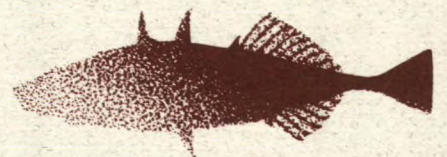
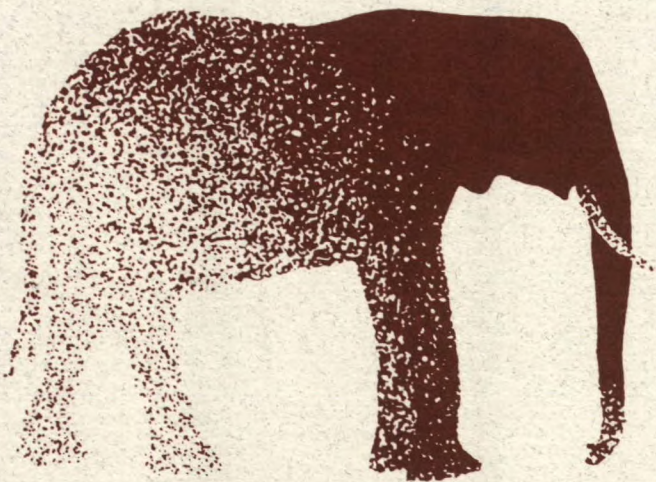
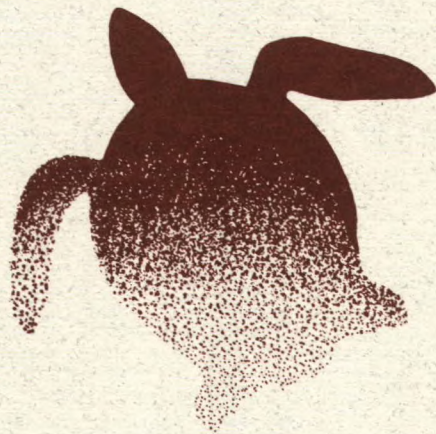
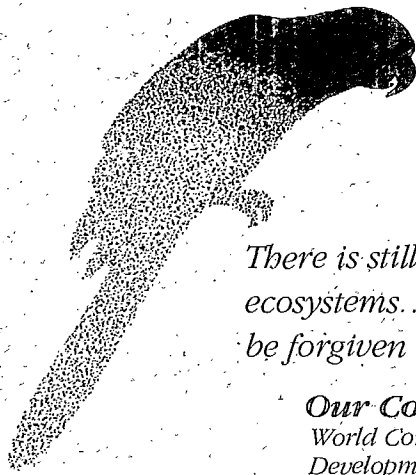


**WILD ANIMAL
AND PLANT
PROTECTION
ACT**

**COMPLIANCE
AND
ENFORCEMENT POLICY**





There is still time to save species and their ecosystems... Our failure to do so will not be forgiven by future generations.

Our Common Future

*World Commission on Environment and
Development report – 1987*

The federal government believes that protecting and enhancing Canada's natural heritage is of vital importance. Canada's rich biological diversity must be a major component of our legacy to future generations.

Canada's Green Plan

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Environment
Canada

Environnement
Canada

Canada



Compliance and Enforcement Policy

**WILD ANIMAL AND
PLANT PROTECTION ACT**



PART OF
CANADA'S GREEN PLAN

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Introduction

The government of Canada recognizes that legislation, regulation and enforcement will continue to play essential roles in the achievement of our environmental objectives.

Canada's Green Plan

The federal government is committed to conserving and protecting wild animals and plants in Canada, and conserving them in other countries. For this reason, as part of *Canada's Green Plan*, it has introduced into the House of Commons a Bill to create new legislation that will be referred to, once passed, as the *Wild Animal and Plant Protection Act*¹.

The proposed Act will give the federal government through Environment Canada authority to:

- Prohibit import or export of wild animals and plants, or their parts and products, according to international agreements, provincial² conservation laws and the conservation laws of other countries.
- Prohibit import or transport from one province to another of live wild animals and plants, thereby preventing the introduction of species potentially harmful to Canada's ecosystems, or to the ecosystems of a receiving province.
- Prohibit the transport from one province to another of any wild animals and plants, or their parts and products, that have been obtained or removed in contravention of the conservation laws of a province.
- Prohibit possession of wild animals and plants, or their parts and products, that have been imported or transported, or are about to be exported or transported, in violation of the Act.
- Prohibit possession of endangered wild animals and plants, or their parts and products, if possessed in order to sell them or otherwise distribute them.

¹The Act's official title is *An Act Respecting the Protection of Certain Species of Wild Animals and Plants*.

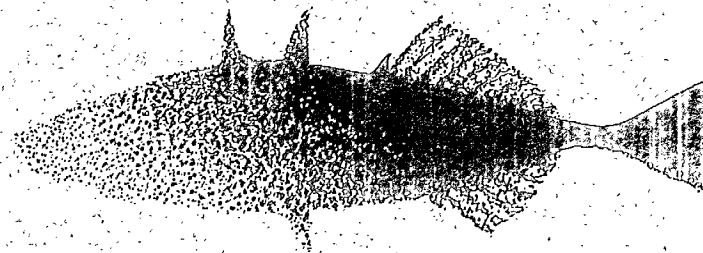
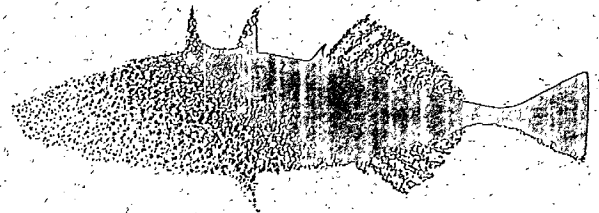
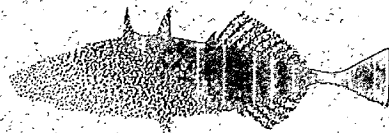
²Throughout this publication, all references to a "province" or "provinces" should be understood to include "territory" or "territories". References to "provincial" legislation, jurisdictions or governments will also apply to the "territorial" counterparts.

Firm, fair and consistent enforcement ensures that good environmental citizens are not penalized by the environmentally abusive acts of others.

Canada's Green Plan

When the *Wild Animal and Plant Protection Act* becomes law, Environment Canada will release the *Compliance and Enforcement Policy* for the Act. The goal of the Policy will be to outline how Environment Canada will apply the Act, how the Department will encourage and ensure compliance, and how it will respond when the Act is contravened. The Policy will establish principles for fair and consistent enforcement and influence the development of operational guidelines and procedures.

To encourage interested parties to give their views in advance, Environment Canada is releasing the *Compliance and Enforcement Policy* for the proposed *Wild Animal and Plant Protection Act*. The Department's objective is to have a comprehensive, workable and clearly defined compliance and enforcement program ready to take effect as soon as Parliament passes the Bill.



Compliance and Enforcement

**Legislation and regulation
are only as good
as their enforcement.**

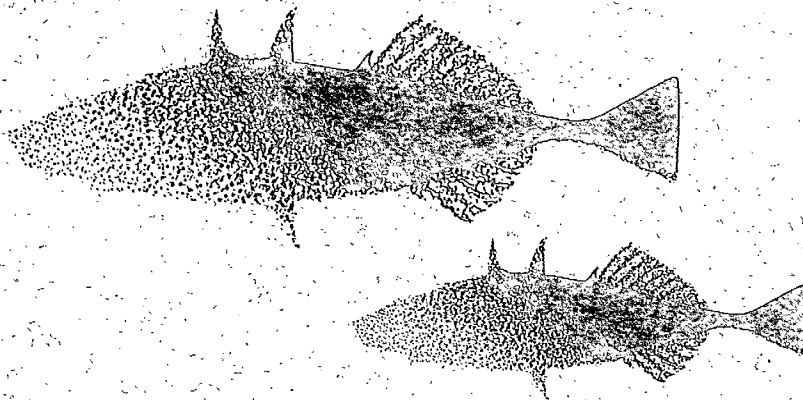
Canada's Green Plan

"Compliance" means conformity with the law. Compliance with the *Wild Animal and Plant Protection Act* will be secured through two types of activity: promotion and enforcement.

Environment Canada believes that compliance can best be achieved by promoting widespread awareness of the new Act's requirements. The Department has planned a communications program designed to ensure that interested parties are aware of the Act's existence and understand its requirements.

Compliance will also be secured through "enforcement" activities:

- inspecting and monitoring;
- investigating violations;
- issuing notices to individuals or businesses requiring them to remove wild animals and plants from Canada;
- issuing tickets for violations;
- seizing of wild animals and plants or their parts and products; and
- prosecuting.



Guidelines

Five general principles will govern how Environment Canada administers the Act.

- I. The Department will emphasize conservation of Canadian and foreign wild animals and plants and protection of Canadian ecosystems from introductions of harmful species.
- II. Compliance with the Act and its regulations will be mandatory.
- III. Enforcement must be securely grounded in law and must be fair, predictable, and consistent across Canada.
- IV. Enforcement officers will encourage individuals to report suspected violations of the Act, will review suspected violations, and will base their responses on operational guidelines developed from the *Compliance and Enforcement Policy*.
- V. Environment Canada will report annually to the public and to the Secretariat of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES)³ on compliance and enforcement activities under the Act.

³The Convention on International Trade in Endangered Species of Wild Fauna and Flora is an international agreement for the protection of certain species of wild fauna and flora against over-exploitation through international trade. It operates through a permit system that varies according to how endangered a species is. A total of 112 countries are signatories to the Convention.

Authorities responsible for implementing the Act

With the co-operative efforts of many enforcement agencies such as the RCMP and Customs and Excise, Environment Canada will enhance its ongoing program of inspections, information exchange and investigations leading to vigorous enforcement of environmental regulations.

Canada's Green Plan

FEDERAL MINISTER OF ENVIRONMENT

The Minister of Environment will be responsible for administering the *Wild Animal and Plant Protection Act* through Environment Canada's Canadian Wildlife Service (CWS).

ENFORCEMENT OFFICERS

To ensure that the new law is obeyed, the Minister will designate federal and provincial government employees as enforcement officers. Appointees will include Environment Canada employees who already enforce the *Migratory Birds Convention Act*, the *Canada Wildlife Act* and the *National Parks Act*, members of the Royal Canadian Mounted Police (RCMP); and conservation officers of provincial governments. At ports of entry, Customs officers will ensure compliance with the Act using powers provided by the *Customs Act*. Prior to designating non-departmental enforcement officers, Environment Canada will sign agreements with the other federal and provincial agencies concerned, to avoid duplication of effort and ensure effective use of resources.

Of the various officials who will administer the Act, it will be the Enforcement Officers who will have the most frequent and direct contact with companies and individuals affected by the legislation. Officers will have five duties:

- providing information to the public;
- conducting inspections to verify compliance with the law;
- reviewing options for preventive and corrective action and explaining legal requirements, such as warning individuals or companies of potential violations;
- conducting investigations for evidence of violations and responding to known violations by, for example, issuing a ticket, or seizing specimens and prosecuting; and
- providing assistance to prosecutors during the preparation and conduct of trials.

The *Wild Animal and Plant Protection Act* will empower officers to enter premises to inspect, to search or seize (with or without warrant), to detain items related to the Act, to require the production of records, and to issue tickets. Officers will also have the power to arrest a suspected violator.

While some officers may specialize in investigation of offences or in performing inspections, all will be trained to conduct the initial phases of the duties described earlier. If, during inspections, officers must shift to investigation or to taking corrective action, they will indicate this to the individual or company being inspected.

Enforcement officers will have expertise in a number of areas:

- basic identification of species;
- basic handling of live animals and plants;
- investigative techniques;
- gathering of evidence and procedures to ensure continuity in the control and custody of evidence;
- taking statements and soliciting information from witnesses;
- securing and executing search warrants;
- court procedures;
- preparation of briefs for Crown prosecutors; and
- appearing as a witness in court proceedings.

To ensure adherence to the Act, investigation specialists will be in close touch with inspectors and will regularly exchange information related to routine inspections, spot checks and special inspections.

DEPARTMENT OF THE ATTORNEY GENERAL

The Attorney General will be responsible for all litigation relating to the Act. While enforcement officers may lay charges for offences, it is the Attorney General who will decide whether to proceed with prosecution.

Measures to Promote Compliance

Canadians share a responsibility to preserve Canada's biodiversity for both future generations of Canadians and the rest of the world.

Canada's Green Plan

Environment Canada believes that promotion of compliance through information, education and consultation is the most effective way of securing conformity with the law. The Department will, therefore, undertake an extensive public education program. Departmental officials will also meet regularly with members of native, industry, environmental and other interested groups, the public and other federal and provincial departments and agencies to exchange information and share concerns about the *Wild Animal and Plant Protection Act*, enforcement practices and compliance.

EDUCATION AND INFORMATION

The education and information program which will be in place when the Act becomes law will include the following materials:

- the *Wild Animal and Plant Protection Act* and its regulations;
- the *Compliance and Enforcement Policy* for the Act; and
- fact sheets, handbooks, pamphlets and reports on subjects relevant to the Act.

Meetings with interested parties are also an essential element of the program.

CONSULTATION ON REGULATIONS

Groups and individuals are more likely to comply with the regulations if they have had a part in developing them. Consequently, Environment Canada will consult interested parties when developing regulations to determine problems and their solutions, and to achieve more effective conservation of Canadian and foreign wild animals and plants and protection of Canadian ecosystems.

Proposed regulations will be published in the *Canada Gazette*, Part I.⁴ Anyone concerned may comment.

Any regulations developed by the Minister of the Environment will follow the principles of openness, fairness, efficiency and accountability.

Canada's Green Plan

⁴The Canada Gazette, published under authority of the Statutory Instruments Act, consists of three parts. Part II contains Regulations and other classes of statutory instruments and documents; Part III contains Public Acts of Parliament and their enactment proclamations; Part I contains material required by federal statute or regulation to be published in the Gazette other than items described in Parts II and III. Part I is published every Saturday. It is available from most libraries, from book stores that sell government publications, or through personal subscriptions.

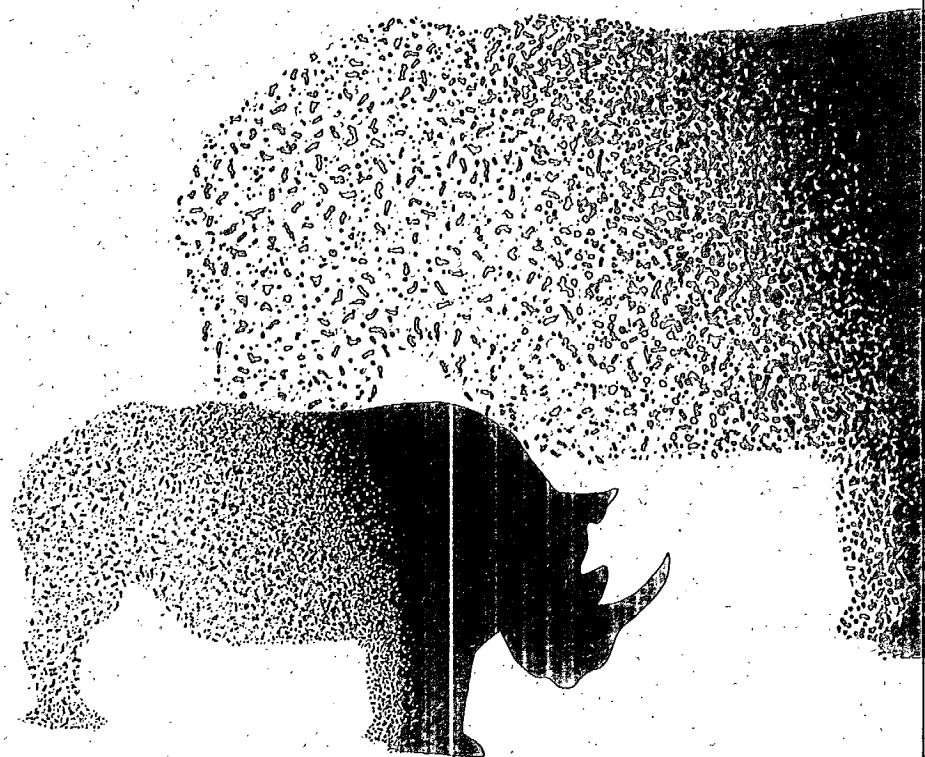
Monitoring Compliance with the Act

As plant and animal species disappear throughout the world at an alarming rate, people and governments are beginning to recognize a responsibility for maintaining the planet's biological diversity.

Canada's Green Plan

Compliance monitoring will show if activities governed by the Act are carried out in accordance with the Act and regulations. Monitoring activities will include:

- conducting regular inspections of documents and shipments at ports-of-entry, and periodic inspections on the premises of affected parties such as businesses that import or export wild animals and plants, or their parts and products;
- obtaining samples of wild animals and plants, or their parts and products, for species identification; and
- monitoring other regulatory requirements, such as those concerning record-keeping and marking of wild animals and plants.



Inspection and Investigation

Wildlife populations in Canada are under considerable stress. Reasons include loss and degradation of habitat, overharvesting and poaching, disease, and the impact of toxic substances.

Canada's Green Plan

INSPECTION

The purpose of an inspection is to routinely verify compliance with the *Wild Animal and Plant Protection Act* and its regulations. Should an inspection suggest a violation, the officer will take appropriate action.

To enter and inspect premises, other than a private dwelling, officers must have reasonable grounds to believe that they contain wild animals or plants, their parts or products, or records relevant to the Act or its administration.

During an inspection, officers may inspect wild animals and plants, their parts and products. They may also open and examine receptacles, containers or packages, take samples, and examine and copy records.

If, during an inspection, officers have reason to believe that a violation is occurring or has taken place, they will select a response, described in the following chapter, that they feel is both appropriate to the nature of the offence and most likely to achieve the desired result. The officer may decide to act immediately, choosing from the available responses, or may initiate a further investigation.

If a situation is urgent (for example, when the delay necessary to obtain a warrant could risk the introduction of a species potentially harmful to Canadian ecosystems or cause loss or destruction of evidence), the officer will respond immediately. The Act empowers officers to act without a warrant, and seize and detain items in urgent situations. In all other circumstances, officers must have a search warrant before they can enter a premises for investigation.

To inspect a private dwelling, officers must obtain the consent of the occupant or present an inspection warrant from a justice of the peace.



INSPECTION PROGRAM

Enforcement officers will routinely monitor imported or exported shipments of wild animals and plants, or their parts and products. They may detain shipments until they are satisfied that the shipments comply with the Act.

Enforcement officers will also check storage facilities for wild animal and plant specimens, as well as pertinent records. The frequency of inspections will depend on how endangered the species is, the harm which could be done to Canadian ecosystems should specimens escape, and the compliance record of the individual or company.

Enforcement officers will verify whether offenders comply with warnings by conducting inspections.

INVESTIGATION

Officers will conduct investigations when they have reasonable grounds to believe that an offence has been, is being or will be committed under the Act. Investigations will involve gathering evidence and information relevant to a suspected violation. Searches are components of investigations, but require warrants in all but the most urgent circumstances—that is, when the delay for obtaining a warrant could risk the introduction of species potentially harmful to Canadian ecosystems or cause loss or destruction of evidence.

With or without a warrant, during a search officers may seize and detain any item that they reasonably believe may have been used to commit an offence under the Act, is related to the commission of an offence, or will provide evidence of an offence. Officers will use their powers of seizure and detention when they believe that the seizure is necessary and in the public interest. They may choose to seize and detain items for the following reasons:

- to prevent the import, export or interprovincial transport of a wild animal or plant, part or product, that was obtained or exported contrary to provincial conservation laws, the conservation laws of another country, or international agreements, or is considered potentially harmful to Canadian ecosystems;
- to prevent possession of a wild animal or plant, part or product traded or transported in violation of the Act;
- to prevent possession of a wild animal or plant, part or product of an endangered species if the specimen is being sold or distributed; or
- to prevent loss or destruction of evidence.

To ensure the well-being of a detained or seized live wild animal or plant, officers may move the wild animal or plant to a location where the specimen will be secure and well cared for. They may also seize any item that they believe was used in the commission of an offence.

Responses to Violations

The illegal trade in wildlife and wildlife products is big business both in Canada and around the world. In some circumstances, it is having a devastating effect on wildlife populations.

Canada's Green Plan

Officers will review suspected or alleged violations. If they determine that there has been no violation or that there is insufficient evidence to warrant further investigation, or to prove that a violation did, in fact, occur, they will take no additional enforcement action. If they can substantiate that a violation did take place, they will choose the appropriate response from those reviewed here.

CRITERIA FOR RESPONSES TO VIOLATIONS

In deciding how to respond to violations, enforcement officers will consider:

- *The nature of the violation*

This includes how endangered the species is, and the degree of harm or potential harm to Canadian ecosystems. Officers will also consider the intent of the alleged violator and whether the violator attempts to conceal information or otherwise thwart the objectives and requirements of the Act.

- *How best to achieve the desired result*

The officer's objective is to achieve compliance with the Act within the shortest possible time and with no recurrence of violation. Factors to be considered include the violator's history of compliance with the Act, willingness to cooperate with enforcement officers, proof that the violator has taken corrective action, and evidence of enforcement actions relating to the same illegal activity but brought under other statutes by other federal or provincial authorities.

- *Consistency in enforcement*

Enforcement officers want to be consistent when deciding what action to take. Accordingly, they will consider precedent cases.

RESPONSES TO VIOLATIONS

Violations will be dealt with in the following ways:

NO ACTION

Occasionally, officers will obtain evidence of an infraction but be unable to locate the offender or determine who committed the offence. In these cases, no action will be taken other than documenting the case and providing for the care and custody

of animals; plants, parts or products, or any other evidence of a violation.

WARNINGS

Officers may give warnings when:

- they have reasonable grounds to believe that a violation of the Act is continuing or has occurred;
- the degree of harm or potential harm to Canadian ecosystems or to the survival of the species is minimal; and
- the warning will stop the illegal activity.

In deciding whether to give warnings or to take more severe enforcement action, officers may also consider whether:

- the individual or company has complied with the *Wild Animal and Plant Protection Act* in the past; and
- the individual or company has made reasonable efforts to remedy or mitigate the consequences of the offence, and plans to avoid further offences.

Enforcement officers can issue warnings verbally or in writing. Verbal warnings may be followed in writing. Warnings will contain the following information:

- the section of the Act or regulations violated;
- a description of the alleged offence;
- if appropriate, a time limit within which the person or company must comply with the warning; and
- a statement that if the warning is not heeded, enforcement officials will take further action, such as issuing a ticket, seizing specimens, or recommending prosecution.

DIRECTIVES BY OFFICERS

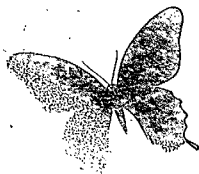
Officers may direct that a wild animal or plant be removed from Canada when:

- they have reasonable grounds to believe that the wild animal or plant was imported in contravention of the Act; and
- there is no immediate risk that the wild animal or plant could be moved, escape or be introduced into Canadian ecosystems.

An officer may direct the company or person that owns, manages or controls the wild animal or plant (or owned, managed or controlled it at the relevant time) to remove it from Canada. A written notice for removal may stipulate a time limit for the removal and describe other terms and conditions considered necessary to safeguard Canadian ecosystems and the wild animal or plant in question. If violators fail to comply with the directive, officers will seize the animal or plant and may prosecute the individual or company.

TICKETING

The Department will develop ticketing regulations that detail ticket offences, and associated fines and procedures for responding to tickets.



**Canadians
must be assured that
poachers will be
prosecuted.**

Canada's Green Plan

Tickets may be given for offences that pose no serious threat to Canadian ecosystems or to the survival of the species involved. Offences that could be ticketed include:

- failure to comply with terms and conditions on permits or notices for removal;
- failure to maintain records as required by regulation; and
- failure to mark or otherwise identify wild animals and plants, or their parts and products, as required by regulation.

SEIZURE

When officers have grounds to believe that a wild animal or plant, part or product is in contravention of the Act, they may seize the specimen and deliver it (or a report on its seizure) to a justice of the peace, who may decide that the item must be forfeited to the Crown. If the accused is being prosecuted, the request to the justice of the peace that the item be forfeited may be delayed until court proceedings have ended.

PROSECUTIONS

Environment Canada will recommend prosecution when evidence indicates that the nature of a violation is serious. Prosecution will be recommended when:

- there is, or has been, serious harm or risk of harm to Canadian ecosystems;
- the actions of the accused are, or have been, detrimental to the survival of the species involved;
- the accused knowingly provided false or misleading information, pretending to comply with the Act;
- the accused obstructed the officer in carrying out duties and responsibilities under the Act; or
- the accused interfered with items seized by an officer under the Act.

PENALTIES UPON CONVICTION

Once an offender has been convicted, enforcement officials will, on behalf of the Minister of Environment, recommend that Crown prosecutors request penalties proportionate to the nature and gravity of the offence. The Act provides for fines, imprisonment, or both. Officers will apply the following criteria when making their recommendations:

- the nature of the violation;
- the effectiveness of the recommended penalty in achieving the desired result (namely, compliance with the Act and no more violations);
- the deterrent effect of the recommended penalty on others, thus ensuring general compliance with the statute; and
- precedent cases.

Conclusion

The conservation and protection of the world's wildlife heritage has become a priority for the people of many countries. In Canada, the new *Wild Animal and Plant Protection Act* will serve as an important instrument for ensuring the future of our own wildlife resources and for meeting our responsibilities as part of the worldwide conservation effort. An effective and fair *Compliance and Enforcement Policy* is essential if the new Act is to achieve these objectives.

ADDITIONAL INFORMATION

PLEASE CONTACT: Director General
Canadian Wildlife Service
Conservation and Protection
Environment Canada
Ottawa, Ontario
K1A 0H3

