



# Hunting, Fishing, Recreational Shooting, and Other Wildlife Measures: S. 3525

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## Summary

The House and Senate have been considering various approaches to open more federal lands to hunting, fishing, and recreational shooting. S. 3525 addresses some of the same topics as H.R. 4089, which passed the House on April 17, 2012. Both concern hunting, fishing, and recreational shooting, but the bills take different approaches. While H.R. 4089 directs changes to federal land management and land planning, S. 3525 allows existing management to continue, requiring only that land managers assemble priority lists to improve access for those activities.

Several issues related to hunting, fishing, and recreational shooting are addressed in S. 3525. Hunting and conservation have been linked since the advent of federal wildlife legislation, such as the Lacey Act of 1900 (making it a federal crime to ship game killed in violation of one state's laws to another state) or the Migratory Bird Treaty Act of 1918 (regulating the killing, hunting, buying, or selling of migratory birds). Even so, controversy exists about exactly what hunting, fishing, or shooting sports should be allowed on federal land, and when. A primary issue is whether opening more lands to hunting, fishing, and recreational shooting should be balanced against good game management, public safety, resource management, and the statutory purposes of the lands. S. 3525 focuses on providing additional physical access to federal lands where these activities are already allowed. This would be accomplished through acquisition of lands or rights of way.

S. 3525 would also expand or authorize certain sport fishing programs. In addition, it addresses the concerns of trophy hunters who killed polar bears in the months before the species was proposed for listing under the Endangered Species Act or between the proposal and the actual listing. These hunters have not been allowed to import their trophies; the bill would allow specified imports of these trophies.

It would support a program of regional working groups to conserve populations of migratory birds. It would amend the duck stamp program, to allow the Secretary of the Interior to increase the price of the stamp at specified intervals. Such a change, which would provide additional funding for acquisition of waterfowl habitat, has been advocated among hunters for several years. S. 3525 would make funding changes for some of these activities, and reauthorize a number of conservation programs, as well as expanding an existing program to control nutria, a marshland pest.

S. 3525 was not referred to a committee, and consequently lacks a committee report. It was placed on Senate Legislative Calendar under General Orders on September 11, 2012; on September 20, 2012, a cloture motion on the motion to proceed to the measure was presented in the Senate.

## **Contents**

Introduction.....	1
Legislative History.....	1
Hunting, Fishing, and Recreational Shooting.....	2
Acquisition of Lands to Promote Hunting Access.....	3
Polar Bear Import Permits.....	3
Bows and Crossbows in National Parks and Wildlife Refuges.....	4
Shooting Range Support from Pittman-Robertson Program.....	5
Sense of Congress Resolution on Agency Cooperation.....	5
Lead Sinkers and Ammunition.....	5
Fishing Programs.....	6
Prohibition on Sale of Billfish.....	6
Artificial Reef Report.....	7
National Fish Habitat Program.....	7
Duck Stamps: Prices and Electronic Purchase.....	9
Joint Venture Program for Migratory Bird Conservation.....	10
Miscellaneous Reauthorizations.....	10
Federal Land Transaction Facilitation Act.....	11
Nutria Eradication and Control.....	12

## **Contacts**

Author Contact Information.....	13
Acknowledgments.....	13

## Introduction

Several issues related to hunting, fishing, and recreational shooting, on both federal and state lands are addressed in S. 3525, the Sportsman's Act of 2012. Hunting and conservation have been linked since the advent of federal wildlife legislation, such as the Lacey Act of 1900<sup>1</sup> (making it a federal crime to ship game killed in violation of one state's laws to another state) or the Migratory Bird Treaty Act of 1918<sup>2</sup> (regulating the killing, hunting, buying, or selling of migratory birds). Even so, controversy exists about exactly what hunting, fishing, or shooting sports currently are allowed on federal land and when. Under current law, opening more lands to hunting, fishing, and recreational shooting is to be balanced against good game management, public safety, resource management, and the statutory purposes of the lands. S. 3525 focuses on physical access to federal lands where these activities are already allowed by acquiring lands or rights of way.

S. 3525 would also create or expand sport fishing programs, allow specified imports of polar bear trophies, support a program of regional working groups to conserve populations of migratory birds, and amend the duck stamp program (which provides funds for acquisition of waterfowl habitat), among other things. S. 3525 would make funding changes for some of these activities, and reauthorize a number of conservation programs, as well as expand an existing program to control nutria, a marshland pest.

S. 3525 is not the only hunting and fishing bill pending before Congress. H.R. 4089, which passed the House in April 2012, would alter the management practices of federal agencies with the intent of opening more lands to hunting, fishing, and recreational shooting.<sup>3</sup> While they have many of the same activities in common, the two bills' approaches are quite different. H.R. 4089 would alter planning practices of agencies, eliminate reviews under the National Environmental Policy Act, and direct certain types of activities to be allowed on lands, even wilderness areas, absent a public safety, national security, or statutory resource protection basis. The Senate bill's approach focuses on physical access to suitable hunting and fishing areas on federal land, in contrast to the House bill's approach of changing federal land management practices.

## Legislative History

Most of S. 3525 was originally part of an amendment (S.Amdt. 2232, introduced on June 7, 2012) to S. 3240 (the 2012 farm bill), although the two measures are not completely identical. On June 19, 2012, the amendment was ruled as nongermane to the 2012 farm bill. S. 3525, in its current form, was introduced as a separate bill on September 10, 2012. It was placed on Senate Legislative Calendar under General Orders on September 11, 2012. Because the measure was not referred to a committee, it lacks a committee report. On September 20, 2012, a cloture motion on the motion to proceed to the measure was presented in the Senate. Consideration before the fall recess has been scheduled.

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<sup>1</sup> Act of May 25, 1900, §3, 31 Stat. 187.

<sup>2</sup> Act of July 3, 1918, c. 128, §2, 40 Stat. 755.

<sup>3</sup> For more on H.R. 4089, see CRS Report R42569, *Hunting, Fishing, and Recreational Shooting on Federal Lands: H.R. 4089 and Related Legislation*, coordinated by (name redacted).

### **Current Status of Hunting, Fishing, and Recreational Shooting on Federal Lands**

The four principal federal land management agencies—Bureau of Land Management (BLM), National Park Service (NPS), Fish and Wildlife Service (FWS), and the Forest Service—do not maintain data on how many acres of land are currently open to hunting, fishing, and/or recreational shooting.<sup>4</sup> However, both the BLM and the Forest Service estimate that more than 95% of their lands are currently open to these activities.<sup>5</sup> NPS states that hunting is permitted in 61 of its 397 units, and fishing is allowed in 200 units.<sup>6</sup> Among the FWS's 594 wildlife refuges and waterfowl production areas, more than 365 are open to some form of hunting, and more than 300 units offer fishing opportunities.<sup>7</sup>

Some data are available on the frequency of hunting and fishing on federal lands. The Forest Service annual data for FY2005 to FY2009 show that 7.6% and 8.2% of annual recreational visitors to national forests list hunting or fishing, respectively, as their main activity.<sup>8</sup> For BLM lands in FY2011, 8.1% of visitors were hunters, and 3.4% fished.<sup>9</sup> For wildlife refuges, the FY2010 to FY2011 data show 27% of visitors' primary activity was fresh or saltwater fishing, and 13% was hunting.<sup>10</sup> While this could indicate that only a minority of visitors use federal lands for the activities described in S. 3525 and H.R. 4089, it could also suggest that if more land were available, more people might use the lands for those types of recreation.

## **Hunting, Fishing, and Recreational Shooting**

Title I of S. 3525 focuses on physical access to federal lands for hunting, fishing, and recreational shooting, as well as other topics. It addresses

- land acquisition to facilitate access for those activities;
- authorization of permits to allow import of certain sport-hunted polar bear trophies;

<sup>4</sup> Personal communication, June 5-6, 2012, between Laura Comay of CRS and the following agencies: Bureau of Land Management (Division of Legislative Affairs); U.S. Forest Service (Jeannie Masquelier, Legislative Affairs Specialist); and National Park Service (Chris Powell, Senior Congressional Affairs Specialist). Personal communication between (name redacted) of CRS and the Fish and Wildlife Service (Martin Kodis, Deputy Chief, Division of Congressional and Legislative Affairs).

<sup>5</sup> The BLM estimate is derived from testimony in the 112<sup>th</sup> Congress on H.R. 3440, H.R. 2834, and H.R. 1444 regarding recreational shooting and hunting, and personal communication regarding fishing between BLM and Carol Hardy-Vincent of CRS, May 21, 2012. The FS estimate is from personal communication between Laura Comay of CRS and Jeannie Masquelier, Legislative Affairs Specialist, U.S. Forest Service, June 7, 2012.

<sup>6</sup> Personal communication between Laura Comay of CRS and Chris Powell, Senior Congressional Affairs Specialist, National Park Service, June 14, 2012. Units may be completely open to hunting or fishing, or these activities may be permitted only in portions of the unit. NPS regulations do not specifically address recreational shooting.

<sup>7</sup> Hunting data based on personal communication between Martin Kodis, Deputy Chief, Division of Congressional and Legislative Affairs, FWS, and (name redacted) of CRS, May 17, 2012. Fishing data based on FWS, National Wildlife Refuge System, "List of Refuges that Offer Fishing," at [http://www.fws.gov/refuges/fishingguide/pdf/National\\_Print.pdf](http://www.fws.gov/refuges/fishingguide/pdf/National_Print.pdf).

<sup>8</sup> Forest Service, National Visitor Use Monitoring Results, National Summary Results, data collected FY2005 through FY2009, p. 13 (last updated April 2010), available at [http://www.fs.fed.us/recreation/programs/nvum/nvum\\_national\\_summary\\_fy2009.pdf](http://www.fs.fed.us/recreation/programs/nvum/nvum_national_summary_fy2009.pdf).

<sup>9</sup> BLM, Recreation Management Information System, Estimated Recreational Use of BLM-Administered Public Lands for Recreation Activities Under Various Fee Authorizations (Fiscal Year 2011), available at [http://www.blm.gov/public\\_land\\_statistics/pls11/pls4-2\\_11.pdf](http://www.blm.gov/public_land_statistics/pls11/pls4-2_11.pdf).

<sup>10</sup> U.S. Geological Survey, National Wildlife Refuge Visitor Survey Results: 2010/2011, Fig. 6, available at <http://pubs.usgs.gov/ds/685/DS685.pdf>.

- expanded permission for carrying bows and crossbows in national park units;
- expanded funding for state land purchase or operation of public target ranges; and
- exclusion of lead ammunition and sinkers from regulation under the Toxic Substances Control Act.

## **Acquisition of Lands to Promote Hunting Access**

One criticism of federal land management has been that access to hunting and fishing areas can be limited. Sometimes, the best access to federal land is across private property. At least two federal land management agencies, BLM and the Forest Service, have authority to acquire property, especially to provide easier access to federal lands.<sup>11</sup> The authority includes eminent domain.

Section 101(a) of S. 3525 would amend the Land and Water Conservation Fund Act<sup>12</sup> (LWCF) by directing preparation of priority lists for federal lands already within the jurisdiction of the Departments of the Interior and Agriculture. The priority lists are to identify land or rights-of-way acquisition projects where access to hunting, fishing, and other recreational purposes currently is “significantly restricted.” The bill would require each agency in the two departments to devote at least 1.5% of its annual appropriation of funds under the LWCF to acquisition of lands, rights of way, or other interests from willing sellers to improve access for these activities.<sup>13</sup>

## **Polar Bear Import Permits**

Before May 15, 2008, when the listing of polar bears as a threatened species under the Endangered Species Act (ESA) took effect, it was legal to import polar bear trophies from Canada. After that date, importation was not allowed. Section 102 of S. 3525 would amend the Marine Mammal Protection Act (MMPA)<sup>14</sup> to allow between 41 and 44 hunters with polar bear trophies legally hunted in Canada to import these trophies to the United States.<sup>15</sup> Section 102 would also direct FWS to issue permits for importing the sport-hunted trophies. This section is almost identical to H.R. 4089, Title III. S. 3525 would further amend the MMPA to provide that the permits may be issued regardless of the polar bears’ status as a depleted species, which is the basis on which the permits were denied.

S. 3525 would apply only to bears legally killed prior to May 15, 2008. Permit fees of \$1,000 for each imported trophy would go to the existing U.S.-Russia Polar Bear Conservation Fund to support polar bear conservation activities.

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<sup>11</sup> 43 U.S.C. §1715(a).

<sup>12</sup> 16 U.S.C. §460l. For more on LWCF, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by (name redacted).

<sup>13</sup> The extent to which physical access is an obstacle to hunting or fishing on federal lands is unclear, though the issue is cited by supporters of this measure. For example, see [http://www.taosnews.com/opinion/my\\_turn/article\\_8baf8c1a-dda8-11e1-a184-0019bb2963f4.html](http://www.taosnews.com/opinion/my_turn/article_8baf8c1a-dda8-11e1-a184-0019bb2963f4.html).

<sup>14</sup> 16 U.S.C. §1361 et seq.

<sup>15</sup> A bill affecting only polar bear imports, S. 1066, contains very similar provisions.

Once the proposed rule to list polar bears as a threatened species was published in January 2007, an extensive campaign was conducted by FWS to alert hunters to the potential impact of ESA listing on the ability to import polar bear trophies. However, despite issuing this warning, FWS continued to authorize the import of polar bear trophies under existing law until the ESA listing became final. The permitting process was truncated by court order making the listing effective immediately rather than after 30 days.<sup>16</sup>

Section 102 would allow entry of any harvest before May 15, 2008, regardless of whether a permit was sought prior to the law change, provided that the bear was taken from a population from which import was legal at the time.

FWS does not oppose legislation allowing importation for hunters who both applied for an import permit and completed their legal hunt prior to ESA listing.<sup>17</sup> FWS originally declined to support another version of this provision (H.R. 991, as introduced) because the introduced version would have allowed hunters to import polar bear trophies regardless of whether the hunter had applied for the permit prior to the ESA listing.<sup>18</sup>

Others oppose allowing these permits, believing it would encourage hunting of species whose listing is imminent. The Humane Society of the United States testified that allowing polar bear imports would “would roll back polar bear conservation efforts and set a dangerous precedent for gutting the protections provided under the Marine Mammal Protection Act and the Endangered Species Act.”<sup>19</sup> The Dissenting Views to the House Committee Report on H.R. 4089, for example, pointed to the “extensive outreach by the Fish and Wildlife Service that a prohibition would be placed on polar bear trophy imports if a listing occurred” as a reason not to provide a legislative waiver.<sup>20</sup> A federal court upheld the permit ban, finding that there was no procedural flaw in blocking permits as of the day the bear was listed as threatened.<sup>21</sup>

## **Bows and Crossbows in National Parks and Wildlife Refuges**

Section 103 of S. 3525 would allow bowhunters to carry their weapons across national park units to access hunting on adjacent lands. Current law for guns allows possession of a “firearm including an assembled or functional firearm” in national park units, depending on applicable state law.<sup>22</sup> Section 103 does not appear to be based on personal protection—it explicitly does not authorize the *use* of the bow or the crossbow—but instead, seems based on convenience. Portage is allowed where it is “the most direct means of access to the adjacent land.” Additionally, despite the heading, Section 103 does not authorize possession of bows within the National Wildlife Refuge System.

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<sup>16</sup> *Center for Biological Diversity v. Kempthorne*, No. C 08-1339, 2008 WL 1902703 (N.D. Cal. April 28, 2008).

<sup>17</sup> Testimony of Rowan Gould, Acting Director, FWS, before the House Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs (May 12, 2011), available at [http://www.fws.gov/laws/Testimony/112th/2011/Gould\\_May%2011.html](http://www.fws.gov/laws/Testimony/112th/2011/Gould_May%2011.html).

<sup>18</sup> *Ibid.*

<sup>19</sup> Testimony of Michael Markarian, Chief Program and Policy Officer, Humane Society of the United States, before the House Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, hearing on H.R. 991 (May 12, 2011), available at <http://www.humanesociety.org/assets/pdfs/legislation/testimony-michael-markarian-h-r-1054.pdf>.

<sup>20</sup> H.Rept. 112-426, part I, Dissenting Views, p. 21.

<sup>21</sup> *In re Polar Bear Endangered Species Act Listing and §4(d) Rule Litigation*, 818 F. Supp. 2d 240 (D.D.C. 2011).

<sup>22</sup> 16 U.S.C. §1a-7b(b).

## Shooting Range Support from Pittman-Robertson Program

Under Subtitle B of Title I of the Senate bill, the Target Practice and Marksmanship Training Support Act, territories and states would be allowed to use more of the funds allocated to them under the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. §669) for projects involving land acquisition, construction, and expansion of public target ranges for firearms or archery.<sup>23</sup> A state's allocation of federal funds may currently be used to support a maximum of 75% of any project, with the remainder coming from nonfederal sources. Section 114(b) would amend 16 U.S.C. §669g(b) to continue the limit on operating and maintaining target ranges to a maximum of 75% federal share;<sup>24</sup> and Section 114(c) would amend 16 U.S.C. §669h-1(a) to increase the maximum federal share from the Pittman-Robertson program to 90%, for projects acquiring land for, expanding, or constructing target ranges.<sup>25</sup>

Section 114 would also add a definition of *public target range*, limiting it to “archery or rifle, pistol, or shotgun shooting.”<sup>26</sup>

The shooting range provision differs substantially from that in H.R. 4089, which does not include any reference to the Pittman-Robertson Act. H.R. 4089 would direct how federal land managers allow shooting ranges on federal lands; it does not describe state and territorial funding for those activities on their own property

## Sense of Congress Resolution on Agency Cooperation

Section 115 of S. 3525 is a resolution stating the sense of the Congress that the Forest Service and BLM are to cooperate with state and local authorities in managing and removing waste on any federal land used as a public target range.

## Lead Sinkers and Ammunition

Section 121 of S. 3525 would exempt lead shot, ammunition, and fishing sinkers from provisions of the Toxic Substances Control Act (TSCA).<sup>27</sup> Despite being named as modifying the “definition of toxic substance to exclude sport fishing equipment [under] Subtitle C - Fishing,” the section

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<sup>23</sup> See <http://federalasst.fws.gov/> for more information about the FWS Wildlife Restoration Program.

<sup>24</sup> The bill breaks 16 U.S.C. §669g(b) into four new subsections, but does not include the information for those sections sequentially: after describing the inserted subsections (1), (3), and (4), it adds subsection (2).

<sup>25</sup> Section 114(b)(5) contains a provision stating that a state “may pay up to 90 percent of the cost of acquiring land for, expanding, or constructing a public target range.” The language appears to mean that a state is allowed to pay 90% of a project. However, the intent may be that a state may use its Pittman-Robertson allocation of federal funds to pay for up to 90% of the cost of a project, with the state (or other nonfederal sources) needing to pay for no more than 10% of the project. There is no committee report to clarify of the intent of the provision. Also, there may be a conflict between the proposed deletion of “construction” from 16 U.S.C. §669g(b), but its retention in the cross-reference in 16 U.S.C. §669h-1(a)(2). Section 669h-1(a)(2) limits states to “the amount described in Section 669g(b) ... for the construction, operation and maintenance of public target ranges.” However, the revised Section 669g, as proposed under S. 3525, breaks expenses into two components: operation and maintenance (669b(1)); and acquiring land for, expanding, or constructing (669b(2)), and no longer uses the term *construction*.

<sup>26</sup> 16 U.S.C. §669a(5).

<sup>27</sup> 15 U.S.C. §2602(2)(B). See also H.R. 1558 and S. 838 for similar provisions.



applies to ammunition as well as to fishing gear. It would prohibit regulation under TSCA of “shot, bullets and other projectiles, propellants, and primers” and “any sport fishing equipment.”

This section is identical to Title IV of H.R. 4089, except that the Senate bill adds that the section does not limit the need to comply with other federal, state, or local laws. This provision appears to seek legislative certainty for a denied citizen petition to force the Environmental Protection Agency (EPA) to regulate lead in ammunition and in fishing sinkers. On August 27, 2010, EPA denied one portion of the petition relating to the production of lead for use in ammunition, stating that the agency did not have legal authority to regulate ammunition under TSCA. EPA continued to evaluate the petition with respect to fishing tackle and accepted public comments until September 15, 2010.<sup>28</sup> EPA denied that portion of the petition on November 4, 2010.<sup>29</sup> On April 30, 2012, a lawsuit challenging the denial was dismissed.<sup>30</sup> On June 7, 2012, a suit was filed challenging EPA’s 2012 denial of a new petition to regulate lead shot under TSCA.<sup>31</sup>

S. 3525 would prevent federal regulation through TSCA, but not through other statutory authorities: lead shot has been banned in the United States for the hunting of migratory waterfowl since 1991 under authority of the Migratory Bird Treaty Act and the Endangered Species Act.<sup>32</sup> Consequently, it is unclear whether the provision will have an affect.

## **Fishing Programs**

Fishing programs and assistance are covered in Title I, Subtitle C, and in Title II, Subtitle A of S. 3525. Sections specifically addressing fish would prohibit the sale of billfish,<sup>33</sup> require a report on artificial reefs, and, through a variety of approaches, provide aid for modifying fish habitat.<sup>34</sup>

### **Prohibition on Sale of Billfish**

Section 122 would prohibit the sale of billfish or billfish products, and would treat a violation of this section as an act prohibited by the Magnuson-Stevens Fishery Conservation and Management Act. An exemption from this section is provided for the state of Hawaii and the Pacific Insular Area, but only for billfish sold in Hawaii and the Pacific Insular Area. A further exemption would allow foreign vessels to land billfish in this area and to sell them, provided the fish are exported to foreign markets, or else retained in Hawaii and the Pacific Insular Area for local consumption.

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<sup>28</sup> Comments are posted in the rulemaking docket, which is identified as EPA-HQ-OPPT-2010-0681 at <http://www.regulations.gov/>.

<sup>29</sup> For more information on the EPA position on the regulation of lead in ammunition and lead sinkers, see CRS General Distribution Memorandum “Petition for Regulation of Lead in Fishing Sinkers and Ammunition by the U.S. Environmental Protection Agency,” by (name redacted) (March 16, 2012), available from the author.

<sup>30</sup> *Center for Biological Diversity v. Jackson*, No. 1:10-CV-2007 (D.D.C. April 30, 2012).

<sup>31</sup> *Trumpeter Swan Society v. Environmental Protection Agency*, No. 1:12-cv-00929 (D.D.C. *complaint filed* June 7, 2012).

<sup>32</sup> 53 *Fed. Reg.* 24284 (June 28, 1988). See also 50 C.F.R. §20.21.

<sup>33</sup> *Billfish* is defined to include nine species of marlin, sailfish, and spearfish, but to exclude swordfish.

<sup>34</sup> Subtitles B, C, and D of this title are primarily about other matters; these provisions are covered below.

## **Artificial Reef Report**

Section 123 would require two reports to Congress by the Secretary of the Interior. An initial report would present a plan to assess how objectives for removal of decommissioned outer continental shelf drilling platforms and related structures in the Gulf of Mexico might relate to creation and preservation of offshore artificial habitats that enhance fishing and other recreational activities. A final report would summarize comments and findings relative to these comments, including options to mitigate any habitat damage caused by platform removal.<sup>35</sup>

## **National Fish Habitat Program**

This title was not included in H.R. 4089. On introduction of S. 1201, whose provisions were similar to this title, Senator Lieberman stated: “Currently, our Nation’s efforts to address threats to fish species are often highly disjointed and not extensive enough to reverse this downward trend.... This bill will bring together all of the different groups that have a stake in the health and productivity of our Nation’s fish habitats.”<sup>36</sup>

Subtitle A of Title II, containing 13 sections, would establish a program to engage state and local governments, conservation groups, fishing industry groups, and related businesses to work together collectively to address the causes of fish habitat decline. This subtitle was not included in H.R. 4089. This legislation is based on the model of the North American Wetlands Conservation Act<sup>37</sup> and seeks to promote action and provide additional funding to improve the quality of aquatic habitat beneficial to fish.

Section 201 defines 12 terms; among these are (a) *aquatic habitat*, which would include certain areas adjacent to an aquatic environment; (b) *fish*, defined to include both finfish and shellfish; and (c) *fish habitat conservation projects*, which are defined as meeting specified procedural criteria and provide for the conservation or management of aquatic habitat.

Section 202 would establish a 27-member National Fish Habitat Board, composed of representatives of federal agencies and various specified constituencies, to coordinate implementation of this act, establish national goals and priorities for aquatic habitat conservation, and make recommendations regarding fish habitat conservation projects. Board members would not be compensated, but would be provided travel expenses, including per diem. Members would generally serve three-year terms, with initial representatives of various constituencies appointed by the existing board that was established by National Fish Habitat Action Plan of April 24, 2006. Subsequent vacancies for representatives of various constituencies would be filled by appointment made by the remaining members of the board.

Section 203 would authorize the board to designate Fish Habitat Partnerships, which would coordinate regional implementation, identify strategic priorities for fish habitat conservation, recommend projects that address priorities, and develop and implement projects. Partnership applicants would need to meet seven criteria, including diverse representation, ability to address

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<sup>35</sup> The provision implies that the initial report will be made public and offered for public comment, although there is no specific provision requiring such a move.

<sup>36</sup> *Congressional Record*, S3822, June 15, 2011.

<sup>37</sup> P.L. 101-233, as amended; 16 U.S.C. 4401 et seq.

issues on a nationally significant scale, and demonstration of progress toward development of a strategic plan to address the causes of system decline in fish populations.

Section 204 would require partnerships to submit recommendations for fish habitat conservation projects annually. The board would then select and recommend projects to the Secretary for approval and funding. Projects could not be recommended by the board unless at least 50% of the cost is from nonfederal funds, with certain exceptions related to projects on federal lands and waters or projects associated with Indian tribes. No project could be recommended by the board for funding unless it includes an evaluation plan to (1) assess results of activities to be carried out; (2) reflect appropriate changes if project objectives are not being met; and (3) require a report to the board on assessment findings. No project that involves acquisition of real property could be recommended by the board unless the acquiring entity is obligated to manage the property.

Section 205 would require FWS to establish within the agency a National Fish Habitat Conservation Partnership Office and to develop an interagency plan for this office. Subsection 205(b) outlines 11 functions of this office, including funding partnerships, facilitating consideration of projects by the board, and coordinating technical and scientific reporting. This office is to be staffed with employees from the Departments of Commerce and the Interior, with additional staffing encouraged from states and Indian tribes. Subsection 205(d)(5) gives the Secretary of the Interior discretion to waive all or part of the nonfederal matching requirement for project funding.

Section 206 would require NOAA, FWS, and USGS to provide technical and scientific assistance to partnerships, project participants, and the board.

Section 207 would require all federal agencies responsible for acquiring, managing, or disposing of federal land or water to cooperate with NOAA and FWS to conserve aquatic habitats.

Section 208 would require the Secretary of the Interior to notify and coordinate with state and tribal agencies prior to project implementation.

Section 209 would require the board to report to Congress every two years, with details on (a) habitat protected, restored, or enhanced; (b) public access protected, restored, or established; (c) opportunities for public fishing established; and (d) status of fish habitat conservation projects.

Section 210 would authorize the Secretary of the Interior to promulgate regulations to implement the act.

Section 211 would impose restrictions with respect to (1) water rights; (2) state authority; (3) effects on Indian tribes; (4) adjudication of water rights; (5) acquisition of land and water; (6) private property protection; and (7) use of funds for mitigation under any federal law or court settlement.

Section 212 declares that the Federal Advisory Committee Act<sup>38</sup> (FACA) is inapplicable to the board and any partnership.

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<sup>38</sup> 5 U.S.C. App. 2. For more on FACA, see CRS Report R40520, *Federal Advisory Committees: An Overview*, by (name redacted).

Section 213 would authorize \$7.2 million annually for FY2012 through FY2016 for projects, with 5% reserved for projects carried out by Indian tribes. Additional authorizations are provided for the national office and planning and administrative expenses. In addition, FWS, NOAA, and USGS are each authorized \$0.5 million for technical and scientific assistance. Subsection 213(c) would authorize solicitation and acceptance of donations.

It is questionable whether the annual authorization of \$7.2 million, even if fully appropriated, is sufficient to leverage significant and lasting improvements to aquatic habitat. It is also unclear whether the restoration and enhancement envisioned by this subtitle would be conducted in a manner adequate to prevent additional human alterations that harm aquatic habitat. An additional concern is whether creation of an additional program is needed. The Dingell-Johnson Sport Fish Restoration Act<sup>39</sup> (DJ program) allows for implementation of these activities under current authorities. The DJ program has significantly more funding and, as mandatory spending, is not subject to annual appropriations.

## **Duck Stamps: Prices and Electronic Purchase**

Title II, Subtitle B, of S. 3525 concerns duck stamps, and contains four sections.<sup>40</sup> Currently, duck stamps are purchased by hunters for the right to hunt migratory birds; proceeds from their sale go to the Migratory Bird Conservation Fund (MBCF) for acquisition of migratory bird habitat for inclusion in the National Wildlife Refuge System. Stamps are good for one year, and cost \$15, a price set in legislation in 1991. FWS has supported an increase in the price of the stamp to \$25 since the FY2009 budget justification. Also, since 2008, a pilot program has been carried out to test the feasibility of the sale of duck stamps through the Internet; eight states now participate in the pilot program. In other states, stamps continue to be available at U.S. post offices or other approved sites.

Section 222 would allow the Secretary of the Interior to set a new price of duck stamps at three-year intervals beginning in 2013. Funds would be collected and expended provided that all amounts in the MBCF from the sale of duck stamps in previous years have been obligated. Section 223 would allow the Secretary, in consultation with the Migratory Bird Conservation Commission, to waive the requirements for purchase of a stamp for certain individuals, provided there would be only a minimal effect on collections for the MBCF.<sup>41</sup>

Section 224 would permanently authorize the electronic issuance of duck stamps. States would apply to the Secretary for authority to issue the electronic stamps, under a procedure specified in the section. Provisions for revocation of state authority to issue electronic stamps are included.

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<sup>39</sup> Act of Aug. 9, 1950, chap. 658, as amended; 16 *U.S.C.* 777 et seq.

<sup>40</sup> Duck stamps are known more formally as *Federal Migratory Bird Hunting and Conservation Stamps*.

<sup>41</sup> Many states allow reduced or zero state fees for hunting or fishing licenses for certain groups such as veterans, handicapped persons, or those under a certain age. Such individuals may be among the anticipated beneficiaries of this proposed federal waiver.

## Joint Venture Program for Migratory Bird Conservation

Title II, Subtitle C, of S. 3525 would authorize the Secretary of the Interior to carry out a Joint Ventures Program<sup>42</sup> (JVP) in coordination with other relevant federal agencies and with states to promote sustainable populations of migratory birds; to encourage partnerships with other stakeholders to that end; to support scientific conservation of these species and their habitats; and to support bird conservation under the Migratory Bird Conservation Act and five other specified relevant statutes. Under the JVP, FWS would provide technical and financial support for regional migratory bird conservation partnerships. Eligible partners, according to Section 234(a)(2), include federal, state, and tribal agencies; regional or local governments; landowners; nongovernmental organizations; and others.

Each partnership agreement under the JVP would establish a management board that includes relevant and diverse stakeholder representatives. Under Section 234(c), each management board, in consultation with FWS, would appoint a coordinator for the implementation plan developed by the board. Implementation plans must be approved by the Director of FWS, and must include a strategy for migratory bird conservation, provisions for communication among members of the group, and a long-term strategy for community outreach and education. Federal employees of any agency could be detailed to a board. For conservation actions under approved plans, the Director may award financial assistance to the parties taking the actions. No specific dollar figure is given. The Secretary, through the Director of FWS, could accept gifts from the public to assist JVP conservation actions.

Section 236 would require management boards to submit annual reports, and FWS would be required to prepare a comprehensive review of the JVP at five-year intervals; the review would be open to public comments. Section 237 further specifies that the JVP would not preempt other laws nor the authorities of state fish and wildlife laws. Finally, Section 238 would exempt any boards or other groups established by the JVP from the Federal Advisory Committee Act.<sup>43</sup>

## Miscellaneous Reauthorizations

Title II, Subtitle D of S. 3525 would reauthorize 10 current laws:

- North American Wetlands Conservation Act (16 U.S.C. §4406(c)(5))
- Partners for Fish and Wildlife Act (16 U.S.C. §3774)
- National Fish and Wildlife Foundation Establishment Act (NFWFEA; 16 U.S.C. §3702)
- Multinational Species Conservation Funds Semipostal Stamp Act of 2010 (MSCFSSA; P.L. 111-241; 39 U.S.C. §416 note)

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<sup>42</sup> Typically, a *joint venture* is a business arrangement where the parties share the risks and gains. This is not how the term *joint venture* is used in S. 3525. The bill defines it as a “self-directed, voluntary partnership.” It appears to be a regional planning group.

<sup>43</sup> 5 U.S.C. App.2.

- African Elephant Conservation Act (16 U.S.C. §4245(a))
- Asian Elephant Conservation Act of 1997 (16 U.S.C. §4266(a))
- Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. §5306(a))
- Great Ape Conservation Act of 2000 (16 U.S.C. §6305)
- Marine Turtle Conservation Act of 2004 (16 U.S.C. §6606)
- Neotropical Migratory Bird Conservation Act (NMBCA; 16 U.S.C. §6109)

In this list, all the laws cited are simply reauthorized through FY2017, with three exceptions that also would amend current law. The NFWFEA (Section 243) is most extensively amended. Among other things, the section would increase the number of directors on the board of the foundation from 23 to 28 and decrease the number of criteria used for their selection, and would make those criteria more generalized. Terms would be set at six years.<sup>44</sup> The bill would also require the naming of an executive director by the board. The section would authorize the foundation to accept restitution and community service payments and other amounts resulting from legal, administrative, or regulatory actions, provided that the amounts further the conservation of fish, wildlife, and plants. The section would also provide specific procedures for the acceptance of amounts from federal agencies, and would allow the foundation to collect fees for management of these amounts. Federal agencies entering into agreements with the foundation could waive competitive processes normally required by the agency if the waiver would address an environmental emergency and also reduce administrative expenses; when or if this authority is invoked, the foundation's annual report would need to include a description of the activity and waiver.

The MSCFSSA would be reauthorized for six years in Section 244. The section would direct that the public must have a choice of five semipostal stamps, each stamp depicting a different species whose conservation is supported under the Multinational Species Conservation Fund.<sup>45</sup>

The NMBCA would be reauthorized through FY2017 in Section 246. But in addition, the section would direct that not less than 75% of the funds made available under the act must be used for projects outside the United States.

## **Federal Land Transaction Facilitation Act**

Section 247 would amend the Federal Land Transaction Facilitation Act (FLTFA). FLTFA was designed to allow proceeds from the disposal of public land to be used to acquire inholdings and other lands to improve federal land management.<sup>46</sup> It focuses on acquiring property that adjoins protected sites such as wilderness areas and national parks. Under Section 205 of the current law, proceeds from the "sale or exchange of public land identified for disposal under approved land

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<sup>44</sup> Current law requires that the terms of the board members be staggered. The bill would strike this feature, and does not specify further whether terms are staggered, nor how the terms of current board members would be affected by this change.

<sup>45</sup> For a description and explanation of semipostal stamps, see CRS Report RS20921, *Semipostal Stamps: Authorization, Revenue, and Selection Process*, by (name redacted) and (name redacted).

<sup>46</sup> P.L. 106-248, §202. For more on FLTFA, see CRS Report R41863, *Federal Land Transaction Facilitation Act: Operation and Issues for Congress*, by Carol Hardy-Vincent.

use plans” are to be put in the Federal Land Disposal Account (FLTFA fund). *Approved land use plans* are those made under the Federal Land Policy and Management Act (FLPMA) that were in effect as of the date FLTFA was enacted.<sup>47</sup>

Section 206(a) of FLTFA states that “notwithstanding any other law [except for laws requiring proceeds to go into state trust funds] the gross proceeds of the sale or exchange of public land under this Act shall be deposited in a separate account in the Treasury of the United States to be known as the ‘Federal Land Disposal Account.’”

Section 247 of S. 3525 would amend FLTFA by extending the expiration of the act and eliminating the expiration of the authorization of the FLTFA fund.<sup>48</sup> The current law prevents revenue going to the fund from sales of the lands listed under the Santini-Burton Act (P.L. 96-586),<sup>49</sup> and under the Southern Nevada Public Land Management Act of 1998 (P.L. 105-263). To that list, Section 247 would add lands in the following bills whose sales revenue would not accrue to the FLTFA fund:

- White Pine County [Nevada] Conservation, Recreation, and Development Act of 2006 (P.L. 109-432);
- Lincoln County [Nevada] Conservation, Recreation, and Development Act of 2004 (P.L. 108-424);
- Owyhee Wilderness, Nevada, in subtitle F of title I of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, §1501);
- lands in Washington County, Utah, subtitle O of title I of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, §1971);
- Carson City, Nevada, exchanges, Section 2601 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, §2601); and
- Douglas County, Washington, exchanges, Section 2606 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, §2606).

## **Nutria Eradication and Control**

Section 248 of S. 3525 would amend the Nutria Eradication and Control Act of 2003.<sup>50</sup> The current law addresses control of this invasive rodent in the states of Louisiana and Maryland, where it had been most abundant. The Maryland population has been drastically reduced through the program, as has the Louisiana population, although re-invasion is a greater problem in that state. To protect more coastal wetland habitats, where the species has been very destructive, this provision of the Senate bill would expand the program to other coastal states where the species has been found. For FY2012 through FY2016, the section authorizes \$6 million annually. Of that

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<sup>47</sup> P.L. 106-248, §205(a).

<sup>48</sup> The bill contains an internal inconsistency regarding the termination of Section 206(f). Section 13707 eliminates Section 206(f), but Section 13101(b)(2) amends it.

<sup>49</sup> Section 247 corrects a typographical error in current law (43 U.S.C. §2305) that incorrectly refers to P.L. 96-568.

<sup>50</sup> P.L. 108-16; the act’s authorization expired in FY2008; \$2 million each was authorized for Louisiana and Maryland annually.

figure, \$2 million is allocated to Maryland and \$2 million to Louisiana; the remainder is allocated to other coastal states.

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