

Federal Police Ranks Swell to Enforce a Widening Array of Criminal Laws

By [LOUISE RADNOFSKY](#), [GARY FIELDS](#) and [JOHN R. EMSHWILLER](#)

For years, the public face of federal law enforcement has been the Federal Bureau of Investigation. Today, for many people, the knock on the door is increasingly likely to come from a dizzying array of other police forces tucked away inside lesser-known crime-fighting agencies. They could be from the Environmental Protection Agency, the Labor or Education departments, the National Park Service, the Bureau of Land Management or the National Oceanic and Atmospheric Administration, the agency known for its weather forecasts.

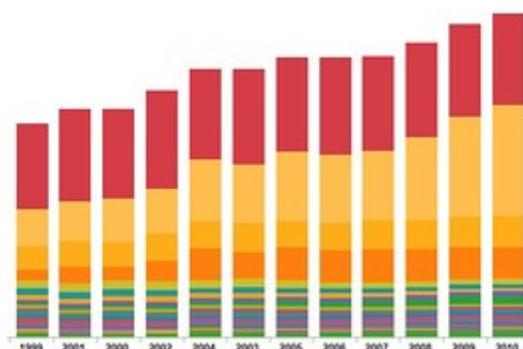
Agents from NOAA, in fact, along with the Fish and Wildlife Service, raided the Miami business of Morgan Mok in 2008, seeking evidence she had broken the Endangered Species Act trading in coral.



The Government's Growing Police Force

Agency	1973	1978	1983
Armed Forces Retirement Home	0	0	0
Corporation for National and Community Service	0	0	0
Department of Agriculture	225	366	341
Department of Commerce	16	18	82
Department of Education	0	0	54
Department of Energy	0	33	26
Department of Health and Human Services	1	73	143
Department of Housing and Urban Development	66	74	75
Department of Interior	77	109	147
Department of Labor	2	14	145
Department of State	1	24	39
Department of Transportation	0	6	39
Department of Veterans Affairs	5	3	55
Environmental Protection Agency	0	1	52
Equal Employment Opportunity Commission	0	0	0

Growth in Federal Criminal Sentences



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The agents had assault rifles with them, and the case documents indicated her house and business records had been under surveillance over a six-month period, says Ms. Mok. Under the 1973 law, the departments of Interior and Commerce (home

to NOAA) must write regulations to define what is endangered and how it must be protected. One of those regulations specifies coral.

"I felt like I was being busted for drugs, instead of coral," Ms. Mok says. "It was crazy."

Ms. Mok says she showed that her coral had been properly obtained. She paid a \$500 fine and served one year of probation for failing to complete paperwork for an otherwise legal transaction. Adam Fetcher of the Department of the Interior, which includes Fish and Wildlife, says the department and its bureaus "follow priorities in line with other federal law-enforcement agencies. We work within the resources appropriated by Congress to effectively follow up and investigate criminal and civil violations."

Government agencies of all stripes have become the front-line enforcers for many of the laws Congress has written the past four decades. Not only do the agencies enforce these laws, they also write the voluminous regulations needed to put the laws into effect and govern federal programs.

Often, Congress makes it a criminal offense to violate any part of a law it passes—including these regulations. As a result, as more criminal laws are passed, the number of regulations that can ensnare people grows as well.

It is hard to pin down precisely how many regulations could result in criminal penalties. Of dozens of federal agencies contacted by The Wall Street Journal, none could say how many of their regulations were connected to criminal statutes. Legal experts have put this number at anywhere between 10,000 and 300,000.

In 1970, the Code of Federal Regulations had 54,000 pages. Today it runs to 165,000 pages and takes 27 feet of shelf space when printed and bound.

The growing rule book has kept enforcement teams busy. Last year, criminal cases pursued chiefly by smaller government agencies led to 10,122 convictions, an 84% increase from 15 years ago. Also up sharply: the numbers of prosecutions and investigators.



In the latest survey, by the Government Accountability Office in 2006, there were 25,000 sworn officers in the smaller government agencies (which excludes departments more commonly associated with crime fighting: Treasury, Justice, Defense and what is now Homeland Security). That number includes police, inspectors, security guards and rangers, as well as criminal investigators.

Across all government agencies, there were about 138,000 federal law-enforcement officers that year, GAO figures show. The Justice Department accounted for more than 40% of that total. Among the smaller agencies, currently there are 3,812 criminal investigators, up from 507 in 1973, the first year for which records are available from the Office of Personnel Management. The EPA received its first two criminal investigators in 1977.

It now has 265.

Even critics of the system say it is important to uphold the law and that criminal sanctions are sometimes necessary. "There are cases that should and can be made," says Roger Marzulla, a Justice Department official in the Reagan administration who oversaw environmental-crime prosecutions. Enforcing regulations also ensures that rule-breakers don't have an unfair advantage over competitors, he says.

An August raid on Gibson Guitar Corp. has drawn heavy criticism from both sides of the political aisle. In that raid, Fish and Wildlife Service agents swarmed the Nashville company to seize rosewood and ebony the agency suspected had been illegally imported from India. The company says its wood was obtained legally and that no charges have been filed.

"Why is it we're treating what is essentially a violation of rules and regulations in a criminal manner?" says Tom Fitton, president of Judicial Watch, a conservative watchdog group.

Federal Offenses

The Journal is examining the vastly expanding federal criminal law book and its consequences.

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Steven Benjamin, president-elect of the National Association of Criminal Defense Lawyers, which tends to be more liberal, says: "Enforcing over-criminalization has put us at war with ourselves." Skeptics also say some of these smaller departments tend to wield their powers indiscriminately, even for seemingly minor infractions, in ways that seem self-justifying.

"When you start making innocuous actions crimes, you multiply the number of people who are enforcing" the laws and regulations, says Ronald Gainer, a former Justice Department official for Democratic and Republican administrations who has cautioned for years against the proliferation of federal law. "You multiply the number of people who have to enforce criminal laws and they all want guns."

Congress provides relatively little oversight, particularly in comparison to the FBI, whose officials are regularly brought before hearings. Committees overseeing federal departments not traditionally associated with crime-fighting pay less attention to their law-enforcement units. Often, it is the agencies' own internal inspectors-general who blow the whistle on problems with other officers in the department. In a stinging 2010 report, the inspector general for the Commerce Department focused on widespread complaints from fishermen in Massachusetts, North Carolina and Florida that criminal investigators from NOAA's National Marine Fisheries Service's Office of Law Enforcement were being heavy-handed, even in civil cases.

The report detailed a 2006 case where a warrant affidavit for a fish dealer's records contained false information, and another case where an agent gained unauthorized access to a facility, then opened another door to let other officers in.



Tony Demin for the Wall Street Journal

Several federal agencies stormed Christopher Kortlander's museum. "The reality is that if you hire a cadre of criminal investigators, they're going to carry out their work like criminal investigators—and that's what they did," says inspector general Todd Zinser. NOAA officials say the agency has improved its enforcement program since the report, with new

leadership and more scrutiny of charging decisions. It has also frozen hiring for criminal investigators and employed more officers to help fishermen with compliance.

"I think that we agreed that there was a need for a more balanced perspective in the makeup of our work force," says Eric Schwaab, Assistant Administrator for Fisheries.

Christopher Kortlander met two dozen agents from several different federal agencies when they burst into the tiny Custer Battlefield Museum he founded in Garryowen, Mont., in 2005.

Mr. Kortlander has said in court filings protesting his treatment that "24 or more federal agents, armed and brandishing automatic weapons" participated in the raid. In an interview, he said he counted agents from the Bureau of Land Management, FBI, Fish and Wildlife Service, National Park Service and several other forces. One of Mr. Kortlander's interns was pushed to the ground in the raid, he says.

The agents sought artifacts they said were being sold online under false pretenses as historical items found at Little Bighorn, scene of the bloody 1876 battle between Indians and the U.S. Army. No charges were brought against Mr. Kortlander. But agents returned in 2008, that time alleging Mr. Kortlander was in illegal possession of eagle feathers.

Again, no charges were filed. Mr. Kortlander denies wrongdoing. In 2009, federal prosecutors took the rare step of notifying Mr. Kortlander's attorney in writing that it wouldn't be pursuing charges in connection with either raid.

Mr. Kortlander is suing the government in federal court to recover some Cheyenne bonnets taken by the Bureau of Land Management during the second raid.

"They raid these people like they're Scarface," says Penelope Strong, Mr. Kortlander's attorney. Using force to go after drug dealers or violent criminals is understandable, Ms. Strong says. "But somebody in a hot, sultry part of Montana, in a trading post where people are wandering around buying blankets? Come on."



Gary Fields The Wall Street Jour

Hubert Vidrine Jr. sued over an EPA-led raid, was awarded \$1.67 million.

The agencies referred inquiries about the case to the U.S. attorney's office in Montana. A spokesman declined to comment, citing the lawsuit.

Postal inspectors, customs and other revenue agents were some of the first federal law-enforcement officers in the years after the Revolution. In the 19th century, Congress created forces to guard federal buildings and to police the expanding American West. After the Civil War, the federal government set up the Department of Justice and stepped up controls of immigration, alcohol and drugs.

The Department of the Interior and the Forest Service received new responsibilities under the environmental legislation sought by President Theodore Roosevelt in the early 20th century. But the foundation for the current growth of federal enforcement agencies was laid in the 1960s and 1970s when smaller departments started having inspectors general whose task was to police the government. Lawmakers writing sweeping environmental laws in that era also granted additional resources to the agencies administering those laws. That, in turn, created new enforcement teams.

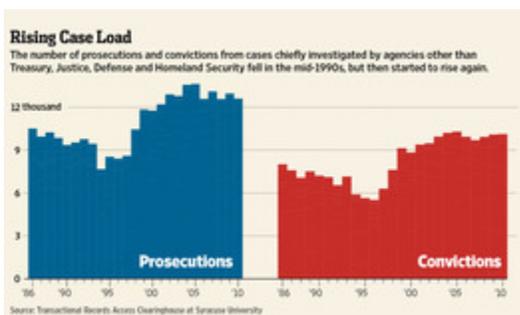
Lawmakers and traditional law-enforcement agencies, in particular the FBI, resisted extending the power to carry firearms, execute warrants and make arrests to other agencies, says Jeffrey Bumgarner, a professor of government at Minnesota State University who has written a history of federal law enforcement. But agencies chipped away at that opposition, he says.

EPA agents were given police powers in 1988. The U.S. Marshals Service started issuing annual blanket authorizations in 1995 to some agencies that didn't have them. After the Sept. 11, 2001, attacks, when the FBI's attention shifted to terrorism matters, Congress gave permanent powers to inspectors general in more than two dozen agencies.

All of the officers are trained at one of the Federal Law Enforcement Training Center facilities now run by the Department of Homeland Security. About 90 federal agencies send their personnel to the centers for training in everything from criminal investigations to cyber terrorism and land-management police training.

In the mid-1990s, many agencies tried to scale back their vigor in pursuing criminal prosecutions amid concern among members of Congress about aggressive tactics. An influential 1994 memo by Earl Devaney, then head of the Environmental Protection Agency's criminal-enforcement program, suggested applying criminal sanctions to only "the most significant and egregious violators."

Mr. Devaney's advice didn't stick, and the numbers are rising. In 2010 there were 12,606 prosecutions from cases investigated chiefly by agencies other than Justice, Treasury, Defense and Homeland Security. That was a 50% increase from 15 years ago.



In September, former oil-refinery manager Hubert Vidrine Jr. was awarded \$1.67 million from a malicious-prosecution lawsuit he filed against the EPA. The judge said she would have made it higher if not limited by federal law. Mr. Vidrine's troubles began in September 1996, when the agency's criminal-investigation division led nearly two-dozen armed federal and state authorities on Canal Refining Co., an oil refinery in Church Point, La.

Mr. Vidrine described in an interview a scene of guns, police dogs, flashing lights and roadblocks. At one point, according to court documents filed in the lawsuit, agents refused to allow female employees to use the bathroom and prevented them from phoning their homes or child-care providers to make arrangements for their children.

The plant, which employed about 260 people, shut down refining operations the following year and is idle now.

Mr. Vidrine was charged in 1999 with "knowingly" storing hazardous waste, which later turned out to be used refined oil not covered by federal regulations. The potential penalty was five years and a \$50,000 fine for each day of the violation. The case was dismissed in 2003, by which time Mr. Vidrine had spent more than \$120,000 in legal fees maintaining his innocence, according to a statement by the judge.

The lead EPA agent in the case pleaded guilty Oct. 3 to charges he lied under oath and obstructed justice. A few days earlier, federal judge Rebecca Doherty sided with Mr. Vidrine in his lawsuit.

The EPA declined to comment, citing potential further action by the Justice Department. In recent weeks the Justice Department filed a notice that it plans to appeal the case to the Fifth Circuit Court of Appeals—promising to push a case that began in 1996 into 2012.

The regulations that spurred the raid were so complex they had led to disagreements among EPA personnel, as well as state environmental quality personnel, the judge noted in her opinion. She called the regulations a "morass."

Judge Doherty wrote that, "Given the egregious conduct displayed by an agent of the government and the devastation wrought on otherwise law-abiding citizens," she would have given Mr. Vidrine more than \$1.67 million, if federal law allowed punitive damages against the government, "in the hope of deterring such reckless and damaging conduct and abuse of power in the future."

—*Kris Maher contributed to this article.*

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