

Legislative Summary
Association of Fish and Wildlife Agencies
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Highlights from the End of 115th Congress and Launching the 116th

Highlights from Last Congress

Recovering America's Wildlife Act –Attention in the House and Senate

In the House Congressman Jeff Fortenberry (R-NE) and Congresswoman Debbie Dingell (D-MI) introduced the bipartisan Recovering America's Wildlife Act ([H.R. 4647](#)), calling for \$1.3 billion in existing revenue from the development of energy and mineral resources on federal lands and waters to be dedicated to the Wildlife Conservation Restoration Program subaccount under the Pittman-Robertson Fund. If enacted (it was not) this historic legislation would have provided each state fish and wildlife agency with an average of \$26 million in new apportionment funding to implement State Wildlife Action Plans and support conservation education and wildlife-dependent recreation programs. In the Senate, Senators Risch (R-ID), Manchin (D-WV), Alexander (R-TN) and Heitkamp (D-ND) introduced the Recovering America's Wildlife Act ([S.3223](#)) which had similar language except for the requirement of an annual appropriation as opposed to the mandatory funding language found in H.R. 4647. We pushed ever closer to realizing this historic and innovative solution to the fish and wildlife funding shortfall we face and built durable bipartisan support for the legislation in Congress. We had aspired to find a way to have the bill included in the final spending package anticipated at the close of the last Congress, but ultimately the appropriations deals broke down and the legislative vehicle enabling passage of the bill did not materialize. However, we finished out the year with 116 bipartisan cosponsors in the House and 6 in the Senate and had positive hearings on the bill in both committees of jurisdiction.

President Enacts the Agriculture Improvement Act

On December 20, 2018, President Trump signed into law the Agriculture Improvement Act (H.R. 2). This is one of this Congress's legislative highlights. A few notable provisions include: for the Environmental Quality Incentives Program (EQIP), increases the minimum amount of funding for wildlife practices from at least 5% to at least 10%; steps up the funding over the 5-year authorization from \$1.75 billion to \$2.025 billion; and allows contracts solely for wildlife practices to be up to 10 years in length. The Conservation Reserve Program (CRP) increases from 24 to 27 million acres; instructs the Secretary to enroll and maintain 8.6 million acres in continuous CRP; limits soil rental rates for general and continuous enrollment to 85% and 90% of the county average, respectively; steps up to a 2 million acre floor for CRP Grasslands for FY2021-2023, and requires an annual enrollment; and requires the Secretary to hold a CRP general sign-up not less than once each year. The Voluntary Public Access and Habitat Incentive Program is reauthorized at \$50 million in total mandatory funding; modifies the language so states may apply for funding (rather than grants), simplifies the application/reporting process; directs the Secretary to use \$3 million to encourage public access on Wetland Reserve Easements; and report language clarifies that remaining funds are to be available for other purposes of VPA-HIP if unable to utilize the full \$3 million for access on land in WRE.

Further, the Agricultural Conservation Easement Programs increases by \$225 million to \$450 million/year; allows any combination of cash, charitable donation, and costs associated with securing the deed to the easement to satisfy non-federal share of the easement; includes a new provision allowing non-federal match to include the costs associated with securing deed, including the cost of

appraisal, survey, inspection and title; and removes the requirement of 50% cash match associated with charitable donations. The county acreage cap on Wetland Reserve Easements increases from 10 to 15%, among other wildlife habitat friendly changes.

The law codifies the Working Lands for Wildlife Program and expands it to include the Farm Services Agency and the CRP; establishes a feral swine eradication and control pilot program of \$75 million with 50% to NRCS and 50% to APHIS; makes research on Chronic Wasting Disease a priority for Agriculture Extension Service grants to land-grant colleges and universities with established deer research programs for the purposes of treating, mitigating, or eliminating chronic wasting disease; and provides AGI waiver authority to the Secretary for all conservation programs to “protect environmentally-sensitive lands of special significance.”

Water Resources Bill Signed into Law by President

On October 23rd, 2018 the President signed into law S. 3021, America’s Water Infrastructure Act of 2018 (AWIA). S. 3021 was a bipartisan bill and passed the Senate with a vote of 99-1. AWIA authorizes and deauthorizes water infrastructure projects led by the Army Corps of Engineers (ACOE) and provides direction on numerous agency operations that have the potential to impact fish and wildlife resources. AWIA is a comprehensive package containing numerous state, regional, and national provisions of interest including but not limited to the following:

- directs the ACOE to expand research on aquatic invasive species, including zebra mussels and Asian carp;
- expands watercraft inspection stations for certain river basins;
- directs the FWS to expedite the processing of permits for take of birds covered by the Bald & Golden Eagle Protection Act and the Migratory Bird Treaty Act when a conflict is present;
- authorizes and/or expedites numerous ecosystem centric projects across the country;
- directs the ACOE to consider natural and nature-based infrastructure options in water resource projects.

Under regular order the Water Resources Development Act is reauthorized every two years and will be scheduled for re-authorization in 2020.

Bill to Amend MMPA and Allow for Better Management of ESA Fisheries Enacted

After significant internal discussion with stakeholders and members during Fall of 2018, the Senate came to a compromise on S. 3119, the Endangered Salmon and Fisheries Predation Prevention Act, and moved to advance the legislation during the last weeks of the 115th Congressional session. This strongly bipartisan bill amended the Marine Mammal Protection Act to allow for more effective and balanced conservation of species by incorporating flexibility in the permitting process to lethally take pinnipeds in the Columbia Basin with the goal of reducing known predation on endangered fish species. On December 18th, the President signed S. 3119 into law, thus adding another tool to the management toolkit for Columbia River Basin state fish and wildlife agencies moving forward.

Modern Fish Act Signed into Law

During the last days of the 115th session Congress acted to advance the Modernizing Recreational Fisheries Management Act of 2017. After consistent discussion and amendment throughout the 115th session, the Senate moved to pass the bill finally on December 17 and the House followed suit on December 19 before sending it to the President for signature. On December 31st, President Trump officially signed the Modern Fish Act into law. Because the states were divided, AFWA remained neutral on this bill.

Bill to Preempt State Authority on Ballast Water and Discharges Enacted

After significant discussion and amendment, on November 14th the Senate passed the Coast Guard Authorization bill (S. 140) by a vote of 94-6, and on November 27th, the House followed suit with a voice vote. S.140 was signed into law on December 4th, 2018. The legislation includes the Vessel Incidental Discharge Act (VIDA), which seeks to preempt state authority. In the passed version of VIDA, the Environmental Protection Agency (EPA) assumes the lead in establishing standards for vessel discharges, and the US Coast Guard (USCG) promulgates standards such as vessel technology requirements and takes a lead role in monitoring and enforcing standards. Once the requirements in the Act are final and enforceable states will be prohibited from promulgating or enforcing laws or regulations, except in certain circumstances, with respect to discharges that are incidental to the normal operation of a vessel. Although the language of the Act contains state preemption, we were pleased that many of the amendments sought by AFWA, our state members and partners, were included in the bill. These amendments increase the role of the states in promulgation and enforcement of regulations, address unique needs specific to geographic areas such as the Pacific Coast and Great Lakes, provide a greater focus on aquatic nuisance species via standard setting, developed grant programs, and set a requirement for states to be notified in the case of an ANS emergency. The bill, among other provisions, also allows for states to petition EPA and USCG for more stringent standards as well as the establishment of “no-discharge zones”.

The term “consultation” was not defined in the bill and the Association looks forward to continuing its work with our partners and states as this legislation is implemented to ensure states are key components of the regulatory process.

Senate Fails to Pass Sportsmen’s Conservation Provisions – PR Modernization “Blue Slipped”

The Senate in consultation with the House pulled together a bipartisan, bicameral package of legislative provisions intended to be attached to the year-end appropriations package. All provisions were required to pass both chambers by unanimous consent (UC). It included the House version of the Land and Water Conservation Fund, Pittman-Roberson Modernization and the Target and Marksmanship bills, the Neotropical Migratory Bird Conservation Act, and many others of significance to our community. The bill ran into a bit of opposition on the floor and failed, and Senator Murkowski (AK) vowed to restart the process early in the next Congress.

Unknowingly, amendments made to the PR Modernization bill (H.R. 2591) in the Senate to achieve the UC violated the Constitution origination clause for tax bills which was objected to as required by law by the House Ways and Means Committee, triggering a “blue slip.” PR Modernization was dropped from the overall package before the package failed on the Senate floor. More information on updated status of these pieces of legislation can be found below in the section on S.47.

Current Actions & Opportunities in the 116th Congress

Breakdown of the 116th Congress

On January 3rd, the 116th Congress commenced with the Republican Party holding the majority in the Senate with 53 Republican, 45 Democratic, and two Independent Senators and the House of Representatives flipping to Democratic majority with 235 Democratic members, 198 Republicans, and two vacant seats. With new Congressional leadership often comes change, such as a change in committee priorities, member composition, staff, and subcommittee organization. The Association’s priorities of the 116th Congress are to educate new staff and Members and help them understand the

roles, responsibilities, authority, and conservation impacts of state fish and wildlife agencies, as well as the interests of state constituents and the priorities of our fish and wildlife conservation community. With about 100 new Representatives in the House, there are many opportunities to educate new members on our issues and cultivate potential new conservation champions, but that will take time.

Omnibus Land Package Bill Passes

During the last few legislative days of the 115th Congress, Senator Murkowski brought to the Senate floor a package of public lands and sportsmen's bills that was assembled and negotiated through bipartisan and bicameral support, which was expected to pass both chambers by unanimous consent. However, a couple of objections on the Senate Floor prevented the package from moving forward. Senator Murkowski vowed to reintroduce the bill early this Congress, which occurred on January 8. The Natural Resources Management Act, [S. 47](#), which passed the Senate with a vote of 98-2, contained many provisions that touches access to public lands in many individual states as well as specific language intended to enhance access to public lands for hunting, fishing, and wildlife associated recreation. The House took up the bill during the week of February 25th and passed it with a vote of 363-62. The bill was renamed the "John D. Dingell, Jr. Conservation, Management, and Recreation Act" in honor of the late Congressman. Along with changes to many federal land boundaries and new off-road vehicle designations, here are a few of the conservation provisions included:

- Permanently reauthorizes the Land and Water Conservation Fund (LWCF) - Requiring at least 40 percent to be used for Federal purposes and 40 percent to be used for assistance to States, as well as at least \$15 million in annual funding for recreational public access projects.
- Wildlife Innovation and Longevity Driver (WILD) Act - Reauthorizes the Partners for Fish and Wildlife Program; reauthorizes the Multinational Species Conservation Funds; requires federal agencies to implement strategic programs to control invasive species; amends the Fish & Wildlife Coordination Act and directs federal agencies to develop management plans with states, tribes and local governments; establishes monetary-prize competitions for technological innovation in prevention of wildlife trafficking and poaching, promotion of wildlife conservation, management of invasive species, protection of endangered species, and non-lethal management of human-wildlife conflicts.
- Modified version of the Migratory Bird Framework and Hunting Opportunities for Veterans - Amends the federal framework for migratory bird hunting seasons by extending the federal closing date to January 31, provided it is supported by science, and allows states to provide two additional days for each veterans and youth.
- Reauthorizes the Neotropical Migratory Bird Conservation Act - Reauthorizes the program at \$6,500,000 annually through fiscal year 2023.
- Extends annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023.
- Amends the purpose of the Marine Turtle Conservation Act to include freshwater turtles, tortoises and their habitats.
- Identifying Opportunities for Recreation, Hunting, and Fishing on Federal Land - Directs the Secretary of the Interior to publicly identify land that the public would otherwise be allowed to hunt, fish, or use for other recreational purposes, but has restricted or no public access.
- Open Book on Equal Access To Justice - Requires online disclosure of information related to payments awarded to non-federal entities when they prevail against the United States in certain administrative proceedings and civil actions.
- Every Kid Outdoors Act - Creates a free annual pass for 4th grade students to access federal lands.
- Includes a Declaration of Congressional Policy on Sportsmen's Access and Related Matters based on EO [12962](#) and 13443 to facilitate the expansions and enhancement of hunting, fishing, and

recreational shooting opportunities on Federal land, in consultation with DOI federal advisory committees, state and tribal fish and wildlife agencies, and the public; and to conserve and enhance aquatic systems and management of game species and their habitats on Federal land in a manner that respects state management authority over wildlife resources and private property rights.

On the heels of the action with S. 47, House lawmakers floated several new natural resources bills. One specifically, the “Authorizing Critical Conservation and Enabling Sportsmen and Sportswomen Act,” or the ACCESS Act” (H.R. 1326), by Rep. Mike Thompson (D-Calif.) would reauthorize the North American Wetlands Conservation Act; the National Fish and Wildlife Foundation Establishment Act for five years; and includes, two Chronic Wasting Disease provisions; the USFWS Resource Protection Act; Great Lakes monitoring, assessment, science and research; Target Practice and Marksmanship Training Support; authorize the Wildlife and Hunting Heritage Conservation Council Advisory Committee; National Fish Habitat Conservation Through Partnerships; and other provisions. It remains to be seen when/how this bill will move forward.

Reintroduction of the Recovering America’s Wildlife Act

AFWA and partners are preparing to hit the ground running this year on the Recovering America’s Wildlife Act with some early progress toward reintroduction in the House. With your valuable feedback and guidance we are currently working through some recommended legislative language changes and technical corrections to ensure the bill’s intent is strong and that it stands the best chance of passage this Congress. Once consensus has been reached there, we will continue to work with our House congressional champions to reintroduce the bill as quickly as possible to allow for the necessary time to get the legislation through both chambers. We will focus on the House first and then move to the Senate. We’ll need to do our due diligence to secure Senate champions that will be strong advocates for the dedicated and permanent funding states need to successfully implement their wildlife action plans.

CWD Bills Introduced in the House and Senate

On January 30, 2019, Congressman Ralph Abraham (R-LA) introduced the *Chronic Wasting Disease Transmission in Cervidae Study Act* ([H.R. 837](#)) in the House. This bill aims to hinder the spread of Chronic Wasting Disease (CWD) which has spread in wild and captive herds across North America. The Association of Fish and Wildlife Agencies strongly supports this important legislation which, if passed, would provide an assessment of scientific information, identify prioritized and needed research to help direct scarce funds and resources, and combat this devastating disease which threatens our nation’s wildlife. The bill is almost identical to the bill introduced last Congress ([H.R. 6272/S. 3644](#)) except now it includes the US Geological Survey (USGS) as a co-administrator for the National Academies Study with USDA Aphis Veterinary Services and requires USGS data to also be included in the study. Original co-sponsors include Marc Veasey (TX), Glenn Thompson (PA), Paul Gosar (AZ), Tom Emmer (MN), Garret Graves (LA), Trent Kelly (MS), Greg Gianforte (MT), Mike Kelly (PA), Steve King (IA), Sean Duffy (WI). On February 7th, Senator Barrasso (R-WY) along with Senators Bennet (D-CO) and Jones (D-AL) and 24 cosponsors introduced a companion bill in the Senate. Stay tuned for action requests to submit letters of support to help advance these bills.

On February 28th, Senator Hyde-Smith (R-MS) introduced the “Detection, Enhanced Education, and Response Act of 2019” or the “DEER Act” ([S. 613](#)). The bill proposes to amend the Animal Health Protection Act to provide funding for chronic wasting disease surveillance, monitoring, and CWD response activities for State wildlife and agriculture agencies; and creates a multiagency task force managed by USDA to coordinate response efforts and for which USDA serves as a single Federal point of

contact for Federal and State entities working on CWD issues, to determine funding priorities and allocation of resources, and to serve to disseminate information to the public on CWD.

Modernizing the Pittman-Robertson Fund for Tomorrow's Needs Act Reintroduced in the House

On January 31, 2019, the Association applauded the reintroduction of the Modernizing the Pittman-Robertson Wildlife Fund for Tomorrow's Needs Act ([H.R. 877](#)). This bipartisan legislation introduced by House leaders of the [Congressional Sportsmen's Caucus](#) clarifies that the Pittman-Robertson Wildlife Restoration Program can be used by state fish and wildlife agencies for outreach, communication, and education of hunters and recreational target shooters, including focused efforts on the recruitment, retention, and reactivation (R3) of hunters and recreational target shooters through R3 initiatives without increasing taxes or existing user fees. Congressman Austin Scott (R-GA), along with Congressman Marc Veasey (D-TX), Congressman Richard Hudson (R-NC) and Congresswoman Debbie Dingell (D-MI), introduced the legislation. Watch for an action request to submit letters of support to help advance these bills.

Transportation, Infrastructure, Wildlife Corridors, and WRDA on Deck for the 116th

Wallop-Breaux Reauthorization:

Chairman DeFazio of the House Committee on Transportation and Infrastructure has indicated he intends to move legislation to reauthorize the transportation bill, the FAST Act which was last reauthorized in December 2015, within the first six months of 2019. The Angling and Boating Alliance (ABA) has been discussing potential policy issues to include in reauthorization of Wallop-Breaux, a provision that in current law that directs receipts from the gas tax on motorboats and small engines to the Sport Fish Restoration and Boating Safety account. President Ed Carter has appointed a working group of Directors to provide input and review policy recommendations of the ABA. In the coming months Directors will receive a draft reauthorization platform of Wallop-Breaux. The Association will seek feedback from Directors and the relevant committees before moving forward with a reauthorization platform this Congress.

The two federal agency partners in this endeavor is the US Coast Guard (USCG) and the US Fish and Wildlife Service (FWS). We are awaiting the release of the President's budget to unveil the USCG's legislative change proposal that will inform the ABA's reauthorization position, and we will work with the FWS to integrate their administrative change needs as well. Because the release of the President's proposed FY2020 budget is late this year, AFWA and the ABA were unable to prepare a reauthorization proposal to vet with AFWA committees of interest at the North American Wildlife and Natural Resources Conference in Denver, CO. Stay tuned for further developments over the next couple of months. The ABA expects to have a draft proposal to vet with AFWA committees in late April or early May.

Opportunities for Wildlife in Transportation Package:

Additionally, AFWA staff are confident that members in the House and Senate have/will reintroduce the Wildlife Corridors Conservation Act of 2018 (S. 3715/H.R. 7232). These bills provided a top down, national, and intense process approach to identifying and federally designating wildlife corridors to focus conservation work. It also would require USGS to establish a national database framework to support state and federal data sharing of species and habitats to enhance collaboration across various interests. The Association would like to work with states and our partners who are interested in crafting an alternative provision that will allow a more constructive framework that provides for ground-up, instead of top-down, conservation of wildlife corridors.

Along those lines, if there are locations of fish and/or wildlife crossings such as overpasses, underpasses, fencing, lighting, and research that are needed in your state to facilitate wildlife movements and identify the appropriate structure and placement of such infrastructure please send this information with a brief explanation to AFWA Government Affairs Director Jen Mock Schaeffer at jenmock@fishwildlife.org with "Transportation-Wildlife Needs" in the subject line of the email. We will work with Hill staff and use the information to inform legislation for wildlife structures and studies that are needed to improve connectivity of corridors and habitats.

Infrastructure & WRDA:

This is an area of potential common ground between Rs, Ds, and the White House. Rep. DeFazio (OR), chairman of the Committee on Transportation and Infrastructure, has a strong history of working collaboratively across the aisle with his counterpart, cutting a deal, and staunchly defending it so long as the other side stays committed to the agreement. Rep. DeFazio has already stated he wants to complete the infrastructure legislation within the first 6 months of 2019. AFWA staff have been participating in community conversations focused on natural infrastructure needs; fish and wildlife corridors, restoration, and habitat needs; nature-friendly infrastructure resiliency; and how we can more effectively capture existing and emergency funds from FEMA and others for fish, wildlife, and habitat restoration work. This advance work will help shape our community's policy platform for the next Congress.

In the event Congress continues to reauthorize the Water Resources Development Act under regular order, this legislation will be slated for passage again in 2020. AFWA is creating a working group to develop a platform for this upcoming reauthorization cycle. It is important to note that many provisions that could be considered in an infrastructure bill, could also be germane to a WRDA reauthorization. Therefore, identifying needs and developing congressional asks for both initiatives early this session will be key.

Energy

Now that she has been successful in passing the Natural Resource Management Act of omnibus lands package (S.47), Chairwoman Murkowski of the Senate Energy and Natural Resources Committee has vowed to pick up this session where she left off with a bipartisan energy package. AFWA staff will work diligently to ensure language governing hydropower supports state authority, provides for the usage of site specific, timely, data and does not include unfunded reporting requirements for the states. Similar to last session, when various sportsmen's provisions were absorbed into the energy package, there may be an opportunity to have additional provisions that benefit state management of fish and wildlife resources incorporated into any package moving forward.

House and Senate Prepare to Negotiate FY2020 Budget Agreement and Appropriations

Due to the 35-day partial federal government shutdown, the President's budget is scheduled to be unveiled beginning in part, on March 11. Appropriations subcommittees have been hosting public witness hearings and meetings in preparation for the upcoming appropriations cycle. Given the changes in leadership, we may have new opportunities to increase appropriations levels for federal agencies and grant programs we care about. In addition to agreeing to federal appropriations, the House and Senate will have to negotiate a new budget agreement and debt ceiling limit before the Treasury reaches the limit, which recently was estimated to occur in August or September. In the coming weeks AFWA will be submitting appropriations recommendations to Congress that outline state fish and wildlife agencies' priorities and programs of importance to the relevant appropriations subcommittees.

Please look for more details about AFWA's Annual Federal Budget Briefings and our Congressional appropriations processes after the Legislative and Federal Budget Committee meeting and the North American Wildlife and Natural Resources Conference.

North American Wetlands Conservation Act (NAWCA) Reauthorization reintroduced

S. 261 and H.R. 925 were introduced by Senator Heinrich (D-NM) and Congressman Mike Thompson (D-CA), respectively. The bills reauthorize NAWCA through fiscal year 2024 at \$60 million per year, down from the current expired authorization level of \$75 million per year.

Target Practice and Marksmanship Training Support Act Reintroduced

S. 94 was reintroduced by Senator Capito and 13 original cosponsors on January 10, 2019, and H.R. 1222 was introduced by Representatives Kind (D-WI), Bishop (R-UT), and Hunter (R-CA), on February 14, 2019. S. 94 was integrated into S. 47, but it was stripped out before passage of S. 47 after the House Ways & Means Committee claimed it violated Constitutional law. We continue to work to move the House version of the bill to avoid another technical problem with House Ways and Means. The bill facilitates the construction and expansion of public target ranges by authorizing use of 90 percent of Wildlife Restorations funds within hunter education (currently 75 percent) for acquiring land; limits the federal share of the enhanced hunter education funds to 90 percent (currently 75 percent); and allows the funds to be available for use for five fiscal years.

Administrative Actions

Repeal and Replace of WOTUS Moving Forward

On December 11, 2018 the Environmental Protection Agency and the Army Corps of Engineers released a revised definition of "waters of the United States" (WOTUS) of which outlines a proposal to redefine the scope of federal authority under the Clean Water Act. The proposed rule was officially published in the Federal Register on February 14th and will be open for a 60-day comment period. Unless extended, the public comment period will close on April 15, 2019.

AFWA, along with the Association of Clean Water Administrators (ACWA), Environmental Council of the States (ECOS) and Association of State Wetlands Managers (ASWM) submitted a formal comment requesting that the EPA and ACOE extend the 60-day comment period on the proposed rulemaking by an additional 60 days to ensure that state agencies have adequate time to conduct a thorough review and analysis of the proposal and compile comments.

The agencies' proposal is the second step in a two-step process to repeal and replace the definition of WOTUS consistent with the February 2017 Presidential Executive Order entitled "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The proposed definition seeks to replace the provisions and guidelines in the 2015 Rule and the pre-2015 regulations.