



# Fish and Wildlife Service: FY2013 Appropriations and Policy

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## Summary

The annual Interior, Environment, and Related Agencies appropriation funds agencies and programs in three federal departments, as well as numerous related agencies and bureaus. Among the agencies represented is the Fish and Wildlife Service (FWS), in the Department of the Interior. Many of its programs are among the more controversial of those funded in the bill. For FY2013, the House Committee on Appropriations approved H.R. 6091, a bill containing \$1.16 billion for FWS, down 21.5% from the FY2012 level of \$1.48 billion contained in the Consolidated Appropriations Act (P.L. 112-74, Division E, H.Rept. 112-331). The President requested \$1.55 billion, an increase of 4.9% over the FY2012 level. Relative to the FY2012 level, reductions in the various accounts and most subaccounts ranged from 6.0% down to elimination, although four subaccounts were held at the FY2012 levels. No increases were approved. Other highlights of the bill include the following:

- \$1.04 billion for Resource Management, by far the largest account in the FWS budget, and a reduction of 15.1% from the FY2012 level.
- Rejection of an Administration proposal to reduce funding for national fish hatcheries from \$46.1 million to \$43.2 million, despite a controversy over appropriate funding for hatcheries intended to mitigate other agencies' water projects.
- \$3.0 million for Cooperative Landscape Conservation and Adaptive Science, a reduction of 90.7% from the FY2012 level of \$32.2 million.
- Elimination of funding for general land acquisition for national wildlife refuges.
- A focus on reductions in programs whose authorizations have expired or are expiring in FY2012.
- Funding restrictions or directives regarding wolves in Wyoming; hunting, fishing, and recreational shooting on federal lands; and management of certain captive-bred endangered game species.

This report analyzes the FWS funding levels for the FY2013 appropriations bill. Emphasis is on FWS funding for programs that have generated congressional debate or particular constituent interest, now or in recent years. General efforts to reduce federal spending will encourage scrutiny of all spending, in FWS as in other agencies.

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## Introduction

The annual Interior, Environment, and Related Agencies appropriations bill contains appropriations for the Fish and Wildlife Service (FWS) in the Department of the Interior (DOI). For FY2013, on July 10, 2012, the House Committee reported H.R. 6091 (H.Rept. 112-589), approving \$1.16 billion, down 21.5% from the FY2012 level of \$1.48 billion contained in P.L. 112-74.<sup>1</sup> The reductions continue a trend from the FY2012 appropriations cycle, when the House committee approved a 20.6% reduction in the FWS budget relative to FY2011.<sup>2</sup> The President had requested \$1.55 billion in annual appropriations, an increase of 4.9% over FY2012.<sup>3</sup> The committee's proposed changes in accounts and subaccounts range from elimination (-100%) to a decrease of 6%.<sup>4</sup> (See **Table 1.**) This report analyzes FY2013 appropriations in a policy context, with reference to past appropriations.

Among other things, the House committee report emphasized that at least 51 agencies or programs in the bill were operating with expired authorizations, and a few have no authorizing statute. The committee “reserves the option to limit future funding for unauthorized programs or discontinue funding altogether.... [T]he Committee has exercised that option by decreasing or terminating funding for fish and wildlife conservation.”<sup>5</sup> Consequently, a number of FWS accounts were reduced by 50% or more.

**Table 1. Appropriations for the Fish and Wildlife Service (FWS), FY2011-FY2013**  
(\$ in thousands)

	FY2011 Enacted <sup>a</sup>	FY2012 Enacted <sup>b</sup>	FY2013 Request	House Comm.
Resource Management	1,244,861	1,226,177	1,247,044	1,040,488
—Ecological Services: Endangered Species	175,446	175,955	179,698	134,017
—Ecological Services: Habitat Conservation	112,524	110,637	112,442	89,579
—Ecological Services: Environmental Contaminants	13,316	13,128	14,393	11,189
—National Wildlife Refuge System	492,059	485,691	494,830	437,442
—Migratory Birds, Law Enforcement & International Conservation	128,224	126,566	128,018	107,016

<sup>1</sup> FWS appropriations for FY2012 are found in Division E of the Consolidated Appropriations Act, P.L. 112-74; H.Rept. 112-331. Title IV of Division E contained an across-the-board reduction of 0.16% for all appropriations in Division E. The figures for FY2012 cited in this report reflect that reduction.

<sup>2</sup> For more on FY2012 appropriations actions, see CRS Report R41928, *Fish and Wildlife Service: FY2012 Appropriations and Policy*, by (name redacted).

<sup>3</sup> For the FY2012 budget cycle, the Coastal Impact Assistance Program (CIAP) was transferred from the Bureau of Ocean Energy Management, Regulation, and Enforcement (also in DOI) to FWS. Unobligated balances in CIAP of \$200 million were proposed for cancellation. (See “Coastal Impact Assistance Program” below.) If the cancellation were accepted by Congress, there would be a one-time reduction of the FWS appropriation, bringing the total appropriation for FY2013 down 8.7%, to \$1.35 billion. The House Committee rejected the cancellation.

<sup>4</sup> A few small accounts (below the level of detail shown here) were proposed for level funding.

<sup>5</sup> H.Rept. 112-589, p. 8. The report has a table (pp. 136-137) showing the 51 expired or expiring authorizations. Of the 51 entries, 15 are under the jurisdiction of FWS.

	<b>FY2011 Enacted<sup>a</sup></b>	<b>FY2012 Enacted<sup>b</sup></b>	<b>FY2013 Request</b>	<b>House Comm.</b>
— <i>Fisheries and Aquatic Resource Conservation</i>	138,939	135,317	131,607	127,170
— <i>Cooperative Landscape Conservation and Adaptive Science</i>	30,970	32,198	33,054	2,989
— <i>General Operations</i>	153,383	146,685	153,002	131,086
Construction	20,804	23,051	19,136	17,755
Land Acquisition	54,890	54,632	106,892	15,047
— <i>Acquisitions: Federal Refuge Lands</i>	35,374	30,117	83,741	0
— <i>Highlands Conservation Act</i>	0	4,992	0	4,000
— <i>Inholdings, Emergencies, &amp; Hardships</i>	4,990	4,493	4,990	3,000
— <i>Exchanges</i>	1,996	2,496	1,995	0
— <i>Acquisition Management</i>	10,534	10,538	10,739	6,570
— <i>User Pay Cost Share</i>	1,996	1,997	2,003	1,477
— <i>Refuge Land Protection Planning</i>	0	0	3,434	0
Landowner Incentive Program (cancellation of prior year funds)	-4,941	0	0	0
Cooperative Endangered Species Conservation Fund	59,880	47,681	60,000	14,129
National Wildlife Refuge Fund	14,471	13,958	0	11,958
North American Wetlands Conservation Fund	37,425	35,497	39,425	22,333
Neotropical Migratory Bird Conservation Fund	3,992	3,786	3,786	1,893
Multinational Species Conservation Fund	9,980	9,466	9,980	4,735
State and Tribal Wildlife Grants	61,876	61,323	61,323	30,662
— <i>State Grants (Formula-based)</i>	49,900	51,323	44,055	25,662
— <i>Competitive Grants for States, Territories, &amp; Other Jurisdictions</i>	4,990	5,732	13,000	2,866
— <i>Tribal Grants</i>	6,986	4,268	4,268	2,134
<b>Total Appropriations</b>	<b>1,503,238</b>	<b>1,475,570</b>	<b>1,547,586</b>	<b>1,159,000</b>
Coastal Impact Assistance Fund <sup>c</sup>	NA	0	-200,000	0
<b>Total</b>	<b>1,503,238</b>	<b>1,475,570</b>	<b>1,347,586</b>	<b>1,159,000</b>

- a. Includes effects of a 0.2% rescission of funds contained in §1119 of Title I, Division B, of P.L. 112-10.
- b. Figures reflect across-the-board reduction of 0.16% in Title IV of Division E of P.L. 112-74.
- c. This fund was transferred from the Bureau of Ocean Energy Management, Regulation, and Enforcement to FWS in the FY2012 budget cycle. The President proposed cancellation of unobligated balances, but the House Committee rejected the proposal. See “Coastal Impact Assistance Program,” below.

By far the largest portion of the FWS annual appropriation is the Resource Management account, for which the House Committee approved \$1.04 billion, down 15.1% from FY2012. The Administration requested \$1.25 billion, up 1.7% from the \$1.23 billion for FY2012. Among the programs included in Resource Management are Endangered Species, the Refuge System, Law Enforcement, Fisheries, and Cooperative Landscape Conservation and Adaptive Science.

## Endangered Species Funding

Funding for the endangered species program is part of the Resource Management account, and is a perennially controversial portion of the FWS budget. The House committee approved \$134.0 million, down 23.8% from the FY2012 level of \$176.0 million. The Administration had requested \$179.7 million, up 2.1%. (See **Table 2.**) The committee reduced most subaccounts significantly, with Critical Habitat Designation being most affected (down 39.7%). While the Administration proposed a modest increase in the listing program as a whole, it proposed no increase in funding to respond listing petitions. FWS has long argued that responding to listing petitions uses agency resources that would be better spent on listing species that the agency itself judges to be more in need of protection. In contrast, critics argue that FWS has proposed and listed very few domestic species on its own initiative and that without petitions many listings would not occur.

**Table 2. Appropriations for Endangered Species and Related Programs, FY2011-FY2013**  
(\$ in thousands)

	FY2011 Enacted	FY2012 Enacted <sup>a</sup>	FY2013 Request	House Comm.
Endangered Species Program				
—Candidate Conservation	11,448	11,337	11,463	10,554
—Listing and Critical Habitat <sup>b</sup>	20,902	20,869	22,431	14,564
—Critical Habitat Designation	9,472	7,460	4,548	4,500
—Listing	11,430	10,413	14,887	7,818
—Foreign Listing	<sup>c</sup>	1,498	1,498	1,123
—Petitions to List	<sup>d</sup>	1,498	1,498	1,123
—Consultation	61,877	60,943	64,095	45,865
—Recovery	81,219	82,806	81,709	63,034
<b>Subtotal, Endangered Species Program</b>	<b>175,446</b>	<b>175,955</b>	<b>179,698</b>	<b>134,017</b>
Related Program: Cooperative Endangered Species Conservation Fund	59,880	47,681	60,000	14,129
<b>Total Appropriations</b>	<b>235,326</b>	<b>223,636</b>	<b>239,698</b>	<b>148,146</b>

a. Figures reflect across-the-board reduction of 0.16%, Title IV of Division E of P.L. 112-74.

b. The subprogram figures given for listing and critical habitat designation reflect restrictions in the appropriations law on how much of the appropriation may be spent in each of those subprograms.

c. There was no specific allocation for international listings in FY2011. All listing activities were supported by the single listing subprogram, funded at \$11.43 million.

d. There was no specific allocation for listings that responded to petitions in FY2011. All listing activities were supported by the single listing subprogram, funded at \$11.43 million.

The committee bill for FY2013 continued specific ceilings on the maximum spending for listing species in response to petitions, for listing foreign species, and for designation of critical habitat; identical limits were contained in FY2012 appropriations. The limitations on listing foreign species or responding to petitions were not found in the FY2011 appropriations bill; limitations on critical habitat designation have been a feature of appropriations bills for over 15 years. The President's proposal for FY2013 would also have continued the limits.

The House committee approved \$45.9 million (-23.5%) for consultation. The Administration request would increase funding for consultation under Section 7 of the Endangered Species Act (ESA) by 4.9% over FY2012. Under Section 7, federal agencies are obliged to consult with FWS on their actions which may affect listed species, and to obtain a biological opinion (BiOp) from FWS on whether the action might jeopardize the species. If jeopardy is found, the BiOp may include reasonable and prudent alternatives for the agency action that would avoid jeopardy. FWS consultation may be critical to timely actions by federal agencies, which might otherwise hesitate to act in the face of potential citizen suits under the ESA.<sup>6</sup> The committee also sought to insulate consultations regarding northern spotted owls (a species found primarily in old growth forests of the Pacific Northwest) from the effects of the reductions by directing FWS to “devote sufficient funds from within Consultation to assure timely Biological Opinions on the northern spotted owl to other Federal land management agencies in addition to technical assistance review and ‘no take letters’ to small landowners seeking approval to implement harvest plans.”<sup>7</sup> A substantial reduction in consultation funding, plus directives to maintain funding for spotted owl consultation, would combine to decrease resources for consultation with other agencies for other species.

Within the amounts for recovery, the committee directed that \$1 million be used to restore a program to compensate ranchers for livestock losses due to wolf depredation; the committee also urged the Administration “to fund this program through the Department of Agriculture in future years.”<sup>8</sup>

The Cooperative Endangered Species Conservation Fund (CESCF) also benefits species that are listed or proposed for listing under ESA, through grants to states and territories. The House committee approved \$14.1 million for the CESCF, down 55.9% from the FY2012 level of \$47.7 million. The Administration requested \$60.0 million, up 25.8%. The program assists states with, among other things, the preparation of Habitat Conservation Plans (HCPs). HCPs are developed for non-federal actions by state, local, business, or private entities as a requirement for obtaining an Incidental Take Permit for actions that may affect listed species.<sup>9</sup> For HCPs involving many actors, states may use their funds from this program to coordinate the HCPs, to develop a single umbrella plan on behalf of a region, or to acquire land to mitigate effects of a project.

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<sup>6</sup> Citizen suit provisions are contained in 16 U.S.C. §1540(g); they have been a major factor in enforcement of ESA. This description of §7 consultation is highly simplified. For a fuller explanation see CRS Report RL31654, *The Endangered Species Act: A Primer*, by (name redacted), (name redacted), and (name redacted).

<sup>7</sup> H.Rept. 112-589, p. 19.

<sup>8</sup> H.Rept. 112-589, p. 19. Another provision, regarding delisting of wolves, is covered below under “Administrative Provisions.”

<sup>9</sup> Incidental Take Permits allow a non-federal entity to undertake an action that is otherwise legal, but may have the incidental effect of taking a listed species. For more information, see CRS Report RL31654, *The Endangered Species Act: A Primer*, by (name redacted), (name redacted), and (name redacted).

Taking the two programs together, the House committee would decrease endangered species funding by 31.5% compared to FY2012 levels.

## **Authorization, Appropriation, and Authority: Key Differences**

Because Section 15 of ESA (16 U.S.C. §1542), authorizing appropriations, expired in FY1992, it is sometimes said that the ESA is not authorized. However, that does not mean that the agencies lack authority to conduct actions (§§4, 6-8, 10, and 11; 16 U.S.C. §§1533, 1535-1537, 1539, and 1540), or that prohibitions within the act are no longer enforceable (§9; 16 U.S.C. §1538). Those statutory provisions continue to be law, even when money has not been appropriated.<sup>10</sup>

(Moreover, Congress may choose to continue to appropriate funds for programs whose authorization has expired.) The expiration of a provision authorizing appropriations does not end the statutory obligations created by that law. The U.S. Supreme Court has long held that “the mere failure of Congress to appropriate funds, without further words modifying or repealing, expressly or by clear implication, the substantive law, does not in and of itself defeat a Government obligation created by statute.”<sup>11</sup> Moreover, Section 11(g) (16 U.S.C. §1540(g)) “allows any citizen to commence a civil suit on his own behalf” on various broad, specified provisions of the act. This option would still be available, and because of this Supreme Court decision, an agency (here FWS, defended by the Department of Justice working with DOI) would have to respond, regardless of agency funding.<sup>12</sup>

## **National Wildlife Refuge System and Law Enforcement**

The House committee approved \$437.4 million for the National Wildlife Refuge System, down 9.9% from FY2012. The President requested \$494.8 million, up 1.9%. Costs of operations have increased on many refuges, partly due to special problems such as hurricane damage and more aggressive border enforcement, but also due to increased use, invasive species control, maintenance backlog, and other demands. According to FWS, refuge funding has not been keeping pace with these demands. Combined with the rising costs of rent, salaries, fuel, and utilities, the agency says these demands have led to cuts in funding for programs on refuge lands to aid endangered species, reduce infestation by invasive species, protect water supplies, address habitat restoration, and ensure staffing at the less popular refuges. While some increases were provided to address these problems in recent years, the FY2009 economic stimulus law (P.L. 111-5, American Recovery and Reinvestment Act) provided additional funding to address these concerns. One response to reduced funding has been the consolidation of refuges (called “complexing” by FWS) under a single refuge manager and staff, as a means of sharing staff and equipment. This program has met resistance from refuge supporters who argue that refuge units

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<sup>10</sup> See *Forest Guardians v. Babbitt*, 174 F.3d 1178 (10<sup>th</sup> Cir. 1999) (duty to designate critical habitat for silvery minnow existed despite inadequate funding); *Center for Biological Diversity v. Norton*, 304 F. Supp. 2d 1174 (D. Ariz. 2003) (inadequate financial resources did not excuse FWS from its obligation to follow a court order to redesignate critical habitat); *Conservation Council for Hawai'i v. Babbitt*, 24 F. Supp. 2d 1074 (D. Hawaii 1998) (holding that insufficient resources were an inadequate reason for failing to designate critical habitat of 245 listed plants).

<sup>11</sup> *United States v. Vulte*, 233 U.S. 509 (1914).

<sup>12</sup> *Ibid.*

will lose resources and adequate supervision. Balanced against these concerns is congressional interest in general deficit reduction.

Law Enforcement is part of the Subaccount for Migratory Birds, Law Enforcement, and International Affairs. Nationwide law enforcement covers wildlife inspections at international borders, investigations of violations of endangered species or waterfowl hunting laws, and other activities. The House committee approved \$54.7 million, down 15.2% from the FY2012 level of \$62.1 million. The Administration requested \$63.9 million, up 2.8%.

## **Fisheries and Aquatic Resource Conservation<sup>13</sup>**

The House committee provided \$127.2 million, down 6.0% from FY2012. The Administration's FY2013 request for this activity was \$131.6 million, down 2.7%. Within this account, the committee held funding for National Fish Hatchery Operations at \$46.1 million, identical to the FY2012 level, and took a larger share out of aquatic habitat and species conservation.<sup>14</sup> In contrast, most of the Administration's reduction (\$2.9 million) was proposed to come from National Fish Hatchery Operations. FWS manages a number of hatcheries under the National Fish Hatchery System. In some cases the mandated role of a hatchery, in whole or in part, is to provide mitigation for activities by other agencies. However, the report states, "The Committee will continue to reject proposals to reduce funding in the Service's budget for mitigation fish hatcheries until the Administration has secured offsetting reimbursable funds from the responsible Federal agencies."<sup>15</sup>

## **Cooperative Landscape Conservation and Adaptive Science**

Part of this program supports work with partners at federal, state, tribal, and local levels to develop strategies to address climate impacts on wildlife at local and regional scales. The remainder is used to support cooperative scientific research on climate change as it relates to wildlife impacts and habitat. Both portions support and work through a network of Landscape Conservation Cooperatives (LCCs) to ameliorate the effects of climate change. The LCCs are an amalgam of research institutions, federal resource managers and scientists, and lands managed by agencies at various levels of government. The House committee provided \$3.0 million for this account, down 90.7% from the FY2012 level of \$32.2 million; the accompanying report made no specific comments on the program, although the introduction to the accompanying report contained a discussion of the Administration's climate change programs generally, and criticized

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<sup>13</sup> This section was provided by (name redacted), Specialist in Natural Resources, Resources, Science, and Industry Division, CRS (7-....; [redacted]@crs.loc.gov).

<sup>14</sup> In this respect, the text of H.Rept. 112-589 (p. 20) differs from the figures in the tables accompanying the report and cited above: "Within National Fish Hatchery System operations, the bill includes an increase of \$3,394,000." Yet an examination of the tables given on p. 126 of the report shows that the bill's figures for hatchery operations are level-funded, relative to FY2012 enacted, and up \$2.9 million relative to the President's request. The table's numbers are presented here, because any other assumption would be inconsistent with various totals provided in the table.

<sup>15</sup> H.Rept. 112-589, p. 20.

them for duplication and lack of coordination.<sup>16</sup> The Administration request was \$33.1 million, up 2.7% from the previous year.

## Land Acquisition

The House committee provided \$15.0 million for land acquisition, to be derived from the Land and Water Conservation Fund (LWCF); this figure is down 72.5% from FY2012. The Administration requested \$106.9 million for land acquisition, an increase of 95.7% over the FY2012 level of \$54.6 million. (See **Table 1**.) These recommendations are consistent with the committee's overview of LWCF spending for all federal land-managing agencies.<sup>17</sup> Within this program, the committee proposed that there be no new funding for general land acquisition, and that new acquisitions be directed only to inholdings, acquisition management, and overhead, as well as \$4.0 million for the Highlands Conservation Act (HCA). According to the FY2012 Fish and Wildlife Service budget justification (p. LA-1), the HCA (16 U.S.C. §3901) authorizes "the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States [CT, NJ, NY, and PA] to preserve and protect high priority conservation land in the Highlands region."<sup>18</sup>

The Migratory Bird Conservation Account (MBCA) is a source of mandatory spending for FWS land acquisition (in contrast to the other three federal lands agencies, which rely entirely on annual appropriations). The MBCA does not receive funding in annual Interior appropriations bills. Rather, funds are derived from the sale of duck stamps to hunters and recreationists, and from import duties on certain arms and ammunition. For FY2013, available funds are estimated at \$61.0 million.<sup>19</sup> This estimate is \$14.0 million above the previous year, and is based on the assumption that Congress would approve a proposed increase in the price of duck stamps from \$15 to \$25. No such increase has been introduced. Assuming that duck stamp prices will be unchanged, a more reliable estimate might be that \$47.0 million would be available for FWS land acquisition from the account.<sup>20</sup>

## National Wildlife Refuge Fund

The National Wildlife Refuge Fund (NWRF, also called the Refuge Revenue Sharing Fund) compensates counties for the presence of the non-taxable federal lands under the primary jurisdiction of FWS.<sup>21</sup> A portion of the fund is supported by the permanent appropriation of receipts from various activities carried out on the National Wildlife Refuge System. However, these receipts are sufficient for funding only a small fraction of the authorized formula, and

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<sup>16</sup> H.Rept. 112-589, p. 9.

<sup>17</sup> H.Rept. 112-589, pp. 8-9.

<sup>18</sup> The program is not described in the FY2013 FWS budget justification. Because a description of the program and its activities is absent in the current budget justification, it is unclear what activities have occurred or will occur under it.

<sup>19</sup> FWS budget justification, p. MBC-2.

<sup>20</sup> S. 2156 would authorize the Secretary of the Interior, in consultation with the Migratory Bird Conservation Commission, to revise the price of duck stamps at five-year intervals, under specified conditions. However, no specific figure is proposed for the new price of a stamp.

<sup>21</sup> For more information on NWRF, see CRS Report R42404, *Fish and Wildlife Service: Compensation to Local Governments*, by (name redacted).

county governments have long urged additional appropriations to make up the difference. The committee approved \$12.0 million for the fund; if this level is approved, counties would receive 22.8% of the authorized level. The Administration requested no funding for NWRF in FY2013; based on receipts alone, counties would then receive 6.6% of the authorized level.<sup>22</sup> The Administration argues that the savings are justified based on low costs of refuges to county infrastructure and economic benefits to local economies from increased tourism.

## Multinational Species and Neotropical Migrants

FWS has long had a role in conserving species across international boundaries, beginning with species such as migratory birds, which spend some part of their life cycle within U.S. boundaries, and more recently including selected species of broader international interest. One of the programs, the Multinational Species Conservation Fund (MSCF), generates considerable constituent interest despite the small size of the program. It benefits Asian and African elephants, tigers, rhinoceroses, great apes, and marine turtles.<sup>23</sup> The House committee reduced all of the MSCF programs by 50.0% relative to FY2012, emphasizing that all of the authorizations in this account have expired, or will expire in FY2012. The Administration requested \$10.0 million, up 5.4%. (See Table 3.)

**Table 3. Multinational Species Conservation and Neotropical Migratory Bird Conservation Funds, FY2011-FY2013**

(\$ in thousands)

	FY2011 Enacted	FY2012 Enacted <sup>a</sup>	FY2013 Request	House Comm.
African Elephant	1,697	1,645	1,697	823
Rhino & Tiger	2,695	2,471	2,695	1,236
Asian Elephant	1,697	1,645	1,697	823
Great Apes	2,194	2,059	2,194	1,030
Marine Turtles	1,697	1,646	1,697	823
<b>MSCF Total</b>	<b>9,980</b>	<b>9,466</b>	<b>9,980</b>	<b>4,735</b>
Neotropical Migratory Birds	3,992	3,786	3,786	1,893

a. Figures reflect across-the-board reduction of 0.16% in Title IV of Division E of P.L. 112-74.

<sup>22</sup> See Refuge Revenue Sharing Act (16 U.S.C. §715s). The National Wildlife Refuge Fund is distinct from the Payments in Lieu of Taxes (PILT) program administered by DOI, and for which many types of federal lands are eligible. In 2009, Congress made PILT a mandatory spending program for FY2008-FY2012, but did not change the Refuge Fund, and in 2012, included a provision in P.L. 112-141 extending mandatory spending for one year. As a result of the PILT formula, which will largely make up for the pro-rated NWRF payment rate but for public domain lands only, counties with acquired FWS lands will be under-compensated for revenue loss relative to counties with refuge lands reserved from the public domain. Because eastern refuges are mostly acquired land, and western refuges are mostly reserved from the public domain, effects of lower funding rates for NWRF will fall primarily on eastern counties. For further information on the interaction of PILT and NWRF, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by (name redacted).

<sup>23</sup> For more information on these two funds, see CRS Report RS21157, *International Species Conservation Funds*, by (name redacted) and (name redacted).

Similarly, the committee reduced the Neotropical Migratory Bird Conservation Fund by 50.0% relative to the FY2012 level.<sup>24</sup> The Administration had requested \$3.8 million, unchanged from FY2012. The program provides grants for the conservation of hundreds of bird species that migrate among North and South America and the Caribbean. The act requires spending 75% of the funds on projects outside of the United States.

## **State and Tribal Wildlife Grants**

State and Tribal Wildlife Grants help fund efforts to conserve species (including nongame species) of concern to states, territories, and tribes. The program was created in the FY2001 Interior appropriations law (P.L. 106-291) and further detailed in subsequent Interior appropriations laws. (It has no separate authorizing statute.) The largest portion of the program is for formula grants to states and territories. Funds may be used to develop state conservation plans as well as to support specific practical conservation projects. A portion of the funding is set aside for competitive grants to tribal governments or tribal wildlife agencies, and another portion for competitive grants to states. The two programs for competitive grants have no specific matching requirements. This grant program has generated considerable support from state and tribal governments.

As it did for programs with expired or expiring authorizations, the House committee reduced this program by 50.0%, urging authorizing committees to pass legislation for these grants. (See **Table 1**.) It further raised the state's minimum share to 50%; the FY2012 program required a state's minimum share of either 25% or 35% (depending on the type of project). The committee also eliminated language to allow unobligated balances to be re-apportioned. The President requested \$61.3 million for these grants, a total unchanged from the amount approved for FY2012. The Administration proposed to continue the proviso that states must provide at least 25% matching funds for planning grants and 35% for implementation grants.

## **Coastal Impact Assistance Program**

The Coastal Impact Assistance Program (CIAP) was established in its modern form under the Energy Policy Act of 2005.<sup>25</sup> The focus of CIAP is assistance to states and local governments from the impacts of offshore development on coastal ecosystems, including wetlands. Under the current CIAP, eligible states are those with offshore energy production: Alabama, Alaska, California, Louisiana, Mississippi, and Texas. The language of the 2005 amendments provided that, from the revenues derived from federal energy leases on the Outer Continental Shelf for each year from FY2007 through FY2010, there would be mandatory spending authority of \$250 million, to remain available until expended. Of the resulting \$1 billion total from those four fiscal years, approximately \$565 million remains in unobligated balances. The Administration proposes permanent cancellation of \$200 million of the unobligated balance, leaving \$365 million available—without further appropriation—for use in the program. However, the House committee took no action on this proposal.

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<sup>24</sup> This program is authorized under the Neotropical Migratory Bird Conservation Improvement Act (16 U.S.C. 6101).

<sup>25</sup> 16 U.S.C. §§1451-1465. Substantial amendments were made to CIAP with the 2005 amendments in P.L. 109-58, §384. The original program was created under the Coastal Zone Management Act of 1972 (P.L. 92-583).

At its inception, the program was administered by the Minerals Management Service, then by its successor agency, the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), and now by FWS.<sup>26</sup> With the transfer to FWS in FY2012, the unobligated balance was transferred as well. Even if the cancellation of \$200 million were accepted by Congress, the program will continue, with expenditures from the remaining unobligated balance of \$365 million. According to FWS, remaining funds would be used for oversight, monitoring, amendments or modifications of ongoing programs, auditing, and other functions. Because the program has mandatory spending authority for the remaining balance, no language is necessary in the annual appropriation bill to make the remaining balance available.<sup>27</sup>

## **Administrative Provisions**

In addition to the regular appropriations provisions, H.R. 6091 contained three administrative provisions affecting FWS. One provision (Section 117) affects gray wolves; another (Section 423) concerns three captive-bred exotic species; and the last (Section 438) affects hunting, fishing, and recreational shooting.

### **Gray Wolves in Wyoming**

On October 5, 2011, FWS issued a proposed rule to remove gray wolves (*Canis lupus*) in Wyoming from the list of species that are threatened or endangered under ESA. Wolves would continue to be protected from taking in two national parks and a national wildlife refuge in the northwestern part of the state.<sup>28</sup> The remainder of the state would be divided into zones of regulated hunting of wolves as a game species and unregulated take. The rule would end the wolf's protection as either a Distinct Population Segment or as an Experimental Population under ESA. The rule is contingent upon the Wyoming legislature's passing a wolf management plan that meets certain criteria specified in the proposed rule; the rule would not be finalized until the legislature's approval of the plan.<sup>29</sup> To date, that approval has not occurred. The rule makes certain assumptions about the management of wolves on federal lands. The Wyoming management plan is being reviewed by FWS.

The House committee included Section 117, which provides that “[b]efore the 60-day period beginning on the date of enactment of this Act, the Secretary of the Interior shall issue a final rule pertaining to the proposed rule” cited above. The effect of the section, in the absence of an accepted wolf management plan and the required approval by the Wyoming legislature, could mean that wolf management in the state stops short of recovery goals.

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<sup>26</sup> BOEMRE has since been split into two agencies: the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE). See <http://www.boemre.gov/>.

<sup>27</sup> For more information on the program, see FY2013 FWS *Budget Justification*, pp. CIAP-1–CIAP-6.

<sup>28</sup> 76 *Fed. Reg.* 61782 (October 5, 2011). The notice uses the words *protected areas* to refer both to lands such as the two national parks where wolves may not be hunted, and to areas where wolves may be hunted as trophy animals, subject to quotas set at levels to avoid the population falling below a certain minimum. For information on gray wolves under ESA, see CRS Report RL34238, *Gray Wolves Under the Endangered Species Act (ESA): Distinct Population Segments and Experimental Populations*, by (name redacted) and (name redacted).

<sup>29</sup> On March 5, 2012, the Wyoming Game and Fish Department issued a wolf management plan. (See <http://wgfd.wyo.gov/web2011/NEWS-1000631.aspx>.) FWS is reviewing comments on the proposed plan. See <http://www.fws.gov/mountain-prairie/species/mammals/wolf/> for links to official documents on Wyoming wolves.

The Full-Year Appropriations Act of 2011 (P.L. 112-10, §1713) was similar, directing FWS to delist the gray wolf in Montana, Idaho, eastern Washington, eastern Oregon, and north-central Utah, but leaving the wolves in the remaining lower 48 states federally protected as either threatened or endangered.<sup>30</sup> However, both Montana and Idaho had approved wolf management plans at the time. Enactment of §1713 was significant because legislation to delist species had been proposed rarely in the past but never successful.<sup>31</sup> An amendment en bloc by Representative Moran (VA) that included a provision to delete this section was defeated in the committee (yeas 19, nays 28).

## Protection of Three Captive-Bred Exotic Species

By voice vote, the House committee approved Section 423 by Representative Carter (TX) to direct the Secretary of the Interior to “reissue the final rule published on September 2, 2005 (70 Fed. Reg. 52310 et seq.) without regard to any other provision of statute or regulation that applies to the issuance of such rule. Such reissuance (including this section) shall not be subject to judicial review.” The referenced final rule affected U.S. captive-bred scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*), all listed as endangered. These three North African game species are related to antelope, and are rare, or perhaps extinct, in their native habitat; excessive hunting, military conflict, and loss of habitat are their chief threats.

When the 2005 rule was issued, all three species were considered threatened, and a substantial fraction of their populations were found on game farms, many in the United States. Farm managers had allowed hunting of surplus captive-bred animals, subject to permits from FWS. The 2005 rule would have allowed a variety of activities, including hunting, interstate shipment, and other specified activities, as long as certain criteria were met.<sup>32</sup> When the rule was challenged, the court held that the rule violated the ESA by granting a broad exception to all game farms raising these species, rather than issuing permits on a case by case basis.<sup>33</sup> In response to the court’s decision, on January 5, 2012, FWS removed the exclusion and stated that it will require any person who wishes to hunt or transport one of the three species to qualify for an exception or obtain a permit.<sup>34</sup> The section approved by the committee would require FWS to reissue the 2005 rule, and would preclude judicial review of the rule.

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<sup>30</sup> Appropriations for FY2012 did not deal with this issue, perhaps because of the relatively late passage of a final FWS appropriations and because the relevant rule-making procedure was at an early phase at that time.

<sup>31</sup> All examples were from the 100<sup>th</sup> Congress and were proposed amendments to the Endangered Species Act Amendments of 1987. They were not passed. See 133 *Cong. Rec.* H11248 (proposed amendment to prevent the Concho water snake from being considered a listed species); 133 *Cong. Rec.* H11248 (proposed amendment to prevent the gray wolf from being considered a listed species); and 133 *Cong. Rec.* H11617 (proposed amendment to prevent the leopard darter minnow from being considered a listed species). Also, for details of the 48 species that had been delisted before passage of §1713, see [http://ecos.fws.gov/tess\\_public/pub/delistingReport.jsp](http://ecos.fws.gov/tess_public/pub/delistingReport.jsp).

<sup>32</sup> A further final rule of Sept. 2, 2005 (70 *Fed. Reg.* 52319) also changed the status of wild individuals of these species to endangered. This rule is not affected by the committee’s action.

<sup>33</sup> *Friends of Animals, et al., v. Ken Salazar, Secretary of the Interior, and Rebecca Ann Cary, et al., v. Rowan Gould, Acting Director, Fish and Wildlife Service, et al.*, 626 F. Supp. 2d 102 (D.D.C. 2009).

<sup>34</sup> 77 *Fed. Reg.* 431.

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

Section 438 of the House committee’s bill directs that no funds under the bill “or any other Act for any fiscal year may be used to prohibit the use of or access to Federal land (as ... defined in ... 16 U.S.C. 6502) for hunting, fishing, or recreational shooting” if the use or access was not prohibited on January 1, 2012, and if the use complied with specified resource management plans for the land in question as of that date.<sup>35</sup> The cited provision in the *U.S. Code* applies to lands managed by the Forest Service and BLM. “Recreational shooting” is not defined in this section; this lack of a definition may produce some confusion in Forest Service and BLM lands where their land management plans do not contemplate that activity.

Section 438(b) would allow the Secretaries of Interior or Agriculture to close federal lands under their jurisdiction to hunting, fishing, or recreational shooting for periods up to 30 days for a special event or for public safety. The period may be extended for another 90 days for “extraordinary weather conditions or for public safety.” If the definition of federal land in Section 438(a) also applies to this subsection, then the lands affected by this closure provision are also the Forest Service and BLM. However, the question of which lands are covered might need clarification.

## **For More Information**

CRS Report R41608, *The Endangered Species Act (ESA) in the 112<sup>th</sup> Congress: Conflicting Values and Difficult Choices*, by (name redacted) et al.

CRS Report RS21157, *International Species Conservation Funds*, by (name redacted) and (name redacted).

For general information on the *Fish and Wildlife Service*, see its website at <http://www.fws.gov/>.

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<sup>35</sup> Some of the same issues were addressed in H.R. 4089, recently passed by the House. See CRS Report R42569, *Hunting, Fishing, and Recreational Shooting on Federal Lands: H.R. 4089 and Related Legislation*, coordinated by (name redacted). Section 438 appears not to alter existing management plans and therefore may affect less land in the affected agencies than H.R. 4089.

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