

Land and Water Conservation Fund: Processes and Criteria for Allocating Funds

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Land and Water Conservation Fund: Processes and Criteria for Allocating Funds

The Land and Water Conservation Fund (LWCF) Act (54 U.S.C. §§200301 et seq.) was enacted to help ensure access to outdoor recreation to promote the health of U.S. citizens. The law created the LWCF to implement this goal. Under the LWCF Act, the fund accrues \$900 million annually in revenues, with nearly all derived in recent decades from offshore oil and gas leasing. Through FY2020, these revenues were available only if appropriated in subsequent law (i.e., discretionary spending). The Great American Outdoors Act (P.L. 116-152) makes the \$900 million mandatory spending beginning in FY2021. The LWCF receives *additional* revenue under the Gulf of Mexico Energy Security Act of 2006 (GOMESA, 43 U.S.C. §1331 note); this revenue also is mandatory spending. Under the LWCF Act and GOMESA combined, there is a maximum of \$1,025.0 million in mandatory spending for LWCF programs for most years.

The LWCF Act sets out purposes for which the fund can be used. These include land acquisition by the four major federal land management agencies—Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), and Forest Service (FS)—and a program that provides outdoor recreation grants to states. In addition, the fund has been used for other programs. For instance, for about two decades, the LWCF has funded the Forest Legacy Program (FLP, 16 U.S.C. §2103c), which provides financial assistance to states to conserve privately owned forest lands threatened with conversion, and financial assistance under Section 6 of the Endangered Species Act (ESA, 16 U.S.C. 1535). Financial assistance under Section 6 of the ESA is sometimes referred to as Cooperative Endangered Species Conservation Fund grants. P.L. 116-152 prescribes a procedure for allocating the \$900 million among programs. Under the procedure, the President is to specify—generally as part of the annual budget submission to Congress—how the monies would be allocated among accounts, programs, and projects. P.L. 116-152 also provides that appropriations acts may specify an “alternate allocation.” Under GOMESA, the appropriations are used only for outdoor recreation grants to states.

The allocation of LWCF funds among agencies, programs, and states has been a topic of congressional interest. Congress has determined the total amount and type of appropriations for the LWCF, established funding allocation criteria and methods, created and amended programs that receive LWCF funding, and overseen agency administration of LWCF-funded programs and expenditures of related funds.

Agencies that administer LWCF-funded programs use different processes and criteria for prioritizing and allocating appropriations. These processes and criteria are based on statutes; distribution formulas; and programmatic, agency, and state priorities, among other factors. For land acquisition, the agencies identify priorities through selection processes that typically progress through the field, regional, and headquarter offices. In evaluating acquisition project requests from the field, regional and headquarter offices typically rank and score requests based on selected criteria, such as significance, urgency, management efficiencies, preservation, recreational value, and species and habitat. For outdoor recreation grants to states, the Secretary of the Interior allocates total funding for traditional/formula grants among states. Each state generally awards its traditional/formula grant monies based on its own plans, priorities, and selection criteria, and NPS awards competitive grants based on grant announcements that prioritize urban and disadvantaged areas. For the FLP, FS provides grants to states for projects selected through a competitive process, which requires state approval and then federal approval and ranking. For financial assistance under Section 6 of the ESA, FWS makes grants to states and territories through a combination of formula, national, and regional allocation processes.

Throughout the LWCF’s history, varying amounts of LWCF appropriations have been allocated for use in each state. The variation stems from diverse program requirements in law, agency mission statements, and state priorities; the extent of federal lands and types of resources on lands; and other factors.

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Introduction

The Land and Water Conservation Fund (LWCF) Act of 1965 was enacted to help preserve, develop, and ensure access to outdoor recreation to foster the health of U.S. citizens. The law created the LWCF in the U.S. Department of the Treasury as a funding source to implement its outdoor recreation goals. The fund accrues revenues from multiple sources. Monies in the fund are mandatory spending, allocated among a variety of purposes.

This report first identifies the LWCF's revenue sources and discusses the mandatory nature of the appropriations from the fund. It next identifies the purposes for which the LWCF can be used. It focuses on the two primary purposes that are set out in the LWCF Act—(1) land acquisition by federal agencies and (2) outdoor recreation grants to states. It also focuses on two other programs that have received appropriations from the LWCF for about two decades—(1) the Forest Legacy Program (FLP) and (2) financial assistance under Section 6 of the Endangered Species Act (ESA). The latter program is sometimes referred to as Cooperative Endangered Species Conservation Fund (CESCF) grants.

This report then sets out the method for allocating LWCF appropriations among the fund's main purposes. For each of these purposes, the report describes the processes and criteria for prioritizing and using appropriations from the LWCF. The processes and criteria differ based on statutes; distribution formulas; and programmatic, agency, and state priorities; among other factors. The report concludes with a discussion of why LWCF funding has varied widely among states since the LWCF's origin.

In recent years, the allocation of LWCF funds among agencies, programs, and states has been a topic of congressional interest. Congress has several roles related to the allocation of LWCF funds. These roles include determining the total amount and type of appropriations for LWCF programs through enactment and amendment of statute. For instance, under the LWCF Act, Congress set the appropriations at \$900 million annually. Previously, the monies had been discretionary, as discussed in the next section. More recently, through enactment of the Great American Outdoors Act (P.L. 116-152), Congress amended the LWCF Act to permanently appropriate the \$900 million (i.e., mandatory appropriations). Congress also has established methods of allocating LWCF funds, as per the allocation method set out in P.L. 116-152. (See herein “Amendments in the Great American Outdoors Act” under “Allocation of LWCF Funds Among Purposes.”) Further, through statute, Congress has established programs and activities which receive LWCF funding. Congress may add, alter, or abolish such programs or change their eligibility for LWCF monies. The outdoor recreation grants to states program, for instance, is established in statute and has been amended over time. Further, Congress oversees agency management of programs that receive LWCF funding and agency expenditures of LWCF appropriations.

Sources of Revenue and Mandatory Spending¹

The LWCF Act provides for \$900 million in specified revenues to be deposited annually into the LWCF.² Under these provisions, the fund accumulates revenues of \$900 million annually from three sources: (1) surplus property sales; (2) the federal motorboat fuel tax; and (3) revenue from

¹ Bill Heniff, Jr., Analyst on the Congress and Legislative Process, contributed to discussions in this report on the operation of the Land and Water Conservation Fund (LWCF).

² 54 U.S.C. §200302(b),(c).

oil and gas leases on the outer continental shelf (OCS). Since the early 1990s, nearly all revenues deposited in the LWCF have been from OCS receipts.

Through FY2020, the \$900 million in revenues that accrued to the LWCF were authorized to be appropriated each year but were available only if appropriated in subsequent law (generally, in annual appropriations acts), which was considered discretionary spending. The Great American Outdoors Act (P.L. 116-152) makes the \$900 million in annual deposits into the LWCF available for obligation without further legislative action beginning in FY2021, thus permanently appropriating the \$900 million each year. Such permanent appropriations are categorized as mandatory spending.

In addition to the \$900 million under the LWCF Act, the LWCF receives other revenue from OCS leasing under the Gulf of Mexico Energy Security Act of 2006 (GOMESA, 43 U.S.C. §1331 note).³ GOMESA specifies that this revenue is mandatory spending, not subject to annual appropriation by Congress. GOMESA further specifies that this revenue is to be in addition to any appropriations under the LWCF Act, available until expended, and used only for grants to states for outdoor recreation purposes.⁴ Under GOMESA, states can receive a maximum of \$125.0 million annually in mandatory funding (except in FY2021 and FY2022, when the maximum is \$162.5 million). Thus, a maximum of \$1,025.0 million in mandatory spending for LWCF programs generally is available each year under the LWCF Act and GOMESA combined.

Land and Water Conservation Fund Purposes

The LWCF Act mandates that, of the total made available through appropriations or deposits under GOMESA, not less than 40% is to be used for “federal purposes,” and not less than 40% is to be used to provide “financial assistance to states.”⁵ The LWCF Act sets out the federal purposes for which the President is to allot the appropriations from the fund “unless otherwise allotted in the appropriation Act making them available.”⁶ The primary federal purpose is acquisition of land by federal agencies. In particular, the LWCF is a principal funding source for land acquisition by the four major federal land management agencies (FLMAs): Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS)—all in the U.S. Department of the Interior (DOI)—and Forest Service (FS) in the U.S. Department of Agriculture (USDA). The LWCF can be used to purchase titles to lands or interests in lands.⁷ The LWCF Act generally permits the use of appropriations only for acquisitions that have been previously authorized by law.⁸ In 2019, Congress amended the federal purposes to specify that a certain amount or percentage of each year’s LWCF appropriations is to be used for land acquisitions that foster access to federal land for recreational purposes.⁹

³ P.L. 109-432, Division C, §105. For current law, see 43 U.S.C. §1331 note.

⁴ P.L. 109-432, Division C, §105(a),(e). For current law, see 43 U.S.C. §1331 note.

⁵ 54 U.S.C. §200304(b).

⁶ 54 U.S.C. §200306.

⁷ Purchase of title sometimes is referred to as “purchase of lands in fee” and means full ownership. An interest in lands is something less than full ownership, such as an easement or mineral, timber, or water rights.

⁸ However, the act allows LWCF appropriations to be used for pre-acquisition work where “authorization is imminent and where substantial monetary savings could be realized.” 54 U.S.C. §200306(b).

⁹ This change is in P.L. 116-9, §3001, as codified in 54 U.S.C. §200306(c). Specifically, the LWCF Act directs that of the amounts appropriated annually—not less than 3% or \$15.0 million, whichever is greater—is to be used for acquisitions that foster recreational access. To this end, the agencies must develop priority lists of acquisitions to facilitate access for hunting, fishing, recreational shooting, or other outdoor recreation purposes.

Under the heading “financial assistance to states,” the LWCF Act sets out a program that provides grants to states for outdoor recreation. It addresses how the Secretary of the Interior is to allocate among states the appropriations for these state grants.¹⁰ It also identifies the purposes for which states can use the grants: planning, acquisition, and development. The grants described in the LWCF Act sometimes are referred to as “traditional” or “formula” state grants.¹¹ In addition, there are “competitive” state grants, although the LWCF Act does not explicitly authorize a competitive grant program. Instead, beginning in FY2014, competitive grants from the LWCF have been supported and funded through appropriations laws. As noted, appropriations under GOMESA are used only for grants to states for outdoor recreation, and they have been provided for only the traditional/formula grants.

In addition to federal land acquisition and outdoor recreation grants to states, appropriations laws have provided funding from the LWCF for selected “other” federal programs and types of grants.¹² For example, for about two decades, LWCF funds have been appropriated annually for grants under the FLP and Section 6 of the ESA (i.e., CESCO grants), although these programs are not explicitly referenced in the LWCF Act. The FLP, administered by FS, provides matching grants to states for acquisition of lands or easements to preserve privately owned forest lands threatened by conversion to nonforest uses. The CESCO, administered by FWS, is authorized under Section 6 of the ESA. It provides grants to states and territories for species and habitat conservation actions on nonfederal lands.

Amendments in the Great American Outdoors Act

In 2020, P.L. 116-152 amended the LWCF Act related to the purposes for which the fund can be used. It provided that the mandatory spending would be available “to carry out the purposes of the Fund (including accounts and programs made available from the Fund pursuant to the Further Consolidated Appropriations Act, 2020 (P.L. 116-94; 133 Stat. 2534)).” There are two parts to this provision. First, the “purposes of the Fund” would include those set out in the LWCF Act. As noted above, the LWCF Act provides that the fund is generally available for the purposes of federal land acquisition and grants to states for outdoor recreation and may be allotted (for other federal purposes) in appropriations acts.

Second, the provision specified that the mandatory spending also may be used for “accounts and programs” for which appropriations were provided from the LWCF pursuant to P.L. 116-94.¹³ P.L. 116-94 contains appropriations from the LWCF for programs not explicitly referenced in the LWCF Act, including

- the FLP, from appropriations for FS’s State and Private Forestry account;
- Section 6 of the ESA from appropriations under FWS’s CESCO account;

¹⁰ 54 U.S.C. §200305.

¹¹ Hereinafter these grants are referred to as “traditional/formula” grants.

¹² Appropriations from the LWCF for “other purposes” were first provided in FY1998 and have been provided each subsequent year (except FY1999). The monies have been directed to an array of activities related to natural resources beyond land acquisition and grants to states for outdoor recreation, as shown in CRS Report R44121, *Land and Water Conservation Fund: Appropriations for “Other Purposes”*, by Carol Hardy Vincent.

¹³ Appropriations from the LWCF were included in the Department of the Interior (DOI), Environment, and Related Agencies Appropriations Act, 2020 (P.L. 116-94, Division D).

- the American Battlefield Protection Program from appropriations for NPS's Land Acquisition and State Assistance account;¹⁴ and
- the DOI Appraisal and Valuation Services Office from appropriations for the DOI Departmental Offices account, Office of the Secretary.¹⁵

Allocation of LWCF Funds Among Purposes

The LWCF Act requires that the President's annual budget include "a comprehensive statement of estimated requirements during the ensuing fiscal year for appropriations from the Fund."¹⁶

Through FY2020, when appropriations under the LWCF Act were discretionary, the President's annual budget submission identified the agencies, accounts, and programs for which the President sought monies from the LWCF. These programs typically included land acquisition for each of the FLMAs. The budget submission for each agency usually listed the particular land parcels (or interests in lands) the agency sought to acquire. In recent years, the Administration sometimes has requested a portion of the federal acquisition funding for acquisitions that would facilitate access to federal lands for recreational purposes. Typically, the Administration also has requested LWCF funding for NPS to make outdoor recreation grants to states.¹⁷ In addition, for more than two decades, the Administration usually has requested LWCF appropriations for purposes other than land acquisition and outdoor recreation grants to states.

Congress has reviewed agency requests and has determined the total appropriation from the LWCF and the portion for each agency, account, and program. Appropriations laws typically have provided funds for land acquisition for each agency. In accompanying report language, Congress usually has identified the funding level for land acquisition projects sought by the Administration. Historically, appropriations laws also typically have contained funds for traditional/formula outdoor recreation grants; in recent years, these laws also have provided funding for competitive grants. As noted, traditional/formula grants began receiving mandatory spending after enactment of GOMESA. Finally, appropriations laws have provided funding for purposes other than land acquisition and outdoor recreation grants to states, as noted.

¹⁴ The American Battlefield Protection Program is codified at 54 U.S.C. §§308101 et seq. Though this program is not explicitly referenced in the LWCF Act, in recent years, Interior appropriations laws have provided for LWCF monies to fund the Battlefield Land Acquisition Grant Program. This program awards matching grants to state and local governments to acquire eligible battlefield land or interests in battlefield land. Additional information on the operation and funding of the American Battlefield Protection Program is contained in CRS In Focus IF11329, *American Battlefield Protection Program*, by Mark K. DeSantis; and NPS, "Battlefield Land Acquisition Program," at <https://www.nps.gov/subjects/battlefields/battlefield-land-acquisition-grant-program.htm>.

¹⁵ Though the DOI Appraisal and Valuation Services Office account is not explicitly referenced in the LWCF Act, in the past, LWCF appropriations sometimes have been used to fund the activities of this office. For instance, P.L. 116-94, Division D, appropriated \$10.0 million for this office. For an overview of the role and activities of this office, see DOI, "Appraisal and Valuation Services Office," at <https://www.doi.gov/valuationservices>.

¹⁶ 54 U.S.C. §200304(a).

¹⁷ In some years, the Administration has not sought funding for land acquisition projects or outdoor recreation grants to states as part of the annual budget submission. For instance, for FY2018-FY2021, the Trump Administration initially did not seek funds for individual land acquisition projects in the annual budget justifications to Congress. Congress subsequently directed the Administration to submit prioritized acquisition project lists for consideration during the appropriations process. For instance, the FY2020 Interior appropriations law directed that for FY2021, the Secretary of the Interior (for the three DOI agencies) and the Secretary of Agriculture (for the Forest Service [FS]) submit to the House and Senate Appropriations Committees "prioritized and detailed lists of Federal land acquisition projects ... that have been identified by each land management Agency." See P.L. 116-94, Division D, §427(a).

Amendments in the Great American Outdoors Act

P.L. 116-152 prescribes a procedure for allocating the \$900 million in annual LWCF deposits, which were made mandatory spending. Under the procedure, the President is to include “detailed account, program, and project allocations” for the full amount available, generally as part of the annual budget submission to Congress.¹⁸ However, the law also provides that subsequent appropriations acts may specify an “alternate allocation,” including “allocations by account, program, and project.”¹⁹ Further, if alternate allocations have not been enacted before “the Act making full-year appropriations for the Department of the Interior, Environment, and Related Agencies for the applicable fiscal year” has been enacted, the President would have the authority to allocate the available amount from the LWCF as the President determines. Similarly, if legislation containing alternate allocations of less than the available amount were enacted, the President would have the authority to allocate the remaining amount. P.L. 116-152 specifies that appropriations under the allocation procedure are to be consistent with provisions of the LWCF Act that direct a portion of funding to acquisitions fostering recreational public access. Finally, under the law, the President is to report to Congress annually on the “final” allocation of appropriations by account, program, and project, together with the status of obligations and expenditures.

Allocation Processes and Criteria: Land Acquisition by Federal Agencies

The agencies use different processes and criteria for prioritizing funds for each program funded by the LWCF, as noted. This section details the processes and criteria used by the FLMAs to prioritize requests for land acquisition with LWCF funds. It begins with an overview of the authorities of the FLMAs to acquire land.

Authorities for Agencies to Acquire Lands

The four FLMAs have varying standing authorities for land acquisition.²⁰ BLM has relatively broad authority under the Federal Land Policy and Management Act of 1976.²¹ By contrast, NPS has no general authority to acquire land (except in limited circumstances), although laws creating park units typically authorize NPS to acquire lands within their boundaries. Although FWS has various authorities to acquire lands, the agency often uses the Migratory Bird Treaty Act of 1929 because of the availability of mandatory funding through the Migratory Bird Conservation Fund.²² Many authorities govern the FS land acquisition process. Most broadly, the Secretary of

¹⁸ For FY2021, P.L. 116-152 requires the information to be submitted to Congress no later than 90 days after enactment. Enactment occurred on August 4, 2020.

¹⁹ P.L. 116-152, §3.

²⁰ In general, all four of the federal land management agencies (FLMAs) are authorized to accept land as gifts and bequests. In addition, each agency generally is authorized to use eminent domain—taking private property, through condemnation, for public use—while compensating the landowner. This practice is controversial, and the FLMAs rarely use it.

²¹ Federal Land Policy and Management Act of 1976, 43 U.S.C. §§1701-1781.

²² Migratory Bird Treaty Act, 16 U.S.C. §§703, et seq.

Agriculture can acquire lands within or contiguous to the proclaimed exterior boundaries of National Forest System (NFS) units.²³

Land acquisition by DOI agencies typically occurs within or adjacent to agency lands. All three DOI agencies have sizeable landholdings in Alaska and the 11 western states.²⁴ FWS and NPS each manage an additional several million acres in other states, whereas BLM manages relatively little land in other states. The NFS contains federal and nonfederal lands. In practice, FS land acquisition typically occurs within or adjacent to NFS units. One of the purposes of the NFS is to protect watersheds and water supplies, and NFS units are located mostly in forested areas, often in rural areas, mountains, and river headwaters.²⁵

In addition to the standing authorities, Congress has enacted various laws to authorize and govern specific land acquisitions by the FLMAs. Numerous other authorities also guide the land acquisition process. These authorities include laws; regulations; department and agency-specific strategic plans and objectives; and guidance in agency manuals, handbooks, memoranda, and other sources. For example, one authority generally requires federal agencies to offer market value when acquiring lands.²⁶ A comprehensive review and discussion of all relevant sources is beyond the scope of this report.²⁷

Common Acquisition Criteria in the LWCF Act

Each year, the four FLMAs typically seek appropriations from the LWCF for acquisitions reflecting agency-specific priorities.²⁸ Agencies identify their priorities through selection processes that typically progress through the field, regional, and headquarter offices. Land acquisition projects that are selected by headquarters generally have been reviewed at the department level and by the Office of Management and Budget before being included in annual budget requests to Congress.

Over time, the FLMAs have developed and used their own criteria to identify and prioritize acquisition project requests. In 2019, Congress amended the LWCF Act to establish common

²³ Currently, new National Forest System units can be created only by law.

²⁴ The 11 western states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

²⁵ For additional discussion of the authorities of the four agencies to acquire land, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, by Carol Hardy Vincent et al. For information on the amount and location of federal land managed by each of the four FLMAs, see CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent and Laura A. Hanson.

²⁶ 43 C.F.R. §24.102(d); and The Appraisal Foundation, *Uniform Appraisal Standards for Federal Land Acquisitions*, 2016, pp. 89-90, at <https://www.justice.gov/file/408306/download>.

²⁷ In discussing each agency's policies, criteria, and processes for acquiring land, the omission of a particular policy should not be understood to mean the lack of a particular policy. For instance, all four FLMAs typically acquire land from willing sellers, though this is not discussed in the summary for each agency.

²⁸ These acquisitions sometimes are referred to as "core" acquisitions. For some years in the past decade, the four agencies also requested funds for "collaborative" land acquisition projects. Under the collaborative process, DOI and FS together identified high-priority landscapes of shared interest in conservation and land acquisition. Initially, a federal Technical Advisory Committee evaluated and scored landscape proposals based on four criteria: process, outcomes, urgency, and contribution to national priorities. Next, a National Selection Committee made final recommendations to the Secretaries. This committee considered various factors, such as opportunities to leverage funds, strength of partnerships and local support, and Administration priorities.

criteria for the agencies to take into account in considering which lands to acquire with monies from the LWCF.²⁹ As amended, the LWCF Act currently specifies seven criteria:

1. significance of the acquisition;
2. urgency of the acquisition;
3. management efficiencies;
4. management cost savings;
5. geographic distribution;
6. threats to the integrity of the land; and
7. recreational value of the land.

In addition to the criteria in the LWCF Act, agencies use other criteria and processes for prioritizing requests for land acquisition funding, as discussed below.

Agency-Specific Acquisition Criteria³⁰

Each agency has developed a process and criteria for requesting land acquisition funds based on the laws and policies under which it operates, priorities of the Administration, and other factors. Agency-specific procedures and criteria have evolved over time. The summaries below are based on FY2021 guidance for each of the FLMAAs.³¹ They focus on the criteria for developing priority lists of land acquisitions to be funded from the LWCF.³²

Bureau of Land Management³³

For FY2021, land acquisition project requests from BLM field offices were reviewed by BLM state offices, with each state office selecting priority projects for further evaluation at the national (headquarters) level. BLM land acquisition selections were guided by broad DOI-wide

²⁹ P.L. 116-9, §3001, codified at 54 U.S.C. §200306(d).

³⁰ This section focuses on “core” acquisitions. In addition to the processes described in this section, the agencies may use other processes and criteria for acquisitions that would enhance access to federal lands for recreational purposes and/or for acquisitions they regard as “emergencies,” “hardships,” or other time-sensitive acquisitions. Time-sensitive acquisitions might arise, for instance, when properties come up for sale unexpectedly, such as following the death of the landowner, and thus were not included in the agencies’ annual core prioritization processes. Each agency typically receives an appropriation for such time-sensitive situations, which is allocated thereafter by the agency. For recreational access, the LWCF Act requires the agencies to develop priority lists of projects but does not outline a particular process for doing so. See 54 U.S.C. §200306(c).

³¹ For the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and FS, the guidance explicitly pertains to FY2021. For the National Park Service (NPS), though the guidance documents identify FY2019 in their titles, the agency confirmed with CRS (by email on April 15, 2020) that this guidance was used for FY2021 as well. The guidance for FY2021 was developed prior to the enactment of P.L. 116-152, which provides mandatory spending from the LWCF for land acquisition. It is unclear if (or how) agencies might amend their guidance because of the change from discretionary to mandatory appropriations.

³² For additional information on the processes and criteria used by the four agencies, see U.S. Government Accountability Office, *Land and Water Conservation Fund: Variety of Programs Supported, but Improvements in Data Collection Needed at BLM*, GAO-19-346, May 2019, pp. 12-29.

³³ Information on the BLM process and criteria for requesting and selecting land acquisition projects is derived from BLM, Instruction Memorandum 2019-040, Congressional Technical Assistance Response for Fiscal Year 2021 Land and Water Conservation Fund Core Project Submissions and Fiscal Year 2020 Land and Water Conservation Fund Recreational Access Submissions, (and attachments), July 12, 2019, at <https://www.blm.gov/policy/im-2019-040> (hereinafter BLM, IM 2019-040). This report includes selected information on the BLM process and criteria. For more complete information, see the BLM website at <https://www.blm.gov/>.

priorities—such as to create a conservation stewardship legacy, ensure tribal sovereignty, and protect people and the border—and by secretarial priorities on topics including outdoor recreation and public access. Other guidance pertained to the availability of a willing seller and identification of acquisition priorities in BLM land-use plans. Further, under BLM policy, acquisitions were to be completed within three years of receiving an appropriation and could not exceed \$5.0 million without prior review by the relevant BLM state and BLM headquarters.³⁴

For each land acquisition request, the guidance required each BLM field office to submit a map and photos of the area and a project data sheet containing information on specific topics. These topics were to relate to certain resources and values, such as the extent to which the acquisition would protect cultural and historic resources, reduce unwanted wildfires, conserve habitats or species, benefit water quality and/or quantity, and support traditional uses on working lands (e.g., forestry, ranching, or farming).³⁵ Other topics were to focus on budgetary and administrative aspects of the proposed acquisition, such as the expected cost of the parcels, estimated operation and maintenance costs and savings, cooperators and partners, and acreage previously acquired and remaining to be acquired (for phased acquisitions involving multiple parcels). The field office also was to identify the congressional district in which the parcels were located.

The acquisition requests from BLM field offices were evaluated and ranked based on the extent to which they met certain criteria.³⁶

- *Public Access*: improves or increases access to BLM lands for hunting and fishing.
- *Opportunity*: increases opportunity for a variety of recreational uses and has community support for access.
- *Variety of Access*: provides for a variety of types of public recreation, both land- and water-based and motorized and nonmotorized.
- *Contribution*: has an outside contribution, including a nonmonetary contribution or transaction assistance.
- *State Directors' Ranking*: is ranked for acquisition by the BLM state director.³⁷

Fish and Wildlife Service³⁸

For FY2021, land acquisition project requests from FWS refuges were reviewed at the regional level, with each region selecting priority projects for further evaluation at the national (headquarters) level. A number of factors guided FWS land acquisition selections. They included Administration priorities, such as those expressed in secretarial orders to expand hunting, fishing,

³⁴ See BLM, IM 2019-040, Attachment 1, pp. 1-2, at <https://www.blm.gov/download/file/fid/33375>.

³⁵ See BLM, IM 2019-040, Attachment 2, at <https://www.blm.gov/download/file/fid/33376>.

³⁶ See BLM, IM 2019-040, Attachment 1, at <https://www.blm.gov/download/file/fid/33375>.

³⁷ This criterion was used for evaluation at the headquarters level.

³⁸ Information on the FWS process and criteria for requesting and selecting land acquisition projects is derived from FWS memoranda. See Memorandum from Cynthia Martinez, chief of the National Wildlife Refuge System, FWS, to regional refuge chiefs, FWS, "Request for List of Refuges with Potential Willing Sellers and Regional Recommendations for FY 2021 Land and Water Conservation Fund Funding," DOI, FWS, April 3, 2019; and Acting Chief, Division of Realty, FWS, to regional realty officers, FWS, "Obtaining Targeted Resource Acquisition Comparison Tool (TRACT) Assessments for the Fiscal Year 2021 Land and Water Conservation Fund Budget Process," DOI, FWS, April 9, 2019 (hereinafter FWS, TRACT Assessments for FY2021 Land and Water Conservation, April 9, 2019). This report includes selected information on the process and criteria. For more complete information, consult the FWS memoranda.

and recreation and to conserve western big-game winter range and migration corridors. Other factors included the availability of willing sellers, extent of congressional support, and regional information about wildlife habitat conservation needed to support conservation targets. In submitting refuge acquisition requests to headquarters, the guidance required each region to identify its top five projects and a cost per acre estimate for each of those projects.

Further, the acquisition requests proposed by FWS refuges were evaluated and prioritized based on how they would meet three biological criteria.³⁹

- *Recovery of Threatened and Endangered Species*: fosters prescribed acquisition in threatened or endangered species recovery plans.
- *Implementation of the North American Waterfowl Management Plan*: contributes toward achieving the waterfowl population objectives identified in related plans.
- *Conservation of Migratory Birds of Conservation Concern*: contributes toward achieving population objectives in related plans.

National Park Service⁴⁰

For FY2021, numerous laws, department and agency policies and priorities, and other factors guided NPS land acquisition selections.⁴¹ For each land acquisition request, the guidance required each park unit (or trail unit) to submit a request form containing a narrative summary and information on an array of variables. Park units seeking multiple acquisitions were to indicate the priority of each.

Land acquisition requests proposed by park units were scored and ranked at the NPS regional level and the national (headquarters) level, with each level focused on particular criteria. Regional level evaluations considered the criteria below.⁴²

- *Resource Threat*: describes the nature and imminence of potential harm to the lands.
- *Preservation of Resource*: sets out the importance, scarcity, and certain benefits of the resource.

³⁹ The evaluation based on these biological criteria is called the “Targeted Resource Acquisition Comparison Tool” (TRACT) biological assessment. See FWS, TRACT Assessments for FY2021 Land and Water Conservation, April 9, 2019.

⁴⁰ Information on the NPS process and criteria for requesting and selecting land acquisition projects is derived from NPS memoranda provided by NPS to CRS. As noted, although the document titles specify FY2019, this guidance also was used for FY2021, according to NPS. The memoranda include the following: “Instructions for Use of the National Park Service Land Acquisition Ranking System (LARS) FY 2019”; “Instructions for Use of the National Park Service Land Acquisition Ranking System (LARS) for Fiscal Year 2019 to be Used by the Submitting Park or Trail Unit” (hereinafter “Instructions for Use of NPS LARS for FY2019: Submitting Park or Trail Unit”); “Instructions for Use of the National Park Service Land Acquisition Ranking System (LARS): to be Used by the Regional Representatives” (hereinafter “Instructions for Use of NPS LARS: Regional Representatives”); and “Instructions for Use of the National Park Service Land Acquisition Ranking System (LARS): to be Used by the WASO Land Resources Division FY2019” (hereinafter “Instructions for Use of NPS LARS: WASO Land Resources Division FY2019”). This report includes selected information on the process and criteria. For more complete information, consult the NPS memoranda.

⁴¹ The NPS’s annual solicitation to the field for land acquisition projects did not specifically cite to agency guidance, however.

⁴² See “Instructions for Use of NPS LARS: Regional Representatives” and “Instructions for Use of NPS LARS for FY2019: Submitting Park or Trail Unit.”

- *Visitor Use Facility and Infrastructure Need*: demonstrates the necessity of acquisition for development of a structure or facility needed for visitor use or administrative purposes.
- *Commitment Made to Acquire*: addresses the extent of commitment to acquire the parcels (e.g., an owner-signed offer to sell).
- *Nonprofit/Partner Involvement*: identifies partners that can provide financial or other substantive support.
- *Continuity*: continues ongoing activities, such as a multiphased acquisition or an effort to connect species, ecosystems, or landscapes.
- *Recreation*: enhances recreational opportunities and has funding for recreational development.
- *Hardship*: addresses circumstances contributing to a landowner's need to sell, such as medical or financial circumstances.

National-level evaluations focused on additional criteria.⁴³

- *Legislative Authority*: conveys whether authority to acquire the parcel has been established or proposed.
- *Ability to Obligate Funds*: describes the pre-acquisition work that has been done (e.g., a land appraisal).
- *Current LWCF Funds*: identifies any carryover monies and matching funds if required.
- *Regional Priority*: awards points for projects that have been ranked by regions as priorities.
- *Current Economic Price Escalation Factor*: reflects the extent of inflation to land prices.
- *Congressional and Local Support*: summarizes the extent of support at the local and national levels, including from the congressional delegation.
- *Park Type*: awards points for types of park units that reflect the Administration's theme(s) during the budget cycle.
- *Out-Year Costs or Savings*: reflects costs or savings in operation, administration, and maintenance that would result from the acquisition.

Forest Service⁴⁴

For FY2021, land acquisition requests from FS forests (and other FS areas) were reviewed at the regional level, with each FS region selecting top-ranked projects for further evaluation by a panel at the national (headquarters) level. Broad agency guidance providing context for FS land acquisition selections included USDA-wide strategic goals, priorities of the FS chief, and FS strategic goals and plans.⁴⁵ Other objectives included priority for acquisitions that would

⁴³ See "Instructions for Use of NPS LARS: WASO Land Resources Division FY2019."

⁴⁴ Information on the FS process and criteria for requesting and selecting land acquisition projects is derived from FS, Lands and Realty Management, "LWCF Purchases," at <https://www.fs.fed.us/land/staff/LWCF/#LWCF>. This report includes selected information on the process and criteria. For more complete information, see the FS website.

⁴⁵ See FS, *2021 LWCF Core Criteria and Guidance (PDF)*, pp. 1-2, at https://www.fs.fed.us/land/staff/LWCF/Documents/2021_LWCF_Criteria_and_Guidance.pdf.

consolidate NFS lands within existing national forest boundaries and meet goals and objectives of FS resource management plans. A particular emphasis was on “demonstrating that land acquisition can support local economies, contribute to effective and efficient stewardship of national forests, support shared stewardship through partnerships, and help deliver excellent customer service.”⁴⁶

For each land acquisition request, the FS forest also was required to submit a land acquisition project sheet, map of the area, and other information. Further, the FS guidance indicated that “support letters from members of Congress, local officials, partners and stakeholders are strongly encouraged.”⁴⁷ The forest also was to identify the congressional district in which the acquisition was located.

Most FS regions were allowed to submit five land acquisition requests for review by headquarters. The Eastern Region and the Southern Region were each allowed to submit up to seven requests because the LWCF Act had required that outside of congressionally designated areas, not more 15% of the land added to the NFS could be west of the 100th meridian.⁴⁸ This provision pertaining to FS acquisitions west of the 100th meridian was repealed by P.L. 116-152.

FS LWCF acquisition requests were evaluated and ranked based on the extent to which they met specific criteria.⁴⁹

- *Recreation and Recreational Access*: creates or enhances opportunities for recreation and access to FS lands for recreation.
- *Watershed Protection/Climate Resilience*: contributes to watershed protection and restoration.
- *Threatened and Endangered Species and Habitat*: protects or restores habitat for endangered, threatened, or candidate species.
- *Tract Location*: has higher levels of protection such as congressionally designated areas (e.g., “wilderness”).
- *Connecting Communities/Partner Support*: evidences public support, partnerships, and community involvement.
- *Regional Ranking*: awards points based on specific regional goals and circumstances.⁵⁰
- *Operation and Maintenance*: contributes to cost savings or other quantifiable efficiencies.⁵¹

Additional criteria were evaluated at the headquarters level. They included whether the request was for the final phase of a multiphase acquisition, the area was ready to be acquired (e.g., whether an appraisal had been completed), anticipated appropriations levels, and unobligated balances of prior year appropriations for acquisition.⁵²

⁴⁶ See FS, *LWCF 2021 Reply Due Project Nominations Letter*, pp. 1-2, at <https://www.fs.fed.us/land/staff/LWCF/Documents/FY-2021-LWCF-Project-Nominations.pdf>.

⁴⁷ See FS, *LWCF 2021 Reply Due Project Nominations Letter*, p. 1.

⁴⁸ This provision had been codified at 54 U.S.C. §200306(a)(2)(B)(iii).

⁴⁹ See FS, *2021 LWCF Core Criteria and Guidance (PDF)*, pp. 3-7.

⁵⁰ This criterion is scored only at the regional level.

⁵¹ Of the listed criteria, only the operation and maintenance criterion is not scored.

⁵² See *2021 LWCF Core Criteria and Guidance (PDF)*, p. 8.

Allocation Processes and Criteria: Outdoor Recreation Grants to States

This section details the processes and criteria used for allocating LWCF funds for outdoor recreation grants to states. It contains an overview of the two types of outdoor recreation grants to states: (1) traditional/formula grants and (2) competitive grants. It describes how the Secretary of the Interior allocates total traditional/formula grant funding among states, how states award their traditional/formula grant monies, and how NPS awards competitive grants.

Introduction

A portion of the LWCF administered by NPS provides matching grants to states (including the District of Columbia and U.S. territories) for recreation planning, acquisition of lands and waters, and facility development.⁵³ Grants are provided for outdoor recreation purposes only, rather than for indoor facilities (e.g., community centers). As a condition for receiving grant funding, each state must develop a comprehensive statewide outdoor recreation plan.⁵⁴ This plan is to include an evaluation of the demand for and supply of outdoor recreation resources and facilities in the state and a program to implement the plan. It also must identify the state agency with authority to represent and act for the state in dealing with NPS (on behalf of the Secretary of the Interior).⁵⁵ The plan generally does not have to include specific projects. The LWCF Act requires the Secretary to approve plans; in practice, the Secretary has delegated this responsibility to NPS.

Under the traditional/formula grant program, the Secretary of the Interior (acting through NPS) divides the total appropriations among the states. Each state awards its appropriation through a statewide competition, selecting recreational projects based on the state's own plans, priorities, and criteria. States may receive competitive grants in addition to traditional/formula grants. Under the competitive program as developed by NPS, the service awards grants for urbanized areas meeting certain criteria, upon application by states.

Under both the traditional/formula and competitive grant programs, states may “sub-award” grants to state agencies, local units of government, and federally recognized Indian tribes. Additional information on traditional/formula and competitive grants is provided below.

Traditional/Formula State Grants

The LWCF Act directs the Secretary of the Interior to apportion appropriations for state grants under a formula process.⁵⁶ The formula calls for a portion of the appropriation to be divided equally among the states.⁵⁷ The remaining appropriation is to be apportioned based on need, as determined by the Secretary. Under law, the determination of need is to include the population of

⁵³ The territories specified in 54 U.S.C. §200301 are Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands. Acquisitions funded through LWCF state grants must remain in recreational use in perpetuity, unless the Secretary of the Interior approves the conversion of the land to another use and acceptable replacement lands are substituted.

⁵⁴ The LWCF Act refers to this plan as a “comprehensive statewide outdoor recreation plan.” However, the LWCF grant manual issued by NPS refers to the plan as the “statewide comprehensive outdoor recreation plan”; thus, the plan often is referred to by the acronym SCORP.

⁵⁵ 54 U.S.C. §200305(d).

⁵⁶ 54 U.S.C. §200305.

⁵⁷ 54 U.S.C. §200305(b). Specifically, the law provides that 40% of the first \$225.0 million, 30% of the next \$275.0 million, and 20% of all additional appropriations are to be apportioned equally among the states.

the state relative to the population of the United States, the use of outdoor recreation resources within a state by people outside the state, and the federal resources and programs within a state. In current practice, population is the biggest factor in determining state need. No state can receive more than 10% of the total appropriation. To be eligible for a grant, a state must prepare and update a statewide outdoor recreation plan.

Appropriations laws usually have not included directions to guide how traditional/formula outdoor recreation grants are to be distributed or spent in each state. Rather, each state has determined how to allocate its grant. States have up to three years to use the money—the federal fiscal year in which the apportionment is made and the next two fiscal years. It is rare for a state not to use the money during this time. Under law, the Secretary is to reapportion any amount that is not paid or obligated during the three-year period.

The states award their grant money through a competitive, open project selection process based on their recreation plans and their own priorities and selection criteria. They can use the money for state projects or for pass-through (e.g., to localities or tribes). States send their ranked projects to NPS for formal approval and obligation of grant money. Under law, payments to states are limited to 50% or less of a project's total costs. The remaining cost is borne by the state (or local) project sponsor.⁵⁸

Competitive State Grants

NPS also awards competitive state grants. Competitive grant projects must comply with the LWCF Act and other program requirements that apply to traditional/formula state grants (e.g., a nonfederal funding match and development of a comprehensive statewide outdoor recreation plan). They also must meet the specific objectives in the related grant announcements. As developed by NPS, competitive grants have focused on land acquisition and development for outdoor recreation in densely settled areas. Under a January 2020 grant announcement, the goals were to fund projects in urban areas (with 50,000 or more people) and neighborhoods or communities that are economically disadvantaged or underserved in terms of outdoor recreation opportunities.⁵⁹ Other priorities included creating jobs; stimulating local economic development; engaging and empowering communities in the development of projects; creating or expanding public-private partnerships, particularly to leverage resources; and coordinating among the public, government, and private sectors. Projects also were to meet the priority needs identified in comprehensive statewide outdoor recreation plans.⁶⁰

For each state, grant applications were to be submitted by the lead agency designated to implement the LWCF.⁶¹ Under the announcement, each state's lead agency could nominate up to four projects to NPS for consideration in the national competition. Project proposals were reviewed and evaluated based on a "pre-application." Grant pre-applications were to include

⁵⁸ For more information on the state grant program, including project selection by states, see DOI, NPS, *Land and Water Conservation Fund State Assistance Program: Federal Financial Assistance Manual*, October 1, 2008, at https://www.nps.gov/subjects/lwcf/upload/lwcf_manual.pdf; particularly, see Chapter 3, "Acquisition and Development Project Eligibility," and Chapter 6, "Application and Evaluation Procedures."

⁵⁹ See Grants.gov, "P20AS00029, Land and Water Conservation Fund Outdoor Recreation Legacy Partnership Program Round 4," January, 31, 2020, at grants.gov website at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=324077>; and Grants.gov, "Full NOFO for ORLP Round 4," p. 1, at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=324077>. Under the announcement, applications from state lead agencies were due to NPS by July 10, 2020.

⁶⁰ See "Full NOFO for ORLP Round 4," p. 4.

⁶¹ See a state contact list at NPS, LWCF, "Contact List," at <https://www.nps.gov/subjects/lwcf/contact-list.htm>.

certain elements,⁶² such as a letter of recommendation from the state, a standard form for federal grant applications, a description of the project and its costs, and maps. Optional information included photos of project areas and letters demonstrating public support.

Applications that met the basic eligibility requirements were to be reviewed and scored by two panels. A technical panel of NPS staff was to focus on the requirements stemming from the LWCF Act.⁶³

- *Project Alignment with Statewide Outdoor Recreation Plan and Other Applicable Plans*: advance the priority recreation needs and goals of the state.
- *Project Readiness*: show readiness to be implemented, likelihood of successful execution, and viability of the period of performance for project execution.
- *Applicant and Partner Capacity*: demonstrate the ability and likelihood of the project sponsor and partner to initially complete, then manage and sustain, the project area.
- *Viability and Reasonableness of Budget*: evidence eligibility and reasonableness of costs and firmness of funding commitment.
- *Partner Support and Leveraging*: involve partner support through money, supplies, land, and services, as well as financial leveraging of the federal share with nonfederal financial support.

A merit panel, which could include federal and nonfederal experts, was to assess the project's purposes, benefits, and relevance to the grant objectives through specified factors.⁶⁴

- *Recreational Access and Deficiencies*: improve physical and recreational access and addresses recreation deficiencies.
- *Recreation Service and Economic Opportunity for the Target Population*: enhance recreational opportunities for low - to moderate-income areas with recreational deficiencies and creates jobs and economic benefits in the community.
- *Project Engagement and Participation*: involve partnership among the project sponsor, community residents and organizations, and the private sector.
- *Innovation and Transformative Attributes*: exhibit innovation, especially in ways that can be transformative for revitalizing the community.

Ultimately, the reviews and scores of the two panels were to be used to produce a ranked list of projects for selection by NPS.

⁶² NPS requires pre-application projects that are selected to be updated and resubmitted as final applications. Final applications are to include additional documentation, such as information to substantiate the project's compliance with environmental, historic, and cultural laws.

⁶³ For additional information on the criteria and the NPS selection process, see "Full NOFO for ORLP Round 4," pp. 20-23.

⁶⁴ As noted above, additional information on the criteria and the NPS selection process is contained in "Full NOFO for ORLP Round 4," pp. 20-23.

Allocation Process and Criteria: Other Programs

This section details the processes and criteria used for allocating LWCF funds for the two main “other” programs that have been funded by the LWCF over the past two decades: (1) the FLP and (2) CESCO grants. For the FLP, this section describes how FS provides grants through a competitive process that requires state approval and then federal approval and ranking. For CESCO, it describes how FWS makes grants to states and territories.

Forest Legacy Program

The FLP, administered by FS, provides financial assistance to states to conserve privately owned forest lands.⁶⁵ As defined by the Cooperative Forestry Assistance Act, the term *state* includes all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the territories and possessions of the United States.⁶⁶ Under the FLP, FS awards grants to state partners (generally, state forestry agencies or the equivalent) to acquire lands or conservation easements to preserve private forests threatened by conversion to nonforest uses. As of 2019, FS reports that 49 states and three territories are enrolled in the FLP; approximately 2.8 million acres have been protected since the program was authorized in 1990.⁶⁷

The FLP is implemented primarily through the states, which generally acquire, hold, and administer the easements or land purchases—although the federal government also may do so. Under law, FLP grants are limited to 75% or less “to the extent practicable”; thus, they generally require at least 25% matching from nonfederal funding sources.⁶⁸ FS awards FLP grants through a two-tiered competitive process. This process involves a state-level project prioritization and selection process followed by a national project ranking and award process.

State Process

As a condition of enrollment in FS’s state and private forestry financial assistance programs, participating states are required to have a State Forest Stewardship Coordinating Committee (SFSCC) and a State Forest Action Plan (Plan).⁶⁹ To participate in the FLP, a state Plan must include specific components. The Plan must include an evaluation of current forest conditions and trends causing conversion of forest to nonforest uses.⁷⁰ The Plan also must define eligibility criteria that the state will use to delineate areas from which FLP projects can be nominated,

⁶⁵ As noted, the Forest Legacy Program (FLP) is codified at 16 U.S.C. §2103c. For additional information on the FLP, see CRS Report R45219, *Forest Service Assistance Programs*, by Anne A. Riddle and Katie Hoover.

⁶⁶ 16 U.S.C. §2109d(1).

⁶⁷ North Dakota is the only state not enrolled in the FLP. FS, *The Forest Legacy Program: Keeping Working Forests Working*, 2019.

⁶⁸ 16 U.S.C. §2103c(j).

⁶⁹ 16 U.S.C. §2101a, 16 U.S.C. §2113b. State forest action plans must contain a statewide assessment of forest resource conditions and a long-term statewide forest strategy.

⁷⁰ FS, “Forest Legacy Program Implementation Guidelines,” FS-1088, May 2017 (hereinafter, FS, Forest Legacy Guidelines).

known as Forest Legacy Areas (FLAs).⁷¹ These eligibility criteria derive from two general factors:

- *environmental importance*, which encompass one or more public values of the forest area, such as timber and other forest commodities, scenic resources, public recreation opportunities, riparian areas, or other ecological values; and
- *threat of conversion*, which encompass the likelihood the area will be converted to nonforest use.⁷²

Within these general factors, the state determines what specific criteria will be used for FLA designation. For instance, a state might use a combination of soil productivity, species richness, population density, and distance from roads as criteria to delineate FLAs.

Based on the criteria it selects, the state identifies specific areas for designation as FLAs, which require approval by FS. For each FLA, the Plan must identify how the FLA's public values could be protected or conserved and what governmental entity could hold lands or interests in lands in the FLA.⁷³ The Plan also must outline how the state would evaluate and prioritize individual project proposals. FS guidance specifies that the SFSCC may advise on these Plan components related to the FLP.⁷⁴

To nominate land for inclusion in the FLP, interested landowners may submit project proposals to the state.⁷⁵ The state reviews project proposals to ensure they are eligible for consideration (e.g., they are at least partially within an FLA, and the landowner is willing to sell or donate the interest in the land). If deemed eligible, the state would evaluate the proposal according to the procedure established in the Plan and, if desired, would assign the proposal a priority ranking. Each state may transmit up to three eligible projects for consideration at the national level annually. The SFSCC may contribute to reviewing and recommending projects at the state level.⁷⁶

National Process

After participating states submit projects, FS undertakes a national-level project ranking. The national ranking is based on the following criteria specified by the FS:⁷⁷

- *Importance*, or the potential public benefits from protecting the lands. Public benefits include environmental values and social and economic benefits, such as threatened and endangered species habitat and economic benefits from timber, watershed protection, public access, and others. Importance can be demonstrated by contribution toward federal initiatives, land designations, or the purposes of

⁷¹ 16 U.S.C. §2103c(e).

⁷² 16 U.S.C. §2103c(e) specifies that to be eligible, lands “shall have significant environmental values or shall be threatened by present or future conversion to nonforest uses.” Forest Legacy Area (FLA) boundaries must encompass forests; they also may include nonforest areas if they are an integral part of the landscape and are within the area's logical boundaries.

⁷³ In the case of federal ownership of the land, the state identifies what governmental entity would be given management responsibility for the land were it to be enrolled in the FLP. FS, Forest Legacy Guidelines.

⁷⁴ 16 U.S.C. §2103c(e); and FS, Forest Legacy Guidelines.

⁷⁵ 16 U.S.C. §2103c(f).

⁷⁶ FS, Forest Legacy Guidelines.

⁷⁷ FS, “Forest Legacy Program Project Scoring Guidance,” July 2020, at <https://www.fs.usda.gov/sites/default/files/fy-2022-flp-project-scoring-guidance-508c.pdf> (hereinafter, FS, FLP Project Scoring Guidance).

federal laws (such as protecting endangered species habitat or a national recreational trail) or by being generally aligned with the purposes of the FLP.⁷⁸

- *Threatened*, or the likelihood of the forest's conversion to nonforest uses, resulting in a loss of public benefits and forest values. Likelihood of conversion can be evaluated by considering adjacent land uses, land and landowner circumstances (e.g., aging landowner, land has been subdivided), existing protections (e.g., zoning, easements), and physical attributes of the area.
- *Strategic*, the ability of the project to contribute toward larger conservation goals. The strategic relevance of the project is evaluated by considering its relationship to other conservation goals, initiatives, or strategies at any level of governance (e.g., state, federal) and how the project complements other protected lands.⁷⁹

The national ranking is determined through a scoring procedure, where each project is assigned a numerical score for each of the three criteria. Numerical scores are based on how many attributes the project has within each criterion and whether the attributes are “significant and high quality.”⁸⁰ FS may consider other issues, such as any state priority ranking (if a state submitted more than one project) and state readiness and performance.

Cooperative Endangered Species Conservation Fund

Funding from the LWCF also has been used for certain activities authorized by the ESA. Section 6 of the ESA authorizes the Secretary of the Interior and the Secretary of Commerce to “cooperate to the maximum extent practicable with the [s]tates” to conserve threatened and endangered species and the ecosystems upon which they rely.⁸¹ As defined by the ESA and used in this section, *states* would be any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Commonwealth of Northern Mariana Islands.⁸² The authorities vested in the Secretaries of the Interior and Commerce under the ESA, including through Section 6, have been delegated to FWS in DOI and to the National Marine Fisheries Service (NMFS) within the National Oceanic and Atmospheric Administration in the Department of Commerce. Although both FWS and NMFS administer financial assistance programs under Section 6, typically only FWS financial assistance has received some of its funding from the LWCF.⁸³ As such, the remainder of this section focuses on programs administered by FWS.

⁷⁸ The National Trails System Act is codified at 16 U.S.C. §§1241-1251. For a full list of attributes considered under this criterion, see FS, FLP Project Scoring Guidance.

⁷⁹ FS, FLP Project Scoring Guidance.

⁸⁰ FS, FLP Project Scoring Guidance.

⁸¹ Section 6 of the ESA is codified at 16 U.S.C. §1535. Two purposes of the ESA at 16 U.S.C. §1531(b) are “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species.”

⁸² 16 U.S.C. §1532(17) and 50 C.F.R. §81.1(i) define *state* in the context of the ESA to be “any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.” The Trust Territory of the Pacific Islands has since terminated, and of the Trustees, only the Commonwealth of the Northern Mariana Islands (CNMI) is still in political union with the United States. For more information, see 48 U.S.C. §1681 and 48 U.S.C. §§1801 et seq.

⁸³ The National Marine Fisheries Service (NMFS) administers grants for species recovery, Atlantic salmon, and Pacific salmon. Funding for these programs is typically included within funding for Protected Resources Science and Management within NMFS Operations, Research, and Facilities appropriations.

In addition to authorizing technical and financial assistance to states, Section 6 establishes a funding source for financial assistance activities. This fund, administered by the FWS, is known as the CESCOF.⁸⁴ In recent years, funding for Section 6 financial assistance typically has been appropriated from both the LWCF and the CESCOF through annual discretionary appropriations bills.⁸⁵

Endangered Species Act, Section 6 Financial Assistance

FWS allocates Section 6 financial assistance to states through four grant programs, which are described in an FWS fact sheet:⁸⁶

- (Traditional) Conservation Grants, which “provide financial assistance to States and Territories to implement conservation projects for listed species and at-risk species. Funded activities include habitat restoration, species status surveys, public education and outreach, captive propagation and reintroduction, nesting surveys, genetic studies, and development of management plans.”
- Habitat Conservation Planning Assistance Grants, which “provide funds to States and Territories to support the development of Habitat Conservation Plans (HCPs) through support of baseline surveys and inventories, document preparation, outreach, and similar planning activities.”
- HCP Land Acquisition Grants, which “provide funding to States and Territories to acquire land associated with approved HCPs. Grants do not fund the mitigation required of an HCP permittee; instead, they support land acquisition by the State or local governments that complement mitigation.”
- Recovery Land Acquisition Grants, which “provide funds to States and Territories for the acquisition of habitat for endangered and threatened species in support of draft and approved recovery plans. Acquisition of habitat to secure long-term protection is often an essential element of a comprehensive recovery effort for a listed species.”

In recent years, funding for these grant programs has been provided from both the LWCF and the CESCOF pursuant to annual discretionary appropriations laws. Typically, the amount in the law appropriated from the LWCF has equaled the amounts in accompanying funding tables for grants for HCP land acquisition and recovery land acquisition. Similarly, the amount in the law appropriated from the CESCOF typically has equaled the amounts in accompanying funding tables

⁸⁴ 16 U.S.C §1535(i). The amount of funding deposited in the Cooperative Endangered Species Conservation Fund (CESCOF) is determined pursuant to statute: 16 U.S.C §1535(i)(1) and 16 U.S.C. §1540(d). Division D of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2020 (P.L. 116-94) appropriated funding “to carry out section 6 of the [ESA]” with funds from the LWCF and CESCOF under the heading of “Cooperative Endangered Species Conservation Fund.” In this report, the fund itself is referred to as the CESCOF, and financial assistance authorized under Section 6 is referred to as “Section 6 financial assistance.”

⁸⁵ For example, see P.L. 116-94, Division D. Although depositing funds into the LWCF and CESCOF is required by statute, in the past, allocating funds from both accounts for assistance under Section 6 of the ESA required further discretionary appropriations. P.L. 116-152 changed this for the LWCF, making LWCF appropriations mandatory beginning in FY2021. (A portion of the appropriations may be allocated for financial assistance under Section 6 of the ESA.) Allocations from the CESCOF continue to be made through discretionary appropriations (under 16 U.S.C §1535(i)).

⁸⁶ FWS, *Cooperative Endangered Species Conservation Fund Grants (Section 6 of the Endangered Species Act)*, September 2016, at <https://www.fws.gov/endangered/esa-library/pdf/section6.pdf>.

for program administration and grants for traditional conservation and habitat conservation planning assistance.⁸⁷

Section 6 of the ESA and the associated implementing regulations provide several requirements that states must meet to be eligible to receive Section 6 financial assistance.⁸⁸ First, each state must have an “adequate and active program for the conservation of various endangered and threatened species.”⁸⁹ Second, the state must have entered into a cooperative agreement with the Secretary of the Interior. Third, under law, grants generally are limited to up to 75% for projects in one state and 90% for projects undertaken by two or more states. State grant recipients are required to provide the remaining cost share, at minimum 25% or 10%, from nonfederal funding sources.⁹⁰

Section 6 financial assistance is awarded to states through a mixture of formula and national and regional competitive allocation processes,⁹¹ which can vary by grant type and location.⁹² In determining which eligible states are to receive funding, the Secretary of the Interior must consider⁹³

- the international commitments of the United States to protect endangered or threatened species;
- the readiness of a state to proceed with a conservation program consistent with the objectives and purposes of the ESA;
- the number of endangered and threatened species within a state;
- the potential for restoring endangered and threatened species; and
- the relative urgency to initiate a program to restore and protect an endangered or threatened species.

⁸⁷ For example, in FY2020, P.L. 116-94, Division D, Title I appropriated funding to FWS “[f]or expenses necessary to carry out section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535), \$54,502,000, to remain available until expended, of which \$23,702,000 is to be derived from the Cooperative Endangered Species Conservation Fund; and of which \$30,800,000 is to be derived from the Land and Water Conservation Fund.” The funding table in the accompanying explanatory statement identified the \$23.7 million from the CESCFC as divided among traditional conservation grants (\$13.0 million), habitat conservation planning assistance grants (\$8.0 million), and program administration (\$2.7 million). It also identified the \$30.8 million from the LWCF as divided between grants for species recovery land acquisition (\$11.2 million) and for habitat conservation planning land acquisition (\$19.6 million). See explanatory statement accompanying H.R. 1865 (enacted as P.L. 116-94) at House debate, *Congressional Record*, vol. 165, no. 204, book III (December 17, 2019), p. H11306.

⁸⁸ 16 U.S.C. §1535(d) and 50 C.F.R. Part 81.

⁸⁹ 16 U.S.C. §1535(c) and 50 C.F.R. §81.2.

⁹⁰ 16 U.S.C. §1535(d)(2) and 50 C.F.R. §81.8. The U.S. Virgin Islands, Guam, American Samoa, and the CNMI are exempt from grant-matching requirements up to \$200,000 under all FWS grant programs pursuant to a May 9, 2003, Director’s Memorandum. Also, see 48 U.S.C. §1469a.

⁹¹ For more information, see FWS, “Endangered Species: Grants|Grants Programs,” at <https://www.fws.gov/endangered/grants/grant-programs.html>.

⁹² For example, see FWS, “FY2020 Cooperative Endangered Species Conservation Fund (CESCF) Traditional Conservation Grants Program Notice of Funding Opportunity (Revised),” June 25, 2020, at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=326053>. Also, see FWS, Cooperative Endangered Species Conservation Fund (CESCF) Non-Traditional Grants (Habitat Conservation Plan (HCP) Planning Assistance, HCP Land Acquisition, and Recovery Land Acquisition Grants) (FY2019), March 15, 2019, at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=313856>.

⁹³ 16 U.S.C. §1535(d)(1).

Factors Affecting Allocations Among States

Throughout the LWCF's history, varying amounts of LWCF appropriations have been allocated for use in each state.⁹⁴ The variation among states generally stems from diverse requirements in law, other authorities governing each of the programs funded by the LWCF, the different allocation mechanisms used for those programs, agency mission statements, and the priorities of agencies and states. Other variables include the extent of federal lands, land values, and types of resources (e.g., species and habitats targeted for conservation), among others.

For each of the main purposes funded by the LWCF, there are a number of specific reasons why LWCF funding may differ among states. For federal land acquisition funding, one determinant may relate to the amount of federal lands in a state. In seeking monies to acquire lands, the four FLMAs often prioritize purchasing nonfederal lands within the boundaries of existing federal land units (inholdings) and nonfederal lands on the borders of existing federal land units (edge holdings). Therefore, states with relatively large amounts of federal lands may receive larger amounts of appropriations. A related determinant is the value of a potential land acquisition. Because acquisition generally is based on the fair market value of the parcels to be acquired, acquisition projects in more expensive real estate areas may necessitate higher amounts of appropriations. Another determinant is the specific agency mission statements or management requirements under law. For instance, acquisitions proposed by FWS refuges have been evaluated based on biological criteria related to threatened and endangered species, waterfowl population objectives, and conservation of migratory birds, among other variables. Accordingly, acquisition funding may be used in states with high-quality resources central to an agency's mission.

For the traditional/formula outdoor recreation grants to states program, funding differences among states derive from the components of the funding mechanism in law. Components of the LWCF Act ensure a share of funding for each state, provide that the remaining appropriation is apportioned by the Secretary of the Interior (through NPS) based on a determination of need, and set out some factors the Secretary is to consider in determining need. One of these factors is state population; in current practice, this has been the biggest factor in determining state need. For this reason, states with larger populations have tended to receive higher allocations of funding for traditional/formula outdoor recreation grants than less populous states. For competitive outdoor recreation grants to states, funding variations result from state prioritization of projects that would meet the criteria of the grant announcements. The criteria focus on recreational enhancements in urban areas that are economically disadvantaged or underserved in terms of outdoor recreational facilities.

Additional factors influence the variation in state-level LWCF funding for the other programs. For example, because it is intended to protect private forest land from development, funding for the FLP tends to be focused on states containing a certain amount of privately owned forest land (generally in the East) or states where there is more (or increasing) development pressure. The distribution of FLP funding among states also depends on the priorities selected by states for ranking at the national level. For the CESCO (Section 6 financial assistance under the ESA), state allocations are contingent upon several factors, including the various distribution formulas, programmatic priorities, and presence of species and habitats targeted for conservation.

⁹⁴ There has been no comprehensive agency source of LWCF funding by state since the origin of the LWCF in FY1965.

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