



# **Alleged Endangered Species Act Violation of the Masked Bobwhite Quail Program**

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This is a version of the report prepared for public release.

## SYNOPSIS

We initiated this investigation in December 2015 after learning of a U.S. Fish and Wildlife Service (FWS) PowerPoint presentation containing photos of masked bobwhite quails that were injured and living in overcrowded conditions at the Buenos Aires National Wildlife Refuge (BANWR) in Sasabe, AZ. The masked bobwhite is an endangered species, and the birds at BANWR were part of an FWS captive breeding and recovery program. The photos of the quails depicted potential violations of the Endangered Species Act (ESA) of 1973.

During our investigation, we learned that a supervisor at BANWR approved the presentation and authorized a BANWR employee to show it to an advisory group, the Masked Bobwhite Recovery Team, on October 26, 2015, to illustrate the quails' living conditions and the need to improve the facilities. On November 4, 2015—10 days after the presentation was shown—an FWS deputy regional supervisor lowered the BANWR supervisor's annual performance rating (even though she had already received a rating) and also reduced a monetary award she was to receive. The BANWR supervisor believed these actions were reprisal against her for allowing the presentation to be shown, so we included this issue in our investigation.

Although we confirmed that the quails had been living in overcrowded conditions and that some had suffered injuries, we found no evidence of negligence by BANWR employees while caring for the quails. We also found that the BANWR supervisor had sought additional funding to improve the birds' living conditions. We further determined that FWS regional officials were concerned because the presentation had been shown to recovery team members who were not FWS employees, and they feared it might be released to the public. The week after the presentation, the officials visited BANWR to assess the quails and their facility; the supervisor's rating was lowered and her award reduced the day after they returned to the regional office.

During our fieldwork, we discussed the details of the alleged ESA violations with a senior trial attorney for the U.S. Department of Justice's Environmental Natural Resources Division, who declined to prosecute. Prior to completing our investigation, we also learned that FWS had improved the quails' living conditions.

## **DETAILS OF INVESTIGATION**

On December 4, 2015, we initiated this investigation after we were notified of potential violations of the Endangered Species Act (ESA) of 1973 involving employees at the U.S. Fish and Wildlife Service's (FWS) Buenos Aires National Wildlife Refuge (BANWR) in Sasabe, AZ. The potential ESA violations were captured in a PowerPoint presentation that contained photos of injured masked bobwhite quails—a critically endangered subspecies of the northern bobwhite—living in overcrowded conditions in small cages at BANWR's captive breeding facility in Arivaca, AZ.

We focused our investigation on whether BANWR employees were negligent in their efforts to properly care for the quails at the captive breeding facility. In addition, we learned during our investigation that a deputy supervisor from FWS Region 2, where BANWR is located, had lowered a BANWR supervisor's fiscal year (FY) 2015 performance rating and reduced her monetary award soon after a BANWR employee showed the presentation to the Masked Bobwhite Recovery Team, an FWS advisory group that included nongovernmental experts in quail reproduction and habitat. We investigated this issue as a possible reprisal.

### **The Endangered Species Act and FWS Permit to Oversee Quail Recovery Activities**

The ESA prohibits unauthorized taking, possession, sale, and transport of endangered species. The most punishable offenses are trafficking and any act of knowingly "taking"—which includes harming, wounding, or killing—an endangered species.

The masked bobwhite (*Colinus virginianus ridgwayi*) has been protected under the ESA since 1967, and its recovery program has been managed at BANWR since 1995. On May 12, 2015, the Endangered Species Permit Office in Albuquerque, NM, issued Regional Director Benjamin N. Tuggle a renewed Federal fish and wildlife permit, effective through May 30, 2020, to oversee Region 2's numerous threatened and endangered species, including the masked bobwhite. The permit authorized all FWS employees and volunteers to conduct authorized activities, such as emergency recovery or salvage actions, associated with the species cited in the permit. The permit's terms and conditions stated: "This permit is only valid to cover incidental and purposeful take associated with job-related recovery activities"; it did not specify a number of allowable takes.

### **BANWR's Efforts To Secure Funding for Improving the Quails' Living Conditions**

During her interview, the BANWR supervisor said that 99 percent of the masked bobwhites in existence—which, according to a March 2014 review by FWS, could number anywhere between 600 and 1,000 birds—were located at BANWR, but FWS did not provide funds specifically for the recovery program. The only year the program had received money was 1995, when the refuge's quail facility was built. That funding came from FWS' Ecological Services Program, but since then BANWR had to use its base funds to support the recovery program. These funds enabled BANWR to operate the program throughout the year, she said, but they were not enough to fund larger projects, such as improving the quails' facility to provide a more natural environment.

### *Disconnect Between FWS Management and BANWR Over Funding for Quail Recovery Program*

We interviewed an FWS assistant director who informed us that Tuggle told him in November 2015 that there did not seem to be a funding shortfall or evidence that BANWR did not have enough funding to properly manage and operate the recovery program. Tuggle told us that he did not know how much funding BANWR received; he said, however, that the BANWR supervisor was responsible for requesting additional program funding from Region 2, and to his knowledge she had not done so.

Other FWS employees, however, disagreed with this perception. The BANWR supervisor said in her interview that BANWR staff had briefed Tuggle for years about the overcrowding at BANWR's quail facility and the need for additional funding to enlarge the facility and improve the quails' living conditions. We also interviewed the recovery team lead, who confirmed that BANWR had provided several briefings about the quails' facility and health to regional officials. He said that the only funds specifically for the quails came to BANWR in the form of small grants, the last of which was received in 2010. In addition, the deputy regional supervisor said that he had attended approximately seven briefings to Tuggle and various regional officials over the past 6 years in which they discussed the need for additional funding for the program. These briefings included discussions about institutions (such as zoos and wildlife organizations) that could assist BANWR with the program, the need to improve veterinary support onsite, and an effort to establish a secondary captive breeding facility at Africam Safari in Puebla, Mexico.

The deputy regional supervisor told us that BANWR staff had communicated to FWS' regional management that although BANWR had enough staff to care for the masked bobwhites, this care was time consuming and burdensome, and it would be better for other institutions to handle the program. He said that BANWR had solicited help and involvement with the program from groups such as the San Diego Zoo, the Phoenix Zoo, the Fossil Rim Wildlife Center in Texas, and the Sutton Wildlife Center in Oklahoma.

We obtained a 5-year review of the quail's status, which FWS had completed in March 2014 as part of its requirements under the ESA. The review found that the program at BANWR was underfunded and that personnel and equipment for the program were inadequate. Tuggle signed the review on May 8, 2014, indicating concurrence with its findings and with this recommendation: "In the absence of additional resources, efforts to raise and release masked bobwhite should be ceased [at] BANWR."

### *Proposal for Funding Recovery Program*

In an effort to secure additional funding for the recovery program, the BANWR supervisor submitted a proposal, titled "Cooperative Recovery Initiative (CRI) Proposal FY 2015," to Region 2 on October 27, 2014. In the proposal, she and other FWS officials who worked with the program requested approximately \$200,000 to improve the quails' living conditions and to initiate a pilot release program with the goal of reestablishing a self-sustaining quail population in southern Arizona.

Describing the quails' conditions, the proposal stated that approximately 30 percent of the birds that had been quarantined before being shipped to the Africam Safari facility in Mexico, as well as another 20 percent in BANWR's own quail population, had died by June 1, 2014. The proposal stated that these deaths were "directly due to bird aggression . . . a result of an overcrowded situation." The proposal also noted: "Although males and females are kept separate, birds killing one another in the crowded cages becomes particularly high during the summer, birds' natural breeding season." The proposal stated that the facility's living conditions were "unacceptable," and that there was "a dire need" to move the birds out of the small, stacked cages where they were kept and into "a more suitable facility so that quality wild birds can be produced." In a November 7, 2014 email, however, an FWS Ecological Services employee notified the BANWR supervisor that regional officials had not recommended the CRI proposal for funding.

The BANWR supervisor said that she usually sought funding for the program through the recovery team, but the regional office had begun requiring her to submit new funding proposals through the FWS Biological Sciences office. She said, however, that her communications with that office were poor and she disagreed with a supervisor in that office about how the quail recovery program should be managed. As a result, she said, her proposals to FWS were unsuccessful.

We interviewed the Biological Sciences supervisor, who explained that CRI funds were competitive and the Ecological Services Program reserved them in order to help the refuges enhance the recovery of the endangered species they were responsible for. He said that the BANWR supervisor's proposal would have been submitted to him for review and comment so that a more competitive proposal could be produced, but he did not approve or reject proposals. He recalled seeing the supervisor's proposal, but said it was provided to him "late" and that it did not meet the CRI criteria, which was to help the quails recover—not simply maintain their facility at BANWR.

The Biological Sciences supervisor also stated that releasing captive gallinaceous birds such as quails into the wild did not work because captive birds would lose their ability to live in the wild. He said he had been to BANWR three to four times since 2008, and he was "disgusted" with the program, which he called a "black eye" for FWS. The BANWR supervisor was very upset over his involvement in the program, he said, and the deputy regional supervisor had tried unsuccessfully to act as an intermediary between them. The Biological Sciences supervisor stated that the BANWR supervisor and the deputy regional supervisor had "burned some bridges" with him.

After his interview, the Biological Sciences supervisor forwarded us an October 27, 2014 email he had received from the BANWR supervisor with a CRI proposal attached. He noted that the emailed proposal contained different language from the version we showed him during his interview. We established that the proposal he had received was an earlier version that did not include some of the final version's descriptive language about the quails' conditions.

When we interviewed the deputy regional supervisor, he told us he knew of the CRI proposal, but said that he had not reviewed it as carefully as he should have and that the BANWR

supervisor had not discussed the quails' conditions with him to the "graphic degree" described in the proposal. He said the proposal was not funded due to the demands of other projects, programs, and species that FWS' upper management was interested in.

We interviewed other Region 2 officials about the CRI proposal and asked whether they were aware of the conditions described in it. Tuggle said he had not seen the proposal, but if BANWR did not receive enough funds to alleviate the conditions cited in it he expected the issue to be elevated to him through BANWR's chain of command. Furthermore, he said, if the program needed more funding, BANWR should have informed either him or his deputy, Joy Nicholopoulos, using a briefing paper, not the proposal. When we interviewed Nicholopoulos and a regional supervisor, both told us they were aware of the proposal but had not read it in detail and, until they saw the PowerPoint that the BANWR supervisor had authorized, they had not been aware of the quails' overcrowding-related injuries and fatalities.

During his interview, the regional supervisor told us that at the end of the past 3 fiscal years, BANWR had unused funds that could have been used to support the recovery program. He later forwarded us an email that he received from an FWS Budget and Facilities Management official, listing the funds that BANWR had not used in FYs 2013, 2014, and 2015:

<b>Fiscal Year</b>	<b>Available Balance at FY End (cents rounded)</b>
<b>2013</b>	<b>\$65,789</b>
<b>2014</b>	<b>\$179,892</b>
<b>2015</b>	<b>\$20,191</b>

We asked the deputy regional supervisor about the BANWR supervisor's authority to use BANWR's general operating funds (which are the same as these end-of-year funds) for the quails. He explained that she had full authority to use the funds as she judged necessary to care for the birds, including purchasing brooders, renovating flight pens, and moving birds into those spaces to alleviate overcrowding.

When we discussed the regional supervisor's email about the unused funds with the BANWR supervisor, she said she had known that funds were left over at the end of FY 2013, but the regional supervisor had "encouraged" BANWR and other refuges to return unused end-of-year funds to pay employee salaries or other expenses. She also said that in general she was not provided accurate budget information.

### **The PowerPoint Presentation**

We interviewed the BANWR employee who prepared the PowerPoint and presented it to the recovery team. She said that after she came to BANWR several years ago, she found that the quails were not receiving medical care and were housed in small cages in outdated facilities. She described the masked bobwhite as a very "high-strung," nervous species, and said that the birds

at the captive breeding facility were kept in small cages 24 hours a day, 7 days a week. This caused them to fight with and peck at each other, resulting in injuries, deaths, and cannibalism, as illustrated in the presentation. Although she had briefed the recovery team on these issues in the past, she did not believe the team fully understood their severity.

On September 24, 2015, the BANWR employee emailed the BANWR supervisor and a regional employee to suggest creating a PowerPoint presentation showing the quails' conditions. She suggested giving the presentation to the recovery team in an effort to obtain support, funding, and assistance to create facilities that would provide a healthier and safer population. In her email, the employee wrote:

It's time for the recovery team to see the dark side of raising birds in tiny, overcrowded chick brooders. I'm talking about the gory, bloody injuries to the feet and legs, the missing toes, the naked backs and necks, the head cysts and gaping head wounds, the pecked nares [nostrils], etc. Need I go on?

In their responses to the email, the supervisor and the regional employee showed strong support for the BANWR employee's idea. The supervisor wrote: "Great idea! I love it! I fully support you putting this together in addition [to] providing a regular update on the breeding status." The regional employee wrote in agreement: "I think it's a great idea too. Shock value can be a powerful motivator! Great thinking out of the box."

The BANWR supervisor provided us with meeting minutes showing that on October 26, 2015, the BANWR employee gave the presentation at a recovery team meeting, which she explained took place in Tucson, AZ. The regional employee told us she was surprised when she later saw the presentation because when she had assisted at the facility in the past, the conditions had not been as overcrowded. She said that from her prior observations at the facility, the types of injuries seen in the presentation did not occur every day.

The BANWR supervisor said that the BANWR employee had volunteered to prepare the presentation for the recovery team meeting, and the supervisor thought it depicted a realistic picture of the quail's conditions and the need to improve the facilities. She told us that she had quickly reviewed a draft of the presentation and felt that it accurately showed the results of the quails' aggression, which occurred most often during the breeding season. She agreed, however, that a person unfamiliar with the quails' behavior during breeding season might infer from the presentation that they had not received proper care and had been neglected.

### **Reaction by FWS Regional Management to the Presentation**

The deputy regional supervisor told us that the briefings he and other regional managers had received over the years had included discussions of the quails' overcrowded conditions, aggressive behavior, and fatalities that occurred during the breeding season. He was aware that the quails occasionally sustained injuries such as missing toes and feather loss from being pecked, he said, but he had not known the extent of the injuries until he saw the presentation.

He said that the regional supervisor told him the conditions were not as bad as the presentation depicted and that the regional supervisor was unhappy with the BANWR supervisor for not briefing FWS' regional management about the presentation and for not keeping it within FWS. He also said that management was concerned that the presentation might get released to the public and cause negative publicity, so a draft press release was prepared in the event of a media inquiry.

The deputy regional supervisor said although the quails were in a "high-density environment," he felt that BANWR managed them properly and that the presentation portrayed the situation as a "worst-case scenario" and more severe than it actually was.

Our interviews of the regional supervisor, Nicholopoulos, and Tuggle revealed that the presentation caused them to become concerned that an "unauthorized take" of the quails had occurred. All three maintained that the birds' injuries would not have occurred to the extent shown if BANWR had managed the recovery program better.

The regional supervisor said that BANWR was responsible for managing the program and controlling the number of quails being produced. Like his deputy, he said that he had not been aware of the extent of the overcrowded conditions or the quail injuries and fatalities before viewing the presentation, and he confirmed that he was unhappy that the recovery team had seen the presentation before he was told about it. He said that in such situations, a team would typically create a briefing paper for him or for Tuggle and then brief them on the issues. He wondered: "Why was this never . . . brought forward to myself to address, to have any kind of conversation or anything?" and noted that he had heard about the presentation third-hand, through one of the meeting attendees who had told an FWS division chief about it.

Nicholopoulos said she first learned of the presentation through the regional supervisor, and when she saw it she was "mortified to see the gore, the terrible pictures." She said she had been concerned because the presentation had been shared with non-FWS recovery team members and she feared it might get released to the public. She told us she asked the regional External Affairs Office to prepare the media statement in case the presentation was publicly released. In a November 2, 2015 email, she told Tuggle that "the conditions depicted in the . . . presentation were deplorable." Tuggle replied that they needed to address the issue immediately. He also said: "We will also notify the persons who are responsible that we will [be] holding them accountable for this dilemma."

On November 5, 2015, Tuggle prepared a memorandum for FWS Director Dan Ashe in which he pointed out that FWS' regional management had not seen the presentation before it was shown to the recovery team. In the memorandum, Tuggle said that the presentation had exposed FWS to "potential public criticism and legal issues related to the Endangered Species Act and the Animal Welfare Act."

Tuggle told us that he was not happy when he saw the presentation because the quails' conditions were unacceptable and appalling. He said that FWS was responsible for ensuring that these birds were not suffering unduly and that they were not subjected to such conditions. Like the other FWS managers we interviewed, he believed that the BANWR staff's concerns about

the quails had been mishandled because they had shared them with recovery team members who were not in a position to improve the situation. He also said that the BANWR supervisor had not requested resources to fix the problems before authorizing the presentation.

The Biological Sciences supervisor said he obtained a copy of the presentation from a member of the recovery team and that he had not been aware of the overcrowding and injuries prior to viewing it. He added that there was little to show for all the money FWS had spent on the quail and the recovery program, and that the program was “shameful from a public stewardship [and] taxpayer standpoint.”

In an October 27, 2015 email, the Biological Sciences supervisor informed the BANWR supervisor that he and the regional supervisor had learned that the conditions at the BANWR quail facility were inadequate and that a biological review would be conducted. She responded: “We have been stating this for more than 10 years now! [It’s] unfortunate that it takes horrifying pictures to get the attention it needs but maybe that is what was needed. We welcome a review anytime.”

According to Tuggle, the FWS Ecological Services Program was responsible for endangered species and issuing incidental take permits to the refuges. He said that this program monitored the conditions at BANWR and was responsible for determining whether BANWR had exceeded its take limit or was within take parameters. In addition, the recovery team lead said that BANWR employees had done the best they could to manage the program but that Ecological Services personnel did not visit the facility, did not do their jobs, and had not done the annual permit evaluations. When we spoke to a former Ecological Services official, however, she denied that her program was responsible for overseeing the recovery program.

### **Regional Management’s November 2015 Visit to BANWR’s Quail Facility**

In light of the conditions shown in the PowerPoint, Nicholopoulos and the regional supervisor visited BANWR on November 3, 2015, to assess the quail facility. Nicholopoulos stated that she showed the presentation to an FWS supervisory special agent because she was concerned that an ESA violation might have occurred, and she asked him for a law enforcement official to accompany them on their visit.

The supervisory special agent said that based on the bleeding, foot injuries, and loss of feathers shown in the presentation, it appeared that a take violation of the ESA had occurred. He assigned an FWS special agent to accompany Nicholopoulos and the regional supervisor to BANWR and conduct an inquiry into the matter.

Nicholopoulos told us that when they visited the facility, she saw overcrowding and the results of previous injuries, including missing toes and feathers. She felt that the presentation was a “cry-for-help kind of thing” and was intended to show the “worst of the worst” in order to shock viewers and draw attention to the issues. Based on her discussion with the BANWR supervisor and the BANWR employee at the facility, she had believed that no funding was available to purchase additional cages to mitigate the overcrowding, but she said the regional supervisor later

informed her that BANWR had not used about \$90,000 in its budget that could have been put toward supporting the recovery program.

According to Nicholopoulos, the BANWR supervisor could not explain why BANWR did not better control the facility's quail population to prevent overcrowding, nor could she explain why the birds' outdoor flight pens had not been maintained so that they could be moved out of the crowded cages. She said the BANWR supervisor also could not provide the number of quails she was allowed to hold at the facility under the endangered species permit.

The BANWR supervisor said the outdoor flight pens were only intended for the rearing and release program, and a complete renovation was needed before any of the captive quail population could be relocated. The quails required protection from predators and temperature changes, she said, and she had been working to renovate other pens to house the birds. Regarding controlling the quail numbers to avoid overcrowding, she said that this was easy to say for those who were not directly involved in the day-to-day management of the recovery program. The program was unpredictable, she said, and BANWR therefore produced more quails to account for unforeseen losses during hatching and other factors such as staffing transitions and facility issues.

The regional supervisor also told us the quail injuries he observed during the field visit were old and did not appear to be as severe as those depicted in the presentation. He said the BANWR supervisor told him that the presentation was intended to solicit a reaction from viewers and that its photos had been collected over a long period of time. Although these photos made it seem that the injuries occurred daily, he said, the BANWR supervisor told him they did not. Based on what he observed during his visit to BANWR, the regional supervisor did not believe that the quails had been neglected.

We interviewed the FWS special agent, who said she conducted a preliminary investigation into possible ESA violations at BANWR. She found that the BANWR employee was genuinely concerned for the quails' welfare and had routinely provided medical attention to injured quails. She also found that none of the quails appeared to be in poor condition, and there appeared to be no evidence of intent to harm or mistreat them. Although some quails had been euthanized due to injuries, the FWS fish and wildlife permit did not establish a maximum number of incidental takes, so she concluded that no ESA violation had occurred.

### **Allegation of Reprisal Against the BANWR Supervisor**

Title 5, U.S.C., § 2302, "Prohibited Personnel Practices," states that a supervisor may not take, fail to take, or threaten to take any personnel action against an employee because the employee disclosed information regarding a violation of law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

On October 15, 2015, the BANWR supervisor received her FY 2015 Supervisory Performance Appraisal Plan from the deputy regional supervisor. In the email he sent transmitting the appraisal to her, he wrote: "Thanks for all your great work this year." The deputy regional

supervisor and the regional supervisor, as the rating and reviewing officials, signed and dated the appraisal on October 26 and 27, 2015.

The BANWR supervisor said, however, that the day after Nicholopoulos and the regional supervisor returned from their visit to BANWR, the deputy regional supervisor notified her that the regional supervisor had “directed” him to lower her rating. She said that he also reduced the amount of a monetary award she was to receive. She told us that he did not clearly explain why he had lowered her appraisal and award, and she wrote a note on her revised appraisal stating that she disagreed with his decision. She told us she believed that this action was reprisal against her because she allowed the presentation to be shown to the recovery team.

A review of the revised appraisal confirmed that the BANWR supervisor’s performance rating had been lowered by one level and her award reduced. We identified no written documentation stating why they were lowered, but an FWS employee relations official informed us that no such documentation was required.

During their interviews, the regional supervisor and his deputy gave conflicting reasons for why the deputy had lowered the BANWR supervisor’s appraisal and award. The deputy regional supervisor said that the regional supervisor had “instructed” him to lower them because the supervisor had authorized the presentation and had not managed the issue appropriately. He said: “For her to have allowed this presentation to go forward before the recovery team was not . . . the way that we expected our managers to elevate a concern or an issue,” and that “we felt we needed to show some recognition . . . of the fact that this was an error in judgment.”

The regional supervisor, however, said the lowered rating and award had nothing to do with the presentation; he said he had spoken to the deputy regional supervisor out of concern that the BANWR supervisor had failed to properly maintain BANWR facilities. He said that during his visit to BANWR, he saw that the general facilities were not well maintained; in particular, he said, the quails’ outdoor flight pens were not properly maintained and weeded, which prevented the quails from being moved out of their crowded cages into the flight pens. He said that the BANWR supervisor had also failed to repair a leaky roof even though she had maintenance staff available to perform the work.

When asked, Tuggle and Nicholopoulos both said they had not participated in any discussions about lowering the BANWR supervisor’s appraisal and award, and that they had not known they had been lowered. They did not state whether they agreed that her appraisal should have been lowered, but Tuggle stated that “looking [in] from the outside” and given the conditions at BANWR, it would be difficult to justify the higher rating for someone responsible for taxpayer dollars. He acknowledged, however, that the timing of the action made it appear to be reprisal.

In an interview, FWS Director Dan Ashe acknowledged that he had seen the presentation and that he had known for some time that the quail recovery program at BANWR was “challenged” and had never been completely successful in its efforts. He stated that it was appropriate for the BANWR supervisor to bring the welfare of the quails to the recovery team’s attention, and when asked, he agreed that no action should have been taken against any employee for preparing the presentation and showing it to the recovery team.

## **Facilities Inspection, Animal Welfare Assessment, and Improvements to the Quails' Living Conditions**

On December 23, 2015, Tuggle notified the BANWR supervisor by memorandum that BANWR would no longer carry out captive quail breeding and that the program at BANWR would be terminated. Tuggle told us that he sent the memo after he had spoken with Ashe. He said the intent of the memo was to clarify that although there were issues to address, FWS was committed to moving forward with the quail recovery effort and other options were being sought to ensure the quails were in a stable condition.

Acting on directions from Tuggle, another Region 2 supervisor and an FWS wildlife veterinarian conducted a facilities inspection and an animal welfare assessment at BANWR's quail facility on January 4, 2016.

The Region 2 supervisor informed us during his interview that he found the captive breeding facility to be well kept, clean, and orderly, but the outdoor flight pens had not been maintained adequately and only 3 or 4 of the 20 pens were in use at the time of his visit. He also identified a leak in the roof and cracks in the wall at BANWR's administrative building, as well as maintenance and cleaning issues at the bunkhouse. He provided a memorandum, dated January 12, 2016, in which he told Tuggle that the quails' indoor facilities were in generally good condition, but the flight pens were only fair due to rodent intrusion and no proper shelter or soft wire mesh to reduce injuries to the birds. The memorandum did not mention the administrative building or the bunkhouse.

After her visit to BANWR, the veterinarian prepared a memorandum, dated January 7, 2016, in which she stated: "There is no evidence of animal abuse or neglect at . . . BANWR." She noted, however, that the equipment and facilities that BANWR had used over the past 20 years for breeding, rearing, and maintaining the quails no longer met welfare standards for the species. She also stated that BANWR staff "should be commended for their dedication to maintaining the best possible health and welfare of the birds under these conditions, and for raising the issue of inadequate facilities and animal welfare deficiencies."

We spoke to the BANWR supervisor in August 2016 about the quails' status. She said that the veterinarian had conducted several site visits to BANWR and had provided guidance for improving the recovery program, and the quails were in a much improved setting. She explained that the outdoor flight pens had been completely renovated and staff had moved more than 600 quails into them so that the birds could be in a more natural, less crowded environment. Despite these significant improvements, she said, the ideal situation was still to relocate the quails to another facility because the flight pens were intended for rearing and conditioning birds to release into the wild, not for housing a captive flock long term.

### **SUBJECTS**

1. FWS deputy regional supervisor.
2. FWS regional supervisor.

## **DISPOSITION**

During our fieldwork, we discussed the details of the alleged ESA violations with a senior trial attorney for the U.S. Department of Justice's Environmental Natural Resources Division, who declined to prosecute. We issued this report to Michael Bean, Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, for review and action.