



ASSOCIATION of
FISH & WILDLIFE
AGENCIES

LEGISLATIVE AND ADMINISTRATIVE SUMMARY
110th VIRTUAL ANNUAL MEETING
September 9-11; 14-15, 2020

LEGISLATIVE UPDATES

Search for Senate RAWA Lead Continues

Coalition members of the *Recovering America's Wildlife Act* continue to work strategically and systematically with coalition partners and Senate offices to secure a lead sponsor for the Senate companion bill to [H.R. 3742/H.R. 2](#). A nice bipartisan suite of co-sponsors are waiting in the wings, but finding a republican to lead the effort will likely come down to strategically navigating how to pay for the bill.

Senators Try Moving the Bear Protection Act

In recent weeks, a small group of Senators have tried bypassing regular order and expediting for a Senate floor vote the *Bear Protection Act* ([S. 3196](#)). This is the Senate companion bill to [H.R. 2264](#) that the Association testified in opposition to in a subcommittee hearing held by the House Committee on Natural Resources (CNR). The Association and many state fish and wildlife agencies have expressed concerns about this bill's preemption of states' authorities to set harvest regulations for a non-migratory, resident big game species and the imposition of unwarranted and unnecessary federal restrictions on legal hunter harvest activities allowed under states' laws. The Association has been on record opposing the bill since first introduced in 1998.

ACE Act Changes Needed in Order to Pass the House

A coalition of diverse groups have continued rallying behind passage of the *America's Conservation Enhancement Act* (ACE Act, [H.R. 925](#)), which will undergo amendment before being brought to the House floor for a vote in mid-September. It is our understanding that staff of the CNR have reached an agreement on amendment changes with the staff of the Senate Committee on Environment and Public Works. Further, there are additional technical questions that must be addressed by the House parliamentarian before the House will move the amended bill to a floor vote.

Coalition members have not seen the final amended bill text, and while we are tentatively supportive of the suggested changes verbalized to date, our full support will depend upon review of the final text. While this bipartisan, bicameral agreement is helpful and will enable the legislation to pass the House, it will have to be sent back to the Senate for passage a second time, and there are no guarantees the bill will easily pass by unanimous consent again or that the Senate will have floor time available for such action.

Continuing Resolution Expected for FY21 Appropriations

The House passed the vast majority of their FY21 appropriations bills this year while the Senate had an impasse over policy riders, preventing any from moving out of committee. Because the federal fiscal year ends September 30, Congress will have to pass a continuing resolution (CR) before this date to keep the federal government open and running past that date. Many expect the CR to run through early to mid-December, giving Congress time to pass another CR or enact omnibus appropriations before the 116th Congress ends on December 31, 2020.

ADMINISTRATIVE UPDATES

FWS Proposes Definition of Habitat

The US Fish and Wildlife Service (USFWS) has [proposed a rule](#) to define “habitat” for regulations implementing section 4 of the Endangered Species Act (ESA). This proposed rule is a direct result of the SCOTUS ruling in the dusky gopher frog case, which directed the development of a definition for habitat. The Association held multiple calls with state agency members of AFWA’s Legal and Threatened and Endangered Species Policy Committees with consensus formed that neither of the two definitions offered by USFWS adequately encompass habitat, most notably in the lack of consideration for suitability based on future management actions. State fish and wildlife agencies are encouraged to submit comments highlighting their concerns with the proposed definitions, requesting clarity, and offering suggested components for inclusion in the definition. Committee members requested the Association likewise submit public comments, encouraging consideration of key elements and reiterating the major concerns among state agencies.

Final 2020-21 Frameworks for Migratory Bird Hunting Regulations Published

On August 21, USFWS published the Final 2020-21 [Frameworks for Migratory Bird Hunting Regulations](#) prescribing season dates, limits, and other options for states’ 2020-21 hunting seasons. The final rule does not contain any substantive changes from the proposal and went into effect as of the date of publication. The Association distributed the rule to relevant state agencies’ staff, but please be aware of its availability.

Notice of Intent to File Petition to List American Bumble Bee Under ESA

On August 17, state agencies received a notice of intent to file a petition to list the American bumble bee under the ESA and designate critical habitat for the species. The previous petition was denied without formal review due to lack of notice or consultation with state agencies per regulation requirements, which this Notice of Intent apparently seeks to accomplish. A formal petition is expected to be filed no sooner than 30 days after receipt of the notification.

Secretary Bernhardt Announces Hunting and Fishing Expansion Finalized

On August 18, Department of the Interior (DOI) Secretary Bernhardt [announced the final rule](#) for 2020-2021 Station Specific Hunting and Sport Fishing Regulations will adhere to the proposed rule, opening more than 2.3 million acres to hunters and anglers across the National Wildlife Refuge System and the National Fish Hatchery System. This historic expansion is a massive achievement in our continuing pursuit of increased access, as noted in our comment letter supporting the proposed rule.

Secretarial Order Formulates Taskforce for GAOA Implementation

On August 11, DOI Secretary Bernhardt issued [Secretarial Order 3383](#), establishing the *Great American Outdoors Act* (GAOA) Coordination and Implementation Task Force (TF) to implement the Interior’s portion of GAOA. The TF is chaired by Margaret Everson, who is currently exercising the delegable authority of the director of the National Park Service. The Secretary has requested the American Wildlife Conservation Partners (AWCP) submit priority recommendations for implementation of the GAOA. As a number of state agencies are responsible for forest legacy and state parks programs, the Association is standing up a working group to formulate and submit our own recommendations on behalf of the states in addition to the AWCP effort. If interested, please designate a member of your agency to participate in this working group, and send recommendations to AFWA’s Government Affairs Director, Jen Mock Schaeffer at jenmock@fishwildlife.org

Responsible Recreation Signage Coming to States

The Association has [partnered with conservation leaders](#), including the National Wild Turkey Federation, Theodore Roosevelt Conservation Partnership, Congressional Sportsmen’s Foundation, Ducks Unlimited, Trout Unlimited, and Pheasants Forever to spearhead #ResponsibleRecreation, a media campaign encouraging Americans to enjoy outdoor recreation while adhering to proper COVID-19 safety protocols. In an effort to spread this message directly to constituents utilizing state lands and waters, the Association has created a physical sign for states to post as they see fit. The Association will be providing them to every state at no cost to the agency, with Spanish signs to be included as well and more available upon request.

Conservation Reserve Program Soil Health and Income Protection Pilot Signup Extension

The Conservation Reserve Program (CRP) Soil Health and Income Protection Pilot (SHIPP) signup deadline was [extended](#) from August 21, 2020 to November 20th, 2020. The SHIPP, which is capped at 50,000 acres, allows landowners in prairie pothole region states to enter into three- to five-year contracts, which provide them rental payments for less profitable land on which they plant perennial cover crops. Landowners enrolling in FY21 will begin their contracts on October 1, 2021.

CRP Emergency Haying and Grazing

USDA FSA has released new guidance for permitting emergency haying and grazing. Following changes to the 2018 Farm Bill, FSA has opened emergency haying and grazing on all CRP practices outside of the primary nesting season and has implemented automatic eligibility triggers using the U.S Drought Monitor. FSA went one step further and changed the permitted haying and grazing intensity limits. Previously, during D2 droughts, producers had to leave 25% of contract acreage ungrazed, and 50% unhayed. Now, FSA allows 100% haying and grazing until the drought becomes D3, at which point the haying intensity limit is lowered to 50%.

Final Rule for Highly Erodible Land and Wetlands

On August 28th, USDA published its [final rule](#) for highly erodible land and wetland determinations. Producers are ineligible for many USDA program benefits if they farm highly erodible land without a conservation system in place, or if they farm a converted wetland. The final rule solidifies changes made in the interim rule, which themselves were codifications of technical portions of the existing agency policy that had not undergone public review and comment. Specifically, the interim rule set a fixed, 30-year precipitation data set (1971 through 2000) for making determinations representative of “normal circumstances,” clarified that wetland determinations can be made on a field or sub-field basis, and identified criteria for the sufficiency of wetland determination maps. The final rule made minor changes for clarity and added the 2018 Farm Bill requirement that USDA will attempt to include producers whose land is part of an on-site investigation conducted prior to a wetland violation technical determination.

CRP Enrollments and Acreage Cap

The Association remains concerned over the gap between actual CRP enrollments and the acreage cap. General Signup 54 acceptances were announced in March, with FSA accepting 3,418,597 acres, or 89%, of the 3,839,488 acres offered. Within this total, FSA accepted 487,573 acres, or 95%, of the 512,958 acres that were offered under State Acres for Wildlife Enhancement (SAFE) Projects. In July, FSA accepted 1,277,078 acres under its Grasslands Signup.

Before General Signup 54 and the Grasslands Signup 202 acres enter the program on October 1st, 5,355,686 acres will expire out of the CRP. This represents a net loss of 660,011 acres, all while the acreage cap increase by a half million to 24.5 million acres. Not counting the ongoing or recently closed Continuous, SHIPP, and CLEAR30 signups, CRP will have 21,285,140 enrolled acres, 3,214,860 acres under the cap.

NRCS Wetland Reserve Easements Restoration Backlog Strategy

NRCS recently outlined its [strategy and timeline](#) to eliminate wetland easement restoration backlog within two years. NRCS reports that there are 875 unrestored WRE and WRP easements in 43 States totaling just over 235,000 acres. Of the unrestored easements, 208 on 105,326 acres, are identified as “backlog” because more than three (3) years has passed since the easement was closed. If no additional WRE easement are restored during fiscal year 2020, 93 additional easements containing 21,652 acres will be added to the backlog list, potentially increasing the totals to 301 easements and 126,978 acres.

Adjusted Gross Income Final Rule

On August 24th, USDA published its [final rule for Payment Limitation and Payment Eligibility](#), incorporating changes from the 2018 Farm Bill that allows USDA to waive the average adjusted gross income (AGI) limitation for participation in conservation programs on environmentally sensitive lands. The rule defines “environmentally sensitive land of special significance” as “land offered for enrollment or adjacent to the land offered for enrollment that contains, or through enrollment will address, critical resources including, but not

limited to: (1) Habitat for threatened, endangered, or at-risk species; (2) Historical or cultural resources; (3) Native grasslands; (4) Unique wetlands; (5) Rare, unique, or related soils; and (6) Critical groundwater recharge areas.” The rule also specifies how a request for a waiver must be submitted and what it must include.

NRCS Chief Lohr Resigns

On August 14th, [Chief Matt Lohr resigned](#) from his post to return to managing his farm in Virginia. Associate Chief for Conservation Kevin Norton has assumed the role of Acting Chief. As Associate Chief, Acting Chief Norton's responsibilities included oversight of the agency's programs, technology and administrative operations, along with national direction and oversight for the agency's financial and technical assistance programs. He also served as agency detail to Congress for the 2018 and 2014 Farm Bills. Prior to joining NRCS HQ, Norton served as NRCS State Conservationist in Louisiana.