



# Federal Land Management Agencies: Background on Land and Resources Management

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## Summary

The federal government owns about 650 million acres (29%) of the 2.27 billion acres of land in the United States. Four agencies administer 617.5 million acres of the federal land: the Forest Service in the Department of Agriculture, and the Bureau of Land Management, Fish and Wildlife Service, and National Park Service, all in the Department of the Interior. Most of these lands are in the West, including Alaska. They generate revenues for the U.S. Treasury, some of which are shared with states and localities. The agencies receive funding through the annual Interior, Environment, and Related Agencies appropriations laws, as well as in various trust funds and special accounts.

The lands administered by the four agencies are managed for a variety of purposes, primarily related to preservation, recreation, and development of natural resources. Yet each of these agencies has distinct responsibilities for the lands and resources it administers. The Bureau of Land Management (BLM) manages 255.8 million acres and is responsible for 700 million acres of subsurface mineral resources. The BLM has a multiple-use, sustained-yield mandate that supports a variety of uses and programs, including energy development, recreation, grazing and wild horses and burros, and conservation. The Forest Service (FS) manages 192.8 million acres also for multiple uses and sustained yields of various products and services, including timber harvesting, recreation, grazing, watershed protection, and fish and wildlife habitats. Most of the lands are designated national forests, but there are national grasslands and other designations. Wildfire protection is an increasingly important activity for both agencies. The BLM and FS have several authorities to acquire and dispose of lands.

The Fish and Wildlife Service (FWS) manages 90.8 million acres of federal land, primarily to conserve and protect animals and plants. The National Wildlife Refuge System includes wildlife refuges, waterfowl production areas, and wildlife coordination units. Units can be created by an act of Congress or executive order, and the FWS also may acquire lands for migratory birds. The National Park Service (NPS) manages 78.1 million acres of federal land to conserve lands and resources and make them available for public use. Activities that harvest or remove resources generally are prohibited. The National Park System has diverse units ranging from historical structures to cultural and natural areas. Units are created by an act of Congress, but the President may proclaim national monuments.

There also are three special management systems that include lands from more than one agency. The National Wilderness Preservation System consists of 107.6 million acres of protected wilderness areas designated by Congress. The National Wild and Scenic Rivers System contains 11,944 miles of wild, scenic, and recreational rivers, primarily designated by Congress and managed to preserve their free-flowing condition. The National Trails System contains four classes of trails managed to provide recreation and access to outdoor areas and historic resources.

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## Introduction<sup>1</sup>

Ownership and use of federal lands have stirred controversy for decades. Conflicting public values concerning federal lands raise many questions and issues: how much land the federal government should own, how managers should balance conflicting uses (e.g., grazing, timber, habitat, recreation), whether Congress should designate specially protected areas, and when and how agencies should collect and distribute fees for land and resource uses. Congress continues to examine these questions—particularly in assessing the various uses that might be made of the federal lands—through legislative proposals, program oversight, and annual appropriations for the four major federal land management agencies—the Bureau of Land Management (BLM), National Park Service, and Fish and Wildlife Service in the Department of the Interior, and the Forest Service in the Department of Agriculture.

## Scope and Organization

This report provides an overview of how federal lands and resources are managed, the agencies that administer the lands, and the authorities under which these agencies operate. The report is divided into nine sections:

- Introduction—a brief historical review and general background on the federal lands.
- Federal Lands Financing—revenues derived from activities on federal lands; the appropriations processes and the trust funds and special accounts that fund these agencies; federal land acquisition funding, especially from the Land and Water Conservation Fund; and programs that compensate state and local governments for the tax-exempt status of federal lands.
- One section for each of the four major federal land management agencies—the Forest Service in the Department of Agriculture and the Bureau of Land Management (BLM), National Park Service, and Fish and Wildlife Service in the Department of the Interior—history; organizational structure; management responsibilities; procedures for land acquisition, disposal, and designation, where relevant; and statutory authorities.
- One section for each of the three major protection systems that are administered by more than one agency—the National Wilderness Preservation System, the National Wild and Scenic Rivers System, and the National Trails System.

In addition, two appendixes list acronyms used in the text and define selected terms used in the report. Many other CRS reports on issues covered here are available on the CRS website at <http://www.crs.gov/>.

## Background

The federal government owns and manages approximately 650 million acres of land in the United States—about 29% of the total land base of 2.27 billion acres.<sup>2</sup> **Table 1** provides data on the

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<sup>1</sup> Prepared by (name redacted).

acreage of federal land administered by the four federal land management agencies in each state and the District of Columbia. The figures understate total federal land, since they do not include lands administered by the Department of Defense or other federal agencies; it should be recognized that these other federal lands are not uniformly distributed among the states, and that **Table 1** thus understates total federal land by more in states with extensive military bases or other federal lands (e.g., Arizona, Florida, and Nevada). **Table 1** also identifies the total size of each state, and the percentage of land in each state administered by the four federal land management agencies. These percentages point to significant variation in the federal presence within states. The figures range from 0.2% of land in Connecticut to 80.8% of land in Nevada.

**Table 1. Land Administered by the Four Federal Land Management Agencies, by State, as of September 30, 2007**

State	Total Acreage in State	Federal Lands Administered by the Four Land Agencies	% in State
Alabama	32,678,400	721,365	2.2
Alaska	365,481,600	230,191,255	63.0
Arizona	72,688,000	27,765,537	38.2
Arkansas	33,599,360	3,073,462	9.1
California	100,206,720	43,921,392	43.8
Colorado	66,485,760	23,615,993	35.5
Connecticut	3,135,360	6,675	0.2
Delaware	1,265,920	25,231	2.0
District of Columbia	39,040	6,951	17.8
Florida	34,721,280	3,827,794	11.0
Georgia	37,295,360	1,386,558	3.7
Hawaii	4,105,600	652,258	15.9
Idaho	52,933,120	32,624,424	61.6
Illinois	35,795,200	383,656	1.1
Indiana	23,158,400	226,413	1.0
Iowa	35,860,480	71,363	0.2
Kansas	52,510,720	138,145	0.3
Kentucky	25,512,320	918,912	3.6
Louisiana	28,867,840	1,191,185	4.1
Maine	19,847,680	185,761	0.9

(...continued)

<sup>2</sup> Total federal land in the United States is not definitively known. Different sources have significantly different estimates. The estimate of 650 million acres presumes that the four federal land management agencies have reasonably accurate data on lands under their jurisdiction (615 million acres), that the Department of Defense administers about 30 million acres (Bruce A. Stein, "The Role of Military Lands in Maintaining Biodiversity," *Conserving Biodiversity on Military Lands: A Guide for Natural Resources Managers*, at [http://dodbiodiversity.org/ch1/index\\_4.html](http://dodbiodiversity.org/ch1/index_4.html)), and that other agencies (U.S. Postal Service, Agricultural Research Service, Department of Energy, etc.) encompass about 5 million acres of federal land. This excludes Indian lands, many of which are held in trust by the federal government.

<b>State</b>	<b>Total Acreage in State</b>	<b>Federal Lands Administered by the Four Land Agencies</b>	<b>% in State</b>
Maryland	6,319,360	85,719	1.4
Massachusetts	5,034,880	54,776	1.1
Michigan	36,492,160	3,618,846	9.9
Minnesota	51,205,760	3,454,368	6.7
Mississippi	30,222,720	1,488,685	4.9
Missouri	44,248,320	1,605,946	3.6
Montana	93,271,040	26,775,984	28.7
Nebraska	49,031,680	540,397	1.1
Nevada	70,264,320	56,775,779	80.8
New Hampshire	5,768,960	764,966	13.3
New Jersey	4,813,440	105,794	2.2
New Mexico	77,766,400	23,484,322	30.2
New York	30,680,960	77,474	0.3
North Carolina	31,402,880	2,036,363	6.5
North Dakota	44,452,480	1,723,934	3.9
Ohio	26,222,080	266,880	1.0
Oklahoma	44,087,680	518,383	1.2
Oregon	61,598,720	32,558,044	52.9
Pennsylvania	28,804,480	571,718	2.0
Rhode Island	677,120	2,318	0.3
South Carolina	19,374,080	784,041	4.0
South Dakota	48,881,920	2,637,198	5.4
Tennessee	26,727,680	1,112,226	4.2
Texas	168,217,600	2,476,945	1.5
Utah	52,696,960	33,262,455	63.1
Vermont	5,936,640	440,700	7.4
Virginia	25,496,320	2,102,547	8.2
Washington	42,693,760	11,682,744	27.4
West Virginia	15,410,560	1,125,945	7.3
Wisconsin	35,011,200	1,793,464	5.1
Wyoming	62,343,040	30,023,237	48.2
<b>Total</b>	<b>2,271,343,360</b>	<b>614,886,528</b>	<b>27.1</b>

**Source:** CRS calculations from the sources listed for **Table 2**.

While fourteen states contain less than ½ million acres of land administered by the four federal land management agencies, another dozen have more than 10 million acres managed by these agencies within their borders. All 12 states where the federal government owns the most land are located in the West (including Alaska). This is a result of early treaties and land settlement laws



and patterns. Management of these lands is often controversial, especially in states where the federal government is a predominant or majority landholder and where competing and conflicting uses of the lands are at issue.

## **Historical Review**

The nation's lands and resources have been important in American history, adding to the strength and stature of the federal government, serving as an attraction and opportunity for settlement and economic development, and providing a source of revenue for schools, transportation, national defense, and other national, state, and local needs.<sup>3</sup>

The formation of our current federal government was particularly influenced by the struggle for control over what were known as the “western” lands—the lands between the Appalachian Mountains and the Mississippi River claimed by the original colonies. Prototypical land laws enacted by the Continental Congress, such as the Land Ordinance of 1785 and the Northwest Ordinance of 1787, established the federal system of rectangular land surveying for disposal and set up a system for developing territorial governments leading to statehood. During operation of the Articles of Confederation, the states that then owned the western lands were reluctant to cede them to the developing new government, but eventually acquiesced. This, together with granting constitutional powers to the new federal government, including the authority to regulate federal property and to create new states, played a crucial role in transforming the weak central government under the Articles of Confederation into a stronger, centralized federal government under the U.S. Constitution.

The new Congress, which first met in 1789, enacted land statutes similar to those enacted by the Continental Congress. Subsequent federal land laws reflected two visions: reserving some federal lands (such as for national forests and national parks) and selling or otherwise disposing of other lands to raise money or to encourage transportation, development, and settlement. From the earliest days, these policy clashes took on East/West overtones, with easterners more likely to view the lands as national public property, and westerners more likely to view the lands as necessary for local use and development. Most agreed, however, on measures that promoted settlement of the lands to pay soldiers, to reduce the national debt, and to strengthen the nation. This settlement trend accelerated with federal acquisition of additional territory through the Louisiana Purchase in 1803, the Oregon Compromise with England in 1846, and cession of lands by treaty after the Mexican war in 1848.<sup>4</sup>

During the mid- to late 1800s, Congress enacted numerous laws to encourage and accelerate the settlement of the West by disposing of federal lands. Examples include the Homestead Act of 1862 and the Desert Lands Entry Act of 1877. Approximately 816 million acres of the public domain lands were transferred to private ownership between 1781 and 2007. Another 328 million

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<sup>3</sup> For more information on the history and legal basis for federal land ownership, see CRS Report RL34267, *Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention*, by (name redacted) and (name redacted).

<sup>4</sup> These major land acquisitions gave rise to a distinction in the laws between *public domain lands*, which essentially are those ceded by the original states or obtained from a foreign sovereign (via purchase, treaty, or other means), and *acquired lands*, which are those obtained from a state or individual by exchange, purchase, or gift. (About 90% of all federal lands are public domain lands, while the other 10% are acquired 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.

acres were granted to the states generally, and an additional 134 million were granted in Alaska under state and native selection laws.<sup>5</sup> Most transfers to private ownership (97%) occurred before 1940; homestead entries, for example, peaked in 1910 at 18.3 million acres but dropped below 200,000 acres annually after 1935, until being totally eliminated in 1986.<sup>6</sup>

Certain other federal laws were “catch up” laws designed to legitimize certain uses that already were occurring on the federal lands. These laws typically acknowledged local variations and customs. For example, the General Mining Law of 1872 recognized mineral claims on the public domain lands in accordance with local laws and customs, and provided for the conveyance of title to such lands. In addition, early land disposal laws allowed states to determine the rights of settlers to use and control water. The courts later determined, however, that the federal government could also reserve or create federal water rights for its own properties and purposes.

Although some earlier laws had protected some lands and resources, such as salt deposits and certain timber for military use, other laws in the late 1800s reflected the growing concern that rapid development threatened some of the scenic treasures of the nation, as well as resources that would be needed for future use. A preservation and conservation movement evolved to ensure that certain lands and resources were left untouched or reserved for future use. For example, Yellowstone National Park was established in 1872 to preserve its resources in a natural condition, and to dedicate recreation opportunities for the public. It was the world’s first national park,<sup>7</sup> and like the other early parks, Yellowstone was protected by the U.S. Army—primarily from poachers of wildlife or timber. In 1891, concern over the effects of timber harvests on water supplies and downstream flooding led to the creation of forest reserves (renamed national forests in 1907).

The creation of national parks and forest reserves laid the foundation for the current development of federal agencies with primary purposes of managing natural resources on federal lands. For example, in 1905, responsibility for management of the forest reserves was joined with forestry research and assistance in a new Forest Service within the Department of Agriculture. The National Park Service was created in 1916<sup>8</sup> to manage the growing number of parks established by Congress and monuments proclaimed by the President. The first national wildlife refuge was proclaimed in 1903, although it was not until 1966 that the refuges coalesced into the National Wildlife Refuge System. The Grazing Service (Department of the Interior, first known as the Grazing Division) was established in 1934 to administer grazing on public rangelands. It was combined with the General Land Office in 1946 to form the Bureau of Land Management (BLM).<sup>9</sup>

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<sup>5</sup> U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2007*, Table 1-2, at [http://www.blm.gov/public\\_land\\_statistics/pls07/pls1-2\\_07.pdf](http://www.blm.gov/public_land_statistics/pls07/pls1-2_07.pdf), corrected through personal communication between (name redacted) and Laurie Sedlmayr, Bureau of Land Management, Washington, DC, on November 28, 2008.

<sup>6</sup> U.S. Dept. of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, DC: GPO, 1976), H. Doc. No. 93-78 (93<sup>rd</sup> Congress, 1<sup>st</sup> Session), pp. 428-429. The homesteading laws were repealed in 1976, although homesteading was allowed to continue in Alaska for 10 years.

<sup>7</sup> Act of March 1, 1872; 16 U.S.C. § 21, et seq. “Yo-Semite” had been established by an act of Congress in 1864, to protect Yosemite Valley from development, but was transferred to the State of California to administer. In 1890, surrounding lands were designated as Yosemite National Park, and in 1905, Yosemite Valley was returned to federal jurisdiction and incorporated into the park. Still earlier, in 1832, Hot Springs Reservation (AR) had been reserved; it was dedicated to public use in 1880 and designated as Hot Springs National Park in 1921.

<sup>8</sup> Act of Aug. 25, 1916; 16 U.S.C. §§ 1-4.

<sup>9</sup> Paul W. Gates, *History of Public Land Law Development*, written for the Public Land Law Review Commission (continued...)

In addition to the conservation laws and activities noted above, emphasis shifted during the 20<sup>th</sup> century from the disposal and conveyance of title to private citizens to the retention and management of the remaining federal lands. During debates on the Taylor Grazing Act, some western Members of Congress acknowledged the poor prospects for relinquishing federal lands to the states, but language included in the act left disposal as a possibility. It was not until the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA)<sup>10</sup> that Congress expressly declared that the remaining public domain lands generally would remain in federal ownership.<sup>11</sup> This declaration of policy was a significant factor in what became known as the Sagebrush Rebellion, an effort that started in the late 1970s to provide state or local control over federal land and management decisions. To date, judicial challenges and legislative and executive attempts to make significant changes to federal ownership have proven unsuccessful. Current authorities for acquiring and disposing of federal lands are unique to each agency, and are described in subsequent chapters of this report.<sup>12</sup>

Since the cession to the federal government of the western lands of several of the original 13 colonies, many issues and conflicts have recurred. Ownership continues to be debated, with some advocating increased disposal of federal lands to state or private ownership, and others supporting retention of federal lands by the federal government. Still others promote acquisition by the federal government of additional land, including through an increased, and more stable, funding source. A related issue is determining the optimal division of resources between federal acquisition of new lands and maintenance of existing federal lands and facilities.

Another focus is whether federal lands should be managed primarily to produce national benefits or benefits primarily for the localities and states in which the lands are located. Who decides these questions, and how the decisions are made, also are at issue. Some would like to see more local control of land and a reduced federal role, while others seek to maintain or enhance the federal role in land management to represent the interests of all citizens.

The extent to which federal lands should be made available for development, preserved, and opened to recreation has been controversial. Significant differences of opinion exist on the amount of traditional commercial development that should be allowed, particularly involving energy development, grazing, and timber harvesting. How much land to dedicate to enhanced protection, what type of protection to provide, and who should protect federal lands are continuing questions. Whether and where to restrict recreation, generally and for high-impact uses such as motorized off-road vehicles, also is a focus of debate.

## **Current Federal Land Management**

Four agencies administer 617.5 million acres (95%) of the roughly 650 million acres of federal land.<sup>13</sup> (This total differs from the acreage listed in **Table 1** because of lands managed by these

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(Washington, DC: GPO, Nov. 1968), pp. 610-622.

<sup>10</sup> P.L. 94-579; 43 U.S.C. §§ 1701, et seq.

<sup>11</sup> FLPMA also established a comprehensive system of management for the remaining western public lands, and a definitive mission and policy statement for the BLM.

<sup>12</sup> See also CRS Report RL34273, *Federal Land Ownership: Current Acquisition and Disposal Authorities*, by (name redacted) and (name redacted).

<sup>13</sup> In this report, the term *federal land* refers to any land owned and managed by the federal government, regardless of its mode of acquisition or managing agency. *Public domain land* is used when the historical distinction regarding mode (continued...)

agencies in Puerto Rico and the U.S. territories.) These four agencies are the Forest Service (FS), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS).<sup>14</sup> The BLM has jurisdiction over 255.8 million acres (39%) of the federal total. The FS has jurisdiction over 192.8 million acres (30%) of the total federal acreage. The FWS administers 90.8 million acres (14%) and has secondary jurisdiction on another 1.6 million acres and easements or leases on 4.0 million acres. The NPS administers 78.1 million acres of federal land (12%), and NPS units encompass another 6.2 million acres of other federal and nonfederal lands. **Table 2** displays the acreage for each of these four agencies in each state, the District of Columbia, and the territories. In addition, **Figure 1**, **Figure 2**, and **Figure 3**, below, provide maps showing these federal lands. **Figure 1** shows federal lands in the West; **Figure 2** shows federal lands in the East; and **Figure 3** shows federal lands in Alaska and Hawaii.

The four major federal land management agencies were created at different times and for different purposes. Thus, their missions and purposes differ. The NPS has a dual mission—to preserve unique resources and provide for their enjoyment. This protection-versus-recreation dichotomy causes many of the agency’s management challenges. The FWS has a clearer primary-use mission—to provide for the conservation of plants and animals. Other uses (recreation, hunting, timber cutting, oil or gas drilling, etc.) are permitted, to the extent they are compatible with the species’ needs. It can be challenging to determine compatibility.

The BLM and FS have similar management responsibilities for their lands—sustained yields of the multiple uses. The uses considered by the agencies include recreation, grazing, timber, minerals, watershed, wildlife and fish habitat, and conservation. The agencies are to manage their lands for sustained yield—a high level of resource outputs in perpetuity, without impairing the productivity of the lands. Because of the similarity of their missions, merging the two agencies occasionally has been proposed.<sup>15</sup> However, different uses have been emphasized by each agency historically. For instance, most rangelands are managed by the BLM, and the BLM administers mineral development on all federal lands. Most federal forests are managed by the FS, and only the FS has a cooperative program to assist nonfederal forest landowners.

Congress also has chosen to protect certain other resource values—wilderness, wild and scenic rivers, and national trails. Instead of creating a new agency for administering federal lands providing these values, Congress has established land systems with management guidelines and constraints for the existing agencies to use in conjunction with their existing missions and purposes. Thus, each of the four agencies administer wilderness areas, portions of national trails, and wild, scenic, or recreational river segments, with the more restrictive management standards (the agencies’ existing missions or the systems’ constraints) applying to the areas. For example, hunting is permitted in most wilderness areas, but generally not in NPS wilderness areas because most NPS lands are closed to hunting.

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of land acquisition is relevant (e.g., when a law specifically applies to those lands that originally were ceded by the original states or obtained from foreign sovereigns (including Indian tribes) as opposed to being acquired from individuals or states). *Public land* refers to lands managed by the Bureau of Land Management, consistent with § 103(e) FLPMA.

<sup>14</sup> Several other agencies manage some of the remaining federal land. The Department of Defense (DOD), including the Army Corps of Engineers, is the fifth largest federal land manager. Because land management is not DOD’s primary mission, these lands are not discussed in this report.

<sup>15</sup> See CRS Report RL34772, *Proposals to Merge the Forest Service and the Bureau of Land Management: Issues and Approaches*, by (name redacted).

**Table 2. Acreage Managed by Each of the Four Federal Land Management Agencies, by State**

State	Forest Service	National Park Service	Fish and Wildlife Service	Bureau of Land Management
Alabama	668,947	16,715	32,180	3,523
Alaska	21,972,605	51,084,827	76,610,000	81,033,823
Arizona	11,264,377	2,618,735	1,680,519	12,201,906
Arkansas	2,598,417	98,404	370,563	6,078
California	20,802,641	7,560,432	283,237	15,275,082
Colorado	14,519,030	609,625	141,135	8,346,203
Connecticut	24	5,719	956	0
Delaware	0	0	25,231	0
Dist. of Col.	0	6,951	0	0
Florida	1,160,324	2,436,995	277,341	3,134
Georgia	866,024	39,645	480,889	0
Hawaii	1	353,661	298,596	0
Idaho	20,466,617	507,425	48,507	11,601,875
Illinois	297,077	12	86,567	0
Indiana	201,467	10,516	14,430	0
Iowa	0	2,708	68,655	0
Kansas	108,175	461	29,509	0
Kentucky	814,045	94,382	10,485	0
Louisiana	604,373	14,536	555,802	16,474
Maine	53,042	66,768	65,951	0
Maryland	0	39,508	45,663	548
Massachusetts	0	32,946	21,830	0
Michigan	2,872,833	631,716	114,297	0
Minnesota	2,840,746	139,509	472,666	1,447
Mississippi	1,174,079	103,698	210,667	241
Missouri	1,491,811	54,338	59,797	0
Montana	16,962,737	1,214,184	629,725	7,969,338
Nebraska	352,289	5,650	176,104	6,354
Nevada	5,853,963	774,509	2,333,803	47,813,504
New Hampshire	734,798	8,362	21,806	0
New Jersey	0	35,216	70,578	0
New Mexico	9,413,211	376,528	326,663	13,367,920
New York	16,211	33,475	27,788	0
North Carolina	1,255,167	362,741	418,455	0

<b>State</b>	<b>Forest Service</b>	<b>National Park Service</b>	<b>Fish and Wildlife Service</b>	<b>Bureau of Land Management</b>
North Dakota	1,111,177	71,252	482,668	58,837
Ohio	238,984	19,403	8,493	0
Oklahoma	400,768	10,008	105,632	1,975
Oregon	15,667,657	192,015	565,274	16,133,098
Pennsylvania	513,428	48,427	9,863	0
Rhode Island	0	5	2,313	0
South Carolina	629,565	30,131	124,345	0
South Dakota	2,016,889	141,317	204,555	274,437
Tennessee	707,387	352,962	51,877	0
Texas	755,365	1,191,216	518,615	11,749
Utah	8,200,161	2,097,106	107,460	22,857,728
Vermont	398,529	8,830	33,341	0
Virginia	1,664,306	306,884	130,552	805
Washington	9,282,376	1,832,279	148,360	419,729
West Virginia	1,043,028	63,802	19,115	0
Wisconsin	1,530,647	61,742	198,709	2,366
Wyoming	9,241,187	2,343,697	70,675	18,367,678
Territories	28,149	15,045	2,003,419	0
<b>Total</b>	<b>192,794,673</b>	<b>78,127,018</b>	<b>90,792,747</b>	<b>255,775,852</b>

**Sources:** For FS: U.S. Dept. of Agriculture, Forest Service, *Land Areas Report—As of Sept 30, 2007*, Tables I and 4, at <http://www.fs.fed.us/land/staff/lar/LAR07/lar07index.html>. Data reflect land within the National Forest System, including national forests, national grasslands, purchase units, land utilization projects, experimental areas, and other areas.

For NPS: U.S. Dept. of the Interior, National Park Service, Land Resources Division, *National Park Service, Listing of Acreage by State, as of 12/31/2007*, unpublished document. Data reflect federally owned lands managed by the NPS. For information on acreage by unit, see the NPS website at <http://www.nature.nps.gov/stats/acreagemenu.cfm>.

For FWS: U.S. Dept. of the Interior, Fish and Wildlife Service, *Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service, as of September 30, 2007*, Table 2, at [http://www.fws.gov/realty/pdf\\_files/2007LandsReport.pdf](http://www.fws.gov/realty/pdf_files/2007LandsReport.pdf). Data reflect all federally owned land over which the FWS has sole or primary jurisdiction.

For BLM: U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2007*, Table I-4, at [http://www.blm.gov/public\\_land\\_statistics/PLS07/PLSI-4\\_07.pdf](http://www.blm.gov/public_land_statistics/PLS07/PLSI-4_07.pdf).

Despite the diverse missions and purposes of the four major federal land management agencies and the systems of federal lands, one overarching issue will likely affect all the lands, resources, and agencies—global climate change. Climate change has and will continue to affect temperatures and alter precipitation patterns and hydrologic regimes, thus affecting animal and plant distributions. Managing lands to provide for diverse outputs and values will become increasingly challenging. Landowners, and the federal land management agencies, will face conditions—drought, wildfires, insect and disease epidemics, invasive species—that differ from anything seen in the past. Responding to these changing conditions may require new procedures and tools, and thus may involve Congress and the public in new debates about how to manage federal lands and resources.

Figure I. Western Federal Lands

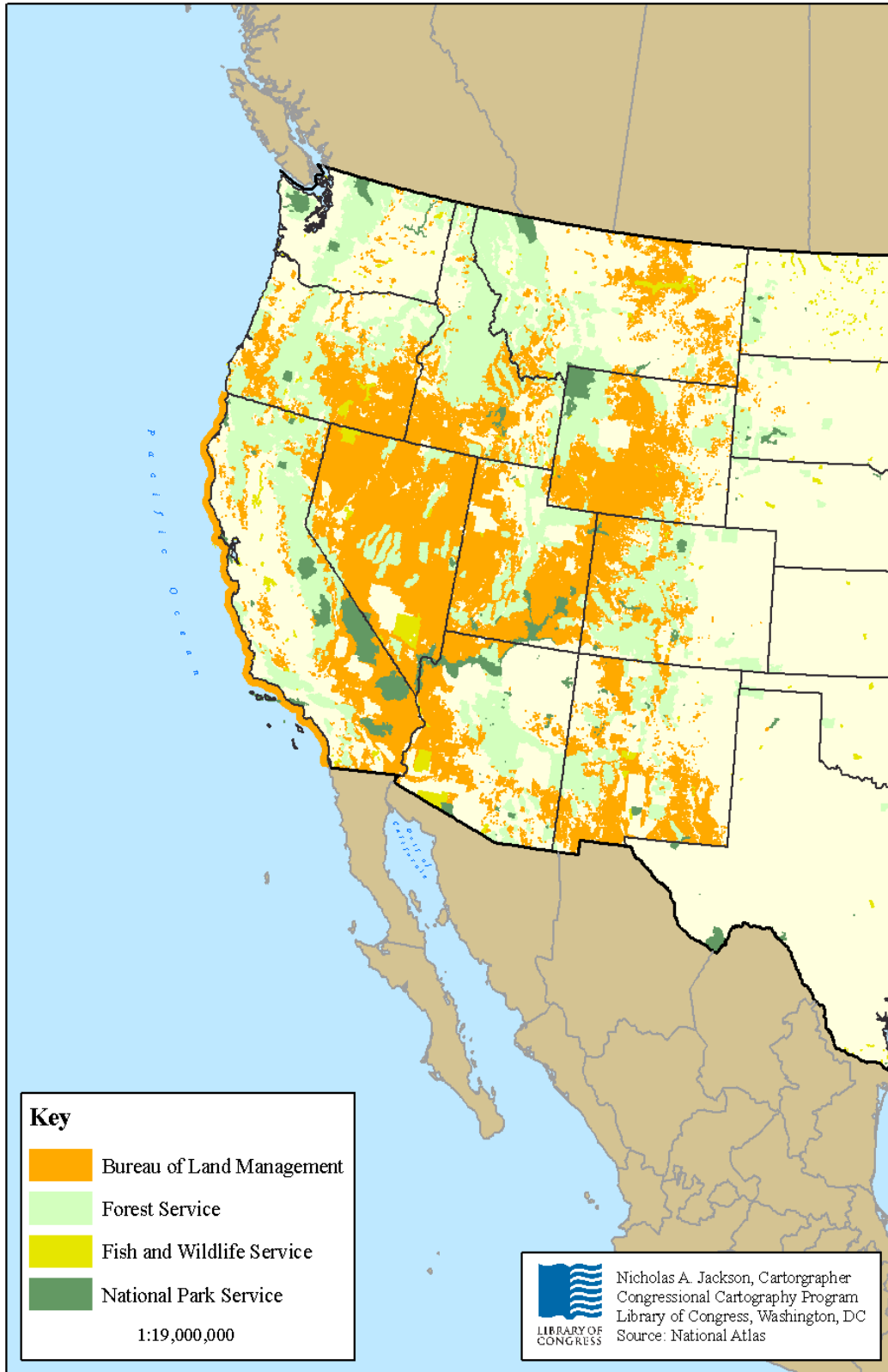
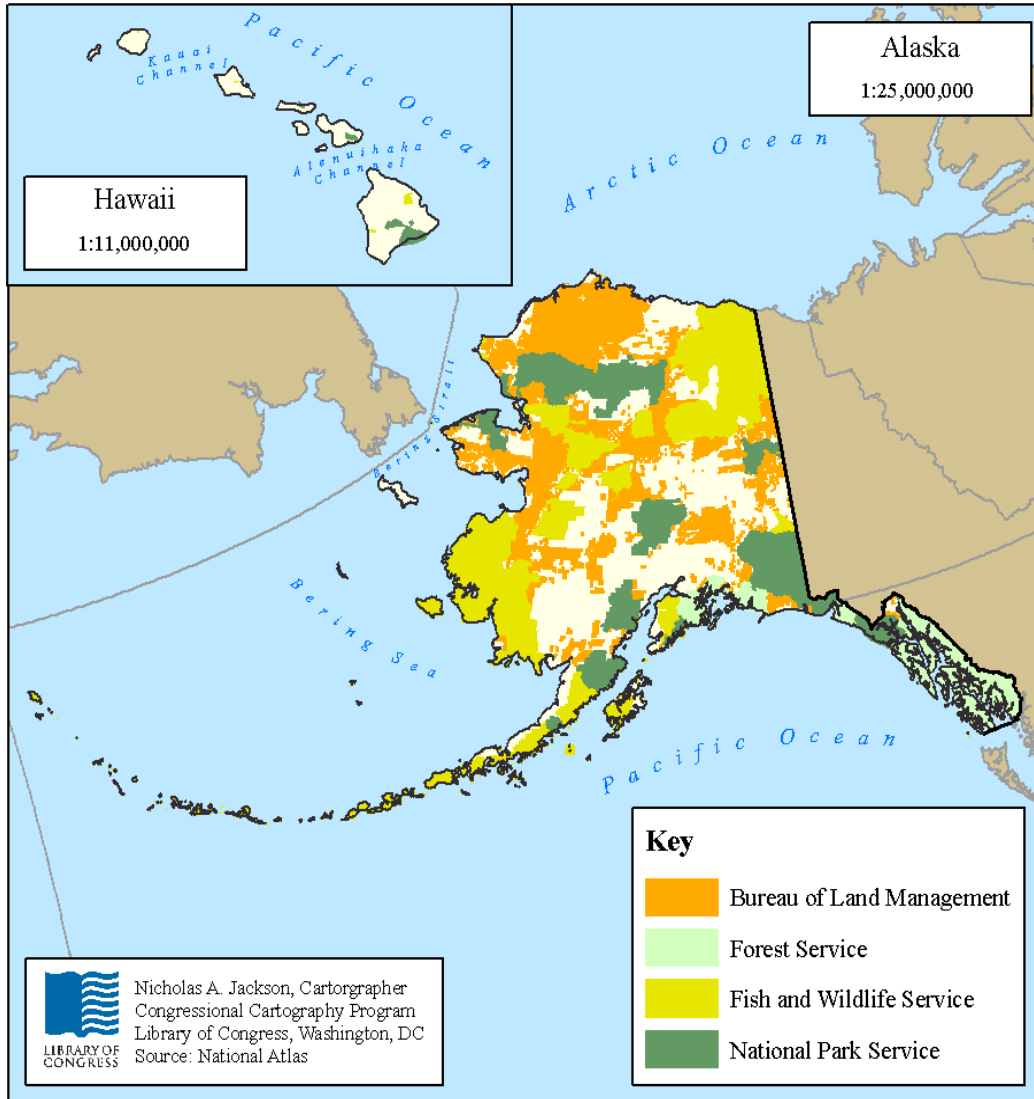


Figure 2. Eastern Federal Lands





**Figure 3. Federal Lands in Alaska and Hawaii**



## Federal Lands Financing<sup>16</sup>

Financial issues are a persistent concern for federal agencies, including the land management agencies. However, the sale or lease of the lands and resources being managed provides these agencies with an opportunity to recover some of their operating and capital costs. This section summarizes the revenues of the four land management agencies and provides a brief overview of annual appropriations, the trust funds and special accounts funded from revenues, and land acquisition funding. It concludes with a discussion of the programs that compensate state and local governments for the tax-exempt status of federal lands.

<sup>16</sup> This section was prepared by (name redacted).

## Revenues from Activities on Federal Lands

The federal land management agencies are among the relatively few federal agencies that generate revenues for the U.S. Treasury. However, none of these four agencies consistently collects more money than it expends. Revenues are derived from the use or sale of lands and resources. Major revenue sources include land sales, energy and mineral leases, timber sales, fees for recreational activities, and livestock grazing fees. The FY2007 revenues collected by these four agencies, excluding deposits to trust funds and special accounts with mandatory spending authority, are shown in **Table 3**.

**Table 3. Revenues from the Sale and Use of Agency Lands and Resources for FY2007**

(thousands of dollars; excludes deposits to mandatory spending accounts)

Resource	BLM	FWS	NPS	FS
Mineral Leases & Permits	\$94,119 <sup>a</sup>	n/a <sup>b</sup>	\$0	\$330,500 <sup>c</sup>
Sales of Timber & Other Forest Products	\$32,445	n/a <sup>b</sup>	\$7	\$45,256
Grazing Leases, Licenses, & Permits	\$14,824	n/a <sup>b</sup>	— <sup>d</sup>	\$5,807
Recreation, Admission, & User Fees <sup>e</sup>	\$0	n/a <sup>b</sup>	\$1,347	\$48,567
Other (land use fees, etc.)	\$1,190,219 <sup>f</sup>	n/a <sup>b</sup>	\$27,231 <sup>g</sup>	\$22,262
<b>Total</b>	<b>\$1,331,607</b>	<b>n/a<sup>b</sup></b>	<b>\$28,585</b>	<b>\$452,392</b>

**Sources:** For BLM: U.S. Dept. of the Interior, Budget Justifications and Performance Information, Fiscal Year 2009: Bureau of Land Management, p. II-1.

For NPS: U.S. Dept. of the Interior, Budget Justifications and Performance Information, Fiscal Year 2009: National Park Service, p. Overview-70.

For FS: U.S. Dept. of Agriculture, Forest Service, FY2009 Budget Justification, pp. F-1-F-2.

- a. Includes mineral leasing on national grasslands, the Naval Oil Shale Reserve, and the National Petroleum Reserve-Alaska, and mining claim and holding fees.
- b. n/a: data are not available in published form. The FWS no longer reports revenues in its annual budget justifications.
- c. Includes estimated \$286.0 million collected by Departments of the Interior and Energy for mineral leases and power licenses.
- d. Included with revenues for sales of timber and forest products.
- e. Excludes each agency's deposits to the Recreation Enhancement Fund and other mandatory spending accounts.
- f. Includes Treasury deposits from land sales (\$883 million); sale of helium (\$169 million); earnings on investments (\$69 million); and other fees, charges, and collections (\$79 million).
- g. Includes donations to the NPS and interest on certain investments.

One persistent issue has been the question of whether prices for federal resources set administratively (rather than by markets) subsidize some resource users. This issue typically has focused on fees for private livestock grazing on federal lands and for hardrock (locatable) minerals that are currently available for private development under a claims system without royalty payments. Also, some question whether “below-cost” timber sales, where the

government's revenues are less than the cost to administer the sales and often significantly less than similar state-owned timber sales, should be allowed to continue.

## Agency Appropriations

### Annual Appropriations

Funding for all four of the federal land management agencies is contained in the annual Interior, Environment, and Related Agencies appropriations bill.<sup>17</sup> The FS is a USDA agency, but has been included in the Interior bill as a "related agency" since 1955. It receives one of the largest appropriations of any agency in the Interior bill, with funding of \$5.80 billion (including emergency fire funding of \$1.36 billion) for FY2008. The NPS received an appropriation of \$2.39 billion, while the appropriation for the FWS was \$1.44 billion. For FY2008, the BLM received \$1.01 billion, excluding funds for DOI wildland fire management. An additional \$1.19 billion was appropriated to the BLM for DOI wildland fire management. For FY2009, the Administration sought to fund DOI wildland fire management as a department-wide program.

Funding for wildfire protection has grown significantly in recent years, following several severe fire seasons. Annual appropriations for fire suppression have not been sufficient, and the agencies have used their authority to borrow from other accounts to fund fire suppression. These borrowings typically are repaid in an emergency supplemental bill or in the subsequent annual appropriations bill. However, the borrowed funds are not always repaid promptly, leading to funding shortfalls in the accounts from which the funds were borrowed (such as land acquisition). Legislation was introduced, but not enacted, in the 110<sup>th</sup> Congress to modify funding for wildfire suppression operations.

### Trust Funds and Special Accounts

The federal land management agencies also have a variety of trust funds and special accounts.<sup>18</sup> Some require annual appropriations; most of these are small, but the Land and Water Conservation Fund used for federal land acquisition is relatively large and often controversial, and is discussed separately below.

A number of the trust funds and special accounts have mandatory spending authority. This means that the agencies can spend the receipts deposited in the accounts without annual appropriations by Congress. Many of these accounts were established to compensate state and local governments for the tax-exempt status of federal lands; these accounts will be discussed separately below. Others receive funds from particular sources (e.g., excise taxes, timber sales, recreation fees) for grants or for agency operations. The receipts deposited in these accounts are *in addition to* the Treasury receipts shown in **Table 3**.

The FWS has the largest mandatory spending authority, with FY2007 budget authority of \$837.4 million. Two accounts produce the majority (87%) of the total. The Sport Fish Restoration

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<sup>17</sup> For more information on annual funding for these agencies, see CRS Report RL34461, *Interior, Environment, and Related Agencies: FY2009 Appropriations*, by (name redacted) et al.

<sup>18</sup> For more information on these accounts generally, see CRS Report RL30335, *Federal Land Management Agencies' Permanently Appropriated Accounts*, by (name redacted), (name redacted), and (name redacted).

Account (\$432.2 million) was established by the Federal Aid in Sport Fish Restoration Act (also known as the Dingell-Johnson Act and the Wallop-Breaux Act). The Federal Aid in Wildlife Restoration Account (\$296.2 million) was established by the Federal Aid in Wildlife Restoration Act (also known as the Pittman-Robertson Act). These accounts are largely funded by excise taxes on equipment related to fishing and hunting, respectively, and most of the money is distributed to the states to fund fish and wildlife restoration activities by state agencies.

The FS had mandatory spending in FY2007 totaling \$798.8 million of budget authority in 23 accounts. Nearly half (\$377.4 million, 47%) was compensation to states and counties for the tax-exempt status of federal lands (discussed below). Of the other 20 accounts, the largest was recreation fees (\$61.0 million, 8% of the total), discussed below with the other agencies, since all four of the land management agencies are authorized to retain and use recreation fees. Five of the next six largest accounts were directly or substantially related to timber sales: the Knutson-Vandenberg Fund (\$56.8 million), the Salvage Timber Sale Fund (\$50.0 million), other cooperative deposits (\$43.7 million), the Reforestation Trust Fund (\$30.0 million), and restoration of national forest lands and improvements (\$21.3 million). Together, these five accounts provided 25% of FS mandatory spending budget authority in FY2007.

The BLM has numerous mandatory spending programs, with FY2007 budget authority totaling \$389.2 million. As with the FS, state and county compensation programs (discussed below) account for a significant share of the total—\$144.5 million (37%) in FY2007. Other accounts relate to mineral programs (three accounts with \$28.4 million in FY2007 budget authority), some to timber (four accounts with \$20.4 million in FY2007 budget authority), and one to recreation (\$14.6 million in FY2008 budget authority). The largest, however, result from BLM land sales, mostly in Nevada—\$155.8 million in FY2007 (40% of FY2007 BLM mandatory spending) from land sales and earnings on investments from earlier land sales.

The NPS also has many mandatory spending accounts, but the lowest total FY2007 budget authority of any of the four agencies—\$304.5 million. One account, recreation fees, provides 55% of the total; this account is discussed below. The other large NPS account results from concession franchise fees and concessions improvement deposits (a combined total of \$60.7 million, 20% of NPS FY2007 mandatory spending).

Two programs authorize the four agencies to retain recreation fees. The first, recreation fee collection costs (P.L. 103-66, §10002(b)), allows the agencies to retain up to 15% of recreation fees to cover the costs to collect the fees. The second, much larger program was established in the Federal Lands Recreation Enhancement Act (Title VIII of Division J of P.L. 108-447, the Consolidated Appropriations Act, 2005).<sup>19</sup> It was originally created as a demonstration (“Fee Demo”) program to allow the agencies to test the feasibility and public acceptability of user fees to supplement appropriations for operations and maintenance (P.L. 104-134, § 315). It now allows the agencies to retain most fees at the collecting site through 2014. For FY2007, budget authority from recreation fees totaled \$248.8 million—\$168.8 million for the NPS, \$61.0 million for the FS, \$14.6 million for the BLM, and \$4.4 million for the FWS.

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<sup>19</sup> For more information, see CRS Report RL33730, *Federal Lands Recreation Enhancement Act*, by (name redacted).

## **Land Acquisition Funding**

The largest source of funding for federal land acquisition is the Land and Water Conservation Fund.<sup>20</sup> LWCF is a special account created in 1964. The fund can be credited with revenues from several sources, up to the authorized level of \$900 million annually (through FY2015). In recent years, nearly all of the money that has accrued to the fund resulted from offshore oil and gas development. For instance, for FY2008, it is estimated that \$897 million was derived from offshore development, with \$1 million from the federal motorboat fuels tax and \$2 million from surplus property sales. In addition to federal land acquisition, LWCF has been used for state recreation programs and, more recently, for other federal conservation or recreation related programs.

LWCF does not operate the way a “true” trust fund would in the private sector. The fund is *credited* with deposits from specified sources, but the agencies can only spend money from the account if Congress appropriates the funds. Through FY2008, about \$31 billion has been credited to the LWCF, and roughly half of that amount has been appropriated. Annual appropriations from LWCF have fluctuated widely throughout its history. Over the past five years, total LWCF appropriations have fallen from \$488 million in FY2004 to \$256 million in FY2008. The FY2008 appropriation consisted of \$130 million for federal land acquisition, \$25 million for state grants, \$49 million for FWS Cooperative Endangered Species Grants, and \$52 million for the FS’s Forest Legacy Program. Debates continue over the level of appropriations from LWCF and the purposes for which the funds should be used.

Other federal programs also provide funding for federal land acquisition. The largest is the FWS’s Migratory Bird Conservation Fund (MBCF). Receipts from the sale of duck stamps to hunters, refuge visitors, stamp collectors, and others are deposited in this account. The funds are permanently appropriated to the FWS to acquire lands for the National Wildlife Refuge System, and often provide more than half the total FWS land acquisition funding. In FY2007, the FWS had \$43.7 million in budget authority from the MBCF for land acquisition.

The BLM has a mandatory spending program for land acquisition and other activities in Nevada, funded from sales of BLM land in that state (Southern Nevada Public Land Management Act [SNPLMA], P.L. 105-263). This program allows money from BLM land sales in Nevada to be used for land acquisition by the federal land management agencies, but also for capital improvements on federal lands and for state and local government purposes. From the origin of the program in 2000 through the end of FY2008, there have been 26 land auctions with 496 parcels sold. The program has generated about \$3.29 billion, with \$3.24 billion distributed. Of the total distributed, \$351.6 million has been for land acquisition. Other distributions have been \$451.9 million for capital improvements; \$1.09 billion for parks, trails, and natural areas; and \$287.3 million to the Southern Nevada Water Authority.

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<sup>20</sup> For more information on LWCF in general, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Current Issues*, by (name redacted). For information on recent appropriations, see “Land and Water Conservation” in CRS Report RL34461, *Interior, Environment, and Related Agencies: FY2009 Appropriations*, by (name redacted) et al.

## Compensation to State and Local Governments

Because federal property is exempt from state and local taxation, Congress has enacted mechanisms to compensate state and local governments for tax revenues that would have been collected if the lands were privately owned. Many of the mechanisms provide for sharing revenues from federal lands with state and/or local governments; only the NPS has no agency-specific compensation system. The Payments In Lieu of Taxes (PILT) Program provides additional revenues.<sup>21</sup>

### Revenue-Sharing

The amount and percentage of federal revenues that are shared with state and/or local governments depends upon the history of the land and the type of activities generating the revenues. Congress created a permanent system for revenue-sharing for most FS lands in 1908. The agency pays 25% of its gross revenues to the states for use on roads and schools in the counties where the national forests are located. The states determine which road and school programs are to be funded, and how much goes to each program, but the amount allocated to each county is determined by the FS and the states cannot retain any of the funds. For the national grasslands, 25% of *net* revenues go directly to the counties. In addition, three counties in Minnesota receive a special payment of 0.75% of the appraised value of the Superior NF lands in the county. Payments for these FS programs are permanently appropriated from any FS revenues. Total FS payments in FY2007 were \$377.4 million.

Because of concerns over declining timber revenues in many areas, and the approaching end of the special “spotted owl payments” program,<sup>22</sup> the 106<sup>th</sup> Congress debated bills to modify the FS revenue-sharing program. In the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393), Congress enacted a six-year program allowing counties to supplant the historic 25% payment with the average of the three highest payments to the state between 1986 and 1999. Of these high-3 payments, 15%-20% must be spent on certain county programs or on projects on federal lands recommended by a local advisory committee or chosen by the FS. The program was extended for one year (FY2007) in the Emergency Supplemental Appropriations Act for FY2007, and the payments under this extension accounted for 88% of the \$377 million in FS payments in FY2007. The program was extended for FY2008-FY2011 in the Emergency Economic Stabilization Act of 2008 (P.L. 110-343), with declining full funding, significant changes to the allocation formula, and transition payments for certain states.<sup>23</sup>

For BLM lands and revenues, the revenue-sharing system is more complicated. The share going to state and local entities ranges from 0% to 90% of gross program revenues, as specified in individual statutes. For example, states and counties receive 12½% of revenues from grazing within grazing districts (under §3 of the Taylor Grazing Act of 1934) and 50% of revenues from grazing outside grazing districts (under §15 of the Taylor Grazing Act). Another example is timber sale revenues. The states and counties receive 4% of timber revenues from most BLM

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<sup>21</sup> For more information, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by (name redacted).

<sup>22</sup> For the 17 national forests that contained northern spotted owl habitat, payments were set at 85% of the FY1986-FY1990 average for FY1994, and declining by 3 percentage points annually, to 58% in FY2003.

<sup>23</sup> See CRS Report RL33822, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*, by (name redacted).

lands. However, the counties receive up to 75% from the heavily timbered Oregon & California (O&C) railroad grant lands in Western Oregon.<sup>24</sup> Counties with the Coos Bay Wagon Road (CBWR) grant lands (adjoining and usually identified with the O&C lands) similarly receive up to 75%, but actual payments are limited by county tax assessments. Because the O&C and CBWR payments have been largely from timber sales, which have declined since the late 1980s, they were included with national forest lands in the spotted owl payments program and the Secure Rural Schools and Community Self-Determination Act of 2000. (See above.)

These examples demonstrate the complexity of the legal issues for sharing BLM revenues with state and local governments. The BLM revenue-sharing payments are permanently appropriated, with 11 separate payment accounts; for FY2007, budget authority was \$144.5 million, of which \$117.1 million (81%) was for the O&C and CBWR lands.

Finally, the FWS has a revenue-sharing program, but payments depend on the history of the land. For refuges reserved from the public domain, the payments are based on 25% of *net* revenues (in contrast to 25% of *gross* revenues from FS lands other than national grasslands). For refuges which have been created on lands acquired from other landowners, payments are based on the *greatest* of: 25% of net revenues, 0.75% of fair market value of the land, or \$0.75 per acre. The National Wildlife Refuge Fund is permanently appropriated for making these payments, but net revenues have been insufficient to make the authorized payments. Although payments have been supplemented with annual appropriations, total payments—\$14.2 million in FY2007—consistently have been less than the authorized level.

### **Payments in Lieu of Taxes**

The most comprehensive federal program for compensating local governments for the tax-exempt status of federal lands was created in the 1976 Payments in Lieu of Taxes (PILT) Act. PILT payments are made in addition to any revenue-sharing payments, although the payments may be reduced by such revenue-sharing payments, as discussed below. Federal lands encompassed by this county-compensation program include lands in the National Forest System, lands in the National Park System, and those administered by the BLM, plus the National Wildlife Refuge System lands reserved from the public domain, and a few other categories of federal lands.

In 1994, Congress amended the PILT Act to more than double the authorized payments over five years, to adjust for inflation between 1976 and 1994, and to build in adjustments for future inflation. The two formulae used to calculate the authorized payment level for each county with eligible federal lands in FY2008 are:

(1) Whichever is *less*: (a) the county's eligible acres times \$2.29 per acre; or (b) the county's payment ceiling (determined by county population level). Pick the lesser of these two, and from it subtract the previous year's total payments under other payment or revenue-sharing programs of the agencies that control the eligible land (as reported by each state to the BLM). This option is called the *standard provision* (or Option A).

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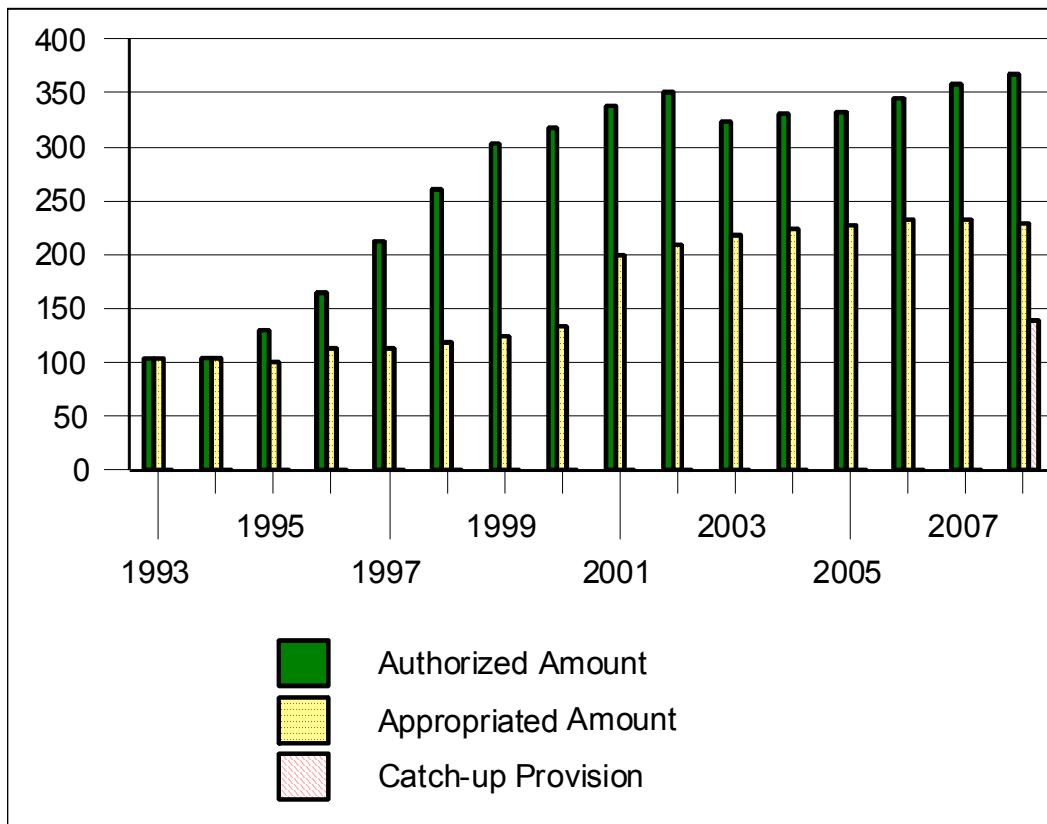
<sup>24</sup> A third of the county payment (i.e., 25% of the total) is returned to the General Treasury to cover appropriations for access roads and reforestation; thus, the counties actually receive 50% of the revenues.

(2) Whichever is *less*: (a) the county’s eligible acres times \$0.32 per acre; or (b) the county’s payment ceiling (determined by county population level). Pick the lesser of these two. This option is called the *minimum provision* (or Option B).

The county is authorized to receive whichever of the above calculations (Option A or Option B) is *greater*. This calculation must be made for all counties individually to determine the national authorization level.

In contrast to most of the revenue-sharing programs, PILT has required annual appropriations from Congress. Those appropriations generally had been sufficient to compensate the counties at the authorized level prior to the 1994 amendments. Those amendments raised the authorization; however, subsequent appropriations have been substantially below the increased authorization. **Figure 4** compares the level of authorization and appropriation for each year since FY1993. However, for FY2008-FY2012, Congress provided mandatory spending for the authorized level of payments in the Emergency Economic Stabilization Act of 2008 (P.L. 110-343). **Figure 4** shows the additional funding for FY2008 as “catch-up” spending, which supplements the FY2008 enacted appropriation.

**Figure 4. Authorized and Appropriated Amounts for PILT, FY1993-FY2008**  
(in millions of dollars)



**Sources:** The authorization levels were calculated by the BLM based on the formula in statute; the appropriation levels are from laws appropriating funds for the Department of the Interior.



## Major Statutes

Federal Lands Recreation Enhancement Act: P.L. 108-447, Title VIII of Division J.

Interior, Environment, and Related Agencies Appropriations Act for FY2009: Division A of the Continuing Appropriations Resolution, 2009, P.L. 110-329.

Land and Water Conservation Fund Act of 1965: P.L. 88-578; 16 U.S.C. § 460*l*.

Payments in Lieu of Taxes Act: P.L. 94-565; 31 U.S.C. §§ 6901-6907.

## The National Forest System<sup>25</sup>

The National Forest System (NFS) is administered by the Forest Service (FS) in the U.S. Department of Agriculture (USDA). The NFS is comprised of national forests, national grasslands, and various other designations. Although NFS lands are concentrated in the West (87%), the FS administers more federal land in the East than all other federal agencies combined. NFS lands are administered for sustained yields of multiple uses, including outdoor recreation (camping, hiking, hunting, sightseeing, etc.), livestock grazing, timber harvesting, watershed protection, and fish and wildlife habitats.

## Background

In 1891, Congress granted the President the authority (now repealed) to establish forest reserves from the public domain. Six years later, in 1897, Congress stated that the forest reserves were:

... to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.

Initially, the reserves were administered by the Division of Forestry in the Department of the Interior's General Land Office. In 1905, this division was combined with the USDA Bureau of Forestry, renamed the Forest Service, and the administration of the 56 million acres of forest reserves (renamed *national forests* in 1907) was transferred to the new agency within the Department of Agriculture. NFS management is one of the three principal FS programs.<sup>26</sup>

In 1906 and 1907, President Theodore Roosevelt more than doubled the acreage of the forest reserves. In 1907, Congress limited the authority of the President to add to the System in certain states.<sup>27</sup> In 1910, Congress repeated the limitation, but then in 1911, Congress passed the Weeks

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<sup>25</sup> This section was prepared by (name redacted).

<sup>26</sup> A second principal FS program continues the original role of the Bureau of Forestry: to provide forestry assistance to states and to nonindustrial private forest owners. The authorities for assistance programs were consolidated and clarified in the Cooperative Forestry Assistance Act of 1978. Forestry research is the third principal FS program. Congress first authorized forestry research in 1928 "to insure adequate supplies of timber and other forest products"; the research authorities were streamlined by the Forest and Rangeland Renewable Resources Research Act of 1978.

<sup>27</sup> Congress enacted the limitation in response to Roosevelt's 1906 reservations. Roosevelt needed the funds provided in the 1907 Act, but proclaimed additional reserves after it was enacted, but before he signed it into law.

Law to authorize additions to the NFS through the purchase of private lands. Under this and other authorities, the System has continued to grow slowly, from 154 million acres in 1919 to 192.8 million acres in 2007. This growth has resulted from purchases and donations of private land and from land transfers, primarily from the BLM.

## Organization

The NFS includes 155 national forests with 188.1 million acres (97.6% of the System); 20 national grasslands with 3.8 million acres (2.0%); and 123 other areas, such as land utilization projects, purchase units, and research and experimental areas, with 0.8 million acres (0.4%).<sup>28</sup> Each national forest unit (which may be one or more national forests) is administered by a forest supervisor. The NFS units are arranged into nine administrative regions, each headed by a regional forester. The nine regional foresters report to the NFS Deputy Chief, who reports to the Chief of the Forest Service. In contrast to the heads of other federal land management agencies, the Chief traditionally has been a career employee of the agency. The Chief reports to the USDA Secretary through the Under Secretary for Natural Resources and Environment.

The NFS regions often are referred to by number, rather than by name. **Table 4** identifies the number, states encompassed, and acreage for each of the regions. Although the NFS lands are concentrated in the seven western FS regions, the FS manages more than half of all federal land in the East; this is illustrated in **Figure 5**. *Inholdings*, shown in **Table 4**, are lands (primarily private) within the designated boundaries of the national forests (and other NFS units) which are not administered by the FS. Inholdings sometimes pose difficulties for FS land management, because the agency does not regulate the development and use of the inholdings. The uses of private inholdings may be incompatible with desired uses of the federal lands, and constraints on access across inholdings may limit access to some federal lands. Many private landowners, however, object to the idea of possible federal restrictions on the use of their lands and especially to unfettered public access across their lands.

## Management<sup>29</sup>

### Overview and Land Management Planning

The management goals for the national forests were first established in 1897, as described above. Management goals were further articulated in § 1 of the Multiple-Use Sustained-Yield Act of 1960, which states:

It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in the Act of June 4, 1897.... The establishment and maintenance of areas as wilderness are consistent with the purposes and provisions of this Act.

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<sup>28</sup> U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System, as of September 30, 2008*, Table 1 at [http://www.fs.fed.us/land/staff/lar/2008/TABLE\\_1.htm/](http://www.fs.fed.us/land/staff/lar/2008/TABLE_1.htm/).

<sup>29</sup> For information on FS management issues, see CRS Report RL33792, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues for the 110<sup>th</sup> Congress*, by (name redacted) et al.

**Table 4. The National Forest System**

Forest Service Region		States containing NFS lands <sup>a</sup>	National Forest System Acreage <sup>b</sup>	
Region Name	No.	States	Federal	Inholdings
Northern	1	ID, MT, ND	25,487,760	2,705,112
Rocky Mountain	2	CO, NE, SD, WY	22,106,058	2,354,410
Southwestern	3	AZ, NM	20,803,312	1,671,547
Intermountain	4	ID, NV, UT, WY	32,044,128	2,226,745
Pacific Southwest	5	CA	20,199,167	3,580,626
Pacific Northwest	6	OR, WA	24,747,787	2,711,556
Southern	8	AL, AR, FL, GA, KY, LA, MS, NC, OK, PR, SC, TN, TX, VA	13,324,821	12,272,119
Eastern	9	IL, IN, ME, MI, MN, MO, NH, NY, OH, PA, VT, WI, WV	12,109,035	9,922,172
Alaska	10	AK	21,972,605	2,386,513
<b>National Forest System</b>			<b>192,744,673</b>	<b>39,830,800</b>

**Source:** U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System, as of Sept 30, 2007*, Tables 1 & 2, from <http://www.fs.fed.us/land/staff/lar/LAR07/lar07index.html/>.

**Notes:** In 1966, Region 7, the Lake States Region, was merged with Region 9, the Northeastern Region, to form the current Eastern Region. Although this merger left 9 regions, the numbering sequence skips 7 and ends with 10, as shown in the table.

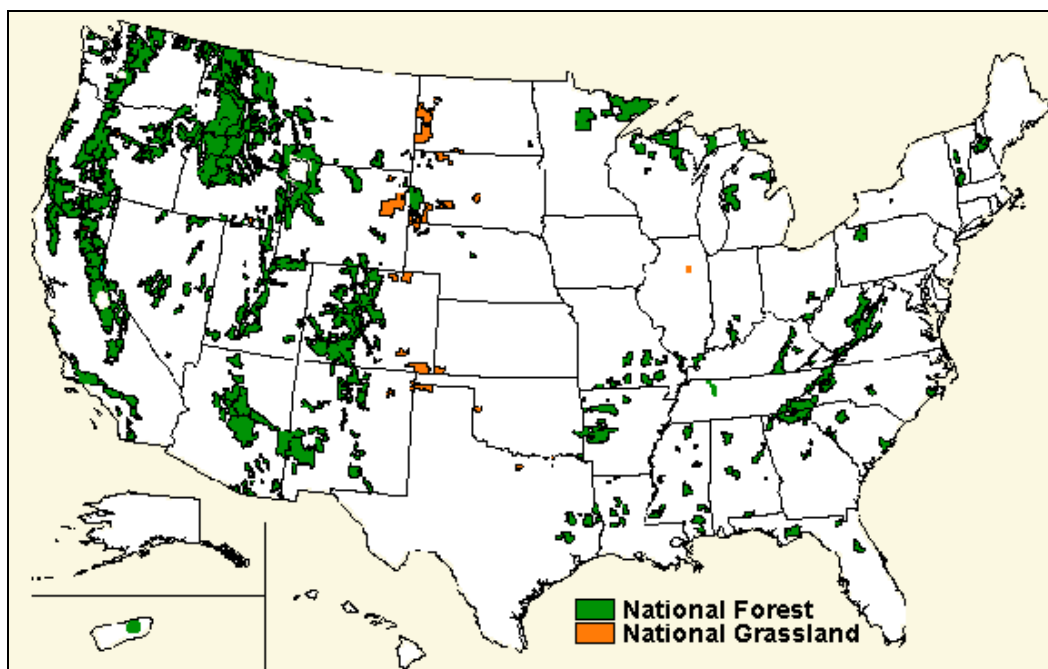
- a. This column lists only states (and territories) that currently contain NFS lands.
- b. *Federal* is federally owned land managed by the FS. *Inholdings* are private and other government lands within NFS boundaries that are not administered or regulated by the FS.

The act directs land and resource management of the national forests for the combination of uses that best meets the needs of the American people. Management of the resources is to be coordinated for *multiple use*—considering the relative values of the various resources, but not necessarily maximizing dollar returns, nor requiring that any one particular area be managed for all or even most uses. The act also calls for *sustained yield*—a high level of resource outputs maintained in perpetuity but without impairing the productivity of the land. Other statutes that apply to all federal agencies, such as the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), also apply.

FS planning and management are guided primarily by the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as amended by the National Forest Management Act (NFMA) of 1976. Together, these laws encourage foresight in the use of the nation's forest resources, and establish a long-range planning process for the management of the NFS. RPA focuses on the national, long-range direction for forest and range conservation and sustainability.<sup>30</sup>

<sup>30</sup> See U.S. Congress, Office of Technology Assessment, *Forest Service Planning: Setting Strategic Direction Under RPA*, OTA-F-441 (Washington, DC: GPO, July 1990), at [http://www.wss.princeton.edu/~ota/disk2/1990/9019\\_n.html](http://www.wss.princeton.edu/~ota/disk2/1990/9019_n.html).

Figure 5. Map of the National Forest System



Source: <http://www.fs.fed.us/recreation/map/finder.shtml>.

NFMA requires the FS to prepare a comprehensive land and resource management plan for each NFS unit, coordinated with the national RPA planning process.<sup>31</sup> The plans must use an interdisciplinary approach, including economic analysis and the identification of costs and benefits of all resource uses. Planning regulations were issued in 1979, then revised in 1982. Further revisions and proposals were debated in the 1990s, leading to new regulations published by the Clinton Administration on November 9, 2000.<sup>32</sup> These regulations would have increased emphasis on ecological sustainability, and would have been implemented over several years.

Concerns about whether the Clinton regulations could be implemented and about the emphasis on biological sustainability led the Bush Administration to propose new regulations supplanting the Clinton regulations before they were implemented. Final regulations to balance ecological sustainability with economic and social considerations and reduce national direction in FS decision-making were promulgated in 2005.<sup>33</sup> The rules also exempted NFMA plans from NEPA and ESA, because the plans were seen as guides to decision-making that would not include site-specific decisions. The Bush planning rules were challenged successfully by interests arguing that the new rules reduced environmental protection without adequate public comment and ESA consideration. The Administration reissued the 2005 rule as a proposed rule, to provide for the

<sup>31</sup> See U.S. Congress, Office of Technology Assessment, *Forest Service Planning: Accommodating Uses, Producing Outputs and Sustaining Ecosystems*, OTA-F-505 (Washington, DC: GPO, Feb. 1992), at [http://www.wss.princeton.edu/~ota/disk1/1992/9216\\_n.html](http://www.wss.princeton.edu/~ota/disk1/1992/9216_n.html).

<sup>32</sup> 65 *Fed. Reg.* 67514.

<sup>33</sup> 70 *Fed. Reg.* 1022 (Jan. 5, 2005).

court-ordered public comment, and issued new final rules in April 2008.<sup>34</sup> These rules have also been challenged in court.<sup>35</sup>

## **National Forest Uses and Values**

As noted above, the FS provides for multiple uses within the national forests. For many years, beginning in the late 1950s, the FS was a major provider of timber for the wood products industry, generally selling between 10 and 12 billion board feet of timber annually (about 20-25% of total U.S. wood supply). Beginning in about 1990 with litigation to protect the northern spotted owl, but extending geographically and for a wide variety of reasons, FS timber sales have fallen, totaling less than 3 billion board feet—less than a quarter of the historic level—annually since 1999. Increasingly, it is difficult to track commercial timber harvests from FS lands because of the growth in stewardship contracting—contracts for stewardship activities (e.g., thinning to reduce potential wildfire fuels) that include commercial timber to offset some of the stewardship costs.<sup>36</sup>

National forests also provide livestock grazing and recreation. Grazing levels have generally declined very slowly over the past several decades. BLM lands provide more grazing than do the national forests, and the BLM typically leads federal efforts on grazing management. In contrast, recreation use of the national forests is higher than for the other federal land management agencies. Use continues to rise slowly, although higher petroleum prices could stifle further increases. Fees from recreation uses are largely retained locally, and have become important funding sources for agency management activities. However, some users object to fees for national forest recreation, arguing that the fees amount to paying twice (once through taxation) to support the agency.

Congress has provided further management direction within the NFS by creating special designations for certain areas. Some of these designations—wilderness areas, wild and scenic rivers, and national trails—are part of larger management systems affecting several federal land management agencies; these special systems are described in later chapters of this report. In addition to these special systems, the NFS includes several other types of land designations. The NFS contains many national game refuges and wildlife preserves, national recreation areas and scenic areas, national monuments, and other congressionally designated areas.<sup>37</sup> Resource development and use is generally more restricted in these specially designated areas than on general NFS lands, and specific guidance typically is provided with each designation. Finally, management to preserve or develop the remaining 58.5 million acres of FS roadless areas (that have not been designated as wilderness by Congress) continues to be controversial.<sup>38</sup>

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<sup>34</sup> 73 *Fed. Reg.* 21467 (April 21, 2008).

<sup>35</sup> For the current status of planning rules and related litigation, see CRS Report RL33792, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues for the 110<sup>th</sup> Congress*, by (name redacted) et al.

<sup>36</sup> See CRS Report RS20985, *Stewardship Contracting for Federal Forests*, by (name redacted).

<sup>37</sup> U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System, as of Sept 30, 2007*, Tables 10-12 and 15-26, at <http://www.fs.fed.us/land/staff/lar/2008/lar08index.html/>.

<sup>38</sup> See CRS Report RL30647, *National Forest System Roadless Area Initiatives*, by (name redacted) and (name redacted).

Finally, the effects of climate change on forests generally, and on the national forests in particular, are becoming a major concern. While animals can generally migrate in response to changing temperature and precipitation patterns, plant communities can only adapt slowly. Current rates of climate change may exceed the capacity of plant communities to adapt, leaving them vulnerable to drought, insects and diseases, and wildfire. When and how to mitigate damages and possibly to assist in plant migration are questions that land managers must address.

## **Wildfire**

In the past few years, the focus of discussions and legislative proposals on FS management has been forest health and wildfires, especially in the intermountain West. Several recent fire seasons were, by most standards, among the worst since 1960. Many believe these fires reflect degraded forest health from excessive accumulations of biomass—dead and dying trees, heavy undergrowth, and dense stands of small trees—exacerbated by drought and climate change and by the increasing numbers of homes in the *wildland-urban interface* (i.e., wildlands near communities threatened by potential wildfire conflagrations).<sup>39</sup> These observers advocate rapid action to improve forest health, including prescribed burning, thinning, and salvaging dead and dying trees, and assert that rapid action is needed to protect NFS forests and nearby private lands and homes. Critics counter that authorities to reduce fuel levels are adequate, treatments that remove commercial timber degrade forest health and waste taxpayer dollars, and expedited processes for treatments are a device to reduce public oversight of commercial timber harvesting.

Several efforts have been undertaken to address the situation. In September 2000, President Clinton requested additional funds (for the FS and the BLM) to pay for that summer's fire suppression efforts and for fuel treatment to address forest health in the interface. In August 2002, President Bush proposed a Healthy Forests Initiative to expedite fuel reduction treatments for federal forests. Because the 107<sup>th</sup> Congress did not enact legislation on this initiative, portions of it were accomplished through regulatory changes; some of these changes have been successfully challenged. On December 2, 2003, Congress enacted the Healthy Forests Restoration Act of 2003 (P.L. 108-148) containing parts of the Healthy Forests Initiative. One title, which garnered most of the attention in debates over the legislation, established an expedited process for fuel reduction activities.

Despite these efforts, many assert that the results have been insufficient. The 2006 and 2007 fire seasons set new records for acres burned, with numerous evacuations and houses burned. Fuel reduction activities are far below the levels needed to significantly alter fuel loadings over large areas. Fire control expenditures continue to climb, affecting the implementation of other programs (and thus affecting national forest uses) through personnel and funds transferred to fire control.<sup>40</sup> It is unclear when, whether, and how this cost spiral can be contained.

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<sup>39</sup> See CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*, by (name redacted).

<sup>40</sup> See CRS Report RL33990, *Wildfire Funding*, by (name redacted).

## **Land Ownership<sup>41</sup>**

### **Designation**

As noted above, in 1891, the President was authorized to reserve lands from the public domain as forest reserves (16 U.S.C. § 471, now repealed), but this authority was subsequently limited by Congress. However, many proclamations and executive orders subsequently have modified boundaries and changed names, including establishing new national forests from existing NFS lands. National forests in the East generally were established between 1910 and 1951, with the Hoosier and Wayne National Forests (in Indiana and Ohio, respectively) the last proclaimed, in 1951.

Presidential authority to proclaim forest reserves from the public domain was restricted piecemeal. The 1897 Act established management direction by restricting the purposes for the reserves. The 1907 Act that renamed the forest reserves as the national forests also prohibited the establishment of new reserves in six western states, although President Theodore Roosevelt did not sign the law until he had reserved 16 million acres in those states. Presidential authority to withdraw public lands to establish new national forests was not formally repealed until 1976. Today, establishing a new national forest or significantly modifying the boundaries of an existing national forest requires an act of Congress.<sup>42</sup>

### **Acquisition Authority**

The Secretary of Agriculture has numerous authorities to add lands to the NFS. The first and broadest authority was in the Weeks Law of 1911 (as amended by NFMA; 16 U.S.C. § 515):

The Secretary is hereby authorized and directed to examine, locate, and purchase such forested, cut-over, or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber.

Originally, the acquisitions were to be approved by a National Forest Reservation Commission, but the Commission was terminated in 1976 by §17 of NFMA.

Other laws also authorize land acquisition for the national forests, typically in specific areas or for specific purposes. For example, § 205 of the Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the acquisition of access corridors to national forests across nonfederal lands (43 U.S.C. § 1715(a)). The Southern Nevada Public Land Management Act authorizes acquiring environmentally sensitive lands in Nevada, some of which have been added to the National Forest System. Also, under the Federal Land Transaction Facilitation Act, the Secretary of Agriculture may acquire inholdings and other nonfederal land. (See discussion of BLM “Disposal Authority,” below.)

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<sup>41</sup> See also CRS Report RL34273, *Federal Land Ownership: Current Acquisition and Disposal Authorities*, by (name redacted) and (name redacted).

<sup>42</sup> The President can still create new national forests from lands acquired under the Weeks Law of 1911; see next section.

Finally, the Bankhead-Jones Farm Tenant Act of 1937 authorizes and directs the Secretary of Agriculture to establish a program for land conservation and utilization. The act authorized the Secretary to acquire submarginal lands and lands not suitable for cultivation. Under this authority, the FS acquired and established the 20 national grasslands and six land utilization projects that account for 2% of the NFS. In addition, millions of acres acquired under this authority have been transferred to the BLM.

## **Disposal Authority**

The Secretary of Agriculture has numerous authorities to dispose of NFS lands, all constrained in various ways and seldom used. In 1897, the President was authorized to revoke, modify, or suspend forest reservations (16 U.S.C. § 473), and to return to the public domain of lands better suited for agriculture or mining. These provisions have not been repealed, but NFMA prohibits the return to the public domain of any land reserved or withdrawn from the public domain, except by an act of Congress (16 U.S.C. § 1609).

The 1911 Weeks Law authorizes the Secretary to dispose of land “chiefly valuable for agriculture” which was included in lands acquired (inadvertently or otherwise), if agricultural use will not injure the forests or stream flows and the lands are not needed for public purposes.

The 1958 Townsites Act (16 U.S.C. § 478a) authorizes the Secretary to transfer up to 640 acres adjacent to communities in Alaska or the 11 western states for townsites, if the “indigenous community objectives ... outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership.” There is to be a public notice of the application for such transfer, and upon a “satisfactory showing of need,” the Secretary may offer the land to a local governmental entity at “not less than the fair market value.”

The 1983 Small Tracts Act (16 U.S.C. § 521) authorizes the Secretary to dispose of certain lands by sale or exchange, if valued at no more than \$150,000, if the tracts are: (1) up to 40 acres interspersed with or adjacent to lands transferred out of federal ownership under the mining laws *and* which are inefficient to administer because of their size or location; (2) up to 10 acres of inadvertent trespass if based in good faith upon an erroneous survey; or (3) road rights-of-way substantially surrounded by nonfederal land and not needed by the federal government, subject to the right of first refusal for adjoining landowners.

Finally, in Title II (the Education Land Grant Act) of P.L. 106-577, Congress authorized the FS to transfer up to 80 acres of NFS land for a nominal cost upon written application of a public school district. Section 202(e) provides for reversion of title to the federal government if the lands are not used for the educational purposes for which they were acquired.

## **Major Statutes<sup>43</sup>**

Bankhead-Jones Farm Tenant Act: Act of July 22, 1937; 7 U.S.C. §§ 1010-1012.

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<sup>43</sup> For a list of laws under which the FS operates, see the agency’s websites at <http://www.fs.fed.us/publications/laws/selected-laws.pdf> and <http://www.fs.fed.us/publications/laws/new-laws-since-selected-laws.pdf>. Access to FS directives, manuals and handbooks is at <http://www.fs.fed.us/im/directives/>.



Cooperative Forestry Assistance Act of 1978: P.L. 95-313; 16 U.S.C. §§ 2101-2111.

Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA): P.L. 93-378; 16 U.S.C. §§ 1600 et seq.

Forest and Rangeland Renewable Resources Research Act of 1978: P.L. 95-307; 16 U.S.C. §§ 1641-1647.

Healthy Forests Restoration Act of 2003: P.L. 108-148; 16 U.S.C. §§ 6501-6591.

Multiple-Use Sustained-Yield Act of 1960 (MUSYA): P.L. 86-517; 16 U.S.C. §§ 528-531.

National Forest Management Act of 1976 (NFMA): P.L. 94-588; 16 U.S.C. §§ 1601 et al.

Organic Administration Act of 1897: Act of June 4, 1897; 16 U.S.C. §§ 473 et seq.

Weeks Law of 1911: Act of March 1, 1911; 16 U.S.C. §§ 515 et al.

## **Bureau of Land Management<sup>44</sup>**

The Bureau of Land Management (BLM) manages 255.8 million acres of land, approximately 11% of the land in the United States. Most of this land is in the West, with nearly one-third of the total in Alaska. The map in **Figure 6** identifies BLM lands.<sup>45</sup> These lands include grasslands, forests, high mountains, arctic tundra, and deserts. They contain diverse resources, including fuels and minerals; timber; forage; wild horses and burros; fish and wildlife habitat; recreation sites; wilderness areas; cultural sites; and other natural heritage assets. On December 16, 2008, Interior Secretary Dirk Kempthorne issued a secretarial order designating BLM lands as the “National System of Public Lands.”<sup>46</sup> The Secretary stated that this designation was to convey the interconnectedness of public lands in providing recreation, conservation, wildlife habitat and economic benefits. The designation is not intended to change the way the lands are managed.

### **Background**

The BLM was created in the Department of the Interior in 1946 by merging two agencies—the General Land Office and the U.S. Grazing Service. The General Land Office, created by Congress in 1812, helped convey lands to pioneers settling the western lands. The U.S. Grazing Service was established in 1934 to manage the public lands best suited for livestock grazing, in accordance with the Taylor Grazing Act of 1934. This law sought to remedy the deteriorating condition of public rangelands due to their overuse as well as the drought of the 1920s and economic depression of the early 1930s.

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<sup>44</sup> This section was prepared by (name redacted).

<sup>45</sup> To view an enlarged, detailed map of BLM lands in a state, see the map on the BLM website at <http://www.blm.gov/wo/st/en/info/regulations.2.html>.

<sup>46</sup> At [http://www.blm.gov/wo/st/en/info/newsroom/2008/december/NR\\_12\\_16\\_2008.html](http://www.blm.gov/wo/st/en/info/newsroom/2008/december/NR_12_16_2008.html).

The Taylor Grazing Act provided for the management of the public lands “pending [their] final disposal.” This language expressed the view that the lands might still be transferred to private or state ownership, and that the federal government was serving as custodian until that time. However, patenting of the more arid western lands had already slowed, and there was growing concern about the condition of resources on these lands. These factors, and a changing general attitude towards the public lands, contributed to their retention by the federal government.

For decades Congress debated whether to retain or dispose of the remaining public lands, and how best to coordinate their management. Studies culminated in the 1970 report of the Public Land Law Review Commission entitled *One-Third of the Nation's Land*. Three successive Congresses deliberated, and in 1976 Congress enacted a comprehensive public land law entitled the Federal Land Policy and Management Act of 1976 (FLPMA).

FLPMA sometimes is called the BLM Organic Act because portions of it consolidated and articulated the agency’s responsibilities. This law established, amended, or repealed many authorities dealing with public land withdrawals, land exchanges and acquisitions, rights-of-way, advisory groups, range management, and the general organization and administration of the BLM and the *public lands*, which were defined as the lands managed by the BLM. Congress also established in FLPMA the national policy that “the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest....” This retention policy contributed to a “revolt” during the late 1970s and early 1980s among some westerners who continued to hope that the federal presence in their states might be reduced through federal land transfers to private or state ownership. The resulting “Sagebrush Rebellion”—objecting to federal management decisions and in some cases to the federal presence itself—was directed primarily toward the BLM.

Since the 1780s, nearly 1.3 billion acres of federal land have been transferred to individuals, businesses, and states. This total includes approximately 287 million acres for homesteaders; 328 million acres to states for public schools, public transportation systems, and various public improvement projects; and 94 million acres for railroads.<sup>47</sup> The last large transfer of BLM land occurred in 1980 with enactment of the Alaska National Interest Lands Conservation Act (ANILCA). This act transferred about 80 million acres from the BLM to the other federal land management agencies. The BLM also is required by law (ANILCA, the Alaska Native Claims Settlement Act, and the Alaska Statehood Act) to transfer ownership of more than 155 million acres of federal lands to the State of Alaska and Alaska Natives. Approximately 134 million acres have been conveyed thus far.

## Organization

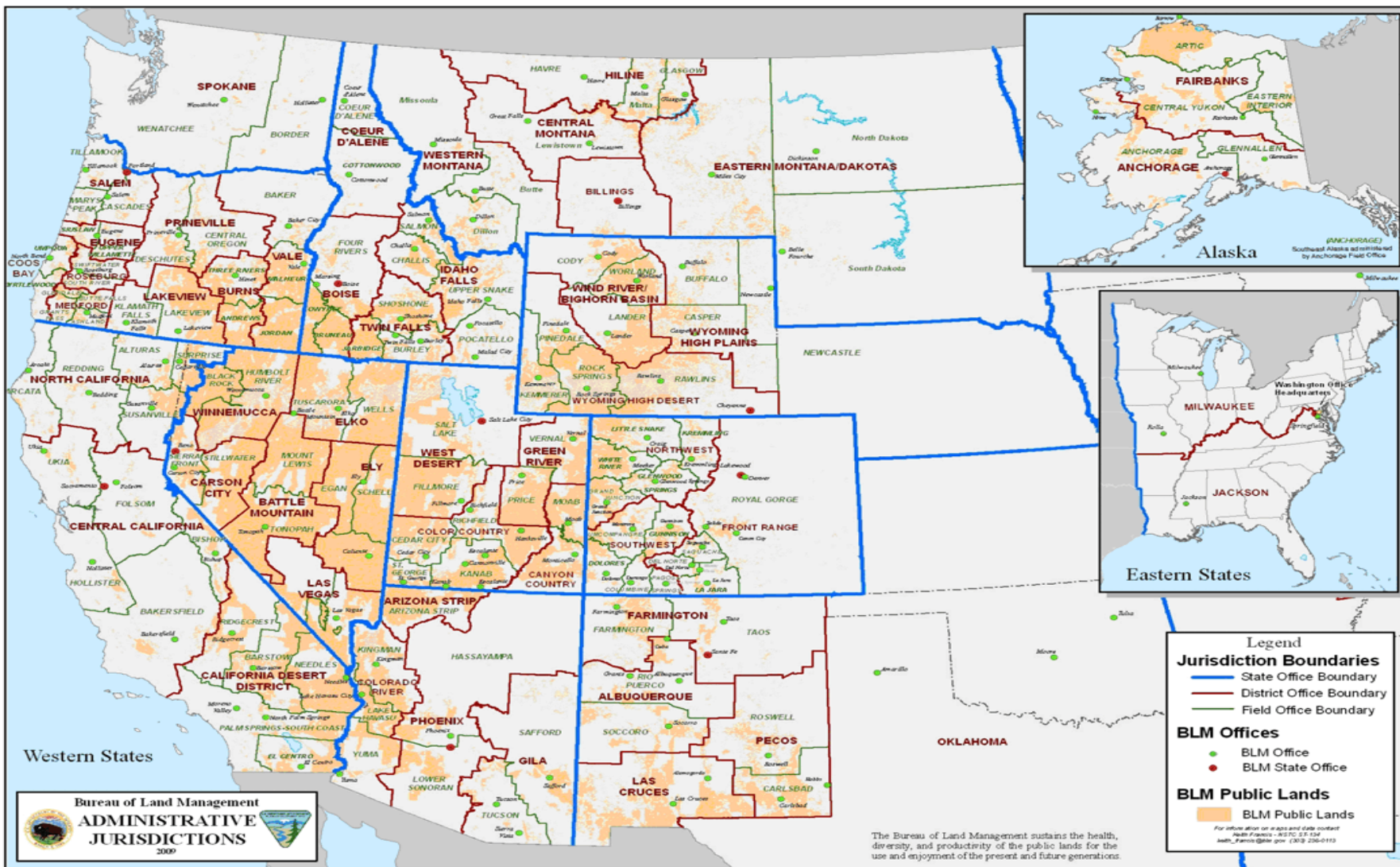
BLM headquarters in Washington, DC, is headed by the Director, a political appointee who reports to the Secretary of the Interior through the Assistant Secretary for Land and Minerals Management. The BLM has been moving from a two-tier structure, involving state and field offices, to a three-tier structure, consisting of state, district, and field offices. The change was intended to make a consistent structure in each state that will allow for decision-making closer to the resources and resource users. Currently, there are 12 BLM state offices, each headed by a state

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<sup>47</sup> U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2007*, Table 1-2, at [http://www.blm.gov/public\\_land\\_statistics/pls07/pls1-2\\_07.pdf](http://www.blm.gov/public_land_statistics/pls07/pls1-2_07.pdf)

director, and each BLM state office administers a geographic area that generally conforms to the boundary of one or more states. Most state offices have established district offices, with field offices within each district. The field managers are responsible for “on the ground” implementation of programs and policies. There also are three national level support and service centers: the National Office of Fire and Aviation (ID); the National Training Center (AZ); and the National Operations Center (CO). **Figure 6** identifies BLM lands by state, district, and field office.

Figure 6. BLM Administrative Jurisdictions



Source: Bureau of Land Management.

The BLM maintains more than a billion land and mineral records from the nation's history, including legal land descriptions, land and mineral ownership and entitlement records, and land withdrawal records. The agency conducts surveys to locate and mark the boundaries of federal and Indian lands. The BLM's Public Land Survey System is the foundation of the nation's land tenure system. The BLM is making its public lands and mineral records available on the Internet to improve public access to, and the quality of, the information. The survey records and land descriptions are being converted to digital, geospatial format. The BLM also is involved in a joint project with the FS, states, counties, and private industry to develop a National Integrated Land System, a geospatial reference for lands throughout the nation regardless of ownership. A goal is to make available the documents relating to land status so users can obtain all attributes of a parcel.<sup>48</sup>

## **Management**

### **Overview**

FLPMA set the framework for the current management of BLM lands. Among other important provisions, the law provides that:<sup>49</sup>

the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts ...

management be on the basis of multiple use and sustained yield unless otherwise specified by law ...

the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute ...

the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use ...

Thus, FLPMA established the BLM as a multiple-use, sustained-yield agency. However, some lands are withdrawn (restricted) from one or more uses, or managed for a predominant use. The agency inventories its lands and resources and develops land use plans for its land units. All BLM lands (except some lands in Alaska), as well as the 700 million acres of mineral resources managed by the BLM, are covered by a land use plan. In 2001, the BLM began a multiyear effort to develop new land use plans and update existing ones, driven by such changes as increased demands for energy resources, a rise in use of off-highway vehicles, additions to the National Landscape Conservation System, new listings of species under ESA, a buildup of biomass fuels on public lands, and a need to mitigate the effects of wildfires. From the start of that effort

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<sup>48</sup> The government website for the Public Land Survey System data and the National Integrated Land System data is <http://www.geocommunicator.gov>.

<sup>49</sup> 43 U.S.C. § 1701.

through 2007, the BLM completed about 50 new or revised land use plans, out of a total of more than 150 plans for all BLM lands. The agency anticipated completing an additional 27 new or revised plans in 2008 and 24 plans in 2009.

The public continues to value and use BLM lands for their diverse attributes and opportunities—open spaces, cultural resources, recreational pursuits, energy development, livestock grazing, and timber production, among others. Issues and conflicts arise from these diverse and often opposing interests, with energy issues being among the most contentious.<sup>50</sup>

## **Energy and Minerals**

The BLM administers onshore federal energy and mineral resources. The agency is responsible for approximately 700 million acres of federal subsurface minerals, and supervises the mineral operations on about 56 million acres of Indian trust lands. The amount of land withdrawn (restricted) from mineral entry or development has long been controversial. A BLM-coordinated study (May 2008)<sup>51</sup> estimated that 279 million of the 700 million acres had the potential for oil or natural gas resources. Of the 279 million acres, 166 million acres (60%) were inaccessible. This would include lands in the National Park System (except National Recreation Areas), Wilderness System, and the Arctic National Wildlife Refuge (ANWR). Another 65 million acres (23%) were accessible with restrictions, leaving 48 million acres (17%) accessible under standard lease terms.

There are three approaches to developing federal mineral resources. One approach is locating and patenting mining claims for hard rock (locatable) minerals. A second approach is competitive and noncompetitive leasing of lands for leaseable minerals (oil, gas, coal, potash, geothermal energy, and certain other minerals). A third approach is the sale or free disposal of common mineral materials (e.g., sand and gravel) not subject to the mining or leasing laws.

In 2006, 37% of the coal, 11% of the natural gas, and 5% of the oil produced in the United States were derived from BLM managed lands. These resources generate large revenues.<sup>52</sup> For FY2007, the total on-shore mineral revenues (including royalties, rents, and bonus bids) were \$3.9 billion, a substantial increase over most previous years primarily due to higher oil and gas prices.

There continues to be debate about the extent, type, and location of energy and mineral development on federal lands. While there has been support for increasing energy production from federal lands, there also has been environmental concern over development. The oil and gas industry has supported entry into unavailable federal lands to expand supply, and the Bush Administration promoted an expanded role for federal lands in supplying energy. Further, the Energy Policy Act of 2005 (P.L. 109-58) included provisions to encourage energy production on federal lands. Environmentalists and others are concerned that the restricted federal lands are unique or environmentally sensitive, and that energy gains could be achieved through

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<sup>50</sup> Several current BLM issues are covered in CRS Report RL33792, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues for the 110<sup>th</sup> Congress*, by (name redacted) et al. They include onshore energy resources, hardrock minerals, the national landscape conservation system, wilderness, wild horses and burros, and wildfire protection.

<sup>51</sup> Available at [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/EPCA\\_III.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/EPCA_III.html).

<sup>52</sup> Fifty percent of the revenues collected from on-shore leasing are returned to the states (except Alaska which receives 90%) in which the lands are located (30 U.S.C. § 191).

conservation, development of existing leases, and other means. Provisions to improve national energy efficiency were included in the Energy Policy Act.

The development and patenting (ownership transfer) of hardrock minerals on public lands continues to receive attention.<sup>53</sup> A focus has been the effect of the BLM's revised hardrock mining regulations on the environment and the level of mining activity. A perennial debate is whether to change the General Mining Law of 1872, which allows claimants to develop the minerals within a claim without paying royalties, and to patent the lands and obtain full title to the land and its minerals for a modest fee (\$2.50 or \$5.00 an acre).

## **National Landscape Conservation System**

In 2000, the BLM created the National Landscape Conservation System, comprised of different types of units—national monuments, conservation areas, wilderness areas, wilderness study areas, wild and scenic rivers, and scenic and historic trails. Approximately 27 million acres<sup>54</sup> currently are in the System, to give them greater recognition, management attention, and resources, according to BLM statements. Areas are managed based on their relevant authorities; for instance, the 7.7 million acres of designated wilderness are managed in accordance with FLPMA and the Wilderness Act. Another 13.8 million acres of wilderness study areas are to be managed by the BLM to maintain their suitability for wilderness designation until legislation is enacted to determine their final status. (For more information on wilderness, see “The National Wilderness Preservation System,” below.)

The agency's 15 national monuments, 13 national conservation areas, and 4 similar areas are a particular focus of the System. BLM management emphasizes resource conservation overall and in general units are to serve outdoor recreationists. Other activities, such as grazing and hunting, may continue if they are compatible with the designation.

The proximity of BLM lands to many areas of population growth in the West has led to an increase in recreation on some agency lands. Recreational activities include hunting, fishing, visiting cultural and natural sites, birdwatching, hiking, picnicking, camping, boating, mountain biking, and off-highway vehicle driving. The BLM collects money from permits for recreation on its lands, such as permits issued to hunting and fishing guide outfitters. The agency also charges recreation fees on some of its lands under the Federal Lands Recreation Enhancement Act.<sup>55</sup>

A number of preservation and recreation matters have come to the fore. These include whether to establish or restrict protective designations; the effect of protective designations on land uses; and the role of Congress, states, and the public in making designations. The growing and diverse nature of recreation on BLM lands has increased the challenge of balancing different types of recreation, especially high-impact (e.g., off-highway vehicle use) versus low-impact uses (e.g.,

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<sup>53</sup> For more information on mineral development on federal lands, see CRS Report RL33908, *Mining on Federal Lands: Hardrock Minerals*, by (name redacted).

<sup>54</sup> NLCS areas overlap (e.g., a designated wilderness area within a national monument). The BLM has deleted this duplication in acreage for the 27 million acre total. For a map of all NLCS lands, as well as a map of each of type of lands in the System, see the BLM website at [http://www.blm.gov/wo/st/en/prog/blm\\_special\\_areas/NLCS/maps.html](http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS/maps.html).

<sup>55</sup> The Federal Lands Recreation Enhancement Act was enacted as Title VIII, Division J, P.L. 108-447, the Consolidated Appropriations Act for FY2005. For more information on recreation fees, see CRS Report RL33730, *Federal Lands Recreation Enhancement Act*, by (name redacted).

backpacking), and balancing recreation with other land uses.<sup>56</sup> A related issue is access to public lands, including restrictions on use of off-highway vehicles. Other issues involve the impact of recreation on resources and facilities and to what extent to collect fees for recreation use. With population growth near BLM lands, and the public value on federal lands for recreation, conflicts over land use can be expected to remain prevalent.

## **Rangelands**

Livestock grazing is permitted on an estimated 160 million acres of BLM land. In some western states, more than half of all cattle graze on public rangelands during at least part of the year, although the forage consumed on federal lands is a small percentage of all forage consumed by beef cattle nationally. The grazing of cattle and sheep, and range management programs generally, are authorized by the Taylor Grazing Act, FLPMA, and the Public Rangelands Improvement Act of 1978 (PRIA). The Taylor Grazing Act converted the public rangelands from a system of common open grazing to one of exclusive permits to graze allotted lands. FLPMA set out overall public land management and policy objectives. PRIA reflected continuing concern over the condition and productivity of public rangelands and established more specific range management provisions for the BLM. An example is a new grazing fee formula that was temporary but essentially has been continued under executive order.

Rangeland management presents an array of issues, including the adequacy of BLM's regulations. The BLM had issued new grazing regulations in 2006, but in 2008 a court enjoined them from taking effect on the grounds that the BLM had violated certain laws in issuing the regulations. The 2006 regulations would have made many changes, including to allow title to range improvements to be shared by the BLM and permittees, allowing permittees to acquire water rights for grazing if consistent with state law, and reducing the occasions on which the BLM is required to consult with the public. Another issue involves the terms and renewal of expiring grazing permits and leases, with recent laws authorizing their automatic renewal. The restriction or elimination of grazing on federal land because of environmental and recreational concerns has been discussed, and the grazing fee that the federal government charges for private livestock grazing on federal lands has been controversial since its inception.<sup>57</sup> Other range issues include the condition of federal rangelands, the spread of invasive plant species, and management of riparian areas.

The BLM's range programs include management of wild horses and burros under the Wild, Free-Roaming Horses and Burros Act of 1971.<sup>58</sup> The herd size on the range historically has been significantly more than the agency has determined is appropriate (ecologically sustainable). The BLM seeks to reduce animals on the range through adoption, sale, fertility control, permanent or temporary holding facilities, and other means. For years, management of wild horses and burros has been controversial. Concerns relate to the removal, adoption, sale, and treatment of the animals as well as the BLM's administration of the program. Another concern has been the effect of wild horses and burros on range resources. Currently, a primary area of debate is how to reduce the number of animals on the range to achieve the optimal herd size, and whether the BLM

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<sup>56</sup> For more information on recreation on BLM lands, see CRS Report RL33525, *Recreation on Federal Lands*, by Kori Calvert et al.

<sup>57</sup> For information on grazing fees, see CRS Report RS21232, *Grazing Fees: An Overview and Current Issues*, by (name redacted).

<sup>58</sup> For more information, see CRS Report RL34690, *Wild Horse and Burro Issues*, by (name redacted).



should employ authorities to euthanize healthy animals or sell them without restrictions to reach that size. Another focus is the level of funding that would be sufficient to care for wild horses and burros, with the high cost of animals in long-term facilities of particular concern.

## **Fire Management**

Recent fire seasons have been among the most severe in decades due to long-term drought, build-up of fuels, and increased population in the wildland-urban interface. The BLM carries out fire management programs, including for fire suppression, preparedness, and burned area rehabilitation. The BLM coordinates its activities with those of other agencies through the National Interagency Fire Center in Boise, ID. A focus of the agency is implementation of the national fire plan, under a 10-year strategy developed jointly with the Forest Service and other partners. Goals of the strategy are to improve fire prevention and suppression, reduce fuels, restore fire-adapted ecosystems, and promote community assistance. Another focus is implementation of the Healthy Forests Restoration Act of 2003 (P.L. 108-148), which sought to expedite fuel reduction on federal lands and authorized other forest protection programs.

Recent, severe wildfires have challenged the BLM's fire management program. One issue is the sufficiency of funds and procedures for suppressing fires, and the effect of borrowing funds from other programs for fire fighting. There have been proposals to establish a separate fund for major wildfire suppression efforts.<sup>59</sup> Another issue is the effect of fire on resource conditions, a compounding factor in areas experiencing drought, invasive species, and other changes. A third issue is the sufficiency of current fuels reductions and other treatments to reduce the risk of wildland fire on federal lands.

## **Land Ownership<sup>60</sup>**

### **General**

BLM lands often are intermingled with other federal or private lands. Many federal grants consisted of alternating sections of lands, often referred to as "checkerboard," resulting in a mixed ownership grid pattern. FLPMA consolidated procedures and clarified responsibilities regarding problems that arise because of this ownership pattern, including rights-of-way across public lands for roads, trails, pipelines, power lines, canals, reservoirs, etc. FLPMA also provided for land exchanges, acquisitions, disposals, and remedies for certain title problems.

There has long been debate over the amount of land the BLM owns and how the land is managed. Contemporary questions have centered on how much land should be acquired versus conveyed to state, local, or private ownership, and under what circumstances. Congress confronts concerns about acquisition of private land, the effectiveness of land exchange programs, and the effect of public ownership on state taxes and authorities.

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<sup>59</sup> For more information on fire funding and related issues, see CRS Report RL33990, *Wildfire Funding*, by (name redacted).

<sup>60</sup> See also CRS Report RL34273, *Federal Land Ownership: Current Acquisition and Disposal Authorities*, by (name redacted) and (name redacted).

## **Acquisition Authority**

The BLM has rather broad, general authority to acquire lands principally under § 205 of FLPMA. Specifically, the Secretary is authorized (43 U.S.C. § 1715(a)):

to acquire pursuant to this Act [FLPMA] by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose.

The BLM may acquire land or interests in land, especially inholdings, to protect threatened natural and cultural resources, increase opportunities for public recreation, restore the health of the land, and improve management of these areas.<sup>61</sup> The agency often acquires land by exchange. Although FLPMA and NFMA were amended in 1988 to “streamline ... and expedite” the process, exchanges may still be time consuming and costly because of problems related to land valuation, cultural and archaeological resources inventories, and other issues. Land exchanges have been controversial in the past, with concerns about the determination of fair market value and the extent of public benefit of exchanges undertaken. The BLM has changed the processes for exchanges in response.<sup>62</sup>

## **Disposal Authority**

The BLM can dispose of public lands under several authorities. A primary means of disposal is through exchanges, just as a primary means of acquisition is through exchanges. Disposal authorities include sales under FLPMA, sales or exchanges under the Federal Land Transaction Facilitation Act, patents under the General Mining Law of 1872, transfers to other governmental units for public purposes, disposals under geographic-specific laws, and other statutes.<sup>63</sup>

With regard to sales, § 203 of FLPMA authorizes the BLM to sell certain tracts of public land that meet specific criteria. The tract must be difficult and uneconomic to manage, no longer required for a federal purpose, or serving important public objectives if disposed (43 U.S.C. § 1713(a)).

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<sup>61</sup> Under the Federal Land Transaction Facilitation Act, the Secretaries of the Interior and Agriculture may use funds from the disposal of certain BLM lands to acquire inholdings and other nonfederal lands. Also, the Southern Nevada Public Land Management Act provides for the disposal, by sale or exchange, of lands in Nevada. The proceeds are used to acquire environmentally sensitive lands in Nevada, among other purposes. A description of these funding sources is provided under “Disposal Authority.” The Land and Water Conservation Fund (see “Federal Lands Financing”) is a primary means of funding BLM land acquisition.

<sup>62</sup> For more information on exchanges, see CRS Report RS21967, *Land Exchanges: Bureau of Land Management Process and Issues*, by (name redacted).

<sup>63</sup> Desert lands can be disposed under other laws. The Carey Act (43 U.S.C. § 641) authorizes transfers to a state, upon application and meeting certain requirements, while the Desert Land Entry Act (43 U.S.C. § 321) allows citizens to reclaim and patent 320 acres of desert public land. These latter provisions are seldom used, however, because the lands must be classified as available and sufficient water rights must be obtained. Other authorities provide for land sales in particular areas.

The Homestead Act and many other authorities for disposing of the public lands were repealed by FLPMA in 1976, with a 10-year extension in Alaska. The General Services Administration has the authority to dispose of surplus federal property under the Federal Property and Administrative Services Act of 1949; however, that act generally excludes the public domain, mineral lands, and lands previously withdrawn or reserved from the public domain (40 U.S.C. § 472(d)(1)).

Proposals to sell tracts of more than 2,500 acres must first be submitted to Congress, and such sales may be made unless disapproved by Congress.<sup>64</sup>

The Federal Land Transaction Facilitation Act provides for the sale or exchange of land identified for disposal under the BLM's land use plans. The proceeds are deposited into a separate Treasury account, and are available to both the Secretary of the Interior and the Secretary of Agriculture to acquire inholdings and certain other nonfederal lands. Not less than 80% of the funds for acquiring land are to be used to purchase land in the same state in which the funds were generated.

The General Mining Law of 1872 allows access to certain minerals on federal lands that have not been withdrawn from entry (i.e., where mineral use is prohibited). With evidence of minerals and sufficient developmental effort, mining claims can be patented, with full title to the land transferred to the claimant upon payment of a small fee. Non-mineral lands used for associated milling or other processing operations can also be patented (30 U.S.C. § 42). Since FY1995, Congress has prevented this means of disposal through an annual moratorium on issuing mineral patents.

The Recreation and Public Purposes Act authorizes the Secretary to dispose of public lands to a state, county, or nonprofit corporation or association, among other entities, for recreational or public purposes. The act specifies conditions, qualifications, and acreage limitations for transfer, and provides for restoring the lands to the public domain if conditions are not met.

The BLM also has land disposal authorities for specific locations. The largest, the Southern Nevada Public Land Management Act (SNPLMA), allows the Secretary of the Interior, through the BLM, to sell or exchange certain land around Las Vegas. State and local governments get priority to acquire lands under the Recreation and Public Purposes Act. Much of the money from the sales is deposited into a special account that may be used for purposes including the acquisition of environmentally sensitive lands in Nevada. Some of the proceeds are set aside for other purposes, such as the State of Nevada general education program. Revenues from SNPLMA land sales have vastly exceeded expectations, totaling \$3.29 billion through September 30, 2008. The large collections have prompted proposals to expand the purposes for which the funds can be used.

## **Withdrawals<sup>65</sup>**

FLPMA also mandated review of public land withdrawals in the 11 western states to determine whether, and for how long, existing withdrawals should be continued. A withdrawal is an action that restricts the use or disposition of public lands; for instance, some lands are withdrawn from mining. The agency continues to review approximately 70 million withdrawn acres, giving priority to about 26 million acres that are expected to be returned by another agency to the BLM, or, in the case of BLM withdrawals, made available for one or more uses. To date, the BLM has completed reviewing approximately 10 million withdrawn acres, mostly BLM, FS, and Bureau of Reclamation land; the withdrawals on more than 9 million of these acres have been revoked. The

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<sup>64</sup> This procedure and certain other provisions of FLPMA may be unconstitutional under *Immigration and Naturalization Service (INS) v. Chadha*, 462 U.S. 919 (1983).

<sup>65</sup> For a table identifying public land withdrawals 1942-2007, see the BLM website at [http://www.blm.gov/wo/st/en/prog/more/lands/public\\_land\\_orders.html](http://www.blm.gov/wo/st/en/prog/more/lands/public_land_orders.html).

review process is likely to continue over the next several years, in part because the lands must be considered in the BLM's planning process and the withdrawals must be supported by documentation under NEPA.

## **Major Statutes<sup>66</sup>**

Federal Land Policy and Management Act of 1976: P.L. 94-579; 43 U.S.C. §§ 1701, et seq.

Federal Land Transaction Facilitation Act: P.L. 106-248; 43 U.S.C. §§ 2301, et seq.

General Mining Law of 1872: R.S. 2319, derived from Act of May 10, 1872; 30 U.S.C. §§ 22, et seq.

Mineral Leasing Act for Acquired Lands: Act of Aug. 7, 1947; 30 U.S.C. §§ 351-359.

Mineral Leasing Act of 1920: Act of Feb. 25, 1920; 30 U.S.C. §§ 181, et seq.

Public Rangelands Improvement Act of 1978: P.L. 95-514; 43 U.S.C. §§ 1901, et seq.

Recreation and Public Purposes Act: Act of June 14, 1926; 43 U.S.C. § 869.

Southern Nevada Public Land Management Act of 1998: P.L. 105-263; 31 U.S.C. § 6901 note.

Taylor Grazing Act of 1934: Act of June 28, 1934; 43 U.S.C. §§ 315, et seq.

Wild Horses and Burros Act of 1971: P.L. 92-195; 16 U.S.C. §§ 1331, et seq.

## **The National Wildlife Refuge System<sup>67</sup>**

The National Wildlife Refuge System (NWRS) is administered by the Fish and Wildlife Service (FWS) in the Department of the Interior.<sup>68</sup> It is dedicated primarily to the conservation of animals and plants. Other uses—hunting, fishing, recreation, timber harvest, grazing, etc.—are permitted only to the extent that they are compatible with the purposes for which the refuge was created.<sup>69</sup> In 1997, Congress established compatible wildlife-dependent recreation as a priority for the NWRS. Some have characterized the NWRS as intermediate in protection between the BLM and FS lands on the one hand and the NPS lands on the other, but this is not entirely accurate. The

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<sup>66</sup> For a list of laws, regulations, and policies under which the BLM operates, see the agency's website at <http://www.blm.gov/wo/st/en/info/regulations.2.html>.

<sup>67</sup> This section was prepared by (name redacted).

<sup>68</sup> Another significant FWS activity is administration of the Endangered Species Act (ESA; P.L. 93-205). FWS responsibilities under ESA are not discussed in this report, except as they relate to administration of the NWRS. For CRS reports on endangered species issues, see [http://apps.crs.gov/cli/cli.aspx?PRDS\\_CLI\\_ITEM\\_ID=312&from=3&fromId=2522](http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=312&from=3&fromId=2522).

<sup>69</sup> Pre-existing rights (e.g., to develop minerals, easements, etc.) are rarely acquired along with the land. Where they exist and their ownership is considered essential to conserving the plants and animals, these rights must be purchased from the owners.

NWRS resembles the FS or BLM lands in allowing some commercial uses, but in certain cases, uses (e.g., public access) can be substantially more restrictive than for NPS lands.<sup>70</sup>

## **Background and Organization**

The first national wildlife refuge was established at Pelican Island, FL, by executive order of President Theodore Roosevelt in 1903. By September 30, 2007, there were 548 refuges totaling 92.9 million acres in 50 states, the Pacific Territories, Puerto Rico, and the Virgin Islands.<sup>71</sup> Of these lands, there were 1.6 million acres where the FWS has secondary jurisdiction (another federal land agency has primary jurisdiction) and 1.4 million acres administered under agreements, easements, or leases. (See **Figure 7** and **Figure 8**.)<sup>72</sup> The largest increase in acreage by far occurred with the addition of 53 million acres of refuge land under the Alaska National Interest Lands Conservation Act (ANILCA). Alaska now has 76.8 million acres of refuge lands—79.7% of the System. Within 66 of the refuges are 78 designated wilderness areas, ranging from 2 acres at Green Bay National Wildlife Refuge (NWR) in Wisconsin to 8.0 million acres at Arctic NWR in Alaska. (See “Wilderness,” below.)

The NWRS includes two other categories of land besides refuges: (1) the 205 Waterfowl Production Area (WPA) districts, private lands managed in accordance with agreements between the FWS and the farmers and ranchers who own the land; and (2) the 49 Wildlife Coordination Areas (WCAs), owned primarily by FWS, but also by other parties, including some federal agencies; they generally are managed by state agencies under agreements with the FWS. These bring the NWRS to 802 units.<sup>73</sup> These two categories bring the total land in the NWRS to 96.4 million acres (including the nearly 1.6 million acres of secondary FWS jurisdiction and 4.0 million acres under agreements, easements, or leases).

The management of the NWRS is divided into three tiers: the 802 total NWRS units under seven regional offices, and the national office in Washington, DC. Each of the seven regional offices is administered by a regional director who has considerable autonomy in operating the refuges within the region. FWS is headed by a director, a deputy director, and 10 assistant directors who head programs not only for the National Wildlife Refuge System, but also for Wildlife and Sport Fish Restoration; Migratory Birds; Fisheries and Habitat Conservation; Endangered Species; Law Enforcement (titled “Chief”); External Affairs; Budget, Planning, and Human Resources; Business Management and Operations; and Information Resources Technology Management.

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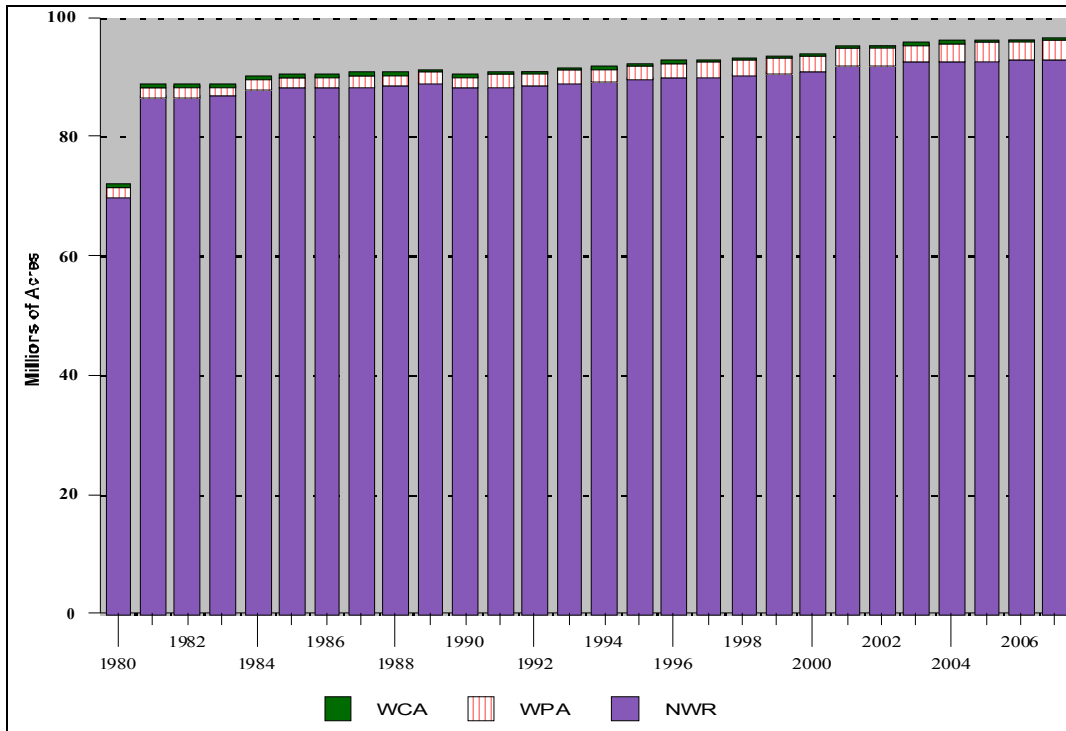
<sup>70</sup> For example, some refuges (especially island refuges for nesting seabirds) may be closed to the public—an unlikely restriction for an NPS area, given the NPS mandate to provide for public enjoyment of park resources.

<sup>71</sup> U.S. Dept. of the Interior, Fish and Wildlife Service, *Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service, as of September 30, 2007*, Table 2, at [http://www.fws.gov/realty/pdf\\_files/2007LandsReport.pdf](http://www.fws.gov/realty/pdf_files/2007LandsReport.pdf).

<sup>72</sup> Because of the relatively small size of many refuges, a national map of the NWRS is not meaningful. However, a map with access to finer detail on refuges in each state is available at <http://www.fws.gov/refuges/>.

<sup>73</sup> The 446 administrative sites and 69 fish hatcheries administered by FWS are not part of the NWRS, and total only 22,750 acres.

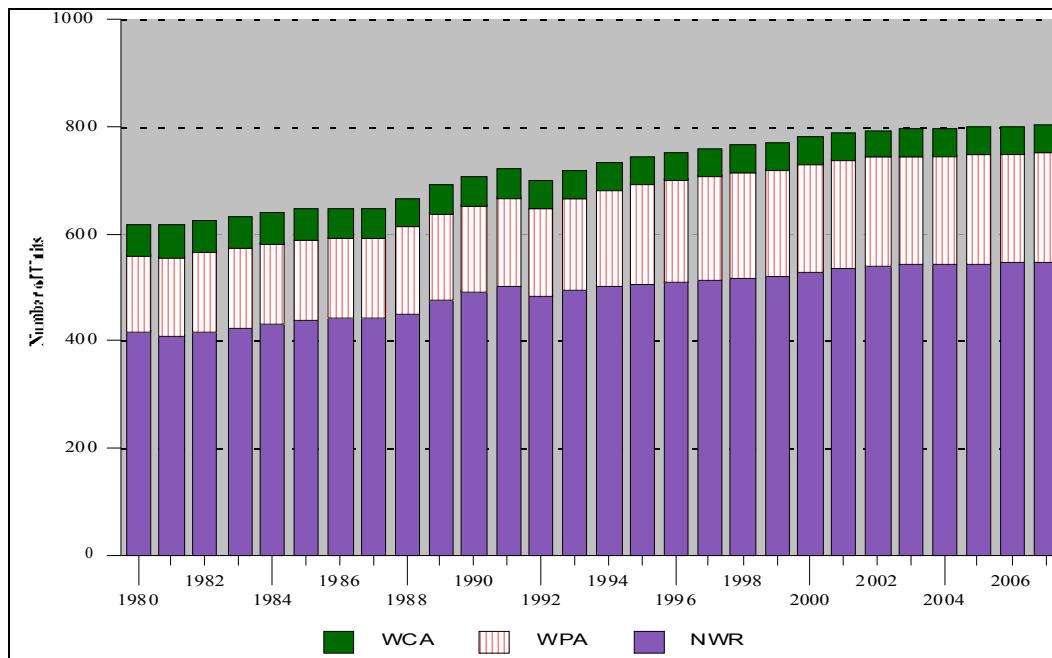
**Figure 7. Acreage in the National Wildlife Refuge System (FY1980-FY2007)**



**Source:** Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service, as of Sept. 30 of each fiscal year.

**Note:** Major acreage was added to the NWRs in December 1980 under ANILCA. ANILCA also consolidated a number of existing Alaskan refuges.

**Figure 8. Number of Units in the National Wildlife Refuge System (FY1980-FY2007)**



**Source:** Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service, as of Sept. 30 of each fiscal year.

**Note:** In FY1992, there was a consolidation of units of the Refuge System.

FWS budget issues have affected refuge management. One budget controversy also may affect recreation, especially on the lesser known refuges. Costs of operation have increased on many refuges, partly due to specific problems such as hurricane damage and more aggressive border enforcement. Reductions in funding for operations in the NWRS, combined with the need to meet fixed costs such as rent, salaries, and utilities, have led to cuts in funding for programs to aid endangered species, reduce infestation by invasive species, protect water supplies, address habitat restoration, and ensure staffing at the less visited refuges. The Northeast Region (roughly extending from Virginia to Maine, with 71 refuges) took the lead in addressing this budget issue by attempting to consolidate management at refuges, and increasing the number of refuges which are not staffed on a full-time or regular basis (termed “de-staffing”). This region also attempted to consolidate some services to spread resources more effectively. Implications for recreation could include reduced trash collection, fewer visitor services, less trail maintenance, and greater reliance on volunteers (if available). Other regions have begun their own plans to address reduced operating budgets.

## **Management**

The National Wildlife Refuge System Administration Act of 1966, as amended, stated the purpose for establishing the System as consolidating the several authorities of the Secretary of the Interior over lands administered for the conservation and protection of fish and wildlife. Conservation of wildlife is the primary emphasis in the three types of areas in the NWRS, but the options for alternative resource use within the areas vary.

The National Wildlife Refuge System Improvement Act of 1997 addressed overarching refuge management controversies facing the FWS. This law clarified that the purpose of the NWRS is the “conservation, management and, where appropriate, restoration of the fish, wildlife and plant resources and their habitats.” Another key provision of this law designated “compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses of the Refuge System.” It also required that priority public uses must “receive enhanced consideration over other general public uses in planning and management within the System.” At the same time, the law continued the statutory policy that activities that are not wildlife-dependent (e.g., grazing, growing hay, etc.) may be permitted, provided they are compatible with wildlife. While there was broad support for the bill among many interest groups, some groups argued that the resulting regulations did not allow for sufficient public access for some forms of recreation, such as off-road vehicles or personal watercraft. In the ensuing decade, controversies over refuge management appear to have been less frequent.

Wildlife refuges provide habitat for various plant and animal species, particularly emphasizing habitat for migratory waterfowl and for endangered species. Individual refuges may consist of single contiguous blocks or disjunct parcels scattered over a larger area. Research on wildlife conservation is carried out by the FWS on refuges (as well as on other areas).<sup>74</sup> Energy and mineral activities are permitted in certain refuges and under certain circumstances; any mineral rights owned by the United States are administered by the BLM. Hunting, fishing, and other recreational uses frequently are permitted, but only to the extent that these activities are compatible with the major purposes for which a particular refuge was established. In refuges set

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<sup>74</sup> Most of the research function was administratively transferred to the U.S. Geological Survey (also in the Department of the Interior) in FY1996.

aside for migratory birds, waterfowl hunting is limited to 40% of the refuge area unless the Secretary determines that hunting in a greater area is beneficial.

WPAs are managed primarily to provide breeding habitat for migratory waterfowl.<sup>75</sup> As of September 30, 2007, these areas totaled 3.3 million acres, of which 700,000 acres were federally owned and 2.6 million acres were managed by the private landowners under leases, easements, or agreements with FWS.<sup>76</sup> These areas are found mainly in the potholes and interior wetlands of the North Central states. In these areas, there is considerably less conflicting resource use, in part because the areas managed under lease are not subject to the federal mining and mineral leasing laws, and because the size of individual tracts is relatively small. However, the leased lands may be less secure as wildlife habitat because they may be converted later to agricultural use by the private owners. The WCAs (250,000 acres) are owned primarily by FWS, but also by other parties, including some federal agencies; they are managed by state wildlife agencies under cooperative agreements with FWS.

There has been a continuing controversy over the propriety of hunting (and, to a lesser extent, fishing) on refuge lands. While various bills have been introduced over the years to eliminate or restrict hunting on refuges, others have been introduced to support it. Through the end of the 110<sup>th</sup> Congress, no bill opposing refuge hunting had been sent to the President.

Over the past several years, the backlog of unmet maintenance needs of the federal land management agencies has also been a focus of the Congress and the Administration. Although there is debate over the amount of FWS money that should be spent on the deferred maintenance backlog versus the acquisition of additional federal lands, there is broad consensus that maintenance of the NWRS was lagging. The funding for deferred maintenance projects in the NWRS increased from \$48.1 million in FY2002 to \$66.5 million in FY2004 and then dropped to \$44.1 million in FY2007. The maintenance backlog is expected to figure in the debate over appropriations in future years. In late 2008, some interest groups suggested that maintenance in the NWRS should be included in an economic stimulus package.

One refuge—the Arctic National Wildlife Refuge—has been the focus of a decades-long controversy regarding proposals for energy development in the biologically and geologically rich northern part of this refuge.<sup>77</sup> While a new Administration and falling oil prices may provide a hiatus in the debate, many proponents of development remain interested in ending current statutory restrictions on development.

## **Land Ownership<sup>78</sup>**

Growth of the NWRS may come about in a number of ways. General authority to expand the NWRS is provided in certain laws, including primarily the Migratory Bird Treaty Act (MBTA) of 1929, but also the Fish and Wildlife Coordination Act, the Fish and Wildlife Act of 1956, and the

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<sup>75</sup> This program is distinct from USDA programs to conserve wetlands.

<sup>76</sup> U.S. Dept. of the Interior, Fish and Wildlife Service, *Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service, as of September 30, 2007*, Table 2, at [http://www.fws.gov/realty/pdf\\_files/2007LandsReport.pdf](http://www.fws.gov/realty/pdf_files/2007LandsReport.pdf).

<sup>77</sup> See CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): New Directions in the 110<sup>th</sup> Congress*, by (name redacted), (name redacted), and (name redacted).

<sup>78</sup> See also CRS Report RL34273, *Federal Land Ownership: Current Acquisition and Disposal Authorities*, by (name redacted) and (name redacted).



Endangered Species Act. These general authorities allow the FWS to add lands to the Refuge System without specific congressional action.

Some units have been created by specific Acts of Congress (e.g., Protection Island NWR, WA; Bayou Sauvage NWR, LA; and John Heinz NWR, PA).<sup>79</sup> Other units have been created by executive order. Also, the Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the Secretary of the Interior to withdraw lands from the public domain for additions to the NWRS, although all withdrawals exceeding 5,000 acres are subject to congressional approval procedures (43 U.S.C. § 1714(c)).<sup>80</sup>

### **Acquisition Authority**

The primary FWS land acquisition authority has been the MBTA. This act authorizes the Secretary to recommend areas “necessary for the conservation of migratory birds”<sup>81</sup> to the Migratory Bird Conservation Commission, after consulting with the relevant governor (or state agency) and appropriate local government officials (16 U.S.C. § 715c). The Secretary may then purchase or rent areas approved by the Commission (§ 715d(1)), and “acquire, by gift or devise, any area or interest therein ...” (§ 715d(2)).<sup>82</sup>

New acquisitions result from transfers from the public domain or lands acquired from other owners. Non-federal lands and interests in lands to create or add to specific NWRS units may be accepted as donations or purchased. Purchases may be made on a willing buyer/willing seller basis or under condemnation authorities. Condemnation authority was last used, under congressional direction contained in P.L. 99-333, for Protection Island NWR in 1986.<sup>83</sup> Purchases, regardless of authority or funding source, are rarely large. In FY2007, 25,000 acres were purchased for \$47.6 million, 4,500 acres were transferred from other federal agencies, and 67,500 acres were added by leases, easements, or agreements.<sup>84</sup> As might be expected, refuges in

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<sup>79</sup> Of the 548 refuges, 34 (6.2%) were created under specific laws naming those particular refuges.

<sup>80</sup> These procedures result in congressional termination of executive actions other than by statute, and thus may be unconstitutional in light of *INS v. Chadha*, 462 U.S. 919 (1983).

<sup>81</sup> While the MBTA definition of “migratory bird” includes, potentially, almost all species of birds, in practice, the focus of acquisition has been on game birds (e.g., certain ducks, geese, etc.). Non-game species tend to benefit secondarily, though areas without game birds are rarely acquired with MBTA funds.

<sup>82</sup> This authority (and its related funding mechanism) is so commonly used that the distribution of refuges is a good approximation of the four major flyways for migratory waterfowl.

<sup>83</sup> Personal communication from FWS Realty Office, Dec. 12, 2008. Not counted are 11 instances of so-called “friendly condemnations,” in which FWS, in cooperation with a willing seller, used the courts to achieve favorable tax treatment, or to settle questions of fair market value, clouded title, or similar problems. Some critics of condemnation authority have suggested that the mere existence of so-called “hostile” condemnation authority has affected some land sales, to the extent that some sellers felt intimidated—that they had little real choice in the decision to sell, even if condemnation authority was not formally used. If such intimidation exists, its extent is unclear, but legislation was introduced in the 105<sup>th</sup> Congress to restrict FWS land acquisitions without specific congressional approval. Ultimately, a provision was added in P.L. 105-277 (the FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act) forbidding the use of “any of the funds appropriated in this Act for the purchase of lands or interests in lands to be used in the establishment of any new unit of the National Wildlife Refuge System unless the purchase is approved in advance by the House and Senate Committees on Appropriations in compliance with the reprogramming procedures contained in S.Rept. 105-56.” This or a similar provision has been incorporated in subsequent appropriations Acts. However, because the Migratory Bird Conservation Fund and the Southern Nevada Public Land Management Act funds are not appropriated in annual appropriations Acts, purchases from those funds are unaffected by such provisions.

<sup>84</sup> The dollars spent were not necessarily spent on those particular 25,000 acres, due to a lag between payments and transfers of title, completion of paperwork, and other factors.

western states tend to be formed from lands reserved from the public domain, while eastern refuges tend to be acquired lands.

The purchase of refuge lands is financed primarily through two funding sources: the Migratory Bird Conservation Fund (MBCF) and the Land and Water Conservation Fund (see “Federal Lands Financing,” above).<sup>85</sup> MBCF acquisitions have emphasized wetlands essential for migratory waterfowl, while LWCF acquisitions have encompassed the gamut of NWRS purposes. MBCF is supported from two sources (amounts in parentheses are FY2007 receipts deposited into the MBCF):

- the sale of hunting and conservation stamps (better known as duck stamps) purchased by hunters and certain visitors to refuges (\$22.5 million);<sup>86</sup> and
- import duties on arms and ammunition (\$21.2 million).

MBCF funds are permanently appropriated to the extent of these receipts and (after paying for engraving, printing, and distribution of the stamps) may be used for the “location, ascertainment, and acquisition of suitable areas for migratory bird refuges ... and administrative costs incurred in the acquisition” of the new acquisitions whose number varies from year to year (16 U.S.C. § 718d(b)). However, the acquisition must be “approved by the Governor of the State or appropriate State agency” (16 U.S.C. § 715k-5). The predictability of MBCF funding makes it assume special importance in the FWS budget. This contrasts with LWCF funding, which has fluctuated significantly from year to year. In FY2007, the MBCF received \$43.7 million from its permanently appropriated sources, and Congress appropriated \$19.9 million from the LWCF for FWS land acquisition.

## **Disposal Authority**

With certain exceptions, NWRS lands can be disposed only by an act of Congress (16 U.S.C. § 668dd(a)(6)). Also, FLPMA prohibits the Secretary from modifying or revoking any withdrawal which added lands to the NWRS from the public domain (43 U.S.C. § 1714(j)). For acquired lands, disposal is allowed only if: (1) the disposal is part of an authorized land exchange (16 U.S.C. §§ 668dd(a)(6) and (b)(3)); or (2) the Secretary determines the lands are no longer needed and the Migratory Bird Conservation Commission approves (§ 668dd(a)(5)). In the latter case, the disposal must recover the acquisition cost or be at the fair market value (whichever is higher).

## **Major Statutes<sup>87</sup>**

Alaska National Interest Lands Conservation Act of 1980: P.L. 96-487; 16 U.S.C. § 3101, et seq.

Endangered Species Act of 1973: P.L. 93-205; 16 U.S.C. §§ 1531-1544.

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<sup>85</sup> See BLM “Land Ownership,” above, for information on a funding source created under the Southern Nevada Public Land Management Act. Funds obtained under this act from federal land sales may be used to acquire environmentally sensitive lands in Nevada, among other purposes. Some of these Nevada acquisitions have become additions to the National Wildlife Refuge System.

<sup>86</sup> For more information on how “duck stamp” money is spent, see <http://www.fws.gov/duckstamps/Conservation/conservation.htm>.

<sup>87</sup> For laws and other directives under which FWS operates, see the agency website at <http://www.fws.gov/laws/Lawsdigest.html>.

Fish and Wildlife Act of 1956: Act of August 8, 1956; 16 U.S.C. §§ 742a, et seq.

Fish and Wildlife Coordination Act of 1934: Act of March 10, 1934; 16 U.S.C. §§ 661-667e.

Migratory Bird Treaty Act of 1918: Act of July 13, 1918; 16 U.S.C. §§ 703-712.

National Wildlife Refuge System Administration Act of 1966: P.L. 90-404; 16 U.S.C. §§ 668dd-668ee.

National Wildlife Refuge System Improvement Act of 1997: P.L. 105-57; 16 U.S.C. §§ 668dd.

San Francisco Bay National Wildlife Refuge: P.L. 92-330; 16 U.S.C. § 668dd note. (A typical statute establishing a refuge.)

## **The National Park System<sup>88</sup>**

The category of federal land perhaps best known to the public is the National Park System. The National Park Service (NPS) currently manages 391 units, including 58 formally entitled national parks (often referred to metaphorically as the “crown jewels” of the System). Other units include national monuments and memorials, battlefields and military parks, historic sites and parks, lakeshores and seashores, recreation areas, reserves, preserves, rivers and trails, and other designations. The System has grown to a total of 84.3 million acres—78.4 million acres of NPS federal land, 1.6 million acres of other government land, and 4.3 million acres of private land—in 49 states, the District of Columbia, and U.S. territories. The enactment of the Alaska National Interest Lands Conservation Act of 1980 roughly doubled the acreage of the Park System because of the large size of the new parks in Alaska. The acreage has been relatively stable in recent years, as new authorizations and land acquisitions have been modest. The NPS has the often contradictory mission of facilitating access and serving visitors while protecting and preserving unimpaired for future generations, the natural, historic, and cultural integrity of the lands and resources it manages. In contrast to many other federal lands systems, the NPS typically has specific management guidance enacted in the authorizing language for each unit.

### **Background**

By the Act of March 1, 1872, Congress established Yellowstone National Park in the then-territories of Idaho, Montana, and Wyoming “as a public park or pleasuring ground for the benefit and enjoyment of the people” (16 U.S.C. § 21). This first national park was placed under the exclusive control of the Secretary of the Interior, who was responsible for developing regulations to “provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition” (16 U.S.C. § 22). Other park functions were to include developing visitor accommodations, building roads and trails, removing trespassers (mostly poachers), and protecting “against wanton destruction of fish and game.”<sup>89</sup>

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<sup>88</sup> This section was prepared by David Whiteman.

<sup>89</sup> For more information on the establishment of Yellowstone National Park, see Aubrey L. Haines, *Yellowstone National Park: Its Exploration and Establishment* (Washington, DC: 1974), at <http://www.nps.gov/history/history/> (continued...)

When Yellowstone National Park was authorized, there was no concept or plan for the development of a system of such parks. The concept now firmly established as the National Park System embracing a diversity of natural and cultural resources nationwide, evolved slowly over the years. The idea of a national park was an American invention of historic proportions, marking the start of a global conservation movement that today accounts for hundreds of national parks (or equivalent conservation preserves) throughout the world. The American National Park System continues to serve as an international model for resource protection and preservation.

At the same time that interest was growing in preserving the scenic wonders of the American West, efforts were underway to protect the sites, structures, and cultural objects associated with early Native American cultures, particularly in the Southwest. In 1906, Congress enacted the Antiquities Act to authorize the President “to declare by public proclamation [as national monuments] historic and prehistoric structures and other objects of historic or scientific interest” (16 U.S.C. § 431). In the years following the establishment of Yellowstone, national parks and monuments were authorized or proclaimed, principally from the public domain lands in the West, and were administered by the Department of the Interior (initially with help from the U.S. Army). However, no single agency provided unified management of the varied federal parklands. Before a management system emerged, 35 national parks and monuments had been created.

On August 25, 1916, President Woodrow Wilson signed the act creating the National Park Service, a new federal agency in the Department of the Interior with the responsibility for protecting the existing national parks and monuments then managed by the department and those yet to be established. This action reflected a developing national concern for preserving the nation’s heritage. This “Organic Act” states that the National Park “Service then established shall promote and regulate the use of Federal areas known as national parks, monuments and reservations ... to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations” (16 U.S.C. § 1). By executive order in 1933, President Franklin D. Roosevelt transferred 63 national monuments and military sites from the FS and the War Department to the National Park Service. This action was a major step in the development of a truly national system of park units. Today, roughly 60% of the park areas administered by the NPS were designated as symbols of the nation’s culture, history and prehistory.<sup>90</sup>

## Organization

The National Park Service manages the 391 units of the National Park System.<sup>91</sup> The Director of the National Park Service, headquartered in Washington, DC, is the chief administrative officer, with an immediate staff of two deputy directors, five associate directors, and a number of policy and program office managers. The NPS Director is nominated by the President, in consultation with the Secretary of the Interior, and confirmed by the Senate. Directly overseeing NPS operations is the Interior Department’s Assistant Secretary for Fish, Wildlife, and Parks. The NPS

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(...continued)

[online\\_books/haines1/index.htm](http://online_books/haines1/index.htm).

<sup>90</sup> For more information, see U.S. Dept. of the Interior, *History of the National Park Service*, at <http://www.nps.gov/history/history/hisnps/NPSHistory.htm>.

<sup>91</sup> Because of the relatively small size of many NPS units, a national map of the Park System is not meaningful. However, a map with access to details on NPS units in each state is available at <http://www.nps.gov/>.

and its more than 20,000 permanent, temporary, and seasonal employees protect, preserve, interpret, and administer the Park System’s diverse natural and historic areas representing the cultural identity of the American people. In addition, the National Park Service Advisory Board, composed of private citizens with requisite experience and expertise, advises on management policies and on potential additions to the System.<sup>92</sup>

The individual park units are arranged in seven regional offices, each headed by a regional director. The NPS had traditionally operated with 10 regional offices but in the 1990s three regional offices were eliminated and a system of “park clusters” was formed. The reorganization, a part of the Clinton Administration’s “reinventing government,” focused on downsizing and streamlining, was primarily designed to shift resources and personnel from central offices to field units. Regional offices and cluster support offices provide certain administrative functions and specialized staff services and expertise which were believed to be impracticable for each park unit. This shared assistance is particularly important to the smaller units. The individual units are overseen by a park superintendent, with staff generally commensurate with the size, public use, and significance of the unit. The park units in Alaska are an exception, with relatively few personnel in comparison to the large size of the holdings. Park superintendents have broad discretionary authority in managing the day to day operations of the varied individual units, and considerable flexibility in interpreting how NPS regulations apply in the specific units.

Of the four federal land management agencies, the NPS manages the most diverse collection of units and generally affords the most protection for lands and resources. The variety of park unit classifications can be confusing to the public as more than 20 different designations are used for park sites or areas, ranging from the traditional national park designation to scenic rivers and trails, memorials, battlefields, historic sites, historic parks, seashores, lakeshores, recreation areas, and monuments. (See **Table 5.**) Some of the Park System nomenclature is descriptive; others are not self-evident. Because of this variety of park unit designations and the sometime public perception of lesser status for units lacking the *national park* designation, Congress sought to establish that all units in the System are to be considered of equal value. The National Park System General Authorities Act of 1970 stated that all NPS units are part of “one national park System preserved and managed for the benefit and inspiration of all people of the United States....” In 1978, Congress amended that law to reassert the System-wide equal standard of protection for all areas administered by the NPS.<sup>93</sup> Nonetheless, some Members of Congress at times and with varying results have sought to “upgrade” park areas in their states to “National Park” status.

**Table 5. NPS Lands by Type of Area**  
(area in acres)

Type of Area	No. of Units	NPS Land	Other Govt. Land	Private Land
International Historic Site	1	28	0	16
National Battlefield Parks	3	9,247	9	5,797
National Battlefield Site	1	1	0	0
National Battlefields	11	12,656	392	1,498

<sup>92</sup> In 2001, the Advisory Board issued a report, *Rethinking the National Parks for the 21<sup>st</sup> Century*, at <http://www.nps.gov/policy/report.htm>, with recommendations on the future of the National Park System.

<sup>93</sup> Redwood National Park Expansion Act, P.L. 95-250; 16 U.S.C. § 1a-1.

<b>Type of Area</b>	<b>No. of Units</b>	<b>NPS Land</b>	<b>Other Govt. Land</b>	<b>Private Land</b>
National Historic Sites	79	23,671	973	13,019
National Historical Parks	42	127,329	28,892	17,484
National Lakeshores	4	146,008	56,528	26,459
National Memorials	28	8,039	212	2,337
National Military Parks	9	37,468	150	4,282
National Monuments	74	1,817,677	50,448	159,740
National Parks	58	49,866,081	547,631	1,680,973
National Preserves	19	22,049,258	215,791	1,892,522
National Recreation Areas	19	3,170,266	349,391	180,621
National Reserves	2	12,236	710	20,794
National Rivers	4	322,669	24,280	79,400
National Scenic Trails	3	112,957	107,385	19,318
National Seashores	10	418,078	167,357	9,579
National Wild & Scenic Rivers	11	75,152	86,446	158,316
Parks (other)	11	34,983	245	1,570
Parkways	4	166,734	419	9,971
<b>NPS Total</b>	<b>393</b>	<b>78,410,536</b>	<b>1,637,258</b>	<b>4,283,695</b>

**Source:** U.S. Dept. of the Interior, National Park Service, Land Resources National Program Center, *Summary of Acreage as of 9/30/2008*, at <http://www.nature.nps.gov/stats/acreagemenu.cfm>.

## Management

### Mandate

As stated above, the basic NPS mission is twofold: (1) to conserve, preserve, protect, and interpret the natural, cultural, and historic resources of the nation for the public and (2) to provide for their enjoyment by the public. To a considerable extent, the NPS contributes to meeting the public demand for certain types of outdoor recreation. Scientific research is another activity encouraged in units of the Park System. Management direction is provided in some general statutes and especially in the statutes that create and govern the individual units.

In general, activities which harvest, extract, or remove the resources from within units of the System are not allowed. Mining, for instance, is generally prohibited, although in a limited number of national parks and monuments some mining is allowed, in accordance with the Mining in the Parks Act of 1976. Also, in authorizing certain additions to the System, Congress has specified that certain natural resource uses, such as oil and gas development or hunting, may—or shall—be permitted in specific units; examples include national preserves (such as Big Cypress and Bering Land Bridge) and national recreation areas (such as Glen Canyon and Delaware Water Gap). Other uses are dealt with in specific enactments, such as the 1911 law dealing with rights-of-way through Park System units.

Striking a balance between appropriate public use of Park System lands for recreation and protecting the integrity of park resources is a continuing challenge for park managers and staff and for the congressional committees providing agency oversight. Motorized recreation in NPS units presents particular challenges, with debates over the economic and environmental impacts of, safety of, and level of access for such types of recreation and the adequacy of existing laws and regulations governing motorized use. Vehicle manufacturers and user groups fear that NPS limits would be economically damaging to communities and industries serving users, unfairly restrict access, and set a precedent for other federal land managers. Others, including environmentalists, fear that failure to adequately manage motorized use will damage resources and diminish the experience of other park users, and increase pressure for additional forms of motorized access. Continuing litigation over differing versions of regulations that would either restrict or allow snowmobile use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller Jr. Memorial Parkway shows no sign of concluding. Efforts to regulate the use of personal watercraft (JetSkis and the like) are continuing.<sup>94</sup>

The magnitude of the potential impact of climate change on the National Park System presents growing challenges for NPS leaders and managers, as it could alter and compromise their ability to sustain the basic NPS mandate of protecting park resources and values. For example, climate change is already causing glaciers to disappear from some park units and coastal boundaries and species ranges to shift. Ultimately, climate change could pose major legal, managerial, and jurisdictional challenges for the agency.

## **Units and Budgets**

Over the years, Congress has expanded the number of new units and the management responsibilities of the NPS. These new obligations, together with sustained high visitation, have challenged NPS operational capacities. While overall NPS appropriations have increased annually in recent years, many argue that they have not kept pace with growing operational and maintenance needs. Some advocacy groups claim that the Park System has long experienced chronic budget shortfalls. By one estimate, the parks operate with two-thirds of needed funding—a budget shortfall of more than \$600 million annually.<sup>95</sup> Increased focus on security and protection for the “icon parks” (e.g., the Statue of Liberty and the Washington Monument) have diverted available funds from park operations and resource protection.

The NPS fiscal situation has contributed to, and is compounded by, a multi-billion dollar backlog of deferred maintenance.<sup>96</sup> President Bush began an initiative in FY2002 to eliminate a then-estimated \$4.9 billion maintenance backlog over five years. However, with better tools to inventory, measure, and prioritize maintenance, the NPS backlog estimate has nearly doubled, with a midpoint estimate of \$9.6 billion (ranging from \$6.12 billion to \$13.11 billion) in 2007.

At times, congressional leaders have packaged large numbers of diverse park, public land, and recreation related bills into omnibus measures to expedite passage, typically in the closing days of

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<sup>94</sup> See CRS Report RL33525, *Recreation on Federal Lands*, by Kori Calvert et al.

<sup>95</sup> See the National Parks Conservation Association website, at [http://www.npca.org/media\\_center/reports/analysis.html](http://www.npca.org/media_center/reports/analysis.html).

<sup>96</sup> See CRS Report RL33484, *National Park Management*, by (name redacted), (name redacted), and (name redacted).

a Congress. Usually the bills included have passed in one chamber or been reported by an authorizing committee.

Efforts to designate special areas, combined with the fiscal concerns, have led Congress to create 40 national heritage areas (NHAs) over the last three decades.<sup>97</sup> These areas are identified to conserve, commemorate, and promote various areas and their resources outside the National Park System (i.e., not federally owned). The NPS assists heritage areas in attaining the designation and supports state and community efforts through seed money, recognition, and technical assistance. Some interests have recommended generic NHA legislation, to standardize and guide the creation and management of these areas; others, however, prefer to retain the variety and flexibility that individual legislative initiatives provide. Proponents contend that NHAs protect valued resources and traditions; promote tourism and community revitalization; and help prevent new and perhaps costly or inappropriate additions to the Park System. Opponents assert that NHA designation and assistance are not appropriate federal activities. Some fear that the heritage program is potentially costly for the government and could limit private property rights, reduce community tax bases, and might be used to extend federal control over nonfederal lands.

### **Commercialization and Privatization**

In addition to its annual appropriations, the NPS has long relied upon support through donations—typically money, lands, and services from a variety of private benefactors (e.g., corporations, foundations, wealthy individuals, and regular citizens) as well as individual park support organizations (“friends groups”) that donate thousands of volunteer hours for various purposes. These contributions have in general been beneficial to the NPS. An ongoing management challenge is to balance the beneficial aspects of this support while avoiding reliance on private largess to carry out the core responsibilities of park operations and facility maintenance; these tasks are traditionally supported by annual appropriations and are a key component of congressional oversight. The NPS has developed extensive policy regulations to guide park managers in dealing with donations. Sometimes donations are conditioned upon some reciprocity that the donor expects in return for the donation; park managers must assess park needs and resist or deny the quid-pro-quo attached to proposed donations when necessary.

Some have argued that the Park Service should more aggressively pursue outside funding support by marketing such things as naming rights to various park features and allowing “tasteful” corporate advertising within park boundaries. Others have criticized “commercialization” and “privatization” influences in the parks and have raised concerns that park managers’ pursuit of various entrepreneurial efforts to finance park needs will be to the detriment of management’s core function of resource protection. One commonly cited example of inappropriate use of NPS lands was the broadcast of an NPS-sanctioned, week-long, corporate-sponsored festival on the National Mall in September, 2003, that featured large advertising banners using the Mall’s iconic monuments as a backdrop; Congress subsequently included a provision in the FY2004 Interior appropriations act (§145, P.L. 108-108) limiting the use of commercial advertisement on the National Mall.

In August 2006, President Bush proposed a three-part National Park Centennial Initiative for park improvement projects to ready the NPS for its 100<sup>th</sup> anniversary in 2016. The Initiative sought to

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<sup>97</sup> For more information on NHAs, see CRS Report RL33462, *Heritage Areas: Background, Proposals, and Current Issues*, by (name redacted) and (name redacted).



add up to \$3 billion in new funds over a ten-year period through joint public/private efforts. Part of the Initiative was a Centennial Challenge that would rely on corporations, foundations, and other private donations. This raised some concerns about potential commercialization and privatization influences upon the parks. Congress did not authorize the challenge component through legislation, but did provide \$24.6 million in seed money in the FY2008 Interior appropriation bill (in P.L. 110-161) and directing that the funds be used for signature projects controlled by the NPS. Some interests have suggested that economic stimulus legislation include an NPS Centennial Challenge provision.

Another commercialization and privatization controversy developed in 2006 when the NPS issued a court-ordered environmental impact statement (EIS) on *bioprospecting* (assessing biological resources for their potential commercial value).<sup>98</sup> The agency's preferred alternative would allow private companies to research genetic resources of plants, animals and micro-organisms in Park System areas set aside for stewardship in the public trust. Some environmental groups campaigned against it, but it became NPS policy to allow commercial bioprospecting under benefit-sharing agreements. Scientists must first apply for research permits to be allowed to collect limited samples, but harvesting of park resources is prohibited. Research specimen collected from parks cannot be sold, but knowledge gained from research on those specimens can be used commercially by private interests.

## **Land Ownership<sup>99</sup>**

### **Designation**

Most units of the National Park System have been created by Acts of Congress. Congress enacted the National Parks Omnibus Management Act of 1998 (P.L. 105-391) in part (in §303) to amend existing law pertaining to the creation of new units to standardize procedures, improve information about potential additions, prioritize areas, focus attention on outstanding areas, and ensure congressional support for studies of possible additions. The Secretary of the Interior is to investigate, study, and monitor nationally significant areas with potential for inclusion in the System (16 U.S.C. §1a-5). The Secretary is to submit annually to Congress a list of areas recommended for study for potential inclusion in the National Park System. The Secretary also is required to submit to Congress each year a list of previously studied areas that contain primarily historical resources, and a similar list of areas with natural resources, with priority ranking of areas for possible inclusion in the System. In practice, NPS performs these functions assigned to the Secretary.

In assessing whether to recommend a particular area, the NPS is required to consider: whether an area is nationally significant, and would be a suitable and feasible addition to the Park System; whether an area represents or includes themes, sites, or resources “not adequately represented” in the System; and requests for studies in the form of public petitions and congressional resolutions. A study requires authorization by Congress, although the NPS may conduct certain preliminary

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<sup>98</sup> See U.S. Dept. of the Interior, National Park Service, “Benefit-Sharing in the National Parks,” at <http://www.nature.nps.gov/benefitssharing/>.

<sup>99</sup> See also CRS Report RL34273, *Federal Land Ownership: Current Acquisition and Disposal Authorities*, by (name redacted) and (name redacted).

assessment activities. In preparing studies, NPS must consider certain factors identified in law. After funds are made available, NPS usually must complete a study within three fiscal years.

Under the Antiquities Act of 1906, the President is authorized to proclaim national monuments on federal land. To date, about 120 monuments have been created by presidential proclamations. Many areas initially designated as national monuments were later converted into national parks by Acts of Congress. Before 1940, Presidents used this authority frequently (proclaiming 87 national monuments), but in 1978 President Carter set aside more land as national monuments (56 million acres in Alaska) than any other President.<sup>100</sup> President Clinton used his authority under the Antiquities Act 22 times to proclaim 19 new monuments and enlarge 3 others.<sup>101</sup> Many monuments have been controversial when proclaimed, including the Carter and Clinton monuments, because of restrictions on current and potential uses, but have often become accepted designations later.<sup>102</sup>

### **Acquisition Authority**

In addition to establishing a unit of the National Park System, Acts of Congress set the boundaries of the units and authorize the NPS to acquire nonfederal lands within those boundaries. The major funding source for such land acquisition has been the Land and Water Conservation Fund (LWCF; see “Federal Lands Financing,” above). Provisions in P.L. 101-628 (the Arizona Desert Wilderness Act of 1990, §§ 1213-1217) requires the Secretary to include, in a report to Congress at least every three years, a “comprehensive listing of all authorized but unacquired lands within the exterior boundaries of each unit” (16 U.S.C. § 1a-11(a)) and a “priority listing of all such unacquired parcels” (16 U.S.C. § 1a-11(b)). Further, the general management plan for each unit is to include “indications of potential modifications to the external boundaries of the unit, and the reasons therefor” (16 U.S.C. § 1a-7). The Secretary is to identify criteria to evaluate proposed boundary changes (16 U.S.C. § 1a-12). Further, the Secretary is authorized to make minor boundary adjustments for “proper preservation, protection, interpretation, or management” and to acquire the nonfederal lands within the adjusted boundary (16 U.S.C. § 460l-9(c)).

### **Disposal Authority**

Units (and lands) of the National Park System established by Acts of Congress can be disposed of only by Acts of Congress. Non-NPS lands encompassed by minor boundary adjustments can be acquired through land exchanges, but, unlike other federal lands, the Secretary may not convey property administered as part of the National Park System to acquire lands by exchange (16 U.S.C. § 460l-9(c)). Finally, the Federal Land Policy and Management Act (FLPMA) prohibits the Secretary from modifying or revoking any presidential withdrawal creating a national monument (43 U.S.C. § 1714(j)).<sup>103</sup> Thus, with minor exceptions, National Park System lands can be changed from that status or disposed of only by an act of Congress.

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<sup>100</sup> Congress rescinded these proclamations and enacted ANILCA to reestablish most of the lands as national monuments, national parks, national preserves, or FWS wildlife refuges.

<sup>101</sup> Other federal agencies manage some national monuments, with the BLM managing many of the monuments created by President Clinton.

<sup>102</sup> See, for example, the proclamation of the Jackson Hole National Monument on March 15, 1943, and its subsequent (September 14, 1950) addition to Grand Teton National Park and the National Elk Refuge administered by the FWS.

<sup>103</sup> While Presidents may modify monument boundaries, it is not clear whether a President can revoke a national (continued...)

## Major Statutes<sup>104</sup>

Mining in National Parks Act: P.L. 94-429; 16 U.S.C. §§ 1901-1912.

National Park Service General Authorities Act of 1970: P.L. 91-383; 16 U.S.C. § 1a-1, § 1c.

National Park Service Organic Act of 1916: Act of Aug. 25, 1916; 16 U.S.C. §§ 1-4.

National Parks Omnibus Management Act of 1998: P.L. 105-391; 16 U.S.C. §§ 5901, et seq.

Omnibus Parks and Public Lands Management Act of 1996: P.L. 104-333.

Preservation of American Antiquities: Act of June 8, 1906; 16 U.S.C. §§ 431-433.

Yellowstone National Park Act: R.S. 2474, derived from Act of March 1, 1872; 16 U.S.C. §§ 21, et seq.

## Special Systems on Federal Lands

There are currently three special management systems that include lands from more than one federal land management agency: the National Wilderness Preservation System, the National Wild and Scenic Rivers System, and the National Trails System. These systems were established by Congress to protect special features or characteristics on lands managed by the various agencies. Rather than establish new agencies for these systems, Congress directed the existing agencies to administer the designated lands within parameters set in statute.

## The National Wilderness Preservation System<sup>105</sup>

The Wilderness Act defines wilderness as “undeveloped federal land ... without permanent improvements.” Further, wilderness generally consists of *federal* land that is primarily affected by the forces of nature, relatively untouched by human activity, and primarily valued for solitude and primitive recreation. Lands eligible for inclusion in the System are areas that generally contain more than 5,000 acres or that can be managed to maintain their pristine character.<sup>106</sup>

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(...continued)

monument. See CRS Report RS20647, *Authority of a President to Modify or Eliminate a National Monument*, by (name redacted).

<sup>104</sup> In addition to the general laws listed here, there are hundreds of laws establishing or modifying specific units of the National Park System. For information on NPS laws, regulations, and policies, see <http://home.nps.gov/applications/npspolicy/index.cfm>.

<sup>105</sup> This section was prepared by (name redacted).

<sup>106</sup> For more information on wilderness, see CRS Report RL31447, *Wilderness: Overview and Statistics*, by (name redacted).

## Background

The National Wilderness Preservation System was established in 1964 by the Wilderness Act. It was based on an FS system established administratively in 1924, but the Wilderness Act reserves to Congress the authority to include areas in the System. The act designated 9.1 million acres of national forest lands as wilderness, and required the FS, NPS, and FWS to review the wilderness potential of lands under their jurisdiction. These reviews were completed within the required 10 years, with wilderness recommendations presented to Congress. The FS also chose to expand its review to all NFS roadless areas (the first and second Roadless Area Review and Evaluation, RARE and RARE II), and presented wilderness recommendations in 1979. A comparable review of BLM lands was required by the Federal Land Policy and Management Act of 1976 (FLPMA), and the BLM finalized wilderness recommendations in 1991.

## Organization

The National Wilderness Preservation System contains more than 107 million acres in 44 states, as shown in **Table 6**. This amounts to nearly one-sixth (16%) of all federal land. More than half of all wilderness acres are in Alaska (57.6 million, 54%); this accounts for nearly a quarter of the federal land in the state. Another 45.4 million acres of wilderness (42%) are in the 11 western states. In total, this wilderness acreage represents 13% of the federal land in those states, ranging from 3% in Utah to 34% in Washington. The remaining 4.6 million acres (4%) are in the other states (the Atlantic Coast through the Great Plains, plus Hawaii). This is 10% of the federal land in other states, ranging from 0% in six states to 50% in Florida.

No one agency manages the Wilderness System. Rather, all four agencies currently manage wilderness areas. (See **Table 6**.) The FS manages 35.5 million acres of designated wilderness, comprising 18% of all NFS lands. Nearly 5.8 million acres of NFS wilderness land (17%) are in Alaska, and another 27.7 million acres (80%) are in the 11 western states. The FS also manages 2.1 million acres of wilderness in the other states (6%), and 26 (of those other 38) states have FS wilderness areas.

More than half of the NPS lands are designated wilderness (43.6 million acres, 56%). More than three-quarters of all NPS wilderness land is in Alaska (33 million acres, 76%); almost two-thirds of the NPS land in Alaska is designated wilderness. The NPS also has significant NPS wilderness areas in California (6.0 million acres, 79% of NPS lands in the state), Washington (1.7 million acres, 95% of NPS lands in the state), and Florida (1.3 million acres, 53% of NPS lands in the state).

The FWS manages 20.7 million acres of wilderness, 23% of FWS lands. Nearly 19 million acres of FWS wilderness areas (90%) are in Alaska, nearly a quarter of FWS land in the state. The FWS also has significant wilderness in Arizona—1.3 million acres, 80% of FWS land in the state. Overall, about half of the states have wilderness areas within the purview of the FWS.

The BLM currently manages 7.7 million acres of wilderness, a small fraction (3%) of all BLM lands. Nearly half of BLM wilderness (3.7 million acres) is in the California desert. The BLM also has significant wilderness in Nevada (2.1 million acres) and Arizona (1.4 million acres). The BLM also manages relatively modest amounts of wilderness in several other western states.

## Designation

The Wilderness Act reserves to Congress the authority to designate wilderness areas as part of the National Wilderness Preservation System. Congress has designated many particular wilderness study areas, in addition to the broader agency reviews required under the Wilderness Act and FLPMA. How long study areas must be administered to preserve their wilderness character depends on the language of the law requiring the study; some areas are available for other uses when the agency recommends against designation, but others must be protected until Congress releases them.

**Table 6. Federally Designated Wilderness Acreage, by State and Agency, as of Dec. 31, 2008**

State	Total Acreage	Forest Service	National Park Service	Fish and Wildlife Service	Bureau of Land Management
Alabama	41,367	41,367	0	0	0
Alaska	57,526,125	5,753,899	33,079,611	18,692,615	0
Arizona	4,528,973	1,345,008	444,055	1,343,444	1,396,466
Arkansas	153,655	116,578	34,933	2,144	0
California	14,308,563	4,642,546	5,997,045	9,172	3,659,800
Colorado	3,349,980	3,147,430	60,466	2,560	139,524
Florida	1,422,247	74,495	1,296,500	51,252	0
Georgia	485,484	114,537	8,840	362,107	0
Hawaii	155,509	0	155,509	0	0
Idaho	4,005,834	3,961,789	43,243	0	802
Illinois	32,113	28,063	0	4,050	0
Indiana	12,463	12,463	0	0	0
Kentucky	18,132	18,132	0	0	0
Louisiana	17,025	8,679	0	8,346	0
Maine	18,625	11,233	0	7,392	0
Massachusetts	3,244	0	0	3,244	0
Michigan	246,856	89,529	132,018	25,309	0
Minnesota	814,033	807,853	0	6,180	0
Mississippi	10,126	6,046	4,080	0	0
Missouri	71,849	64,119	0	7,730	0
Montana	3,443,038	3,372,503	0	64,535	6,000
Nebraska	12,429	7,794	0	4,635	0
Nevada	3,453,708	1,087,624	309,539	0	2,056,545
New Hampshire	138,418	138,418	0	0	0
New Jersey	10,341	0	0	10,341	0
New Mexico	1,634,377	1,387,498	56,392	39,908	150,579

State	Total Acreage	Forest Service	National Park Service	Fish and Wildlife Service	Bureau of Land Management
New York	1,363	0	1,363	0	0
North Carolina	111,419	102,634	0	8,785	0
North Dakota	39,652	0	29,920	9,732	0
Ohio	77	0	0	77	0
Oklahoma	23,113	14,543	0	8,570	0
Oregon	2,281,954	2,094,291	0	940	186,723
Pennsylvania	9,002	9,002	0	0	0
South Carolina	60,681	16,671	15,010	29,000	0
South Dakota	77,570	13,426	64,144	0	0
Tennessee	66,349	66,349	0	0	0
Texas	85,333	38,483	46,850	0	0
Utah	902,014	772,894	0	0	129,120
Vermont	100,870	100,870	0	0	0
Virginia	177,214	97,635	79,579	0	0
Washington	4,434,004	2,686,296	1,739,763	805	7,140
West Virginia	81,538	81,538	0	0	0
Wisconsin	79,943	46,414	33,500	29	0
Wyoming	3,111,232	3,111,232	0	0	0
Territories	10,000	10,000	0	0	0
<b>Total</b>	<b>107,567,842</b>	<b>35,499,881</b>	<b>43,632,360</b>	<b>20,702,902</b>	<b>7,732,699</b>

**Sources:** The sources for this table were generally the same as for **Table 2**, except NPS data are from their website at <http://wilderness.nps.gov/maplocator.cfm>. Data in the table are updated by CRS to reflect laws enacted after the publication dates.

Congress began expanding the System in 1968, four years after it was established. The most significant expansion was included in the Alaska National Interest Lands Conservation Act of 1980, which established 35 new wilderness areas of more than 56 million acres in Alaska. This action more than tripled the System at that time.

For the decade following FS wilderness recommendations in 1979, Congress generally addressed possible wilderness designations for all FS lands within a state. Many statewide FS wilderness bills were introduced, but their enactment was held up in the early 1980s until a compromise over *release language*<sup>107</sup> broke the legislative stalemate. This compromise—which allowed but did not compel the FS to maintain wilderness attributes of released lands—led the 96<sup>th</sup> Congress to enact 21 wilderness laws designating 8.6 million acres of predominately NFS wilderness in 21 states.

<sup>107</sup> Release language provides congressional direction on the timing and extent of future wilderness considerations (i.e., when the land would be reviewed for possible wilderness), and on the interim management of roadless areas, pending any future wilderness reviews. See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by (name redacted) and (name redacted).

The 103<sup>rd</sup> Congress (1993-1994) also substantially expanded the System, with NFS wilderness areas in Colorado and BLM and NPS wilderness areas in the California Desert.

Congress continues to consider expanding the Wilderness System. More than 29 million acres, mostly NPS lands in Alaska, have been recommended by the agencies to Congress for inclusion in the System. Numerous areas continue to be reviewed for their wilderness potential by the federal land management agencies.

## Management

Wilderness areas generally are managed to protect and preserve their natural conditions. Permanent improvements, such as buildings and roads, and activities which significantly alter existing natural conditions, such as timber harvesting, generally are prohibited. Also, motorized and mechanical (e.g., bicycle) access to wilderness areas generally is prohibited.

Wilderness designations continue to be controversial. Restrictions on the use and development of designated wilderness areas often conflict with the desires of some groups, while providing the values sought by others. In an attempt to find a balance between development and protection, Congress has enacted general standards and prohibitions for wilderness protection (e.g., no permanent improvements and no motorized access), and general and specific exemptions to those standards and prohibitions (e.g., *continued* motorboat use where such use was occurring prior to the designation).<sup>108</sup> For example, the Wilderness Act allowed mineral exploration and leasing for 20 years (through December 31, 1983), and directed that valid existing mineral rights be permitted to be developed under “reasonable regulations” to attempt to preserve the wilderness characteristics of the area. Exceptions to the management standards and prohibitions often reflect agreements for specific areas.

Possible protection for the remaining FS and BLM roadless areas continues to draw attention.<sup>109</sup> One controversy has focused on BLM lands in Utah, but has national relevance. Central to the controversy is whether the BLM may designate *wilderness study areas* (WSAs)—areas that are statutorily entitled to automatic and continuing protections, know as the *non-impairment* standard—other than the original WSAs identified under § 603 of FLPMA. In 1996, President Clinton’s Interior Secretary Bruce Babbitt used § 201 of FLPMA to inventory lands and identified an additional 2.6 million acres in Utah as having wilderness qualities. Although the stated purpose of the inventory was only to ascertain which lands had wilderness characteristics, Utah filed suit alleging various flaws in this process, and alleging that the inventory was illegal, even under § 201. After various court rulings, Bush’s Interior Secretary Gale Norton settled the case, and in 2003, the agency issued new wilderness guidance officially (Instruction Memoranda No. 2003-174 and 2003-175) prohibiting administrative creation of WSAs under § 603, or any other authority, and prohibiting application of the non-impairment standard to non-WSA lands.

The management of the remaining FS roadless areas has also been controversial.<sup>110</sup> FS roadless areas nationwide were administratively protected from most timber cutting and most roads under

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<sup>108</sup> See CRS Report RL33827, *Wilderness Laws: Permitted and Prohibited Uses*, by (name redacted).

<sup>109</sup> See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by (name redacted) and (name redacted).

<sup>110</sup> See CRS Report RL30647, *National Forest System Roadless Area Initiatives*, by (name redacted) and (name redacted).

a Clinton Administration rule in 2001.<sup>111</sup> That rule was subsequently enjoined, and replaced by a Bush Administration rule providing for state governors to petition for a special rule governing the management of roadless areas in their particular state.<sup>112</sup> This rule was also successfully challenged in court. The conflicting court rulings on the FS roadless area rules have led to uncertainty in managing these areas.<sup>113</sup>

## Major Statutes

Alaska National Interest Lands Conservation Act of 1980: P.L. 96-487.

California Desert Protection Act of 1994: P.L. 103-433.

The Wilderness Act: P.L. 88-577; 16 U.S.C. §§ 1131-1136.

## The National Wild and Scenic Rivers System<sup>114</sup>

### Background

The National Wild and Scenic Rivers System was established in 1968 by the Wild and Scenic Rivers Act. The act established a policy of preserving designated free-flowing rivers for the benefit and enjoyment of present and future generations, to complement the then-current national policy of constructing dams and other structures (such as flood control works) along many rivers. Three classes of wild and scenic rivers were established under the act, reflecting the characteristics of the rivers at the time of designation, and affecting the type and amount of development that may be allowed thereafter. The classes of rivers are:

- **Wild rivers**—free from impoundments (dams, diversions, etc.) and generally inaccessible except by trail, where the watersheds (area surrounding the rivers and tributaries) are primitive and the shorelines are essentially undeveloped;
- **Scenic rivers**—free from impoundments in generally undeveloped areas but accessible in places by roads; and
- **Recreational rivers**—readily accessible by road, with some shoreline development, and possibly subject to some impoundment or diversion in the past.

Rivers may come into the System either by congressional designation or state nomination to the Secretary of the Interior. Congress initially designated 789 miles in eight rivers as part of the National Wild and Scenic Rivers System. Congress began expanding the System in 1972, and made substantial additions in 1976 and in 1978 (413 miles in three rivers, and 688 miles in eight rivers, respectively). The mileage of the Wild and Scenic Rivers System was more than doubled by designation of rivers in Alaska in ANILCA in 1980. In January 1981, Interior Secretary Cecil

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<sup>111</sup> 66 *Fed. Reg.* 3244 (Jan. 12, 2001).

<sup>112</sup> 70 *Fed. Reg.* 25654 (May 13, 2005).

<sup>113</sup> For more information, see CRS Report RL33792, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues for the 110<sup>th</sup> Congress*, by (name redacted) et al.

<sup>114</sup> This section was prepared by (name redacted).



Andrus approved five rivers designated by the State of California, increasing the System mileage by another 20% (1,235 miles). The first additions under the Reagan Administration were enacted into law in 1984, with the addition of five rivers including more than 300 miles. The next large addition came in 1988, with the designation of more than 40 river segments in Oregon, adding 1,400 miles. In 1992, 14 Michigan river segments totaling 535 miles were added. Recent Congresses have added new designations. The System now includes 166 river units with 11,944.2 miles in 38 states and the Commonwealth of Puerto Rico. See **Table 7**.

**Table 7. Mileage of Wild, Scenic, and Recreational Rivers,  
by State and Territory, 2008**

State	Wild	Scenic	Recreational	Total
Alabama	36.4	25.0	0.0	61.4
Alaska	2,955.0	227.0	28.0	3,210.0
Arizona	22.2	18.3	0.0	40.5
Arkansas	21.5	147.7	40.8	210.0
California	706.1	199.1	988.4	1,893.6
Colorado	30.0	0.0	46.0	76.0
Connecticut	0.0	25.3	14.0	39.3
Delaware <sup>a</sup>	0.0	8.9	80.8	89.7
Florida	32.7	7.9	8.6	49.2
Georgia <sup>a</sup>	38.6	2.0	11.0	51.6
Idaho <sup>a</sup>	320.9	36.0	216.7	573.6
Illinois	0.0	17.1	0.0	17.1
Kentucky	9.1	0.0	10.3	19.4
Louisiana	0.0	19.0	0.0	19.0
Maine	92.5	0.0	0.0	92.5
Massachusetts	2.6	57.8	46.7	107.1
Michigan	79.0	277.9	267.9	624.8
Minnesota <sup>a</sup>	0.0	193.0	59.0	252.0
Mississippi	0.0	21.0	0.0	21.0
Missouri	0.0	44.4	0.0	44.4
Montana <sup>a</sup>	161.9	75.5	130.6	368.0
Nebraska <sup>a</sup>	0.0	76.0	126.0	202.0
New Hampshire	0.0	13.7	24.3	38.0
New Jersey <sup>a</sup>	0.0	98.0	125.6	223.6
New Mexico	90.5	21.9	12.0	124.4
New York <sup>a</sup>	0.0	23.1	50.3	73.4
North Carolina <sup>a</sup>	7.6	93.5	41.0	142.1
Ohio	0.0	136.9	76.0	212.9
Oregon <sup>a</sup>	610.3	336.3	807.7	1,754.3

State	Wild	Scenic	Recreational	Total
Pennsylvania <sup>a</sup>	0.0	115.7	298.6	414.3
South Carolina <sup>a</sup>	38.6	2.0	11.0	51.6
South Dakota <sup>a</sup>	0.0	0.0	98.0	98.0
Tennessee	43.3	2.0	0.0	45.3
Texas	95.2	96.0	0.0	191.2
Washington	6.7	122.3	68.5	197.5
West Virginia	0.0	10.0	0.0	10.0
Wisconsin <sup>a</sup>	12.0	205.0	59.0	276.0
Wyoming	20.5	0.0	0.0	20.5
Puerto Rico	2.1	4.9	1.9	8.9
<b>U.S. Total<sup>b</sup></b>	<b>5,435.3</b>	<b>2,760.2</b>	<b>3,748.7</b>	<b>11,944.2</b>

**Source:** U.S. Dept. of the Interior, National Park Service, *River Mileage Classifications for Components of the National Wild and Scenic Rivers* (Washington, DC: June 2008), available at <http://www.nps.gov/rivers/wildriverstable.html>. Updated through personal communication with Dan Haas, FWS, on Dec. 8, 2008; Robin Maercklein, NPS, on Dec. 8, 2008; and Chuck Barszcz, NPS, on Dec. 5, 2008.

- a. This state shares mileage with some bordering states, where designated river segments are also state boundaries. Figures for each state reflect the total shared mileage, resulting in duplicate counting.
- b. Figure totals represent the actual totals of classified mileage in the United States and delete the duplicate counting of mileage of rivers running between state borders. Because the figures for individual states reflect the shared mileage, the sum of each column exceeds the indicated column total.

## Organization and Management

Land areas along rivers designated by Congress generally are managed by one of the four federal land management agencies, where federal land is dominant. However, land use restrictions and zoning decisions affecting private land in wild and scenic corridors generally are made by local jurisdictions (e.g., the relevant county, township, city, etc.) where appropriate. The boundaries of the areas along wild and scenic rivers are identified by either the Interior or Agriculture Secretary, depending on land ownership within the corridor. The area included may not exceed an average of 320 acres per mile of river designated (640 acres per mile in Alaska), an average quarter-mile wide corridor of land on each side of the river.

Where wild and scenic river corridor boundaries include state, county, or other public land, or private land, federal agencies have limited authority to purchase, condemn, exchange, or accept donations of state and private lands within the corridor boundaries. Additionally, federal agencies are directed to cooperate with state and local governments in developing corridor management plans.

In response to controversies associated with management of lands within wild and scenic river corridors, several recent designations have included language calling for citizen advisory boards or other mechanisms to ensure local participation in developing management plans. Even without such direction, management plans for river corridors involving predominantly private lands usually are developed with input from local jurisdictions, prior to designation.

Management of lands within wild and scenic corridors generally is less restricted than in some protected areas, such as wilderness, although management varies with the class of the designated river and the values for which it was included in the System. Administration is intended to protect and enhance the values which led to the designation, but Congress also directed that other land uses not be limited unless they “substantially interfere with public use and enjoyment of these values” (16 U.S.C. § 1281(a)). Primary emphasis for management is directed toward protecting aesthetic, scenic, historic, archaeologic, and scientific features of the area. Road construction, hunting and fishing, and mining and mineral leasing may be permitted, as long as the activities are consistent with the values of the area being protected and with other state and federal laws.

## **Designation**

Rivers may be added to the System either by an act of Congress, usually after a study by a federal agency, or by state nomination with the approval of the Secretary of the Interior. Congress has identified numerous rivers as potential additions to the System. The Secretaries of the Interior and Agriculture are required to report to the President on the suitability of these rivers for wild and scenic designation, who in turn submits recommendations to Congress.

State-nominated rivers may be added to the National System only if the river is designated for protection under state law, is approved by the Secretary of the Interior, and is permanently administered by a state agency (16 U.S.C. § 1273(a)). Management of these state-nominated rivers may be more complicated because of the diversity of land ownership in these areas. Fewer than 10% of the federal wild and scenic river designations have been made in this manner.

Designation and management of lands within river corridors have been controversial in some cases, with debates over the effect of designation on private lands within the river corridors, the impact of activities within a corridor on the flow or character of the designated river segment, and the extent of local input in developing management plans. Initially, the river designations involved federal land; however, over the years, more and more segments have been designated that include private lands within the river corridors. The potential use of condemnation authority has been particularly controversial. Congress has addressed these issues in part by encouraging development of management plans during river study phase, prior to designation, and by avoiding condemnation. According to the NPS, condemnation has “almost ceased to be used [since] the early 1980s.”<sup>115</sup> Another issue that arises from time to time is the nature of state or federal projects prohibited within a corridor, such as construction of major highway crossings, bridges, or other activities that might affect the flow or character of the designated river segment.

## **Major Statutes**

Wild and Scenic Rivers Act: P.L. 90-542; 16 U.S.C. §§ 1271, et seq.

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<sup>115</sup> U.S. Dept. of the Interior, National Park Service, *Wild and Scenic Rivers and the Use of Eminent Domain*, at <http://www.rivers.gov/publications/eminant-domain.pdf>. Condemnation and subsequent acquisition of land by the federal government has been used along four rivers since 1968, resulting in the acquisition of 1,413 acres.

Condemnation of land for easements has occurred on eight rivers amounting to 6,340 acres. The FWS is the only agency that has never used condemnation to acquire land or an easement for a wild and scenic river corridor.

## National Trails System<sup>116</sup>

The National Trails System (NTS) was created in 1968 by the National Trails System Act. This act established the Appalachian and Pacific Crest National Scenic Trails, and authorized a national system of trails to provide additional outdoor recreational opportunities and to promote the preservation of access to the outdoor areas and historic resources of the nation. The System includes four types of national trails:

- **National Scenic Trails** provide outdoor recreation and the conservation and enjoyment of significant scenic, historic, natural, or cultural qualities;
- **National Historic Trails** follow travel routes of national historic significance;
- **National Recreation Trails** are in, or reasonably accessible to, urban areas on federal, state, or private lands; and
- **Connecting or Side Trails** provide access to or among the other classes of trails.

### Background

During the early history of the United States, trails served as routes for commerce and migration. Since the early 20<sup>th</sup> century, trails have been constructed to provide access to scenic terrain. In 1921, the concept of the first interstate recreational trail, now known as the Appalachian National Scenic Trail, was introduced. In 1945, legislation to establish a “national system of foot trails” as an amendment to a highway funding bill, was considered but not reported.<sup>117</sup>

As population expanded in the 1950s, the nation sought better opportunities to enjoy the outdoors. In 1958, Congress established the Outdoor Recreation Resources Review Commission (ORRRC) to make a nationwide study of outdoor national recreation needs.<sup>118</sup> A 1960 survey conducted for the ORRRC indicated that 90% of all Americans participated in some form of outdoor recreation and that walking for pleasure ranked second among all recreation activities.<sup>119</sup> On February 8, 1965, in his message to Congress on “Natural Beauty,” President Lyndon B. Johnson called for the nation “to copy the great Appalachian Trail in all parts of our country, and make full use of rights-of-way and other public paths.”<sup>120</sup> Just three years later, Congress heeded the message by enacting the National Trail System Act.

The National Trails System began in 1968 with only two scenic trails. The Appalachian National Scenic Trail stretches 2,160 miles from Mount Katahdin, ME, to Springer Mountain, GA. The Pacific Crest National Scenic Trail covers 2,665 miles from Canada to Mexico along the mountains of Washington, Oregon, and California. The System was expanded a decade later when the National Parks and Recreation Act of 1978 designated four historic trails with more than 9,000 miles, and another national scenic trail, along the Continental Divide, with 3,100 miles.

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<sup>116</sup> This section was prepared by (name redacted).

<sup>117</sup> Donald D. Jackson, “The Long Way ‘Round,” *Wilderness*, v. 51, no. 181 (summer, 1998): 19-20.

<sup>118</sup> Outdoor Recreation Resources Review Commission, *Outdoor Recreation for America* (Washington, DC: Jan. 1962), 34 pp.

<sup>119</sup> ORRRC Report, p. 1.

<sup>120</sup> *Congressional Record*, vol. 111 (Feb. 8, 1965): 2087.

Forty years later, the federal portion of the System consists of 26 national trails (eight scenic trails and 18 historic trails) covering 60,000 miles, over 1,000 recreation trails, and two connecting and side trails, in every state, Washington, DC, and Puerto Rico. In addition, the act has authorized more than 1,100 rails-to-trails conversions (16 U.S.C. § 1247). (See **Figure 9**.)

## **Organization and Management**

Each of the 26 national trails is administered by either the Secretary of the Interior or the Secretary of Agriculture. The NPS administers 19 of the 26 trails, the FS administers 4 trails, the BLM administers 1 trail, and the NPS and BLM jointly administer 2 historic trails. The Secretaries are to administer the federal lands and to work cooperatively with agencies managing lands not under their jurisdiction. Management responsibilities vary depending on the type of trail.

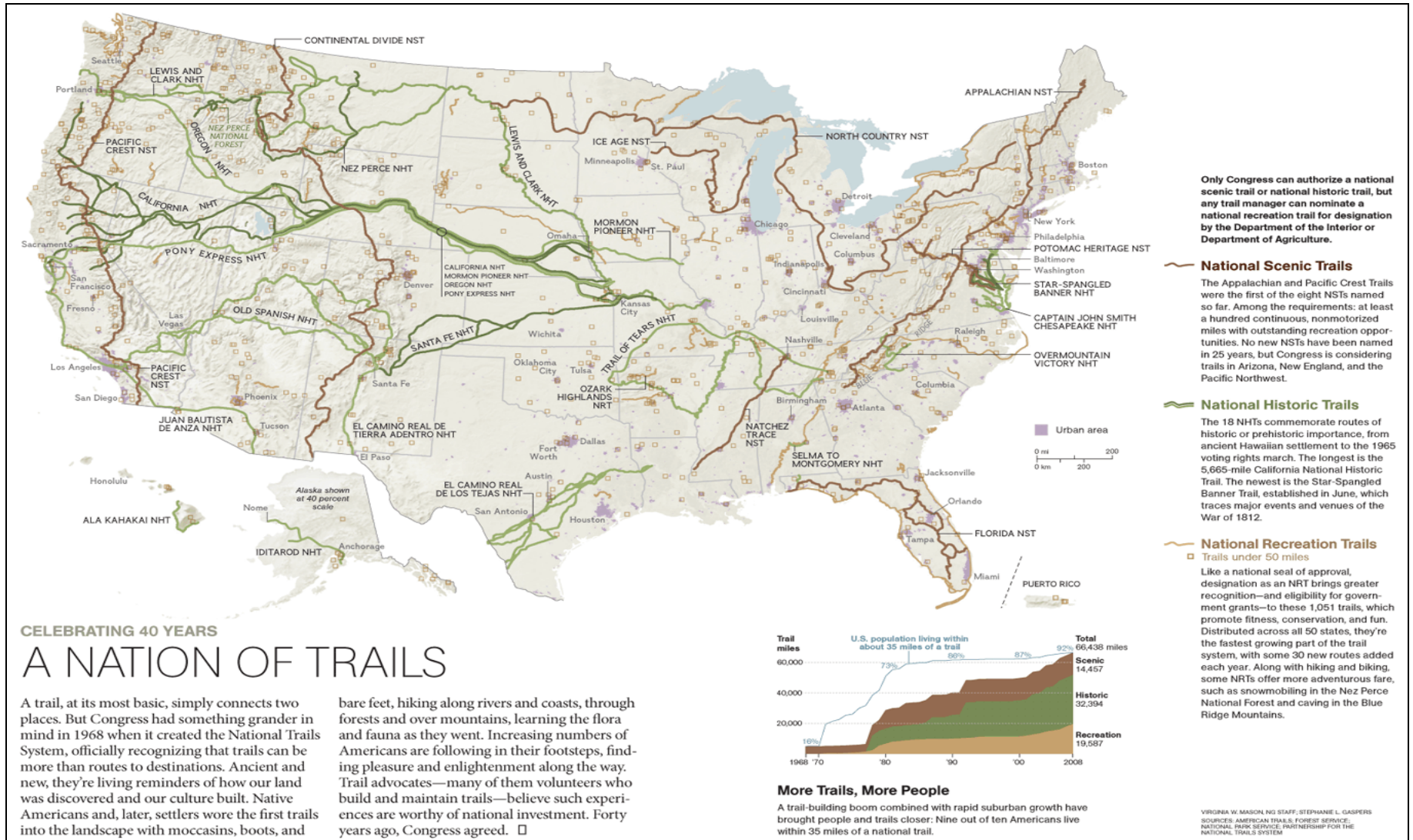
### **National Scenic Trails**

These trails provide recreation, conservation, and enjoyment of significant scenic, historic, natural, or cultural qualities. The use of motorized vehicles on these long-distance trails is generally prohibited, except for the Continental Divide National Scenic Trail which allows: (1) access for emergencies; (2) reasonable access for adjacent landowners (including timber rights); and (3) landowner use on private lands in the right of way, in accordance with regulations established by the administering Secretary.

### **National Historic Trails**

These trails follow travel routes of national historical significance. To qualify for designation, the proposed trail must meet the following criteria: (1) the route must have historical significance as a result of its use and documented location; (2) there must be evidence of a trail's national significance with respect to American history; and (3) the trail must have significant potential for public recreational use or historical interest. These trails do not have to be continuous, and can include land and water segments, marked highways paralleling the route, and sites that together form a chain or network along the historic route. Examples include the Mormon Trail and the Oregon Pioneer Trail.

**Figure 9. National Trails System**



**Source:** National Geographic Society, *National Geographic* (Oct. 2008), pp. 138-139.

## **National Recreation Trails**

The Park Service is responsible for the overall administration of the national recreation trails program, including coordination of nonfederal trails, although the FS administers national recreation trails within the national forests. Recreation trails are existing trails in, or reasonably accessible to, urban areas, and are managed by public and private agencies at the local, state, and national levels. The various recreation trails provide recreation opportunities for the handicapped, hikers, bicyclists, cross country skiers, and horseback riders.

## **Connecting and Side Trails**

These certified trails provide public access to nationally designated trails or connections between such trails. In 1990, the Secretary of the Interior designated: (1) the 18-mile Timm's Hill Trail (WI), which connects Timm's Hill to the Ice Age National Scenic Trail, and (2) the 186-mile Anvik Connector (AK), which joins the Iditarod National Historic Trail to the village of Anvik on the Yukon River. Connecting and side trails are administered by the Secretary of the Interior, except that the Secretary of Agriculture administers trails on national forest lands.

Each agency with management authority over national trails has its own budget or funding for carrying out activities related to trail administration and management. Federal land managing agencies have agreed, within the limits of agency authorities, to coordinate requests for and obligation of funds related to the National Trails System to eliminate duplication of effort and increase effectiveness. Since 1992, the Department of Transportation through federal transportation programs have provided more than \$1 billion for bicycle and pedestrian transportation projects (including many transportation trails). Additional potential sources of funding for trails include challenge cost-share projects, cooperative agreements to trail partner organizations, charitable foundations, corporations, permits and fees, local excise taxes, and dedicated funds.

## **Designation**

As defined in the act, national scenic trails and national historic trails are long distance trails designated by Acts of Congress. National recreation trails and connecting and side trails may be recognized by the Secretaries of the Interior and Agriculture with the consent of the federal agency, state, or political subdivision with jurisdiction over the lands involved. The 109<sup>th</sup> Congress established the Captain John Smith Chesapeake National Historic Trail (P.L. 109-418), the nation's first all-water national historic trail.

The Secretaries are permitted to acquire lands or interest in lands for the Trails System by written cooperative agreements, through donations, by purchase with donated or appropriated funds, by exchange, and, within limits, by condemnation. The Secretaries are directed to cooperate with and encourage states to administer the nonfederal lands through cooperative agreements with landowners and private organizations for the rights-of-way or through states or local governments acquiring such lands or interests.

Land acquisition for resource protection has been controversial in some cases. Legislation to give federal land management agencies the authority to purchase land from willing sellers has been considered, but not enacted, beginning in the 106<sup>th</sup> Congress and continuing in subsequent Congresses. Between 1978 and 1986, Congress authorized nine national scenic and historic trails

(the Oregon, Mormon Pioneer, Lewis and Clark, Iditarod, and Nez Perce National Historic Trails, and the Continental Divide, Ice Age, North Country, and Potomac Heritage National Scenic Trails), but prohibited federal authority for land acquisition. Trails authorized since 1986 typically have included land acquisition authority.

## **Major Statutes**

National Parks and Recreation Act of 1978: P.L. 95-625.

National Trails System Act: P.L. 90-543; 16 U.S.C. §§ 1241, et seq.

Outdoor Recreation Act of 1963: P.L. 88-29; 16 U.S.C. § 4601.



## **Appendix A. Major Acronyms Used in This Report**

ANILCA:	Alaska National Interest Lands Conservation Act
ANWR:	Alaska National Wildlife Refuge
BLM:	Bureau of Land Management
DOD:	Department of Defense
DOI:	Department of the Interior
ESA:	Endangered Species Act
EIS:	Environmental Impact Statement
FLPMA:	Federal Land Policy and Management Act of 1976
FS:	Forest Service
FWS:	Fish and Wildlife Service
LWCF:	Land and Water Conservation Fund
MBCF:	Migratory Bird Conservation Fund
NEPA:	National Environmental Policy Act of 1969
NFMA:	National Forest Management Act of 1976
NFS:	National Forest System
NHA:	National Heritage Area
NPS:	National Park Service
NWRS:	National Wildlife Refuge System
O&C:	Oregon and California (grant lands)
PILT:	Payments in Lieu of Taxes (Act and Program)
PRIA:	Public Rangelands Improvement Act of 1978
RPA:	Forest and Rangeland Renewable Resources Planning Act of 1974
USDA:	United States Department of Agriculture
WCAs:	Wildlife Coordination Areas
WPAs:	Waterfowl Production Areas

## **Appendix B. Definition of Selected Terms**

*Acquired lands:* land obtained by the federal government from a state or individual, by exchange, or through purchase (with or without condemnation) or gift. One category of federal lands.

*Entry:* occupation of public land as first step to acquiring title; can also mean application to acquire title.

*Federal land:* any land owned or managed by the federal government, regardless of its mode of acquisition or managing agency.

*Homesteading:* the process of occupying and improving public lands to obtain title. Almost all homesteading laws were repealed in 1976 (extended to 1986 in Alaska).

*Impoundment:* man-made impediment to the free flow of rivers or streams, such as a dam or diversion.

*Inholdings:* state or private land inside the designated boundaries of lands owned by the federal government, such as national forests or national parks.

*Land and Water Conservation Fund:* the primary source of federal funds to acquire new lands for recreation and wildlife purposes to be administered by federal land management agencies. The fund is derived largely from receipts from the sale of offshore oil and gas (16 U.S.C. § 460*I*), but funds must be appropriated annually.

*Land withdrawal:* an action that restricts the use or disposition of public lands, e.g., for mineral leasing.

*Leaseable minerals:* minerals that can be developed under federal leasing systems, including oil, gas, coal, potash, phosphates, and geothermal energy.

*Lease:* contractual authorization of possession and use of public land for a period of time.

*Mining claim:* a mineral entry and appropriation of public land that authorizes possession and the development of the minerals and may lead to title.

*Multiple use land:* federal lands which Congress has directed be used for a variety of purposes.

*Patent:* a document that provides evidence of a grant from the government—usually conveying legal title to public lands.

*Payments in Lieu of Taxes:* a program administered by the DOI which provides payments to local governments which have eligible federal lands within their boundaries.

*Public domain land:* One category of federal lands consisting of lands ceded by the original states or obtained from a foreign sovereign, through purchase, treaty, or other means. By contrast, “acquired lands” are obtained from an individual or state.

*Public land:* various meanings. Traditionally has meant the public domain lands subject to the public land disposal laws. Defined in the Federal Land Policy and Management Act of 1976

(FLPMA) to refer to the lands and interests in land owned by the United States that are managed by the BLM, whether public domain or acquired lands. Also, commonly used to mean all federal, state, and local government-owned land.

*Rangeland*: land with a plant cover primarily of grasses, forbs, grasslike plants, and shrubs. Many federal rangelands managed by the BLM and the FS are leased (or used under permit) for private grazing use.

*Release language*: congressional direction on the timing and extent of future wilderness considerations, and on the management of roadless areas pending future wilderness reviews, if any.

*Reservation*: public land withdrawn from general access for a specific public purpose or program.

*Right-of-way*: a permit or easement that authorizes the use of lands for specific purposes, such as construction of a forest access road, installation of a pipeline, or placement of a reservoir.

*Subsurface mineral estate*: typically refers to a property interest in mineral resources below ground.

*Surface estate*: typically refers to a property interest in surface lands and the above-ground resources.

*Sustained yield*: a high level of resource outputs maintained in perpetuity, but without impairing the productivity of the land.

*Water right*: right to use or control water. Such rights typically are granted by the states, although the United States may have federal water rights as well.

*Wetlands*: areas predominantly of soils that are situated in water-saturated conditions during part or all of the year, and support water-loving plants, called hydrophytic vegetation. They are transitional between terrestrial and aquatic systems, and are found where the water table generally is at or near the surface.

*Wilderness*: undeveloped federal land, usually 5,000 acres or more and without permanent improvements, managed to protect and preserve natural conditions.

*Wildlife refuge*: land administered by the FWS for the conservation and protection of fish and wildlife. (Hunting, fishing, and other forms of wildlife-related recreation typically are allowed, consistent with the purposes of the refuge.)

*Withdrawal*: an action that restricts the use or disposition of public lands, e.g., for mineral leasing.

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**Division abbreviations:** RSI = Resources, Science, and Industry Division; KSG = Knowledge Services Group; ALD = American Law Division.

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