



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

U.S. FISH AND WILDLIFE SERVICE'S MANAGEMENT OF OIL AND GAS ACTIVITIES ON REFUGES





OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

MAR 01 2015

Memorandum

To: Dan Ashe
Director, U.S. Fish and Wildlife Service

From: *for* Mary L. Kendall *S. L. Kendall*
Deputy Inspector General

Subject: Final Evaluation Report – U.S. Fish and Wildlife Service’s Management of Oil and Gas Activities on Refuges
Report No. CR-EV-FWS-0002-2014

This memorandum transmits the findings of our evaluation of the U.S. Fish and Wildlife Service’s (FWS) management of oil and gas development activities on National Wildlife Refuges. Our objective was to determine the nature and the extent of the threat that orphaned and abandoned wells and their associated infrastructures pose to refuges. In order to fully understand some of the underlying causes of orphaned and abandoned wells, we determined that current management practices of active wells must also be evaluated.

Our report contains five recommendations that should help FWS improve managing oil and gas activities. These recommendations target standardizing policies and procedures and improving the data that refuge managers need to manage oil and gas activities consistent with refuge goals. We consider all five of these recommendations resolved but not implemented, and we will refer these recommendations to the Assistant Secretary for Policy, Management and Budget to track implementation (see Appendix 3). We are encouraged by FWS’s positive response to the draft report and the comprehensive steps it is taking to address the recommendations.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

If you have any questions about this report, please do not hesitate to contact me at 202-208-5745.

Table of Contents

Results in Brief	1
Introduction.....	2
Objective	2
Background	2
Findings.....	4
Inconsistent Oversight of Oil and Gas Activities.....	4
Insufficient Orphaned Wells and Infrastructure Policy.....	9
Inaccurate and Incomplete Data on Oil and Gas Wells	11
Conclusion and Recommendations.....	13
Conclusion.....	13
Recommendations	13
Appendix 1: Scope and Methodology.....	15
Scope	15
Methodology	15
Appendix 2: U.S. Fish and Wildlife Service’s Response to Draft Report.....	16
Appendix 3: Status of Recommendations.....	22

Results in Brief

The National Wildlife Refuge System is an extensive system of Federal lands and waters acquired and managed specifically for conserving wildlife, plants, and their habitats. The system has evolved into a comprehensive network of lands devoted to wildlife conservation and management.

The U.S. Fish and Wildlife Service (FWS) often manages these lands without having acquired subsurface mineral rights, a circumstance referred to as a “split estate.” On split estates, the non-Federal mineral owners can often continue to produce or newly develop the private minerals underlying the Federal surface. As a result, America’s refuges have over 5,000 oil and gas wells, of which approximately 1,665 are actively producing. The remaining wells are either inactive or their status is unknown.

Due to minimal and vague national guidance, and questions about FWS’ legal authority, FWS’ management of oil and gas development activities on national wildlife refuges is inconsistent. Inconsistent management has also left FWS’ refuges littered with orphaned or abandoned oil and gas infrastructure that could threaten the health and safety of wildlife, the safety of refuge visitors, and damage the environment. In addition, FWS has not completed a comprehensive database system for tracking wells as recommended by the Government Accountability Office in 2003. A complete and accurate database would assist FWS in managing oil and gas operations in refuges.

We offer five recommendations to help FWS improve its management of oil and gas activities on refuges by addressing inconsistent oversight and enforcement, safety and environmental problems with orphaned and abandoned wells, and poor data management.

Introduction

Objective

The objective of this evaluation was to determine the nature and extent of the threat that orphaned (where active owners or operators cannot be identified) and abandoned (not currently operational) oil and gas wells and their associated infrastructures pose to U.S. Fish and Wildlife Service (FWS) refuges and refuge visitors. This includes understanding the universe of all oil and gas wells on FWS lands; the laws, regulations, and departmental policies and guidance related to these wells; how FWS works with the States regarding these wells; and what programs exist that FWS may draw upon to help reclaim these wells.

Appendix 1 contains our evaluation's scope and methodology.

Background

In 1997, Congress passed the National Wildlife Refuge System Improvement Act (Act), 16 U.S.C. § 668dd, to ensure that national wildlife refuges are managed as a system of related lands, waters, and interests that protect and conserve our Nation's fish and wildlife resources. The Act defines a unifying mission for all refuges, requires a process for determining which activities are compatible with the mission of individual refuges, and requires that each refuge be managed according to a Comprehensive Conservation Plan. The Act states that the Secretary's responsibilities include providing for the conservation of fish, wildlife, plants, and their habitats within the system, 16 U.S.C. 668dd(a)(4)(A). Among other responsibilities, the Secretary must ensure that the biological integrity, diversity, and environmental health of the refuge system are maintained, 16 U.S.C. 668dd(a)(4)(B).

FWS must manage each refuge to fulfill the refuge system's mission and the specific purposes for which the refuge was established. The mission of the refuge system is to administer the refuge system's lands and waters for the conservation, management, and restoration of the fish and wildlife populations and habitats for the benefit of present and future generations. Today, more than 560 national wildlife refuges and 38 wetland management districts provide habitat for more than 700 species of birds, 220 species of mammals, 250 reptile and amphibian species, and 1,000 species of fish. FWS is tasked with protecting about 380 threatened or endangered plants, animals, and fish on its refuges.

Oil and gas activities on refuge lands and water most often occur where FWS owns the surface rights to the land, but the mineral estate remains in private or State ownership, a circumstance referred to as a "split estate." The owners of these non-Federal mineral rights (they may be individuals, corporations, State or local governments, Indian tribes, or native corporations) often have a legal right to explore for and extract their oil and gas resources despite Federal ownership of the surface estate. In some cases, the non-Federal oil and gas leases on refuges

predate Federal ownership of the surface estate. In consultation with FWS, the Bureau of Land Management (BLM) will issue Federal leases on refuges only in cases where wells on neighboring lands are producing and draining federally owned oil and gas without compensating the Federal Government. These Federal leases are managed by BLM. Management of Federal refuges with oil and gas leases of any kind presents complex challenges.

Approximately 5,000 wells are associated with oil and gas exploration and development on lands owned by FWS. They are located on over 200 refuges, including several wetland management districts. Two-thirds of the wells are either inactive or their status is unknown to FWS. In addition, about 1,275 miles of transmission pipelines cross refuge lands, transporting a variety of petroleum products including crude oil, refined petroleum products, and natural gas.

FWS Regulations for managing oil and gas activities on refuges are contained in 50 C.F.R. §§ 29.31-29.32. Although FWS published an Advance Notice for Proposed Rulemaking in the Federal Register on February 24, 2014, these regulations have not been revised in over 35 years.

FWS' policy is outlined in the FWS Manual, Part 612 FW 2, "Oil and Gas." FWS' regulations state that it shall protect refuge resources to the maximum extent possible without infringing upon the rights of subsurface mineral owners. The private mineral owner must show reasonable regard for the surface estate as required by State law.

One of the key tools used by other land management agencies for regulating oil and gas activities is the issuance of permits. In 1986, an opinion written by the U.S. Department of the Interior's Office of the Solicitor concluded that FWS did not have the authority to regulate the surface uses of the owners of "reserved" mineral rights, unless that authority was stipulated in the deed. Reserved mineral rights are mineral rights that have been reserved by the previous owner when the surface ownership was transferred to the Federal Government. In practice, FWS has often applied this opinion to "outstanding" mineral rights as well. Outstanding mineral rights are those that were separated from the surface before the Government's acquisition, so that the person that gave the Federal Government the land did not own the minerals at the time of the transfer. The Solicitor's office is currently reevaluating the ability of FWS to require permits for oil and gas activities and to impose accompanying restrictions on the use of the refuge lands. FWS has historically taken a hands-off approach when managing oil and gas activities on refuges, and guidance remains vague.

Findings

FWS refuges currently face a growing problem with wells and their infrastructures that pose environmental and safety dangers. We identify three areas contributing to these management difficulties—inconsistent oversight and enforcement, safety and environmental problems with orphaned and abandoned wells, and poor data management.

Inconsistent Oversight of Oil and Gas Activities

We found inconsistent oversight of oil and gas activities on refuges. Management ranges widely from an active, hands-on process to minimal management. For instance, management may include negotiating Special Use Permits with specific conditions or limitations for new oil and gas activities, as at Atchafalaya National Wildlife Refuge (NWR) in Louisiana, or managers might defer more to State regulators and regulations, as at D'Arbonne National Wildlife Refuge where it is felt that the management's "sole recourse is via state law."

FWS staff from five refuges we visited reported that they had little or no management authority over any type of oil and gas operations on refuge lands, and referred to the FWS Handbook, which states that FWS "should pursue voluntary permitting arrangements with the mineral interest owner to specify the reasonable limits of his/her intended operations." This guidance requires refuge managers to develop their own, more specific policies, and they have done so with varying degrees of success. In some refuges, we found instances of robust Special Use Permits entered into by FWS and operators that include such conditions as the prohibition of drilling pits, while another refuge manager reported that based on the 1986 solicitor's opinion they had no authority to enter into such agreements and feared that the agreements would be challenged in court.

Special Use Permits, however, have been effective management tools for FWS. According to data provided by FWS, between 2005 and 2013 there were 701 Special Use Permits issued in the FWS Southeast region (35 refuges with active oil and gas activities) but only three refuges accounted for nearly 30 percent of those permits. In one case in 2011, for instance, FWS pursued criminal charges against an oil and gas operator for violating special use permit terms with the Atchafalaya NWR. Charges included failing to report production spills, failing to timely remove spill products or byproducts from refuge surfaces and restore those surfaces to original condition, and failing to provide notice or obtain approval for a new surface location of associated infrastructure. The company pled guilty on two of the five misdemeanor counts. The court ordered the company to remediate the site, fined the company \$65,000, and, as community service, ordered the company to donate \$25,000 to the Nature Conservancy.

Recommendation

We recommend that FWS:

- I. Work with U.S. Department of the Interior's Office of the Solicitor to determine how best to utilize special use permits to improve accountability of operations on refuges.

Inconsistent Enforcement of Regulations

We found FWS staff members inconsistently enforce existing guidance and regulations. FWS regulations for management of oil and gas activities are contained at 50 C.F.R. §§ 29.31 and 29.32. The regulations state that, “to the greatest extent practicable,” private mineral owners shall conduct oil and gas activities in a manner that prevents damage to refuge resources and wildlife.

In one instance in the Lower Rio Grande Valley NWR in Texas, a completed well drilled in early 2013 was on a well pad measuring 62,500 square feet, which is excessive for the minimal onsite production equipment (see Figure 1). The FWS Handbook allows refuge managers to require intermediate reclamation of roads and well pad sites after completion of the well and during the well's active phase. As of March 2014, refuge staff members had not taken actions to reduce the size and impact of this large well pad.



Figure 1. Well pad with wellhead (circled). Source: OIG

On another part of the Lower Rio Grande Valley NWR, we observed an abandoned storage tank that had become detached from its pad and floated to a different part of the refuge during a 2011 flood (see Figure 2). Even though Texas' regulations address abandoned and orphaned equipment, FWS had taken no action to have the tank removed or to have Texas State regulations enforced. After our site visit FWS began efforts to identify the owner of the abandoned storage tank.



Figure 2. Abandoned oil storage tank. Source: OIG

On another refuge, an operator replaced all of its diesel powered pumping engines with electric motors and installed electrical lines across the refuge to power the motors. The operating company did not inform the refuge manager of its plans, nor did it receive permission or a right-of-way from the refuge manager as may be required under 50 C.F.R. part 29 subpart B, “Wildlife and Fisheries.” When asked about this, the refuge manager said he had no plans to address this instance of possible trespass. Enforcement inactions may result in private operators not informing FWS staff of such activities in the future, thus encouraging possible trespass.

A particularly problematic well is the St. Charles #1 on the Aransas NWR in Texas. It was originally drilled in 1939, but after a blowout in 1940 and subsequent attempts to salvage the well, it was temporarily abandoned.

Approximately 11 years later, the well began to flow salt water and trace amounts of methane to the surface outside the original wellbore, thereby threatening surrounding plant life and habitat. The well continues to discharge saltwater intermittently, with the most recent incident occurring in February 2014. During this release, the operator vacuumed up to 85 barrels of salt water a day off the well site. The St. Charles #1 has continued to leak intermittently for most of its 70-year existence and has not been successfully plugged and abandoned. The refuge manager feels he has no authority to require the operator to permanently plug and abandon this well, which will likely continue to leak intermittently and threaten the surrounding refuge.

In its response to our draft report, FWS states the company is cooperating with the refuge manager at this time to install monitoring wells and is pumping salt water as necessary. The operator and FWS' petroleum engineers have also agreed that successful permanent plugging could not be accomplished at this time, but this apparent lack of authority will continue to hamper FWS from pursuing a more permanent solution to this persistent problem.

In addition to these examples, the Office of Inspector General found numerous instances of abandoned well infrastructures on refuges. These included abandoned pump-jacks and pump-jack stands, tank batteries, processing equipment, and flow lines as well as miscellaneous dumpings on well sites (see Figures 3 and 4).



Figure 3. Excess pipes abandoned at a well site in Lower Rio NWR. Source: OIG



Figure 4. Abandoned oil treatment equipment in Lower Rio NWR. Source: OIG

Abandoned structures such as tank batteries (a set of storage tanks associated with a well) act as an attractive nuisance and can pose a significant safety threat to refuge visitors. For example, on refuges where hunting is allowed, hunters may use the higher vantage point of abandoned structures as blinds or stands (see Figure 5). There have been a reported 11 incidents with 16 associated fatalities across the country relating to the unauthorized access to oil and gas storage tanks since 2000. While these incidents did not occur on FWS land and we did not identify any such fatalities on FWS land, the same potential exists on refuges.

Even when the owners of the structures can be identified, FWS seldom asked the owners to remove these structures.



Figure 5. An abandoned well pad site. Source: OIG

The above are all examples of instances in which FWS is not enforcing existing rules and regulations to their full extent. FWS has announced its intention to update its oil and gas management rules through an Advance Notice of Proposed Rulemaking.

Recommendation

We recommend that FWS:

2. Improve, develop, and implement procedures and training to ensure consistent application of all established guidance and regulations.

Insufficient Orphaned Wells and Infrastructure Policy

When the owners or operators of abandoned wells and associated infrastructures either cannot be identified or have ceased to exist for various reasons, refuge managers, in the absence of dedicated funds, have relied on State orphaned well programs to permanently plug wells and remediate well sites. The definition of an orphaned well varies from state to state; however, the general industry definition of an orphaned well is an oil or gas well that is not producing or injecting, has not

received State approval to remain idle, and for which the operator is unknown or insolvent. Deep Fork NWR in Oklahoma alone contains 84 orphaned wells.

The causes of orphaned wells vary. During the early years of petroleum production, when a well was abandoned the well bore itself was left either unplugged or plugged with tree stumps, logs, mud, or a variety of other unsuitable material. Recurrent boom and bust cycles in the oil and gas industry, or operators defaulting, have also contributed to the orphaned well inventory.

One of the fundamental issues with orphaned wells is that data concerning their history and existence are inexact. In the early years of oil and gas exploration, data collection was incomplete, and over years and decades, many records of who owned and operated these wells have been lost, especially if the operator has gone bankrupt or is no longer in business. In addition, on some refuges, orphaned and abandoned wells are often in remote areas and difficult to detect.

Orphaned wells can pose environmental hazards because hydrocarbons, salts, and groundwater migrate. An unplugged well creates a conduit allowing these materials to mingle, thereby possibly contaminating underground aquifers and water wells, or seeping to the surface to contaminate fields, waterways, or ponds. Similarly, water and salts can migrate into and contaminate petroleum reserves through abandoned wells or improperly plugged orphaned wells.

Beyond possible contamination, surface seeps can increase the risk and ferocity of wildfires by providing hydrocarbons as additional fuel. As unplugged wells deteriorate over time, they can also cave in on themselves or give way to unsuspecting animals and humans. Identifying these wells and subsequently monitoring them and their infrastructures is essential to effectively managing their impact on refuges.

States require companies to put up bonds for reclamation of wells and these State programs are then responsible for permanently plugging wells that become orphaned. The average cost to properly plug an orphaned well varies depending on well depth, condition of the well, and terrain. Costs typically range from \$2,000 to \$40,000 but can be much higher as evidenced by a particularly difficult 2011 plugging effort on the Lower Rio Grande Valley NWR where it took over \$1 million to plug three wells.

While States have developed programs for plugging orphaned wells, many State programs remain backlogged, and States are unclear how orphaned wells on federally managed lands rank on their priority lists. Current State backlogs of orphaned wells include 700 in Arkansas and 2,800 in Louisiana. Texas plugged 778 wells for more than \$20 million in 2013, an average of about \$26,000 per well, but still has 8,829 noncompliant orphaned wells. In addition, the States' reclamation bond requirements may not reflect actual plugging costs. For example, Louisiana only requires a statewide bond of \$25,000 to cover up to 10

wells within the State. The same amount of bond in Arkansas covers up to 25 wells.

Recommendations

We recommend that FWS:

3. Develop and implement policies and procedures to require owners to properly notify FWS when well and lease ownership is transferred.
4. Explore requiring additional bonds that could be used for plugging orphaned wells and remediating environmental damage in a timely manner.

Inaccurate and Incomplete Data on Oil and Gas Wells

We found that the data currently used by FWS staff are inadequate for effectively managing oil and gas activities on FWS refuges. Without basic data on oil and gas operations, refuge staff cannot create and implement effective management policies and programs. Many times, the data do not include such basic facts as status or ownership. These data also do not include the existence or location of infrastructures such as tank batteries and oil and gas gathering pipelines.

In 2003, the U.S. Government Accountability Office (GAO) issued a report identifying opportunities to improve FWS' management of oil and gas operations on refuges.¹ GAO recommended FWS: "Collect and maintain better data on the nature and extent of oil and gas activities and the effects of these activities on refuge resources." GAO revisited this recommendation in 2007 and considered it open with no clear timeline on its implementation.²

We found that FWS obtained a significant amount of oil and gas well data in 2012 from the Environmental Protection Agency (EPA), including some location and status data. This was nearly a decade after the initial recommendation, and FWS continues to analyze these data. These data were provided to EPA in January 2011 by a private company that gathered them from various regulatory agencies. Because wells are bought and sold regularly, however, these 3-year-old data are likely out of date.

The data themselves present additional challenges. FWS has not confirmed many well locations, making the location data more prone to errors. In addition, because

¹ U.S. Government Accountability Office, GAO-03-517, "National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Land," (August 2003).

² U.S. Government Accountability Office, GAO-07-829R, "Opportunities Remain to Improve Oversight and Management of Oil and Gas Activities on National Wildlife Refuges," (June 2007).

the data were collected for EPA by a private entity, they are not sufficient for FWS' needs. They often do not include key pieces of information, including the date the well was drilled, its current ownership, and its status.

Well status is important information needed for oil and gas management. Of the approximately 5,000 wells identified on refuge lands, the statuses of 3,000 wells were identified as "inactive" or "unknown." Unknown wells may be actively producing, thereby necessitating regular access by operators, temporarily abandoned but with possible future use, or permanently plugged and abandoned. Without knowing the statuses of wells on refuges, FWS cannot determine what problems may exist and where to focus its energies.

Ownership information also presents a challenge. When ownership information is included in EPA's data, the companies may have since gone out of business. These wells are orphaned wells, and they present the challenge of attempting to track down a responsible party to pay for the cleanup and plug the wells. Determining well ownership can be labor intensive. It includes queries to State regulatory agencies and State or county court records. If a responsible party cannot be found and State bonds are insufficient to permanently plug a well, responsibility falls to the backlogged State's program to attempt to plug it.

Partly in response to our evaluation, FWS has begun reviewing EPA's data on those refuges most affected by oil and gas development. It has preliminarily analyzed 1,240 wells and identified 84 orphaned wells on Deep Fork NWR alone. An additional 200 wells of the 1,240 wells require further data validation. In addition, FWS has developed a strategic plan to address orphaned wells across the refuge system. It expects to identify all orphaned wells by the end of 2015. This is a significant step forward since EPA first informed FWS of this issue in 2003.

Recommendation

We recommend that FWS:

5. Develop and implement a plan that includes timelines and requirements for obtaining, verifying, maintaining, and regularly updating oil and gas well and related infrastructure data.

Conclusion and Recommendations

Conclusion

Without guidance at the national level, FWS' management of oil and gas operations on refuges has been inconsistent, and at times, nonexistent. Management has been hampered by absent data, particularly concerning the locations and statuses of wells and related infrastructure. This has left refuges more vulnerable to damage and created risks to visitors' safety.

Recommendations

We recommend that the FWS:

1. Work with U.S. Department of the Interior's Office of the Solicitor to determine how best to utilize special use permits to improve accountability of operations on refuges.

FWS Response: FWS concurred with and is addressing this recommendation through the rulemaking process. FWS stated that the current proposed rule will apply to new operations on refuges and will cover procedures for permit applications, review and approval, and noncompliance.

OIG Reply: We consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

2. Improve, develop, and implement procedures and training to ensure consistent application of all established guidance and regulations.

FWS Response: FWS concurred with the recommendation and is utilizing the National Wildlife Refuge System Energy Team to revise current training and guidance, including revisions to the current FWS Handbook and new training sessions and webinars.

OIG Reply: We consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

3. Develop and implement policies and procedures that ensure that the FWS staff is properly notified by owners when well and lease ownership is transferred.

FWS Response: FWS concurred and is addressing the recommendation through the rule-making process. The current proposed rule will apply to new operations on refuges and will require operators to notify FWS of a change or transfer. Under this proposed rule, new operators will be held to the same terms and conditions as the previous operators, and current operators will continue to be held responsible until FWS approves the change.

OIG Reply: We consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

4. Explore requiring additional bonds that could be used for plugging orphaned wells in a timely manner.

FWS Response: FWS partially concurred with this recommendation and is addressing the recommendation through the rule-making process. The current proposed rule is to require bonding as a condition of a permit and set the bond amount equal to the estimated cost of plugging and reclamation.

OIG Reply: We consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

5. Develop and implement a plan that includes timelines and requirements for obtaining, verifying, maintaining, and regularly updating oil and gas well and related infrastructure data.

FWS Response: FWS concurred with the recommendation and is currently considering two strategies to address this concern. The first proposed solution would create an in-house geographic information system database and management team by May 2017 using State oil and gas regulatory data. The second proposed option would involve extending FWS's current subscription to a third-party database by May 2016, if it proves to be sufficient. FWS targeted May of 2015 for making the determination between these options.

OIG Reply: We consider this recommendation resolved, but not implemented and encourage FWS to expedite implementation of either solution considering that this shortcoming was first identified in 2003. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

Appendix I: Scope and Methodology

Scope

We focused on oil and gas wells located on U.S. Fish and Wildlife (FWS) managed lands and on those wells' related abandoned infrastructures.

Methodology

We conducted this evaluation in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We conducted the evaluation from January 2014 through April 2014. We believe the work performed provides a reasonable basis for our conclusions and recommendations.

We reviewed laws, regulations, policies, and procedures related to oil and gas development, conducted site visits, and interviewed knowledgeable FWS personnel.

We visited or contacted the following organizations:

- FWS Headquarters, Arlington, VA
- Tensas River National Wildlife Refuge (NWR), Tallulah, LA
- Catahoula NWR, Rhinehart, LA
- Aransas NWR, Austwell, TX
- Matagorda Island, NWR, Matagorda Island, TX
- D'Arbonne NWR, Farmerville, LA
- St. Catherine's Creek NWR, Sibley, MS
- Lower Rio Grande Valley NWR, Alamo, TX
- Atchafalaya NWR, Lacombe, LA
- Big Branch Marsh NWR, Lacombe, LA
- Deep Fork NWR, Okmulgee, OK
- Felsenthal NWR, Crossett, AR

Appendix 2: U.S. Fish and Wildlife Service's Response to Draft Report

The U.S. Fish and Wildlife Service's response to our draft report follows on page 17.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



In Reply Refer To:
FWS/ABHC/PDM/059098

DEC 29 2014

Ms. Kimberly Elmore
Assistant Inspector General for Audits, Inspections, and Evaluations
U.S. Department of the Interior
Office of the Inspector General
1849 C Street, NW, MS 4428
Washington, DC 20240

Dear Ms. Elmore:

Thank you for providing the U.S. Fish and Wildlife Service the opportunity to respond and comment on the draft audit report: "U.S. Fish and Wildlife Service's Oil and Gas Development on U.S. Fish and Wildlife Service Refuges - Report No.: CR-EV-FWS-0002-2014".

You will find the Service's response to the findings and our plan to address those findings attached to this document.

Sincerely,

ACTING

DIRECTOR

Attachment

Office of the Inspector General

U.S. Fish and Wildlife Service's Oil and Gas Development on U.S. Fish and Wildlife Service Refuges - Report No.: CR-EV-FWS-0002-2014

Specific Comments:

The Office of the Inspector General (OIG) believes the U.S. Fish and Wildlife Service (Service) has existing oil and gas regulations that require owners of private minerals to develop their minerals responsibly. OIG suggests that the Service enforce our current regulations, but unfortunately, the regulations are minimal, vague and do not address the specific circumstances under which we can issue citations to restrict impacts on refuges.

The language in the existing regulation is vague: "greatest extent practicable"; "So far as is practicable"; "as quickly as practicable" and "as nearly as possible". This vagueness was exacerbated by the 1986 Solicitor's Memo regarding issuing permits for reserved and outstanding mineral rights. The combination of vague and ineffective regulations in conjunction with the interpretation and implementation of the memo resulted in the inconsistent application of oil and gas management on refuges, reported initially by GAO and reiterated in this report.

We are working with the Department of the Interior's Office of the Solicitor to clarify not only our oil and gas regulation, but also to rectify the issues in the 1986 memo. We believe consistency and clarity will improve after the oil and gas regulations are finalized, likely by 2017. We have simultaneous efforts launched to address the deficiencies in the oil and gas dataset, inspect individual well sites and identify well locations. As OIG states in their report, the FWS will resolve "inconsistent oversight and enforcement, safety and environmental problems with orphaned and abandoned wells, and poor data management."

On Page 7, the report identifies the lack of obtaining authority for installing electric motors and power lines as a possible violation of the Federal Land Policy and Management Act (Pub.L. 94-579). However, this is a federal statute that governs the way in which the public lands are administered by the Bureau of Land Management. We do not have a direct equivalent of this act, and we do not have the authority to enforce it.

On Page 8, the report discusses issues with release of salt water, due to a well blow out. This information is correct. While the refuge manager may believe he has no authority to require the operator to permanently plug and abandon this well, it was also determined by company engineers, in consultation with our Petroleum Engineer, that the well cannot be successfully plugged. The resolution was to install monitoring wells around the leaking well head, and periodically pump the salt water to an injection well. The company continues to cooperate with the Refuge Manager to maintain the monitoring wells and pump salt water as necessary.

U.S. Fish and Wildlife Service's Oil and Gas Development on U.S. Fish and Wildlife Service Refuges - Report No.: CR-EV-FWS-0002-2014

Recommendation 1: *Work with U.S. Department of the Interior's Office of the Solicitor to determine how best to utilize special use permits to improve accountability of operations on refuges.*

CONCUR: The Service is addressing this recommendation through the rulemaking process. Under proposed regulations, new operations will be required to obtain a Service permit. Since new operations create the greatest additional impacts, proper site planning, timing restrictions, and best management practices can result in a great improvement in resource protection, thus justifying a permit system.

The proposed regulations identify procedures for permit applications and Service review and approval, as well as consequences for non-compliance. Furthermore, these regulations increase accountability of operations on Refuges by assimilating State laws, giving Refuge Law Enforcement the ability to enforce such laws on operators on all Refuges.

Target Date: To complete regulations (Spring 2017)

Responsible Official: Mr. Jim Kurth, Chief, National Wildlife Refuge System

Recommendation 2: *Improve, develop, implement procedures and training to ensure consistent application of all established guidance and regulations.*

CONCUR: As part of the regulation development, the National Wildlife Refuge System (NWRS) Energy Team is taking a strategic approach revising our outreach material (including training and handbook guidance, Operator Guidance, regional and field new regulation training sessions, webinars to Service Refuge staff) to ensure it remains relevant and up to date. For example, in 2013, the National Conservation Training Center, in Shepherdstown, West Virginia, sponsored the class Management of Oil and Gas Activities on National Wildlife Refuge System Lands and was thoroughly revised by the national Service oil and gas team. In previous classes, there were many discrepancies found in our authorities and in legal requirements. The Service is addressing these discrepancies by working with the Solicitor's Office to clarify the Service's authorities. A new revision is being drafted of our Handbook which should resolve many of these issues.

Target Date: To complete revisions to Handbook, Operator Guidance, webinar (Summer 2017)

Responsible Official: Mr. Jim Kurth, Chief, National Wildlife Refuge System

Recommendation 3: *Develop and implement policies and procedures that ensure that Service staff is properly notified by owners when well and lease ownership is transferred.*

CONCUR: The Service addresses this recommendation through the current rulemaking process, which requires the previous operator to notify the Service of its transfer and requires that the new operator adopts and agrees to the terms and conditions of any previous operator's operations

U.S. Fish and Wildlife Service's Oil and Gas Development on U.S. Fish and Wildlife Service Refuges - Report No.: CR-EV-FWS-0002-2014

permit. The proposed rule provides that a previous owner remains liable under the financial assurance until that owner informs the Service that the rights have been transferred to another party. A new owner cannot operate until it posts financial assurance and ratifies the existing plan of operations.

Target Date: To complete regulations (Spring 2017)

Responsible Official: Mr. Jim Kurth, Chief, National Wildlife Refuge System

***Recommendation 4:** Explore requiring additional bonds that could be used for plugging orphaned wells in a timely manner.*

PARTIALLY CONCUR: The Service is addressing this recommendation through the current rulemaking process and through the States and Environmental Protection Agency (EPA). To ensure that the operators, rather than the public, bear the financial burden of damages from their operations, the Service is proposing to require bonding as a condition of a permit and set the bond amount equal to the estimated cost of plugging and reclamation.

As the OIG report points out, many states remain hesitant to plug and reclaim wells on federal lands because there is a considerable backlog of projects; however, some States have addressed leaking wells on refuges (e.g., Lower Rio Grande, Texas). The number of abandoned or orphaned wells in need of plugging far exceeds the amount of state funds available for plugging and abandonment. The Service will continue to work with the EPA to address orphan wells at these locations (e.g., Deep Fork, Oklahoma) with the intent properly plugging and abandoning the wells so that risks to refuge resources as well as public health and safety are eliminated.

Limited Service funds are available, through specific damage claims such as The Restore Act. The NWRs Energy Team will continue to seek out alternatives.

Target Date: To complete regulations (Spring 2017)

Responsible Official: Mr. Jim Kurth, Assistant Director, National Wildlife Refuge System

***Recommendation 5:** Develop and implement a plan that includes timelines and requirements for obtaining, verifying, maintaining, and regularly updating oil and gas well and related infrastructure data.*

CONCUR: As OIG correctly points out, the Energy Team and the Service's Inventory and Monitoring Program (I&M) worked with the EPA Compliance Office to extract oil and gas data from their database in 2012. Through use of the database, the Service has uncovered inconsistencies in the dataset regarding the completeness (e.g., not all Federal wells were included), status (many inactive wells were actually plugged), and locations (many locations were incorrectly recorded). In lieu of these problems, the Energy Team is working with the Service's I&M to resolve these issues.

U.S. Fish and Wildlife Service's Oil and Gas Development on U.S. Fish and Wildlife Service Refuges - Report No.: CR-EV-FWS-0002-2014

The Energy Team and I&M are evaluating two alternatives to address the data issues from the EPA database.

1. Develop a database using data from each State. This is a long-term, complicated proposal requiring at least one full-time experienced Geographic Information System (GIS) specialist. The Service estimates it would take approximately two years to assemble dataset, verify, and set up links to other existing databases to ensure routine updates. Obtaining the well geospatial data and well type and status data from the state oil and gas regulatory data will take approximately 6 months.

In addition, the Service will begin a well record research project to verify all well locations and well status on the refuges. We are currently working with Human Resources on hiring individuals for this effort. We have budgeted for two years to complete the project; \$600,000 for each year. Funding includes staff salaries for three persons and travel costs.

2. The Service currently has a one-year subscription to the Enerdeq Browser & IHS oil and gas well database that will end on August 14, 2015. We are evaluating this product to determine if it meets our needs.

Recently, the Service's GIS Steering Committee responded to a Department of the Interior (DOI) spatial data request and identified oil/gas infrastructure dataset as one of top four priorities. DOI is evaluating resources for all bureaus to utilize this IHS dataset in the future, but has not made a final determination. The Service is unsure of the long-term funding for this effort, so we are evaluating other alternatives, such as constructing the dataset using I&M staff.

Target Date: May 2015 (Alternative Determination Decision – Develop Database or IHS)
May 2016(IHS Contract in place)
May 2017 (Database Completion)

Responsible Official: Mr. Jim Kurth, Chief, National Wildlife Refuge System

Appendix 3: Status of Recommendations

The table below summarizes the status of the recommendations.

Recommendations	Status	Action Required
I, 2, 3, 4, and 5	Resolved; not implemented.	Recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking implementation.

Report Fraud, Waste, and Mismanagement



Fraud, waste, and mismanagement in Government concern everyone: Office of Inspector General staff, departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to departmental or Insular Area programs and operations. You can report allegations to us in several ways.



By Internet: www.doi.gov/oig/index.cfm

By Phone: 24-Hour Toll Free: 800-424-5081
Washington Metro Area: 202-208-5300

By Fax: 703-487-5402

By Mail: U.S. Department of the Interior
Office of Inspector General
Mail Stop 4428 MIB
1849 C Street, NW.
Washington, DC 20240