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Fish and Wildlife Service: FY2011 Appropriations and Policy

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Summary

For Fish and Wildlife Service appropriations in FY2011, the Administration requests \$1.64 billion, down 0.3% from the FY2010 level of \$1.65 billion. Climate change and land acquisition programs would receive notable increases; construction and funds for wetlands, neotropical migratory birds, and selected foreign species would decrease.

The annual Interior, Environment, and Related Agencies appropriations bill 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. This report analyzes FY2011 appropriations and gives a brief review of the agency's appropriation enacted for FY2010 (P.L. 111-88). Emphasis is on FWS funding for programs of interest to Congress, now or in recent years. These include the endangered species program, global climate change, wildlife refuges, land acquisition, international conservation, and state and tribal wildlife grants. In addition, related policy issues are also considered in the funding context. Each of the related policy issues is explained in more detail in the report.

For FY2010, the House passed H.R. 2996, the Interior appropriations bill, containing FWS appropriations, on June 26, 2009 (H.Rept. 111-180). The Senate passed its version of H.R. 2996 on September 24, 2009 (S.Rept. 111-38). The conference report (H.Rept. 111-316) included a Division B, providing continuing appropriations for other federal agencies and programs whose FY2010 appropriations had not yet been passed. The House and Senate both approved the conference report on October 29, 2009; the President signed the bill the following day (P.L. 111-88).

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Introduction

The annual Interior, Environment, and Related Agencies appropriations bill 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 (DOI). This report analyzes FY2011 appropriations and gives a brief review of the agency's appropriation enacted for FY2010 (P.L. 111-88).

For FWS in FY2011, the Administration requests \$1.64 billion, down 0.3% from the FY2010 level of \$1.65 billion. By far the largest portion of the FWS annual appropriation is the Resource Management account, for which the President requests \$1.27 billion, down 0.07% from the FY2010 level of \$1.27 billion. Among the programs included in Resource Management are Endangered Species, the Refuge System, Law Enforcement, and Climate Change Adaptive Science Capacity.

Table I. Appropriations for the Fish and Wildlife Service (FWS), FY2009-FY2011
(\$ in thousands)

Fish and Wildlife Service	FY2009 Omnibus	FY2009 ARRA ^a	FY2009 Total	FY2010 Enacted	FY2011 Request
Resource Management	1,140,962	165,000	1,305,962	1,269,406	1,266,410
—Ecological Services: Endangered Species	157,973	<i>n/a</i>	<i>n/a</i>	179,309	181,326
—Ecological Services: Habitat Conservation and Environmental Contaminants	118,297	<i>n/a</i>	<i>n/a</i>	133,476	133,476
—National Wildlife Refuge System	462,859	<i>n/a</i>	<i>n/a</i>	502,805	499,546
—Migratory Birds, Law Enforcement & International Conservation	126,717	<i>n/a</i>	<i>n/a</i>	134,640	129,131
—Fisheries	131,831	<i>n/a</i>	<i>n/a</i>	148,214	142,477
—Climate Change Adaptive Science Capacity	0	0	0	20,000	28,750
—General Administration	143,285	<i>n/a</i>	<i>n/a</i>	152,792	151,704
Construction	35,533	115,000	150,533	37,439	23,737
Land Acquisition	42,455	0	42,455	86,340	106,340
—Acquisitions: Federal Refuge Lands	28,315	0	28,315	66,785	84,785
—Inholdings, emergencies, & hardships	3,000	0	3,000	5,000	5,000
—Exchanges	1,500	0	1,500	2,000	2,000
—Acquisition Management	8,140	0	8,140	10,555	12,555
—Cost Allocation Methodology	1,500	0	1,500	2,000	2,000
Cooperative Endangered Species Conservation Fund	75,501	0	75,501	85,000	85,000
National Wildlife Refuge Fund	14,100	0	14,100	14,500	14,100
North American Wetlands Conservation Fund	42,647	0	42,647	47,647	42,647
Neotropical Migratory Bird Conservation Fund	4,750	0	4,750	5,000	4,000
Multinational Species Conservation Fund	10,000	0	10,000	11,500	10,000
State and Tribal Wildlife Grants	75,000	0	75,000	90,000	90,000

Fish and Wildlife Service	FY2009 Omnibus	FY2009 ARRA ^a	FY2009 Total	FY2010 Enacted	FY2011 Request
—State Grants	63,000	0	63,000	78,000	78,000
—Competitive Grants for States, Territories, & Other Jurisdictions	5,000	0	5,000	5,000	5,000
—Tribal Grants	7,000	0	7,000	7,000	7,000
Wildlife Conservation and Appreciation Fund (cancel prior-year funds)	-529	0	-529	0	0
Total Appropriations	1,440,451	280,000	1,720,451	1,646,832	1,642,234

Note: n/a indicates not available. Stimulus money within the Resource Management account is being distributed primarily to actions on wildlife refuges, but funding through other programs (e.g., endangered species, migratory bird conservation, and wetlands restoration) is also available.

a. American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5).

Hot Topics

Only a few FWS issues that may arise in an appropriations context seem predictable at this early phase of the appropriations cycle. One possibility may be the management of certain California water projects.

California Water Projects: Restriction on Implementation of Biological Opinions

The Bureau of Reclamation has faced many legal challenges in its role as a water resources manager in California. Among them are lawsuits challenging how Reclamation operations may affect several species listed under the Endangered Species Act (ESA). Over a year ago both FWS and the National Marine Fisheries Service (NMFS) issued separate biological opinions (BiOps)¹ for Central Valley Project (California) water operations, holding that certain actions by Reclamation would jeopardize listed species. Under the ESA, these BiOps provided alternatives to avoid jeopardy or adverse modification of habitat designated as critical to the listed species. In addition, the BiOps provided incidental take statements (ITSs) that authorized takes of listed species that might result even though the action agency followed the BiOp, the alternatives, and any mitigation recommended by FWS or NMFS.² Some of the actions in the alternatives may result in restricting water supplies to certain water users in central and southern California. The agricultural users are in regions of California that are also heavily affected by the general downturn in the economy and loss of jobs in the building construction industry.

¹ A biological opinion (BiOp) is a document issued by a Service when it completes consultation with a federal agency on whether a proposed agency action may harm a species or its critical habitat. A BiOp is accompanied by an incidental take statement (ITS). The ITS excuses the federal agency from liability if its actions take a listed species (meaning harming or killing it), provided the agency follows the specified measures to mitigate the harm of its actions. Without the ITS, the agency would be liable under the ESA each time its actions resulted in taking a species. The ESA requires an agency to follow the terms and conditions in the statement (16 U.S.C. § 1536(b)(4)(C)(iv)). An agency that takes steps contrary to the terms of the ITS may be prosecuted for violating the ESA, or could be subject to an injunction under the citizen suit provision of the act (16 U.S.C. § 1540(g)(1)(A)).

² For more information on the controversy in the context of a potential application for an exemption under ESA, see CRS Report R40787, *Endangered Species Act (ESA): The Exemption Process*, by M. Lynne Corn, Kristina Alexander, and Betsy A. Cody.

Various California water interests support restricting or modifying the implementation of the BiOps to provide more water for agriculture. Others in the area point to the need for maintaining water in streams not only for listed species but also for commercial fisheries and water quality. While the shape of the congressional response is unclear, FWS appropriations might become a vehicle for an amendment to address California long-standing water issues.³

Endangered Species Funding

Funding for the endangered species program is part of the Resource Management account, and is one of the perennially controversial portions of the FWS budget. The Administration's FY2011 request is \$181.3 million, an increase from the FY2010 enacted level of \$179.5 million. (See **Table 2.**) For FY2010, the House Appropriations Committee's report encouraged FWS to address a backlog of candidate species awaiting listing decisions; the Administration's request proposed a decrease in this program for FY2011. The Senate Appropriations Committee's FY2010 report urged improvement in the consultation program to address past deficiencies. The FY2010 conference report set aside \$2.5 million in the consultation program to improve monitoring and record-keeping.⁴

The Cooperative Endangered Species Conservation Fund also benefits conservation of species that are listed, or proposed for listing, under the Endangered Species Act, through grants to states and territories. The President proposes to leave the program at the FY2010 level. In total, the two endangered species programs would increase by 1%.

Table 2. Appropriations for Endangered Species and Related Programs, FY2009-FY2011

(\$ in thousands)

Endangered Species and Related Programs	FY2009 Enacted	FY2010 Enacted	FY2011 Request
Endangered Species Program			
—Candidate Conservation	10,670	12,580	11,471
—Listing	19,266	22,103	20,945
—Consultation	53,462	59,307	63,299
—Recovery	74,575	85,319	85,611
Subtotal, Endangered Species Program	157,973	179,309	181,326
Related Program: Cooperative Endangered Species Conservation Fund	75,501	85,000	85,000
Total Appropriations	233,474	264,457	266,326

National Wildlife Refuge System (NWRs) and Law Enforcement

The Administration requested \$499.5 million for FY2011 for refuge operations and maintenance, a 1% decrease from the FY2010 level of \$502.8 million. Costs of operations have increased on

³ For more on the California water crisis, see CRS Report R40979, *California Drought: Hydrological and Regulatory Water Supply Issues*, by Betsy A. Cody, Peter Folger, and Cynthia Brougher.

⁴ For a discussion of the Endangered Species Act and its programs, see CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn, Kristina Alexander, and Eugene H. Buck.

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. Refuge funding was not keeping pace with new demands, and these demands, combined with the rising costs of rent, salaries, fuel, and utilities, 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. Some observers contend that the system's problems are ongoing and will be significant after the stimulus funding is exhausted. Balanced against these concerns is congressional interest in general deficit reduction.

The Administration requests \$63.3 million for nationwide law enforcement, a decrease of 4% from the FY2010 level of \$65.8 million. Nationwide law enforcement covers border inspections, investigations of violations of endangered species or waterfowl hunting laws, and other activities.

Refuges: Stimulus Funding

The American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5) provided FWS with \$165.0 million for Resource Management and \$115.0 million for Construction, using nearly identical criteria for project selection.⁵ Obligation authority for these funds ceases on October 1, 2010. According to FWS, “[t]o complete this work, we plan to hire local laborers, building contractors, companies and other entities to do the maintenance, repairs, retrofits, and construction.”⁶ Refuges are among the biggest beneficiaries within FWS of the stimulus funding, and the refuge maintenance backlog could be affected substantially. Improvements in energy conservation at refuge visitor centers are also being funded, as are habitat improvements, such as removal of invasive species, and recovery of protected species.

Climate Change Planning and Adaptive Science Capacity

For FY2011, the Administration requests \$28.8 million for Climate Change Planning and Adaptive Science Capacity, an increase of 44% over the FY2010 level of \$20.0 million. Part of the funding would support 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 would be used to support cooperative scientific research on climate change as it relates to wildlife impacts and habitat. Both portions would support and work through a network of new 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 additional funding is intended to increase the network of LCCs from 9 to 12, with an eventual goal of 21 LCCs.

Land Acquisition

The Administration requests \$106.3 million for land acquisition, an increase of \$20.0 million (19%) from the FY2010 enacted level of \$86.3 million. See **Table 1**. As compared to recent years, the request and the FY2010 level both devote a somewhat higher percentage (80% and

⁵ As of April 1, 2010, projects are being funded in all 50 states and Puerto Rico. More detailed information about FWS activities under the stimulus law may be found at <http://recovery.doi.gov/press/bureaus/us-fish-and-wildlife-service/>.

⁶ Personal communication to Lynne Corn from Division of Congressional and Legislative Affairs, U.S. Fish and Wildlife Service, March 24, 2009. For more on FWS spending under the stimulus bill, see <http://recovery.doi.gov/press/bureaus/us-fish-and-wildlife-service/>.

77% respectively) of the funding to acquisition of land for specified federal refuges, rather than for closely related functions (e.g., acquisition management, land exchanges, emergency acquisitions, and purchase of inholdings). This program is funded with appropriations from the Land and Water Conservation Fund.

Under the Migratory Bird Conservation Account (MBCA), FWS (in contrast to the other three federal lands agencies) has a source of mandatory spending for land acquisition. The MBCA does not receive funding in annual Interior appropriations bills. The account is permanently appropriated, with funds for FY2011 estimated at \$58.0 million, derived from the sale of duck stamps to hunters and recreationists, and import duties on certain arms and ammunition. 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 (also called the Refuge Revenue Sharing Fund) compensates counties for the presence of the non-taxable federal lands of the 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. For FY2011, the Administration requests \$14.1 million, down 3% from the FY2010 level of \$14.5 million. With refuge receipts, the FY2010 appropriation was estimated to fund about 36% of the authorized payment level. A projected increase in receipts, combined with the appropriation of \$14.1 million, would increase the payment to 38% of the authorized level in FY2010.⁷

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. The President requests \$10.0 million for FY2011, a 13% decrease from the FY2010 level of \$11.5 million.⁸ See **Table 3**. The President also requests \$4.0 million for the Neotropical Migratory Bird Conservation Fund, down 20% from the FY2010 level of \$5.0 million.

⁷ 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 tend to make up for the pro-rated NWRP payment rate 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 tend to be mostly acquired land, while western refuges are mostly reserved from the public domain. For further information, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

⁸ For more information on funding levels for each subprogram, see CRS Report RS21157, *International Species Conservation Funds*, by Pervaze A. Sheikh and M. Lynne Corn.

Table 3. Multinational Species Conservation and Neotropical Migratory Bird Conservation Funds, FY2009-FY2011

(\$ in Thousands)

Program	FY2009 Omnibus	FY2010 Enacted	FY2011 Request
African Elephant	2,000	2,000	2,000
Rhinos & Tiger	2,500	3,000	2,500
Asian Elephant	2,000	2,000	2,000
Great Apes	2,000	2,500	2,000
Marine Turtles	1,500	2,000	1,500
MSCF Total	10,000	11,500	10,000
Neotropical Migratory Birds	4,750	5,000	4,000

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 grants have generated considerable support from these governments. 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. A state's allocation is determined by formula. The Administration's request for FY2011 is \$90.0 million, identical to the FY2010 level. See **Table 1**, above.

The FY2010 appropriations law included language reducing the required state match from 50% to 25% for planning grants. (Because the entire program is part of annual appropriations bills, the change would apply only to that year's appropriation.) It also reduced the required state share of implementation grants from 50% to 35%, to encourage more states to participate. The Administration proposal for FY2011 would return the latter figure to a minimum of 50% from the states for implementation, and allow grants to be distributed to more projects.

For More Information

CRS Report R40185, *The Endangered Species Act (ESA) in the 111th 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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