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# Wilderness: Overview, Management, and Statistics

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## Summary

Congress enacted the Wilderness Act in 1964. This act created the National Wilderness Preservation System, reserved to Congress the authority to designate wilderness areas, and directed the Secretaries of Agriculture and of the Interior to review certain lands for their wilderness potential. The act also designated 54 wilderness areas with 9 million acres of federal land. Congress began expanding the Wilderness System in 1968, and as of July 15, 2019, there are 803 wilderness areas, totaling over 111 million acres, in 44 states and Puerto Rico. Numerous bills to designate additional areas and to expand existing ones have been introduced and considered in every Congress.

The Wilderness Act defined wilderness as an area of undeveloped federal land, among other criteria, but due to differing perceptions of wilderness and its purpose, it did not establish criteria or standards to determine whether an area should be designated. In general, wilderness areas are undeveloped, and commercial activities, motorized access, and roads, structures, and facilities are prohibited in wilderness areas. In response to conflicting demands, however, Congress has granted both general exemptions and specific exceptions to the general standards and prohibitions. Questions also persist over the frequency and extent to which federal agencies must review the wilderness potential of their lands, and how those lands should be managed.

Wilderness designation can be controversial. Because the designation generally prohibits commercial activities, motorized access, and human infrastructure from wilderness areas, opponents see such designations as preventing certain uses and potential economic development in rural areas where such opportunities are relatively limited. Advocates propose wilderness designations to preserve the generally undeveloped conditions of the areas.

The federal government owns about 28% of the land in the United States, although the proportion in each state varies widely. Four federal agencies—the Bureau of Land Management, National Park Service, and Fish and Wildlife Service in the Department of the Interior; and the Forest Service in the Department of Agriculture—manage most of the 111 million acres of designated wilderness, as well as many other lands. They also protect certain other lands as possible additions to the Wilderness System, and review the wilderness potential of lands.

In total, approximately 18% of federal land administered by the four major federal land management agencies, and nearly 5% of all land in the United States, has been designated as wilderness, largely in Alaska. Alaska, because of its size and relatively pristine condition, dominates wilderness statistics—more than 52% of designated wilderness is in Alaska (57.4 million acres). In total, nearly 16% of the entire state of Alaska has been designated as wilderness. In contrast, 3% of all land in the United States outside Alaska has been designated as wilderness.

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In 1964, the Wilderness Act established a national system of congressionally designated areas to be preserved in a wilderness condition: “where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”<sup>1</sup> The National Wilderness Preservation System (NWPS) was originally created with 9 million acres designated in national forest system lands managed by the Forest Service. Congress has since added more than 100 million acres to the Wilderness System (see **Table 1**). Wilderness areas have been designated on land managed by each of the four federal land management agencies—the Forest Service in the Department of Agriculture, and the National Park Service (NPS), Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM) in the Department of the Interior.<sup>2</sup> Federal agencies, Members of Congress, and interest groups have recommended additional lands for inclusion in the Wilderness System. Furthermore, at the direction of Congress, agencies have studied, or are studying, the wilderness potential of their lands. This report provides a brief history of wilderness, describes what wilderness is, identifies permitted and prohibited uses in wilderness areas, and provides data on the 111.4 million acres of designated wilderness areas as of July 15, 2019. For information on current wilderness legislation, see CRS Report R41610, *Wilderness: Issues and Legislation*.

## History of Wilderness

As the United States was formed, the federal government acquired 1.8 billion acres of land through purchases, treaties, and other agreements. Initial federal policy was generally to transfer land to states and private ownership, but Congress also provided for reserving certain lands for federal purposes. Over time, Congress has reserved or withdrawn increasing acreage for national parks, national forests, wildlife refuges, etc. The general policy of land disposal was formally changed to a policy of retaining the remaining lands in the Federal Land Policy and Management Act of 1976 (FLPMA).<sup>3</sup>

The early national forests were managed for conservation—protecting and developing the lands for sustained use. It did not take long for some Forest Service leaders to recognize the need to preserve some areas in a natural state. Acting at its own discretion, and at the behest of an employee named Aldo Leopold, the Forest Service created the first wilderness area in the Gila National Forest in New Mexico in 1924. In the succeeding decades, the agency’s system of wilderness, wild, and primitive areas grew to 14.6 million acres. However, in the 1950s, increasing timber harvests and recreational use of the national forests led to public concerns about the permanence of this purely administrative system. The Forest Service had relied on its administrative authority in making wilderness designations, but there was no law to prevent a future change to those designations.

In response, Congress enacted the Wilderness Act in 1964. The act described the attributes and characteristics of wilderness, and it prohibited or restricted certain activities in wilderness areas to preserve and protect the designated areas, while permitting other activities to occur. The act reserves to Congress the authority to designate areas as part of the National Wilderness Preservation System.

The Wilderness System began with the 9.1 million acres of national forest lands that had been identified administratively as wilderness areas or wild areas. The Wilderness Act directed the

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<sup>1</sup> P.L. 88-577, 16 U.S.C. §§1131-1136.

<sup>2</sup> For data on the acreage managed by the FS, BLM, NPS, and FWS, see CRS Report R42346, *Federal Land Ownership: Overview and Data*.

<sup>3</sup> P.L. 94-579, 43 U.S.C. §§1701, et seq.

Secretary of Agriculture to review the agency’s 5.5 million acres of primitive areas, and the Secretary of the Interior to evaluate the wilderness potential of National Park System and National Wildlife Refuge System lands. The Secretaries were to report their recommendations to the President and to Congress within 10 years (i.e., by 1974). Separate recommendations were made for each area, and many areas recommended for wilderness were later designated, although some of the recommendations are still pending. In 1976, FLPMA directed the Secretary of the Interior to conduct a similar review of the public lands administered by BLM within 15 years (i.e., by 1991). BLM submitted its recommendations to the President, and presidential recommendations were submitted to Congress (see “BLM Wilderness Review and Wilderness Study Areas”).

The 90<sup>th</sup> Congress began expanding the Wilderness System in 1968, as shown in **Table 1**. Five laws were enacted, creating five new wilderness areas with 792,750 acres in four states. Wilderness designations generally increased in each succeeding Congress, rising to a peak of 60.8 million acres designated during the 96<sup>th</sup> Congress (1979-1980), the largest amount designated by any Congress. This figure included the largest single designation of 56.4 million acres of wilderness through the Alaska National Interest Lands Conservation Act.<sup>4</sup> The 98<sup>th</sup> Congress enacted more wilderness laws (21) and designated more acres (8.5 million acres in 21 states) outside of Alaska than any Congress since the Wilderness System was created. The 112<sup>th</sup> Congress was the first Congress to designate no additional wilderness acres.

Including the Wilderness Act, Congress has enacted more than 120 laws designating new wilderness areas or adding to existing ones, as shown in **Table 1**. The Wilderness System now contains 803 wilderness areas managed by the four federal land management agencies, with approximately 111.4 million acres in 44 states and Puerto Rico, as shown in **Table 2**.<sup>5</sup> The agencies have recommended that additional lands be added to the Wilderness System; these lands are generally managed to protect their wilderness character while Congress considers adding them to the Wilderness System (see “Wilderness Review, Study, and Release”). The agencies are studying additional lands to determine if these lands should be added to the Wilderness System. However, comprehensive data on the lands recommended and being reviewed for wilderness potential are not available.

**Table 1. Additions to the National Wilderness Preservation System**

Congress	Number of Laws <sup>a</sup>	Number of States	Number of New Areas (Additions) <sup>b</sup>	Acres Designated <sup>c</sup>
88 <sup>th</sup>	1	13	54 (0)	9,125,721
89 <sup>th</sup>	0	0	0 (0)	0
90 <sup>th</sup>	5	4	5 (1)	792,750
91 <sup>st</sup>	3	13	25 (0)	303,612
92 <sup>nd</sup>	9	7	8 (1)	913,337
93 <sup>rd</sup>	4	22	35 (0)	1,271,535
94 <sup>th</sup>	8	23	35 (0)	2,428,327
95 <sup>th</sup>	7	18	28 (5)	4,680,519
96 <sup>th</sup>	7	10	71 (11)	60,753,605 <sup>d</sup>
97 <sup>th</sup>	6	6	7 (0)	83,309

<sup>4</sup> ANILCA; P.L. 96-487.

<sup>5</sup> Connecticut, Delaware, District of Columbia, Iowa, Kansas, Maryland, and Rhode Island do not contain any designated wilderness.

Congress	Number of Laws <sup>a</sup>	Number of States	Number of New Areas (Additions) <sup>b</sup>	Acres Designated <sup>c</sup>
98 <sup>th</sup>	21	21	177 (49)	8,530,657
99 <sup>th</sup>	5	5	11 (2)	99,153
100 <sup>th</sup>	7	8	22 (4)	1,422,730
101 <sup>st</sup>	5	5	68 (3)	3,501,160
102 <sup>nd</sup>	2	2	6 (4)	426,290
103 <sup>rd</sup>	2	2	79 (14)	8,272,871
104 <sup>th</sup>	2	2	1 (2)	29,970
105 <sup>th</sup>	1	1	0 (1)	160
106 <sup>th</sup>	8	7	18 (1)	1,081,465
107 <sup>th</sup>	5	5	18 (13)	529,590
108 <sup>th</sup>	2	2	15 (0)	801,784
109 <sup>th</sup>	6	7	25 (11)	1,030,748
110 <sup>th</sup>	1	1	1 (0)	106,000
111 <sup>th</sup>	1	9	50 (27)	2,096,150
112 <sup>th</sup>	0	0	0	0
113 <sup>th</sup>	2	6	5 (4)	279,709
114 <sup>th</sup>	1	1	3 (0)	275,665
115 <sup>th</sup>	2	2	1(7)	20,196
116 <sup>th</sup>	1	5	37 (7)	1,339,605
<b>Total</b>	<b>123</b>	<b>44</b>	<b>803</b>	<b>111,368,221</b>

**Source:** Created by the Congressional Research Service (CRS).

- Excludes laws with minor boundary and acreage adjustments (less than 10 acres of net change).
- The first number indicates the number of new wilderness areas; the number in parentheses indicates the number of additions to existing wilderness areas.
- The total reported for a given Congress reflects the acreage as designated at the time of enactment, which may differ from the acreage used to calculate the total for the column because of subsequent acreage revisions.
- This figure includes 56.4 million acres that were designated wilderness through the Alaska National Interest Lands Conservation Act (ANILCA: P.L. 96-487).
- Data are current as of the publication date of this report.

## What Is Wilderness?

The Wilderness Act described wilderness as an area of generally undisturbed federal land. Specifically, Section 2(c) defined wilderness as

A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean ... an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land

or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.<sup>6</sup>

This definition provides some general guidelines for determining which areas should or should not be designated wilderness, but the law contains no specific criteria. The phrases “untrammelled by man,” “retaining its primeval character,” and “man’s work substantially unnoticeable” are not precise. Even the numerical standard (5,000 acres) is not absolute; smaller areas can be designated.

These imprecise criteria stem in part from differing perceptions of what constitutes wilderness. To some, *wilderness* is an area where there is absolutely no sign of human presence: no traffic can be heard (including aircraft); no roads, structures, or litter can be seen. To others, sleeping in a camper in a 400-site campground in Yellowstone National Park is a wilderness experience. Complicating these differing perceptions is the wide range of ability to “get away from it all” in various settings. In a densely wooded area, isolation might be measured in yards; in mountainous or desert terrain, human developments can sometimes be seen for miles.

Section 2 of the Wilderness Act also identified the purposes of wilderness. Specifically, Section 2(a) stated that the act’s purpose was to create wilderness lands “administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness.”<sup>7</sup> These criteria also contain degrees of imprecision, sometimes leading to different perceptions about how to manage wilderness. Thus, there are contrasting views about what constitutes wilderness and how wilderness should be managed.

In an attempt to accommodate contrasting views of wilderness, the Wilderness Act provided certain exemptions and delayed implementation of restrictions for wilderness areas, as will be discussed below. At times, Congress has also responded to the conflicting demands of various interest groups by allowing additional exemptions for certain uses (especially for existing activities) in particular wilderness designations. The subsequent wilderness statutes have not designated wilderness areas by amending the Wilderness Act. Instead, they are independent statutes. Although nearly all of these statutes direct management in accordance with the Wilderness Act, many also provide unique management guidance for their designated areas. Ultimately, *wilderness areas* are whatever Congress designates as wilderness, regardless of developments or activities that some might argue conflict with the act’s definition of wilderness.

## Statutory Management Provisions

The Wilderness Act and subsequent wilderness laws contain several provisions addressing management of wilderness areas. These laws designate wilderness areas as part of and within existing units of federal land, and the management provisions applicable to those units of federal land, particularly those governing management direction and restricting activities, also apply. For example, hunting is prohibited in most NPS units but not on most Forest Service or BLM lands. Thus, hunting would be prohibited for the wilderness areas in those NPS units but would be permitted in Forest Service or BLM wilderness areas, absent specific statutory language.

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<sup>6</sup> 16 U.S.C. §1131(c).

<sup>7</sup> 16 U.S.C. §1131(a).

In addition to the management requirements applicable to the underlying federal land, most of the subsequent wilderness statutes direct management of the designated areas in accordance with or consistent with the Wilderness Act, although some management provisions have been expanded or clarified.

- *State Fish and Wildlife Jurisdiction and Responsibilities.* The Wilderness Act explicitly directed that wilderness designations had no effect on state jurisdiction or responsibilities over fish and wildlife jurisdiction (Section 4(d)(8)).<sup>8</sup> Comparable language, sometimes only referring to state jurisdiction (not responsibilities) has been included in many of the wilderness statutes.
- *Jurisdiction and Authorities of Other Agencies.* Several wilderness statutes have directed that other agencies' specific authorities, jurisdiction, and related activities be allowed to continue. For example, some wilderness statutes specify that the wilderness designation has no effect on law enforcement, generally, or on U.S.-Mexico border relations, drug interdiction, or military training.
- *Water Rights.* Wilderness statutes have provided different directions concerning federal reserved water rights associated with the designated wilderness areas. The Wilderness Act expressly states that it does not claim or deny a reserved water right (Section 4(d)(7)),<sup>9</sup> whereas some wilderness statutes have expressly reserved, or denied, claims to federal water rights. Wilderness statutes frequently provide that state law dictates regulation of water allocation and use.
- *Buffer Zones.* The Wilderness Act is silent on the issue of buffer zones around wilderness areas to protect the designated areas. However, in response to concern that designating wilderness areas would restrict management of adjoining federal lands, language in many subsequent wilderness bills has prohibited buffer zones that would limit uses and activities on federal lands around the wilderness areas.
- *Land and Rights Acquisition and Future Designations.* The Wilderness Act authorizes the acquisition of land within designated wilderness areas (called *inholdings*), including through donation or exchange for other federal land (Section 5(a-c)),<sup>10</sup> subject to appropriations. Congress has also enacted several wilderness statutes with intended or potential wilderness that are within or adjoining designated wilderness areas. These areas are to become wilderness when certain conditions have been met, such as acquisition, as specified in the statute.
- *Wilderness Study, Review, and Release.* Many of the wilderness statutes have directed the agencies to review the wilderness potential of certain lands and present recommendations regarding wilderness designations to the President and to Congress. (See the "Wilderness Review, Study, and Release" section, below.) However, the Wilderness Act and most of the initial statutory wilderness review provisions were silent on the management of the areas during and after the review, leading to concerns about how to manage areas not recommended for wilderness designation. A legislative provision, called *release language*, was developed to address this concern. Release language provides direction on the

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<sup>8</sup> 16 U.S.C. §1133(d)(7).

<sup>9</sup> 16 U.S.C. §1133(d)(6).

<sup>10</sup> 16 U.S.C. §1135(a-c).

timing of future wilderness review and of the management of areas not designated as wilderness until the next review.

The Wilderness Act, and subsequent statutes, authorized some uses to continue, particularly if the uses were authorized at the time of designation. For example, the Wilderness Act specifically directs that “the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture” (Section 4(d)(4)(2)).<sup>11</sup> Congress expanded on this language by providing additional guidance on continuing livestock grazing at historic levels in designated wilderness areas (H. Rept. 96-617, which accompanied P.L. 96-560, and Appendix A—Grazing Guidelines—in H.Rept. 101-405, which accompanied P.L. 101-628). Many of the subsequent wilderness statutes also expressly directed continued livestock grazing in conformance with the Wilderness Act and the committee reports.

The Wilderness Act extended the mining and mineral leasing laws for wilderness areas in national forests for 20 years, through 1983. Until midnight on December 31, 1983, new mining claims and mineral leases were permitted for those wilderness areas and exploration and development were authorized, “subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture.”<sup>12</sup> On January 1, 1984, the Wilderness Act withdrew the specified national forest wilderness areas from all forms of appropriation under the mining laws. Some subsequent wilderness statutes have specifically withdrawn the designated areas from availability under the mining and mineral laws, whereas others have directed continued mineral development and extraction or otherwise allowed historical use of an existing mine to continue within designated areas.

## **Prohibited Uses**

The Wilderness Act, directly and by cross-reference in virtually all subsequent wilderness statutes, generally prohibits commercial activities; motorized uses; and roads, structures, and facilities in designated wilderness areas. Specifically, Section 4(c) states:

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

Thus, most businesses and commercial resource development—such as timber harvesting—are prohibited, except “for activities which are proper for realizing the recreational or other wilderness purposes of the areas” (§4(d)(6)). The use of motorized or mechanized equipment—such as cars, trucks, off-road vehicles, bicycles, aircraft, or motorboats—is also prohibited, except in emergencies and specified circumstances. Human infrastructure—such as roads, buildings, dams and pipelines—is likewise prohibited in wilderness areas. However, the Wilderness Act is silent on the treatment of infrastructure in place at the time of the designation, although many of the wilderness statutes do address it through “Nonconforming Permitted Uses” provisions. Many

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<sup>11</sup> 16 U.S.C. §1133(d)(3).

<sup>12</sup> The Wilderness Act withdrew designated wilderness areas from access under the mining and mineral leasing laws after December 31, 1983.

wilderness statutes have authorized closing certain wilderness areas (or parts thereof) to public access. In addition, many statutes have withdrawn the designated areas from the public land disposal laws<sup>13</sup> and the mining and mineral leasing and disposal laws, although valid existing rights are not terminated and can be developed under reasonable regulations.

## **Nonconforming Permitted Uses**

The Wilderness Act and many subsequent wilderness statutes have allowed various nonconforming uses and conditions, especially if such uses were in place at the time of designation. Motorized access has generally been permitted for management requirements and emergencies; for nonfederal inholdings; and for fire, insect, and disease control. Continued motorized access and livestock grazing have also generally been permitted where they had been occurring prior to the area's designation as wilderness, as discussed above. In addition, construction, operations, and maintenance—and associated motorized access—have been permitted for water infrastructure and for other infrastructure in many instances. Motorized access for state agencies for fish and wildlife management activities has sometimes been explicitly allowed. Several statutes have expressly permitted low-level military overflights of wilderness areas, although the Wilderness Act does not prohibit overflights. Access for minerals activities has been authorized in some specific areas and for valid existing rights. Finally, several statutes have allowed access for other specific activities, such as access to cemeteries within designated areas or for tribal activities.

## **Wilderness Review, Study, and Release**

Congress directed the four land-management agencies to review the wilderness potential of their lands and make recommendations regarding the lands' suitability for wilderness designation. Congress acted upon many of those recommendations, by either designating lands as wilderness or by releasing lands from further wilderness consideration. However, some recommendations remain pending. Questions and discussions persist over the protection and management of these areas, which some believe should be designated as wilderness and others believe should be available for development. This debate has been particularly controversial for Forest Service inventoried roadless areas and BLM wilderness study areas.<sup>14</sup>

## **Forest Service Wilderness Reviews and Inventoried Roadless Areas**

The Wilderness Act directed the Secretary of Agriculture to review the wilderness potential of primitive areas identified by the Forest Service and to make wilderness recommendations for those lands within 10 years (i.e., by 1974). In 1970, the Forest Service expanded its review of potential wilderness areas to include lands that had not been previously identified as primitive areas. This Roadless Area Review and Evaluation (RARE) was conducted under the newly

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<sup>13</sup> The Wilderness Act is silent on the application or withdrawal of areas designated from the public land laws, likely because the areas designated were all within national forests, which were already withdrawn from the public land laws as congressionally authorized reservations of land. Similarly, therefore, all wilderness designations are automatically withdrawn from the public land laws, because the designations are implicitly congressional reservations of federal land. Furthermore, the vast majority of the public land laws were repealed in Title VII of the Federal Land Policy and Management Act of 1976 (FLPMA, P.L. 94-579). Nonetheless, several wilderness statutes have still explicitly withdrawn the designated areas from disposal under the public land laws.

<sup>14</sup> The Forest Service and the Fish and Wildlife Service also manage land designated as wilderness study areas.

enacted National Environmental Policy Act (NEPA).<sup>15</sup> The Forest Service issued the final environmental impact statement in 1973 and was sued for not properly following the NEPA process in identifying potential wilderness areas. It chose not to present the recommendations to Congress.

In 1977, the Forest Service began a second review (RARE II) of the 62 million acres of national forest roadless areas, to accelerate part of the land-management planning process mandated by the Forest and Rangeland Renewable Resources Planning Act of 1974 and the National Forest Management Act of 1976 (NFMA).<sup>16</sup> The RARE II final environmental impact statement was issued in January 1979, recommending more than 15 million acres (24% of the study area) for addition to the Wilderness System. In addition, nearly 11 million acres (17%) were to be studied further in the ongoing Forest Service planning process under NFMA. The remaining 36 million acres (58% of the RARE II area) were to be available for other uses—such as logging, energy and mineral developments, and motorized recreation—that might be incompatible with preserving wilderness characteristics. In April 1979, President Jimmy Carter presented the recommendations to Congress with minor changes.

In 1980, the state of California successfully challenged the Forest Service RARE II recommendations for 44 areas allocated to non-wilderness uses, with the court decision substantially upheld on appeal in 1982.<sup>17</sup> The Reagan Administration responded in 1983 by directing a reevaluation of all RARE II recommendations. Tensions between Congress and the Administration, and among interest groups, led to a particularly intense debate during the 98<sup>th</sup> Congress (1983-1984). Many statewide wilderness laws were subsequently enacted, each containing language releasing some lands in that state from potential wilderness designations (*release language*).

The completion of RARE II and subsequent enactment of bills designating national forest wilderness areas has not ended the debate, and the Forest Service has other directives to consider the wilderness values or the undisturbed condition of national forest lands (e.g., NFMA). Further, there are extensive roadless areas within the National Forest System that have not been designated wilderness. To address the management and protection of the 58.5 million acres of *inventoried roadless areas* (primarily RARE II areas not designated as wilderness),<sup>18</sup> the Clinton Administration developed regulations that would keep all roadless areas free from most development (the Roadless Rule).<sup>19</sup> More than a decade of litigation followed, with the Clinton Administration's rule being enjoined twice and the Bush Administration promulgating a rule that also was enjoined. The courts deciding the cases upheld the Clinton Administration's rule, and in October 2012, the Supreme Court refused to review the issue.<sup>20</sup> Currently, under the Clinton policy, road construction, reconstruction, and timber harvesting are prohibited on most of the inventoried roadless areas within the National Forest System, with some exceptions.<sup>21</sup>

<sup>15</sup> P.L. 91-190, 42 U.S.C. §§4321-4347.

<sup>16</sup> Respectively: Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA; P.L. 93-378) and National Forest Management Act of 1976 (NFMA; P.L. 94-588). 16 U.S.C. §§1600-1614, et al.

<sup>17</sup> *California v. Bergland*, 483 F. Supp. 465 (E.D.Cal. 1980), aff'd in part, rev'd in part, 690 F.2d 753 (9<sup>th</sup> Cir. 1982).

<sup>18</sup> This acreage has not been adjusted for inventoried roadless areas that have subsequently been designated wilderness.

<sup>19</sup> Forest Service, "Roadless Area Conservation Rule," 66 *Federal Register* 3244-3273, January 12, 2001.

<sup>20</sup> *Wyoming v. U.S. Department of Agriculture*, 661 F.3d 1209 (10<sup>th</sup> Cir. October 21, 2011); *California v. U.S. Department of Agriculture*, 575 F.3d 999 (9<sup>th</sup> Cir. 2009).

<sup>21</sup> Two states petitioned for their own roadless regulations under the Bush Roadless Rule prior to the rule's enjoinder: Colorado and Idaho. The inventoried roadless areas in the national forests within those states are managed under those regulations and not under the Clinton nationwide Roadless Rule. On June 1, 2018, the Secretary of Agriculture directed

## BLM Wilderness Review and Wilderness Study Areas

Congress directed BLM to consider wilderness as a use of its public lands in the 1976 enactment of FLPMA. FLPMA required BLM to make an inventory of roadless areas greater than 5,000 acres and to recommend the suitability for designation of those areas to the President within 15 years of October 21, 1976, and the President then had two years to submit wilderness recommendations to Congress. BLM presented its recommendations by October 21, 1991, and Presidents George H. W. Bush and William Clinton submitted wilderness recommendations to Congress. Although these areas have been reviewed and Congress has enacted several statutes designating BLM wilderness areas, many of the wilderness recommendations for BLM lands remain pending. There are two continuing issues for potential BLM wilderness: protection of the wilderness study areas and whether BLM has a continuing obligation under FLPMA to conduct wilderness reviews.

### Protection of BLM Wilderness Study Areas

From 1977 through 1979, BLM identified suitable wilderness study areas (WSAs) from roadless areas identified in its initial resource inventory under FLPMA Section 201. Section 603(c) of FLPMA directs the agency to manage those lands “until Congress has determined otherwise ... in a manner so as not to impair the suitability of such areas for preservation as wilderness.” Thus, BLM must protect the WSAs as if they were wilderness until Congress enacts legislation that releases BLM from that responsibility. This responsibility is sometimes referred to as a *non-impairment* obligation or standard.

WSAs have been subject to litigation challenging BLM’s protection. In the early 2000s, BLM was sued for not adequately preventing impairment of WSAs from increased off-road vehicle use. In *Norton v. Southern Utah Wilderness Alliance*, the U.S. Supreme Court ruled that the non-impairment obligation was not enforceable by court challenge.<sup>22</sup> The Court held that although WSA protection was mandatory, it was a broad programmatic duty and not a discrete agency obligation. The Court also concluded that the relevant FLPMA land use plans (which indicated that WSAs would be monitored) constituted only management goals that might be modified by agency priorities and available funding and were not a basis for enforcement under the Administrative Procedure Act. Therefore, it appears that although BLM actions that would harm WSAs could be enjoined, as with any agency enforcement obligation,<sup>23</sup> forcing BLM to take protective action would be difficult at best.

### BLM Reviews for Wilderness Potential

Despite BLM’s continuing obligation under FLPMA Section 201 to identify the resources on its lands, giving priority to areas of critical environmental concern,<sup>24</sup> it is unclear whether BLM is required to review its lands specifically for wilderness potential after expiration of the reviews

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the Chief of the Forest Service to initiate rulemaking for roadless area management for the Tongass National Forest in Alaska, often called the “Alaska roadless rule.” For more information, see <https://www.fs.usda.gov/roadmain/roadless/alaskaroadlessrule>.

<sup>22</sup> 542 U.S. 55 (2004).

<sup>23</sup> See, for example, *Heckler v. Chaney*, 470 U.S. 821, 831 (1985); *United States v. Batchelder*, 442 U.S. 114, 123-124 (1979); *United States v. Nixon*, 418 U.S. 683, 693 (1974); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967) (“an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion”).

<sup>24</sup> FLPMA §201; 43 U.S.C. §1711.

required by Section 603.<sup>25</sup> In contrast to the Forest Service, which must revise its land and resource management plans at least every 15 years, BLM is not required to revise its plans on a specified cycle; rather, it must revise its land and resource management plans “when appropriate.” Furthermore, while NFMA includes wilderness in the planning process, both directly and by reference to the Multiple Use-Sustained Yield Act of 1960, FLPMA is silent on wilderness in the definitions of multiple use and sustained yield and in the guidance for the BLM planning process. Thus, future BLM wilderness reviews are less certain than future Forest Service wilderness reviews.

## DOI Wilderness Policy Changes

With each Administration, DOI has changed its policy regarding how it administers areas with wilderness potential. In September 2003, then-DOI secretary Gale Norton settled litigation challenging a 1996 policy identifying large amounts of wilderness-suitable lands.<sup>26</sup> Following the settlement, the BLM assistant director issued guidance (known as Instruction Memorandum 2003-274) prohibiting further reviews and limiting the term *wilderness study areas* and the non-impairment standard to areas already designated for the original Section 603 reviews of the 1970s and 1980s.<sup>27</sup> The guidance advised, in part, that because the Section 603 authority expired, “there is no general legal authority for the BLM to designate lands as WSAs for management pursuant to the non-impairment standard prescribed by Congress for Section 603 WSAs.”<sup>28</sup>

On December 22, 2010, then-DOI secretary Ken Salazar issued Order No. 3310, known as the Wild Lands Policy, addressing how BLM would manage wilderness.<sup>29</sup> This order indirectly modified the 2003 wilderness guidance without actually overturning the direction (or even acknowledging it). The order relied on the authority in FLPMA Section 201 to inventory lands with wilderness characteristics that are “outside of the areas designated as Wilderness Study Areas and that are pending before Congress” and designated these lands as “Wild Lands.” It also directed BLM to consider the wilderness characteristics in land use plans and project decisions, “avoiding impairment of such wilderness characteristics” unless alternative management is deemed appropriate. Whereas Instruction Memorandum 2003-274 indicated that, except for extant Section 603 WSAs, the non-impairment standard did not apply, Order No. 3310 appeared to require an affirmative decision that impairment is appropriate in a Section 201 wilderness resource area. Otherwise, under Order No. 3310, impairment must be avoided. After Congress withheld funding, Secretary Salazar revoked the order in June 2011 and stated that BLM would

<sup>25</sup> FLPMA §603; 43 U.S.C. §1782 (requiring a review within 15 years [by 1991] of roadless areas greater than 5,000 acres to determine suitability for wilderness).

<sup>26</sup> In 1996, then-DOI secretary Bruce Babbitt used the inventory authority in Section 201 of FLPMA to identify 2.6 million acres in Utah as having wilderness qualities. This land was in addition to the lands inventoried and reviewed in the 1970s and 1980s. The state of Utah challenged the inventory as violating Section 603. See *Utah v. Norton*, No 96-CV-870 (D. Utah *Order approving settlement* April 14, 2003).

<sup>27</sup> BLM Assistant Director, Instruction Memorandum 2003-275, *Consideration of Wilderness Characteristics in Land Use Plans (Excluding Alaska)*, September 29, 2003, p. 1, at [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction.html) (“It is, therefore, no longer BLM policy to continue to make formal determinations regarding wilderness character, designate new WSAs through the land use planning process, or manage any lands—except WSAs established under Section 603 of FLPMA and other existing WSAs—in accordance with the non-impairment standard prescribed in the [Interim Management Policy].”) These memoranda rescinded the Wilderness Inventory and Study Procedures Handbook.

<sup>28</sup> Instruction Memorandum 2003-275.

<sup>29</sup> Secretary of the Interior, Order No. 3310, *Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management*, (December 22, 2010), at [http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications\\_Directorate/public\\_affairs/news\\_release\\_attachments.Par.26564.File.dat/sec\\_order\\_3310.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/news_release_attachments.Par.26564.File.dat/sec_order_3310.pdf).

not designate any wild lands.<sup>30</sup> Despite the order being formally revoked, Congress has continued to withhold funding in annual appropriations acts.<sup>31</sup>

## Data on Wilderness Designations as of July 15, 2019

The wilderness data presented in **Table 2** are the most recent acreage estimates for wilderness areas that have been designated by Congress as compiled by the agencies. Acreages are estimates, since few (if any) of the areas have been precisely surveyed. In addition, the agencies have recommended areas for addition to the National Wilderness Preservation System, and continue to review the wilderness potential of other lands under their jurisdiction, both of congressionally designated wilderness study areas and under congressionally directed land management planning efforts. However, statistics on acreage in pending recommendations and being studied, particularly in the planning efforts, are unavailable.

As of July 15, 2019, Congress has designated 111.4 million acres of federal land in units of the National Wilderness Preservation System, as shown in Error! Reference source not found. and **Figure 1**. Wilderness areas have been designated in 44 states plus Puerto Rico; Connecticut, Delaware, District of Columbia, Iowa, Kansas, Maryland, and Rhode Island do not contain any designated wilderness areas. Just over half (52%) of this land—57.4 million acres—is in Alaska, and includes most of the wilderness areas managed by NPS (74%) and FWS (90%).<sup>32</sup> California has the next-largest wilderness acreage, with 15.3 million acres designated in the state. However, Washington has the largest percentage of federal land designated wilderness, with the 4.5 million acres of wilderness accounting for 38% of the federal land within the state. NPS manages the most wilderness acreage (44.0 million acres, 40% of the Wilderness System), followed by the Forest Service, which manages 36.7 million acres (33%). FWS manages 20.7 million acres (19%), and BLM manages the least wilderness acreage, 10.0 million acres (9%).

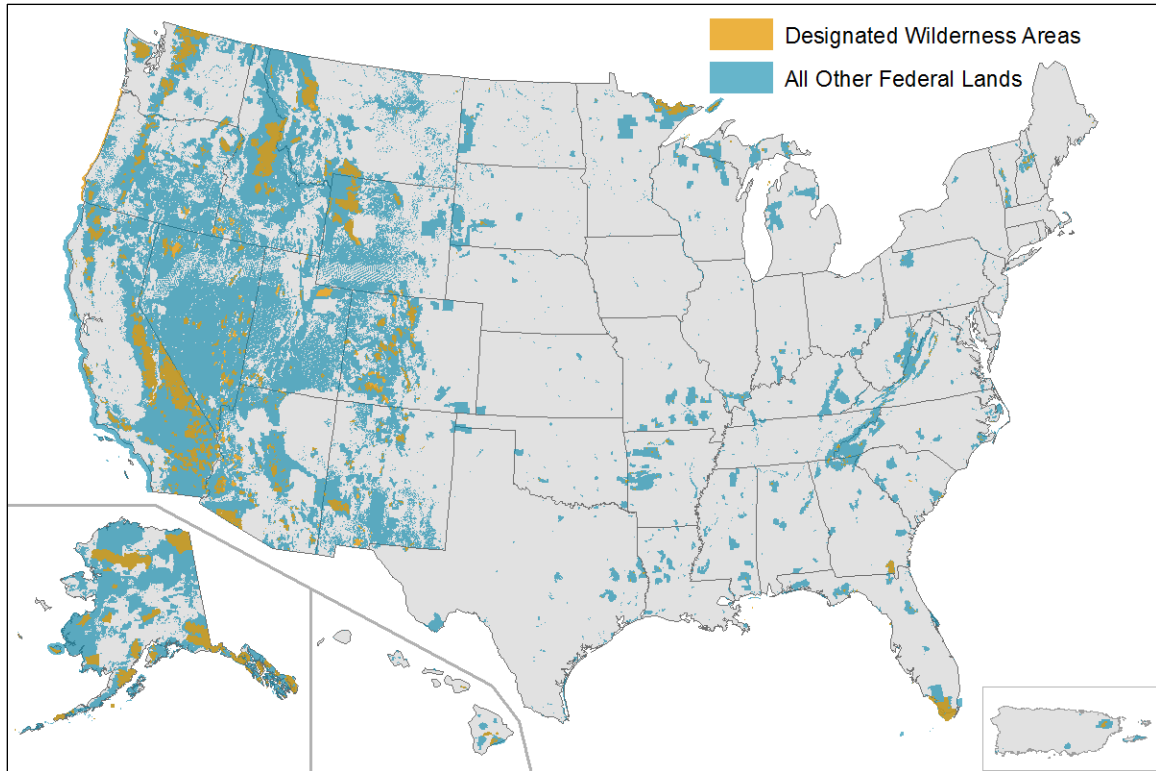
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<sup>30</sup> Memorandum from Secretary, Department of the Interior, to Director, Bureau of Land Management, *Wilderness Policy* (June 1, 2011), at <http://www.doi.gov/news/pressreleases/upload/Salazar-Wilderness-Memo-Final.pdf>.

<sup>31</sup> FY2011: P.L. 112-10, §1769; FY2012: P.L. 112-74, §125; FY2014: P.L. 113-76, Division G, Title I, §124; FY2015: P.L. 113-235, Division F, Title I, §115; and FY2016: P.L. 114-113 Division G, Title I, §112.

<sup>32</sup> For data on the acreage managed by the Forest Service, BLM, NPS, and FWS, see CRS Report R42346, *Federal Land Ownership: Overview and Data*.

**Figure 1. Designated Wilderness Areas and Federal Lands in the United States**



**Source:** Created by CRS using data from Wilderness.net and the U.S. National Atlas.

**Notes:** The federal lands depicted in this figure include all of the federally owned or administered land areas in the United States, including lands managed by the Department of Defense and Department of the Interior lands held in trust for Indian tribes.

**Table 2. Designated Wilderness Area, by State and Agency**

	Bureau of Land Management		Fish and Wildlife Service		Forest Service		National Park Service		Total Designated Area		Share of Wilderness System
	Acres	% of BLM Land	Acres	% of FWS Land	Acres	% of FS Land	Acres	% of NPS Land	Acres	% of Federal Land	
Alabama	0	0*	0	0%	42,218	6%	0	0%	42,218	6%	<1%
Alaska	0	0%	18,692,615	24%	5,766,750	26%	32,979,406	63%	57,438,771	26%	52%
Arizona	1,396,966	12%	1,343,444	80%	1,327,601	12%	444,055	17%	4,512,066	16%	4%
Arkansas	0	0*	2,144	1%	116,265	4%	34,933	36%	153,342	5%	<1%
California	4,125,676	27%	9,172	3%	5,110,478	25%	6,098,882	80%	15,344,208	35%	14%
Colorado	205,814	2%	2,560	1%	3,177,196	22%	349,422	53%	3,734,992	16%	3%
Connecticut	0	0*	0	0%	0	0%	0	0%	0	0%	0%
Delaware	0	0*	0	0%	0	0*	0	0%	0	0%	0%
Florida	0	0*	51,252	17%	73,643	6%	1,296,500	53%	1,421,395	36%	1%
Georgia	0	0*	362,107	74%	116,665	13%	9,906	25%	488,678	35%	<1%
Hawaii	0	0*	0	0%	0	0*	155,509	43%	155,509	23%	<1%
Idaho	541,727	5%	0	0%	4,211,551	21%	43,243	8%	4,796,521	15%	4%
Illinois	0	0*	4,050	5%	28,122	9%	0	0%	32,172	8%	<1%
Indiana	0	0*	0	0%	12,472	6%	0	0%	12,472	5%	<1%
Iowa	0	0*	0	0%	0	0*	0	0%	0	0%	0%
Kansas	0	0*	0	0%	0	0%	0	0%	0	0%	0%
Kentucky	0	0*	0	0%	17,187	2%	0	0%	17,187	2%	<1%
Louisiana	0	0*	8,346	1%	8,701	1%	0	0%	17,047	1%	<1%
Maine	0	0*	7,392	10%	11,236	21%	0	0%	18,628	7%	<1%
Maryland	0	0*	0	0%	0	0*	0	0%	0	0%	0%
Massachusetts	0	0*	3,244	14%	0	0*	0	0%	3,244	6%	<1%

	Bureau of Land Management		Fish and Wildlife Service		Forest Service		National Park Service		Total Designated Area		Share of Wilderness System
	Acres	% of BLM Land	Acres	% of FWS Land	Acres	% of FS Land	Acres	% of NPS Land	Acres	% of Federal Land	
Michigan	0	0*	25,309	21%	89,684	3%	176,314	28%	291,307	8%	<1%
Minnesota	0	0*	6,180	1%	814,441	29%	0	0%	820,621	23%	<1%
Mississippi	0	0*	0	0%	6,026	1%	4,630	4%	10,656	1%	<1%
Missouri	0	0*	7,730	13%	64,184	4%	0	0%	71,914	4%	<1%
Montana	6,347	0%	64,535	10%	3,430,477	20%	0	0%	3,501,359	12%	3%
Nebraska	0	0*	4,635	3%	7,802	2%	0	0%	12,437	2%	<1%
Nevada	2,079,696	4%	0	0%	1,123,244	19%	236,789	30%	3,439,729	6%	3%
New Hampshire	0	0*	0	0%	138,407	18%	0	0%	138,407	17%	<1%
New Jersey	0	0*	10,341	14%	0	0*	0	0%	10,341	9%	<1%
New Mexico	446,344	3%	40,048	12%	1,429,723	15%	56,392	12%	1,972,507	8%	2%
New York	0	0*	0	0%	0	0%	1,380	4%	1,380	2%	<1%
North Carolina	0	0*	8,785	2%	102,719	8%	0	0%	111,504	5%	<1%
North Dakota	0	0%	9,732	2%	0	0%	29,920	42%	39,652	2%	<1%
Ohio	0	0*	77	0%	0	0%	0	0%	77	0%	<1%
Oklahoma	0	0*	8,570	94%	15,470	4%	0	0%	24,040	6%	<1%
Oregon	254,060	2%	940	0%	2,252,346	14%	0	0%	2,507,346	8%	2%
Pennsylvania	0	0*	0	0%	9,005	2%	0	0%	9,005	2%	<1%
Puerto Rico	0	0*	0	0%	10,244	36%	0	0%	10,244	20%	<1%
Rhode Island	0	0*	0	0%	0	0*	0	0%	0	0%	0%
South Carolina	0	0*	29,000	22%	16,537	3%	21,700	67%	67,237	8%	<1%
South Dakota	0	0%	0	0%	13,534	1%	64,144	43%	77,678	3%	<1%
Tennessee	0	0*	0	0%	86,099	12%	0	0%	86,099	8%	<1%
Texas	0	0*	0	0%	38,317	5%	46,850	4%	85,167	3%	<1%

	Bureau of Land Management		Fish and Wildlife Service		Forest Service		National Park Service		Total Designated Area		Share of Wilderness System
	Acres	% of BLM Land	Acres	% of FWS Land	Acres	% of FS Land	Acres	% of NPS Land	Acres	% of Federal Land	
Utah	914,079	4%	0	0%	780,577	10%	124,406	6%	1,819,062	5%	2%
Vermont	0	0*	0	0%	100,874	25%	0	0%	100,874	22%	<1%
Virginia	0	0*	0	0%	137,578	8%	79,579	26%	217,157	10%	<1%
Washington	7,140	2%	805	0%	2,733,421	29%	1,743,100	95%	4,484,466	38%	4%
West Virginia	0	0*	0	0%	118,811	11%	0	0%	118,811	10%	<1%
Wisconsin	0	0*	29	0%	46,438	3%	33,500	54%	79,967	4%	<1%
Wyoming	0	0%	0	0%	3,067,728	33%	0	0%	3,067,728	11%	3%
<b>U.S. Total</b>	<b>9,977,849</b>	<b>4%</b>	<b>20,703,042</b>	<b>23%</b>	<b>36,653,771</b>	<b>19%</b>	<b>44,030,560</b>	<b>55%</b>	<b>111,365,222</b>	<b>18%</b>	<b>100%</b>

**Source:** BLM, *Public Land Statistics*, 2017, <https://www.blm.gov/about/data/public-land-statistics>; Fish and Wildlife Service, *Annual Lands Report*, 2018, <https://www.fws.gov/refuges/land/LandReport.html>; Forest Service, *Land Areas of the National Forest System (LAR)*, 2018, <https://www.fs.fed.us/land/staff/lar/LAR2018/lar2018index.html>; National Park Service, *Park Acreage Reports*, 2018, <https://www.nps.gov/subjects/lwcf/acreagereports.htm>.

**Notes:** \*Indicates that the agency owns no land within the state. Unless otherwise noted, data is current as of July 15, 2019. The District of Columbia and U.S. territories other than Puerto Rico are not listed in the table.

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# Wilderness: Issues and Legislation

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January 17, 2018

**Congressional Research Service**

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## Summary

The Wilderness Act of 1964 established the National Wilderness Preservation System and, in it, Congress reserved for itself the authority to designate federal lands as part of the system. The act initially designated 54 wilderness areas containing 9.1 million acres of national forest lands. Since then, more than 100 laws designating wilderness areas have been enacted. As of September 2017, the system consisted of 110 million acres over 765 units, owned by four land management agencies: the Forest Service (FS), in the Department of Agriculture; the National Park Service (NPS); Fish and Wildlife Service (FWS); and Bureau of Land Management (BLM) within the Department of the Interior (DOI). The act also directed the Secretaries of Agriculture and the Interior to review certain lands for their wilderness potential.

Free-standing bills to designate wilderness areas are typically introduced and considered in each Congress; such bills are not amendments to the Wilderness Act, but typically refer to the act for management guidance and sometimes include special provisions. The 114<sup>th</sup> Congress considered many bills to add to the wilderness system, and one was enacted into law—P.L. 114-46—designating three additional wilderness areas totaling 275,665 acres. To date, several bills have been introduced in the 115<sup>th</sup> Congress to designate additional wilderness areas.

Wilderness designations can be controversial. The designation generally prohibits commercial activities, motorized access, and human infrastructure from wilderness areas; however, there are several exceptions to this general rule. Advocates propose wilderness designations to preserve the generally undeveloped conditions of the areas. Opponents express concern that such designations prevent certain uses and potential economic development in rural areas where such opportunities are relatively limited. The potential benefits or costs of wilderness designations are difficult to value or quantify. Thus, wilderness deliberations commonly focus on trying to maximize the benefits of preserving pristine areas while minimizing potential opportunity costs. Wilderness debates also focus on the extent of the National Wilderness Preservation System and whether it is of sufficient size or whether lands should be added or subtracted.

Most bills direct management of designated wilderness in accordance with the Wilderness Act. However, proposed legislation also often seeks a compromise among interests by allowing other activities in the area. Preexisting uses or conditions may be allowed to continue, sometimes temporarily, with or without halting or rectifying any associated nonconforming uses or conditions. Wilderness bills also often contain additional provisions, such as providing special access for particular purposes, for example, border security. Water rights associated with wilderness designations have also proved controversial; many statutes have addressed water rights in specific wilderness areas. In some cases, Congress has statutorily removed lands from several wilderness areas, commonly to adjust boundaries to delete private lands or roads included inadvertently in the original designation.

Controversies regarding management of existing wilderness areas also have been the subject of legislation. In previous Congresses, bills have been introduced to expand access to wilderness areas for border security; to guarantee access for hunting, fishing, and shooting; to release wilderness study areas (WSAs) from wilderness-like protection; and to limit agency review of the wilderness potential of their lands. The latter two issues have been contentious for BLM lands because BLM is required by law to protect the wilderness characteristics of its WSAs until Congress determines otherwise.

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The Wilderness Act of 1964 (P.L. 88-577, 16 U.S.C. §§1131-1136) established the National Wilderness Preservation System as a system of undeveloped federal lands, which are protected and managed to preserve their natural condition.<sup>1</sup> The act initially designated 54 wilderness areas containing 9.1 million acres of federal land within the national forests. Since then, Congress has passed more than 100 subsequent laws designating additional wilderness areas.<sup>2</sup> As of September, 1, 2017, the National Wilderness Preservation System totaled 765 areas, spanning nearly 110 million acres.<sup>3</sup> Many believe that certain areas should be designated to protect and preserve their unique value and characteristics, and bills are usually introduced in each Congress to designate wilderness areas. Others oppose such legislation because commercial activities, motorized access, and roads, structures, and facilities generally are prohibited in wilderness areas. Another area of concern is how prohibition of such activities can affect law enforcement in wilderness areas along U.S. national borders.

This report presents information on wilderness protection and a discussion of issues in the wilderness debate—some pros and cons of wilderness designation generally; proposed legislation; and a discussion of wilderness study area designations and protections and related issues. This report is updated periodically to track the status of legislation introduced in the 115<sup>th</sup> Congress to designate new wilderness (see **Table 1**) or to release wilderness study areas (WSAs; see **Table 2**). Tables of legislation from the 114<sup>th</sup> Congress are provided in the **Appendix** of this report.

## Wilderness Designations and Prohibited and Permitted Uses

In the Wilderness Act, Congress reserved for itself the authority to designate federal lands as part of the system. This congressional authority is based on the Property Clause of the Constitution, which gives to Congress the “Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”<sup>4</sup> Wilderness areas are part of existing units of federal land administered by the four federal land management agencies—the Forest Service (FS), in the Department of Agriculture; and the National Park Service (NPS); Fish and Wildlife Service (FWS); and Bureau of Land Management (BLM) within the Department of the Interior (DOI). Thus, statutory provisions for these agencies’ lands, as well as the Wilderness Act and subsequent wilderness statutes, govern the administration of the designated wilderness areas.

Wilderness designations can be controversial because the Wilderness Act (and subsequent laws) restricts the allowed uses of the land within designated areas. In general, the Wilderness Act prohibits commercial activities, motorized access, and roads, structures, and facilities in wilderness areas. Specifically, Section 4(c) states:

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the

<sup>1</sup> P.L. 88-577, 16 U.S.C. §1131.

<sup>2</sup> Subsequent wilderness statutes have not designated wilderness areas by amending the Wilderness Act; instead, they are independent statutes that typically direct management in accordance with the Wilderness Act, but also may provide for unique management guidance.

<sup>3</sup> See CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by (name redacted)

<sup>4</sup> Art. IV, §3, cl. 2.

administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.<sup>5</sup>

This section thus prohibits most commercial resource exploitation (such as timber harvesting) and motorized entry (with cars, trucks, off-road vehicles, aircraft, or motorboats) except for “minimum requirements” to administer the areas and in emergencies.<sup>6</sup> However, Section 4(d) provides numerous exceptions, including (a) possible continued use of motorboats and aircraft where uses are already established; (b) measures to control fires, insects, and diseases; (c) mineral prospecting conducted “in a manner compatible with the preservation of the wilderness environment”; (d) water projects; (e) continued livestock grazing; and (f) certain commercial recreation activities. Subsequent wilderness statutes have included additional provisions for administering those individual wilderness areas, including exceptions to the general Wilderness Act prohibitions.

Existing private rights established prior to the designation of an area as wilderness remain in effect, unless expressly modified by the wilderness statute. The designation does not alter property rights, but does not suggest that all uses prior to the designation are allowed. There must be a property right, rather than a general right of use. Courts have consistently interpreted the phrase “subject to valid existing rights” to mean that the wilderness designation is not intended to take property in violation of the Fifth Amendment of the Constitution.<sup>7</sup> Ownership of land within a wilderness area would confer existing rights.

While most uses—timber harvesting, livestock grazing, motorized recreation—are not considered as rights to the lands and resources, the mining and mineral leasing laws do provide a process for establishing rights to the mineral resources. The Wilderness Act allowed implementation of these laws through 1983 for the original areas designated; many subsequent laws explicitly withdrew the designated areas from availability under these laws.<sup>8</sup>

Wilderness designations are permanent unless revised by law. Congress has statutorily removed lands from several wilderness areas, commonly to adjust boundaries to delete private lands or roads included inadvertently in the original designation.<sup>9</sup>

## Nonconforming Uses or Conditions<sup>10</sup>

Lands do not have to be untouched by humans to be eligible for statutory designation as wilderness. Specific statutes designating wilderness areas may terminate or accommodate any existing uses or conditions that do not conform to wilderness standards (commonly referred to as

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<sup>5</sup> 16 U.S.C. §1133(c).

<sup>6</sup> The Wilderness Act did not further define what activities would qualify as a minimum requirement necessary for administration or emergency response. Each agency has developed different guidelines and policies to determine whether a specified activity would qualify, commonly referred to as a minimum requirements analysis.

<sup>7</sup> See *Stupak-Thrall v. United States*, 89 F.3d 1269, 1280 (6<sup>th</sup> Cir. 1996), and *Utah v. Andrus*, 486 F. Supp. 995, 1010 (D. Utah 1979).

<sup>8</sup> Three statutes—P.L. 97-466, P.L. 101-628, and P.L. 103-77—directed that mineral leases within the wilderness be acquired through exchanges for mineral leases elsewhere.

<sup>9</sup> A memorandum listing these deletions is available from the author.

<sup>10</sup> For a discussion on uses in wilderness statutes, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by (name redacted)

*nonconforming uses*). Many previous wilderness designations have directed immediate termination of nonconforming uses, whereas other bills have directed the agencies to remove, remediate, or restore nonconforming conditions or infrastructure within a specified time frame.

Alternatively, many nonconforming uses and conditions have been permitted to remain in designated wilderness areas. The Wilderness Act explicitly allows continued motorized access by aircraft and motorboats in areas where such uses were already established. The Wilderness Act also permits motorized access for management requirements and emergencies, and for fire, insect, and disease control. Numerous wilderness statutes have permitted existing infrastructure (e.g., cabins, water resource facilities, telecommunications equipment) to remain and have authorized occasional motorized access to operate, maintain, and replace the infrastructure. A few statutes have also allowed new infrastructure developments (e.g., telecommunications equipment and a space energy laser facility) within designated wilderness areas. Although such authorizations are usually for a specific area, some statutes have provided more general exemptions, such as for maintaining grazing facilities or for fish and wildlife management by a state agency in all areas designated in the statute.

Various existing wilderness statutes have included special access provisions for particular needs. For example, several statutes have included provisions addressing possible military needs in and near the designated areas, particularly for low-level military training flights. Similarly, statutes designating wilderness areas along the Mexican border commonly have allowed motorized access for law enforcement and border security. (See “Wilderness and U.S.-Mexican Border Security” below.) Other statutes have contained provisions allowing particular access for tribal, cultural, or other local needs. Several statutes have included provisions authorizing the agencies to prevent public access, usually temporarily and for the minimum area needed, to accommodate particular needs.

## Debate Surrounding Wilderness Designations

Proponents of adding new areas to the National Wilderness Preservation System generally seek designations of specific areas to preserve them in their current condition and to prevent development activities from altering their wilderness character. Most areas protected as or proposed for wilderness are undeveloped, with few (if any) signs of human activity, such as roads and structures. The principal benefit of a wilderness designation is to maintain such undeveloped conditions and the values that such conditions generate—clean water, undisturbed wildlife habitats, natural scenic views, opportunities for nonmotorized recreation (e.g., backpacking), unaltered research baselines, and for some, the simple knowledge of the existence of such pristine places.

Opponents of wilderness designations generally seek to retain development options for federal lands. The potential use of lands and resources can provide economic opportunities through extracting and developing the resources, especially in the relatively rural communities in and around the federal lands. The principal cost of a wilderness designation is the lost opportunity (opportunity costs) for economic activity resulting from resource extraction and development. While some economic activities—such as grazing and some recreation—are allowed to continue within wilderness areas, many are prohibited. The potential losses for some resources—such as timber harvesting—can often be determined with relative accuracy, since the quality and quantity of the resource can be measured. However, for other resources—particularly minerals—the assessments of the quality and quantity of the unavailable resources are more difficult to determine, and thus the opportunity costs are less certain.

The potential benefits and opportunity costs of wilderness designation can rarely be fully quantified and valued. Thus, decisions about wilderness generally cannot be based solely on a clear cost-benefit or other economic analysis. Rather, deliberations commonly focus on trying to maximize the benefits of preserving pristine areas and minimize the resulting opportunity costs. However, individuals and groups who benefit from wilderness designations may differ from those who may be harmed by lost opportunities, increasing conflict and making compromise difficult.

## Issues and Legislation in the 115<sup>th</sup> Congress

In general, Congress addresses several issues when drafting and considering wilderness bills. These issues include the general pros and cons of wilderness designation—generally and regarding identified areas of interest—and specific provisions regarding management of wilderness areas to allow or prohibit certain uses.

### Bills Designating Wilderness Areas

The first step in developing legislation to designate wilderness areas is to identify which areas to designate. The Wilderness Act specified that wilderness areas are “at least 5,000 acres of land or ... of sufficient size to make practicable its preservation and use in an unimpaired condition”;<sup>11</sup> but no minimum size is required for designations made under new legislation. As a result, wilderness areas have taken all shapes and sizes; the smallest is the Pelican Island Wilderness in Florida, with only 5½ acres, and the largest is the Mollie Beattie Wilderness (Arctic National Wildlife Refuge) in Alaska, with 8.0 million acres.<sup>12</sup> Many wilderness statutes have designated a single area, or even a single addition to an existing area. Others have designated more than 70 new areas or additions in a single statute. Some bills address a particular area, while others address all likely wilderness areas for a state or substate region (e.g., the California desert), usually for one agency’s lands, although occasionally for two or more agencies’ lands in the vicinity. Typically, the bill references a particular map for each area, and directs the agency to file a map with the relevant committees of Congress after enactment and to retain a copy in relevant agency offices (commonly a local office and/or the Washington, DC, headquarters).

Numerous bills to designate wilderness areas usually are introduced in each Congress. For example, 33 bills that would have designated wilderness areas (plus 13 companion bills) were introduced in the 111<sup>th</sup> Congress.<sup>13</sup> One was enacted—the Omnibus Public Land Management Act of 2009, P.L. 111-11. It included 16 subtitles (many of which had been introduced in individual wilderness bills in the 110<sup>th</sup> and 111<sup>th</sup> Congresses) designating over 50 new and expanding nearly 30 wilderness areas covering 2,050,964 acres in various states, as well as numerous other land, water, and other provisions. The 112<sup>th</sup> Congress was the first in decades not to designate additional wilderness; the only wilderness law that was enacted reduced the size of a wilderness area in the State of Washington and transferred the land to the Quileute Indian Tribe.<sup>14</sup> The 113<sup>th</sup>

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<sup>11</sup> 16 U.S.C. §1131(c).

<sup>12</sup> For more information on issues regarding the Arctic National Wildlife Refuge, see CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): An Overview*, by (name redacted) and (name redacted).

<sup>13</sup> For information on these bills from the 111<sup>th</sup> Congress, see CRS Report R40237, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues in the 111th Congress*, coordinated by (name redacted) and (name redacted).

<sup>14</sup> Although 41 bills to designate wilderness were introduced in the 112<sup>th</sup> Congress, no new wilderness areas were created, for the first time since the 89<sup>th</sup> Congress (1965-1967). P.L. 112-97 reduced the wilderness area in Olympic National Park by 222 acres, transferring the land to the Quileute Indian Tribe.

Congress added five new areas and over 279,00 acres to the system in two enacted bills.<sup>15</sup> In the 114<sup>th</sup> Congress, more than 30 bills were introduced to designate new or add to existing wilderness areas, and one was enacted: P.L. 114-46, which designated three new wilderness areas in Idaho.<sup>16</sup> See **Appendix** for an alphabetical list of legislation introduced and the bill enacted into law in the 114<sup>th</sup> Congress.

In the 115<sup>th</sup> Congress, as of the date of this report, more than 20 bills had been introduced to expand the National Wilderness Preservation System. See **Table 1** for an alphabetical list of legislation introduced and the most recent action (as of the publication of this report). Some of these bills include proposals to designate more than one wilderness area or to designate several wilderness areas in different states.

**Table 1. 115<sup>th</sup> Congress: Bills to Designate Wilderness Areas**

Bill Title	Bill No.	State	Acreage <sup>a</sup>	Latest Action
America's Red Rock Wilderness Act of 2017	H.R. 2044 S. 948	UT	~9,174,040	Introduced 4/6/17 (H.R. 2044) Introduced 4/26/17 (S. 948)
Blackfoot Clearwater Stewardship Act of 2017	S. 507	MT	79,060	Introduced 3/2/17
California Desert Protection and Recreation Act of 2017	S. 32	CA	378,670	Hearing 7/26/17
California Off-Road Recreation and Conservation Act	H.R. 857	CA	329,370	Introduced 2/3/17
Central Coast Heritage Protection Act	H.R. 4072 S. 1959	CA	289,105	Introduced 10/16/17 (H.R. 4072 and S. 1959)
Cerros del Norte Conservation Act	S. 432	NM	21,540	Placed on the Senate Calendar 5/3/17
Clear Creek National Recreation Area and Conservation Act	H.R. 1913	CA	21,000	Passed House 7/11/2017
Energy and Natural Resource Act of 2017, Title IV	S. 1460	NM, TN	41,096	Hearing 9/19/17
Imperial Valley Desert Conservation and Recreation Act	H.R. 827	CA	49,300	Introduced 2/2/17
Jay S. Hammond Wilderness Act	S. 213	AK	2,600,000	Placed on Senate Calendar 6/14/17
Northern Rockies Ecosystem Protection Act	H.R. 2135 S. 936	ID, MT, OR, WA, WY	24,526,000	Introduced 4/25/17 (H.R. 2135 and S. 936)
Oregon Wildlands Act	S. 1548	OR	87,240	Hearing 7/26/17
Organ Mountains-Desert Peaks Conservation Act	S. 441	NM	241,786	Introduced 2/17/17

<sup>15</sup> P.L. 113-87 and P.L. 113-291 §§3060-3062, 3064-3066.

<sup>16</sup> The 114<sup>th</sup> Congress enacted two additional laws that affected existing wilderness areas but did not add or delete any acreage. P.L. 114-272 changed the name of one wilderness area. P.L. 114-328 specified that certain state lands already located within a designated wilderness area in Utah may be included in an exchange of land between the state and federal government. If the exchange is necessary, the land would be added to the Cedar Mountains Wilderness.

Bill Title	Bill No.	State	Acreage <sup>a</sup>	Latest Action
Pershing County Economic Development and Conservation Act	H.R. 1107 S. 414	NV	136,072	Passed House 1/16/18 (H.R. 1107) Introduced 2/16/17 (S. 414)
San Gabriel Mountains Forever Act of 2017	H.R. 3039	CA	31,069	Introduced 6/23/17
San Juan County Settlement Implementation Act	S. 436	NM	9,492	Hearing 7/26/17
Tennessee Wilderness Act of 2017	H.R. 2218 S. 973	TN	7,368 19,556	Introduced 4/27/17 (H.R. 2218 and S. 973)
Udall-Eisenhower Arctic Wilderness Act	H.R. 1889 S. 820	AR	1,559,538	Introduced 4/4/17 (H.R. 1889 and S. 820)
Wild Olympics Wilderness and Wild and Scenic Rivers Act of 2017	H.R. 1285 S. 483	WA	131,900	Introduced 3/1/17 (H.R. 1285 and S. 483)

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

**Notes:** Bills may contain multiple designations of new wilderness areas, multiple additions to existing wilderness areas, and multiple designations of potential wilderness areas. Bills that would expand or modify existing wilderness areas but do not also include any provisions to designate new wilderness areas are not included.

- a. Estimated acreage as identified or derived (if possible) from the latest version of the legislation—as introduced, reported, passed, or enacted.

## Management in Accordance with the Wilderness Act

Most bills direct that the designated areas are to be managed in accordance with the Wilderness Act, meaning human impacts, such as commercial activities, motorized and mechanical access, and infrastructure developments, are generally prohibited. Some bills designating wilderness areas may terminate or accommodate any existing nonconforming uses or conditions, however. The Wilderness Act does allow some activities that affect the natural condition of the property, such as access for emergencies and for minimum management requirements; activities to control fires, insects, and diseases; livestock grazing; and some water infrastructure facilities.<sup>17</sup> Subject to valid existing rights, wilderness areas are withdrawn from the public land laws and the mining and mineral leasing laws. The Wilderness Act specifies that “reasonable access” to nonfederal lands within a designated wilderness area must be accommodated.<sup>18</sup> State jurisdiction over and responsibilities for fish and wildlife and water rights are unaffected.

## Hunting, Fishing, and Recreational Shooting

The Wilderness Act provides that the area will be managed, in part, for recreational use, but it does not specifically address hunting, fishing, or recreational shooting (although motorized vehicles, which may be helpful in removing big game from remote areas, are typically forbidden).<sup>19</sup> Wilderness areas are generally open to hunting, fishing, and recreational shooting, subject to the management provisions of the underlying federal land. For example, hunting is prohibited in many NPS units; subsequently, hunting is also prohibited in any wilderness areas

<sup>17</sup> See 16 U.S.C. §1133(c) and 16 U.S.C. §1133(d).

<sup>18</sup> See 16 U.S.C. §1134(c).

<sup>19</sup> 16 U.S.C. §1133(b).

within those units. However, hunting, fishing, and recreational shooting are generally permitted on FS or BLM lands and, thus, on wilderness areas within those areas. Some wilderness designations authorize periods when or zones where the wilderness may be closed to hunting, fishing, and trapping for safety and administrative reasons.<sup>20</sup>

Legislation introduced in the 115<sup>th</sup> Congress would alter management of wilderness areas for hunting, fishing, and recreational shooting activities. For example, S. 733, the Sportsmen’s Act, and H.R. 3668, the Sportsmen’s Heritage and Recreational Enhancement (SHARE) Act, both include provisions that would specify that wilderness areas managed by the FS and BLM would be open to recreational fishing, hunting, and recreational shooting, unless a land management agency had acted to close the land to the activity.<sup>21</sup> The agencies would be permitted to close an area temporarily or permanently. H.R. 3668 specifies that closures must be determined to be necessary and reasonable and supported by facts and evidence. S. 733 would require specific public notice and comment periods prior to a closure. S. 733 also would prohibit the agencies from providing permits for recreational shooting ranges within designated wilderness areas. H.R. 3668 was reported by the House Committee on Natural Resources on September 18, 2017.<sup>22</sup> S. 733 was reported by the Senate Committee on Energy and Natural Resources on June 22, 2017.<sup>23</sup> Similar bills were introduced in previous Congresses.<sup>24</sup>

## Wilderness and U.S.-Mexican Border Security

One issue that has received attention from some Members of Congress in recent years is the impact of the Wilderness Act and other federal laws governing land and resource management on border security.<sup>25</sup> Many are concerned that wilderness areas abutting and near the Mexican border are conduits for illegal immigration and drug trafficking because limitations on motorized access may restrict apprehension efforts.

There are 15 designated wilderness areas within about 20 miles of the Mexican border, and 5 wilderness areas abut the border (for a total of approximately 96 linear miles).<sup>26</sup> As noted above, the Wilderness Act authorizes motorized access for emergencies and administrative needs, but does not describe what is meant by “administrative needs.” The act is silent on access specifically for border security, but some actions related to controlling drug trafficking and illegal immigration might be considered administrative needs or emergencies. Specific enabling statutes may contain more specific language or provisions.

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<sup>20</sup> See for example, P.L. 113-291.

<sup>21</sup> S. 733 and H.R. 3668 are described as illustrative examples of legislation in the 115<sup>th</sup> Congress to address hunting, fishing, and recreational shooting in wilderness areas. Other bills in the 115<sup>th</sup> Congress may also address these issues.

<sup>22</sup> U.S. Congress, House Committee on Natural Resources, *Sportsmen’s Heritage and Recreational Enhancement Act*, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., September 18, 2017, H.Rept. 115-314.

<sup>23</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, *Sportsmen’s Act*, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., June 22, 2017, S.Rept. 115-116.

<sup>24</sup> See, for example, H.R. 528, H.R. 2406, and S. 556 in the 114<sup>th</sup> Congress.

<sup>25</sup> Other laws commonly cited as potentially impeding efforts to halt drug traffic and illegal aliens include the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) because they require an assessment of impacts prior to an agency action.

<sup>26</sup> Of the five wilderness areas that abut the border with Mexico, two are in California—the Otay Mountain Wilderness (3.25 linear miles) and Jacumba Wilderness (9.5 linear miles), both managed by BLM—and three are in Arizona—the Cabeza Prieta Wilderness (37.5 linear miles), managed by FWS; the Organ Pipe Cactus Wilderness (42 linear miles), managed by NPS; and the Pajarita Wilderness (3.75 linear miles), managed by the Forest Service. Mileage calculated by CRS from the National Atlas.

The enabling statutes for two of the five border wilderness areas contain specific language authorizing access for border security reasons. The first explicit language on the issue of wilderness access for border security was in Title III of the Arizona Desert Wilderness Act of 1990 (P.L. 101-628). Section 301(g) directs that

Nothing in this title, including the designation as wilderness of lands within the Cabeza Prieta National Wildlife Refuge shall be construed as (1) precluding or otherwise affecting continued border operations ... within such refuge, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or (2) precluding ... new or renewed agreements ... concerning ... border operations within such refuge, consistent with management of the refuge for the purpose for which such refuge was established.

The California Desert Protection Act of 1994 (P.L. 103-433) also contains explicit guidance on border security for all designated areas, including one abutting the Mexican border and six others within about 20 miles of the border. Section 103(g) directs that

Nothing in this Act, including the wilderness designations ... may be construed to preclude Federal, State, and local law enforcement agencies from conducting law enforcement and border operations as permitted before the date of enactment of this Act, including the use of motorized vehicles and aircraft, on any lands designated as wilderness by this Act.

The most recent statute designating a border wilderness area, the Otay Mountain Wilderness Act of 1999 (P.L. 106-145), also addresses border security. The act requires the southern boundary of the wilderness to be at least 100 feet from the border. Also, Section 6(b) allows border operations to continue consistent with the Wilderness Act:

Because of the proximity of the Wilderness Area to the United States-Mexico international border, drug interdiction [and] border operations ... are common management actions throughout the area.... This Act recognizes the need to continue such management actions so long as such management actions are conducted in accordance with the Wilderness Act and are subject to such conditions as the Secretary considers appropriate.

Concerns about access limitations to wilderness areas (and other legal constraints that apply more broadly to federal lands) have persisted through several Congresses. In 2010, the Government Accountability Office (GAO) noted that most border officials reported that any delays and restrictions reported in border security operations did not affect security:

[D]espite the access delays and restrictions experienced by these [Border Patrol] stations, 22 of the 26 patrol agents-in-charge reported that the overall security status of their jurisdiction had not been affected by land management laws. Instead, factors such as the remoteness and ruggedness of the terrain have had the greatest effect on their ability to achieve operational control in these areas. Four patrol agents-in-charge reported that delays and restrictions had affected their ability to achieve or maintain operational control, but they either had not requested resources for increased or timelier access or their requests had been denied by senior Border Patrol officials because of higher priority needs of the agency.<sup>27</sup>

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<sup>27</sup> U.S. Government Accountability Office, *Southwest Border: Border Patrol Operations on Federal Lands*, GAO-11-573T, April 15, 2011, at <http://www.gao.gov/new.items/d11573t.pdf>. See also GAO, *Southwest Border: More Timely Border Patrol Access and Training Could Improve Security Operations and Natural Resource Protection on Federal Lands*, GAO-11-38, October 2010, at <http://www.gao.gov/new.items/d1138.pdf>; and GAO, *Border Security: Additional Actions Needed to Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010, at <http://www.gao.gov/new.items/d11177.pdf>.

## Administrative Action

In August 2017, the Trump administration issued notice that the Secretary of Homeland Security used the authority provided in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA, as amended)<sup>28</sup> to waive all laws—including the Wilderness Act and the Otay Mountain Wilderness Act—in order to expeditiously implement border security measures in California.<sup>29</sup> This includes the construction of border infrastructure and other operational improvements along a 15-mile segment of the border.

## Legislative Action

The 115<sup>th</sup> Congress is considering legislation to reduce the potential restrictions of the Wilderness Act and other federal statutes on border security activities.<sup>30</sup> For example, H.R. 3593, the Securing Our Borders and Wilderness Act, would amend the Wilderness Act to permit U.S. Customs and Border Protection to perform border security measures as needed, including operating motor vehicles and aircraft and building infrastructure, including roads (upon approval of the Secretary of the Interior), within designated wilderness areas. H.R. 3548, the Border Security for America Act of 2017, and S. 1757, the Building America’s Trust Act, would amend IIRAIRA and explicitly waive any provisions in the Wilderness Act (among others) that would impede, prohibit, or restrict activities of U.S. Customs and Border Protection on federal lands on both the southern and northern international borders. Similar bills were introduced in previous Congresses.<sup>31</sup>

## Wilderness Study Areas and Reviews for Wilderness Potential

Congress directed FS and BLM to initially evaluate the wilderness potential of their lands at different times, and these wilderness reviews have been controversial. Congress directed FS to review the wilderness potential of the National Forest System (NFS) in the 1964 Wilderness Act, and directed BLM to do so for public lands in the Federal Land Policy and Management Act of 1976 (FLPMA).<sup>32</sup> BLM and FS also have different requirements to assess the wilderness characteristics and potential of their lands for future wilderness designation by Congress, described below. Once identified, BLM and FS also have different requirements on how to manage the wilderness potential of those lands. Some believe that these *wilderness study areas* (WSAs, for BLM) and *inventoried roadless areas* (for FS) are improperly managed as wilderness, restricting development opportunities, despite lacking congressional designation as wilderness.<sup>33</sup>

<sup>28</sup> P.L. 104-208, Div. C, Title I, Section 102(a)-(c), 8 U.S.C. 1103 note.

<sup>29</sup> Department of Homeland Security, “Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended,” 82 *Federal Register* 147, August 2, 2017.

<sup>30</sup> The bills described in this section are illustrative examples of legislation in the 115<sup>th</sup> Congress to address border security in wilderness areas. Other bills in the 115<sup>th</sup> Congress may also address these issues.

<sup>31</sup> See for example, S. 750 and H.R. 1412 in the 114<sup>th</sup> Congress and S. 744 in the 113<sup>th</sup> Congress.

<sup>32</sup> P.L. 94-579; 43 U.S.C. §§1701 et seq. The Wilderness Act directed the Secretary of the Interior to review the wilderness potential of the lands managed by the NPS and FWS, but did not include BLM lands.

<sup>33</sup> Here, WSAs refer to lands identified through an administrative process by BLM. However, Congress has also established some WSAs through statute on BLM, FWS, and FS lands. The *inventoried roadless areas*, identified in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume II. 2000, generally refer to areas identified in the 1979 Roadless Area Review and Evaluation (RARE) II process, excluding areas that have since been designated wilderness by Congress.

Others note that FLPMA and regulations dictate that certain areas must be managed to preserve their wilderness potential.

### **Forest Service Wilderness Considerations and Inventoried Roadless Areas**

The Wilderness Act directed the FS to evaluate the wilderness potential of NFS lands by September 3, 1974.<sup>34</sup> In the 1970s and 1980s, the FS conducted two reviews, known as the Roadless Area Review and Evaluation (RARE) I and II that resulted in some, but not all, of the inventoried roadless areas being recommended to Congress for a wilderness designation. Congress designated some of these areas as wilderness areas and released others from further consideration, although many remain pending before Congress. Congress also directed the FS to continue to evaluate the wilderness potential of NFS lands during the development and revision of land and resource management plans (also known as forest plans), approximately every 15 years.<sup>35</sup> These reviews may lead to the recommendation of new wilderness areas, or potentially may lead to the modification of an existing recommendation.

Management of the inventoried roadless areas has been controversial. The George W. Bush and William Clinton Administrations each proposed different roadless area policies. Both were heavily litigated; however, the Clinton policy remains largely intact after the Supreme Court chose not to review a lower court's decision in 2012.<sup>36</sup> Under the Clinton Nationwide Roadless Rule, certain activities—such as road construction and timber harvesting—are restricted or prohibited in certain inventoried roadless areas, with some exceptions.<sup>37</sup>

### **BLM Wilderness Study Areas and Wilderness Reviews**

Section 603(a) of FLPMA required BLM to review and present its wilderness recommendations to the President within 15 years of October 21, 1976, and the President then had two years to submit wilderness recommendations to Congress.<sup>38</sup> Starting in 1977 through 1979, BLM identified suitable wilderness study areas (WSAs) from roadless areas identified in its initial resource inventory. BLM presented its recommendations within the specified time frame, and Presidents George H. W. Bush and William J. Clinton submitted wilderness recommendations to Congress. Although these areas have been reviewed and several statutes have been enacted to designate BLM wilderness areas based on them, many of the wilderness recommendations for BLM lands remain pending before Congress. Section 603(c) of FLPMA directs the agency to manage those lands “until Congress has determined otherwise ... in a manner so as not to impair the suitability of such areas for preservation as wilderness.”<sup>39</sup> Thus, BLM must protect the WSAs as if they were wilderness until Congress enacts legislation that releases BLM from that responsibility. This is sometimes referred to as a nonimpairment obligation.

<sup>34</sup> P.L. 88-577 §3(b); 16 U.S.C. §1132(b).

<sup>35</sup> Under Section 6(f)(5) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (P.L. 93-378), as amended by the National Forest Management Act of 1976 (NFMA, P.L. 94-588), management plans for the national forests must be revised at least every 15 years.

<sup>36</sup> *Wyoming v. Department of Agriculture*, 133 S.Ct. 417 (2012). The Clinton roadless policy does not apply to Colorado or Idaho; roadless areas within the national forests within those states are subject to statewide regulations developed under the Bush roadless rule. See 36 C.F.R. § 294.40-294.49 for the Colorado Roadless Rule and 36 C.F.R. § 294.20-294.29 for the Idaho Roadless Rule.

<sup>37</sup> Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume II. 2000. See also Forest Service, “Roadless Area Conservation,” 66 *Federal Register* 9, January 12, 2001.

<sup>38</sup> P.L. 94-579 §603; 43 U.S.C. §1782(a).

<sup>39</sup> FLPMA §603; 43 U.S.C. §1782(c).

Section 201 of FLPMA directs BLM to identify and maintain an inventory of the resources on its lands, giving priority to areas of critical environmental concern.<sup>40</sup> It is unclear, however, whether BLM is required to conduct any future assessments of the wilderness potential of its lands. In contrast to the FS, which must revise its land and resource management plans at least every 15 years, BLM is not required to revise its plans on a specified cycle; rather it must revise its land and resource management plans “when appropriate.”<sup>41</sup> Furthermore, although the FS is directed to include wilderness reviews in the planning process, FLPMA is silent on wilderness in the guidance for the BLM planning process. FS is required to conduct reviews of its lands and resources at regular intervals, and an assessment of the wilderness potential is a required part of those reviews. In contrast, BLM is not required to conduct reviews of its lands and resources at regular intervals, and when BLM does do a review, an assessment of the wilderness potential is not required.

## Legislative Action

Previous Congresses have considered legislation to more broadly release WSAs. For example, the Wilderness and Roadless Area Release Act of 2011 (H.R. 1581/S. 1087, 112<sup>th</sup> Congress) would have released certain BLM WSAs—those not designated as wilderness by Congress and those identified by the BLM as not suitable for wilderness designation—from the nonimpairment requirement of Section 603(c) of FLPMA. The bill also would have terminated the William Clinton and George W. Bush Forest Service roadless area rules. The 114<sup>th</sup> Congress also considered similar legislation. For example, S. 193, the Inventoried Roadless Area Management Act, proposed to terminate the Clinton roadless area rule on national forests in Wyoming but did not broadly address WSAs.

Congress also regularly considers legislation to release specific WSAs. See **Table 2** for an alphabetical list of WSA release legislation in the 115<sup>th</sup> Congress (See **Appendix** for 114<sup>th</sup> Congress legislation).

**Table 2. 115<sup>th</sup> Congress: Bills to Release Wilderness Study Areas**

Bill Title	Bill No.	State	Name of WSA (acreage to be released)	Latest Action
California Off-Road Recreation and Conservation Act / California Desert Protection and Recreation Act	H.R. 857 S. 32	CA	Cady Mountains Kingston Range, Avawatz Mountain, Death Valley National Park Boundary, Great Falls Basin, and Soda Mountain	Introduced 2/3/17 (H.R. 857) Hearing 7/26/17 (S. 32)
Cerros del Norte Conservation Act	S. 432	NM	San Antonio (7,050)	Placed on Senate Calendar 5/3/17
Clear Creek National Recreation Area and Conservation Act	H.R. 1913	CA	San Benito Mountain	Passed House 7/11/17

<sup>40</sup> FLPMA §201; 43 U.S.C. §1711.

<sup>41</sup> FLPMA §202; 43 U.S.C. §1712(a).

<b>Bill Title</b>	<b>Bill No.</b>	<b>State</b>	<b>Name of WSA (acreage to be released)</b>	<b>Latest Action</b>
Crooked River Ranch Fire Protection Act	H.R. 2075	OR	Deschutes Canyon-Steelhead Falls (832)	Placed on House Calendar 8/29/17
Energy and Natural Resource Act of 2017, Title IV	S. 1460	NM, TN	San Antonio (7,050)	Hearing 9/19/17
Organ Mountains-Desert Peaks Conservation Act	S. 441	NM	Dona Ana County	Introduced 2/17/17
Pershing County Economic Development and Conservation Act	H.R. 1107 S. 414	NV	China Mountain, Mt. Limbo, Selenite Mountains, and Tobin Range (~48,600)	Placed on House Calendar 9/28/17 (H.R. 1107) Introduced 2/16/17 (S. 414)
Protect Public Use of Public Lands Act	S. 2206	MT	West Pioneer, Blue Joint, Sapphire, Middle Fork Judith, and Big Snowies (449,500)	Introduced 12/7/17
San Juan County Settlement Implementation Act	S. 436	NM	Ah-shi-sle-pah	Hearing 7/26/17

**Source:** CRS.

**Notes:** Acreage estimated or derived (if possible) from the latest version of the legislation. The legislation may also specify that the release of the WSA is only to be to the extent that the lands within the specified area were not designated by wilderness within the same legislation.

## Appendix. 114<sup>th</sup> Congress Wilderness Legislation

The 114<sup>th</sup> Congress added 275,665 acres to the wilderness system by either adding new wilderness areas or expanding existing areas. Many other bills to designate additional wilderness areas were introduced and considered (see **Table A-1**). See **Table A-2** for 114<sup>th</sup> Congress legislation that would have released BLM WSAs.

**Table A-1. 114<sup>th</sup> Congress: Bills to Designate Wilderness Areas**

Bill Title	Bill No.	State	Acreage <sup>a</sup>	Last Action in the 114 <sup>th</sup> Congress
America's Red Rock Wilderness Act of 2015	H.R. 2430 S. 1375	UT	8,654,040	H.R. 2430 introduced 5/19/15 S. 1375 introduced 5/19/15
Arizona Sonoran Desert Heritage Act of 2015	H.R. 2926	AZ	290,823	H.R. 2926 introduced 6/25/15
California Desert Conservation and Recreation Act of 2015	S. 414	CA	398,497	S. 414 introduced 2/9/15
California Desert Conservation, Off-Road Recreation, and Renewable Energy Act of 2015 <sup>b</sup>	S. 2568	CA	378,167	S. 2568 introduced 2/23/16
California Minerals, Off-Road Recreation, and Conservation Act	H.R. 3668	CA	430,658	H.R. 3668 hearing 12/9/15
Central Coast Heritage Protection Act	H.R. 1865 S. 1423	CA	288,788	H.R. 1865 introduced 4/16/15 S. 1423 hearing 4/21/16
Cerros del Norte Conservation Act	S. 1240	NM	21,410	S. 1240 placed on Senate Calendar 9/9/15
Clear Creek National Recreation Area and Conservation Act	H.R. 1838	CA	21,000	H.R. 1838 passed House 7/15/16
Colorado Wilderness Act of 2015	H.R. 3336	CO	715,825	H.R. 3336 introduced 7/29/15
Continental Divide Wilderness and Recreation Act	H.R. 2554	CO	39,460	H.R. 2554 introduced 5/21/15
Douglas County Conservation Act of 2015/Douglas County Conservation and Economic Development Act of 2016	H.R. 925 S. 472 H.R. 4688	NV	12,330	H.R. 925 introduced 2/12/15 S. 472 hearing 5/21/15 H.R. 4688 introduced 3/3/16
Gold Butte National Conservation Area Act	H.R. 856 S. 199	NV	221,558	H.R. 856 introduced 2/10/15 S. 199 introduced 1/20/15
Imperial Valley Desert Conservation and Recreation Act of 2015	H.R. 4060	CA	49,300	H.R. 4060 introduced 11/18/15
Jay S. Hammond Wilderness Act	S. 873	AK	2,600,000	S. 873 placed on Senate Calendar 9/9/15
Northern Rockies Ecosystem Protection Act	H.R. 996	ID, MT, OR, WA, WY	24,526,000	H.R. 996 introduced 2/13/15
Oregon and California Land Grant Act of 2015	S. 132	OR	86,640	S. 132 hearing 7/16/15
Oregon Wildlands Act	S. 1699	OR	56,700	S. 1699 hearing 4/21/16

Bill Title	Bill No.	State	Acreage <sup>a</sup>	Last Action in the 114 <sup>th</sup> Congress
Saint Francis Dam Disaster National Memorial and Castaic Wilderness Act	H.R. 3153	CA	70,432	H.R. 3153 introduced 7/22/15
San Juan County Settlement Implementation Act of 2016	S. 2681	NM	9,492	S. 2681 hearing 9/22/16
Sawtooth National Recreation Area and Jerry Peak Wilderness Additions Act	H.R. 1138 S. 583	ID	275,665	P.L. 114-46, 8/7/15
Sutton Mountain and Painted Hills Area Preservation and Economic Enhancement Act of 2015	S. 1255	OR	57,465	S. 1255 introduced 5/7/2015
Tennessee Wilderness Act	H.R. 4545 S. 755	TN	19,556	H.R. 4545 hearing 7/16/15 S. 755 hearing 7/16/15
Udall-Eisenhower Arctic Wilderness Act	H.R. 239 S. 2341	AK	1,559,538	H.R. 239 introduced 1/9/15 S. 2341 introduced 12/2/15
Wild Olympics Wilderness and Wild and Scenic Rivers Act of 2015	H.R. 2665 S. 1510	WA	126,554	H.R. 2665 introduced 6/4/15 S. 1510 hearing 4/21/16

**Source:** CRS.

**Notes:** Many of the bills contained multiple designations of new wilderness areas and/or multiple additions to existing wilderness areas.

- a. Estimated acreage as identified or derived from the latest version of the legislation—as introduced, reported, passed, or enacted.
- b. S. 2568 and S. 414 contained nearly identical wilderness designation provisions, except that S. 414 would have designated additional acreage in one wilderness area not included in S. 2568 and would have designated more acreage in another wilderness area.

**Table A-2. 114<sup>th</sup> Congress: Bills to Release Wilderness Study Areas (WSAs)**

Bill Title	Bill No.	State	Name of WSA (acreage to be released)	Last Action in the 114 <sup>th</sup> Congress
California Desert Conservation and Recreation Act of 2015	S. 414	CA	Lists 6 WSAs to be released, specific acreage not provided	S. 414 hearing 10/8/15
California Desert Conservation, Off-Road Recreation, and Renewable Energy Act	S. 2568	CA	Lists 6 WSAs to be released (identical to S. 414), specific acreage not provided	S. 2568 introduced 2/23/16
California Minerals, Off-Road Recreation, and Conservation Act	H.R. 3668	CA	Lists 12 WSAs to be released (including all 6 of the WSAs in S. 414), specific acreage not provided	H.R. 3668 hearing 12/9/15
Cerros del Norte Conservation Act	S. 1240	NM	San Antonio (7,050)	S. 1240 placed on Senate Calendar 9/9/15
Clear Creek National Recreation Area and Conservation Act	H.R. 1838	CA	San Benito Mountain (1,500)	H.R. 1838 ordered to be reported from the House Committee on Natural Resources 3/16/16
Douglas County Conservation Act of 2015	H.R. 925 S. 472	NV	Burbank Canyons (1,065)	H.R. 925 introduced 2/12/15 S. 472 hearing 5/21/15
Gold Butte National Conservation Area Act	H.R. 856 S. 199	NV	Specific WSAs and acreage not listed <sup>a</sup>	H.R. 856 introduced 2/10/15 S. 199 introduced 1/20/15
Luna and Hidalgo Counties Wilderness Study Area Research Act of 2015	H.R. 3478	NM	9 WSAs, specific acreage not provided	H.R. 3478 introduced 9/21/15
Sawtooth National Recreation Area and Jerry Peak Wilderness Additions Act	H.R. 1138 S. 583	ID	4 WSAs, specific acreage not provided	P.L. 114-46, 8/7/15

**Source:** CRS.

- a. The bill would have released any land within the Gold Butte National Conservation Area that the bill did not designate as wilderness.

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Public Law 95-150  
95th Congress

An Act

To provide for the study of certain lands to determine their suitability for designation as wilderness in accordance with the Wilderness Act of 1964, and for other purposes.

Nov. 1, 1977  
[S. 393]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Montana Wilderness Study Act of 1977".

SEC. 2. (a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132), the Secretary of Agriculture (hereinafter known as the "Secretary") shall, within five years after the date of enactment of this Act, review certain lands designated by this section, as to their suitability for preservation as wilderness, and report his findings to the President, as follows:

(1) certain lands in the Beaverhead National Forest, Montana, which are generally depicted on a map entitled "West Pioneer Wilderness Study Area" and dated April 1976, comprising approximately one hundred and fifty-one thousand acres, which shall be known as the West Pioneer Wilderness Study Area;

(2) certain lands in the Beaverhead and Gallatin National Forests, Montana, which are generally depicted on a map entitled "Taylor-Hilgard Wilderness Study Area" dated April 1976, comprising approximately two hundred and eighty-nine thousand acres, which shall be known as the Taylor-Hilgard Wilderness Study Area;

(3) certain lands in the Bitterroot National Forest, Montana, which are generally depicted on a map entitled "Bluejoint Wilderness Study Area" and dated April 1976, comprising approximately sixty-one thousand acres, which shall be known as the Bluejoint Wilderness Study Area;

(4) certain lands in the Bitterroot and Deerlodge National Forests, Montana, which are generally depicted on a map entitled "Sapphire Wilderness Study Area" and dated April 1976, comprising approximately ninety-four thousand acres, which shall be known as the Sapphire Wilderness Study Area;

(5) certain lands in the Kootenai National Forest, Montana, which are generally depicted on a map entitled "Ten Lakes Wilderness Study Area" and dated April 1976, comprising approximately thirty-four thousand acres, which shall be known as the Ten Lakes Wilderness Study Area;

(6) certain lands in the Lewis and Clark National Forest, Montana, which are generally depicted on a map entitled "Middle Fork Judith Wilderness Study Area" dated April 1976, comprising approximately eighty-one thousand acres, which shall be known as the Middle Fork Judith Wilderness Study Area;

(7) certain lands in the Lewis and Clark National Forest, Montana, which are generally depicted on a map entitled "Big Snowies Wilderness Study Area" and dated April 1976, comprising approximately ninety-one thousand acres, which shall be known as the Big Snowies Wilderness Study Area;

Montana  
Wilderness Study  
Act of 1977.  
16 USC 1132  
note.  
Land  
designations,  
review.  
Report to  
President.  
16 USC 1132  
note.

(8) certain lands in the Gallatin National Forest, Montana, which are generally depicted on a map entitled "Hyalite-Porcupine-Buffalo Horn Wilderness Study Area" and dated April 1976, comprising approximately one hundred and fifty-one thousand acres, which shall be known as the Hyalite-Porcupine-Buffalo Horn Wilderness Study Area; and

(9) certain lands in the Kootenai National Forest, Montana, which are generally depicted on a map entitled "Mount Henry Wilderness Study Area" and dated April 1976, comprising approximately twenty-one thousand acres, which shall be known as the Mount Henry Wilderness Study Area.

Recommendations,  
Presidential  
advisement to  
Congress.  
16 USC 1132.

(b) The Secretary shall conduct his review, and the President shall advise the United States Senate and House of Representatives of his recommendations, in accordance with the provisions of subsections 3(b) and 3(d) of the Wilderness Act, except that any reference in such subsections to areas in the national forests classified as "primitive" shall be deemed to be a reference to the wilderness study areas designated by this Act and except that the President shall advise the Congress if his recommendations with respect to such areas within seven years after the date of enactment of this Act: *Provided, however,* That the Secretary shall give at least sixty days' advance public notice of any hearing or other public meeting concerning such areas.

Hearings, public  
notice.

Maps,  
availability.

(c) The maps referred to in this section shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

Administration.  
16 USC 1132  
note.

Sec. 3. (a) Except as otherwise provided by this section, and subject to existing private rights, the wilderness study areas designated by this Act shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

(b) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

(c) Nothing herein contained shall (1) limit the President in proposing, as part of his recommendation to Congress, the alteration of existing boundaries of any wilderness study area or recommending the addition to any such area of any contiguous area predominantly of wilderness value, or (2) limit the authority of the Secretary of Agriculture to establish, protect, study, or make recommendations to the President and Congress with respect to additional wilderness study areas within national forests in the State of Montana.

Appropriation  
authorization.  
16 USC 1132  
note.

Sec. 4. There are hereby authorized to be appropriated after October 1, 1977, such sums as may be necessary to carry out the provisions of this Act.

Approved November 1, 1977.

#### LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-620 (Comm. on Interior and Insular Affairs).  
SENATE REPORT No. 95-163 (Comm. on Energy and Natural Resources).  
CONGRESSIONAL RECORD, Vol. 123 (1977):  
May 18, considered and passed Senate.  
Oct. 18, considered and passed House.

Public Law 98-140  
98th Congress

An Act

To establish the Lee Metcalf Wilderness and Management Area in the State of Montana, and for other purposes.

Oct. 31, 1983

[S. 96]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Lee Metcalf Wilderness and Management Act of 1983".*

Lee Metcalf  
Wilderness and  
Management  
Act of 1983.

DESIGNATION AND MANAGEMENT OF LEE METCALF WILDERNESS AND  
MANAGEMENT AREA

SEC. 2. (a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131), certain lands within the Beaverhead and Gallatin National Forests and certain lands in the Dillon Resource Area, Montana, administered by the Bureau of Land Management which comprise approximately two hundred and fifty-nine thousand acres as generally depicted as the "Lee Metcalf Wilderness" on a map entitled "Lee Metcalf Wilderness—Proposed", and dated October 1983 are hereby designated as wilderness and shall be known as the Lee Metcalf Wilderness.

16 USC 1132  
note.  
16 USC 1131  
note.

(b) Subject to valid existing rights, the Lee Metcalf Wilderness as designated by this Act shall be administered by the Secretary of Agriculture, hereafter referred to as "the Secretary", in accordance with the Wilderness Act governing areas designated by that Act as wilderness: *Provided*, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act: *Provided further*, That the Bear Trap Canyon portion of the Lee Metcalf Wilderness shall be administered by the Secretary of the Interior.

Administration  
of lands.

16 USC 1131  
note.

(c) The Congress finds that certain lands within the Gallatin National Forest near Monument Mountain have important recreational and wildlife values, including critical grizzly bear and elk habitat. In order to conserve and protect these values, the area lying adjacent to the Monument Mountain and Taylor-Hilgard units of the Lee Metcalf Wilderness as designated by this Act and comprising approximately thirty-eight thousand acres, as generally depicted on the map entitled "Lee Metcalf Wilderness—Proposed", dated October 1983, shall be managed to protect the wildlife and recreational values of these lands and shall be hereby withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and geothermal leasing, and all amendments thereto. The area shall further be administered by the Secretary of Agriculture to maintain presently existing wilderness character, with no commercial timber harvest nor additional road construction permitted. The Secretary shall permit continued use of the area by motorized equipment only for activities associated with existing levels of livestock grazing, administrative purposes (including snowmobile trail maintenance) and for snowmobiling during periods of adequate snow cover but only where such

Motorized  
equipment  
activities.

uses are compatible with the protection and propagation of wildlife within the area: *Provided*, That the Secretary may, in his discretion, also permit limited motor vehicle access by individuals and others within the area where such access is compatible with the protection and propagation of wildlife and where such access was established prior to the date of enactment of this Act. Management direction for the area that recognizes these values shall be included in the forest plan developed for the Gallatin National Forest in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976.

Forest plan.

16 USC 1604.  
16 USC 1600  
note.

DESIGNATION AND MANAGEMENT OF CERTAIN NATIONAL FOREST LANDS  
IN THE STATE OF MONTANA

Studies and  
initial plans.

91 Stat. 1243.

16 USC 1600  
note.

Wilderness  
study areas.

91 Stat. 1243.

43 USC 1782.

SEC. 3. (a) The Congress hereby determines and directs that—

(1) the areas listed in subsection (b) of this section have been adequately studied for wilderness pursuant to Public Law 95-150 or in the RARE II Final Environmental Statement (dated January 1979);

(2) such studies shall constitute an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option for such areas prior to revision of the initial plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976 (Public Law 94-588) and in no case prior to the date established by law for completion of the initial planning cycle;

(3) such areas need not be managed, unless otherwise specified in this Act, for the purposes of protecting their suitability for wilderness designation pending revision of the initial plans.

(b) The areas covered by subsection (a) of this section are as follows:

(1) the Mount Henry Wilderness Study Area as designated by Public Law 95-150;

(2) those portions of the Taylor-Hilgard Wilderness Study Area as designated by Public Law 95-150 but not designated as wilderness by this Act;

(3) certain lands on the Gallatin National Forest and Beaverhead National Forest identified as area 1549 in the Forest Service Roadless Area Review and Evaluation (II) Final Environmental Statement, Executive Communication Numbered 1504, May 3, 1979, not designated as wilderness by this Act;

(4) certain lands on the Custer National Forest known as the proposed Tongue River Breaks Wilderness, which comprise approximately sixteen thousand five hundred acres, as identified in Executive Communication Numbered 1504, Ninety-sixth Congress (House Document Numbered 96-119).

(c)(1) The lands described in subsection (c)(2) of this section have been adequately studied for wilderness pursuant to section 603 of the Federal Land Policy and Management Act (Public Law 94-579) and are no longer subject to the requirement of section 603(c) of the Federal Land Policy and Management Act pertaining to management in a manner that does not impair suitability for preservation as wilderness.

(2) The lands covered by subsection (c)(1) of this section are as follows:

Wilderness  
study areas.

(A) certain lands administered by the Bureau of Land Management in the Powder River Resource Area, Montana, identified as area numbered 736, Tongue River Breaks Contiguity, comprising approximately two thousand acres as described in the "Final Decision Montana Wilderness Inventory" published November 1980 by the Bureau of Land Management;

(B) certain lands administered by the Bureau of Land Management in the Dillon Resource Area, Montana, identified as area numbered MT-076-079 "Madison Tack-Ons" comprising approximately one thousand five hundred acres, as described in the "Final Decision Montana Overthrust Belt Wilderness Inventory" published by the Bureau of Land Management, not otherwise designated as wilderness by this Act; and

(C) certain lands administered by the Bureau of Land Management known as "Bear Trap Canyon Study Area", Madison County, Montana, as described in "Draft Suitability and Environmental Impact Statement for Wilderness Designation of Bear Trap Canyon Instant Study Area" published April 1980 by the Bureau of Land Management, not otherwise designated as wilderness by this Act.

(d) The boundary of the Absaroka-Beartooth Wilderness, Montana, as designated by Public Law 95-249, is hereby modified to exclude from the wilderness approximately forty acres in the West Fork of Mill Creek and approximately twenty-seven acres in the Passage Creek drainage as depicted on a map entitled "Absaroka-Beartooth Wilderness-West Fork Mill Creek and Passage Creek Deletions", dated August 1983.

16 USC 1132  
note.

(e) The boundary of the UL Bend Wilderness, Montana, as designated by Public Law 94-557 is hereby modified to exclude from the wilderness approximately twenty-eight acres as depicted on a map entitled "UL Bend Wilderness Deletion", dated July 1983.

16 USC 1132  
note.

(f) To provide for more efficient administration of lands designated by this Act as wilderness:

Administration  
of designated  
lands.

(1) the exterior boundaries of the Beaverhead and Gallatin National Forests in the State of Montana are hereby modified to exclude all lands within the Bear Trap Canyon portion of the Lee Metcalf Wilderness and the said national forest boundaries shall hereafter be the same as the wilderness boundaries depicted on the maps referred to in section 2(a) of this Act. All national forest lands within the Bear Trap Canyon portion of the Lee Metcalf Wilderness are transferred to the administration of the Secretary of the Interior to be managed as public lands in accordance with this Act, the Wilderness Act and the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2743);

16 USC 1131  
note.

43 USC 1701  
note.

(2) the public lands in section 12, township 10 south, range 1 east, Montana principal meridian, administered by the Secretary of the Interior are hereby transferred to the Secretary of Agriculture to be hereafter administered in accordance with this Act the laws, rules, and regulations applicable to the national forest system;

(3) for purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 903, as amended), the boundaries of the Beaverhead and Gallatin National Forests, as modified by

16 USC 4601-9.

Land use  
authorizations.

this subsection, shall be treated as if they were the boundaries of those forests on January 1, 1965;

(4) nothing in this Act shall affect valid existing rights or interests in existing land use authorizations, except that any such right or authorization shall hereafter be administered by the agency having jurisdiction of the land after the enactment of this Act, in accordance with this Act and applicable law. Reissuance of any such authorization shall be in accordance with applicable law and the regulations of the agency having jurisdiction.

#### LAND ACQUISITION AND EXCHANGE

SEC. 4. (a) The Congress finds that the wilderness area within the Gallatin and Beaverhead National Forests in Montana established by this Act contains significant amounts of intermingled lands owned by Burlington Northern Railroad Company and that in order to manage the wilderness in an efficient and effective manner these lands should be owned by the Federal Government. Notwithstanding any other provision of law, this section hereby authorizes and directs the exchange of lands and interests in lands between Burlington Northern Railroad Company and the United States through the Secretary and the revocation of existing withdrawals on the Federal lands. Accordingly, the Congress directs the Secretary to accept from Burlington Northern Railroad Company the following described lands and interests therein, consisting of twenty-four thousand and seven and twenty-three one-hundredths acres of land, more or less, subject to valid existing rights of record acceptable to the Secretary.

Township 6 South, Range 1 East, Montana Principal Meridian

Section 13: All,

Township 6 South, Range 2 East

Section 1:

Lots 13, 14,  
North half,  
West half southeast quarter,

Section 19: All fractional,

Section 27: All,

Section 29: All,

Section 31: All fractional,

Section 33: All,

Township 7 South, Range 1 East

Section 1: All fractional,

Section 3:

Lots 1 and 2,  
South half northeast quarter,

Section 11: North half northeast quarter,

Township 7 South, Range 2 East

Section 5: All fractional,

Section 15: All,

Section 17: All,  
 Section 21: All,  
 Section 25: All,  
 Section 27: North half,  
     Southeast quarter,  
     East half southwest quarter,  
 Section 35: North half,

Township 7 South, Range 3 East

Section 31: All fractional,

Township 8 South, Range 1 East

Section 25: North half,

Township 8 South, Range 2 East

Section 1: All fractional,  
 Section 3: All fractional,  
 Section 9: All,  
 Section 11: All,  
 Section 13: All,  
 Section 15: All,  
 Section 17: All,  
 Section 19: All fractional,  
 Section 21: All,  
 Section 23: All,  
 Section 25: All,  
 Section 27: All,  
 Section 33: East half,  
 Section 35: All,

Township 8 South, Range 3 East

Section 5: All fractional,  
 Section 7: All fractional,  
 Section 17: All,  
 Section 19: All fractional,  
 Section 21: West half,  
 Section 29: All,  
 Section 31: Lots 1 and 2,  
     Northeast quarter,  
     East half northwest quarter,

Township 9 South, Range 2 East

Section 1: All fractional,  
 Section 11: All.

The lands acquired by the United States under the provisions of this section shall become parts of the Gallatin and Beaverhead National Forests subject to the laws, rules, and regulations applicable to the national forest system.

(b) Upon acceptance of title by the United States to the lands described in subsection (a) of this section, the United States through the Secretary shall convey to Burlington Northern Railroad Company all right, title, and interests to the following described national forest system lands and interests therein, consisting of eleven thou-

Conveyance.

sand eight hundred and ten and forty-seven one-hundredths acres of land more or less, which are of substantially equal value to the lands and interests conveyed to the United States and described as follows:

Township 5 South, Range 1 East, Montana Principal Meridian

Section 24: South half,

Section 26: All,

Section 34:

Lots 1, 2, 3, 4,

Southeast quarter,

Section 36: All, less HES 187 and 190,

Township 5 South, Range 2 East

Section 30: All fractional,

Section 32: All,

Section 34: South half,

Township 6 South, Range 1 East

Section 2: All fractional,

Section 12: All,

Township 6 South, Range 2 East

Section 2: All fractional,

Section 4: All fractional,

Section 6: All fractional,

Section 8: All,

Section 10: All,

Section 12: All fractional,

Section 14: All,

Section 16: All,

Section 22: All,

Section 24: All,

Township 6 South, Range 3 East

Section 18: All fractional.

The lands described in this subsection are conveyed subject to the following reservations:

(1) ditches and canals as provided for in the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945); and

(2) for so long as the Secretary deems necessary, Burlington Northern Railroad Company accepts the responsibility accruing from this exchange to provide and manage three (3) public recreational accesses, including trail head facilities, in the Jack Creek drainage over routes approximately as illustrated on Exhibit C of the Memorandum of Understanding dated November 20, 1981, between the United States Forest Service and Burlington Northern Railroad Company to utilize national forest lands.

Conveyances.

(c) The transactions necessary to effect the conveyances of title to lands authorized by this section shall be completed within ninety days of enactment of this Act: *Provided*, That the rights and respon-

sibilities of the respective owners shall remain with such owners until such time as the conveyances are executed.

(d) The following orders of withdrawal, as they apply to the lands conveyed by the United States and involved in the transactions authorized by this section, are hereby revoked:

Orders of  
withdrawal.

Executive Order Numbered 30—Montana 7—Phosphate Reserve—October 9, 1917 (one hundred and eighty-five acres).

Executive Order Numbered 30—Montana 8—Coal Reserve—December 27, 1911 (two thousand two hundred and eighty acres).

Montana 1—Coal Reserve—July 9, 1910 (seven thousand three hundred and sixteen and seventy-three one-hundredths acres).

Public Land Order Numbered 1370—Hammond Administrative Site—November 28, 1956.

Public Land Order Numbered 909—Jack Creek Administrative Site—July 13, 1953.

#### FILING OF MAPS AND DESCRIPTIONS

SEC. 5. As soon as practicable after enactment of this Act, maps and legal descriptions of the Lee Metcalf Wilderness shall be filed with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, and such maps and legal descriptions shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal descriptions and maps may be made.

Submittal to  
congressional  
committees.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There is hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act.

SEC. 7. (a) Subsection (b)(3) of section 4 of the Rattlesnake National Recreation Area and Wilderness Act of 1980 (Public Law 96-476) is amended to read as follows:

Land leases and  
bidding rights.  
16 USC 4601-3.

“(3) If for any reason, including but not limited to the failure of the Secretary of the Interior to offer for lease lands in the Montana portion of the Powder River Coal Production Region as defined in the Federal Register of November 9, 1979 (44 F.R. 65196), or the failure of the holder of the bidding rights to submit a successful high bid for any such leases, any bidding rights issued in an exchange under this Act have not been exercised within two years from the date of enactment of this Act, the bidding rights may be used as a monetary credit, which shall be considered ‘money’ within the meaning of section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191), against that portion of bonus payments, rental or royalty payments paid into the Treasury of the United States and retained by the Federal Government on any Federal coal lease won or otherwise held by the applicant, its successors or assigns. The holder of the bidding rights shall pay the balance due on such bonus payments, rental or royalty payments in cash for transmittal to the States in the same manner and in the same amounts as though the entire payment were made in cash under the provisions of the Mineral Leasing Act of 1920 as amended. The bidding rights may be transferred or sold at any time by the owner to any

“Money.”

30 USC 181 note.

Lands exchange  
and bidding  
rights.  
16 USC 460ll-3.  
"Cash  
Equivalency  
Rate."

other party with all the rights of the owner to the credit, and after such transfer, the owner shall notify the Secretary." (b) Section 4 of the Rattlesnake National Recreation Area and Wilderness Act of 1980 (Public Law 96-476) is further amended by adding a new subsection to read as follows:

"(e) The Secretary of the Interior, in consultation with the Secretary of Agriculture, shall consummate the exchange of the lands owned by the Montana Power Company within the boundaries of the Rattlesnake National Recreation Area and Rattlesnake Wilderness by issuing bidding rights to the Montana Power Company which shall equal the negotiated cash equivalent of the fair market value of such Montana Power Company lands, as provided in the agreement of April 4, 1983, signed by the authorized representatives of the Secretary of Agriculture, the Secretary of the Interior and the Montana Power Company, except that adjustments in the 'Cash Equivalency Rate' referred to in said agreement shall not exceed a rate determined by the Secretary of the Interior taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the remaining period during which the bidding rights may be used."

Approved October 31, 1983.

LEGISLATIVE HISTORY—S. 96:

HOUSE REPORT No. 98-405, Pt. 1 (Comm. on Interior and Insular Affairs).  
SENATE REPORT No. 98-16 (Comm. on Energy and Natural Resources).  
CONGRESSIONAL RECORD, Vol. 129 (1983):

Apr. 13, considered and passed Senate.  
Oct. 6, considered and passed House, amended.  
Oct. 19, Senate concurred in House amendment.