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Land and Water Conservation Fund (LWCF): Frequently Asked Questions Related to Provisions Scheduled to Expire on September 30, 2018

What is the Land and Water Conservation Fund?

The Land and Water Conservation Fund Act of 1965 (LWCF Act; 54 U.S.C. §§200301 et seq.) was enacted to help preserve, develop, and ensure access to outdoor recreation resources. The law created the LWCF in the Department of the Treasury as a dedicated funding source to implement its stated outdoor recreation goals. Monies in the fund are available only as provided in appropriations acts, except that a portion of the appropriations for the state matching grant program is available without further legislative action (i.e., constitutes mandatory spending) under provisions of the Gulf of Mexico Energy Security Act of 2006 (GOMESA; P.L. 109-432, §105, Div. C).

Similar to other special funds in the federal budget, the LWCF is an accounting mechanism to link dedicated receipts with the spending of those receipts. The fund has been used for three general purposes: (1) as the principal source of monies for land acquisition by the four major federal land management agencies—the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS), and Forest Service (FS); (2) as a matching grant program to assist states in recreational planning, acquiring recreational lands and waters, and developing outdoor recreational facilities; and (3) for other federal programs with related purposes, such as the Forest Legacy program (FS) and grants under the Cooperative

Endangered Species Conservation Fund (FWS.) **Figure 1** shows the historical appropriations for the three purposes.

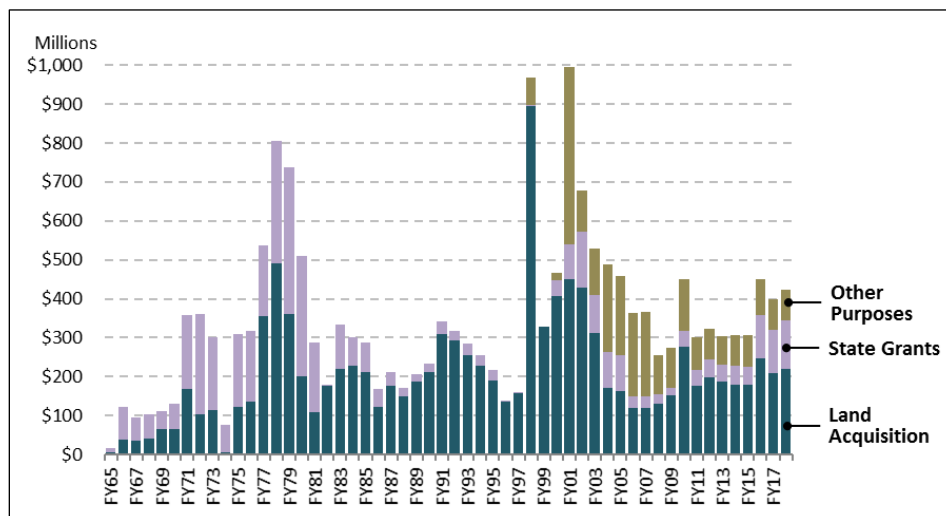
For additional background on the LWCF, including historical appropriations, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

What provisions of the LWCF Act are currently scheduled to expire?

The provisions of the act that provide for \$900 million in specified revenues to be deposited annually into the LWCF are currently scheduled to expire on September 30, 2018 (54 U.S.C. §200302). Under these provisions, the fund accumulates revenues of \$900 million annually from three sources: (1) surplus property sales; (2) the federal motorboat fuel tax; and (3) revenues from oil and gas leases on the outer continental shelf (OCS). Since the early 1990s, nearly all revenues deposited in the LWCF have been from OCS receipts.

Notwithstanding the provisions scheduled to expire, other provisions of law pertain to the LWCF. Specifically, 26 U.S.C. §9503(c)(3)(A) specifies that the Secretary of the Treasury “shall pay from time to time” the motorboat fuel taxes received from October 1, 2005, until October 1, 2022, from the Highway Trust Fund into the LWCF. The law caps the amount at \$1 million per fiscal year.

Figure 1. LWCF Annual Discretionary Appropriations, FY1965-FY2018



Sources: For FY1965-FY2013, Department of the Interior, Office of Budget. For FY2014-FY2018, the annual *Interior Budget in Brief* and congressional documents accompanying the annual appropriations bill.

Notes: Figures are not adjusted for inflation. The graph does not reflect \$76 million for a 1976 transition quarter. “State Grants” reflects the NPS state grant program for outdoor recreation. Beginning in FY1998, appropriations have been provided from the LWCF each year, except FY1999, to fund purposes (referred to as “other purposes”) in addition to state grants and land acquisition.

Is there any money currently in the LWCF?

Yes. From FY1965 through FY2018, about \$40.0 billion was credited to the LWCF under both the LWCF Act and GOMESA. Less than half that amount—\$18.4 billion—has been appropriated, leaving an unappropriated balance of \$21.6 billion in the LWCF. (Figures were derived primarily from data provided by the Department of the Interior [DOI], Office of Budget.) The balance is to remain credited to the fund until appropriated or otherwise reduced by the enactment of new legislation.

Does the authority for the LWCF expire?

No. The authority to carry out the purposes of the LWCF Act, including the authority to appropriate monies from the LWCF, would not expire on September 30, 2018. The LWCF Act does not include an expiration date and therefore continues indefinitely, unless changed by law.

Do the four major federal land management agencies' authorities to acquire land expire?

The authorities of the four agencies to acquire land derive from other laws and differ considerably among the agencies. For instance, BLM has relatively broad authority to acquire land under the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§1701 et seq.). By contrast, NPS has no general authority to acquire land to create new park units.

Would the federal government lose the revenues if they were not deposited into the LWCF?

No. The federal government would continue to collect the revenues and deposit them in other funds or accounts. For instance, OCS receipts would be deposited in the General Fund of the Treasury and other places specified in law.

Are any revenues currently scheduled to continue to be deposited into the LWCF after September 30, 2018?

Yes. Under GOMESA, 12.5% of the revenues from qualified OCS leases under the law are directed to the LWCF state matching grant program in accordance with the terms of the LWCF Act. States could receive a maximum of \$125 million annually in mandatory funding under GOMESA (except in FY2021 and FY2022, when the maximum is \$162.5 million). This money is in addition to the \$900 million deposited in the LWCF annually under the LWCF Act.

More than \$8 million in proceeds from OCS leasing under GOMESA was first collected in FY2008 and disbursed to the LWCF state matching grant program in FY2009. Such disbursements subsequently decreased through FY2017. However, DOI expects that mandatory appropriations will increase “significantly” beginning in FY2018, due to additional revenues from leasing in the Gulf of Mexico under Phase II of GOMESA. DOI projects mandatory appropriations for the LWCF of \$62.6 million for FY2018 and \$89.3 million for FY2019, although these projections are subject to change.

If the provisions expire but Congress enacts legislation during FY2019 to extend them, would it be too late to deposit \$900 million into the LWCF for FY2019?

The LWCF Act does not specify a certain date during a fiscal year on which monies are credited to the LWCF. Therefore, as long as an extension was enacted before

September 30, 2019 (i.e., the end of FY2019), the fund presumably would be credited with \$900 million from the specified sources for FY2019.

If the provisions expire, would Congress have authority to appropriate from the balance in the LWCF?

Yes. Congress can determine what, if any, appropriations should be provided from the balance in the LWCF and the purposes of those appropriations. Congress also could appropriate monies from the General Fund of the Treasury for programs that historically have been funded from the LWCF, such as land acquisition by federal agencies.

Would legislation score if it provided authority to spend monies in the LWCF?

Yes. Current law does not provide the legal authority to spend the monies in the LWCF, including its balances (except mandatory spending under GOMESA; see above). Therefore, any legislation that would provide such authority to spend the monies in the LWCF would be scored as *new budget authority* and *new outlays* for purposes of budget enforcement. That is, given existing budget rules, any legislation providing such authority presumably would be subject to certain budget points of order if not offset.

Do LWCF appropriations count toward budgetary caps?

Yes. Monies from the LWCF are available only to the extent provided in appropriations acts (except mandatory monies under GOMESA; see above). Such discretionary funds provided in appropriations acts are subject to spending caps, such as the statutory limits set by the Budget Control Act of 2011 (P.L. 112-5) and recently modified by the Bipartisan Budget Act of 2018 (P.L. 115-123).

How long will the money in the LWCF last if it is not accruing new revenue under the LWCF Act?

The number of years the money will last depends on the level of funding Congress chooses to appropriate each year. Throughout the fund's more than 50-year history, annual appropriations have varied considerably (see **Figure 1**). Moreover, the LWCF state matching grant program would continue to receive mandatory appropriations under GOMESA.

What would be the effect of the expired provisions of the LWCF Act on monies appropriated for FY2018 for land acquisition projects and grants to states?

An expiration of provisions generally would not affect monies appropriated in prior fiscal years. Appropriations laws typically provide that LWCF monies for land acquisition by the federal agencies remain available until expended, meaning the funds can be carried over from fiscal year to fiscal year. States have up to three years to use discretionary appropriations provided for state matching grants—the federal fiscal year in which the apportionment is made and the next two years. By contrast, the mandatory appropriations for the state matching grant program under GOMESA are available to the states until expended.

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