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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 120 laws designating wilderness areas have been enacted. As of July 15, 2019, the system consisted of over 111 million acres in 803 units, managed 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.

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 115th Congress considered many bills to add to the wilderness system, and two were enacted into law, designating 20,196 additional acres as one new wilderness area and additions to seven existing wilderness areas. To date, several bills have been introduced in the 116th Congress to designate additional wilderness areas and one law has been enacted, designating approximately 1.3 million acres as 37 new wilderness areas and additions to seven existing 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.

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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 July 15, 2019, the National Wilderness Preservation System totaled 803 areas, spanning over 111 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 116th Congress to designate new wilderness (see **Table 1**) or to release wilderness study areas (WSAs; see **Table 2**). Tables of legislation from the 115th 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 National Wilderness Preservation 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 Anne A. Riddle and 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 extraction (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 authors.

[10] For a discussion on uses in wilderness statutes, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Anne A. Riddle and 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 communities in and around the federal lands. The principal cost of a wilderness designation is the lost opportunity for economic activity (opportunity costs) 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 116th Congress

Congress typically 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, more than 30 bills were introduced in the 114th Congress to designate new or add to existing wilderness areas, and one was enacted: P.L. 114-46, which designated over 275,000 acres in three new wilderness areas in Idaho.[13] Nearly 30 wilderness designation bills were introduced in the 115th Congress. The 115th Congress passed two laws, designating a total of 20,196 acres in Arizona and Tennessee.[14] See **Table A-1** and **Table A-2** for an alphabetical list of legislation introduced and the bills enacted into law in the 115th Congress.

In the 116th Congress, as of the date of this report, over 25 bills had been introduced to expand the National Wilderness Preservation System. To date, the 116th Congress has enacted one law that combined several wilderness bills: the John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9) designated 38 areas across five states. See **Table 1** for an alphabetical list of legislation introduced and the most recent action (as of the publication of this report). Some

[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 Laura B. Comay, Michael Ratner, and R. Eliot Crafton.

[13] 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.

[14] **P.L. 115-334, P.L. 115-430.**

introduced or enacted bills include proposals to designate more than one wilderness area or to designate several wilderness areas in different states.

Table 1. 116th Congress: Bills to Designate Wilderness

Bill Title	Bill No.	State	Acreage	Latest Action
Antiquities Act	H.R. 1050 S. 367	NM	392,689	**P.L. 116-9 §1201, 1202[a]**
Arctic Refuge Protection Act of 2019	S. 2461	AK	1,559,538	S. 2461 introduced 9/11/2019
Blackfoot Clearwater Stewardship Act	S. 1765	MT	79,060	S. 1765 introduced 6/10/2019
California Desert Protection and Recreation Act of 2019	H.R. 376 S. 67	CA	375,500	**P.L. 116-9, §1411[a]**
Central Coast Heritage Protection Act	H.R. 2199 S. 1111	CA	244,476	H.R. 2199 ordered to be reported 11/20/2019 S. 1111 introduced 4/10/19
Clear Creek National Recreation Area and Conservation Act	H.R. 403	CA	21,000	H.R. 403 introduced 2/05/19
Colorado Outdoor Recreation and Economy (CORE) Act	H.R. 823 S. 241	CO	57,887	H.R. 823 passed House and received in Senate, 10/31/2019; S. 241 introduced 1/28/19
Colorado Wilderness Act	H.R. 2546	CO	741,607	H.R. 2546 ordered to be reported (as amended), 11/20/2019
Devil's Staircase Wilderness Act of 2019	H.R. 999 S. 86	OR	30,621	**P.L. 116-9, §1205[a]**
Oregon Wildlands Act				**P.L. 116-9, §1205[a]**
John D. Dingell Jr. Conservation, Management, and Recreation Act[b]	S. 47	NM UT	1,309,241	**P.L. 116-9, §1121; §1201, §1202, §1205,§1231, §1411**
Northern Rockies Ecosystem Protection Act (NREPA)	H.R. 1321 S. 827	ID, MT, OR, WA, WY	23,070,000	H.R. 1321 introduced 2/22/19; S. 827 introduced 3/14/19

Bill Title	Bill No.	State	Acreage	Latest Action
Northwest California Wilderness, Recreation, and Working Forests Act	H.R. 2250 S. 1110	CA	261,889	H.R. 2250 ordered to be reported (as amended), 11/20/2019 S. 1110 introduced 4/10/19
Oregon Recreation Enhancement Act	S. 1262	OR	59,512	S. 1262 hearings held 5/14/2019
Pershing County Economic Development and Conservation Act	H.R. 252	NV	136,072	H.R. 252 hearings held 7/10/2019
San Gabriel Mountains Foothills and Rivers Protection Act	H.R. 2215 S. 1109	CA	31,069	H.R. 2215 ordered to be reported (as amended), 11/20/2019 S. 1109 introduced 4/10/2019
Sutton Mountain and Painted Hills Area Preservation and Economic Enhancement Act	S. 1597	OR	57,465	S. 1597 introduced 5/22/2019
Wild Olympics Wilderness and Wild and Scenic Rivers Act	H.R. 2642 S. 1382	WA	126,554	H.R. 2642 introduced 5/09/19; hearings held 7/10/2019; S. 1382 introduced 5/09/19

Source: Congressional Research Service (CRS).

Notes: Bills may contain multiple designations. Bills that only contain provisions to modify or expand existing wilderness areas are not included. CRS identified acreage from the latest version of the legislation—as introduced, reported, passed, or enacted. Acreage listed in legislation may differ from final designated acreage (for example, if acreage in legislation is described as "approximate" or differs from the acreage calculated from official maps). Therefore, acreage should be considered approximate. Legislative provisions that passed appear in boldface in the "Latest Action" column, along with the P.L. number of the legislation in which they passed.

a. This designation was enacted as part of P.L. 116-9, the John D. Dingell Jr. Conservation, Management, and Recreation Act.

b. S. 47, as introduced and as enacted in P.L. 116-9, included several wilderness designations that had already been introduced as stand-alone bills in the 116th Congress and included 19 designations that had not previously been introduced in the 116th Congress.

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.[15] 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.[16] 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).[17] Wilderness areas are generally open to hunting, fishing, and recreational shooting, subject to the management provisions of the underlying federal land.[18] For example, hunting is 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 and BLM lands and, thus, on wilderness areas within lands administered by those agencies. Some wilderness designations authorize periods when or zones where the wilderness may be closed to hunting and fishing for safety and administrative reasons and to comply with applicable laws.[19]

Legislation passed in the 116th Congress affected management of wilderness areas for hunting, fishing, and recreational shooting activities. The John D. Dingell Jr. Conservation, Management, and Recreation Act (P.L. 116-9) specified that lands managed by the FS and BLM—including wilderness areas—would be open to recreational fishing, hunting, and recreational shooting, unless a land management agency had acted to close the land to the activity.[20] The agencies are permitted to close an area temporarily or permanently after consulting with state fish and wildlife agencies and providing public notice and opportunity to comment.[21] Although recreational shooting may be allowed, the agencies are prohibited from providing permits for recreational shooting ranges within designated wilderness areas, wilderness study areas, or areas administratively classified as wilderness eligible or wilderness suitable.[22]

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.[23] Many are concerned that wilderness areas abutting and near the Mexican border

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

[16] See 16 U.S.C. §1134(c).

[17] 16 U.S.C. §1133.

[18] For more information on hunting, fishing, and trapping, see CRS Report R45103, *Hunting and Fishing on Federal Lands and Waters: Overview and Issues for Congress*, by R. Eliot Crafton.

[19] See for example, P.L. 113-291 §3061.

[20] P.L. 116-9 §4102-4103, 16 U.S.C. §7912 et seq. This section specifies that federal lands shall be open to hunting, fishing, and recreational shooting, unless the Secretary of jurisdiction closes the land as specified in §4103, or unless the land was not open to those activities as of March 12, 2019.

[21] 16 U.S.C. §7913.

[22] P.L. 116-9 §4104(b).

[23] 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

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).[24] 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.

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 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:

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impacts prior to an agency action.

[24] 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.

> [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. [25]

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)[26] to waive all laws—including the Wilderness Act and the Otay Mountain Wilderness Act—in order to expeditiously implement border security measures in California.[27] This includes the construction of border infrastructure and other operational improvements along a 15-mile segment of the border.

Legislative Action

The 116th Congress is considering legislation to reduce the potential restrictions of the Wilderness Act and other federal statutes on border security activities.[28] For example, H.R. 612, 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. Similar bills were introduced in previous Congresses.[29]

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).[30] BLM and FS also have different requirements to assess the wilderness characteristics and potential of their lands for future wilderness designation by Congress,

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[25] 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.

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

[27] 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.

[28] The bills described in this section are illustrative examples of legislation in the 116th Congress to address border security in wilderness areas. Other bills in the 116th Congress may also address these issues.

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

[30] 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.

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.[31] 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.[32] 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.[33] 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 J. 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.[34] 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.[35]

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.[36] Starting in 1977 through 1979, BLM

[31] 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.

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

[33] 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.

[34] 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. On June 1, 2018, the Secretary of Agriculture directed the Chief of the Forest Service to initiate rulemaking for roadless area management for the Tongass National Forest of Alaska, often called the "Alaska roadless rule." For more information, see https://www.fs.usda.gov/roadmain/roadless/alaskaroadlessrule.

[35] 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.

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

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."[37] Thus, BLM must protect the WSAs 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.[38] 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."[39] 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 Clinton Administration and George W. Bush Administration 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 Administration 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 116th Congress (See **Appendix** for 115th Congress legislation).

[37] FLPMA §603; 43 U.S.C. §1782(c).

[38] FLPMA §201; 43 U.S.C. §1711.

[39] FLPMA §202; 43 U.S.C. §1712(a).

Table 2. 116th Congress: Bills to Release Wilderness Study Areas (WSAs)

Bill Title	Bill No.	State	Name of WSA	Latest Action
Antiquities Act	H.R. 1050 S. 367	NM NV	Doña Ana County San Antonio Gold Butte	**P.L. 116-9, §1201, §1202 (Doña Ana County and San Antonio only)[a]**
California Desert Protection and Recreation Act of 2019	S. 67	CA	Cady Mountains, Soda Mountains, Kingston Range, Avawatz` Mountain, Death Valley, Great Falls Basin	**P.L. 116-9, §1411[a]**
Clear Creek National Recreation Area and Conservation Act	H.R. 403	CA	San Benito Mountain	H.R. 403 introduced 2/05/19
Colorado Outdoor Recreation and Economy (CORE) Act	H.R. 823 S. 241	CO	Dominguez Canyon, McKenna Peak, Rocky Mountain National Park (15.5 acres)	H.R. 823 passed House and received in Senate, 10/31/2019 S. 241 introduced 1/28/19
Crooked River Ranch Fire Protection Act	S. 81 H.R. 524	OR	Deschutes Canyon-Steelhead Falls (688 acres)	**P.L. 116-9, §1108[a]**
John D. Dingell Jr. Conservation, Management, and Recreation Act[a]	S. 47	NM	Ah-shi-sle-pah Cady Mountains, Soda Mountains, Kingston Range, Avawatz, Death Valley 17, Great Falls Basin BLM Wilderness Study (17,420 acres)	**P.L. 116-9, §1121; §1411; §1234[b]**
Pershing County Economic Development and Conservation Act	H.R. 252	NV	China Mountain, Mt. Limbo, Selenite Mountains, and Tobin Range (~48,600 acres)	H.R. 252 hearings held 7/10/2019

Bill Title	Bill No.	State	Name of WSA	Latest Action
Restoring Access to Public Lands Act	H.R. 572	CA	Yolla Bolly, Timbered Crater, Lava, Pit River Canyon, Tule Mountain, South Warner Contiguous, Bitterbrush, Buffalo Hills, Twin Peaks, Five Springs, Dry Valley Rim, Skedaddle, Tunnison Mountain (170,284 acres)	H.R. 572 introduced 1/15/19

Source: CRS.

Notes: CRS identified acreage from the latest version of the legislation—as introduced, reported, passed, or enacted. WSA release legislation may specify that WSA acreage is to be released if not otherwise acted upon in that legislation: for example, all WSA acreage not designated as wilderness is to be released. Wilderness study area releases in multiple bills are listed next to the first introduced bill. Bills containing minor boundary adjustments to WSAs are not included. Legislative provisions that passed appear in boldface in the "Latest Action" column, along with the P.L. number of the legislation in which they passed.

a. This designation was enacted as part of P.L. 116-9, the John D. Dingell Jr. Conservation, Management, and Recreation Act.

b. This release was enacted as part of P.L. 116-9, the John D. Dingell Jr. Conservation, Management, and Recreation Act. P.L. 116-9 included several wilderness releases that had already been introduced as stand-alone bills in the 116th Congress and included several releases (the Ah-shi-sle-pah area in New Mexico, the Cady Mountains, Soda Mountains, Kingston Range, Avawatz, Death Valley 17, Great Falls Basin areas in California, and unnamed wilderness study areas in Utah) that had not previously been introduced in the 116th Congress.

Appendix. 115th Congress Wilderness Legislation

The 115th Congress added approximately 20,196 acres to the wilderness system by adding one new wilderness area and expanding seven existing areas (see **Table A-1**). Many other bills to designate additional wilderness areas were introduced and considered. See **Table A-2** for 115th Congress legislation regarding release of Bureau of Land Management (BLM) wilderness study areas (WSAs); no releases of BLM WSAs were enacted in the 115th Congress.

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

Bill Title	Bill No.	State	Acreage	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)
Arizona Sonoran Desert Heritage Act of 2018	H.R. 6520	AZ	290,823	H.R. 6520 introduced 7/25/18
Blackfoot Clearwater Stewardship Act of 2017	S. 507	MT	79,060	Introduced 3/2/17
California Desert Protection and Recreation Act of 2017	H.R. 857 S. 32	CA	378,670	H.R. 857 placed on Senate Calendar 12/5/18 S. 32 placed on Senate Calendar 12/6/18
Central Coast Heritage Protection Act	H.R. 4072 S. 1959	CA	289,105	H.R. 4072 introduced 10/16/17 S. 1959 hearings 8/22/18
Cerros del Norte Conservation Act	H.R. 5600 S. 432	NM	21,540	S. 432 passed Senate 12/21/17 H.R. 5600 introduced 4/24/18
Clear Creek National Recreation Area and Conservation Act	H.R. 1913	CA	21,000	H.R. 1913 passed House 7/11/2017
Colorado Wilderness Act of 2018	H.R. 6492	CO	74,000	H.R. 6492 introduced 7/24/18
Continental Divide Recreation, Wilderness and Camp Hale Legacy Act	H.R. 4883 S. 2337	CO	34,354	H.R. 4883 introduced 1/25/18 S. 2337 introduced 1/24/18
Devil's Staircase Wilderness Act of 2018	H.R. 6484	OR	30,520	H.R. 6484 introduced 7/24/18
Douglas County Economic Development and Conservation Act	H.R. 6676 S. 3397	NV	12,330	H.R. 6676 introduced 8/24/18 S. 3397 introduced 8/28/18
Emery County Public Land Management Act of 2018	H.R. 5727 S. 2809 S. 3803	UT	529,146	H.R. 5727 placed on Union Calendar 12/10/18 S. 2809 S.Rept. 115-440 S. 3803 introduced 12/20/18
Energy and Natural Resource Act of 2017, Title IV	S. 1460	NM, TN	41,096	Hearing 9/19/17
Flatside Wilderness Enhancement Act	H.R. 5636	AR	640	**P.L. 115-430**
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

Bill Title	Bill No.	State	Acreage	Latest Action
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)
Northwest California Wilderness, Recreation, and Working Forests Act	H.R. 6596 S. 3705	CA	326,000	H.R. 6596 introduced 7/26/18 S. 3705 introduced 12/05/18
Oregon Wildlands Act	S. 1548	OR	87,240	S. 1548 S.Rept. 12/11/18
Organ Mountains-Desert Peaks Conservation Act	S. 441 S. 2354 H.R. 6410	NM	241,786	S. 441 S.Rept. 115-427 issued 12/11/18 S. 2354 introduced 1/30/18 H.R. 6410 introduced 7/17/18
Pershing County Economic Development and Conservation Act	H.R. 1107 S. 414	NV	136,072	H.R. 1107 passed House 1/16/18 S. 414 placed on Senate calendar 12/4/18
San Gabriel Mountains Forever Act of 2017	H.R. 3039	CA	31,069	H.R. 3039 introduced 6/23/17
San Juan County Settlement Implementation Act	S. 436	NM	9,492	S. 436 S.Rept. 115-318 issued 8/15/18
San Juan Mountains Wilderness Act	S. 2721	CO	31,488	S. 2721 hearing 8/22/18
Tennessee Wilderness Act of 2017	H.R. 2218 S. 973	TN	19,556	**P.L. 115-334, §8626**
Udall-Eisenhower Arctic Wilderness Act	H.R. 1889 S. 820	AR	1,559,538	H.R. 1889 introduced 4/4/17 S. 820 introduced 4/4/17
Wild Olympics Wilderness and Wild and Scenic Rivers Act of 2017	H.R. 1285 S. 483	WA	131,900	H.R. 1285 introduced 3/1/17 S. 483 hearing 8/22/18

Source: CRS.

Notes: Bills may have contained multiple designations of new wilderness areas, multiple additions to existing wilderness areas, and multiple designations of potential wilderness areas. Bills that would have expanded or modified existing wilderness areas but did not include any provisions to designate new wilderness areas are not included. Estimated acreage as identified or derived (if possible) from the latest version of the legislation—as introduced, reported, passed, or enacted. Wilderness designations in multiple bills are listed next to the first introduced bill. Legislative provisions that passed appear in boldface in the "Latest Action" column, along with the P.L. number of the legislation in which they passed.

Table A-2. 115th Congress: Bills to Release Wilderness Study Areas (WSAs)

Bill Title	Bill No.	State	Name of WSA (acreage to be released)	Latest Action
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	H.R. 857 placed on Senate Calendar 12/5/18 S. 32 placed on Senate Calendar 12/6/18
Cerros del Norte Conservation Act	H.R. 5600 S. 432	NM	San Antonio (7,050)	S. 432 passed Senate 12/21/17 H.R. 5600 introduced 4/24/18
Clear Creek National Recreation Area and Conservation Act	H.R. 1913	CA	San Benito Mountain	H.R. 1913 passed House 7/11/17
Crooked River Ranch Fire Protection Act	H.R. 2075	OR	Deschutes Canyon-Steelhead Falls (832)	Placed on House Calendar 8/29/17
Douglas County Economic Development and Conservation Act	H.R. 6676	NV	Burbank Canyons	H.R. 6676 introduced 8/24/18
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/Antiquities Act	S. 441 S. 2354 H.R. 6410	NM	Dona Ana County	S. 441 S.Rept. 115-427 issued 12/11/18 S. 2354 introduced 1/30/18 H.R. 6410 introduced 7/17/18
Pershing County Economic Development and Conservation Act	H.R. 1107 S. 414	NV	China Mountain, Mt. Limbo, Selenite Mountains, and Tobin Range (~48,600)	H.R. 1107 passed House 1/16/18 S. 414 placed on Senate calendar 12/4/18
Protect Public Use of Public Lands Act	H.R. 5148 S. 2206	MT	West Pioneer, Blue Joint, Sapphire, Middle Fork Judith, and Big Snowies (449,500)	H.R. 5148 hearing 6/21/18 S. 2206 hearing 2/7/18

Bill Title	Bill No.	State	Name of WSA (acreage to be released)	Latest Action
Restoring Access to Public Lands Act	H.R. 6007	CA	Yolla Bolly, Timbered Crater, Lava, Pit River Canyon, Tule Mountain, South Warner Contiguous, Bitterbrush, Buffalo Hills, Twin Peaks, Five Springs, Dry Valley Rim, Skedaddle, Tunnison Mountain (170,284)	H.R. 6007 introduced 6/05/18
San Juan County Settlement Implementation Act	S. 436	NM	Ah-shi-sle-pah	Hearing 7/26/17
Unlocking Public Lands Act	H.R. 5149	MT	Axolotl Lakes, Bell/Limekiln Canyons, Henneberry Ridge, Hidden Pasture, Twin Coulee, Black Sage, Blacktail Mountains, Centennial Mountains, East Fork Blacktail Deer Creek, Farlin Creek, Ruby Mountains, Bitter Creek, Billy Creek, Bridge Coulee, Seven Blackfoot, Terry Badlands, Hoodoo Mountain, Wales Creek, Antelope Creek, Cow Creek, Dog Creek South, Ervin Ridge, Stafford, Woodhawk (~240,000)	H.R. 5149 hearing 6/21/18

Source: CRS.

Notes: Acreage estimated or derived (if possible) from the latest version of the legislation. The legislation may also have specified 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. WSA releases in multiple bills are listed next to the first introduced bill.

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