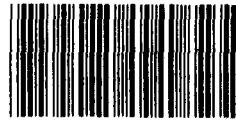


April 1991

WILDLIFE PROTECTION

Enforcement of Federal Laws Could Be Strengthened



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**United States
General Accounting Office
Washington, D.C. 20548**

**Resources, Community, and
Economic Development Division**

B-235010

April 26, 1991

The Honorable Gerry Studds
Chairman, Subcommittee on Fisheries
and Wildlife Conservation and the
Environment
Committee on Merchant Marine and Fisheries
House of Representatives

The Honorable Steve Gunderson
House of Representatives

This report responds to your request to review the adequacy of federal laws and treaties for protecting fish and wildlife and the extent to which the Department of the Interior's Fish and Wildlife Service enforces those laws and treaties. The report discusses law enforcement activities conducted by special agents in six of the Fish and Wildlife Service's regions.

Unless you publicly announce its contents earlier, we plan no further distribution of this report for 30 days from the date of this letter. At that time we will send copies to the Secretary of the Interior; the Director, Office of Management and Budget; and various congressional committees. Copies will also be made available to other interested parties upon request.

This work was performed under the direction of James Duffus III, Director, Natural Resources Management Issues, who can be reached at (202) 275-7756. Other major contributors are listed in appendix IV.

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

Although the full extent to which fish and wildlife are illegally taken is not known, some estimates of the annual worldwide illegal trade in wildlife and their parts exceed a billion dollars. In response to a congressional request, GAO determined whether (1) federal statutes and international treaties provide sufficient authority to protect wildlife, particularly migratory waterfowl, and (2) the Department of the Interior's Fish and Wildlife Service (FWS) is adequately enforcing these statutes and treaties.

Background

Enforcing wildlife protection laws is one important means by which FWS protects and conserves fish and wildlife and their habitats. FWS has broad law enforcement authority under 11 laws and 5 international treaties. FWS' law enforcement staff, consisting of 200 special agents and 65 wildlife inspectors, are decentralized throughout the United States; they work cooperatively with national wildlife refuge officers, state conservation officers, and others in investigating suspected crimes against wildlife.

Some common infractions of fish and wildlife laws include baiting (using feed to lure wildlife so that they can be captured or killed) and killing and taking over the authorized limits. Investigations of crimes against wildlife may be overt or undercover, depending on the nature and magnitude of the suspected violation. FWS' law enforcement activities most often focus on four statutes—(1) the Lacey Act, which is used to control smuggling and trade in illegally taken wildlife and fish; (2) the Migratory Bird Treaty Act; (3) the Eagle Protection Act; and (4) the Endangered Species Act.

Results in Brief

Federal statutes together with international treaties generally provide FWS with adequate authority to protect wildlife. A legal limitation identified by FWS special agents, however, is that the Migratory Bird Treaty Act does not confer warrantless search and seizure authority similar to other laws that protect wildlife. Many hunters are unaware of this limitation and voluntarily consent to searches. As hunters become more aware of the limitation and, thus, less likely to consent to searches, FWS law enforcement officials are concerned that the limitation may become a bigger problem than it is now.

While FWS investigates thousands of suspected violations each year and maintains a conviction rate averaging over 90 percent for cases prepared for prosecution, the agency cannot investigate many more suspected violations because the number of its agents is limited. For the past several years, this number has not met FWS' estimate of the number needed to minimally deter crimes against wildlife. Moreover, many special agents are deskbound for months at a time due to insufficient operating funds. As a result, FWS' regions have been forced to selectively enforce wildlife protection legislation. In the yearly competition within FWS for staffing and funding, the Division of Law Enforcement has been hamstrung because information that could help justify needed resources—such as information on the effectiveness of FWS' law enforcement efforts and the number of suspected crimes that are not investigated due to insufficient staff and/or funds—is not readily available to FWS' management.

Increasingly, FWS has been unable to respond to many state requests to investigate suspected crimes, which has strained relationships between FWS and several states.

Principal Findings

Laws and Treaties Generally Provide Sufficient Enforcement Authority

According to FWS special agents GAO surveyed, existing federal statutes and international treaties generally provide adequate authority to protect wildlife. However, in addition to being concerned about the lack of warrantless search and seizure authority under the Migratory Bird Treaty Act, agents were concerned about problems in enforcing the Endangered Species Act. Although species similar in appearance to endangered or threatened species may be listed under the Endangered Species Act, when doing so would provide additional protection for the endangered or threatened species, this provision has rarely been used. Thus, agents sometimes face a special enforcement problem when suspected violators claim that captured wildlife are similarly appearing but unprotected hybrid species. In such instances, proving a violation might require that an animal be destroyed in order to be examined—an action agents may be understandably reluctant to perform.

Limited Staff and Operating Funds Affect FWS' Law Enforcement

FWS' Division of Law Enforcement has not fared well in the allocation of substantial increases in FWS' overall funding and staffing. In 1976, FWS estimated that it needed 240 special agents to fulfill its law enforcement responsibilities. Although FWS' total staffing increased from 4,138 in fiscal year 1977 to 7,367 in fiscal year 1990, FWS directed the increases to activities other than law enforcement. The number of special agents actually declined from 220 to 200. FWS officials GAO interviewed identified specific needs for 16 additional special agents.

If the Division of Law Enforcement is to fare better in the yearly competition within FWS for staffing and funding, it will have to develop better documentation on (1) suspected crimes that are not investigated and (2) the overall effectiveness of enforcement efforts. FWS has been trying to develop more reliable direct measures of law enforcement's effectiveness for several years but has been unable to do so.

Agents in the field are often precluded from performing their work—which involves covering vast geographic areas that include hundreds of thousands of licensed hunters—because of insufficient operating funds. Funds available to cover operating expenses decreased from \$24,100 per agent in fiscal year 1984 to \$11,800 in fiscal year 1990. The Division of Law Enforcement estimates that if such funding trends continue, agents will be virtually deskbound—significantly hampering their ability to investigate suspected crimes.

Staffing and funding shortfalls have necessitated that FWS' regions selectively enforce wildlife protection legislation. In one instance described by a regional official, the region expended so many resources on a highly successful 2-year task force investigation of alleged illegal harvests of migratory waterfowl in Louisiana that other enforcement efforts in the region were crippled.

FWS Is Unable to Respond to Many State Requests for Assistance

To conduct large-scale investigations of illegal commercial operations involving the taking of and trading in wildlife, FWS often relies on assistance from state agencies that enforce wildlife protection laws, whose agents outnumber FWS agents by 37 to 1. FWS tries to reciprocate by participating in joint investigations at the request of the state agencies. While this mutually beneficial relationship appears to have worked well in the past, reductions in staffing and operating funds have caused FWS to be unable to respond to many state requests for assistance.

According to a June 1990 report by FWS' Law Enforcement Advisory Commission, inadequate federal and state cooperation could have serious adverse short- and long-term consequences on FWS' effectiveness throughout the nation. For example, state law enforcement directors in 10 northeastern states have advised FWS that they believe the agency has "turned its back" on investigations of major violations involving the interstate transportation of illegally taken wildlife and plants.

Matter for Congressional Consideration

The Congress may wish to consider amending the Migratory Bird Treaty Act to provide warrantless search and seizure authority. As FWS suggested in its comments on a draft of this report, the Congress may wish to use language similar to that in the Lacey Act Amendments of 1981.

Recommendations

To provide current and reliable information with which to better justify the resources FWS needs to carry out its law enforcement efforts, GAO recommends that the Secretary of the Interior direct the Director, FWS, to require its special agents to record (1) all instances of suspected violations coming to their attention, including all state requests for assistance; (2) the agency's handling of the suspected violations and state requests; and (3) the outcome of the investigations. FWS should then use these records to periodically assess the extent of the suspected crimes against wildlife, provide realistic estimates of staff and funds needed to adequately address the problem, and include the estimates in annual budget requests.

Agency Comments

FWS agrees that it needs to improve its documentation of crimes against wildlife and of state requests for assistance. The agency is currently developing the capability to implement a reporting system that will enable it to improve its documentation. However, FWS does not believe that better documentation of reported violations will provide meaningful data to support increased funding or staffing for law enforcement. GAO believes that the only way FWS' Division of Law Enforcement will fare better in annual allocations of scarce resources is to improve documentation and justify needed resources, which appear to be substantial because many suspected crimes are not investigated.

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Abbreviations

CITES	Convention on Trade in Endangered Species of Wild Fauna and Flora
FWS	Fish and Wildlife Service
GAO	General Accounting Office

Introduction

For a variety of reasons, wildlife populations in this country have been diminishing in recent years. North America's duck population, for example, has decreased about 60 percent in the last 5 decades because of the loss of habitat, drought, predation, the use of pesticides, and illegal harvesting. Although not all of these causes of the decrease are controllable, illegal harvesting of migratory waterfowl and large-scale illegal trading in wildlife and wildlife parts, which exceeds a billion dollars annually, can be reduced through the effective enforcement of relevant laws and treaties.

The overall mission of the Department of the Interior's Fish and Wildlife Service (FWS) is to conserve and enhance fish and wildlife populations and their habitats for the continuing benefit of the American people. Enforcing wildlife protection laws is an important and necessary means by which FWS carries out its mission. Some 11 laws and 5 international treaties provide, at the federal level, formal ways to protect and manage wildlife resources. (See app. I for a brief description of each law and treaty.) In addition, FWS law enforcement agents work cooperatively with state law enforcement agents, who are charged with enforcing fish and wildlife laws at the state level.

Organizational Structure for and Funding of FWS' Law Enforcement Activities

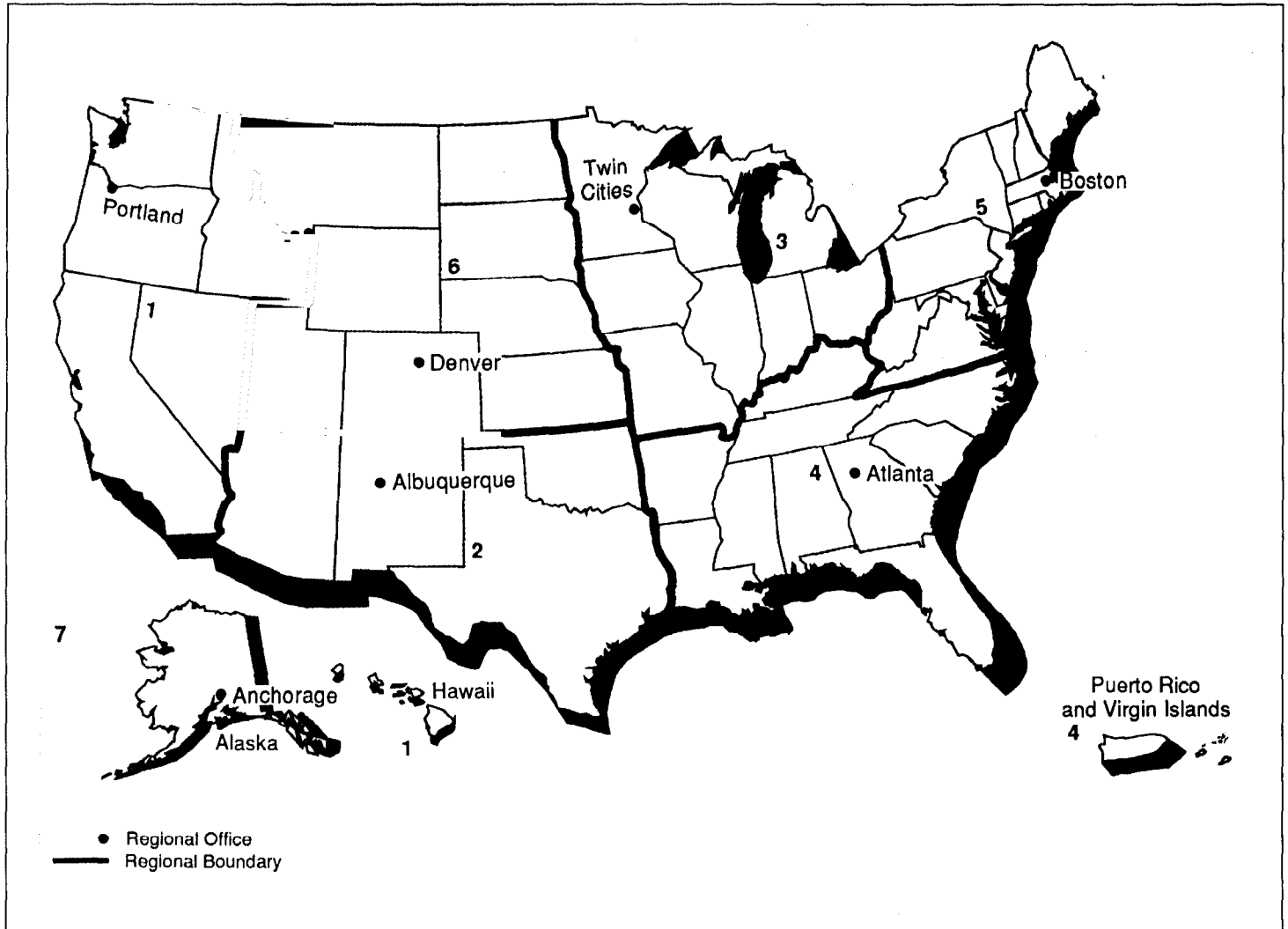
In addition to managing a 90-million-acre National Wildlife Refuge System and a National Fish Hatchery System, FWS has been charged with managing migratory birds' habitats, protecting endangered species, consulting on water resource development projects, and enforcing wildlife protection laws and treaties. To carry out its law enforcement responsibilities, FWS maintains a decentralized network of law enforcement agents throughout the United States.

FWS' Division of Law Enforcement, headquartered in Arlington, Virginia, oversees a force of about 200 special agents and 65 wildlife inspectors, who are charged with enforcing the provisions of national statutes and international treaties. Special agents are criminal investigators responsible for the protection of domestic and international fish, wildlife, and plant resources. They maintain liaison with all mutually interested federal, state, and local enforcement authorities and conduct investigations into violations of laws to protect fish and wildlife. Wildlife inspectors support and work closely with special agents in enforcing and administering laws governing the importation and exportation of fish and wildlife species, the animals' parts, and products made from the animals or their parts. Also, FWS' Division of Refuges oversees a force of about 750 refuge officers on the approximately 450 National Wildlife Refuges

throughout the United States. These officers are responsible for protecting fish, wildlife, and plant resources on the refuges, as well as visitors and FWS' property.

The Division of Law Enforcement provides overall direction and develops policy for the agency's seven law enforcement regions, coordinates interregional investigations, monitors investigations of national significance, conducts selected, sensitive investigations and all foreign investigations, and maintains liaison with other federal law enforcement agencies. The seven regional offices (shown in fig. 1.1) are each administered by a Regional Director with the help of an Assistant Regional Director for Law Enforcement. FWS special agents are located in field offices throughout each region, and wildlife inspectors are stationed at 10 designated ports of entry and many other locations where wildlife shipments occur.

Figure 1.1: Map of FWS' Law Enforcement Regions



Source: Prepared by GAO using original from FWS.

Funding for the Division of Law Enforcement's activities is derived from two primary sources—annual appropriations and user fees collected from wildlife importers and exporters. Amounts from these two primary sources and the net amount received by the Division of Law Enforcement for fiscal years 1985 through 1990 are shown in table 1.1.

Table 1.1: Appropriations for and User Fees Collected by FWS' Division of Law Enforcement, Fiscal Years 1985 Through 1990

	Dollars in millions					
	Funding by fiscal year					
	1985	1986	1987	1988	1989	1990
Appropriations	\$19.5	\$18.8	\$18.3	\$20.8	\$21.5	\$22.6
User fees	0	.6	.9	1.4	1.8	1.8 ^a
Net amount available ^b	17.1	18.2	18.8	22.1	23.3	24.4 ^a

^aEstimated.

^bThe net amount available may not equal totals of appropriations and user fees collected because of rounding and various adjustments by headquarters programming offices and by Interior's Denver Finance Center.

FWS' Law Enforcement Role

FWS special agents investigate cases involving (1) large-scale selling or commercialization of wildlife and wildlife parts; (2) crimes against threatened and endangered species¹; (3) illegal importation of wildlife for commercial purposes; and (4) illegal taking² of migratory birds, especially ducks and geese. Of the 11 federal statutes, 4 are particularly prominent: the Lacey Act, as amended (16 U.S.C. 3371-3378 and 18 U.S.C. 42); the Migratory Bird Treaty Act, as amended (16 U.S.C. 703-712); the Eagle Protection Act, as amended (16 U.S.C. 668-668c); and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543).

The first major wildlife protection law, the Lacey Act, which was passed in 1900, prohibits the importation, exportation, transportation, sale, receipt, acquisition, or purchase of fish, wildlife, or plants that are taken, possessed, transported, or sold in violation of any federal, state, tribal, or foreign law. Under the Migratory Bird Treaty Act, originally passed in 1918, it is unlawful to take, import, export, possess, buy, sell, purchase, or barter any migratory bird, its feathers, or other parts—except as specifically allowed by regulation. The Eagle Protection Act, passed in 1940, makes it illegal to import, export, or take bald or golden eagles, or to sell, purchase, or barter their parts, products made from their parts, or their eggs. Under the Endangered Species Act of 1973, it is prohibited to import, export, deliver, receive, carry, transport, ship, sell, offer to sell, or take threatened or endangered species. The act also makes it illegal to take any listed species of wildlife within the United

¹Endangered species are those in danger of extinction throughout all or a significant portion of their range. Threatened species are those likely to become endangered within the foreseeable future throughout all or a significant portion of their range.

²"Taking" can include such activities as pursuing, shooting, shooting at, poisoning, wounding, killing, capturing, trapping, collecting, molesting, and disturbing covered species.

States, or its territorial waters, or to remove listed plants from federal lands.

FWS' enforcement of the 11 statutes and 5 international treaties can result in criminal or civil prosecution. Violators may be subject to fines, imprisonment, and forfeiture of property. For example, penalties for misdemeanor violations of the Migratory Bird Treaty Act can be up to 6 months in prison and fines of up to \$5,000 for individuals and \$10,000 for organizations. Under the Lacey Act, penalties for misdemeanor violations can be up to 1 year in prison and fines of up to \$100,000 for individuals and \$200,000 for organizations. Felony violations under the Migratory Bird Treaty Act may result in fines of up to \$250,000 for individuals and \$500,000 for organizations and up to 2 years' imprisonment for those convicted. Felonies under the Lacey Act can carry sentences of up to 5-year prison terms and \$250,000 fines for individuals and \$500,000 fines for organizations. FWS refers cases for prosecution to local U.S. attorneys in the Department of Justice.

Cases opened annually by FWS special agents number in the thousands, and fines for illegal acts against wildlife have exceeded \$1 million in fiscal years 1984 through 1989. Table 1.2 shows, among other things, for fiscal years 1984 through 1989 (the latest year for which data have been accumulated), the number of cases opened and closed, the amount of fines assessed, and jail sentences imposed as a result of FWS' enforcement efforts.

Table 1.2: FWS Case Statistics, Fiscal Years 1984 Through 1989

Dollars in millions						
Fiscal year	Cases opened	Cases closed ^a	Criminal convictions	Conviction rate (percent)	Fines	Jail terms (years)
1984	11,319	13,238	7,858	96	\$1.1	94
1985	13,363	11,303	7,647	93	1.5	206
1986	12,626	11,999	9,621	95	1.6	178
1987	11,360	12,536	7,775	94	1.8	126
1988	14,472	10,668	9,029	92	1.7	153
1989	14,249	12,924	9,379	94	1.8	104
6-year total	75,389	72,808	51,305	94	\$9.5	861

^aThe number of cases closed in a given fiscal year may be greater or fewer than the number of cases opened during that year because cases are carried over from year to year until they are closed.

FWS special agents often rely on tips or leads from other law enforcement agencies, informants, and others to open investigations of suspected crimes against wildlife. The investigations may be overt or undercover, depending on the nature of the suspected violation and its magnitude. Overt investigations often include incidental smaller cases such as checking hunters for required hunting licenses. However, much of this work is performed by state enforcement agents, which frees FWS special agents to work on larger cases. Undercover investigations, or "stings," sometimes involving cooperation among several law enforcement agencies and FWS, are usually longer-term operations involving suspected large-scale illegal operations for commercial purposes.

Common infractions of laws protecting fish and wildlife include baiting (using corn or other feed to lure wildlife so that they can be captured or killed), taking wildlife before or after authorized shooting hours, taking fish or wildlife over authorized limits, failing to obtain licenses or permits, using toxic (lead) shot in areas where only nontoxic (steel) shot is allowed, having "unplugged" shotguns (with a capacity over the general limit of three shells), shooting out of season, and "double tripping" (taking the authorized limit on one trip and returning later the same day to take more wildlife).

Objectives, Scope, and Methodology

Because of reports of sizable illegal harvests of ducks in Louisiana, the Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, and Representative Steve Gunderson requested us to determine whether (1) federal wildlife statutes and treaties provide FWS sufficient authority to protect wildlife, particularly migratory waterfowl, and (2) FWS is adequately enforcing wildlife protection statutes and treaties.

As agreed with the requesters' offices, our review covered six of FWS' seven regions. It involved work at FWS' headquarters in Arlington, Virginia, and at regional offices in Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; and Denver, Colorado. We did not include region 7, with its office in Anchorage, Alaska, because of the unique characteristics involved in wildlife management and enforcement in that state.

Our review focused on the field investigations component of FWS' Division of Law Enforcement. This included a review of the activities of special agents, but not of wildlife inspectors, refuge officers, or a small number of special agents who are assigned full-time undercover duties

in the Branch of Special Operations in headquarters. From fiscal years 1984 to 1989, the vast majority of FWS' enforcement budget, about 70 percent, was allocated to field investigations.

To determine the sufficiency of FWS' authority to protect the nation's wildlife, we reviewed wildlife protection laws and treaties (and related documentation) enforced by FWS special agents, and we interviewed (1) regional officials and special agents, (2) U.S. attorneys and other Department of Justice officials familiar with prosecuting violators of these laws, (3) state wildlife enforcement staff who work with FWS agents on certain enforcement projects, and (4) headquarters officials in the Division of Law Enforcement. We also obtained views on the enforcement of wildlife protection laws from officials with wildlife conservation organizations, including the Wildlife Management Institute, the National Audubon Society, the World Wildlife Fund, and the National Fish and Wildlife Foundation.

To determine the adequacy of FWS' enforcement of wildlife protection laws and treaties, we reviewed documentation on law enforcement activities for fiscal years 1985 through 1989; reviewed and analyzed documentation on staffing trends for fiscal years 1977 through 1990; reviewed and analyzed the process FWS uses to prepare its annual budget, including requests, submissions to the Congress, appropriations, and allocations; and interviewed regional officials.

We also administered a telephone questionnaire to 50 randomly selected FWS special agents, working in 41 of the 50 states and in some locations outside the United States, to determine if they believe they (1) have sufficient authority to do their jobs and (2) are adequately enforcing wildlife protection laws. We selected the agents for interview from a June 1989 listing provided by FWS' Division of Law Enforcement showing all special agents who enforce federal laws and treaties for protecting wildlife. We adjusted the list to exclude agents who work in FWS' headquarters and the Alaska region. We further excluded all assistant and deputy regional directors for law enforcement and senior resident agents (supervisors). This process produced a universe of 137 FWS special agents who conduct field investigations in the six regions in our review. Of the 50 agents randomly selected for our sample, 1 was no longer employed by FWS. Therefore, we randomly selected a substitute for that agent.

Since we used a probability sample of special agents who conduct field investigations to develop our estimates, each estimate has a measurable

precision, or sampling error, which may be expressed as a plus/minus figure. A sampling error indicates how closely we can reproduce from a sample the results that we would obtain if we were to take a complete count of the universe using the same measurement methods. By adding the sampling error to and subtracting it from the estimate, we can develop upper and lower bounds for each estimate. This range is called a confidence interval. Sampling errors and confidence intervals are stated at a certain confidence level—in this case, 95-percent. For example, a confidence interval at the 95-percent confidence level, means that in 95 out of 100 instances, the sampling procedure we used would produce a confidence interval containing the universe value we are estimating.

Our review was conducted between February 1989 and July 1990 in accordance with generally accepted government auditing standards. The Department of the Interior provided written comments on a draft of this report. These comments are summarized and evaluated in chapters 2 through 4 and are reproduced in appendix III.

Wildlife Protection Laws and Treaties Generally Provide Sufficient Enforcement Authority

The 11 federal statutes and 5 international treaties enforced by FWS provide broad enforcement authority. The majority of FWS special agents' work in law enforcement, however, involves four statutes—the Lacey Act, Migratory Bird Treaty Act, Endangered Species Act, and Eagle Protection Act. According to FWS' statistics, during fiscal years 1987 to 1989, about 65 percent of the investigative activities of special agents involved these four statutes. Although 2 of the wildlife protection laws either limit the authority or enforcement capability of special agents under some circumstances, and therefore must sometimes be used in conjunction with the other laws or treaties, the 11 laws and 5 treaties generally provide adequate authority to protect the nation's wildlife.

The Migratory Bird Treaty Act was mentioned by some FWS special agents as limiting their authority to investigate certain suspected crimes against wildlife. The act does not provide the agents with search and seizure authority unless certain conditions are met. Enforcement of the Endangered Species Act was also cited as a problem by some special agents. These agents explained that when species similar in appearance to threatened and endangered species are not listed as threatened or endangered under the act, enforcing provisions of the act can be difficult. It might require that animals be destroyed and examined to determine their species, an action agents may be reluctant to perform. Although most law enforcement officials we spoke with agreed that this limitation of authority and this problem in enforcement, in most cases, can be overcome through the use of provisions in other federal and state wildlife protection laws or international treaties, FWS special agents are occasionally confronted with situations that they believe cannot be resolved satisfactorily.

FWS Generally Has Sufficient Enforcement Authority

FWS is responsible for enforcing the 11 domestic laws and 5 international treaties that provide broad authority designed to protect the nation's fish and wildlife. With the exception of the Migratory Bird Treaty Act and the Endangered Species Act, these laws and treaties generally provide sufficient enforcement authority when appropriately applied. FWS special agents responding to our telephone questionnaire as well as FWS assistant regional directors for law enforcement, Department of Justice attorneys, state fish and game officials, and environmental group officials we spoke with said that the federal statutes and international treaties for protecting wildlife are generally adequate.

**Chapter 2
Wildlife Protection Laws and Treaties
Generally Provide Sufficient
Enforcement Authority**

Although FWS special agents are responsible for enforcing each of the federal wildlife protection laws and treaties, 65 percent of the investigations pursued by FWS special agents during fiscal years 1987 through 1989 were for suspected violations of the Migratory Bird Treaty Act, the Endangered Species Act, the Lacey Act, and the Eagle Protection Act. As shown in table 2.1, most special agents believe that these four statutes provide them with somewhat to very sufficient authority. On the basis of the views of the 50 randomly selected special agents who responded to our telephone questionnaire concerning the sufficiency of the authority provided by these four laws, we estimate that the 137 FWS special agents located in regional offices throughout the continental United States would have given the responses in table 2.1 if we had interviewed all of them.

Table 2.1: Special Agents' Views on the Sufficiency of Their Enforcement Authority

Statute	Estimated number of agents (range of estimate), by their response					Total
	Very insufficient	Somewhat insufficient	Neither sufficient nor insufficient	Somewhat sufficient	Very sufficient	
Migratory Bird Treaty Act	a	14 (3-25)	a	69 (52-86)	49 (33-65)	137
Eagle Protection Act	a	a	a	71 (54-88)	55 (38-72)	137
Endangered Species Act	a	30 (16-44)	a	74 (57-91)	22 (9-35)	137
Lacey Act	a	a	a	63 (46-80)	66 (49-83)	137

Note: Numbers in the parentheses are the lower and upper limits of the estimates to the universe at the 95-percent confidence level.

^aToo few agents gave this response to allow a projection to the universe of all 137 agents.

FWS special agents believe that the Lacey Act Amendments of 1981 were especially important in improving overall enforcement authority for FWS by allowing agents to use the act when enforcing any federal law, treaty, regulation, or tribal law. For example, 94 percent (+/- 6 percent) of the special agents responding to our questionnaire said that the Lacey Act provides somewhat or very sufficient authority to carry out their enforcement duties. The Lacey Act provides warrantless search and seizure authority in cases of suspected violations and allows the federal government to prosecute offenses regardless of whether or not offenders cross state boundaries. Agents told us that these provisions often compensate for some problems caused by the lack of enforcement authority conferred by the other acts and that they often rely on the Lacey Act to enhance penalties for violations even when other acts are involved because the Lacey Act allows larger fines.

Investigations of Crimes Against Migratory Birds Hampered by Limit to Authority

FWS special agents are occasionally hampered in their efforts to investigate certain suspected violations because of the lack of warrantless search and seizure authority in the Migratory Bird Treaty Act. In this regard, the United States Court of Appeals, Tenth Circuit, has held that the act "impliedly withheld power to make a warrantless search on probable cause."¹ In other words, under the act, special agents can only search a hunter's gear if they place the hunter under arrest or if the hunter consents to a search.

According to FWS' Chief, Division of Law Enforcement, and several assistant regional directors for law enforcement, hunters generally give FWS special agents permission to search their personal equipment such as coolers and automobiles. The Chief also pointed out that many states have deputized FWS special agents, providing them with the authority to inspect gear under state laws, and that most hunters now assume that all FWS agents have such authority. Although FWS does not maintain information on the total number of cases where the lack of warrantless search and seizure authority in the Migratory Bird Treaty Act has caused enforcement problems, a senior resident agent in region 6 told us that he knew of only four or five occasions in the last 10 years where hunters denied agents permission to search. However, other agents we interviewed recalled the following instances where their investigations were hampered by this limitation:

- In November 1986, an FWS special agent in region 1 issued a citation to a hunter for possessing toxic shotgun shells (containing lead shot) in an area where the use of nontoxic shells (containing steel shot) were required for the hunting of migratory game birds. Although the FWS special agent said the hunter granted permission to search his boat, where the toxic shells were found, the hunter's lawyer, telling the judge that the hunter had not consented to the search, requested that the evidence be suppressed. The court granted the lawyer's request. Without the use of this evidence, the Assistant U.S. Attorney subsequently requested the violation notice be dismissed, which it was.
- A senior resident agent in region 6 told us that he was one of several agents who had a duck hunting camp under surveillance during the 1988-89 hunting season. The agents strongly suspected that hunters were exceeding authorized limits, but the agents had been unable to catch the hunters coming into camp with kills over the limit. The hunters had a number of coolers that the agents suspected contained many more ducks than were allowed to be killed according to limits

¹ *Aiuppa v. United States*, 338 F.2d 146 (10th Cir. 1964).

established under the authority of the Migratory Bird Treaty Act. However, when the agents asked the hunters if they could inspect the coolers, the hunters refused. With only the Migratory Bird Treaty Act to rely on, the agents could not conduct a search without a warrant unless they placed the hunters under arrest. Under the circumstances, the agents chose not to pursue the matter.

Some special agents are concerned that as hunters become more familiar with the limitation to agents' authority, hunters will be more reluctant to consent voluntarily to searches. Moreover, even when hunters consent to a search, they may later recant, saying that the agents exceeded their authority. The Chief, Division of Law Enforcement, agreed that the lack of warrantless search and seizure authority under the Migratory Bird Treaty Act may become more of a problem in the future.

Hybrid Species Can Present Enforcement Problems

The issue of whether hybrid species are protected under the Endangered Species Act of 1973 has proven to be both complex and controversial.² The Department of the Interior's Solicitor has grappled with this issue on several occasions, and in December 1990 the Solicitor's most recent decision regarding hybrids was withdrawn in order for FWS to revisit the matter once again. The problem arises because the Endangered Species Act does not specifically address hybrid species. However, there is concern that if a strict interpretation of the act concludes that hybrids are not protected, it could adversely affect some already listed threatened or endangered species whose populations are known to include some hybrid animals. The situation is further complicated by a provision in the act that allows listing as protected, species that are similar in appearance to those that are endangered or threatened, when doing so would provide additional protection for the listed endangered or threatened species. This provision has rarely been used.

This situation can present problems for FWS agents because hybrids can sometimes appear very similar to protected endangered and threatened species. Thus, when FWS agents attempt to enforce the act, they sometimes cannot distinguish between hybrid species and purebred endangered or threatened species. If the only alternative available to prove conclusively that a live animal is of a protected species is to destroy and

²A hybrid is the offspring of two animals or plants of different breeds, varieties, species, or genera. Problems or questions having to do with hybrids and the Endangered Species Act most likely would occur when at least one of the hybrid's parents is from an endangered or threatened species.

examine it, FWS agents understandably may be reluctant to take such action.

For example, FWS special agents in region 6 described an incident involving the possession of what they thought was an illegally imported leopard. Though leopards are considered an endangered species under the Endangered Species Act, the act's authority could not be used in this case because the person transporting the leopard claimed that it was an unprotected hybrid animal.

The special agents involved with the above case also could not enforce the March 3, 1973, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), whose purpose is to prevent international trade from contributing to the endangerment of any species, including hybrids if one or both parents are listed as endangered and threatened. To accomplish its purpose, CITES controls the import and export of covered species. In this particular case, however, the FWS agents could not prove that the animal had been imported. The agents were left with two options: to either (1) kill the animal in order to examine it and determine its true species or (2) drop the investigation. The agents chose the latter option.

Conclusions

FWS law enforcement agents have broad enforcement authority under 11 domestic laws and 5 international treaties designed to protect fish and wildlife. According to our review and the opinions of most of the law enforcement and other officials we contacted, wildlife protection statutes and treaties generally provide FWS sufficient authority to protect wildlife.

In most cases to date, FWS special agents have been able to make up for the lack of authority or coverage in any given wildlife protection statute by using the authority contained in other laws or treaties. The Lacey Act, as amended in 1981, which provides warrantless search and seizure authority for suspected violations and allows violators to be charged with felonies, has been especially effective, according to FWS special agents who use it to supplement other statutes.

There are situations that cannot be effectively dealt with under existing laws or treaties, although FWS does not maintain information on how often these situations occur. In particular, FWS special agents we interviewed cited instances where the lack of warrantless search and seizure authority under the Migratory Bird Treaty Act hampered investigations

of crimes against migratory birds. Although the number of such cases that have occurred to date appears to be small, FWS agents are concerned that the lack of warrantless search and seizure authority will become better known, causing an increasing number of hunters to not submit to searches voluntarily.

FWS special agents have on occasion been presented with enforcement problems when faced with suspected crimes against wildlife involving species similar in appearance to threatened or endangered species (such as hybrids, which are not—as such—addressed under the Endangered Species Act). Sometimes the only alternative available to prove conclusively that a live animal is of a protected species is to destroy and examine it. However, FWS agents are reluctant to take such steps. The issue of what to do about affording hybrids protection under the act was under consideration by FWS as of March 15, 1991.

Agency Comments and Our Evaluation

A draft of this report submitted to the Department of the Interior for comment proposed that the Secretary of the Interior direct the Director, FWS, to require special agents to report all instances of suspected violations of the Migratory Bird Treaty Act in which the limitation on search and seizure authority precluded or seriously hindered their law enforcement efforts. Although we concluded that the lack of warrantless search and seizure authority has not been a major problem for FWS special agents to date, some FWS special agents are concerned that this limitation in the law may become more of a problem in the future as hunters become more familiar with it and use it as a means to avoid searches and seizures of their equipment.

Our proposed recommendation was intended to provide a basis for determining the magnitude of the problem faced by FWS agents and proposing legislative changes to the Congress, if needed. In its comments on behalf of the Department of the Interior, FWS stated that because warrantless search and seizure authority is such a basic element of law enforcement, which is included in most other wildlife protection legislation passed in the last 20 years, further documentation to justify amending the Migratory Bird Treaty Act to provide such authority is not needed. FWS stated that we should change our proposed recommendation to support amending the Migratory Bird Treaty Act to provide warrantless search and seizure authority in language similar to that in the Lacey Act Amendments of 1981. In view of the concern that this limitation in the law may become more of a problem in the future, and

the fact that similar authority exists in other federal and state legislation, we agree that it would be useful for the Congress to consider providing such authority in the Migratory Bird Treaty Act. Accordingly, we have added an appropriate matter for congressional consideration to our report.

**Matter for
Congressional
Consideration**

The Congress may wish to consider amending the Migratory Bird Treaty Act to provide warrantless search and seizure authority. As FWS suggests, the Congress may wish to use language similar to that in the Lacey Act Amendments of 1981.

Funding and Staffing Limitations Necessitate Selective Enforcement of Wildlife Laws

At a time of increasing responsibilities and crimes against wildlife, FWS' Division of Law Enforcement has not fared well in the allocation of substantial increases in FWS' overall funding and staffing. There are fewer special agents now than there were 10 years ago, and many special agents are deskbound and unable to perform their basic responsibilities for months at a time due to a lack of operating funds for travel, vehicle operation, equipment, and support services. As a result, FWS' regions have been forced to selectively enforce wildlife legislation. FWS believes that by focusing on (1) covert investigations of large-scale illegal commercial operations involving taking and trading wildlife and their parts and (2) massive illegal harvesting of migratory waterfowl, it can utilize its limited resources most effectively by apprehending and deterring violators who have the greatest negative impact on fish and wildlife.

Currently, FWS does not maintain information on the extent of suspected crimes against wildlife that it is unable to investigate because of limited funding and staffing, and it has been unable to develop reliable direct measures of law enforcement's effectiveness. This lack of information, upon which informed decisions about needed resources can be made, will continue to keep the Division of Law Enforcement at a disadvantage in the yearly competition within FWS for funding and staffing.

Responsibilities Are Up, but Staffing Is Down

During the 1970s and 1980s, new and amended legislation substantially increased FWS' responsibilities for protecting species, including hundreds of domestic animals and plants and certain marine mammals. (See app. I.) Also during this period, crimes against wildlife were said to be on the rise.

In 1976, FWS estimated that 240 special agents were needed to minimally deter crimes against wildlife. Although FWS' total staffing increased from 4,138 in fiscal year 1977 to 7,367 in fiscal year 1990, the number of special agents decreased from 220 to 200, or by 9 percent. (See table 3.1.) FWS used its increase in staff to meet other responsibilities, including protecting and enhancing wildlife habitat, operating and maintaining wildlife refuges, cleaning up environmental contaminants, and listing species as endangered or threatened in order to take appropriate steps to return them to a point where they are no longer endangered or threatened.

**Chapter 3
Funding and Staffing Limitations Necessitate
Selective Enforcement of Wildlife Laws**

Table 3.1: Staffing Summary, Fiscal Years 1977 Through 1990

Fiscal year	Total agents^a
1977	220
1978	208
1979	213
1980	211
1981	209
1982	195
1983	189
1984	194
1985	185
1986	186
1987	194
1988	211
1989	205
1990	200

^aIncludes special agents assigned to FWS' seven regional offices and headquarters.

Staffing in some regions has declined sharply. For example, in region 3, staffing has decreased from 31 special agents in 1982 to 23 in 1990, or by over 25 percent. As a result, the region has been unable to continue protecting trout in the Great Lakes even though commercial fishermen are suspected of routinely exceeding legal catch limits and may be seriously threatening FWS' \$12 million annual trout restocking program.

In fiscal year 1990, FWS convened a Law Enforcement Advisory Commission composed of members from the Department of Agriculture's Forest Service, Department of Justice, Department of the Interior, Customs Service, and Department of the Treasury's Federal Law Enforcement Training Center, to consider FWS' enforcement policies, procedures, management, and supervision. In its June 1990 Report of Findings and Recommendations, the Commission observed that (1) law enforcement personnel in five of FWS' seven regions identified a current shortfall of up to five special agents per region and (2) supervisory enforcement positions had decreased from 78 to 46 since 1977.

The Commission's findings are generally consistent with ours. For example, FWS officials we contacted in six regions identified a total need in fiscal year 1990 for 16 additional special agents and about \$1.5 million in increased funds. The regions' needs ranged from two additional agents and \$170,000 in region 2 and two additional agents and \$250,000 in region 6 to four additional agents and \$340,000 in region 4. Most of

these increased resources would be used to enforce legislation to protect migratory waterfowl.

Funding Limitations Have Resulted in Special Agents Being Deskbound for Months

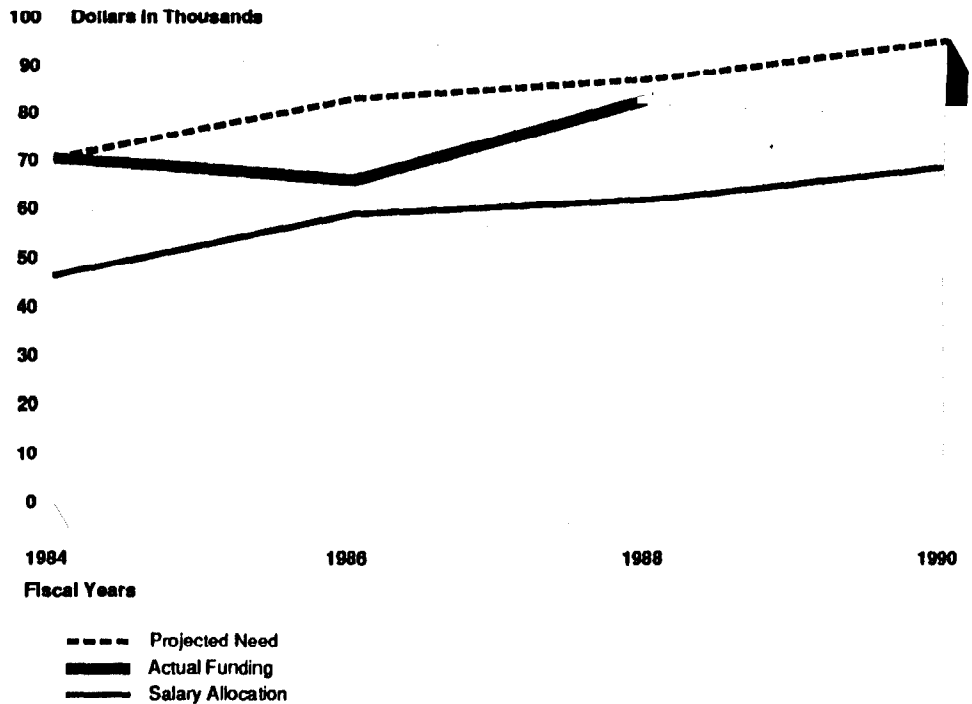
FWS special agents are responsible for covering vast geographic areas that include hundreds of thousands of licensed hunters. Yet in some of FWS' regions, insufficient funds have resulted in agents being deskbound and unable to perform their basic responsibilities including conducting surveillance, participating in raids, interviewing witnesses, interrogating suspects, searching for evidence, seizing contraband, and making arrests when warranted by the circumstances. These activities require FWS special agents to be "in the field" a significant portion of the time rather than at their desks. FWS' Division of Law Enforcement estimates that if current funding trends continue throughout fiscal year 1991, all FWS special agents will be deskbound for most of the year.

According to most state wildlife management agency officials we talked with and reports we reviewed, FWS special agents do an effective job when provided the funds for travel, up-to-date equipment, and support services needed to do their jobs. These funds have not always been forthcoming, however, and some FWS special agents have used their private vehicles, stayed with friends, or slept in their vehicles to save per diem costs and have used other means to ensure that resources for investigations are stretched as far as possible.

Despite these efforts, special agents are often precluded from performing their work because of insufficient funds. In a May 1983 report to the Senate Committee on Appropriations, FWS estimated that \$70,000 would be required to keep a special agent fully operational in fiscal year 1984. This amount rose to \$82,500 in fiscal year 1986, \$86,600 in fiscal year 1988, and \$94,600 in fiscal year 1990. Figure 3.1 shows that actual funding has not matched the estimated amounts needed to keep agents fully operational, except in fiscal year 1984. Actual funding declined from \$70,000 in fiscal year 1984 to \$65,400 in fiscal year 1986; it increased to \$82,500 in fiscal year 1988, and then dropped slightly to \$79,900 in fiscal year 1990.

Although \$94,600 was estimated to be the average cost to keep an agent operational in fiscal year 1990, regional estimates varied significantly. For example, region 3 estimated about \$85,000 per agent, while region 4 estimated about \$110,000. Detailed fiscal year 1990 per-agent cost estimates for each of FWS' seven regions are included as appendix II.

Figure 3.1: Average Projected Costs and Allocated Funding Per Agent, Fiscal Years 1984, 1986, 1988, and 1990



Note: Funding levels reflect an agent's salary and the cost of benefits, travel, vehicle operation, equipment, and support services.

Source: Prepared by GAO using FWS information.

The \$79,900 allocated per agent in fiscal year 1990 reflects increases in agents' salaries and benefits, but decreases in operating funds for such things as travel and per diem expenses, vehicle operation, and other office and field support services. While on average, an agent's salary and benefits rose from \$45,900 in fiscal year 1984 to \$68,100 in fiscal year 1990, allocations for operating expenses per agent decreased from \$24,100 to \$11,800. One result has been that special agents are able to perform only limited fieldwork, which represents a significant portion of their work under normal circumstances.

For example, an FWS special agent in Louisiana stated that realistically speaking, all special agents in region 4 were deskbound with a full 5 months left in fiscal year 1989. This agent went on to say that this phenomenon had occurred almost annually over the span of his 19-year career with FWS and that operating funds had never been adequate to

genuinely protect wildlife, as the agency is mandated to do by the Congress.

Other regions also have experienced significant funding shortfalls. For example, according to region 6's Assistant Regional Director for Law Enforcement, travel by agents had to be severely curtailed one-quarter of the way through fiscal year 1989 and one-third of the way through fiscal year 1990. According to a special agent in region 6, a shortage of travel funds has precluded her from investigating the killing of bald eagles in South Dakota by ranchers using aircraft. Information from informants has led her to suspect that from 15 to 20 bald eagles are killed annually by ranchers who believe the eagles prey on their cattle and sheep. She continued that she is not otherwise engaged in higher priority work; rather, she is essentially deskbound because of insufficient operating funds.

Similarly, because of inadequate travel funds, an FWS special agent in South Dakota had to close an ongoing investigation of the potential baiting of migratory waterfowl and the taking of more than the authorized limit at two exclusive hunting clubs. Although the agent suspects that hundreds of ducks and geese were killed daily over baited areas of the two clubs, which are located about 200 miles from her duty station, the region simply did not have the operating funds for the necessary travel, per diem expenses, and vehicle operation.

Staffing and Funding Shortfalls Have Resulted in Selective Enforcement

Our review of the limited research available on hunters' compliance with wildlife protection legislation shows that if enforcement is concentrated on certain crimes against wildlife and others are selectively not targeted, hunters will tend to violate those laws that are not being enforced because the hunters believe there is little chance of being caught. Yet staffing and funding shortfalls have necessitated that FWS' law enforcement efforts be selectively directed toward commercial violations or large-scale operations having the greatest impact on wildlife.

Because FWS has, by necessity, selectively enforced wildlife protection legislation, we asked FWS special agents for their perceptions of the quantity and quality of FWS' investigations. On the basis of agents' responses to our questionnaire, we estimate that 71 (+/- 17) of the 137 special agents located in the field offices in the contiguous states believe that FWS' enforcement of migratory waterfowl protection laws is very to somewhat inadequate and 58 (+/- 17) believe the same thing about enforcement of the Endangered Species Act. FWS regional officials with

whom we spoke explained the selective enforcement undertaken in regions.

During the 1988-89 and 1989-90 waterfowl hunting seasons, many of FWS' special agents in region 4 were assigned to a task force investigating alleged illegal harvests of migratory waterfowl in Louisiana. According to the Acting Assistant Regional Director for Law Enforcement in region 4, this 2-year task force investigation crippled other enforcement efforts in the region. A senior special agent in region 4 provided us with a list of 30 suspected crimes in Alabama, Arkansas, and Mississippi that were not investigated or properly handled in 1989, in part, because of funding and staffing shortages.

Region 2 agents in New Mexico have emphasized investigating the killing of eagles and illegal trading in bobcat pelts that exceeds \$1 million annually. The trade-off has been that they have not been able to investigate the alleged illegal killing of hundreds of canvasback and red-head ducks each season along the Texas coastline and on Ute Lake in eastern New Mexico, areas that provide critical winter habitat.

Region 6 places a high priority on enforcing wetland easements and protecting breeding areas for migratory waterfowl, and it allocates existing staff accordingly. Regional officials informed us that although they have identified major violations of the Lacey Act, they do not have the resources to enforce the act's requirements.

Region 5 also emphasizes the enforcement of waterfowl protection legislation and has concentrated available staff in areas with large populations of migratory birds. However, this deployment of staff has limited the number of staff available to investigate other suspected crimes against wildlife in the region.

FWS Lacks Information to Make Informed Decisions

The Division of Law Enforcement is often hamstrung in the yearly competition within FWS for funding and staffing by inadequate information that could help FWS' management make informed decisions about needed resources. Although the full extent of illegal activities against wildlife may never be known, the division needs more reliable information on (1) the effectiveness of its enforcement efforts and (2) the number of suspected crimes that its special agents do not investigate because of insufficient staff and/or operating funds.

In a June 1989 report, Interior's Inspector General concluded that FWS' documentation and tracking of incidents and allegations of crimes against wildlife were inadequate, in part, because suspected crimes reported to FWS are not always entered into case-tracking systems, particularly if special agents are unable to investigate the crimes.¹ The report also stated that FWS did not report its investigative time accurately, thereby limiting management's ability to assess the cost and benefits of enforcement, planned use of resources, and productivity of employees. Although FWS agreed that improvements were needed to correct these problems, it had not completed action on them as of March 15, 1991.

Developing reliable direct measurements of law enforcement's effectiveness is another problem FWS has had in ranking law enforcement relative to the agency's other responsibilities. While indirect work load measures are available, such as the number of investigations opened and closed and the penalties imposed, direct measures, such as of those things that contribute to a species' resurgence or that reduce the number of animals killed illegally, are often difficult to quantify. According to FWS' Deputy Director, the agency has been trying to develop reliable direct measures of law enforcement's effectiveness for several years, but so far it has been unable to do so.

Conclusions

Because FWS does not adequately document and track suspected crimes against wildlife, including those not investigated, it does not have a good estimate of the magnitude of the problems faced by its enforcement agents and the resources needed to address these problems. This lack of information has kept the Division of Law Enforcement at a disadvantage in the yearly competition within FWS for funding and staffing. Consequently, many special agents are deskbound for months at a time due to insufficient operating funds. From behind a desk, agents cannot perform such basic responsibilities as conducting surveillance and raids, interviewing witnesses or interrogating suspects, gathering evidence or seizing contraband, and making arrests when warranted. Although FWS' regions have identified specific needs for additional agents, this lack of funding raises questions about the feasibility of FWS seeking increases in the number of special agents at a time when it cannot effectively utilize those that it already employs.

¹Law Enforcement Activities, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Office of Inspector General, Report No. 89-81 (June 1989).

Recommendations

To provide current and reliable information on the extent of crimes against wildlife, thus enabling FWS to better justify its funding needs and ensure that FWS law enforcement agents are able to perform their basic responsibilities, we recommend that the Secretary of the Interior direct the Director, FWS, to require FWS law enforcement management and agents to record (1) all instances of suspected violations coming to their attention, including those that may not be investigated; (2) the agency's handling of the suspected violations; and (3) the outcome of the investigations. FWS should then use these records to (1) periodically assess the extent of the suspected crimes against wildlife, (2) provide realistic estimates of staff and funds needed to adequately address the problem, and (3) include the estimates in annual budget requests.

Agency Comments and Our Evaluation

In commenting on a draft of this report, FWS agreed that it needs to improve its documentation of crimes against wildlife. FWS is currently developing the capability to implement the National Incident Based Reporting System (a uniform, nationwide crime reporting system), which it believes will improve its documentation of reported or suspected crimes, regardless of whether an investigation is or is not conducted. FWS disagreed, however, that better documentation of reported violations will provide meaningful data to justify increased funding or staffing for law enforcement. The agency went on to cite studies and special agents' experience indicating that only a small fraction of the crimes against wildlife are reported. As agents are added to new areas of the country, awareness and investigation of crimes against wildlife increases, according to FWS.

As we point out in this report, over the years, FWS' law enforcement program has consistently fared poorly in the allocation of funds. We believe that a major problem concerns the Division of Law Enforcement's lack of information on suspected crimes against wildlife, including those that are not investigated. According to special agents and others we spoke with, there are many such suspected crimes that are not investigated. However, the extent of crimes is unknown because special agents are not required to record such instances. Therefore, we continue to believe that our recommendation is appropriate and, if implemented, could provide the Division of Law Enforcement with information that would help justify realistic funding and staffing needs for law enforcement.

FWS Is Unable to Respond to Many State Requests for Assistance

During the past 5 years, FWS' Division of Law Enforcement has often relied on assistance from state agencies that enforce wildlife protection laws in investigating large-scale illegal commercial operations and massive illegal harvesting of migratory waterfowl. The 7,500 state agents outnumber FWS' by 37 to 1. FWS reciprocates by participating with states in certain investigations and responding to state requests to investigate suspected violations of wildlife protection laws, whose enforcement is the responsibility of FWS. While this mutually beneficial relationship has worked well in the past, there are signs that this may not be the case in the future as limited law enforcement staffing and funds continue to affect FWS' operations and decrease the agency's ability to respond to state requests for assistance. FWS acknowledged that limitations on funding and staffing resources have resulted in special agents' being unable to respond to all state requests for assistance.

Joint FWS-State Investigations Have Worked Well

Investigations of large-scale illegal commercial operations and massive illegal harvesting of waterfowl often involve large task forces of more than 100 FWS and state enforcement agents. While investigations of these types can be both time-consuming and costly, they have also proven to be quite successful. For example, during the 1988-89 waterfowl hunting season, FWS, working with the Louisiana Department of Natural Resources, undertook a task force investigation of alleged illegal harvests of migratory waterfowl in Louisiana. At the peak of the investigation, FWS had increased the number of special agents assigned to monitor the 1988-89 hunting season in Louisiana from 6 to 10 and had temporarily assigned another 8 agents from other regions. The Louisiana task force operations contributed to a sharp decline in the number of citations for baiting, which dropped from 79 during the 1987-88 season to 4 in the 1988-89 season, indicating that the increased presence of federal and state enforcement agents was serving as a deterrent.

In another instance, FWS' Region 6—in concert with law enforcement agents from Colorado and New Mexico—conducted a 2-1/2-year covert investigation of poaching and the commercialization of wildlife in the San Luis Valley, which is in south-central Colorado and north-central New Mexico. During the early stages of this investigation, FWS assigned one full-time undercover agent, who was assisted by two part-time agents and support staff. From November 1986 through March 1989, they documented about 850 violations of wildlife protection laws. A task force of 275 agents from FWS and other federal and state enforcement agencies then arrested about 50 persons and seized 20 vehicles. On the basis of statements by those interrogated, FWS reported that

poachers in the San Luis Valley had illegally killed at least 2,000 deer, 500 elk, and 92 eagles during the 2-1/2 years covered by the investigation.

In region 4, FWS agents and state wildlife conservation officers arrested 34 persons charged with numerous violations stemming from an extensive operation for poaching and marketing black bears. Black bears' gall bladders are prized by some cultures for medicinal uses. These arrests climaxed a 3-year, three-state undercover investigation.

FWS Must Turn Down Many State Requests for Assistance

Just as FWS often relies on assistance from state agencies that enforce wildlife protection laws in conducting its investigations, these state agencies frequently call upon FWS to participate in investigations. FWS does not systematically accumulate information on (1) the number of times state law enforcement agents request the agency's assistance in investigating crimes against wildlife, (2) the number of such requests that FWS responds to, or (3) the outcome of the investigations. Increasingly, however, reductions in FWS staffing and operating funds, coupled with the agency's focus on large-scale operations, have resulted in FWS' being unable to respond to state requests for assistance. According to the June 1990 Report of Findings and Recommendations by FWS' Law Enforcement Advisory Commission, this lack of cooperation could have serious adverse short- and long-term consequences on the agency's effectiveness throughout the nation.

For example, state law enforcement directors in 10 of the 11 northeastern states in region 5 have advised FWS that they will not be renewing cooperative law enforcement agreements with the agency in the future. The directors believe that FWS has "turned its back" on investigations of major violations involving the interstate transportation of illegally taken wildlife and plants by denying state requests for FWS special agents to participate in covert investigations. The Director of Massachusetts' Division of Law Enforcement within the Department of Fisheries, Wildlife, and Environmental Law told us that FWS has advised him that its agents could not respond to many individual requests to investigate suspected violations of hunting laws. Recently, his division provided FWS with the names and license numbers of numerous individuals who collectively had transported at least 50 illegally killed deer across state lines, only to be informed by FWS that it did not have the resources necessary to investigate.

FWS' inability to respond to state requests for assistance is not limited to the northeast. FWS' Assistant Regional Director for Law Enforcement in region 6, for example, told us that limited resources had precluded the region from responding to requests for assistance from (1) Colorado's Division of Wildlife in 1988 and 1989 to investigate illegal hunting of migratory waterfowl in the Arkansas River Valley of northern Colorado and (2) Utah's Division of Wildlife Resources in 1988 to assist in a covert investigation into possible violations of the Lacey Act involving illegal hunting and trapping of cougars and bobcats. In the first instance, Colorado's Chief for Wildlife Law Enforcement had allegations that hunting guides and members of hunting clubs were routinely killing migratory waterfowl both before and after authorized shooting hours and were exceeding authorized limits. In the latter instance, Utah's state game agency had proposed to equally split the estimated \$3,000 cost to investigate alleged caging of cougars for release when parties arrived for the hunt, illegal trapping and killing of bobcats after the season and shipping their furs out of state, and exceeding the limit on the number of cougars that can be killed by a given hunter.

Similarly, FWS' senior special agent in region 2 informed us he had been unable to respond to a 1989 request by a Texas game warden for assistance in investigating allegations that a rancher had killed 20 to 30 bald eagles. According to this agent, special agents were involved in investigating suspected migratory waterfowl violations along the Texas coast. However, the number of agents enforcing these same laws along a 70-mile stretch of Nebraska's Platte River had previously been reduced from four to two because of other competing priorities, including investigations of the killing of eagles, commercialization of wildlife, and violations of wetland easements. This reduction was made despite an agreement with Nebraska to provide four agents along this stretch of river where an estimated 350 hunters were believed to be exceeding authorized limits and using toxic lead shot in nontoxic steel shot zones.

In commenting on a draft of this report, FWS acknowledged that because of limitations in funding and staffing, it cannot respond to all state requests for assistance.

Conclusions

To maximize the effectiveness of investigations into large-scale illegal commercial operations and massive illegal harvesting of migratory waterfowl and other crimes against wildlife, FWS will need to continue to

work cooperatively with the 7,500 state conservation officers nationwide. To obtain this cooperation, FWS must be able to reciprocate by participating in state investigations and responding to state requests for assistance. This may not be possible at the current levels of staffing and funding.

As noted in chapter 3, FWS does not now have information on the magnitude of the problems facing its enforcement agents, which is necessary for the agency to make informed decisions in allocating resources. Among the missing information are data on the number and disposition of state requests for assistance in investigating suspected crimes against wildlife.

Recommendation

To provide current and reliable information on joint federal-state efforts to protect wildlife and to better justify the resources needed to continue the reciprocal relationship with the states, we recommend that the Secretary of the Interior direct the Director, FWS, to document (1) all state requests for assistance in investigating suspected violations of wildlife protection laws, (2) FWS' responses to the requests, and (3) the outcome of any investigations.

Agency Comments and Our Evaluation

FWS agrees that it needs to improve its documentation of crimes against wildlife, including requests for assistance from the states. It believes that the National Incident Based Reporting System will improve documentation of reported or suspected crimes. However, because FWS is still developing this capability, we could not determine if this system will provide the necessary information to provide a more reliable and comprehensive system to protect wildlife and justify FWS' resource needs.

Laws and Treaties Enforced by FWS

The Lacey Act, as amended (18 U.S.C. 42; 16 U.S.C. 3371-3378)—Passed in 1900, the Lacey Act prohibits the import, export, transportation, sale, receipt, acquisition, or purchase of fish, wildlife, or plants that are taken, possessed, transported, or sold in violation of any federal, state, tribal, or foreign law. Amendments to the act in 1981, which provided, among other things, the authority for warrantless search and seizure when violations are suspected, were designed to (1) strengthen federal enforcement of laws to protect fish and wildlife and (2) improve relevant federal assistance to states and foreign governments. The act is used to control the smuggling of and trade in illegally taken fish and wildlife. The Lacey Act also regulates the transportation of live wildlife, requiring that animals be transported into the United States under humane and healthful conditions. Further, the act allows the Secretary of the Interior to designate wildlife species as injurious to humans and to prohibit the importation of such species.

Individuals convicted of violating the Lacey Act may, for misdemeanors, be sentenced to up to 1 year in jail and fined up to \$100,000 and, for felonies, may be sentenced to up to 5 years and fined up to \$250,000. Fines for organizations in violation of the act are, for misdemeanor and felony violations, up to \$200,000 and \$500,000, respectively. In addition, vehicles, aircraft, and equipment used in a violation, as well as illegally obtained fish, wildlife, and plants, may be subject to forfeiture. Persons who provide information on violations of the Lacey Act may be eligible for cash rewards.

Migratory Bird Treaty Act, as amended (16 U.S.C. 703-712)—Originally passed in 1918, this act makes it unlawful—except as allowed by implementing regulations—to take, possess, buy, sell, purchase, or barter any migratory bird, including the feathers or other parts, nests, eggs, or products made from migratory birds. “Taking” is defined as pursuing, hunting, shooting, shooting at, poisoning, wounding, killing, capturing, trapping, or collecting migratory birds. Hunting regulations regarding migratory birds, established by FWS, allow during designated seasons the shooting and killing of ducks, geese, doves, rail, woodcocks, and some other species. In addition, permits may be granted for various noncommercial activities involving migratory birds and some commercial activities involving birds bred in captivity. For misdemeanor violations, individuals and organizations may be fined up to \$5,000 and \$10,000, respectively, and individuals may face up to 6 months’ imprisonment. Felony violations may result in fines of up to \$250,000 for individuals and \$500,000 for organizations and in up to 2 years’ imprisonment for those convicted.

The Migratory Bird Treaty Act also implements four international treaties that individually affect migratory birds common to the United States and four countries—Canada, Japan, Mexico, and the Soviet Union. The act authorizes the Secretary of the Interior to determine when, how, and the extent to which migratory birds may be taken consistent with the treaties it implements, and it prohibits anyone from taking such birds except in accordance with the Secretary's regulations.

Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718)—Passed in 1934, this act is commonly referred to as the “Duck Stamp Act.” It requires waterfowl hunters 16 years of age or older to purchase and possess a valid federal waterfowl hunting stamp prior to taking migratory waterfowl.

Eagle Protection Act (16 U.S.C. 668-668c)—Passed in 1940, this act makes it illegal to import, export, or take bald or golden eagles, or to sell, purchase, or barter their parts, nests, or eggs, or products made from the animals, their nests, or eggs. “Taking” encompasses pursuing, shooting, shooting at, poisoning, wounding, killing, capturing, trapping, collecting, molesting, or disturbing. Permits may be granted for scientific, exhibitory, or Indian religious purposes. However, no permits may be issued for the importation, exportation, or commercialization of eagles. Misdemeanor violations may result in fines of up to \$100,000 for individuals and \$200,000 for organizations, and 1 year's imprisonment for individuals. Felony violations may result in fines of up to \$250,000 for individuals and \$500,000 for organizations and up to 2 years' imprisonment for those convicted. Persons providing information leading to the conviction of violators of the Eagle Protection Act may be eligible for cash rewards.

The Airborne Hunting Act (16 U.S.C. 742j-1)—Section 13 of the Fish and Wildlife Act of 1956, added in 1971, is commonly referred to as the “Airborne Hunting Act,” or “the Shooting From Aircraft Act.” It prohibits the taking or harassing of wildlife from aircraft, except for certain reasons, which include protecting wildlife, livestock, and human health or safety as authorized by a federal or state license or permit.

National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee)—This act establishes a National Wildlife Refuge System by combining former “wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas,” into a single refuge system.

Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407)—This act establishes a moratorium on the taking and importation of marine mammals, their parts, and products made from the animals or their parts. Additionally, it defines a federal responsibility for the conservation of marine mammals, with managerial authority vested in the Department of the Interior for conserving the sea otter, marine otter, walrus, polar bear, dugong, and manatee. Under this act, it is unlawful to take any marine mammal on the high seas or in water or on land under the jurisdiction of the United States. It is also unlawful to (1) use any port or harbor under U.S. jurisdiction for any purpose connected with the unlawful taking or importation of any marine mammal; (2) possess any unlawfully taken marine mammal, its parts, and products made from the animal or its parts; or (3) transport, purchase, sell, or offer to purchase or sell any marine mammal, its parts, and products made from the animal or its parts.

Alaskan Aleuts, Indians, and Eskimos who reside in Alaska are permitted to take marine mammals for the purpose of subsistence or for use in the manufacture and sale of native handicrafts. Permits may be granted for the research or display of marine mammals; permits allowing the taking of these animals may also be granted to those who show economic hardship. Violations of the act may result in fines of up to \$100,000 and 1 year's imprisonment for individuals and fines of up to \$200,000 for organizations. In addition, the entire cargo, or its monetary value, of aircraft, vessels, or other conveyances used in violations may be forfeited.

Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543)-- This act is designed to regulate a wide range of activities affecting plants and animals designated as endangered or threatened. It prohibits the following activities:

- importing into or exporting from the United States;
- taking (includes harassing, harming, pursuing, hunting, shooting, wounding, trapping, killing, capturing, or collecting) within the United States and its territorial seas;
- taking on the high seas;
- possessing, selling, delivering, carrying, transporting, or shipping any species unlawfully taken within the United States, its territorial seas, or on the high seas;
- delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of a commercial activity; and
- selling or offering for sale in interstate or foreign commerce.

Prohibitions apply to endangered species, their parts, and products made from their parts. Most of these restrictions also apply to species listed as threatened unless the species qualifies for an exception. The act also allows listing as protected, species similar in appearance to those that are endangered or threatened, when doing so would provide additional protection for the listed endangered or threatened species. Individuals in violation of the Endangered Species Act are subject to fines of up to \$100,000 and 1 year's imprisonment. Organizations found in violation may be fined up to \$200,000. Fish, wildlife, plants, and vehicles and equipment used in violations may be subject to forfeiture. Individuals providing information leading to a civil penalty or criminal conviction may be eligible for cash rewards.

The Endangered Species Act of 1973 also implements the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The purpose of CITES is to prevent international trade from contributing to the endangerment of any species. To achieve this, CITES establishes a system of trade controls that vary in their restrictiveness depending upon the degree of jeopardy each species faces. The trade controls imposed by CITES apply only to species listed in three appendixes to the treaty. Species listed in appendix I of the treaty receive the most protection. They cannot be imported or exported for primarily commercial purposes. To be traded for other purposes, a specimen of any species listed in appendix I must be accompanied by an export permit from the exporting country and an import permit from the importing country.

Species listed in appendix II of the treaty, which are the vast majority of all species protected by CITES, can be traded for both commercial and noncommercial purposes. However, they must be accompanied by an export permit, which may be issued only upon the finding that the export of the specimens concerned will not be detrimental to the survival of the species. This requirement allows countries to control trade in species listed in appendix II.

Member countries may unilaterally list in appendix III of the treaty species that are protected within the countries' borders. The purpose of appendix III is to obtain international cooperation in the enforcement of national conservation laws. Countries importing specimens of a species listed in appendix III from the country responsible for including the species in the appendix must insist upon presentation of a permit showing that the specimens were lawfully acquired and exported from that country.

The parties to CITES agreed that hybrid species may be listed in the above appendixes if they form distinctive and stable populations in the wild. Also, hybrids are subject to the provisions of CITES even if they are not included in the appendixes if one or both of their parents are of listed species.

Antarctic Conservation Act of 1978 (16 U.S.C. 2401-2412)—The purpose of the act is to provide for the conservation and protection of the fauna and flora of Antarctica and of the ecosystem upon which fauna and flora depend. The primary prohibitions of the act make it unlawful for any U.S. citizen to take any native bird or mammal in Antarctica or to collect any native plant from any specially protected area within Antarctica. In addition, the act makes it unlawful for any U.S. citizen or any foreign person in the United States to possess, sell, offer for sale, deliver, receive, carry, transport, import to, export from the United States, or attempt to import or export any native mammal or bird taken in Antarctica or any plant collected in any specially protected area.

Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470mm)—The purpose of the act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites that are on public lands and Indian lands, and to foster increased cooperation and the exchange of information among governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data that were obtained before October 31, 1979. The primary prohibitions of the act make it illegal for any person to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public or Indian lands without a permit issued under the act. Under tribal law there is an exception for excavations or removal by an Indian tribe or its members. In addition, the act makes it illegal for any person to sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource taken from public or Indian lands in violation of federal law.

African Elephant Conservation Act (16 U.S.C. 4201-4245)—The purpose of the act, passed in 1988, is to provide additional protection for the African elephant. The act establishes an assistance program to countries of Africa where elephants are indigenous and provides for the establishment of an African Elephant Conservation Fund. In addition, the act places a moratorium on importation of raw or worked ivory from African countries not meeting certain criteria found in the act.

Fiscal Year 1990 Per-Agent Cost Projections Provided by FWS' Regions

Cost category	Per-agent cost projections, by region						
	1	2	3	4	5	6	7
Personnel compensation							
Salary							
Agent	\$43,376	\$45,812	\$42,308	\$56,100	\$53,711	\$55,538	\$57,073
Clerical employee	8,534	8,840	6,000	11,500	17,200	12,550	9,131
Benefits	10,000	10,278	12,123	10,400	^a	^a	7,990
Medical	230	250	175	400	^a	600	500
Subtotal	62,140	65,180	60,606	78,400	70,911	68,688	74,694
Travel & transportation							
Per diem allowance	6,500	6,500	5,400	6,500	4,225	5,000	7,500
Travel (common carrier)	3,900	3,000	1,000	3,900	1,500	1,000	4,000
Subtotal	10,400	9,500	6,400	10,400	5,725	6,000	11,500
Vehicle operation							
Gasoline & oil	4,500	2,950	5,000	4,500	2,250	2,000	4,500
Repairs	2,100	800	500	2,100	600	800	2,100
Aircraft operation	0	0	415	5,000	0	0	15,000
Subtotal	6,600	3,750	5,915	11,600	2,850	2,800	21,600
Other							
Storage (evidence/ equipment)	900	1,184	1,200	900	500	500	900
Telephone	1,300	0	3,600	2,500	3,482	2,000	0
Supplies	700	500	1,200	300	840	750	2,000
Household move	6,200	4,272	5,500	1,700	2,800	2,381	17,000
Purchase/repair of equipment	6,000	5,000	500	3,600	8,300	10,100	4,200
Training (travel, fees, etc.)	600	500	200	600	300	200	600
Subtotal	15,700	11,456	12,200	9,600	16,222	15,931	24,700
Total	\$94,840	\$89,886	\$85,121	\$110,000	\$95,708	\$93,419	\$132,494

^aIncluded under salary cost category.

Source: FWS.

Comments From the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



JAN 04 1991

Mr James Duffus III
Director, Natural Resources
Management Issues
General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

Thank you for the opportunity to review the draft General Accounting Office (GAO) report entitled Wildlife Protection: Enforcement of Federal Laws Could Be Strengthened (GAO/RCED-91-44). In this report the GAO examined three areas in which the Fish and Wildlife Service (Service) law enforcement activities could be strengthened. These were:

1. Do wildlife laws and treaties generally provide sufficient enforcement authority?
2. Do funding and staffing limitations necessitate selective enforcement of wildlife laws?
3. Is the Service unable to respond to many State requests for assistance?

The following are the Service's comments on the GAO's findings and conclusions under each of these areas.

Do Wildlife Laws and Treaties Generally Provide Sufficient Enforcement Authority?

In its draft report the GAO found that Federal wildlife laws do generally provide sufficient authority to protect the nation's wildlife. However, the report identified two areas where problems may arise. The first of these involved the lack of warrantless search authority under the Migratory Bird Treaty Act. The GAO noted that under a 1964 10th Circuit Court decision, there is no authority under the Migratory Bird Treaty Act to conduct searches without a warrant, even though a law enforcement agent would in other situations have authority to do so. As pointed out in the report, this has not been a serious problem to the Service, but may become so in the future.

The Service would like to point out that warrantless search authority would not necessarily solve the problems of conducting routine hunter checks in the field. In most routine checks of hunters, the agent does not have probable cause that the hunter has violated the Migratory Bird Treaty Act. Rather the agent makes a compliance inspection of the hunter's bag, gun, hunting license and ammunition to determine if the hunter is in compliance with the hunting regulations. Such compliance inspections, while a routine part of game law enforcement, are outside the scope of warrantless search authority and must have the consent of the hunter or would have to be authorized by an amendment to the Migratory Bird Treaty Act to provide such authority.

**Appendix III
Comments From the Department of
the Interior**

See comment 1.

In its conclusions under this section, the GAO states "...the lack of warrantless search authority under the Migratory Bird Treaty Act cannot be overcome by resorting to the Lacey Act when interstate or foreign commerce has not occurred." Under the Lacey Act, when the underlying statute is a violation of Federal law or regulation, there is no requirement for the subsequent transportation to be in interstate or foreign commerce. All the Act requires in these circumstances is that the illegal wildlife be imported, exported, transported, sold, received, acquired or purchased.

See comment 2.

The second problem identified by the GAO involves hybrid species (or subspecies) that are not protected by the Endangered Species Act of 1973. The Service would like to point out that the Endangered Species Act provides for the listing of similar species as endangered or threatened when such listing would provide additional protection for the listed endangered or threatened species. Under this similarity of appearance provision, the Service could list hybrids of an endangered species as either endangered or threatened if it were determined that such listing were necessary for the protection of the listed species.

In summary, I believe that the Service has sufficient authority to carry out its law enforcement responsibilities.

Do funding and staffing limitations necessitate selective enforcement of wildlife laws?

See comment 3.

In its conclusions, the GAO states that the Service does not adequately document suspected wildlife crimes, including those not investigated. The Service acknowledges that this is a weakness in its system. However, the GAO goes on to state that "Better information on what is needed to provide existing agents with the funds required for them to do their jobs including travel and per diem, vehicle operation, up-to-date equipment, and other office and field support services, would help FWS' law enforcement personnel to better justify their funding level needs." The Service believes that it has more than adequately documented the funding level necessary to fully support both Special Agents and Wildlife Inspectors. Detailed information on the cost to fund a Special Agent and a Wildlife Inspector has been developed and refined over the past 15 years. The Service believes that these figures, which include salary and benefits, travel and per diem, equipment repair and replacement, clerical and administrative support and other costs, accurately reflect the cost to fully support Special Agents and Wildlife Inspectors. In addition, the Service has developed detailed figures to support other costs required to operate its law enforcement activity at an adequate level. These figures, including the supporting documentation were provided to the GAO review team. While I believe that the Service adequately documents law enforcement needs, I recognize that funding resources available to the Service to carry out its law enforcement responsibilities are limited.

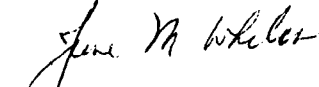
**Appendix III
Comments From the Department of
the Interior**

Is the Service unable to respond to many State requests for assistance?

In the discussion of this issue the GAO cites several examples in which the Service was unable to respond to State requests for assistance because of lack of resources. The Service acknowledges that because of limitations of funding and staff resources, the Service cannot respond to all State requests for assistance.

The Service's responses to the GAO's specific recommendations are found in the attached enclosure. If we may be of further assistance, please let us know.

Sincerely,


Deputy Assistant Secretary for Fish
and Wildlife and Parks

Enclosure

Appendix III
Comments From the Department of
the Interior

The following are the Service's responses to the specific recommendations made by the GAO in its report.

Now on p. 21.

Chapter 2. Page 25

Recommendation

To provide the basis for determining the magnitude of the problem because of the lack of warrantless search and seizure authority under the Migratory Bird Treaty Act and proposing legislative changes to the Congress, if needed, we recommend that the Secretary of the Interior direct the Director, FWS, to require special agents to report all instances of suspected violations of the act in which this limitation precludes or seriously hinders their law enforcement efforts.

Service's Response

The Service disagrees with this recommendation. Warrantless search authority is such a basic element of law enforcement that we do not believe that further documentation is necessary to justify amending the Migratory Bird Treaty Act to add this authority. Congress has specifically included warrantless search authority in all wildlife legislation passed in the past 20 years. Such authority is implied in most other criminal statutes and supported upon the basis of numerous court decisions. Therefore, the Service believes that the GAO should change this recommendation to support amending the Migratory Bird Treaty Act to include warrantless search authority using language similar to that in the Lacey Act Amendments of 1981.

See comment 4.

Now on p. 30.

Chapter 3. Page 35

Recommendation

To provide current and reliable management information on the extent of crimes against wildlife, thus enabling FWS law enforcement personnel to better justify their funding needs and ensuring that FWS law enforcement agents are able to perform their basic responsibilities, we recommend that the Secretary of the Interior direct the Director, FWS, to require FWS law enforcement management and agents to (1) record all instances of suspected violations that come to their attention, including those that may not be investigated, and (2) periodically assess the extent of suspected crimes against wildlife. Estimates of the resources needed to adequately address the problem and keep agents fully operational throughout the fiscal year should be included in annual budget requests.

Service's Response

The Service agrees that it needs to improve its documentation of wildlife crime. It is currently developing the capability to implement the National Incident Based Reporting System (NIBRS) which will be a uniform, nationwide criminal reporting system managed by the Federal Bureau of Investigation. Implementation of the NIBRS system will enable the Service to improve its documentation of reported or suspected wildlife crimes regardless of whether an investigation is conducted.

See comment 5.

The Service disagrees, however, with the GAO premise that better documentation of reported violations will provide meaningful data to support increased funding or staffing for law enforcement. Several studies have been conducted by State conservation agencies to determine the rate at which the public reports violations of wildlife laws. The results of these studies indicate that less than 1% of all wildlife crimes are reported to law enforcement agencies. The Service's own experience supports these findings. Service Special Agents obtain information about wildlife violations through an informal system of intelligence networks and informants that are developed by the individual agents. Rarely does an agent receive a report of suspected violation from a member of the general public. Because of this, the Service has little information about the extent of wildlife crime in areas where there is little or no Service law enforcement presence. The Service has learned through experience that as it adds agents to an area or establishes agent positions in new areas, the intelligence about wildlife crime in that area quickly expands, and the result is an increase in the number of investigations conducted in the area.

Now on p. 34.

Chapter 4, Page 41

Recommendation

To provide current and reliable information on joint federal-state efforts to protect wildlife and to better justify the resources needed to continue the reciprocal relationship with the states, we recommend that the Secretary of the Interior direct the Director, FWS, to document (1) all state requests for assistance in investigating suspected wildlife violations, (2) FWS' responses to the requests, and (3) the outcome of any investigations.

Service's Response

The Service agrees that it needs to improve its documentation of wildlife crime, including requests for assistance from the states. As noted in the preceding recommendation, it is currently developing the capability to implement the National Incident Based Reporting System (NIBRS) which will be a uniform, nationwide criminal reporting system managed by the Federal Bureau of Investigation. Implementation of the NIBRS system will enable the Service to improve its documentation of reported or suspected wildlife crimes regardless of whether an investigation is conducted.

See comment 6.

The following are GAO's comments on the Department of the Interior's letter dated January 4, 1991.

GAO's Comments

1. We have revised our conclusions in chapter 2 to clarify the provisions of the Lacey Act.
2. We have revised our final report to recognize these comments (see pp. 19 and 20).
3. We have deleted the sentence referred to by Interior from our final report. Also, we relied extensively on FWS information regarding the funding levels necessary to support its agents (see ch. 3).
4. At the end of chapter 2, we have recognized and evaluated the agency's comments. Also, we changed our recommendation to the Secretary of the Interior to a matter for congressional consideration in view of (1) the concern that the lack of warrantless search authority in the Migratory Bird Treaty Act may become more of a problem in the future, (2) the fact that similar authority exists in other federal and state legislation, and (3) FWS' position that further documentation is not needed to justify amending the Migratory Bird Treaty Act to add warrantless search and seizure authority.
5. At the end of chapter 3, we have recognized and evaluated the agency's comments.
6. At the end of chapter 4, we have recognized and evaluated the agency's comments.

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