related Matters."

[137] For an example of a reservation system, see for example NPS, "Yosemite National Park Launches Temporary Peak Hours Reservation System May 20," press release, February 16, 2022, at https://www.nps.gov/yose/learn/news/yosemite-national-park-launches-temporary-peak-hours-reservation-system-may-20.htm.

permit fees and cost-recovery calculations, or modify various procedural requirements, such as those required by the National Environmental Policy Act.[138]

CRS Products

CRS In Focus IF10151, *Federal Lands Recreation Enhancement Act: Overview and Issues*, by Carol Hardy Vincent

CRS Report R45103, *Hunting and Fishing on Federal Lands and Waters: Overview and Issues for Congress*, by Christopher R. Field

CRS Report R46380, *Guides and Outfitters on Federal Lands: Background and Permitting Processes*, by Mark K. DeSantis

CRS Report R46381, *Guides and Outfitters on Federal Lands: Issues for Congress*, by Mark K. DeSantis

Species Management

Each FLMA is responsible for managing the plant and animal resources under its purview. An agency's responsibilities may be based on widely applicable statutes or directives, including the Endangered Species Act, the Migratory Bird Treaty Act, the Fish and Wildlife Coordination Act, executive orders, and other regulations. Species management can also be based on authorities specific to each FLMA, such as the National Wildlife Refuge System Administration Act. In addition, each FLMA must work closely with state authorities to address species management issues.

In the case of the National Wildlife Refuge System (administered by FWS), the conservation, management, and, as appropriate, restoration of plants and animals is the mission of the system, and other uses are allowed to the extent they are compatible with that mission and any specific purposes of an individual system unit.[139] While most refuges are open for public enjoyment, some refuges or parts of refuges (such as island seabird colonies) might be closed to visitors to preserve natural resources. For the National Park System, resource conservation (including wildlife resources) is part of the National Park Service's dual mission, shared with the other goal of public enjoyment.[140] FS and BLM have *multiple use* missions, with species management being one of several agency responsibilities.[141]

The federal land management agencies do not exercise their wildlife authorities alone. Often, Congress has directed federal agencies to share management of their wildlife resources with state agencies.[142] For example, where game species are found on federal land and hunting or fishing is

[138] 42 U.S.C. §§4321 et seq. For more information on the National Environmental Policy Act, see CRS In Focus IF11549, *The Legal Framework of the National Environmental Policy Act*, by Nina M. Hart and Linda Tsang.

[139] National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. §668dd et seq. Preexisting rights that were not acquired (e.g., in a split estate where FWS acquires surface rights but not mineral rights) may also affect what may occur on FWS lands.

[140] 54 U.S.C. §100101.

[141] For BLM, see 43 U.S.C. §§1701-1702. For FS, see 16 U.S.C. §§528-531.

[142] For example, the National Wildlife Refuge System Administration Act states, "Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish

generally allowed on that land, federal agencies work with states on wildlife censuses and typically require appropriate state licenses to hunt and fish on the federal lands.[143] In addition, federal agencies often cooperate with states to enhance wildlife habitat for the benefit of both jurisdictions.

The four FLMAs do not consistently report specific data on how many acres of land are open to hunting, fishing, and recreational shooting. However, both BLM and FS are generally required to open lands under their administration to hunting, fishing, and recreational shooting, subject to any existing and applicable law, unless the respective Secretary specifically closes an area.[144] Both agencies estimate that nearly all of their lands are open to these activities.[145] FWS is required to report the number of refuges open to hunting and fishing as well as the acreage available for hunting on an annual basis.[146] As of September 2022, there were 378 refuges open to fishing and 436 refuges open to hunting.[147] Congress frequently considers species management issues, such as balancing land and resources use, providing access to hunting and fishing on federal lands, and implementing endangered species protections.

Endangered Species

The protection of endangered and threatened species—under the 1973 Endangered Species Act (ESA)—can raise challenges for FLMAs when their obligations to conserve listed species come into tension with their other management directives, such as natural resources use and development.[148] Under the ESA, all federal agencies must "utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to ... this Act."[149] As a result, the FLMAs generally consider species listed as threatened or endangered in their land management plans, timber sales, energy or mineral leasing plans, and all other relevant aspects of their activities that might affect listed species. In addition, under Section 7(a)(2), they must consult with FWS (or NMFS, for most marine species and for anadromous fish such as salmon) when these or their other actions may affect listed species or their critical habitats.

Congress has considered altering ESA implementation on federal lands in various ways. These debates have generally centered on how to balance potential conflicts between species

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and wildlife laws, regulations, and management plans" (16 U.S.C. §668dd(m)).

[143] While state licenses are generally required to hunt and fish on federal lands, there are some exceptions. For example, select NPS units do not require state licenses for fishing.

[144] This requirement was added by the Dingell Conservation Act (P.L. 116-9, §4102). However, the requirement is prospective and does not retroactively open any lands that were closed as of the date of enactment (February 26, 2019). P.L. 116-9, §4103 outlines the required procedures for closing lands to these activities.

[145] BLM estimates that over 99% of its lands are open to hunting, fishing, and recreational shooting (BLM, *Recreation Programs*, https://www.blm.gov/programs/recreation/recreation-programs/recreational-shooting). FS estimates that 99% of its lands are open to hunting, and at least 99% of FS administered rivers, streams, and lakes are open to fishing (personal communication between CRS and FS, February, 2018). For more information on hunting and fishing on federal lands, see CRS Report R45103, *Hunting and Fishing on Federal Lands and Waters: Overview and Issues for Congress*, by Christopher R. Field.

[146] P.L. 113-264 amended the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. §718d) to mandate that FWS annually publish the number of acres open to hunting and fishing within the NWRS.

[147] FWS, *National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*, at https://www.fws.gov/press-release/2022-09/service-offers-new-public-access-hunting-and-fishing. The numbers provided herein do not include hunting and fishing opportunities in wetland management districts that are also part of the NWRS.

[148] P.L. 93-205, as amended; 16 U.S.C. §§1531-1543.

[149] 16 U.S.C. §1536(a).

conservation and other resource use, generally pertaining to certain listed and proposed species. Examples of such species include sage grouse (energy and other resources in sage brush habitat), gray wolves (ranching), and polar bears (energy development in northern Alaska), among others. Proposals aimed at addressing these potential conflicts include granting greater authority to states over whether a species may be listed, changing the listing status of a species, and creating special conditions for the treatment of a listed species. Congress may also consider administrative changes that have been made related to the implementation of the ESA.[150]

CRS Products

CRS Report R46677, *The Endangered Species Act: Overview and Implementation*, by Pervaze A. Sheikh and Erin H. Ward

CRS Report RL32992, *The Endangered Species Act and "Sound Science"*, by Pervaze A. Sheikh

CRS Report R40787, *Endangered Species Act (ESA): The Exemption Process*, by Pervaze A. Sheikh

CRS In Focus IF11241, *The Legal Framework of the Endangered Species Act (ESA)*, by Erin H. Ward

CRS Report R46184, *The Gray Wolf Under the Endangered Species Act (ESA): A Case Study in Listing and Delisting Challenges*, by Erin H. Ward

CRS Report R45926, *The Endangered Species Act and Climate Change: Selected Legal Issues*, by Linda Tsang

Invasive Species

While habitat loss is a major factor in the decline of species, invasive species have long been considered the second-most-important factor.[151] Invasive species—nonnative or alien species that cause or are likely to cause harm to the environment, the economy, or human health upon introduction, establishment, and spread—have the potential to affect habitats and people across the United States and U.S. territories, including on federal lands and waters.[152] For example,

[150] See for example, DOI, FWS, "Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat," 87 *Federal Register* 43433, July 21, 2022; DOI, FWS, "Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat," 85 *Federal Register* 82376, December 18, 2020; DOI, FWS, and Department of Commerce (DOC), NOAA, "Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat," 87 *Federal Register* 37757, July 25, 2022; DOI, FWS, and Department of Commerce (DOC), NOAA, "Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat," 85 *Federal Register* 81411, December 16, 2020; DOI, FWS, and DOC, NOAA, "Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation," 84 *Federal Register* 44976, August 27, 2019; and DOI, FWS, "Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants," 84 *Federal Register* 44753, August 27, 2019.

[151] For example, see Randy G. Westbrooks, *Invasive Plants: Changing the Landscape of America*, Federal Interagency Committee for the Management of Noxious and Invasive Weeds, Washington, DC, 1998, p. 5.

[152] The introduction and spread of invasive species also can result in economic impacts, with potential related costs estimated by some as exceeding $100 billion per year. For example, see David Pimentel, Rodolfo Zuniga, and Doug Morrison, "Update on the Environmental and Economic Costs Associated with Alien-invasive Species in the United States," *Ecological Economics*, vol. 52, no. 3 (February 15, 2005), pp. 273-288. For recent U.S. economic impact estimates, see Travis Warziniack, Robert G. Haight, Denys Yemshanov, et al., "Economics of Invasive Species," in *Invasive Species in Forests and Rangelands of the United States: A Comprehensive Science Synthesis for the United States Forest Sector*, ed. Therese M. Poland,; Toral Patel-Weynand; Deborah M. Finch; Chelcy Ford Miniat; Deborah C. Hayes; Vanessa M. Lopez (Heidelberg, Germany: Springer International Publishing, 2021), pp. 305-320.

gypsy moths and hemlock wooly adelgid have been pests in many eastern national forests as well as Shenandoah National Park. A fungus causing white-nose syndrome has led to widespread mortality in bat populations in the central and eastern states—and was recently identified in western states—including those in caves on national park and national forest lands. Burmese pythons prey on native species of birds, mammals, and reptiles in south Florida, including in Everglades National Park. Invasive species can impact federal lands and resources in a variety of ways and impair the FLMAs' ability to fulfill their respective management missions.

Many stakeholders believe the most effective way to deal with invasive species is to prevent their introduction and spread. For species already introduced, finding effective management approaches is important, though potentially difficult or controversial. Control efforts can be complex and expensive, and may require collaboration and coordination between multiple stakeholders. FLMAs are responsible for invasive species management on the lands within their jurisdiction, often in coordination with one another and with state fish and wildlife agencies.[153] The National Invasive Species Council, which is co-chaired by the Secretary of the Interior, is responsible for the coordination of federal efforts to control invasive species, including state and interagency partnerships.

Addressing invasive species is a responsibility shared by several federal agencies, including USDA in addition to the FLMAs.[154] These agencies are required to plan and carry out control activities and to develop strategic plans to implement such activities.[155] Control activities are required to manage invasive populations, prevent or inhibit the introduction and spread of invasive species, and to restore impacted areas. Further, by law, agencies must consider both ecological and economic aspects in developing their strategic plans and implementing control activities, and they must coordinate with state, local, and tribal representatives. The introduction and spread of invasive species as well as the impacts that arise from these species is of perennial interest to Congress.

CRS Product

CRS In Focus IF11011, *Invasive Species: A Brief Overview*, by Christopher R. Field

CRS In Focus IF11666, *U.S. Army Corps of Engineers Invasive Species Efforts*, by Anna E. Normand

Tribal and Alaska Native Lands and Resources Management

There are many types of tribal lands and tribal land ownership. Indian tribes (hereinafter *tribes*) have a unique relationship with the federal government, including with regard to land and

[153] State fish and wildlife agencies typically are responsible for invasive species management on non-federal lands.

[154] Dingell Conservation Act (P.L. 116-9, §7001) adds a general authority and requirement for the FLMAs, BIA, the Bureau of Reclamation (also in DOI), and the Army Corps of Engineers to address invasive species on the lands in their jurisdiction. The Lacey Act (18 U.S.C. §42(a)(1)) prohibits importing species found to be injurious to the United States. FWS issues regulations to amend the list of banned species. Other statutes address management of specific species groups (for example, noxious weeds; 7 U.S.C. §2814 and 7 U.S.C. §§7781-7786) or habitats (for example, aquatic habitats; 16 U.S.C. §§4701-4751). In addition, addressing invasive species has also been considered through administrative mechanisms, including executive orders (for example, Executive Order 13112, "Invasive Species," 64 *Federal Register* 6183, February 8, 1999).

[155] P.L. 116-9, §7001.

resource management.[156] One aspect of this special relationship is the doctrine of the *federal trust responsibility*: a legal obligation under which the United States, through treaties, acts of Congress, and court decisions, "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes.[157] The federal trust responsibility can include a duty on the part of the United States to protect treaty rights, lands, assets, and resources on behalf of tribes and tribal members.[158] This unique relationship is a key difference between the *federal management of tribal lands* and the *management of federal lands*.

BIA is the lead agency responsible for the administration and management of land and resources the United States holds in trust for the 574 federally recognized tribes and individual tribal members.[159] BIA manages about 56 million surface acres and 59 million acres of subsurface minerals estates.[160] Putting land into trust can generate potential benefits. For example, the use of trust lands is generally governed by tribes and not state laws.[161] In addition, tribes may be eligible for economic benefit programs specific to trust lands, including tax benefits.[162] On the other hand, with a few exceptions, BIA's approval is required for leases and agreements to develop trust lands and resources. For example, with respect to energy resource development, some of BIA's actions and decisions include reviewing and approving surface and subsurface leases, drilling permits, rights-of-way, cultural resources surveys, and environmental studies and surveys.[163]

Land can become trust land through a process known as the *land-into-trust*, or *fee-to-trust*, process. This can be done administratively, through the Secretary of the Interior, or Congress can mandate land be brought into trust for a tribe.[164] Notably, a 2009 Supreme Court case, *Carcieri v. Salazar,* decided that only tribes that were federally recognized prior to 1934 could petition to reserve land in trust.[165] On January 20, 2021, President Biden issued a list of agency actions under

[156] The terms *federally recognized tribe* or *tribe* reflect statutory language denoting tribal entities that, through a process known as federal recognition or federal acknowledgment, have a government-to-government relationship with the United States and are entitled to certain rights and privileges. 25 U.S.C. §5131(a) directs the Secretary of the Interior to annually publish a list of federally recognized tribes.

[157] Seminole Nation v. U.S., 316 U.S. 286, 296-297 (1942). For a general overview of the trust relationship, see U.S. v. Jicarilla Apache Nation, 564 U.S. 162 (2011).

[158] DOI, BIA, "Frequently Asked Questions," at https://www.bia.gov/frequently-asked-questions.

[159] 25 C.F.R. §151.2(d), 25 C.F.R. §169.2; see also Nell Jessup Newton, ed., *Cohen's Handbook of Federal Indian Law, 2012 Edition*, 2017, §15.03 (hereinafter, Newton, *Cohen's Handbook*); see also DOI, "Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs," 87 *Federal Register* 4640-4641, January 28, 2022.

[160] BIA, *Budget Justifications and Performance information, Fiscal Year 2023*, p. IA-RES-11, at https://www.doi.gov/sites/doi.gov/files/fy2023-bia-greenbook.pdf.

[161] BIA, "Benefits of Trust Land Acquisition (Fee to Trust)," at https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition.

[162] Ibid.

[163] GAO, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, GAO-15-502, June 8, 2015, p. 4. Other federal agencies, such as BLM, play key roles in energy development on tribal lands. DOI, BIA, Office of Indian Energy and Economic Development, "Working on Indian Lands," at https://www.indianaffairs.gov/as-ia/ieed/division-energy-and-mineral-development/working-indian-lands.

[164] The Indian Reorganization Act of 1934 (IRA) authorizes the Secretary of the Interior to bring land into trust on behalf of tribes (25 U.S.C. §5108). See P.L. 116-92, §2870, for an example of Congress mandating a legislative land-into-trust process.

[165] Carcieri v. Salazar, 555 U.S. 379 (2009). For more information on this court case, see CRS Report RL34521, *Carcieri v. Salazar: The Secretary of the Interior May Not Acquire Trust Land for the Narragansett Indian Tribe Under 25 U.S.C. Section 465 Because That Statute Applies to Tribes "Under Federal Jurisdiction" in 1934*, by M. Maureen Murphy.

review, which includes *Carcieri* guidance issued by DOI's Office of the Solicitor during the Trump Administration.[166] In December 2022, DOI issued a proposed rule that outlined the process for determining whether a tribe was "under federal jurisdiction" in 1934, as required by the *Carcieri* decision.[167]

Land ownership statuses and the federal-tribal trust relationship can pose unique challenges for Congress to consider when deliberating tribal land and resource management policies. For example, the type of tribal land can affect the rights of the land owners to participate in certain federal programs and activities. Other issues include reducing *fractionation*, meaning there could be many landowners—sometimes hundreds—on one parcel of land. The administration of the land-into-trust process also raises several potential issues for Congress. These issues include funding and timeliness concerns, considerations for bringing off-reservation parcels into trust, and the impacts of recent Supreme Court decisions.[168]

CRS Products

CRS Insight IN11486, *Potential Land and Natural Resources Policy Implications of McGirt v. Oklahoma*, by Mariel J. Murray

CRS In Focus IF11944, *Tribal Lands: An Overview*, by Mariel J. Murray

CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Mariel J. Murray

CRS Report R46446, *Tribal Energy Resource Agreements (TERAs): Approval Process and Selected Issues for Congress*, by Mariel J. Murray

CRS In Focus IF11877, *Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs*, by Mariel J. Murray

CRS Report R47346, *Tribal Issues: CRS Experts and Points of Contact*, by Elayne J. Heisler, Mainon A. Schwartz, and Mariel J. Murray

Alaska Native Lands and Resources

There is a unique form of tribal sovereignty in Alaska.[169] Under the Alaska Native Claims Settlement Act (ANCSA), Alaska Natives received approximately 45 million acres, the majority of which were divided among over 200 village corporations and 13 regional corporations (Alaska Native Corporations, or ANCs).[170] Unlike tribal governments, ANCs are business entities organized under the laws of Alaska, although several Alaska Native groups are federally recognized and have trust lands.[171] BIA, BLM, and other federal agencies administer various ANCSA-related lands programs for land and realty issues unique to Alaska.

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[166] White House, "Fact Sheet: List of Agency Actions for Review," January 20, 2021.

[167] DOI, BIA, "Land Acquisitions," 87 *Federal Register* 74335, December 5, 2022.

[168] In addition to the *Cacieri* decision, Congress may also choose to address jurisdictional issues raised in the Supreme Court cases of McGirt v. Oklahoma, 140 S. Ct. 2452 (2020) and Castro-Huerta v. Oklahoma, 597 U.S. (2022).

[169] For more on Alaska tribal sovereignty, see Statement of Julie Kitka, President, Alaska Federation of Natives Statment of U.S. Congress, Senate Committee on Indian Affairs, *A Call to Action: Native Communities' Priorities in Focus for the 117th Congress*, 117th Cong., 1st sess., February 24, 2021, S. HRG. 117–8 (Washington: GPO, 2021), p. 40.

[170] P.L. 92-203.

[171] See CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview*

Lands-related issues in Alaska may pose unique considerations for Congress. Congress may, for example, wish to consider how to approach the distinctions between ANC lands and tribal lands in the lower 48 states when legislating across the United States, consider whether to modify ANCSA's complex land management framework, consider whether to dispose of remaining lands withdrawn under ANCSA, and consider potential implications of creating new Alaska Native village corporations. Congress may also wish to consider Alaska subsistence uses on federal lands.[172]

CRS Products

CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress*, by Mariel J. Murray

Wildfire Management

Wildfire is a concern because it can lead to loss of human life, damage communities and timber resources, and affect soils, watersheds, water quality, and wildlife.[173] Management of wildfire includes preparedness, suppression, fuel reduction, site rehabilitation, and more.[174] Since 2000, there were over 70,000 wildfires annually on average in the United States, impacting 7.0 million acres annually on average. In 2022, 7.5 million acres were estimated to be impacted by wildfire.[175]

The federal government is responsible for managing wildfires that begin on federal land and for coordinating multi-jurisdictional response activities with state and local governments as needed. Federal responsibility for wildfire suppression is intended to protect lives, property, and resources on federal lands. Federal wildfire policy is to evaluate the risks to firefighters and public safety and welfare—and to natural, ecological, and cultural values to be protected—to determine the appropriate response to wildfire.[176] Depending on the risk assessment, the federal response may

and Selected Issues for Congress, by Mariel J. Murray. See also U.S. Department of Interior, "Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs," 87 *Federal Register* 4640-4641, January 28, 2022.

[172] DOI (FWS, BLM, and NPS) and USDA (FS)'s Federal Subsistence Board manage fish and wildlife for subsistence uses on over 237 million acres of federal lands in Alaska. U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2023, U.S. Fish and Wildlife Service*, p. 185, at https://www.doi.gov/sites/doi.gov/files/fy2023-fws-greenbook.pdf.

[173] Wildfires can also have beneficial impacts on some ecosystems. The terms *wildland fire* and *wildfire* often are used interchangeably, although each term has a distinct definition. The National Wildfire Coordinating Group (NWCG) defines *wildland fire* as any nonstructure fire that occurs in vegetation or natural fuels, including prescribed fire and wildfire. NWCG defines *wildfire* as a wildland fire caused by an unplanned ignition, such as lightning, unauthorized human-caused fires, and escaped prescribed fire projects. See NWCG, "Glossary of Wildland Fire Terminology," September 2020, at https://www.nwcg.gov/glossary/a-z.

[174] Preparedness is the range of tasks necessary to build, sustain, and improve the capability to protect against, respond to, and recover from wildfire incidents. Suppression is the work associated with extinguishing or confining a fire. Fuel reduction is manipulation, including combustion, or removal of fuels to reduce the likelihood of ignition and/or to lessen potential damage and resistance to control. Site rehabilitation is efforts undertaken generally within three years of a wildfire to repair or improve fire-damaged lands unlikely to recover to a management-approved condition, or to repair or replace minor facilities damaged by fire.

[175] This estimate is derived from the *Incident Management Situation Report* issued by the National Interagency Fire Center for December 23, 2022. Official data regarding statistics for 2022 were not reported by the time of publication of this report.

[176] DOI and FS, *The National Strategy: The Final Phase in the Development of the National Cohesive Wildland Fire*

range from active suppression to monitoring, as supported by the area's land and resource management plans.

Legislative issues for Congress include consideration of the federal roles and responsibilities for wildfire protection, response, damages, and recovery. This includes issues related to the federal government's ability to recruit and retain firefighters; the age, extent, and effectiveness of the firefighting aviation fleet; and the use of new technologies for wildfire detection and response, such as unmanned aircrafts, among others.

Another issue is the impact of the expanding *wildland-urban interface*, which is the area where structures (usually homes) are intermingled with or adjacent to vegetated wildlands (forests or rangelands).[177] The proximity to vegetated landscapes puts these areas at a potentially greater risk of experiencing wildfires and associated damage. As such, additional issues for Congress include oversight of the agencies' fire management activities and other wildland management practices that have altered fuel loads over time, as well as consideration of programs and processes for reducing fuel loads and mitigating wildfire risk to communities near or adjacent to federal lands.

Funding also is a perennial concern, particularly for suppression purposes, an activity for which costs are generally rising but vary annually and are difficult to predict. Both FS and DOI generally receive annual discretionary appropriations for wildfire management activities through the Interior, Environment, and Related Agencies appropriations bills, but have also received supplemental appropriations for these purposes.[178]

CRS Products

CRS In Focus IF10244, *Wildfire Statistics*, by Katie Hoover

CRS In Focus IF10732, *Federal Assistance for Wildfire Response and Recovery*, by Katie Hoover

CRS In Focus IF12142, *Funding for Wildfire Management: FY2023 Appropriations for Forest Service and Department of the Interior*, by Katie Hoover

CRS Report R46583, *Federal Wildfire Management: Ten-Year Funding Trends and Issues (FY2011-FY2020)*, by Katie Hoover

Management Strategy, 2014.

[177] C. Radeloff et al., "The Wildland-Urban Interface in the United States," *Ecological Applications*, vol. 15, no. 3 (2005), pp. 799-805.

[178] Wildfire management funding for DOI is provided to the Office of Wildland Fire (a department-level office), which then allocates the funding to BIA, BLM, FWS, and NPS.

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