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Wilderness: Issues and Legislation

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Summary

The Wilderness Act of 1964 established the National Wilderness Preservation System and, in it, Congress reserved for itself the authority to designate federal lands as part of the system. The act initially designated 54 wilderness areas containing 9.1 million acres of national forest lands. Since then, more than 100 laws designating wilderness areas have been enacted. As of September 2017, the system consisted of 110 million acres over 765 units, owned by four land management agencies: the Forest Service (FS), in the Department of Agriculture; the National Park Service (NPS); Fish and Wildlife Service (FWS); and Bureau of Land Management (BLM) within the Department of the Interior (DOI). The act also directed the Secretaries of Agriculture and the Interior to review certain lands for their wilderness potential.

Free-standing bills to designate wilderness areas are typically introduced and considered in each Congress; such bills are not amendments to the Wilderness Act, but typically refer to the act for management guidance and sometimes include special provisions. The 114th Congress considered many bills to add to the wilderness system, and one was enacted into law—P.L. 114-46—designating three additional wilderness areas totaling 275,665 acres. To date, several bills have been introduced in the 115th Congress to designate additional wilderness areas.

Wilderness designations can be controversial. The designation generally prohibits commercial activities, motorized access, and human infrastructure from wilderness areas; however, there are several exceptions to this general rule. Advocates propose wilderness designations to preserve the generally undeveloped conditions of the areas. Opponents express concern that such designations prevent certain uses and potential economic development in rural areas where such opportunities are relatively limited. The potential benefits or costs of wilderness designations are difficult to value or quantify. Thus, wilderness deliberations commonly focus on trying to maximize the benefits of preserving pristine areas while minimizing potential opportunity costs. Wilderness debates also focus on the extent of the National Wilderness Preservation System and whether it is of sufficient size or whether lands should be added or subtracted.

Most bills direct management of designated wilderness in accordance with the Wilderness Act. However, proposed legislation also often seeks a compromise among interests by allowing other activities in the area. Preexisting uses or conditions may be allowed to continue, sometimes temporarily, with or without halting or rectifying any associated nonconforming uses or conditions. Wilderness bills also often contain additional provisions, such as providing special access for particular purposes, for example, border security. Water rights associated with wilderness designations have also proved controversial; many statutes have addressed water rights in specific wilderness areas. In some cases, Congress has statutorily removed lands from several wilderness areas, commonly to adjust boundaries to delete private lands or roads included inadvertently in the original designation.

Controversies regarding management of existing wilderness areas also have been the subject of legislation. In previous Congresses, bills have been introduced to expand access to wilderness areas for border security; to guarantee access for hunting, fishing, and shooting; to release wilderness study areas (WSAs) from wilderness-like protection; and to limit agency review of the wilderness potential of their lands. The latter two issues have been contentious for BLM lands because BLM is required by law to protect the wilderness characteristics of its WSAs until Congress determines otherwise.

Contents

Wilderness Designations and Prohibited and Permitted Uses 1
Nonconforming Uses or Conditions 2
Debate Surrounding Wilderness Designations 3
Issues and Legislation in the 115th Congress 4
Bills Designating Wilderness Areas 4
Management in Accordance with the Wilderness Act 6
Hunting, Fishing, and Recreational Shooting 6
Wilderness and U.S.-Mexican Border Security 7
Administrative Action 9
Legislative Action 9
Wilderness Study Areas and Reviews for Wilderness Potential 9
Forest Service Wilderness Considerations and Inventoried Roadless Areas 10
BLM Wilderness Study Areas and Wilderness Reviews 10
Legislative Action 11

Tables

Table 1. 115th Congress: Bills to Designate Wilderness Areas 5
Table 2. 115th Congress: Bills to Release Wilderness Study Areas 11

Table A-1. 114th Congress: Bills to Designate Wilderness Areas 13
Table A-2. 114th Congress: Bills to Release Wilderness Study Areas (WSAs) 15

Appendixes

Appendix. 114th Congress Wilderness Legislation 13

Contacts

Author Information 15
Acknowledgments 16

The Wilderness Act of 1964 (P.L. 88-577, 16 U.S.C. §§1131-1136) established the National Wilderness Preservation System as a system of undeveloped federal lands, which are protected and managed to preserve their natural condition.[1] The act initially designated 54 wilderness areas containing 9.1 million acres of federal land within the national forests. Since then, Congress has passed more than 100 subsequent laws designating additional wilderness areas.[2] As of September, 1, 2017, the National Wilderness Preservation System totaled 765 areas, spanning nearly 110 million acres.[3] Many believe that certain areas should be designated to protect and preserve their unique value and characteristics, and bills are usually introduced in each Congress to designate wilderness areas. Others oppose such legislation because commercial activities, motorized access, and roads, structures, and facilities generally are prohibited in wilderness areas. Another area of concern is how prohibition of such activities can affect law enforcement in wilderness areas along U.S. national borders.

This report presents information on wilderness protection and a discussion of issues in the wilderness debate—some pros and cons of wilderness designation generally; proposed legislation; and a discussion of wilderness study area designations and protections and related issues. This report is updated periodically to track the status of legislation introduced in the 115th Congress to designate new wilderness (see **Table 1**) or to release wilderness study areas (WSAs; see **Table 2**). Tables of legislation from the 114th Congress are provided in the **Appendix** of this report.

Wilderness Designations and Prohibited and Permitted Uses

In the Wilderness Act, Congress reserved for itself the authority to designate federal lands as part of the system. This congressional authority is based on the Property Clause of the Constitution, which gives to Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."[4] Wilderness areas are part of existing units of federal land administered by the four federal land management agencies—the Forest Service (FS), in the Department of Agriculture; and the National Park Service (NPS); Fish and Wildlife Service (FWS); and Bureau of Land Management (BLM) within the Department of the Interior (DOI). Thus, statutory provisions for these agencies' lands, as well as the Wilderness Act and subsequent wilderness statutes, govern the administration of the designated wilderness areas.

Wilderness designations can be controversial because the Wilderness Act (and subsequent laws) restricts the allowed uses of the land within designated areas. In general, the Wilderness Act prohibits commercial activities, motorized access, and roads, structures, and facilities in wilderness areas. Specifically, Section 4(c) states:

> Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the

[1] P.L. 88-577, 16 U.S.C. §1131.

[2] Subsequent wilderness statutes have not designated wilderness areas by amending the Wilderness Act; instead, they are independent statutes that typically direct management in accordance with the Wilderness Act, but also may provide for unique management guidance.

[3] See CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Katie Hoover.

[4] Art. IV, §3, cl. 2.

> administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.[5]

This section thus prohibits most commercial resource exploitation (such as timber harvesting) and motorized entry (with cars, trucks, off-road vehicles, aircraft, or motorboats) except for "minimum requirements" to administer the areas and in emergencies.[6] However, Section 4(d) provides numerous exceptions, including (a) possible continued use of motorboats and aircraft where uses are already established; (b) measures to control fires, insects, and diseases; (c) mineral prospecting conducted "in a manner compatible with the preservation of the wilderness environment"; (d) water projects; (e) continued livestock grazing; and (f) certain commercial recreation activities. Subsequent wilderness statutes have included additional provisions for administering those individual wilderness areas, including exceptions to the general Wilderness Act prohibitions.

Existing private rights established prior to the designation of an area as wilderness remain in effect, unless expressly modified by the wilderness statute. The designation does not alter property rights, but does not suggest that all uses prior to the designation are allowed. There must be a property right, rather than a general right of use. Courts have consistently interpreted the phrase "subject to valid existing rights" to mean that the wilderness designation is not intended to take property in violation of the Fifth Amendment of the Constitution.[7] Ownership of land within a wilderness area would confer existing rights.

While most uses—timber harvesting, livestock grazing, motorized recreation—are not considered as rights to the lands and resources, the mining and mineral leasing laws do provide a process for establishing rights to the mineral resources. The Wilderness Act allowed implementation of these laws through 1983 for the original areas designated; many subsequent laws explicitly withdrew the designated areas from availability under these laws.[8]

Wilderness designations are permanent unless revised by law. Congress has statutorily removed lands from several wilderness areas, commonly to adjust boundaries to delete private lands or roads included inadvertently in the original designation.[9]

Nonconforming Uses or Conditions[10]

Lands do not have to be untouched by humans to be eligible for statutory designation as wilderness. Specific statutes designating wilderness areas may terminate or accommodate any existing uses or conditions that do not conform to wilderness standards (commonly referred to as *nonconforming uses*). Many previous wilderness designations have directed immediate

[5] 16 U.S.C. §1133(c).

[6] The Wilderness Act did not further define what activities would qualify as a minimum requirement necessary for administration or emergency response. Each agency has developed different guidelines and policies to determine whether a specified activity would qualify, commonly referred to as a minimum requirements analysis.

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

[8] Three statutes—P.L. 97-466, P.L. 101-628, and P.L. 103-77—directed that mineral leases within the wilderness be acquired through exchanges for mineral leases elsewhere.

[9] A memorandum listing these deletions is available to congressional staff from the author.

[10] For a discussion on uses in wilderness statutes, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Katie Hoover.

termination of nonconforming uses, whereas other bills have directed the agencies to remove, remediate, or restore nonconforming conditions or infrastructure within a specified time frame.

Alternatively, many nonconforming uses and conditions have been permitted to remain in designated wilderness areas. The Wilderness Act explicitly allows continued motorized access by aircraft and motorboats in areas where such uses were already established. The Wilderness Act also permits motorized access for management requirements and emergencies, and for fire, insect, and disease control. Numerous wilderness statutes have permitted existing infrastructure (e.g., cabins, water resource facilities, telecommunications equipment) to remain and have authorized occasional motorized access to operate, maintain, and replace the infrastructure. A few statutes have also allowed new infrastructure developments (e.g., telecommunications equipment and a space energy laser facility) within designated wilderness areas. Although such authorizations are usually for a specific area, some statutes have provided more general exemptions, such as for maintaining grazing facilities or for fish and wildlife management by a state agency in all areas designated in the statute.

Various existing wilderness statutes have included special access provisions for particular needs. For example, several statutes have included provisions addressing possible military needs in and near the designated areas, particularly for low-level military training flights. Similarly, statutes designating wilderness areas along the Mexican border commonly have allowed motorized access for law enforcement and border security. (See "Wilderness and U.S.-Mexican Border Security" below.) Other statutes have contained provisions allowing particular access for tribal, cultural, or other local needs. Several statutes have included provisions authorizing the agencies to prevent public access, usually temporarily and for the minimum area needed, to accommodate particular needs.

Debate Surrounding Wilderness Designations

Proponents of adding new areas to the National Wilderness Preservation System generally seek designations of specific areas to preserve them in their current condition and to prevent development activities from altering their wilderness character. Most areas protected as or proposed for wilderness are undeveloped, with few (if any) signs of human activity, such as roads and structures. The principal benefit of a wilderness designation is to maintain such undeveloped conditions and the values that such conditions generate—clean water, undisturbed wildlife habitats, natural scenic views, opportunities for nonmotorized recreation (e.g., backpacking), unaltered research baselines, and for some, the simple knowledge of the existence of such pristine places.

Opponents of wilderness designations generally seek to retain development options for federal lands. The potential use of lands and resources can provide economic opportunities through extracting and developing the resources, especially in the relatively rural communities in and around the federal lands. The principal cost of a wilderness designation is the lost opportunity (opportunity costs) for economic activity resulting from resource extraction and development. While some economic activities—such as grazing and some recreation—are allowed to continue within wilderness areas, many are prohibited. The potential losses for some resources—such as timber harvesting—can often be determined with relative accuracy, since the quality and quantity of the resource can be measured. However, for other resources—particularly minerals—the assessments of the quality and quantity of the unavailable resources are more difficult to determine, and thus the opportunity costs are less certain.

The potential benefits and opportunity costs of wilderness designation can rarely be fully quantified and valued. Thus, decisions about wilderness generally cannot be based solely on a

clear cost-benefit or other economic analysis. Rather, deliberations commonly focus on trying to maximize the benefits of preserving pristine areas and minimize the resulting opportunity costs. However, individuals and groups who benefit from wilderness designations may differ from those who may be harmed by lost opportunities, increasing conflict and making compromise difficult.

Issues and Legislation in the 115th Congress

In general, Congress addresses several issues when drafting and considering wilderness bills. These issues include the general pros and cons of wilderness designation—generally and regarding identified areas of interest—and specific provisions regarding management of wilderness areas to allow or prohibit certain uses.

Bills Designating Wilderness Areas

The first step in developing legislation to designate wilderness areas is to identify which areas to designate. The Wilderness Act specified that wilderness areas are "at least 5,000 acres of land or … of sufficient size to make practicable its preservation and use in an unimpaired condition";[11] but no minimum size is required for designations made under new legislation. As a result, wilderness areas have taken all shapes and sizes; the smallest is the Pelican Island Wilderness in Florida, with only 5½ acres, and the largest is the Mollie Beattie Wilderness (Arctic National Wildlife Refuge) in Alaska, with 8.0 million acres.[12] Many wilderness statutes have designated a single area, or even a single addition to an existing area. Others have designated more than 70 new areas or additions in a single statute. Some bills address a particular area, while others address all likely wilderness areas for a state or substate region (e.g., the California desert), usually for one agency's lands, although occasionally for two or more agencies' lands in the vicinity. Typically, the bill references a particular map for each area, and directs the agency to file a map with the relevant committees of Congress after enactment and to retain a copy in relevant agency offices (commonly a local office and/or the Washington, DC, headquarters).

Numerous bills to designate wilderness areas usually are introduced in each Congress. For example, 33 bills that would have designated wilderness areas (plus 13 companion bills) were introduced in the 111th Congress.[13] One was enacted—the Omnibus Public Land Management Act of 2009, P.L. 111-11. It included 16 subtitles (many of which had been introduced in individual wilderness bills in the 110th and 111th Congresses) designating over 50 new and expanding nearly 30 wilderness areas covering 2,050,964 acres in various states, as well as numerous other land, water, and other provisions. The 112th Congress was the first in decades not to designate additional wilderness; the only wilderness law that was enacted reduced the size of a wilderness area in the state of Washington and transferred the land to the Quileute Indian Tribe.[14] The 113th Congress added five new areas and over 279,00 acres to the system in two enacted bills.[15] In the

[11] 16 U.S.C. §1131(c).

[12] For more information on issues regarding the Arctic National Wildlife Refuge, see CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): An Overview*, by Michael Ratner and Laura B. Comay.

[13] For information on these bills from the 111th Congress, see CRS Report R40237, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues in the 111th Congress*, coordinated by Ross W. Gorte and Carol Hardy Vincent.

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

[15] P.L. 113-87 and P.L. 113-291 §§3060-3062, 3064-3066.

114th Congress, more than 30 bills were introduced to designate new or add to existing wilderness areas, and one was enacted: P.L. 114-46, which designated three new wilderness areas in Idaho.[16] See **Appendix** for an alphabetical list of legislation introduced and the bill enacted into law in the 114th Congress.

In the 115th Congress, as of the date of this report, more than 20 bills had been introduced to expand the National Wilderness Preservation System. See **Table 1** for an alphabetical list of legislation introduced and the most recent action (as of the publication of this report). Some of these bills include proposals to designate more than one wilderness area or to designate several wilderness areas in different states.

Table 1. 115th Congress: Bills to Designate Wilderness Areas

Bill Title	Bill No.	State	Acreage[a]	Latest Action
America's Red Rock Wilderness Act of 2017	H.R. 2044 S. 948	UT	~9,174,040	Introduced 4/6/17 (H.R. 2044) Introduced 4/26/17 (S. 948)
Blackfoot Clearwater Stewardship Act of 2017	S. 507	MT	79,060	Introduced 3/2/17
California Desert Protection and Recreation Act of 2017	S. 32	CA	378,670	Hearing 7/26/17
California Off-Road Recreation and Conservation Act	H.R. 857	CA	329,370	Introduced 2/3/17
Central Coast Heritage Protection Act	H.R. 4072 S. 1959	CA	289,105	Introduced 10/16/17 (H.R. 4072 and S. 1959)
Cerros del Norte Conservation Act	S. 432	NM	21,540	Placed on the Senate Calendar 5/3/17
Clear Creek National Recreation Area and Conservation Act	H.R. 1913	CA	21,000	Passed House 7/11/2017
Energy and Natural Resource Act of 2017, Title IV	S. 1460	NM, TN	41,096	Hearing 9/19/17
Imperial Valley Desert Conservation and Recreation Act	H.R. 827	CA	49,300	Introduced 2/2/17
Jay S. Hammond Wilderness Act	S. 213	AK	2,600,000	Placed on Senate Calendar 6/14/17
Northern Rockies Ecosystem Protection Act	H.R. 2135 S. 936	ID, MT, OR, WA, WY	24,526,000	Introduced 4/25/17 (H.R. 2135 and S. 936)
Oregon Wildlands Act	S. 1548	OR	87,240	Hearing 7/26/17
Organ Mountains-Desert Peaks Conservation Act	S. 441	NM	241,786	Introduced 2/17/17

[16] The 114th Congress enacted two additional laws that affected existing wilderness areas but did not add or delete any acreage. P.L. 114-272 changed the name of one wilderness area. P.L. 114-328 specified that certain state lands already located within a designated wilderness area in Utah may be included in an exchange of land between the state and federal government. If the exchange is necessary, the land would be added to the Cedar Mountains Wilderness.

Bill Title	Bill No.	State	Acreage[a]	Latest Action
Pershing County Economic Development and Conservation Act	H.R. 1107 S. 414	NV	136,072	Passed House 1/16/18 (H.R. 1107) Introduced 2/16/17 (S. 414)
San Gabriel Mountains Forever Act of 2017	H.R. 3039	CA	31,069	Introduced 6/23/17
San Juan County Settlement Implementation Act	S. 436	NM	9,492	Hearing 7/26/17
Tennessee Wilderness Act of 2017	H.R. 2218 S. 973	TN	7,368 19,556	Introduced 4/27/17 (H.R. 2218 and S. 973)
Udall-Eisenhower Arctic Wilderness Act	H.R. 1889 S. 820	AR	1,559,538	Introduced 4/4/17 (H.R. 1889 and S. 820)
Wild Olympics Wilderness and Wild and Scenic Rivers Act of 2017	H.R. 1285 S. 483	WA	131,900	Introduced 3/1/17 (H.R. 1285 and S. 483)

Source: Congressional Research Service (CRS).

Notes: Bills may contain multiple designations of new wilderness areas, multiple additions to existing wilderness areas, and multiple designations of potential wilderness areas. Bills that would expand or modify existing wilderness areas but do not also include any provisions to designate new wilderness areas are not included.

a. Estimated acreage as identified or derived (if possible) from the latest version of the legislation—as introduced, reported, passed, or enacted.

Management in Accordance with the Wilderness Act

Most bills direct that the designated areas are to be managed in accordance with the Wilderness Act, meaning human impacts, such as commercial activities, motorized and mechanical access, and infrastructure developments, are generally prohibited. Some bills designating wilderness areas may terminate or accommodate any existing nonconforming uses or conditions, however. The Wilderness Act does allow some activities that affect the natural condition of the property, such as access for emergencies and for minimum management requirements; activities to control fires, insects, and diseases; livestock grazing; and some water infrastructure facilities.[17] Subject to valid existing rights, wilderness areas are withdrawn from the public land laws and the mining and mineral leasing laws. The Wilderness Act specifies that "reasonable access" to nonfederal lands within a designated wilderness area must be accommodated.[18] State jurisdiction over and responsibilities for fish and wildlife and water rights are unaffected.

Hunting, Fishing, and Recreational Shooting

The Wilderness Act provides that the area will be managed, in part, for recreational use, but it does not specifically address hunting, fishing, or recreational shooting (although motorized vehicles, which may be helpful in removing big game from remote areas, are typically forbidden).[19] Wilderness areas are generally open to hunting, fishing, and recreational shooting, subject to the management provisions of the underlying federal land. For example, hunting is

[17] See 16 U.S.C. §1133(c) and 16 U.S.C. §1133(d).

[18] See 16 U.S.C. §1134(c).

[19] 16 U.S.C. §1133(b).

prohibited in many NPS units; subsequently, hunting is also prohibited in any wilderness areas within those units. However, hunting, fishing, and recreational shooting are generally permitted on FS or BLM lands and, thus, on wilderness areas within those areas. Some wilderness designations authorize periods when or zones where the wilderness may be closed to hunting, fishing, and trapping for safety and administrative reasons.[20]

Legislation introduced in the 115th Congress would alter management of wilderness areas for hunting, fishing, and recreational shooting activities. For example, S. 733, the Sportsmen's Act, and H.R. 3668, the Sportsmen's Heritage and Recreational Enhancement (SHARE) Act, both include provisions that would specify that wilderness areas managed by the FS and BLM would be open to recreational fishing, hunting, and recreational shooting, unless a land management agency had acted to close the land to the activity.[21] The agencies would be permitted to close an area temporarily or permanently. H.R. 3668 specifies that closures must be determined to be necessary and reasonable and supported by facts and evidence. S. 733 would require specific public notice and comment periods prior to a closure. S. 733 also would prohibit the agencies from providing permits for recreational shooting ranges within designated wilderness areas. H.R. 3668 was reported by the House Committee on Natural Resources on September 18, 2017.[22] S. 733 was reported by the Senate Committee on Energy and Natural Resources on June 22, 2017.[23] Similar bills were introduced in previous Congresses.[24]

Wilderness and U.S.-Mexican Border Security

One issue that has received attention from some Members of Congress in recent years is the impact of the Wilderness Act and other federal laws governing land and resource management on border security.[25] Many are concerned that wilderness areas abutting and near the Mexican border are conduits for illegal immigration and drug trafficking because limitations on motorized access may restrict apprehension efforts.

There are 15 designated wilderness areas within about 20 miles of the Mexican border, and 5 wilderness areas abut the border (for a total of approximately 96 linear miles).[26] As noted above, the Wilderness Act authorizes motorized access for emergencies and administrative needs, but does not describe what is meant by "administrative needs." The act is silent on access specifically for border security, but some actions related to controlling drug trafficking and illegal immigration might be considered administrative needs or emergencies. Specific enabling statutes may contain more specific language or provisions.

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[20] See for example, P.L. 113-291.

[21] S. 733 and H.R. 3668 are described as illustrative examples of legislation in the 115th Congress to address hunting, fishing, and recreational shooting in wilderness areas. Other bills in the 115th Congress may also address these issues.

[22] U.S. Congress, House Committee on Natural Resources, *Sportsmen's Heritage and Recreational Enhancement Act,* 115th Cong., 1st sess., September 18, 2017, H.Rept. 115-314.

[23] U.S. Congress, Senate Committee on Energy and Natural Resources, *Sportsmen's Act,* 115th Cong., 1st sess., June 22, 2017, S.Rept. 115-116.

[24] See, for example, H.R. 528, H.R. 2406, and S. 556 in the 114th Congress.

[25] Other laws commonly cited as potentially impeding efforts to halt drug traffic and illegal aliens include the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) because they require an assessment of impacts prior to an agency action.

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

The enabling statutes for two of the five border wilderness areas contain specific language authorizing access for border security reasons. The first explicit language on the issue of wilderness access for border security was in Title III of the Arizona Desert Wilderness Act of 1990 (P.L. 101-628). Section 301(g) directs that

> Nothing in this title, including the designation as wilderness of lands within the Cabeza Prieta National Wildlife Refuge shall be construed as (1) precluding or otherwise affecting continued border operations ... within such refuge, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or (2) precluding … new or renewed agreements ... concerning ... border operations within such refuge, consistent with management of the refuge for the purpose for which such refuge was established.

The California Desert Protection Act of 1994 (P.L. 103-433) also contains explicit guidance on border security for all designated areas, including one abutting the Mexican border and six others within about 20 miles of the border. Section 103(g) directs that

> Nothing in this Act, including the wilderness designations ... may be construed to preclude Federal, State, and local law enforcement agencies from conducting law enforcement and border operations as permitted before the date of enactment of this Act, including the use of motorized vehicles and aircraft, on any lands designated as wilderness by this Act.

The most recent statute designating a border wilderness area, the Otay Mountain Wilderness Act of 1999 (P.L. 106-145), also addresses border security. The act requires the southern boundary of the wilderness to be at least 100 feet from the border. Also, Section 6(b) allows border operations to continue consistent with the Wilderness Act:

> Because of the proximity of the Wilderness Area to the United States-Mexico international border, drug interdiction [and] border operations ... are common management actions throughout the area.... This Act recognizes the need to continue such management actions so long as such management actions are conducted in accordance with the Wilderness Act and are subject to such conditions as the Secretary considers appropriate.

Concerns about access limitations to wilderness areas (and other legal constraints that apply more broadly to federal lands) have persisted through several Congresses. In 2010, the Government Accountability Office (GAO) noted that most border officials reported that any delays and restrictions reported in border security operations did not affect security:

> [D]espite the access delays and restrictions experienced by these [Border Patrol] stations, 22 of the 26 patrol agents-in-charge reported that the overall security status of their jurisdiction had not been affected by land management laws. Instead, factors such as the remoteness and ruggedness of the terrain have had the greatest effect on their ability to achieve operational control in these areas. Four patrol agents-in-charge reported that delays and restrictions had affected their ability to achieve or maintain operational control, but they either had not requested resources for increased or timelier access or their requests had been denied by senior Border Patrol officials because of higher priority needs of the agency. [27]

[27] U.S. Government Accountability Office, *Southwest Border: Border Patrol Operations on Federal Lands*, GAO-11-573T, April 15, 2011, at http://www.gao.gov/new.items/d11573t.pdf. See also GAO, *Southwest Border: More Timely Border Patrol Access and Training Could Improve Security Operations and Natural Resource Protection on Federal Lands*, GAO-11-38, October 2010, at http://www.gao.gov/new.items/d1138.pdf; and GAO, *Border Security: Additional Actions Needed to Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010, at http://www.gao.gov/new.items/d11177.pdf.

Administrative Action

In August 2017, the Trump Administration issued notice that the Secretary of Homeland Security used the authority provided in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA, as amended)[28] to waive all laws—including the Wilderness Act and the Otay Mountain Wilderness Act—in order to expeditiously implement border security measures in California.[29] This includes the construction of border infrastructure and other operational improvements along a 15-mile segment of the border.

Legislative Action

The 115th Congress is considering legislation to reduce the potential restrictions of the Wilderness Act and other federal statutes on border security activities.[30] For example, H.R. 3593, the Securing Our Borders and Wilderness Act, would amend the Wilderness Act to permit U.S. Customs and Border Protection to perform border security measures as needed, including operating motor vehicles and aircraft and building infrastructure, including roads (upon approval of the Secretary of the Interior), within designated wilderness areas. H.R. 3548, the Border Security for America Act of 2017, and S. 1757, the Building America's Trust Act, would amend IIRAIRA and explicitly waive any provisions in the Wilderness Act (among others) that would impede, prohibit, or restrict activities of U.S. Customs and Border Protection on federal lands on both the southern and northern international borders. Similar bills were introduced in previous Congresses.[31]

Wilderness Study Areas and Reviews for Wilderness Potential

Congress directed FS and BLM to initially evaluate the wilderness potential of their lands at different times, and these wilderness reviews have been controversial. Congress directed FS to review the wilderness potential of the National Forest System (NFS) in the 1964 Wilderness Act, and directed BLM to do so for public lands in the Federal Land Policy and Management Act of 1976 (FLPMA).[32] BLM and FS also have different requirements to assess the wilderness characteristics and potential of their lands for future wilderness designation by Congress, described below. Once identified, BLM and FS also have different requirements on how to manage the wilderness potential of those lands. Some believe that these *wilderness study areas* (WSAs, for BLM) and *inventoried roadless areas* (for FS) are improperly managed as wilderness, restricting development opportunities, despite lacking congressional designation as wilderness.[33]

[28] P.L. 104-208, Div. C, Title I, Section 102(a)-(c), 8 U.S.C. 1103 note.

[29] Department of Homeland Security, "Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended," 82 *Federal Register* 147, August 2, 2017.

[30] The bills described in this section are illustrative examples of legislation in the 115th Congress to address border security in wilderness areas. Other bills in the 115th Congress may also address these issues.

[31] See for example, S. 750 and H.R. 1412 in the 114th Congress and S. 744 in the 113th Congress.

[32] P.L. 94-579; 43 U.S.C. §§1701 et seq. The Wilderness Act directed the Secretary of the Interior to review the wilderness potential of the lands managed by the NPS and FWS, but did not include BLM lands.

[33] Here, WSAs refer to lands identified through an administrative process by BLM. However, Congress has also established some WSAs through statute on BLM, FWS, and FS lands. The *inventoried roadless areas*, identified in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume II. 2000, generally refer to areas identified in the 1979 Roadless Area Review and Evaluation (RARE) II process, excluding areas that have since been designated wilderness by Congress.

Others note that FLPMA and regulations dictate that certain areas must be managed to preserve their wilderness potential.

Forest Service Wilderness Considerations and Inventoried Roadless Areas

The Wilderness Act directed the FS to evaluate the wilderness potential of NFS lands by September 3, 1974.[34] In the 1970s and 1980s, the FS conducted two reviews, known as the Roadless Area Review and Evaluation (RARE) I and II that resulted in some, but not all, of the inventoried roadless areas being recommended to Congress for a wilderness designation. Congress designated some of these areas as wilderness areas and released others from further consideration, although many remain pending before Congress. Congress also directed the FS to continue to evaluate the wilderness potential of NFS lands during the development and revision of land and resource management plans (also known as forest plans), approximately every 15 years.[35] These reviews may lead to the recommendation of new wilderness areas, or potentially may lead to the modification of an existing recommendation.

Management of the inventoried roadless areas has been controversial. The George W. Bush and William Clinton Administrations each proposed different roadless area policies. Both were heavily litigated; however, the Clinton policy remains largely intact after the Supreme Court chose not to review a lower court's decision in 2012.[36] Under the Clinton Nationwide Roadless Rule, certain activities—such as road construction and timber harvesting—are restricted or prohibited in certain inventoried roadless areas, with some exceptions.[37]

BLM Wilderness Study Areas and Wilderness Reviews

Section 603(a) of FLPMA required BLM to review and present its wilderness recommendations to the President within 15 years of October 21, 1976, and the President then had two years to submit wilderness recommendations to Congress.[38] Starting in 1977 through 1979, BLM identified suitable wilderness study areas (WSAs) from roadless areas identified in its initial resource inventory. BLM presented its recommendations within the specified time frame, and Presidents George H. W. Bush and William J. Clinton submitted wilderness recommendations to Congress. Although these areas have been reviewed and several statutes have been enacted to designate BLM wilderness areas based on them, many of the wilderness recommendations for BLM lands remain pending before Congress. Section 603(c) of FLPMA directs the agency to manage those lands "until Congress has determined otherwise … in a manner so as not to impair the suitability of such areas for preservation as wilderness."[39] Thus, BLM must protect the WSAs

[34] P.L. 88-577 §3(b); 16 U.S.C. §1132(b).

[35] Under Section 6(f)(5) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (P.L. 93-378), as amended by the National Forest Management Act of 1976 (NFMA, P.L. 94-588), management plans for the national forests must be revised at least every 15 years.

[36] Wyoming v. Department of Agriculture, 133 S.Ct. 417 (2012). The Clinton roadless policy does not apply to Colorado or Idaho; roadless areas within the national forests within those states are subject to statewide regulations developed under the Bush roadless rule. See 36 C.F.R. §294.40-294.49 for the Colorado Roadless Rule and 36 C.F.R. §294.20-294.29 for the Idaho Roadless Rule.

[37] Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume II. 2000. See also Forest Service, "Roadless Area Conservation," 66 *Federal Register* 9, January 12, 2001.

[38] P.L. 94-579 §603; 43 U.S.C. §1782(a).

[39] FLPMA §603; 43 U.S.C. §1782(c).

as if they were wilderness until Congress enacts legislation that releases BLM from that responsibility. This is sometimes referred to as a nonimpairment obligation.

Section 201 of FLPMA directs BLM to identify and maintain an inventory of the resources on its lands, giving priority to areas of critical environmental concern.[40] It is unclear, however, whether BLM is required to conduct any future assessments of the wilderness potential of its lands. In contrast to the FS, which must revise its land and resource management plans at least every 15 years, BLM is not required to revise its plans on a specified cycle; rather it must revise its land and resource management plans "when appropriate."[41] Furthermore, although the FS is directed to include wilderness reviews in the planning process, FLPMA is silent on wilderness in the guidance for the BLM planning process. FS is required to conduct reviews of its lands and resources at regular intervals, and an assessment of the wilderness potential is a required part of those reviews. In contrast, BLM is not required to conduct reviews of its lands and resources at regular intervals, and when BLM does do a review, an assessment of the wilderness potential is not required.

Legislative Action

Previous Congresses have considered legislation to more broadly release WSAs. For example, the Wilderness and Roadless Area Release Act of 2011 (H.R. 1581/S. 1087, 112th Congress) would have released certain BLM WSAs—those not designated as wilderness by Congress and those identified by the BLM as not suitable for wilderness designation—from the nonimpairment requirement of Section 603(c) of FLPMA. The bill also would have terminated the William Clinton and George W. Bush Forest Service roadless area rules. The 114th Congress also considered similar legislation. For example, S. 193, the Inventoried Roadless Area Management Act, proposed to terminate the Clinton roadless area rule on national forests in Wyoming but did not broadly address WSAs.

Congress also regularly considers legislation to release specific WSAs. See **Table 2** for an alphabetical list of WSA release legislation in the 115th Congress (See **Appendix** for 114th Congress legislation).

Table 2. 115th Congress: Bills to Release Wilderness Study Areas

Bill Title	Bill No.	State	Name of WSA (acreage to be released)	Latest Action
California Off-Road Recreation and Conservation Act / California Desert Protection and Recreation Act	H.R. 857 S. 32	CA	Cady Mountains Kingston Range, Avawatz Mountain, Death Valley National Park Boundary, Great Falls Basin, and Soda Mountain	Introduced 2/3/17 (H.R. 857) Hearing 7/26/17 (S. 32)
Cerros del Norte Conservation Act	S. 432	NM	San Antonio (7,050)	Placed on Senate Calendar 5/3/17
Clear Creek National Recreation Area and Conservation Act	H.R. 1913	CA	San Benito Mountain	Passed House 7/11/17

[40] FLPMA §201; 43 U.S.C. §1711.

[41] FLPMA §202; 43 U.S.C. §1712(a).

Bill Title	Bill No.	State	Name of WSA (acreage to be released)	Latest Action
Crooked River Ranch Fire Protection Act	H.R. 2075	OR	Deschutes Canyon-Steelhead Falls (832)	Placed on House Calendar 8/29/17
Energy and Natural Resource Act of 2017, Title IV	S. 1460	NM, TN	San Antonio (7,050)	Hearing 9/19/17
Organ Mountains-Desert Peaks Conservation Act	S. 441	NM	Dona Ana County	Introduced 2/17/17
Pershing County Economic Development and Conservation Act	H.R. 1107 S. 414	NV	China Mountain, Mt. Limbo, Selenite Mountains, and Tobin Range (~48,600)	Placed on House Calendar 9/28/17 (H.R. 1107) Introduced 2/16/17 (S. 414)
Protect Public Use of Public Lands Act	S. 2206	MT	West Pioneer, Blue Joint, Sapphire, Middle Fork Judith, and Big Snowies (449,500)	Introduced 12/7/17
San Juan County Settlement Implementation Act	S. 436	NM	Ah-shi-sle-pah	Hearing 7/26/17

Source: CRS.

Notes: Acreage estimated or derived (if possible) from the latest version of the legislation. The legislation may also specify that the release of the WSA is only to be to the extent that the lands within the specified area were not designated by wilderness within the same legislation.

Appendix. 114th Congress Wilderness Legislation

The 114th Congress added 275,665 acres to the wilderness system by either adding new wilderness areas or expanding existing areas. Many other bills to designate additional wilderness areas were introduced and considered (see **Table A-1**). See **Table A-2** for 114th Congress legislation that would have released BLM WSAs.

Table A-1. 114th Congress: Bills to Designate Wilderness Areas

Bill Title	Bill No.	State	Acreage[a]	Last Action in the 114th Congress
America's Red Rock Wilderness Act of 2015	H.R. 2430 S. 1375	UT	8,654,040	H.R. 2430 introduced 5/19/15 S. 1375 introduced 5/19/15
Arizona Sonoran Desert Heritage Act of 2015	H.R. 2926	AZ	290,823	H.R. 2926 introduced 6/25/15
California Desert Conservation and Recreation Act of 2015	S. 414	CA	398,497	S. 414 introduced 2/9/15
California Desert Conservation, Off-Road Recreation, and Renewable Energy Act of 2015[b]	S. 2568	CA	378,167	S. 2568 introduced 2/23/16
California Minerals, Off-Road Recreation, and Conservation Act	H.R. 3668	CA	430,658	H.R. 3668 hearing 12/9/15
Central Coast Heritage Protection Act	H.R. 1865 S. 1423	CA	288,788	H.R. 1865 introduced 4/16/15 S. 1423 hearing 4/21/16
Cerros del Norte Conservation Act	S. 1240	NM	21,410	S. 1240 placed on Senate Calendar 9/9/15
Clear Creek National Recreation Area and Conservation Act	H.R. 1838	CA	21,000	H.R. 1838 passed House 7/15/16
Colorado Wilderness Act of 2015	H.R. 3336	CO	715,825	H.R. 3336 introduced 7/29/15
Continental Divide Wilderness and Recreation Act	H.R. 2554	CO	39,460	H.R. 2554 introduced 5/21/15
Douglas County Conservation Act of 2015/Douglas County Conservation and Economic Development Act of 2016	H.R. 925 S. 472 H.R. 4688	NV	12,330	H.R. 925 introduced 2/12/15 S. 472 hearing 5/21/15 H.R. 4688 introduced 3/3/16
Gold Butte National Conservation Area Act	H.R. 856 S. 199	NV	221,558	H.R. 856 introduced 2/10/15 S. 199 introduced 1/20/15
Imperial Valley Desert Conservation and Recreation Act of 2015	H.R. 4060	CA	49,300	H.R. 4060 introduced 11/18/15
Jay S. Hammond Wilderness Act	S. 873	AK	2,600,000	S. 873 placed on Senate Calendar 9/9/15
Northern Rockies Ecosystem Protection Act	H.R. 996	ID, MT, OR, WA, WY	24,526,000	H.R. 996 introduced 2/13/15
Oregon and California Land Grant Act of 2015	S. 132	OR	86,640	S. 132 hearing 7/16/15
Oregon Wildlands Act	S. 1699	OR	56,700	S. 1699 hearing 4/21/16

Bill Title	Bill No.	State	Acreage[a]	Last Action in the 114th Congress
Saint Francis Dam Disaster National Memorial and Castaic Wilderness Act	H.R. 3153	CA	70,432	H.R. 3153 introduced 7/22/15
San Juan County Settlement Implementation Act of 2016	S. 2681	NM	9,492	S. 2681 hearing 9/22/16
Sawtooth National Recreation Area and Jerry Peak Wilderness Additions Act	H.R. 1138 S. 583	ID	275,665	P.L. 114-46, 8/7/15
Sutton Mountain and Painted Hills Area Preservation and Economic Enhancement Act of 2015	S. 1255	OR	57,465	S. 1255 introduced 5/7/2015
Tennessee Wilderness Act	H.R. 4545 S. 755	TN	19,556	H.R. 4545 hearing 7/16/15 S. 755 hearing 7/16/15
Udall-Eisenhower Arctic Wilderness Act	H.R. 239 S. 2341	AK	1,559,538	H.R. 239 introduced 1/9/15 S. 2341 introduced 12/2/15
Wild Olympics Wilderness and Wild and Scenic Rivers Act of 2015	H.R. 2665 S. 1510	WA	126,554	H.R. 2665 introduced 6/4/15 S. 1510 hearing 4/21/16

Source: CRS.

Notes: Many of the bills contained multiple designations of new wilderness areas and/or multiple additions to existing wilderness areas.

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

b. S. 2568 and S. 414 contained nearly identical wilderness designation provisions, except that S. 414 would have designated additional acreage in one wilderness area not included in S. 2568 and would have designated more acreage in another wilderness area.

Table A-2. 114th Congress: Bills to Release Wilderness Study Areas (WSAs)

Bill Title	Bill No.	State	Name of WSA (acreage to be released)	Last Action in the 114th Congress
California Desert Conservation and Recreation Act of 2015	S. 414	CA	Lists 6 WSAs to be released, specific acreage not provided	S. 414 hearing 10/8/15
California Desert Conservation, Off-Road Recreation, and Renewable Energy Act	S. 2568	CA	Lists 6 WSAs to be released (identical to S. 414), specific acreage not provided	S. 2568 introduced 2/23/16
California Minerals, Off-Road Recreation, and Conservation Act	H.R. 3668	CA	Lists 12 WSAs to be released (including all 6 of the WSAs in S. 414), specific acreage not provided	H.R. 3668 hearing 12/9/15
Cerros del Norte Conservation Act	S. 1240	NM	San Antonio (7,050)	S. 1240 placed on Senate Calendar 9/9/15
Clear Creek National Recreation Area and Conservation Act	H.R. 1838	CA	San Benito Mountain (1,500)	H.R. 1838 ordered to be reported from the House Committee on Natural Resources 3/16/16
Douglas County Conservation Act of 2015	H.R. 925 S. 472	NV	Burbank Canyons (1,065)	H.R. 925 introduced 2/12/15 S. 472 hearing 5/21/15
Gold Butte National Conservation Area Act	H.R. 856 S. 199	NV	Specific WSAs and acreage not listed[a]	H.R. 856 introduced 2/10/15 S. 199 introduced 1/20/15
Luna and Hidalgo Counties Wilderness Study Area Research Act of 2015	H.R. 3478	NM	9 WSAs, specific acreage not provided	H.R. 3478 introduced 9/21/15
Sawtooth National Recreation Area and Jerry Peak Wilderness Additions Act	H.R. 1138 S. 583	ID	4 WSAs, specific acreage not provided	P.L. 114-46, 8/7/15

Source: CRS.

a. The bill would have released any land within the Gold Butte National Conservation Area that the bill did not designate as wilderness.

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