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Committee on Interior and Insular Affairs,  
House of Representatives

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WILDLIFE PROTECTION

Enforcement of Federal Laws  
Could Be Strengthened

Statement of James Duffus III, Director,  
Natural Resources Management Issues,  
Resources, Community, and Economic Development Division



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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our April 1991 report on 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 (FWS) enforces these laws and treaties.<sup>1</sup> We will also discuss the status of corrective actions taken in response to our recommendations.

In summary, we reported that federal statutes--together with international treaties--generally provide FWS with adequate authority to protect wildlife. However, as FWS special agents noted, the Migratory Bird Treaty Act does not give FWS the authority to conduct a search and seizure without a warrant, as do other laws that protect wildlife. Our report suggested that the Congress may wish to consider amending the Migratory Bird Treaty Act to provide FWS with warrantless search and seizure authority.

We also reported that FWS investigates over 10,000 suspected violations each year and maintains a conviction rate averaging over 90 percent for cases prepared for prosecution. The agency cannot, however, investigate many more suspected violations or respond to state requests to participate in certain investigations because (1) it has a limited number of special agents and (2) many of these agents are deskbound for months at a time because of insufficient operating funds. Further compounding these shortfalls, FWS does not have readily available information on suspected violations and other enforcement activities that could help to justify needed resources. Therefore, we recommended that Interior develop current and reliable information on the extent of wildlife crimes and use this information to provide realistic estimates of the resources that FWS needs to carry out its law enforcement efforts effectively. FWS agreed with our findings and recommendations and now estimates that our recommendations will be implemented by October 1992.

Before discussing our report in more detail, I would like briefly to provide some background information.

#### BACKGROUND

Although FWS has broad law enforcement authority under 11 domestic laws and 5 international treaties to protect and conserve fish and wildlife and their habitats, FWS' law enforcement activities most often focus on 4 statutes--(1) the Lacey Act, which is used to control the smuggling and trade in illegally taken fish and wildlife; (2) the Migratory Bird Treaty Act; (3) the Eagle Protection Act; and (4) the Endangered Species Act.

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<sup>1</sup>Wildlife Protection: Enforcement of Federal Laws Could Be Strengthened (GAO/RCED-91-44, Apr. 26, 1991).

As of January 1992, FWS' Division of Law Enforcement included 205 special agents and 68 wildlife inspectors who are located in FWS headquarters and regional offices 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 taking of wildlife over the authorized limits.<sup>2</sup> Investigations of crimes against wildlife may be overt or undercover, depending on the nature and magnitude of the suspected violations.

WILDLIFE PROTECTION LAWS AND TREATIES GENERALLY  
PROVIDE SUFFICIENT ENFORCEMENT AUTHORITY

According to FWS special agents whom we surveyed during our review, existing federal laws and international treaties generally provide FWS with sufficient authority to protect wildlife. In those instances where a lack of authority in certain statutes creates enforcement problems, FWS special agents are generally able to compensate with the authority contained in another wildlife protection law or treaty.

In certain instances, however, existing statutes have not provided FWS with adequate authority to protect wildlife. Although overall statistics are not available on the number of times this occurs, FWS agents whom we interviewed cited instances in which the absence of authority to conduct a search and seizure without a warrant under the Migratory Bird Treaty Act had hampered investigations of crimes against migratory birds. The agents were concerned that although this limitation had not yet significantly impeded their enforcement efforts, it might prevent searches in the future, as hunters learn about the limitation and refuse to consent to the searches. We suggested in our report that the Congress may wish to consider amending the act to provide warrantless search and seizure authority. Although the Congress has not acted on this suggestion, the Department of the Interior has advised us that FWS is reviewing its overall law enforcement authorities and, as a part of that review, may develop a proposal to amend the act to provide for warrantless search and seizure authority.

LIMITED STAFF AND FUNDS AFFECT  
FWS' LAW ENFORCEMENT EFFORTS

In 1976, FWS estimated that a minimum of 240 special agents were needed to deter crimes against wildlife. Since then, new and amended laws have substantially increased FWS' responsibilities for

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

protecting wildlife, adding hundreds of domestic animals and plants and certain marine mammals to the wildlife species that the agency was originally directed to protect. Also during this period, the number of crimes against wildlife reportedly increased. Yet, despite this expanded workload, FWS' Division of Law Enforcement has not fared well in the allocation of substantial increases in FWS' overall funding and staffing. Although FWS' total staffing increased by almost 80 percent between fiscal years 1977 and 1990, the number of special agents decreased by 9 percent. If the division is to fare better in the yearly competition within FWS for staffing and funding, it will have to document more precisely (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, as of January 1992, had not done so.

FWS' staff of 205 special agents is up slightly from the 200 that the Division had at the time of our review in fiscal year 1990 but down from the 16-year high of 220 in fiscal year 1977. FWS special agents are responsible for covering vast geographic areas in which hundreds of thousands of hunters are licensed to hunt. However, because Division operating funds have not been adequate to cover expenses for travel, vehicle operation, equipment, and support services, agents have often been confined to their desks. As a result, they have been unable to perform basic responsibilities in the field, including conducting surveillance, participating in raids, interviewing witnesses, interrogating suspects, searching for evidence, seizing contraband, and making arrests when warranted. Operating funds provided for these activities decreased from \$24,100 per agent in fiscal year 1984 to \$11,800 in fiscal year 1990. Operating funds per agent further declined to \$8,800 in fiscal year 1991. This decline was accompanied by a 25-percent reduction in cases opened and a 20-percent reduction in cases closed during the fiscal year. In fiscal year 1992, operating funds per agent are to increase to an estimated \$18,900--a figure that is still 22 percent below the funding provided in fiscal year 1984.<sup>3</sup>

Staffing and funding shortfalls have dictated that FWS regions selectively enforce wildlife protection legislation. FWS believes that by focusing on (1) covert investigations of large-scale illegal commercial operations involving the taking and trading of wildlife and their parts and (2) massive illegal harvesting of migratory waterfowl, it can use its limited resources most effectively, apprehending and deterring violators who pose the greatest threat to fish and wildlife. Nonetheless, according to

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<sup>3</sup>These figures were not adjusted for inflation.

some FWS agents, this marshaling of resources in a few selected areas results in suspected crimes in many other areas being ignored.

To provide current and reliable information on the extent of crimes against wildlife and thus enable FWS better to justify and obtain the funds needed to ensure that FWS law enforcement agents are able to perform their basic responsibilities, we recommended that the Secretary of the Interior direct the Director, FWS, to require FWS law enforcement management and agents to record (1) all 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) assess periodically the extent of the suspected crimes against wildlife, (2) provide realistic estimates of staff and funds needed to address the problem adequately, and (3) include the estimates in its annual budgets.

In September 1991, Interior informed us that it agreed that FWS needs to improve its documentation of the reported or suspected crimes against wildlife that it does not have the resources to investigate. The Department stated that FWS has had procedures for such documentation since 1974 but that these procedures have not always been followed. As a part of the corrective action to be taken, FWS was to issue a policy memorandum to reemphasize its current case management and reporting procedures and require its agents to report all known or suspected violations, whether they are investigated or not. Although FWS has not yet issued the memorandum, it has initiated action to redesign its Law Enforcement Management Information System. The redesigned system will provide the capability to interface with the National Incident-Based Reporting System, a nationwide criminal reporting system managed by the Federal Bureau of Investigation. Implementation of the system, scheduled for October 1, 1992, should enable FWS to improve its documentation of reported or suspected crimes against wildlife, whether they are investigated or not.

#### 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 officers outnumber FWS agents by about 37 to 1. In the past, FWS reciprocated by participating in joint investigations at the request of state agencies. While this mutually beneficial relationship has worked well, FWS has increasingly been unable to respond to state requests for assistance because of limitations in its staffing and operating funds.

According to a report by an FWS Law Enforcement Advisory Commission in June 1990,<sup>4</sup> 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 advised FWS of their belief that the agency had "turned its back" on investigations of major violations involving the interstate transportation of illegally taken wildlife and plants.

To maximize the effectiveness of government 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 their cooperation, FWS must be able to reciprocate by participating in state investigations and responding to state requests for assistance. Under current levels of staffing and funding, FWS will not always be able to do so.

To provide current and reliable information on joint federal/state efforts to protect wildlife and to justify better the need for resources to continue the reciprocal relationship with the states, we recommended 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. Interior informed us in September 1991 that it agreed that FWS needs to improve its documentation of crimes against wildlife, including requests for assistance from the states. Plans call for FWS' system for recording investigations of suspected crimes against wildlife, scheduled for completion in October 1992, to include provisions for recording state requests for assistance in investigating suspected crimes, whether these crimes are investigated or not.

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In summary, although the Department of the Interior is developing an information system capable of recording suspected crimes against wildlife, it also needs to (1) ensure that its agents report all known or suspected violations, whether these violations are investigated or not, and (2) document all state requests for assistance. This information should then be used to identify and substantiate the resources that FWS needs to carry out its law enforcement activities effectively. We continue to believe that it would enhance FWS' enforcement authority if the Migratory Bird Treaty Act were amended to provide warrantless search and seizure authority.

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<sup>4</sup>Report of Findings and Recommendations, FWS Law Enforcement Advisory Commission, June 1990.

Mr. Chairman, this concludes my prepared statement. We will be happy to respond to any questions you or other Members of the Subcommittee may have.

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