



Fish and Wildlife Service: FY2012 Appropriations and Policy

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July 21, 2011

Congressional Research Service

7-5700

www.crs.gov

R41928

Summary

The annual Interior, Environment, and Related Agencies appropriation funds agencies and programs in three federal departments, as well as numerous related agencies and bureaus. Among the more controversial agencies represented in the bill is the Fish and Wildlife Service (FWS), in the Department of the Interior. For FWS appropriations in FY2012, on July 12, 2011 the House Appropriations Committee approved H.R. 2584 (H.Rept. 112-151) containing \$1.19 billion for the agency, down 21% from the FY2011 level of \$1.50 billion. In discussing the motivation for the broad reductions, the Committee stated in its report that “Congress must take immediate action to put our nation’s fiscal house in order by reducing Federal spending, balancing the budget, and creating jobs to put our economy on a sustainable, healthy course for the future.”

For FWS, each account was reduced to some degree relative to the FY2011 level. A few accounts or subaccounts were proposed for zero funding: listing and critical habitat designation under the Endangered Species Program, portions of the land acquisition program for the National Wildlife Refuge System, portions of the Cooperative Endangered Species Conservation Fund (which funds grants to states for endangered species conservation), the Neotropical Migratory Bird Conservation Fund, and competitive state grants under the State and Tribal Wildlife Grants account.

This report analyzes the FWS funding levels contained in the FY2012 appropriations bill. Emphasis is on FWS funding for programs of interest to Congress, now or in recent years. Each of the related policy issues is explained in more detail in the report. Several current controversies over appropriations levels or funding restrictions are discussed in more detail, including elimination of funding for certain programs under the Endangered Species Act; funding levels for fish hatcheries, payments to counties in lieu of taxes, and land acquisition; and further restrictions concerning protection of gray wolves.

For FY2011, on April 14, 2011, the House and Senate both passed a full-year continuing appropriations measure, H.R. 1473, which was signed into law on April 15, 2011 as P.L. 112-10.

Contents

Introduction	1
Hot Topics	2
Endangered Species Funding.....	3
Wolf Delisting.....	5
National Wildlife Refuge System (NWRS) and Law Enforcement.....	6
Fisheries and Aquatic Resource Conservation.....	6
Cooperative Landscape Conservation and Adaptive Science.....	8
Land Acquisition.....	8
Wildlife Refuge Fund.....	9
Multinational Species and Neotropical Migrants.....	10
State and Tribal Wildlife Grants	10
For More Information	11

Tables

Table 1. Appropriations for the Fish and Wildlife Service (FWS), FY2010-FY2012.....	1
Table 2. Appropriations for Endangered Species and Related Programs, FY2010-FY2012.....	4
Table 3. Projected FWS Mitigation Expenses in FY2012 for Nine National Fish Hatcheries on Behalf of Water Project Agencies	8
Table 4. Multinational Species Conservation and Neotropical Migratory Bird Conservation Funds, FY2010-FY2012	10

Contacts

Author Contact Information	11
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Introduction

The annual Interior, Environment, and Related Agencies appropriations bill, H.R. 2584, funds agencies and programs in parts of three federal departments (Interior, Agriculture, and Health and Human Services), as well as numerous related agencies and bureaus, including the Environmental Protection Agency. Among the more controversial agencies represented in the bill is the Fish and Wildlife Service (FWS), in the Department of the Interior (DOI). This report analyzes FY2012 appropriations in a policy context, with reference to past appropriations.¹ For FWS in FY2012, the President requested \$1.69 billion (up 13% from FY2011); on July 12, 2012, the House Committee approved \$1.19 billion (down 21% from FY2011). (See **Table 1.**) All accounts and subaccounts were reduced relative to FY2011 levels, except one subaccount within Construction (for bridge and dam safety) which was increased by 0.2%.

By far the largest portion of the FWS annual appropriation is the Resource Management account, for which the House Committee approved \$1.10 billion for FY2012, down 12% from FY2011. Among the programs included in Resource Management are Endangered Species, the Refuge System, Law Enforcement, Fisheries, and Cooperative Landscape Conservation and Adaptive Science (formerly called Climate Change Adaptive Science Capacity).

Table 1. Appropriations for the Fish and Wildlife Service (FWS), FY2010-FY2012
(\$ in thousands)

Fish and Wildlife Service	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Comm.
Resource Management	1,269,406	1,244,861	1,271,867	1,099,055
—Ecological Services: Endangered Species	179,309	175,446	182,650	138,707
—Ecological Services: Habitat Conservation	117,659	112,524	118,442	78,442
—Ecological Services: Environmental Contaminants	13,987	13,316	13,825	11,825
—National Wildlife Refuge System	502,805	492,059	502,875	455,297
—Migratory Birds, Law Enforcement & International Conservation	134,640	128,224	130,048	122,048
—Fisheries and Aquatic Resource Conservation	148,214	138,939	136,012	128,343
—Cooperative Landscape Conservation and Adaptive Science	20,000	30,970	37,483	20,000
—General Operations	152,792	153,383	150,532	144,393
Construction	37,439	20,804	23,088	11,804
Land Acquisition	86,340	54,890	140,000	15,047
—Acquisitions: Federal Refuge Lands	62,785	35,374	108,990	0

¹ For more detail on the seven continuing resolutions approved before passage of a full-year appropriation for FY2011, and of other versions of the final full appropriation for FY2011, see CRS Report R41258, *Interior, Environment, and Related Agencies: FY2011 Appropriations*, coordinated by Carol Hardy Vincent.

Fish and Wildlife Service	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Comm.
—Highlands Conservation Act	4,000	0	5,000	4,000
—Inholdings, Emergencies, & Hardships	5,000	4,990	5,000	3,000
—Exchanges	2,000	1,996	2,000	0
—Acquisition Management	10,555	10,534	13,570	6,570
—User Pay Cost Share	2,000	1,996	2,000	1,477
—Refuge Land Protection Planning	0	0	3,440	0
Landowner Incentive Program (cancellation of prior year funds)	0	-4,941	0	0
Cooperative Endangered Species Conservation Fund	85,000	59,880	100,000	2,854
National Wildlife Refuge Fund	14,500	14,471	0	13,980
North American Wetlands Conservation Fund	47,647	37,425	50,000	20,000
Neotropical Migratory Bird Conservation Fund	5,000	3,992	5,000	0
Multinational Species Conservation Fund	11,500	9,980	9,750	7,875
State and Tribal Wildlife Grants	90,000	61,876	95,000	22,000
—State Grants (Formula-based)	78,000	49,900	67,000	20,000
—Competitive Grants for States, Territories, & Other Jurisdictions	5,000	4,990	20,000	0
—Tribal Grants	7,000	6,986	8,000	2,000
Total Appropriations	1,646,832	1,503,238	1,694,705	1,192,615

a. Includes effects of a 0.2% rescission of funds contained in §1119 of Title I, Division B, of P.L. 112-10.

Hot Topics

In the FY2012 FWS appropriations cycle several issues emerge in the House Committee bill:

- elimination of funding for the adding of new species to the list of those protected under the Endangered Species Act;
- elimination of funding for critical habitat designation;
- cuts in funding for fish hatcheries;
- restoration to near FY2011 levels for the National Wildlife Refuge Fund, a fund that provides payments in lieu of taxes to local governments for the presence of non-taxable refuge land – a program for which the President proposed no appropriation;
- elimination of annual funding for most land acquisition for the National Wildlife Refuge System; and
- response to the FY2011 legislative delisting of certain populations of gray wolves.

Each of the points above will be discussed in the appropriate account's section below. The discussion covers certain limitations included in the FY2012 House Committee bill as well.

Endangered Species Funding

Funding for the endangered species program is part of the Resource Management account, and is a perennially controversial portion of the FWS budget. The House Committee approved \$138.7 million, down 21% from the FY2011 level of \$175.4 million. The Administration's FY2012 request was \$182.6 million. (See **Table 2.**) In the Committee report, the absence of a reauthorization for the Endangered Species Act (ESA) was criticized, and statistics were cited on the low rate for recovery of listed species as evidence that the ESA has failed.² (Other observers hold that the continued existence of listed species in the face of mounting habitat loss and other perils is a more suitable measure of the act's success than recovery rates.³) Over half of the House Committee's reduction from FY2011 (\$20.9 million) came from elimination of funding for adding new species to the list of species protected under the ESA, and for the designation of new critical habitat for species. The language would allow action to delist species or to downlist species from endangered to threatened, although with no funding for the listing program it is not clear where funds would be available for such actions. The Committee's bill directed that

none of the funds shall be used for implementing subsections (a), (b), (c), and (e) of section 4 of the Endangered Species Act, (except for processing petitions, developing and issuing proposed and final regulations, and taking any other steps to implement actions described in subsection (c)(2)(A), (c)(2)(B)(i), or (c)(2)(B)(ii) of such section).

The last major congressional effort to end funding for the ESA occurred in the 104th Congress. The effort was based on a desire to eliminate a major source of conflict in projects by limiting the number of protected species and the levels of protection offered to those already listed. The expectation was that the scope of conflict nationwide would be reduced. However, because of the potential for untoward effects (see discussion of ESA consultation funding, below for an example), the effort was abandoned, although funding for listing new species was temporarily halted.⁴

The Committee bill reduced funding for consultation under Section 7 of the ESA by 14% from FY2011. Under Section 7, federal agencies are obliged to consult with FWS on their actions which may affect listed species, and obtain a biological opinion (BiOp) from FWS on whether the action might jeopardize the species. The BiOp may include reasonable and prudent alternatives for the agency action that would avoid jeopardy. Reduced funding for FWS to consult could delay federal actions, because the action agency might hesitate to open its actions to the citizen suit provisions of the ESA in the absence of the FWS BiOp.⁵

² H.Rept. 112-151, p. 9-10.

³ For a discussion of measures of success under ESA, see CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn, Kristina Alexander, and Eugene H. Buck.

⁴ P.L. 104-6. For a history of ESA funding in the 104th Congress, see Archived Issue Brief IB95003, *Endangered Species: Continuing Controversy*, by M. Lynne Corn.

⁵ The citizen suit provisions are contained in 16 U.S.C. 1540(g); they have been a major factor in enforcement of ESA. This description of Section 7 consultation is highly simplified. For a fuller explanation see CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn, Kristina Alexander, and Eugene H. Buck.

Because Section 15 (16 U.S.C. § 1542) authorizing ESA appropriations expired in FY1992, it is sometimes said that the ESA is not authorized. However, that does not mean that the agencies lack authority to conduct actions (Sections 4, 6-8, 10, and 11; 16 U.S.C. §§ 1533, 1535-1537, 1539 and 1540), or that prohibitions within the act are no longer enforceable (Section 9; 16 U.S.C. § 1538). Those statutory provisions continue to be law, even when money has not been appropriated.⁶ The expiration of a provision authorizing appropriations does not end the statutory obligations created by that law. The U.S. Supreme Court has long held that “the mere failure of Congress to appropriate funds, without further words modifying or repealing, expressly or by clear implication, the substantive law, does not in and of itself defeat a Government obligation created by statute.”⁷ Moreover, Section 11(g) (16 U.S.C. § 1540(g)) “allows any citizen to commence a civil suit on his own behalf” on various broad, specified provisions of the act. This option would still be available, regardless of agency funding.

**Table 2. Appropriations for Endangered Species and Related Programs,
FY2010-FY2012**
(\$ in thousands)

Endangered Species and Related Programs	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Comm.
Endangered Species Program				
—Candidate Conservation	12,580	11,448	11,426	10,670
—Listing and Critical Habitat	22,103	20,902	24,644	0
—Critical Habitat Designation	11,632	9,472	10,431	0
—Listing	9,971	11,430	8,847	0
—International Listing	500	a	1,500	0
—Petitions to List	b	c	3,866	0
—Consultation	59,307	61,877	62,888	53,462
—Recovery	85,319	81,219	83,692	74,575
Subtotal, Endangered Species Program	179,309	175,446	182,650	138,707
Related Program: Cooperative Endangered Species Conservation Fund	85,000	59,880	100,000	2,854
Total Appropriations	264,309	235,326	282,650	141,561

- a. There was no specific allocation for international listings in FY2011.
- b. There has never been a specific allocation for listings that responded to petitions. All listing funds were derived from the single listing subprogram, funded at \$9.97 million. FWS listings in recent years have been almost exclusively in response to petitions.
- c. There was no specific allocation for listings that responded to petitions. All listing funds were derived from the single listing subprogram, funded at \$11.43 million.

⁶ See *Forest Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1999) (duty to designate critical habitat for silvery minnow existed despite inadequate funding); *Center for Biological Diversity v. Norton*, 304 F. Supp. 2d 1174 (D. Ariz. 2003) (inadequate financial resources did not excuse FWS from obligation to follow court order to redesignate critical habitat); *Conservation Council for Hawai'i v. Babbitt*, 24 F. Supp. 2d 1074 (D. Hawaii 1998) (holding that insufficient resources were an inadequate reason for failing to designate critical habitat of 245 listed plants).

⁷ *United States v. Vulte*, 233 U.S. 509 (1914).

The Cooperative Endangered Species Conservation Fund also benefits species that are listed or proposed for listing under ESA, through grants to states and territories. The House Committee proposed \$2.9 million, down 95% from the FY2011 level of \$59.9 million. Funding for administration of the program would remain; conservation grants to states, assistance with development of Habitat Conservation Plans (HCPs), and a program to benefit species affected by the Snake River Water Rights Act would be eliminated. HCPs are developed for non-federal actions by state, local, business or private entities as a requirement for obtaining an Incidental Take Permit for actions that may affect listed species.⁸ For HCPs involving many actors, states may use their funds from this program to coordinate the HCPs, to develop a single umbrella plan on behalf of a region, or to acquire land to mitigate effects of a project. The absence or reduction of state support would leave states with the option of funding such efforts alone, or leaving individual actors to develop their own plans.

Overall, the House Committee bill projects savings in endangered species funding, compared to FY2011 levels, at 40% (\$93.7 million).

Wolf Delisting⁹

Substantial action on delisting of gray wolves occurred in the FY2011 appropriation (P.L. 112-10), and provides background for additional action in the House Committee bill for FY2012. Section 1713 of P.L. 112-10 removed most wolves in the Northern Rockies from the protections of ESA. This removal from the ESA's list of protected species (or "delisting") makes these gray wolves the 49th species to be delisted, and the only one delisted due to specific legislative action.¹⁰ In April 2009, FWS had issued a regulation to delist the population of wolves that had been reintroduced in the Northern Rockies.¹¹ The rule removed wolves in Montana, Idaho, and parts of Washington, Oregon, and Utah from ESA protections, but the rule did not change the wolf's status outside these five states. The wolves of Wyoming were to remain protected because FWS held that Wyoming's proposed management plan was not adequate to avoid population declines that would result in relisting the wolves. In August 2010, a federal court overturned the rule.¹² In addition, in November 2010, a federal district court in Wyoming ordered FWS to reconsider the Wyoming plan for wolf management, holding that FWS had acted arbitrarily and capriciously in rejecting the plan.¹³ Section 1713 ordered FWS to reissue the April 2009 rule and insulated the new rule from judicial review. It further stated that the section was to have no effect

⁸ Incidental Take Permits allow a non-federal entity to undertake an action that is otherwise legal, but may have the incidental effect of taking a listed species. For more information, see CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn, Kristina Alexander, and Eugene H. Buck, *The Endangered Species Act: A Primer*, by M. Lynne Corn, Kristina Alexander, and Eugene H. Buck.

⁹ For more information on gray wolf controversies, see CRS Report RL34238, *Gray Wolves Under the Endangered Species Act (ESA): Distinct Population Segments and Experimental Populations*, by Kristina Alexander and M. Lynne Corn, and CRS Report R41730, *The Gray Wolf and the Endangered Species Act (ESA): A Brief Legal History*, by Kristina Alexander.

¹⁰ For background on the 48 species delisted to date, see the FWS website at http://ecos.fws.gov/tess_public/pub/delistingReport.jsp.

¹¹ 74 *Federal Register* 15123-15188, April 2, 2009.

¹² *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010).

¹³ *Wyoming v. U.S. Dept. of the Interior*, No. 09-cv-118J, 2010, U.S. Dist. LEXIS 122829 (D. Wyo. Nov. 18, 2010).

on the Wyoming case.¹⁴ FWS reissued the rule on May 5, 2011.¹⁵ The provision appears to leave open the option for a subsequent proposal to re-list the species.

Two factors make this delisting distinct from past efforts to delist species legislatively. First, FWS had previously delisted the species though the action was later rejected by a court. FWS had argued that the best available science supported delisting. Second, the species had met and exceeded the numeric goals for delisting in the species' recovery plan, although some aspects of its recovery were disputed.

In H.R. 2584 (Section 119), the House Committee addressed concerns that the re-issued rule or other rules delisting wolves might be challenged in court. The section directs that any final rule delisting wolves in Wyoming or in the western Great Lakes area shall not be subject to judicial review, provided that FWS has authorized the state(s) to manage the wolf population.

National Wildlife Refuge System (NWRS) and Law Enforcement

The House Committee's bill contained \$455.3 million for the National Wildlife Refuge System (NWRS), down 7% from the FY2011 level of \$492.1 million. Costs of operations have increased on many refuges, partly due to special problems such as hurricane damage and more aggressive border enforcement, but also due to increased use, invasive species control, maintenance backlog and other demands. According to FWS, refuge funding has not been keeping pace with new demands, and these demands, combined with the rising costs of rent, salaries, fuel, and utilities, have led to cuts in funding for programs to aid endangered species, reduce infestation by invasive species, protect water supplies, address habitat restoration, and ensure staffing at the less popular refuges. While some increases were provided to address these problems in recent years, the FY2009 stimulus law provided additional funding to address these concerns. One response to reduced funding has been the consolidation of refuges (called "complexing" by FWS) under a single refuge manager and staff, as a means of sharing staff and equipment. This program has met resistance from refuge supporters who argue that refuge units will lose resources and adequate supervision. Balanced against these concerns is congressional interest in general deficit reduction.

Law Enforcement is part of the Subaccount for Migratory Birds, Law Enforcement, and International Affairs. The House Committee's bill contained \$58.6 million for the Law Enforcement program, down 7% from the FY2011 level of \$62.9 million. Nationwide law enforcement covers wildlife inspections at international borders, investigations of violations of endangered species or waterfowl hunting laws, and other activities.

Fisheries and Aquatic Resource Conservation

The House Committee provided \$128.3 million for this account, down 8% from the FY2011 level of \$138.9 million. Within the program, the Committee rejected the President's proposed cuts in the hatchery program, funding it at \$46.1 million rather than the requested \$42.8 million, but still below the FY2011 level of \$48.9 million. The Committee's figure for hatchery funding would be a decrease of 6% from FY2011 and of 15% from FY2010.

¹⁴ Section 1713 specifically cites "United States District Court for the District of Wyoming in Case Numbers 09-CV-118J and 09-CV-138J on November 18, 2010."

¹⁵ 76 *Federal Register* 25590-25592, May 5, 2011.

FWS manages a number of hatcheries under the National Fish Hatchery System. In some cases the mandated role of a hatchery, in whole or in part, is to provide mitigation for activities by other agencies. Annual costs to FWS attributed to the mitigation role at these hatcheries may be substantial. In FY2012, for example, FWS expects spending to mitigate projects of these agencies at these levels: Army Corps of Engineers (\$4.7 million), Tennessee Valley Authority (\$835,000), Bonneville Power Authority (\$40,000), and the Bureau of Reclamation (\$715,000). The Administration proposed that FWS negotiate reimbursable agreements with responsible parties for mitigation activities at National Fish Hatcheries. Until such reimbursement is negotiated, FWS proposed to eliminate or substantially reduce activities at the nine National Fish Hatcheries where mitigation costs are at least 40% of total operating expenses; the nine hatcheries meeting this threshold are shown in **Table 3**. In rejecting the Administration reduction, the Committee Report (H.Rept. 112-151, p. 25) addressed reimbursement:

understanding that the U.S. Army Corps of Engineers will reimburse the Service an amount of \$3,800,000 during fiscal year 2012, subject to appropriations. The Committee directs the Service to continue to seek reimbursement from the remaining agencies for mitigation hatchery operations, and to redirect any additional reimbursed funding to deferred maintenance.¹⁶

¹⁶ On July 15, 2011, the House passed H.R. 2354, Energy and Water Appropriations; its Section 107 provided “The Secretary of the Army may transfer to the Fish and Wildlife Service, and the Fish and Wildlife Service may accept and expend, up to \$3,800,000 of funds provided in this title under the heading ‘Operation and Maintenance’ to mitigate for fisheries lost due to Corps of Engineers projects.”

Table 3. Projected FWS Mitigation Expenses in FY2012 for Nine National Fish Hatcheries on Behalf of Water Project Agencies

(in \$)

Hatchery	State	% M	Corps	TVA	Reclamation
Greers Ferry NFH	AR	100	541,532	—	—
Jones Hole NFH	UT	100	—	—	620,484
Chattahoochee Forest NFH	GA	99	630,915	68,102	—
Norfolk NFH	AR	98	1,030,139	—	—
Dale Hollow NFH	TN	94	267,672	598,004	—
Erwin NFH	TN	67	334,781	93,378	—
Neosho NFH	MO	60	375,236	—	—
Wolf Creek NFH	KY	58	389,325	—	—
Garrison Dam NFH	ND	40	150,372	—	—
Total	—	—	3,719,972	759,484	620,484

Source: Fish and Wildlife Service, Division of Congressional and Legislative Affairs.

Notes: % M is the fraction of the annual cost of the hatchery that can be attributed to mitigation of the effects of water project of the federal agency(ies). *Corps* is the U.S. Army Corps of Engineers; *TVA* is the Tennessee Valley Authority; and *Reclamation* is the Bureau of Reclamation.

Cooperative Landscape Conservation and Adaptive Science

For this program (formerly called Climate Change Planning and Adaptive Science Capacity), the House Committee approved \$20.0 million, a decrease of 35% from the FY2012 level of \$31.0 million. Part of the program supports work with partners at federal, state, tribal, and local levels to develop strategies to address climate impacts on wildlife at local and regional scales. The remainder is used to support cooperative scientific research on climate change as it relates to wildlife impacts and habitat. Both portions support and work through a network of Landscape Conservation Cooperatives (LCCs) to ameliorate the effects of climate change. The LCCs are an amalgam of research institutions, federal resource managers and scientists, and lands managed by agencies at various levels of government. The report (p. 26) noted an overlap of programs aimed at wildlife conservation partnerships under the adaptive science initiative. The Committee directed FWS to “(1) more fully develop the initiative in a limited number of areas; and (2) combine the initiative with bird joint ventures and national fish habitat partnerships.”

Land Acquisition

In H.R. 2584, the House Committee provided \$15.0 million for land acquisition, down 73% from the FY2011 level of \$54.9 million. The Administration requested \$140.0 million. See **Table 1**. Under the Committee proposal, the main acquisition funding would be reduced to zero, and remaining funds would be allocated to acquisitions of inholdings, or emergency and hardship

purchases.¹⁷ The Committee provided funds for administration and management of these acquisitions or others that may be newly purchased but still require some administrative work. The Committee also specified that “\$4,000,000 shall be for land conservation partnerships authorized by the Highlands Conservation Act of 2004, including not to exceed \$120,000 for administrative expenses.”¹⁸ The land acquisition program is funded with appropriations from the Land and Water Conservation Fund. The Administration’s top five acquisition priorities (of 63 listed projects) were, in descending order: Alaska Maritime National Wildlife Refuge (NWR), Silvio Conte NWR (CT, MA, NH, VT), Laguna Atascosa NWR (TX), St. Marks NWR (FL) and Cache River NWR (AR).¹⁹

The Migratory Bird Conservation Account is a source of mandatory spending for FWS land acquisition (in contrast to the other three federal lands agencies, which rely on annual appropriations). The MBCA does not receive funding in annual Interior appropriations bills. The account is permanently appropriated, and funds are derived from the sale of duck stamps to hunters and recreationists, and from import duties on certain arms and ammunition. For FY2011, available funds are estimated at \$58.0 million. This estimate is \$14.0 million above the previous year, and is based in part on the assumption that Congress approves a proposed increase in the price of duck stamps from \$15 to \$25.

Wildlife Refuge Fund

The National Wildlife Refuge Fund (NWRF, also called the Refuge Revenue Sharing Fund) compensates counties for the presence of the non-taxable federal lands of the National Wildlife Refuge System (NWRS). A portion of the fund is supported by the permanent appropriation of receipts from various activities carried out on the NWRS. However, these receipts are not sufficient for full funding of amounts authorized in the formula, and county governments have long urged additional appropriations to make up the difference. The House Committee approved \$14.0 million, down 3% from the FY2011 level of \$14.5 million. Funding in the House Committee bill, combined with receipts, would be sufficient for counties to receive 31% of the authorized level. The Administration requested no funding for NWRF in FY2012, which would have meant that based on receipts alone, counties would have received 5% of the authorized level.²⁰ The Administration argued that the savings were justified based on low costs of refuges to county infrastructure and economic benefits to local economies from increased tourism.

¹⁷ An emergency or hardship purchase may be made when owners or their heirs are eager to sell, sometimes at below market value, or otherwise wish to ensure that their land becomes part of refuge. Occasionally, purchases are expedited when imminent threat of development would make later acquisition impractical.

¹⁸ According to the FY2012 Fish and Wildlife Service Budget Justification (p. LA-1), the Highlands Conservation Act (16 U.S.C. 3901) authorizes “the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States [CN, NJ, NY, and PA] to preserve and protect high priority conservation land in the Highlands region.”

¹⁹ FWS does not acquire all or even most of the lands on its priority list in a given year. As lands become available, and the various complex reviews of title records, fair market value, etc., are completed and owners are willing to sell, FWS acquires the lands. Some lands may be a high priority, but may wait years before acquisition is accomplished.

²⁰ The National Wildlife Refuge Fund is distinct from the Payments in Lieu of Taxes (PILT) program administered by DOI, and for which many types of federal lands are eligible. In 2009, Congress made PILT a mandatory spending program for FY2008-FY2012, but did not change the Refuge Fund. As a result of the PILT formula, which will largely make up for the pro-rated NWRF payment rate but for public domain lands only, the acquired lands of the refuge system will be under-compensated for revenue loss relative to the refuge lands reserved from the public domain. Eastern refuges are mostly acquired land, while western refuges are mostly reserved from the public domain. For (continued...)

Multinational Species and Neotropical Migrants

The Multinational Species Conservation Fund generates considerable constituent interest despite the small size of the program. It benefits Asian and African elephants, tigers, rhinoceroses, great apes, and marine turtles.²¹ The House Committee approved \$7.9 million, down 21% from FY2011. (See **Table 4**.) The Administration requested \$9.8 million. In percentage terms, the Committee's largest reductions, relative to FY2011, were in the marine turtle program (43%), and the smallest in the great apes program (9%).

The House Committee did not approve any funding for the Neotropical Migratory Bird Conservation Fund and noted that its authorization had expired. (See discussion above, under "Endangered Species Funding" on appropriating in the absence of an authorization.) The President requested \$5.0 million, up 25% from FY2011. The program provides grants for the conservation of hundreds of bird species that migrate among North and South America and the Caribbean. The act requires spending 75% of the funds on projects outside of the United States.

Table 4. Multinational Species Conservation and Neotropical Migratory Bird Conservation Funds, FY2010-FY2012

(\$ in thousands)

Program	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Comm.
African Elephant	2,000	1,735	1,950	1,477
Rhinos & Tiger	3,000	2,604	2,450	1,969
Asian Elephant	2,000	1,735	1,950	1,477
Great Apes	2,500	2,170	1,950	1,969
Marine Turtles	2,000	1,736	1,450	983
MSCF Total	11,500	9,980	9,750	7,875
Neotropical Migratory Birds	5,000	3,992	5,000	0

State and Tribal Wildlife Grants

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

(...continued)

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

²¹ For more information on these two funds, see CRS Report RS21157, *International Species Conservation Funds*, by Pervaze A. Sheikh and M. Lynne Corn.

is allocated by formula. This grant program has generated considerable support from state governments.

The House Committee approved \$22.0 million for these grants, down 64% from FY2011, and eliminated funding for competitive grants for states, leaving only formula-based funding. See **Table 1**, above. The Administration's request for FY2012 was \$95.0 million. The House Committee bill specifies that all state grants are subject to a match of 50% from non-federal sources.

For More Information

CRS Report R41608, *The Endangered Species Act (ESA) in the 112th Congress: Conflicting Values and Difficult Choices*, by Eugene H. Buck et al.

CRS Report RS21157, *International Species Conservation Funds*, by Pervaze A. Sheikh and M. Lynne Corn.

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

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