

Audit of NSF's Law Enforcement Program in the Antarctic

**National Science Foundation
Office of Inspector General**

**August 30, 2005
OIG 05-2-009**



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Introduction

The United States maintains an active influential presence in Antarctica designed to support the range of U.S. Antarctic interests. After 1971, the U.S. President assigned the National Science Foundation (NSF) overall responsibility for activities in Antarctica. The NSF manages three year-round civilian research stations in Antarctica with a total population in the austral summer¹ of over 1,300 researchers, contractors, and NSF staff. In the austral winter², the population decreases to approximately 250.

Prior to 1984, there were no provisions in the judicial system to prosecute civilians for any criminal activity they might engage in while on the continent of Antarctica. To protect its U.S. citizens, in 1984, Congress expanded federal and special maritime laws to include any offenses committed by or against U.S. nationals in any place outside the jurisdiction of any nation, including Antarctica. The special maritime laws address such crimes as murder, maiming, rape, and arson. The maritime laws also address additional federal offenses, including treason and bribing a federal official.

Special Deputy Appointment

Due to the harsh climate in Antarctica, the two more populated stations, McMurdo and the South Pole, are inaccessible during the austral winter. If a crime was committed during that time, months could elapse before an agent from the Federal Bureau of Investigation (FBI) or a U.S. Marshal could be transported to Antarctica to investigate, and, if necessary, remove the suspect from the continent. For this reason, NSF believed it is essential to have someone in Antarctica during the austral winter authorized to detain a civilian whose freedom of movement endangered others, or to seize and secure evidence essential to the successful prosecution of a serious crime. Thus, in 1992, the NSF initiated discussions with the U.S. Navy, the Departments of Justice and State, the U.S. Attorney's Office, the U.S. Marshals Service, and the FBI. As a result of these discussions, the Deputy Attorney General authorized the U.S. Marshals Service to appoint the NSF Station Chief for Antarctica as a Special Deputy U.S. Marshal, with

¹ The austral summer is normally October through February.

² The austral winter is normally March through September.

the legal authority to arrest, detain or search a civilian in Antarctica (see Appendix B).

Special Deputy Authority

Each NSF Station Chief must comply with the following requirements prior to his appointment as a Special Deputy U.S. Marshal:

- Be a U.S. citizen;
- Be an employee of NSF;
- Successfully complete the standard Federal Law Enforcement Training Center (FLETC) Basic Criminal Investigators course;
- Meet the U.S. Marshals Service's firearms qualification requirements;
- Certify that he has no conviction for domestic violence;
- Comply with the Department of Justice's policy on deadly force; and
- Pass a background check.

Additionally, as a Special Deputy, the Station Chief's authority is restricted to effect sight and probable cause arrests, request and execute arrest warrants, and request and execute arrest warrants only as to exigent circumstances requiring immediate application of criminal law enforcement authority for 24 specific offenses alleged to have been committed by United States persons against other United States persons. [The 24 specific offenses are listed in Appendix B.] As Special Deputy, he is directly supervised by the U.S. Marshals and the U.S. Attorney for the District of Hawaii in the performance of his duties. Finally, NSF must have the deputation reauthorized annually by the U.S. Marshals Service.

Objectives, Scope, and Methodology

Since September 11, 2001, law enforcement has become one of the top priorities of Federal agencies. It is imperative that the safety of U.S. citizens and federal property be protected. The objectives of this audit were to determine if NSF's law enforcement program is effective and to ensure NSF complies with rules and regulations governing the appointment of Special Deputies.

To meet this objective, we conducted research to identify factors important for an effective law enforcement program, including procedures for notification, investigation, and prosecution of criminal activities. We then identified and compared NSF's law

enforcement procedures to these factors. We interviewed the current Special Deputy, NSF personnel, and NSF Antarctic support personnel to identify incidents or concerns they may have regarding law enforcement in Antarctica. Also, we reviewed documentation and conducted interviews to identify any incidents/crimes that have occurred in the past five years to determine if the appropriate law enforcement authorities were properly and timely notified and the procedures were working as intended.

To determine whether NSF is in compliance with rules and regulations governing the appointment of Special Deputy U.S. Marshals, we reviewed the *United States Attorney Manual* to identify the requirements for appointing an individual to a Special Deputy U.S. Marshal. In addition, we reviewed the requirements and restrictions imposed by the Deputy Attorney General in the 1992 authorization letter (see Appendix B) and discussed the appointment procedures with U.S. Marshals Service personnel and NSF personnel. We reviewed appointment documentation to verify that the appointments of the NSF Special Deputies are in compliance with rules and regulation.

We conducted our audit fieldwork between October and December 2004, in accordance with the Comptroller General's standards for audits contained in the *Government Auditing Standards*.

Results of Audit

Overall, NSF's law enforcement program is effective and the Special Deputy appointments comply with the rules and regulations governing the appointment of special deputies. NSF's agreement with the Department of Justice specifies the requirements governing Special Deputy appointments and procedures for prosecuting crimes in Antarctica.

Effective Law Enforcement Program in Antarctica

Because of its remoteness, an effective law enforcement program in Antarctica is critical to ensuring the safety of U.S. citizens and protection of federal property. At a minimum, an effective law enforcement program ensures that citizens and property are protected from immediate harm; evidence is properly secured; incidents are investigated by the appropriate federal agency; investigations are conducted as timely as possible; and investigations are presented to the appropriate prosecutorial authority. In addition, investigations should be conducted by personnel that are properly trained and equipped.

Overall, NSF's procedures and practices ensure a generally effective law enforcement program and are sound. Although NSF has experienced only one serious incident in Antarctica that required law enforcement intervention, when the incident occurred, the Special Deputy followed NSF and Federal law enforcement procedures. Following these procedures resulted in the arrest and successful prosecution of the suspect.

The Special Deputy U.S. Marshal is the station manager at McMurdo and for law enforcement purposes, reports to the U.S. Marshals Service in Hawaii. When a serious incident or crime occurs, NSF procedures call for the Special Deputy to first diffuse any immediate threat to human safety. The Special Deputy then reports the incident to the U.S. Marshals Service and/or the Federal Bureau of Investigation (FBI) in Hawaii.³ Under the FBI's direction, the Special Deputy may arrest or detain a suspect, and/or conduct a search. Because only the Department of Justice has authority to prosecute crimes in Antarctica, the FBI coordinates each investigation with the appropriate U.S. Attorney's office. Thus, the Special Deputy acts under the supervision of the U.S. Marshals Service, the FBI, and the U.S. Attorney to secure evidence and

³ If the incident occurs at Palmer Station in Antarctica, the Special Deputy works with the FBI in Miami, Florida.

detain a suspect until either the FBI or U.S. Marshals arrive to conduct the investigation and take the suspect into custody.

Crime is rare in Antarctica but these procedures were tested when a U.S. citizen assaulted two other U.S. citizens at McMurdo Station in 1996. The Special Deputy properly detained the suspect and promptly contacted the U.S. Marshals Service in Hawaii. Under the direction of the FBI and the U.S. Attorney in Hawaii, the Special Deputy secured the evidence and placed the suspect under continual observation until the FBI Agents arrived and assumed control of the situation. In coordination with the U.S. Attorney's office in Hawaii, the FBI investigated the incident, arrested the suspect, and transported him back to the U.S. for prosecution.

Although NSF's law enforcement program is generally effective, the safety of U.S. citizens and federal property could be enhanced by properly equipping the Special Deputy. The Special Deputy is firearms-qualified; however, he does not carry firearms because NSF does not permit lethal weapons in Antarctica.

Instead, when a crime is committed in Antarctica, the Special Deputy is expected to defuse the situation through verbal discourse. Although the Special Deputies have never been in a situation where they could not control the situation through communication, there is the potential that they could be put in a situation where alternative tools would be necessary. Nevertheless, NSF has not explored equipping the Special Deputy with other non-deadly weapons, such as a baton or pepper spray, to assist him in performing his duties. Without a properly equipped Special Deputy, NSF cannot ensure that the threats or dangers to U.S. citizens can be promptly and safely removed, and citizens' rights and federal property are adequately protected.

Recommendations

To provide the Special Deputy U.S. Marshal in Antarctica with essential tools needed to carry out critical law enforcement duties, we recommend that the Director, Office of Polar Programs:

1-1) Coordinate with the U.S. Marshals Service to select an appropriate non-lethal weapon for the Special Deputy U.S. Marshal to use in Antarctica.

1-2) Issue and train the Special Deputy U.S. Marshal in Antarctica on the non-lethal weapon selected.

NSF Actions

NSF concurred with the recommendations, and has determined that it will equip its Special Deputies with pepper spray and a baton. NSF is currently procuring these non-lethal weapons and expects to have them available for use by the start of the operating season, October 4, 2005. The Special Deputy who will be on duty during the October 2005 to February 2006 season recently completed training on the use of these weapons. The second Special Deputy will complete the training prior to his deployment in February 2006.

NSF's response to the official draft is included in its entirety as Appendix A to this report.

Compliance with Rules and Regulations

NSF is in compliance with rules and regulations governing the appointment of Special Deputies. These rules and regulations are primarily specified in the 1992 Deputation letter from the U.S. Attorney General, the *U.S. Attorney Manual*, and 18 U.S.C. Section 922 (g)(9), the Lautenberg Amendment.⁴

All of the Special Deputy appointments from January 1999 through December 2004 met the requirements listed in the Department of Justice Deputy Attorney General's 1992 Deputation letter and the Department of Justice rules and regulations. Specifically, each of the Special Deputies completed the standard Federal Law Enforcement Training Center (FLETC) Basic Criminal Investigators course, was a NSF employee, was firearms qualified, certified each had no convictions for domestic violence, and agreed to the Department of Justice's policy on the use of deadly force.

⁴ The Lautenberg Amendment prohibits any person who has been convicted of a misdemeanor crime of domestic violence from lawfully possessing a firearm or ammunition. (18 U.S.C § 9(g))

Appendix A: Agency Response

NATIONAL SCIENCE FOUNDATION
4201 Wilson Boulevard
ARLINGTON, VIRGINIA 22230




OFFICE OF POLAR PROGRAMS

MEMORANDUM

DATE: July 18, 2005

TO: Karen Scott
Senior Audit Manager

FROM: Karl A. Erb 
Director, Office of Polar Programs

SUBJECT: Official Draft of Audit of NSF's Law Enforcement Program in the Antarctic

Thank you for your report on NSF's Law Enforcement Program. We are pleased that the report recognized the effectiveness of our program and our compliance with the requirements set out by the Department of Justice. The report notes two recommendations with which we are in complete agreement. We have, since the auditor's visit, consulted with the U.S. Marshal's service in Hawaii. As noted below, we have taken the steps necessary to close the recommendations contained in the report. Implementation of these recommendations will enhance the effectiveness of the Special Deputy and contribute to safeguarding the property and people associated with the U.S. Antarctic Program.

Recommendations

To provide the Special Deputy U.S. Marshal in Antarctica with essential tools needed to carry out critical law enforcement duties, we recommend that the Director, Office of Polar Programs:

1-1) Coordinate with the U.S. Marshals Service to select appropriate non-lethal weapon for the Special Deputy U.S. Marshal to use in Antarctica.

In consultation with the Chief Deputy, Hawaii, and with our own Office of General Counsel, NSF has determined that its Special Deputies will be equipped with pepper spray and a baton. Each will be procured and available at the beginning of the operating season, commencing on October 4, 2005.

1-2) Issue and train the Special Deputy U.S. Marshal in Antarctica on the non-lethal weapon selected.

NSF employs two Station Managers/Special Deputies. One serves on-site from station open in October through close in February, and the second assumes the on-site duties from station close in February through station open in October. The SM/SD scheduled to deploy for station open in October 2005 has already received the recommended training through the Federal Law Enforcement Training Center; training was offered in advanced interviewing and one-on-one training in the use of pepper spray and baton was also provided. The SM/SD scheduled to leave Antarctica in October will receive the same training prior to redeploying in February 2006.

cc: Lawrence Rudolph
Erick Chiang
Susanne LaFratta
Deborah Cureton

Appendix B: U.S. Deputy Attorney General's Authorization

AUG 09 2004 09:31 FR US MARSHALS HAWAII 8085413056 TO 917032929159 P.14/14
DEC-09-2003 17:30 NSF/DK 2032929041 P.08/09



U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 21, 1992

MEMORANDUM

TO: John Twomey
Deputy Director
United States Marshals Service

FROM: George J. Terwilliger
Deputy Attorney General

SUBJECT: Limited Appointment of National Science Foundation Antarctica
Station Chief as Special Deputy United States Marshal.

The Department has reviewed your recommendation of July 7 and consulted with the State Department on NSF's requested authorization. You are authorized to appoint the NSF Station Chief for Antarctica as a Special Deputy United States Marshal with the following restrictions:

- A. that NSF's Station Chief, and each of his successors, undertake the standard FLETC Basic Criminal Investigators course,
- B. that the deputization run from January 1 - December 31, 1993, subject to annual reauthorization;
- C. that the deputization be restricted to authorize sight and probable causes arrests, request for and execution of arrest warrants, and request for and execution of arrest warrants only as to exigent circumstances requiring immediate application of criminal law enforcement authority under the following specific offenses alleged to have been committed by United States persons against other United States persons:
 1. 16 U.S.C. § 2408 (taking of flora and fauna in Antarctica; despoliation or pollution of restricted area),
 2. 18 U.S.C. § 32(a) & (b) (destruction of aircraft),

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3. 18 U.S.C. § 81 (arson),
4. 18 U.S.C. § 113 (assaults),
5. ~~18 U.S.C. § 114 (maiming),~~
6. 18 U.S.C. § 351 (assault on specific officials),
7. 18 U.S.C. § 641 (theft or embezzlement of government property),
8. 18 U.S.C. § 661 (theft and embezzlement),
9. 18 U.S.C. § 662 (receiving stolen property),
10. 18 U.S.C. § 844(f) (destruction by fire or explosives),
11. 18 U.S.C. § 1111 (murder),
12. 18 U.S.C. § 1112 (manslaughter),
13. 18 U.S.C. § 1113 (attempt to commit murder or manslaughter),
14. 18 U.S.C. § 1114 (assault on a protected federal official),
15. 18 U.S.C. § 1201 (kidnapping),
16. 18 U.S.C. § 1203 (hostage taking),
17. 18 U.S.C. § 1361 (malicious destruction),
18. 18 U.S.C. § 1512 (tampering with a witness, victim or informant),
19. 18 U.S.C. § 2111 (robbery),
20. 18 U.S.C. § 2241 (aggravated sexual abuse),
21. 18 U.S.C. § 2242 (sexual abuse),
22. 18 U.S.C. § 2243 (sexual abuse of a minor or ward),
23. 18 U.S.C. § 2244 (abusive sexual contact), and
24. 49 U.S.C. App. § 1472(n) (aircraft hijacking); and

D. that the United States Marshal and United States Attorney for the District of Hawaii directly supervise the work of the Station Chief in performing the duties of Special Deputy United States Marshal.