



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

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Memorandum

To: Assistant Secretary – Fish and Wildlife and Parks
Director – U.S. Fish and Wildlife Service

From: Deputy Secretary *Katharine S. MacGregor*

Subject: Programmatic Review and Implementation of International Conservation Grants

The U.S. Fish and Wildlife Service (FWS), in partnership with the Office of the Assistant Secretary for Policy, Management and Budget (PMB) and the Office of the Solicitor (SOL), has been conducting a programmatic review of the FWS international conservation grant program, with particular focus on the Central Africa Regional Program for the Environment (CARPE) program, which is funded by appropriations transferred to FWS from the U.S. Agency for International Development (USAID). As a result of a bipartisan congressional oversight investigation and the Department of the Interior's (Department's) concern that taxpayer funds were used to support violations of human rights of indigenous people in Africa and Asia, certain USAID Fiscal Year (FY) 2018/2019 funds have been obligated by FWS, but not awarded to grantees or expended.

During this programmatic review, FWS has obtained information from grantees and human rights organizations that appears to substantiate the concerns of Department officials regarding allegations of murder, rape, torture, and abuse. However, it remains unclear the extent of direct allocation of taxpayer resources to these specific activities and bad actors. It is apparent that some of the grant recipients have been aware of such allegations and have conducted internal investigations within their own organizations which, in some cases, have substantiated such accounts. Several of the recipients have taken some degree of action to remedy them. It is not clear whether grant recipients shared these internal investigations with FWS officials, or, at the very least, made them aware of the initial allegations. This has called into question the oversight and accountability procedures currently in place within the FWS Division of International Affairs in providing taxpayer dollars to such awardees. The Department has spent extensive time assessing this FWS program and has sought recommendations on how it can fully execute Congress' multiple statutory mandates in a lawful and responsible manner given the approaching fiscal year deadlines. However, a more thorough investigation is recommended and significant controls will be required before any further funds are awarded.

Currently, there are two different sets of funds that await agency action. First, there are obligated, but unspent FY 2018/2019 funds that the Department received from USAID in July 2019. Second, there are FY 2019/2020 CARPE funds that were provided to USAID in the FY 2020 omnibus Appropriations Act.¹ These funds have been obligated internally within USAID.

¹ PUBLIC LAW 116-94 (December 20, 2019).

The two different sets of funds are discussed below in order to provide relevant background on the Department's legal obligations. In addition, there are FY 2020/2021 USAID funds that may also be made available to FWS at some point.

Issue Background

In March 2019, the Department became aware of allegations through media accounts that a long-standing and repeat grant recipient of wildlife conservation funds through FWS and USAID had funded organizations and some sub-elements whose employees or agents, at various times over the last decade, were reported to have committed rape, murder, torture, and abuse. The investigative series also drew from findings in at least a half dozen other reports investigating similar allegations spanning several countries dating back over a decade.²

These reports triggered a broader examination by PMB of all FWS international conservation grantmaking, with a prioritized focus on USAID funds set to lapse unless obligated/awarded by end-of-year (EOY) FY 2019 (\$27M in FY 2019). Concurrently, bipartisan members of the House Natural Resources Committee wrote to the Secretary to express their concerns about potential wrongdoing by organizations funded by FWS.³ The FWS obligated and then awarded some of these funds because it believed they were associated with low-risk activities (i.e., unlikely to involve support for or involvement in activity connected to allegations of human rights violations). In contrast, PMB authorized FWS to obligate about \$12.3 million in USAID funds in the Department's Financial Business Management System (FBMS), but directed FWS not to award any of these funds to grantees pending a review and decision on how to award these particular funds in a manner that would allow the Department to be confident that the funding would not result in the commission of human rights abuses.

Upon review, in fall 2019, the Department suspended the issuance of new and continuing awards under the CARPE program, totaling about \$12.3 million. In addition, 27 non-CARPE awards totaling about \$5.3 million in no-year money from appropriations made directly to the FWS International Affairs (FWS-IA) program await Departmental approval. No new Notice of Funding Opportunities (NOFOs) related to USAID funds derived from any year's appropriation have yet been issued.

² Some reports include: "Policy Matters: Conservation and Human Rights," IUCN Commission on Environmental, Economic & Social Policy, Issue 15, July 2007:

<https://assets.documentcloud.org/documents/5754776/Conservation-Human-Right-Policy-Matters-2007.pdf>;

Investigating Allegations of Extra-Judicial Killings in the Terai, United Nations (2010):

[https://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-](https://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf)

[Judicial%20Killings%20in%20the%20Terai.pdf](https://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf); "Kaziranga: The Park that Shoots People to Protect Rhinos," BBC

News (Feb. 10, 2017): <https://www.bbc.com/news/world-south-asia-38909512>; "Ambition and Reality of Participatory Protected Area Approaches Using Cameroon as an Example," KfW Development Bank (2018),

overview available at: <https://assets.documentcloud.org/documents/5759399/SLE-Lobeke-Project.pdf>; and "Severe

Human Rights Abuses Reported In and Around Salonga National Park, Democratic Republic of Congo," Rainforest Foundation UK, (June 6, 2019), available at: file:///C:/Users/hrelat/Downloads/media_abf196ba-89da-4680-8df3-af5d382f7d5f.pdf.

³ See letters dated June 6, 2019 and July 23, 2019, respectively. See also May 6, 2019 letter requesting the Government Accountability Office conduct a review into the funding in light of the allegations outlined in media accounts.

As the Department communicated in October and November 2019 conversations with Congressional staff, the internal review sought to understand how we could execute our statutory obligations in a lawful and responsible manner. Conversations with Federal partners added to concerns raised by Congress and the Department; among those concerns, foremost are: concern over the inability of FWS to conduct adequate oversight over grantee subrecipients; inadequate procedures and documentation maintained by the FWS to adequately document review of each award; and the inability of FWS to maintain an ongoing physical presence on the ground to oversee grant-supported activities in many countries for purposes considered high-risk.

In November 2019, the FWS sent an information request to a limited number of existing grantees who had applied for or received CARPE funds in order to better understand potential gaps in information related to human rights allegations, past awards by the U.S. Government, compliance procedures, and any relevant reports or internal investigations on the issue of human rights developed by or on behalf of the partner organization. While all grantees replied, the responses were not uniformly thorough or responsive, thereby raising further questions about the desire and capability of grantees and the ability of the FWS to adequately monitor allegations and prevent such abuses in the future.⁴ One organization, Virunga Foundation, replied with a statement that it would be closing down its operations in 2019, and would not be sending any further documentation. FWS provided a summary of the hundreds of documents received to the Principal Deputy Director in response to this request; however, not all of the documents have been thoroughly reviewed, according to FWS officials.

The Department has also received letters from Survival International, a human rights advocacy organization, expressing concern about activities at national parks managed by two FWS grantees, the World Wildlife Fund (WWF) and Wildlife Conservation Society (WCS), with particular attention to funds associated with the relocation of indigenous populations. While uncertainty around the extent of misconduct remains, information collected demonstrates the challenge the Department faces in monitoring potentially prohibited activities in high-risk countries without substantially improved internal and external controls being put in place. Several of the Department's findings are detailed in the following section.

Notably, the Government Accountability Office (GAO) also initiated an inquiry into the issue in late 2019, with a draft report expected in the second half of calendar year 2020. The Department anticipated this report would inform our own internal review. In late August 2020, the Department received GAO's draft report, which contained no recommendations and instead indicated that GAO could not properly perform an inquiry into the in-country monitoring component of the CARPE program – arguably one of the areas of greatest concern and vulnerability when reviewing real-time oversight controls – due to COVID-19 travel restrictions.

⁴ See WWF reports identified in footnote 12, below; Virunga Foundation letter stating that it is closing down its operations at the end of 2019 and providing no documents in response to information request; Wildlife Conservation Society letter stating the Service's request was overly burdensome and that they would only be able to produce a limited amount of information based on their internal document retention policy; African Parks announced that three investigations into allegations of human rights violations were conducted in 2019 managed by the organization and closed without documented consultation or notice provided to the Service prior to this data call.

While GAO's inquiry was limited due to COVID-19, it nevertheless produced some interesting findings.⁵ For instance, interviews with U.S. government officials at multiple relevant agencies (State, USAID, and FWS) indicated widespread surprise by the allegations and concern that they were not notified previously through standard channels. Further, that even the State Department, which conducts the *Leahy* Vetting for partner organizations,⁶ has relied on partner organizations (e.g., WWF), to conduct its own internal investigation to determine whether fault can be assigned to government-funded actors or whether misconduct occurred. The notion of an agency relying on an awardee to investigate itself to determine wrongdoing was highlighted during a Department briefing to House Natural Resources Committee staff conducted in July 2019. Staff from both the majority and minority expressed concern with this practice.

Findings

The Department has dedicated substantial time and effort to a review of this program due to the seriousness and extent of the allegations spanning years, and in recognition of the importance of preserving the integrity of the international wildlife conservation mission. While one organization has been the focus of many concerns, the allegations nonetheless cast doubt on the activities of similarly situated organizations that operated in similar environments and conduct similar activities, all subject to the same inadequate (in retrospect) controls. After this review, it is clear that information remains quite dispersed, buried in emails of former employees, spread across different Federal agencies, and in many instances, in the possession of awardees who have provided information in rolling productions that have not always been completed in a timely manner.⁷ Despite these challenges, the Department has obtained valuable information to inform a decision on the pending issues. Such findings are below:

- Widespread allegations that have been shared with FWS about several grantees spanning years, and potentially decades, find support in investigative documents. Some of them involve external organizations such as the United Nations Development Programme (UNDP),⁸ the German Development Bank,⁹ and human rights-focused non-governmental organizations (NGOs).¹⁰ Many others come from confidential reports commissioned and

⁵ *Combating Wildlife Trafficking: Agencies Work to Address Human Rights Abuse Allegations in Overseas Conservation Programs*, Draft Report, GAO-20-696R (September 2020).

⁶ See footnote 40, below.

⁷ For instance, WWF stated they were told by other federal parties not to provide internal reports that document findings of wrongdoing by auditors they hired to investigate long-standing allegations. Fortunately, these documents were ultimately made available to the Department and contributed to our analysis.

⁸ *Investigating allegations of non-compliance with UNDP social and environmental commitments relating to the following UNDP activities: Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Congo, TRIDOM II, (October 2017-March 2023)*, Draft Investigative Report, U.N. Development Programme – OAI, Social and Environmental Compliance Unit (March 10, 2020) (UNDP Draft Investigative Report).

⁹ "Ambition and Reality of Participatory Protected Area Approaches Using Cameroon as an Example," KfW Development Bank (2018), overview available at: <https://assets.documentcloud.org/documents/5759399/SLE-Lobeke-Project.pdf>.

¹⁰ Survival International, *How Will We Survive? Baka Cameroon* (Sept. 2017), found at: <https://assets.survivalinternational.org/documents/1683/how-will-we-survive.pdf>; Ines Ayari and Simon Counsell, *The Human Cost of Conservation in Republic of Congo: Conkouati-Douli and Nouabale-Ndoki National Parks and Their Impact on the Rights and Livelihood of Forest Communities*, Rainforest Foundation UK (2017).

paid for by WWF.¹¹ While these reports are discussed below with more specificity, it is important to make clear the reprehensible nature of the abuse that has been documented and must be guarded against in the future:

- Four women were beaten with a baton, lashed on their backs and legs, and raped by the eco-guards – two of the women were pregnant, and were still raped, even though a woman “begged them to spare her.”¹²
 - Three men were held by eco-guards for three days, during which the eco-guards beat them, “tied their penises with fishing thread, and hung them at the branch of a tree.”¹³
 - Eco-guards were falsely informed that a farmer’s family was in possession of a weapon, so in the middle of the night the eco-guards burst into the farmer’s home, beat all the members of the household, raped his wife in the bushes, and imprisoned the farmer and his father.¹⁴
 - A woman was detained by guards, forced to cook for and serve the guards, and was tortured for four days after guards were falsely informed that her husband was in possession of a weapon of war. She was only released when her husband found her and took her place. He was imprisoned without a trial.¹⁵
- FWS Law enforcement officers directly employed by the FWS are not mentioned in these allegations and there is no evidence or basis to believe that law enforcement officers have performed their duties in any way that is inappropriate or connected to the many allegations or documented cases of abuse of indigenous peoples. To the contrary, FWS law enforcement officers are subject to controls and protocols, and have consistently and effectively contributed significantly to the reduction in wildlife trafficking.
 - Coordinating effective law enforcement efforts of the U.S. Government and foreign governments remains a top priority for the Department, and is consistent with the Administration’s ongoing efforts to combat wildlife trafficking.
 - UNDP’s 2020 draft investigative report is the most recent international report available:
 - Reports of abuse of indigenous populations were ignored for several years by WWF and initially UNDP staff, until being investigated following a formal complaint submitted by Survival International in July 2018.
 - “These beatings occur when the Baka are in their camps along the road as well as when they are in the forest. They affect men, women, and children. ... There are reports of Baka men having been taken to prison and of torture and rape inside prison. The widow of one Baka man spoke about her husband being so ill-treated

¹¹ See Diel Mochire Mwenge & Joseph Itongwa Mukumo, *Analysis and Participatory Evaluation of the Implementation of WWF Human Rights Strategies and Principles at Selected Sites Around the Lobeke, Boumba Bek and Nki National Parks in Cameroon* (Final Report, April 2015); Paul Chiy, *Independent Assessment of the Allegations of Human Rights Abuse by Rangers in Cameroon and of Deprivation of Indigenous Peoples’ Ancestral Rights* (Final Report, January 2018); *Investigation Report on Salonga National Park* (Draft Report, March 2019).

¹² *Investigation Report on Salonga National Park* (Draft Report, March 2019).

¹³ *Id.*

¹⁴ Paul Chiy, *Independent Assessment of the Allegations of Human Rights Abuse by Rangers in Cameroon and of Deprivation of Indigenous Peoples’ Ancestral Rights* (Final Report, January 2018).

¹⁵ *Id.*

in prison that he died shortly after his release. He had been transported to prison in a WWF-marked vehicle.¹⁶

- WWF staff in Congo “acknowledged the evidence of abuse against the Baku” by the eco-guards...but appeared to view them as isolated incidents.¹⁷
- German Development Bank found that abuse of indigenous populations by eco-guards was widespread in Cameroon:
 - The research team, of which WWF was a part, heard from local villagers in almost all communities that they worked in that eco-guards used violence against them.
 - Several FWS grants support partners operating in parks in Cameroon:
 - WWF has received an average of \$21 million annually in taxpayer dollars, from 2004-2019 (totaling \$333 million). Nearly half (\$156 million) went to fund grants supporting activities related to anti-poaching or park management, including paying for armed rangers and law enforcement officers. Numerous awards were provided under CARPE and similar conservation programs administered by the FWS in Africa and Asia.
 - Wildlife Conservation Society (WCS), another prominent organization that administers support under international conservation programs, has received at least \$28 million since 2010, with at least \$19 million going to grants tied to law enforcement activities. This funding has been spread across several countries, including the Republic of Congo and Cameroon (e.g., \$1.3 million just for law enforcement activities in Cameroon since 2010).¹⁸
- Extensive allegations also involve WCS, another major recipient of FWS international conservation grants:
 - Rainforest Foundation UK (RFUK) and Survival International have detailed human rights abuses in parks managed by WCS in the Republic of Congo, Konkoutai-Douli National Park and Naouble-Ndoki National Park. One report by RFUK documents violence in these parks perpetrated by eco-guards, including the beating of a young villager and the shooting of villagers, which resulted in three deaths and two injuries.¹⁹

¹⁶ UNDP Draft Investigative Report; see also Chris Lang, “UNDP investigation confirms that WWF-funded ecoguards beat up indigenous peoples in the Republic of Congo,” REDD-Monitor, (Feb. 14, 2020).

¹⁷ UNDP Draft Investigative Report; see also Chris Lang, “UNDP investigation confirms that WWF-funded ecoguards beat up indigenous peoples in the Republic of Congo,” REDD-Monitor, (Feb. 14, 2020).

¹⁸ See Letter from Rep. Rob Bishop, Ranking Member, H. Comm. on Nat. Res. To Mr. Cristian Samper, President and CEO, Wildlife Conservation Society (Dec. 16, 2019) citing FWS data captured in footnotes 4-6: Letter Project Summaries, U.S. Fish and Wildlife Serv. Int’l Affairs (last visited Dec. 4, 2019).

¹⁹ Ines Ayari and Simon Counsell, *The Human Cost of Conservation in Republic of Congo: Konkouati-Douli and Nouabale-Ndoki National Parks and Their Impact on the Rights and Livelihood of Forest Communities*, Rainforest Foundation UK (2017). See also Letter from Rep. Rob Bishop, Ranking Member, H. Comm. on Nat. Res. To Mr. Cristian Samper, President and CEO, Wildlife Conservation Society (Dec. 16, 2019).

- Another report by Survival International alleges a decades-long history of eco-guards abusing indigenous people in at least one of the parks supported by WCS.²⁰ The abuses range from beatings, shootings, imprisonment, theft, and destruction of homes.²¹
- One description of the extended pattern of abuse alleges the “WCS eco-guards are accused of regularly beating Mbendjele [Bayaka], for ‘simply being Mbendjele.’”²²
- WWF internal reports obtained by the Department appear to substantiate many allegations of abuse by eco-guards paid for and/or supervised by WWF.²³
 - At Salonga National Park in the Democratic Republic of Congo, a park where several incidents of murder, rape, and torture have been documented (including gang-rape of four women in 2015 by forest rangers), a WWF employee was the park’s top official, in charge of hundreds of eco-guards. WWF even posted a photograph on its website of Congolese officials handing him an assault rifle, in what would appear to be a blatant acknowledgement of the organization’s involvement in prohibited activity.²⁴
 - Eco-guards and national parks in Cameroon managed by the government nonetheless still relied on WWF support, including financial, logistical, and technical support. This included joint missions, use of office space, and community education efforts.²⁵
 - One internal report stated that WWF, by continuing to work with or supporting these governments that fail to protect human rights, was “contributing to human rights violations, in contravention of its own policies and of international law.”²⁶

²⁰ In an email campaign related to this organization, the Department has also received thousands of emails from individuals reciting some of the allegations against WCS in Asia and Africa and urging financial aid to be withheld until such practices end.

²¹ Survival International, *How Will We Survive? Baka Cameroon* (Sept. 2017), found at: <https://assets.survivalinternational.org/documents/1683/how-will-we-survive.pdf>.

²² *Id.*

²³ See Diel Mochire Mwenge & Joseph Itongwa Mukumo, *Analysis and Participatory Evaluation of the Implementation of WWF Human Rights Strategies and Principles at Selected Sites Around the Lobeke, Boumba Bek and Nki National Parks in Cameroon* (Final Report, April 2015); Paul Chiy, *Independent Assessment of the Allegations of Human Rights Abuse by Rangers in Cameroon and of Deprivation of Indigenous Peoples’ Ancestral Rights* (Final Report, January 2018); Lassana Kone & Anouska Perram, *FPIC in Messok Dja: A Report and Assessment by FPP for WWF on the Free, Prior and Informed Consent Process Undertaken in Respect of the Proposed Messok Dja Protected Area in Republic of Congo* (Forest Peoples Programme, 2019); *Investigation Report on Salonga National Park* (Draft Report, March 2019).

²⁴ See Katie J.M. Baker and Tom Warren, “A Leaked Report Shows WWF Was Warned Years Ago of ‘Frightening’ Abuses,” BuzzFeed, (March 5, 2019); “Severe Human Rights Abuses Reported In and Around Salonga National Park, Democratic Republic of Congo,” Rainforest Foundation UK, (June 6, 2019), available at: file:///C:/Users/hrelat/Downloads/media_abf196ba-89da-4680-8df3-af5d382f7d5f.pdf; *Investigation Report on Salonga National Park* (Draft Report, March 2019).

²⁵ Diel Mochire Mwenge & Joseph Itongwa Mukumo, *Analysis and Participatory Evaluation of the Implementation of WWF Human Rights Strategies and Principles at Selected Sites Around the Lobeke, Boumba Bek and Nki National Parks in Cameroon* (Final Report, April 2015).

²⁶ See 2019 Forest Programme report for WWF, at 6-7

- Application materials submitted to the Department by WWF even appear to imply that the organization used funds to support potentially prohibited activity, including paying for firearms and ammunition. The same document contained statements that implied future FWS funds would continue to be leveraged for the effort's biggest perceived need – firearms and ammunition.²⁷
- These findings represent only a portion of the material received by the Department during our review. Sources included awardees, Congress, other Federal agencies, and human rights organizations.

Internal Controls Implicated in the Findings

Many of the allegations outlined in the reports that have been furnished to FWS precede current awards, with notable examples of violations occurring in 2013. That said, this is not the first time that concerns were brought forward regarding grant and cooperative agreements issued by the FWS Division of International Affairs. In reviewing this matter, the Department found early indications of systemic problems with the FWS International Conservation Grant program.

A series of reports from the Department's Office of Inspector General (OIG) demonstrates the point. In 2010, an inspection "...confirmed a failure to address conflicts of interests, as well as a lack of objectivity and fairness in certain grant proposal review sessions," among other issues. An investigation in February 2018 found that the Chief of the Division of International Conservation, International Affairs violated Federal laws and regulations by participating in an FWS cooperative agreement that financially benefited his family member beginning in 2014. Later, in July 2018, an Inspection Report found that the FWS International Affairs program "did not comply with federal regulations, FWS policy, or agreement terms and conditions when awarding and monitoring agreements". Notably, none of these reports reviewed potential allegations of human rights abuses, despite the existence and availability of many of the reports highlighted throughout this memorandum.²⁸

In light of these previous deficiencies, as well as the absence of an apparent record of any investigation into the alleged human rights abuses raised by Congress, the Department requested further information and review from the FWS into the aforementioned allegations. Information furnished by grantees, as well as produced in myriad FWS briefings, have raised significant oversight concerns.

Some of the policy concerns include:

- Notification and Audit Requirements: The Department's initial notification of these violations came from media sources despite multiple internal reports developed on behalf

²⁷ See Letter from Rep. Rob Bishop, Ranking Member, H. Comm. on Nat. Res. To Hon. David Bernhardt, Sec'y, Dep't of the Interior (Oct. 23, 2019) citing footnote 24.

²⁸ GAO's Draft Report confirms that officials from relevant federal agencies were unaware and even surprised by the allegations when they were brought to their attention following the BuzzFeed News Investigative series. State Department officials expected that this information should have come to them through standard information channels including embassies and NGOs. This would seem to bolster the Department's concern that there is a serious deficiency in the FWS' existing information chain.

of WWF to investigate and address organizational deficiencies and wrongdoing. FWS Assistance Award Guidelines require grant recipients to notify the Service Program Office in writing of any conflicts of interest that arise during the life of the award,²⁹ though the parameters seem focused only on the award of the grant, not activity associated with the expenditure of the funds. Further, during the Department's data call to other awardees, the Department was made aware of allegations of human rights violations involving African Parks Foundation (APF) that were summarily dismissed by APF after finding no fault.³⁰ Similarly, despite several reports detailing extensive allegations of human rights abuses at the hands of eco-guards supported by the WCS, they indicated their record retention policies prevent the Department from assessing whether such incidences involving their organization occurred or how they were handled. The Department's oversight and accountability controls have previously only been engaged when the applicable offices have been notified of an allegation; there is no proactive monitoring.

- Independent Audits or Investigations: As evidenced in this programmatic review, allegations of human rights abuse have been consistently handled internally by awardees, even when those allegations implicate the organization's employees and taxpayer funding. Subsequent investigations resulted in findings of misconduct, but were then relayed to the organization in confidential reports and not made available to the U.S. Government either at all or in a timely manner. This has deprived the Department of the ability to make informed risk assessments and determine whether a proper and independent investigation is warranted. Moreover, as congressional staff noted in a briefing on the issue in July 2019, the prospect of the Federal government relying on a private party to investigate itself, especially in instances involving severe human rights abuses are alleged, is a troubling practice.
- Risk Assessments: In 2018, the Office of Inspector General found fault with the risk assessments being conducted within FWS International Affairs. While FWS has resolved most, if not all, of the IG's recommendations, it is difficult to understand how a proper risk assessment is or has been conducted when partner organizations have failed to inform the Department of relevant information that would possibly (negatively) impact the findings in a risk assessment.
- Leahy Vetting: Organizations receiving CARPE funds are subject to *Leahy* Vetting.³¹ However, many of these organizations also receive funds under other programs using funds directly appropriated to the FWS for purposes, activities, and in locations similar to those under CARPE. Yet, as GAO notes in its Draft Report, since these funds are not

²⁹ <https://www.fws.gov/international/pdf/assistance-award-guidelines.pdf>; p. 7.

³⁰ Each of the allegations involved investigations that were opened and closed within six weeks and either managed or conducted by APF.

³¹ The *Leahy* Vetting requirement is included annually in the Foreign Assistance Appropriations Act. It prohibits assistance to individuals with human rights abuse records. See 22 U.S.C. § 2378d ("No assistance shall be furnished under this chapter or the Arms Export Control Act [22 U.S.C. §2751 et seq.] to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights").

provided under the Foreign Assistance Act, they are not necessarily subject to and may not receive *Leahy* Vetting. This is a gap in oversight that should be addressed. Also, while the Leahy law prohibits expending appropriated funds to equip security forces having known human rights violations, it does not specify consequences for its violation.

- Record Retention: In the course of the Department's review, it has also become clear that records supporting the existence of *Leahy* Vetting for the time period in question, let alone any grants prior to 2018, remain difficult, if not impossible, to locate. This does not lead to a presumption that the proper vetting procedure did not take place, but calls into question the ability of the Department to properly audit the program and identify potential deficiencies. Dispersed documentation regarding other aspects of the awards under the CARPE program, although not unique, have also been difficult to identify and produce when requested.
- Physical Presence On-site: The FWS has expertise in biological sciences that aids in wildlife and conservation management. Additionally, FWS has some expertise and experience in conducting financial audits to monitor awards. However, this is often done from a distance, with minimal site visits conducted each year during visits planned well in advance and focused on compliance on matters within FWS expertise. While the FWS has limited law enforcement personnel stationed internationally, its officers have extensive responsibility over broad geographic areas and do not normally focus on individual grant oversight or investigations of alleged grantee personnel misconduct. The physical presence of our USAID partners in-country, with this expertise, or at least in neighboring countries where grants are being implemented could be leveraged to partially mitigate some of these concerns.
- Oversight Capabilities of FWS Officials: Those employees in the International Affairs program charged with executing the program from beginning to end are largely Program Officers and Grant Specialists. These positions develop expertise in financial and program audits, but do not have backgrounds or experience in criminal or civil investigations. Such skills and experience are critical to being able to genuinely assess any potential allegation of misconduct.
- Oversight Funding as Part of FWS Awards: Upon review of the internal practices of FWS to oversee and monitor these awards, it was discovered that the average amount of funding dedicated to conducting such oversight was around 3%. This is well below the level that would be appropriate for monitoring high-risk activities performed by non-governmental entities in countries not subject to U.S. law and known to have issues of corruption, human rights violations, and several other types of misconduct. There may be some statutory limits on the amount of funding that can be used for such administrative oversight, which can be reviewed. Use of other funding mechanisms such as 632(b) authorities and outlined in an agreement with USAID could potentially mitigate this need by allowing USAID to administer the program while relying on the technical expertise of FWS through training and consultation.

- Access to Sub-Recipients: Much of the misconduct appears to be done at the hands of sub-recipients and those supported by the primary awardee. Yet the Department's ability to conduct appropriate oversight over sub-recipients is contractually and regulatorily severely limited and therefore difficult to achieve, relying on the primary awardee to hold the sub-recipients accountable and provide important information.

Legal Obligations

Congressional Appropriation

CARPE funds, in addition to other international wildlife grants, are provided on an annual basis through an appropriations act and are considered discretionary funds.³² In both FY 2019 and FY 2020, as in previous years, USAID was directed, through non-binding report language, to transfer a portion of CARPE funds to FWS for protected areas management and wildlife protection in national parks.³³ However, new language was added to accompany these instructions in FY 2020, specifically intended to address the human rights concerns raised by several different entities, including the House Natural Resources Committee. First, the transfer was authorized pursuant to 632(b) of the Foreign Assistance Act, as opposed to previous authorizations under 632(a).³⁴ Presumably, this was intended to convey greater accountability for

³² Congress, in report language, has provided specific direction that the relevant amounts of FY 2018 CARPE funding be apportioned directly to the FWS. The Fiscal Year 2018 House State and Foreign Operations Appropriations Bill Report outlines the intention of the fund in question as follows: "The Committee directs that \$17,500,000 of the funds made available for CARPE be apportioned directly to the Service to support further development and implementation of a Central African regional wildlife law enforcement network and to build local capacity for wildlife protection in such region. These programs should include the professionalization of park guards and other wildlife law enforcement officials and the provision of tools and technologies for measuring, evaluating, and improving the effectiveness of wildlife law enforcement patrols and site-based protection and conservation activities." (H. Rep. 115-253 at 91). Nearly identical language was also included in the House State and Foreign Operations Appropriations Bill Reports for Fiscal Years 2014, 2015, and 2017, the years for which multi-year grants currently being held for review were originally funded.

³³Section 7060(c) of the Consolidated Appropriations Act, 2018, Division K, Department of State, Foreign Operations, and Related Programs Appropriations Act 2018 (Public Law 115-141); FY 2020 Explanatory Statement, Division G, Department of State, Foreign Operations, and Related Programs H. Rep. 116-9 at 872.

³⁴ A 2015 report from the U.S. Department of State provides a useful overview of the two types of authorizations under the Foreign Assistance Act. "Sections 632(a) and 632(b) of the Foreign Assistance Act of 1961 are the authority for the State Department and USAID to provide foreign assistance funds to other U.S. agencies within certain parameters:

- Section 632(a) allows a non-expenditure transfer of funds to the implementing agency. The recipient Federal agency assumes program and financial responsibility and may use the requesting agency and/or its own authority in obligating the funds. However, neither an allocation nor a transfer using a 632(a) agreement constitutes an obligation of funds by the requesting agency. Instead, the funds must be obligated by the recipient agency, in accordance with applicable laws using an appropriate obligating mechanism (e.g., grant, cooperative agreement, etc.). A 632(a) transaction constitutes a legal augmentation of the recipient agency's appropriation. The Department [of State] budgetary resources are reduced, and the implementing agency resources are increased. Under a section 632(a) agreement, the Department does not record obligations and relies upon the implementing agency to track and report on the funding. However, the recipient agency may provide periodic financial reports to the requesting agency and may also report when funds are obligated.
- A 632(b) transaction is the authority to provide foreign assistance funds to—utilize the services and facilities of any agency. The requesting agency acquires, on a reimbursable basis, the services or supplies

oversight of the funds to USAID in light of the concerns over potential misuse of taxpayer dollars due to inadequate monitoring and oversight controls within FWS.

Second, the FY 2020 Omnibus statement of managers presents new language with regard to State Department policies and related funds transferred by USAID: “The [Department] shall develop policies and procedures for the execution and oversight of programs from funds made available by transfer from USAID to ensure that agreements for the obligation of funds between implementing partners and the Department include provisions requiring that: (1) information detailing the proposed project and potential impacts is shared with local communities and the free, prior, and informed consent of affected indigenous communities is obtained in accordance with international standards; (2) the potential impacts of the proposed projects on existing land or resource claims by affected local communities or indigenous peoples are considered and addressed in any management plan; (3) any eco-guards, park rangers, and other law enforcement personnel authorized to protect biodiversity will be properly trained and monitored; and (4) effective grievance and redress mechanisms for victims of human rights violations and other misconduct exist.”³⁵

The Department of the Interior has studied this new direction from Congress against the backdrop of what appear to be potentially serious deficiencies in our present ability to apply satisfactory internal controls, particularly since these directives carry the same legal weight as the report language directing the transfer of funds from USAID to FWS. It is well-established that report language is not binding. However, if FWS proceeds with accepting the funds, these directives place a high bar on what assurances must be in place to prevent support for organizations involved with or connected to human rights abuses.

Impoundment Control Act

Under the Impoundment Control Act of 1974, an impoundment is an action or inaction by an officer or employee of the United States that delays or precludes the obligation or expenditure of budget authority provided by Congress.³⁶ Under the Act, there are two types of impoundment actions: deferrals and rescission proposals. Deferrals include withholding or delaying the obligation or expenditure of budget authority provided for projects or activities.³⁷ A special message is required to be submitted to Congress notifying them of a deferral, which may not be proposed for longer than the end of the fiscal year.³⁸ If Congress disapproves, it must enact

of the servicing agency. Posts may not directly accept MOU/MOA or IAA transfers/agreement, reimbursement requests, or use other Federal agencies’ fiscal strips. The requesting agency must provide a written request to the proposed receiving bureau, office or post, which then decides whether to accept a funding transfer from the requesting agency. All obligations are recorded, tracked, and reported in the Department’s financial system.” *Foreign Assistance Data Review: Findings Report*, U.S. Department of State, December 2015, p. 13.

³⁵ FY 2020 Explanatory Statement, Division G, Department of State, Foreign Operations, and Related Programs H. Rep. 116-9 at 872.

³⁶ 2 U.S.C. §§ 682(1), 683.

³⁷ *Id.* at § 682(1).

³⁸ *Id.* at § 684.

legislation requiring that the deferred funds be made available for obligation. Deferrals are permissible for limited reasons.³⁹

Rescission proposals are presented to Congress in special messages transmitted by the President seeking to rescind, in whole or in part, budget authority.⁴⁰ Once a rescission proposal has been submitted, budget authority may be withheld for a period of 45 days of continuous session following receipt. The Comptroller General must also receive this message and present his views to the Congress.⁴¹ GAO can opine on whether the rescission or deferral was correctly classified and may construe a deferral as a de facto rescission if the timing of the proposed deferral is such that “funds could be expected with reasonable certainty to lapse before they could be obligated, or would have to be obligated imprudently to avoid that consequence.” 54 Comp. Gen. 453, 462 (1974).⁴² The Comptroller General is also authorized to bring a civil action against the executive branch if it fails to make an obligation in the face of a requirement to do so.⁴³

While the two impoundment actions will capture most delays or expiration of budget authority, there are some exceptions. As the GAO notes, “the expiration of budget authority or delays in obligating it resulting from ineffective or unwise program administration are not regarded as impoundments unless accompanied by or derived from an intention to withhold the budget authority. B-229326, Aug. 29, 1989.” Additionally, there is a distinction between deferrals, which must be reported, and “programmatic delays,” which are not impoundments and are not reportable under the Impoundment Control Act. A programmatic delay is one in which operational factors unavoidably impede the obligation of budget authority, notwithstanding the agency’s reasonable and good faith efforts to implement the program.⁴⁴ Intent is important to consideration and any determination will be made in light of all of the surrounding circumstances.⁴⁵ Finally, a programmatic delay may become a reportable deferral if the programmatic basis ceases to exist.⁴⁶

GAO provides some guidance on what factors may contribute to a programmatic delay, depending on the facts and circumstances involved.⁴⁷ Relevant factors worth noting here include:

³⁹ 1) to provide for contingencies; 2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or 3) as specifically provided by law. *Id.*

⁴⁰ *Id.* at § 683.

⁴¹ *Id.* at § 685.

⁴² U.S. Gov’t Accountability Office, GAO-16-464SP, 2 Principles of Federal Appropriations Law, 2-49 (4th ed., 2016).

⁴³ 2 U.S.C. § 687.

⁴⁴ B-290659, July 24, 2002; GAO, *Impoundment Control: Deferral of DOD Budget Authority Not Reported*, GAO/OGC-91-8 (Washington, D.C.: May 7, 1991); *Impoundment Control: Deferrals of Budget Authority for Military Construction Not Reported*, GAO/OGC-91-3 (Washington, D.C.: Feb. 5, 1991). See also, Letter from Mark Paoletta, General Counsel, Office of Management and Budget to Thomas Armstrong, General Counsel, U.S. Government Accountability Office (Dec. 11, 2019) (“[A] pause in spending to assess facts and ensure programmatic effectiveness is not a deferral of funds.”).

⁴⁵ Although “When attempting to discern Executive intent, the task is made even more challenging by the fact that unearthing such “intent” often requires disclosing pre-decisional and deliberative information to the Legislative branch to persuade it that the Executive action was proper.” GAO-16-464SP at 2-50.

⁴⁶ GAO-16-464SP at 2-50.

⁴⁷ Of course, while GAO’s analysis is useful for understanding historical interpretations, the Executive Branch is a separate, co-equal branch of government and not bound by the legal views of the Legislative Branch. See Office of

- Conditions on availability for using funds not met (B-290659, July 24, 2002);
- Time required to set up the program or to comply with statutory conditions on obligating the funds (B-96983, B-225110, Sept. 3, 1987);
- Compliance with congressional committee directives (B-221412, Feb. 12, 1986); and
- Administrative determination of allowability and accuracy of claims for grant payments (B-115398, Oct. 16, 1975).

Decision

As a result of this initial programmatic review, it is my determination that additional controls are necessary in order to ensure taxpayer funds are spent responsibly and consistently with all laws, rules, and regulations and no further funding may be awarded until such deficiencies are corrected.

FY 2018/2019 CARPE funds

Because FY 2018/2019 funds are no longer available for new obligations, any decision to de-obligate FY 2018/2019 funds may be considered a rescission of budget authority under the Impoundment Control Act. Prior to de-obligation, the Department must coordinate with the President to transmit a special message to Congress regarding the proposed rescission and follow all other requirements of the Impoundment Control Act, as laid out in the previous section.

Per a decision made by the Secretary in April 2020 regarding these funds, the FWS should prioritize funding for research, training, and development of best practices in international conservation efforts that draw on FWS expertise but avoids all activities where the FWS cannot ensure future human rights violations will not occur. These include, but are not limited to, the following terms:

- Free, informed, and prior consent by the indigenous population must be obtained before a program is established or expanded, with appropriate criteria developed to document the engagement and corresponding consent.
- To the extent consistent with all legal obligations or to mitigate risks associated with particular programs and/or recipients, the FWS will no longer provide funding for subgrantees.
- The FWS will not award grants to conduct high-risk activities such as eco-guards, law enforcement activities and supplies, community patrols, and other similar or related activities. This includes activities related to relocating communities, voluntarily or involuntarily, either through direct engagement or support to local government entities seeking to do the same.

Management and Budget (OMB) Memorandum for Agency General Counsels, Reminder Regarding Non-Binding Nature of GAO Opinions (Nov. 5, 2019). (In particular, see footnote 3 citing relevant OMB and Department of Justice – Office of Legal Counsel memoranda.)

- Grant awardees will certify that no activities will be conducted in violation of U.S. law, rules or regulations and that they are taking steps to protect human rights during the implementation of the grant.
- Consistent with applicable laws, impose minimum bonding and/or insurance requirements for the purposes of addressing harm or liability resulting from actual or potential human rights violations and other risks related to activities or operations in which such violations are possible. (*FWS shall work with SOL to advise on maximum bond and insurance amounts authorized under the law*).
- Grantees will provide for a whistleblower capability to both alert the FWS of potential human rights abuses and ensure thorough investigation of such allegations.
- Awardees will satisfy appropriate reporting requirements, including mandating immediate notification of any internal investigations conducted on human rights abuses in which federal dollars may have been involved.

FWS shall expeditiously develop terms in coordination with SOL and PMB to affect this direction and add these terms to the relevant Notice of Awards and any future Notice of Funding Opportunity (NOFO). FWS shall also review and update international assistance award guidelines. Obligated grant funds should be awarded grantees and subsequently expended to the extent the grantee is prepared to confirm, through acceptance of an award, documentation that the scope of the grant will be limited to appropriate activities. Once the terms are finalized, FWS may proceed with the issuance of appropriate award documents under these conditions in a timely manner.

FY 2019/2020 and subsequent CARPE funds

The Department's review of the international conservation grants at issue has resulted in significant concern that inadequate controls exist to monitor and hold accountable awardees and their partners in many countries in Africa and Asia. While the Department is committed to meeting all of its legal obligations, it is clear that changes must be made to the awards process and program management prior to resuming the program. This includes internal policy changes, adjustments to the roles and responsibilities of our Federal partnerships, and guidelines that govern the grants process (e.g., NOFO, risk assessments, NOA, auditing/oversight, etc.).

At a minimum, specific changes to FWS program administration include the following:

- FWS, in partnership with PMB and SOL, will develop a 632(b) agreement with USAID to ensure that USAID will administer the program, including all monitoring and oversight, while FWS shall participate in a consulting role to provide its technical biological expertise.
- To the extent that FWS participates in subsequent NOFOs and NOAs, such documents will clearly state what activities are ineligible for funding and include appropriate vetting and documentation from any subgrantees, if permitted.
- Consistent with a 632(b) agreement, FWS will enhance the frequency and depth of its communications with the appropriate USAID mission.

- The FWS will clearly establish the scope of *Leahy* Vetting of prospective grantees and adequately track the status and completion of such vetting.
- Awardees will be informed of appropriate reporting requirements to FWS as a condition of award, including mandating immediate notification of any internal investigations conducted on human rights abuses in which Federal dollars may have been involved.
- Other relevant procedures, criteria, or terms identified by FWS, SOL, and PMB should be developed and proposed for incorporation, as appropriate and consistent with applicable legal obligations.

USAID and the Department will notify the appropriate authorizing and appropriations committees of Congress of our intention to fully execute this program once we have resolved these issues. However, USAID should take appropriate steps to ensure its appropriated funds are handled in accordance with all its legal obligations. It remains the Department's intent and direction to FWS, and other relevant offices, to resolve these issues expeditiously. As has been the direction since awareness of this issue, the Department must continue to pursue all policy actions that would enable it to effectively and responsibly spend taxpayer dollars. We must always balance the important goal of preventing wildlife trafficking with maintaining the human dignity of all people.

Additional Actions

FWS shall collect all documents provided by awardees in response to its November 2019 data request and provide those documents to the OIG as a referral for investigation and, if deemed appropriate by the OIG, a program audit. FWS shall also provide a copy of such documents to the AS-PMB's Office of Grants Management (PGM) for additional evaluation of grantee compliance with the terms and conditions of their associated grants. Documents provided or otherwise obtainable shall be evaluated for such period as, based on credible information, there may have been abuses relevant to the grantee's activities. Upon completion of this evaluation, and not later than 90 days from the date of this memorandum, PGM shall report its findings to the Deputy Secretary, SOL, AS-PMB, and AS-FWP.

cc: Daniel H. Jorjani, Solicitor
Scott Cameron, Acting Assistant Secretary – Policy, Management and Budget