

# Protecting Wildlife from Government Agencies

By Samantha Ruscavage-Barz and Ashley Wilmes

Between 2004 and 2010, Wildlife Services, a federal agency within the U.S. Department of Agriculture, spent nearly \$1 billion to kill nearly 23 million animals using aerial gunning, poisons, traps, snares and hounds, purportedly to protect agriculture and other private interests from wildlife interference. As part of its program on federal lands, Wildlife Services distributes sodium cyanide booby traps and shoots tens of thousands of native carnivores such as coyotes and wolves from helicopters and airplanes on public lands, including in wilderness areas. The agency also kills many “non-target” species such as domestic dogs and cats. <http://www.sacbee.com/news/investigations/wildlife-investigation/article2574599.html> (last visited April 1, 2016). Because it is a federal program, Wildlife Services’ actions must comply with the National Environmental Policy Act, a statute requiring federal agencies to analyze the environmental impacts of their actions before proceeding with the action. 42 U.S.C. § 4332(2)(C).

In 2012, WildEarth Guardians (“Guardians”) sued the USDA and Wildlife Services to enjoin the federal agency’s management program because of its two-decade refusal to analyze the environmental consequences of its actions pursuant to NEPA and other statutes. *WildEarth Guardians v. USDA et al.*, Case No. 2:12-cv-716 (D.Nev. April 30, 2012). Guardians alleged Wildlife Services relied on an outdated environmental analysis for its wildlife-killing activities that failed to take into account new reports evaluating the efficacy of the program, current public concern with wildlife, and new scientific and economic information concerning wildlife management. Guardians presented significant new information to the agency on the costs, ineffectiveness, and environmental harms of wildlife-killing programs, but the agency did not consider the new data in its ongoing program implementation. This article traces the historical development of Wildlife Services, discusses the program’s killing methods and budget, and describes the *WildEarth Guardians v. USDA* case.

## History of Wildlife Services<sup>1</sup>

In 1931, Congress passed the Animal Damage Control Act, which authorized the Secretary of Agriculture to “promulgate the best methods of eradication, suppression or bringing under control” a whole host of species, including “mountain lions, wolves, coyotes, bobcats, prairie dogs and gophers” for the benefit of agribusiness. 7 U.S.C. § 426. As a result, the government initiated massive poisoning and trapping campaigns that greatly diminished America’s wildlife, from rodents to birds to native carnivores. By the 1940s, this federal agency had contributed to the extirpation of species such as wolves and grizzly bears from the Lower 48 states.

In 1964, Secretary of the Interior Stewart L. Udall’s Advisory Board on Wildlife and Game Management issued the “Leopold Report” to Congress (named for its chairman, Dr. A. Starker



Leopold, son of pioneering ecologist Aldo Leopold). The Leopold Report described the killing agency as a “semi-autonomous bureaucracy whose function in many localities bears scant relationship to real need and less still to scientific management.” It noted the agency’s penchant for indiscriminate wildlife killing through the use of traps and poisons, particularly Compound 1080. According to the Leopold Report, the American populace especially favored native carnivores. However, the agency and government decision makers ignored the public’s sentiment in favor of carnivore protection, and continued to respond to agribusiness pressures.

In 1971, the U.S. Department of Interior and Council on Environmental Quality issued a second report from a panel chaired by Stanley A. Cain. The 207-page “Cain Report” lamented that the government’s wildlife-management program “contains a high degree of built-in resistance to change,” and that monetary considerations that favored the livestock industry served to harm native wildlife populations. The Cain Report called for substantive changes to wildlife management regimes by changing personnel and control methods, valuing “the whole spectrum of public interests and values,” and asserting protections for native wildlife. In 1972, citing the Cain Report, Richard Nixon banned the toxicants Compound 1080, sodium cyanide, strychnine and thallium used by federal agents to kill wildlife on public lands. However, by the mid-1980s, federal agents returned to using these toxicants as part of their practices.

Between 2004 and 2006, the USDA’s Office of Inspector General (“OIG”) released audits revealing that Wildlife Services was not in compliance with the Bioterrorism Preparedness and Response Act. OIG’s audits showed that: Wildlife Services’ aircraft (used to shoot wildlife from the air) were not secured and could potentially be used in terrorist attacks and that Wildlife Services had not secured “dangerous biological agents and toxins” by preventing access by unauthorized persons, providing adequate training for individuals using toxicants, and maintaining inventories to prevent the illegal possession (theft), transfer or sale of these toxicants.

In November 2007, Wildlife Services itself admitted that it had experienced a “wake of accidents” that involved its aerial gunning program, its hazardous chemicals inventory, and more. The aerial gunning program, for instance, caused ten fatalities and 28 injuries to federal employees and contractors. In March 2008, the Environmental Protection Agency issued a notice of warning letter to Wildlife Services for its illegal and unsafe placement of M-44s that resulted in the injury of a U.S. Fish and Wildlife Service biologist and the death of his hunting dog.

Despite dramatic changes in public perceptions and values pertaining to wildlife, public calls for change, and reports such as those by the Leopold and Cain committees and the OIG, fundamental reforms of Wildlife Services have not occurred, nor has the agency re-evaluated the impact and effectiveness of its federal

wildlife management program. Rather, Wildlife Services continues to operate under a modified version of the Animal Damage Control Act of 1931, and continues to rely on outdated environmental analyses from almost two decades ago.

### Wildlife Services' Methods

Wildlife Services uses four methods for killing animals. Aerial Gunning involves shooting animals from planes and helicopters. The agency uses two types of trapping methods: "restraining" traps that hold the animal until someone comes to kill it (leg-hold traps are in this category), and "killing" traps meant to kill the animal. Use of toxicants includes a wide range of poisons: 1) rodenticides and anticoagulants, 2) alpha-chloralose (for waterfowl), 3) aluminum phosphide, 4) avitrol, 5) sodium cyanide (also known as Compound 1080 and deployed through M-44 booby traps), 6) DRC-1339, 7) glyphosate, 8) sodium nitrate/nitrite, 9) strychnine, and 10) zinc phosphide. Finally, using a practice known as "denning", Wildlife Services kills young animals in their den, usually with sodium nitrate and/or hooks.

### Wildlife Services' Budget

About half of Wildlife Services' budget is funded from federal tax dollars, while the rest is provided by unnamed "cooperators" such as states, counties, municipalities, and even industry groups like the American Sheep Industry Alliance and the Farm Bureau. The agency's annual budget has exceeded \$100 million over the last several years. The following table shows the agency's expenditures and number of animals killed over the last decade.

Wildlife Services Expenditures & Kills			
Year	Budget	Total Animals Killed	Mammals Killed
2004	\$101,490,740	2,767,152	101,246
2005	\$99,792,976	1,746,248	98,199
2006	\$108,590,001	1,642,823	115,929
2007	\$117,337,662	2,222,189	121,565
2008	\$121,059,992	4,996,899	124,414
2009	\$121,039,763	4,120,295	114,522
2010	\$126,495,487	5,008,755	112,781
2011	\$110,558,653	3,752,362	116,093
2012	\$112,531,789	3,352,378	105,279
<b>TOTAL</b>	<b>\$1,018,897,063</b>	<b>29,609,101</b>	<b>1,010,022</b>

### Conclusion

Wildlife Services last issued a comprehensive review of its program in 1994, when it studied the environmental consequences of killing only 17 target species, based on its records from 1988. Since that study, Wildlife Services' budget has grown by about 400 percent and the number of target species it kills is closer to 300. In *WildEarth Guardians v. USDA*, Wildlife Services insisted that its 1994 Programmatic Environmental Impact Statement ("PEIS") sufficiently analyzed its *current* activities, even though the PEIS relies on outdated science from the 1970s and 1980s. In contrast, NEPA review is designed to ensure all environmental impacts are analyzed and that the public has an opportunity to comment, and therefore influence, activities conducted using public funds. In addition to Wildlife Services' refusal to conduct an analysis taking into account current science, the agency also argued its wildlife-killing activities are immune from oversight because state agencies might conduct similar activities if Wildlife Services were prohibited from doing so. Wildlife Services also claimed Guardians did not have legal "standing" to challenge the killing program. The Ninth Circuit recently rejected this argument, finding that Guardians' interests are injured by the program's activities and that regardless of whether a state agency might engage in similar activities, Guardians can challenge Wildlife Services' actions. *WildEarth Guardians v. USDA*, 795 F/3d 1148 (9th Cir. 2015). The case is currently proceeding on the merits in the United States District Court for the District of Nevada.

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### Endnotes

<sup>1</sup> Information on Wildlife Services' history, practices, and budget is excerpted from the WildEarth Guardians' 2009 publication *War on Wildlife: The U.S. Department of Agriculture's Wildlife Services*. Available at <http://www.wildearthguardians.org/site/DocServer/report-war-on-wildlife-june-09-lo-2.pdf?docID=242&AddInterest=1103>.