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# Effect of COVID-19 on Federal Land Revenues

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## Effect of COVID-19 on Federal Land Revenues

Four major federal land management agencies administer 606 million acres (95%) of the federal land in the United States (approximately 640 million acres). These agencies are the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) in the Department of the Interior (DOI) and the Forest Service (FS) in the Department of Agriculture. In addition, the Bureau of Ocean Energy Management (BOEM), in DOI, manages access to approximately 1.7 billion offshore acres in federal waters on the U.S. outer continental shelf. The agencies administer their lands for a variety of purposes, primarily related to conservation, recreation, and development of natural resources. This report focuses on the potential impacts of the Coronavirus Disease 2019 (COVID-19) pandemic on certain revenue-generating activities, federal payment and revenue-sharing programs, and federal assistance programs administered by these resource-managing agencies.

The resource-managing agencies are authorized to charge fees and generate revenue from many of the uses and services provided on the federal lands they manage. Revenue-generating activities include recreation; concessions and commercial visitor services; energy development, both onshore and offshore; livestock grazing; and timber harvesting. The revenue may be allocated in various ways to support diverse purposes. Some allocations are made to the resource-managing agencies to offset costs of specific activities, such as recreation and visitor services. Other allocations are to the General Fund of the U.S. Treasury to support governmental functions generally; still other allocations are to special funds established by Congress for particular activities, such as historic preservation or land acquisition. During the COVID-19 pandemic, the five agencies have experienced varying degrees of disruption to the continuity of revenue-generating activities on their lands and programs they administer. If reduced activity or fee payments result in less revenue generated on federal lands, the decrease could affect the agencies, general and special funds, and activities sharing in the revenues. More broadly, the general public, communities near federal lands, and businesses and industries that use or purchase resources from federal lands could feel the effects of such a decrease in activity or revenue.

In some cases, the resource-managing agencies are required to share revenues with state and local governments. State and local governments also receive payments through various other programs based on the extent of federal acreage within their jurisdiction or other factors. The basis, distribution, recipients, and authorized uses of these revenue-sharing and other payment programs differ widely. For the revenue-based payments, lower revenues from federal lands likely would affect the level of payments to states and local governments. For most payments, however, the effect would not be apparent until the following fiscal year (e.g., FY2021, for revenue fluctuations in FY2020). The potential for COVID-19 to affect the nonrevenue-based payments is less clear. An issue for some of the nonrevenue-based payments has been uncertainty related to program and funding authorization. In addition, because some of the revenue-based and nonrevenue-based payments are funded through offsetting receipts, another potential issue is that any reduction in receipts also may reduce the availability of funds to cover the payments' costs.

Some of the resource-managing agencies also administer programs that provide assistance to states and territories for conservation-related and other activities through grants or other financial or technical assistance. Two such programs are the Pittman-Robertson Wildlife Restoration Program and the Dingell-Johnson Sport Fish Restoration Program. FWS administers these two programs, which are funded through revenues from excise taxes and/or import duties for specific items. The COVID-19 pandemic could affect these programs in various ways, including by altering the amount of revenue generated, allocations to states and territories, and recipients' ability to use allocated funds. It is unclear, however, the extent to which any effect of COVID-19 on these programs may be representative of impacts on assistance programs generally.

The effects of COVID-19 on revenue-generating activities, federal payment and revenue-sharing programs, and assistance programs administered by these agencies raise an array of potential issues for Congress. Generally, these issues include whether to counteract any decreases in revenues, payments, or funding for assistance programs; provide for additional flexibilities or direct relief for entities that operate on federal lands or purchase federal resources; or alter cost-share and obligation requirements for recipients of assistance programs. To address these issues, Congress could provide additional appropriations or amend the programs in diverse ways to mitigate the impacts. Congress may decide that some issues do not warrant legislative action, or it may prefer to address these issues in the future, depending on the duration, scope, and scale of the pandemic and related impacts.

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# Introduction

## Overview of Primary Resource-Managing Agencies

The federal government owns roughly 640 million acres of onshore land in the United States, about 28% of the 2.27 billion total acres. Four major federal land management agencies (FLMAs) administer 606 million acres (95%) of this land.<sup>1</sup> These agencies are the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) in the Department of the Interior (DOI) and the Forest Service (FS) in the Department of Agriculture (USDA).<sup>2</sup> Many other agencies administer the remaining onshore federal acreage. In addition, the Bureau of Ocean Energy Management (BOEM), in DOI, manages access to approximately 1.7 billion offshore acres in federal waters on the U.S. outer continental shelf.

The five agencies administer these lands for many purposes, primarily related to conservation, recreation, and development of natural resources. In addition, the agencies have distinct responsibilities. BLM and FS manage 244 million acres and 193 million acres, respectively, under similar multiple-use, sustained-yield mandates that support various conservation, recreation, and development activities. FWS manages 89 million acres, primarily to conserve and protect animals and plants. NPS manages 80 million acres in diverse units to conserve lands and resources and make them available for public use. BOEM administers offshore energy leasing and mineral development in federal waters.<sup>3</sup>

## Scope of the Report

This report focuses on the potential impacts of the Coronavirus Disease 2019 (COVID-19) pandemic on certain activities and programs related to these five resource-managing agencies.<sup>4</sup> The report is organized into three broad sections.

The first section, “Revenue-Generating Programs and Activities,” discusses five key activities that generate revenue on federal lands. These activities are recreation, concessions and commercial visitor services, onshore and offshore energy development, livestock grazing, and timber harvesting.

The second section, “Federal Payment and Revenue-Sharing Programs,” covers payment programs to state and local governments for the presence of federal lands within their jurisdictions. The programs covered include Secure Rural Schools (SRS) payments, FS Payments to States, BLM Oregon and California (O&C) payments, BLM Coos Bay Wagon Road (CBWR)

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<sup>1</sup> This figure is current as of September 30, 2018.

<sup>2</sup> Hereinafter, these agencies often are referred to as the four federal land management agencies (FLMAs).

<sup>3</sup> For a brief overview of the four FLMAs, see CRS In Focus IF10585, *The Federal Land Management Agencies*, by Katie Hoover. For a profile of each Department of the Interior (DOI) agency, see CRS Report R45480, *U.S. Department of the Interior: An Overview*, by Mark K. DeSantis. For information on the acreage managed by the four FLMAs, including acreage changes over time, see CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent and Laura A. Hanson.

<sup>4</sup> For an overview of COVID-19 in the United States, including responses to frequently asked questions, see the website of the Centers for Disease Control and Prevention at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. For an overview of the U.S. response to COVID-19, see CRS Report R46219, *Overview of U.S. Domestic Response to Coronavirus Disease 2019 (COVID-19)*, coordinated by Sarah A. Lister and Kavya Sekar. For an overview of the worldwide implications of and response to COVID-19, see CRS In Focus IF11421, *COVID-19: Global Implications and Responses*, coordinated by Sara M. Tharakan.

payments, and Payments in Lieu of Taxes (PILT).<sup>5</sup> The report covers revenue sharing for energy and mineral development in the “Energy Production and Mineral Extraction on Federal Lands” section. Some of these programs apply to particular federal lands, such as those administered by FS and/or BLM, whereas others apply to federal lands more broadly, as is the case for the PILT Program.

The third section, “Selected FLMA-Administered Assistance Programs,” addresses programs administered by FWS that provide assistance to states and territories, among other entities. It focuses on two large programs: the Pittman-Robertson Wildlife Restoration Program and the Dingell-Johnson Sport Fish Restoration Program.<sup>6</sup> Assistance programs administered by the other agencies are not included.

Similar types of information are included for each activity and program covered in the three broad sections, including the following:

- the authority for the activity or program;<sup>7</sup>
- how revenues are collected and allocated or how the payments are made;
- the amount of collections or payments for the most recent fiscal year for which complete information is available;
- the potential effect of COVID-19 on program operations generally and on revenues or payments in particular;
- issues for potential consideration by Congress, including any loss of revenues; and
- related CRS products for further information on the covered programs and activities.

There are several caveats about the coverage of this report. First, the report does not provide a comprehensive review of all pertinent activities and programs that could foster a deeper understanding of the impact of COVID-19 on federal lands. Instead, it addresses selected activities and programs based on their prominence and other factors. Second, for many of the covered activities and programs, the full effect of COVID-19 will not be known for some time; agency policies and activities are changing based on the evolving pandemic, and the report essentially reflects a snapshot in time. In addition, complete data and measurements are not yet available. As an example, the amount of revenue derived in FY2020 from the covered activities typically will not be available until some months after the end of the fiscal year. Third, comparisons across activities cannot be easily made, in part because the type, currency, and completeness of available information varies. For instance, for some activities and programs, revenue or payment data are available for FY2019, whereas in other cases the most recent available data are available for FY2018. Further, some activities and programs have had relatively stable revenues and payments in recent years, whereas in other cases amounts have varied considerably. Additional caveats related to the coverage of this report are in the discussion below of “Research Methodology and Caveats.”

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<sup>5</sup> 31 U.S.C. §§6901-6907.

<sup>6</sup> See the Pittman-Robertson Wildlife Restoration Act, 16 U.S.C. §§669 et seq., and the Dingell-Johnson Sport Fish Restoration Act, 16 U.S.C. §§777 et seq.

<sup>7</sup> Some sections identify multiple applicable authorities.

## Research Methodology and Caveats

### Methodology

The Congressional Research Service (CRS) used various research strategies to assess the impact of COVID-19 on selected revenue-oriented federal land programs and related management activities. CRS conducted extensive searches for pertinent information from a variety of publicly available resources, including but not limited to the following:

- DOI websites, including the main domain for the department ([doi.gov](https://www.doi.gov)) and specific domains for the central and regional/state offices of BLM, FWS, and NPS, to identify agency policy updates and interim guidance documents, regional orders, and press releases;
- USDA websites, including the main domain for the department ([usda.gov](https://www.usda.gov)) and the main FS, regional, and forest-specific domains, to identify agency policy updates and interim guidance documents, regional orders, and press releases;
- Press releases by Members of Congress regarding COVID-19-related impacts on revenue-oriented federal lands issues; and
- Websites and literature of stakeholder groups, including entities that are broadly focused and organizations that are more narrowly focused on particular federal land management agencies, programs, and activities.<sup>8</sup>

### Caveats

Several caveats about the research methodology warrant mention. First, CRS identified a large number of documents of varying type and scope through the search strategy outlined above. Documents included federal agency press releases, memoranda, interim orders, and other policy guidance; stakeholder news releases, position statements, and letters to government officials; and news articles and trade literature that provided additional context. Despite the expansive research strategy, the information identified generally should be regarded as illustrative rather than comprehensive, because the search did not return complete information on agency activities taken in response to the rapidly evolving COVID-19 crisis.

Second, the research focused on documenting potential impacts of COVID-19 on selected revenue- or payment-oriented federal lands activities and programs. CRS did not attempt to research comprehensively all potential impacts of COVID-19 on federal land management.

Third, the research relied on publicly available documents. CRS did not contact agencies to obtain and review policy documents that have not been made publicly available.

Fourth, CRS primarily searched for material released to the public from January 2020 to May 2020. Material released before or after this period likely would not have been located.

Relatedly, a fifth caveat is that federal agency and stakeholder documents only address developments to date. Agency policies and stakeholder interests may change quickly in response

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<sup>8</sup> Broadly focused organizations include, for example, the Western Governors Association, the Public Lands Council, the National Education Association, and the National Association of Counties. More narrowly focused organizations include, for example, the National Cattlemen's Beef Association, American Sportfishing Association, Archery Trade Association, National Parks Conservation Association, Congressional Sportsmen's Foundation, National Forest Counties and Schools Coalition, and American Forest Resource Council.

to the ongoing COVID-19 pandemic. As a result, some of the reference material used in this report may become outdated as conditions, information, and policies change.

## **Overview of Issues for Congress**

During the COVID-19 pandemic, the five resource-managing agencies have experienced varying degrees of disruption to the continuity of activities on their lands and programs they administer. These changes raise an array of potential issues for Congress, which are addressed more specifically and in greater depth in the discussions of activities and programs throughout this report. Some common issues and options for Congress are presented below. Congress may decide that some issues do not require legislative action, or it may prefer to address issues soon or in the future, depending on the duration, scope, and scale of the pandemic and related impacts.

### **Revenue-Generating Programs and Activities**

An issue for Congress is whether to counteract any decrease in revenues from reductions in revenue-generating programs and activities. A replenishment of funds could benefit the recipients of the funds, be it the federal agencies administering the programs, state and local governments, or the public. Making up for lost revenues might be accomplished in various ways, such as by providing additional discretionary appropriations; changing revenue-sharing requirements among federal, state, and local recipients; or amending law pertaining to the amount, location, or type of fees allowed in the future. Alternatively, Congress might view replenishing decreased fee collections as undesirable, especially if the revenue reductions are small, or might prefer to prioritize addressing other challenges to individuals, segments of the public, and particular industries.

A second issue for Congress is whether, and if so the extent to which, revenue-generating activities on federal lands need flexibility for operations and whether the agencies have authority to provide that flexibility. Such flexibility could include relief in the form of fee waivers or deferrals, or it could include contract modifications, extensions, or buyouts. To help address how contractors, timber purchasers, and other commercial operators confront challenging economic conditions, Congress could authorize agencies to provide relief or direct agencies to use any current authorities for fast relief. Alternatively, Congress might bar agencies from offering these options to maintain revenues from commercial service to fund important activities and programs. Further, Congress might decide that issues related to commercial activities are to be dealt with through free market mechanisms.

### **Federal Payment and Revenue-Sharing Programs**

Federal payment and revenue-sharing programs include both revenue-based payment programs and nonrevenue-based payment programs. For the revenue-based programs, such as those administered by FS and BLM, an issue for Congress is whether to make up for any decrease in the amount received by the state and local recipients from these payments. If so, Congress could accomplish this by amending laws to increase the percentage of revenues shared with the recipients, though this would decrease the federal share of the revenues. Congress also could consider options to lessen the impact of reduced payments in any one year through program amendments—for example, by moving to a rolling average of receipts generated over a number of years. Alternatively, Congress might prefer to address any potential state or local government funding shortfalls from revenue-sharing programs through other mechanisms that provide more direct relief or that are temporary and do not permanently change the relevant laws.



For the nonrevenue-based payment programs, an issue is the uncertainty regarding continuity of operations and funding, particularly for those interested in providing a predictable funding stream for program recipients. Congress could address this concern by extending or permanently authorizing these programs and/or providing mandatory instead of discretionary appropriations. One payment program, Secure Rural Schools (SRS),<sup>9</sup> is set to expire after payments are made in FY2021. The funding for another program, Payments in Lieu of Taxes (PILT),<sup>10</sup> has been set through the annual appropriations process for the past several years.<sup>11</sup> Other issues include whether to amend the way payments are calculated or to increase flexibility for program recipients. Congress might view modifying revenue-based or nonrevenue-based programs as unnecessary or undesirable at this time due to insufficient information on the extent or nature of COVID-19 impacts to date.

### **Selected FLMA-Administered Assistance Programs**

For the FWS-administered assistance programs covered in this report—Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration—an issue is whether to alter requirements for cost sharing and obligation time frames. The existing requirements could affect funding recipients' ability to use their monies; alterations to these requirements might help funding recipients address other priorities stemming from COVID-19. For example, Congress could postpone or waive cost-share requirements, extend obligation time frames, or change the activities eligible to be undertaken. Before deciding whether to legislate, Congress could wait for additional information on COVID-19 impacts on revenues that support the programs and on recipients' ability to spend program funding.

## **Revenue-Generating Programs and Activities**

The resource-managing agencies are authorized to charge fees and generate revenue from many of the uses and services provided on the federal lands they manage. Revenue may be derived from different fees, such as for entrance, franchises or contracts, livestock grazing permits, the sale of federal resources (such as timber), and bonuses and royalties from the sale of resources (such as energy). The revenue may be used for a variety of purposes, including offsetting agency costs of the specific activities (e.g., program administration), sharing with the communities containing the lands or affected by the activity, or depositing in the General Fund of the U.S. Treasury. In some cases, these activities directly and indirectly support nearby and surrounding communities, businesses, and industries.

This section discusses the potential impact of COVID-19 on several of the revenue-generating programs and activities on federal lands: recreation; concessions and commercial visitor services; energy development, both onshore and offshore; livestock grazing; and timber harvesting. (See **Table 1.**) These activities, however, do not all occur on the federal lands administered by each of the five agencies; rather, some activities are restricted to certain lands. For example, onshore energy development, livestock grazing, and timber harvesting occur on lands managed by BLM and FS but generally are prohibited on NPS and FWS lands. In contrast, BLM, FS, FWS, and

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<sup>9</sup> 16 U.S.C. §§7101-7153.

<sup>10</sup> 31 U.S.C. §§6901-6907.

<sup>11</sup> For example, in FY2020, Payments in Lieu of Taxes (PILT) received mandatory appropriations through provisions authorized by the annual discretionary appropriations law for that fiscal year (P.L. 116-94).

NPS all administer recreation fees, concessions, and various commercial visitor services programs. Offshore energy development occurs in federal waters and is administered by BOEM.<sup>12</sup>

During the COVID-19 pandemic, the five resource-managing agencies have experienced varying degrees of disruption to the continuity of activities on their lands and programs they administer. For some activities, operations generally have continued with little or minor adjustments. For other activities, operations ceased temporarily in some areas or were scaled back considerably. This has resulted in varying degrees of disruption to the public, communities, businesses, and industries that use, rely on, purchase, or otherwise are affected by the revenue-generating programs and activities. These revenue-generating activities are discussed in more detail in the following sections.

**Table I. Selected Revenue-Generating Programs and Activities**

Activity	Lands Covered	Revenue Basis	Amount of Fees or Revenues Collected	Receipt Allocation
Recreation Fees	BLM, FS, FWS, NPS	Fees for entrance and/or use of amenities	\$442.0 million (FY2019)	100% to collecting agency
Concessions and Commercial Visitor Services	BLM, FS, FWS, NPS	Concession franchise fees, permit fees, lease fees	\$134.3 million (FY2019) in NPS concession franchise fees; amounts of other fee collections not available	For NPS concession franchise fees, 100% for NPS Allocation of other fees is variable, with some authority to retain only cost-recovery fees
Energy Production and Mineral Extraction (Onshore)	Onshore federal lands (generally BLM, FS) <sup>a</sup>	Rents, bonuses, royalties, permit fees, material disposal	\$4.85 billion (FY2019) <sup>b</sup>	Varies by applicable authorization
Energy Production and Mineral Extraction (Offshore)	Federal waters (administered by BOEM)	Rents, bonuses, royalties	Varies by applicable authorization	Varies by applicable authorization
Livestock Grazing	BLM, FS	Permit/lease fees	\$21.0 million (FY2018)	Range Betterment Fund, Treasury, and states (to benefit counties where receipts generated)
Timber Harvesting	BLM, FS	Sale	\$217.1 million (FY2019)	Varies by individual sale, with options for up to 100% agency retention; revenue-sharing requirements also vary

<sup>12</sup> The Bureau of Ocean Energy Management (BOEM) administers energy leasing and mineral development on the U.S. outer continental shelf. Two other DOI agencies—the Bureau of Safety and Environmental Enforcement (BSEE) and the Office of Natural Resources Revenue (ONRR)—also have responsibilities for offshore energy management. BSEE oversees offshore operational safety and environmental protection, and ONRR manages public revenues from federally regulated offshore and onshore energy and natural resource projects.

**Source:** Information in this table is drawn from a variety of sources related to the covered agencies and activities, including agency websites and annual budget justifications to Congress.

**Notes:** BLM = Bureau of Land Management; BOEM = Bureau of Ocean Energy Management; FS = Forest Service; FWS = U.S. Fish and Wildlife Service; NPS = National Park Service.

- a. In addition to BLM and FS lands, onshore energy development occurs on lands administered by other agencies. For example, for information on energy development on lands within the National Wildlife Refuge System, administered by FWS, see CRS Report R45192, *Oil and Gas Activities Within the National Wildlife Refuge System*, by R. Eliot Crafton, Laura B. Comay, and Marc Humphries.
- b. This total does not reflect FY2019 revenues from locatable mineral fees, mineral material disposals, and wind and solar rights-of-way, because these amounts are not yet available. In FY2018, collections from these three activities totaled \$105 million.

## Recreation Fees on Federal Lands<sup>13</sup>

### Overview of Authority

There were nearly 600 million visits in FY2018 to federal lands managed by the four major FLMAs.<sup>14</sup> Visitors engaged in diverse types of recreation, including observing wildlife, hunting and fishing, camping and picnicking, hiking, boating, driving for pleasure, and riding off-highway vehicles. A number of authorities set conditions under which agencies can charge fees for recreation on lands under their jurisdiction. The primary authority applicable to the four agencies—the Federal Lands Recreation Enhancement Act (FLREA)—authorizes the four agencies (and the Bureau of Reclamation) to charge, collect, and retain recreation fees on federal recreational lands and waters.<sup>15</sup> FLREA authorizes agencies to charge fees at recreation sites through October 1, 2021. Initially, the authority was set to expire in 2014, but Congress has enacted multiple extensions.<sup>16</sup>

FLREA authorizes different kinds of fees, outlines criteria for establishing fees, and prohibits fees for certain activities or services. Fee criteria in the law were intended to be commensurate with benefits and services provided and to promote fairness and consistency among agencies and locations. FWS and NPS can charge entrance fees. BLM and FS can charge standard amenity fees in areas or circumstances where a certain level of services or facilities are available. All of the agencies can charge an expanded amenity fee for specialized facilities and services and special recreation permit (SRP) fees for specialized uses, such as group activities. FLREA authorized the establishment of a national pass for recreation at sites of the different agencies,<sup>17</sup> leading to the establishment of the America the Beautiful—the National Parks and Federal Recreational Lands

<sup>13</sup> This section was prepared by Carol Hardy Vincent, Specialist in Natural Resources Policy. It does not address the pandemic's effect on the broader outdoor recreation economy. For an overview and analysis of the outdoor recreation economy, see CRS Report R45978, *The Outdoor Recreation Economy*, by Anne A. Riddle.

<sup>14</sup> The estimate of 600 million is derived from a variety of sources for the four FLMAs and may reflect different definitions used by agencies (e.g., of visitors vs. recreational visits). An FY2018 estimate is provided because it is the most recent fiscal year for which all four FLMAs have published estimates.

<sup>15</sup> Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814). This section of the report focuses on the four FLMAs. Under FLREA, the Bureau of Reclamation (Reclamation) also is authorized to charge fees. In FY2019, Reclamation had one site charging a fee, and revenues for that year (not reflected here) were estimated at \$0.7 million.

<sup>16</sup> FLREA was enacted on December 8, 2004, as Title VIII of Division J of P.L. 108-447, the Consolidated Appropriations Act for FY2005.

<sup>17</sup> The U.S. Army Corps of Engineers also participates in the pass program (under P.L. 113-121, §1048).

Pass. The annual pass is \$80 per year, but discounted or free versions are available (e.g., for individuals who are permanently disabled).

The extent and use of FLREA varies across the land management agencies. FS manages some 30,000 developed recreation sites, of which about 4,000 collect fees under FLREA. Most of these sites provide overnight services, such as campgrounds and cabin rentals. BLM manages some 3,600 developed recreation sites, of which about 400 charge standard or expanded amenity fees or SRP fees. Of about 460 publicly open FWS refuges, approximately 200 charge fees, including about 30 areas with entrance fees. Of the 419 NPS units, roughly 165 charge a fee, including 111 units with entrance fees.<sup>18</sup>

## Collection and Allocation of Receipts

In FY2019, the four FLMAs collected \$442.0 million in receipts under FLREA. NPS and FS took in 92% of the revenue (70% and 22%, respectively). Recreation revenues increased 40% over the past five years, from \$315.9 million in FY2015, due to new and higher FLREA fees, additional visitation at some sites, and other factors.<sup>19</sup> Recreation sites collect widely varying amounts of recreation revenue. Moreover, the portion of sites' budgets made up of recreation revenues differs across sites.

Each agency can retain and spend the revenue collected without further appropriation. At least 80% of the revenue is to be used at the site where it was generated, although the Secretaries of the Interior and Agriculture can reduce that amount to not less than 60% for a fiscal year if collections exceed reasonable needs. The remaining collections are to be allocated at the agency's discretion. In practice, the agencies generally allow between 80% and 100% of fees to be used at the collecting sites.<sup>20</sup>

The agencies have broad discretion in using revenues for purposes specified in FLREA that aim to benefit visitors. Purposes include facility maintenance, repair, and enhancement; interpretation and visitor services; signs; certain habitat restoration; law enforcement; and program overhead, administration, and indirect costs. The largest amount of total agency collections typically is used for asset repair and maintenance, with interpretation and visitor services comprising the second-largest share. The agencies generally have large balances of unobligated funds, carrying over funds from one year to the next, to conduct environmental analysis, design, and engineering of projects and to fund next year's operations and large projects, among other uses.<sup>21</sup>

## Effect of COVID-19 on Recreation Operations and Receipts

During the COVID-19 pandemic, the four FLMAs ceased collecting recreation fees at some locations and temporarily closed other areas to the public. With regard to DOI fees, in mid-March 2020, the Secretary of the Interior directed DOI agencies to waive entrance fees in "recognition that we are not providing a full-service experience and [as] an important means to limit contact between visitors and our employees."<sup>22</sup> Under this policy, the extent to which DOI agencies

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<sup>18</sup> Figures in this paragraph were provided in communications to CRS from the FLMAs. They are approximate based on the most recent data available for each agency.

<sup>19</sup> Information on in this paragraph is derived from annual budget justifications for the four FLMAs.

<sup>20</sup> FLREA contains other provisions for the distribution of collections, including from the sale of recreation passes.

<sup>21</sup> Information in this paragraph on obligation and use of fee collections is derived from annual budget justifications for the FLMAs and communications from FS to CRS.

<sup>22</sup> Department of the Interior (DOI), "OP-ED: Secretary of the Interior David Bernhardt: Maintaining Public Access for Public Health," press release, April 17, 2020, at <https://www.doi.gov/pressreleases/op-ed-secretary-interior-david-bernhardt>

charged FLREA fees varied. For instance, FWS and NPS generally waived entrance fees. For BLM, “site-specific day-use fees at BLM recreation sites and areas will be waived for the foreseeable future. Other fees, such as overnight camping, cabin rentals, group day use, and use of special areas, will remain in effect.”<sup>23</sup> With regard to FS fees, agency guidance emphasized continuing “existing fee programs as appropriate, while seeking ways to minimize person-to-person contact and the handling of cash.”<sup>24</sup>

Area closures were intended to support social distancing, in implementation of federal, state, and local guidance, to protect the health and safety of agency employees, visitors, neighboring communities, partners, volunteers, and resources.<sup>25</sup> The extent to which federal lands were closed depended in part on the spread of COVID-19 in the area.<sup>26</sup> Closures and limitations could differ by forest, field office, park unit, or other entity and could change based on the virus’s spread.<sup>27</sup>

Across the four agencies, many visitor centers, public rooms, and other buildings and facilities closed, whereas large outdoor areas often remained open. According to the Secretary of the Interior, “Many national monuments, memorials, battlefields [of the NPS] and other public lands remain generally accessible,” as were a majority of BLM and FWS lands, “despite most facilities and amenities being closed.”<sup>28</sup> However, some areas were closed completely, including a number of “entire parks—from small, urban parks to iconic, large-landscape parks.”<sup>29</sup> Under FS guidance, recreation services at facilities “may be changed, suspended or offered through alternate approaches” based on risk assessments performed by local managers.<sup>30</sup> FS closed to the public food service areas and other places where 10 or more people congregate.<sup>31</sup> FS areas that could

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bernhardt-maintaining-public-access-public-health, hereinafter cited as DOI press release, April 17, 2020. Press releases of DOI agencies announcing the fee suspensions are as follows: Bureau of Land Management (BLM), “BLM to Temporarily Suspend Entrance Fees on Public Lands Across America,” press release, March 19, 2020, at <https://www.blm.gov/press-release/blm-temporarily-suspend-entrance-fees-public-lands-across-america>, hereinafter referred to as BLM press release, March 19, 2020; U.S. Fish and Wildlife Service (FWS), “U.S. Fish and Wildlife Service Temporarily Suspends Entrance Fees at National Wildlife Refuges,” press release, March 19, 2020, at [https://www.fws.gov/news/ShowNews.cfm?ref=u.s.-fish-and-wildlife-service-temporarily-suspends-entrance-fees-at-amp-\\_ID=36534](https://www.fws.gov/news/ShowNews.cfm?ref=u.s.-fish-and-wildlife-service-temporarily-suspends-entrance-fees-at-amp-_ID=36534), hereinafter cited as FWS press release, March 19, 2020; and National Park Service (NPS), “National Park Service to Temporarily Suspend Park Entrance Fees,” press release, March 18, 2020, at <https://www.nps.gov/orgs/1207/national-park-service-to-temporarily-suspend-park-entrance-fees.htm>, hereinafter cited as NPS press release, March 18, 2020.

<sup>23</sup> BLM press release, March 19, 2020.

<sup>24</sup> Forest Service (FS), *Guidance for the Operation of Recreation Services Sites and Food Services*, March 19, 2020, at [https://www.americantrails.org/images/USDAFS\\_Covid-19-Recreation-and-Food-Service-Guidance-031920201.pdf](https://www.americantrails.org/images/USDAFS_Covid-19-Recreation-and-Food-Service-Guidance-031920201.pdf). This source provides detailed guidance for recreation service sites and food services on FS lands and is hereinafter cited as FS, *Guidance for Recreation and Food Services*, March 19, 2020.

<sup>25</sup> See, for example, NPS, *NPS Public Health Update*, at <https://www.nps.gov/aboutus/news/public-health-update.htm>, accessed May 14, 2020.

<sup>26</sup> For instance, BLM closed developed campgrounds and recreation sites in California and campgrounds in Oregon and Washington, while Arizona recreation sites were generally open (though sites could adjust operations or limit entry).

<sup>27</sup> Agency guidance typically advised that visitors check guidance in an area before visiting.

<sup>28</sup> DOI press release, April 17, 2020. BLM, FWS, and NPS press releases similarly noted that at a majority of areas where it was possible to adhere to public health guidance, outdoor spaces remained open to the public while many facilities would be closed. See BLM press release, March 19, 2020; FWS press release, March 19, 2020, and NPS press release, March 18, 2020.

<sup>29</sup> NPS, *NPS Public Health Update*, at <https://www.nps.gov/aboutus/news/public-health-update.htm>, accessed May 14, 2020.

<sup>30</sup> FS, *Forest Service Coronavirus (Covid-19) Updates*, at <https://www.fs.usda.gov/about-agency/covid19-updates>, accessed May 14, 2020.

<sup>31</sup> FS, *Guidance for Recreation and Food Services*, March 19, 2020.

remain open, with appropriate limits on person-to-person contact and sufficient staffing and sanitation measures, included those that foster dispersed recreation (e.g., campgrounds, trails, and day-use sites).<sup>32</sup> Special-use permits remained valid, such as for ski resorts, organizational camps, and club activities, with operations at the permit holder’s discretion.<sup>33</sup>

The agencies sought to keep some lands accessible to the public during the pandemic to provide “places of solace, respite and even healing in times of challenge” and to allow the public “to have a place to be socially distant, together,” according to the Secretary of the Interior.<sup>34</sup> FS guidance similarly noted that the National Forest System (NFS) is an “American treasure” that can be a resource for people in difficult times, recreation benefits the health and well-being of visitors, and FS recreation facilities promote solitude and self-reliance.<sup>35</sup> Nevertheless, some agency guidance encouraged visitors to delay travel to outdoor destinations until it is safer or to recreate locally to avoid strain on other communities, as per the FS guidance for Region 6 (Pacific Northwest).<sup>36</sup>

Across the agencies, the reopening of areas that were closed is occurring on varied timelines and may depend more on local conditions than uniform dates. Some NPS areas in the South began increasing access in early May 2020, for example.<sup>37</sup> FS Region 6 guidance indicates that the legal closure order for most forests lasts until September 30, 2020, but may be rescinded earlier if conditions permit.<sup>38</sup>

The extent to which COVID-19 might affect recreation receipts of the four agencies under FLREA is unclear. Data necessary for analyzing the impact of area closures and restrictions, waived fees, and stay-at-home guidance are unlikely to be available for some months or years. Such data would include FY2020 statistics on the number of visitors to federal lands and the amount of recreation revenue collected by the agencies.<sup>39</sup> The duration of public health stay-at-home guidelines; the resulting length and extent of federal land closures, restrictions, and fee waivers; and public confidence in resuming recreational activities, among other factors, will affect revenue collections. In addition, the effect on individual recreation sites will vary, depending in part on the portion of a site’s overall budget that is derived from recreation fees.

## Issues for Congress Related to Recreation Fees

It appears likely that some federal land areas could collect less recreational revenue due to the pandemic, and thus total agency collections could be lower. This could be the case for FY2020 and possibly for future fiscal years, depending in part on the length and severity of the pandemic.

<sup>32</sup> FS, *Guidance for Recreation and Food Services*, March 19, 2020.

<sup>33</sup> FS, *Forest Service Coronavirus (Covid-19) Updates*, at <https://www.fs.usda.gov/about-agency/covid19-updates>, accessed May 14, 2020.

<sup>34</sup> DOI press release, April 17, 2020.

<sup>35</sup> FS, *Guidance for Recreation and Food Services*, March 19, 2020.

<sup>36</sup> FS, “Coronavirus (COVID-19) Frequently Asked Questions,” at <https://www.fs.usda.gov/detail/r6/home/?cid=fseprd720368>, accessed May 14, 2020.

<sup>37</sup> DOI, “In Case You Missed It: Interior Continues to Restore Public Access to Public Lands,” press release, May 8, 2020, at <https://www.doi.gov/pressreleases/case-you-missed-it-interior-continues-restore-public-access-public-lands>. Other park units have resumed some operations. See, for example Rob Hotakainen, “‘The Parks Are Opening, and Rapidly.’ But It’s Complicated,” *Greenwire*, May 14, 2020, at <https://www.eenews.net/greenwire/2020/05/14/stories/1063135399>.

<sup>38</sup> FS, “Coronavirus (COVID-19) Frequently Asked Questions,” at <https://www.fs.usda.gov/detail/r6/home/?cid=fseprd720368>, accessed May 14, 2020.

<sup>39</sup> For example, the three DOI agencies typically publish actual recreation fee collections for a fiscal year in the budget justification for the fiscal year that is two years later. Thus, based on past practice, the agencies would include actual fee revenues for FY2020 in the FY2022 budget justifications to Congress.

Any decrease in collections would reduce mandatory appropriations for fee-collecting sites and the agencies generally, because agencies retain and use the fees for varied purposes (e.g., facility repair), as discussed above.

An issue for Congress is whether to counteract any decrease in fee collections for one or more agencies. A replenishment of funds could benefit the agencies and the public by providing monies for the types of visitor services covered by FLREA. Congress could accomplish this replenishment in varied ways, including by appropriating additional discretionary appropriations for recreation, visitor services, and maintenance generally, for instance, through an agency's primary land management account (e.g., for NPS, the Operation of the National Park System account). Another option could be to amend the fee criteria in FLREA to increase revenues for future years, such as by expanding the type or location of authorized fees or by mandating higher fee levels than agencies customarily charge. To address any loss of revenue at particular land units, Congress could amend FLREA to provide additional flexibility in allocating revenues, such as by lowering the percentage that needs to remain at the collection site.

Alternatively, Congress might view any replenishment of decreased fee collections as unnecessary or undesirable, for a variety of reasons. At least in the short term, agencies might be able to use prior-year unobligated balances of fee collections, making new funding unnecessary. Congress might prioritize addressing revenue losses and other challenges to individuals, segments of the public, or particular industries. Further, in light of financial challenges for some visitors stemming from COVID-19 and the potential benefits of outdoor recreation during difficult times, Congress might consider maintaining or extending fee waivers or mandating lower fee levels than agencies typically charge.

### CRS Products for Additional Reading

- CRS In Focus IF10151, *Federal Lands Recreation Enhancement Act: Overview and Issues*, by Carol Hardy Vincent.

## Concessions and Commercial Visitor Services<sup>40</sup>

### Overview of Authority

Under various authorities, private-sector entities may offer commercial visitor services such as food, lodging, and recreational activities on federal lands. These services are administered through concessions contracts and other mechanisms. Commercial visitor service providers generally pay fees or a portion of revenues to the federal government.

Many providers operate in units of the National Park System. NPS manages almost 500 concessions contracts, over 6,000 commercial use authorizations (CUAs), and more than 180 leases with private-sector operators to provide visitor services on system lands.<sup>41</sup> NPS issues concessions contracts and CUAs under the authority of the National Park Service Concessions Management Improvement Act of 1998.<sup>42</sup> The concessions contracts typically authorize concessioners to provide lodging, food, camping, transportation, or other services using

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<sup>40</sup> This section was prepared by Mark DeSantis, Analyst in Natural Resources Policy, and Laura B. Comay, Specialist in Natural Resources Policy.

<sup>41</sup> NPS, *Budget Justification for FY2021*, p. ONPS-44, at <https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-budget-justification-nps.pdf>.

<sup>42</sup> P.L. 105-391; 54 U.S.C. §§101911 et seq.

government-owned facilities and resources, for terms of up to 10 (or in some cases 20) years. CUAs are shorter-term agreements of up to two years, used for activities that begin and end outside park boundaries (such as some guide and outfitter tours) or meet other specified criteria.<sup>43</sup> NPS also may authorize commercial activities through lease agreements in some circumstances.<sup>44</sup>

Other federal land management agencies have broad authorities to enter into leases, licenses, agreements, and other instruments with commercial entities that include the operation of concessions and visitor services.<sup>45</sup> BLM, FS, and FWS also rely on recreation fee authority under FLREA to issue commercial visitor service permits for recreation-related services. (See the “Recreation Fees on Federal Lands” section of this report.)

In some cases, agencies have specific authorities pertaining to particular commercial activities. For example, FS issues permits for ski resort concessioners operating on NFS lands pursuant to the National Forest Ski Area Permit Act of 1986.<sup>46</sup> As of FY2020, 122 ski resorts operate on NFS lands.<sup>47</sup> FS also has a number of concessioner-operated recreation sites, such as campgrounds, which are authorized under Section 7 of the Granger-Thye Act.<sup>48</sup>

## Collection and Allocation of Receipts

The collection and allocation of receipts from commercial services vary by agency, authority, and activity. NPS’s 1998 concessions law requires concessioners to pay *franchise fees* to the federal government.<sup>49</sup> The fee is typically set as a percentage of a concessioner’s annual gross receipts.<sup>50</sup> Under the law, 80% of the fees are retained at the park where they are collected and may be used for visitor services and high-priority resource-management activities. This could include concessions-related expenses as well as improving facilities, rehabilitating infrastructure, and addressing the backlog of deferred maintenance projects. The remaining 20% of the fees are

<sup>43</sup> 54 U.S.C. §101925. Commercial use authorizations (CUAs) may be used for activities that generate annual gross revenues of less than \$25,000, begin and end outside park boundaries, are conducted by certain nonprofit organizations, or are otherwise determined by the Secretary of the Interior to be appropriate. Like the other federal land management agencies, NPS has authority to issue special recreation permits under FLREA for guide and outfitting activities. (See the section of this report entitled “Recreation Fees on Federal Lands.”) However, NPS typically uses the authority provided under the 1998 concessions law to issue permits for such activities.

<sup>44</sup> 54 U.S.C. §102102. NPS may not authorize commercial services through a lease if the activity would be subject to authorization through a concession contract.

<sup>45</sup> For example, the Federal Land Policy and Management Act (FLPMA; 43 U.S.C. §§1701 et seq.) authorizes BLM to regulate the use of land through leases, licenses, and other instruments, FWS is authorized to enter into certain concessions contracts under the National Wildlife Refuge System Administration Act (16 U.S.C. §668dd-668ee), and FS has standing authority under the Term Permit Act of 1915 (16 U.S.C. §497) to authorize operations in connection with a commercial public service site. FS also has numerous other authorities under which it may administer concessions services. For a complete list of federal laws that allow occupancy and use of National Forest System (NFS) lands by entities other than FS, see FS, *Forest Service Manual 2710.1*.

<sup>46</sup> 16 U.S.C. §497b. Ski area permits issued prior to 1986 may have been issued under separate existing authorities, such as the Term Permit Act of 1915 (38 Stat. 1101, 16 U.S.C. §497). Most dining, lodging, and retail concession operations on NFS lands are authorized in conjunction with these ski resort permits as part of the larger resort operation.

<sup>47</sup> FS, *Budget Justification for FY2021*, p. 58, at <https://www.fs.usda.gov/sites/default/files/2020-02/usfs-fy-2021-budget-justification.pdf>.

<sup>48</sup> 16 U.S.C. §580d.

<sup>49</sup> 54 U.S.C. §101917.

<sup>50</sup> NPS determines franchise fees based on consideration of “the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract” (36 C.F.R. §51.78(a)).



deposited in a special account to support activities throughout the park system.<sup>51</sup> In FY2019, NPS received \$134.3 million in concession franchise fees.<sup>52</sup> For NPS commercial services authorized under CUAs, parks must charge a “reasonable fee” for permit issuance and administration.<sup>53</sup> The fee revenues are available without further appropriation to park superintendents to recover, at a minimum, associated management and administrative costs. Under interim NPS guidance, park managers may use any excess funds to monitor and mitigate CUAs’ resource impacts and for other “high-priority” park needs (other than funding permanent positions).<sup>54</sup>

The FS generally applies a *graduated rate fee system* to determine concession fees, with rates adjusted in accordance with the concessioner’s gross sales.<sup>55</sup> For example, ski resort permit fees take into account how much revenue a company makes on lift tickets, ski lessons, restaurants, bars, and other services. BLM and FWS do not have specific fee systems for concessions and commercial services. However, implementing regulations for the Federal Land Policy and Management Act of 1976 (FLPMA) call for BLM to charge fair market value for long-term leases on its lands.<sup>56</sup> FLPMA also authorized BLM to charge and collect “to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands.”<sup>57</sup>

FS, BLM, and FWS, unlike NPS, generally do not have authority to retain concession fees, beyond amounts necessary for cost recovery. Any additional federal revenues generated from concessions typically are deposited in the General Fund of the U.S. Treasury. For example, in FY2019, \$55 million from ski resort operations on FS lands was deposited in the Treasury.<sup>58</sup>

## Effect of COVID-19 on Operations and Receipts of Concessions and Commercial Visitor Services

Public land closures or reduced visitation due to COVID-19 would affect revenues of concessioners and other commercial service providers on federal lands, including the portion of revenues returned to the federal government. Even where lands generally are open to visitors, commercial visitor operations such as lodges, restaurants, buses, and other services may be closed

<sup>51</sup> 54 U.S.C. §101917(c).

<sup>52</sup> NPS, *Budget Justification for FY2021*, p. Overview-30. NPS received an additional \$9.5 million in FY2019 from “concessions improvement accounts” for contracts issued under an earlier concessions law.

<sup>53</sup> 54 U.S.C. §101925(b)(2). The law requires that the fee, at a minimum, “recover associated management and administrative costs.” Fees may exceed cost-recovery amounts based on market prices and “the value of the business opportunity” (NPS, “Charging Fees for Commercial Use Authorizations,” at <https://www.nps.gov/subjects/cua/upload/Directive-for-Charging-Fees-for-CUAs-11-12-15.pdf>).

<sup>54</sup> NPS, “Charging Fees for Commercial Use Authorizations,” at <https://www.nps.gov/subjects/cua/upload/Directive-for-Charging-Fees-for-CUAs-11-12-15.pdf>.

<sup>55</sup> FS, *Forest Service Manual (FSM) 2700: Special Uses Management*, Ch. 10 Special Use Authorizations, Part 5.1, 2014. Hereinafter abbreviated to FSM 2715.1. The rate, or rates, to be used is determined by the proportioned relationship of the concessioner’s sales to gross fixed assets, “the total of the original undepreciated cost (not the present value) of the current permittee’s investment in improvements and fixtures plus the cost of equipment necessary to generate sales and other income” (*Forest Service Handbook* 2709.11, §53.1). For permits issued under the Granger-Thye Act, any maintenance or repairs to government-owned properties may be credited when calculating the applicable rate under the graduated rate fee system (16 U.S.C. §580d).

<sup>56</sup> FLPMA is codified at 43 U.S.C. §§1761 et seq. Implementing regulations are at 43 C.F.R. §2920.8. (“Holders of a land use authorization shall pay ... a rental as determined by the authorized officer.... In no case shall the rental be less than fair market value.”)

<sup>57</sup> 43 U.S.C. §1734.

<sup>58</sup> Prepared statement of Chris French, Deputy Chief, NFS, FS, in U.S. Congress, Senate Committee on Energy and Natural Resources, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., October 31, 2019. Hereinafter referred to as Chris French Testimony, 2019.

because of concerns about social distancing (or, if open, could draw fewer patrons due to such concerns).<sup>59</sup> In the case of NPS concessions, industry representatives have stated that they anticipate significant revenue declines in CY2020 due to the pandemic.<sup>60</sup> The National Park Hospitality Association (NPHA), a trade association for park concessioners, projected a drop of at least 46% in 2020 concessioner revenues, depending on when parks were able to reopen.<sup>61</sup> The NPHA has sought relief actions from the federal government, including waivers of franchise fees and rent payments, contract extensions, and others.<sup>62</sup> Under existing law, NPS may modify franchise fees for some contracts “to reflect extraordinary unanticipated changes.”<sup>63</sup>

The COVID-19 crisis also has affected guides and outfitters operating under NPS CUAs and other agencies’ permitting authorities. These businesses often operate on a seasonal basis and have seen effects from spring closures of national parks and other federal lands.<sup>64</sup> America Outdoors, a trade association for commercial guides and outfitters, has asked congressional leaders for legislation to provide FLMA’s with flexibility in administering permits. This flexibility includes “fee deferrals and waivers, contract extensions, operational flexibility, and other appropriate measures to mitigate such impacts.”<sup>65</sup> Some agencies with authority to waive permit fees for recreation providers have issued guidance to waive fees for a time.<sup>66</sup> NPS, which administers most guide and outfitter activities as CUAs under its 1998 concessions law, had not indicated that fees would be waived as of the date of this report.

The COVID-19 crisis has affected ski resort visitation nationwide. Most states temporarily shut down ski operations at the onset of the outbreak in mid-March, and some resorts opted to close for the remainder of the ski season.<sup>67</sup> The National Ski Areas Association estimates that the 470 ski areas in the United States will suffer economic losses of over \$2 billion, should the crisis continue into the next ski season (winter 2020-2021).<sup>68</sup> It is unclear to what degree the loss in

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<sup>59</sup> For a brief discussion of federal land closures and reduced visitation, see the “Effect of COVID-19 on Recreation Operations and Receipts” section of this report.

<sup>60</sup> Letter from National Park Hospitality Association (NPHA) to Speaker of the House Nancy Pelosi and Senate Majority Leader Mitch McConnell, March 20, 2020, at <http://www.parkpartners.org/Congressional-COVID-19-Letter.html>, hereinafter cited as NPHA letter to Congress, March 20, 2020; and letter from NPHA to President Donald Trump, March 17, 2020, at <http://www.parkpartners.org/Letter-to-the-President-on-COVID-19.html>, hereinafter cited as NPHA letter to President, March 20, 2020.

<sup>61</sup> NPHA, COVID-19 Effects Infographic, at <http://www.parkpartners.org/Effects-of-COVID-19-on-Park-Concessioners.html>, hereinafter cited as NPHA Infographic.

<sup>62</sup> NPHA letter to Congress, March 20, 2020; NPHA letter to President, March 17, 2020; and NPHA Infographic.

<sup>63</sup> 54 U.S.C. §101917(b). The provisions apply only to concessions contracts with a term of more than five years. The NPHA has developed a form letter for concessioners to request fee modifications (NPHA, “Franchise Fee Relief Request Form, at <http://www.parkpartners.org/COVID-19.html>).

<sup>64</sup> Of the roughly 40,000 small businesses nationwide that provide guide and outfitter services, approximately 15,000 operate under permits, contracts, or other authorization on federal lands.

<sup>65</sup> America Outdoors letter to Congress, March 18, 2020, at [https://www.americaoutdoors.org/assets/1/27/AO\\_letter\\_to\\_Senate\\_leadership\\_re\\_coronavirus\\_relief.pdf?6482](https://www.americaoutdoors.org/assets/1/27/AO_letter_to_Senate_leadership_re_coronavirus_relief.pdf?6482).

<sup>66</sup> For example, see FS, “COVID-19 National Emergency Direction for Billing Holders of Commercial Recreation Special Use Authorizations and Commercial Filming Permits,” April 8, 2020, at [https://www.americaoutdoors.org/assets/1/27/COVID19\\_CommercialFilmingPermitsGuidance.pdf?6517](https://www.americaoutdoors.org/assets/1/27/COVID19_CommercialFilmingPermitsGuidance.pdf?6517).

<sup>67</sup> For example, see Vail Resorts, “Vail Resorts to Close North American Resorts for the 2019-20 Ski Season,” press release, March 17, 2020, at <http://investors.vailresorts.com/news-releases/news-release-details/vail-resorts-close-north-american-resorts-2019-20-ski-season>.

<sup>68</sup> Michelle Bruton, “Will Ski Resorts Reopen? How Coronavirus Will Affect Season Passes, Capacity,” *Forbes*, May 6, 2020, at <https://www.forbes.com/sites/michellebruton/2020/05/06/will-ski-resorts-reopen-how-coronavirus-will-affect-season-passes-capacity/#53c5f6b62189>.

business for ski resorts starting in March 2020 might affect FS fee revenues for FY2020. Because fees typically are collected monthly, a portion of the FY2020 fees were collected in months prior to the start of the outbreak. However, March tends to be a popular month for ski visitation, and resorts at higher elevations often can operate as late as June, depending on conditions. This is particularly the case in Colorado, a state responsible for more than half of the \$55 million generated from ski resort fee revenue in FY2019. To assist resort operators in addressing lost revenues related to the COVID-19 outbreak, some stakeholders have requested that the FS waive the remainder of fee payments in 2020 for ski areas leasing public lands.<sup>69</sup>

The extent of COVID-19 effects on concessions and commercial services receipts across the FLMAs may not be clear for some time. For example, the final amounts of franchise fees collected by NPS under concessions contracts for a fiscal year typically are published in the agency's budget justification two years later. Thus, based on past practice, NPS would include actual franchise fees for FY2020 in the FY2022 budget justification to Congress. For other concessions receipts assessed by the other FLMAs—as well as fees collected by NPS under CUAs—agencies typically do not regularly report annual data.<sup>70</sup>

### **Issues for Congress Related to Concessions and Commercial Visitor Services**

As discussed above, concessioners and other commercial service providers on federal lands have sought various types of relief from the federal government during the COVID-19 pandemic, such as fee waivers, fee deferrals, contract extensions, and other changes. To date, agencies have provided some requested flexibilities and not others. In some cases, agencies may lack authority to make requested changes absent congressional action. Congress might consider legislation to authorize or require agencies to provide fee waivers, deferrals, and/or contract extensions on a widespread basis to provide relief to the industries in a manner different than how agencies could or would provide on their own. Another option would be to provide direct relief to commercial service providers affected by the COVID-19 crisis, such as through a relief fund. Alternatively, Congress might intervene to prohibit agencies from offering contract flexibilities—for example, on the basis that agencies need to maximize commercial service revenues to fund important activities and programs. Congress also could consider alternative funding sources, such as increased discretionary appropriations, for agency programs that rely on commercial service revenues, or Congress might judge that other fiscal priorities are more important than making up for any concessions-related losses in funding for these programs.

With regard to NPS's concessions program, for example, the 1998 concessions law allows NPS to modify franchise fees in response to “extraordinary and unanticipated changes” in contracts with a term of longer than five years but not for shorter-term contracts.<sup>71</sup> Under agency regulations and policies, NPS would consider each request for a franchise fee modification through individual negotiations with the requesting concessioner.<sup>72</sup> Concessioners have sought legislation to provide comprehensive waivers of fees and rental payments for all contracts for two years.<sup>73</sup> Because such

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<sup>69</sup> See, for example, letter from Senator Cory Gardner to Secretary of Agriculture Sonny Perdue, March 18, 2020, at [https://www.gardner.senate.gov/imo/media/doc/2018.03.18\\_Ski%20Industry%20COVID-19%20Letter.pdf](https://www.gardner.senate.gov/imo/media/doc/2018.03.18_Ski%20Industry%20COVID-19%20Letter.pdf).

<sup>70</sup> However, some agencies do track this data. For example, NPS tracks fees collected under CUAs and FS tracks fees assessed to ski resorts operating on NFS lands, although these agencies do not publicly report the figures.

<sup>71</sup> 54 U.S.C. §101917(b) states, “The Secretary shall include in concession contracts with a term of more than 5 years a provision that allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of extraordinary unanticipated changes.” Also see NPS regulations at 36 C.F.R. §51.78(b).

<sup>72</sup> NPS, *NPS Commercial Services Guide*, April 2019, pp. 209-210.

<sup>73</sup> NPHA letter to Congress, March 20, 2020.

waivers likely would result in revenue losses for NPS, concessioners also have asked Congress to provide supplemental appropriations to NPS to mitigate any such losses.<sup>74</sup>

For other agencies, most concessions fees are not retained by the agency but rather are deposited in the General Fund of the Treasury. Thus, any decrease in collections likely would not directly affect program funding. In the case of FS ski resort permits, since fees are calculated based on an operator's gross revenue, Treasury receipts from these permits likely will decrease for the FY2020 ski season. This also would be the case should permit fees be waived or reduced in response to the COVID-19 crisis. Although some lawmakers have requested that FS waive fees for ski resorts,<sup>75</sup> it is not clear whether FS has the authority to do so.<sup>76</sup> As such, Congress could consider legislation that would provide this authority or would waive fees for a time.

### CRS Products for Additional Reading

- CRS Report R46380, *Guides and Outfitters on Federal Lands: Background and Permitting Processes*, by Mark K. DeSantis.
- CRS Report R46381, *Guides and Outfitters on Federal Lands: Issues and Legislation in the 116th Congress in Brief*, by Mark K. DeSantis.
- CRS Report R45994, *Federal Land Management Agencies' Mandatory Appropriations Accounts*, coordinated by Carol Hardy Vincent.

### Energy Production and Mineral Extraction on Federal Lands<sup>77</sup>

This section of the report covers the development of energy and mineral resources on federal lands in two parts: onshore federal lands and offshore federal lands. (For a discussion of other revenue-based payment programs, see the “Federal Payment and Revenue-Sharing Programs” section of this report.)

*Onshore federal lands* include all federal surface lands and 700 million acres of the federal subsurface mineral estate. BLM manages energy and mineral development on these subsurface lands, including for lands otherwise managed by other agencies.<sup>78</sup> Some federal lands, including most NPS units, designated wilderness areas, military bases, and others, have been withdrawn from mineral exploration and development. BLM and FS also have the authority to use their surface lands for energy production, typically from renewable sources, including wind and solar.<sup>79</sup>

<sup>74</sup> NPHA letter to Congress, March 20, 2020.

<sup>75</sup> See, for example, Senator Cory Gardner, “Gardner Urges USDA to Waive Fees on Ski Areas Leasing Public Lands,” press release, March 19, 2020, at <https://www.gardner.senate.gov/newsroom/press-releases/gardner-urges-usda-to-waive-fees-on-ski-areas-leasing-public-lands>.

<sup>76</sup> 16 U.S.C. §497b(b)(8) states that ski area permits “shall be subject to a permit fee based on fair market value in accordance with applicable law.” FS policies (*Forest Service Handbook* 2709.11\_31.2) prohibit officials from granting a fee waiver if “the holder is a profit-making entity and the principal purpose of the authorization is to generate income.” In addition, the policies (*Forest Service Handbook* 2709.11\_38.13) set minimum fees for ski areas should they have no adjusted gross revenue from which to calculate a fee.

<sup>77</sup> This section was prepared by Brandon S. Tracy, Analyst in Energy Policy (onshore federal lands) and Laura B. Comay, Specialist in Natural Resources Policy (offshore federal lands).

<sup>78</sup> If surface lands over the federal mineral estate are not federally owned (i.e., split estate), BLM works with private surface owners to manage the federal mineral estate.

<sup>79</sup> The revenues and disbursements from wind and solar energy developments on FS lands are not included in this section. CRS was able to identify a wind farm in the Green Mountain National Forest in Vermont, approved in 2017.

The term *offshore federal lands* refers to the approximately 1.7 billion offshore acres in federal waters on the U.S. outer continental shelf (OCS), where energy and mineral leasing is managed by DOI's Bureau of Ocean Energy Management (BOEM). The OCS encompasses the Gulf of Mexico, Pacific, Atlantic, and Alaska regions, with offshore energy and mineral development predominantly occurring in the Gulf of Mexico.

## Overview of Authority

### *Onshore Federal Lands*

Multiple statutory authorities govern energy production and mineral extraction on onshore federal lands. The different authorities create different revenue and disbursement streams, which are discussed separately below.

BLM's statutory authorities cover three general categories of mineral extraction from onshore federal lands: locatable (or hardrock) minerals, mineral materials, and leasable minerals.<sup>80</sup>

Locatable minerals, which are governed by the General Mining Law of 1872, generally include metal and nonmetal ores, precious stones, and high-value minerals.<sup>81</sup> Locatable minerals require claimants to file claims and pay annual maintenance fees.<sup>82</sup> BLM administered approximately 4 million mining claims in FY2018, of which approximately 400,000 are active.<sup>83</sup>

Mineral materials generally include low-value minerals and products, such as sand, clay, and gravel, and are governed by the Materials Act of 1947.<sup>84</sup> Extraction of these materials typically occurs from community pits and common resource areas designated by BLM, and BLM establishes the disposal fees.<sup>85</sup> In FY2018, BLM processed 2,588 production reports for the disposal of these materials.<sup>86</sup>

Leasable minerals generally include energy minerals, such as oil, natural gas, and coal, and non-energy minerals, such as sodium, potassium, phosphate, gilsonite, and sulfur.<sup>87</sup> Leasable minerals are governed by the Mineral Leasing Act of 1920, which generally requires a competitive leasing process on lands deemed appropriate for mineral extraction. The winning, qualified bid offers the highest bonus payment, which is a premium paid beyond the fair-market value for the deposit, as determined by BLM.<sup>88</sup> Other required payments include an annual lease rental payment prior to

<sup>80</sup> For more information, see CRS Report R46278, *Policy Topics and Background Related to Mining on Federal Lands*, by Brandon S. Tracy.

<sup>81</sup> The General Mining Law of 1872 applies to locatable minerals on public domain lands (e.g., lands ceded by the original states or obtained from a foreign sovereign via purchase, treaty, or other means). Otherwise, locatable minerals found on acquired federal lands generally are treated as leasable minerals (30 U.S.C. §§351 et seq.). Acquired federal lands are lands that were obtained by purchase, gift, or other means.

<sup>82</sup> 30 U.S.C. §§28 et seq.

<sup>83</sup> BLM indicates that "active means that the subject claim or site is in good standing under the recording, annual maintenance, and assessment work statutes." See BLM, *Public Land Statistics 2018*, Table 3-22, p. 133, at <https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2018.pdf>. Footnote /b/.

<sup>84</sup> 30 U.S.C. §601.

<sup>85</sup> Free use of these materials is available for government entities and nonprofit organizations.

<sup>86</sup> BLM, *Public Land Statistics 2018*, Table 3-20, p. 131. Production reports indicate annual quantities and values produced for sales contracts and permits.

<sup>87</sup> 30 U.S.C. §181.

<sup>88</sup> If the competitive leasing process does not produce an acceptable bid, the lease may be awarded through a noncompetitive process at a later time; noncompetitive leases also are subject to rental and royalty payments.

production and royalties during production.<sup>89</sup> In FY2018, BLM administered more than 35,000 oil and gas leases, 299 coal leases, and approximately 500 leases of other minerals.<sup>90</sup>

BLM also administers geothermal energy leasing on federal lands, which follows processes similar to those for leasable minerals. Under the Geothermal Steam Act of 1970, BLM can designate and lease geothermal energy resources.<sup>91</sup> Similar to leasable minerals, geothermal resources are to be leased by competitive bidding and require land rental and production royalty payments. In FY2018, BLM administered 361 geothermal leases.<sup>92</sup>

Wind and solar projects on federal lands require issuance of rights-of-way (ROWs) pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA).<sup>93</sup> Holders of ROWs for solar and wind energy facilities and associated power lines pay rent on the acres of land encumbered and capacity fees.<sup>94</sup> In FY2018, BLM administered 79 ROWs for solar and wind energy activities.<sup>95</sup>

### *Offshore Federal Lands*

Under the Outer Continental Shelf Lands Act (OCSLA), the federal government collects revenues from the development of offshore energy resources—primarily oil, natural gas, and wind—on more than 1.7 billion acres of federal submerged lands.<sup>96</sup> BOEM administers offshore energy leasing.<sup>97</sup> Revenues are collected at several stages of the leasing and development process: companies may pay bonus bids to secure development rights, rents on leases prior to production, royalties during production, and other fees.<sup>98</sup> The majority of revenues come from oil and gas leasing in the Gulf of Mexico.<sup>99</sup> As of May 2020, BOEM administered 2,530 active oil and gas leases in the Gulf, 688 of which were producing. Another 34 active (and producing) oil and gas leases were in the Southern California region, and 33 active leases (3 of which are producing)

<sup>89</sup> See 43 C.F.R. §3120 for competitive leasing of oil and gas; see 43 C.F.R. §3420 for competitive leasing of coal; and see 43 C.F.R. §3508 for competitive leasing of other leasable minerals.

<sup>90</sup> BLM, *Public Land Statistics 2018*, Tables 3-13, 3-14, 3-18, and 3-19, pp. 91-124.

<sup>91</sup> 30 U.S.C. §§1001 et seq.

<sup>92</sup> BLM, *Public Land Statistics 2018*, Tables 3-13 and 3-14, pp. 97-105.

<sup>93</sup> FLPMA, 43 U.S.C. §§1761 et seq.

<sup>94</sup> 43 C.F.R. §2800.

<sup>95</sup> BLM, *Public Land Statistics 2018*, Table 3-4, p. 66.

<sup>96</sup> Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. §§1331-1356b. Federal submerged lands consist of those lying seaward of state coastal waters on the U.S. outer continental shelf (43 U.S.C. §1331(a)). Under the Submerged Lands Act (43 U.S.C. §§1301 et seq.), most coastal states are entitled to an area extending three geographical (nautical) miles from their officially recognized coasts. For more information, see CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

<sup>97</sup> For information on the leasing process, see CRS Report R44504, *Five-Year Program for Offshore Oil and Gas Leasing: History and Program for 2017-2022*, by Laura B. Comay, Marc Humphries, and Adam Vann; and CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program for 2019-2024: Status and Issues in Brief*, by Laura B. Comay.

<sup>98</sup> For information on federal energy production nationwide by resource type, see DOI, ONRR, “Explore Data: Production,” at <https://revenue.data.doi.gov/explore/#production>. For information on federal energy revenue collections, see ONRR, “Explore Data: Revenue,” at <https://revenue.data.doi.gov/explore/#revenue>.

<sup>99</sup> DOI’s BOEM estimates that 98% of U.S. offshore oil and gas production takes place in the Gulf of Mexico (BOEM, *2019-2024 National Outer Continental Shelf Oil and Gas Leasing: Draft Proposed Program*, Section 4.3, January 2018, at <https://www.boem.gov/NP-Draft-Proposed-Program-2019-2024>). Other sites of production include waters off Southern California and Alaska.

were in Alaskan waters in the Beaufort Sea and Cook Inlet.<sup>100</sup> BOEM also has collected revenues in recent years from offshore wind leasing in the Atlantic region, including bids from lease sales and rents on leased tracts. As of May 2020, BOEM administered 15 active commercial offshore wind leases, all in preconstruction stages of development.<sup>101</sup>

## Collection and Allocation of Receipts

DOI's Office of Natural Resources Revenue (ONRR) collects and distributes most of the federal revenue from onshore and offshore energy and mineral development. ONRR maintains data on energy and mineral production, revenues (amounts collected), and disbursements (amounts distributed). In addition, BLM administers certain revenues from onshore development, as described below.

### *Onshore Federal Lands*

The federal government assesses different types of fees for onshore energy development and mineral extraction, and the resulting revenues are subject to different requirements for receipt allocation. Locatable minerals are subject to location fees and annual maintenance fees, which BLM collects.<sup>102</sup> The General Mining Law of 1872 does not specify how the fees are to be allocated. The Consolidated Appropriations Act of 2018 authorized BLM to retain up to approximately \$40 million.<sup>103</sup> Collections in excess of this amount are deposited in the General Fund of the U.S. Treasury. In FY2018, BLM received \$73 million for mining claims and related fees.<sup>104</sup>

Mineral materials are subject to a disposal fee. The fees are collected by BLM and are disposed or allocated in “the same manner as moneys received from the sale of public lands.”<sup>105</sup> In FY2018, BLM received \$11 million for disposal of mineral materials.<sup>106</sup>

ONRR collects and disburses leasable mineral revenues from onshore federal lands, unless otherwise noted. The revenues are derived from rents, royalties, and bonus payments, and the allocation of those receipts is the same for all states except Alaska. For leasable minerals, in states other than Alaska, 50% of bonuses, production royalties, and other fees (e.g., civil penalties, late fees) are disbursed to the state in which the lease is located,<sup>107</sup> and 40% are deposited in the

<sup>100</sup> BOEM, *Combined Leasing Report: As of May 1, 2020*, at <https://www.boem.gov/sites/default/files/documents/Combined%20Leasing%20Report%20May%202020.pdf>.

<sup>101</sup> BOEM, “Renewable Energy: Lease and Grant Information,” at <https://www.boem.gov/renewable-energy/lease-and-grant-information>. BOEM also administers a research lease in waters off Virginia (lease no. OCS-A 0497) that was awarded in 2015; construction of a two-turbine pilot project has been completed on this lease.

<sup>102</sup> 30 U.S.C. §§28(f)-(g).

<sup>103</sup> P.L. 115-141, Division G, Title I. The precise maximum in FY2018 was \$39.696 million. For FY2020, the amount is \$40.196 million under P.L. 116-94, Division D, Title I.

<sup>104</sup> BLM, *Public Land Statistics 2018*, Table 3-32, p. 166.

<sup>105</sup> 30 U.S.C. §601-603; see this section for additional caveats, including if the surface is managed by the Department of Agriculture (USDA) or if sales occur on school section lands in Alaska. “The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended” (43 U.S.C. §1734(b)).

<sup>106</sup> BLM, *Public Land Statistics 2018*, Table 3-20, pp. 127-129. Value excludes the reported value of materials disposed under free-use permits.

<sup>107</sup> In using the disbursements, states other than Alaska are to give “priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service” (30 U.S.C. §191(a)). No provisions on

Reclamation Fund.<sup>108</sup> After these disbursements, any funds remaining are credited to the General Fund of the U.S. Treasury.<sup>109</sup> For rental revenues from leasable minerals, 50% of the rental revenue is disbursed to the state in which the revenue occurred and the remaining 50% is deposited in the BLM Permit Processing Improvement Fund (PPIF).<sup>110</sup> For leases in Alaska, 90% of revenues, including rental revenues, are disbursed to the state. For all states (including Alaska), 2% of disbursed funds are withheld as an administrative fee and deposited as miscellaneous receipts in the Treasury.<sup>111</sup> New onshore oil and gas leases also are subject to a permit processing fee, to be submitted with an application for a permit to drill.<sup>112</sup> These revenues are deposited in the PPIF, with 75% of the revenue being returned to the state BLM office that collected the fees.

Coal, regardless of where it is mined in the United States,<sup>113</sup> is subject to an excise tax and a reclamation fee;<sup>114</sup> this tax and fee are in addition to royalties if production occurs on a federal lease.<sup>115</sup> Equivalent revenues from the excise tax are transferred into the Black Lung Disability Trust Fund.<sup>116</sup> This fund is used to compensate eligible coal miners or their survivors for pneumoconiosis (black lung disease).<sup>117</sup> The reclamation fees are deposited in the Abandoned Mine Reclamation Fund, which is used for “reclamation and restoration of land and water resources adversely affected by past coal mining,” among other purposes.<sup>118</sup> In FY2019, \$151 million was paid into the Abandoned Mine Reclamation Fund.<sup>119</sup>

For leasing of geothermal resources, for states other than Alaska, 50% of rentals, bonuses, production royalties, and other fees are disbursed to the state in which the geothermal resource is located and 25% of these monies are disbursed to the county in which the resource is located.<sup>120</sup> In the case of Alaska, 90% of revenues are disbursed to the state. For disbursements to states (but

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prioritization are given for Alaska.

<sup>108</sup> The Reclamation Fund was established to develop and maintain irrigation systems in a number of western states (43 U.S.C. §391); see CRS Report R41844, *The Reclamation Fund: A Primer*, by Charles V. Stern.

<sup>109</sup> 30 U.S.C. §191(a).

<sup>110</sup> The BLM Permit Processing Improvement Fund is to be used “for the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land”; see 30 U.S.C. §191(c).

<sup>111</sup> 30 U.S.C. §191(b).

<sup>112</sup> 30 U.S.C. §191(d). See BLM Instruction Memorandum IM 2019-044 for the current fiscal year fee, available at <https://www.blm.gov/policy/im-2019-044>. The fee, indexed to inflation, is \$10,230 for FY2020.

<sup>113</sup> About 43% of coal mined in the United States was produced on federal and Indian lands in CY2018 (CRS calculations based on 2018 data for total coal production from the Energy Information Administration, found at <https://www.eia.gov/coal/annual/>, and 2018 data for federal and Indian coal production from DOI, found at <https://revenue.data.doi.gov/?tab=tab-production>).

<sup>114</sup> The excise tax does not apply to lignite or to coal sold for export. The tax rates are currently \$1.10 per ton of coal mined from underground mines and \$0.55 per ton of coal mined from surface mines; neither rate is to exceed 4.4% of the coal sale price. See 26 U.S.C. §4121.

<sup>115</sup> For coal other than lignite, “a reclamation fee of 28 cents per ton of coal produced by surface coal mining and 12 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine,” and the fee for lignite “shall be at a rate of 2 per centum of the value of the coal at the mine, or 8 cents per ton, whichever is less.” 30 U.S.C. §1232(a).

<sup>116</sup> 26 U.S.C. §9501.

<sup>117</sup> See U.S. Department of Labor, Office of Workers’ Compensation Programs, Division of Coal Mine Workers’ Compensation, “About the Black Lung Program,” at <https://www.dol.gov/owcp/dcmwc/>.

<sup>118</sup> 30 U.S.C. §1231.

<sup>119</sup> DOI, Office of Surface Mining Reclamation and Enforcement, *Budget Justifications and Performance Information Fiscal Year 2021*, p. 125, at <https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-budget-justification-osmre.pdf>. These collections are not included in **Table 1** and are not used elsewhere in this report.

<sup>120</sup> 30 U.S.C. §1019.



not counties), 2% of the funds are withheld as an administrative fee and deposited in the General Fund of the U.S. Treasury.<sup>121</sup> After these disbursements, any funds remaining also are deposited in the Treasury.<sup>122</sup>

In FY2019, leasable minerals and geothermal resources resulted in total collections of \$4.85 billion from federal lands.<sup>123</sup> Total collections represent the sum of royalties (\$3.57 billion), bonuses (\$1.22 billion), other revenue (\$33 million), and rentals (\$24 million). Of these collections, \$4.17 billion were from oil and natural gas resources, which are commonly coproduced on federal lands.<sup>124</sup> Combined coal collections were \$514 million. Geothermal resource collections were \$17 million.<sup>125</sup> Collections from other minerals, including sodium, potassium, and phosphate, among others, made up the remainder.

In FY2019, leasable minerals and geothermal resources from federal lands resulted in total disbursements of \$4.71 billion. These disbursements include payments of \$2.21 billion to states; \$1.76 billion to the Reclamation Fund; \$185 million to other accounts, including \$7 million to the PPIF; and \$550 million remaining as miscellaneous receipts in the Treasury.<sup>126</sup> The difference between collections and disbursements for any given period can be a result of timing differences, as a disbursement may occur in the month following its receipt or may be delayed for other reasons, including disputed values, challenged amounts, or adjustments.<sup>127</sup> All leasable mineral and geothermal resource disbursements to states and counties are reduced by the applicable sequestration rate for the given fiscal year.<sup>128</sup>

Title V of FLPMA governs wind and solar energy development on federal lands. For projects developed under BLM authority, BLM collects all revenues and deposits them in the Treasury.<sup>129</sup> BLM collected \$21 million from solar and wind ROWs in FY2018.<sup>130</sup>

### *Offshore Federal Lands*

ONRR collects and disburses federal revenues from offshore energy development, including oil and natural gas, and wind. The amounts of collections and disbursements in a given year are not the same, because disbursements often do not occur at the same time that revenues are received. For example, in the case of offshore oil and gas revenues from the Gulf of Mexico, the Gulf of

<sup>121</sup> 30 U.S.C. §191(b).

<sup>122</sup> 30 U.S.C. §191(a).

<sup>123</sup> Not including Native American lands. For more information on the treatment of revenues from Native American lands, see DOI, ONRR, “Revenue from Natural Resources on Native American Land,” at <https://revenue.data.doi.gov/how-it-works/native-american-revenue/>.

<sup>124</sup> Total includes the ONRR categories of “Oil,” “Gas,” “Oil & Gas,” and “Natural Gas Liquids.”

<sup>125</sup> DOI, ONRR, “Data Query Tool,” for all federal onshore revenues for FY2019, at <https://revenue.data.doi.gov/query-data/?dataType=Revenue>.

<sup>126</sup> CRS calculations using disbursement data from DOI, ONRR, “Downloads / Disbursements by Month,” at <https://revenue.data.doi.gov/downloads/disbursements-by-month/>.

<sup>127</sup> Leasable minerals and geothermal resource disbursements are required to be made before the end of the month occurring 10 days after the revenues were received by the Treasury, see 30 U.S.C. §191(a).

<sup>128</sup> For discussion of sequestration of mandatory spending, including mineral leasing revenues, see CRS Report R45941, *The Annual Sequester of Mandatory Spending through FY2029*, by Charles S. Konigsberg.

<sup>129</sup> FLPMA, 43 U.S.C. §§1761 et seq.

<sup>130</sup> BLM, *Public Land Statistics 2018*, Table 3-4, p. 66.

Mexico Energy Security Act (GOMESA) requires that revenue disbursements be made in the fiscal year following the year in which the revenues are collected.<sup>131</sup>

In FY2019, ONRR collected \$5.57 billion in revenues from offshore oil and gas leasing and development, of which \$5.04 billion came from royalties, \$407 million came from bonus bids, \$103 million came from rents, and \$19 million came from other sources.<sup>132</sup> Additionally, ONRR collected \$411 million from offshore wind leasing in FY2019, of which \$405 million came from bonus bids and \$6 million came from rents. (ONRR received no royalties or operating fees from electricity generation, as no federal wind leases were generating electricity.<sup>133</sup>)

Federal offshore energy revenues are disbursed to states, certain federal programs, and the U.S. Treasury. The OCSLA provides for revenue sharing with coastal states of 27% of revenues from oil, gas, and renewable energy leases that lie within 3 nautical miles of state waters.<sup>134</sup> GOMESA provides for additional revenue sharing with the states of Alabama, Louisiana, Mississippi, and Texas of 37.5% of revenues on specified oil and gas leases in the Gulf of Mexico, up to a collective cap of \$375 million in most years.<sup>135</sup> GOMESA provides for these revenue shares to be used primarily for coastal conservation and restoration activities.<sup>136</sup> In addition to state revenue sharing, various laws direct portions of offshore energy revenues to federal programs. Under the Land and Water Conservation Fund (LWCF) Act, the LWCF receives up to \$900 million annually from offshore oil and gas revenues.<sup>137</sup> Separately, GOMESA directs to the LWCF state assistance program 12.5% of revenues on specified Gulf of Mexico leases, up to a cap of \$125 million in most years.<sup>138</sup> Under the National Historic Preservation Act, the Historic Preservation Fund receives \$150 million annually from offshore oil and gas revenues.<sup>139</sup> The OCSLA provides for the remainder of federal offshore energy revenues to stay in the U.S. Treasury.

In FY2019, ONRR disbursed \$5.85 billion in revenues from offshore leases.<sup>140</sup> Of the FY2019 amount, \$4.35 billion went to the U.S. Treasury, \$1.01 billion went to the LWCF, \$225 million

<sup>131</sup> Gulf of Mexico Energy Security Act (GOMESA), 43 U.S.C. §1331 note.

<sup>132</sup> ONRR, “Natural Resources Revenue Data: Data Query Tool,” at <https://revenue.data.doi.gov/query-data/?dataType=Revenue>. Includes revenues from the ONRR commodity categories Oil, Oil & Gas, Gas, and NGL (natural gas liquids). Of the total FY2019 revenues of \$5.57 billion, \$5.51 billion came from leases in the Gulf of Mexico.

<sup>133</sup> The OCSLA (43 U.S.C. §1337(p), as amended by the Energy Policy Act of 2005 (P.L. 109-58), provides for the Secretary of the Interior to establish royalties and other types of fees for renewable energy leases. BOEM regulations at 30 C.F.R. §585.506 provide for annual operating fees on the value of electricity generation from offshore wind leases.

<sup>134</sup> 43 U.S.C. §1337(g) and (p).

<sup>135</sup> GOMESA, 43 U.S.C. §1331 note. For FY2020 and FY2021, the collective cap is \$487.5 million (P.L. 115-97). For more information on GOMESA, see CRS Report R46195, *Gulf of Mexico Energy Security Act (GOMESA): Background, Status, and Issues*, by Laura B. Comay and Marc Humphries.

<sup>136</sup> P.L. 109-432, §105(d).

<sup>137</sup> 54 U.S.C. §§200301 et seq. For more information on the Land and Water Conservation Fund (LWCF), see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

<sup>138</sup> 43 U.S.C. §1331 note. For FY2020 and FY2021, the cap is \$162.5 million (P.L. 115-97). These funds are provided as mandatory appropriations under GOMESA and are separate from the \$900 million deposited in the fund under the LWCF Act (which are available only to the extent appropriated in annual appropriations laws).

<sup>139</sup> 54 U.S.C. §§300101 et seq. For more information on the Historic Preservation Fund, see CRS Report R45800, *The Federal Role in Historic Preservation: An Overview*, by Mark K. DeSantis.

<sup>140</sup> ONRR, “Natural Resources Revenue Data: Data Query Tool,” at <https://revenue.data.doi.gov/query-data/?dataType=Disbursements>. Although the high majority of this amount came from energy commodities (primarily oil and gas), the ONRR disbursement data also include some revenues from non-energy commodities such as hard-rock minerals, phosphate, carbon dioxide, and others. ONRR does not disaggregate disbursement data by commodity, so it is not possible to know what portion of the disbursed revenue came from non-energy commodities. The amount of FY2019

went to states, \$150 million went to the Historic Preservation Fund, and \$110 million went to other recipients. The GOMESA disbursements to states and to the LWCF state assistance program are reduced by the applicable sequestration rate for the given fiscal year.

## Effect of COVID-19 on Energy and Mineral Operations and Receipts

The COVID-19 pandemic and accompanying recession have significantly affected energy and mineral prices, production, and consumption. Many observers expect energy consumption will remain below 2019 levels through at least 2021. The effects of these changes on federal energy revenues and disbursements for FY2020 and beyond will unfold over time. The expected impacts of the pandemic on onshore and offshore energy and mineral receipts appear to be focused primarily on energy minerals (i.e., oil, natural gas, and coal). These expectations stem from reported and ongoing reduced demand for liquid fuels for the transportation sector and reduced demand for coal and natural gas associated with the reduced demand for electricity and industrial activity.<sup>141</sup>

Approximately 93% of federal energy and mineral revenues come from oil and gas leasing, and changes in oil prices have been among the major factors in revenue fluctuations from year to year. Other factors, including changes in production and consumption, also contribute to revenue fluctuations. Royalties are the largest contributor to federal energy and mineral revenues. Royalty rates are set by statute, regulation, or for specific leases, but the rates are rarely altered once a lease has been issued. The revenues from royalties reflect the product of the royalty rate and the market value of the commodity produced. The pandemic and accompanying recession have resulted in reduced demand for oil, gas, and coal, which has resulted in lower prices and lower production for these commodities in recent months, relative to 2019.<sup>142</sup>

For May 2020, ONRR reported onshore oil and gas royalty collections of \$170 million, a decline of 53% from May 2019. ONRR reported offshore oil and gas royalty collections of \$100 million, a decline of 84% from royalty collections for the same month in 2019.<sup>143</sup> The royalty collections for May reflect production and sales in April.<sup>144</sup> ONRR reports new monthly data on an ongoing basis.

To the extent that royalties and other revenues are reduced due to impacts from the COVID-19 pandemic and recession, disbursements to states and some federal programs would decline accordingly. The severity of these impacts on program funding and state budgets depends on the portion of total revenue coming from energy and mineral disbursements and on other factors. Some programs (e.g., the LWCF) receive disbursements up to a specified limit; in such cases, royalties could fall but remain sufficient to fund such programs.<sup>145</sup> Reductions in energy and

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disbursements differs from the amount of FY2019 revenue collections because some revenues are not disbursed in the year they are collected.

<sup>141</sup> For an example of forecasts, see U.S. Energy Information Administration, “Short-Term Energy Outlook,” June 2020, at <https://www.eia.gov/outlooks/steo/>.

<sup>142</sup> U.S. Energy Information Administration, “Short-Term Energy Outlook,” June 2020, at <https://www.eia.gov/outlooks/steo/>. Also see CRS Insight IN11286, *Low Oil Prices: Prospects for Global Oil Market Balance*, by Phillip Brown.

<sup>143</sup> Figures for both offshore and onshore royalties include natural gas liquids.

<sup>144</sup> 30 C.F.R. §1218.50 (“Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold”).

<sup>145</sup> Unlike the percentage-based onshore energy revenue distributions, some offshore distributions are specified in law as dollar amounts rather than percentages. For example, the Historic Preservation Fund is to receive \$150 million annually from offshore oil and gas revenues (54 U.S.C. §303102), and the LWCF is to receive amounts from offshore

mineral revenues also could affect the funds remaining in the U.S. Treasury as miscellaneous receipts.

## Issues for Congress Related to Energy Revenues

Options for Congress to address the pandemic’s impacts on federal energy revenues could focus on industry operators, state or federal programs supported by federal energy revenues, contributions to the U.S. Treasury, or some combination of these subjects. For example, some industry stakeholders have requested federal relief actions, such as comprehensive royalty relief and other flexibilities for federal energy leases, to address financial hardships stemming from the pandemic. DOI has stated that producers affected by circumstances related to COVID-19 may apply for royalty relief individually using existing options, clarifying that the Department does not plan to pursue a new program of blanket royalty relief.<sup>146</sup> BLM has issued policy guidance specific to COVID-19 royalty relief and lease suspension applications,<sup>147</sup> and the Bureau of Safety and Environmental Enforcement, which oversees some types of offshore royalty relief, issued an “overview” guide on the existing process.<sup>148</sup> Congress could consider legislation to mandate, expedite, or prohibit royalty relief or other contract flexibilities for affected producers on federal lands, and/or could pursue oversight of administrative actions.

Congress might consider actions to address the effects of potential COVID-related revenue decreases on state and federal programs that are partly or wholly supported by federal energy revenues. For example, Congress could consider whether to amend revenue-sharing laws to provide higher revenue shares for states to maintain program funding or, alternatively, whether to lower state shares to preserve funding for federal programs supported by energy revenues. Congress might augment affected programs with higher appropriations, or it might reduce appropriations for some programs to focus limited funds on other priorities. Other options to potentially increase program revenues could include mandating higher royalty rates or taxes on energy development; considerations might include whether and how such actions would affect production.

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oil and gas revenues that are sufficient to bring total deposits to the fund (including some amounts from other specified sources) to \$900 million annually (54 U.S.C. §200302(c)). It is not clear how offshore revenue recipients would be prioritized if these payment requirements—along with (percentage-based) state revenue-sharing requirements in the OCSLA and GOMESA—were to exceed available funding. For further discussion of this question, please contact CRS’s American Law Division.

<sup>146</sup> See, for example, sources cited in CRS Insight IN11380, *Offshore Royalty Relief: Status During the COVID-19 Pandemic*, by Laura B. Comay.

<sup>147</sup> BLM, “Regulatory and Process Information for Onshore Oil and Natural Gas Suspensions and Royalty Rate Reduction Applications due to COVID-19 Impacts,” at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/covid-royalty-rate-reduction-guidance>; “Regulatory and Process Information for Onshore Oil and Natural Gas Suspensions Applications due to COVID-19 Impacts,” at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/covid-lease-suspension-guidance>; “Federal Coal COVID-19 Relief Royalty Rate Reduction (RRR),” at <https://www.blm.gov/programs/energy-and-minerals/coal/covid-royalty-rate-reduction-guidance>; and “Federal Coal COVID-19 Relief Suspensions,” at <https://www.blm.gov/programs/energy-and-minerals/coal/covid-lease-suspension-guidance>.

<sup>148</sup> Bureau of Safety and Environmental Enforcement, “Special Case Royalty Relief Overview,” at <https://www.bsee.gov/special-case-royalty-relief-overview>. For more information, see CRS Insight IN11380, *Offshore Royalty Relief: Status During the COVID-19 Pandemic*, by Laura B. Comay.

## CRS Products for Additional Reading

- CRS Report R46278, *Policy Topics and Background Related to Mining on Federal Lands*, by Brandon S. Tracy.
- CRS Insight IN11380, *Offshore Royalty Relief: Status During the COVID-19 Pandemic*, by Laura B. Comay.
- CRS Report R46195, *Gulf of Mexico Energy Security Act (GOMESA): Background, Status, and Issues*, by Laura B. Comay and Marc Humphries.
- CRS In Focus IF10987, *Legislative Proposals to Address National Park Service Deferred Maintenance*, by Laura B. Comay.

## Livestock Grazing on BLM and FS Lands<sup>149</sup>

### Overview of Authority

Grazing private livestock is generally allowed on BLM and FS land under the agencies' multiple-use authorities. In 2018, BLM managed 244 million acres, of which an estimated 154 million acres were available for grazing and 137 million acres were for grazing. In the same year, FS managed 193 million acres, of which 94 million were available for grazing and 74 million were for grazing. BLM and FS issue permits or leases to livestock operators, typically for 10-year terms (subject to renewal). The leases and permits are granted for specified numbers of private livestock, based on the amount of vegetation available for livestock and wildlife and other factors.

BLM and FS have statutory authority to charge fees for grazing private livestock. The current formula for determining the grazing fee was established in the Public Rangelands Improvement Act of 1978 (PRIA) and continued administratively.<sup>150</sup> The fee is based on grazing of a specified number of animals for one month, known as an animal unit month (AUM). It is intended to represent the fair market value of grazing. It is set annually under a formula that uses a base value per AUM as adjusted by three factors—the lease rates for grazing on private lands, beef cattle prices, and the cost of livestock production. The fee for 2018 was \$1.41 per AUM.<sup>151</sup> The agencies typically charge and collect grazing fees in advance of grazing.

### Collection and Allocation of Receipts

In 2018, BLM collected \$15.3 million in grazing fees and FS collected \$5.7 million.<sup>152</sup> Fifty percent of grazing fees collected by each agency, or \$10.0 million—whichever is greater—go to a

<sup>149</sup> This section was prepared by Carol Hardy Vincent, Specialist in Natural Resources Policy.

<sup>150</sup> P.L. 95-514, 92 Stat. 1803; 43 U.S.C. §§1901, 1905. Executive Order 12548, "Grazing Fees," 51 *Federal Register* 5985, February 19, 1986, at <https://www.archives.gov/federal-register/codification/executive-order/12548.html>. These authorities govern grazing on BLM and FS lands in 16 contiguous western states: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

<sup>151</sup> The 2018 fee was in effect for March 1, 2018, through February 28, 2019. 2018 is the most recent year for which grazing revenues are available, as discussed in this section. The grazing fee for 2019 was \$1.35 per animal unit month (AUM), the minimum allowed under law. Similarly, the current fee for 2020 (for March 1, 2020, through February 28, 2021) is \$1.35 per AUM.

<sup>152</sup> The BLM figure was taken from Table 3-26 of *Public Land Statistics, 2018*, at <https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2018.pdf>. The FS figure was taken from the Class 8—Grazing West total in the *2018 All Service Receipts Report* at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd622645.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd622645.pdf). FS collected an additional \$128,736 in grazing fees from eastern states, which are governed by a different authority.

Range Betterment Fund in the Treasury. BLM and FS grazing receipts are deposited separately.<sup>153</sup> Monies in the fund are subject to appropriations. BLM typically has requested and received an annual appropriation of \$10.0 million for the fund. FS generally has requested and received an appropriation that was less than the \$10.0 million minimum authorized in law; for FY2018, the agency received an appropriation of \$3.8 million.<sup>154</sup>

FS and BLM may use the Range Betterment Fund for range rehabilitation, protection, and improvement, including grass seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat. Under law, one-half of the fund is to be used as directed by the Secretary of the Interior or of Agriculture, and the other half is authorized to be spent in the district, region, or forest that generated the fees, as the relevant Secretary determines after consultation with user representatives.<sup>155</sup> Agency regulations contain additional detail.<sup>156</sup> For example, BLM regulations provide that half of the fund is to be allocated by the Secretary of the Interior on a priority basis, and the rest is to be spent in the state and grazing district where derived. FS regulations provide that half of the monies are to be used in the national forest where derived and the rest in the FS region where the forest is located. In general, FS returns all range betterment funds to the forest where they were generated.

The agencies allocate the remaining 50% of the collections differently.<sup>157</sup> BLM allocates the receipts based on where they are generated. For BLM lands within grazing districts, states receive 12.5% of collections and 37.5% is deposited in the Treasury. For BLM lands outside grazing districts, states receive 50% of fees collected.<sup>158</sup> For FS, 25% of the funds are deposited in the Treasury and 25% are subject to revenue-sharing requirements.<sup>159</sup> The revenue-sharing payments are made to states and passed to the counties containing the forests where the grazing fees were derived. For both agencies, any state share is to be used to benefit the counties where the receipts were generated.

## Effect of COVID-19 on Grazing Operations and Receipts

Continuity of livestock grazing operations on federal lands during the COVID-19 pandemic has been a focus of BLM, FS, and the livestock grazing industry, among others.<sup>160</sup> BLM and FS issued separate guidance to address concerns of livestock operators and limit potential impacts to grazing operations, though the guidance is similar in some respects.<sup>161</sup> Both agencies stated that

<sup>153</sup> 43 U.S.C. §1751(b)(1).

<sup>154</sup> This amount is the actual appropriation based on collections. It differs from the amount FS requested and received in the FY2018 appropriations law (\$2.1 million), which was an estimate. See USDA, FS, *FY2021 Budget Justification*, p. 84, at <https://www.fs.usda.gov/sites/default/files/2020-02/usfs-fy-2021-budget-justification.pdf>.

<sup>155</sup> 43 U.S.C. §1751(b)(1).

<sup>156</sup> For BLM, see regulations at 43 C.F.R. §4120.3-8. For FS, see regulations at 36 C.F.R. §222.10.

<sup>157</sup> The allocations described in this paragraph are made regardless of the amount of fees and agency collects, including whether the total collection is less than the \$10.0 million authorized for the Range Betterment Fund.

<sup>158</sup> Taylor Grazing Act of June 28, 1934; ch. 865, 48 Stat. 1269. 43 U.S.C. §315, 315i.

<sup>159</sup> For an overview of FS revenue-sharing requirements, see the “Federal Payment and Revenue Sharing Programs” section of this report.

<sup>160</sup> As examples of industry statements, see Public Lands Council, in a letter to congressional leaders, March 19, 2020, at <http://publiclandscouncil.org/wp-content/uploads/2020/04/PLC-Letter-to-Congressional-leadership-re-COVID.pdf>, and National Cattlemen’s Beef Association, in a letter to Vice President Pence, March 17, 2020, at <https://www.ncba.org/CMDocs/BeefUSA/Publications/3.17.20%20NCBA%20WH%20letter%20RE%20COVID19.pdf>

<sup>161</sup> BLM guidance is available from BLM, “Frequently Asked Questions: Grazing Management on BLM-Managed Lands,” HQ200, April 2, 2020, at <https://calcattlemen.org/wp-content/uploads/2020/04/BLM-Grazing-Covid-19-FAQs.pdf>, and BLM, “BLM Statement on Continuation of Grazing Activities During COVID-19 Pandemic,” at

they would continue to charge and collect fees in advance of grazing. Due to the isolated nature of grazing operations, they did not expect significant disruptions to grazing from COVID-19, including from state and local shelter in place orders. They further noted that aspects of grazing administration that ordinarily might be done in person could be pursued by other means to allow for a normal grazing season. FS, for instance, identified possible modifications for planning, assessing range readiness, documenting and recording activities and decisions, and monitoring, with an emphasis on phone, mail, electronic communications, and other means. However, the FS observed that allotment inspections might be delayed.

The BLM and FS guidance each addressed flexibility in administering grazing. For example, FS asserted that in hardship situations, such as when a permittee is unable to fully stock a grazing allotment, the FS may exercise flexibility in approving “nonuse” for personal convenience.<sup>162</sup> BLM indicated flexibility if permits and leases allow, such as authorizing a greater number of livestock for a shorter period of time, and in adjusting or postponing field activities that are not mission critical. BLM also noted that under law, terms and conditions in expired permits or leases continue until the renewal process is complete.<sup>163</sup> This authority would likely preclude interruptions to livestock operations if the renewal process is delayed due to COVID-19.

The extent to which COVID-19 might affect receipts from livestock grazing is unclear, in part given the management emphasis of the agencies on continuity of operations and lack of data on FY2020 fee collections. Data on grazing receipts is unlikely to be available for FY2020 until sometime during 2021.<sup>164</sup>

## Issues for Congress Related to Livestock Grazing

Any decrease in grazing fee collections might reduce funding for federal and/or state and local purposes. On the federal side, this could include reduced deposits in the Treasury and BLM and FS Range Betterment Funds. FS’s Range Betterment Fund might be impacted more than BLM’s, because FS typically requests and receives an appropriation based on (anticipated) grazing fee receipts rather than the authorized minimum in law (\$10.0 million). On the state and local side, reduced grazing collections could affect the counties that share in the use of receipts.

If grazing revenues for BLM and FS decreased, Congress could consider appropriating additional monies for the Range Betterment Funds or for related discretionary activities, such as BLM rangeland management (within the Management of Lands and Resources account) and FS grazing management or FS vegetation and watershed management (both in the National Forest System account). To address any loss to counties, Congress could consider changing revenue-sharing requirements in law. A potential option to address any loss to both the agencies and counties could be altering the grazing-fee formula in PRIA, for instance by raising the AUM fee or altering the allocation of collections among recipients. However, any changes to grazing fees might not

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<https://www.blm.gov/press-release/blm-statement-continuation-grazing-activities-during-covid-19-pandemic>. FS guidance is at <http://publiclandscouncil.org/wp-content/uploads/2020/04/RM-QA-Grazing-Permit-And-Allotment-Admin-through-Covid-19-091531APR20.pdf> and FS, “Grazing Management,” FSM 2210, March 25, 2020, at <https://www.ncba.org/CMDocs/BeefUSA/Publications/Forest%20Service%20-%20Grazing%20Covid-19%20Guidance%20Letter%20Signature%20and%20Enclosure.pdf>.

<sup>162</sup> Non-use also is authorized on BLM lands under 43 C.F.R. 4130.4.

<sup>163</sup> This authority is contained in 43 U.S.C. §1752. It also applies generally to FS grazing permits.

<sup>164</sup> For each fiscal year, BLM and FS typically publish grazing receipts several months or more after the end of the fiscal year. For instance, FS grazing receipts for FY2018 were published in April 2019 on the agency’s Payments and Receipts website, and BLM grazing receipts for FY2018 were published in August 2019 in *Public Land Statistics, 2018*.

apply to current permits and leases and are likely to be contentious, based on differing opinions among Members, state and local governments, livestock operators, and others.

### CRS Products for Additional Reading

- CRS Report RS21232, *Grazing Fees: Overview and Issues*, by Carol Hardy Vincent.
- CRS Report R44932, *Statistics on Livestock Grazing on Federal Lands: FY2002 to FY2016*, by Carol Hardy Vincent.

## Timber Harvesting on FS and BLM Lands<sup>165</sup>

### Overview of Authority

FS and BLM are broadly authorized to sell federal timber under the agencies' multiple-use authorities.<sup>166</sup> The agencies use timber sales to accomplish various forest management objectives. FS and BLM also have specific authorities to sell timber under specified conditions (e.g., *salvage sales*),<sup>167</sup> and the agencies are authorized to combine timber sales with service contracts for forest restoration projects (known as *stewardship contracts*).<sup>168</sup> In 2019, approximately 2.6 billion board feet of timber were harvested from FS lands. In that same year, approximately 206.3 million board feet were harvested from BLM lands.

FS and BLM generally conduct timber sales through an open, competitive bidding process, with a starting bid price based on the timber's appraised value.<sup>169</sup> Private operators bid on a contract to harvest the timber from the respective lands. In addition to the sale price, the contract specifies what trees may be harvested, allowable harvest methods, site preparation and road building requirements, and other conditions for conducting the timber harvest. Winning bidders often pay for the contract at periodic intervals throughout the contract term, meaning timber sale revenue is collected at various times after the initial sale date. Timber harvests generally must be completed in 3 years, with a maximum term of 10 years for FS timber.<sup>170</sup>

### Collection and Allocation of Receipts

In FY2019, the cut value of FS timber was approximately \$166.8 million and the cut value of BLM timber was approximately \$50.3 million.<sup>171</sup> Congress has established several funds for FS

<sup>165</sup> This section was prepared by Anne Riddle, Analyst in Natural Resources Policy, and Katie Hoover, Specialist in Natural Resources Policy.

<sup>166</sup> 16 U.S.C. §475, 30 U.S.C. §601.

<sup>167</sup> 16 U.S.C. §472a(h). Timber salvage sales involve the timely removal of insect-infested, dead, damaged, or down trees that are commercially usable, to capture some of the economic value of the timber resource before it deteriorates or to remove the associated trees for forest health purposes.

<sup>168</sup> 16 U.S.C. §6591(c).

<sup>169</sup> 16 U.S.C. §6591c. The process for awarding stewardship contracts is mostly similar but also includes the service components within the contract, among other differences.

<sup>170</sup> FS: 16 U.S.C. §472a(c). BLM timber contracts must be completed in three years unless extended at the timber purchaser's written request, (43 C.F.R. §5463.1, 43 C.F.R. §5473.4).

<sup>171</sup> FS: FY2019 Cut and Sold Reports, at <https://www.fs.fed.us/forestmanagement/products/cut-sold/index.shtml>. FS timber sale contracts may specify additional payments by timber purchasers to FS for site preparation and cleanup, road building, or other activities related to timber sales but not directly tied to timber revenues. These payments are not reflected in the cut value of FS timber. BLM: FY2019 Bureau Wide Timber Data (Transaction Data) Reports, at



and BLM to use the revenue generated from their respective timber sales, usually without further appropriation (i.e., as mandatory appropriations). Each agency may allocate its timber revenue in several different ways, depending in part on the type of sale that generated the revenue. For example, some of the allocations to these funds are required (e.g., revenue from certain FS and BLM timber sales must be deposited in each agency's Timber Sales Pipeline Restoration Fund). Some of the allocations are at the agency's discretion, however. For example, FS and BLM may allocate any portion of the revenue from a timber sale with a salvage component into the respective agency's salvage fund.<sup>172</sup> The agencies may use the money in these funds for various purposes; authorized uses of various FS and BLM timber revenue funds include, for example, planning and executing future timber sales and stewardship contracts, restoration projects, and recreation projects.<sup>173</sup> (Timber sale revenue is not the only source of funding for these activities, however, as both FS and BLM also receive discretionary appropriations that may be used for the same purposes.) In FY2019, the FS's appropriations for the agency's timber revenue funds were approximately \$328.8 million and BLM's appropriations were approximately \$8.7 million.<sup>174</sup>

In addition, FS and BLM are required to share a portion of the revenue from specified timber sales with the state or local government containing the federal lands from which the sale took place. (For a discussion of revenue-sharing programs, see the "Federal Payment and Revenue-Sharing Programs" section of this report.) If timber sale revenues remain after agency use or distribution of revenue-sharing payments, the revenues are deposited in the General Fund of the U.S. Treasury.

## Effect of COVID-19 on FS and BLM Timber Programs

During the COVID-19 pandemic, FS and BLM timber programs have focused on safety, continuity of operations, and flexibility.<sup>175</sup> Both agencies have issued guidance to address these issues.<sup>176</sup>

<https://www.blm.gov/programs/natural-resources/forests-and-woodlands/timber-sales/bureau-wide-timber-data>.

<sup>172</sup> The FS's fund for salvage sale revenues is called the Salvage Sale Fund, and the BLM's fund for salvage sale revenues is called the Forest Ecosystem Health and Recovery Fund.

<sup>173</sup> For information on FS and BLM funds, see Appendix: Timber Receipt Funds in CRS Report R45688, *Timber Harvesting on Federal Lands*, by Anne A. Riddle, or the "Permanent Appropriations and Trust Funds" section of the annual FS Budget Justifications (e.g., pp.105-121 of the FY2021 Budget Justification at <https://www.fs.usda.gov/sites/default/files/2020-02/usfs-fy-2021-budget-justification.pdf>), and the "Appropriation: Permanent Operating Funds" section of the annual BLM Budget Justifications (e.g., p. XI-5 of the FY2021 Budget Justification at <https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-blm-budget-justification.pdf>).

<sup>174</sup> CRS. FS, sum of FY2019 appropriations in the Salvage Sale Fund, Timber Sales Pipeline Restoration Fund, Stewardship Contracting Fund, and Knutson-Vandenberg Trust Fund. BLM, sum of FY2019 appropriations in the Forest Ecosystem Health and Recovery Fund, Timber Sales Pipeline Restoration Fund, and Stewardship Contracting Fund. Other agency funds may relate to timber sales. FS and BLM timber revenue fund levels in any given fiscal year may differ from the cut value of FS and BLM timber in that fiscal year for a variety of reasons.

<sup>175</sup> See, for example, Letter from Federal Forest Resources Coalition et al. to Sonny Perdue, Secretary of Agriculture, March 18, 2020, at <http://amforest.org/wp-content/uploads/2020/03/Letter-to-Purdue-on-Contract-Relief-March-2020.pdf>, and Letter from Senator Steve Daines to Sonny Perdue, Secretary of Agriculture, March 30, 2020, at <http://amforest.org/wp-content/uploads/2020/03/Daines-Letter-to-Perdue-COVID19-Timber-Relief-032020.pdf>.

<sup>176</sup> FS: FS, *Continuity of Forest Products Operations*, April 3, 2020, at <http://amforest.org/wp-content/uploads/2020/04/Timber-Sale-Continuity-Covid-19-Guidance-Letter-04032020FINAL.pdf>, hereinafter cited as FS, *Operational Continuity*; FS, "Accommodating Procurement Interruptions from Coronavirus Disease 2019 (COVID-19)," April 23, 2020, <http://amforest.org/wp-content/uploads/2020/04/FS-Service-Contract-Guidance-Letter-April-23-2020.pdf>, and FS, "COVID-19 Related Contract Questions and Answers (Q&As) (enclosed)," April 23, 2020, at <http://amforest.org/wp-content/uploads/2020/04/Procurement-Questions-Answers-Document.pdf>. BLM: BLM legislative affairs office, personal communication, May 11, 2020. For examples of BLM procedures for individual timber sales, see BLM,

With regard to safety and continuity of operations, FS and BLM have directed that timber activities (including preparation and bid opening for new timber sales, administration of existing sales, and others) occur under amended agency procedures to promote safety of agency staff, timber purchasers, and the public. Several FS and BLM measures emphasize safety by reducing in-person contact between staff, potential timber purchasers, and others. FS noted that aspects of timber sale preparation and administration that ordinarily might be done in person (e.g., designating timber for cutting during new sale preparation) could be done by other means. FS guidance specifies that timber sale bid and public notification procedures should use mail and electronic communications and should limit or eliminate in-person bidding methods. BLM has guided forestry personnel to implement social distancing measures in the course of their duties and to limit BLM personnel and public attendance for timber sale auctions. Some BLM offices have eliminated in-person bidding methods. FS stated that service interruptions or delays may occur due to agency safety protocols or limited employee capacity (e.g., by travel restrictions or quarantines); information on service interruptions or delays for BLM was not available.

FS's actions regarding current timber contracts and future timber sales emphasize increased flexibility. By law, FS may extend the amount of time eligible timber purchasers have to execute their contract if it makes a finding that there is a "substantial overriding public interest" in doing so.<sup>177</sup> On April 15, 2020, FS announced such a finding, specifying that it was a response to global timber market impacts from the COVID-19 pandemic, ongoing trade disputes, and other factors.<sup>178</sup> The finding allows timber purchasers to request an up to two-year total extension on their contract term (three years for Alaska purchasers). FS also may use certain flexibilities for timber purchasers not eligible for extensions under the finding, such as those with certain kinds of stewardship contracts.<sup>179</sup> FS also has issued guidance regarding other timber sale flexibilities, such as alternative appraisal procedures to more accurately reflect timber prices during changing market conditions. It is unclear whether BLM has used any contract term flexibilities.<sup>180</sup>

The COVID-19 pandemic may affect FS and BLM timber sale revenues through various means related to both general timber market conditions (e.g., reduced demand or manufacturing disruptions) or agency actions (e.g., delayed timber sale offerings).<sup>181</sup> Some evidence suggests that planned FS timber sales already have been delayed.<sup>182</sup> Information on timber sale revenues

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"BLM Offering Salvage Timber Sale in Butte County," press release, April 13, 2020, at <https://www.blm.gov/press-release/blm-offering-salvage-timber-sale-butte-county>, BLM, "Notice to Prospective Timber Sale Purchasers," April 7, 2020, at [https://www.blm.gov/or/districts/medford/timbersales/files/NOTICE\\_TO\\_PROSPECTIVE\\_TIMBER\\_SALE\\_PURCHASERS.pdf](https://www.blm.gov/or/districts/medford/timbersales/files/NOTICE_TO_PROSPECTIVE_TIMBER_SALE_PURCHASERS.pdf).

<sup>177</sup> 16 U.S.C. §472a(c).

<sup>178</sup> FS, "Extension of Certain Timber Sale: Contracts; Finding of Substantial Overriding Public Interest," 85 *Federal Register* 20984, April 15, 2020.

<sup>179</sup> For more information, see FS, "Accommodating Procurement Interruptions from Coronavirus Disease 2019 (COVID-19)," April 23, 2020, at <http://amforest.org/wp-content/uploads/2020/04/FS-Service-Contract-Guidance-Letter-April-23-2020.pdf>; and FS, "COVID-19 Related Contract Questions and Answers (Q&As) (enclosed)," April 23, 2020, at <http://amforest.org/wp-content/uploads/2020/04/Procurement-Questions-Answers-Documents.pdf>.

<sup>180</sup> Industry groups have requested contract term flexibilities from BLM. See American Forest Resource Council, in a letter to BLM, at <http://amforest.org/wp-content/uploads/2020/04/Letter-to-BLM-State-Offices-COVID19-and-Contract-Extension-Request-042020.pdf>.

<sup>181</sup> For a discussion of timber market impacts, see Forest2Market, *Forest2Market COVID-19 Forest Industry Roundtable Discussion Notes*, April 16, 2020, at [https://www.forest2market.com/hubfs/Discussion\\_Notes\\_04162020.pdf](https://www.forest2market.com/hubfs/Discussion_Notes_04162020.pdf).

<sup>182</sup> Christine Souza, "USFS Outlines Operations During COVID-19 Pandemic," *California Farm Bureau Federation*, April 1, 2020, and Zach Urness, "Oregon Forests Remain Open for Logging and Timber Sales During Coronavirus Pandemic," *Salem Statesman-Journal*, April 7, 2020.

generally is not available until the end of the fiscal year; therefore, FY2020 timber sale revenues will not be available until 2021.<sup>183</sup> Depending on market conditions; purchaser use of timber contract flexibilities; and the duration, scope, and scale of the pandemic, some effects may be delayed beyond FY2020.

## Issues for Congress Related to Timber Revenues

The pandemic may disrupt the FS's and BLM's timber programs, which could have fiscal effects on the federal government and timber sale purchasers. An issue for Congress is whether to address these issues and, if so, in what ways.

Congress may authorize additional contract flexibilities, as Congress has done in response to previous market downturns. This could include authorizing contract reappraisals to reflect changing timber prices, adjustments to the payment terms for qualified contracts, or contract buyouts.<sup>184</sup> These flexibilities may reduce delinquencies or defaults by timber purchasers experiencing challenging market conditions, which may benefit related sectors.<sup>185</sup> In addition, these flexibilities may reduce or mitigate FS and BLM overall timber sale revenue losses. Alternatively, Congress may opt not to extend additional flexibilities (e.g., if Congress deems the agencies' use of existing authorities sufficient).

On the federal side, the fiscal impacts include reduced deposits in the various FS and BLM timber revenue funds, reducing FS's and BLM's funding for future timber harvesting, restoration, and other projects. Because of the variation in the required and discretionary allocations of timber revenues, it is difficult to generalize or predict the specific influence of revenue decreases (e.g., to what degree specific activities or regions would be affected). Thus, an issue for Congress is whether to address any reduction in timber sale revenue collections and the associated availability of funding for agency activities. If desired, Congress could address any revenue and funding reductions in varied ways. For example, Congress could provide additional discretionary appropriations for the affected activities or could authorize additional uses of other FS and BLM revenues. Alternatively, Congress may view such actions as unnecessary (e.g., if it appears that decreases may be relatively small or short-lived).

## CRS Products for Additional Reading

- CRS Report R45688, *Timber Harvesting on Federal Lands*, by Anne A. Riddle.
- CRS In Focus IF11179, *Stewardship End Result Contracting: Forest Service and Bureau of Land Management*, by Anne A. Riddle.
- CRS Report R45696, *Forest Management Provisions Enacted in the 115th Congress*, by Katie Hoover et al.
- CRS Insight IN11364, *Forest Service Announces Timber Sale Contract Relief*, by Anne A. Riddle.

<sup>183</sup> For each fiscal year, BLM and FS typically publish timber sale revenues several months or more after the end of the fiscal year. For instance, FS FY2019 timber sale revenues were published in both the FS FY2021 Budget Justification and the "All Service Receipts" report series in February 2020; BLM FY2019 timber sale revenues were published in the BLM FY2021 Budget Justification in February 2020.

<sup>184</sup> P.L. 110-246, Food, Conservation, and Energy Act of 2008 (§8401).

<sup>185</sup> For example, see explanatory material at FS, "Extension of Certain Timber Sale: Contracts; Finding of Substantial Overriding Public Interest," 85 *Federal Register* 20984, April 15, 2020, and FS, "Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest," 77 *Federal Register* 65169, October 25, 2012.

## Federal Payment and Revenue-Sharing Programs<sup>186</sup>

### Introduction

Under federal law, state and local governments receive payments through various programs due to the presence of federally owned land within their jurisdictions. The basis, distribution, recipients, and authorized uses of these payments vary greatly between programs. Some payment programs are based on the revenues generated from the federal lands, whereas others are based on acreage of federal land or other nonrevenue factors. Some of these programs are run by specific agencies and apply only to that agency's land, whereas other payment programs span multiple agencies. For the revenue-based payments, some of the payments are based on one specific land use or activity (e.g., energy or mineral development), whereas other payments are based on revenue generated by multiple land uses and activities. This section of the report focuses on the latter, as well as certain nonrevenue programs. Most of these payments are funded through mandatory appropriations, although some have been funded through both mandatory and discretionary appropriations.

If COVID-19 results in—or contributes to—a deviation from historic trends in revenue from uses and activities, the subsequent revenue-based payments to states and local governments would likewise be affected. The scale and timing of any potential effects vary and for most payments would not be apparent until the following fiscal year (e.g., FY2021 for revenue fluctuations in FY2020). The potential for COVID-19 to affect the nonrevenue-based payments is less clear and may be driven in part by any potential changes in discretionary appropriations. Any reduction in receipts, for example, also may reduce the availability of funds to cover the costs of some of these payments and may subsequently require additional funds from the General Fund of the U.S. Treasury.

This section discusses the potential impact of COVID-19 on several payment programs, as listed below and in **Table 2**. Revenue-based payments associated with energy and mineral development are discussed in the “Energy and Mineral Leasing” section of this report.

- Secure Rural Schools and Community Self-Determination Act (SRS) payments.<sup>187</sup>
- FS Payments to States program, including the 25% Payments, National Grassland Payments, Payments to Minnesota Counties, and various special acts payments.
- BLM revenue-based payments, including the payments for the Oregon and California Railroad (O&C) lands and Coos Bay Wagon Road (CBWR) lands.
- Payments In Lieu of Taxes (PILT) payments.<sup>188</sup>

Some of these payment programs are interrelated or interact with each other in varying ways. For example, when SRS payments are authorized, they replace the FS 25% Payments or BLM's payments if the recipient counties have opted in to the SRS program. When SRS payments are not authorized, those counties receive the applicable revenue-based payments (25% Payments, O&C, or CBWR payments). As another example, the PILT payments are reduced (but not below a minimum payment) by other payment programs as specified in statute. This includes some—but not all—of the revenue-based payments.

<sup>186</sup> This section was prepared by Katie Hoover, Specialist in Natural Resources Policy.

<sup>187</sup> Secure Rural Schools and Community Self-Determination Act (SRS; P.L. 106-393), 16 U.S.C. §§7101-7153.

<sup>188</sup> Payments In Lieu of Taxes Act of 1976 (PILT; P.L. 94-565), 31 U.S.C. §§6901-6907.

**Table 2. Selected Federal Land Payment Programs**

Payment Program	Type of Program Authorization/Type of Appropriations <sup>a</sup>	Lands Covered (Implementing Agency)	Payment Basis	Recipient and Use of Funds
25% Payments	Permanent Authorization/ Mandatory Appropriations 16 U.S.C. §500	National forests (FS) <sup>b</sup>	Revenue; 25% of the average gross receipts generated over previous seven years	States; passed through to counties or other entities for use on local roads and schools
Coos Bay Wagon Road (CBWR) Payments	Permanent Authorization/ Mandatory Appropriations 43 U.S.C. §2621	CBWR lands (BLM) <sup>b</sup>	Tax equivalency	Counties; for roads, schools, bridges, and highways
National Grassland Payments	Permanent Authorization/ Mandatory Appropriations 7 U.S.C. §1012	National grasslands (FS)	Revenue; 25% previous year net receipts	Counties; for use on local roads and schools
Oregon and California (O&C) Payments	Permanent Authorization/ Mandatory Appropriations 43 U.S.C. §§2601 et seq.	O&C lands (BLM) <sup>b</sup>	Revenue; 50% previous year gross receipts	Counties; for any governmental purpose
Payments to Minnesota Counties	Permanent Authorization/ Mandatory Appropriations 16 U.S.C. §577g	Specified lands within the Superior National Forest (FS)	Formula; 0.75% of the appraised value of the land	Counties; for any governmental purpose
Payments In Lieu of Taxes (PILT)	Authorization through FY2020/Discretionary and/or Mandatory Appropriations <sup>c</sup> 16 U.S.C. §§6902, 6904, and 6905	BLM, NPS, FS, certain FWS, others (DOI)	Formula; primarily based on acreage, population, other payments received	Local government units; primarily for any governmental purpose
Secure Rural Schools (SRS) Payments <sup>b</sup>	Authorization through FY2020/Mandatory Appropriations <sup>d</sup> 16 U.S.C. §7111	National forests (FS) <sup>b</sup> O&C and CBWR lands (BLM) <sup>b</sup>	Formula; based on revenue generated from FY1986 to FY1999 and other factors	FS: same as 25% Payments BLM: same as O&C, CBWR Payments Some funds are retained by the agency for use on the federal land, and other funds may be used for specified services related to the federal lands. <sup>e</sup>

**Source:** CRS.

**Notes:** BLM = Bureau of Land Management, FS = Forest Service, FWS = U.S. Fish and Wildlife Service, NPS = National Park Service. Some of the smaller payment programs, such as FS payments authorized under various special acts, are not included in the table.

- a. This column includes the statute authorizing the program.
- b. Counties with eligible lands receive either an SRS payment or the 25%, O&C or CBWR Payment for which they are eligible. The authority to make an election between SRS and the other payments expired in FY2013, so counties that opted to receive an SRS payment for FY2013 have continued to do so (for those years that payments were authorized).

- c. In various years, PILT funding has been appropriated through discretionary appropriations, mandatory appropriations, or both types of appropriations. In FY2020, PILT received mandatory appropriations in P.L. 116-94.
- d. The FY2020 SRS payment is to be made in FY2021. SRS payments have been authorized annually since FY2001, except there was no authorization for FY2016. The FY2007 SRS payment was funded through discretionary appropriations.
- e. The SRS payment is divided into three parts, each with different requirements for use. The bulk (between 80% and 85% for most counties) of the payment is distributed and used in the same manner as the 25% O&C or CBWR payments.

## Secure Rural Schools (SRS) Act Payments<sup>189</sup>

### Overview of Authority

Congress enacted the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS) as a temporary alternative payment option to the FS and BLM revenue-based payments, starting with the FY2001 payment. Congress has since extended the payments for every year except FY2016, and the payments are authorized through FY2020. Counties with eligible lands (national forests, O&C, and CBWR lands) can opt to receive either an SRS payment or a revenue-based payment, although most counties have elected to receive the SRS payment.<sup>190</sup>

Each county's SRS payment is determined by a formula based on historic revenues (average of the three highest revenue-based payments received by the county from FY1986 through FY1999), area of eligible federal lands, and county incomes. Because the SRS payments are based on historic rather than current revenue, they are not affected by current fluctuations in the revenue streams from the specified lands. The total SRS payment, however, declines by 5% annually. The program is funded through mandatory spending, with funds coming first from agency receipts and then from the General Fund of the Treasury.<sup>191</sup> SRS payments are disbursed after the fiscal year ends, so the FY2020 SRS payment is to be made in FY2021.

The SRS payment is divided into three parts, with different requirements for how the funds may be used. The bulk of the payment, however, is to be used for the same purposes as specified for the revenue-based payments: for roads and schools for the FS payment; for roads, schools, bridges, and highways for the payment for the CBWR lands; or for any governmental purpose for the payment for the O&C lands.

The FY2019 SRS payment was distributed in April 2020. The total SRS payment was \$254.3 million (\$225.8 million FS; \$28.4 million BLM).<sup>192</sup> SRS is set to expire after the FY2020 payments are made, after which the payments are to return to the revenue-based system (the 25% Payments for FS; O&C and CBWR payments for BLM).

<sup>189</sup> This section was prepared by Katie Hoover, Specialist in Natural Resources Policy.

<sup>190</sup> The authority to elect either to receive an SRS payment or the revenue-based payment expired in FY2013, so counties have not had the option to change their election since then (16 U.S.C. §§7112(b)(1)-(2)).

<sup>191</sup> 16 U.S.C. §7112(b)(3). SRS payments also are authorized to receive discretionary appropriations and were funded through discretionary appropriations in FY2007.

<sup>192</sup> Data from FS, *All Service Receipts: Title I, II, and III Region Summary (ASR-18-3)*, at <http://www.fs.usda.gov/main/pts/home>, and BLM, *Official Payments Made to Counties reports*, at <https://www.blm.gov/programs/natural-resources/forests-and-woodlands/oc-lands>.

## Effect of COVID-19 on SRS Payments

COVID-19 would not affect the amount of FY2020 SRS payments to counties, because the payment amount an eligible county is set to receive in FY2021 (for the FY2020 payment) is not based on current revenue.<sup>193</sup> However, there could be an effect on the source of the funds used to make the payment, depending on whether COVID-19 results in revenue reductions from the national forests or from the O&C/CBWR lands. For example, any decrease in revenue collections would reduce the availability of agency receipts to fund the SRS payments, which would mean that more of the SRS payment would come from the General Fund of the U.S. Treasury. Likewise, if revenue were to increase, less of the SRS payment would come from the Treasury.

For counties that receive SRS payments, any potential effect of COVID-19 would be delayed until after the FY2020 payment. With the pending expiration of SRS after that payment, county payments are set to return to the revenue-based system for FY2021. The revenue-based payments are significantly less than the SRS payments, without accounting for any COVID-19-related revenue effects. For example, when SRS payments temporarily expired for FY2016, county payments returned to the revenue-based system and were nearly two-thirds lower than an SRS payment would have been for that year. The year-to-year difference in SRS and revenue-based payments could be larger, however, depending on if and how COVID-19 affects the related revenue-based payments.

## Issues for Congress Related to SRS Payments

To address any reduction in payments to counties, Congress could consider extending the SRS payments beyond the current authorization. The reauthorization could be of limited duration, over a longer time frame, or on a permanent basis. In addition, Congress could consider modifying the payment formula in various ways to increase the payments. Such modifications could include adjusting the formula to decline at a different annual rate or to increase annually or setting the payments at a constant annual level. Another modification could be adding an inflation adjustment to the formula. Congress also could consider program modifications to increase flexibility for the counties, such as by allowing counties to opt in or out of the SRS payments or by removing restrictions on or authorizing additional uses of funds.

Prior to the pandemic, the uncertainty about the continuation of the SRS program had been an ongoing issue for Congress. Those interested in providing a consistent and predictable payment for local governments generally support extending or permanently authorizing SRS payments. By contrast, the opportunity to revisit the SRS reauthorization at more frequent intervals may be of interest to those wanting to review the program or federal spending more broadly, among other potential reasons. Further, some generally support returning payments to the revenue-based system.

## CRS Products for Additional Reading

- CRS Report R41303, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues*, by Katie Hoover.

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<sup>193</sup> However, this payment will be 5% less than the payment received in FY2020 for the FY2019 payment, per the statutory formula.

## FS Payments to States Programs<sup>194</sup>

### Overview of Authority

Congress has authorized several different payment programs for the counties containing National Forest System (NFS) lands managed by the FS.<sup>195</sup> These payments are collectively referred to as the FS Payments to States program, though the counties or other local government entities are often the recipients or beneficiaries of the payments. The payments are required based on different laws with varying purposes and disbursement formulas. The funds used to make the payment generally consist of receipts from sales, leases, rentals, or other fees for using NFS lands or resources (e.g., timber sales, certain recreation fees, communication site leases, etc.), although Congress has designated some activities exempt from the revenue-based requirement. Payments made under SRS are included under the Payments to States program, but are discussed separately in this report. (See the “Secure Rural Schools (SRS) Act Payments” section of this report.)

- **25% Payments.** The Act of May 23, 1908, requires states to receive annual payments of 25% of the average gross revenue generated over the previous seven years on the national forests in the state, for use on roads and schools in the counties containing those lands.<sup>196</sup> The payment is made to the state after the end of the fiscal year. The state cannot retain any of the funds but allocates the payment to the counties based on the area of national forest land in each county. Counties may receive an SRS payment instead of this payment, for the years that SRS payments are authorized (every year since FY2001, except for FY2016). The FY2019 payment (\$18.8 million) was distributed in April 2020.<sup>197</sup>
- **National Grassland Payments.** These payments are authorized by the Bankhead-Jones Farm Tenant Act, which requires payments of 25% of *net* (rather than *gross*) receipts directly to the counties for roads and schools in the counties where national grasslands are located.<sup>198</sup> These payments are sometimes referred to as *Payments to Counties*, because the payment is made directly to the counties and the allocation is based on the national grassland acreage in each county. The FY2018 payment (\$35.1 million) was made in FY2019.<sup>199</sup>
- **Payments to Minnesota Counties.** Enacted in 1948, this program pays three northern Minnesota counties 0.75% of the appraised value of the land, without

<sup>194</sup> This section was prepared by Katie Hoover, Specialist in Natural Resources Policy.

<sup>195</sup> The 193 million-acre NFS consists of 154 national forests, 20 national grasslands, and several other federal land designations managed by FS.

<sup>196</sup> 16 U.S.C. §500.

<sup>197</sup> Data from FS, *All Service Receipts: Final Payment Summary Report (ASR-10-01)*, at <http://www.fs.usda.gov/main/pts/home>.

<sup>198</sup> 7 U.S.C. §1012.

<sup>199</sup> Payment reflects sequestration. Data from FS, *FY2021 Budget Justification*, p. 115, at <https://www.fs.usda.gov/about-agency/budget-performance>.



restrictions on using the funds.<sup>200</sup> The land is reappraised on a 10-year cycle.<sup>201</sup> The FY2018 payment (\$5.7 million) was made in FY2019.<sup>202</sup>

- **Special Acts Payments.** These include payments authorized under various special acts, such as payments for quartz mined from the Ouachita National Forest in Arkansas and for revenue generated on the Quinalt Special Management Area in the Olympic National Forest in Washington.<sup>203</sup> The FY2018 payment (~\$1,000 combined) was made in FY2019.<sup>204</sup>

The payments are mandatory spending and are subject to annual reductions due to the sequestration requirements of the Budget Control Act of 2011.<sup>205</sup>

## Effect of COVID-19 on FS Payments to States

The potential effect of COVID-19 on FS Payments to States varies by program, depending on the extent to which each payment is based on revenues. The Payments to Minnesota Counties are not likely to be affected, for example, since that payment is based on land value, not revenue.<sup>206</sup> The other payments are revenue-based and would be affected by any potential revenue fluctuations. The National Grassland payments, for example, could see effects starting with the FY2020 payment, which is to be made in FY2021.

The 25% Payments are revenue-based, but the formula is based on a seven-year rolling average of receipts. Any revenue fluctuations would be moderated by the average, meaning the effect on the payment would not be as pronounced in any given year but would continue for seven years. Counties receiving the revenue-based payment could see effects starting with the payment to be made in FY2021. However, most of the counties eligible to receive this payment receive the SRS payment instead. Because SRS payments are set to expire after the last authorized payment is made in FY2021, the county payments could be impacted by revenue fluctuations associated with COVID-19 if those effects continue into FY2021 or later.

## Issues for Congress Related to FS Payments to States

An issue for Congress is whether to make up for any decrease in the amount provided to counties under the revenue-based payments. Congress could accomplish this by changing the basis of the payments, such as by increasing the percentage shared, the activities subject to revenue sharing,

<sup>200</sup> Thye-Blatnik Act of June 22, 1948 (16 U.S.C. §577g). Also known as the Superior National Forest Land Consolidation Act.

<sup>201</sup> The land value is based on appraisals from 2018, and a new appraisal is in process (FS, *FY2021 Budget Justification*, p. 115).

<sup>202</sup> The FY2018 figure is reflected here as the most recent payment that reflects sequestration. Data from FS, *FY2021 Budget Justification*, p. 115, at <https://www.fs.usda.gov/about-agency/budget-performance>.

<sup>203</sup> Special acts payments sometimes are not reported as part of the Payments to States program, but they are included here for purposes of this report. The authority for the quartz payments is derived from P.L. 100-446 §323 and requires 50% of the revenue derived to be paid to the State of Arkansas for the benefit of roads and schools in the counties in which the national forest is located. The authority for the Quinalt Special Management Area payments is derived from P.L. 100-638 and requires 45% of receipts to be paid to the Quinalt Indian Nation, 45% to the State of Washington, and the remaining 10% may be used for land- and resource-management purposes.

<sup>204</sup> Data from FS, *FY2021 Budget Justification*, p. 12, at <https://www.fs.usda.gov/about-agency/budget-performance>.

<sup>205</sup> P.L. 112-25. For more information, see CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, by Megan S. Lynch, and CRS Report R45941, *The Annual Sequester of Mandatory Spending through FY2029*, by Charles S. Konigsberg.

<sup>206</sup> The land value is based on appraisals from 2018, and a new appraisal is in process (FS, *FY2021 Budget Justification*, p. 115).

or the lands covered. Congress also could consider options to lessen the impact of reduced payments, for example, by moving to a rolling-average (i.e., for the National Grassland payments) or extending the years included in the rolling average (i.e., for the 25% Payments). Congress also could remove any restrictions on the authorized use of the funds, allowing counties greater flexibility.

Alternatively, Congress might view modifying the payment programs as unnecessary or undesirable at this time, for a variety of reasons. For example, Congress may prefer to address any potential state or local government funding shortfalls through other mechanisms that provide more direct relief or that are temporary and not a permanent change in law. In addition, Congress may prefer to consider potential legislative remedies at a later date, depending on the duration, scope, and scale of the pandemic and related impacts.

### CRS Products for Additional Reading

- CRS Report R45994, *Federal Land Management Agencies' Mandatory Appropriations Accounts*, coordinated by Carol Hardy Vincent.

## BLM O&C and CBWR Payments<sup>207</sup>

### Overview of Authority

Congress has enacted revenue-based programs for BLM lands for various types of resource use, including the Oregon and California (O&C) payments and Coos Bay Wagon Road (CBWR) payments. The O&C payments are made to the 18 counties in western Oregon containing the revested Oregon and California grant lands, which are lands that were returned to federal ownership due to the state's failure to fulfill the terms of the grant. The O&C counties receive 50% of the receipts from these lands, and the funds may be used for any local governmental purposes.<sup>208</sup> The CBWR lands are located in two of the same counties in western Oregon that also contain O&C lands. These counties receive a tax-equivalency payment, which is paid for using receipts generated from those lands. Those funds may be used for schools, roads, bridges, and highways.<sup>209</sup>

The O&C and CBWR payments are mandatory payments that are paid directly to the counties. The O&C/CBWR counties received an SRS payment instead of these payments, for the years that SRS payments are authorized (every year since FY2001, except for FY2016). This means that the O&C/CBWR counties have received the revenue-based payment only once since FY2001.<sup>210</sup>

### Effect of COVID-19 on O&C/CBWR Payments

The O&C/CBWR payments are made only when SRS payments are not authorized. Because the SRS payments are based on historical rather than current revenue, a potential reduction in the revenue generated on these lands in FY2020 would not affect the FY2020 payment these counties are set to receive in FY2021. However, SRS payments are set to expire after the last authorized payment is made in FY2021, as noted. Thereafter, it is possible for the county payments under

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<sup>207</sup> This section was prepared by Katie Hoover, Specialist in Natural Resources Policy.

<sup>208</sup> 43 U.S.C. §§2601 et seq.

<sup>209</sup> Per statute (43 U.S.C. §§2621 et seq.), 75% of the gross receipts from Coos Bay Wagon Road (CBWR) lands are deposited in a special fund and used to make tax-equivalency payments; any portion remaining in the fund after a 10-year period is transferred to the General Fund of the Treasury.

<sup>210</sup> The FY2016 Oregon and California/CBWR payment was \$20.5 million (the payment was made in FY2017).

O&C/CBWR to be affected by revenue fluctuations associated with COVID-19, if those effects continue into FY2021 or later.

### Issues for Congress Related to O&C/CBWR Payments

The O&C/CBWR payments are set to be made again in FY2022, after the last authorized SRS payments are distributed in FY2021. As a result, the more immediate issues for Congress might be associated with whether to reauthorize SRS payments.

Upon the expiration of SRS, an issue for Congress is whether to make up for any decrease in the amount received by counties under the O&C/CBWR revenue-based payments. Congress could accomplish this by increasing the percentage of revenue shared with the counties. Congress also could consider options to lessen the impact of reduced payments, for example, by moving to a rolling average of receipts generated over a certain number of years.

Alternatively, Congress might view modifying the payment programs as unnecessary or undesirable at this time, for a variety of reasons. For example, Congress may prefer to address any potential state or local government funding shortfalls through other mechanisms that provide more direct relief or that are temporary and not a permanent change in law. In addition, Congress may prefer to consider potential legislative remedies at a later date, depending on the duration, scope, and scale of the pandemic and related impacts.

### CRS Products for Additional Reading

- CRS Report R42951, *The Oregon and California Railroad Lands (O&C Lands): Issues for Congress*, by Katie Hoover.

## Payments in Lieu of Taxes Program<sup>211</sup>

### Overview of Authority

The Payments in Lieu of Taxes (PILT) program was first enacted in 1976 to partially compensate for the presence of selected nontaxable federal lands (known as *entitlement lands*) within the jurisdictions of local governmental units.<sup>212</sup> Entitlement lands include selected federal lands administered by BLM, NPS, FWS, and FS; federal water projects; dredge disposal areas; and some military installations.<sup>213</sup> DOI administers PILT, though the department relies on data from other federal agencies and states to calculate authorized payments. PILT has a complicated appropriations history and has received discretionary or mandatory appropriations, and sometimes both, in various years. Since FY2013, Congress has provided annual extensions of PILT funding (through FY2020).<sup>214</sup>

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<sup>211</sup> This section was prepared by Eliot Crafton, Analyst in Natural Resources Policy.

<sup>212</sup> 31 U.S.C. §§6901-6907. PILT was originally enacted in 1976 through P.L. 94-565. In 1982, PILT was “revised, codified, and enacted” in Title 31 of the *U.S. Code* pursuant to Chapter 69 of P.L. 97-258. PILT has been amended multiple times.

<sup>213</sup> 31 U.S.C. §6901(1).

<sup>214</sup> In various years, PILT funding has been provided through discretionary appropriations, mandatory appropriations, or both types of appropriations. In FY2020, PILT received mandatory appropriations through provisions authorized by the annual discretionary appropriation law for that fiscal year (P.L. 116-94).

PILT provides payments directly to units of local government jurisdiction for the presence of entitlement lands within their jurisdictions.<sup>215</sup> PILT includes three programs known for the section of law that authorizes them: Section 6902, Section 6904, and Section 6905.<sup>216</sup> Section 6902 payments are authorized based on a statutory formula that takes into account the number of acres of entitlement lands, counties' populations, and payments through other revenue-sharing programs in the prior year.<sup>217</sup> Payments under Sections 6904 and 6905 are authorized only in certain circumstances, typically after the federal acquisition of specific land types or lands in specific places. The vast majority (typically over 99%) of funding under PILT is provided through Section 6902, whereas Sections 6904 and 6905 account for the remaining payments. The majority of PILT payments may be used for any governmental purpose, though a small fraction are required to be passed on to sub-county units and school districts.<sup>218</sup> The actual payment received by the county may be prorated based on both the authorized payment level and the amount of funding appropriated for PILT payments to counties.<sup>219</sup>

PILT payments typically have been disbursed in June for a given fiscal year. For FY2020, PILT payments were authorized in P.L. 116-94 and disbursed in June 2020. PILT payments to units of local government totaled \$514.7 million in FY2020.<sup>220</sup> Congress commonly has used annual discretionary appropriations laws to provide additional guidance for PILT implementation.<sup>221</sup>

### Effect of COVID-19 on PILT

Because authorized payments under PILT are calculated pursuant to a formula and requirements in statute, impacts on authorized payment levels due to COVID-19 may be minimal. Further, as noted, P.L. 116-94 already authorized mandatory funding for PILT payments at the fully authorized level for FY2020 (less a set-aside of \$400,000 for program administration), and payments at the authorized level were made in June 2020.

COVID-19 may affect future-year payments. Because Congress has recently authorized appropriations for PILT on an annual basis, any shifts in priorities in the appropriations process, including those resulting from COVID-19, could influence future PILT appropriations levels. COVID-19 also could affect the factors that go in to calculating the statutory formula for Section 6902 payments. For example, because counties' payments are capped based on population, if

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<sup>215</sup> 31 U.S.C. §6901(2). The units of local government typically are counties, but other types of local governments also may be eligible. For the purposes of this section, units of local government jurisdiction are referred to collectively as *counties*.

<sup>216</sup> 31 U.S.C. §§6902, 6904, and 6905.

<sup>217</sup> 31 U.S.C. §6903.

<sup>218</sup> Specifically, payments under 16 U.S.C. §§6904 and 6905, which typically account for less than 1% of total PILT payments, have provisions that may require payments be passed through to sub-county jurisdictions.

<sup>219</sup> For example, although funding for PILT at the full, authorized level was appropriated in FY2019, pursuant to P.L. 116-6, the law also provided that a small amount (\$400,000) of the appropriated funding could be set aside for program administration. As such, the amount available for payments to counties was the fully authorized amount less \$400,000, and counties each received a reduced, prorated payment.

<sup>220</sup> DOI, *Fiscal Year 2020 Payments in Lieu of Taxes National Summary*, at <https://www.doi.gov/sites/doi.gov/files/uploads/fiscal-year-2020-payments-in-lieu-of-taxes-national-summary-annual-report.pdf>. The FY2020 payments included \$514,372,212 for FY2020 payments and \$312,248 for FY2019 payment adjustment s.

<sup>221</sup> For example, in FY2020, provisions in P.L. 116-94, Division D, Title I, (1) specified that no payment is to be made to a county if its authorized payment is less than \$100; (2) authorized DOI to retain up to \$400,000 from the authorized payment for administrative expenses; and (3) allowed for payments to be reduced proportionally if the appropriated amount is insufficient and to correct for prior over- or underpayments. Although similar provisions have been included routinely in appropriations acts, the specific text of these provisions has varied.

COVID-19 contributes to substantial changes to a county's population due to deaths or individuals choosing to relocate, this could affect future payments. Similarly, if COVID-19 affects other payment programs that are accounted for in PILT, this could affect the authorized level for future PILT payments. For example, if other payment programs were reduced because of COVID-19 in one year, the authorized level for PILT payments could correspondingly increase in the subsequent year.

### Issues for Congress Related to PILT

An issue for Congress is the mechanism used to appropriate funding for PILT. Prior to the onset of the COVID-19 pandemic, stakeholders frequently advocated for PILT to be funded at the full statutorily authorized amount and for permanent or long-term mandatory appropriations.<sup>222</sup> The COVID-19 pandemic has caused some stakeholders to increase advocacy to enact laws to “authorize the PILT program on either a long-term or permanent basis.”<sup>223</sup> Congress may consider enacting legislation that would provide mandatory funding for PILT for a limited period or permanently, as stakeholders have requested. This would obviate the need for Congress to enact funding for PILT annually, which may provide greater assurances to counties of relatively stable PILT payments.<sup>224</sup> However, authorizing mandatory payments for PILT, for either a limited period or permanently, could reduce congressional oversight over the program. Further, a multiyear mandatory appropriation could contribute to less funding being available for other priorities. Alternatively, Congress may choose to continue providing annual appropriations for PILT, either as discretionary or mandatory funding. Annual consideration could allow Congress to routinely weigh financial priorities.

Congress also may consider whether amending the calculation of PILT payments is necessary to respond to impacts of the COVID-19 pandemic. This could include amending certain factors used to calculate PILT payments, such as freezing county populations used to calculate maximum payments, which could address any population impacts of COVID-19, or adjusting the per-acre payment rates, which could be used to increase or decrease authorized payment amounts. Alternatively, Congress may decide that, at this time, modifying PILT is unnecessary to respond to the COVID-19 pandemic or that there is insufficient information to modify the program. As noted, mandatory funding for FY2020 PILT payments was included in P.L. 116-94, so any amendments to PILT may not be sought or have impact until FY2021.<sup>225</sup>

### CRS Products for Additional Reading

- CRS Report R46260, *The Payments in Lieu of Taxes (PILT) Program: An Overview*, by R. Eliot Crafton.

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<sup>222</sup> For example, see Jonathan Shuffield, *Provide Full Mandatory Funding for the Payments in Lieu of Taxes (PILT) Program*, National Association of Counties, Policy Brief, February 19, 2020, at <https://www.naco.org/resources/provide-full-mandatory-funding-payments-lieu-taxes-pilt-program>.

<sup>223</sup> For example, see Western Governor's Association, “Policy Resolution 2020-03: Tax-Exempt Federal Lands and Secure Rural Schools,” April 21, 2020, at [https://westgov.org/images/editor/WGA\\_Hill\\_Leadership\\_COVID19\\_PILT\\_SRS.pdf](https://westgov.org/images/editor/WGA_Hill_Leadership_COVID19_PILT_SRS.pdf).

<sup>224</sup> Although long-term or permanent funding for PILT may provide more reliable funding, as stakeholders have suggested, authorized PILT payments change from year to year due to the various factors used to calculate the payment levels.

<sup>225</sup> However, a law could be enacted that would retroactively amend PILT and alter the FY2020 payments.

# Selected FLMA-Administered Assistance Programs<sup>226</sup>

## Introduction

Several FLMA-administered programs provide assistance to states and territories, as well as other nonfederal entities, for conservation-related activities through grants or other financial or technical assistance. These programs may be funded through discretionary or mandatory appropriations, and funds may be derived from specific sources (e.g., excise taxes or import duties) or be transferred from the General Fund in the U.S. Treasury. Programs also may require assistance recipients, whether states or other entities, to meet cost-share or other requirements or to use funding within a certain time period. The COVID-19 pandemic has the potential to affect these programs in various ways, including the amount of revenue generated, allocations to states and territories, and recipients' ability to use allocated funds.

This section discusses two such programs: the Pittman-Robertson Wildlife Restoration Program and the Dingell-Johnson Sport Fish Restoration Program.<sup>227</sup> Both of these programs are funded through excise taxes or import duties collected from the sale of specific items. In recent years, these two programs combined accounted for nearly \$1 billion in annual grant funding to states, territories, and Washington, DC, for conservation and other authorized activities.<sup>228</sup> Although these programs represent only a subset of federal assistance programs related to the FLMAs, their large size and source of funding makes them of particular interest. However, the extent to which the possible effect of the COVID-19 pandemic on these programs may be representative of impacts to federal assistance programs more generally is unclear.

## Federal Aid in Wildlife Restoration (Pittman-Robertson)

### Overview of Authority

Enacted in 1937, the Federal Aid in Wildlife Restoration Act, now known as the Pittman-Robertson Wildlife Restoration Act, provides matching grant funding to states and selected territories for wildlife restoration and hunting education and safety.<sup>229</sup> FWS administers the Pittman-Robertson program. In FY2020, \$601.8 million was allocated and disbursed to states and certain territories through Pittman-Robertson.<sup>230</sup>

<sup>226</sup> This section was prepared by Eliot Crafton, Analyst in Natural Resources Policy.

<sup>227</sup> Assistance programs administered by the other FLMAs are not included in this report. Additional programs are addressed in other CRS products. For instance, for information on selected FS programs, see CRS Report R45219, *Forest Service Assistance Programs*, by Anne A. Riddle and Katie Hoover. For information on selected NPS programs, see CRS Report R45800, *The Federal Role in Historic Preservation: An Overview*, by Mark K. DeSantis, CRS In Focus IF11329, *American Battlefield Protection Program*, by Mark K. DeSantis, and CRS Report RL33462, *Heritage Areas: Background, Proposals, and Current Issues*, by Mark K. DeSantis and Laura B. Comay.

<sup>228</sup> These programs are authorized through the Pittman-Robertson Wildlife Restoration Act, 16 U.S.C. §§669 et seq., and the Dingell-Johnson Sport Fish Restoration Act, 16 U.S.C. §§777 et seq. For additional information on these and other assistance programs administered by FWS, see FWS, "Wildlife and Sport Fish Restoration Program," at <https://www.fws.gov/wsfrprograms/>.

<sup>229</sup> 16 U.S.C. §§669 et seq. Hereinafter, the program authorized by this act typically is referred to as Pittman-Robertson; individual subprograms within Pittman-Robertson will be referred to by name.

<sup>230</sup> FWS, "Certificate of Apportionment of \$601,827,014 of the Appropriation for Pittman-Robertson Wildlife

Funding for Pittman-Robertson is generated through the collection of excise taxes on firearms, ammunition, and certain archery equipment.<sup>231</sup> Collected excise taxes are deposited in the Federal Aid to Wildlife Restoration Fund in the Treasury. Funds are made available to FWS for allocation and disbursement in the year following their collection. Pittman-Robertson funds are considered mandatory funding and thus do not require further action by Congress prior to disbursement.<sup>232</sup>

The majority of funding disbursed pursuant to Pittman-Robertson is allocated under three state/territory programs.<sup>233</sup> The three state/territory programs are the Wildlife Restoration program, Basic Hunter Education and Safety program, and Enhanced Hunter Education and Safety program.<sup>234</sup> State apportionments are determined through two formulas set in statute, which take into account land area of the state, population of the state, and number of hunting licenses sold by the state as compared with national totals for each of these categories.<sup>235</sup> Allocations for territories are based on percentages of the total funding for each program, as set in statute.<sup>236</sup>

Pittman-Robertson grants under the three state/territory programs generally require the recipient states/territories to cover a percentage of the cost for projects funded with allocated monies. The federal share of project costs is capped at 75% for most projects;<sup>237</sup> however, the federal share is capped at 90% for certain projects related to shooting ranges funded through the Basic and Enhanced Hunter Education and Safety programs.<sup>238</sup>

Funding allocated through the state/territory programs is available for a limited period after disbursement. Funding allocated through the Wildlife Restoration program and Basic Hunter Education and Safety program is available for two fiscal years.<sup>239</sup> Funding allocated under the Enhanced Hunter Education and Safety program typically is available for one fiscal year, except

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Restoration (CFDA No. 15.611) to the States, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands for Fiscal Year 2020,” March 16, 2020, at <https://www.fws.gov/wsfrprograms/Subpages/GrantPrograms/WR/WRFinalApportionment2020.pdf>.

<sup>231</sup> 16 U.S.C. §669b(a) states that “(a)n amount equal to all revenues accruing each fiscal year (beginning with the fiscal year 1975) from any tax imposed on specified articles by sections 4161(b) and 4181 of title 26, shall, subject to the exemptions in section 4182 of such title, be covered into the Federal aid to wildlife restoration fund.”

<sup>232</sup> Pursuant to the Appropriations Act of August 31, 1951 (P.L. 82-136).

<sup>233</sup> The Pittman-Robertson Act also authorizes a multistate conservation grant program and a hunter and recreational shooter grant program (16 U.S.C. §669h-2). These programs are not discussed in this report.

<sup>234</sup> The Basic Hunter Education and Safety program also is known as the Section 4(c) program. The Enhanced Hunter Education and Safety program also is known as the Section 10 program. The three programs are authorized at 16 U.S.C. §669c(b), 16 U.S.C. §669c(c), and 16 U.S.C. §669h-1, respectively. FWS has promulgated regulations at 50 C.F.R. §80.50 that describe activities that are eligible to be carried out with Pittman-Robertson funding through each program.

<sup>235</sup> 16 U.S.C. §669c(b-c).

<sup>236</sup> 16 U.S.C. §669g-1.

<sup>237</sup> 16 U.S.C. §669e, 16 U.S.C. §669g(b)(1), and 16 U.S.C. §669h-1(b)(1). The federal share for territories is outlined in 16 U.S.C. §669g-1, which states, “the Secretary [of the Interior] shall in no event require any of said cooperating agencies [in the territories] to pay an amount which will exceed 25 per centum of the cost of any project.” Further, 48 U.S.C. §1469a(d) provides limited waiver authority to waive cost-share requirements for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands; Puerto Rico is not eligible for the waiver.

<sup>238</sup> 16 U.S.C. §669g(b)(2) and 16 U.S.C. §669h-1(b)(2). The 90% cap applies to costs for land acquisition for and expansion and construction of a public target range.

<sup>239</sup> 16 U.S.C. §669b(a) and 16 U.S.C. §669g-1. Unobligated funds may be used for other purposes after the two-fiscal-year period, as specified in statute.

that funds used for “acquiring land for, constructing, or expanding a public target range” are available for five fiscal years.<sup>240</sup>

### **Effect of COVID-19 on Pittman-Robertson State/Territory Programs**

The mandatory nature of Pittman-Robertson may minimize certain effects of COVID-19 on the program. Additionally, Pittman-Robertson allocations for FY2020 already have been disbursed, which may minimize any immediate effect of the pandemic.<sup>241</sup> However, the extent of any effects may not be immediately clear.

COVID-19 could affect state/territory programs in a number of ways, depending on the responses of individuals and states/territories to the pandemic. Possible effects may pertain to revenues (e.g., the amount of excise taxes collected), the calculation of state apportionments (e.g., effects to the number of hunting licenses sold by each state or the population of a state), and states’ ability to expend funds received through Pittman-Robertson (e.g., states’ ability to meet cost-share and obligation time frame requirements).

### ***Effect on Revenue-Generating Activities***

It is unclear at this time whether the COVID-19 pandemic will result in an increase or a decrease in excise tax collections in FY2020 or future years and, as such, the amount of funding available for Pittman-Robertson in FY2021 and beyond. One potential effect of the pandemic could be that individuals purchase firearms, ammunition, and archery equipment, or a subset of these items, in quantities that exceed normal trends. Increased firearm and ammunition sales have occurred in response to certain events in the past, and there are indications that this trend may continue in response to the COVID-19 pandemic.<sup>242</sup> This could result in greater collections of excise taxes for FY2020 and more funding for Pittman-Robertson in FY2021. Conversely, any restriction on manufacturers, importers, and producers of guns, ammunition, and archery equipment; sellers of these products; or individuals who would normally purchase these products potentially could reduce excise tax collection.<sup>243</sup> Any delays or extensions on excise tax collections also could affect availability of funding for Pittman-Robertson if excise taxes are collected and applied to a different fiscal year than they otherwise would have been.<sup>244</sup>

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<sup>240</sup> 16 U.S.C. §669h-1(c). Unobligated funds may be used for other purposes after the required obligation periods, as specified in statute.

<sup>241</sup> FWS, “Certificate of Apportionment of \$601,827,014 of the Appropriation for Pittman-Robertson Wildlife Restoration (CFDA No. 15.611) to the States, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands for Fiscal Year 2020,” March 16, 2020, at <https://www.fws.gov/wsfrprograms/Subpages/GrantPrograms/WR/WRFinalApportionment2020.pdf>.

<sup>242</sup> Cheryl Corley, “Some Stock Up on Guns and Ammunition During Coronavirus Crisis,” NPR, March 20, 2020, at <https://www.npr.org/2020/03/20/817369503/some-stock-up-on-guns-and-ammunition-during-coronavirus-crisis>.

<sup>243</sup> However, the Administration’s guidance on essential critical infrastructure workforce included “(w)orkers supporting the operation of firearm, or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges.” U.S. Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response,” Version 3.0, April 17, 2020, at [https://www.cisa.gov/sites/default/files/publications/Version\\_3.0\\_CISA\\_Guidance\\_on\\_Essential\\_Critical\\_Infrastructure\\_Workers\\_4.pdf](https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_4.pdf).

<sup>244</sup> For example, see U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB), “Tax Payment and Other Filing Due Dates Postponed for Industry Members Affected by COVID-19,” TTB Industry Circular 2020-2, March 31, 2020, at <https://www.ttb.gov/industry-circulars/ttb-industry-circulars-2020-2>. This circular delayed the filing and payment due date for firearms and ammunition excise taxes for the January 1, 2020, through March 31, 2020, period from April 30, 2020, to July 29, 2020. This delay would not affect the fiscal year for this particular



### *Effect on State Allocations Pursuant to Statutory Formulas*

COVID-19 could affect state apportionments. For example, the formula for apportioning state funding under the Wildlife Restoration program relies on both land area of a state compared with total land area of all states and the number of paid hunting-license holders in a state compared with the number of paid hunting-license holders in all states. However, the calculation for a given fiscal year relies upon the number of paid hunting-license holders from two fiscal years earlier. (For instance, the number of paid hunting-license holders in FY2020 will be used to calculate the apportionments in FY2022.<sup>245</sup>) As such, if the COVID-19 pandemic affects the number of hunting licenses sold in a given state in FY2020, then wildlife restoration apportionments could be effected in FY2022. For example, if a state restricts hunting for residents or nonresidents in response to the pandemic, the number of paid hunting-license holders in that state could be reduced.<sup>246</sup> Conversely, if individuals have more free time for hunting or increase their reliance on hunted game for food in some states, the number of licenses holders in those states could increase.<sup>247</sup>

### *Effect on Recipient Use of Funding*

COVID-19 also may affect a state's or territory's ability to use grant funding provided through Pittman-Robertson. Pittman-Robertson generally requires recipients to provide at least 25% of the cost of most projects, as noted.<sup>248</sup> Revenue from hunting licenses and other nonfederal funds is used for the state or territory portions of the project costs. The COVID-19 pandemic may affect revenues from license sales or reduce the amount of other nonfederal funds that could be used to meet cost-share requirements. If states are unable to meet their cost-share obligations, they may be ineligible for funding. Similarly, the COVID-19 pandemic may affect states' ability to use funds within certain periods, as required by law, due to financial or personnel limitations or restrictions on relevant activities (e.g., shelter-in-place orders that restrict conservation activities).

### **CRS Products for Additional Reading**

- CRS Report R45667, *Pittman-Robertson Wildlife Restoration Act: Understanding Apportionments for States and Territories*, by R. Eliot Crafton.
- CRS Report R45123, *Guns, Excise Taxes, Wildlife Restoration, and the National Firearms Act*, by R. Eliot Crafton, Jane G. Gravelle, and William J. Krouse.

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collection, as both April 2020 and July 2020 are within FY2020.

<sup>245</sup> 16 U.S.C. §669c(b). For tabulating the number of hunting licenses sold, Pittman-Robertson uses the state's fiscal year rather than the federal fiscal year for calculations.

<sup>246</sup> For example, see Eric Davis, "The Potential Impacts of COVID-19 to Fish And Game," *The Evening Sun*, April 22, 2020, at <https://www.evesun.com/news/stories/2020-04-22/32983/The+Potential+Impacts+of+COVID-19+to+Fish+and+Game>.

<sup>247</sup> For example, see Scott Keeper, "South Carolinians Find Pandemic Relief in Fishing, Hunting," Associated Press, May 9, 2020, at <https://www.usnews.com/news/best-states/south-carolina/articles/2020-05-09/south-carolinians-find-pandemic-relief-in-fishing-hunting>.

<sup>248</sup> 16 U.S.C. §669e, 16 U.S.C. §669g(b), and 16 U.S.C. §669h-1(b). Pursuant to 16 U.S.C. §669g(b)(2) and 16 U.S.C. §669h-1(b)(2) some shooting range projects only require a minimum 10% state cost share.

## Federal Aid in Fish Restoration (Dingell-Johnson)

### Overview of Authority

The Federal Aid in Fish Restoration Act, now referred to as the Dingell-Johnson Sport Fish Restoration Act, provides matching grant funding to states, Washington, DC, and certain territories for various aquatic restoration and boating purposes.<sup>249</sup> The program is modeled after the Pittman-Robertson Wildlife Restoration Act and is administered by FWS. In FY2020, \$369.7 million was allocated and disbursed to states, certain territories, and Washington, DC, through Dingell-Johnson.<sup>250</sup>

Dingell-Johnson is funded through excise taxes collected on the sale of certain sport-fishing equipment by manufactures, producers, and importers as well as import duties on fishing tackle, yachts, and pleasure crafts.<sup>251</sup> These revenues are deposited in the Sport Fish Restoration and Boating Trust Fund in the U.S. Treasury.<sup>252</sup> Additionally, a portion of the gasoline fuel tax attributable to small engines and motorboats is deposited in the trust fund.<sup>253</sup> Funds are made available to FWS—and, for certain activities, the U.S. Coast Guard—for disbursement in the year following their collection. Dingell-Johnson funds are considered mandatory and thus do not require further action by Congress prior to disbursement.<sup>254</sup>

Funding is allocated to multiple programs, each with different programmatic requirements.<sup>255</sup> The majority of grant funding disbursed through Dingell-Johnson is allocated to states, DC, and territories through the Sport Fish Restoration program.<sup>256</sup> Among other uses,<sup>257</sup> Dingell-Johnson funds also support programs on Coastal Wetlands, Boating Safety, Boating Infrastructure Improvement, and National Outreach and Communications.<sup>258</sup>

Each program has its own apportionment formulas and use period and cost-share requirements. For example, funding for the Sport Fish Restoration program is apportioned to states based 40%

<sup>249</sup> 16 U.S.C. §§777 et seq. Hereinafter, the program authorized by this act typically is referred to as Dingell-Johnson; individual subprograms within Dingell-Johnson will be referred to by name.

<sup>250</sup> FWS, “Certificate of Apportionment of \$369,725,164 of the Appropriation for Dingell-Johnson Sport Fish Restoration (CFDA No. 15.605) to the States, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the District of Columbia for Fiscal Year 2020,” March 16, 2020, at <https://www.fws.gov/wsfrprograms/Subpages/GrantPrograms/SFR/SFRFinalApportionment2020.pdf>.

<sup>251</sup> 26 U.S.C. §9504 directs that an amount equivalent to the amount of taxes imposed pursuant to 26 U.S.C. §4161(a) and import duties collected under heading 9507 and chapter 89 of the Harmonized Tariff Schedule of the United States (19 U.S.C. §1202) be deposited in the Sport Fish Restoration and Boating Trust Fund. Additionally, any interest accrued on the Sport Fish Restoration and Boating Trust Fund is deposited in the fund pursuant to 26 U.S.C. §9602(b).

<sup>252</sup> 26 U.S.C. §9504.

<sup>253</sup> 26 U.S.C. §§9503(c)(3) and 9503(c)(4).

<sup>254</sup> Pursuant to the Appropriations Act of August 31, 1951 (P.L. 82-136).

<sup>255</sup> 16 U.S.C. §777c.

<sup>256</sup> 16 U.S.C. §777c(c). Allocations for the Sport Fish Restoration program include requirements for expenditures on Aquatic Resource Education and Boating Access (16 U.S.C. §§777g(b) and 777g(c)). Funding under this provision also is used for Multistate Conservation grants pursuant to 16 U.S.C. §777m(a).

<sup>257</sup> Funding from the Sport Fish Restoration and Boating Trust Fund also is used for Dingell-Johnson programmatic administration, U.S. Coast Guard administration (16 U.S.C. §777c(b)), and regional fisheries commissions (16 U.S.C. §777m(e)).

<sup>258</sup> 16 U.S.C. §777c(a). Funding from the Sport Fish Restoration and Boating Trust Fund for these programs is authorized only through FY2021.

on the ratio of land and water area in the state compared with the total land and water area in all states and 60% based on the number of paid fishing-license holders in the state compared with the number paid fishing-license holders in all states in the second fiscal year preceding the allocation year. (For determining FY2020 allocations, the number of fishing licenses sold in FY2018 is used.<sup>259</sup>) No state can receive less than 1% or more than 5% of the total apportionments. Washington, DC, and the eligible territories each receive a fixed percentage of the apportionment.<sup>260</sup> Funds allocated through the Sport Fish Restoration program generally are available for two fiscal years,<sup>261</sup> except that the subset of funds used for Boating Access are available for five fiscal years.<sup>262</sup> The federal cost share for projects funded through this program, and its subprograms for Aquatic Resource Education and Boating Access, is not to exceed 75%.<sup>263</sup>

### Effect of COVID-19 on Dingell-Johnson State/Territory Programs

Similar to Pittman-Robertson, the mandatory nature of Dingell-Johnson may minimize certain effects of COVID-19 on the program.<sup>264</sup> Further, any immediate effects may be minimized because allocations for FY2020 already have been disbursed.<sup>265</sup>

However, COVID-19 may affect revenues (e.g., the amount of excise taxes, import duties, and fuel taxes collected), the calculation of state apportionments (e.g., effects to the number of fishing licenses sold by each state), and states' ability to expend funds received through Dingell-Johnson (e.g., states' ability to meet cost-share and obligation time-frame requirements).

### Effect on Revenue-Generating Activities

COVID-19 has the potential to affect the amount of revenues generated through excise taxes on fishing equipment; import duties on fishing equipment, yachts, and pleasure crafts; and taxes on motorboat and small-engine fuels. If revenues from these sources decrease in FY2020 due to COVID-19—because of reduced demand for any of the products—there would be a lower appropriation in FY2021 for Dingell-Johnson programs.<sup>266</sup> Conversely, if revenues increase—for example, due to additional demand for fishing equipment for increased fishing efforts—the FY2021 appropriation for Dingell Johnson could be higher than it otherwise would have been.<sup>267</sup>

<sup>259</sup> 16 U.S.C. §777c(c).

<sup>260</sup> 16 U.S.C. §777k.

<sup>261</sup> 16 U.S.C. §§777b and 777k. Unobligated funds may be used for other purposes after the two-fiscal-year period, as specified in statute.

<sup>262</sup> 16 U.S.C. §777g(b). Unobligated funds may be used for other purposes after the five-fiscal-year period, as specified in statute.

<sup>263</sup> 16 U.S.C. §§777e, 777g(b) and 777g(c). The cost share for territories and DC may be different (16 U.S.C. §777k).

<sup>264</sup> As noted, disbursement of funding for several of the programs currently expires in FY2021.

<sup>265</sup> FWS, "Certificate of Apportionment of \$369,725,164 of the Appropriation for Dingell-Johnson Sport Fish Restoration (CFDA No. 15.605) to the States, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the District of Columbia for Fiscal Year 2020," March 16, 2020, at <https://www.fws.gov/wsfrprograms/Subpages/GrantPrograms/SFR/SFRFinalApportionment2020.pdf>.

<sup>266</sup> For example, see California Fish and Game Commission, *aspira*ST D399 Calculations Worksheet Addendum, Emergency Action to Adopt Section 8.02, Title 14, California Code of Regulations Re: Special Measures for Sport Fishing to Protect Public Health from the Threat of COVID-19, in California Fish and Game Commission Emergency Meeting Binder, Sacramento, CA, April 9, 2020, p. 12 (p. 39 PDF), at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=178208&inline>.

<sup>267</sup> For example, see Scott Keeper, "South Carolinians Find Pandemic Relief in Fishing, Hunting," Associated Press,

If effects from COVID-19 extend into future fiscal years (e.g., FY2021 and beyond), appropriations in FY2022 and later could be affected.

### *Effect on State Allocations Pursuant to Statutory Formulas*

The number of fishing licenses sold by a state accounts for 60% of the state apportionment calculation for the Sport Fish Restoration program, as noted. If the ratio of paid fishing-license holders in a state changes in comparison to the total number of paid fishing-license holders in all states during the same fiscal year, the state apportionment also may change. However, any effect may be moderated by the apportionment percentage caps (i.e., no state may receive less than 1% or more than 5%) and delayed by the fact that apportionments for a fiscal year are based on the number of paid fishing licenses from two fiscal years prior. (For instance, any effects on license sales in FY2020 will not affect apportionment calculations until FY2022.) Both in-state and nonresident license sales count toward a state's license sales. Accordingly, any restrictions placed on travel or in-state or nonresident fishing license sales may affect state apportionments.<sup>268</sup> Since the onset of the COVID-19 pandemic, observers have documented certain changes in the number of fishing licenses sold compared with previous years.<sup>269</sup>

### *Effects on Recipient Use of Funding*

The Sport Fish Restoration program—as well as other Dingell-Johnson programs—generally requires funding recipients to contribute a percentage of the cost of most projects.<sup>270</sup> Funding recipients may use revenues from fishing license sales for part or all of these cost shares, though other nonfederal funding may be used. COVID-19 may affect the ability of states, territories, and Washington, DC, to meet cost-share requirements, either by influencing the amount of revenues gathered through license sales or through changes to other funding availability.<sup>271</sup> If funding recipients are unable to meet their cost-share obligations, they may be unable to fully utilize Dingell-Johnson funding. Further, COVID-19 may affect the ability of states, territories, and Washington, DC, to use funds within periods specified in law.

### **CRS Products for Additional Reading**

- CRS Report R45994, *Federal Land Management Agencies' Mandatory Appropriations Accounts*, coordinated by Carol Hardy Vincent.

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May 9, 2020, at <https://www.usnews.com/news/best-states/south-carolina/articles/2020-05-09/south-carolinians-find-pandemic-relief-in-fishing-hunting>.

<sup>268</sup> Other Dingell-Johnson programs have different allocation formulas/disbursement structures and may be affected differently by COVID-19.

<sup>269</sup> For example, see Joe Sills, “Fishing License Sales on the Rise as Manufacturers Adjust to New Climate,” *Fishing Wire*, May 11, 2020, at <https://www.thefishingwire.com/features/fa30826e-60e3-4041-876f-de19e4bc436c>. Also, see California Fish and Game Commission, “Emergency Action to Add Section 8.02, Title 14, California Code of Regulations Re: Special Measures for Sport Fishing to Protect Public Health from the Immediate Threat Posed by COVID-19,” Statement of Proposed Emergency Regulatory Action, Sacramento, CA, April 15, 2020, p. 5.

<sup>270</sup> For example, Sport Fish Restoration projects have a 75% cap on the federal share of project costs. The federal share for other programs may differ. Federal share requirements may differ between states, territories, and Washington, DC.

<sup>271</sup> For example, see California Fish and Game Commission, *aspiraSTD399 Calculation Worksheet, Emergency Action to Adopt Section 8.02, Title 14, California Code of Regulations Re: Special Measures for Sport Fishing to Protect Public Health from the Threat of COVID-19*, in California Fish and Game Commission Emergency Meeting Binder, Sacramento, CA, April 9, 2020, p. 12 (p. 39 PDF), at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=178208&inline>.

## **Issues for Congress Related to Selected Assistance Programs**

An issue for Congress is whether to amend statutory requirements for cost shares and obligation time frames required by Pittman-Robertson and Dingell-Johnson. These requirements could affect a funding recipient's ability to use the FY2020 allocations or allocations in future years. Congress could introduce legislation to temporarily waive, postpone, or extend cost-share requirements or obligation time frames automatically, or upon request or demonstration of need from a state, territory, or Washington, DC. Loosening these requirements could allow funding recipients the flexibility to undertake activities supported with Pittman-Robertson and Dingell-Johnson funding to better account for other priorities related to COVID-19.

Further, Congress may be interested in addressing future allocations under these programs by temporarily or permanently altering the formulas for apportionments to states, in order to respond to any COVID-19 effects on hunting and fishing licenses sales or states' populations. Additionally, Congress may consider temporarily or permanently amending activities eligible to be undertaken using Pittman-Robertson or Dingell-Johnson funds, which could increase flexibility for funding recipients.

Alternatively, Congress may decide it is not necessary to amend these programs at this time, for a variety of reasons. Congress may wait to see if impacts of COVID-19 manifest for these programs to inform what, if any, actions to take. For example, Congress could wait until funding recipients demonstrate a hardship in meeting obligations under Pittman-Robertson and Dingell-Johnson due to COVID-19. For potential longer-term impacts, such as those related to funding allocations in FY2021 and beyond, Congress might consider legislative changes at a later date. For example, FY2021 funding for Pittman-Robertson and Dingell-Johnson depends on tax and duty revenues from FY2020, and the sale of hunting or fishing licenses in FY2020 will be used to determine allocation calculations in FY2022.

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