



441 G St. N.W.  
Washington, DC 20548

April 9, 2018

The Honorable Wilbur Ross  
Secretary of Commerce

**Cooperative Endangered Species Conservation Fund: NOAA Should Track Its Endangered Species Act and Lacey Act Collections and Request Any Required Deposits**

Dear Mr. Secretary:

The Cooperative Endangered Species Conservation Fund (Fund) provides grants to states and territories for, among other things, conservation of threatened and endangered species on nonfederal lands, including habitat acquisition, conservation planning, and habitat restoration. Established by the Endangered Species Act (ESA) and administered by the Department of the Interior's U.S. Fish and Wildlife Service (FWS), the Fund provided more than \$56 million in such grants during fiscal year 2016.<sup>1</sup> According to Interior documents, these grants are crucial to conserving species listed under the ESA because most listed species depend on habitats found on state and private lands.

Section 11(d) of the ESA requires the Secretary of the Treasury to make deposits into the Fund in certain circumstances. In particular, section 11(d) requires deposits into the Fund whenever the amount of fines, penalties, or proceeds from property forfeitures collected (hereinafter referred to as collections) for ESA or Lacey Act violations exceeds \$500,000.<sup>2</sup> When this occurs, the Secretary must make a deposit into the Fund equal to the amount of the collections that exceed the \$500,000 statutory threshold.<sup>3</sup> Such deposits to the Fund are made from the General Fund of the U.S. Treasury, according to federal budget documents, and not from ESA and Lacey Act collections, which are retained by the agencies that collect them. For example, if combined collections for ESA and Lacey Act violations totaled \$2 million, then the Secretary of the Treasury would be required to deposit \$1.5 million into the Fund—the amount exceeding the \$500,000 statutory threshold.

The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) primarily enforces the ESA and the Lacey Act for most marine species and anadromous fish and so may make collections that trigger a deposit to the Fund when the statutory threshold is

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<sup>1</sup>16 U.S.C. § 1535(i)(1). The ESA was enacted in 1973 to conserve threatened and endangered species and the ecosystems upon which they depend. To receive protection under the ESA, a species must first be added to one of the federal lists of threatened or endangered species, which typically happens in response to a person or group filing a petition to list a species with, or through a review initiated by, FWS or the National Oceanic and Atmospheric Administration's National Marine Fisheries Service.

<sup>2</sup>16 U.S.C. § 1540(d). The ESA also requires an annual deposit to the Fund equal to 5 percent of deposits into the Federal Aid in Wildlife Restoration and the Sport Fish Restoration accounts. 16 U.S.C. §1535(i)(1). The Lacey Act prohibits the trafficking of plants, fish, or wildlife taken, possessed, transported, or sold in violation of U.S., state, tribal, or foreign law, among other things.

<sup>3</sup>16 U.S.C. § 1540(d).

met.<sup>4</sup> Examples of ESA and Lacey Act violations that could result in collections include the killing of endangered marine mammals and sale of these animals or their parts. NOAA is authorized to use its ESA and Lacey Act collections to, among other things, pay financial rewards to people who provide information that leads to arrests, criminal convictions, civil penalty assessments, or property forfeitures for violations of those two laws.<sup>5</sup>

Several offices within NOAA have a role in tracking agency collections for ESA and Lacey Act violations. The NOAA Office of Law Enforcement enforces certain U.S. laws and international treaties protecting marine fisheries, wildlife, and habitat, including the ESA and Lacey Act.<sup>6</sup> The office's investigations can lead to civil and criminal cases, which can result in collections for ESA and Lacey Act violations. NOAA's Office of the General Counsel manages NOAA's civil ESA and Lacey Act cases, and the Department of Justice represents NOAA in federal court for criminal ESA and Lacey Act cases. NOAA's Finance Office maintains NOAA's financial system and records NOAA collections.

In February 2017, we notified you that in response to a request from the Ranking Member of the Senate Finance Committee, we would be reviewing the use of financial rewards by federal agencies to combat wildlife trafficking. During the course of that ongoing review, we became concerned about the extent to which NOAA tracks its collections for ESA and Lacey Act violations and requests that the Department of the Treasury (Treasury) make any statutorily required deposits to the Fund. As a result, we prepared this report to outline our findings and related recommendation for this issue.

For this report, we reviewed the ESA provision requiring deposits into the Fund based on the amount of collections for ESA and Lacey Act violations. We reviewed available documentation from NOAA and FWS on how they track collections for ESA and Lacey Act violations, as those are the agencies primarily responsible for implementing the two laws. We also interviewed NOAA and FWS budget, finance, and law enforcement officials on how the agencies track their ESA and Lacey Act collections and request that Treasury make any statutorily required deposits. We sought documentation from NOAA and FWS on any requests they made to Treasury for deposits into the Fund based on the agencies' ESA and Lacey Act collections. We obtained and reviewed FWS requests to Treasury for fiscal years 2014 through 2017, the most recent data available at the time of our review.<sup>7</sup> However, NOAA officials told us that the agency did not request that Treasury make any deposits during this time frame. Further, we reviewed documentation on deposits Treasury made to the Fund from fiscal years 2014 through 2017.

In addition, we reviewed a nongeneralizable sample of three NOAA law enforcement cases that were closed from fiscal years 2014 to 2017. We selected these cases for our audit on federal

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<sup>4</sup>FWS primarily enforces the ESA and the Lacey Act for terrestrial, freshwater, and bird species and thus may also make collections that trigger a deposit to the Fund when the statutory threshold is met.

<sup>5</sup>16 U.S.C. §§ 1540(d)(1), 3375(d)(1). ESA and Lacey Act collections can also be used for the reasonable and necessary costs incurred for providing temporary care for plants, fish, or wildlife during a civil or criminal proceeding alleging a violation of those laws with respect to that plant, fish, or wildlife.

<sup>6</sup>In addition to the ESA and the Lacey Act, examples of other marine resource laws that NOAA enforces include the Magnuson-Stevens Fishery Conservation and Management Act, as amended, and the Marine Mammal Protection Act, as amended.

<sup>7</sup>We did not review the underlying data in the requests FWS sent to Treasury because that was outside the scope of our review.

agencies' use of financial rewards to combat wildlife trafficking because these cases involved payment of financial rewards. Because these cases involved ESA or Lacey Act violations, we reviewed them to identify whether collections resulting from those cases may have triggered the statutory threshold for a deposit to the Fund. The cases we reviewed represented 3 of the 161 cases that the NOAA Office of Law Enforcement closed from fiscal years 2014 through 2017 where the primary law violated was the ESA or the Lacey Act. The findings from our review of the three cases cannot be generalized to cases we did not select and review, but they illustrate how NOAA had collections that may have met the statutory threshold for a deposit to the Fund.

We conducted this performance audit from December 2017 to April 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### **NOAA Does Not Track Collections for ESA and Lacey Act Violations or Request Deposits to the Fund**

NOAA does not track its collections specific to ESA and Lacey Act violations or request that Treasury make any deposits to the Fund under section 11(d). According to agency officials, NOAA records its collections for violations of all of the marine resource laws it enforces without identifying the specific laws under which those collections were made. NOAA officials said the agency does not track the amounts it collects for violations under specific laws because NOAA is authorized to deposit its collections for violations under any of the marine resource laws it enforces—including the ESA and the Lacey Act—into its Fisheries Enforcement Asset Forfeiture Fund.<sup>8</sup> As a result, agency officials said NOAA has not tracked the specific laws under which individual collections were made. In addition, NOAA officials said that because individual cases often involve charges for violations of multiple laws, it would take additional review and may be challenging for NOAA's Office of Law Enforcement and Office of General Counsel to determine the portion of amounts collected in those cases that should be attributed to the ESA or the Lacey Act.

NOAA officials agreed, however, that to facilitate the implementation of section 11(d), it may be feasible for them to track their collections specific to ESA and Lacey Act violations, such as by adopting an approach similar to that of FWS. According to FWS officials, as FWS receives collections for ESA and Lacey Act violations, officials record and track those amounts in FWS's financial system. For instance, FWS provides instructions to U.S. district court clerks on how to mark checks so that collection amounts for ESA or Lacey Act violations are clearly identified. Then, as checks come in, FWS finance officials record those amounts in the agency's financial system. The instructions to the clerks indicate that amounts collected for violations of laws other than the ESA or the Lacey Act qualify as amounts collected under one or both of those laws if the underlying activity violated the ESA or the Lacey Act. For example, if a case involved smuggling, and the smuggled merchandise was obtained in violation of the Lacey Act, then any resulting collection would qualify as a collection under the Lacey Act. Officials from NOAA's Finance Office said that it may be feasible to develop an electronic identifier in the agency's financial system, similar to what FWS has, to track its collections specific to ESA and Lacey Act

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<sup>8</sup>Pub. L. No. 112-55, div. B, tit. I, § 110, 125 Stat. 552, 602 (Nov. 18, 2011). According to federal budget documents, the Fisheries Enforcement Asset Forfeiture Fund can be used to partially offset the costs of administering NOAA's enforcement program, such as the cost of storing, maintaining, and caring for seized fish, vessels, or other property during a civil or criminal proceeding and expenditures related directly to specific investigations.

violations. These officials further said that they would need the Office of Law Enforcement and the Office of General Counsel to identify the collections attributable specifically to ESA and Lacey Act violations, particularly for cases involving violations of multiple laws.

Because NOAA does not track its collections specific to ESA or Lacey Act violations, the agency cannot calculate and notify Treasury if a deposit needs to be made into the Fund. Treasury officials said they rely on NOAA and FWS to track the amounts the agencies collect above the \$500,000 statutory threshold for Fund deposits. NOAA officials said the agency did not request that Treasury make deposits in fiscal years 2014 to 2017, and Treasury officials confirmed that they did not receive requests from NOAA or make deposits to the Fund based on NOAA's ESA and Lacey Act collections during this time. In contrast, according to FWS and Treasury documents, FWS requested that Treasury make deposits equal to the amounts of its ESA and Lacey Act collections above the \$500,000 statutory threshold. Treasury made corresponding deposits to the Fund each year from fiscal year 2014 through 2017. Treasury deposited approximately \$7.6 million into the Fund based on FWS's collections across the 4-year period.

Based on three NOAA law enforcement cases we examined, it appears that NOAA had collections in one case that by itself may have exceeded the \$500,000 threshold for a required deposit to the Fund. Specifically, NOAA collected almost \$650,000 in one 2015 case for violations of multiple laws, including the Lacey Act. If the \$500,000 statutory threshold for ESA and Lacey Act collections was met, then a deposit to the Fund would have been required. Without a means for NOAA to track its collections specific to ESA and Lacey Act violations and request that Treasury make any needed deposits, the Fund may not receive some statutorily required deposits.

## **Conclusions**

The Fund's grants are used to help conserve threatened and endangered species. Under section 11(d) of the ESA, the Fund receives deposits from the General Fund of the U.S. Treasury if collections for ESA and Lacey Act violations exceed \$500,000. Treasury deposited approximately \$7.6 million into the Fund in recent years based on FWS's collections. However, because NOAA does not track its collections specific to ESA and Lacey Act violations, it has not requested that Treasury make similar deposits, so the Fund may not be receiving some statutorily required deposits.

## **Recommendation for Executive Action**

The NOAA Administrator should develop and implement a mechanism to track agency collections for ESA and Lacey Act violations and request that the Secretary of the Treasury make any required deposits to the Fund. (Recommendation 1)

## **Agency Comments**

We provided a draft of this report to the Departments of Commerce, the Interior, and the Treasury for review and comment. Audit liaisons from the Departments of the Interior and the Treasury stated in emails that their respective agencies did not have comments on our draft report. We received written comments from the Department of Commerce, which are reproduced in the enclosure. In its written comments, the Department of Commerce concurred with our recommendation. The department indicated that NOAA is taking action to develop and implement a mechanism to ensure collections from Endangered Species Act and Lacey Act

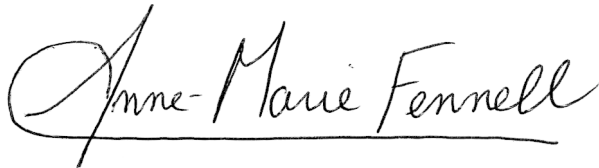
violations are tracked, and will request that the Secretary of the Treasury make any required deposits to the Fund.

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As agreed to with staff for the requester of this work, we are providing this report to him and plan no further distribution of it until 30 days from the report date. At that time, we will send copies to you, the appropriate congressional committees, the Secretaries of the Interior and the Treasury, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Alyssa M. Hundrup (Assistant Director), David Marroni (Analyst-in-Charge), Cindy Gilbert, Keesha Luebke, Jeanette Soares, and Sheryl Stein.

Sincerely yours,

A handwritten signature in black ink that reads "Anne-Marie Fennell". The signature is written in a cursive style with a large initial "A" and a horizontal line underlining the name.

Anne-Marie Fennell  
Director, Natural Resources and Environment

Enclosure

**Enclosure: Comments from the Department of Commerce**



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Secretary of Commerce**  
Washington, D.C. 20230

March 27, 2018

Ms. Anne-Marie Fennell  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Fennell:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled *Cooperative Endangered Species Conservation Fund: NOAA Should Track its Endangered Species Act and Lacey Act Collections and Request Any Required Deposits* (GAO-18-346R).

The Department of Commerce agrees with GAO's recommendation. The National Oceanic and Atmospheric Administration is taking action to develop and implement a mechanism to ensure collections specific to Endangered Species Act and Lacey Act violations are tracked, and will request that the Secretary of the Treasury make any required deposits to the Cooperative Endangered Species Conservation Fund.

If you have any questions, please contact MaryAnn Mausser, GAO Liaison, at (202) 482-8120 or [MMausser@doc.gov](mailto:MMausser@doc.gov).

Sincerely,

A handwritten signature in blue ink that reads "Wilbur Ross".

Wilbur Ross

Enclosure

**Department of Commerce**  
**National Oceanic and Atmospheric Administration**  
**Response to the GAO Draft Report Entitled**  
***Cooperative Endangered Species Conservation Fund: NOAA Should***  
***Track its Endangered Species Act and Lacey Act***  
***Collections and Request Any Required Deposits***  
**(GAO-18-346R)**

**General Comments**

The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) appreciates the opportunity to review the Government Accountability Office's (GAO) draft report on the Cooperative Endangered Species Conservation Fund (Fund).

**NOAA Response to GAO Recommendations**

The draft GAO report made one recommendation for NOAA:

**Recommendation 1:** "The NOAA Administrator should develop and implement a mechanism to track agency collections for Endangered Species Act (ESA) and Lacey Act violations and request that the Secretary of the Treasury make any required deposits to the Fund."

**NOAA Response:** NOAA agrees with this recommendation and is taking action to develop and implement a mechanism to identify collections of fines and penalties from ESA and Lacey Act violations in order to appropriately advise the Treasury to make deposits into the Cooperative Endangered Species Conservation Fund.

**Recommended Changes for Factual/Technical Information**

None

**Editorial Comments**

None

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