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June 29, 2007

The Honorable Nick J. Rahall, II
Chairman
Committee on Natural Resources
House of Representatives

The Honorable Madeleine Z. Bordallo
Chairwoman
Subcommittee on Fisheries
Wildlife and Oceans
Committee on Natural Resources
House of Representatives

The Honorable Ron Kind
House of Representatives

Subject: *U.S. Fish and Wildlife Service: Opportunities Remain to Improve Oversight and Management of Oil and Gas Activities on National Wildlife Refuges*

The mission of the Department of the Interior's Fish and Wildlife Service (FWS) includes administering a national network of refuges for the conservation, management, and, where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations. The refuges are unique in that they are the only federal lands managed primarily for the benefit of wildlife. The refuge system's 95 million acres, which represent more than 14 percent of all federal lands and are found in every state, include land that has always been federally owned and land that has been acquired from others. While the federal government owns almost all of the surface lands in the system, in many cases it does not own the subsurface mineral rights. Subject to some restrictions, owners of subsurface mineral rights have the legal authority to explore for mineral resources such as oil and gas and to extract resources that are found.

In August 2003, we reported that oil and gas activities were occurring on many wildlife refuges and that little was known about the effects of those activities on refuge resources.¹ Specifically, we reported that 155 of the 575 FWS-managed refuges had past or current oil and gas exploration, production, or pipeline activities, including over 1,800 active and 2,600 inactive oil and gas wells. While available studies, anecdotal information, and our observations indicated that environmental damage had occurred, FWS had not assessed the cumulative environmental effects of oil and gas activities on refuge resources. We also reported that FWS oversight of oil and gas activities needed improvement, in part because of uncertainties related to FWS's authority to require oil

¹GAO, *National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands*, [GAO-03-517](#) (Washington, D.C.: August 28, 2003).

and gas operators to obtain access permits before conducting exploration and production activities. In addition, we reported that FWS guidance regarding land acquisition was unclear and potentially exposed the federal government to situations where it could unknowingly acquire contaminated land. To address these deficiencies, we made a number of recommendations that, if implemented, we believed would improve FWS's ability to protect refuge resources.

On May 3, 2007, we briefed House Committee on Natural Resources staff on the extent to which FWS had taken corrective measures to address the problems that we previously identified. We reported that FWS has taken steps to implement some of our recommendations, but we believe that more action is needed. For example, FWS has made progress in developing a database to collect information on the nature and extent of oil and gas activities and their effect on refuge resources. However, the database is not yet in use and FWS has no estimate for when it will be in place nationwide. In addition, FWS has developed an estimate of the staffing levels needed to oversee oil and gas activities but has not yet sought sufficient resources to fund the needed positions. And, while FWS reported to us that it has worked with the Department of the Interior (DOI) to determine the extent of the FWS's authority to require permits from oil and gas operators, FWS has yet to make that determination public. In summary, we consider all but one of the recommendations from our 2003 report to be open.

The enclosed briefing document provides further details about the findings and recommendations in our 2003 report and the status of FWS actions to implement those recommendations (see enc. I). We conducted our follow-up review from April 2007 through May 2007 in accordance with generally accepted government auditing standards.

We provided DOI with a draft of this report and the enclosed briefing document for review and comment. In reply, DOI commented that, in general, it agreed with the majority of our conclusions that pertain to FWS (see enc. II). DOI also provided additional details regarding its actions to implement recommendations from our 2003 report. We have incorporated these clarifications in this report as necessary.

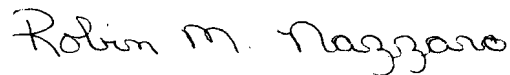
DOI stated that it partially concurred with our assessment of its progress in implementing our recommendation regarding adequate training for staff responsible for overseeing oil and gas activities. In particular, DOI disagreed that, as we wrote in the draft briefing document, the training should be required for appropriate personnel. Instead, DOI stated that voluntary enrollment was sufficient. Our intent in suggesting that training be required was to ensure that appropriate personnel attended. We accept DOI's assurances that the training has been well received and attended, and its claim that making the training mandatory *at this time* is not necessary. We expect that DOI would change this policy if it finds in the future that appropriate personnel are not seeking such training. Accordingly, we will close this recommendation.

Additionally, DOI stated that it does not believe that our recommendation from the 2003 report that the Secretary of the Interior and the Director of FWS work with DOI's Office of the Solicitor to seek from Congress any necessary additional authority over outstanding and reserved mineral rights is necessary. DOI asserted that it is able, under its existing authorities, to effectively manage and oversee oil and gas development activities on national wildlife refuges and that it is able to do so without infringing on the private property rights of mineral owners.

We appreciate DOI's belief that it can protect the public's surface interests in national wildlife refuge lands with the authority it currently has. However, we do not believe that DOI has adequate information on which to base this claim. In particular, FWS has not comprehensively assessed the extent of the damages occurring on refuge lands due to oil and gas activities and it has yet to publicly clarify the extent of its current authority over private mineral rights. We continue to believe that such information is necessary for DOI to adequately inform the Congress regarding the need for additional authority. Moreover, we believe it is for Congress, not DOI, to weigh the needs of the refuge lands and the interests of mineral owners and, ultimately, to determine what oversight authority would be appropriate. Before Congress can do so, DOI must inform the Congress as to what authority FWS might require to adequately protect refuge resources.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, copies of this report will be sent to interested congressional committees and the Secretary of the Interior. We will also make copies available to others upon request. In addition, this report will be available at no charge on the GAO Web site at <http://www/gao/gov>.

If you or your staffs have any questions, please contact me on (202) 512-3841 or at nazzaror@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Kevin Bray, Ross Campbell, John Delicath, and Trish McClure.



Robin M. Nazzaro
Director, Natural
Resources and Environment

Enclosures



Briefing

Why GAO Did This Study

In 2003, GAO issued a report on the U.S. Fish and Wildlife Service's (FWS) management and oversight of privately held oil and gas operations on wildlife refuges. GAO made several recommendations to the Department of the Interior and FWS to improve oversight. In response to the growing demand for domestic energy sources, there has been increased pressure to pursue oil and gas development on federal lands, and some are concerned about the impact of oil and gas activities on federal resources if they are not properly managed. In this context, you asked us to determine the extent to which FWS had implemented the recommendations from our 2003 report and whether additional actions are necessary to properly oversee and manage oil and gas operations.

Scope and Methodology

To determine the extent to which FWS has implemented corrective actions to address the problems we identified in 2003, we reviewed agency documents and relevant laws, analyzed agency responses to written questions, and interviewed agency officials. This work was conducted in accordance with generally accepted government auditing standards in April and May 2007.

U.S. FISH AND WILDLIFE SERVICE

Opportunities Remain to Improve Oversight and Management of Oil and Gas Activities on National Wildlife Refuges

Background

The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations. While the federal government owns almost all of the surface lands in the system, in many cases it does not own the subsurface mineral rights. Subject to some restrictions, owners of subsurface mineral rights have the legal authority to explore for mineral resources such as oil and gas and to extract resources that are found.

In August 2003, we reported the following:

- Of the 575 FWS-managed refuges, 155 had past or current oil and gas exploration, production, or pipeline activities. As of December 2002, 4,406 active and inactive oil and gas wells were located on 105 refuges. The 1,806 active wells, located on 36 refuges, produced about 1.1 percent and 0.4 percent of total domestic oil and gas production, respectively.
- FWS had not assessed the cumulative environmental effects of oil and gas activities on refuge resources. Available evidence indicated that effects varied from negligible to substantial. Some effects had been reduced through improvements in industry practices.
- Federal management and oversight of oil and gas activities varied widely among refuges. The variation occurred because of differences in authority to oversee private mineral rights and because refuge managers lacked guidance, resources, and training.
- FWS's legal authority to require oil and gas operators to obtain access permits that contain conditions designed to protect refuge resources varies depending upon the nature of the mineral rights. For "reserved" mineral rights—cases where the property owner retained the mineral rights when selling the land to the federal government—FWS can require permits only if the property deed subjects the rights to such requirements. For "outstanding" mineral rights—cases where the mineral rights were separated from the surface lands before the government acquired the property—FWS had not formally determined its position regarding its authority to require access permits. We reported that based on statutory language and court decisions, we believe FWS has the authority to require owners of outstanding mineral rights to obtain permits.
- FWS's land acquisition guidance was unclear and oversight was inadequate, thereby exposing the federal government to unexpected cleanup costs for properties contaminated by hazardous substances, including oil and gas.

Accordingly, we made numerous recommendations to FWS to address these deficiencies. We also suggested that the Congress consider providing FWS with greater authority to oversee private mineral rights.

Briefing

Prior GAO Products

GAO, *National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands*, GAO-03-517. Washington, D.C.: August 28, 2003.

GAO's Recommendations from 2003 and FWS's Actions to Implement Them

Collect and Maintain Better Data on Oil and Gas Activities

- 1) **We recommended that FWS collect and maintain better data on the nature and extent of oil and gas activities and the effects of those activities on refuge resources.**

Agency Actions

- FWS reported to us that it began working with the Environmental Protection Agency (EPA) in October 2006 to evaluate whether an oil and gas database used by EPA—the Site Assessment Reconnaissance Tracking System—could be adapted to suit FWS's needs.
- According to FWS, the system includes geospatial location information, site photographs, spill information, and an action tracking log.
- FWS told us that it is a priority to complete the evaluation process in 2007.
- FWS's initial estimate is that it will cost approximately \$2 million to create an initial inventory of all wells and pipelines on the 155 refuges. Populating and maintaining the database with inspection results would add yearly costs.
- FWS is considering a pilot test of the database in Region 4 (which includes Louisiana).
- FWS told us that once a funding source is identified, the agency plans to hire contractors to conduct the initial phases of data collection and database population. Once that is completed and the database is operational, FWS will use existing staff to conduct day-to-day oil and gas facility inspections.

GAO Analysis

- We consider this recommendation to be open.
- It appears to us that the EPA database contains many data elements that would be needed to manage oil and gas activity on refuges and is a reasonable starting point for the development of an FWS system.
- It is not clear when the database will be implemented on a systemwide basis.

Recommendations and Actions (cont.)

Determine Necessary Staffing Levels

- 2) **We recommended that FWS determine the level of staffing necessary to adequately oversee oil and gas operations and seek the necessary funding to meet those needs through appropriations, the authority to assess fees, or other means.**

Agency Actions

- A team of FWS managers, working with staff from the National Park Service's Geological Resources Division, determined that a total of 45 positions are needed to oversee oil and gas activities for the national wildlife refuge system, including 32 refuge oil and gas specialists, 7 regional coordinators, and a 6-person Mineral Resources Team.
- FWS reported to us that under current budget circumstances, creating 45 positions is not feasible.
- According to FWS, if additional funding becomes available, it will create three new positions to form a national Mineral Resources Team.
- FWS has used damage fees to hire oil and gas staff specialists in Texas and Louisiana to conduct damage assessments, mitigate or restore damage, and monitor or study the recovery of damaged resources.
- FWS told us that it is "strongly considering" initiating a process to expand its authority nationally to retain fees collected for damages.

GAO Analysis

- We consider this recommendation to be open.
- FWS used reasonable factors to determine necessary staffing levels, namely comparing staff levels with the National Park Service for comparable activities and assessing expected increases in oil and gas activities on refuge lands.
- However, one could argue that reaching parity with National Park Service staffing levels would require more than 45 FWS positions.
 - The Park Service has 13 dedicated positions to manage over 700 wells in 12 parks. This equates to just over 1 person per park, and about 54 wells per person.
 - FWS has 4,400 wells on 105 refuges. A staffing level of 45 equates to less than 1 person for every 2 refuges and almost 100 wells per person.
 - FWS does not appear to be taking aggressive steps to adequately staff the agency's management and oversight of oil and gas activities. In general, FWS is planning for reductions in overall refuge staffing levels and conceded to us that the loss of staff will have a significant effect on all programs within the refuge system, including oil and gas management.

Recommendations and Actions (cont.)

Ensure that Agency Staff Are Trained

- 3) **We recommended that FWS ensure that staff are adequately trained to oversee oil and gas activities.**

Agency Actions

- FWS developed a new training manual and conducted three training sessions in Texas, North Dakota, and Louisiana. A fourth session is tentatively scheduled for September 2007 in Alaska.
- FWS plans to offer one course per year starting in FY 2008.
- FWS personnel involved with natural resource management or enforcement concerning oil and gas facilities are “strongly encouraged,” but not required, to attend the training.
- FWS is working on a handbook entitled *Management of Oil and Gas on National Wildlife Refuges* to provide guidance to refuge managers. FWS told us that the handbook would be available to personnel in August or September 2007.
- FWS believes that it has met the requirement of this recommendation.

GAO Analysis

- We are closing this recommendation in recognition of FWS’s actions. However, we have several comments on those actions.
 - We believe that FWS should monitor the attendance at its training classes to ensure that personnel with oil and gas responsibilities are enrolling. If voluntary enrollment does not prove adequate, then mandatory enrollment might be needed.
 - In our view, a key element of training concerns FWS’s authority to require permits for oil and gas activities. However, FWS’s training manual states that the question of permitting authority for outstanding mineral rights is “unresolved.” We believe that the handbook will be a more meaningful document than the training manual if it directly addresses the issue of authority over private mineral rights. According to FWS, the handbook will address legal authorities, including mineral ownership, and implementing regulations. Although FWS testified in October 2003 that the handbook would be ready in December 2004, it is still not available.

Recommendations and Actions (cont.)

Enhance Permit Authorities for Oil and Gas Activities

- 4) **We recommended that the Secretary of the Interior and the Director of FWS should work with the Department of the Interior's (DOI) Office of the Solicitor to determine FWS's existing authority to issue permits and set reasonable conditions regarding outstanding mineral rights and to report the results of its determination to Congress.**

Agency Actions

- According to FWS, it is considering seeking—but has not sought—a formal opinion from DOI's Office of the Solicitor regarding FWS's authority to issue permits for outstanding mineral rights.
- However, FWS told us that it has consulted with the Office of the Solicitor regarding its authorities to issue permits for nonfederal oil and gas operations on refuge lands.
- According to FWS, the Office of the Solicitor has reviewed and concurred with the language in the draft FWS handbook on oil and gas management regarding FWS's authorities.
- FWS will not reveal the solicitor's position on this question until it releases the handbook on oil and gas management.

GAO Analysis

- We consider this recommendation to be open until the Secretary and FWS report the results of their determination to the Congress.

Recommendations and Actions (cont.)

Enhance Permit Authorities for Oil and Gas Activities

- 5) **We recommended that the Secretary of the Interior and the Director of FWS should work with DOI's Office of the Solicitor to seek from Congress, in coordination with appropriate administration officials—including those within the Executive Office of the President—any necessary additional authority over such [outstanding] rights, and over reserved mineral rights, so that FWS can apply a consistent and reasonable set of regulatory and management controls over all oil and gas activities occurring on national wildlife refuges to protect the public's surface interests.**

Agency Actions

- In October 2003, FWS testified that it did not see the need for additional legislative authority—similar to that available to the National Park Service and the Forest Service—regarding outstanding or reserved mineral rights. FWS has maintained this position in its response to our recent inquiries.
- In response to our request for comments on a draft of this product, DOI stated its belief that it does not require additional authority to manage oil and gas activities where the mineral rights have been reserved. DOI also said that additional authority would require permitting for operators who own the subsurface mineral rights and that FWS is able to effectively manage oil and gas activities on refuges without infringing on the private property rights of mineral owners.

GAO Analysis

- We consider this recommendation to be open.
- We appreciate DOI's belief that it can protect the public's surface interests in national wildlife refuge lands with the authority it currently has. However, we do not believe that DOI has adequate information on which to base this claim. In particular, FWS has not comprehensively assessed the extent of the damages occurring on refuge lands due to oil and gas activities and it has yet to publicly clarify the extent of its current authority over private mineral rights. We continue to believe that such information is necessary for DOI to adequately inform the Congress regarding the need for additional authority. Moreover, we believe it is for Congress, not DOI, to weigh the needs of the refuge lands and the interests of mineral owners and, ultimately, to determine what oversight authority would be appropriate. Before Congress can do so, DOI must inform the Congress as to what authority FWS might require to adequately protect refuge resources.

Briefing

GAO Contributors

If you have any questions concerning this briefing, please contact Robin M. Nazzaro, Director, Natural Resources and Environment, at (202) 512-3841. Other key contributors to this briefing were Kevin Bray, Ross Campbell, John Delicath, and Trish McClure.

Recommendations and Actions (cont.)

Improve Land Acquisition Guidance to Avoid Problems

- 6) We recommended that FWS clarify guidance and better oversee its land acquisition process so that all hazardous substances and environmental problems, as well as future cleanup costs, are fully identified prior to acquisition and that unexpected costs are avoided.**

Agency Actions

- October 2003—FWS testified that it believed that existing policies were sound but that they could be further improved.
- June 2004—FWS wrote to GAO stating that its policies were clear but that it would issue a Director's Order in FY 2004 reaffirming the importance of conducting thorough environmental site assessments for all sites, including properties with oil and gas activities.
- FWS has now decided to revise the policy rather than issue a Director's Order. The agency stated the following reasons for its change in plans:
 - Director's Orders are temporary.
 - In November 2005, EPA issued regulations describing environmental site assessment practices. Those regulations became effective in November 2006 and FWS needs to address them in its revised policy.
 - FWS has assembled a team to work on revising its policy but cannot complete that task until
 - DOI and the U.S. Department of Agriculture issue guidance for addressing the new EPA regulations and
 - DOI revises its land acquisition policy after issuing the guidance.
 - In its comments on a draft of this report, DOI said that its guidance for addressing the new EPA regulation is under review and is expected to be completed by the end of 2007.

GAO Analysis

- We consider this recommendation to be open.
- We are not yet able to evaluate DOI or FWS changes to policy.
- The revised FWS policy will not be available until at least 2008.
- We note that improved guidance must also be accompanied by adequate implementation and oversight.

Comments from the Department of the Interior



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



JUN 14 2007

Ms. Robin Nazzaro
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Nazzaro:

Thank you for providing the Department of the Interior with the opportunity to review and comment on U.S. Government Accountability Office Draft Report "Opportunities Remain to Improve Oversight and Management of Oil and Gas Activities on National Wildlife Refuges" GAO-07-829-R dated May 2007. Within the Department, the U.S. Fish and Wildlife Service (Service) has worked diligently to improve its management of oil and gas activities on refuge lands and to implement the recommendations of the GAO. In general, we agree with the majority of the GAO's conclusions that pertain to the Service. We have provided specific comments below.

In addition to the minor editorial comments that the Service previously provided to GAO regarding the draft report, the enclosure provides technical comments, as well. We hope these comments will assist you in preparing the final report. Again, thank you for the opportunity to review and comment on the GAO's Draft Report.

Sincerely,

Assistant Secretary for Fish,
Wildlife and Parks

Enclosure



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