


PEER

WHITE

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SITTING DUCKS

**The U.S. Fish & Wildlife Service's
Assault On The Migratory Bird Treaty Act**

June 1998

About PEER

Public Employees for Environmental Responsibility (PEER) is an association of resource managers, scientists, biologists, law enforcement officials and other government professionals committed to upholding the public trust through responsible management of the nation's environment and natural resources.

PEER advocates sustainable management of public resources, promotes enforcement of environmental protection laws, and seeks to be a catalyst for supporting professional integrity and promoting environmental ethics in government agencies.

PEER provides public employees committed to ecologically responsible management with a credible voice for expressing their concerns.

PEER's objectives are to:

1. **Organize** a strong base of support among employees with local, state and federal resource management agencies;
2. **Monitor** land management and environmental protection agencies;
3. **Inform** policymakers and the public about substantive issues of concern to PEER members; and
4. **Defend** and strengthen the legal rights of public employees who speak out about issues of environmental management.

PEER recognizes the invaluable role that government employees play as defenders of the environment and stewards of our natural resources. PEER supports resource professionals who advocate environmental protection in a responsible, professional manner.

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About This Report

This PEER white paper documents the retreat of the U.S. Fish and Wildlife Service (USFWS) from strong and uncompromised enforcement of the Migratory Bird Treaty Act (MBTA). According to its own enforcement personnel, the agency is bowing to intense political pressure to allow unethical hunting techniques, principally baiting, which will facilitate detrimental over-harvesting of game birds.

This report was prepared by USFWS law enforcement officers charged with the difficult duty of enforcing hunting regulations on the millions of sportsmen who participate in the taking of game birds during the annual hunting season. These special agents – who collectively have more than 500 years of wildlife law enforcement – are forced to remain anonymous not only to avoid repeated threats of retaliation from politicians and their own agency, but also to let the facts contained herein speak for themselves.

Information relating to particular cases discussed in this white paper was obtained through published media coverage and other public sources.

While critical of baiting, this report is by no means a critique of the practice of sport hunting. Many of the authors of this report hunt, but are outraged by what they see as hunting which contradicts the principles of fair chase and damages the very resources whose survival makes recreational hunting possible.

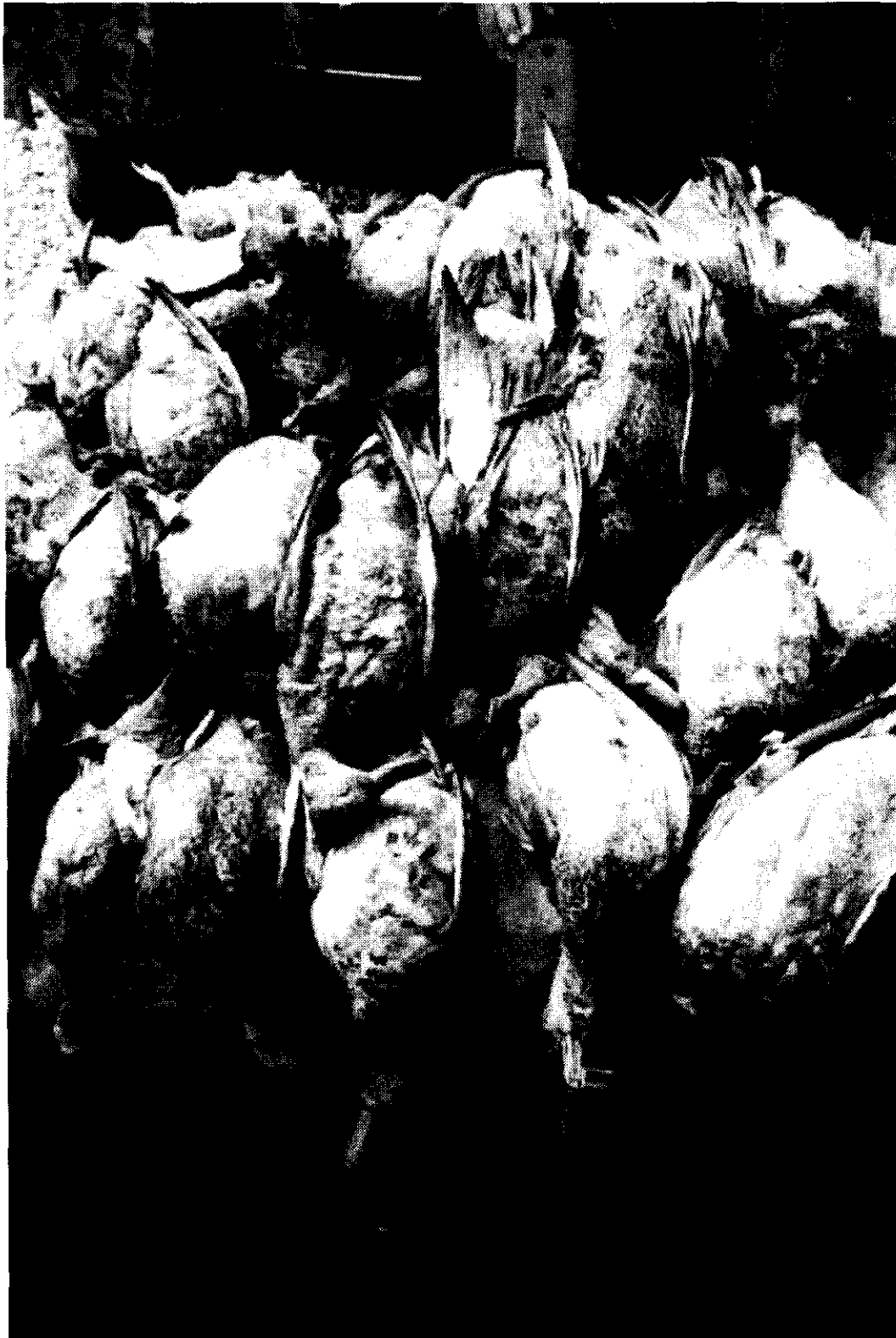
On behalf of special agents, PEER has also submitted to USFWS, as part of the public comment process, a detailed analysis opposing specific elements of the proposed rule change. A copy of the PEER comments is available upon request.

For more information about out how the agency's regulatory proposal would weaken the anti-baiting provisions, consult the **Federal Wildlife Officers Association** website at

<http://www.nauticom.net/www/harts/fwoa/fwoahome.htm>

PEER is proud to serve conscientious public employees who have dedicated their careers to the faithful execution of the laws that protect our natural resources.

Jeffrey Ruch
PEER Executive Director



I. Executive Summary

At a time when migratory bird populations are stressed by habitat loss, pollution and hunting, the Department of Interior's Fish and Wildlife Service (USFWS) — the federal agency mandated to conserve America's wild fowl — is proposing changes to liberalize restrictions against the use of bait to attract waterfowl. According to its own law enforcement personnel, USFWS has succumbed to mounting political pressure to loosen the federal baiting prohibition.

Baiting is the illegal practice of using feed to attract game. It is a highly effective way to lure birds within a hunter's range of fire because feeding birds conditions them to return to a specific area time and time again. In this regard, a baited area is essentially no different than a bird feeder. Law enforcement officers and ethical hunters agree that this activity, which has been outlawed since 1935, violates the tradition and sporting heritage of hunting.

Despite more than six decades of enforcement, baiting remains one of the most common hunting violations. Baiting usually occurs in conjunction with other illegal hunting practices, such as exceeding kill or "bag" limits. Due to the vulnerability of migratory birds to the lure of bait, large-scale baiting usually results in the slaughter of hundreds of birds in a short period of time.

Enforcement of anti-baiting laws has significantly reduced the unsustainable taking of game birds, but other factors continue to place pressure on bird populations. As habitat continues to decline in both quality and quantity, migratory birds are forced to concentrate into an ever-shrinking area, making them easier targets for hunters. For instance, North America's duck population, which has declined by 60 percent since the 1950s, is being decimated by hunters, many of whom use bait. The reason is evident — ducks are more scarce and baiting assures kills. The same is true for other migratory game species, including geese, swans and doves.

USFWS special agents, empowered to strictly enforce hunting laws, fear proposed changes

that would hinder prosecution of hunters who shoot birds over bait and, as a result, drastically reduce game bird populations, undermining the intent of species protection laws. The officers question the motives of those — and particularly their own agency — in favor of allowing the use of bait to hunt game birds. Like most Americans, the agents disagree with any government policy that promotes the use and abuse of migratory birds in a manner that has been banned for more than six decades.

Each year, the nation's approximately 200 USFWS law enforcement officers issue hundreds of citations for violating hunting laws, many for baiting. Many of these flagrant cases involve prominent individuals who use bait to ensure kills and often shoot more birds than the law allows. Despite their efforts, these few federal agents cannot possibly ensure total compliance among the nation's more than 20 million hunters. Their job would be made more difficult if the USFWS weakens existing regulations.

The powerful sportsmen lobby and its state and federal political supporters are pressuring the agency to change existing standards. State game agencies and hunter constituency groups want to relax baiting regulations that they claim hurt the average hunter. The proposed changes discriminate in favor of commercial interests — namely private hunt clubs which cater to wealthy and influential members — who want to enhance their hunting through baiting. Since birds would no doubt flock to the clubs' many acres of prime, heavily manipulated habitat, the common hunter would no longer have an equal chance to compete for limited waterfowl resources.

Congressional legislation has also been introduced to relax regulations by making it more difficult to punish hunting violators who fail to understand baiting laws. Most offenders are indeed victims of ignorance. They failed to learn the cardinal rule of federal game laws — the hunter is always responsible when it comes to hunting over baited areas. If passed into law, the bill would, among other things,

U.S. Fish & Wildlife Service

shift the burden of proof from hunters to law enforcement, making it more difficult to prosecute violators; eliminate the incentive to comply with regulations; and put migratory birds at greater risk.

In light of these issues, USFWS agents are baffled by their agency's recent, inexplicable turnaround on the issue. In May 1997, USFWS Assistant Director Robert Streeter testified before Congress against proposals to loosen MBTA provisions, arguing that such measures would "liberalize bird baiting laws and result in more birds being killed as a result of baiting" and possibly "result in overharvest of...waterfowl."

On the issue of hunter equity, Streeter warned that "liberalization...could promote and encourage an inequity whereby those with the greatest financial motivation and resources, such as...hunting clubs and commercial hunting operations, would benefit the most at the expense of the wildlife resource and the common hunter." In terms of the impact on the sport of hunting, Streeter said the loosening of regulations amounted "to the elimination of the traditional 'fair chase' hunting standard", providing "the anti-hunting segment

of society a new platform to pursue for closure of all hunting activities."

Now, just one year later, there seems to be widespread complicity and cooperation on the part of the USFWS to deregulate anti-baiting regulations.

Given the agency's new position, it is not surprising that in January, 1998 a USFWS employee was caught illegally hunting swan at a Virginia farm that had been the scene of repeated illegal baiting activity. The violator, Mr. Ronald Kokel — a wildlife biologist with the Office of Migratory Bird Management — was deeply involved in formulating the agency's proposed rule change regarding baiting.

In the opinion of USFWS special agents, both the agency's proposed regulatory changes and pending legislation endorse politics at the expense of conservation, riddling the regulations with loopholes that will render them unenforceable. By eliminating proven deterrents, baiting relaxation would increase enforcement costs at the expense of the too few officers in the field. The net effect would be a drastic reduction in game bird populations.

II. World of Baiting

As post-industrial values continue to gain ascendancy in rural areas of the United States, increasing amounts of criticism of the poacher and his fading culture are sure to follow. This criticism eventually will find its way into the vocabularies and motives of the game wardens who have acted as a cultural buffer between poachers caught between the norms of society and survival and the encroaching modern world.

– Craig Forsyth, "The Game of Poaching"

The Migratory Bird Treat Act (MBTA) has been the principal statute protecting migratory birds in the United States for 80 years. Enacted to save birds "from indiscriminate slaughter," the law makes it illegal "to hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale" more than 800 avian species. The MBTA does, however, permit hunting of migratory birds such as ducks, geese, swans, doves and others, subject to federal regulations. The "taking" of game birds for sport occurs yearly during fall and winter hunting seasons.

Perhaps the most important of the MBTA regulations, in terms of preventing dramatic population declines, are those governing baiting. Baiting is the practice of illegally using grain, seed or other substances to attract birds to a hunt. This practice has been outlawed since 1935. And for good reason — ducks, doves and many other migratory birds are notoriously easy to attract to bait.

This inherent vulnerability means that once exposed to sufficient quantities of salt, rice, grain, or other substances, the birds lose their natural wariness and return repeatedly to the food, whether or not they are being shot at by hunters. The need to prohibit hunting over bait was demonstrated quite clearly in a well-known study

conducted in the early 1940s which found that kill levels dropped from 1 million birds to 175,000 when bait was eliminated.

Law of the Land

Current rules regarding baiting are based on time-honored, court-tested principles which are straightforward and simple to understand. Federal regulations (C.F.R. Title 50, Part 20) specify that "no person shall take migratory game birds by the aid of baiting or on or over any baited area." *Baiting* is defined as "the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, or salt or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them." In other words, baiting occurs when food is spread or placed in the open or in water in order to lure migratory game birds, usually ducks or doves.



Popped With Corn. *A sure-fire way to attract birds is to provide an enticing meal.*

It follows then that a *baited area* is any area where the food is placed and where "hunters are attempting to take" — shoot, possess, kill — the targeted birds. The present regulations further state that the area where bait is spread is considered off-limits to hunting for a set period following complete removal of the bait. All grain or feed must be completely gone from the area for ten days before the area can be legally hunted. The "10-Day Rule" is essential because the birds habitually return to the same spot for several days after their food supply no longer exists. Some hunters refer to birds exposed to bait as "drugged" or "daffy ducks," so blinded by the

quest for food that these wild creatures ignore instinct by acting almost tame.



Extra Helping. *Corn seeds piled high to bring in the ducks.*

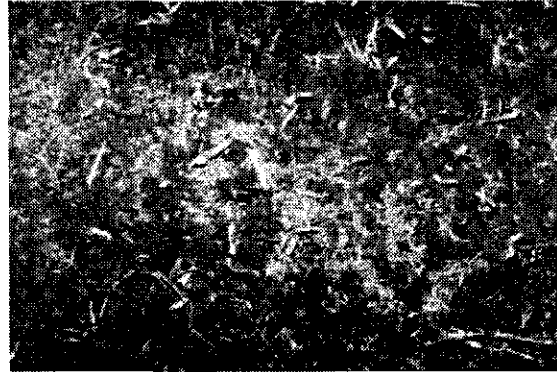
All of the crimes under the MBTA are classified as misdemeanors or petty offenses, carrying a maximum \$5,000 fine. There is a possibility of jail time and loss of license for repeat offenders.

Legal Practices

There is a difference between an illegally "baited" field and one which has legally been prepared with seeds for a legitimate purpose, such as farming or wildlife management. Both may contain food for birds, the difference basically being how and why it is there.

Federal regulations recognize that agricultural lands afford good migratory bird hunting. Birds are predictable and prefer farm land where crops have been harvested, providing them with their preferred food source — seeds. It is perfectly legal, for instance, to hunt waterfowl over areas where normal crop planting and harvesting have occurred. Likewise, it is permissible to

hunt doves over an area where scattered grain is present solely due to a "bona fide" agricultural operation or where standing crops have been manipulated — cut, mowed, dragged down, bush-hogged, disked or burned — for wildlife management purposes.



For the Birds. *Milo is supposed to be planted in Spring, but these seeds were top-sown prior to Fall hunting season.*

Planting crops or creating habitat which attracts game is permissible; indeed, wildlife agencies will actually help. But spreading the seed to attract the birds is forbidden. The general theory is that planting the crops has a long-term benefit for wildlife because the scattered seed is there before and after the hunting. That type of planting is thought to benefit wildlife other than the game birds.

The mistake too many landowners make is instead of preparing their crops earlier in the year for hunting season, they wait until a few days before the season starts to top-sow wheat, for instance. The only purpose for spreading seeds around generally at that time of year is to guarantee bird kills.

Legal Agricultural Hunting Areas

- **Standing crops:** fields of unharvested commercial crops such as wheat, corn, sorghum or milo.
- **Flooded crops:** crops that are grown, left standing and flooded.
- **Aquatic plants:** plants which live and grow in water.
- **Flooded harvested crops:** flooded crops where grain is present solely as a result of a normal harvest.
- **Shocked grain crops:** stacking stalks of grain upright on the same field where they were grown.
- **Normally planted crops:** planting must be done in a way where normal methods are used to produce a crop (does not include top-seeding or the placement of grain in piles or other large concentrations).
- **Harvested crops:** normal harvest scatters grain over a wide area, rarely in long rows or piles.



Fields of Fire. *Plowed field planted with wheat and repeatedly top-sown to lure doves.*

Too Close for Comfort

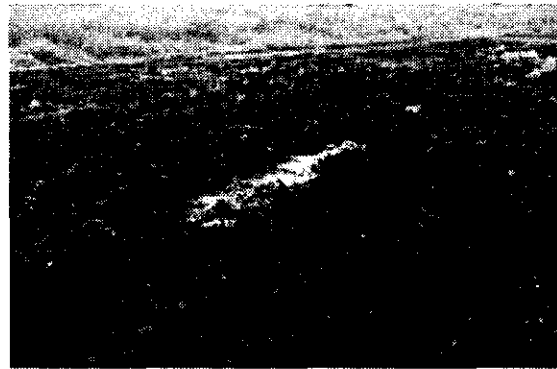
Many hunters wonder, "How close can I be to bait without breaking the law?" There is no set distance. Court rulings on baiting violations state that the distance between the hunter and the bait varies. The influence of bait can extend or shrink on the basis of many factors, including the topography or landscape of the area, the weather, and bird flight patterns. The question of distance is decided on a case-by-case basis. Regardless, agents estimate that the number of truly unaware hunters cited for illegal baiting represents an infinitesimal number of cases.

In those rare situations, the hunter could probably have avoided trouble by taking preventative steps to avoid hunting in a baited area:

- **Ask before hunting.** It is the hunter's responsibility to talk to the host or property owner to find out what was done to the field and when. Some landowners may try to manipulate the rules by placing food out continuously through the summer, stopping two weeks before hunting season. Regardless, anyone who hunts over an illegally prepared field is subject to the baiting law.
- **Look before hunting.** Simply asking "is it legal?" and then hunting is not enough. Neither is a cursory examination of the first few yards in front of a shooting van tage. Hunters must make a vigorous visual inspection of the field. This involves arriving early enough to walk the field, preferably in a zig-zag pattern from one end to the other, looking for signs of

baiting. Grain for legitimate crops are always evenly distributed, not clumped or broadcast. Piles or rows of grain and seed recently turned under the topsoil are not part of normal planting or harvesting or the result of a bona fide agricultural practice.

- **Use logic before hunting.** A hunter should consider why birds would be attracted to the area. If the field recently has been plowed and is nothing but rows of mud, something obviously is wrong. Birds are not attracted to bare dirt or tall green plants. They seek seeds and grains. If there is any doubt that a field the hunter plans to hunt may be illegal, it is not worth the risk to hunt.



Come and Get It. *An obvious sign of baiting is a heavy amount of seeds on a fresh field.*

Strict Liability

Federal wildlife officers live by a simple credo — the regulations regarding baiting are clear and the law will be enforced. The hunter is ultimately responsible for his actions and should make an effort to assure his area is bait-free. Tried and tested for more than half a century in state and federal courts, baiting laws come under the legal principle of "strict liability" — that is, judges do not require the prosecution to prove the hunter had prior knowledge of baiting. All they have to prove is the defendant was hunting over bait. So as soon as he attempts to hunt over a baited field, the hunter has technically broken the law, and can be prosecuted.

In establishing this precedent, the courts clearly place the responsibility on the hunter, regardless of who owns the field or who actually prepared it. Law enforcement officers agree

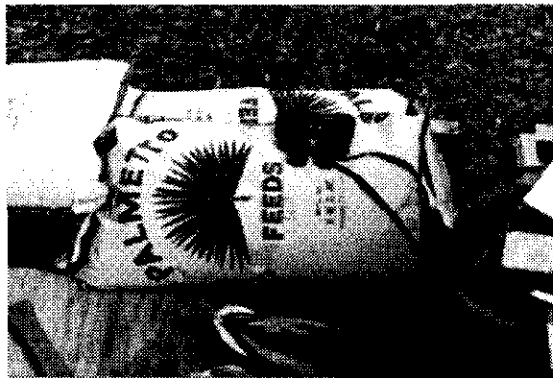
Tricks of the Trade

Before shooting, hunters should look for any signs of seed, grain, salt or anything else not attached to natural vegetation growing in the field. If something seems suspicious, hunting is not worth the risk. Some sure baiting giveaways even "city slickers" can notice:

- **Birds flocking to a field without any crops or plants.** Doves and ducks do not eat dirt. Birds attracted to a seemingly barren field are a sign the owner probably had bait out and plowed it under a day or two before the season — an illegal act.
- **The heavy presence of seeds in the dirt on a field growing a crop.** One baiting trick is to spread grain and seed after the crop has started to come up. Agents usually spot it quickly. So should hunters.
- **Birds flocking to an adjacent field in inordinate numbers.** Shooting birds attracted by bait is against the law — whether the bait is on the field the hunter is sitting on, or one next to it.

strongly with this rationale because there is no practical alternative to this approach to enforcement.

Omitting or relaxing strict liability in any way would cripple the MBTA regulations and lead to a host of problems. For instance, officers would have to catch people in the act of baiting to make a solid case. In order to do this, they would require expensive, high-tech equipment like helicopters to enforce the regulations. Also, many more agents



Tools of the Trade. Sacks of seeds stored at hunting camp and ready to use.

would be needed in the field to conduct sting operations and investigations, particularly since even more of the agents' time would have to be spent in the office developing cases.

Realistically, if an agent had to keep a field under surveillance 24 hours a day, 365 days a year, and also read a hunter's mind, there

would never be a conviction. Without convictions there is no deterrent, and the law is rendered meaningless.

Off the Hook

The concept of strict liability is common among environmental statutes such as oil spill and toxic pollution laws. Not only is strict liability central to the MBTA, this standard also extends even to non-hunting violations, providing leverage over individuals, and particularly industries, to take steps to avoid killing birds. Replacing strict liability with a "scienter" standard — requiring agents to prove prior knowledge of or intent to violate — would create so many avenues of "reasonable doubt" that convictions would be few and far between. Examples of potentially valid excuses without strict liability:

- a hunter who shoots a Western Kingbird — "I thought it was a dove."
- an oil company whose open oil pit kills geese — "We didn't realize it posed a danger."
- a mining company using cyanide leach — "We never intended to kill any birds."
- a farmer using harmful pesticides — "I couldn't help that ducks fed on the field."
- a person who poisons swans — "I only meant to kill starlings."
- a seller of Indian artifacts — "I had no idea they were eagle feathers."

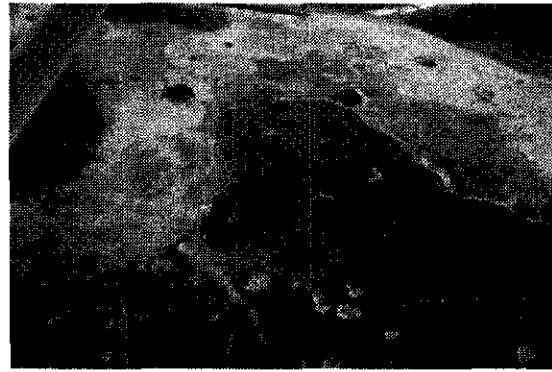
Finally, agents worry that the need to prove the hunter's knowledge or intent would result not only in more case dismissals but also more lawsuits against wildlife officers themselves for false arrest. Even under the current regulations, commercial hunting operators have tried to sue officers for economic damages resulting from "closure" of a club or the bad publicity surrounding an arrest. Many of the well-connected hunters would not hesitate to sue agents as a bullying tactic or for revenge. Even though many of these suits would be defended by the government on the agent's behalf, the uncertainty and stress inherent in this type of litigation are not welcomed by overworked law enforcement officers.

Ducks Not So Unlimited

The most hunted and the most harvested migratory game bird in North America is the mourning dove, of which 45 million of the estimated 500 million population are killed annually in the United States during hunting season. Waterfowl is also a highly prized game bird. So much so that over the last five decades, North America's duck population has declined by 60 percent.

Migratory birds face many pressures in this country, not the least of which is habitat loss. The Mississippi Flyway, the area running the length of the country's mid-section, is suffering the loss of thousands of acres of habitat annually. Originally, the Mississippi Alluvial Plain comprised nearly 24 million acres of bottomland forested wetlands. By 1937, only 11.8 million acres (50 percent) of these remained. Today, there are less than 5.2 million acres left, roughly 20 percent of the original acreage.

The Mississippi's bottomland hardwood forests are among nation's most important wetlands, serving as primary winter breeding ground for many waterfowl, including 85 percent of the 3 million mallards (among the species hardest hit), nearly all of the 4 million wood ducks, and countless other migratory birds. Since the 1950s, these forested wetlands have been converted for crop production, drained for federal flood control and navigation projects and cleared for other development at an accelerated rate. An estimated 2 percent of remaining bottomland forests are lost annually.



No Safe Haven. *This salt marsh pond, prime waterfowl habitat, is heavily baited (lower left corner of pond).*

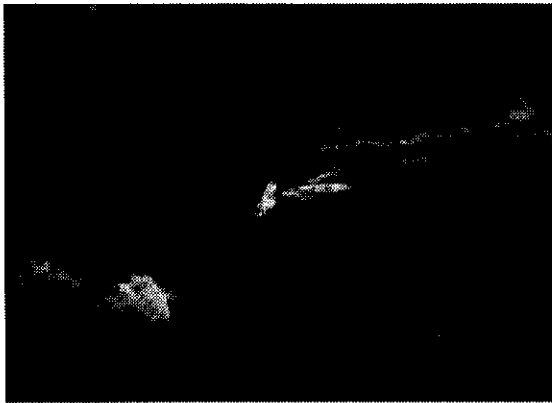
Each year hundreds of miles of coastal marshes also disappear, primarily due to erosion. Without the constant infusion of fresh water from rivers, the marshes subside, and are virtually defenseless against the Gulf of Mexico's ever-pressing saltwater. Indeed, the freshwater marshes that once lay before the Gulf, teeming with healthy and abundant fisheries, have largely vanished. In their place are vast expanses of brackish and salt water.

Baiting's Impact on Wildlife

As habitat continues to decline in both quantity and quality, the dwindling waterfowl population is forced to concentrate into an ever-shrinking area, making the birds easier targets for natural predators and hunters alike. Even with continental duck populations dropping faster than habitat is being destroyed, the USFWS, along with many sportsmen and conservation groups continue to ignore the impact of hunting on the resource. As a



Feeding Frenzy. *Oblivious to danger, ducks flock to bait that has been spread on the water.*



Caught in the Act. A rare aerial snapshot of hunters nabbed while "feeding the pond" with grain.

result, North America's battered ducks are being decimated by hunters, many of whom hunt over bait.

When asked why he illegally baited, a convicted hunter replied: "You have to if you want to get ducks these days." The reason is simple: Ducks are more scarce and baiting assures kills. Repeatedly told by the USFWS and groups like Ducks Unlimited that "hunting is compensatory," "hunting has no impact," it is little wonder many conclude that cheating a little to ensure a day's kill is not really a big deal.

Agents contend and studies confirm that baiting is usually associated with other hunting violations. According to a survey conducted during the 1986-90 hunting seasons by wildlife experts at Mississippi State University, 36 percent of all Mississippi Flyway waterfowl hunters admitted committing one or more violations. The southern region of the Flyway — Arkansas, Mississippi, Tennessee and Louisiana — consistently had the greatest percentage of violators. For example, federal law enforcement officers estimate that illegal waterfowl hunting in Texas and Louisiana exceeds by four times the annual legal kill.

Most guilty hunters surveyed said they broke laws intentionally, primarily those concerning baiting and bag limits. The fact that many hunters engage in unethical practices in the field suggests there is a continuing need for

wildlife law enforcement. Indeed, in all states surveyed, violators and legal hunters thought increased law enforcement (particularly undercover operations), mandatory loss of hunting privileges, large fines and jail terms were the most effective deterrents to illegal hunting. As the scientists who designed the MSU survey suggest, "Unfortunately, there will always be a segment of the hunter population that must be regulated into lawful behavior."

If every hunter killed the bag limit every time out, overharvest would result. So what will it take to wake hunters up to the true cost of baiting in terms of the resource? Perhaps when the last duck flies over the marsh. "If that happens," warns one agent, "I just hope everyone doesn't rush to get their guns and shoot it."



Two Scoops. Agents use screens to collect evidence of baiting.

Dove baiter often bagged

State senator fined for hunting violations

Huge waterfowl stings rocks Texas hunting

4 indicted in dove shoot at High

Dove hunters given citations on charges of 'baiting' fields

Baiting of shooting range nets operator \$1,000 fine

Key man gets 30 days for illegal duck hunting

Owner fined \$10,000 for baiting

90 cited in 11 hunters Dove Baiters discover how the wheels of justice run

Baiting

hunting club massacres sickening

Agents bag limit of baiters on opening days

Penalties awarded dove baiters

Charges filed for trouble

Dove hunt results in \$250 fine

Four found guilty on bird hunting charges

Hunting baited ducks costs firm, workers

Baiter gets six months

Shooting range operators guilty

Busted: Baiters sitting ducks for ages

Waterfowl violations increase

Against Nine

63 cited for hunting violations

Duck-Killing Case

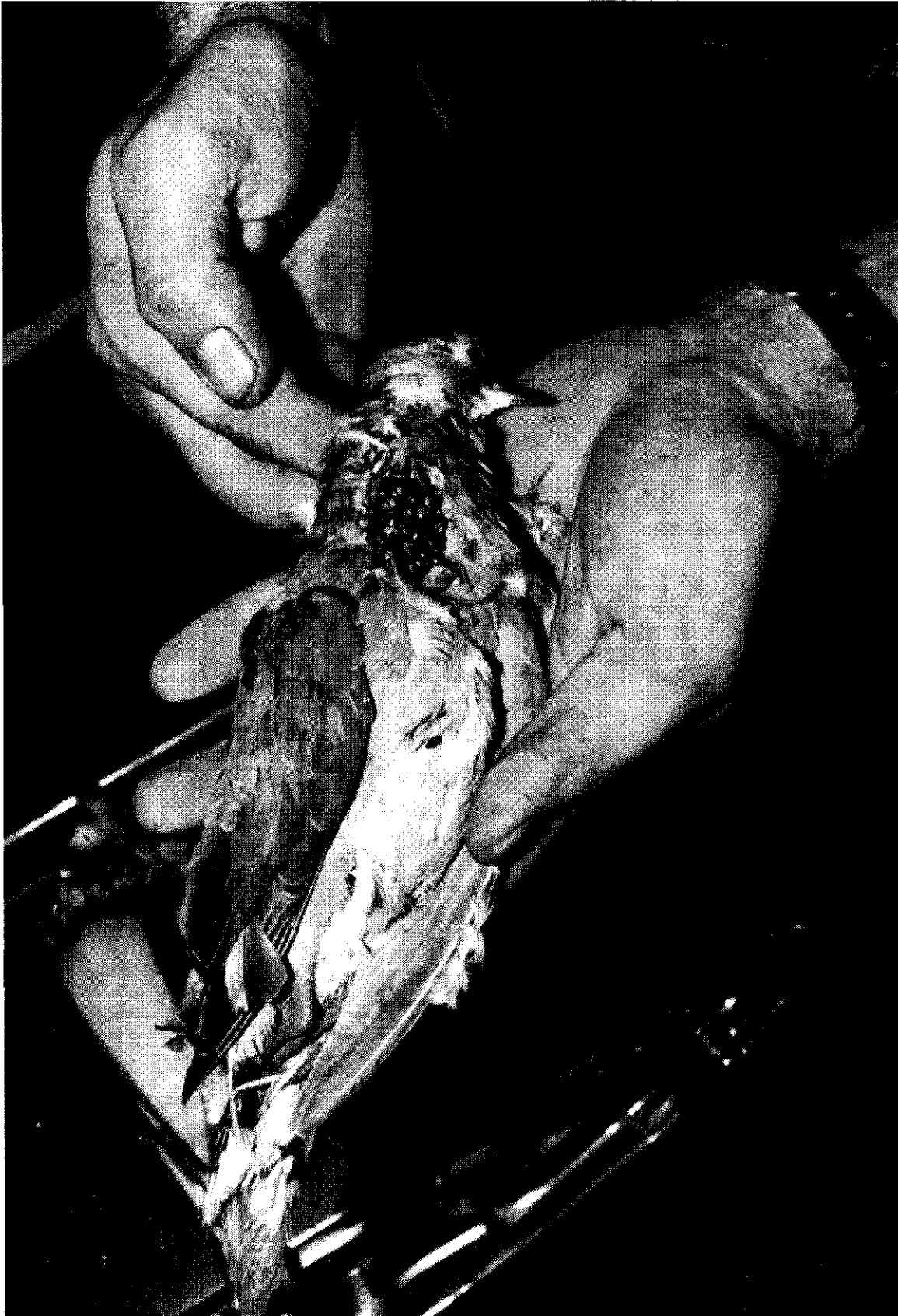
Dove-baiting crackdown bags warden

4 to face poaching charges

Agents hawkish on illegal doves

former city judge sentenced to six months in jail for violating hunting laws





III. Poacher's Paradise

Nobody left me any buffalo to shoot. Why should I leave anyone any ducks?

– Louisiana hunter

In March 1971, USFWS law enforcement officers stationed in Louisiana wrote a memorandum to their superiors in Atlanta and Washington, D.C., describing the widespread waterfowl poaching problem. The memo details a three day period during a previous hunting season in which the officers made random spot checks wherever they observed duck hunters and concentrations of waterfowl. With the use of a helicopter they inspected a number of hunting parties and found frequent evidence of baiting.

According to the memo, the special agents "filled litters attached to each pontoon of the helicopter with seized ducks." They also filled the cockpit with "additional burlap bags of seized waterfowl." The large number of illegal duck kills forced the helicopter to return to the airport several times to off-load and dispose of the carcasses.

In a later foray, the officers inspected more than two dozen duck hunting clubs. As stated in their memo, "One hundred percent of these clubs produced evidence of baiting."

A standing joke in Louisiana is that if you wanted to control a bird's population, make the



Ducks in a Row. Mallards are among the game birds hardest hit by baiting and bag limit violations.

bag limit two and close the season. "We did wrong, we admit that," said Dennis Badeaux, a hunter found guilty of shooting more than 50 birds over a baited pond in a Louisiana bayou. "It's just that for so long, killing ducks like we did was the accepted practice down here. Nobody thought anything about it. We killed what we wanted to kill...200, maybe 300 [birds] a day. No big deal."

In some places, men are often judged by the number of birds they kill. Indeed, for many baiting is more than just a standard hunting practice — it is a way of life. Other hunting violators are "weekend warriors" from urban areas who are either too lazy or too pressed for time to sit in a blind all day and risk going home without a duck.

Playing Catch

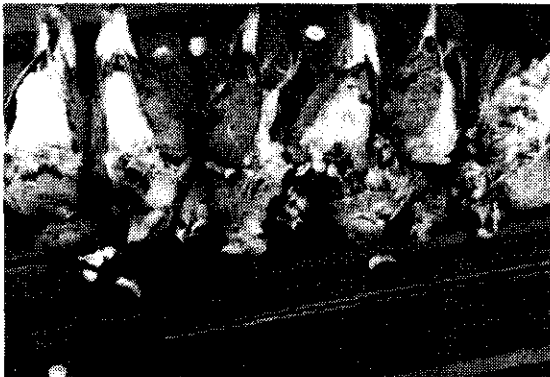
Every year wildlife officers around the nation issue thousands of citations for hunting violations. The lure of using bait to draw migratory birds into an open field of the hunters' choosing is a powerful one and has led to many flagrant cases. The following are typical examples of what agents experience during the annual hunting season:

- Earlier this year in Nebraska, former Minnesota Vikings football coach Bud Grant and members of his hunting party were caught baiting migratory birds during the filming of an outdoor television show. More than 100 pounds of corn were scattered among decoys in order to guarantee televised shooting action.
- In 1996, a former Kentucky governor, his son, a member of the board of education, two police officers and a mayor were among 36 prominent citizens cited for taking part in an illegal dove hunt. The traditional opening day paid event involved the use of sunflowers and top-sown wheat to attract birds to the farm.
- In 1993, a Washington, D.C. lobbyist and 20 of his friends and clients slaughtered nearly 200 ducks in 45 minutes at a Chesapeake Bay area private hunt club.



The Baiting Game. *"Smart" baiters try, usually in vain, to fool agents by adding store-bought seeds to a sunflower field.*

- At an opening weekend "charity shoot" in 1991, law enforcement officers busted 88 Louisiana hunters, many of them prominent businessmen, for baiting at a private hunt club. A team of state and federal agents closed down the hunt because surveillance photographs revealed that piles of grain had been illegally placed on several fields a few days before the hunt and then "turned under" the surface the day before the opener. Many of the hunters had paid as much as \$80 each for the chance to take part in the event, billed by club operators as "the hottest dove action north of the border."



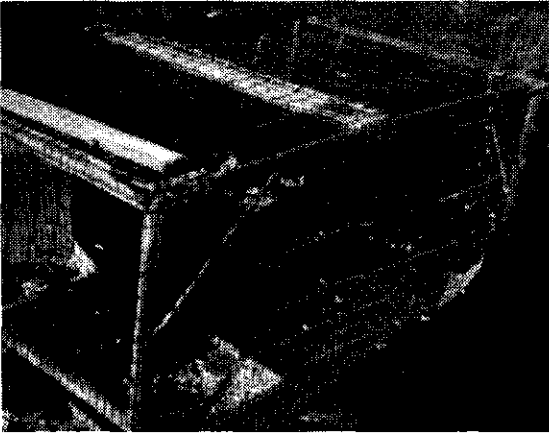
Last Supper. *Mourning doves seized by agents bear evidence of corn used to lure them into shotgun range.*

- In another Louisiana joint state-federal crackdown, a state game warden was among more than 50 people pinched for hunting doves over a heavily baited wheat field. Another 40 hunters were cited for baiting on the same day in a nearby parish.



Food For Shot. *Corn kernels along the water's edge increase "harvest opportunities" or kills.*

- In South Carolina, at a time when declining waterfowl populations forced a shortened hunting season and reduced the bag limit to two ducks per hunter, nine men were cited for killing 144 wood ducks. The hunters committed the violations in an area that had been set aside as a waterfowl sanctuary.
- A few years ago in Virginia, two county judges and a retired State Police Captain were among a group of 50 hunters who bagged hundreds of doves over a wheat-scattered farm field. That same season, 18 county lawyers, one a former Commonwealth's attorney, were nabbed using a "borrow pit" — a large, shallow hole filled with gravel, wheat and water — to kill doves as they descended to the trap. In another case, two men without valid duck "stamps" used 100 pounds of corn and live bait — two caged, honking Canada geese — to lure "some meat," as they later referred to the birds. The use of live bait was banned along with baiting in 1935. The hunters were prepared to shoot the incoming geese and ducks with outlawed semiautomatic shotguns capable of shooting five shots without re-loading (instead of the legal maximum of three shots).
- In 1990, an Alabama lawyer, his father and two other men were charged with multiple hunting violations, including baiting. Using milo to attract hundreds of ducks to a pond, the hunters bagged 52



Live Bait. *The use of live decoys, in this case mallards, has been outlawed for more than 60 years.*

birds, including 46 mallards. Aside from taking 27 catches over the limit, nearly half of the ducks killed were hens, which were scarce that year. When the hunters noticed the agents, two tried to flee in boats but were tracked by a helicopter.

- A sting operation in Texas netted \$250,000 in fines, 1,300 citations and criminal indictments against 200 hunters, their guide services and several "four star" hunt clubs for massive hunting violations. Over a ton of wheat was used as bait to ensure high "body counts." Hunters packed into blinds, hid until the birds settled on the water in large concentrations, and then fired en masse. With so many targets, there was no need to aim. One professional guide was charged with encouraging his clients to ignore bag limits and "just keep shooting." Hundreds of ducks, geese and non-game bird were killed in what the media later dubbed the "Texas Waterfowl Massacre."

Spread Too Thin

A "reformed" poacher in Maryland told officials that for 50 years he baited "two or three times a day" without ever getting caught. He estimated that he killed more than 30,000 ducks during his poaching career. Taking a look at enforcement numbers in this country, it's not surprising that hunters can avoid getting caught breaking the law given the obstacles officers face.

The ratio of hunters to wildlife officers is approximately 9,000 to 1. This means that there

are only 7,000 state and federal officers covering the entire nation, from Alaska to the Virgin Islands, from Main to Guam, monitoring the activities of 20 million hunters. Year-round these officers enforce laws during hunting seasons for a variety of game species ranging from deer and bear to pheasant and quail. In addition to migratory bird laws, USFWS special agents nationwide are also charged with enforcing interstate wildlife transportation laws (the Lacey Act), the Endangered Species Act (ESA), the Airborne Hunting Act and all other federal laws regulating wildlife, including fish.

Not surprisingly, these paltry few federal law enforcement officers — roughly 200 special agents nationwide — are so underfunded and under-equipped that they can do little more than sit and watch as wildlife is gunned down. In Colorado, for example, where nearly two million hunting licenses are sold each year, there are three federal field agents to cover the entire 104,000-square-mile state. Because of paper work requirements and other competing demands, agents never get around to enforcing wildlife laws at all in some states. While poachers take animals year-round, agency funding restrictions keep most agents deskbound after waterfowl hunting season ends, making enforcement virtually non-existent for many months at a time.

The minimal federal presence in some areas is more troublesome given that federal law enforcement is comparatively free of certain political constraints that are a fact of life for state agents. Like their federal counterparts, state agents are charged with enforcing waterfowl laws but their jobs oftentimes are vulnerable, especially when they nab the wrong person. Political interference often comes with the territory in some state game agencies, with some states more political than others. Indeed, a state game warden who pinches someone who knows a legislator or high official, might put his job in jeopardy, or at least find life more difficult in the field.

Taking the Bait Out of Crime

Despite the seemingly uphill fight agents face, enforcement can have an impact. For instance, things have changed dramatically in Louisiana in the last decade. Migratory bird-baiting cases, along with other hunting violations, have dropped precipitously in recent years.

U.S. Fish & Wildlife Service

Surveys made in the late 1980s show that Louisiana trailed only California and Texas in the number of hunting citations issued — not bad considering that a quarter of all waterfowl winter in Louisiana (ranking the state second only to California in that regard).

There are a variety of contributing factors to the state's sudden turn around. Nationwide negative publicity in the 1980s surrounding baiting and other hunting crimes embarrassed Louisiana into finally taking action. State game wardens then began assisting federal law enforcement agents in actively pursuing violators.

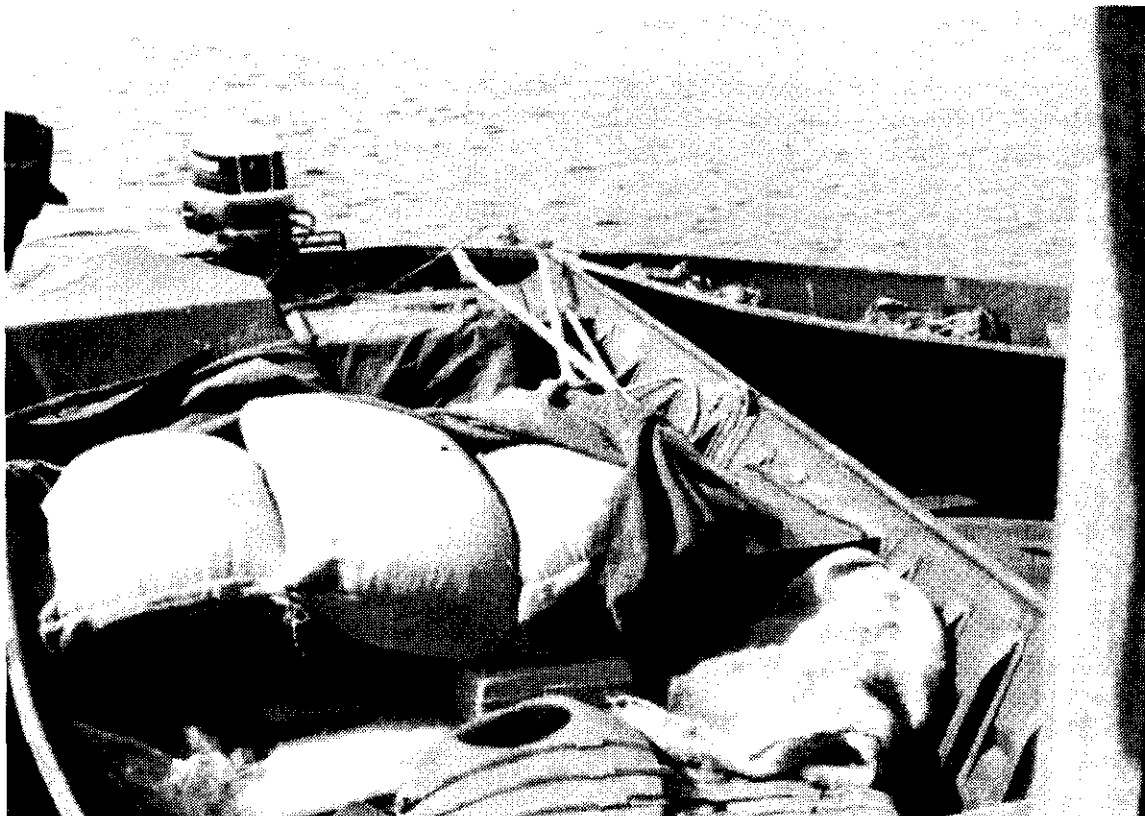
Federal judges and magistrates began cracking down with tough penalties, often handing down jail time along with stiff fines. A former Louisiana governor became so paranoid about being caught hunting over bait that he posted State Police officers on look-out to warn him

if federal law enforcement officers were spotted in the area.

In Virginia, after waterfowl violations dropped considerably over a six-year period due to strong enforcement, some citizen members of the state game commission criticized federal agents as "overzealous" in performing their duties. "If hunters are mad, we must be doing our jobs," commented one of the agents.

Statistics show that deterrence is working in Illinois, as well. Since 1993, as baiting fines have increased and more violators have lost hunting privileges, the number of citations have dropped dramatically, especially for baiting.

Thanks in large part to certain and consistent enforcement, hunters have begun to realize that baiting is a serious offense. And it is no longer acceptable, in Louisiana, Virginia, Illinois, or anywhere else in the country. At least for now.



Unlock and Unload. Agents intercepted sacks of grain before they were dumped into pond.



IV. In The Line Of Fire

Always the bastard child of the Fish and Wildlife Service, the Division of Law Enforcement is constantly nagged to be more 'preventative', more 'customer-friendly.' But maybe it's time for the Fish and Wildlife Service to have a long think about who it's customers really are. They are the 50 million Americans who enjoy watching migratory birds. And they are the 3 million Americans who enjoy hunting migratory birds without bait...who have always believed that there can't be any thrill to the chase if there is no chase.

– Ted Williams, "The Baiting Game"

USFWS law enforcement officers have a reputation of incorruptibility in enforcing laws and regulations. This even-handedness has historically generated controversy when a person of influence gets caught.

A Gramm of Prevention

In the Fall of 1987, just before opening day of waterfowl season, two USFWS special agents flying a routine early morning patrol over the Eastern Shore of the Chesapeake Bay spotted



Deadly Vittles. *Scattered corn and millet seeds rim the edge of a pond.*

huge piles of bait ringing a pond below. They immediately suspected that local hunters were illegally trying to lure ducks into shotgun range.

The area, located near the Blackwater National Wildlife Refuge, ranks among the country's most desirable locations for waterfowl hunting. Just a convenient two-hour drive from the nation's capital, private hunt clubs abound to entertain rich and powerful clients. Sometimes, in the zeal to maximize their harvest during a stay, guests run afoul of game laws, usually by baiting.

The pond that caught the eye of the agents that day happened to be adjacent to a vacation home owned by U.S. Senator Phil Gramm (R-TX). A follow-up inspection revealed clear signs of active baiting, including several hundred pounds of feed and spent shotgun shells around a duck blind. But after four days of undercover surveillance, no hunters showed up. Although Gramm denies it, a former Interior Department assistant secretary submitted sworn testimony to a congressional panel in 1989 that then USFWS Director Frank Dunkle, aware of the ongoing investigation, tipped off the senator to avoid an "embarrassing" situation for a politician Dunkle said was "useful" to Interior.

The investigation soon fell apart amid a political firestorm generated by Gramm. An internal investigation into the episode found photographs of the baited duck blinds were mysteriously "lost" by the agency. As a result, the senator's friends who owned the pond were exonerated of wrongdoing.

The political fallout incited by Senator Gramm was swift and severe. After the inquiry, one of the agents was transferred. Gramm then met with Director Dunkle to complain on behalf of his neighbors – many of whom were his political contributors – about the local refuge manager's aggressive crack-down on illegal baiting in the area. Gramm admitted telling Dunkle "that people all over the country are up in arms over this guy."

After the meeting Dunkle told his deputy director that "the management of the [Blackwater]

refuge would go better if they had a change in the head of operations down there." When the deputy director and his regional supervisor disagreed, voicing strong support for the 32-year USFWS veteran, they were demoted. The first order of business for their successors was to oust the refuge manager.

Other changes followed. Dunkle ordered officers on the Eastern Shore to practice "preventative" law enforcement by notifying owners when bait was found on their land instead of issuing citations. He also restricted agents to the Blackwater's boundaries — an order that did not apply to the nation's more than 500 other refuges. Coincidentally, the number of special agents patrolling the more than 100 miles of shoreline has dropped from twelve to two.

States' Rights and Wrongs

Since their implementation in 1935, the MBTA regulations have been amended 18 times, the last time 25 years ago, in an effort to make them as clear as possible to hunters and to the agents charged with enforcing the law. Based on pressure exerted by a few politically powerful hunters, a 19th set of amendments is now under consideration. The reason is simple — hunters clamoring for more game to shoot, and who want to make the hunting experience easier, have set their sights on relaxing the regulations that prohibit baiting.

The proponents of regulatory change have found support among some state game and fish agencies, which have long been in conflict with the USFWS over baiting laws. Illinois provides a classic illustration of the states' obstruction of federal regulations.

In 1933, a report declared Illinois the most heavily baited state in the nation. To some extent, that tradition continues, although baiting techniques are no longer as blatant or as easy to detect. The new, more sophisticated methods used by hunters essentially achieve the same purpose as dumping seeds from a sack. Today, manipulating crops, supplementing or adding seeds, and employing dubious farming practices are the norm, providing a real challenge for wildlife officers.

As if these kinds of cases are not hard enough for federal agents to deal with every day, their



Road Less Traveled. Crop "knocked down" to allow easier access to hunting site, illegally scattering seeds.

progress has been impeded by the Illinois Department of Natural Resources (DNR). In 1993, for instance, the DNR gave into pressure from hunters complaining about a lack of food for ducks. Just before the start of hunting season, in an effort to initiate a "green up" to draw birds, the agency conducted aerial wheat seeding on the water and around blinds.

When USFWS agents informed the DNR that allowing hunting in those areas would put hunters in jeopardy of violating the anti-baiting regulations, the state agency reluctantly agreed to postpone hunting until all seeds were removed from the area. When hunters complained, the DNR blamed "the feds" for imposing the restrictions.

A year later, state wildlife officers requested USFWS assistance in determining if a waterfowl management area had been improperly planted with millet and mowed prior to teal season. The special agents confirmed heavy amounts of seeds on the water around every blind site and observed ducks in a feeding frenzy, "like drug



The Call of the Tame. Ringneck ducks "on bait" directly in front of hunting blind.

No Fear

In September 1997, USFWS law enforcement officers documented widespread evidence of baiting at hunt clubs in the Suisun Marsh area of central California, wintering ground for 20 percent of North America's migratory waterfowl. The agents set up a meeting to alert the local Resource Management District to potential violations. The district's executive director angrily denounced the regulations, telling the agents to "get your ticket books" because his office did not intend to enforce certain baiting laws for the clubs. He also threatened the agents, informing them that "we're going to do everything we can to get your ass out of our area." Following the incident, the USFWS assistant regional director for law enforcement informed a California sportsmen group that hunters "should not fear prosecution during the 1997-98 season" for violating the controversial baiting restrictions.

addicts on dope." Despite DNR Director Brent Manning's concern that closing the area would upset hunters, the evidence of an impending duck slaughter left no choice. The DNR issued a press release about the closure that was highly critical of the federal agents' "interpretation" of the regulations, sparking media outrage against the USFWS.

In 1995, following the "closure" controversy, federal law enforcement officers on an aerial patrol along the Illinois river spotted possible hunting violations at a hunt club. State officers alerted to the site confirmed baiting activity — seeds floating among the duck blinds — and cited the club for illegally cutting and mowing millet.

One of the club members hunting that day, Randy Vogel, happened to be a close friend of DNR Director Manning. Vogel told the officers that he would "take care of [the problem] with one phone call" to his buddy Manning. In response to the call, Manning or-

dered a second site visit of the club just to be sure. The officers, accompanied by DNR's law enforcement chief, inspected the area and again concluded that it was baited.

Some of the hunters decided to fight the charges in court. After losing the case [U.S. v. Hogan, 906 F.Supp. 455 (1995)], the hunters appealed. This time, Manning even had a DNR waterfowl biologist testify against his own wildlife officers. The court ruled the case, "duck soup — misdemeanor convictions, only fines imposed, and a challenge on appeal only to the sufficiency of the evidence.... In short, there was sufficient evidence in this record to support a conviction, and the judgement is AFFIRMED" [U.S. v. Hogan, 89 F.3d 403 (1996)]. In upholding the fines against the baiters — which ranged from \$100 to \$2,100 — the court did not overlook the fact that Vogel attempted to involve Manning, and chastised the DNR director for misusing "the power of his position in an attempt to shield a friend."

A Free Lunch

In January 1997, at a southern Illinois hunt club — with a history of hunting violations — wildlife officers observed thousands of geese flying in and out of a baited field, while as many as 50 hunters shot and killed the birds. Officers advised the club owner that manipulating corn was illegal and that the area would remain a baited area until 10 days after the corn was removed. No individual hunters were charged and no geese were seized from any hunters.

In addition to initiating Congressional inquiries, the club filed an injunction the next day to continue the hunt. Neither the wildlife agencies nor the U.S. Attorney pursued the baiting charges. The hunt club also filed a lawsuit against one of the DNR officers for \$100,000, citing lost revenue for being prohibited from hunting the baited area for two days. Despite the fact that his agency has been named in the pending lawsuit, DNR Director Manning recently coordinated and attended a Republican lunch and geese shoot fundraiser for a gubernatorial candidate at the same club.

Seeding Discontent

After the case, both men took their fight to the public. Vogel founded the Sportsmen's Defense Fund and in his newsletter urged people to contribute stories of "overzealous law enforcement activities" in order "to convince Congress that some meaningful changes in our fish and wildlife laws are desperately needed." He also began raising money for the legal defense of federally abused hunters.

Agreeing with his friend that hapless hunters are too often the victims of unreasonable federal regulations, Manning launched a one-man crusade to stir up opposition to baiting laws. He traveled the country speaking to state game and fish departments and sportsmen groups, urging widespread regulatory "reform" under the rally cry of "consistency, clarity and common sense."

At about the same time, a number of state game directors asked the International Association of Fish and Wildlife Agencies (IAFWA) to press the USFWS for baiting law "reform." At the association's annual convention, after Manning pledged to spearhead a campaign to change the regulations, the IAFWA tapped him to serve as chair of the newly created Ad Hoc Committee on Baiting.

No conservation groups were asked to participate on the Committee, which is laden with Manning's DNR staffers (9 of 29 members). In February 1997, the IAFWA faxed the committee's draft baiting recommendations to all state game directors for comment. Only fifteen states responded, with six rejecting either all or key portions of the proposed changes — not exactly a groundswell of opposition to the current regulations.

Ducking the Rules

Nevertheless, the IAFWA adopted the Ad Hoc Committee's final recommendations and submitted them to the USFWS last year. Their proposal is twofold. One part deals with moist-soil management, with the association insisting that the manipulation of non-agricultural vegetation planted specifically to attract waterfowl to a hunt should not be considered baiting. Under the guise of wildlife management, they are essentially advocating the use of "natural," wild plants, instead of piles of corn or wheat or

grain, as bait. Tweaking the regulations in this way would produce the same results — birds will come in droves and be shot.

The IAFWA argues that baiting regulations are too confusing or inconsistently applied, causing innocent hunters to be ensnared. To address this "problem," they also favor the removal of "strict liability," the more than half-century old standard by which hunters can be cited for baiting without any knowledge or intent to do so. Under the association's amendment to the regulation, law enforcement officers would face the nearly impossible task of proving that a violator "knows or through the exercise of reasonable diligence should have known" that the area was baited.

The IAFWA is essentially urging the USFWS to make a legitimate excuse out of ignorance, as virtually every violator apprehended claims



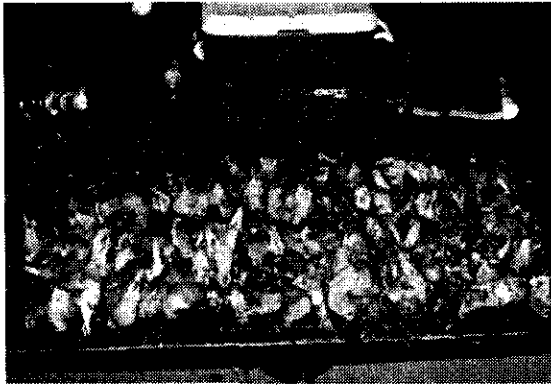
Ignorance is Bliss. *Those cited for hunting over piles of wheat on this farm field all claimed not to know the bait was there.*

not to have known about the presence of bait. Powerful members of Congress, subscribing to this "ignorance is bliss" argument, are pushing for similar regulatory relaxation on behalf of their constituents.

Little Ruby Ridge

The first day of hunting season is when most baiting occurs, serving as a festive occasion for hunters to get reacquainted with one another and to make plans for later hunting excursions. One reason for baiting fields on opening day is that no one wants their first party of the season to flop, especially if it's a pay hunt with the added pressure to guarantee birds. To avoid this problem, illegal baiting sometimes takes place.

A high-profile opening day baiting bust in 1995 triggered a new wave of Congressional attacks on federal regulations, leading to intense legislative scrutiny and an attempt to weaken the law. On that October day, USFWS special agents raided the second annual "Predators Dove Hunt" — a charity dove shoot and beer blast — in Dixie County, Florida. Officers found illegal bait everywhere and saw doves settling down in the fields despite all the blasting guns. As soon as the agents arrived to break up the hunt, most of the 150 hunters fled.



By Any Means Necessary. *Three hunters used wheat to lure doves, killing nearly 100 before being nabbed for baiting.*

Agents seized nearly 500 bird carcasses, many of them non-game birds. In all, 86 hunters were cited for baiting and bag limit violations, and later paid nearly \$40,000 in fines. One of the agents called it the most flagrant baiting cases he'd worked in 24 years and a prime example of what bait does to birds. "It was a complete war," he said. "Very effective baiting."

Present at the Dixie County "hunt" that day were four Florida sheriffs, the regional director of the Florida Game and Fresh Water Fish Commission, state wildlife officers and a host of local politicians. These individuals contacted their Congressmen and so began a concerted effort to dismantle the baiting law.

Upon hearing of the "heavy hand" of federal law enforcement agents, U.S. Representative Don Young (R-AK) introduced the Migratory Bird Treaty Reform Act to loosen baiting restrictions. As Chairman of the House Committee on Resources, Young called a hearing and solicited testimony from angry hunters.

Not surprisingly, the episode was depicted as "a little Ruby Ridge" and the federal agents involved were lambasted for "overzealousness" in enforcing the law. Even Brent Manning and Ron Vogel flew in to offer testimony on the need to "fix" baiting laws.

With Friends Like These...

As a result of the staged revolt of state agencies and hunter constituency groups, and driven more by politics than biology, in March 1996, the USFWS put a notice in The Federal Register soliciting comments on the agency's plan to reassess the MBTA regulations related to baiting. The agency invited the IAFWA to tell it how to "improve" the rules.

A group of USFWS special agents also took the time to review the baiting regulations, concluding that changes were not necessary. A number of them even wrote a scathing memo to their superiors in Washington charging that any liberalization of the baiting regulations "has nothing to do with protection" and "everything to do with the enhancement of killing opportunities." Their protest fell on deaf ears.

The USFWS caved in to the threat of legislation by promising to address the baiting "problem" through the regulatory process. In May 1997, law enforcement officers were notified by headquarters to accept "politically certain givens," including the fact that "there will be a scienter standard applied to baiting." The agents were also told that other changes, relating to the IAFWA's concerns, were forthcoming.



Stand Down. *Under proposed changes, mowing millet to attract birds would be permitted.*

On March 25, 1998 the axe fell. A week after providing the IAFWA with advance notice, the USFWS published in the Federal Register a proposed rule change to the current MBTA regulations. The agency's stated rationale was to provide "clarity for the public and consistency and fairness in law enforcement operations." In a press statement, USFWS Director Jamie Rappaport Clark admitted that the proposal is based on input from state fish and wildlife agencies and sportsmen groups. But she insisted that "no adverse effect on migratory bird populations" would result.

USFWS law enforcement officers wholeheartedly disagree with the director. While they support the proposal to ban hunting over top-sown seeds, the agents insist that other proposed changes would weaken baiting restrictions, causing increased waterfowl mortality. Of particular concern to law enforcement officers are changes that would liberalize the regulations to allow hunting over areas that have been manipulated under the guise of "moist soil management practices."



Look Out Below. *Heavy crop manipulation, as seen here, would become a legal activity under the proposed rules.*

Under the agency's proposed rule change, hunters or commercial hunt club operators would be permitted to grow, cut and then flood certain crops with mature seed heads. Allowing the mowing of vegetation with seed heads present serves no purpose other than to attract waterfowl, producing a legal loophole for hunters to enhance their "harvest" opportunities — in short, to kill more birds. Moist soil management practices for habitat conservation purposes are already allowed, the agents contend, and therefore this provision does not need to be changed.

Although the removal of the strict liability standard is not part of the USFWS's current proposal, if adopted, the agency's sweeping regulatory re-write will accomplish much of what Don Young and Brent Manning intended all along. Vernon Ricker, a retired federal agent once responsible for the Eastern Shore of the Chesapeake Bay, is among many who are not optimistic that the agency will act in the best interest of the resource:

"I've enforced the MBTA for twenty eight years and I can tell you the USFWS is going to go with the flow. It will cave in on anything. If it cared about the resource, we would have people here in the Eastern Shore to enforce the law."

The Young Bill

Baiting restrictions have drawn heat from politicians primarily because some constituents have complained that they were invited to a hunt where they were unaware bait was being used. Under the law, a hunter can be convicted of the crime even if he did not know the field was baited.

This strict legal interpretation is necessary given that every person caught hunting over bait naturally claims to have had no idea the bait was there. Without strict liability, it would be much more difficult to prosecute violators.

In May 1997, Rep. Don Young introduced legislation to significantly weakened the MBTA regulations in a number of ways, most seriously by codifying the IAFWA's intent element. Supporting the measure were a small, vocal group of hunters, mainly paid professional guides, commercial hunt clubs and lobbyists for the sport hunting industry.



Open Season
Rep. Don Young is leading the legislative effort to gut anti-baiting laws in favor of hunters.

Young recently struck everything from his bill except the most threatening aspect, the scienter standard requiring proof beyond a reasonable doubt that a hunter had prior knowledge of baiting activity. In speaking to his bill, Young said he had given USFWS the opportunity to address the strict liability issue in the regulatory process and they failed to do so. He defended his actions by bringing up the 1995 Dixie, Florida baiting case, saying that "the present regulations make people criminals."

In late April of this year, the House Resources Committee approved Young's modified baiting "reform" bill.

Muffling Dissent

Federal law enforcement officers contend that the proposed regulatory and legislative changes would, among other things, erase decades of case law that have aided in the prosecution of hunters who shoot birds over bait; it would place further burdens on federal wildlife officers, at a time when there are already too few of them in the field enforcing the law; and it would drastically reduce game bird populations, undermining the very spirit and intent of the wildlife protection statute.

If enacted, they argue, the new rules would take the sport out of hunting — fair chase would become nonexistent; high numbers of birds would be killed in a short period, shot while eating and accustomed to the presence of humans. "Slob hunters could lure birds with piles of food and shoot them at point-blank range," noted an agent. "There might be more challenge in shooting caged birds in a pet store."

The freedom to speak their minds honestly and openly is unfortunately not an option for these public servants. In addition to repeated threats from Congressmen to "punish" agents for discussing their personal views on baiting, the USFWS has also issued what amounts to a gag order on its officers.

Special agents have been formally warned not to have any contact with outside groups on this hot-button issue. A memo, circulated a few days prior to public notification on the proposed rule change, advised the agents to, in part:

"Feel free to discuss among yourselves, but don't get caught going outside the agency...Congressman Young and Senator Breaux gave Director Clark a very difficult time over the fact that some agents were believed to be lobbying against the draft Migratory Bird Treaty Reform bill. Young made it clear that he will hold hearings and agents accountable if they lobby against the bill and get caught...be careful...[He] means business..."

The agency may insist that this order is meant to protect employees, but as one agent put it, "With all the threats and intimidation, there are those of us who feel a bit like a scared rabbit, with the hawk circling our head just waiting for us to make the mistake of sneaking out of the bushes" by going public.

The message USFWS agents would like the public to hear in regard to attempts to liberalize baiting regulations is simple: "Protection of the resource should be the primary objective here instead of increasing kills." After committing themselves to the pursuit of this cause, day in and day out in the field, they are understandably disappointed that their agency is more concerned with its own self-protection than it is for the protection of migratory game birds.

Some agents maintain a fatalistic attitude about the ultimate impact of impending changes in the MBTA law. "Maybe we shouldn't worry about the baiting regulations," suggested an agent. "When the ducks end up on the endangered species list, we can finally go back to protecting them."

