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Recreational Access Acquisitions: Overview and Recent Funding History

November 2, 2021

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R46957

CRS REPORT
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SUMMARY

R46957

November 2, 2021

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Recreational Access Acquisitions: Overview of Appropriations, Authorities, and Issues

Four federal land management agencies (FLMAs) administer about 95% of federal land. They are the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS), all in the Department of the Interior, and the Forest Service (FS) in the Department of Agriculture. These agencies administer lands for diverse purposes, including recreation. Most federal lands are accessible to the public, but some areas have limited access or are unavailable to the public. Recreational access to federal lands and related appropriations are of interest to Congress and Administrations.

The FLMAs receive appropriations to acquire lands and interests in lands (e.g., easements). The Land and Water Conservation Fund (LWCF) is the primary source of acquisition funding. In FY2021, the $900 million in annual deposits to the fund became available as mandatory spending under the Great American Outdoors Act (P.L. 116-152).

In FY2013-FY2021, Congress specified portions of LWCF appropriations for acquisitions that foster recreational access to federal lands. The total for all FLMAs' recreational access acquisitions increased from $4.8 million to $67.5 million during the period, with most of the increase since FY2019. The share of the total land acquisition funding specified for recreational access increased from 3% in FY2013 to 18% in FY2021. For each of FY2013-FY2015, Congress specified recreational access appropriations for FS only or for both FS and BLM. Thereafter, all four FLMAs received such appropriations. From FY2013 to FY2021, BLM and FS each received roughly one-third of the totals, and FWS and NPS together received about one-third.

Several factors may influence how Congress determines the FLMAs' appropriations levels for land acquisition and the portion, purposes, and conditions for recreational access funding.

Statutory Requirements. Some statutory requirements are broad, such as the LWCF Act provisions that generally seek to foster access to federal lands for recreation. Other provisions of law are more specific, such as those enacted in P.L. 116-9 providing a threshold level of funding for recreational public access projects based on agencies' priority lists.

Project Criteria and Selection Processes. Typically, agencies identify "core" acquisitions (individually identified priority parcels), for inclusion in the President's budget submission, through selection processes involving ranking at the field, regional, and headquarter levels. The FLMAs typically have not identified specific recreational access projects as part of their budget submissions. After receiving an appropriation from Congress, the FLMAs selected recreational access projects using a process similar to that used for core projects. BLM and NPS used all, or nearly all, of the same criteria to select their core acquisitions; FWS and FS used different criteria. After the FLMAs selected recreational access projects, the agencies provided project lists to Congress for informational purposes, according to a 2019 Government Accountability Office report.

Congressional and Agency Guidance. Congress provided guidance on recreational access funding during consideration of annual Interior, Environment, and Related Agencies appropriations bills in each of FY2013-FY2021, often in the explanatory statements accompanying enacted bills. The guidance pertained to prioritization of areas and purposes, agency processes for selecting recreational access acquisition projects, and agency requirements to report and disclose information. The FLMAs provided guidance on recreational access appropriations in budget justifications. The information varied among FLMAs and over time, including differences in the kinds of recreation specified, the amount and type of information provided, and the processes and criteria for selecting recreational access acquisitions.

Potential issues for Congress may arise in determining and assessing appropriations levels for recreational access acquisitions and the purposes and conditions for this funding. One such issue is the lack of a single definition of *recreational access* during FY2013-FY2021, making it difficult to compare past funding across years; Congress may evaluate whether the recreational purposes specified in P.L. 116-9 provide sufficient guidance. A second issue is whether an assessment of all funding sources for recreational access would foster decisionmaking on LWCF appropriations for recreational access and the challenge in determining all appropriations. A third issue is the availability and sufficiency of information, both on how agencies select and use recreational funding and on the extent to which FLMA lands are accessible for recreation.

Contents

Introduction 1
Appropriations for Recreational Access Acquisitions 2
Statutory Requirements 6
Acquisition Selection Processes and Criteria 8
Recreational Access Project Selection 9
Bureau of Land Management 10
U.S. Fish and Wildlife Service 10
National Park Service 11
Forest Service 12
Congressional Guidance on Recreational Access Acquisitions 12
Specified Areas and Purposes 12
Agency Selection Processes 13
Reporting and Other Disclosure Requirements 14
Multiple Objectives 14
Agency Guidance on Recreational Access Acquisitions 15
Issues for Congress 16
Definition of Recreational Access 17
Identification of Total Funding 17
Availability of Recreational Access Information 19

Figures

Figure 1. Total Recreational Access Appropriations by Agency and Fiscal Year, FY2013-FY2021 4
Figure 2. Total Recreational Access Appropriations by Agency for FY2013-FY2021 Combined 5
Figure 3. Combined Appropriations for Recreational Access and All Acquisitions for Four Agencies, by Fiscal Year 6

Tables

Table 1. Appropriations for Recreational Access Acquisitions and All Acquisitions, by Agency and Fiscal Year (FY2013-FY2021) 3

Appendixes

Appendix. Agency Guidance on Recreational Access Acquisitions (FY2013-FY2021) 21

Contacts

Author Information 27

Introduction

Most federal lands are accessible to the public, but some areas have limited access or are unavailable to the public. This is sometimes the case because private or state lands or geographical features (e.g., mountains or rivers) limit or block public access. Recreational access to federal lands has been a continual focus of Congress and successive Administrations. In 1964, Congress enacted the Land and Water Conservation Fund (LWCF) Act to foster outdoor recreation on federal land.[1] A 1992 General Accounting Office (GAO) report focused on "inadequate" public access to federal lands for recreational opportunities and other purposes,[2] and a 2002 House Appropriations Committee report on FY2003 Interior appropriations addressed recreational access.[3] In 2010, President Barack Obama signed a presidential memorandum establishing the America's Great Outdoors initiative to promote conservation and reconnect Americans to the outdoors,[4] which established a goal to "increase and improve recreational access and opportunities."[5] More recently, the 116th Congress enacted changes in law to foster recreational access.[6]

Four federal land management agencies (FLMAs) administer about 95% of federal land. They are the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS), all in the Department of the Interior (DOI), and the Forest Service (FS), in the Department of Agriculture.[7] These agencies administer lands for diverse purposes, including recreation.

The FLMAs receive appropriations to acquire lands and interests in lands.[8] The LWCF is the primary source of acquisition funding.[9] Monies in the LWCF became available as mandatory spending in FY2021.[10] Previously, the money had been available only if appropriated in

[1] 54 U.S.C. §§200301 et seq.

[2] U.S. General Accounting Office (GAO), *Federal Lands: Reasons for and Effects of Inadequate Public Access*, GAO/RCED-92-116BR, April 1992. The GAO was renamed the Government Accountability Office; in this report, GAO is used for the former and current names.

[3] U.S. Congress, House Committee on Appropriations, *Department of the Interior and Related Agencies Appropriations Bill, 2003*, report to accompany H.R. 5093, 107th Cong., 2nd sess., H.Rept. 107-564 (Washington, DC: GPO, 2002), especially p.16 and pp. 114-115.

[4] White House, Office of the Press Secretary, "A 21st Century Strategy for America's Great Outdoors," presidential memorandum, April 16, 2010, at https://obamawhitehouse.archives.gov/the-press-office/presidential-memorandum-americas-great-outdoors.

[5] Council on Environmental Quality et al., *America's Great Outdoors: A Promise to Future Generations*, February 2011, p. 17.

[6] The "Statutory Requirements" section of this report discusses provisions contained in the John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9), enacted on March 12, 2019, and in the Great American Outdoors Act (GAOA; P.L. 116-152), enacted on August 4, 2020.

[7] For an overview of the four agencies, see CRS In Focus IF10585, *The Federal Land Management Agencies*, coordinated by Katie Hoover; and CRS Video WVB00399, *Introduction to Federal Lands*, by Mark K. DeSantis and Katie Hoover.

[8] An interest in land (e.g., an easement or mineral, timber, and water rights) is something less than full ownership. In this report, "acquisition" generally is used to encompass acquisitions of full ownership and of interests, though "interest" is noted in some cases for emphasis.

[9] Some agencies have other sources of funding. As one example, the U.S. Fish and Wildlife Service (FWS) has the Migratory Bird Conservation Fund, an account with mandatory spending authority.

[10] 54 U.S.C. §200303. The GAOA, enacted on August 4, 2020, made the annual deposits to the fund available as mandatory spending beginning in FY2021. For a summary of provisions of this act, see CRS In Focus IF11636, *The Great American Outdoors Act (P.L. 116-152)*, by Carol Hardy Vincent, Laura B. Comay, and Bill Heniff Jr.

subsequent law and thus was considered discretionary spending.[11] Congress has appropriated LWCF funding to the FLMAs for different types of acquisitions. They include "core" acquisitions (individually identified priority parcels), "emergency" situations (time-sensitive),[12] inholdings (nonfederal lands within the boundaries of federal land areas), and recreational access (which fosters recreational land uses). Appropriations for recreational access are the focus of this report.

A variety of factors may influence congressional determinations of the FLMAs' appropriations levels for land acquisition, the portion (if any) specified for recreational access, and the purposes and conditions for using recreational access funding. General factors include broad congressional and administrative priorities and the types of acquisition funding most suitable for each agency. More specific factors relate to statutory requirements, acquisition project criteria and selection processes, and congressional and agency guidance, among others.

This report examines appropriations from the LWCF specified for recreational access in recent years (FY2013-FY2021). For each year, it first provides the total LWCF appropriations for acquisitions by the FLMAs and the portion specified for recreational access acquisitions. It next sets out some of the authorities and processes that affect the levels of appropriations for recreational access. They include statutory requirements, agency acquisition selection processes and criteria, congressional guidance to FLMAs, and other guidance used by the agencies as set out in their annual budget justifications. The report then discusses issues for Congress related to appropriations for recreational access stemming from the analysis of the FY2013-FY2021 period. They include the lack of a consistent definition of *recreational access*, the challenge in determining appropriations for recreational access from all funding sources that may foster recreational access, and the sufficiency of information on agency priorities for recreational access funding and the extent to which FLMA lands are accessible for recreation.

Appropriations for Recreational Access Acquisitions

From FY2013 to FY2021, Congress specified LWCF appropriations for recreational access for each year, with an average of $21.3 million annually across all FLMAs.[13] Annual appropriations for recreational access increased throughout FY2013-FY2021, from $4.8 million to $67.5 million for the FLMAs, as shown in **Table 1** and **Figure 1**. For each of FY2013-FY2015, approximately $4 million to $5 million was appropriated for recreational access acquisitions by the FLMAs. For

[11] For an overview of the Land and Water Conservation Fund (LWCF) Act as it operated with discretionary spending, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

[12] Emergency acquisitions typically are time-sensitive; for example, when a property unexpectedly becomes available for purchase due to changed circumstances, such as the death of the landowner. Some agencies use the term "hardship" acquisitions in addition to or instead of emergency acquisitions.

[13] For FY2010-FY2021, CRS consulted several sources to identify when Congress enacted appropriations specifically for recreational access. FY2013 was the first year for which CRS identified such funding. The source of the FY2013 appropriation is a detailed funding table prepared by the Appropriations Committees dated May 29, 2013. The table contained $4.8 million for the Forest Service (FS) for "priority recreational access." Other sources consulted did not identify FY2013 funding for FS for recreational access acquisitions. More generally, recreational access appropriations typically are not specified in the annual appropriations laws, but instead in congressional documents accompanying the annual Interior, Environment, and Related Agencies appropriations bill. Accordingly, CRS searched the documents accompanying this bill, especially the detailed funding tables contained in explanatory statements and committee reports. Other sources included the Department of the Interior (DOI) Office of Budget, DOI's annual *Interior Budget in Brief*, and annual budget justifications for the four federal land management agencies (FLMAs). In some cases, these sources differed as to amounts of appropriations for acquisitions for a particular agency in a given year. This is likely due to factors such as the date of the information and the inclusion (or exclusion) of rescissions, emergency funding, and other funding actions subsequent to the initial appropriation. CRS attempted to identify and present herein the most authoritative figures, though in some cases it may not have been possible to do so.

each of FY2016-FY2019, about $17 million to $20 million was appropriated. The appropriation roughly doubled from FY2019 to FY2020 and increased by 80% from FY2020 to FY2021. (Amounts in this paragraph are not adjusted for inflation.)

Table 1. Appropriations for Recreational Access Acquisitions and All Acquisitions, by Agency and Fiscal Year (FY2013-FY2021)

($ in millions of current dollars)

	BLM		FWS		NPS		FS		Total	
	Rec	All	Rec	All	Rec	All	Rec	All	Rec	All
FY2013	$0	$21.2	$0	$50.8	$0	$44.3	$4.8	$49.8	**$4.8**	**$166.1**
FY2014	$0	$19.5	$0	$54.4	$0	$41.0	$4.7	$43.5	**$4.7**	**$158.4**
FY2015	$2.0	$19.7	$0	$47.5	$0	$41.9	$2.0	$47.5	**$4.0**	**$156.6**
FY2016	$8.0	$38.6	$2.5	$68.5	$2.0	$53.7	$8.0	$63.4	**$20.5**	**$224.2**
FY2017	$8.0	$31.4	$2.5	$60.0	$2.0	$42.0	$4.7	$54.4	**$17.2**	**$187.8**
FY2018	$8.0	$24.9	$2.5	$63.8	$2.0	$46.9	$4.7	$64.3	**$17.2**	**$200.0**
FY2019	$9.0	$26.5	$2.5	$65.2	$2.0	$34.4	$5.0	$72.6	**$18.5**	**$198.7**
FY2020	$13.0	$29.9	$8.0	$67.1	$7.0	$53.1	$9.5	$76.9	**$37.5**	**$227.0**
FY2021	$20.5	$60.7	$15.5	$111.8	$14.5	$93.8	$17.0	$118.3	**$67.5**	**$384.6**
Total	**$68.5**	**$272.4**	**$33.5**	**$589.2**	**$29.5**	**$451.2**	**$60.4**	**$590.7**	**$191.9**	**$1,903.5**

Sources: Department of the Interior (DOI), Office of Budget, *Interior Budget in Brief* (annual); budget justifications for BLM, FWS, NPS, and FS; and congressional documents accompanying the annual Interior appropriations bill.

Notes: BLM = Bureau of Land Management; FWS = Fish and Wildlife Service; NPS = National Park Service; and FS = Forest Service. For each agency, the column with the "Rec" heading reflects the appropriation specifically identified for recreational access acquisitions, and the column with the "All" heading reflects the total appropriation for acquisitions by the agency. Amounts are current appropriations—they represent the appropriations in the fiscal years indicated and are not adjusted for inflation. Amounts shown for acquisition appropriations of NPS do not include appropriations for the American Battlefield Protection Program. In some cases, the sources consulted differ as to amounts for a particular agency in a given year due to factors including date of publication and inclusion (or exclusion) of rescissions. CRS has attempted to present the most authoritative figures, including rescissions, though it was not possible to do so with certainty in some cases.

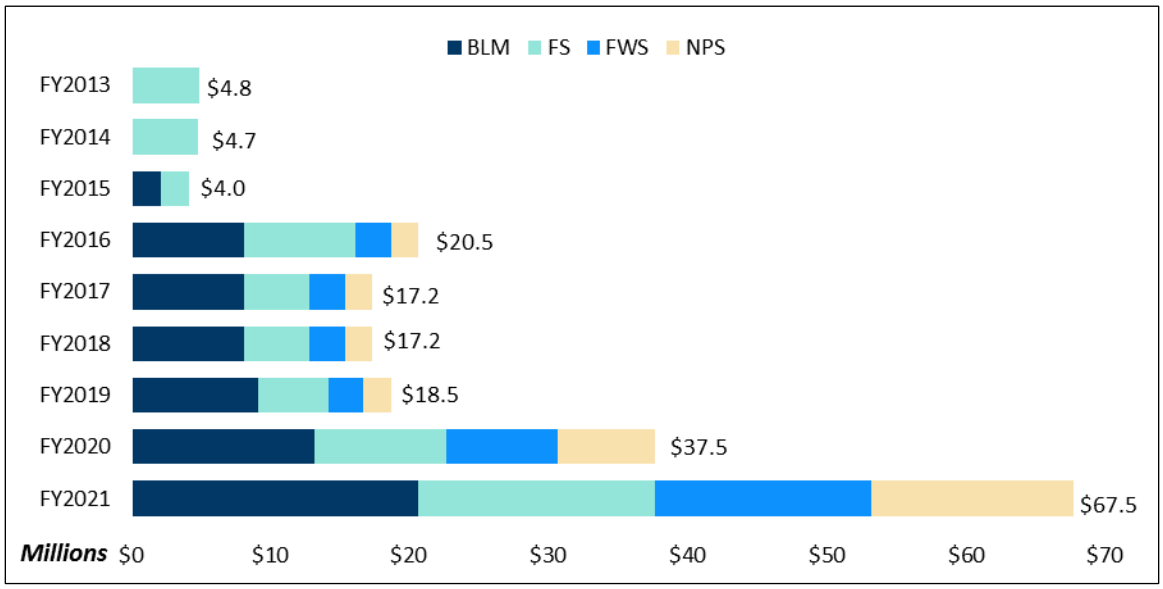
For FS, the FY2013 appropriation is derived from a detailed funding table prepared by the Appropriations Committees dated May 29, 2013. The FY2014 appropriation was provided for "Critical Inholdings/Cash Equalization/Recreational Access" and thus may have been intended for purposes in addition to recreational access.

For FY2021, appropriations reflect rescissions of prior year funds for BLM ($5.4 million) and FS ($5.6 million) in the land acquisition accounts in Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2021, of the Consolidated Appropriations Act, 2021 (P.L. 116-260). The law did not contain a rescission for the FWS land acquisition account and specified that a rescission in the NPS Land Acquisition and State Assistance account was to come from grant programs (as distinct from federal land acquisition).

In each of FY2013 and FY2014, Congress specified recreational access funding for FS only. In FY2015, both BLM and FS received appropriations for recreational access. For each of FY2016-FY2021, Congress provided appropriations to each of the four FLMAs for recreational access acquisitions. **Figure 1** depicts the agencies that received recreational access funding each year and the relative amounts of funding provided to each agency.

Figure 1. Total Recreational Access Appropriations by Agency and Fiscal Year, FY2013-FY2021

($ in millions of current dollars)



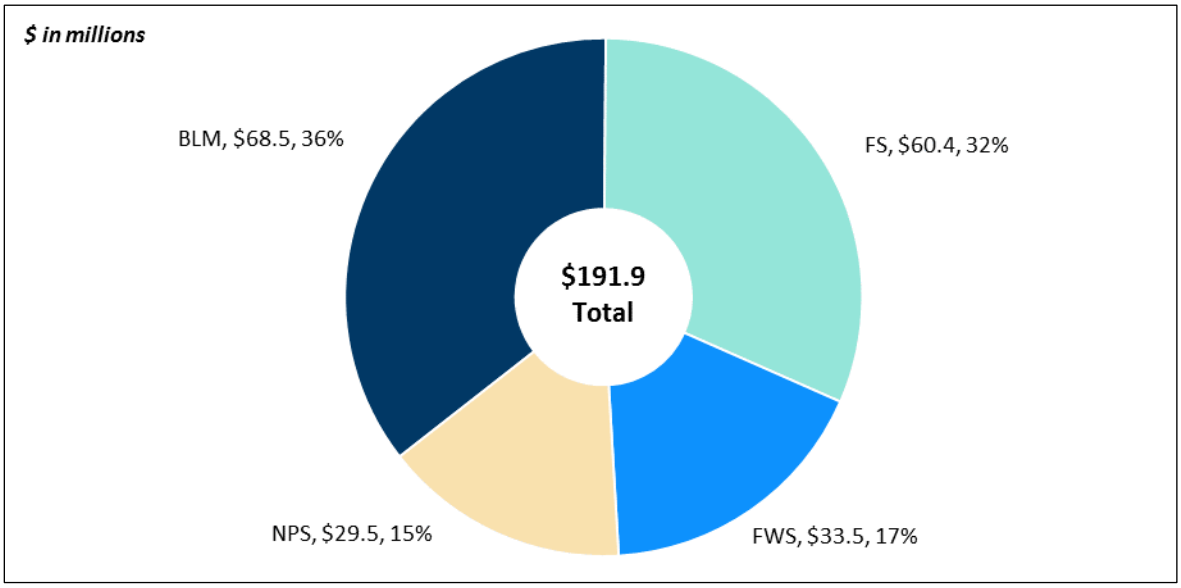
Sources: DOI Office of Budget; annual *Interior Budget in Brief*; budget justifications for BLM, FWS, NPS, and FS; and congressional documents accompanying the annual Interior appropriations bill.

Notes: BLM = Bureau of Land Management; FWS = Fish and Wildlife Service; NPS = National Park Service; and FS = Forest Service. Amounts are current appropriations—they represent the appropriations in the fiscal years indicated and are not adjusted for inflation. They reflect the appropriations specifically identified for recreational access acquisitions. In some cases, the sources consulted differ as to amounts for a particular agency in a given year due to factors including date of publication and inclusion (or exclusion) of rescissions. CRS has attempted to present the most authoritative figures, including rescissions, though it was not possible to do so with certainty in some cases. For information on particular fiscal years, see the notes for **Table 1**.

Congress appropriated a total of $191.9 million in recreational access appropriations from the LWCF for FY2013-FY2021. Each of the four FLMAs received different amounts of this total, as shown in **Table 1** and **Figure 2**. Two agencies each received roughly a third of the total: BLM with $68.5 million (36%) and FS with $60.4 million (32%). FWS and NPS together received about a third of the total. Specifically, FWS received $33.5 million (17%), and NPS received $29.5 million (15%).

Figure 2. Total Recreational Access Appropriations by Agency for FY2013-FY2021 Combined

($ in millions of current dollars)



Sources: DOI Office of Budget; annual *Interior Budget in Brief*; budget justifications for BLM, FWS, NPS, and FS; and congressional documents accompanying the annual Interior appropriations bill.

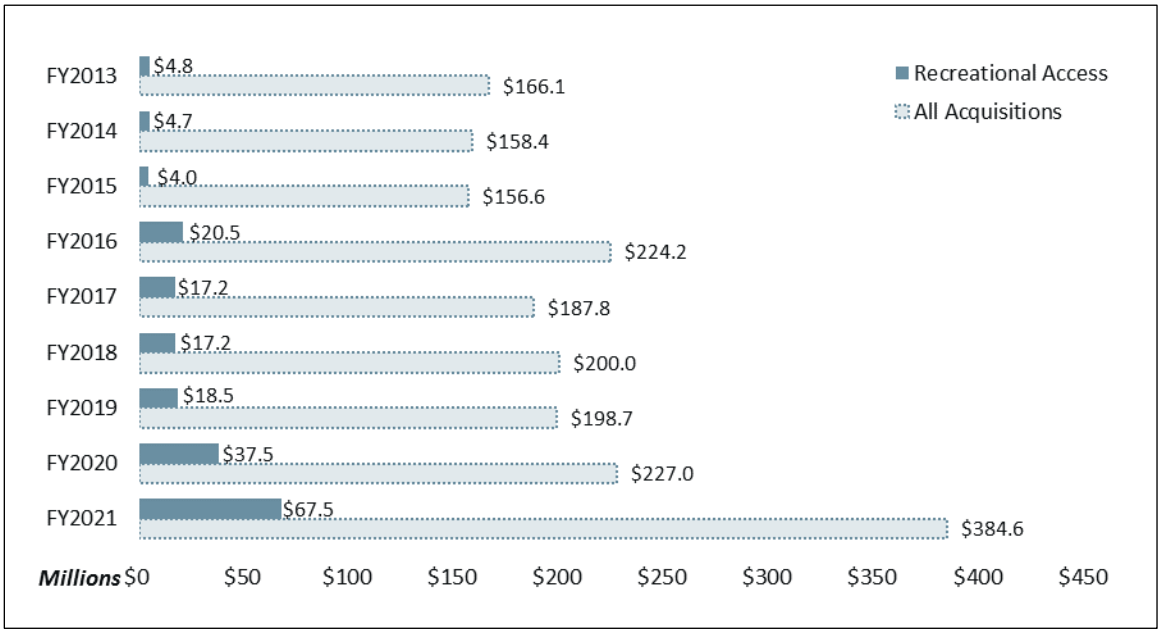
Notes: BLM = Bureau of Land Management; FWS = Fish and Wildlife Service; NPS = National Park Service; and FS = Forest Service. Amounts are current appropriations—they represent the appropriations in the fiscal years indicated and are not adjusted for inflation. They reflect the appropriations specifically identified for recreational access acquisitions. In some cases, the sources consulted differ as to amounts for a particular agency in a given year due to factors including date of publication and inclusion (or exclusion) of rescissions. CRS has attempted to present the most authoritative figures, including rescissions, though it was not possible to do so with certainty in some cases. For information on particular fiscal years, see the notes for **Table 1**.

Congress increased LWCF appropriations for all acquisitions over the FY2013-FY2021 period, from $166.1 million in FY2013 to $384.6 million in FY2021 (**Table 1** and **Figure 3**). Annual appropriations fluctuated throughout the period, averaging $211.5 million. The share of the total acquisition funding specified for recreational access increased from 3% in FY2013 to 18% in FY2021. More specifically, for each of FY2013-FY2015, approximately 3% of the total acquisition appropriation went to recreational access. For each of FY2016-FY2019, approximately 9% of the total acquisition appropriation went to recreational access. For each of FY2020 and FY2021, the percentage was about 17%-18%.[14]

[14] This report does not address recreational access appropriations or all acquisition appropriations as a percentage of total discretionary appropriations for the FLMAs. In the past, both recreational access appropriations and all acquisition appropriations tended to be a relatively small portion of total discretionary appropriations for the FLMAs. For example, for FY2021, the $67.5 million appropriated for recreational access was a relatively small portion of the four agencies combined regular discretionary appropriations of $13.44 billion.

Figure 3. Combined Appropriations for Recreational Access and All Acquisitions for Four Agencies, by Fiscal Year

($ in millions of current dollars)



Sources: DOI Office of Budget; annual *Interior Budget in Brief*; budget justifications for BLM, FWS, NPS, and FS; and congressional documents accompanying the annual Interior appropriations bill.

Notes: Amounts are current appropriations—they represent the appropriations in the fiscal years indicated and are not adjusted for inflation. For each fiscal year, the first bar reflects the combined appropriation specifically identified for recreational access acquisitions for the four FLMAs, and the second bar reflects all acquisition appropriations for FLMAs. Amounts shown for all acquisition appropriations do not include appropriations to NPS for the American Battlefield Protection Program. In some cases, the sources consulted differ as to amounts for a particular agency in a given year due to factors including date of publication and inclusion (or exclusion) of rescissions. CRS has attempted to present the most authoritative figures, including rescissions, though it was not possible to do so with certainty in some cases. For information on particular fiscal years, see the notes for **Table 1**.

Statutory Requirements

Provisions of authorizing statutes likely influence congressional decisions in appropriating funds for land acquisition generally and recreational access acquisitions in particular.[15] Some of these statutes are broad. For instance, the LWCF Act lays out broad outdoor recreation goals for the nation and generally seeks to foster access to federal lands for recreational purposes. As enacted in 1964, the LWCF Act set out its purposes as follows:

> to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor

[15] The recent statutes addressed in this section are illustrative rather than exhaustive. Other recent statutory changes also sought to foster recreational access and use. For instance, the 115th Congress reauthorized and amended the Federal Land Transaction Facilitation Act (FLTFA) in P.L. 115-141, Division O, Title III. The law renewed mandatory spending authority for land acquisition with proceeds from BLM disposal of certain lands. It is codified at 43 U.S.C. §§2301 et seq. and discussed in this report under "Issues for Congress."

> recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States.[16]

The LWCF Act sought to accomplish these purposes in part by "providing funds" for federal land acquisition.[17] The law created the LWCF in the Treasury as a funding source to implement its outdoor recreation goals. In addition, other broad statutes pertaining to each of the FLMAs generally allow for and govern recreation.[18]

To foster recreational access to federal lands, recent Congresses have discussed whether to amend the LWCF Act or other laws or to establish other new authorities. These debates resulted in new statutory requirements governing funding for recreational access. For example, the 116th Congress enacted P.L. 116-9, with both funding and policy provisions related to recreational access. P.L. 116-9 amended the LWCF Act to set aside a portion of federal acquisition funding specifically to foster access to federal lands for recreational purposes. It set an annual threshold for such acquisitions—not less than $15.0 million or 3% of amounts made available for expenditure (under 54 U.S.C. §200303), whichever is greater.[19] The law required the funding to be used for projects identified on a priority list developed by the Secretary of the Interior and the Secretary of Agriculture. It directed the Secretaries, in consultation with the heads of affected agencies, to develop annual priority lists of acquisitions that "secure recreational public access" to lands under their jurisdiction for "hunting, fishing, recreational shooting, or other outdoor recreational purposes."[20]

Other provisions of P.L. 116-9 required the Secretary of the Interior and the Secretary of Agriculture to prepare priority lists of FLMA lands where the public is allowed to hunt, fish, or use lands for other recreational purposes but for which there is no public access or significantly restricted public access. The law required the priority lists to be prepared within 1 year of enactment and biennially thereafter over 10 years and to be publicly available on agency websites. With respect to lands included on a priority list, the law also required the Secretaries to report to Congress on options for resolving access issues,[21] including by acquiring lands or interests in lands.[22]

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[16] Act of September 3, 1964; §1(b), P.L. 88-578, 78 Stat. 897.

[17] The law also established a program for grants to states for outdoor recreation purposes, among other provisions.

[18] For example, under the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§1701 et seq.), the Bureau of Land Management (BLM) manages lands for multiple uses, including recreation.

[19] This change was enacted in P.L. 116-9, §3001(d), on March 12, 2019, as codified at 54 U.S.C. §200306(c). P.L. 116-9 also set out a threshold level of appropriations for "federal purposes" of which recreational access appropriations is part. The law stated that of the total amount made available to the fund through appropriations or deposited in the fund under the Gulf of Mexico Energy Security Act of 2006 (GOMESA), not less than 40% shall be used for "federal purposes" and not less than 40% shall be used "to provide financial assistance to states." See P.L. 116-9, §3001(b), enacted on March 12, 2019, as codified at 54 U.S.C. §200304(b). Under GOMESA, as codified at 43 U.S.C. §1331 note, states can receive a maximum of $125 million annually in mandatory funding, except in FY2021 and FY2022 when the maximum is $162.5 million. These monies can be used only for the outdoor recreation grants to states program set out in the LWCF Act at 54 U.S.C. §200305. They are in addition to the mandatory appropriations provided under the LWCF Act.

[20] This change was enacted in P.L. 116-9, §3001(d), on March 12, 2019, as codified at 54 U.S.C. §200306(c).

[21] The Secretaries are required to report to the House Committee on Appropriations, House Committee on Natural Resources, Senate Committee on Appropriations, and Senate Committee on Energy and Natural Resources.

[22] These provisions were included in P.L. 116-9, Title IV, §4105, enacted on March 12, 2019, as codified at 16 U.S.C. §7915. Title IV of the law, pertaining to "Sportsmen's Access and Related Matters," contained other provisions on facilitating access to federal lands for recreation, especially hunting, fishing, and recreational shooting.

Another 116th Congress law, the Great American Outdoors Act (GAOA; P.L. 116-152), also contained provisions related to recreational access.[23] Under the LWCF Act, $900 million is deposited annually into the fund.[24] GAOA made the $900 million in deposits available as mandatory spending. Prior to GAOA, the money had been available only if appropriated in subsequent law and thus was considered discretionary spending. The annual appropriations typically were less than $900 million.[25] To allocate the mandatory funds, GAOA generally required the President to submit annually to Congress detailed account, program, and project allocations for the full amount available. GAOA also provided for alternate allocations by Congress through appropriations acts. If Congress does not enact an alternate allocation by the date of enactment of full-year appropriations for Interior, Environment, and Related Agencies, the President is to allocate amounts. GAOA also required amounts expended from the fund to be consistent with the requirements for recreational public access in 54 U.S.C. §200306(c).[26] The requirements in Section 200306(c) pertain to a threshold level of funding for recreational public access projects based on a priority list developed by the Secretaries, as discussed above (in the context of P.L. 116-9).

Changes in law in the 116th Congress may account for some of the increase in appropriations for recreational access in FY2020 and FY2021. The appropriations for those two years were provided after enactment of P.L. 116-9, which set a threshold level of funding for acquisitions that foster recreational access to federal lands. The appropriations for FY2021 were provided after enactment of GAOA, which provided a higher total level of funding for LWCF programs ($900 million) than generally had been the case in recent decades.[27]

Acquisition Selection Processes and Criteria

Numerous authorities guide the FLMAs in seeking to acquire lands with LWCF funding. They include differing standing authorities to acquire land, which range from relatively broad authority for BLM to no general authority (except in limited circumstances) for NPS.[28] In addition, Congress has enacted various laws to authorize and govern specific land acquisitions by the FLMAs. Provisions of the LWCF Act also govern land acquisitions, for instance, through the establishment of common criteria for agencies to take into account in considering which lands to acquire with LWCF funds. The criteria include the recreational value of the land.[29] Other authorities that guide the land acquisition process include regulations; department and agency-

[23] P.L. 116-152, enacted on August 4, 2020, as codified at 54 U.S.C. §200303.

[24] 54 U.S.C. §200302.

[25] This resulted in an unappropriated balance in the fund of approximately $22 billion through FY2019.

[26] P.L. 116-152, enacted on August 4, 2020, as codified at 54 U.S.C. §200303(c)(3).

[27] Congress set out the allocation of $900 million in mandatory appropriations for FY2021 in the explanatory statement for the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2021. "Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendment to H.R. 133, Consolidated Appropriations Act, 2021 (Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2021)," *Congressional Record*, daily edition, vol. 166, no. 218-Book IV (December 21, 2020), pp. H8554-H8556.

[28] However, laws creating park units typically authorize the National Park Service (NPS) to acquire lands within the boundaries of the units. For an overview of the land acquisition authorities of the FLMAs, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, coordinated by Carol Hardy Vincent.

[29] Common criteria are set out in the LWCF Act at 54 U.S.C. §200306(d).

specific strategic plans and objectives; Administration priorities; and agency manuals, handbooks, memoranda, and other sources.

Under the procedure in the LWCF Act, the President is to include detailed account, program, and project allocations of the $900 million in mandatory spending as part of his budget submission to Congress, though appropriations acts may specify an alternate allocation, as noted earlier.[30] Agencies typically identify priority core projects for inclusion in the President's budget submission through selection processes that progress through the field, regional, and headquarter offices.[31] In evaluating projects from the field, regional and headquarter offices typically rank and/or score requests using point values for each criteria they consider. Agency-specific criteria and processes have evolved over time.[32] Land acquisition projects selected by headquarters generally have been reviewed at the department level and by the Office of Management and Budget before being included in annual budget requests to Congress. Congressional decisionmaking on levels of appropriations for recreational access acquisitions is based on the agencies' budget submissions.

Recreational Access Project Selection[33]

A 2019 GAO report on the LWCF included a review of the processes and criteria the FLMAs used to identify potential land acquisitions to be funded by the LWCF, including recreational access acquisitions. The report focused on the processes and criteria used by the agencies in FY2018. In conducting the review, GAO interviewed agency officials and examined agency guidance. This section of the report summarizes portions of the GAO report pertaining to the processes and criteria FLMAs used to select recreational access acquisitions.[34]

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[30] P.L. 116-152, as codified at 54 U.S.C. §200303(c)(1). The law provided that appropriations acts may specify an "alternate allocation," including "allocations by account, program, and project." Further, if alternate allocations have not been enacted before "the Act making full-year appropriations for the Department of the Interior, Environment, and Related Agencies for the applicable fiscal year" has been enacted, the President would have the authority to allocate the available amount from the LWCF as the President determines. See 54 U.S.C. §200303(c)(2).

[31] For BLM, "field" refers to field offices; for the other agencies, "field" refers to a field unit, such as a national wildlife refuge or a national park. In this report, "field" encompasses BLM offices and other agencies' units. For BLM, the selection process typically involves the state office; for the other agencies, it involves the regional office. In this report, "region" or "regional" is used to encompass BLM state offices and other agencies' regional offices.

[32] For additional information on the processes and criteria used by the FLMAs to allocate funding for land acquisition projects, see CRS Report R46563, *Land and Water Conservation Fund: Processes and Criteria for Allocating Funds*, coordinated by Carol Hardy Vincent.

[33] This section summarizes information contained in a GAO report. See GAO, *Land and Water Conservation Fund: Variety of Programs Supported, but Improvements in Data Collection Needed at BLM*, GAO-19-346, May 2019 (accessible text versions), at https://www.gao.gov/products/gao-19-346. Hereinafter referred to as GAO-19-346.

[34] GAO-19-346 is based on processes and criteria used by the agencies for FY2018. CRS has not examined the extent to which the agencies have used the same processes and criteria each year since the GAO report was issued. However, the FY2021 process and criteria used by the agencies for core (individual) acquisitions were similar to those shown in the GAO report. The FY2021 process and criteria are summarized in CRS Report R46563, *Land and Water Conservation Fund: Processes and Criteria for Allocating Funds*, coordinated by Carol Hardy Vincent. Moreover, the explanatory statement for the FY2021 Interior appropriations law identified an appropriation for each of the FLMAs for recreational access acquisitions but did not identify individual recreation access projects. See the explanatory statement for the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2021. "Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendment to H.R. 133, Consolidated Appropriations Act, 2021 (Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2021)," *Congressional Record*, daily edition, vol. 166, no. 218-Book IV (December 21, 2020), pp. H8554-H8556.

According to GAO, FLMAs did not submit recreational access projects to Congress as part of their budget submissions, unlike for core acquisition projects. Instead, after they received an appropriation from Congress, the agencies initiated the process of selecting recreational access projects using a *process* similar to that used for core projects. Under this process, field units identify priority projects, these projects are reviewed at the regional level, and regions select projects for review at the headquarters level.[35] After the FLMAs selected recreational access projects, they provided lists of selected projects to Congress for informational purposes, according to GAO.

In selecting recreational access acquisitions, BLM used the same *criteria* and point system as used to select core acquisitions. This also was the case for NPS, except that NPS had an additional criterion—that the projects provide access to land that lacked access. By contrast, FWS and FS used different criteria to select recreational access acquisitions than they used for core acquisitions. Moreover, neither agency used a point system to score recreational access acquisitions. The GAO report contained additional detail on the process and criteria used by each FLMA to select recreational access acquisitions, as discussed below.

Bureau of Land Management

BLM began the selection process for recreational access acquisitions after receiving its land acquisition appropriation. To evaluate recreational access projects, BLM used the same criteria and point system that it used for core projects, as noted. The criteria related to the following:

- Public Access: creates or increases access to previously inaccessible BLM lands.
- Opportunity: increases opportunity for a variety of recreational uses and has community support for access.
- Variety of Access: provides for a variety of types of public recreation, both land- and water-based and motorized and nonmotorized.
- Contribution: has outside funding or is being sold below market value.
- State Directors' Priority*:* is a priority of the BLM state director.[36]

U.S. Fish and Wildlife Service

After receiving its land acquisition appropriation, FWS began the selection process for recreational access acquisitions. To evaluate recreational access projects, FWS used different criteria than those used for core projects. Further, FWS did not use point values. The criteria related to whether projects

- provide hunting and/or fishing access to inaccessible refuge areas;
- improve access to federal lands that are open to hunting and/or fishing;
- acquire areas that could be readily opened to hunting and/or fishing;
- acquire areas that create or expand opportunities for wildlife viewing, interpretation, environmental education, or photography; and
- are ready to close by a certain date.[37]

[35] GAO-19-346, pp. 16-17. For recreational access projects, NPS headquarters consulted with regional offices about the viability of projects that were not funded as core projects but that provided recreational access. Thus, recreational access projects may not have repeated the full three-step process.

[36] Information on the BLM process and criteria is derived from GAO-19-346, pp. 46-47.

[37] Information on the FWS process and criteria is derived from GAO-19-346, pp. 50-52.

National Park Service

Following receipt of its land acquisition appropriation, NPS headquarters reviewed requests for core acquisitions that were not funded to identify those that would provide recreational access. After confirming with the regional offices that the acquisitions were still viable, NPS headquarters distributed funds to regions. Because NPS considered projects proposed as core acquisitions that were not funded, the agency assessed recreational access projects using the same criteria and point system as used for core projects. In addition, acquisitions were to provide access to lands where it was lacking.

NPS used different criteria at the regional and headquarters levels to evaluate potential acquisitions. Regional criteria were as follows:

- Resource Threat: describes the nature and imminence of potential harm to the lands and whether the resource could be repaired if harmed.
- Preservation of Resource: sets out the importance, scarcity, and certain benefits of the resource.
- Visitor Use and Infrastructure: demonstrates whether the acquisition supports a proposed structure or facility.
- Commitment Made to Acquire: addresses the extent to which the seller has committed to convey the parcel.
- Nonprofit/Partner Involvement: identifies whether a nonprofit/partner is involved in the acquisition.
- Continuity: considers whether the acquisition is part of a multiphase project or planned effort.
- Recreation: enhances recreational opportunities.
- Hardship: addresses circumstances contributing to a landowner's need to sell, such as medical or financial circumstances.

Headquarters criteria were

- Legislative Authority: conveys whether legislative authority is needed for the acquisition.
- Ability to Obligate Funds: describes the pre-acquisition work that has been done (e.g., a land appraisal).
- Current LWCF Funds: identifies any carryover monies and matching funds.
- Regional Priority: identifies projects that have been ranked by the regions as priorities.
- Current Economic Price Escalation Factor: reflects the extent of inflation to land prices.
- Congressional and Local Support: conveys the political support for the project.
- Park Type: considers types of park units that reflect the Administration's priorities during the budget cycle.
- Out-year Costs or Savings: reflects costs or savings in operation, administration, and maintenance that would result from the acquisition.[38]

[38] Information on the NPS process and criteria is derived from GAO-19-346, p. 55 and p. 57.

Forest Service

FS began the selection process for recreational access acquisitions after receiving its land acquisition appropriations. To evaluate recreational access projects, FS used different criteria than those used for core projects. FS did not use a point system. The criteria related to whether proposed projects

- meet key recreation needs for increasing access to hunting, fishing, and other recreational activities; and
- support the forest from a resource management perspective.[39]

Congressional Guidance on Recreational Access Acquisitions

Congress has addressed recreational access during its consideration of annual Interior, Environment, and Related Agencies appropriations bills each year from FY2013 through FY2021. For some years, Congress included guidance in explanatory statements accompanying enacted appropriations bills.[40] The guidance sometimes specified areas and purposes to prioritize for recreational access funding. Other guidance addressed the processes that agencies use to select recreational access acquisition projects. In other cases, the guidance directed agencies to report certain information to the Appropriations Committees or disclose information in agency budget documents. Still other guidance had a combination of these provisions or other objectives. Congressional guidance is likely to affect the amount of appropriations agencies request for recreational access acquisitions, the processes agencies use to select acquisitions, and agency use of appropriations for recreational access. Provided below are examples of various types of congressional guidance.

Specified Areas and Purposes

In several years, explanatory statements accompanying appropriations bills specified the types of recreational purposes for which funding should be used. They typically emphasized hunting, fishing, and other recreational activities. For example, the FY2015 explanatory statement directed both BLM and FS "to prioritize recreational access projects that significantly enhance access to existing public lands that have inadequate access for hunting, fishing, and other recreational activities."[41]

In some years, Congress identified specific units or types of areas as priority candidates for recreational access funding. For FY2018, for example, the explanatory statement provided that "funds provided for recreational access are available to close gaps in national trails, including the

[39] Information on the FS process and criteria is derived from GAO-19-346, pp. 61-62.

[40] For some years, the House and Senate Committees on Appropriations also included guidance in their reports on annual appropriations bills or addressed related issues during hearings on these bills. CRS did not consistently seek to determine the extent to which recommendations in reports of these committees or issues addressed at hearings held by these committees may have been reflected in or superseded by language in the explanatory statements on the enacted measures. Accordingly, this section of the report focuses on guidance in explanatory statements.

[41] "Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendment on H.R. 83 (Division F, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2015)," *Congressional Record*, daily edition, vol. 160, no. 151- Book II (December 11, 2014), pp. H9760, H9768.

Ice Age, North Country, and New England National Scenic Trails. The Committees urge the [National Park] Service to consider geographic distribution to ensure that investments for the trail system are reflected in project prioritization."[42] For FY2019, the conference report expressed the understanding of the conferees "that projects … such as the Upper Snake/South Fork River Special Recreation Management Area, meet the criteria for recreational access funding and should receive full consideration from the amounts included for recreational access."[43]

For FY2021, the explanatory statement noted the newly established Green River National Wildlife Refuge was eligible for recreational access and inholding funding and encouraged FWS "to continue to use these additional funding tools to purchase parcels as they become available, as it does for other units of the National Wildlife Refuge System."[44]

Agency Selection Processes

Congress sometimes addressed agency processes for selecting recreational access projects. For instance, for FY2019, conferees expressed that the "agencies are expected to work with their respective regions, State offices, and/or management units to identify potential recreation access projects and to inform the Committees on project selections prior to proceeding."[45]

With regard to recreational access, the FY2020 explanatory statement indicated, "the Department of the Interior and the Forest Service shall follow the direction contained in the S.Rept. 116-123,"[46] the report of the Senate Appropriations Committee on the FY2020 Interior appropriations bill. Among other provisions, that committee report included guidance on completing acquisitions of selected projects.

> The Committee remains concerned about the prioritization of projects and the ability to allocate funds once appropriated. The Committee strongly encourages the [Forest] Service to quickly close projects once funds have been made available and a willing seller has been identified, an appraisal has been completed, and a purchase contract has been agreed to.[47]

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[42] "Explanatory Statement Submitted by Mr. Frelinghuysen, Chairman of the House Committee on Appropriations, Regarding the House Amendment to Senate Amendment on H.R. 1625 (Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2018)," *Congressional Record*, daily edition, vol. 164, no. 50-Book II (March 22, 2018), p. H2616.

[43] U.S. Congress, House Committee on Appropriations, *Making Further Continuing Appropriations for the Department of Homeland Security for Fiscal Year 2019, and for Other Purposes*, conference report to accompany H.J.Res. 31, 116th Cong., 1st sess., H.Rept. 116-9 (Washington DC: GPO, 2019), p. 712.

[44] "Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendment to H.R. 133, Consolidated Appropriations Act, 2021 (Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2021)," *Congressional Record*, daily edition, vol. 166, no. 218-Book IV (December 21, 2020), p. H8525.

[45] U.S. Congress, House Committee on Appropriations, *Making Further Continuing Appropriations for the Department of Homeland Security for Fiscal Year 2019, and for Other Purposes*, conference report to accompany H.J.Res. 31, 116th Cong., 1st sess., H.Rept. 116-9 (Washington, DC: GPO, 2019), p. 708.

[46] "Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding H.R. 1865, Further Consolidated Appropriations Act 2020 (Division D, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2020)," *Congressional Record*, daily edition, vol. 165, no. 204-Book III (December 17, 2019), p. H11282.

[47] U.S. Congress, Senate Committee on Appropriations, *Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2020*, report to accompany S. 2580, 116th Cong., 1st sess., S.Rept. 116-123 (Washington, DC: GPO, 2019), p. 109.

Reporting and Other Disclosure Requirements

In some years, Congress directed the agencies to report to the Appropriations Committees on recreational access activities and processes for selecting projects. In other cases, Congress directed the agencies to disclose related information in future agency budget justifications.

Some reporting requirements pertained to recreational access actions broadly. For example, the FY2014 explanatory statement directed DOI and FS to report to the House and Senate Appropriations Committees within 120 days regarding actions taken to "preserve and improve access to public lands for hunting, fishing, shooting, and other recreational activities.... "[48]

Several reporting and disclosure requirements pertained to how the agencies would use, or did use, acquisition funding. For FY2016, for instance, the explanatory statement noted the following:

> The Committees believe increasing access to public lands for hunting, fishing, and other recreational activities is important. This agreement includes new funding for these activities for the National Park Service and Fish and Wildlife Service while increasing funds for the Bureau of Land Management and Forest Service. The Committees expect the agencies to report within 30 days of enactment of this Act on how this funding will be spent, and the agencies should include a description and explanation of the use of funds in future budget requests.[49]

Multiple Objectives

Some of the congressional guidance had multiple objectives. For instance, some explanatory statements included a combination of the three types of provisions discussed above, pertaining to the purposes for which recreational access funds could be used, the agency processes for selecting recreational access projects, and requirements for agencies to report certain information to the Appropriations Committees or disclose information in their annual budget justifications. Provided below are a few examples.

For FY2017, the explanatory statement noted as follows:

> The Committees urge each of the agencies to comply with any Congressional requests for full and accurate accounting of cost, acreage, and location data of lands acquired with LWCF funds. In future budget justifications, the agencies are directed to include a detailed explanation on the use of prior year funds for recreational access projects and inholdings. The Committees direct the agencies to continue to consider and rank Federal land acquisition projects consistent with the process used in prior years, and upon request, to provide a prioritized project list for any funding levels above the budget request being considered by the House or Senate Committees. The Committees believe increasing access to our public lands for hunting, fishing, and other recreational activities is important and again include funding for these projects. The Committees expect the same factors used to determine suitability of listed projects will apply to recreational access projects and the

[48] "Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, regarding the House Amendment to the Senate Amendment on H.R. 3547, Consolidated Appropriations Act, 2014 (Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2014)," *Congressional Record*, daily edition, vol. 160, no. 9-Book II (January 15, 2014), p. H972.

[49] "Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, Regarding House Amendment No. 1 to the Senate Amendment on H.R. 2029-Continued, Consolidated Appropriations Act, 2016 (Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016)," *Congressional Record*, daily edition, vol. 161, no. 184-Book III (December 17, 2015), p. H10211.

> agencies should work through their respective regions, State offices, and/or management units to consider projects that may not rise to the level of listed projects. The agencies are directed to include an explanation of the process and criteria used for allocating funds for recreational access in future budget justifications. Further, the Committees are to be informed about the selection process and how the agencies are meeting the outlined objectives prior to proceeding with projects.[50]

For FY2018, the explanatory statement expressed the following:

> The Committees expect recreational access projects to be selected based on their role in meeting key recreation needs and the agencies should work with their respective regions, State offices, and/or management units to identify potential projects. The Committees are to be informed about the selection process and how the agencies are meeting the outlined objectives prior to proceeding with projects. Further, the agencies are again directed to include in future budget justifications an explanation of the process used for allocating funds for recreational access in the previous year.[51]

For FY2020, the explanatory statement directed agencies to follow the direction in S.Rept. 116-123, as noted.[52] The Senate Appropriations Committee report contained language similar to the FY2018 explanatory statement, set out above.

> The Committee expects recreational access projects to be selected based on their role in meeting key recreation needs, and the agencies should work with their respective regions, State offices, and/or management units to identify all potential projects. Further, the agencies are again directed to include in future budget justifications an explanation of the process and criteria used to allocating funds for recreational access in the previous year.[53]

Agency Guidance on Recreational Access Acquisitions

Over the years examined (FY2013-FY2021), the FLMAs provided guidance on recreational access appropriations in their annual budget justifications. The information varied among the agencies and over time. The variation extended to the kinds of recreation specified, the amount and type of information provided, and the processes and criteria used for selecting recreational access acquisitions, among other factors. The variation likely stems from new congressional direction, changes in Administration priorities, and the evolution of the LWCF to acquire parcels expressly for recreational access. This section summarizes some of the differences in guidance among the FLMAs.

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[50] "Explanatory Statement Submitted by Mr. Frelinghuysen of New Jersey, Chairman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendments on H.R. 244 (Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2017)," *Congressional Record*, daily edition, vol. 163, no. 76-Book II (May 3, 2017), p. H3874.

[51] "Explanatory Statement Submitted by Mr. Frelinghuysen, Chairman of the House Committee on Appropriations, Regarding the House Amendment to Senate Amendment on H.R. 1625 (Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2018)," *Congressional Record*, daily edition, vol. 164, no. 50-Book II (March 22, 2018), p. H2609.

[52] "Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding H.R. 1865, Further Consolidated Appropriations Act 2020 (Division D, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2020)," *Congressional Record*, daily edition, vol. 165, no. 204-Book III (December 17, 2019), p. H11282.

[53] U.S. Congress, Senate Committee on Appropriations, *Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2020*, report to accompany S. 2580, 116th Cong., 1st sess., S.Rept. 116-123 (Washington, DC: GPO, 2019), p. 7.

In their annual budget justifications, the FLMAs sometimes included guidance as to how recreational access funding is to be or has been spent, including policies, plans, and past performance. For FY2013-FY2021, the information differed among agencies in several respects. One difference is the types of recreational activities highlighted by the agencies. For instance, in some years, BLM identified "a variety" of recreational activities, including hunting and fishing; FWS identified wildlife-dependent recreation, including hunting, fishing, observation, photography, environmental education, and interpretation; NPS identified entry and exit points for watercraft along waterways and connecting gaps in scenic trails; and FS identified both motorized and nonmotorized recreation. These examples do not represent the full range of recreational activities identified by, or authorized on, the lands of each of the FLMAs, though they may point to some differences in emphasis. Agency variations in the types of activities specified may stem in part from their diverse missions and authorities for managing lands.

Another difference relates to the amount and type of information provided across the FLMAs. BLM budget justifications, for example, contained relatively little information on the purposes of recreational access acquisitions and the processes used to prioritize and select these acquisitions. In contrast, FS budget justifications typically included fuller information covering purposes, eligibility, rating criteria, application procedures, and broad summaries or illustrative examples of prior year acquisitions. In lieu of (or in addition to) budget justifications, some agencies may detail recreational access purposes and processes in other sources, such as in guidance from headquarters to field offices.[54]

Where the FLMA budget justifications described the selection of recreational access projects, the processes and criteria outlined often varied among the agencies. For instance, the FWS budget justification for some years identified four categories of acquisitions in priority order. They ranged from refuge areas inaccessible for hunting and/or fishing to areas that create or expand opportunities for wildlife viewing, interpretation, environmental education, and photography. Some NPS budget justifications noted that recreational access acquisitions were selected from projects using the same merit-based criteria used for core acquisitions. These criteria encompassed a broad range of factors, such as threat to the resource, involvement of partners, and recreational opportunities.[55] The FS budget justifications for some years set out a list of questions for evaluating parcels, such as "How does the acquisition solve a specific access problem or overcome a barrier to access?"[56] Again, these examples do not fully identify the variations in processes and criteria among the FLMAs over the years. Instead, they point to differences that likely derive in part from differing agency missions, priorities, and authorities.

The **Appendix** contains agency-specific summaries that detail how each of the four FLMAs discussed recreational access in annual budget justifications to Congress. The summaries cover FY2013-FY2021, the years for which CRS identified specific funding for recreational access.

Issues for Congress

Potential issues for Congress arise in determining and assessing appropriations levels for recreational access acquisitions and the purposes and conditions of such funding. One issue has

[54] CRS did not comprehensively analyze such other guidance in preparing this report.

[55] See, for instance, NPS, *Fiscal Year 2017 Budget Justifications*, p. LASA-14. The criteria used for FY2017 were threat to the resource; preservation of the resource; visitor use facility accommodation; involvement of partners, nonprofit groups or availability of matching funds; continuation of an ongoing effort; recreational opportunities; and local support for the acquisition.

[56] FS, *Fiscal Year 2018 Budget Justification*, May 2017, pp. 132-133; FS, *FY2020 Budget Justification*, March 2019, p. 153; and FS, *FY2021 Budget Justification*, February 2020, p. 143.

been the lack of a single definition of *recreational access* during the period covered by this report (FY2013-FY2021), making it difficult to compare funding across years. A second issue is whether an assessment of all funding sources for recreational access would foster decisionmaking and the challenge in determining total appropriations. A third issue is the availability and sufficiency of information, both on how agencies select and use recreational funding and on the extent to which FLMA lands are accessible for recreation.

Definition of Recreational Access

No uniform definition of recreational access acquisitions appears to have been used during the years examined. This makes it difficult to compare past funding across years and may make it challenging to determine or compare future appropriations.

In some cases, recreational access acquisitions may have referred to purchases of lands and interests (e.g., easements) *adjacent to* areas currently in federal ownership, where the federal lands are suitable for recreation. In other cases, recreational access acquisitions may have referred to purchases of lands that may be suitable for recreational purposes. Further, the types of recreation intended to be fostered by recreational access acquisitions may have varied over the years. In recent years, one focus has been on access for hunting, fishing, and recreational shooting. Another has been on access for these activities and broader recreational pursuits, such as bird watching and viewing other species and land resources, picnicking, camping, hiking, biking, boating, driving for pleasure, swimming, snowmobiling, and off-highway travel, among other uses (though some forms or recreation are not allowed on certain types of lands or in particular areas).

P.L. 116-9 may have helped clarify congressional meaning regarding recreational access acquisitions. As noted, the law required portions of LWCF funding to be used for acquisition projects on a priority list developed annually by the Secretary of the Interior and the Secretary of Agriculture in consultation with the heads of affected agencies. The list is to include acquisitions of lands (or interests) that would "secure recreational public access to Federal land under the jurisdiction of the applicable Secretary for hunting, fishing, recreational shooting, or other outdoor recreational purposes."[57] This language would encompass a variety of types of recreation, though the types and locations allowed on each agency's lands would depend on its mission and authorities.

Congress may evaluate whether the recreational purposes specified in P.L. 116-9 provide the desired clarity and flexibility or uniformity that Congress intended. One issue may be the extent to which certain types of recreational acquisitions are to be prioritized across agencies or by a particular agency, in the context of the differing statutes that govern FLMA land use. Congress also may consider the extent to which the agencies' priority lists meet the recreational access needs of the public, in terms of the type of acquisition (i.e., full ownership or an interest) and the purposes, locations, and acreages of proposed acquisitions.

Identification of Total Funding

It is difficult, if not impossible, to determine total appropriations for acquisitions that benefit recreational access. Information on total appropriations could foster decisionmaking on the portion of LWCF appropriations that Congress may wish to specify for recreational access.

[57] P.L. 116-9, §3001(d), enacted on March 12, 2019, as codified at 54 U.S.C. §200306(c).

This report identifies LWCF appropriations for the FLMAs that were specified for recreational access. However, other portions of LWCF funding might foster recreational access, though they might not be labeled as such. For example, in its 2019 report, GAO noted, "Core projects and time-sensitive projects can also improve recreational access."[58] Moreover, according to BLM testimony in 2015, "nearly 100 percent of LWCF funding over the past several years has been used for projects that enhance public access for recreation."[59] For FS, 39 of the 40 acquisitions completed in FY2014 with LWCF funding provided improved access or legal access where none existed, according to agency testimony in 2015.[60] However, the extent to which agencies prioritize acquisition funding for recreational access might vary among FLMAs and from year to year.

In addition, FLMA acquisitions with non-LWCF funding sources may enhance recreational access. For instance, in P.L. 115-141 (Division O, Title III), the 115th Congress reauthorized and amended the Federal Land Transaction Facilitation Act (FLTFA), renewing mandatory spending authority for land acquisition with proceeds from BLM disposal of certain lands.[61] It renewed the authority of the Secretary of the Interior and the Secretary of Agriculture to use the funds to acquire inholdings and lands adjacent to certain federally designated areas that contain "exceptional" resources. P.L. 115-141 also amended the operation of FLTFA to foster recreational access and use. For instance, one change authorized the funds to be used for acquiring lands or interests in lands adjacent to BLM areas that are open to the public for hunting, fishing, recreational shooting, and other recreational purposes but for which there is no access or "significantly restricted" public access. Another change directed the Secretaries to develop a procedure to prioritize acquisition of inholdings and nonfederal lands with exceptional resources that meet certain criteria, including the extent to which acquisition "will increase the public availability of resources for, and facilitate public access to, hunting, fishing, and other recreational activities."[62]

An issue for Congress each year is determining the optimal level of funding for recreational access acquisitions. To foster this decisionmaking, Congress might wish to assess LWCF funding specifically for recreational access and LWCF funding for other types of acquisitions (e.g., core, emergency, and inholding) that enhance recreational access. Similarly, Congress might assess sources of funding under other authorities, such as FLTFA, that enhance recreational access. Considerations may pertain to the purposes, requirements, and amounts of funding available under different authorities and their adequacy for the varying recreational needs of the FLMAs and the public.

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[58] GAO-19-346, p. 9, footnote 18.

[59] Statement of BLM's Deputy Director for Operations Steve Ellis, in U.S. Congress, Senate Committee on Energy and Natural Resources, *Legislative Hearing on S. 556, the Bipartisan Sportsmen's Act of 2015*, hearing, 114th Cong., 1st sess., March 12, 2015, p. 6, at http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=f46d20ea-6d78-4c4a-a582-2881bbb5abca.

[60] Testimony of FS's Deputy Chief for National Forest System Leslie Weldon, in U.S. Congress, Senate Committee on Energy and Natural Resources, *Legislative Hearing on S. 556, the Bipartisan Sportsmen's Act of 2015*, hearing, 114th Cong., 1st sess., March 12, 2015, pp. 5-6, at http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=f46d20ea-6d78-4c4a-a582-2881bbb5abca.

[61] P.L. 115-141, Division O, Title III codified at 43 U.S.C. §2301 et seq.

[62] 43 U.S.C. §2305(c)(3)). Unlike the GAOA, the Federal Land Transaction Facilitation Act (FLTFA) did not specify a role for Congress in allocating the mandatory appropriations.

Availability of Recreational Access Information

It is not clear if in past years the FLMAs generally provided Congress information on areas lacking recreational access. Further, the quality of any information provided is uncertain. For example, during the years examined (FY2013-FY2021), FLMA budget justifications typically did not include information on areas lacking recreational access or lists of acquisition projects to be prioritized for recreational access funding. Comprehensive information might assist Congress in appropriating funding for recreational access.

The 116th Congress enacted legislation relating to the accessibility of federal lands for recreation. For instance, P.L. 116-9 required the Secretary of the Interior and the Secretary of Agriculture, on behalf of the FLMAs, to publish information on the accessibility of federal lands for recreation. Specifically, the law directed the Secretaries to identify and publish on agency websites "priority lists" containing the location and acreage of land on which the public is allowed to hunt, fish, and engage in other forms of recreation but for which there is no access or "significantly" restricted access.[63] The areas listed are to consist of at least 640 acres. The law further directed the agencies to report to the appropriations and authorizing committees on options—including acquisition—for providing access.[64] In response, the FLMAs developed priority lists that were posted online in 2020.[65] P.L. 116-9 also required the Secretaries to prepare and publish priority lists biennially during the 10-year period following the completion of the first lists.[66]

In addition, academic and other nongovernmental entities have published information on the extent to which federal lands are available for recreation.[67] Some of them also have called for federal agencies to develop standardized datasets of existing access easements to improve public awareness of legal access points and help federal agencies identify areas where access is most limited.[68] Although P.L. 116-9 does not explicitly require FLMAs to make recreational access priority lists available in geospatial format, the FLMAs are engaged in activities to make geospatial information publicly available. According to recent BLM testimony, the agency has "begun an internal initiative to digitize recreational access information into geospatial files and make that information available to the public by the end of FY 2022."[69] As of October 2021,

[63] P.L. 116-9, §4105, enacted on March 12, 2019, as codified at 16 U.S.C. §7915.

[64] These committees are the House Committee on Appropriations, House Committee on Natural Resources, Senate Committee on Appropriations, and Senate Committee on Energy and Natural Resources.

[65] The lists are available at the following agency websites: https://www.nps.gov/subjects/legal/dingell-act.htm; https://www.fws.gov/refuges/realty/dingell-act-priority-list.html; https://eplanning.blm.gov/eplanning-ui/project/1503445/570; and https://www.fs.usda.gov/managing-land/lands-realty-management/dingell-cmra. In some cases, agency information indicated that the lists on these sites were still under review, not final.

[66] P.L. 116-9, §4105, enacted on March 12, 2019, as codified at 16 U.S.C. §7915.

[67] See for example, John W. Sheridan, "The Legal Landscape of America's Landlocked Property," *Journal of Environmental Law* 37 (2019); Theodore Roosevelt Conservation Partnership, *Off Limits, But Within Reach: Unlocking the West's Inaccessible Public Lands* (August 2018), at https://www.trcp.org/wp-content/uploads/2019/02/TRCP-onX-Landlocked-Report-8-26-2018.pdf; and Center for Western Priorities, *Landlocked: Measuring Public Land Access in the West* (2013), at https://westernpriorities.org/2013/11/25/new-report-landlocked-measuring-public-land-access-in-the-west/.

[68] Theodore Roosevelt Conservation Partnership, *Off Limits, But Within Reach: Unlocking the West's Inaccessible Public Lands* (August 2018), p. 8; and Testimony of President and CEO Joel Pedersen, Mule Deer Foundation, in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Regarding the MAPLand Act and SOAR Act*, 117th Cong., 1st sess., June 8, 2021, pp. 2-3, at https://naturalresources.house.gov/imo/media/doc/Pedersen,%20Joel%20-%20UPDATED%20Testimony%20-%20NPFPL%20Leg%20Hrg%2006.08.21.pdf.

[69] Statement of BLM Assistant Director of National Conservation Lands and Community Partnerships Mark Lambrecht, in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and

BLM had publicly released data on acquired public access easements in Montana, North Dakota, South Dakota, and Alaska.[70] FWS, NPS, and FS also have publicly released geospatial datasets that provide parcel-level information for many purposes, including recreational access.[71] The amount and presentation of data vary from agency to agency. Many access easements and other parcel-level records have not been digitized and are not represented in these public data files.

An issue for Congress may be whether agency budget justifications contain sufficient information about how agencies select and use recreational access funding. Congress also may evaluate whether the requirements in P.L. 116-9, and agency actions thereunder, provide adequate information for determining recreational access funding through the LWCF. The processes agencies use to develop priority lists, as well as the frequency, format, and completeness of information, might be among the areas of focus. Specific questions might explore whether the minimum size of 640 acres is an optimal threshold, the value and extent of digitization of data, and the extent to which agencies should coordinate in the development of priority lists.

Public Lands, H.R. 3113 Modernizing Access to Our Public Lands Act, 117th Cong., 1st sess., June 8, 2021, p. 2 at https://naturalresources.house.gov/imo/media/doc/Lambrecht,%20Mark%20-%20Testimony%20-%20NPFPL%20Leg%20Hrg%2006.08.21.pdf. BLM has released public lands access data for some areas on data.gov.

[70] These datasets are publicly available on Data.gov.

[71] NPS, FWS, and FS geospatial data files are available through Data.gov, the websites of the agencies, or both.

Appendix. Agency Guidance on Recreational Access Acquisitions (FY2013-FY2021)

This appendix contains agency-specific summaries of selected guidance on recreational access acquisitions. It details how each of the four federal land management agencies (FLMAs) discussed recreational access in annual budget justifications to Congress. The summaries cover FY2013-FY2021, the years for which CRS identified specific funding for recreational access.

Bureau of Land Management

The Bureau of Land Management (BLM) FY2013-FY2017 budget justifications requested funds to acquire small parcels of land, access easements to improve public access to "landlocked" BLM lands, or both. BLM estimated "23 million acres (or 9 percent) of BLM-managed public lands lack public access or have inadequate public access, primarily due to checkerboard land ownership patterns. Securing and improving public access to these lands will serve various recreational activities, including hunting and fishing."[72] BLM indicated the requested "funds will invest in acquisitions to better meet recreation access needs by working with willing landowners to secure rights-of-way, easements or fee simple lands that provide access or consolidate Federal ownership so the public has unbroken spaces to recreate, hunt, and fish."[73]

BLM's FY2018-FY2020 budget justifications did not request funds for recreational access projects, citing the "Administration's priority to focus available budget resources on maintaining current BLM lands rather than acquiring additional lands."[74] The FY2021 budget justification included $3 million for recreational access projects. It noted that project proposals would be given priority consideration if they "provide substantially added access to the public than at present; provide substantially added opportunities for visitor use than at present; provide a variety of recreational access for the public to enjoy; are under contract or option or have been pre-purchased by a third-party partner; and include non-BLM leveraged funding or are offered as a bargain sale."[75]

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service's (FWS's) FY2013-FY2014 budget justifications did not address recreational access projects. The FY2015 budget justification sought mandatory funding for the Land and Water Conservation Fund (LWCF) and noted "FWS will focus $2.5 million in

[72] The quoted text appears in each of the FY2013-FY2017 budget justifications. See Bureau of Land Management (BLM), *Budget Justifications and Performance Information: Fiscal Year 2013*, p. X-8; BLM, *Budget Justifications and Performance Information: Fiscal Year 2014*, p. IX-8; BLM, *Budget Justifications and Performance Information: Fiscal Year 2015*, p. VIII-8; BLM, *Budget Justifications and Performance Information: Fiscal Year 2016*, p. VIII-10; and BLM, *Budget Justifications and Performance Information: Fiscal Year 2017*, p. VIII-10.

[73] See BLM, *Budget Justifications and Performance Information: Fiscal Year 2015*, p. VIII-7; BLM, *Budget Justifications and Performance Information: Fiscal Year 2016*, p. VIII-9; BLM, *Budget Justifications and Performance Information: Fiscal Year 2017*, p. VIII-10; BLM, *Budget Justifications and Performance Information: Fiscal Year 2018*, p. VIII-10; and BLM, *Budget Justification and Performance Information: Fiscal Year 2021*, p. VII-8.

[74] See BLM, *Budget Justifications and Performance Information: Fiscal Year 2018*, p. II-10; BLM, *Budget Justifications and Performance Information: Fiscal Year 2019*, p. VII-11; and BLM, *Budget Justifications and Performance Information: Fiscal Year 2020*, p. VII-8.

[75] BLM, *Budget Justifications and Performance Information: Fiscal Year 2021*, p. VII-8.

mandatory funding towards projects to acquire access for sportsmen/recreation."[76] FWS explained, "these funds will invest in acquisition to better meet recreation access needs by working with willing landowners to secure rights-of-way, easements or fee simple lands that provide access or consolidate Federal ownership so that public has unbroken spaces to recreate, hunt, and fish."[77]

FWS's FY2016 budget justification requested "an additional" $2.5 million to

> acquire and conserve important wildlife habitat to share with the public for recreational use, including hunting and fishing. Refuges that may not have project funding but have willing sellers, may request funds to acquire land to provide access for families and recreationalists to enjoy wildlife recreation, such as observation and photography of wildlife, and enjoying environmental education and interpretation.[78]

In the FY2017 budget justification, FWS noted that "sportsmen and recreational access" funds covered the following:

> Acquisition of small parcels of land to conserve important wildlife habitat that also provide recreational opportunities, including hunting and fishing. Refuges that do not have project funding, but have willing sellers, may request funds to acquire land to provide public access for wildlife-dependent recreation, such as wildlife observation, photography, environmental education, and interpretation. The Service will be able to acquire choice lands quickly and make them accessible to young people and the country's growing urban population that lives within an hour's drive of a national wildlife refuge.[79]

Starting in the FY2018 budget justification, FWS proposed "to eliminate dedicated funding for sportsmen and recreational access within the acquisition program to allow the Service to support other higher priorities."[80] Nevertheless, FWS indicated that the criteria for this funding were, in priority order, the following: "Provide access to refuge areas previously inaccessible for hunting and/or fishing; Acquire areas that can be readily opened to hunting and/or fishing; Acquire areas that expand existing hunting and/or fishing opportunities; and Acquire areas that create or expand wildlife viewing, interpretation, environmental education, and photography opportunities."[81] In FY2019 and FY2020 budget justifications, FWS did not request funding for recreational access "in order to support higher priorities."[82]

For FY2021, FWS included $3.0 million in "funding to acquire tracts that provide or improve public access to Service lands for wildlife dependent recreation, including hunting and fishing."[83] Under "Sportsmen and Recreational Access," the FY2021 budget justification indicated as follows:

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[76] U.S. Fish and Wildlife Service (FWS), *Budget Justifications and Performance Information: Fiscal Year 2015*, p. LA-6. Mandatory funding for the Land and Water Conservation Fund (LWCF) was not authorized in FY2015. Mandatory funding for LWCF programs first became available in FY2021 under provisions of the Great American Outdoors Act (GAOA; P.L. 116-152).

[77] See footnote 76.

[78] FWS, *Budget Justifications and Performance Information: Fiscal Year 2016*, p. LA-4.

[79] FWS, *Budget Justifications and Performance Information: Fiscal Year 2017*, p. LA-8.

[80] FWS, *Budget Justifications and Performance Information: Fiscal Year 2018*, p. LA-4.

[81] FWS, *Budget Justifications and Performance Information: Fiscal Year 2018*, p. LA-9.

[82] FWS, *Budget Justifications and Performance Information: Fiscal Year 2019*, p. LA-4; and FWS, *Budget Justifications and Performance Information: Fiscal Year 2020*, p. LA-7.

[83] FWS, *Budget Justifications and Performance Information: Fiscal Year 2021*, p. LA-7.

> This activity provides funding for acquisition of small parcels of land to conserve important wildlife habitats that provide public recreational opportunities, including hunting and fishing. Refuges that have willing sellers may request funds to acquire lands to provide public access for wildlife-dependent recreation, such as hunting, fishing, wildlife observation, photography, environmental education, and interpretation.[84]

The budget justification also provided criteria for proposed acquisitions, which were the same as those reflected in the FY2018 justification (as listed above).[85]

National Park Service

The National Park Service's (NPS's) FY2013-FY2014 budget justifications discussed recreational access in connection with the Obama Administration's America's Great Outdoors initiative but did not specifically request funding for recreational access projects. Both budget justifications provide the following:

> Federal land acquisition is an important tool to achieve the AGO [America's Great Outdoors] goals of enhancing recreational access and opportunities…. Since its inception in 1916, the NPS has served as the ultimate caretaker of the country's most valuable natural and cultural resources, while providing for public use and enjoyment of those resources. Today the National Park System has a vast and diverse portfolio of assets under its care totaling more than 84 million acres, yet 2.7 million acres of private land remains within NPS boundaries. Of the remaining private land, approximately 1.8 million acres are either unprotected or are not available for public use, and have therefore been identified to be purchased either in fee or through scenic/conservation easement interest. The public strongly recommended providing full funding for LWCF programs to support public access to recreational lands during the America's Great Outdoors listening sessions this past summer.[86]

The NPS FY2015 budget justification proposed dedicating $2.5 million for land acquisition "projects that specifically address recreational access."[87] For FY2016, NPS requested a $2.0 million "funding increase" so as "to invest in acquisitions to better meet recreation access needs by working with willing landowners to secure rights-of-way, easements or fee simple lands that provide access or consolidate federal ownership so that the public has unbroken spaces for recreation on park lands."[88]

NPS requested $2.0 million for recreational access acquisitions in FY2017.[89] The budget justification also provided information on FY2016 recreational access acquisitions:

> Funds that were appropriated in FY2016 for Recreational Access lands or interest in lands within NPS boundaries are intended to be used where lands or interest in lands are being considered for acquisition that would improve access to the resource and the recreation potential within a unit of the national park system. Currently, many projects that meet the criteria were previously submitted by Regions through the NPS ranking process. Those projects which have already been vetted by the Regions, and did not receive funding, will

[84] FWS, *Budget Justifications and Performance Information: Fiscal Year 2021*, p. LA-6.

[85] Ibid.

[86] National Park Service (NPS), *Budget Justifications and Performance Information: Fiscal Year 2013*, pp. LASA-8–LASA-9; and NPS, *Budget Justifications and Performance Information: Fiscal Year 2014*, pp. LASA-10–LASA-11.

[87] NPS, *Budget Justifications and Performance Information: Fiscal Year 2015*, p. Overview-9.

[88] NPS, *Fiscal Year 2016 Budget Justifications*, p. Overview-45.

[89] NPS, *Fiscal Year 2017 Budget Justifications*, p. LASA-17.

> be looked at on the basis of the ranking and current 'ripeness'—is the owner a willing seller, etc., and then funds will be allotted to appropriate acquisition projects.[90]

NPS specified, "in FY 2016, it is anticipated that these funds will be used at two units to protect 620 acres of trail and river corridor for hiking and canoeing."[91]

The budget justification also noted that

> acquisitions proposed for FY 2017 were selected from the requested acquisitions using merit-based criteria established by NPS and by the Department, including:
>
> - threat to the resource
> - preservation of the resource
> - visitor use facility accommodation
> - involvement of partners, non-profit groups or availability of matching funds
> - continuation of an ongoing effort
> - recreational opportunities
> - local support for the acquisition

NPS's FY2018 and FY2019 budget justifications proposed to eliminate funding for recreational access acquisitions. The FY2018 budget justification stated the following:

> The National Park Service proposes to eliminate funding for Recreational Access in FY 2018. Funding for land management priorities is supported in part by reductions in lower priority activities such as new major acquisitions of federal land. This program works with State, local and private land owners to purchase parcels adjacent to existing NPS lands that will create, supplement or enhance recreational opportunities for the public; additional acres may be purchased to allow visitors to access entry or exit points for watercraft along waterways, connect gaps in scenic trails or provide a buffer to protect park resources as well as provide protection for neighboring private land owners. Elimination of this funding would preclude the NPS from acquiring lands in support of recreational access and use, resource protection, and sporting activities available to the public.[92]

The FY2019 budget justification noted, "the FY 2019 President's Budget request does not include funding for recreational access projects."[93] The FY2020 budget justification proposed to reduce funding for recreational access from the FY2019 appropriation of $2 million to $1 million and indicated NPS would "continue to work with State, local and private land owners to purchase parcels adjacent to existing NPS lands that will create, supplement, or enhance recreational opportunities for the public. Additional acres may be purchased to allow visitors to access entry or exit points for watercraft along waterways, connect gaps in scenic trails, or provide a buffer to protect neighboring land owners."[94]

The FY2021 budget justification proposed to reduce funding for recreational access from the FY2020 appropriation of $7 million to $4 million. The FY2021 budget justification noted that the recreational access subactivity

> provides funds to allow NPS to work with State, local, and private land owners to acquire parcels adjacent to existing NPS-managed lands where authority permits. These parcels

[90] NPS, *Fiscal Year 2017 Budget Justifications*, pp. LASA-13 – LASA-14.

[91] NPS, *Fiscal Year 2017 Budget Justifications*, p. LASA-14.

[92] NPS, *Budget Justifications and Performance Information: Fiscal Year 2018*, p. Overview-35.

[93] NPS, *Budget Justifications and Performance Information: Fiscal Year 2019*, p. LASA-12.

[94] NPS, *Budget Justifications and Performance Information: Fiscal Year 2020*, p. LASA-11.

> will create, supplement, or enhance recreational opportunities for the public. Additional acres may be acquired to allow visitors to access entry or exit points for watercraft along waterways, connect gaps in scenic trails, or provide a buffer to neighboring land owners. Lands to be acquired through this subactivity are chosen by first applying the same criteria as general acquisition requests are subject to in the annual priority setting process, and then additional scrutiny for recreational opportunities is explored. These include access points, recreational opportunities such as expanded hunting or fishing, equestrian trail connectivity, watercraft use such as kayaking, canoeing, or boating, and hiking or walking trail connectivity or safety concerns. Each request has an expressed willing seller and activity to protect the resource and make it available to the public is ready to commence once funds are approved.[95]

Forest Service

FS proposed funding recreational access acquisitions in its budget justifications to Congress between FY2013 and FY2017. For example, in the FY2013 budget justification, FS proposed to "use up to $5 million of FY2013 LWCF funds in a one-year endeavor to acquire parcels that provide access to NFS lands whereby access is not currently available or is impeded…. For the purposes of this funding we intend 'access' to include both motorized and/or non-motorized."[96]

In contrast, the FY2018-FY2021 budget justifications proposed eliminating land acquisition funding. In the FY2018 budget justification, FS noted, "No new land acquisition projects are proposed in the FY 2018 budget."[97] The FY2019-FY2021 budget justifications cited other agency priorities. For example, the FY2019 budget justification noted, "elimination of this program is proposed because the Forest Service will focus on maintenance of existing National Forest System lands in FY 2019, which currently comprise about 30 percent of the Federal estate."[98] The FY2020 budget justification reported, "elimination of the [land acquisition] program is proposed in FY 2020 because the Forest Service will focus on reducing wildland fire risk, contributing to the improvement of forest and grassland conditions across shared landscapes, and contributing to rural economic prosperity."[99] The FY2021 budget justification indicated, "the Forest Service will focus on active forest management, maintaining and improving infrastructure, and effective wildfire response."[100]

Regardless of whether the agency sought acquisition funding, FS consistently provided information on recreational access projects, including eligibility, rating criteria, and/or application procedures in its budget justifications to Congress between FY2013 and FY2021. For instance, the FY2013 budget justification in part stated the following:

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[95] NPS, *Budget Justifications and Performance Information: Fiscal Year 2021*, pp. LASA-10 – LASA-11.

[96] Forest Service (FS), *Fiscal Year 2013 President's Budget: Budget Justification*, February 2012, p. 7-3. The Senate Committee on Appropriations discussed the proposed one-year endeavor to acquire priority recreational access parcels during hearings on the Department of the Interior, Environment, and Related Agencies Appropriations, Fiscal Year 2013. See questions submitted to Tom Tidwell by Sen. Jack Reed in S.Hrg. 112-731, p. 169. For subsequent fiscal years, references are FS, *Fiscal Year 2014 Budget Justification*, April 2013, p. 7-3; FS, *Fiscal Year 2015 Budget Justification*, March 2014, p. 7-3; FS, *Fiscal Year 2016 Budget Justification*, February 2015, pp. 229-230; and FS, *Fiscal Year 2017 Budget Justification*, February 2016, p. 254.

[97] FS, *FY2018 Budget Justification*, May 2017, pp. 132-133.

[98] FS, *FY2019 Budget Justification*, February 2018, p. 104.

[99] FS, *FY2020 Budget Justification*, March 2019, p. 91.

[100] FS, *FY2021 Budget Justification*, February 2020, p. 79.

> [Recreational access] parcels will be identified by the public with the support of a non-governmental organization, and funding decisions will be based on a regionally competitive process. Upon receipt of an appropriation, we will allocate funds to Forest Service Regions, based on visitor use. The Forest Service's Washington Office will issue a request for proposals (RFP) that outlines conditions and instructions for how to nominate a parcel and apply for funding, includes a simple application form, that will include information about when and where to submit applications to the Regional Offices.[101]

The FY2013 budget justification also specified eligibility and rating criteria. The FY2014 budget justification identified recreational access rating criteria as follows:

> Projects will be evaluated on the degree to which previously inaccessible lands are made accessible, or the importance of the inholding acquisition to protect and enhance habitat, recreation, access, restoration and/or viewsheds. This can be quantified in terms of area (acres), a linear measure (e.g. stream frontage), and/or costs savings and operational efficiencies for access and inholding purposes achieved by the acquisition. The Regional Forester will make final project recommendations for project selection. The Deputy Chief of NFS has final approval for selecting projects for funding.[102]

As another example, the FY2018, FY2020, and FY2021 budget justifications identified several criteria for evaluating potential recreational access acquisitions:[103]

- How does the acquisition solve a specific access problem or overcome a barrier to access?
- What is the size and configuration of the tract relative to the National Forest System lands around it?
- How much of the tract borders existing National Forest System or other publicly accessible lands?
- What types of recreational access would the land provide? Hunting, fishing, hiking, other?
- Has the public indicated that more or improved access is needed in this area?
- What is the level of local support for the acquisition?

FS also has provided broad summaries of prior recreational access acquisitions and specific examples as part of budget justifications. For instance, broad summaries were included in the budget justifications for FY2019 and FY2021. The FY2019 budget justification summarized, "acquisitions completed in 2017 supported new and improved recreational access for a wide array of outdoor activities in 21 States (11 eastern States and 10 western States) with an average acreage of 533 acres."[104] The FY2021 budget justification noted, "Congress appropriated $5 million in FY 2019 for priority recreational access projects. In FY 2019, the Forest Service acquired 19,515 acres of land that provided or improved public access."[105]

More specific recreational access acquisitions were identified in the FY2017 and FY2021 budget justifications, for instance. The FY2017 budget justification mentioned using recreational access funds to complete a series of acquisitions in the Beaverhead-Deerlodge National Forest in

[101] FS, *Fiscal Year 2013 President's Budget: Budget Justification*, February 2012, p. 7-3.

[102] FS, *Fiscal Year 2014 Budget Justification*, April 2013, p. 7-3.

[103] FS, *Fiscal Year 2018 Budget Justification*, May 2017, pp. 132-133; and FS, *FY2020 Budget Justification*, March 2019, p. 153; and FS, *FY2021 Budget Justification*, February 2020, p. 143.

[104] FS, *FY2019 Budget Justification*, February 2018, p. 107.

[105] FS, *FY2021 Budget Justification*, February 2020, p. 143

Montana.[106] The FY2021 budget justification noted, "The Forest Service acquired Fall Creeks, Montana in FY 2019, which is located on the Helena-Lewis and Clark National Forest about 30 miles southwest of Augusta…. The acquisition permanently opened access to 26,000 acres of public land along the majestic Rocky Mountain Front."[107]

In addition, FS sometimes has referenced and responded to congressional directives in its annual budget justifications. For example, the FY2021 budget justification stated, "Congress requires the Forest Service to 'annually develop a priority list for projects that, through acquisition of land (or an interest in land), secure recreational public access to Federal land under the jurisdiction of the applicable Secretary for hunting, fishing, recreational shooting, or other outdoor recreational purposes' (54 U.S. Code §200306(c))."[108] The justification then set out the acquisition criteria in the LWCF Act at 54 U.S.C. §200306(d) and additional criteria used by the agency to evaluate recreational access acquisitions as shown in the bulleted list, above.

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[106] FS, *FY2017 Budget Justification*, February 2016, pp. 254-255.

[107] FS, *FY2021 Budget Justification*, February 2020, p. 81.

[108] FS, *FY2021 Budget Justification*, February 2020, p. 143.