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Wilderness: Legislation and Issues in the 113th Congress

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Summary

The Wilderness Act of 1964 established the National Wilderness Preservation System and directed that only Congress can designate federal lands as part of the system. 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. Numerous wilderness bills were introduced in the 112th Congress, but it was the first Congress since 1966 that did not add to the wilderness system. The only wilderness law that was enacted in the 112th Congress reduced the size of a wilderness area. To date, the 113th Congress has introduced many bills to add to the wilderness system, and passed one bill designating additional wilderness.

Wilderness designation 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 see such designations as preventing certain uses and potential economic development in rural areas where such opportunities are relatively limited.

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. Pre-existing uses or conditions are often allowed to continue, sometimes temporarily, with nonconforming uses to be halted and/or nonconforming conditions to be rectified. More commonly, the authority is permanent, with limited access permitted for specific areas, uses, and times, or with the authority to operate and maintain pre-existing infrastructure. Wilderness bills 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 wilderness water rights.

Controversies regarding management of existing wilderness areas also have been the subject of legislation. 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 from wilderness-like protection; and to limit agency review of the wilderness potential of their lands. The latter two issues have been contentious for Bureau of Land Management (BLM) lands for two reasons. First, BLM is required by law to protect the wilderness characteristics of its wilderness study areas (WSAs) until Congress determines otherwise. Second, a December 2010 secretarial order directed BLM to maintain a wilderness inventory, to consider wilderness potential in planning, and to protect wilderness characteristics of those "Wild Lands" unless alternative management was deemed appropriate. The FY2012 Interior Appropriations Act (Division E of P.L. 112-74) prohibited using funds to implement the secretarial order, and bills were introduced to terminate the order. In June 2011, Secretary Salazar withdrew the order, but stated that BLM would maintain a wilderness inventory and continue to consider wilderness characteristics as required by law. Legislation in the 113th Congress proposes to eliminate several WSAs.

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The 1964 Wilderness Act (16 U.S.C. §§1131-1136) established the National Wilderness Preservation System and directed that only Congress can designate federal lands as part of the system.[1] Many believe that special areas should be designated to protect and preserve their unique values 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. Debate over wilderness bills that may be introduced in the 113th Congress is likely to follow this pattern, especially as to how those prohibited activities affect law enforcement in wilderness areas along U.S. national borders. In addition, a December 2010 change to the Interior Department policy dictating management for wilderness-suitable areas stimulated legislation in the 112th Congress over the timing and nature of wilderness reviews. Despite the policy's retraction in 2011, this continues to spur congressional interest.

This report presents background information on wilderness protection and a discussion of issues in the wilderness debate—the pros and cons of wilderness designation generally; possible considerations for specific legislation; and a discussion of possible wilderness study area designation and protection. This report also tracks the status of legislation introduced in the 113th Congress to designate new wilderness or release wilderness study areas. A table of legislation from the 112th Congress is in **Appendix A** to this report.

The Wilderness Act and Subsequent Designations

The Wilderness Act established a National Wilderness Preservation System of federal lands, initially with 54 wilderness areas containing 9.1 million acres of federal land within the national forests. It reserved to Congress the authority to add areas to the system, although agencies were given the authority to review the wilderness potential of certain lands. This congressional authority is based on what is known as 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."[2]

The Wilderness Act and 118 subsequent laws have designated wilderness areas. As of December 31, 2013, the National Wilderness Preservation System totaled 759 areas, with nearly 110 million acres.[3] To date, the 113th Congress has designated one additional wilderness area, adding 32,500 acres to the system. The wilderness areas are part of existing units of federal land administered by the several 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) within the Department of the Interior. Thus, statutory provisions for these agencies' lands, as well as the Wilderness Act and the subsequent wilderness statutes, govern the administration of the designated wilderness areas.

Wilderness designations can be controversial because the Wilderness Act restricts the allowed uses of the land within designated areas. In general, the Wilderness Act prohibits commercial

[1] This report does not address the administrative, legislative, and judicial actions related to national forest roadless areas, which some observers believe were an administrative attempt to create wilderness; see CRS Report RL30647, *National Forest System (NFS) Roadless Area Initiatives*.

[2] Art. IV, §3, cl. 2.

[3] See CRS Report RL31447, *Wilderness: Overview and Statistics*.

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 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.[4]

This section thus prohibits most commercial resource exploitation (such as timber harvesting) and motorized entry (via cars, trucks, off-road vehicles, aircraft, or motorboats) except for "minimum requirements" to administer the areas and in emergencies. However, Section 4(d) provides numerous exceptions, including (a) possible continued use of motorboats and aircraft; (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) commercial recreation activities. Subsequent wilderness statutes have included additional provisions for administering those wilderness areas, including exceptions to the general Wilderness Act prohibitions.[5]

Valid existing rights established prior to the designation of an area as wilderness remain, unless expressly modified by the wilderness statute. The phrase *valid existing rights* means that the designation does not alter property rights, and 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 "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.[6] Ownership of land within a wilderness area would confer existing rights.

While most uses—timber harvesting, livestock grazing, motorized recreation—are not 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. 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.

Pros and Cons of Wilderness Designations

Proponents of adding wilderness generally seek designations of specific areas to preserve the areas 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

[4] 16 U.S.C. §1133(c).

[5] For more information, see CRS Report R41649, *Wilderness Laws: Statutory Provisions and Prohibited and Permitted Uses*.

[6] See Stupak-Thrall v. United States, 89 F.3d 1269, 1280 (6th Cir. 1996), and Utah v. Andrus, 486 F. Supp. 995, 1010 (D. Utah 1979).

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. These conditions and values may be constrained by existing rights and other exceptions and exemptions provided for specific areas by Wilderness Act prohibitions and restrictions on development and access.

Opponents of wilderness generally seek to retain development options for federal lands. The potential use of lands and resources can provide economic opportunities in 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 for economic activity resulting from resource extraction and development. While some economic activities, such as grazing and outfitting, are allowed to continue within wilderness areas, many are prohibited. The potential losses (opportunity costs) for some resources, such as timber harvesting, can 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 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, the individuals and groups who benefit from wilderness designations may differ from those who may be harmed by the lost opportunities, increasing conflict and making compromise difficult. Wilderness designations are not necessarily permanent. Congress has statutorily deleted lands from 18 wilderness areas, commonly to adjust boundaries to delete private lands or roads included inadvertently in the original designation. Thus, changes can be made if subsequent information shows a wilderness designation should be altered.

Issues for Congress

In general, Congress addresses several issues when drafting and considering new wilderness bills. These issues include the general pros and cons of wilderness designation 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 choose which areas to designate. While the Wilderness Act requires areas of at least 5,000 acres for future designations,[7] 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, while the largest is the Mollie Beattie Wilderness (Arctic National Wildlife Refuge) in Alaska, with 8.0 million acres. 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

[7] 16 U.S.C. §1132(c).

additions in a single statute. Some bills address a particular area, while others address all likely wilderness areas for a state or sub-state 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 DC headquarters).

Numerous bills to designate wilderness areas are usually introduced in each Congress. For example, 33 bills that would have designated wilderness areas (plus 13 companion bills) were introduced in the 111th Congress.[8] 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 wilderness bills in the 110th and 111th Congresses) designating 2,050,964 acres of wilderness in various locales, as well as including numerous land, water, and other provisions. The 112th 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.[9]

So far in the 113th Congress, over 30 bills have been introduced to expand U.S. wilderness holdings, and one bill has been enacted, designating 32,500 acres of wilderness in Michigan. See **Table 1** for an alphabetical list of legislation introduced and the most recent action (as of publication of this report). Some of these bills include proposals to designate more than one wilderness area, and one proposes to designate several wilderness areas in different states.

Table 1. 113th Congress: Bills to Designate Wilderness Areas

Bill Title	Bill No.	State	Acreage[a]	Most Recent Action
Alpine Lakes Wilderness Additions and Pratt and Middle Fork Snoqualmie Rivers Protection Act	H.R. 361 S. 112	WA	22,173 acres	H.R. 361 hearing 7/23/13 S. 112 passed Senate 6/19/13
America's Red Rock Wilderness Act of 2013	H.R. 1630 S. 769	UT	9,144,240 acres[b]	H.R. 1630 introduced 4/18/13 S. 769 introduced 4/18/13
Arizona Sonoran Desert Heritage Act of 2013	H.R. 1799	AZ	290,823 acres	Introduced 4/26/13
Browns Canyon National Monument and Wilderness Act of 2013	S. 1794	CO	10,400 acres	Introduced 12/10/13
Central Idaho Economic Development and Recreation Act	H.R. 145	ID	332,928 acres	Introduced 1/3/13
Clear Creek National Recreation Area and Conservation Act	H.R. 1776	CA	21,000 acres	Introduced 4/26/13

[8] For information on these bills from the 111th 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*.

[9] Although 41 bills to designate wilderness were introduced in the 112th Congress, see **Appendix A**, no new wilderness areas were created for the first time since the 89th Congress (1965-1967). P.L. 112-97 reduced the wilderness area in Olympic National Park by 222 acres, transferring the land to an Indian tribe.

Bill Title	Bill No.	State	Acreage[a]	Most Recent Action
Colorado Wilderness Act of 2013	H.R. 2552	CO	735,650 acres	Introduced 6/27/13
Columbine-Hondo Wilderness Act	H.R. 1683 S. 776	NM	45,000 acres	H.R. 1683 introduced 4/23/13 S. 776 hearing 11/20/13
Devil's Staircase Wilderness Act of 2013[c]	H.R. 2491/ H.R. 1526 S. 352/S. 1784	OR	30,520 acres 30,540 acres	H.R. 2491 introduced 6/25/13; H.R. 1526 passed House 9/20/2013 S. 352 passed Senate 6/19/13/S. 1784 hearing 2/6/14
Douglas County Conservation Act of 2013	S. 1263	NV	12,330 acres	Introduced 6/27/13
Forest Jobs and Recreation Act of 2013	S. 37	MT	626,192 acres	Ordered reported 12/19/13
Gold Butte National Conservation Area Act	S. 1054	NV	221,558 acres	Introduced 5/23/13
Hermosa Creek Watershed Protection Act of 2013	H.R. 1839 S. 841	CO	37,236 acres	H.R. 1839 hearing 3/6/14 S. 841 hearing 11/20/13
Maine Coastal Islands Wilderness Act of 2013	H.R. 1808	ME	3,256 acres	Hearing 7/23/13
Northern Rockies Ecosystem Protection Act	H.R. 1187	ID, MT, OR, WA, WY	20,971,000 acres[d]	Introduced 3/14/13
Oregon and California Land Grant Act of 2013[c]	S. 1784	OR	86,640 acres	Hearing 2/6/14
Oregon Treasures Act of 2013[c]	S. 353	OR	~77,340[e]	Reported 9/10/13
Organ Mountains-Desert Peaks Conservation Act	S. 1805	NM	241,067 acres	Introduced 12/12/13
Pine Forest Range Recreation Enhancement Act of 2013	H.R. 433 S. 342	NV	26,000 acres	H.R. 433 hearing 7/23/13 S. 342 reported 6/27/13
Restoring Healthy Forests for Healthy Communities Act[c]	H.R. 1526	OR	88,620 acres	H.R. 1526 passed House 9/20/2013
Rio Grande del Norte National Conservation Area Establishment Act	H.R. 560 S. 241	NM	21,420 acres	H.R. 560 introduced 2/6/13 S. 241 reported 6/27/13
Rocky Mountain Front Heritage Act of 2013	S. 364	MT	67,112 acres	Hearing 7/30/13
Rogue Wilderness Area Expansion Act[c]	H.R. 2488/ H.R. 1526 S. 1784	OR	59,986 acres	Introduced 6/25/13; H.R. 1526 passed House 9/20/2013 S. 1784 introduced 12/9/13
San Juan Mountains Wilderness Act	S. 341	CO	33,200 acres	Reported 9/10/13

Bill Title	Bill No.	State	Acreage[a]	Most Recent Action
Sleeping Bear Dunes National Lakeshore Conservation and Recreation Act	H.R. 163 S. 23	NV	32,557 acres	P.L. 113-87
Stephen Mather wilderness boundary adjustment (no formal title)	H.R. 1156	WA	no net change of acreage	Reported 5/17/13
Tennessee Wilderness Act	S. 1294	TN	19,556 acres	Reported 4/8/14
Udall-Eisenhower Arctic Wilderness Act	H.R. 139 S. 1695	AK[f]	1,559,538 acres	H.R. 139 introduced 1/3/13 S. 1695 introduced 11/13/13
Virgin Valley Tourism and Lake Mead Preservation Act	H.R. 2276	NV	221,558 acres	Introduced 6/6/13
Wasatch Wilderness and Watershed Protection Act	H.R. 2808	UT	13,407 acres	Introduced 7/24/13
Wild Olympics Wilderness Act of 2014	H.R. 3917/H.R. 3922 S. 1949	WA	126,554 acres	H.R. 3917 introduced 1/16/14; H.R. 3922 introduced 1/17/14 S. 1949 introduced 1/16/14
Wovoka Wilderness - Lyon County Economic Development and Conservation Act	H.R. 696 S. 159	NV	~48,981 acres[g]	H.R. 696 hearing 4/18/13 S. 159 reported 9/10/13

Source: Congressional Research Service.

a. Estimated acreage as identified in the latest version of the legislation—as introduced, reported, passed, or enacted.

b. Total includes nine potential wilderness areas.

c. The wilderness designations proposed in H.R. 2491 (Devil's Staircase Wilderness) and H.R. 2488 (Rogue Wilderness) were incorporated into Title III of H.R. 1526 (Restoring Healthy Forests for Healthy Communities Act). Title III of S. 1784 (Oregon and California Land Grant Act) includes the wilderness designations proposed in S. 352 (Devil's Staircase Wilderness). Title III of S. 1784 also proposes to designate the Rogue Wilderness, which is one of the three proposed wilderness designations in S. 353 (Oregon Treasures Act).

d. Total includes potential wilderness in five states.

e. Total acreage is based upon conditional land transfers occurring.

f. Designates land in Arctic National Wildlife Refuge.

g. Acreage specified in U.S. Congress, Senate Committee on Energy and Natural Resources, *Lyon County Economic Development and Conservation*, report to accompany S. 159, 113th Cong., 2nd sess., September 10, 2013, S.Rept. 113-94.

Bills introduced in the 112th Congress to designate wilderness areas are listed alphabetically in **Table A-1** in **Appendix A**.

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. The land management agency may allow an otherwise prohibited use in order to meet the minimum requirements necessary for administration of the area.[10] 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 presidentially authorized water projects. Subject to valid existing rights, wilderness areas are withdrawn from the public land laws and the mining and mineral leasing laws. Acquisition of nonfederal lands is authorized from willing sellers, and "reasonable access" to nonfederal lands within the wilderness area must be accommodated. 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.[11] Accordingly, wilderness areas are generally open to hunting and fishing, although motorized vehicles, which may be helpful in removing big game from remote areas, are typically forbidden. Legislation introduced in the 113th Congress would alter management of wilderness areas for those activities.

The Recreational Fishing and Hunting Heritage and Opportunities Act, S. 170, would ensure that wilderness areas managed by BLM or the Forest Service would be open for hunting, shooting, and recreational shooting, unless the land management agency closed an area. Closure would be allowed where "necessary and reasonable and supported by facts and evidence."[12] The bill states that it would not allow motorized vehicle access for those activities. If enacted in its current form, S. 170 would not significantly alter the management of wilderness areas.

In contrast, H.R. 1825, a bill with the same name as S. 170, directs land management agencies to provide access to designated wilderness for hunting, fishing, and recreational shooting. H.R. 1825 also prohibits the land management agency from exercising discretion to limit access except when closure is determined to be supported by the best scientific evidence, a different standard than required by the Wilderness Act.[13] H.R. 1825 also addresses the allowed uses in a wilderness area. The standard under the Wilderness Act is that uses are allowed when found to meet the minimum requirements necessary to administer the area.[14] A subsection of H.R. 1825 deems that hunting, fishing, and recreational shooting meet the "minimum requirements necessary for the administration of the wilderness area," but that the bill would not authorize uses "not otherwise allowed by the Wilderness Act."[15] If enacted in its current form, H.R. 1825 would alter the management of wilderness areas by designating all wilderness areas as open to hunting, fishing, and recreational shooting, unless the land management agency determines using the best science available that the activities violate statutory mandates to protect wilderness resources.

[10] 16 U.S.C. §1133(c).

[11] 16 U.S.C. §1133(b)

[12] S. 170, §3(d)(2).

[13] H.R. 1825, §4(a)(3).

[14] 16 U.S.C. §1133(c).

[15] H.R. 1825, §4(e)(1).

A bill of the 112th Congress, the Sportsmen's Heritage Act of 2012, H.R. 4089, also would have addressed hunting, fishing, and shooting on federal lands. Section 104(e) of that bill might have changed how the Wilderness Act applies to wilderness area management, possibly opening wilderness areas to any activity that related to hunting and fishing, even if otherwise inconsistent with wilderness values, such as motorized transport. Although this bill passed the House on April 17, 2012, it was not brought to a vote in the Senate. A similar bill (S. 838) was considered in the Senate, but also was not brought to a vote in the Senate.

Non-Conforming Uses or Conditions[16]

Lands do not have to be untouched by humans to be eligible for statutory designation as wilderness. Enabling legislation could terminate or accommodate any non-conforming uses or conditions. Existing wilderness statutes have directed immediate termination of non-conforming uses or have allowed such uses to continue for a specified period. Similarly, existing statutes typically have provided the agencies a specified period for removing, remediating, or restoring non-conforming conditions or infrastructure. Alternatively, many non-conforming uses and conditions have been permitted to remain in designated wilderness areas. The Wilderness Act explicitly allowed continued motorized access by aircraft and motorboats in areas where such uses were already established. 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. While 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.

Courts have looked narrowly at exceptions to permitted uses. Accordingly, broad legislative language to continue excepted uses risks being interpreted by courts in a way not intended. For example, in one case, the law creating a wilderness specifically allowed the management agency to "upgrade, maintain and replace" one structure. The court held that did not mean that Congress intended preservation of other similar structures in that wilderness.[17] In another case, the Eleventh Circuit stated that unless the enabling legislation permitted it, maintenance and preservation of structures, even those deemed historic, could not be permitted: "Congress wrote the wilderness rules and may create exceptions as it sees fit. Absent these explicit statutory instructions, however, the need to preserve historical structures may not be inferred from the Wilderness Act nor grafted onto its general purpose."[18]

A law enacted in the 113th Congress, P.L. 113-99, requires the Forest Service to operate and maintain the Green Mountain Lookout in the Glacier Peak Wilderness in Washington. The lookout is on the National Register of Historic Places, and at one point was fully disassembled

[16] For a discussion on uses in wilderness statutes, see CRS Report R41649, *Wilderness Laws: Statutory Provisions and Prohibited and Permitted Uses*, by Kristina Alexander and Katie Hoover.

[17] Olympic Park Associates v. Mainella, No. C04-5732, 2005 WL 1871114 (W.D. Wash. August 1, 2005).

[18] Wilderness Watch v. Mainella, 375 F.3d 1085, 1092 (11th Cir. 2004).

due to damage.[19] In 2012 a federal court ruled that maintaining the structure was contrary to the Wilderness Act and ordered it removed.[20] P.L. 113-99 reverses that decision.

H.R. 2276, Section 307(b), which establishes wilderness in Clark County, Nevada, would allow motor vehicles for management activities to promote healthy fish and wildlife populations.

Buffer Zones

Many existing wilderness statutes have addressed management outside of the designated wilderness area. For example, some legislation has also proposed prohibiting buffer zones around the wilderness area, contending that the management of adjoining lands would be altered by the presence of wilderness. Such provisions direct that non-conforming activities can occur up to the wilderness boundary, and that the ability to see or hear a non-conforming activity from within the wilderness is not a reason to prohibit the activity.

Special Access

Various existing wilderness statutes have included special access provisions for particular needs. For example, statutes designating wilderness areas along the Mexican border commonly have allowed motorized access for law enforcement and border security. (See "Wilderness and Border Security" below.) Similarly, several statutes have included provisions addressing possible military needs in and near the designated areas, particularly for low-level military training flights. 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.

Reserved Water Rights

Under the so-called *Winters* doctrine, when Congress reserves federal land for a particular purpose, it also reserves enough water to fulfill the purpose of the reservation.[21] Initial wilderness designations were seen as having a minimal effect on water rights, as they were made in national forests, which are congressional reservations of federal land and often included the headwaters of affected rivers and streams. Section 4(d)(7) of the Wilderness Act explicitly stated that the wilderness designations did not "constitute an express or implied claim or denial … as to exemption from State water laws." Water is particularly an issue for BLM lands, since many BLM lands are public domain lands (acquired by the federal government from a foreign sovereign) that were not reserved by Congress. Furthermore, as BLM lands often do not contain the headwaters of streams (in contrast to the national forests), upstream diversions can affect the water flowing through a wilderness area. Wilderness statutes have taken various approaches to

[19] See Forest Service, Mt. Baker-Snoqualmie National Forest website at http://www.fs.usda.gov/recarea/mbs/recreation/recarea/?recid=41669.

[20] Wilderness Watch v. Iwamoto, 853 F. Supp. 2d 1063 (W.D. Wash. 2012).

[21] Winters v. United States, 207 U.S. 564 (1908). See also CRS Report R41081, *The Wild and Scenic Rivers Act (WSRA): Protections, Federal Water Rights, and Development Restrictions*, by Cynthia Brougher, for a discussion of federal reserved water rights in similarly protected areas.

water rights.[22] Congress may consider addressing federal water rights in wilderness legislation, especially for places that have water availability constraints.

Wilderness and Border Security

One issue that has received attention from some Members of Congress in recent years is the impact on border security of the Wilderness Act and other federal laws governing land and resource management.[23] Many are concerned that wilderness areas abutting and near the Mexican border are conduits for illegal aliens 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. However, only 5 actually abut the border (for approximately 96 linear miles).[24] 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. Language within a specific enabling statute may be more specific.

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 adjacent to 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-adjacent wilderness area, the Otay Mountain Wilderness Act of 1999 (P.L. 106-145), also addresses border security. The act requires the

[22] For more information, see also CRS Report R41649, *Wilderness Laws: Statutory Provisions and Prohibited and Permitted Uses*.

[23] 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 the activity's being authorized.

[24] Of the five wilderness areas that abut the border with Mexico, two are in California (the Otay Mountain Wilderness (3.25 mi) and Jacumba Wilderness (9.5 mi), both managed by the BLM), and three are in Arizona (the Cabeza Prieta Wilderness (37.5 mi) managed by the FWS, the Organ Pipe Cactus Wilderness (42 mi) managed by the NPS, and the Pajarita Wilderness (3.75 mi) managed by the Forest Service). Mileage calculated by CRS from the National Atlas.

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) persist. On April 15, 2011, the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands and the House Oversight and Government Reform Subcommittee on National Security, Homeland Defense, and Foreign Operations held a joint hearing on the issues.[25] The Government Accountability Office (GAO) testified, based on two reports from late 2010.[26] 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.

Legislative Action

The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, as introduced in the 113th Congress, would affect wilderness area management along the U.S. border with Mexico. The bill would authorize the Secretary of Homeland Security to waive all laws in order to expedite construction activities along the border, including roads and barriers.[27] To the extent that those construction activities are in a wilderness area, the Wilderness Act could be waived, as it otherwise would limit such projects. An additional provision of S. 744, Section 1105, addresses border patrol activities along the Arizona-Mexico border. That area includes wilderness comprising most of the Cabeza Prieta National Wildlife Refuge and the Organ Pipe Cactus National Monument. Section 1105 requires the land management agencies to allow "immediate" access for certain border patrol activities. That apparently would preclude the land management determination of whether an activity was necessary to meet the minimum requirements to administer the area, as typically is made for wilderness areas.[28]

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[25] See http://naturalresources.house.gov/Calendar/EventSingle.aspx?EventID=234828.

[26] U.S. Government Accountability Office, *Southwest Border: Border Patrol Operations on Federal Lands*, GAO-11-573T, April 15, 2011, 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, 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, http://www.gao.gov/new.items/d11177.pdf.

[27] S. 744, §3(d).

[28] See, e.g. Wilderness Watch, Inc. v. U.S. Fish and Wildlife Service, 629 F.3d 1024 (9th Cir. 2010).

Bills were introduced in the 112th Congress to reduce the potential restrictions of the Wilderness Act and other federal statutes on border security activities; however, none of the bills were enacted. See **Appendix B** for a discussion of those bills.

Wilderness Study Areas and Reviews for Wilderness Potential

The 113th Congress may consider when (and whether) the agencies can and must review the wilderness potential of their lands. A controversial DOI policy from December 2010, perceived by some as expanding wilderness protection by BLM to non-designated lands, stimulated debate in the 112th Congress. FY2011 and FY2012 Interior appropriations acts removed funding for the policy,[29] which was formally revoked by the then Secretary of the Interior in June 2011. DOI announced that, in place of the so-called Wild Lands policy, BLM would maintain wilderness study areas and consider wilderness characteristics in its land management planning.[30] Issuance of updated guidance documents in March 2012 for conducting wilderness inventories may renew congressional interest in how BLM manages its land.[31]

Background

The Wilderness Act and other statutes direct land management agencies to review the wilderness potential of certain federal lands. A particular effort was made in the late 1970s to identify areas suitable for wilderness designation. Such a finding of wilderness potential can be interpreted as a limitation on developing that area's resources. Later congressional action "released" BLM and the Forest Service from maintaining certain areas as wilderness.

Forest Service Wilderness Considerations

The Forest Service is required to review the National Forest System for potential wilderness areas during the development and revision of land and resource management plans (also known as forest plans), approximately every 15 years.[32] In the 1970s and 1980s, the agency conducted two reviews—known as the Roadless Area Review and Evaluation (RARE) I and II—that resulted in some, but not all, of these inventoried roadless areas being recommended for a wilderness designation in January 1979.[33] However, a successful judicial challenge to those recommendations by the state of California[34] led to uncertainty over the validity of the RARE II recommendations and to disputes over the need to protect the wilderness characteristics of the reviewed areas. Congress released the Forest Service from the duty of reviewing wilderness

[29] P.L. 112-10, §1769; P.L. 112-74, §175, respectively.

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

[31] See BLM Manual 6310 – Conducting Wilderness Characteristics Inventory on BLM Lands (March 15, 2012); BLM Manual 6320 – Considering Lands with Wilderness Characteristics in BLM Land Use Planning Process (March 15, 2012). Both are available online at http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/blm_manual.html.

[32] Under Section 6(f)(5) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (P.L. 93-378), as amended by NFMA, management plans for the national forests must be revised at least every 15 years.

[33] Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume II. 2000.

[34] California v. Block, 690 F.2d 753 (9th Cir. 1982) (holding that the Forest Service had not satisfied the National Environmental Policy Act or NFMA in producing the recommendations).

potential in the initial forest plans and from preserving the wilderness characteristics of areas not recommended for wilderness designation. This was known as release language, and was enacted in 30 state-by-state Forest Service wilderness statutes between 1980 and 1990.[35]

Review of potential wilderness is now part of the forest planning process; however, management of Forest Service inventoried roadless areas has been controversial.[36] Starting in 2001, the Clinton and Bush Administrations each proposed different roadless area policies. Both were heavily litigated; however, the Clinton policy to prohibit many activities on roadless areas—with significant exceptions—remains intact after the Supreme Court refused to review a lower court's decision in 2012. Release language is no longer significant for national forest wilderness legislation, although some bills do include release provisions. For example, S. 1967 would release all inventoried roadless areas in Wyoming national forests.

BLM Wilderness Review

BLM must review the wilderness potential of its "roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of this Act as having wilderness characteristics."[37] Section 603 of the Federal Land Policy and Management Act[38] (FLPMA) required BLM to 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. 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 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

In 1977-1979, 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 is sometimes referred to as a nonimpairment obligation.

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

[35] See, e.g., P.L. 98-321 (Wisconsin).

[36] For more information, see CRS Report RL30647, *National Forest System (NFS) Roadless Area Initiatives*, by Kristina Alexander.

[37] 43 U.S.C. §1782(a).

[38] P.L. 94-579; 43 U.S.C. §§1701-1787.

nonimpairment obligation was not enforceable by court challenge.[39] The Court held that while 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 (APA). Therefore, it appears that although BLM actions that would harm WSAs could be enjoined, as with any agency enforcement obligation,[40] forcing BLM to take protective action is 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,[41] it is unclear whether BLM is required to review its lands specifically for wilderness potential after expiration of the reviews required by Section 603.[42] 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, BLM wilderness reviews are less certain than future Forest Service wilderness reviews.

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 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, and in September 2003, then-DOI Secretary Gale Norton settled the case.[43] The BLM Assistant Director issued guidance (Instruction Memoranda Nos. 2003-274 and 2003-275) prohibiting further reviews and limiting the term "wilderness study areas" and the nonimpairment standard to areas already designated for the original Section 603 review.[44] Instruction Memorandum 2003-274 advised 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." These memoranda rescinded the Wilderness Inventory and Study Procedures Handbook.

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[39] 542 U.S. 55 (2004).

[40] See, e.g., 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").

[41] FLPMA §201; 43 U.S.C. §1711.

[42] 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).

[43] Utah v. Norton (no written decision is available).

[44] BLM Assistant Director, Instruction Memorandum 2003-275, *Consideration of Wilderness Characteristics in Land Use Plans (Excluding Alaska)*, p. 1 (September 29, 2003) ("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 the FLPMA and other existing WSAs—in accordance with the non-impairment standard prescribed in the [Interim Management Policy]"). Available at http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction.html.

On December 22, 2010, DOI Secretary Ken Salazar issued Order No. 3310, addressing how BLM would manage wilderness.[45] 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. While Instruction Memorandum 2003-274 indicated that, except for extant Section 603 WSAs, the nonimpairment mandate did not apply, Order No. 3310 appeared to require an affirmative decision that impairment is appropriate in a Section 201 wilderness resource area, or otherwise impairment must be avoided. After Congress withheld funding, Secretary Salazar announced in June 2011 that BLM would not designate any Wild Lands. He also announced that DOI would be gathering recommendations from stakeholders on what areas to protect as wilderness, with those suggestions being forwarded to Congress in a report. The memorandum did not indicate whether there was a shift on how impairment would be considered.

Legislative Action

Several bills before the 113th Congress would release BLM WSAs, meaning they would no longer be managed as wilderness. See **Table 2** for an alphabetical list of legislation introduced and the most recent action (as of publication of this report). H.R. 1839/S. 841 would release two WSAs in Colorado; H.R. 995 would release three WSAs in New Mexico. Other bills provide for the release of WSAs not incorporated into wilderness designations made within that legislation: S. 37 would release remaining sections of nine WSAs in Montana; H.R. 1683 remainders of the 46,000-acre Columbine-Hondo area in New Mexico; and H.R. 433/S. 342 would release remaining areas of two WSAs in Nevada.

In FY2011 and FY2012 Interior appropriations laws (P.L. 112-10, §1769; and P.L. 112-74, §125), Congress prohibited funds to "implement, administer, or enforce Secretarial Order No. 3310."

The Wilderness and Roadless Area Release Act of 2011 (H.R. 1581/S. 1087) 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 Clinton and Bush Forest Service roadless area rules. A similar bill in the 113th Congress—S. 1967, the Inventoried Roadless Area Management Act—would terminate the Clinton roadless area rule on national forests in Wyoming.

Legislation to modify WSA nonimpairment protection under Section 603 of FLPMA was offered in earlier Congresses (106th, 107th, and 108th). The legislation typically provided release for all remaining BLM WSAs 10 years after enactment to provide time for Congress to consider wilderness legislation for BLM lands, meaning that if Congress had not acted by that time, the areas would no longer be treated as WSAs. However, no hearings were held on the bills and no legislation was enacted.

[45] Secretary of the Interior, Order No. 3310, *Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management*, (December 22, 2010). Available 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.

Table 2. 113th Congress: Bills to Release Wilderness Study Areas

(areas would no longer be managed as wilderness)

Bill Title	Bill No.	State	Name of WSA (acreage to be released)	Most Recent Action
Columbine-Hondo Wilderness Act	H.R. 1683 S. 776	NM	Columbine-Hondo[a] (~1,000)	H.R. 1683 introduced 4/23/13 S. 776 hearing 11/20/13
Douglas County Conservation Act of 2013	S. 1263	NV	Burbank Canyons (1,065)	Introduced 6/27/13
Forest Jobs and Recreation Act of 2013	S. 37	MT	Axolotl Lakes (7,804) Bell and Limekiln Canyons (9,650) Blacktail Mountains[b] (6,804) Centennial Mountains[b] (3,991) Farlin Creek (1,139) Henneberry Ridge (9,806) Hidden Pasture (15,509) Humbug Spires (11,175) Ruby Mountains[b] (10,311)	Ordered reported 12/19/13
Hermosa Creek Watershed Protection Act of 2013	H.R. 1839 S. 841	CO	West Needles Contiguous (461)	H.R. 1839 introduced 5/6/13 S. 841 hearing 11/20/13
Las Vegas Valley Public Land and Tule Springs Fossil Beds National Monument Act of 2013	H.R. 2015 S. 974	NV	Sunrise Mountain (10,240)	H.R. 2015 hearing 10/3/13 S. 974 ordered reported 12/19/13
Organ Mountains National Monument Establishment Act	H.R. 995	NM	Organ Mountains (7,283) Organ Needles (7,630) Pena Blanca (4,470)	Hearing 5/9/13
Pine Forest Range Recreation Enhancement Act of 2013	H.R. 433 S. 342	NV	Blue Lakes[c] Alder Creek[c]	H.R. 433 hearing 7/23/13 S. 342 reported 6/27/13
San Juan Mountains Wilderness Act	S. 341	CO	Dominguez Canyon (3,033)	Reported 9/10/13

Source: Congressional Research Service.

a. The release of the WSA is only to the extent that lands within that area were not included in the bill's wilderness designation. The enabling legislation for the Columbine Hondo WSA indicates it is approximately 46,000 acres (94 Stat. 3223). H.R. 1683, Section 101(a) identifies the new wilderness as being approximately 45,000 acres.

b. Release of these WSAs is only to the extent the lands within those areas were not included within the bill's wilderness designation(s). Total acreage released is based on the difference between the WSA acreage and the acreage designated as wilderness.

c. Release of these WSAs is only to the extent the lands within those areas were not included within the bill's wilderness designation(s). Acreage totals are not provided in the legislation.

Concluding Observations

Legislation is typically introduced in each Congress to add areas to the National Wilderness Preservation System. Many interests favor wilderness designations as a means of preserving the existing pristine nature of the areas; others oppose wilderness because it may prevent the development and use of the resources contained in the areas. Wilderness legislation commonly refers to the 1964 Wilderness Act for management direction, but many bills contain additional provisions with special guidance to allow limited, nonconforming access or infrastructure within the designated areas.

Appendix A. 112th Congress Wilderness Legislation

Table A-1 lists alphabetically the bills introduced in the 112th Congress to designate new wilderness areas. No new wilderness areas were created in the 112th Congress, for the first time since the 89th Congress (1965-1967). The only wilderness bill enacted into law (P.L. 112-97) removed 222 acres from wilderness designation.

Table A-1. 112th Congress: Bills to Designate Wilderness Areas

Bill Title	Bill No.	State	Acreage[a]	Most Recent Action
Alpine Lakes Wilderness Additions and Middle Fork Snoqualmie Rivers Protection Act	H.R. 608/ S. 322	WA	22,173 acres	H.R. 608 hearing 10/25/11 S. 322 reported 1/13/12
America's Red Rocks Wilderness Act of 2011	H.R. 1916/ S. 979	UT	9,174,040 acres	H.R. 1916 introduced 5/13/11 S. 979 introduced 5/12/11
Angeles and San Bernardino National Forests Protection Act	H.R. 113	CA	18,208 acres[b]	Hearing 10/25/11
Beauty Mountain and Agua Tibia Wilderness Act of 2011	H.R. 41 S. 1574	CA	21,431 acres	Hearing 10/25/11 S. 1574 introduced 9/19/11
California Desert Protection Act of 2011	S. 138	CA	394,441 acres[c]	Introduced 1/25/11
Cathedral Rock and Horse Heaven Wilderness Act of 2011	S. 607	OR	7,375 acres[d]	Hearing 5/18/11
Central Idaho Economic Development and Recreation Act	H.R. 163	ID	332,928 acres	Introduced 1/5/11
Colorado Wilderness Act of 2011	H.R. 2420/ H.R. 2922	CO	699,128 acres 735,650 acres	H.R. 2420 introduced 7/6/11 H.R. 2922 introduced 9/14/11
Devil's Staircase Wilderness Act of 2011	H.R. 1413/ S. 766	OR	30,540 acres	H.R. 1413 hearing 10/25/11 S. 766 reported 1/13/12
Eagle and Summit Counties Wilderness Preservation Act	H.R. 1701	CO	81,790 acres	Introduced 5/3/11
Forest Jobs and Recreation Act of 2011	S. 268	MT	666,260 acres	Hearing 5/25/11
Los Padres Conservation and Recreation Act of 2012	H.R. 4109	CA	63,576 acres	Hearing 6/28/12
Maine Coastal Islands Wilderness Act of 2011	H.R. 2984	ME	3,256 acres	Hearing 3/29/12
Manzano Mountain Wilderness (no official title)	H.R. 490	NM	(unspecified)	Hearing 10/25/11
Northern Rockies Ecosystem Protection Act	H.R. 3334	[e]	3,680,000 acres	Introduced 11/3/11
Olympic National Park Wilderness (no official title)	H.R. 3222	WA	4,126 acres[f]	Hearing 12/2/11
Olympic National Park Wilderness (no official title)	H.R. 1162	WA	(222 acres)[g]	P.L. 112-97

Bill Title	Bill No.	State	Acreage[a]	Most Recent Action
Organ Mountains—Dona Ana County Conservation and Protection Act	S. 1024	NM	241,200 acres	Hearing 8/3/11
Pine Forest Range Recreation Enhancement Act of 2011	H.R. 3377/	NV	26,000 acres	H.R. 3377 hearing 3/8/12
	S. 1788			S. 1788 hearing 3/22/12
Pinnacles National Park Act	H.R. 3641/	CA	2,905 acres 2,715 acres	H.R. 3641 Passed House 7/31/12; Passed Senate 12/30/12[h]
	S. 161			S. 161 hearing 5/11/11
Rio Grande del Norte National Conservation Area Establishment Act	H.R. 1241/	NM	21,420 acres	H.R. 1241 hearing 3/29/12
	S. 667			S. 667 reported 1/13/12
Rocky Mountain Front Heritage Act of 2011	S. 1774	MT	67,112 acres	Hearing 3/22/12
Rogue Wilderness Expansion Act of 2011 (H.R. 3436 has no official title)	H.R. 3436/	OR	58,100 acres 60,000 acres	H.R. 3436 hearing 3/8/12
	S. 2001			S. 2001 hearing 3/22/12
San Juan Mountains Wilderness Act of 2011	S. 1635	CO	33,200 acres	Hearing 3/22/12
Sleeping Bear Dunes National Lakeshore Conservation and Recreation Act	H.R. 977/	MI	32,557 acres	H.R. 977 hearing 10/25/11
	S. 140			S. 140 passed 12/30/12
Tennessee Wilderness Act of 2011	S. 1090	TN	19,556 acres	Reported 1/13/12
Tumacacori Highlands Wilderness Act	H.R. 6609	AZ	70,000 acres	Introduced 11/30/12
Udall-Eisenhower Arctic Wilderness (S. 33 has no official title)	H.R. 139/	AK[i]	1,559,538 acres	H.R. 139 introduced 1/5/11
	S. 33			S. 33 introduced 1/25/11
Wasatch Wilderness and Watershed Protection Act	H.R. 4267	UT	15,541 acres	Introduced 3/27/12
Wovoka Wilderness	S. 3701	NV	48,000 acres	Introduced 12/20/12

Source: CRS acreage calculation is based on the amounts indicated in the pertinent legislation.

Notes: Excludes legislation with minor boundary adjustments of wilderness areas.

a. Estimated acreage as identified in the latest version—as introduced, reported, passed, or enacted.

b. The Forest Service has estimated the area as 17,724 acres.

c. Total includes 48,333 acres of potential wilderness in four areas.

d. Designates as potential wilderness, and converts to wilderness upon acquisition of additional lands.

e. Designates land in Idaho, Montana, Oregon, Washington, and Wyoming.

f. Includes 15 acres of potential wilderness.

g. Removed 222 acres of designated wilderness from the National Wilderness Preservation System and transferred right, title, and interest to be held in trust by the United States for the benefit of the Quileute Indian Tribe in the state of Washington.

h. The provision designating additional wilderness areas was removed prior to passage. The passed bill changed the name of the Pinnacles Wilderness to the Hain Wilderness.

i. Designates land in the Arctic National Wildlife Refuge.

Appendix B. 112th Congress: Border Security Bills Affecting Wilderness

The National Security and Federal Lands Protection Act (H.R. 1505) would have allowed "immediate access" for border security activities on Forest Service and Interior lands, "including access to maintain and construct roads, construct a fence, use vehicles to patrol, and set up monitoring equipment." The act also explicitly would have applied the April 1, 2008, waiver of the Secretary of Homeland Security (under Section 102(c)(1) of P.L. 104-208) for border security actions within 100 miles of the border from many federal land and resource management and protection laws, including the Wilderness Act.

The Border Security Enforcement Act of 2011 (H.R. 1507 and S. 803) also addressed border security and wilderness by directing the Secretaries of Agriculture and the Interior to "authorize and provide ... immediate access to Federal lands for security activities, including (I) routine motorized patrols; and (II) the deployment of temporary tactical infrastructure." This would apply to all federal lands, including designated wilderness areas, within 150 miles of the border.

The FY2012 Homeland Security authorization bill (H.R. 3116, §606) would have authorized routine motorized patrols and deployment of temporary tactical infrastructure by U.S. Customs and Border Protection, "notwithstanding any other provision of law." This provision would have applied to all federal lands, including wilderness areas, within 150 miles of the southwest border. Similar legislation in the Senate (S. 1546, §513) would have authorized routine motorized patrols within 100 miles of Mexican border.

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