

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

October 5, 2015

To: All Natural Resources Committee Members

From: Majority Committee Staff – Spencer Kimball x 6-7736
Subcommittee Federal Lands

Markup: Markup on H.R. 2406 (Rep. Rob Wittman), To protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes.
October 7 and 8, 2015

H.R. 2406, *Sportsmen's Heritage and Recreational Enhancement (SHARE) Act of 2015*

Bill Summary

H.R. 2406, the *Sportsmen's Heritage and Recreational Enhancement Act of 2015 (SHARE Act)*, introduced earlier this year by Rep. Robert Wittman (R-VA) is comprised of thirteen provisions that will increase opportunities for hunters, anglers, and recreational shooters; eliminate regulatory impediments and safeguard against new regulations that will impede outdoor sporting activities; and protect Second Amendment rights.

Similar packages were passed with bipartisan support in both the 112th and 113th Congresses. H.R. 3590, which was introduced in the 113th Congress by Rep. Robert Latta (R-OH) and included many of the same or similar provisions as the *SHARE Act*, passed the House on February 5, 2014 with a bipartisan vote of 268-154, but was not taken up in the Senate.

Co-Sponsors

Rep. Babin (R-TX-36), Rep. Benishek (R-MI-1), Rep. Carter (R-TX-31), Rep. Cole (R-OK-4), Rep. Collins (R-NY-27), Rep. DesJarlais (R-TN-4), Rep. Duncan (R-SC-3), Rep. Emmer (R-MN-6), Rep. Farenthold (R-TX-27), Rep. Gosar (R-AZ-4), Rep. Green (D-TX-29), Rep. Hice (R-GA-10), Rep. Huelskamp (R-KS-1), Rep. Huizenga (R-MI-2), Rep. Kline (R-MN-2), Rep. Latta (R-OH-5), Rep. Luetkemeyer (R-MO-3), Rep. McClintock (R-CA-4), Rep. Messer (R-IN-6), Rep. Miller (R-MI-10), Rep. Nugent (R-FL-11), Rep. Peterson (D-MN-7), Rep. Rigell (R-VA-2), Rep. Roe (R-TN-1), Rep. Mike Rogers (R-AL-3), Rep. Sessions (R-TX-32), Rep. Tipton (R-CO-3), Rep. Walberg (R-MI-7), Rep. Walz (D-MN-1), Rep. Westmoreland (R-GA-3).

Background

The *SHARE Act* aims to ensure that future generations will have ample access to federal lands to hunt, fish, and shoot. Reliable access not only sustains our nation's rich outdoor sporting tradition heritage, it significantly benefits the men and women that make up the industries that

support it. The bill also protects Second Amendment rights and the use of traditional ammunition and fishing tackle, prevents the implementation of onerous constraints on lawfully possessed ivory products, and eliminates red tape associated with the importation of hunting trophies.

Outdoor sporting activities, including hunting, fishing and recreational shooting, are deeply engrained in the fabric of America's culture and heritage. Values instilled by partaking in these activities are passed down from generation to generation. Hunting, fishing, and shooting are now growing in popularity. In 2011, over 37 million people over the age of 16 hunted or fished in the U.S.¹ Outdoor sporting activities are also a major economic driver, contributing over \$90 billion to the U.S. economy in 2011.²

Much of this activity occurs on America's federal lands. Unfortunately, federal agencies like the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) often prevent or impede access to federal lands for hunting, fishing, and recreational shooting that should otherwise be available for those activities. Since lack of access is one of the key reasons why sportsmen and women may stop participating in traditional outdoor sporting activities, ensuring that the public has reliable access to our nation's federal lands must remain a priority.

Major Provisions of H.R. 2406

Section 3 requires the Secretary of the Interior to submit **a report to Congress that assesses expected economic impacts from the Act within one year of passage**. This report must include a review of any expected increases in recreational hunting, fishing, recreational shooting, and conservation activities and an estimate of any jobs created to support these activities including estimated wages and federal revenue related to those jobs.

TITLE I--HUNTING, FISHING AND RECREATIONAL SHOOTING PROTECTION ACT

- Makes permanent the existing exemption from Environmental Protection Agency regulation under the Toxic Substances Control Act (TSCA) for lead ammunition, and adds lead sport fishing equipment to the list of exempted products under TSCA.
- Prevents the Departments of the Interior and Agriculture from regulating the use of ammunition and related components and fishing tackle based on lead content. This limitation does not apply to the U.S. Fish and Wildlife Service and the National Park Service, the existing prohibition of lead used in waterfowl hunting, and if such use is in compliance with State law.

TITLE II--TARGET PRACTICE AND MARKSMANSHIP TRAINING SUPPORT ACT

- Encourages federal land management agencies to cooperate with state and local governments to maintain recreational shooting ranges
- Extends and increases states' authority to allocate Pittman-Robertson Act funding for recreational shooting ranges on federal lands.

¹ [*America's Sporting Heritage: Fueling the American Economy*](#). Congressional Sportsmen's Foundation. 2013.

² *Id.*

- Enables states to allocate a greater proportion of federal funding to create and maintain recreational shooting ranges on federal and non-federal lands.
- Shields the United States from any civil action or claim for money damages caused by an activity occurring at a public target range that is funded by the federal government, except to the extent provided under the Federal Tort Claims Act.
- Urges the Chief of the USFS and the Director of the BLM to cooperate with state and local authorities and other entities to implement waste removal and other practices on federal lands used as a public target range to encourage continued use.

TITLE III--POLAR BEAR CONSERVATION AND FAIRNESS ACT

- Amends the Marine Mammal Protection Act of 1972 to enable the Secretary of the Interior to authorize import permits of 41 Polar Bears legally harvested from approved populations in Canada before the polar bear was listed as threatened under the Endangered Species Act (ESA) in 2008.
- This provision applies to any person who submits proof that the polar bear was legally harvested by the person before February 18, 1997 or has submitted, before May 15, 2008, proof that the polar bear was legally harvested by the person before May 15, 2008, from a polar bear population from which a sport-hunted trophy could be imported before that date in accordance with federal regulations.

TITLE IV--RECREATIONAL LANDS SELF-DEFENSE ACT

- Authorizes the lawful possession of firearms pursuant to state law on lands managed by the Army Corps of Engineers as part of a water resource development project, so long as the individual is not otherwise prohibited by law from possessing the firearm and the possession of the firearm is in compliance with the law of the State in which the water resources development project is located.

TITLE V--WILDLIFE AND HUNTING HERITAGE CONSERVATION COUNCIL ADVISORY COMMITTEE

- Amends the Fish and Wildlife Coordination Act to establish the Wildlife and Hunting Heritage Conservation Council Advisory Committee to advise the Secretaries of the Interior and of Agriculture on wildlife and habitat conservation, hunting, and recreational shooting.
- Stipulates the membership of the council, including discretionary and ex officio members, terms of members and Chairperson, pay for services and reimbursement for travel and lodging, frequency and nature of meetings, and provides for the establishment of subgroups.
- Eliminates the existing Wildlife and Hunting Heritage Conservation Council.
- Requires the submission of an annual report to the Secretaries, certain Congressional Committees that describes the activities during the preceding year.
- Exempts the Advisory Committee from the Federal Advisory Committee Act.

TITLE VI--RECREATIONAL FISHING AND HUNTING HERITAGE OPPORTUNITIES ACT

- Requires BLM and USFS lands to be open for recreational hunting fishing and shooting unless specifically closed.
- BLM and USFS retain authority to implement closures or restrictions on such land for purposes including resource conservation, public safety, energy or mineral production, energy generation or transmission infrastructure, water supply facilities, national security, protection of private property rights, or compliance with other law. National parks and wildlife refuges will remain exempt from this provision.
- Revises the U.S. Fish & Wildlife Service (FWS) Strategic Growth Policy to require the consideration of priority public uses such as hunting and recreational fishing when adding new lands to National Wildlife Refuge System.
- Provides for the use of volunteers from the hunting community to cull excess animals on Bureau of Land Management (BLM), U.S. Forest Service (USFS), FWS, and National Park Service (NPS) lands.
- Requires federal agencies to reports to Congress any closures of federal lands to hunting, fishing, or recreational shooting.

TITLE VII--FARMER AND HUNTER PROTECTION ACT

- Authorizes U.S. Department of Agriculture (USDA) state extension offices to determine “normal agricultural practices” in order to help remedy situations in which the FWS has interpreted the Migratory Bird Treaty Act to include hunting of migratory birds on rolled rice fields as illegal baiting.
- Aims to set criteria of what constitutes “normal agricultural practices” by having the FWS refer to local USDA extension offices for the determination.

TITLE VIII--TRANSPORTING BOWS ACROSS NATIONAL PARK SERVICE LANDS

- Authorizes bows and crossbows to be lawfully transported on NPS units, as long as they are not ready for immediate use and remain inside the vehicle during the time they are transported.
- Allows NPS to establish hunter access corridors with system units, in consultation with states, and retain authority to close corridors for reasons of public safety, administration, or compliance with applicable law.

TITLE IX--FEDERAL LAND TRANSACTION FACILITATION ACT REAUTHORIZATION (FLTFA)

- Reauthorizes FLTFA, which enables the BLM to sell federal land for ranching, community development, and other projects. The revenue allows federal agencies to acquire high-priority inholdings from willing sellers.

- Requires funds from the federal portion of the program to be used for acquisition of lands that will address deferred maintenance activities and enhance hunting, fishing, and recreational access.

TITLE X--AFRICAN ELEPHANT CONSERVATION AND LEGAL IVORY POSSESSION ACT

- Reauthorizes the African Elephant Conservation Act (AECA) through fiscal year 2019.
- Authorizes ivory to be imported or exported under the AECA and the ESA if the raw ivory or worked ivory is solely for a museum; it was lawfully importable into the United States on February 24, 2014, regardless of when it was acquired; or the worked ivory was previously lawfully possessed in the United States.
- Authorizes the possession, sale, delivery, receipt, shipment, or transportation of African elephant ivory that has been lawfully imported or crafted in the United States and the importation of a sport-hunted African elephant trophy if the country in which the elephant was taken had elephants that are listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) at the time the trophy was taken.

TITLE XI--RESPECT FOR TREATIES AND RIGHTS

- Prevents the bill from modifying of treaties and rights of federally recognized Indian tribes.

TITLE XII--INTEREST ON OBLIGATIONS HELD IN THE WILDLIFE RESTORATION FUND

- Extends the date after which interest earned on obligations held in the wildlife restoration fund, which was established by the Pittman-Robertson Wildlife Restoration Act, may be available for apportionment through 2026.

TITLE XIII--PERMITS FOR FILM CREWS OF FIVE PEOPLE OR LESS

- Directs the Departments of the Interior and Agriculture to issue permits and assess a \$200 fee on an annual-basis for commercial filming on federal lands and waterways for crews of five people or fewer
- Allows the Secretaries to deny access for commercial filming for crews of five or less in certain scenarios.

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.

Support for the Legislation

The following organizations support H.R. 2406:

American Sportfishing Association, Archery Trade Association, Association of Fish and Wildlife Agencies, B.A.S.S., Bear Trust International, Berkley Conservation Institute, Boone and Crockett Club, Camp Fire Club of America, Catch-A-Dream Foundation, Center for Coastal Conservation, Coastal Conservation Association, Congressional Sportsmen's Foundation, Conservation Force, Council to Advance Hunting and the Shooting Sports, Dallas Safari Club, Delta Waterfowl Foundation, Ducks Unlimited, Houston Safari Club, International Game Fish Association, Izaak Walton League of America, Masters of Foxhounds Association, Mule Deer Foundation, National Marine Manufacturers Association, National Rifle Association, National Shooting Sports Foundation, National Trappers Association, National Wild Turkey Federation, North American Bear Foundation, Orion – The Hunter's Institute, Pheasants Forever, Pope and Young Club, Quail Forever, Quality Deer Management Association, Rocky Mountain Elk Foundation, Ruffed Grouse Society, Safari Club International, Shikar Safari Club International, Shimano American Corporation, Sportsmen's Alliance, Texas Wildlife Association, Theodore Roosevelt Conservation Partnership, Tread Lightly!, Trout Unlimited, Wild Sheep Foundation, Wildlife Forever, Wildlife Management Institute, Wildlife Mississippi.

Administration Position

Neither USFS nor the Department of Interior have taken a formal position on H.R. 2406. At a legislative hearing in May to address a discussion draft of the bill, USFS and BLM expressed general support for many of the goals of the bill, but also expressed a number of serious concerns with the language as written.

Anticipated Amendments

Rep. Rob Wittman (R-VA-01) will offer an Amendment in the Nature of a Substitute (ANS) that updates language in Title IX so that federal agencies have the option to use funds in the federal land disposal account for deferred maintenance activities, in addition to the purchase of land. It also allows federal agencies to use funds in that account to acquire lands that may help address deferred maintenance activities or deferred costs.

The ANS also amends Title VIII, including refining definitions of terms, changing the title, clarifying language regarding the transportation of bows through the National Park System, and clarifying and expanding language regarding the authority of NPS to establish hunter access corridors through National Park System units that are used to access adjacent federal land that is open to hunting.

Effect on Current Law

H.R. 2406 affects current law in the following ways:

TITLE I--HUNTING, FISHING AND RECREATIONAL SHOOTING PROTECTION ACT

- Amends Section 3(2)(B) of the Toxic Substances Control Act (15 U.S.C. 2602(2)(B)) to add any lead components including shot, bullets and other projectiles, propellants, and primers and sport fishing equipment to exempted products under TSCA.

TITLE II--TARGET PRACTICE AND MARKSMANSHIP TRAINING SUPPORT ACT

- Amends Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669) to allocate additional resources from the fund for recreational shooting ranges on federal lands and so states to allocate a greater proportion of federal funding to create and maintain recreational shooting ranges on federal and non-federal lands.

TITLE III--POLAR BEAR CONSERVATION AND FAIRNESS ACT

- Amends Section 104(c)(5)(D) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(5)(D)) to enable the Secretary of the Interior to authorize import permits of 41 Polar Bears legally harvested from approved populations in Canada before the polar bear was listed as threatened under the ESA in 2008, with limitations.

TITLE V--WILDLIFE AND HUNTING HERITAGE CONSERVATION COUNCIL ADVISORY COMMITTEE

- Amends the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) to abolish the Wildlife and Hunting Heritage Conservation Council and establish the Wildlife and Hunting Heritage Conservation Council Advisory Committee, and add details about the Advisory Committee.

TITLE VI--RECREATIONAL FISHING AND HUNTING HERITAGE OPPORTUNITIES ACT

- Amends Section 4(a)(3) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)(3)) so that FWS must consider priority public uses such as hunting and recreational fishing when adding new lands to National Wildlife Refuge System.

TITLE VII--FARMER AND HUNTER PROTECTION ACT

- Amends Section 3 of the Migratory Bird Treaty Act (16 U.S.C. 704) to authorize U.S. Department of Agriculture (USDA) state extension offices to determine “normal agricultural practices” and sets criteria of what constitutes “normal agricultural practices” by having the FWS refer to local USDA extension offices for the determination.

***TITLE IX--FEDERAL LAND TRANSACTION FACILITATION ACT
REAUTHORIZATION (FLTFA)***

- Reauthorizes and amends the Federal Land Transaction Facilitation Act (43 U.S.C. 2302) so that funds from the federal portion of the program may be used for acquisition of lands that will address deferred maintenance activities and enhance of hunting, fishing, and recreational access.

TITLE X--AFRICAN ELEPHANT CONSERVATION AND LEGAL IVORY POSSESSION ACT

- Reauthorizes the African Elephant Conservation Act (16 U.S.C. 4201 et seq.) through fiscal year 2019.
- Amends the African Elephant Conservation Act (16 U.S.C. 4201 et seq.) to authorize ivory to be imported or exported under the AECA and the ESA if the raw ivory or worked ivory is solely for a museum; it was lawfully importable into the United States on February 24, 2014, regardless of when it was acquired; or the worked ivory was previously lawfully possessed in the United States.
- Amends the African Elephant Conservation Act (16 U.S.C. 4201 et seq.) to authorize the possession, sale, delivery, receipt, shipment, or transportation of African elephant ivory that has been lawfully imported or crafted in the United States and the importation of a sport-hunted African elephant trophy if the country in which the elephant was taken had elephants that are listed on Appendix II of CITES at the time the trophy was taken.

TITLE XII--INTEREST ON OBLIGATIONS HELD IN THE WILDLIFE RESTORATION FUND

- Amends Section 3(b)(2)(C) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b(b)(2)(C)) so that the interest on obligations held in the fund shall become available for apportionment at the beginning of fiscal year 2026.

TITLE XIII--PERMITS FOR FILM CREWS OF FIVE PEOPLE OR LESS

- Amends Section 100905 of title 54, U.S.C., to direct the Departments of the Interior and Agriculture to issue permits and assess a \$200 fee on an annual-basis for commercial filming on federal lands and waterways for crews of five people or fewer and allows the Secretaries to deny access for commercial filming for crews of five or less in certain scenarios.

Current Law Proposed as Amended by H.R. 2406 as introduced
[Supplement to document prepared by Legislative Counsel; if conflict, this document controls]

[new text highlighted in yellow; text to be deleted in brackets]

Section 8 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g)

[(b) Each State] **(b) EXPENDITURES FOR MANAGEMENT OF WILDLIFE AREAS AND RESOURCES.—**

(1) In General.—Except as provided in paragraph (2), each State may use the funds apportioned to it under section 4(c) to pay up to 75 per centum of the costs of a hunter safety program and the [construction, operation,] **operation** and maintenance of public target ranges, as part of such program. [The non-Federal share]

(2) Exceptions.—Notwithstanding the limitation described in paragraph (1), a State may pay up to 90 percent of the cost of acquiring land for, expanding, or constructing a public target range.

(3) Non-Federal Share.—The non-Federal share of such costs may be derived from license fees paid by hunters but not from other Federal grant programs. [The Secretary]

(4) Regulations.—The Secretary shall issue not later than the 120th day after the effective date of this subsection such regulations as he deems advisable relative to the criteria for the establishment of hunter safety programs and public target ranges under this subsection.

Section 3(b) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b)

(b) Investment of unexpended amounts

(1) The Secretary of the Treasury shall invest in interest-bearing obligations of the United States such portion of the fund as is not, in his judgment, required for meeting a current year's withdrawals. For purposes of such investment, the Secretary of the Treasury may-

(A) acquire obligations at the issue price and purchase outstanding obligations at the market price; and

(B) sell obligations held in the fund at the market price.

(2) The interest on obligations held in the fund-

(A) shall be credited to the fund;

(B) constitute the sums available for allocation by the Secretary under [section 4407 of this title](#); and

(C) shall become available for apportionment under this chapter at the beginning of fiscal year [2016] **2026**.

Section 4(a)(3) of National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd)

[(C)] (D) compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; and

[(D)] (E) when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.

Section 205 of the Federal Land Transaction Facilitation Act (43 U.S.C. 2304)

(a) In General.--The Secretary shall establish a program, using funds made available under [section 206, to complete appraisals and satisfy other legal requirements for the sale or exchange of public land identified for disposal under approved land use plans (as in effect on July 25, 2000) under section 1712 of this title.] section 206--

(1) to complete appraisals and satisfy other legal requirements for the sale or exchange of public land identified for disposal under approved land use plans under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712);

(2) not later than 180 days after the date of enactment of the Federal Land Transaction Facilitation Act Reauthorization of 2015, to establish and make available to the public, on the website of the Department of the Interior, a database containing a comprehensive list of all the land referred to in paragraph (1); and

(3) to maintain the database referred to in paragraph (2).

* * * * *

(d) Termination of authority

The authority provided under this section shall terminate [11] 22 years after July 25, 2000.

Section 206(c)(2) of the Federal Land Transaction Facilitation Act (43 USC 2305(c)(2))

(2) Fund allocation

(A) **Deferred Maintenance Activities.**—Except as authorized under subparagraph (D), funds shall be used to purchase lands or interests in lands therein for the performance of deferred maintenance on administrative sites or other deferred maintenance activities.

[(A)] (B) Purchase of land

Except as authorized under subparagraph [(C)] (D), funds shall be used to purchase lands or interests therein that are otherwise authorized by law to be acquired, and that are-

(i) inholdings; [and]

(ii) adjacent to federally designated areas and contain exceptional resources[.] ;and

(iii) opportunities for hunting, recreational fishing, recreational shooting, and other recreational activities.

[(B)] (C) Inholdings

Not less than 80 percent of the funds allocated for the purchase of land within each State shall be used to acquire inholdings identified under section 2303 of this title.

[(C)] **(D) Administrative and other expenses**

An amount not to exceed 20 percent of the funds deposited in the Federal Land Disposal Account may be used by the Secretary for administrative and other expenses necessary to carry out the land disposal program under section 2304 of this title.

[(D)] **(E) Same State purchases**

Of the amounts not used under subparagraph [(C)] **(D)**, not less than 80 percent shall be expended within the State in which the funds were generated. Any remaining funds may be expended in any other State.

(F) Any funds made available under subparagraph **(E)** that are not obligated or expended by the end of the fourth full fiscal year after the date of the sale or exchange of land that generated the funds may be expended in any State.

(3) Priority

The Secretary and the Secretary of Agriculture shall develop a procedure for prioritizing the acquisition of inholdings and non-Federal lands with exceptional resources as provided in paragraph (2). Such procedure shall consider-

(A) the date the inholding was established (as provided in section 2303(c) of this title);

(B) the extent to which the acquisition of the land or interest therein will increase the public availability of resources for, and facilitate public access to, hunting, fishing, and other recreational activities.

[(B)] **(C)** the extent to which acquisition of the land or interest therein will facilitate management efficiency; and

[(C)] **(D)** such other criteria as the Secretary and the Secretary of Agriculture deem appropriate.

Section 100905 of Title 54, United States Code

Section 1. Commercial Filming.

(a) Commercial Filming Fee.—**Except as provided in paragraph (3), the Secretary** [The Secretary] shall require a permit and shall establish a reasonable fee for commercial filming activities or similar projects in a System unit. The fee shall provide a fair return to the United States and shall be based on the following criteria:

(A) The number of days the filming activity or similar project takes place in the System unit.

(B) The size of the film crew present in the System unit.

(C) The amount and type of equipment present in the System unit.