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Fish and Wildlife Service: FY2015 Appropriations and Policy

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Summary

The annual appropriation for Interior, Environment, and Related Agencies provides funds for agencies and programs in three federal departments, as well as numerous related agencies and bureaus. Among the agencies represented is the Fish and Wildlife Service (FWS), in the Department of the Interior. Many of its programs are among the more controversial of those funded in the bill. On July 23, 2014, the House Committee on Appropriations reported H.R. 5171. The bill provided \$1.40 billion for FWS, down 2.0% from the FY2014 level of \$1.43 billion contained in P.L. 113-76. The President requested \$1.48 billion, an increase of 3.4% over the FY2014 level. In addition, the Administration proposed a number of significant accounting changes. As the committee noted, some of these changes make comparisons with funding in prior years impossible for some accounts. The House committee accepted a few of the Administration's changes, while rejecting others. The committee further made its own changes in accounting, in order to emphasize certain priorities. In combination, the many changes affect a number of comparisons.

Other highlights of H.R. 5171 include the following:

- A 9.3% increase in funding for hatcheries and aquatic resources.
- Elimination of funding for most acquisition of new refuge lands.
- A 187.8% increase in the National Wildlife Refuge Fund, which compensates local governments for the presence of non-taxable refuge system lands.
- Elimination of funding for Cooperative Landscape Conservation and Adaptive Science.

There were also several funding restrictions or directives. Among these were the following:

- A prohibition on expansion or creation of national wildlife refuges using moneys from the Land and Water Conservation Fund, the Migratory Bird Conservation Account, or any other sources without specific congressional approval.
- Directives to maintain funds for the fish hatchery and aquatic resources program to continue support for mitigation hatcheries, as well as to secure reimbursement from agencies whose projects produced the need for fisheries mitigation.
- A prohibition on funding for any new regulations applying within the United States on lawfully imported ivory.
- A prohibition on writing or issuing certain rules or proposed rules under the Endangered Species Act on specified populations of sage-grouse.
- A limitation on the ability to close lands under the Forest Service or Bureau of Land Management to hunting, fishing, and recreational shooting, except for temporary closures related to special events or public safety.

General efforts to reduce federal spending will encourage scrutiny of all spending, in FWS as in other agencies.

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Introduction

The annual Interior, Environment, and Related Agencies appropriations bill contains appropriations for the Fish and Wildlife Service (FWS) in the Department of the Interior (DOI). For FY2015, the Administration proposed a number of accounting changes. Some were accepted and others rejected by the committee, which in turn made other changes in various accounts and subaccounts. As a result, comparisons of FY2015 funding with levels in previous years are particularly difficult for a number of accounts or subaccounts. The House Committee on Appropriations specifically flagged some subaccount figures as “incomparable to the budget request because of the proposed budget restructuring.” **Table 1** shows FY2014 levels, as well as the FY2015 funding recommended by the committee, somewhat rearranged to facilitate comparison with FY2014 levels where that is possible. This report presents an overview of the committee’s actions, compares them with the preceding year, and discusses those programs whose funding has generated controversy in recent budget cycles. For readability, Administration proposals are omitted from the table, but discussed in the text.¹

On July 23, 2014, the committee reported H.R. 5171 (H.Rept. 113-551), approving \$1.40 billion, down 2.0% from the FY2014 level of \$1.43 billion contained in P.L. 113-76.² The President had requested \$1.48 billion in annual appropriations, an increase of 3.4% over FY2014. The committee’s proposed changes in accounts and subaccounts range from elimination (-100%) to an increase of 187.8%. (See **Table 1**.)

Among other things, the committee wished to protect certain subaccounts within the agency from transfers of their funds to other programs within the same account. To do so, it lifted three subaccounts out of Resource Management, the largest account in the FWS budget. The three programs—Partners for Fish and Wildlife, National Wildlife Refuge System, and Fisheries and Aquatic Resources—are now funded as separate accounts in the text of H.R. 5171. (See **Table 1**.)

Table 1. Appropriations for the Fish and Wildlife Service (FWS), FY2014-FY2015
(\$ in thousands)

	FY2014 Enacted	House Comm.	% Change
Resource Management	1,188,339	500,842	-57.9%
—Ecological Services: Endangered Species	170,511	169,537	-0.6%
—Habitat Conservation (omitting Partners for Fish and Wildlife) ^a	49,559	50,941	2.8%
—Environmental Contaminants	9,567	9,299	-2.8%
—Conservation and Enforcement	141,484	131,645	-7.0%
—Cooperative Landscape Conservation	14,416	—	-100.0%
—General Operations	143,515	139,420	-2.9%

¹ The Administration’s request is shown in the House committee’s tables, where the proposed changes result in multiple mismatches among rows of entries in budget tables.

² FWS appropriations for FY2014 are found in Division G of P.L. 113-76. For more on FY2014 appropriations, see CRS Report R43142, *Interior, Environment, and Related Agencies: FY2013 and FY2014 Appropriations*, by Carol Hardy Vincent.

	FY2014 Enacted	House Comm.	% Change
Partners for Fish and Wildlife ^b	51,776	52,066	0.6%
National Wildlife Refuge System ^b	472,202	476,865	1.0%
Fisheries and Aquatic Resources ^b	135,319	147,916	9.3%
Construction	15,722	14,305	-9.0%
Land Acquisition	54,422	14,500	-73.4%
Cooperative Endangered Species Conservation Fund	50,095	49,227	-1.7%
National Wildlife Refuge Fund	13,228	38,073	187.8%
N. American Wetlands Conservation Fund	34,145	34,145	0.0%
Neotropical Migratory Bird Fund	3,660	3,660	0.0%
Multinational Species Conservation Fund	9,061	10,000	10.4%
State and Tribal Wildlife Grants	58,695	58,695	0.0%
Landowner Incentive Program (rescission of prior year balance)	—	(2,000)	N.A.
Private Stewardship Grants (rescission of prior year balance)	—	(24)	N.A.
TOTAL, FWS	1,427,367	1,398,270	-2.0%

Source: Compiled from H.Rept. 113-551, pp. 145-151 and FY2015 *Budget Justification*.

Notes: Subaccounts shown in blue in the PDF version of this report are part of the Resource Management account for the year in question. Accounts shown in yellow in the PDF version were removed by the House Appropriations Committee and named as independent accounts for FY2015. This restructuring accounts for much of the large decrease in the Resource Management account in FY2015. Large changes in other accounts are discussed in the text.

- a. To aid comparison with FY2015 levels, the Partners for Fish and Wildlife program is not included in the FY2014 figure shown here, but is shown separately below in this table.
- b. These three subaccounts—Partners for Fish and Wildlife, National Wildlife Refuge System, and Fisheries and Aquatic Resources—were part of the Resource Management account in FY2014. The House Committee proposed to name them as independent accounts for FY2015.

The following discussion singles out those accounts and subaccounts that have generated special congressional interest over the last few years. Not every account is discussed.

Resource Management

By far the largest portion of the FWS annual appropriation is the Resource Management account, and it was within this account that both the Administration and the committee focused their structural changes. The Administration proposed to collapse all funding under Endangered Species, Habitat Conservation, and Environmental Contaminants and their various subaccounts into new Ecological Services and Habitat Conservation accounts, with the subaccounts divided differently among them compared to previous years. However, none of the Administration's proposed changes removed subaccounts (such as Candidate Conservation, Consultation, and Recovery) from the overarching Resource Management account. Comparison of funding levels between years for such traditional accounts for ESA could not be made as there were no longer

any accounts with those labels. The FY2015 *Budget Justification* made a case that the proposed structure more accurately reflected the field experience of its employees and would lead to more efficient allocation of resources.³ The committee bill rejected this argument, although it did make other changes in the budget structure, as discussed below.

Endangered Species Funding

Ecological Services: Endangered Species is a program that is part of the Resource Management account, and is a perennially controversial portion of the FWS budget. The House committee approved \$169.5 million, down 1.6% from the FY2014 level of \$170.5 million. (Details of the funding for the Endangered Species program are shown in **Table 2**.) Due to the proposed restructuring, the Administration request cannot be compared to the FY2104 levels. The committee retained the old structure, so its proposal can be compared with the FY2014 levels.

Table 2. Appropriations for Endangered Species and Related Programs, FY2014-FY2015
(\$ in thousands)

	FY2014 Enacted	House Comm.	% Change
Endangered Species Program			
—Candidate Conservation	11,530	11,219	-3%
—Listing and Critical Habitat	20,515	17,852	-13%
— <i>Critical Habitat Designation</i>	4,605	4,633	1%
— <i>Listing</i>	12,905	10,201	-21%
— <i>Foreign Listing</i>	1,504	1,513	1%
— <i>Petitions to List</i>	1,501	1,505	0%
—Consultation	61,550	62,550	2%
—Recovery	76,916	77,916	1%
Subtotal, Endangered Species Program	170,511	169,537	-1%
Related Program: Cooperative Endangered Species Conservation Fund	50,095	49,227	-2%
Total Appropriations	220,606	218,764	-1%

Source: H.Rept. 113-551, p. 145 and 149.

³ Fish and Wildlife Service *Budget Justifications and Performance Information, FY2015*, pp. ES-1 to ES-2. Hereinafter cited as FY21015 *Budget Justification*.

The committee reduced some subaccounts, with the listing program showing the largest drop at 13%. Other subaccounts showed modest increases. FWS has long argued that responding to listing petitions uses agency resources that would be better spent on listing species that the agency itself judges to be more in need of protection. In contrast, critics argue that FWS has proposed and listed very few domestic species on its own initiative and that without petitions many listings would not occur, especially for domestic species.

The committee bill for FY2015 continued specific ceilings on the maximum spending for listing species in response to petitions, for listing foreign species, and for designation of critical habitat; similarly structured limits were contained in FY2014 appropriations. Such limitations on critical habitat designation have been a feature of appropriations bills for over 15 years and have been supported by each Administration, while limits on funding for petitions are somewhat newer, but still supported over many years. In committee, language was added to the report (H.Rept. 113-551) commending FWS for its delay in listing the long-eared bat under ESA, and directing FWS, if it does list the species as threatened, to consider a special rule that would allow “activities minimally affecting the species to continue.”

The House committee approved \$62.6 million (+1.6%) for consultation under Section 7 of the Endangered Species Act (ESA). Under Section 7, federal agencies are obliged to consult with FWS on their actions which may affect listed species, and to obtain a biological opinion (BiOp) from FWS on whether the action might jeopardize the species. If jeopardy is found, the BiOp may include reasonable and prudent alternatives for the agency action that would avoid jeopardy. FWS consultation may be critical to timely actions by federal agencies, which might otherwise hesitate to act in the face of potential citizen suits under the ESA.⁷

Authorization, Appropriation, and Authority: Key Differences

Because Section 15 of ESA (16 U.S.C. §1542), authorizing appropriations, expired in FY1992, it is sometimes said that the ESA is not authorized. However, that does not mean that the agencies lack authority to conduct actions (§§4, 6-8, 10, and 11; 16 U.S.C. §§1533, 1535-1537, 1539, and 1540), or that prohibitions within the act are no longer enforceable (§9; 16 U.S.C. §1538). Those statutory provisions continue to be law, even when money has not been appropriated.⁴ (Moreover, Congress may choose to continue to appropriate funds for programs whose authorization has expired.) The expiration of a provision authorizing appropriations does not end the statutory obligations created by that law. The U.S. Supreme Court has long held that “the mere failure of Congress to appropriate funds, without further words modifying or repealing, expressly or by clear implication, the substantive law, does not in and of itself defeat a Government obligation created by statute.”⁵ Moreover, Section 11(g) (16 U.S.C. §1540(g)) “allows any citizen to commence a civil suit on his own behalf” on various broad, specified provisions of the act. This option would still be available, and because of this Supreme Court decision, an agency (here FWS, defended by the Department of Justice working with DOI) would have to respond, regardless of agency funding.⁶

⁴ 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 its obligation to follow a court order to redesignate critical habitat); *Conservation Council for Hawai'i v. Babbitt*, 24 F. Supp. 2d 1074 (D. Hawaii 1998) (holding that insufficient resources were an inadequate reason for failing to designate critical habitat of 245 listed plants).

⁵ *United States v. Vulte*, 233 U.S. 509 (1914).

⁶ *Ibid.*

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

The committee report contained language to encourage FWS to proceed with efforts to delist remaining populations of gray wolves. Within the amounts for recovery, the committee directed that \$1 million be used for a program to compensate ranchers for livestock losses due to wolf depredation; the committee also urged the Administration “to seek funding for this program through the Department of Agriculture in future years.”⁸

The Cooperative Endangered Species Conservation Fund (CESCF) also benefits species that are listed or proposed for listing under ESA, through grants to states and territories. The House committee approved \$49.2 million for the CESCF, down 1.7% from the FY2014 level of \$50.1 million. The Administration requested \$50.0 million. The program assists states with, among other things, the preparation of habitat conservation plans (HCPs). HCPs are developed for non-federal actions by state, local, business, or private entities as a requirement for obtaining an incidental take permit for actions that may affect listed species.⁹ 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.

Taking the two programs together, the committee would decrease endangered species funding by 0.8% compared to FY2014 levels.

Conservation and Law Enforcement

One portion of the Conservation and Law Enforcement subaccount (shown in **Table 1**) has proved controversial in recent years, and that is the Law Enforcement program.¹⁰ Nationwide law enforcement covers wildlife inspections at international borders, investigations of violations of endangered species or waterfowl hunting laws, and other activities. The House committee approved the Administration’s request for \$66.7 million, up 3.8% from the FY2014 level of \$64.3 million. Within the program, the committee provided an increase of \$1.2 million for the FWS forensics laboratory in Ashland, Oregon, and \$0.7 million for new agents to combat wildlife trafficking.

Cooperative Landscape Conservation and Other Science Programs

Over the last several budget cycles, FWS has supported a number of science programs, each associated with various aspects of the agency’s mission. The committee has historically been critical of the Administration’s science and climate change programs generally and has criticized them for duplication and lack of coordination.¹¹ The FWS science programs have supported work with partners at federal, state, tribal, and local levels to develop strategies to address climate and other impacts on wildlife at local and regional scales. This research has supported and worked especially through a network of Landscape Conservation Cooperatives (LCCs) to understand and

⁸ H.Rept. 113-551, p. 16.

⁹ Incidental take permits allow a nonfederal 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 and Kristina Alexander.

¹⁰ Besides the Law Enforcement program itself, this subaccount also includes Migratory Bird Management, International Affairs, and Science Support. (See “Cooperative Landscape Conservation and Other Science Programs” below.)

¹¹ For example, in the 112th Congress, see H.Rept. 112-589 on H.R. 6091, p. 9.

ameliorate threats to wildlife, including 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 committee eliminated funding for LCCs, while providing \$5.10 million in science support in an existing program under Conservation and Enforcement. This level represents a 70.4% reduction in that program as well. While lauding the science programs within the National Fish Hatchery System, the committee noted that the Administration's proposed restructuring of FWS science programs was the third such effort in three budget cycles. It further urged the agency to find homes for its scientific research needs by more closely tying research to specific programs of the agency.

Partners for Fish and Wildlife

Partners for Fish and Wildlife (PFW) works with private landowners to improve wildlife habitat on their lands.¹² Assistance may take various forms, from telephone consultations and advice, to site visits and planning, and—where wildlife benefits are very high—to financial or material assistance in improving habitat. The program offers great flexibility to landowners, and demand has generally exceeded resources. Until FY2105, the program had been funded through the Resource Management account, and the Administration would have continued that budget structure. However, the committee recommended “moving the program to its own account in order to prevent the use of funds for activities not authorized by the Partners for Fish and Wildlife Act.”¹³ It provided \$52.1 million, a 0.6% increase over FY2014, and directed that an initiative to protect sage grouse be the program's top priority.

National Wildlife Refuge System

The committee also moved funding for the National Wildlife Refuge System (NWRS) from the Resource Management account into its own separate account. The result gives Congress greater control over exact spending levels for the NWRS, as moneys cannot readily be transferred to another specific account. The House committee approved \$476.9 million for the NWRS, up 1.0% from FY2014. The President requested \$476.4 million, up 0.9%. Costs of operations have increased on many refuges, partly due to special problems such as hurricane damage and more aggressive border enforcement, but also due to increased use, invasive species control, maintenance backlog, and other demands. According to FWS, refuge funding has not been keeping pace with these demands.

The committee included a provision providing that “none of the funds made available by this or any other Act may be used to establish any refuge (as that term is defined in ... (16 U.S.C. §668cc)), or to expand the boundary of any refuge (as so defined), unless the establishment or boundary expansion, respectively, is expressly authorized by a law enacted after the date of enactment of this Act.” As written, the text appears to prevent the continued use of funds provided under the Migratory Bird Conservation Account (MBCA, sometimes called the Duck Stamp program) without a new step of specific congressional approval. (See “Migratory Bird Conservation Account: An Acquisition Supplement,” below.) The committee report also asserts

¹² For more information on the program, see the agency's website: <http://www.fws.gov/partners/aboutus.html>.

¹³ H.Rept. 113-551, p. 6.

that FWS authority to create and expand refuges “originated with the need to act quickly to save species from certain extinction.”¹⁴

Fisheries and Aquatic Resource Conservation

The committee moved funding for Fisheries and Aquatic Resource Conservation from the Resource Management account into its own separate account. The result gives Congress greater control over exact spending levels for this program, as moneys cannot readily be transferred to another specific account. The committee approved \$147.9 million for this program, a 9.3% increase over FY2014, while generally commending the program for its work. It went on to provide detailed recommendations for spending below the account level, limiting particularly funding for propagation of species listed under ESA, but allowing FWS to transfer funding to the Fisheries program where such assistance is needed to aid a species’ recovery.¹⁵ In light of controversy in recent years over FWS funding for the mitigation necessary for fisheries loss from projects actually built and run by other agencies, the Secretary of the Interior is directed to “secure reimbursement from other Federal agencies for up to 100 but not less than 50 percent of the annual costs to the Federal Government to fulfill such mitigation responsibilities.”¹⁶

Land Acquisition

The House committee provided \$14.5 million for land acquisition, to be derived from the Land and Water Conservation Fund (LWCF); this figure is down 73.4% from FY2014. (See **Table 3**.) The Administration requested \$55.0 million for land acquisition, an increase of 1.1% over the FY2014 level of \$54.4 million. Within this program, the committee proposed that there be no new funding for general land acquisition, and that new acquisitions be directed only to inholdings, acquisition management, and overhead.

The committee included \$3.5 million for the Highlands Conservation Act (HCA). The HCA (16 U.S.C. §3901) authorizes “the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States [CT, NJ, NY, and PA] to preserve and protect high priority conservation land in the Highlands region.”¹⁷

¹⁴ H.Rept. 113-551, p. 20. However, in addition to the Endangered Species Act of 1973 (16 U.S.C. §§1531-1544), FWS has acquisition authority under several other, even older, statutes: the Migratory Bird Treaty Act (MBTA) of 1929 (16 U.S.C. §§703, et seq.); Fish and Wildlife Coordination Act of 1934 (16 U.S.C. §§661-667a); and the Fish and Wildlife Act of 1956 (16 U.S.C. §§742a, et seq.). Any given acquisition may be authorized by one or more of these statutes or by specific authorizing legislation. MBTA is perhaps the most important because it offers the option of funding through the MBTA. See CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, by Carol Hardy Vincent et al.

¹⁵ There are additional, detailed recommendations in H.Rept. 113-551, pp. 20-23.

¹⁶ H.R. 5171, p.11-12.

¹⁷ The program is not described in the FY2015 *Budget Justification*. Because a description of the program and its activities is absent in the current justification, it is unclear what activities have occurred or will occur under it in FY2015.

Table 3. Land Acquisition, FY2014-FY2015

(\$ in thousands)

	FY2014 Enacted	House Comm.	% Change
—Acquisition of Federal Refuge Lands	35,071	—	-100.0%
—Inholdings, Emergencies, & Hardships	7,351	4,000	-45.6%
—Exchanges	1,500	1,500	0.0%
—Acquisition Management	10,500	6,000	-42.9%
—Highlands Conservation (CT, NJ, NY, PA)	—	3,500	N.A.
Total	54,422	14,500	-73.4%

Source: H.Rept. 113-551, p. 149.

Migratory Bird Conservation Account: An Acquisition Supplement

The Migratory Bird Conservation Account (MBCA) is a source of mandatory spending for FWS land acquisition (in contrast to the other three federal lands agencies, which rely entirely on annual appropriations). The MBCA does not receive funding in annual Interior appropriations bills. Rather, funds are derived from the sale of duck stamps to hunters and recreationists, and from import duties on certain arms and ammunition. As funding has declined from annual appropriations, the MBCA has become increasingly important in the conservation of waterfowl habitat. For FY2015, the Administration estimated available funds at \$70.4 million.¹⁸ This estimate is \$14.6 million above the previous year, and is based on the assumption that Congress would approve a proposed increase in the price of duck stamps from \$15 to \$25. H.R. 5069 has been introduced in the House to raise the price to \$25; it would also require that the additional funds be used solely for acquisition of easements.¹⁹

Expenditures are currently controlled by the Migratory Bird Conservation Commission, consisting of the Secretary of the Interior (chair), the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, one Republican and one Democrat from the House; one Democrat and one Republican from the Senate; the head of the FWS Realty Office; and—for each specific acquisition—a representative of the game department or of the governor of the relevant state.²⁰ The Commission is able to approve purchases; with mandatory spending, no additional action by Congress is required. In the House, there is also a pending bill (H.R. 3409) that would change that system by prohibiting expansions of refuges “except as expressly authorized by a law enacted after January 3, 2013.”²¹

¹⁸ FY2015 *Budget Justification*, p. MBC-2.

¹⁹ In recent years, the bulk of easement-only acquisitions have been in the Prairie Pothole states: North and South Dakota, Minnesota, Iowa, and Montana. The Prairie Potholes are an area rich in duck habitat, and are sometimes called “America’s Duck Factory.”

²⁰ The current congressional Members are Rep. Wittman, Rep. Dingell, Sen. Pryor, and Sen. Cochran.

²¹ The wording would appear to permit creation of new refuges, however.

National Wildlife Refuge Fund

The National Wildlife Refuge Fund (NWRF, also called the Refuge Revenue Sharing Fund) compensates counties for the presence of the non-taxable federal lands under the primary jurisdiction of FWS.²² A portion of the fund is supported by the permanent appropriation of receipts from various activities carried out on the National Wildlife Refuge System. However, these receipts are sufficient for funding only a small fraction of the authorized formula, and county governments have long urged additional appropriations to make up the difference. The committee approved \$38.1 million for the fund; if this level is approved, counties would receive 55.9% of the authorized level.²³ The Administration requested no funding for NWRF in FY2015; based on receipts alone, counties would then receive 7.4% of the authorized level.²⁴ The Administration argued that the savings are justified based on low costs of refuges to county infrastructure and economic benefits to local economies from increased tourism. The committee contrasted the proposed elimination of NWRF funding with the Administration's support for full funding for a similar program called Payments in Lieu of Taxes and argued that the programs should be treated equally.

Multinational Species and Neotropical Migrants

FWS has long had a role in conserving species across international boundaries, beginning with species such as migratory birds, which spend some part of their life cycle within U.S. boundaries, and more recently including selected species of broader international interest. One of the programs, the Multinational Species Conservation Fund (MSCF), generates considerable constituent interest despite the small size of the program. It benefits Asian and African elephants, tigers, rhinoceroses, great apes, and marine turtles.²⁵ The House committee increased the fund as a whole by 10.4% compared to FY2014, and each individual program as well. (See **Table 4**.)

²² For more information on NWRF, see CRS Report R42404, *Fish and Wildlife Service: Compensation to Local Governments*, by M. Lynne Corn.

²³ An amendment in committee reduced the level from \$63.2 million, which—combined with receipts—would have provided 87.9% of full funding for the NWRF. The Administration estimated that the full funding level in FY2015 would be \$78.5 million, of which \$5.8 million would be provided by receipts, available as mandatory spending. (See FY2015 *Budget Justification*, p. RF-4.)

²⁴ See Refuge Revenue Sharing Act (16 U.S.C. §715s). The National Wildlife Refuge Fund is distinct from the Payments in Lieu of Taxes (PILT) program administered by DOI, and for which many types of federal lands are eligible. In 2009, Congress made PILT a mandatory spending program for FY2008-FY2012, but did not change the Refuge Fund, and in 2012, included a provision in P.L. 112-141 extending mandatory spending for one year. The PILT formula will largely make up for the pro-rated NWRF payment rate but for public domain lands only. Consequently, counties with acquired FWS lands will be under-compensated for revenue loss relative to counties with refuge lands reserved from the public domain. Because eastern refuge lands are mostly acquired, and western refuges are mostly reserved from the public domain, effects of lower funding rates for NWRF will fall primarily on eastern counties. For further information on the interaction of PILT and NWRF, see CRS Report R42404, *Fish and Wildlife Service: Compensation to Local Governments*, by M. Lynne Corn and CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

²⁵ For more information on these two funds, see CRS Report RS21157, *International Species Conservation Funds*, by Pervaze A. Sheikh and M. Lynne Corn.

The committee provided level funding for the Neotropical Migratory Bird Conservation Fund relative to the FY2014 level.²⁶ The Administration had requested the same amount. 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 the United States.

Table 4. Multinational Species Conservation and Neotropical Migratory Bird Conservation Funds, FY2014-FY2015

(\$ in thousands)

	FY2014 Enacted	House Comm.	% Change
African Elephant	1,582	1,739	9.9%
Rhino & Tiger	2,440	2,751	12.7%
Asian Elephant	1,557	1,714	10.1%
Great Apes	1,975	2,132	7.9%
Marine Turtles	1,507	1,664	10.4%
MSCF Total	9,061	10,000	10.4%
Neotropical Migratory Birds	3,660	3,660	0.0%

Source: H.Rept. 113-551, p. 150.

State and Tribal Wildlife Grants

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

The House committee recommended the FY2014 level, but shifted the program to a greater emphasis on competitive grants, keeping the state formula grants as the lion's share of the funding. (See **Table 5**.) The President requested \$50.0 million for these grants, a 14.8% reduction from the amount approved for FY2014. The House committee retained the current minimum state match of 25.0%.

²⁶ This program is authorized under the Neotropical Migratory Bird Conservation Improvement Act (16 U.S.C. §6101).

Table 5. State and Tribal Wildlife Grants

(\$ in thousands)

State and Tribal Wildlife Grants	FY2014 Enacted	House Comm.	% Change
State Grants (formula)	49,124	41,000	-16.5%
State Grants (competitive)	5,487	12,695	131.4%
Tribal Grants	4,084	5,000	22.4%
Total	58,695	58,695	0.0%

Source: H.Rept. 113-551, p. 150.

Administrative and Other Provisions Affecting Wildlife

In addition to the regular appropriations provisions, H.R. 5171 contained administrative provisions affecting FWS. One provision (Section 115) concerned domestic trade in, and international import of ivory; Section 116 concerns conservation of the valley elderberry longhorn beetle; Section 117 delays issuance of further rules for conservation of sage-grouse; and Section 118 requires an economic analysis in the development of a recovery plan for certain California amphibians.

Finally, two additional provisions in Title IV affect matters relevant to wildlife. Section 426 affects the regulation of lead content in ammunition and fishing tackle under the Toxic Substances Control Act (15 U.S.C. §2601 et seq.). Section 431 affects the regulation of hunting, fishing, or recreational shooting on Forest Service and BLM lands.

Section 115: Ivory

Section 115 addresses a recent issue about the import of elephant ivory.²⁷ On February 25, 2014, the Fish and Wildlife Service (FWS) issued a Director's Order taking effect immediately, which, on its face, requires strict enforcement of laws pertaining to elephant ivory trade. The order appears to make illegal some ivory trade that FWS long has permitted. The order was modified on May 15, 2014, reinstating some forms of trade—in particular, antique elephant ivory—that the original order had severely curtailed. Under §115, the authority of FWS to create new or revised regulations prohibiting or restricting trade in elephant ivory would be severely restricted.

Section 116: Valley Elderberry Longhorn Beetle

The Fish and Wildlife Service agreed in 2006 that the threatened valley elderberry longhorn beetle has recovered sufficiently to permit delisting. FWS issued a proposed rule to that effect in

²⁷ Recent controversies concern ivory from Asian and African elephants. However, the term *ivory* can also be applied to tusks from walrus and narwhals (a species of whale) as well. Section 115 does not specify what kind of ivory is under consideration; Congress may wish to clarify the meaning of the term.

October, 2012.²⁸ After the proposed delisting, FWS conducted a review of its own proposal. The review panel held that the proposed delisting was not supported by the best available scientific information.²⁹ Various groups argued the beetle should not be delisted; others asserted that VWS should continue with its proposal. This provision would prevent use of funds for any study on the beetle, and would prevent FWS from either withdrawing or finalizing the delisting rule during FY2015.

Section 117: Sage-Grouse

Listing or recovery of various populations and species of sage-grouse in western states has been controversial. The birds face complex habitat threats (including the presence of tall objects such as telephone poles, fence posts, and drilling rigs, as well as habitat loss and fragmentation). The possible listing of these birds under ESA has alarmed many western interests who fear threats to a wide assortment of economic activities. Under §117, FWS could not write or issue proposed rules for two groups of sage-grouse, nor final rules for two other groups of sage-grouse whose listing has already been proposed.³⁰

Section 118: California Amphibians

FWS listed three species of amphibians under the ESA: the Sierra Nevada yellow-legged frog (*Rana sierrae*, endangered); the northern distinct population segment of the mountain yellow-legged frog (*Rana muscosa*, endangered); and the Yosemite toad (*Anaxyrus canorus*, threatened). All three species live at high elevations in the Sierra Nevada. Threats to all three species include habitat degradation (especially due to introduced predatory fish such as trout) and fragmentation, predation, climate change, and introduced diseases, among other factors. There is concern that recovery efforts for these species may affect recreational fishing, dams and diversions, grazing, timber management, packstock use, and other activities. Section 118 would direct FWS to release draft recovery plans for the three species no later than December 30, 2015. In addition, the plans are to include analyses of social and economic impacts of recovery actions and of efforts to minimize these impacts.

Section 426: Lead Content Regulation under the Toxic Substances Control Act

Section 426 appears to seek legislative certainty during FY2015 for a denied citizen petition to force the Environmental Protection Agency (EPA) to regulate lead in ammunition and in fishing sinkers. On August 27, 2010, EPA denied one portion of the petition relating to the production of lead for use in ammunition, stating that the agency did not have legal authority to regulate ammunition under TSCA. EPA continued to evaluate the petition with respect to fishing tackle

²⁸ Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; Removal of the Valley Elderberry Longhorn Beetle From the Federal List of Endangered and Threatened Wildlife, Proposed Rule,” 77 *Federal Register* 60238-60276, 2012.

²⁹ For the FWS analysis of its own proposal, see http://www.fws.gov/cno/science/Review%20PDFs/Atkins_2013_VELB%20Peer%20Review%20Doc%20of%20Proposed%20Rule%20to%20Delist.pdf.

³⁰ For additional information on sage-grouse, see CRS Report R40865, *Sage Grouse and the Endangered Species Act (ESA)*, by Kristina Alexander and M. Lynne Corn.

and accepted public comments until September 15, 2010.³¹ EPA denied that portion of the petition on November 4, 2010.³² On April 30, 2012, a lawsuit challenging the denial was dismissed.³³ On June 7, 2012, a suit was filed challenging EPA's 2012 denial of a new petition to regulate lead shot under TSCA.³⁴ The court rejected the plaintiffs' case in July 2013, and an appeal has been filed.³⁵

Section 426 would prevent federal regulation through TSCA, but not through other statutory authorities: lead shot has been banned in the United States for the hunting of migratory waterfowl since 1991 under authority of the Migratory Bird Treaty Act and the Endangered Species Act.³⁶ Consequently, it is unclear what effect the provision might have.

Section 431: Hunting, Fishing, and Recreational Shooting

Section 431 of the House committee's bill directs that no funds under the bill "or any other Act for any fiscal year may be used to prohibit the use of or access to Federal land (as ... defined in ... (16 U.S.C. §6502)) for hunting, fishing, or recreational shooting" if the use or access was not prohibited on January 1, 2013, and if the use complied with specified resource management plans for the land in question as of that date. The cited provision in the U.S. Code applies to lands managed by the Forest Service and BLM. "Recreational shooting" is not defined in this section; this lack of a definition may produce some confusion in Forest Service and BLM lands with existing land management plans that do not contemplate that activity.³⁷

Section 431(b) would allow the Secretaries of Agriculture and the Interior to close federal lands under their jurisdiction to hunting, fishing, or recreational shooting for periods up to 30 days for a special event or for public safety. The period may be extended for another 90 days for "extraordinary weather conditions or for public safety." If the definition of federal land in Section 431(a) also applies to this subsection, then the lands affected by this closure provision are also those of the Forest Service and BLM.

For More Information

CRS Report R42945, *The Endangered Species Act (ESA) in the 113th Congress: New and Recurring Issues*, coordinated by M. Lynne Corn and Kristina Alexander.

³¹ Comments are posted in the rulemaking docket, which is identified as EPA-HQ-OPPT-2010-0681 at <http://www.regulations.gov/>.

³² For more information on the EPA position on the regulation of lead in ammunition and lead sinkers, see CRS General Distribution Memorandum, "Petition for Regulation of Lead in Fishing Sinkers and Ammunition by the U.S. Environmental Protection Agency," by Linda-Jo Schierow, March 16, 2012, available from the author.

³³ *Center for Biological Diversity v. Jackson*, No. 1:10-CV-2007 (D.D.C. April 30, 2012).

³⁴ *Trumpeter Swan Society v. Environmental Protection Agency*, No. 1:12-cv-00929 (D.D.C. *complaint filed* June 7, 2012).

³⁵ *Trumpeter Swan Society v. Environmental Protection Agency*, No. 1:12-cv-00929 (D.D.C. *order filed* July 22, 2013).

³⁶ 53 *Fed. Reg.* 24284 (June 28, 1988). See also 50 C.F.R. §20.21.

³⁷ For more recent information on a range of hunting, fishing, and recreational shooting issues, see CRS Report R43629, *Hunting and Fishing: Issues and Legislation in the 113th Congress*, by M. Lynne Corn.

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/>.

For links to current and past *Budget Justifications*, see <http://www.fws.gov/budget/>.

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