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# **Federal Lands and Natural Resources: Overview and Selected Issues for the 114<sup>th</sup> Congress**

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## Summary

The Property Clause in the U.S. Constitution (Article IV, §3, Clause 2) grants Congress the authority to acquire, dispose of, and manage federal property. The 114<sup>th</sup> Congress may consider multiple federal land and natural resources policy and management issues. These issues are complex and often interrelated, and include how much and which land the government should own, and how lands and resources should be used and managed. These issues affect local communities, industries, ecosystems, and the nation.

There are approximately 640 million surface acres of federally owned land in the United States. Four agencies (referred to in this report as the federal land management agencies, or FLMAs) administer approximately 609 million surface acres (95%) of federal lands: the Forest Service (FS) in the Department of Agriculture (USDA), and the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS), all in the Department of the Interior (DOI). The federal estate also extends to the energy and mineral resources located below ground and offshore. These include about 700 million onshore acres of the federal subsurface mineral estate that are managed by BLM. In addition, the Bureau of Ocean Energy Management, also in DOI, manages access to approximately 1.7 billion offshore acres located in and below federal waters within and beyond the U.S. Exclusive Economic Zone. However, not all of these onshore or offshore acres contain extractable mineral and energy resources.

This report introduces some of the broad themes and issues Congress considers when addressing federal land policy and resource management, including questions about the extent and location of the federal estate. For example, legislation may be introduced in the 114<sup>th</sup> Congress to continue funding laws that authorize the acquisition of additional lands, and other legislation may propose to convey some land out of federal ownership or management. Other issues for Congress may include whether certain lands or resources should have additional protections, for example, by designating certain lands as wilderness or national monuments, or protecting endangered species and their habitat. Congress also may address questions about wildfire management on both federal and nonfederal lands, such as questions about funding suppression efforts.

Other policy questions involve how federal land should be used. Certain federal lands are considered primary- or dominant-use lands as specified in statute by Congress. For example, the dominant-use mission of the National Wildlife Refuge System is “to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans,” and the dual-use mission of the National Park System is to conserve unique resources and provide for their use and enjoyment by the public. BLM and FS lands, however, have a statutory mission to balance multiple uses: recreation, grazing, timber, habitat and watershed protection, and energy production. Conflicts arise as users and land managers attempt to balance these uses both spatially and temporally. The 114<sup>th</sup> Congress may consider bills that would attempt to clarify and prioritize these uses. In addition to questions about balancing energy production against other uses, other questions include how to balance traditional and alternative energy production on federal lands.

Congress also may consider how or whether to charge for access and use of federal resources and lands, how to use those funds, and whether and how to compensate local governments for the presence of untaxed federal lands within their borders.

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## Introduction

Federal land management decisions influence the U.S. economy, environment, and social welfare. These decisions determine how the nation's federal lands will be acquired, developed, managed, and protected. Their impact may be local or regional, or may even rise to the national level. This report discusses selected federal land policy issues that the 114<sup>th</sup> Congress may consider through oversight, authorizations, or appropriations. The report also identifies CRS products that provide more detailed information.<sup>1</sup>

The federal government manages roughly 640 million acres of surface land, approximately 28% of the 2.3 billion acres of land in the United States.<sup>2</sup> Four agencies (referred to in this report as the federal land management agencies, or FLMAs) administer a total of 609 million acres (95%) of federal lands:<sup>3</sup> the Forest Service (FS) in the Department of Agriculture (USDA), and the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS), all in the Department of the Interior (DOI). Most of these lands are in the West and Alaska, where the percentage of federal ownership is significantly higher than elsewhere in the nation (see **Figure 1**). In addition, the Department of Defense administers approximately 14 million acres in military bases, training ranges, and more; and numerous other agencies administer the remaining federal acreage.<sup>4</sup>

The federal estate also extends to the energy and mineral resources located below ground and offshore. These include about 700 million onshore acres of the federal subsurface mineral estate and about 1.7 billion acres located beyond state coastal waters—referred to as U.S. offshore areas—although not all of these acres contain extractable mineral and energy resources. The U.S. offshore areas, which lie within and beyond the U.S. Exclusive Economic Zone (EEZ), are also referred to as the Outer Continental Shelf (OCS).<sup>5</sup> U.S. offshore areas represent approximately 4.5 million square miles, or an area about 23% larger than the total land area of the United States.

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<sup>1</sup> For a comprehensive listing of CRS products on federal land issues, see CRS Issues Before Congress, Energy, Environment, and Resources: Federal Lands at <http://www.crs.gov/pages/subissue.aspx?cliid=314&parentid=2522&preview=False>.

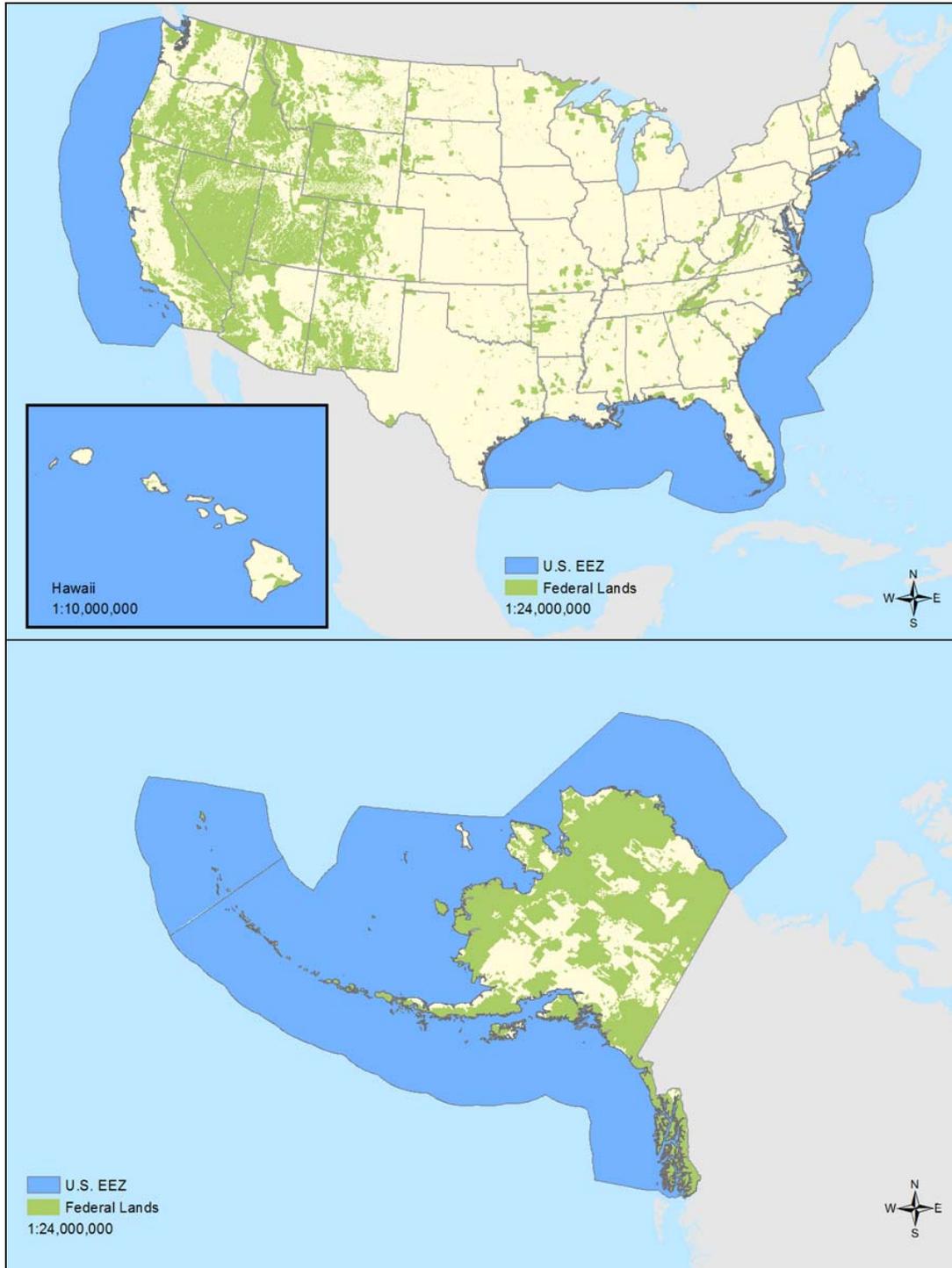
<sup>2</sup> Total federal land in the United States is not definitively known. In 2013, the four major federal land management agencies managed a total of 608.9 million acres in the United States (611.0 million acres including territorial acreage). For historical information on acres managed by the four agencies and the Department of Defense, by state, see CRS Report R42346, *Federal Land Ownership: Overview and Data*.

<sup>3</sup> In this report, the term *federal land* is used to refer to any land owned (fee simple title) and managed by the federal government, regardless of its mode of acquisition or managing agency; it excludes lands administered by a federal agency under easements, leases, contracts, or other arrangements. Acreage totals also exclude federal lands for which the federal land management agency (FLMA) has secondary jurisdiction (another federal agency has primary jurisdiction and the lands are counted with that agency).

<sup>4</sup> This report focuses on federal land managed by the four major FMLAs and the Bureau of Ocean and Energy Management. Issues related to land management by other agencies, such as the Department of Defense, are covered in other CRS products.

<sup>5</sup> It is not uncommon to see statutory references to “federal waters,” “U.S. EEZ” and “U.S. OCS.” These terms might be used interchangeably in some policy contexts; however, most experts caution that each term can refer to a distinct geographical area.

**Figure I. Federal Onshore and Offshore Management Areas**



**Source:** Congressional Research Service (CRS).

**Notes:** This figure reflects the approximately 623 million acres of surface federal lands managed by the federal land management agencies (FLMAs) as well as the Department of Defense (DOD) in the 50 states. This map shows a generalized image of federal lands and submerged lands without attempting to demonstrate with any specificity the geographical area of the U.S. Exclusive Economic Zone (EEZ) as defined by state or federal courts, lawmakers, or agency officials. Due to scale considerations, all of the ocean area surrounding Hawaii in the figure is within the U.S. EEZ.

Federal land policy and management issues generally fall into several broad themes: Should federal land be managed to produce national or local benefits? How should current uses be balanced with future supplies and opportunities? Should current uses, management, and protection programs be replaced with alternatives? Who decides how federal land resources should be managed, and how are the decisions made? Some stakeholders seek to maintain or enhance the federal estate, while others seek to divest the federal estate to state or private ownership. Some issues, such as forest management and fire protection, involve both federal and nonfederal (state, local, or privately owned) land. In many cases, positions on federal land issues do not divide along clear party lines. Instead, they may be split along the lines of rural-urban, eastern-western, and coastal-interior interests.

Several authorizing committees in the House and Senate have jurisdiction over federal lands issues. For example, issues involving the management of the national forests cross multiple committee jurisdictions including the Committee on Agriculture, Natural Resources, and Interior Appropriations in the House and the Committee on Agriculture, Energy and Natural Resources, and Interior Appropriations in the Senate . In addition, federal land issues are often addressed during consideration of annual appropriations for the FLMAs' programs and activities.

This report introduces selected federal land issues, many of which are complex and interrelated. The discussions are broad and aim to introduce the reader to the range of issues regarding federal land management, while providing references to more detailed and specific CRS products available on the issue. After a background section on the FLMAs, the issues are grouped into 10 broad categories:

- Federal Estate Ownership
- Funding for Federal Land Management
- Climate Management
- Energy and Minerals Resources and Development
- Forest Management
- Range Management
- Recreation on Federal Lands
- Special Land Designations
- Species Management
- Wildfire Management

## **The Federal Land Management Agencies (FLMAs)**

Federal land ownership began when the original 13 states ceded title of some of their land to the newly formed central government.<sup>6</sup> The early federal policy was to dispose of federal land to generate revenue and encourage western settlement and development. However, Congress began

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<sup>6</sup> For more information, see CRS Report RL34267, *Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention*.

to withdraw, reserve, and protect federal land through the creation of national parks and forest reserves starting in the late 1800s. This “reservation era” laid the foundation for the current federal agencies, whose primary purpose is to manage natural resources on federal lands.

The four federal land management agencies (FLMAs)—the Forest Service, the National Park Service, the Fish and Wildlife Service, and the Bureau of Land Management—administer the large majority of the federal lands (609 million surface acres and access to 700 million acres of subsurface minerals).<sup>7</sup> In addition to the FLMAs, the Bureau of Ocean Energy Management administers nearly 2 billion acres of offshore federal submerged lands. These five agencies were created at different times, with different missions and purposes, as discussed below, and were authorized by several different House and Senate committees. However, these agencies all receive funding through the annual Interior, Environment, and Related Agencies appropriations laws, as well as through various trust funds and special accounts.

## Forest Service

The Forest Service (FS) is the oldest of the federal land management agencies. Although the first forest reserves—later renamed national forests—were created in 1891, FS was established later, in 1905 in the Department of Agriculture. The FS is charged with managing the National Forest System (NFS), as well as conducting forestry research and providing assistance to state and private forest owners. Today, FS administers 193.1 million acres of land—including 154 national forests and 20 national grasslands—predominately in the West (although FS manages more than half of all the eastern federal lands).<sup>8</sup>

The forest reserves were originally authorized to protect the lands, preserve water flows, and provide timber. These purposes were expanded in the Multiple-Use Sustained-Yield Act of 1960.<sup>9</sup> This act added recreation, livestock grazing, and wildlife and fish habitat as purposes of the national forests, with wilderness added as a defined management objective in 1964.<sup>10</sup> The act directed that these multiple uses be managed in a “harmonious and coordinated” manner and “in the combination that will best meet the needs of the American people.”<sup>11</sup> The act also directed FS to manage the renewable resources under the principle of sustained yield, meaning to achieve a high level of resource outputs in perpetuity, without impairing the productivity of the lands. Congress reaffirmed and expanded the multiple-use sustained-yield management directive in subsequent legislation, including the Forest Rangeland Renewable Resources Planning Act of 1974 (RPA)<sup>12</sup> and the National Forest Management Act of 1976 (NFMA).<sup>13</sup> The RPA and NFMA also direct FS to conduct long-range planning efforts to manage the national forests. Balancing

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<sup>7</sup> The remaining surface federal lands are managed by various agencies, including the Department of Defense, the U.S. Postal Service, the National Aeronautics and Space Administration, and the Department of Energy. Throughout the report, the term *land management* may include submerged land management where appropriate.

<sup>8</sup> Table 1, Forest Service, *Land Areas Report, as of September 30, 2014*, <http://www.fs.fed.us/land/staff/lar/LAR2014/lar2014index.html>.

<sup>9</sup> P.L. 86-517; 16 U.S.C. §§528-531.

<sup>10</sup> The Wilderness Act of 1964 (P.L. 88-577; 16 U.S.C. §§1131-1136) established wilderness as a management responsibility for all of the federal land management agencies.

<sup>11</sup> 16 U.S.C. §531(a).

<sup>12</sup> P.L. 93-378; 16 U.S.C. §1600, et seq.

<sup>13</sup> P.L. 94-588, 16 U.S.C. §1600, et seq.

the multiple uses across the national forest system has sometimes led to conflicts regarding management decisions and priorities.

## **Bureau of Land Management**

The BLM was formed in 1946 by combining two existing agencies.<sup>14</sup> The BLM currently administers more onshore federal lands than any other agency—247 million acres. BLM lands are heavily concentrated (99.9%) in the 12 western states. Nearly half of the total acreage is in two states—Alaska (29%) and Nevada (19%). BLM lands, officially designated the National System of Public Lands, include grasslands, forests, high mountains, arctic tundra, and deserts. BLM lands often are intermingled with other federal or private lands, and the agency has authority to acquire, dispose of, and exchange lands under various statutes.

As defined in the Federal Land Policy and Management Act of 1976 (FLPMA),<sup>15</sup> BLM management responsibilities are similar to those of FS—sustained yields of the multiple uses, including recreation, grazing, timber, watershed, wildlife and fish habitat, and conservation. For instance, about 155 million acres are available for livestock grazing, and about 30 million acres are in BLM’s National Landscape Conservation System. 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. In addition, BLM administers onshore federal energy and mineral resources, covering nearly 700 million acres of federal subsurface mineral estate—including the subsurface of many national forests—although not all of these acres contain extractable mineral and energy resources. BLM also supervises the mineral operations on about 56 million acres of Indian trust lands. Conflicts sometimes arise among and between users and land managers as a result of the diversity of the lands and multiple use opportunities provided on BLM public lands.

## **Fish and Wildlife Service**

The first national wildlife refuge was established by executive order in 1903.<sup>16</sup> In 1966 the refuges were aggregated into the National Wildlife Refuge System, administered by the Fish and Wildlife Service (FWS). Today, FWS administers 89 million acres of federal land, of which 77 million acres (86%) are in Alaska.<sup>17</sup> The FWS also administers several largely marine refuges around Hawaii and U.S. territories in the Pacific (53 million acres total). Several large marine national monuments<sup>18</sup> are also administered by FWS, but are not part of the National Wildlife Refuge System.

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<sup>14</sup> These two agencies were the Grazing Service, established in 1934 to administer grazing on public rangelands, and the General Land Office, established in 1812 to oversee the disposal of the federal lands. For more information, see Paul W. Gates, *History of Public Land Law Development*, written for the Public Land Law Review Commission (Washington, DC: GPO, Nov. 1968), pp. 610-622.

<sup>15</sup> P.L. 94-579; 43 U.S.C. §1701, et seq.

<sup>16</sup> Exec. Order No. 1014 (March 13, 1903).

<sup>17</sup> This total includes the Hanford Reach National Monument (WA; 32,965 acres), which is administered by FWS but is not part of the National Wildlife Refuge System.

<sup>18</sup> FWS manages these areas in coordination with the National Oceanic and Atmospheric Administration. See “National Marine” section in this report for more information on marine national monuments.

In contrast to the multiple-use missions of FS and BLM, the FWS has a dominant-use mission—to conserve plants and animals for the benefit of present and future generations. Other uses (motorized recreation, timber cutting, grazing, etc.) are permitted, to the extent that they are compatible with the species’ needs, but wildlife-related activities (hunting, bird-watching, hiking, education, etc.) are considered “priority uses” and are given preference over consumptive uses such as timber, grazing, and minerals. Determining compatibility can be challenging, but the relative clarity of the mission generally has minimized conflicts over refuge management and use.

## National Park Service

The National Park Service (NPS) was created in 1916<sup>19</sup> to manage the growing number of park units established by Congress and monuments proclaimed by the President. The National Park System has grown to 408 units with diverse titles—national park, national preserve, national historic site, national recreation area, national battlefield, and many more.<sup>20</sup> NPS administers 80 million acres of federal land in all 50 states, the District of Columbia, and U.S. territories. Roughly two-thirds of the system’s lands are in Alaska.<sup>21</sup>

The NPS has a dual mission—to preserve unique resources and to provide for their enjoyment by the public. Park units include spectacular natural areas (e.g., Yellowstone, Grand Canyon, and Arches National Parks), unique prehistoric sites (e.g., Mesa Verde National Park and Dinosaur National Monument), and special places in American history (e.g., Valley Forge National Historic Park, Gettysburg National Military Park, and the Statue of Liberty National Monument), as well as areas that focus on recreation (e.g., Cape Cod National Seashore and Glen Canyon National Recreation Area). NPS laws, regulations, and policies emphasize the conservation of park resources in conservation/use conflicts, and the system’s lands and resources generally receive a higher level of protection than those of BLM and FS. The tension between providing recreation and preserving resources has produced many management challenges for NPS.

## Bureau of Ocean Energy Management

The Bureau of Ocean Energy Management (BOEM) was established in 2010.<sup>22</sup> Specifically, BOEM was created as part of DOI structural reforms to replace the Minerals Management Service (MMS), which was previously responsible for managing offshore energy resources.<sup>23</sup>

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<sup>19</sup> Act of August 25, 1916; 16 U.S.C. §§1-4.

<sup>20</sup> For a discussion of the different park titles, see CRS Report R41816, *National Park System: What Do the Different Park Titles Signify?*, by Laura B. Comay and Laura B. Comay. Ten units were added to the system during the 113<sup>th</sup> Congress, including three units proclaimed by the President as national monuments and another seven units established by Congress in P.L. 113-291 of December 2014. (P.L. 113-291 also redesignated two of the presidentially proclaimed monuments as national historical parks and made other changes to the National Park System.)

<sup>21</sup> 52.4 million acres, 66% of NPS total.

<sup>22</sup> Order No. 3299, issued by Former Secretary of the Interior Ken Salazar issued on May 19, 2010.

<sup>23</sup> The Minerals Management Service (MMS) was established in 1982 after congressional committees held a number of hearings in 1981 documenting persistent problems with management of offshore energy programs. United States Commission on Fiscal Accountability of the Nation’s Energy Resources, *Fiscal Accountability of the Nation’s Energy Resources* (Washington, GPO, 1982). In June 2010, former Interior secretary Ken Salazar changed the name of the agency to the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). See DOI Secretarial Order 3302, June 18, 2010, at <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=35872>.

BOEM's mission is to balance energy independence, environmental protection, and economic development through responsible, science-based management of offshore conventional and renewable energy resources in four regions: the Atlantic, the Pacific, the Gulf of Mexico, and the Arctic (see **Figure 1**).

BOEM manages energy resources in areas covering approximately 1.7 billion acres located beyond state waters and comprising areas defined in the Outer Continental Shelf (OCS) Lands Act, as amended in 1978 (OCSLA).<sup>24</sup> Most OCS acreage is concentrated in the Alaska region (more than 1 billion acres), but some OCS acreage exists off all coastal states.<sup>25</sup> OCS revenues are allocated mainly to the General Treasury and to two federal programs—the Land and Water Conservation Fund and the Historic Preservation Fund.<sup>26</sup> Because of the cross-cutting nature of its management responsibilities, BOEM shares some responsibilities with two other DOI agencies: the Bureau of Safety and Environmental Enforcement (BSEE) and the Office of Natural Resources Revenue (ONRR).<sup>27</sup>

BOEM schedules and conducts oil and gas lease sales,<sup>28</sup> administers existing oil and gas leases, issues easements and leases for deploying renewable energy technologies,<sup>29</sup> and manages ownership records for offshore tracts leased for energy development, among other responsibilities. Furthermore, BOEM administers offshore sand and gravel resources to assist state beach-replenishment efforts.

### ***CRS Products***

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

CRS Report RL34267, *Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention*, by Kristina Alexander.

CRS Report R42656, *Federal Land Management Agencies and Programs: CRS Experts*, by Katie Hoover.

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<sup>24</sup> 43 U.S.C. §1331 et. seq. Generally, the Outer Continental Shelf (OCS) begins 3-9 nautical miles from shore (depending on the state) and extends 200 nautical miles outward, or farther if the continental shelf extends beyond 200 miles; see 43 U.S.C. §1331(a). Federal jurisdiction can be subject to principles of international law. After 1978, the OCSLA statutory framework incorporated certain requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. §4321). Separately, the United States declared its EEZ, extending no more than 200 nautical miles from the territorial sea baseline, in Presidential Proclamation No. 5030, 48 *Federal Register* 10605 (March 14, 1983). For more information, see NOAA, “What Is the EEZ?”, at <http://oceanservice.noaa.gov/facts/eez.html>.

<sup>25</sup> Not all of these acres contain energy resources.

<sup>26</sup> P.L. 90-401 and P.L. 94-422, respectively. The Land and Water Conservation Fund is authorized to receive \$900 million per year from OCS revenues, and the Historic Preservation Fund is authorized to receive \$150 million per year. Other OCS revenues are deposited in various accounts designated for states, other programs, and the General Treasury.

<sup>27</sup> Each agency emphasizes a different mission. The Bureau of Safety and Environmental Enforcement is responsible for safety permitting and environmental enforcement, and the Office of Natural Resources and Revenue is responsible for collecting, auditing, and disbursing public revenues from offshore projects.

<sup>28</sup> 43 U.S.C. §1344. The current Five Year Program went into effect August 27, 2012, and is expected to remain in effect until 2017. 77 *Federal Register* 40080 (July 6, 2012).

<sup>29</sup> P.L. 109-58, §388(a).

CRS Report R40225, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Carol Hardy Vincent.

## Federal Estate Ownership

The ownership and use of federal lands has generated controversy for more than a century. One key area of debate is the extent of the federal estate; or, in other words, how much land the federal government should own (**Figure 1**). This debate includes questions about disposing of some federal land to state or private ownership, or if additional land should be acquired for conservation, open space, or other purposes. For lands retained in federal ownership, questions have centered around whether to curtail certain land designations (e.g., national monuments proclaimed by the President or wilderness areas designated by Congress) or if current management procedures should be changed (e.g., to allow a greater role for state and local governments or to expand economic considerations in decision-making). A separate issue is how to ensure the security of international borders while protecting the federal lands and resources along the border, which are managed by multiple agencies.

Debates about federal land ownership—including efforts to divest federal lands—often hinge upon constitutional principles such as the Property Clause and the Supremacy Clause.<sup>30</sup> The Property Clause<sup>31</sup> grants Congress authority over the lands, territories, or other property of the United States: “the Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” Thus, the Congress has broad and exclusive authority to govern the lands of the federal government. The Supremacy Clause<sup>32</sup> establishes federal preemption over state law, meaning where a state law conflicts with federal law, the federal law will prevail. Through these constitutional principles, the U.S. Supreme Court has described Congress’s power over federal lands as “without limitations.”<sup>33</sup>

Echoing efforts of the “Sagebrush Rebellion” during the 1980s, several states have recently initiated efforts to assume title to the federal lands within their borders. These efforts generally are in response to concerns about the amount of federal land within their state, as well as concerns about how the land is managed, fiscally and otherwise. However, efforts by a state to claim federal lands absent parallel federal legislation seem unlikely to succeed because of the Supremacy Clause of the Constitution. That clause gives federal laws—such as the laws establishing the states in which the states forever waived their rights to federal lands<sup>34</sup>—supremacy over state laws.<sup>35</sup> Further, each state constitution recognizes the U.S. Constitution as

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<sup>30</sup> Others have argued that the *equal footing doctrine* relates to federal land ownership, although no court has ever supported that theory. The term *equal footing* comes from the Northwest Ordinance of 1787, and state enabling acts included the phrase that the state was admitted “into the Union on an equal Footing with the original States (See, e.g., Nevada Enabling Act, 13 Stat. 30). The U.S. Supreme Court has further clarified that equal footing does not mean, however, that physical or economic situations among states must be the same.

<sup>31</sup> U.S. Const. Article IV, Section 3, cl. 2.

<sup>32</sup> U.S. Const. Article VI, cl. 2.

<sup>33</sup> See *United States v. San Francisco*, 310 U.S. 16, 29 (1940) and *Kleppe v. New Mexico*, 426 U.S. 529, 542-43.

<sup>34</sup> For example, Utah’s enabling act (Act of July 16, 1984, §3, 28 Stat. 107) and Arizona’s enabling act (Act of June 20, 1910, §20, 36 Stat. 568) respectively, provided that “the people inhabiting proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof.”

<sup>35</sup> For more information, see CRS Legal Sidebar “State Claims to Federal Lands Within Their Boundaries,” at <http://www.crs.gov/LegalSidebar/details.aspx?ID=291>.

the supreme law of the land, reaffirming federal supremacy. Accordingly, state or local laws attempting to impose requirements on federal lands would be preempted by federal law.

### ***CRS Products***

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

CRS Report RL34267, *Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention*, by Kristina Alexander.

CRS Report R41770, *Leasing and Selling Federal Lands and Resources: Receipts and Their Disposition*, by Carol Hardy Vincent and Marc Humphries.

## **Agency Acquisition and Disposal Authorities**

Congress has granted the FLMAs varying and limited authorities to acquire and dispose of land. The extent of this authority differs considerably among the FLMAs. The BLM has relatively broad authority for both acquisitions and disposals under FLPMA. By contrast, NPS has almost no general authority to acquire land to create new park units or to dispose of park lands without congressional action. The FS authority to acquire lands is limited mostly to lands within or contiguous to the boundaries of a national forest, including the authority to acquire access corridors to national forests across nonfederal lands.<sup>36</sup> The agency has various authorities to dispose of land, but they are relatively constrained and infrequently used. FWS has various authorities to acquire lands, but no general authority to dispose of its lands. For example, the Migratory Bird Conservation Act of 1929 grants FWS authority to acquire land for the National Wildlife Refuge System—in part using funds from the sale of hunting and conservation stamps—after state consultation and agreement.<sup>37</sup>

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

### ***CRS Product***

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

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<sup>36</sup> 43 U.S.C. §1715(a).

<sup>37</sup> 16 U.S.C. §715 et seq. The Migratory Bird Conservation Act permanently authorized and appropriated a fund supported through the sale of hunting and conservation stamps, import duties on arms and ammunition, and a portion of certain refuge entrance fees.

## Funding Issues

Funding for federal land and natural resource programs presents an array of issues for Congress. The FLMAs receive their discretionary appropriations through the Interior, Environment, and Related Agencies appropriations bill.<sup>38</sup> In addition to questions related directly to appropriations, other funding questions relate to the compensation of states or counties for the presence of federal lands and resources, including whether to revise or maintain existing payment programs. A second set of questions relates to the Land and Water Conservation Fund, from which Congress appropriates funds for land acquisition by federal agencies, outdoor recreation needs of states, and other purposes. Under debate are the levels, sources, and uses of funding and whether the funding should be reauthorized and continued as discretionary. A third set of issues relates to the maintenance of assets by the agencies, particularly how to address their backlog of maintenance projects while achieving other government priorities.

### *CRS Products*

CRS Report R43617, *Interior, Environment, and Related Agencies: FY2015 Appropriations*, by Carol Hardy Vincent.

CRS Report R43822, *Federal Land Management Agencies: Appropriations and Revenues*, coordinated by Carol Hardy Vincent.

## Federal Payment Programs

As a condition of statehood, most states forever waived the right to tax federal lands within their borders. However, some believe federal lands may create demand for services such as fire protection, police cooperation, or longer roads to skirt the federal property. Under federal law, local governments are compensated through various programs due to the presence of federally owned land. Some of these programs are run by specific agencies and apply only to that agency's land. In addition, portions of the rents and royalties charged for energy development and production on both onshore and offshore federal lands may be shared with the states or local governments where the land or mineral deposit is located. The adequacy, coverage, and equity of the payment formulas for all of these programs are recurring issues for Congress.

The most widely applicable onshore program, administered by DOI, applies to many types of federally owned land and is called Payments in Lieu of Taxes, or PILT. Counties with NPS lands primarily receive payments under PILT. FS and BLM have additional payment programs based primarily on receipts from revenue-producing activities on their lands; FWS has a smaller payment program for certain refuge lands.<sup>39</sup> One program (Secure Rural Schools, or SRS), which

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<sup>38</sup> For an overview of appropriations for Interior, Environment, and Related Agencies, see CRS Report R43617, *Interior, Environment, and Related Agencies: FY2015 Appropriations*, by Carol Hardy Vincent. For products pertaining to funding for individual agencies and programs in the Interior bill, see CRS Issues Before Congress, Interior, Environment, and Related Agencies' Appropriations at <http://www.crs.gov/pages/subissue.aspx?cliid=2346&parentid=73&preview=False>.

<sup>39</sup> A program, commonly referred to as Impact Aid, supports local schools based on the presence of children of federal employees, including military dependents. It provides some support to local governments however, and to some extent it compensates for lost property tax revenue when military families live on federally owned land. For more information, (continued...)

expired after the last payments were disbursed in 2014, compensated counties with NFS lands or certain BLM lands in Oregon for declining timber harvests. Starting in 2015, the payments returned to a revenue-sharing system and were significantly lower than the previous years' SRS payments.

The federal government also shares the revenue from mineral and energy development, both onshore and offshore. Revenue collected (rents, bonus, and royalties) from onshore mineral and energy development is shared 50% with the states, under the Mineral Leasing Act of 1920<sup>40</sup> (less administrative costs). Alaska, however, receives 90% of all revenues collected on federal onshore leases (less administrative costs).

Revenue collected from offshore mineral and energy development in the Outer Continental Shelf (OCS) is shared with the coastal states, albeit at a lower rate. The Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>41</sup> as amended, allocates 27% of the total revenue generated from federal offshore leases to the coastal states (and the remaining to the Land and Water Conservation Fund, discussed below, the National Historic Preservation Fund, and the U.S. Treasury). However, the Gulf of Mexico Energy Security Act (GOMESA)<sup>42</sup> increased the rate to 37.5% for four coastal states<sup>43</sup> starting in 2006 for specific OCS leases, and expanding to more OCS leases in 2017. States have argued for a greater share of the OCS revenues based on the impacts oil and gas projects have on infrastructure and the environment, while others have argued that more of the revenue should go to the general fund of the Treasury.

### ***CRS Products***

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

CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

CRS Report R41303, *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000*, by Katie Hoover.

CRS Report R42404, *Fish and Wildlife Service: Compensation to Local Governments*, by M. Lynne Corn.

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

CRS Report R40645, *U.S. Offshore Oil and Gas Resources: Prospects and Processes*, by Marc Humphries and Robert Pirog.

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(...continued)

see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner.

<sup>40</sup> 30 U.S.C. §181.

<sup>41</sup> The Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. §§1331 et. seq.).

<sup>42</sup> P.L. 109-432.

<sup>43</sup> The four states are Alabama, Louisiana, Mississippi, and Texas.

## Land and Water Conservation Fund

The Land and Water Conservation Fund Act of 1965<sup>44</sup> was enacted to help preserve, develop, and assure access to outdoor recreation facilities to strengthen the health of U.S. citizens. The law created the Land and Water Conservation Fund (LWCF) in the U.S. Treasury as a funding source to implement its outdoor recreation purposes. The LWCF has been the principal source of monies for land acquisition for outdoor recreation by the four FLMAs. The LWCF also has funded a matching grant program to assist states in recreational planning, acquiring recreational lands and waters, and developing outdoor recreational facilities. Further, LWCF has been used to fund other federal programs with purposes related to lands and resources.

The LWCF is authorized at \$900 million annually through September 30, 2015. While the fund accrues revenues and collections from multiple sources, nearly all of the revenues are derived from oil and gas leasing in the OCS. Congress determines the level of appropriations each year, and yearly appropriations have fluctuated widely since the origin of the program.<sup>45</sup> Of the total revenues that have accrued throughout the history of the program (\$37.1 billion), less than half have been appropriated (\$17.1 billion).<sup>46</sup> Thus, the unappropriated balance in the fund is currently estimated at approximately \$20 billion.

There is a difference of opinion as to the appropriate level of funds for LWCF and how those funds should be used. Current congressional issues include deciding the amount to appropriate for land acquisition, the state grant program, and other purposes and whether to alter the processes for allocating acquisition funds and state grants. The primary context for debating these issues is annual Interior appropriations legislation. Several other issues have been under debate, including whether to reauthorize the LWCF beyond 2015; to provide the fund with permanent appropriations at the authorized level; to direct revenues from additional activities to the LWCF; to limit the use of funds for particular purposes, or, alternatively, to require some of the funds to be used for certain purposes; and to prohibit the disposal of, or limit the use of, lands acquired with LWCF monies.

### *CRS Product*

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

## Deferred Maintenance

The FLMAs have maintenance responsibility for their buildings, roads and trails, recreation sites, and other infrastructure. Congress continues to focus on the agencies' deferred maintenance, often called the maintenance backlog, defined as maintenance that "was not performed when it should have been or was scheduled to be and which, therefore, is put off or delayed for a future

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<sup>44</sup> Land and Water Conservation Fund Act of September 3, 1964; P.L. 88-578, 78 Stat. 897. 16 U.S.C. §§4601-4, et seq.

<sup>45</sup> However, monies provided to the state grant program under §105, Division C, P.L. 109-432 are permanently appropriated.

<sup>46</sup> These figures are estimated through FY2015.

period.”<sup>47</sup> The agencies assert that continuing to defer maintenance of facilities accelerates their rate of deterioration, increases their repair costs, and decreases their value.

Congressional and administrative attention has centered on the NPS backlog, which has continued to increase from a FY1999 estimate of \$4.25 billion in nominal dollars. Currently, DOI estimates deferred maintenance for NPS for FY2014 at between \$9.31 billion and \$13.70 billion, with a mid-range figure of \$11.50 billion. A majority of the backlogged maintenance (59%) is for roads, bridges, and trails. The other FLMAs also have maintenance backlogs. DOI estimates deferred maintenance for FY2014 for FWS at between \$1.24 billion and \$1.82 billion and BLM backlog at between \$0.66 billion and \$0.81 billion. The FS estimated its backlog for FY2014 at \$5.10 billion.<sup>48</sup> Thus, the four agencies together had a combined FY2014 backlog estimated at between \$16.31 billion and \$21.43 billion, with a mid-range figure of \$18.87 billion.

The backlogs have been attributed to decades of funding shortfalls to address capital improvement projects. However, it is not clear how much total funding is provided for deferred maintenance each year because annual presidential budget requests and appropriations documents typically do not identify and aggregate all funds for deferred maintenance. Currently, there is debate over the appropriate level of funds to maintain infrastructure, whether to use funds from other programs/sources, how to balance maintenance of the existing infrastructure with the acquisition of new assets, and the priority of maintaining infrastructure relative to other government functions.

## Climate Change and Federal Land Management

Scientific evidence shows that the United States’ climate has been changing in recent decades.<sup>49</sup> This poses several interrelated and complex issues for the management of federal lands and resources, in terms of mitigation, adaptation, and resiliency. Overall, climate change is introducing uncertainty about conditions previously considered relatively stable and predictable. Given the diversity of federal land and resources, concerns are wide-ranging and include, among other things, invasive species, sea-level rise, wildlife habitat changes, and vulnerability to extreme weather events, as well as concerns about the effects of these changes on tourism and recreation. More specific observed impacts include a fire season that begins earlier and lasts longer, warmer winter temperatures that allow various insect and disease infestations to persist, thinner snowpacks that melt earlier and contribute to drought conditions, and habitat shifts that may or may not exacerbate the status of sensitive species. Another concern is how climate change may impact some iconic federal lands, such as the diminishing size of the glaciers that cover Glacier National Park and several parks in Alaska,<sup>50</sup> or the flooding of some wildlife refuges.

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<sup>47</sup> This definition is taken from the *Statement of Federal Financial Accounting Standards No. 6*, p. 31, available on the website of the Federal Accounting Standards Advisory Board at <http://www.fasab.gov/pdf/ffas-6.pdf>.

<sup>48</sup> The FY2013 estimate for FS is the most recent readily available at publication of this report.

<sup>49</sup> This report does not address the causes of multi-decadal climate change. For more discussion of climate change science, see National Research Council, *Advancing the Science of Climate Change*, Washington DC, 2010. See also CRS Report R43229, *Climate Change Science: Key Points*, by Jane A. Leggett.

<sup>50</sup> Gregory T. Pederson, Stephen T. Gray, and Daniel B. Fagre, *Long-Duration Drought Variability and Impacts on Ecosystem Services: A Case Study from Glacier National Park, Montana*, U.S. Geologic Survey, Earth Interactions, Volume 10, Paper 4., January 2006, <http://www.ncdc.noaa.gov/paleo/pubs/pederson2006/pederson2006.html>.

The role of the federal government in responding to climate change is currently under debate. Some stakeholders see future climate conditions as representing an increased risk to the effective performance of the FLMAs' missions and roles. Others are concerned that a focus on climate change adaptation may divert resources and attention from other agency activities and near-term challenges. The debate largely hinges on how to make investments that will cost-effectively assist the agencies in successfully performing their activities in the near term and in future decades.

A related debate is the role of federal agencies—particularly BLM and BOEM—in energy production on federal lands. Specifically in question is the extent to which the agencies should provide access to and promote the different sources of energy production. Both traditional sources of energy (non-renewable fossil fuels such as oil, gas, and coal) and alternative sources of energy (renewable fuels such as solar, wind, and geothermal) are available on federal lands. However, since fossil fuel emissions contribute to climate change, some argue that the agencies should prioritize renewable energy production on federal lands over traditional energy sources.

**GAO Reports on Climate Change and Federal Land Management**

*Various Adaptation Efforts Are Underway at Key Natural Resource Management Agencies*, GAO-13-253, May 31, 2013, <http://www.gao.gov/products/gao-13-253>.

*Climate Change: Future Federal Adaptation Efforts Could Better Support Local Infrastructure Decision Makers*, GAO-13-242, April 12, 2013, <http://www.gao.gov/products/gao-13-242>.

*High Risk Series: An Update*. GAO-15-290, February 11, 2015, <http://www.gao.gov/highrisk>.

*Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water Resources*, GAO-07-863, August 7, 2007, <http://www.gao.gov/products/GAO-07-863>.

*Adaptation: Strategic Federal Planning Could Help Government Officials Make More Informed Decisions*, GAO-10-113, October 7, 2009, <http://www.gao.gov/products/GAO-10-113>.

Congress is addressing agency climate change efforts through appropriations, oversight, and legislation. Issues for Congress include whether additional statutes, regulations, or guidance for climate change is needed. More specific legislative issues for Congress may be the extent to which federal resources support a strategy to achieve long-term climate change policy goals, the demands of climate change programming for the FLMAs and the resources they manage, proposals to restructure or improve collaboration among the FLMAs regarding climate change activities, and possible reporting requirements to support congressional decision-making and oversight.

**CRS Products**

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

CRS Report R42613, *Climate Change and Existing Law: A Survey of Legal Issues Past, Present, and Future*, by Robert Meltz.

CRS Report R43227, *Federal Climate Change Funding from FY2008 to FY2014*, by Jane A. Leggett, Richard K. Lattanzio, and Emily Bruner.

CRS Report R43229, *Climate Change Science: Key Points*, by Jane A. Leggett.

CRS Report R43120, *President Obama's Climate Action Plan*, coordinated by Jane A. Leggett.

CRS Report R43230, *Climate Change Legislation in the 113<sup>th</sup> Congress*, by Jonathan L. Ramseur.

CRS Report R41144, *Deforestation and Climate Change*, by Pervaze A. Sheikh.

CRS Report R41691, *Forest Management for Resilience and Adaptation*, by Pervaze A. Sheikh.

## Energy and Mineral Resources

Much of the onshore federal estate is open to energy and mineral exploration and development, including most BLM and many FS lands. Offshore federal resources, within and beyond the U.S. EEZ, also are open for exploration and development. However, many NPS lands and areas within the National Wilderness Preservation System, as well as certain other federal lands, have been specifically withdrawn from exploration and development.<sup>51</sup>

Energy production on federal lands accounts for a significant amount of total U.S. energy production. For example, in FY2014, approximately 22% of crude oil, 16% of natural gas, and 41% of coal production came from federal lands.<sup>52</sup> This includes approximately 23,657 federal onshore oil and gas leases in production on 12.5 million acres of surface federal lands and 1,025 federal OCS leases in production on about 5 million acres offshore.<sup>53</sup> There are 309 federal coal leases on about 474,000 acres and about 400,000 active mining claims on federal public domain lands.<sup>54</sup> Federal lands also are available for renewable energy projects. BLM manages the solar and wind energy programs on about 20 million acres for each program and about 800 geothermal leases on federal lands.<sup>55</sup> Geothermal capacity on federal lands represents 40% of U.S. total geothermal electric generating capacity. Solar and wind energy potential on federal lands is growing and, based on BLM-approved projects, there is potential for 5,000 megawatts (MW) of wind and nearly 8,800 MW of solar energy on federal lands.<sup>56</sup>

The 114<sup>th</sup> Congress may continue to debate issues related to access to and availability of onshore and offshore federal lands for energy and mineral development, as well as to how to balance energy and mineral development, environmental protection, and other uses for those federal lands. Some would like to open more federal lands for energy development, whereas others have sought to retain or increase restrictions and withdrawals for certain areas they consider too sensitive or inappropriate for energy development (including some areas for renewable energy projects). Congress also may continue to focus on the energy and mineral permitting processes, the timeline for energy and mineral development, and debates over royalty collections. These issues are described in more detail in the following sections.

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<sup>51</sup> The Mining in the Parks Act of 1976 (16 U.S.C. §§1901 et seq.) closed all NPS units to the location of new mining claims, although existing claims must still be honored (see 36 C.F.R. Part 9B). P.L. 95-495 §11(a) is an example of a wilderness designation that withdrew the area from mining and mineral exploration.

<sup>52</sup> Onshore data from the BLM Oil and Gas Statistics at <http://www.blm.gov/wo/st/en.html>. Offshore data from BOEM's Combined Leasing Status Report, February 2, 2015 at <http://www.boem.gov>.

<sup>53</sup> In total, federal oil and gas active leases number 46,123 onshore and 6,056 in the OCS.

<sup>54</sup> BLM, "Coal Operations" and "Federal Coal Leasing," at [http://www.blm.gov/wo/st/en/prog/energy/coal\\_and\\_non-energy.html](http://www.blm.gov/wo/st/en/prog/energy/coal_and_non-energy.html).

<sup>55</sup> BLM, "New Energy for America," at [http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html).

<sup>56</sup> The general statutory framework for solar and wind energy development on federal lands is contained within Title V of the Federal Land Policy and Management Act of 1976, under its provisions for rights-of-way (ROW) grants (43 U.S.C. 1761).

## CRS Products

CRS Report R42756, *Energy Policy: 114<sup>th</sup> Congress Issues*, by Brent D. Yacobucci

CRS Report R41770, *Leasing and Selling Federal Lands and Resources: Receipts and Their Disposition*, by Carol Hardy Vincent and Marc Humphries.

CRS Report R43891, *Mineral Royalties on Federal Lands: Issues for Congress*, by Marc Humphries

## Onshore Resources

### Oil and Natural Gas

Onshore oil and natural gas produced on federal lands account for 5% and 11% of total U.S. oil and gas production, respectively.<sup>57</sup> Development of oil, gas, and coal on federal lands is governed primarily by the Mineral Leasing Act of 1920 (MLA).<sup>58</sup> The MLA authorizes the Secretary of the Interior—through BLM—to lease the subsurface rights to virtually all BLM and FS lands that contain fossil fuel deposits, with the federal government retaining title to the lands.<sup>59</sup> The MLA authorizes both competitive bidding and noncompetitive application processes for oil, gas, and coal exploration and production leases. Leases include an annual rental fee and a royalty payment generally determined by a percentage of the value or amount of the resource removed or sold from the federal land. In addition, the Energy Policy Act of 2005 (EPA05),<sup>60</sup> which amended the MLA, also includes provisions governing access, leasing, and management of energy development on BLM and FS lands.<sup>61</sup>

Access to federal lands and permitting projects for energy and mineral development have been controversial issues. (See also “Arctic National Wildlife Refuge: Energy Development or Wilderness?”). According to a 2008 report, out of 279 million acres of federal land or federal mineral estate with oil and gas potential, 113 million acres are open and accessible for oil and gas development and about 166 million acres were off limits or inaccessible.<sup>62</sup> The oil and gas industry contends that entry into the currently unavailable areas is necessary to ensure future domestic oil and gas supplies. Opponents maintain that the restricted lands are unique or environmentally sensitive and that the United States could realize equivalent energy gains through conservation and increased exploration on current leases or elsewhere. A related access issue is the extent to which BLM or FS may regulate the approximately 3,400 oil and gas wells

<sup>57</sup> Budget Justifications, Bureau of Land Management, FY2016, p. VII-93.

<sup>58</sup> 30 U.S.C. §181.

<sup>59</sup> Exceptions include most BLM and FS lands classified as wilderness, lands incorporated in cities and towns, and lands that have otherwise been administratively or statutorily withdrawn from entry.

<sup>60</sup> P.L. 109-58.

<sup>61</sup> For further information, see CRS Report R40806, *Energy Projects on Federal Lands: Leasing and Authorization*, by Adam Vann.

<sup>62</sup> U.S. Departments of the Interior, of Agriculture, and of Energy, *Inventory of Onshore Federal Oil and Natural Gas Resources and Restrictions to Their Development (Phase III)*, May 2008, available on the BLM website 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). The availability of public lands for oil and gas leasing can be divided into three categories: lands open under standard lease terms, open to leasing with restrictions, and closed to leasing.

on federal lands that are hydraulically fractured annually. BLM has proposed two different draft rules—one in 2012 and then a revision in 2013.<sup>63</sup> Final regulations for hydraulic fracturing on federal lands were released on March 20, 2015.<sup>64</sup> The regulations also would extend to national forests, although FS is debating this issue during the forest planning process at the individual unit level.

Another controversial issue is the permitting process and timeline, which EPA05 revised for oil and gas permits. Although the time it takes BLM to process applications has decreased since FY2006, the time it takes applicants to respond and resolve issues with the applications has increased over that time period.<sup>65</sup> EPA05 also authorized a pilot project to improve efficiency of processing oil and gas permits through FY2015.<sup>66</sup> After three years of implementation, a 2008 BLM report described improved interagency communication and a reduction in the time needed for BLM to review and process permit applications in the pilot locations. EPA05 requires that the Secretary of the Interior “makes a recommendation to the President regarding whether the pilot project should be implemented throughout the United States.” A recommendation by the Secretary of the Interior has not yet been made, although the Administration has proposed to extend the pilot. Congress may consider ending, extending, or making the pilot program permanent, with or without modifications.

Congress is debating increasing royalty rates on onshore federal oil and gas leases. According to the MLA, if a lease produces oil or gas, a royalty is paid to the landowner on the value of extracted production. The onshore royalty rate for federal oil and gas leases has remained at the statutory minimum of 12.5% since the enactment of the MLA in 1920. However, royalty rates for offshore leases currently range from 12.5% to 18.75%.

## **Coal**

Congress debates several issues regarding coal production on federal lands, including how to balance coal production against other resource values. Other concerns include how to assess the value of the coal resource, what is the fair market value, (e.g., minimum bids) for the coal, and what should be the government’s royalty. In response to these congressional concerns, a 2013 GAO analysis found inconsistencies in how BLM evaluated and documented federal coal leases.<sup>67</sup> In addition, a 2013 DOI Inspector General report found BLM may have violated provisions in the MLA by accepting below-cost bids for federal coal leases.<sup>68</sup> The Secretary of the Interior announced the initiation of a new rule for the valuation of coal. A proposed rule was published on January 6, 2015. In the proposal, the Office of Natural Resources Revenue reaffirms

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<sup>63</sup> 77 *Fed. Reg.* 27691, May 11, 2012, and 78 *Fed. Reg.* 31636, May 24, 2013.

<sup>64</sup> Department of the Interior, Bureau of Land Management, Final Agency Draft, 4310-84P, Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands. 43 C.F.R. §Part 3160.

<sup>65</sup> Bureau of Land Management, “Average Application for Permit to Drill (APD) Approval Timeframes: FY2005-FY2012,” [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/statistics/apd\\_chart.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics/apd_chart.html).

<sup>66</sup> U.S. Department of the Interior, Bureau of Land Management, *Year Two Report: Section 365 of the Energy Policy Act of 2005—Pilot Project to Improve Federal Permit Coordination* (Feb. 2008).

<sup>67</sup> U.S. Government Accountability Office, *Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information*, GAO-14-140, December 2013, <http://www.gao.gov/assets/660/659801.pdf>.

<sup>68</sup> U.S. Department of the Interior, Office of Inspector General, *Coal Management Program*, CR-EV-BLM-0001-2012, June 11, 2013, <http://www.doi.gov/oig/reports/upload/CR-EV-BLM-0001-2012Public.pdf>.

that the value for royalty purposes is at or near the lease and that gross proceeds from arm's-length contracts are the best indication of market value.<sup>69</sup>

### ***CRS Products***

CRS Report R43011, *U.S. and World Coal Production, Federal Taxes, and Incentives*, coordinated by Marc Humphries

CRS Report R40806, *Energy Projects on Federal Lands: Leasing and Authorization*, by Adam Vann.

CRS Report R42432, *U.S. Crude Oil and Natural Gas Production in Federal and Non-Federal Areas*, by Marc Humphries.

### **Renewable Energy Sources**

Both BLM and FS manage land that is considered suitable for renewable energy generation and as such have authorized projects for geothermal, wind, solar, and biomass energy projects. Interest in renewable energy projects comes in part from concern over the impact of emissions from fossil fuel-fired power plants but also is driven by the increasing adoption of statewide renewable portfolio standards that require electricity producers to supply a certain minimum share (which varies by state) of electricity from renewable sources.<sup>70</sup> Congressional interest in renewable energy resources on onshore federal lands has focused on whether to expand the leasing program for wind and solar projects versus maintaining the current right-of-way authorization process, and how to balance environmental concerns with the development and production of these resources. For example, some of these environmental concerns include the potential wildlife impacts from wind turbines and water supply requirements for solar energy.

### ***CRS Product***

CRS Report R40806, *Energy Projects on Federal Lands: Leasing and Authorization*, by Adam Vann.

### ***Geothermal Energy***

Geothermal energy is a renewable energy source produced from heat stored under the surface of the earth. Geothermal leasing on federal lands is conducted under the authority of the Geothermal Steam Act of 1970, as amended.<sup>71</sup> BLM manages geothermal permitting and leasing requirements for federal lands, in consultation with FS. In 2008, BLM and FS made 110 million acres of BLM public lands and 79 million acres of NFS lands available for leasing and potential development, pending site-specific analysis of future leasing applications.<sup>72</sup> The BLM currently manages 818

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<sup>69</sup> U.S. Department of the Interior, Natural Resources Revenue Office, "Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform," 80 *Federal Register* 2014-30033, posted January 6, 2015.

<sup>70</sup> As of April 1, 2015, 29 states and the District of Columbia have enforceable renewable portfolio standards and 8 states have voluntary goals for renewable generation. See <http://www.dsireusa.org/resources/detailed-summary-maps/>.

<sup>71</sup> 30 U.S.C. §§1001-1028.

<sup>72</sup> BLM and Forest Service, *Record of Decision and Resource Management Plan Amendments for Geothermal Leasing* (continued...)

geothermal leases (59 in producing status), with a total capacity of 1,500 megawatts (about 40% of U.S. geothermal energy capacity).<sup>73</sup> Under EPAAct05, states receive 50% of the revenue generated from rental and royalty payments from geothermal leases within their states, counties receive 25%, and the remaining 25% goes to the Treasury. The Obama Administration has proposed returning to the pre-EPAAct05 formula, which shared revenues equally among the states and the federal treasury, while counties did not receive a payment.<sup>74</sup>

### *Wind and Solar Energy*

Development of solar and wind energy sources on BLM and FS lands are governed primarily by right-of-way authorities under Title V of FLPMA.<sup>75</sup> These projects could require large tracts of land to replace or add significant electric generating capacity, in addition to new transmission capacity. The extent of some of the environmental impacts of renewable energy production, such as impacts on wildlife and on environmentally sensitive areas, remains controversial. For example, in 2013 FWS revised regulations to monitor and address the potential long-term impacts of these projects on federally protected eagles.<sup>76</sup> Also at issue for Congress is how to balance solar and wind project applications against other land uses. For example, in 2013, BLM finalized a rule allowing temporary withdrawal of subsurface mineral claims in areas with pending wind and solar project applications.<sup>77</sup> Another issue for Congress is how to manage the leasing process for wind and solar energy projects. In September 2014, BLM proposed to amend the regulations governing the process by establishing preferred areas for solar and wind energy development and establishing specific right-of-way conditions for those leases, among other provisions.<sup>78</sup>

As of May 2014, BLM had authorized 39 wind energy development projects and over 100 wind energy testing sites, and had 29 wind energy development applications pending on its public lands.<sup>79</sup> In October 2012, BLM finalized the plan for solar energy development on federal lands in six western states.<sup>80</sup> The Western Solar Plan established 17 Solar Energy Zones (SEZs) covering over 285,000 acres of federal lands that are designated as a priority area for commercial-scale solar projects. An October 2013 competitive auction to develop these projects received zero bids.<sup>81</sup> However, according to BLM, the agency approved 29 utility-scale solar projects from 2010 to 2012 and has 70 applications pending covering 560,000 acres.<sup>82</sup>

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(...continued)

*in the Western United States*, BLM-WO-GI-09-003-1800, December 2008, [http://www.blm.gov/Geothermal\\_EIS](http://www.blm.gov/Geothermal_EIS).

<sup>73</sup> BLM geothermal energy website, <http://www.blm.gov/wo/st/en/prog/energy/geothermal.html>, accessed March 2015.

<sup>74</sup> Budget Justification, BLM FY2013.

<sup>75</sup> 43 U.S.C. §§1761-1771.

<sup>76</sup> Fish and Wildlife Service, Eagle Permits; Changes in the Regulations Governing Eagle Permitting, 50 C.F.R. Parts 13 and 22.

<sup>77</sup> BLM, "Segregation of Lands-Renewable Energy," 78 *Fed. Reg.* 25204, April 30, 2013.

<sup>78</sup> Bureau of Land Management, "Competitive processes, terms, and conditions for leasing public lands for solar and wind energy development and technical changes and corrections; proposed rule," 79 *Federal Register* 59022, September 29, 2014.

<sup>79</sup> BLM Fact Sheet, Renewable Energy and the BLM, Wind, Updated May 2014.

<sup>80</sup> These six states are Arizona, California, Colorado, Nevada, New Mexico, and Utah. BLM Fact Sheet, Renewable Energy and the BLM: Solar, Updated September 2013.

<sup>81</sup> Scott Streater, "First-ever auction of solar-zone parcels draw zero industry interest," *E&E News PM*, October 24, 2013, <http://www.eenews.net/eenewspm/stories/1059989375/>.

<sup>82</sup> BLM Fact Sheet, Renewable Energy: Solar, Updated May 2014.

FS has not approved any special use authorizations for solar projects to date, but in 2012 FS approved the first utility-scale wind power facility special use authorization. Implementation of the project to construct and operate a 15-turbine facility in the Green Mountain National Forest is pending the outcome of ongoing litigation.<sup>83</sup>

### **Woody Biomass**

Removing woody biomass<sup>84</sup> from federal lands for energy production has received special attention because of its potential widespread availability. Biomass may serve as a renewable feedstock for energy production, and in addition, proponents assert that removing or reducing the amount of biomass density on NFS and BLM lands also provides landscape benefits such as improved forest resiliency and reduced risk of catastrophic wildfires. Opponents, however, are concerned that incentives to use wood and wood waste might increase land disturbances on federal lands (e.g., some of the biomass may be located in areas that are not easily accessible), and they are concerned about related wildlife, landscape, and ecosystem impacts. Other issues include the role of the federal government in developing and supporting emerging markets for woody biomass energy production, and whether to include biomass removed from federal lands in the Renewable Fuel Standard.<sup>85</sup>

Administration efforts to promote and implement woody biomass energy production have focused on developing policy principles, research and development, infrastructure needs, and capacity building.<sup>86</sup> FS and BLM both award woody biomass utilization research grants through EPAAct05.<sup>87</sup> Programs such as stewardship contracting and the collaborative forest landscape restoration program authorize both agencies to implement woody biomass utilization projects.

### **CRS Product**

CRS Report R40529, *Biomass: Comparison of Definitions in Legislation*, by Kelsi Bracmort.

### **Locatable Minerals**

Locatable minerals include both metallic minerals (e.g., gold, silver, copper), nonmetallic minerals (e.g., mica, gypsum) and other minerals generally found in the subsurface.<sup>88</sup> Developing

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<sup>83</sup> For more information, see the FS Deerfield Wind Energy Development Special Use Permit EIS webpage: <http://data.ecosystem-management.org/nepaweb/fs-usda-pop.php?project=7838>.

<sup>84</sup> Woody biomass is defined by FS and BLM as the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment that are the byproducts of forest management.

<sup>85</sup> For more information on the renewable fuel standard, see CRS Report R43325, *The Renewable Fuel Standard (RFS): In Brief*, by Kelsi Bracmort and CRS Report R40155, *Renewable Fuel Standard (RFS): Overview and Issues*, by Mark A. McMinimy and Kelsi Bracmort.

<sup>86</sup> See for example, *Memorandum of Understanding on Policy Principles for Woody Biomass Utilization for Restoration and Fuel Treatments in Forests, Woodlands, and Rangelands*, June 2003, [http://www.fs.fed.us/woodybiomass/documents/BiomassMOU\\_060303\\_final\\_web.pdf](http://www.fs.fed.us/woodybiomass/documents/BiomassMOU_060303_final_web.pdf) and Forest Service, *Woody Biomass Utilization Desk Guide*, September 2007, [http://www.forestsandrangelands.gov/Woody\\_Biomass/documents/biomass\\_deskguide.pdf](http://www.forestsandrangelands.gov/Woody_Biomass/documents/biomass_deskguide.pdf).

<sup>87</sup> See for example, [http://www.forestsandrangelands.gov/Woody\\_Biomass/opportunities.shtml](http://www.forestsandrangelands.gov/Woody_Biomass/opportunities.shtml).

<sup>88</sup> Management of non-locatable minerals (e.g., sand, gravel, and stone) on federal lands is governed by the Materials Act of 1947.

these minerals on federal lands is guided by the General Mining Law of 1872. The law, largely unchanged since enactment, grants free access to individuals and corporations to prospect for minerals in open public domain lands, and allows them, upon making a discovery, to stake (or “locate”) a claim on the deposit. A claim gives the holder the right to develop the minerals and apply for a patent to obtain full title of the land and minerals. Congress is considering whether and how to reform the law, including how to capture the value of the federal resources and how to balance mineral development with competing resource values. Another issue is the lack of direct authority for environmental protection under the statute and how to address cleaning up abandoned hardrock mines. Congress has imposed a moratorium on mining claim patents in the annual Interior appropriations laws since FY1995, but has not restricted the right to stake claims or extract minerals.

The mining industry supports the claim-patent system, which offers the right to enter federal lands and prospect for and develop minerals. Critics consider the claim-patent system a giveaway of publicly owned resources because royalty payments are not required and the amounts paid to maintain a claim and to obtain a patent are small. New mining claim location and annual claim maintenance fees are currently \$37 and \$155 per claim, respectively.<sup>89</sup>

The Obama Administration has proposed to place most hardrock minerals produced on public lands into a leasing system, including a 5% “gross proceeds” royalty on the value of production.<sup>90</sup> The proposal also includes a fee on the volume of material extracted by hardrock mining on all U.S. lands to raise revenues for abandoned hardrock mine reclamation efforts.<sup>91</sup> There were similar legislative proposals in the 113<sup>th</sup> Congress.

### ***CRS Product***

CRS Report RL33908, *Mining on Federal Lands: Hardrock Minerals*, by Marc Humphries.

## **Offshore Resources**

The federal government is responsible for managing energy resources in approximately 1.7 billion acres of waters belonging to the United States (see **Figure 1**). These offshore resources are governed by the Outer Continental Shelf Lands Act of 1953 (OCSLA), as amended, and management involves balancing domestic energy demands with protection of the environment.<sup>92</sup> Public concerns about U.S. dependence on foreign fuels have competed with concerns about vulnerability of oceans and shoreline communities to oil-spill risks, prompting policymakers to debate access to certain ocean areas for offshore drilling.<sup>93</sup> Those in favor of protecting marine and coastal areas from oil-spill risks support banning drilling through moratoriums,

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<sup>89</sup> The fees are to be adjusted every five years based on the Consumer Price Index (30 U.S.C. 28 j (c)).

<sup>90</sup> Department of the Interior, Bureau of Land Management, “Required Fees for Mining Claims or Sites,” 79 *Federal Register* 36662, June 30, 2014.

<sup>91</sup> Budget Justifications, BLM, FY2015.

<sup>92</sup> The Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. §1331 et. seq.) and the National Environmental Policy Act (NEPA, 42 U.S.C. §4321).

<sup>93</sup> Congress addresses multiple issues related to access, including revenue sharing with states, adequacy of environmental reviews, timetables for drilling permitting, operational safety, receipts and disbursements, and research needs.

nondevelopment zones, and other measures.<sup>94</sup> Others claim that increasing offshore oil and gas development will strengthen and diversify the nation's domestic energy portfolio and that drilling can be done in a safe manner that protects marine and coastal areas.

## Offshore Oil and Gas Leases

The Bureau of Ocean Energy Management (BOEM) administers more than 6,000 active oil and gas leases on nearly 33 million acres in the OCS.<sup>95</sup> Under the OCSLA, BOEM prepares forward-looking five-year leasing programs to govern oil and gas lease sales. BOEM has conducted seven oil and gas lease sales in the Gulf of Mexico as part of the current five-year program and has three lease sales scheduled for Alaska in 2016 and 2017, along with additional sales in the Gulf of Mexico between 2015 and 2017. The process for establishing the next five-year leasing program (2017-2022) has begun.<sup>96</sup>

Under the OCSLA,<sup>97</sup> the President may withdraw unleased lands on the OCS from leasing disposition. For example, in late 2014 and early 2015, the President indefinitely withdrew from leasing disposition certain areas offshore of Alaska, including the North Aleutian Basin Planning Area, the Hanna Shoal region of the Chukchi Sea, and certain other parts of the Beaufort and Chukchi Seas.<sup>98</sup> Congress also has established leasing moratoria; for example, the GOMESA established a moratorium on preleasing, leasing, and related activity in the eastern Gulf of Mexico through June 2022.

Congress considers multiple issues related to offshore oil and gas exploration, including questions about allowing or deferring access to ocean areas and how increasing or restricting access may impact domestic energy markets and affect the risk of oil spills. Other issues concern the use of OCS revenues and the extent to which they should be shared with coastal states (see “Federal Payment Programs” section).

## Offshore Renewable Energy Sources

BOEM also is responsible for managing renewable ocean energy resources. BOEM has been in the process of estimating renewable ocean energy resources to facilitate leases for electricity

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<sup>94</sup> For example, President Obama has issued several presidential memoranda that prohibit energy development in certain ocean areas, mostly in Alaska. On March 31, 2010, he issued a presidential memorandum directing the Secretary of the Interior to place the Bristol Bay area within the North Aleutian Basin Planning Area in Alaska off-limits until June 30, 2017. Later, on December 16, 2014, he issued a presidential memorandum declaring the North Aleutian Basin Planning Area (including Bristol Bay) off limits indefinitely. Additionally, in January 2015, President Obama issued a presidential memorandum directing the Secretary of the Interior to indefinitely withdraw certain areas within the Beaufort Sea Planning Area and the Chukchi Sea Planning Area, offshore Alaska.

<sup>95</sup> Bureau of Ocean Energy Management, *Budget Justifications and Performance Information, Fiscal Year 2016*, p. 60, at <http://www.boem.gov/BOEM-FY-2016-Budget-Justification/>.

<sup>96</sup> See BOEM, “2017-2022 Oil and Gas Leasing Program,” at <http://www.boem.gov/Five-Year-Program-2017-2022/>.

<sup>97</sup> 43 U.S.C. §1341.

<sup>98</sup> Presidential Memorandum, “Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition,” December 16, 2014, at <http://www.whitehouse.gov/the-press-office/2014/12/16/presidential-memorandum-withdrawal-certain-areas-united-states-outer-con>; and Presidential Memorandum, “Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska from Leasing Disposition,” January 27, 2015, at <http://www.whitehouse.gov/the-press-office/2015/01/27/presidential-memorandum-withdrawal-certain-areas-united-states-outer-con>.

generation from offshore wind, thermal power, and kinetic forces from ocean tides and waves.<sup>99</sup> As of February 2015, BOEM had issued seven offshore wind energy leases in areas off the coasts of Massachusetts, Rhode Island, Delaware, Maryland, and Virginia.<sup>100</sup> No leases are yet producing within the Offshore Renewable Energy Program, and the earliest major project, Cape Wind off of Massachusetts, has experienced litigation and financing challenges. Issues for Congress include whether to take steps to facilitate the development of offshore wind and other renewables, such as through grants for research and development project loan guarantees, extension of federal tax credits for renewable energy production, or oversight of regulatory issues for these emerging industries.

### ***CRS Products***

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

CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

CRS Report R40645, *U.S. Offshore Oil and Gas Resources: Prospects and Processes*, by Marc Humphries and Robert Pirog.

## **Forest Management**

Management of federal forests presents several policy questions for Congress. For instance, there is debate about the appropriate level of timber harvesting on federal forest lands, particularly FS and BLM lands. A related debate is how to balance timber harvesting against the other uses and values for these federal lands. Further, Congress may debate how the agencies use timber harvesting or other active forest management techniques to achieve other resource-management objectives, such as improving wildlife habitat or improving a forest's resistance and resilience to disturbance events (e.g., wildfire, ice storm).

FS manages the most federal forest land: approximately 188 million acres of the 193 million acre National Forest System (NFS) are national forests (98%).<sup>101</sup> The national forests are managed under the principles of multiple use and sustained yield, meaning the production of timber is one of several statutorily defined uses for the national forests and the amount of timber removed from NFS should not exceed the amount of annual growth. In FY2014, FS harvested approximately 2.4 billion board feet of timber and other forest products, at a value of \$149.0 million.<sup>102</sup> BLM

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<sup>99</sup> P.L. 109-58. For more information about deployment of renewable energy projects, see <http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx>. Estimates of OCS energy resources are available from a variety of sources, including BOEM, the Energy Information Administration, and industry sources. Due to the maturity of the offshore oil and gas sector, information supporting oil and gas reserve and resource estimates is often more robust than information about renewable resources. For a complete analysis of OCS resources, see CRS Report R40645, *U.S. Offshore Oil and Gas Resources: Prospects and Processes*, by Marc Humphries and Robert Pirog.

<sup>100</sup> See BOEM, "Fact Sheet: Renewable Energy on the Outer Continental Shelf," February 2, 2015, at <http://www.boem.gov/BOEM-Overview-Renewable-Energy/>.

<sup>101</sup> The remaining 4.7 million acres contain of national grasslands, land utilization projects, purchase units, and research and experimental areas. Table 1, Forest Service, *Land Areas Report, as of September 30, 2014*, <http://www.fs.fed.us/land/staff/lar/LAR2014/lar2014index.html>.

<sup>102</sup> Forest Service, *Cut and Sold Reports*, available at <http://www.fs.fed.us/forestmanagement/products/sold-harvest/cut-sold.shtml>.

manages approximately 60 million acres of forest and woodlands. The vast majority—58 million acres—is public domain forests, managed under the principles of multiple use and sustained yield as established by FLPMA for generating forest products and forest restoration activities. The 2.6 million acres of O&C forests in western Oregon, however, are managed under a statutory direction for permanent forest production.<sup>103</sup> In FY2014, BLM harvested approximately 256.4 million board feet of timber and other forest products, at a value of \$57.1 million.<sup>104</sup> The NPS and FWS have limited authorities to cut, sell, or dispose of timber from their lands and established policies to do so generally only in certain cases, such as controlling for insect and disease outbreaks.

In the past few years, the ecological condition of the federal forests has been one focus of discussion and legislative proposals, including the forests' susceptibility to insect and disease outbreaks and the risk of catastrophic wildfires. Many believe federal forests are ecologically degraded; decades of wildfire suppression and other forest-management decisions have created forests overgrown and overstocked with biomass (fuels) that can serve to increase the spread or intensity of wildfires. These observers advocate rapid action to improve forest conditions, including prescribed burning, thinning, and salvaging dead and dying trees. Critics counter that authorities to reduce fuel levels are adequate, treatments that remove commercial timber degrade other ecosystem conditions and waste taxpayer dollars, and expedited processes for treatments are a device to reduce public oversight of commercial timber harvesting.

### ***CRS Products***

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

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

## **Range Management**

### **Livestock Grazing**

Management of federal rangelands, particularly by BLM and FS, presents an array of policy matters for Congress. Several issues pertain to livestock grazing. For instance, there is debate about the appropriate fee that should be charged for grazing private livestock on BLM and FS lands, including what criteria should prevail in setting the fee. Today, fees are charged under a formula established by law in 1978, then continued indefinitely through an executive order issued by President Reagan in 1986.<sup>105</sup> The BLM and FS are charging a grazing fee of \$1.69 per animal unit month (AUM)<sup>106</sup> on about 139 million and 77 million acres of land respectively.

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<sup>103</sup> The Oregon & California Railroad Lands Act of 1937, also known as the Act of August 28, 1937, ch. 876, 16 U.S.C. §§1181a et seq.

<sup>104</sup> Email from BLM Legislative Affairs staff, January, 2015.

<sup>105</sup> P.L. 95-514, 92 Stat. 1803; 43 U.S.C. §§1901, 1905. Executive Order 12548, 51 *Fed. Reg.* 5985 (February 19, 1986).

<sup>106</sup> BLM defines an AUM, for fee purposes, as a month's use and occupancy of the range by one animal unit, which (continued...)

Conservation groups, among others, generally seek increased fees to recover program costs or approximate market value, whereas livestock producers who use federal lands want to keep fees low to sustain ranching and rural economies.

The BLM and FS issue permits and/or leases to ranchers that specify the terms and conditions for grazing on agency lands. Permits and leases generally cover a 10-year period and may be renewed. Congress has considered whether to extend the permit/lease length (e.g., to 20 years) to strengthen the predictability and continuity of operations. Longer permit terms have been opposed as potentially reducing the opportunities to analyze the impact of grazing on lands and resources.

The effect of livestock grazing on rangelands has been part of a debate on the health and productivity of rangelands. Due to environmental concerns, some recent measures would restrict or eliminate grazing, for instance, through voluntary retirement of permits and leases and subsequent closure of the allotments to grazing. These efforts are opposed by those who support ranching on the affected lands for not only environmental but lifestyle and economic reasons. Another focus of the discussion on range health and productivity is the spread of invasive and noxious weeds. (See “Invasive Species” section below.)

## **Wild Horses and Burros**

There is continued congressional interest in management of wild horses and burros, which are protected on BLM and FS lands under the Wild Free-Roaming Horses and Burros Act of 1971.<sup>107</sup> Under the act, the agencies inventory horse and burro populations on their lands to determine appropriate management levels (AMLs). While the agencies are authorized to remove animals exceeding the range’s carrying capacity, currently both BLM and FS have populations exceeding their national AMLs. Most of the animals are on BLM lands. BLM estimates AML at 26,684 wild horses and burros, and it estimates population at 49,209. Off the range, BLM provides funds to care for approximately 48,335 additional wild horses and burros in short-term corrals and long-term (pasture) holding facilities.

The agencies use a variety of methods to meet AML, including programs to adopt and sell animals; care for animals in holding; administer fertility control; and, most recently, establish ecosanctuaries. Questions for Congress include the sufficiency of these authorities for managing wild horses and burros. Another controversial question is whether the agencies should humanely destroy excess animals, as required under law, or whether Congress should continue to prohibit funds from being used to slaughter healthy animals. Additional issues center on the costs of management, particularly the relatively high cost of caring for animals in holding. Also, some recent proposals have focused on options for keeping animals on the range, such as by expanding areas for herds and changing the method for determining AML.

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(...continued)

includes one yearling, one cow and her calf, one horse, or five sheep or goats. The FS uses head-month (HD-MO) as its measurement for use and occupancy of FS lands. AUM is used in this report to cover both HD-MO and AUM.

<sup>107</sup> 16 U.S.C. §§1331 et seq.

## CRS Products

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

CRS Report RL34690, *Wild Horses and Burros: Issues and Proposals*, by Carol Hardy Vincent.

## Recreation

The growing and diverse nature of recreation on federal lands and waters has increased the challenge of balancing different types of recreation with each other and with other land uses. At issue are questions of access to recreational opportunities, regulation of activities,—for example, through zoning or usage fees—impacts on natural and cultural resources, and the extent of motorized versus nonmotorized use.

One issue is how—or whether—fees should be collected for recreational activities on federal lands. The Federal Lands Recreation Enhancement Act (FLREA)<sup>108</sup> established a recreation fee program for the four FLMAs and the Bureau of Reclamation. The program was set to expire in 2014 but was extended in appropriations laws, most recently through September 30, 2016, by P.L. 113-235. The 114<sup>th</sup> Congress faces the issue of whether to let the program expire after September 30, 2016, or whether to further extend it or make it permanent, as well as issues regarding the program's structure. The current program provides for various kinds of fees, specifies criteria for determining them, and establishes a national recreation pass. Agencies can use collections without further appropriation. Most of the money is for improvements at the collecting site, such as maintenance and capital improvement projects. Supporters of the program contend that it allows fees to be charged only in appropriate circumstances, sets fair and similar fees among agencies, keeps most fees on-site for improvements that visitors desire, and provides for public involvement. Some support new or increased fees or extension of the program to other agencies, especially the U.S. Army Corps of Engineers. Among critics, some oppose recreation fees in general; others find fault with the current program, asserting, for example, that fees are appropriate for fewer agencies or types of lands, that the fee structure should be simplified and funds obligated more quickly, or that the program should ensure that most fees are used to reduce agency maintenance backlogs.

Another contentious issue is the use of off-highway vehicles (OHVs)—all-terrain vehicles, snowmobiles, personal watercraft, and others—on federal lands and waters. OHVs are a popular recreational use on BLM and FS land, while NPS and FWS have fewer lands allowing them. OHV supporters contend that the vehicles facilitate visitor access to hard-to-reach natural areas and bring economic benefits to communities serving riders. Critics raise concerns about disturbance of nonmotorized recreation and potential damage to wildlife habitat and ecosystems. Recent Congresses have explored broad questions of OHV access to federal lands and agency management of motorized recreation in the context of oversight hearings, but legislation has been largely unit specific, focused on OHVs at individual parks, forests, conservation areas, and other federal sites.

Access to opportunities on federal lands for hunting, fishing, and recreational shooting (e.g., at shooting ranges) is also an issue for Congress. Hunting and fishing are allowed on the majority of

<sup>108</sup> P.L. 108-447, 16 U.S.C. §§6801-6814.

federal lands, but some believe they are unnecessarily restricted by protective designations, barriers to physical access, and agency planning processes. Others question whether opening more lands to hunting, fishing, and recreational shooting is fully consistent with good game management, public safety, other recreational uses, resource management, and the statutory purposes of the lands. Congress may consider whether these activities should be given a higher priority in land management; which agencies' lands would be affected by measures to prioritize these activities; whether a certain portion of LWCF funding should be used for additional physical access to hunting and fishing areas; and whether and how areas designated as wilderness could be affected by legislation to increase access for these activities, among other issues.

### ***CRS Products***

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

CRS Report RL33730, *Recreation Fees Under the Federal Lands Recreation Enhancement Act*, by Carol Hardy Vincent.

CRS Report R42920, *Motorized Recreation on Bureau of Land Management and Forest Service Lands*, by Carol Hardy Vincent and Katie Hoover.

CRS Report R42955, *Motorized Recreation on National Park Service Lands*, by Laura B. Comay, Carol Hardy Vincent, and Kristina Alexander

## **Special Land Designations**

In addition to the land protection systems administered by the individual agencies, Congress has created three cross-cutting special systems of federal lands to preserve or emphasize particular values or resources, or to protect the natural conditions for biological, recreation, or scenic purposes. These systems are the congressionally designated National Wilderness Preservation System, National Wild and Scenic Rivers System, and the National Trails System. The units of these systems can be on one or more agency's lands, and the agencies manage them within parameters set in statute. Congress also has designated certain offshore areas as marine national monuments or sanctuaries.

Congress and the Administration also establish other designations on federal lands, such as individual special management areas within the National Forest System. While many of the designations are unique, some have been more commonly applied, such as national recreation area, national scenic area, or national monument. The extent to which Congress and the Administration should expand special systems and establish other special designations on federal lands and the types, locations, and management of such designations continue to be controversial.

Congress also has established 49 national heritage areas (NHAs). NHA designations commemorate, conserve, or promote areas that include important natural, scenic, historic, cultural, and recreational resources on nonfederal lands. Lands within NHAs typically remain in state, local, or private ownership or a combination thereof. They are not part of the National Park System, where lands are federally owned and managed. Instead, NHAs are partnerships among NPS, states, and local communities, where the NPS supports state and local conservation through federal recognition, seed money, and technical assistance. Heritage areas have been supported as

protecting lands and traditions and promoting tourism and community revitalization, but opposed as potentially burdensome, costly, or leading to federal control over nonfederal lands. Among other issues, Congress has debated whether to establish a system of NHAs, provide criteria for their designation, standards for their management, and limits on federal support.

### ***CRS Products***

CRS Report RL33462, *Heritage Areas: Background, Proposals, and Current Issues*, by Carol Hardy Vincent and Laura B. Comay.

CRS Report R41285, *Congressionally Designated Special Management Areas in the National Forest System*, by Katie Hoover.

## **Wilderness and Roadless Areas**

In 1964, the Wilderness Act created the National Wilderness Preservation System, with statutory protections that emphasize preserving areas in their natural state. Units of the system only can be designated by Congress. Many bills to designate wilderness areas have been introduced in each Congress. As of January 2015, there were 762 wilderness areas, totaling nearly 110 million acres in 44 states and managed by all four of the FLMAAs. A wilderness designation generally prohibits commercial activities, motorized access, and human infrastructure from wilderness areas, subject to valid existing rights. Advocates propose wilderness designations to preserve the generally undeveloped conditions of the areas. Opponents see such designations as preventing certain uses and potential economic development in rural areas where such opportunities are relatively limited.

Designation of new wilderness areas can be controversial, and questions persist over the management of areas being considered for wilderness designation. FS reviews the wilderness potential of NFS lands during the forest planning process. The lands FS recommends to Congress for wilderness designation may be part of the “inventoried roadless areas.” Management of these lands has been controversial. The Clinton Administration promulgated nationwide rules to limit almost all road development in those areas, regulations that also would limit resource development severely. More than a decade of litigation followed, with the Clinton Administration rule being enjoined twice, and the Bush Administration promulgating a rule that also was enjoined. The courts deciding the cases upheld the Clinton Administration rule, and in October, 2012, the Supreme Court refused to review the issue.

Questions also persist over BLM wilderness study areas (WSAs). WSAs are the areas BLM studied as potential wilderness, and BLM is required by FLPMA to protect their wilderness characteristics “until Congress determines otherwise.” This has raised legal questions, including whether release language is needed to allow multiple use management of WSAs not designated as wilderness. Congress has designated some WSAs as wilderness, and generally in the same statutes, Congress has released BLM from the requirement to protect the wilderness characteristics of certain other areas. However, release language in BLM wilderness statutes has generally been more controversial than for national forest areas.

## **CRS Products**

CRS Report RL31447, *Wilderness: Overview and Statistics*, by Katie Hoover.

CRS Report R41649, *Wilderness Laws: Statutory Provisions and Prohibited and Permitted Uses*, by Kristina Alexander and Katie Hoover.

CRS Report R41610, *Wilderness: Legislation and Issues in the 114<sup>th</sup> Congress*, by Katie Hoover, Kristina Alexander, and Sandra L. Johnson.

CRS Report RL30647, *National Forest System (NFS) Roadless Area Initiatives*, by Kristina Alexander.

## **Arctic National Wildlife Refuge: Energy Development or Wilderness?**

In the ongoing energy debate in Congress, one issue has been whether to approve energy development in the Arctic National Wildlife Refuge (ANWR) in northeastern Alaska—and if so, under what conditions—or whether to continue prohibiting development to protect the area’s biological, recreational, and subsistence values.<sup>109</sup> ANWR is rich in fauna, flora, and oil and natural gas potential, but energy development is currently prohibited by law.<sup>110</sup> Its development has been debated for more than 50 years, and sharp periodic increases in energy prices have intensified the debate at times. Low energy prices, such as those currently being experienced, negate the short-term incentives for developing ANWR because Alaskan production is relatively costly. According to the American Petroleum Institute, in 2009 Alaskan drilling costs were nearly 18 times higher than drilling costs in the lower 48 states. This debate has been given new impetus in 2015 by a presidential proposal to designate the area as wilderness. If approved by Congress, this designation would reinforce the existing prohibition on energy development, and it would be an additional law requiring repeal if energy development were to be allowed.

## **CRS Product**

CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): A Primer for the 114<sup>th</sup> Congress*, by M. Lynne Corn, Kristina Alexander, and Michael Ratner.

## **The National Wild and Scenic Rivers System and the National Trails System**

The Wild and Scenic Rivers Act of 1968<sup>111</sup> created the National Wild and Scenic Rivers System. The act established a policy of preserving designated free-flowing rivers for the benefit and enjoyment of present and future generations. River units designated as part of the system are classified and administered as wild, scenic, or recreational rivers, based on the condition of the

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<sup>109</sup> For more information, see CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): A Primer for the 114<sup>th</sup> Congress*.

<sup>110</sup> Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, §1003; 16 U.S.C. 3143).

<sup>111</sup> P.L. 90-542, 16 U.S.C. §1271 et seq.

river, the amount of development in the river or on the shorelines, and the degree of accessibility by road or trail at the time of designation. The system contains both federal and nonfederal river segments. Typically, rivers are added to the system by an act of Congress, but they may also be added by state nomination with the approval of the Secretary of the Interior. Congress initially designated 789 miles of eight rivers as part of the system in 1968. As of January 2015, there are 208 river units with 12,709 miles in 40 states and Puerto Rico, administered by all four FLMAs, or by state, local, or tribal governments.

Designation and management of lands within river corridors has been controversial in some cases. Issues include concerns about private property rights and water rights within designated river corridors. Controversies have arisen over 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. The extent of local input in developing river management plans is another recurring issue.

The National Trails System Act of 1968<sup>112</sup> authorized a national system of trails, across federal and nonfederal lands, to provide additional outdoor recreation opportunities and to promote the preservation of access to the outdoor areas and historic resources of the nation. The 1968 act established the Appalachian National Scenic Trail, stretching almost 2,200 miles from Maine to Georgia, and the Pacific Crest National Scenic Trail, covering roughly 2,650 miles from Canada to Mexico through Washington, Oregon, and California. The system today includes 30 national trails (11 national scenic trails and 19 national historic trails), more than 1,200 national recreation trails, and 6 connecting-and-side trails. The system covers almost 55,000 miles and can be found in all 50 states, the District of Columbia, and Puerto Rico. National trails are administered by FS, NPS, and BLM, in cooperation with appropriate state and local authorities. Most recreation uses are permitted, as are other uses or facilities that do not substantially interfere with the nature and purposes of the trail. However, motorized vehicles are prohibited on many trails.

Protection of national scenic and historic trails has sometimes proven challenging. Among other issues, land acquisition has sometimes been controversial. P.L. 111-11 gave federal land management agencies the authority to purchase land from willing sellers for a number of trails that had previously lacked such authority. Other issues have arisen around trail administration, involving partnerships between the federal government and volunteer nonprofit trail groups, as well as states and localities. Funding for the system is an ongoing concern. National scenic and historic trails primarily receive funding through the FLMAs that administer them, while national recreation trails receive much of their federal funding through transportation legislation. Additionally, new types of trails have occasionally been proposed for the system, such as “national discovery trails,” which would be interstate trails connecting representative examples of metropolitan, urban, rural, and backcountry regions.<sup>113</sup>

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<sup>112</sup> P.L. 90-543; 16 U.S.C. §1241 et seq.

<sup>113</sup> See, for example, H.R. 3022 and S. 2346 in the 113<sup>th</sup> Congress. Similar bills were introduced in previous Congresses.

### **CRS Products**

CRS Report R42614, *The National Wild and Scenic Rivers System: A Brief Overview*, by Sandra L. Johnson and Laura B. Comay.

CRS Report R43868, *The National Trails System: A Brief Overview*, by Sandra L. Johnson and Laura B. Comay

CRS Report R41081, *The Wild and Scenic Rivers Act (WSRA): Protections, Federal Water Rights, and Development Restrictions*, by Cynthia Brown

## **National Monuments and the Antiquities Act**

The Antiquities Act of 1906<sup>114</sup> authorizes the President to proclaim national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of natural, historic, or scientific interest. The President is to reserve “the smallest area compatible with the proper care and management of the objects to be protected.”<sup>115</sup> Sixteen of the 19 Presidents since 1906, including President Obama, have used this authority to proclaim national monuments. Congress has modified many of these proclamations, abolished some monuments, and created monuments under its own authority.

Presidential establishment of monuments sometimes has been contentious. For instance, Congress limited the President’s authority by requiring congressional authorization for extensions or establishment of monuments in Wyoming,<sup>116</sup> and by making withdrawals in Alaska exceeding 5,000 acres subject to congressional approval.<sup>117</sup> Currently, issues include the size of the areas and types of resources protected; the effects of monument designation on land uses; the level and types of threats to the areas; the inclusion of nonfederal lands within monument boundaries; the act’s limited transparency process compared with the public participation and environmental review aspects of other laws; and the agency managing the monument.

Opponents have sought to revoke or impose restrictions on the President’s authority to proclaim monuments. For instance, among the bills considered in recent Congresses were those that sought to block monuments from being declared in particular states; limit the size or duration of withdrawals; require the approval of Congress, the pertinent state legislature, or the pertinent governor before a monument could be proclaimed; or promote presidential creation of monuments in accordance with certain federal land management and environmental laws. Measures also were introduced to change land uses within monuments and to alter monument boundaries.

Monument supporters defend the President’s authority to act promptly to protect valuable resources on federal lands that may be vulnerable to looting, vandalism, commercial development, and other permanent changes, and they note that Presidents of both parties have

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<sup>114</sup> 16 U.S.C. §431.

<sup>115</sup> *Ibid.*

<sup>116</sup> 16 U.S.C. §431a.

<sup>117</sup> 16 U.S.C. §3213.

used the authority for over a century. They favor the Antiquities Act in its present form, asserting that the courts have upheld monument designations and that many past designations that initially were controversial have come to be supported. They further contend that large segments of the public support land protection, such as through monument designations, for the recreational, preservation, and economic benefits that such designations can bring.

### ***CRS Product***

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

## **National Marine Sanctuaries and Marine National Monuments**

The National Marine Sanctuaries Act (NMSA) authorizes the National Oceanic and Atmospheric Administration (NOAA) to designate specific areas for protection of their ecological, aesthetic, historical, cultural, scientific, or educational qualities.<sup>118</sup> The NOAA Office of National Marine Sanctuaries serves as the trustee for 13 sanctuaries designated under the NMSA and the Papahānaumokuākea Marine National Monument.<sup>119</sup> Sanctuaries and monuments are located in U.S. coastal and offshore waters including the Great Lakes and sometimes include state or territorial as well as federal waters.<sup>120</sup> Each site was designated for specific reasons such as protecting cultural artifacts, specific species such as humpback whales, or entire ecosystems. The NMSA requires the development and implementation of management plans for each sanctuary. The management plan provides the basis for managing or limiting incompatible activities.

At most of these sites, questions related to developing or amending management plans have focused on which activities are incompatible with the purposes of the designation and how incompatible activities will be limited. Some observers question whether the overriding purpose of the NMSA is to preserve and protect marine areas or to create multiple use management areas.<sup>121</sup> Although this remains an open question, most agree that the designation and management of sanctuaries will continue to inspire debate over the role of marine protected areas.

In 2006, Papahānaumokuākea National Monument (362,075 square kilometers [sq. km]) became the first of four large marine national monuments to be designated in the Pacific under the Antiquities Act (see “National Monuments and the Antiquities Act” section, above). In 2009, President Bush designated three more national marine national monuments, including Rose Atoll (34,800 sq. km), Marianas Trench (250,487 sq. km), and the Pacific Remote Islands (1,057,761 sq. km). In 2014, the Remote Pacific Islands National Monument was expanded to include waters out to 200 nautical miles from the shore of Jarvis and Wake Islands and Johnston Atoll.<sup>122</sup> All four marine national monuments are managed cooperatively by the Department of Commerce (NOAA) and the Department of the Interior (FWS). Other management partners include the State

<sup>118</sup> National Marine Sanctuaries Act, 16 U.S.C. §1431 et seq.

<sup>119</sup> Thunder Bay National Marine Sanctuary is located in the Great Lakes.

<sup>120</sup> There are no national marine sanctuaries or monuments in federal or state waters adjacent to Alaska.

<sup>121</sup> William L. Chandler and Hannah Gillelan, “The History and Evolution of the National Marine Sanctuaries Act,” *Environmental Law Reporter*, vol. 34 (2004), pp. 10506-10565.

<sup>122</sup> For Baker and Howland Islands, Kingman Reef, and Palmyra Atoll the seaward boundary has not been changed from 50 nautical miles.

of Hawaii for Papahānaumokuākea; Department of Defense (DOD), Department of State, and the government of American Samoa for Rose Island Atoll; the government of the Commonwealth of the Northern Mariana Islands and DOD for the Marianas Trench; and DOD for the Remote Pacific Islands.

### ***CRS Product***

CRS Report RL32154, *Marine Protected Areas: An Overview*, by Harold F. Upton.

## **Species Management**

Each federal land agency has a responsibility to manage the plant and animal resources under its purview. An agency's authority or duty may be based on widely applicable statutes or authorities, including the Endangered Species Act, the Migratory Bird Treaty Act, the Fish and Wildlife Coordination Act, executive orders, and others. But the agencies considered in this report also have more specific authorities in their own organic acts or in site-specific legislation.

In the case of the National Wildlife Refuge System, the conservation of plants and animals is the mission of the system, and other uses are allowed to the extent they are compatible with that mission.<sup>123</sup> While most refuges are open for public enjoyment, in some cases (such as island seabird colonies), the result may be a refuge that is closed to visitors. For the National Park System, resource conservation (including wildlife resources) is half of the Park Service's dual mission, shared with the other goal of public enjoyment. The missions of FS and BLM are multiple use, with species management being only one of several agency responsibilities.

The federal land management agencies do not exercise their wildlife authorities alone. Federal agencies share management of their wildlife resources with state agencies. For example, where game species are found on federal land and hunting is not expressly forbidden on that land, federal agencies work with states on wildlife censuses, and require appropriate state licenses to hunt on the federal lands. And the agencies often cooperate with states to enhance wildlife habitat to the benefit of both jurisdictions.

The four land management agencies do not maintain data on how many acres of land are currently open to hunting, fishing, and/or recreational shooting.<sup>124</sup> However, both BLM and the Forest Service estimate that more than 95% of their lands are currently open to these activities.<sup>125</sup> Among the FWS's 594 wildlife refuges and waterfowl production areas, more than 360 are open

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<sup>123</sup> National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §668dd et seq.

<sup>124</sup> Personal communication between Laura Comay of CRS and NPS (Chris Powell, Senior Congressional Affairs Specialist) and BLM (Division of Legislative Affairs), February 2014; Personal communication between Katie Hoover of CRS and FS (Tony Edwards, Legislative Affairs Specialist), February 2014; Personal communication between Lynne Corn of CRS and FWS (Martin Kodis, Deputy Chief, Division of Congressional and Legislative Affairs), February 2014.

<sup>125</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 between BLM and Carol Hardy-Vincent of CRS, February 2014. The FS estimate is from personal communication between Katie Hoover of CRS and Tony Edwards, FS Legislative Affairs Specialist, February 2014.

to some form of hunting, and more than 300 units offer fishing opportunities.<sup>126</sup> As of February 2014, hunting was permitted in 61 of the 401 NPS units, and fishing in 200 units.<sup>127</sup>

Congress considers species management issues such as how to balance land and resources use, when the protection of endangered and threatened species force the recognition of trade-offs among user groups. These conflicts are usually regional over resources such as surface or ground water, timber, or shorelines, to name a few.

## **Endangered Species**

The protection of endangered and threatened species—under the 1973 Endangered Species Act (ESA)<sup>128</sup>—is controversial, in part, because dwindling species are often harbingers of resource scarcity. Under the ESA, all federal agencies must “utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to ... this Act.”<sup>129</sup> As a result, the federal land agencies specifically must consider listed species in their land management plans, timber sales, energy or mineral leasing plans, and all other relevant aspects of their activities. They must consult with FWS (or NMFS, for most marine species and anadromous fish such as salmon) about those effects. The majority of these consultations result in little or no change in the actions of the land managers. But some result in major controversies over the appropriate balance of land and resource use with protection of endangered and threatened species, often with some user groups allied with the listed species.

The ESA may become a focus of debate, particularly where conservation of a species signals conflict over resources in various habitats. These species include sage grouse (energy and other resources in sage brush habitat) and polar bears (energy development in northern Alaska), among others. Conflicts arise once a species is listed, because legal tools, including penalties and citizen suits, are available to aid species recovery and protect habitat. Use of these tools, or the failure to use them, has led to conflict.<sup>130</sup> Proposals resulting from such conflicts include granting greater authority to states over whether a species may be listed, granting priority for water projects over species recovery, and limiting the ability of citizens groups to petition for listing new species.

## **CRS Products**

CRS Report R42945, *The Endangered Species Act (ESA) in the 113<sup>th</sup> Congress: New and Recurring Issues*, coordinated by M. Lynne Corn and Kristina Alexander

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<sup>126</sup> *U.S. Fish and Wildlife Service*, April 2013, <http://www.fws.gov/refuges/about/pdfs/RecreationFactSheetApril2013.pdf>.

<sup>127</sup> Personal communication between Laura Comay of CRS and Chris Powell, NPS Senior Congressional Affairs Specialist, February 21, 2014. Units may be completely open to hunting or fishing, or these activities may be permitted only in portions of the unit.

<sup>128</sup> P.L. 93-205, as amended; 16 U.S.C. §§1531-1543.

<sup>129</sup> 16 U.S.C. §1536(a).

<sup>130</sup> A more detailed discussion of the major provisions of ESA is provided in CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn and Kristina Alexander.

CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn and Kristina Alexander.

CRS Report RL32992, *The Endangered Species Act and “Sound Science”*, by M. Lynne Corn and Kristina Alexander.

## Invasive Species

While habitat loss is a major factor in the loss of species, invasive species have long been considered the second most important factor.<sup>131</sup> Invasive species may affect some of the key resources on federal lands. For example, gypsy moths have been a pest in eastern hardwoods, including national forests and Shenandoah National Park. The newly arrived fungus causing white-nose syndrome has devastated bat populations in northeastern states including those in caves on national park and national forest lands. Rats and cats threaten seabirds on coastal refuges, and goats harm rare native plant species on park units in Hawaii. In some cases, such as white-nose syndrome, no method of control is yet known, and current work is confined to research and prevention.<sup>132</sup> In other cases, such as the vegetation damage caused by non-native horses and burros, some control methods are considered inhumane, and others are considered expensive. In general, funding for detection, prevention, and control of invasive species on federal lands (and elsewhere) has been an issue. The 114<sup>th</sup> Congress may introduce legislation to address invasive species management on federal lands.

### *CRS Product*

CRS Report R43258, *Invasive Species: Major Laws and the Role of Selected Federal Agencies*, by M. Lynne Corn and Renée Johnson.

## Wildfire Management

Wildfire is a concern because it can lead to loss of human life, damage communities and timber resources,<sup>133</sup> and impact soils, watersheds, water quality, and wildlife. Management of wildfire—an unplanned and unwanted fire—includes preparedness, suppression, fuel reduction, site rehabilitation, and more.<sup>134</sup> Nearly 3.6 million acres burned in 2014 due to wildfire. This was

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<sup>131</sup> For example, see Randy G. Westbrooks, *Invasive Plants: Changing the Landscape of America*, Federal Interagency Committee for the Management of Noxious and Invasive Weeds, Washington, DC, 1998, p. 5.

<sup>132</sup> For an example of prevention efforts, see those at Mammoth Cave National Park, where the fungus has already been found: <http://www.nps.gov/macawhitenose.htm>.

<sup>133</sup> For more information on wildfire damages to homes and resources, see CRS Report RL34517, *Wildfire Damages to Homes and Resources: Understanding Causes and Reducing Losses*, by Kelsi Bracmort.

<sup>134</sup> Preparedness is any activity that leads to a safe, efficient and cost-effective fire management program, as well as the range of tasks necessary to build, sustain, and improve the capability to protect against, respond to, and recover from domestic incidents. Suppression is all of the work associated with extinguishing or confining a fire. Fuel reduction is manipulation, including combustion, or removal of fuels to reduce the likelihood of ignition and/or to lessen potential damage and resistance to control. Site rehabilitation is efforts undertaken generally within three years of a wildfire to repair or improve fire damaged lands unlikely to recover to a management approved condition, or to repair or replace minor facilities damaged by fire.

slightly less than the 4.3 million acres that burned in 2013 and significantly less than the 9.3 million acres that burned in 2012.<sup>135</sup>

The federal government is responsible for managing wildfires that begin on federal land. FS and DOI have overseen wildfire management, with FS receiving approximately two-thirds of federal funding.<sup>136</sup> Although wildfires can occur on federal, state, or private lands, some 95% of the funding is used to protect federal lands. Wildfire management funding—including supplemental appropriations—has averaged \$3.3 billion over the last ten years, ranging from a low of \$2.6 billion in FY2012 to a high of \$4.5 billion in FY2008.<sup>137</sup>

Congressional activity regarding wildfire management typically peaks during the fire season, and during the early part of the budget process.<sup>138</sup> Legislative issues for Congress include oversight of the agencies' fire management activities and other wildland management practices that have altered fuel loads over time; consideration of programs and processes for reducing fuel loads; rising wildfire suppression costs; and federal roles and responsibilities for wildfire protection and damages, including supplemental appropriations to deal with these issues. Another issue is the impact of the expanding wildland-urban interface (WUI) which has increased the wildfire threat to people and houses. Approximately 10% of all land within the lower 48 states is classified as WUI.

There is also congressional interest in FS air tanker readiness and efficacy,<sup>139</sup> specifically the planning for aviation resources given wildfire projections, the number and age of available air tanker units, and the contract process to place the units in service. FS aviation assessments conclude that additional resources are needed, but differ on the type, quantity, and cost of these resources.<sup>140</sup> In 2013, FS awarded contracts with five companies to supply the agency with new air tankers over the next five years.<sup>141</sup> In 2014, Congress authorized FS to receive aircraft transferred from DOD and the Department of Homeland Security for wildfire suppression,<sup>142</sup> and

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<sup>135</sup> The acreage burned in 2012 was the third largest acreage burned annually based on historical fire statistics, which were first reported in 1960. The first and second largest fire year on record for acres burned was 2006 and 2007, respectively. National Interagency Fire Center, *Total Wildland Fires and Acres (2014)*; [http://www.nifc.gov/fireInfo/fireInfo\\_stats\\_totalFires.html](http://www.nifc.gov/fireInfo/fireInfo_stats_totalFires.html) and National Interagency Fire Center, *Wildland Fire Summary and Statistics Annual Report (2014)*, [http://www.predictiveservices.nifc.gov/intelligence/2014\\_Statsum/intro\\_summary14.pdf](http://www.predictiveservices.nifc.gov/intelligence/2014_Statsum/intro_summary14.pdf).

<sup>136</sup> Wildfire management is funded under the Interior, Environment and Related Agencies appropriations bill. For more information on federal funding for wildfire management, see CRS Report R43077, *Wildfire Management: Federal Funding and Related Statistics*, by Katie Hoover and Kelsi Bracmort, and CRS Report RL33990, *Federal Funding for Wildfire Control and Management*, by Kelsi Bracmort.

<sup>137</sup> *Ibid.*

<sup>138</sup> The fires season generally starts in mid- or late summer and ends in mid- or late fall. Factors such as wind, drought, precipitation events from the previous year, and more contribute to the length and severity of the fire season.

<sup>139</sup> The FS reports that the average age of air tankers still in service is more than 50 years old. USDA Forest Service, *Large Airtanker Modernization Strategy*, January 17, 2012, [http://www.fs.fed.us/fire/aviation/airtanker\\_modernization\\_strategy.pdf](http://www.fs.fed.us/fire/aviation/airtanker_modernization_strategy.pdf).

<sup>140</sup> RAND Corporation, *Air Attack Against Wildfires: Understanding U.S. Forest Service Requirements for Large Aircraft*, 2012 <http://www.rand.org/pubs/monographs/MG1234.html>; National Interagency Aviation Council, *Interagency Aviation Strategy*, July 2008; Fire Program Solutions LLC, *Wildland Fire Management Aerial Application Study*, USDA Forest Service, October 17, 2005; Forest Service, *Federal Aerial Firefighting: Assessing Safety and Effectiveness*, December 2002; USDA Forest Service, *National Study of Airtankers to Support Initial Attack and Large Fire Suppression*, 1995 [http://www.fs.fed.us/fire/publications/aviation/nats1\\_report.pdf](http://www.fs.fed.us/fire/publications/aviation/nats1_report.pdf).

<sup>141</sup> Forest Service, "U.S. Forest Service issues notice of intent to award "Next Generation" airtanker contracts," press release, May 6, 2013, <http://www.fs.fed.us/news/2013/releases/05/next-gen-tanker.shtml>.

<sup>142</sup> National Defense Authorization Act, FY2014 (P.L. 113-66 §1098).

the 2014 farm bill authorized FS to establish an airtanker and aerial asset leasing program.<sup>143</sup> Further, the FY2015 funding bill provided FS with an additional \$65 million to acquire aircraft to “enhance firefighting mobility, effectiveness, efficiency, and safety.”<sup>144</sup>

### ***CRS Products***

CRS Report R43077, *Wildfire Management: Federal Funding and Related Statistics*, by Katie Hoover and Kelsi Bracmort.

CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*, by Katie Hoover and Kelsi Bracmort.

CRS Report R40811, *Wildfire Fuels and Fuel Reduction*, by Katie Hoover.

CRS Report R41858, *Federal Assistance for Wildfire Response and Recovery*, by Katie Hoover.

CRS Report RL34517, *Wildfire Damages to Homes and Resources: Understanding Causes and Reducing Losses*, by Kelsi Bracmort.

CRS Report RL30755, *Forest Fire/Wildfire Protection*, by Kelsi Bracmort.

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<sup>143</sup> Agricultural Act of 2014; P.L. 113-79 §8305.

<sup>144</sup> Consolidated and Further Continuing Appropriations Act, 2015, P.L. 113-235 Division F.