

# Law Enforcement Session

## The Role of Covert Operations in Modern Wildlife Law Enforcement

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*Abstract:* Covert, or undercover, investigations have been utilized by various state and federal law enforcement agencies for decades to detect and prosecute surreptitious and organized forms of criminal activity. Historically, wildlife law enforcement divisions have relied almost exclusively on overt, or uniformed modes of enforcement, both as a means of effecting voluntary compliance, and to detect and prosecute instances of noncompliance. Modern technological advances coupled with increased commercial value of many wildlife species has generated clandestine and organized illegal commercial activities which can severely impact natural resources. Recent covert operations by state and federal wildlife agencies have proven effective in combating these types of violations. Some illustrative case examples are presented.

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Throughout human history, the relationship between humans and wildlife has traditionally been one of subsistence, recreation, and mysticism (Jorgensen 1995, Stearman and Redford 1995). Although wild furs, oils, and meat have always held commodity value, it is only in recent history that significant monetary value has been ascribed to wild animals or their parts. The growing demand for, and value of, such wildlife reflects both our increasing human population as well as mounting pressures on ever larger segments of global economies. Affecting a broad range of species—from tigers in Cambodia to black bears in Appalachia—this demand has resulted in highly lucrative and overly exploitative enterprises intent on short-term financial gain without regard for long-term ecological consequences (Mills and Servheen 1991, Poten 1991, Martin 1995). Currently, the United States as well as most foreign countries has legislation in place prohibiting most types of adverse commercial exploitation. Responsibility for enforcing these laws falls on wildlife personnel who, in many parts of the world, are poorly equipped, poorly paid, and few in number. Furthermore, poachers involved in lucrative illegal ventures are usually well equipped, organized, and highly motivated by the potential for large profits. These factors, combined with the increasing use of modern communications

and computer technologies by groups of criminal conspirators, only serves to broaden the effective enforcement distance between violators and enforcement personnel whose mandate is to detect, apprehend and prosecute those involved in illegal activities.

When poaching or other illegal activities associated with wildlife resources become commonplace and clearly evident to those who are uninvolved, there evolves 2 principal dangers to the ability of an agency to effectively manage wildlife resources. The first is an erosion of the deterrent effect of past and present enforcement efforts to those individuals either actively engaged in illegal activities or those predisposed to engage in such. This can result not only in increased rates of noncompliance by chronic violators, but also the appearance of "new players" who may have been previously deterred only by effective enforcement. The second danger is an erosion of public confidence in the competence and ability of the agency to professionally manage wildlife resources. This can have serious ramifications should public dissatisfaction result in unfavorable legislative or budgetary actions (Brinkley 1991).

Because of rapidly emerging new and lucrative markets for wildlife products and the increasing complexity and sophistication of illegal commercial networks, traditional forms of overt enforcement are often insufficient and ineffective in combating large-scale commercial exploitation. Within our current judicial system, this problem is exacerbated by antiquated punitive responses that usually serve as little deterrent in the face of large profits. Commercial violators often view misdemeanor penalties for wildlife violations as "the cost of doing business."

However, many state agencies in addition to the U.S. Fish and Wildlife Service have in recent years begun to effectively employ covert operations to infiltrate and successfully prosecute these groups. Although covert operations have been used sporadically in wildlife enforcement since the 1930s, it is only during the last 15 to 20 years that more comprehensive advantage has been taken of this useful and effective law enforcement tool by wildlife enforcement.

Covert operations are usually highly complex, expensive, and dangerous to the agents involved. The use of fictitious identities and participation in criminal activity, wildlife and otherwise, by enforcement personnel must be planned and executed prudently to avoid adverse legal consequences to both the agency and individual agents. Because the focus of this paper is on the present and future role of covert operations as an enforcement tool, topics such as planning and implementation, security maintenance, entrapment issues, search and arrest warrants, etc. are beyond the scope of this paper. Gavitt (1989) and Nichols (1990) provide some informative details on these topics.

Proper use of covert investigations has often resulted in the exposure, prosecution, and subsequent reduction of illegal activity which, if unabated, could potentially devastate not only the affected resource itself, but also the overall image of honest sportsmen engaged in consumptive use of the same or similar resources. An appropriate analogy is the old "bad apple" adage. The problem

is that with organized illegal activity, there are usually several "bad apples." Some examples of recent covert investigations from the southeastern United States illustrate many of these points. During the period 1986–1992, while employed with the Law Enforcement Division of the Tennessee Wildlife Resources Agency, the author was personally involved as a covert operative on several of these investigations.

### **Operation Smokey**

Operation Smokey, a joint investigation between the states of Tennessee and North Carolina in conjunction with the U.S. Fish and Wildlife Service, was initiated in late 1985 in response to growing intelligence information regarding the widespread illegal harvest of black bears in and around the Great Smokey Mountains National Park. At that time, state biologists estimated that the illegal bear harvest equalled or exceeded the legal harvest (Carlock et al. 1983). Most bears were being taken primarily for their gall bladders which were ending up in the Asian bear parts trade. Working until August 1988, undercover state and federal agents purchased nearly 300 bear gall bladders in addition to numerous hides, teeth, and claws. Undercover agents also accompanied poachers on illegal hunts in Tennessee, North Carolina, and as far away as New Mexico. These hunts allowed agents to discover how and when the poachers hunted illegally as well as to break the poachers' coded and often complex system of citizen's band (C.B.) radio communication which they used to evade apprehension by uniformed officers. During some of these hunts, poachers threatened the agents' lives if they ever discovered that they were "Feds." Undercover agents also documented several violators' involvement in illegal drugs, stolen vehicles, counterfeit money, and even overtures of contract murder.

Operation Smokey resulted in the arrest of 43 individuals on charges ranging from hunting bear in closed season to felony Lacey Act violations. Final adjudication of these cases resulted in a total of 50 individuals convicted with total fines in excess of \$152,000 and active jail terms ranging from 30 days to 3 years. Subsequent reports from officers in the areas of the investigation have indicated a marked decline in illegal bear hunting activity.

### **Operation Spoonbill**

In January 1988, a joint covert investigation between the State of Missouri and the U.S. Fish and Wildlife Service was initiated in response to evidence indicating that a substantial commercial overexploitation of paddlefish was taking place on 2 bodies of water in southwestern Missouri (Nichols 1990). Large numbers of paddlefish carcasses were showing up at those sites with only the eggs removed. Three agents eventually infiltrated a network of commercial poachers and egg buyers. After 18 months, several arrests were made on a variety of state and federal charges. A total of 25 individuals entered guilty pleas.

The egg buyers received jail sentences of 21 months in addition to large fines. Several others were sentenced from 3 to 6 months and ordered to pay restitution to the state (Nichols 1990). Additionally, agents gained a tremendous amount of intelligence information on the inner workings of the illegal paddlefish trade.

### Operation Pet

In July 1989, acting primarily on tips from the public, agents in Tennessee began a covert investigation into the sale and purchase of live native wildlife in Tennessee. On practically the first contact with a subject, agents became involved in a network of several individuals engaged in the business of illegally marketing live native and exotic wildlife. The investigation led agents into transactions with violators in Pennsylvania, Alabama, Missouri, Indiana, and Ohio, in addition to those occurring within Tennessee. Over a dozen species of wildlife were involved, ranging from bobcats and raccoons to black bear cubs and white-tailed deer. The agents, posing as owners of a small timber business, were solicited by the violators to provide them with wildlife taken from the wild. Agents documented the frequent use of forged paperwork that was being used to launder illegally acquired animals and to sell the animals in both intrastate and interstate commerce. One violator even used a home computer to track illicit transactions. Two violators were also involved in illegal drugs and automatic weapons. Several violators admitted to being engaged in an organized attempt to influence pending legislation for purposes of facilitating their illegal activities.

After 18 months of investigation, 12 individuals were arrested on multiple state and federal charges including felony Lacey Act and felony conspiracy to violate the Lacey Act. A home computer and diskettes were seized and yielded additional evidence which further substantiated the extent of the illegal trade. All those charged with federal violations plead guilty and were heavily fined and placed on lengthy probation. One state case was dismissed and 1 state case is still pending. The attempted legislative effort was subsequently unsuccessful.

### Operation Washboard

Although freshwater mussels may seem an unlikely victim of commercial overexploitation, the recently developed cultured pearl industry in both western Tennessee and Japan has resulted in premium prices being paid for several species of this mollusk. While there are approximately 12 commercially valuable species (McGregor and Gordon 1992), the most prized is the large "washboard" mussel (*Megalonias nervosa*). The value attributed to this resource, estimated at over \$8.8 million in the Tennessee portion of Kentucky Lake in 1990 (McGregor and Gordon 1992), has led to rapid overharvest in many areas. Because of the extremely slow rates of individual growth and recruitment, minimum size restrictions have been imposed on the legal harvest to protect mussels of pre-reproductive age in both Tennessee and Kentucky. Additionally, several areas

have been set aside as "sanctuaries" and closed to mussel harvest in an effort to further perpetuate this valuable resource (Radcliff and Loveless 1991).

The problem was that as the value of mussels increased, both harvesters and buyers began to routinely ignore size limits and sanctuary boundaries. During the late 1980s, mounting evidence indicated that the resource was being rapidly depleted in Tennessee and Kentucky. Outnumbered enforcement officers had no chance of effectively reversing the situation. Consequently, in 1989 the states of Kentucky and Tennessee entered into a joint covert operation targeting the buyers of illegal shells. Because of the literally hundreds of harvesters compared to only a dozen or so buyers, it was deemed more effective to target the demand rather than the supply. Two-man teams composed of a Kentucky and a Tennessee agent posed as harvesters with obviously illegal (undersized) shells. No buyers turned them away and many openly acknowledged the illegality of the transactions. Some even bragged of previous convictions for similar offenses.

At the conclusion of the investigation, 10 buyers were arrested on multiple charges of illegally purchasing undersized shells. Although some charges were later dismissed, most were convicted and received substantial fines and lengthy probation. However, as long as the financial gains exceed punitive enforcement deterrents, abuse of this resource will likely continue. In fact, as pressure on illegal harvesters and buyers increased in Tennessee and Kentucky, many of the violators simply sought out "greener pastures" as evidenced by numerous recent arrests for illegal musseling activities in West Virginia, Ohio, Iowa, Alabama, and Arkansas (Radcliff and Loveless 1991, Mosby 1992).

These examples, covering a broad range of species, represent but a few of the successful covert investigations carried out by southeastern wildlife agencies over the past decade. Always intensive and usually long-term, these investigations require extraordinary dedication and cooperation, both interagency and intraagency, to be successful. Support for such operations must exist at all levels within the parent agency. Field officers, particularly, must be confident that the covert unit will not be used as an internal affairs tool or they will view both the program and the agents with contempt and suspicion. No covert program can function without full support of the uniformed field officers.

Covert operations should not be viewed as a surrogate for diligent overt enforcement efforts. Instead, these investigations should be considered as a valuable and effective supplement to traditional enforcement activities. If the past holds any indication of the future, new and unanticipated wildlife enforcement dilemmas are certain to present themselves as we rapidly approach the twenty-first century. Without the implementation of an effective covert operations program, no state can expect to adequately meet these coming challenges.

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