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# The Green Fourth Amendment

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*Fourth Amendment law has developed almost entirely through the lens of urban policing. This Article identifies and critiques a parallel body of constitutional law that governs searches and seizures by conservation law enforcement officers in forests, waterways, and public lands. It calls this law the Green Fourth Amendment and describes the distinct set of statutory authorizations and judicial doctrines that comprise it.*

*Drawing on an original empirical analysis of more than 300 state and federal court decisions and a comprehensive survey of statutes from all fifty states, this Article maps how foundational Fourth Amendment doctrine operates differently when conservation law enforcement is at stake. It shows that courts have applied the open fields doctrine to extinguish privacy interests across vast categories of land, treated participation in a licensed recreational activity as blanket consent to warrantless inspection, approved roving suspicionless stops, and endorsed a form of “sportsman profiling” that permits stops based on appearance and location rather than individualized suspicion of wrongdoing.*

*Although conservation police work in a unique context, doctrinal erosion has consequences far beyond the conservation law enforcement context. This Article argues that weakened Fourth Amendment constraints migrate into traditional policing through interagency partnerships and doctrinal precedent and could extend to any licensed or regulated activity. The Green Fourth*

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*Amendment further destabilizes principles that structure existing constitutional criminal procedure — including the prohibition on suspicionless stops, the distinction between administrative and criminal searches, and the requirement that asserted government interests receive genuine rather than reflexive judicial scrutiny. By identifying and mapping the Green Fourth Amendment, this Article raises fundamental questions for criminal procedure about the scope of the reasonableness inquiry, the coherence of the administrative search and special needs exceptions to the warrant requirement, and the role of place and activity in defining constitutional protection.*

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## INTRODUCTION

Imagine walking down a busy street after a day of shopping. You sense someone following you and turn to see a police officer. The officer grips your arm and leads you away from the crowd before quickly patting down your coat. As a matter of law, you have been searched and seized, and the officer's actions are constrained by the Fourth Amendment.<sup>1</sup> Absent a warrant, the rule in this circumstance is clear: the officer's search and seizure were permissible only if there was reasonable suspicion that crime was afoot and that you were armed and dangerous.<sup>2</sup>

Now imagine that you are hunting deer in the woods, fishing on a quiet lake, or navigating a boat along a river when you are stopped by a law enforcement officer. The officer inspects your gear, checks your

<sup>1</sup> See *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

<sup>2</sup> See *id.* at 27.

license, and looks through your bags — all without any suspicion of wrongdoing.<sup>3</sup> In these settings, officers often can do all that without a warrant or probable cause — indeed, often without having any suspicion of wrongdoing at all.<sup>4</sup> Why does the Fourth Amendment not limit the officer's actions in the same way in these contexts? Is it because outdoor recreation is inherently different from street-level conduct, or does this distinction reveal something deeper about how we value the natural environment and the freedom of people who engage in the activities that impact it?

These questions aren't just a matter of abstract legal curiosity; they have real consequences for the millions of Americans who engage in outdoor activities such as fishing, hunting, and boating.<sup>5</sup> For example, conservation law enforcement officers in just one federal agency investigated more than 40,000 cases over a four-year period, resulting in a total of over \$26 million in criminal fines, 90 years in prison, and 1,303 years of probation.<sup>6</sup> Even in the least populous states, conservation law enforcement officers uncover thousands of violations and courts impose significant jail sentences in response to those crimes.<sup>7</sup> Yet the rules governing searches and seizures in these contexts diverge sharply from those applied in more traditional policing contexts.<sup>8</sup> These

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<sup>3</sup> See Ed R. Haden & Adam K. Israel, *The Fourth Amendment, Game Wardens, and Hunters*, 46 CUMB. L. REV. 79, 79-80 (2015).

<sup>4</sup> See *infra* Parts II and III.

<sup>5</sup> See U.S. FISH & WILDLIFE SERV., 2022 NATIONAL SURVEY OF FISHING, HUNTING, AND WILDLIFE-ASSOCIATED RECREATION 47, 62-63 (2023) (noting that more than 48,000,000 Americans boat, 39,000,000 fish, and 14,000,000 hunt); Don C. Gibbons, *Crime in the Hinterland*, 10 CRIMINOLOGY 177, 178 (1972).

<sup>6</sup> U.S. FISH & WILDLIFE SERV., OFF. OF L. ENF'T, 2019 ANNUAL REPORT 44 (2019); see also Monique C. Sosnowski, Yuna Kim, Gohar A. Petrossian & Marcus Asner, *Profiling Wildlife Crime Prosecuted Federally by the United States*, 2 FRONTIERS CONSERVATION SCI., no. 811516, at 1, 4-6, 8-9 (2020) (surveying prosecution and sentences imposed for federal wildlife crimes from 2011 to 2018).

<sup>7</sup> See, e.g., S.D. GAME, FISH & PARKS, 2023 LAW ENFORCEMENT ANNUAL REPORT 20 (2023) (noting that South Dakota's wildlife law enforcement discovered more than 2,500 violations in 2023 for which the violators were sentenced to 33,000 days of jailtime); WY. GAME & FISH DEP'T, 2021 ANNUAL LAW ENFORCEMENT REPORT 45-46 (2021) (noting that Wyoming's Game and Fish Department encounters more than 3000 violations each year).

<sup>8</sup> See *infra* Parts IV and V.

differences point to a tension between individual rights and the government's interest in maintaining public safety in outdoor, mostly rural spaces.<sup>9</sup>

In what follows, I analyze these different rules as a unique form of constitutional regulation, which I call “the Green Fourth Amendment.” Briefly stated, the Green Fourth Amendment encapsulates a distinct balance between state and society, where interests in conservation and environmental protection alter the traditional constraints on police investigatory actions. As it articulates and elaborates the Green Fourth Amendment, this Article makes two empirical claims about conservation policing. The descriptive claim is that state legislatures and courts have recognized broad investigatory authority in conservation law enforcement that goes beyond that which is normally tolerated in traditional policing. The interpretive claim is that the Green Fourth Amendment gives rise to criminal procedure rules that operate differently with respect to conservation law enforcement. Examining cases involving conservation law enforcement reveals new understandings of governmental interests and expectations of privacy that go beyond, or even contradict, conventional interpretations of “reasonableness” in other cases.<sup>10</sup>

To proceed with these claims requires understanding how policing unfolds in wilderness and rural contexts and how such policing is implemented in practice. Part I develops that explanation. It describes the law enforcement activities carried out by officers who are

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<sup>9</sup> See Alyse Bertenthal, *Environmentalists' Latent Abolitionism*, 72 UCLA L. REV. 1132, 1132 (2026) (noting the tension between abolition of criminal enforcement and pursuing robust environmental protection).

<sup>10</sup> The Supreme Court has repeatedly emphasized that the “touchstone of the Fourth Amendment is reasonableness,” which is calculated by balancing the extent of the intrusion against the government's interests. *Michigan v. Fisher*, 588 U.S. 45, 47 (2009) (per curiam); see, e.g., *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (“The touchstone of the Fourth Amendment is reasonableness.”) (internal quotations omitted); *Samson v. California*, 547 U.S. 843, 855 n.4 (2006) (same); *Illinois v. McArthur*, 531 U.S. 326, 330 (2001) (stating that the “central requirement” of the Fourth Amendment “is one of reasonableness”) (internal quotation marks omitted); Christopher Slobogin, *The World Without a Fourth Amendment*, 39 UCLA L. REV. 1, 70 (1991) (noting that “[t]he most fundamental guideline . . . in determining whether a search or seizure is ‘reasonable’” is that “competing state and individual interests must be balanced”).

responsible for preserving order in rural and wilderness areas. “Known variously as wildlife management agents, fish and game wardens, park rangers, conservation agents, natural resources police, and conservation police officers,” they are sworn peace officers who fulfill a unique and specialized mission of protecting the nation’s wildlife and natural resources.<sup>11</sup> Despite their specialization, these officers are, indeed, police: like other law enforcement officers, they conduct investigations, collect evidence, perform searches, and make arrests.<sup>12</sup>

This Article frames the constitutional constraints on conservation law enforcement officers as a significant legal phenomenon — one that challenges conventional ideas about individual privacy and state power. Part II traces the development of these constraints in state legislation. Drawing from a collection of statutes in all fifty states, I analyze statutory definitions of conservation officers’ search and seizure powers and show how these powers often exceed those granted to traditional police officers under the conventional Fourth Amendment.

In Part III, I show how courts have evaluated the constitutionality of such statutes and created novel interpretations of the Fourth Amendment’s reasonableness requirement for conservation law enforcement officers. What emerges is a unique legal landscape where the state’s regulatory interests eclipse an individual’s constitutional protections, creating a distinct zone of interaction between law enforcement and the public. Drawing from an original content analysis of more than 1,000 state and lower federal court decisions involving searches and seizures by conservation law enforcement, I demonstrate that even where statutory rules are similar for conservation officers and traditional peace officers, courts have interpreted those rules to broaden conservation officers’ investigatory powers. Taken together,

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<sup>11</sup> David Falcone, *America’s Conservation Police: Agencies in Transition*, 27 *POLICING* 56, 56 (2004); see also Clark R. Bavin, *Wildlife Law Enforcement*, in *WILDLIFE AND AMERICA* 350, 353 (Howard P. Brokaw ed., 1978); see also David Falcone, *America’s Conservation Police: Agencies in Transition*, 27 *POLICING* 56, 56 (2004) (“Known variously as wildlife management agents, fish and game wardens, park rangers, conservation agents, natural resources police, and conservation police officers, these sworn natural resource protectors are most often employees of state government.”). In this Article, I use “conservation officers” except when quoting or discussing cases or literature that employs different terms.

<sup>12</sup> See HARRY CHASE, *POWERS, DUTIES AND WORK OF GAME WARDENS* 11-13 (1910).

these interpretations and subsequent rules give rise to the Green Fourth Amendment.

Part IV considers why the Green Fourth Amendment matters beyond the conservation context. It examines how the doctrinal erosion documented in Part III threatens to spill over into traditional policing through officer partnerships and mission creep, how the Green Fourth Amendment's logic could extend to any licensed or permitted activity, and how it destabilizes core Fourth Amendment principles that constrain suspicionless stops and searches in other regulatory contexts. We should be concerned about different legal approaches to regulating conservation police because meaningful Fourth Amendment protections are at risk. Yet, at a time when regulatory authority — especially when used by conservation and environmental protection agencies — is under threat, there is potential value to be found in the novel ways courts frame governmental interests in criminal cases involving threats to nonhuman nature.<sup>13</sup> This Article concludes by evaluating the potential pitfalls and promises of a Green Fourth Amendment and proposes reforms that would preserve effective conservation enforcement while restoring constitutional constraints.

## I. THE GREEN POLICE

Over the years, a vast and wide-ranging literature has examined U.S. police culture and practice from a variety of perspectives.<sup>14</sup> By comparison, scholars have paid scant attention to the police who

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<sup>13</sup> See Jake Spring & Amudalat Ajasa, *How Trump Officials Have Transformed the EPA to Weaken Enforcement*, WASH. POST (Nov. 7, 2025, 6:00 AM), <https://www.washingtonpost.com/climate-environment/2025/11/07/epa-environment-enforcement-deregulation/>.

<sup>14</sup> See, e.g., Laure Weber Brooks, *Police Discretionary Behavior*, in CRITICAL ISSUES IN POLICING 122, 122-23 (Roger G. Dunham & Geoffrey P. Alpert eds., 2015) (surveying research concerning the situational, organizational, environmental, and officer characteristics that influence the exercise of police discretion). See generally Anthony A. Braga, Ron K. Brunson & Kevin M. Drakulich, *Race, Place, and Effective Policing*, 45 ANN. REV. SOCIO. 535 (2019) (surveying literature that examines how police approach crime in different places); Jeffrey T. Martin, *Police and Policing*, 47 ANN. REV. ANTHROPOLOGY 133 (2018) (surveying anthropological research on police and policing); Greg Ridgeway, *Policing in the Era of Big Data*, 1 ANN. REV. CRIMINOLOGY 401 (2018) (surveying studies examining how police make use of data).

enforce boating, fish, game, and environmental laws in America.<sup>15</sup> This oversight is striking, given the crucial role these officers play in safeguarding our public lands and natural resources.<sup>16</sup>

Studying conservation law enforcement can be challenging because there is a lack of reliable, publicly available data about them. Three-quarters of Americans say they know little or nothing about conservation police.<sup>17</sup> Conservation officers are rarely subjects of media or political attention. They are overlooked in conversations about police reform and seldom scrutinized by special interest groups or oversight organizations. We lack comprehensive information about the types of violations subject to enforcement actions and about the types of enforcement that are commonly used.<sup>18</sup> What we do know about conservation law enforcement comes primarily from self-reported data, and those reports vary significantly in terms of the detail they make available.<sup>19</sup>

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<sup>15</sup> See Stephen L. Eliason, *Throwing the Book Versus Cutting Some Slack: Factors Influencing the Use of Discretion by Game Wardens in Kentucky*, 24 *DEVIANT BEHAV.* 129, 130 (2003); see also Stephen D. Mastrofski, *Controlling Street-Level Police Discretion*, 593 *ANNALS AM. ACAD. POL. & SOC. SCI.* 100, 107 (2004) (“The vast majority of studies focus on relatively large municipal police forces, leaving mostly unexplored small urban departments, sheriff’s departments, rural agencies, special police agencies, and large but geographically dispersed state police agencies.”).

<sup>16</sup> See James A. Swan, *Thin Green Line: The Heroic Work of Game Wardens*, AM. FORESTS, <https://www.americanforests.org/article/thin-green-line-the-heroic-work-of-game-wardens/> (last visited Jan. 14, 2026) [<https://perma.cc/YZ3H-WA6F>]; *What We Do*, NAT’L ASS’N CONSERVATION L. ENF’T CHIEFS, <https://naclec.org/about> (last visited Jan. 14, 2026) [<https://perma.cc/X9PW-9BGM>].

<sup>17</sup> NAT’L ASS’N OF CONSERVATION L. ENF’T CHIEFS, *PLANNING FOR THE FUTURE OF CONSERVATION LAW ENFORCEMENT IN THE UNITED STATES*, at v (2021), [http://drive.google.com/file/d/1zuxcaCE\\_FhqG7Edcqalki5X8NtygI3nr/view](http://drive.google.com/file/d/1zuxcaCE_FhqG7Edcqalki5X8NtygI3nr/view) [<https://perma.cc/5GB9-Q6FJ>].

<sup>18</sup> There are a few studies of conservation law enforcement activity, but these are site-specific and do not contain significant details about violations. See, e.g., Michael J. Lynch, Paul B. Stretesky & Michael A. Long, *Wildlife Officer Enforcement Activities in Colorado, 2005-2014*, 25 *HUM. DIMENSIONS WILDLIFE* 544, 548, 549, 552 (2020) (reporting citations issued by Colorado conservation officers); John C. Sherblom, Lisa Keränen & Leslie A. Withers, *Tradition, Tension, and Transformation: A Structuration Analysis of a Game Warden Service in Transition*, 30 *J. APPLIED COMMUN. RES.* 143, 144 (2002) (reporting game warden activities in Maine).

<sup>19</sup> For example, West Virginia makes available the numbers of citations and arrests for natural resource violations. See W. VA. DEP’T NAT’L RES., *ANNUAL REPORT 2023-2024*,

There also exists a subset of sociological research on conservation law enforcement, primarily derived from case studies of specific agencies. That work has engaged principally with topics related to agencies' organizational structure, officer behaviors, conservation agencies' resources and policies, conservation officers' discretionary decisions, and job stress and officers' wellbeing.<sup>20</sup> Insights derived from those studies are amplified, and often sensationalized, by popular literature and reality television shows.<sup>21</sup> What emerges is a somewhat blurry picture of a "police power in green," which both resembles and exceeds that of traditional law enforcement.<sup>22</sup>

Sharpening this picture is essential to evaluating the rules that govern conservation law enforcement officers. Drawing from existing literature as well as understudied and often overlooked primary sources, this Part

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at 48 (2023), [https://wvdnr.gov/wp-content/uploads/2025/01/Pub\\_AnnualReport\\_FY\\_2024\\_DNR\\_digital\\_20250108.pdf](https://wvdnr.gov/wp-content/uploads/2025/01/Pub_AnnualReport_FY_2024_DNR_digital_20250108.pdf) [<https://perma.cc/W559-7RNQ>]. Other states just publish general counts of arrests and citations without specifying the violations. *See, e.g.*, MICH. DEP'T NAT'L RES., ANNUAL REPORT 1, 9 (2020) (reporting results of conservation law enforcement operation targeting illegal fishing activity on the Betsie and Platt rivers). Most states do not publish information about investigatory actions or outcomes at all.

<sup>20</sup> *See, e.g.*, Timothy J. Carter, *Police Use of Discretion: A Participant Observation Study of Game Wardens*, 27 *DEVIANT BEHAV.* 591, 596-620 (2006) (surveying factors that influence conservation officers' exercise of discretion); Stephen Eliason, *Factors Influencing Job Satisfaction Among State Conservation Officers*, 29 *POLICING* 6, 11-14 (2006) (analyzing varying levels of conservation officers' job satisfaction); Craig J. Forsyth, *Bookers and Peacemakers: Types of Game Wardens*, 14 *SOCIO. SPECTRUM* 47, 50-59 (describing conservation officers' policing styles); Logan Ledford, Dustin Osborne, Bradley Edwards & Ben Stickle, *Conservation Officer Perceptions of Stress Associated with Traditional Policing Duties*, 17 *POLICING* 1, 3-4 (2022) (describing sources of conservation officers' stress).

<sup>21</sup> *See generally* TONY H. LANTHAM, *BEHIND A THIN GREEN LINE* (2017) (describing the author's experiences as an undercover game warden); JOHN NORES JR. & JAMES A. SWAN, *WAR IN THE WOODS* (2010) (discussing game wardens' efforts to eradicate marijuana farms on public lands); *NORTH WOODS LAW* (Animal Planet 2012) (conservation officers in Maine); *WILD JUSTICE* (National Geographic 2010) (conservation officers in California); *LONE STAR LAW* (Animal Planet 2016) (conservation officers in Texas); *RUGGED JUSTICE* (Animal Planet 2015) (conservation officers in Alaska); *LOUISIANA LAW* (Animal Planet 2021) (conservation officers in Louisiana); *WARDENS* (Outdoor Channel 2010) (conservation officers in Montana).

<sup>22</sup> Francis Massé, *Police Power in Green: Furthering Political Ecologies of the State*, 97 *POL. GEOGRAPHY*, no. 102627, at 1, 2 (2022).

takes on that task. It presents a historical overview of the evolution of conservation law enforcement, discusses conservation officers' unique roles and responsibilities, and highlights the similarities and differences between conservation police and their municipal counterparts.

*A. Origins and Evolution of Conservation Police*

Conservation policing, in one form or another, has a long history, dating to at least thirteenth-century England, where warreners and foresters patrolled the gentry's lands and punished poachers.<sup>23</sup> When the colonists broke with England and created an independent nation, they experienced not just freedom from the King's rule but also freedom from restrictions on hunting and fishing on the King's lands.<sup>24</sup> However, they soon learned the necessity of regulation: without it, once-abundant wildlife populations were rapidly depleted. Faced with this reality, local governments moved to constrain fishing and hunting.<sup>25</sup> Initially, enforcement of these laws fell to individuals loosely authorized to prosecute suspected violators in exchange for payment from fines collected from those found guilty.<sup>26</sup> Eventually, states anointed officers to take over the enforcement of game laws.<sup>27</sup> By 1906, game wardens existed in all but one state, leaving, as one warden proudly proclaimed, "scarcely a wild bird or animal which does not come under [the warden's] protection."<sup>28</sup>

The wardens were not always effective. They confronted numerous challenges, including lack of funding and personnel, as well as public apathy — and sometimes outright opposition — to conservation

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<sup>23</sup> See Jean Birrell, *Who Poached the King's Deer? A Study in Thirteenth Century Crime*, 7 MIDLAND HIST. 9, 10 (2013).

<sup>24</sup> See David H. Getches, *The Law of Wildlife Protection in the United States*, in PROCEEDINGS OF THE SINO-AMERICAN CONFERENCE ON ENVIRONMENTAL LAW 84 (1987).

<sup>25</sup> See Michael R. Conover & Denise O. Conover, *Historical Forces Shaping Americans' Perceptions of Wildlife and Human-Wildlife Conflicts*, 8 PROC. E. WILDLIFE DAMAGE MGMT. CONF. 1, 3 (1997).

<sup>26</sup> See SYLVESTER JUDD, HISTORY OF HADLEY 357 (Northampton, Metcalf & Co. 1863).

<sup>27</sup> See Getches, *supra* note 24, at 88.

<sup>28</sup> CHASE, *supra* note 12, at 14.

programs.<sup>29</sup> Officers often worked alone and with little supervision, making it difficult to ensure quality and impose accountability.<sup>30</sup> One federal wildlife management official summed it up this way:

In the early years of game management in this country, the game warden was seldom a man to be looked up to in the community. Rather he was the village loafer who could swing a few votes at election time. He usually liked to hunt and fish, but as an enforcement officer he just didn't rate.<sup>31</sup>

Concerns about efficacy mounted as an increasingly powerful conservation movement spurred the passage of new laws aimed at protecting the country's fish, wildlife, and natural resources.<sup>32</sup> By the turn of the twentieth century, state legislatures had enacted nearly 700 fish and game laws, many of which carried criminal sanctions.<sup>33</sup> Yet, as one game warden observed, those laws mostly laid "dormant through lack of adequate means of enforcement."<sup>34</sup>

At first, newly constituted offices of sheriffs, constables, and police took up the responsibility for enforcing those laws.<sup>35</sup> However, it proved

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<sup>29</sup> See JAMES B. TREFETHEN, *AN AMERICAN CRUSADE FOR WILDLIFE* 167 (Winchester Press 1975).

<sup>30</sup> Stephen L. Eliason, *From Wildlife Specialist to Police Generalist? The Scope of Nonwildlife Violations Encountered by Conservation Officers*, 4 SW. J. CRIM. JUST. 120, 122 (2007) [hereinafter Eliason, *From Wildlife Specialist to Police Generalist*].

<sup>31</sup> RAY P. HOLLAND, *NOW LISTEN, WARDEN*, at ix (1946).

<sup>32</sup> See generally Newlands Reclamation Act, ch. 1093, 32 Stat. 388 (1902) (establishing a "reclamation fund" to facilitate reclamation of arid lands); Lacey Act of 1900, ch. 553, 31 Stat. 187 (1900) (amended 1981) (creating a federal crime to poach game); Forest Reserve Acts, ch. 561, § 24, 26 Stat. 1095, 1103 (1891) (allowing the President to reserve "public land bearing forests").

<sup>33</sup> See T.S. Palmer, *Preface* to R.W. WILLIAMS, *GAME COMMISSIONS AND WARDENS* 9 (1907); see, e.g., OHIO REV. CODE ANN. § 6960 (1900); N.Y. REV. STAT. § 1.48 (1881) (creating "game and fish protectors"); N.C. Code §§ 1058, 1059 (1883) (enacting hunting restrictions).

<sup>34</sup> Palmer, *supra* note 33, at 9.

<sup>35</sup> See Thomas Lund, *Nineteenth Century Wildlife Law: A Case Study of Elite Influence*, 33 ARIZ. ST. L.J. 935, 978 n.237 (2001); Bruce A. Lemmert, *Virginia Game Wardens Celebrate One Hundred Years*, VA. WILDLIFE MAG., May 2003, at 4, 8, <https://dwr.virginia.gov/conservation-police/history/> [<https://perma.cc/2GES-DKE5>] (explaining that "those people interested in protecting or managing wildlife realized

difficult for police to keep up with violations of the fish and game code in addition to their other responsibilities for enforcing the general criminal code.<sup>36</sup> Thus, a growing number of officials advocated for the separation of generalist police and conservation police, arguing that only those with specialized expertise could effectively enforce the ever-increasing number of laws relating to wildlife and natural resources.<sup>37</sup>

States responded by creating new departments of natural resources to manage the impacts of people fishing, hunting, and recreating outdoors.<sup>38</sup> In most states, conservation police were absorbed into the new agencies.<sup>39</sup> The development of centralized conservation agencies with salaried law enforcement officers proceeded incrementally — and often with substantial modifications — for nearly half a century.<sup>40</sup> As conservation law enforcement became increasingly centralized so too did hiring and recruitment processes. Conservation officers became salaried state employees, rather than political appointees who served at the pleasure of local officials.<sup>41</sup> Whereas early game wardens had little to no formal training, contemporary conservation officers enroll in police academies, where they gain the same skills and physical

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that unless someone was specifically assigned to enforce wildlife law, it simply would not get done”).

<sup>36</sup> See, e.g., THEODORE S. PALMER, C.E. BREWSTER & FRANK L. EARNSHAW, *GAME LAWS FOR 1912: A SUMMARY OF THE PROVISIONS RELATING TO SEASONS, SHIPMENTS, SALE, LIMITS, AND LICENSES* 9-16 (1912) (detailing proliferation of fish and game laws).

<sup>37</sup> See, e.g., CHASE, *supra* note 12, at 8 (“We are decidedly of the opinion that the enforcement of the laws is more important than the laws themselves . . . . The work of the game warden who is charged with enforcing the laws in his line of work is a distinct branch of to-day and the future.”).

<sup>38</sup> See Falcone, *supra* note 11, at 59; see, e.g., Paul Holton, *NRB Turns 50*, WIS. NAT’L RES. MAG., <https://dnr.wisconsin.gov/about/NRB/NRB-history.html> (last visited Mar. 7, 2026) [<https://perma.cc/AKV4-TGSJ>] (describing establishment of conservation law enforcement agency in Wisconsin); see also Ryan Patten, Matthew S. Crow & Tara O’Connor Shelley, *What’s in a Name? The Occupational Identity of Conservation and Natural Resources Oriented Law Enforcement Agencies*, 40 AM. J. CRIM. JUST. 750, 757 (describing attributes of conservation law enforcement agencies in all fifty states).

<sup>39</sup> See Falcone, *supra* note 11, at 61.

<sup>40</sup> WILLIAMS, *supra* note 33, at 11.

<sup>41</sup> See Falcone, *supra* note 11, at 57.

conditioning as their counterparts in other law enforcement agencies.<sup>42</sup> They are also trained in such practices as arrest procedures and use of firearms.<sup>43</sup> Most states and the U.S. Fish and Wildlife Service mandate additional, specialized training for conservation officers, which includes environmental management specific to their region, identification of plant and animal species, and skills such as driving boats and All-Terrain Vehicles (ATVs).<sup>44</sup>

Those extended training programs reflect the breadth of the responsibilities assigned to conservation officers.<sup>45</sup> Understanding their hybrid roles as specialist and generalist police officers can be helpful in assessing whether and how conservation officers' activities fit with commonly understood constitutional doctrines regulating police investigations. The next section provides that background.

### B. Conservation Officers' Roles and Responsibilities

In his 1912 "handbook" for wildlife officers, former Vermont game warden Harry Chase offered what he called a "leading maxim" for wardens: "There ain't any violators where there ain't any game or fish, 'cause there ain't anything to violate."<sup>46</sup> The implication was obvious: Wildlife officers should protect fish and game and leave the rest to other sworn officers.

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<sup>42</sup> See, e.g., Paul J. Benoit, *From Fish and Wildlife Officer to Environmental Conservation Officer*, 1 WILDLIFE SOC'Y BULL. 128, 128-29 (1973) (providing sample training schedule for New York's conservation officers).

<sup>43</sup> See *id.*

<sup>44</sup> Ninety-four percent of the states require their wildlife officers to attend state certified police academies in addition to specialized wildlife training. Patten et al., *supra* note 38, at 758. For example, Special Agents of the U.S. Fish and Wildlife Service receive basic criminal investigator training at the Federal Law Enforcement Training Center. Following the eight-week course, they attend five additional weeks of Special Agent Basic School conducted by the Service. After their formal training, officers are stationed at selected posts where on-the-job training and close supervision follow for the next year to year and a half. *Law Enforcement Training*, U.S. FISH & WILDLIFE SERV. (2005), <https://www.fws.gov/policy-library/232fw2> [<https://perma.cc/9VBV-5JSC>].

<sup>45</sup> See Tara O'Connor Shelley & Matthew S. Crow, *The Nature and Extent of Conservation Policing: Law Enforcement Generalists or Conservation Specialists?*, 34 AM. J. CRIM. JUST. 9, 24 (2009) [hereinafter Shelley & Crow, *The Nature and Extent of Conservation Policing*].

<sup>46</sup> CHASE, *supra* note 12, at 127.

Much has changed since that 1912 publication. Although conventional wisdom holds that conservation law enforcement “remains a unique style of policing,”<sup>47</sup> recent studies of conservation law enforcement reveal many similarities between conservation officers and traditional law enforcement officers. Conservation officers do more than regulate fishing and hunting.<sup>48</sup> They protect natural resources from illegal harvesting, habitat destruction, and other violations.<sup>49</sup> They provide hunter, angler, and water safety programs, and enforce vehicle codes, snowmobile laws, and other state and federal statutes.<sup>50</sup> They apprehend criminal suspects, conduct searches for missing persons, and assist other law enforcement agencies with criminal investigations and public safety tasks.<sup>51</sup> In many states, conservation officers operate with full law enforcement authority.<sup>52</sup>

Conservation law enforcement agencies have changed as well.<sup>53</sup> Many agencies today impose performance standards for inspections made, warnings handed out, citations issued, and prosecutions obtained.<sup>54</sup> Agencies increasingly hire officers with an interest in law enforcement but little or no experience in hunting, fishing, and boating.<sup>55</sup> As one commentator noted, such changes have cast “the conservation police into a more police-like role. . . . [T]he image of the conservation police officer as a limited function game warden is quickly waning.”<sup>56</sup>

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<sup>47</sup> Stephen Eliason, *Becoming a Game Warden: Motivations for Choosing a Career in Wildlife Law Enforcement*, 32 J. POLICE & CRIM. PSYCH. 28, 28 (2017).

<sup>48</sup> Typical responsibilities of conservation law enforcement include: enforcing fish and wildlife laws, engaging in search and rescue operations, enforcing recreational vehicle laws, providing safety education for hunters, trappers, boaters, snowmobilers, and all-terrain vehicle operators, and fostering good relations between outdoor enthusiasts and private landowners.

<sup>49</sup> See, e.g., Falcone, *supra* note 11, at 57 (summarizing responsibilities of conservation officers in Illinois); Sherblom et al., *supra* note 18, at 144.

<sup>50</sup> See Sherblom et al., *supra* note 18, at 144.

<sup>51</sup> See *id.*

<sup>52</sup> See *infra* Fig. 1; APPENDIX A.

<sup>53</sup> See, e.g., Benoit, *supra* note 42, at 130 (“Before, the ECO [Environmental Conservation Officer] was proud to be the guardian of wildlife resources; he is now prouder than ever to picture himself as a protector of the total environment.”).

<sup>54</sup> See Sherblom et al., *supra* note 18, at 153.

<sup>55</sup> See *id.* at 160.

<sup>56</sup> Falcone, *supra* note 11, at 61-62.

Indeed, conservation officers play a “de facto dual enforcement role,” one in which they continue to enforce fish, game, and boating laws, but also increasingly operate as generalist police who investigate and enforce crimes like drug possession and domestic violence.<sup>57</sup> In carrying out their work, conservation officers employ techniques “strikingly similar to those of the urban police officer,” including observation, patrol, stakeouts, use of decoys, and the use of informants.<sup>58</sup> One officer quoted in a research survey put it bluntly: “The job has changed. You do [have] more of a traffic cop mentality . . . .”<sup>59</sup> Given these changes, the conservation officer’s job is probably best understood as traditional policing, but where the officers “happen to (mostly) ply their trades in ‘forests, fields, and waterways.’”<sup>60</sup>

Those locations comprise vast expanses of wilderness and rural areas, making the conservation officer’s job unique. Conservation officers patrol state and federal parks, forests, waterways, wetlands, hunting preserves, and private property; in short, their jurisdiction covers virtually everywhere except major metropolitan areas.<sup>61</sup> Notably, they have relatively few officers to cover all this territory and those who are in it. For example, Virginia’s 167 conservation officers cover 203,000

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<sup>57</sup> See Eliason, *From Wildlife Specialist to Police Generalist*, *supra* note 30, at 122 (describing conservation law enforcement agencies as “full service police agencies”); Falcone, *supra* note 11, at 62 (same); see, e.g., Shelley & Crow, *The Nature and Extent of Conservation Policing*, *supra* note 45, at 24 (describing variety of nonwildlife crimes enforced by Florida conservation officers); Joanne F. Tynon & Deborah J. Chavez, *Adopting a Tourism Crime Typology: Classifying Outdoor Recreation Crime*, 44 J. TRAVEL RSCH. 298, 299-300 (describing “urban crime” in a National Forest recreation setting).

<sup>58</sup> Craig J. Forsyth, *Chasing and Catching “Bad Guys”: The Game Warden’s Prey*, 14 DEVIANT BEHAV. 209, 211 (1993) [hereinafter Forsyth, *Chasing and Catching “Bad Guys”*].

<sup>59</sup> Stephen L. Eliason, *Policing Natural Resources: Issues in a Conservation Law Enforcement Agency*, 6 PROF. ISSUES CRIM. JUST. 43, 49 (2011).

<sup>60</sup> Patten et al., *supra* note 38, at 752 (quoting Stephen L. Eliason, *From Wildlife Specialist to Police Generalist? The Scope of Nonwildlife Violations Encountered by Conservation Officers*, 4 SW. J. CRIM. JUST. 120, 121 (2007)).

<sup>61</sup> See, e.g., N.C. GEN. STAT. § 113-136(a) (2025) (“Inspectors and protectors are granted the powers of peace officers anywhere in this State, and beyond its boundaries to the extent provided by law, in enforcing all matters within their respective subject-matter jurisdiction as set out in this section.”); see also Stephen L. Eliason, *Policing the Poachers in the United States: A Qualitative Analysis of Game Wardens and Profiling*, 8 INT’L J. CRIM. JUST. SCI. 235, 236 (2013) (“[G]ame wardens are specialized law enforcement officers that carry out the majority of their work in rural areas.”).

acres of wildlife management areas, 1,668,626 acres of forest, and over 6,400 miles of trout waters.<sup>62</sup> In nearby South Carolina, approximately 300 officers patrol 1.1 million acres of state-owned land, more than 370,000 acres of public waters, and 187 miles of Atlantic coastal waters.<sup>63</sup> Within these areas, wildlife officers operate in near isolation with limited backup.<sup>64</sup> Nationally, the ratio of conservation officers to hunters is about one officer per 10,000 people.<sup>65</sup> By comparison, the national ratio of police officers to population averages approximately twenty-four sworn officers per 10,000 people.<sup>66</sup> To police so many people over such large areas, conservation officers conduct patrols, often covering long distances on foot or using planes, ATVs, or boats to check on activities that are inaccessible by car.<sup>67</sup>

Differences in terrain, the means of patrolling it, and the people found there all influence conservation officers' enforcement styles.<sup>68</sup> They also increase risks to officers. As one conservation officer told a researcher, "Everyone's got a gun or knife [that] you deal with. And you are alone, usually 1 hour away from your nearest backup. Dealing with multiple suspects, with no prewarning of their history."<sup>69</sup> They face additional

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<sup>62</sup> See VA. CONSERVATION POLICE, ANNUAL REPORT 2024, at 3 (2024), <https://dwr.virginia.gov/wp-content/uploads/media/Virginia-Conservation-Police-Annual-Report-2024.pdf> [<https://perma.cc/5R5J-TACM>].

<sup>63</sup> See, e.g., S.C. DEP'T NAT. RES., 2018-2019 ACCOUNTABILITY REPORT 15 (2019) (noting that the Department employed 252 "sworn law enforcement officers" but sought to increase that number to 358); *Maps & Access*, S.C. DEP'T NAT. RES., <https://www.dnr.sc.gov/maps.html> (last visited Feb. 8, 2026) [<https://perma.cc/C9EK-CRJL>] (providing maps of South Carolina's public lands and waters).

<sup>64</sup> Willard M. Oliver & Cecil "Andy" Meier, "Duck Cops," "Game Wardens," and "Wildlife Enforcement:" Stress Among Conservation Officers, 2 APPLIED PSYCH. CRIM. JUST. 1, 5 (2006).

<sup>65</sup> Falcone, *supra* note 11, at 59.

<sup>66</sup> *Id.*

<sup>67</sup> Bavin, *supra* note 11, at 351; see Samuel G. Chapman & Jerry Hartman, *Conservation Law Enforcement in Michigan*, 53 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 384, 388 (1962) (discussing conservation officers' powers, duties, and method).

<sup>68</sup> Bavin, *supra* note 11, at 351.

<sup>69</sup> Stephen Eliason, *Patrolling the Peaks and the Plains: An Examination of Big Sky Game Wardens*, 24 CRIM. JUST. STUD. 409, 412 (2011) [hereinafter Eliason, *Patrolling the Peaks and the Plains*].

threats posed by inclement weather, insects, snakes, and wild animals.<sup>70</sup> Still, conservation officers emphasize that much of the violence they encounter arises in conjunction with “urban-associated” crimes: use of drugs and alcohol, domestic violence, and violations of the vehicle code.<sup>71</sup> Nearly half of conservation officer deaths occur in contexts outside of boating, fishing, and hunting.<sup>72</sup>

Conservation officers patrol remote areas. Isolated from both witnesses and backup, officers frequently confront individuals who are not only armed but also skilled in the use of deadly weapons.<sup>73</sup> According to available data, conservation officers are assaulted more than twice as often as other police when serving citations.<sup>74</sup> More than twenty percent of assaults on wildlife officers involve a firearm or cutting object as compared to approximately three percent of such assaults on other police.<sup>75</sup> The limited information about conservation officers’ use of

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<sup>70</sup> Craig J. Forsyth & York A. Forsyth, *Dire and Sequestered Meetings: The Work of Game Wardens*, 34 AM. J. CRIM. JUST. 213, 220 (2009). Wardens have a lot of stories about these more-than-human encounters. Forsyth, *Chasing and Catching “Bad Guys,”* *supra* note 58, at 214, recorded the following illustrative anecdote from a game warden:

Once I got caught between two wolves fighting. It was about 6:00 a.m., and I heard noises like dogs barking, but when I made it to this clearing two gray wolves came running towards me. They were chasing each other to fight, but I was frozen, I could not go anywhere. I was finally able to get away from them . . . I shot . . . them both [with a tranquilizer gun] so I could get away free.

<sup>71</sup> Deborah J. Chavez and Joanne F. Tynon observe that: “Though half the sites are in rural areas, all face problems considered ‘urban-associated crimes.’ While a few of these crimes are ‘traditional’ (arson, thefts), others are relatively new to National Forests (domestic violence, body dumping, murder). All sites are now reporting some urban-associated crimes are on the increase.” Deborah J. Chavez & Joanne F. Tynon, *Triage Law Enforcement: Societal Impacts on National Forests in the West*, 26 ENV’T MGMT. 403, 407 (2000); *see also* Sherblom et al., *supra* note 18, at 148 (observing that structural changes in conservation law enforcement emphasize the status of conservation police as a law enforcement officer).

<sup>72</sup> Patten et al., *supra* note 38, at 753. *See generally* Stephen Eliason, *Death in the Line of Duty: Game Warden Mortality in the United States, 1886-2009*, 36 AM. J. CRIM. JUST. 319 (2011) (examining causes of death for line duty game wardens in the United States).

<sup>73</sup> *See* Eliason, *Patrolling the Peaks and the Plains*, *supra* note 69, at 410; Forsyth & Forsyth, *supra* note 70, at 218.

<sup>74</sup> *See* Timothy J. Carter, *Force Against and by Game Wardens in Citizen Encounters*, 7 POLICE Q. 489, 501 (2004).

<sup>75</sup> *See id.*

force indicates that this, too, is elevated compared to other peace officers. One state study comparing use of force by and against wildlife officers and other sworn officers in the state found that conservation officers used force eight times more than other sworn police when issuing citations.<sup>76</sup> Another study found that wildlife officers drew firearms on suspects about four times more frequently than state police.<sup>77</sup>

These statistics round out the picture of today's conservation officer and underscore not only the challenges inherent in their job, but also the parallels between their work and that of other law enforcement officers in terms of crimes confronted, policing methods, and the consequences of their actions. As they do more of the work of traditional peace officers — and as their tactics increasingly mirror those of other law enforcement officers — we need to ask whether legislative and judicial limits on their investigatory powers should also mirror those imposed on traditional police officers. Does it make sense to have different rules for conservation law enforcement?

Before turning to that question, it is necessary to account for the rules that circumscribe conservation officers' investigations. Part II elaborates those rules and reveals both the substance and limitations on conservation law enforcement officers' investigatory powers.

## II. INVESTIGATORY AUTHORITY "ON THE BOOKS"

Conservation officers' investigatory activities most often occur in open spaces where people are participating in boating, fishing, hunting or other recreational activities.<sup>78</sup> They may occur in a vehicle, on a boat,

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<sup>76</sup> See *id.* at 502. It is unclear where the data underlying this report comes from, and other studies have found conservation officers' use of force to be a rare occurrence. See Ryan Patten & Jonathan W. Caudill, *Weekend Warriors and Sun Block: Game Wardens and the Use of Force*, 38 AM. J. CRIM. JUST. 410, 412 (2012); see also Frank Graham, Jr., *A Warden's Story*, 89 AUDUBON 105, 109 (1987) (explaining that when working as a game warden, "I've never carried a badge or a gun. [The other conservation officer] and I try to work this thing a little different . . . Wearing a damn gun just gets you in trouble. If they know you're not wearing a gun, nobody around here's going to shoot you.").

<sup>77</sup> Carter, *supra* note 74, at 503.

<sup>78</sup> See Travis R. McLain, *The Constitutionality of Fish and Wildlife Related Searches and Seizures Conducted by Conservation Agents in Missouri*, 62 ST. LOUIS U. L.J. 713, 730 (2018).

or at a campsite.<sup>79</sup> As with all law enforcement officers, the Fourth Amendment applies to conservation officers' searches and seizures, yet the conventional wisdom is that conservation officers enjoy "expanded authority"<sup>80</sup> and "powers that exceed those of most law enforcement officers."<sup>81</sup> These commonly held beliefs might be dismissed as "myths,"<sup>82</sup> but many derive from the plain language of the statutes that define conservation officers' enforcement and investigatory authority.<sup>83</sup>

To explore that authority, I collected and analyzed all state statutes that define conservation officers' jurisdiction and investigatory powers.<sup>84</sup> I supplemented my survey of statutory authority with departmental rules and regulations whenever those were publicly accessible and incorporated judicial interpretations of existing statutes into my analysis of statutory language whenever possible. In Part II.A, I describe the limits of conservation officers' enforcement authority. This is important because many courts base their analysis on a presumption that these officers are undertaking different types of investigations than

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<sup>79</sup> See *id.*

<sup>80</sup> County Office, *Can A Conservation Officer Search Without a Warrant?*, YOUTUBE (Feb. 24, 2024), <https://www.youtube.com/watch?v=JoAKkc7wjwQ> [<https://perma.cc/9MWP-Y4VY>].

<sup>81</sup> *Game Warden Job Description*, GAMEWARDEN, <https://www.gamewarden.org/job-description> (last visited Dec. 22, 2025) [<https://perma.cc/8ZE5-PGV7>]; see also Daniel Taylor, *Do Game Wardens Have the Same Powers as Police Officers?*, FINDLAW, <https://www.findlaw.com/legalblogs/criminal-defense/do-game-wardens-have-the-same-powers-as-police-officers/> (last visited Dec. 22, 2025).

<sup>82</sup> See Keith LaCaze, *Facts Behind the Fiction*, LA. SPORTSMAN (Jan. 23, 2014), <https://www.louisianasportsman.com/hunting/facts-behind-the-fiction/> [<https://perma.cc/YL2V-9XR3>].

<sup>83</sup> See Ryan J. Overturf, *Keeping It Regulatory: Examining State Statutes Pertaining to Searches for Fish and Wildlife Violations*, 50 TEX. ENV'T L.J. 151, 171-73 (2020) [hereinafter Overturf, *Keeping it Regulatory*]; Thomas White, *The Curious Tension Between Fish and Game and Conservation Officers and the Fourth Amendment*, 57 CREIGHTON L. REV. 91, 95-96 (2023).

<sup>84</sup> Overturf, *Keeping it Regulatory*, *supra* note 83, at 171-73, and White, *supra* note 83, at 95-96, offer valuable starting points for identifying and understanding these statutes, but their analyses are necessarily limited in scope and, in some instances, rest on interpretations of statutory language that merit reconsideration. This Article builds on that previous work by providing a more comprehensive survey, incorporating additional regulatory materials and judicial interpretations, and offering alternative readings of some statutory provisions where their analyses merit reconsideration.

traditional peace officers. The expansive jurisdictional authority provided by state statutes belie that assumption. In Part II.B, I briefly describe conservation officers' typical enforcement activities and the level of intrusion required to effectuate them. In Part II.C, I catalog conservation officers' search and seizure powers and compare them to the authority of traditional law enforcement officials.

I do not intend this discussion to be a comprehensive review or analysis of conservation officers' search and seizure authority. Rather, my aim is to provide a sketch of the statutory landscape and to offer the reader a map charting the possibilities for conservation officers' exercise of expansive authority. The crucial point is that states have carved out special powers for conservation officers, which appear to invite the implementation of a new Fourth Amendment cartography — one that courts have already begun to accomplish.<sup>85</sup>

#### A. *Defining the Scope of Conservation Officers' Authority*

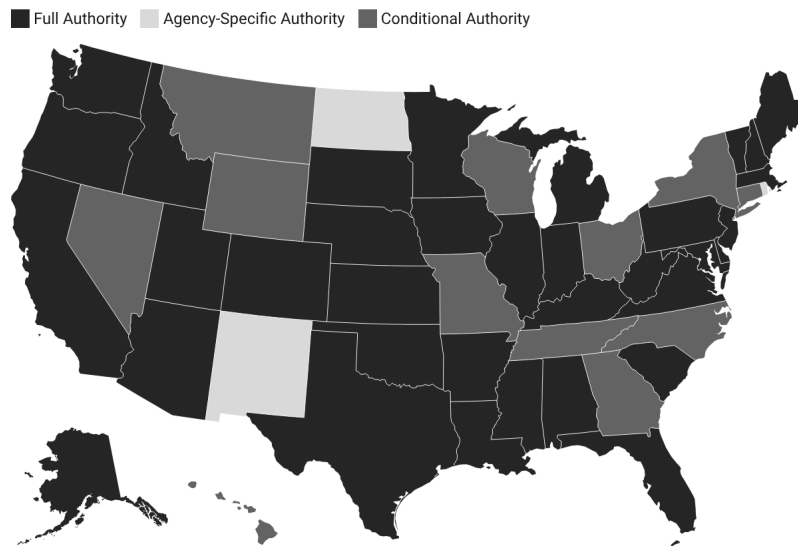
Conservation law enforcement is a specialized area of law enforcement, and some states limit conservation officers' enforcement authority to violations of boating and fish and game laws or violations in specific areas under the purview of conservation agencies.<sup>86</sup> However, most conservation officers retain the power to enforce all criminal laws.<sup>87</sup>

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<sup>85</sup> See *infra* Part III.

<sup>86</sup> See, e.g., COLO. REV. STAT. § 33-6-101(1) (2025) (allocating wildlife officers "the full power and authority to arrest any person who [they have] probable cause to believe is guilty of a violation of [the wildlife code]"); GA. CODE ANN. § 27-1-18(a) (2024) (providing that conservation officers can enforce laws on land managed by the conservation agency or when a law "pertaining to functions assigned to the department" has been violated); TENN. CODE ANN. § 70-6-101 (2025) (granting wildlife enforcement officers the authority to "enforce all laws . . . for the propagation and preservation of all wildlife in this state"); see also White, *supra* note 83, at 118 (noting that twenty-four states limit conservation officers' enforcement authority to just violations of fish and game laws).

<sup>87</sup> See, e.g., IND. CODE § 14-9-8-17(4) (2025) (granting conservation officers the "power to enforce Indiana laws and may exercise all powers granted by law to state police officers"); VA. CODE ANN. § 29.1-205 (2007) (providing that "[r]egular conservation police officers are vested with the same authority as sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth").

Figure 1: Conservation Officers' Enforcement Authority<sup>88</sup>

Even in states that limit conservation officers' authority to enforcing violations of environmental or fish and game codes, the officers' investigation could lead to charges for violations of other laws. Consider, for example, a situation where a conservation officer stops a car because they believe the driver has been hunting and they want to check that the driver had a hunting license. This would be a lawful stop in any state because it was purportedly for the purpose of checking a hunting permit.<sup>89</sup> Take this hypothetical further and assume that the officer smells alcohol on the driver's breath and asks the driver to step out of the car. The officer asks the driver to perform a sobriety test. If the driver fails that test, the officer could arrest them and search their car. Imagine the officer does so and uncovers a bag of white powder that

<sup>88</sup> For a detailed explanation of the classification methodology, statutory citations, and operative statutory language for each state, see APPENDIX A *infra*.

<sup>89</sup> See, e.g., *People v. Layton*, 552 N.E.2d 1280, 1287 (Ill. App. Ct. 1990) (upholding suspicionless stop of hunters and vehicles for possible violations of the Wildlife Code, including hunting without a license); see also *Commonwealth v. Karash*, 309 A.3d 1159, 1162, 1174 (Pa. Commw. Ct. 2024) (upholding suspicionless stop of boat to conduct fishing license check).

turns out to be cocaine. The driver might then be charged with driving while intoxicated and possession of cocaine.

Although all actions subsequent to the initial stop are extraneous to the enforcement of fish and game laws, they would be justifiable under exceptions to the warrant requirement based on what the officer observed after the initial stop.<sup>90</sup> Indeed, none of those searches or the arrest could have happened without the initial stop. Thus, in a world where investigations often proceed via a series of linked actions that serve to justify subsequent actions, any erosion of constraints on the power to search and seize can have far-reaching consequences and lead to criminal charges beyond those concerned with violations of boating, fishing, and hunting laws. The end result is that, whether empowered to police all criminal violations or not, traditional criminal charges often follow from conservation officers' investigations.<sup>91</sup> This means that jurisdictional limitations do not always limit conservation officers' investigations in practice and any expansion of conservation officers' investigatory authority by what some judges have termed "legislative fiat" has far-reaching consequences even beyond the policing of boating, fish and game, and other environmental offenses.<sup>92</sup>

#### *B. Conservation Officers' Enforcement Activities*

Understanding conservation officers' statutory enforcement authority is only part of the picture. Equally important is their investigatory authority: the power that officers have to detect violations and collect evidence. To evaluate whether statutory grants of

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<sup>90</sup> See *People v. Butorac*, 2013 IL App (2d) 110953, ¶ 47, 3 N.E.3d 438, 455 (upholding arrest for boating under the influence after a routine boat safety stop); *Layton*, 552 N.E.2d at 1287 (finding no error in the discovery of cannabis during stop of vehicle to check hunting licenses); *State v. Albaugh*, 1997 ND 229, ¶ 26, 571 N.W.2d 345, 351 (reversing suppression of evidence discovered when the defendant was arrested for driving under the influence at a hunting checkpoint stop); Michael T. O'Connor, *Fishing for Evidence: The Expansive Warrantless Search Powers of Fish and Game Wardens*, 13 HASTINGS CONST. L.Q. 119, 131 (1985).

<sup>91</sup> Conservation officers increasingly bring charges for traditional criminal violations, such as domestic violence and intoxication. See Shelley & Crow, *The Nature and Extent of Conservation Policing*, *supra* note 45, at 11-12.

<sup>92</sup> *State v. Boyer*, 2002 MT 33, ¶ 94, 42 P.3d 771, 788 (Nelson, J., dissenting); *Fleck v. Russell*, 269 P. 883, 883 (Or. 1928).

investigatory authority are justified — and whether they comport with Fourth Amendment constraints — it is essential to understand what conservation officers actually do in the field. Their enforcement activities vary significantly in both purpose and intrusiveness, with some violations detectable through mere observation while others require stops, inspections, or searches. Their activities can be grouped into several categories:

1. License and Permit Verification

Officers verify that individuals possess required licenses and permits. Most states require hunters and anglers to carry licenses while engaged in fishing and hunting and to present them upon request by conservation officers.<sup>93</sup> License checks are one of the most common enforcement activities and typically involve a brief interaction where the officer requests to see the license and verifies its validity.<sup>94</sup>

2. Catch and Bag Limits

Officers inspect what individuals have caught or taken to ensure compliance with daily and possession limits. For anglers, this might

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<sup>93</sup> See MICH. COMP. LAWS § 324.43516 (1994) (requiring individuals to “carry the license and . . . exhibit the license upon the demand”); *Sporting License Issues*, N.Y. DEP’T ENV’T CONSERVATION, <https://dec.ny.gov/environmental-protection/public-safety/environmental-conservation-police/law-enforcement-faq> (last visited Dec. 22, 2025) [<https://perma.cc/SA9L-AMNN>] (noting that sportsmen are “required to exhibit [their license] on demand to any police officer, peace officer or owner, lessee or person in control of the lands or waters or the designees of the owner, lessee or person in control of the lands or waters on which the license holder is present”).

<sup>94</sup> *Conservation Officers Stay Busy in the Winter with Trapping Compliance Checks*, IDAHO FISH & GAME (Jan. 28, 2019), <https://idfg.idaho.gov/blog/2019/01/conservation-officers-stay-busy-winter-trapping-compliance-checks> [<https://perma.cc/2M7V-8TNN>] (“One of the primary responsibilities for [conservation officers] is compliance checks on hunting, fishing, and trapping activities.”); *When Approached by a Conservation Enforcement Officer*, OUTDOOR ALA., <https://www.outdooralabama.com/law-enforcement-contacts/when-approached-conservation-enforcement-officer> (last visited Nov. 16, 2025) [<https://perma.cc/3A2J-NG2U>] (“Basic compliance checks for the proper licenses . . . account for the majority of interactions with the hunting, angling and boating public.”).

involve examining a cooler or livewell to count fish.<sup>95</sup> For hunters, it might involve inspecting harvested game<sup>96</sup> because limits vary by species, season, and location, and in some cases are restrictive (for example, one deer per season, five fish per day).<sup>97</sup>

### 3. Equipment and Method Restrictions

Officers verify that individuals are using legal equipment and methods to take game. Regulations prohibit certain types of gear (for example, gill nets, electronic calling devices, lead shot in some areas) and specify equipment requirements (for example, barbless hooks, specific arrow types, ammunition restrictions).<sup>98</sup> Officers inspect equipment in use and, in some cases, search vehicles or bags for prohibited equipment.<sup>99</sup>

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<sup>95</sup> See, e.g., *Environmental Conservation Police on Patrol*, N.Y. DEP'T ENV'T CONSERVATION (Oct. 22, 2025), <https://dec.ny.gov/news/press-releases/2025/10/environmental-conservation-police-on-patrol-o> [<https://perma.cc/A27U-53DY>] (detailing an officer's search of a cooler while conducting a fishing compliance check).

<sup>96</sup> See CONN. GEN. STAT. § 26-6(c) (2013) (permitting officer inspections of any "box, locker, basket, creel, crate, game bag or game coat or other package"); MINN. STAT. § 97A.215 (2025) (permitting a conservation officer to "open and inspect any package or container"); VA. CODE ANN. § 29.1-209 (1987) (allowing inspections of "game, fur-bearing animals and fish taken by any person found hunting, trapping or fishing without arresting the person").

<sup>97</sup> Jared Braddock, *Understanding Bag Limits and Tags for Spring Hunts*, HUNTER-ED (Apr. 1, 2025), <https://www.hunter-ed.com/blog/understanding-bag-limits-and-tags/> [<https://perma.cc/BH95-WWP2>]; see also *Mule Deer*, TEX. PARKS & WILDLIFE, <https://tpwd.texas.gov/regulations/outdoor-annual/regs/animals/mule-deer> (last visited Nov. 16, 2025) [<https://perma.cc/Z3FM-ZGPW>] (imposing an annual bag limit of no more than one buck); Linda Spansel, *Fishing Regulation Updates*, OR. DEP'T OF FISH & WILDLIFE (Oct. 3, 2025), <https://myodfw.com/articles/regulation-updates> [<https://perma.cc/XZ3D-4GZX>] (noting a permanent daily bag limit of five jack salmon).

<sup>98</sup> See *Laws Pertaining to Hunting Equipment*, ME. DEP'T INLAND FISHERIES & WILDLIFE, <https://www1.maine.gov/IFW/hunting-trapping/hunting/laws-rules/hunting-equipment.html> (last visited Dec. 22, 2025) [<https://perma.cc/V98P-CHSY>]; *Legal Hunting Equipment and Methods*, TENN. WILDLIFE RES. AGENCY, <https://www.tn.gov/twra/hunting/equipment-methods.html> (last visited Dec. 22, 2025).

<sup>99</sup> See N.J. STAT. ANN. § 23:10-20 (2024) (authorizing warrantless search of boats and vehicles and authorizing seizure of illegal equipment).

#### 4. Species, Size, and Sex Restrictions

Officers verify that fish or game taken comply with species-specific regulations.<sup>100</sup> Many states prohibit taking certain species entirely, require that fish meet minimum size requirements, or restrict harvest to specific sexes (for example, male-only seasons, antler restrictions for deer).<sup>101</sup> Verification requires examining the actual catch or game.

#### 5. Zone, Season, and Time Restrictions

Officers ensure that hunting and fishing occur in permitted locations, during open seasons, and within allowed time periods.<sup>102</sup> Some areas are closed to hunting or fishing entirely, some have seasonal closures, and some restrict activities to specific times (for example, daylight only).<sup>103</sup> These violations are typically observable without searching a person or their belongings.

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<sup>100</sup> See *Hunting Seasons and Bag Limits*, MISS. WILDLIFE, FISHERIES, & PARKS, <https://www.mdwfp.com/wildlife-hunting/hunting-seasons-and-bag-limits> (last visited Dec. 22, 2025) [<https://perma.cc/4ZTW-ADKJ>] (listing both sex and antler restrictions for certain deer hunting areas within the state); *Rhode Island Freshwater Sizes and Limits*, STATE OF R.I. DEP'T OF ENV'T MGMT., <https://dem.ri.gov/natural-resources-bureau/fish-wildlife/rules-regulations/freshwater-sizes-and-limits> (last visited Dec. 22, 2025) [<https://perma.cc/A99M-NASW>].

<sup>101</sup> See MISS. WILDLIFE, FISHERIES & PARKS, *supra* note 100; STATE R.I. DEP'T ENV'T MGMT., *supra* note 100.

<sup>102</sup> See *Law Enforcement Today*, COLO. PARKS & WILDLIFE, <https://cpw.state.co.us/law-enforcement> (last visited Dec. 22, 2025) [<https://perma.cc/8KYD-GZT4>] (“Our officers enforce those regulations, as well as season dates, bag limits, and license requirements.”).

<sup>103</sup> See *Other Small Game*, NEB. GAME & PARKS, <https://outdoornebraska.gov/hunt/game/other-small-game/> (last visited Dec. 22, 2025) (noting that jackrabbit hunting has a closed season east of Highway 81); Erik Schmidt, *Misunderstood Regulations*, N.D. GAME & FISH, <https://gf.nd.gov/enforcement/news/misunderstood-regulations> (last visited Dec. 22, 2025) [<https://perma.cc/57XP-L46E>] (describing the specific times when waterfowl hunting is permitted).

## 6. Safety Compliance

Particularly in the boating context, officers verify compliance with safety regulations.<sup>104</sup> Boaters must carry required safety equipment (for example, life jackets, fire extinguishers, navigation lights) and operate vessels safely (observing, for example, speed limits, no wake zones, capacity limits, and not operating boats under the influence of alcohol or drugs).<sup>105</sup> Officers may board vessels to inspect safety equipment.<sup>106</sup>

## 7. Protected Areas and Special Regulations.

Officers enforce regulations specific to particular areas, such as wilderness areas, wildlife refuges, or special management zones.<sup>107</sup> These areas may have restrictions beyond general hunting and fishing regulations, such as prohibitions on firearms, camping restrictions, or special permit requirements.<sup>108</sup>

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<sup>104</sup> See, e.g., *Who Enforces Boating Laws*, BOAT-ED, [https://www.boat-ed.com/wisconsin/studyGuide/Who-Enforces-Boating-Laws/10105102\\_51084/](https://www.boat-ed.com/wisconsin/studyGuide/Who-Enforces-Boating-Laws/10105102_51084/) (last visited Dec. 22, 2025) [<https://perma.cc/TUA9-K57R>] (“Officers have the right to stop and board vessels in order to check for compliance with state and federal laws.”).

<sup>105</sup> See *Boating Regulations*, FLA. FISH & WILDLIFE CONSERVATION COMM’N, <https://myfwc.com/boating/regulations/> (last visited Dec. 22, 2025) [<https://perma.cc/F2QJ-3ZWQ>] (requiring flotation devices for each person aboard the vessel); *Required Equipment Checklist*, GA. DEP’T NAT. RES., <https://gadnrle.org/required-equipment> (last visited Dec. 22, 2025) [<https://perma.cc/74Y9-TLQR>] (listing fire extinguishers and navigation lights as required equipment for Georgia boaters).

<sup>106</sup> See, e.g., *Required Safety Equipment*, TEX. PARKS & WILDLIFE, <https://tpwd.texas.gov/regulations/outdoor-annual/boating/required-safety-equipment> (last visited Dec. 22, 2025) [<https://perma.cc/4FFT-ATZH>] (“Game Wardens and other peace officers certified as marine safety enforcement officers by TPWD may stop, board, and inspect any vessel to determine compliance and ensure the safety of boat owners and passengers.”).

<sup>107</sup> See *Belle Grove WMA*, MD. DEP’T NAT. RES., <https://dnr.maryland.gov/wildlife/Pages/publiclands/western/bellegrove.aspx> (last visited Dec. 22, 2025) [<https://perma.cc/LSN6-QD2B>] (noting the area restrictions for a Maryland wildlife management area); *WDFW-Managed Lands*, WASH. DEP’T FISH & WILDLIFE, <https://wdfw.wa.gov/about/wdfw-lands> (last visited Dec. 22, 2025) [<https://perma.cc/6LD9-HR37>] (noting that the WDFW manages nearly one million acres of land).

<sup>108</sup> See *Restricted Areas*, TEX. PARKS & WILDLIFE DEP’T, <https://tpwd.texas.gov/regulations/outdoor-annual/hunting/general-regulations/restricted-areas-in-counties> (last visited Dec. 22, 2025) [<https://perma.cc/VN9B-W4QJ>] (listing

These enforcement activities vary substantially in their intrusiveness and investigative requirements. Table 1 summarizes what conservation officers check, the methods they employ, and whether stops or searches are required to accomplish the investigation. As the table demonstrates, many violations can be detected through observation alone, while others require stops or searches.

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various hunting and fishing prohibitions on certain restricted areas); *Wildlife Management Areas*, S.C. DEP'T NAT. RES., <https://www.dnr.sc.gov/wma/> (last visited Dec. 22 2025) [<https://perma.cc/JWL3-GXSD>].

Table 1: Conservation Officers' Enforcement Activities

| Enforcement Activities by Level of Intrusion |                                            |                                                               |
|----------------------------------------------|--------------------------------------------|---------------------------------------------------------------|
|                                              | Low Intrusion<br><i>Observable/No Stop</i> | Moderate-High Intrusion<br><i>Stop and/or Search Required</i> |
| Zone/Season/Time Compliance                  | ✓<br><i>Observable from public area</i>    | —                                                             |
| Protected Area Rules                         | ✓<br><i>Brief permit check</i>             | —                                                             |
| License/Permit Verification                  | ✓<br><i>If displayed</i>                   | ✓<br><i>If not displayed</i>                                  |
| Equipment Restrictions                       | ✓<br><i>If visible</i>                     | ✓<br><i>If concealed</i>                                      |
| Species/Size/Sex Requirements                | ✓<br><i>If visible catch</i>               | ✓<br><i>Stop + search if in a container</i>                   |
| Vessel Safety Compliance                     | ✓<br><i>Some visible</i>                   | ✓<br><i>Boarding + storage search</i>                         |
| Catch/Bag Limit Enforcement                  | —                                          | ✓<br><i>Stop + container search</i>                           |

### C. Conservation Officers' Search and Seizure Authority

Fourth Amendment doctrine establishes boundaries on when and how police may conduct searches and seizures. State conservation statutes, however, routinely authorize searches and seizures under circumstances that would be unconstitutional in traditional policing contexts. This section examines these statutory grants of investigatory authority.

#### 1. Search Authority

State statutes expand conservation officers' search authority beyond constitutional limits in multiple ways. Some states permit warrantless

searches without any suspicion of wrongdoing.<sup>109</sup> Even when requiring some justification for the search, many state statutes specify standards lower than probable cause, such as “reason to believe” or “good reason to believe” that a law has been violated.<sup>110</sup> Other statutes expand conservation officers’ search authority by allowing warrantless searches of places and vehicles solely because they are engaged in the sale or transport of fish and game.<sup>111</sup> Still others expand conservation officers’ power to search without warrants by requiring license-holders to consent to searches without suspicion, as a condition of obtaining the license.<sup>112</sup> Each of these mechanisms represents a significant departure from established Fourth Amendment doctrine.

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<sup>109</sup> See, e.g., ALA. CODE § 9-11-303 (2025) (permitting officers “to search without warrant any automobile, wagon, truck or other vehicle or any hunting sack or hunting coat within any wildlife management area”); MONT. CODE ANN. § 87-1-502(6) (2023) (officers can inspect “all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling”); TEX. PARKS & WILD. CODE ANN. § 31.124(a) (an enforcement officer “may stop and board any vessel . . . and may inspect the boat to determine compliance with applicable provisions”).

<sup>110</sup> See, e.g., ARIZ. REV. STAT. ANN. § 17-211(E)(3)-(4) (2025) (officers may search “any aircraft, boat, vehicle, box, game bag, or other package where there is sufficient cause to believe that wildlife or parts of wildlife are possessed in violation of the law”); 7 DEL. CODE ANN. § 111 (2025) (officers “may search and examine without warrant any person, conveyance, vehicle, game bag, game coat or other receptacle for protected wildlife, and . . . may search and examine without warrant such camp or tent for protected wildlife, when they have reason to believe that any of the laws relating to protected wildlife have been violated”); IND. CODE § 14-22-39-3 (2024) (stating that if a conservation officer “has good reason to believe [they] will secure evidence of a violation” of fish and game laws, they may search a boat, vehicle, fish box or basket, game bag, game coat, or container in which game may be carried and enter into or upon private or public property to recover game, investigate, or patrol).

<sup>111</sup> See, e.g., CAL. FISH & GAME CODE § 1006 (2025) (officers may inspect “all boats, markets, stores, and other buildings, except dwellings, and all receptacles . . . where birds, mammals, fish, reptiles, or amphibia may be stored, placed, or held for sale or storage”); OR. ADMIN. R. 635-044-0510 (2025) (“Facilities holding captive wildlife are subject to inspection by any State Police officer or Department representative.”).

<sup>112</sup> See, e.g., KY. REV. STAT. ANN. § 150.090(5) (2024) (officers may “call for and inspect” the license or tag, bag or creel, and any firearms or devices used in taking wildlife from any person engaged in activities requiring a license under the Fish and Wildlife Resources Chapter); OR. REV. STAT. § 497.036 (2025) (“The holder of any license, tag or permit to angle, take, hunt or trap must consent to the inspection of any such

*a. Departures from the Warrant and Probable Cause Requirements*

The most evident departure is the authorization of searches without a warrant or probable cause. Although the Supreme Court has recognized exceptions to the warrant requirement for searches, they require probable cause or certain conditions that remain unspecified in the state statutes.<sup>113</sup> Two examples will serve to make this point.<sup>114</sup> First, Michigan law permits a conservation officer to search “any boat, conveyance, vehicle, automobile, fish box, fish basket, game bag, game coat, or any other receptacle or place” when the officer has probable cause to believe any wildlife statutes or laws are being violated.<sup>115</sup> This expands officers’ search authority with respect to the containers (basket, game bag, etc.). Under the so-called “container doctrine” applied in the traditional policing context, the Supreme Court allows officers to seize a container that they have probable cause to believe contains contraband, but they must apply for a search warrant before opening that container.<sup>116</sup> However, under the plain language of

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license, tag or permit and any wildlife taken pursuant to such license, tag or permit”); *State v. Colosimo*, 669 N.W.2d 1, 9 (Minn. 2003) (noting that an enforcement officer may, at reasonable times, enter and inspect the premises of an activity requiring a license under the game and fish laws and stop and inspect a motor vehicle requiring a license under the game and fish laws without a warrant or probable cause).

<sup>113</sup> See William J. Stuntz, *Warrants and Fourth Amendment Remedies*, 77 VA. L. REV. 881, 882 (1991) (noting that the Supreme Court “claims . . . the warrant requirement is the centerpiece of the law of search and seizure” but “that in practice warrants are the exception rather than the rule”) [hereinafter Stuntz, *Warrants and Fourth Amendment Remedies*]. See generally Cynthia Lee, *Package Bombs, Footlockers, and Laptops: What the Disappearing Container Doctrine Can Teach Us About the Fourth Amendment*, 100 J. CRIM. L. & CRIMINOLOGY 1403 (2010) (explaining the ways law enforcement officers can search vehicles and containers without obtaining a warrant).

<sup>114</sup> In order to conserve space, I limit the analysis here to just two examples, but many more could be offered. Figure 1 and Appendix A provide additional information to readers who are interested in further exploring the statutory variability in search authority.

<sup>115</sup> MICH. COMP. LAWS § 324.1602 (2025).

<sup>116</sup> *United States v. Chadwick*, 433 U.S. 1, 13-14 (1977). There are several exceptions to this general rule including, for example, searches incident to a lawful arrest, *United States v. Robinson*, 414 U.S. 218, 236 & n.7 (1973), and searches of containers that “by their very nature cannot support any reasonable expectation of privacy.” *Arkansas v. Sanders*, 442 U.S. 753, 764 n.13 (1979); see Lee, *supra* note 113, at 1427-64.

Michigan's statute, conservation officers can open containers based on probable cause alone.<sup>117</sup>

New Hampshire also grants broad search authority to conservation officers, providing, in relevant part, that conservation officers can “stop and . . . search without a warrant and . . . examine in the field, in the highway, at an airbase or on the stream, any person . . . when there is reasonable and articulable suspicion to believe that any wildlife, or any illegal apparatus subject to forfeiture, is concealed thereon or therein.”<sup>118</sup> Although, police can generally search a person without a warrant if the officer has reasonable suspicion that the person is “armed and presently dangerous,”<sup>119</sup> that search is limited in scope to just the outer clothing to discover weapons, unless exigent circumstances are present.<sup>120</sup> However, under the plain language of New Hampshire's statute, conservation officers may execute a full search absent exigency and even if they only suspect the presence of contraband, not weapons.<sup>121</sup>

These examples illustrate a broader national pattern.<sup>122</sup> Conservation officers in most states possess search authority that extends well

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<sup>117</sup> See MICH. COMP. LAWS § 324.1602.

<sup>118</sup> N.H. REV. STAT. ANN. § 206:26(VI) (2024). The applicable statute permits, in relevant part, conservation officers to “stop and to search without a warrant and to examine in the field, in the highway, at an airbase or on the stream, any person . . . when there is reasonable and articulable suspicion to believe that any wildlife, or any illegal apparatus subject to forfeiture, is concealed thereon or therein.”

<sup>119</sup> *Terry v. Ohio*, 392 U.S. 1, 30 (1968); see Seth W. Stoughton, *Terry v. Ohio and the (Un)Forgettable Frisk*, 15 OHIO ST. J. CRIM. L. 19, 22 (2017).

<sup>120</sup> See *Terry*, 392 U.S. at 30.

<sup>121</sup> N.H. REV. STAT. ANN. § 211:75 (2024).

<sup>122</sup> See *infra* Figure 2; APPENDIX B. See, e.g., ALA. CODE § 9-11-303 (2024) (authorizing Game and Fish Wardens to search, without a warrant, “any automobile, wagon, truck, or other vehicle,” as well as hunting sacks or hunting coats, within wildlife management areas); CAL. FISH & GAME CODE § 1006 (2023) (authorizing Fish and Wildlife agents to inspect: “[a]ll boats, markets, stores, and other buildings, except dwellings, and all receptacles, except the clothing actually worn by a person at the time of inspection, where birds, mammals, fish, reptiles, or amphibia may be stored, placed, or held for sale or storage”); GA. CODE ANN. § 27-1-20(a)(9) (2024) (stating that any person exercising the right to hunt, trap, fish, possess, or transport wildlife is subject to inspection by authorized employees of the Department of Natural Resources to ascertain compliance with wildlife laws and regulations); KY. REV. STAT. ANN. § 150.090(5) (2024) (stating that “[g]ame wardens and other officers [may] call for and inspect the license or tag, bag or

beyond what the Fourth Amendment permits for general law enforcement officers conducting warrantless searches. Their authority applies not only to traditional conservation-related items like hunting equipment and wildlife, but also to vehicles, vessels, and various containers — often without any requirement of exigent circumstances or even reasonable suspicion.

Figure 2: Conservation Officers’ Statutory Search Authority<sup>123</sup>



creel,” and any firearms or devices “used in taking wildlife” from any person engaged in activities requiring a license under the Fish and Wildlife Resources Chapter); LA. STAT. ANN. § 56:55(B) (2023) (stating that conservation officers may search and inspect vehicles, vessels, aircraft, containers, storage facilities, and records relating to wildlife or aquatic life, with or without a warrant, when they have probable cause to believe a violation has occurred); MONT. CODE ANN. § 87-1-502(6) (2024) (“A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling.”); OHIO REV. CODE ANN. § 1531.13 (1998) (stating that wildlife officers “may inspect any container or package at any time except when within a building and the owner or person in charge of the building objects”); S.D. CODIFIED LAWS § 41-15-6 (2009) (“Any person who possesses any game bird, animal, or fish shall, upon the request of any person authorized to enforce the game and fish laws of the state, permit the inspection and count of the birds, animals, or fish. Any motor vehicle, pickup camper, camper, or any conveyance attached thereto, may be stopped for such an inspection and count by any uniformed law enforcement officer.”); WASH. REV. CODE § 77.15.094 (2001) (“Fish and wildlife officers and ex officio fish and wildlife officers may make a reasonable search without warrant of a vessel, conveyances, vehicles, containers, packages, or other receptacles for fish, seaweed, shellfish, and wildlife which they have reason to believe contain evidence of a violation of law or rules adopted pursuant to this title and seize evidence as needed for law enforcement.”).

<sup>123</sup> Appendix B *infra* provides the classification methodology, explains how ambiguous and layered statutory schemes were resolved, and lists each state’s classification with the corresponding statutory citations and operative language.

*b. The Pervasively Regulated Industry Problem*

A second departure from constitutional norms rests on shakier conceptual ground. The statutory authorization for warrantless searches of places and vehicles engaged in the sale or transport of fish and game rests on the assumption that such activities are undertaken by pervasively regulated industries where searches may be justified by less than probable cause.<sup>124</sup> However, that assumption is unsupported. As an initial matter, the Supreme Court has never recognized fishing and hunting — even when commercialized — to be pervasively regulated industries,<sup>125</sup> and, in fact, has repeatedly noted that “the closely regulated industry . . . is the exception.”<sup>126</sup> Even if such activities were considered to be part of a pervasively regulated industry, the government must satisfy additional criteria including the implementation of an inspection program that “provides a constitutionally adequate substitute for a warrant.”<sup>127</sup> Yet the statutes do not condition officers’ search authority on the existence of such programs.<sup>128</sup>

*c. The Unconstitutional Conditions Problem*

The implied-consent statutes raise a distinct concern. These statutory requirements parallel controversial schemes that incorporate implied consent for blood alcohol testing as a condition of holding a driver’s

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<sup>124</sup> See *Camara v. Mun. Ct.*, 387 U.S. 523, 534 (1967); *Tallman v. Dep’t Nat. Res.*, 365 N.W.2d 724, 744-45 (Mich. 1984).

<sup>125</sup> The Court has identified four industries that have diminished expectations of privacy because of the nature of their business. See *generally, e.g.*, *New York v. Burger*, 482 U.S. 691 (1987) (running an automobile junkyard); *Donovan v. Dewey*, 452 U.S. 594 (1981) (mining); *United States v. Biswell*, 406 U.S. 311 (1972) (firearms dealing); *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (liquor sales).

<sup>126</sup> *Los Angeles v. Patel*, 576 U.S. 409, 424 (2015) (rejecting the argument that a hotel is a pervasively regulated industry); *Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 314 (1978).

<sup>127</sup> *Burger*, 482 U.S. at 702-03.

<sup>128</sup> See *supra* note 106; see also, *e.g.*, *State v. Saunders*, 799 P.2d 159, 162 (Or. Ct. App. 1990) (noting that Oregon statute allowing inspection of places and things used in the taking and processing of fish “does not even marginally implement a routine inspection program”).

license.<sup>129</sup> As with those other implied-consent schemes, the search statutes are vulnerable to challenge under the unconstitutional conditions doctrine, which prohibits the government from conditioning benefits on the surrender of constitutional rights unless the condition is both germane to the purpose of the benefit and roughly proportionate to the government's interest.<sup>130</sup> Commentators argue that blanket consent to suspicionless searches may exceed what is necessary to achieve legitimate regulatory objectives, particularly given the absence of any relationship between the consent requirement and evidence of wrongdoing or dangerousness.<sup>131</sup> Extending that argument, the license to hunt or fish is a license to engage in a lawful recreational activity; it is not, without more, a basis for treating the license-holder as having surrendered the constitutional protections that would apply to any other person in any other setting. Whether courts would find the implied-consent conditions sufficiently tailored to survive constitutional challenge remains uncertain, but the vulnerability of these provisions to constitutional challenge underscores how far they venture beyond traditional criminal procedure protections.

## 2. Seizure Authority

State legislatures have also granted conservation officers broad authority to seize people and things.<sup>132</sup> Under *Terry v. Ohio*, a police officer may conduct a brief investigatory stop only when the officer has

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<sup>129</sup> See Tina Wescott Cafaro, *Fixing the Fatal Flaws in OUI Implied Consent Laws*, 34 J. LEGIS. 99, 99 (2008).

<sup>130</sup> See Philip Hamburger, *Unconstitutional Conditions: The Irrelevance of Consent*, 98 VA. L. REV. 479, 536-37 (2012); Kay L. Levine, Jonathan Remy Nash & Robert A. Schapiro, *The Unconstitutional Conditions Vacuum in Criminal Procedure*, 133 YALE L.J. 1401, 1405-06 (2024).

<sup>131</sup> See Levine et al., *supra* note 130, at 1431-37.

<sup>132</sup> See, e.g., ARIZ. REV. STAT. ANN. § 17-211(E)(5) (2025) (officers “may . . . seize as evidence devices used illegally in taking wildlife and hold them”); IND. CODE § 14-22-39-6(a) (2024) (officers may seize wild animals or parts of wild animals taken or attempted to be taken in violation of the law); N.C. GEN. STAT. § 113-136(g) (officers “may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting seafood products”); TEX. PARKS & WILD. CODE ANN. § 31.124(a) (2024) (“[A]n enforcement officer may stop and board any vessel subject to [the Parks and Wildlife Code.]”).

reasonable, articulable suspicion that “crime is afoot” — that is, specific facts suggesting that the person stopped has committed, is committing, or is about to commit a criminal offense.<sup>133</sup> State statutes authorizing seizures by conservation officers depart from this framework in a fundamental way by permitting stops based not on suspicion of wrongdoing but on an officer’s belief that a person is or has been engaged in a lawful activity — hunting, fishing, or trapping.<sup>134</sup>

Conservation officers’ authority to seize personal property represents another area of expanded authority. Not only can officers seize things that they have “cause to believe” are contraband,<sup>135</sup> but they can also demand the surrender of items used in conjunction with fishing and hunting — including, for example, licenses, ice vests, tackle, and guns — whether or not those items were used to commit a violation.<sup>136</sup> For example, Alaska authorizes seizure of “[g]uns, traps, nets, fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a violation.”<sup>137</sup> Louisiana authorizes officers to “seize vessels, airplanes, vehicles, and all other means of transport and the equipment used or employed in the commission of

<sup>133</sup> *Terry v. Ohio*, 392 U.S. 1, 30 (1968); *see also* *Illinois v. Wardlow*, 528 U.S. 119, 138–39 (2000) (holding that a stop is not justified absent reasonable suspicion that a crime “is afoot”).

<sup>134</sup> HAW. REV. STAT. § 199-8(a) (2021); *see also, e.g.*, 15 CODE ARK. R. pt. 300, § 01.00-B (2023); ME. STAT. tit. 12, § 10353(2)(D) (2023); N.C. GEN. STAT. § 113-136(f) (2019); 34 PA. CONS. STAT. § 901(a)(6) (2025); UTAH CODE ANN. § 23A-5-207(2) (2022); WASH. REV. CODE § 77.15.080 (2014).

<sup>135</sup> N.Y. ENV’T CONSERV. LAW § 71-0907(4)(e)–(f) (McKinney 2024). A seizure is generally justified if the officers have probable cause to believe an item is or contains contraband or to prevent destruction of evidence, *see* *Riley v. California*, 573 U.S. 373, 388 (2014); *United States v. Chadwick*, 433 U.S. 1, 13 (1977), but it is unclear whether “cause to believe” is, in fact, “probable cause,” and no court has interpreted it to mean that.

<sup>136</sup> *See, e.g.*, 15 CODE ARK. R. pt. 300, § 01.00-B (“Game Wardens may request that the person stopped and detained immediately surrender the following items for inspection: all killing devices, licenses, permits, tags, stamps, check sheets, ice chests, game bags, game vests, wildlife, fishing tackle, equipment used for hunting or fishing, or containers that can reasonably hold wildlife.”); NEV. REV. STAT. § 37-620 (2024) (“Whenever the contents of any box, barrel, package, or receptacle consist partly of contraband and partly of legal game or raw furs, the entire contents of such box, barrel, package, or other receptacle shall be seized and confiscated.”).

<sup>137</sup> ALASKA STAT. § 16.05.190 (2025).

offenses.”<sup>138</sup> Pennsylvania authorizes officers to “seize and take possession of all game or wildlife or parts of game or wildlife” and to “seize all firearms, shooting or hunting paraphernalia, vehicles, boats, conveyances, traps, dogs, decoys, automotive equipment, records, papers, permits, licenses and all contraband or any unlawful device, implement or other appliance used in violation of any of the laws relating to game or wildlife.”<sup>139</sup> New York authorizes seizure without warrant of “[a]ny boat or vehicle, when they have probable cause to believe it has been used for the taking” of wildlife in violation of law.<sup>140</sup> Michigan authorizes warrantless seizure of “any and all nets, hunting or fishing apparatuses or appliances, or other property, wild birds, wild animals, or fish, or any part or parts thereof” taken or possessed in violation of the law.<sup>141</sup> West Virginia’s statute goes even further by allowing conservation officers to seize “any property found in the possession of the accused and susceptible of use in committing the offense of which the person is accused.”<sup>142</sup> Although this permits officers to seize only items relevant to a fish or game violation, it need not be shown that the items were actually used, or even believed to have been used, to commit the crime.<sup>143</sup>

Other states authorize outright forfeiture of seized property. Colorado declares “[e]very motor vehicle, vessel, firearm, seine, net, trap, explosive, poisonous or stupefying substance, or other personal property used in the hunting, taking, or harassing of wildlife in violation . . . to be a public nuisance” subject to “seizure, confiscation, and forfeiture or destruction.”<sup>144</sup> New Mexico authorizes seizure and forfeiture of “[a]ll firearms and bows and arrows . . . used as instrumentalities” in certain wildlife offenses, and provides that “[a]ny motor vehicle shall be subject to seizure and forfeiture when operated in violation of [spotlighting] provisions.”<sup>145</sup> Minnesota requires officers

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<sup>138</sup> LA. STAT. ANN. § 57:56 (2023).

<sup>139</sup> 34 PA. CONST. STAT. § 901 (2025).

<sup>140</sup> N.Y. ENV’T CONSERV. LAW § 71-0907(4)(f)(5) (McKinney 2026).

<sup>141</sup> MICH. COMP. LAWS § 324.1602(1) (2026).

<sup>142</sup> W. VA. CODE § 20-7-8(a) (2025).

<sup>143</sup> *See id.*

<sup>144</sup> COLO. REV. STAT. § 33-6-102(1) (2024).

<sup>145</sup> N.M. STAT. ANN. § 17-2-20.1(A)–(B) (2025).

to seize all motor vehicles used in certain violations, including spotlighting wild animals and transporting illegally taken big game, and provides that “[t]he property held is confiscated” upon conviction.<sup>146</sup> New Jersey authorizes wardens to “seize, remove and forthwith destroy any net . . . or other device . . . found . . . where fishing with nets is prohibited,” declaring such devices “a public nuisance.”<sup>147</sup> Nebraska provides that “[w]henever the contents of any box, barrel, package, or receptacle consist partly of contraband and partly of legal game or raw furs, the entire contents of such box, barrel, package, or other receptacle shall be seized and confiscated.”<sup>148</sup>

The seizure authority accorded to conservation officers mirrors and reinforces the pattern identified in the search-authority analysis: State legislatures have constructed a regime of power for conservation officers that departs from the traditional constraints imposed by the Fourth Amendment. The statutes authorize stops based on an officer’s belief that a person is engaged in a lawful, licensed activity — not that the person has violated any law. The justification for the seizure is the individual’s identity as a hunter, angler, or trapper, or the individual’s presence in a location associated with those activities. This is a categorical departure from the *Terry* framework, which requires a nexus between the stop and suspected criminal conduct.<sup>149</sup>

The statutes also expand officers’ authority to seize property, sometimes permanently. In traditional criminal procedure, officers may seize property incident to a lawful arrest or when they have probable cause to believe that property is contraband or contains evidence of a crime.<sup>150</sup> Conservation statutes authorize seizure under broader circumstances: officers may seize items based on “cause to believe” they are contraband, and some statutes authorize seizure of any property merely “susceptible of use” in committing an offense, without requiring

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<sup>146</sup> MINN. STAT. § 97A.225 (2017).

<sup>147</sup> N.J. STAT. ANN. § 23:2-6 (2025).

<sup>148</sup> NEB. REV. STAT. § 37-620 (2026).

<sup>149</sup> See *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

<sup>150</sup> See, e.g., *Riley v. California*, 573 U.S. 373, 388 (2014); *California v. Acevedo*, 500 U.S. 565, 575 (1991); *United States v. Robinson*, 44 U.S. 218, 236 (1973); *Chimel v. California*, 395 U.S. 752, 763 (1969).

any showing that the property was actually used.<sup>151</sup> The forfeiture provisions go further, declaring seized property to be a “public nuisance” subject to immediate destruction or permanent confiscation, often without the procedural protections — notice, hearing, proportionality review — that would attend forfeiture proceedings in the traditional criminal law context.<sup>152</sup>

### III. ADJUDICATING CONSERVATION OFFICERS’ INVESTIGATORY AUTHORITY

The legislative enactments leave little doubt that conservation officers enjoy extensive investigatory authority. Yet questions remain about the scope and lawfulness of that authority. The Supreme Court has never addressed whether and how the Fourth Amendment applies to conservation law enforcement, leaving state and lower federal courts to interpret constitutional constraints. These courts have built the Green Fourth Amendment from the ground up — constructing, case by case, a body of Fourth Amendment doctrine for conservation enforcement that diverges from the constitutional rules governing other police.

Piecing together the patchwork of state court decisions is essential to seeing this body of doctrine as a coherent whole.<sup>153</sup> This Part draws on an original, comprehensive analysis of conservation law enforcement cases from all fifty states and lower federal courts. Part III.A briefly describes the process of creating a database and provides a descriptive overview of the issues, holdings, and rationales of the judicial opinions collected there. The remaining sections trace the Green Fourth

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<sup>151</sup> See, e.g., N.Y. ENV’T CONSERV. LAW § 71-0907(4)(e)–(f) (McKinney 2024); W. VA. CODE § 20-7-8(a) (2025).

<sup>152</sup> Compare COLO. REV. STAT. § 33-6-102(1) (2024), and N.J. STAT. ANN. § 23:2-6 (2025), with *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (requiring proportionality), and FED. R. CRIM. P. 32.2 (establishing notice and hearing requirements).

<sup>153</sup> See Walter V. Schaefer, *Federalism and State Criminal Procedure*, 70 HARV. L. REV. 1, 1 (1956); William J. Stuntz, *The Substantive Origins of Criminal Procedure*, 105 YALE L.J. 393, 436 (1995) [hereinafter Stuntz, *The Substantive Origins of Criminal Procedure*]; cf. Mona Lynch, *Mass Incarceration, Legal Change, and Locale*, 10 CRIMINOLOGY & PUB. POL’Y 673, 674 (2011) (arguing that “law [] and its transformation[]” takes place in local courtrooms and it is these sites that must be foregrounded in explanation of sentencing and punishment).

Amendment through the doctrinal and institutional mechanisms that produce it. Courts have narrowed the threshold question of what counts as a “search” and lowered the standard for evaluating the reasonableness of seizures. Conservation officers, in turn, have developed enforcement norms that extend their perceived authority still further and largely beyond the reach of judicial review.

Part III.B examines how courts determine whether constitutional protections apply to conservation officers’ investigative actions. Because the Fourth Amendment prohibits only unreasonable searches and seizures, constitutional protections apply only when a court finds that a search or seizure occurred.<sup>154</sup> Courts evaluating conservation officers’ investigations frequently rely on two doctrines — open fields and implied consent — to hold that no search occurred. The effect is to narrow the Green Fourth Amendment at the threshold: fewer investigative actions trigger constitutional scrutiny.

Part III.C examines a second mechanism giving rise to the Green Fourth Amendment: how courts evaluate conservation officers’ seizures. Even when courts acknowledge that a seizure occurred, they rarely find it to be unconstitutional. Instead, they apply doctrines developed in border patrol, highway safety, and maritime contexts to uphold suspicionless stops of hunters, anglers, and boaters. The application of those doctrines to conservation stops, however, often lack the hallmarks of those other contexts — including fixed locations, neutral guidelines, and constraints on officer discretion.<sup>155</sup> The Green Fourth Amendment thus operates not only by narrowing what counts as a search but also by lowering the standard for what counts as a reasonable seizure.

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<sup>154</sup> See Orin S. Kerr, *The Questionable Objectivity of Fourth Amendment Law*, 99 TEX. L. REV. 447, 452 (2021).

<sup>155</sup> See, e.g., *People v. Maikhio*, 253 P.3d 247, 262-63 (Cal. 2011) (reasoning that the factors used to assess the constitutionality of administrative searches “are the appropriate factors to be considered in determining the reasonableness” of the game warden’s search of defendant’s vehicle); *State v. Pike*, 532 S.E.2d 543, 549 (N.C. Ct. App. 2000) (reasoning that “with regulations also come inspections”); *Commonwealth v. Karash*, 309 A.3d 1159, 1173 (Pa. Commw. Ct. 2024) (applying factors used to assess constitutionality of administrative searches to reject defendant’s argument that conservation officers’ inspection of his boat was unconstitutional).

Finally, Part III.D reveals a dimension of the Green Fourth Amendment that cannot be found in judicial opinions alone. Decades of sociolegal studies cement the proposition that law-in-action matters as much as — if not more than — law-in-books.<sup>156</sup> This is especially true in criminal procedure, where daily investigations vastly outnumber judicial challenges.<sup>157</sup> What conservation officers believe they can do thus becomes important in understanding practical constraints on their conduct. Cataloguing officers' professional norms reveals that the Green Fourth Amendment develops not only through legislative enactment and judicial interpretation but also through enforcement practices and institutional cultures that reflect and reinforce the doctrinal departures documented in Parts III.B and III.C.

#### A. Methodology

Absent a brief mention of “game wardens” in a concurrence penned more than fifty years ago, the Supreme Court has never explicitly considered how the Fourth Amendment regulates conservation law enforcement officers in criminal investigations.<sup>158</sup> The Green Fourth Amendment has instead taken shape in state and lower federal courts, where hundreds of cases involving conservation officers have accumulated largely without national attention.<sup>159</sup> Because these decisions are scattered across court systems, developing the Green Fourth Amendment as a coherent body of doctrine requires a different methodological approach than studies of traditional criminal procedure, which are generally organized around a relatively small number of

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<sup>156</sup> See Carol Seron, Susan B. Coutin & Pauline W. Meeusen, *Is There a Canon of Law and Society?*, 9 ANN. REV. L. & SOC. SCI. 287, 294-95 (2013).

<sup>157</sup> See FBI, UCR SUMMARY OF CRIME IN THE NATION, 2023, at 14 (2024) (noting that nationally only forty-one percent of reported violent offenses and fourteen percent of property offenses resolved in an arrest).

<sup>158</sup> *Delaware v. Prouse*, 440 U.S. 648, 664 (1979) (Blackmun, J., concurring).

<sup>159</sup> The vast majority of these cases reside in state courts because the violations enforced are rarely felonies.

Supreme Court cases.<sup>160</sup> This Part draws on an original, comprehensive analysis of those decisions to map the rules that emerge from them.<sup>161</sup>

### 1. Constructing the Dataset

To identify cases involving conservation law enforcement investigatory actions, I performed a search in Westlaw for cases in every jurisdiction that referred to the Fourth Amendment and any of the following terms (or their variants): game warden, fish warden, wildlife management agent, park ranger, natural resources police, conservation officer, conservation law enforcement, conservation agent, and conservation police. My search string retrieved 1,041 cases, which included both published and unpublished opinions.

I eliminated cases in which the conservation officer was mentioned only in passing or only in the description of a cited case. I further disqualified cases where the conservation officer was merely present and did not participate in the challenged action. In addition, I excluded cases that were filed under Section 1983,<sup>162</sup> as the courts' consideration of the Fourth Amendment violation in those cases was not always clear or conclusive.

After removing the above cases, my dataset included 323 cases. Although all of these cases involved conservation officers' conduct, less than thirty percent of the cases involved charges that are unique to

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<sup>160</sup> Criminal procedure scholars overwhelmingly rely on analysis of Supreme Court cases to discuss doctrine and emerging trends. See, e.g., Orin S. Kerr, *Searches and Seizures in a Digital World*, 119 HARV. L. REV. 531, 536-46 (2005) (describing digital searches in reference to Supreme Court doctrine governing searches of homes); Matthew Tokson & Ari Ezra Waldman, *Social Norms in Fourth Amendment Law*, 120 MICH. L. REV. 265, 288-95 (2021) (examining Supreme Court cases to explain the "discriminatory norms" that pervade Fourth Amendment law). But see Kate Weisburd, *The Carceral Home*, 103 B.U. L. REV. 1879, 1882-83 (2023) (drawing on a collection of criminal court supervision rules to probe privacy protections for the millions of people subjected to "carceral surveillance").

<sup>161</sup> This approach is best described as content analysis: a "scientific understanding of the *law itself* as found in judicial opinions and other legal texts." See Mark A. Hall & Ronald F. Wright, *Systematic Content Analysis of Judicial Opinions*, 96 CALIF. L. REV. 63, 64 (2008) (emphasis in original). For a description of how content analysis proceeds, see Alyse Bertenthal, *Administrative Reasonableness: An Empirical Analysis*, 2020 WIS. L. REV. 85, 101-05.

<sup>162</sup> 42 U.S.C. § 1983.

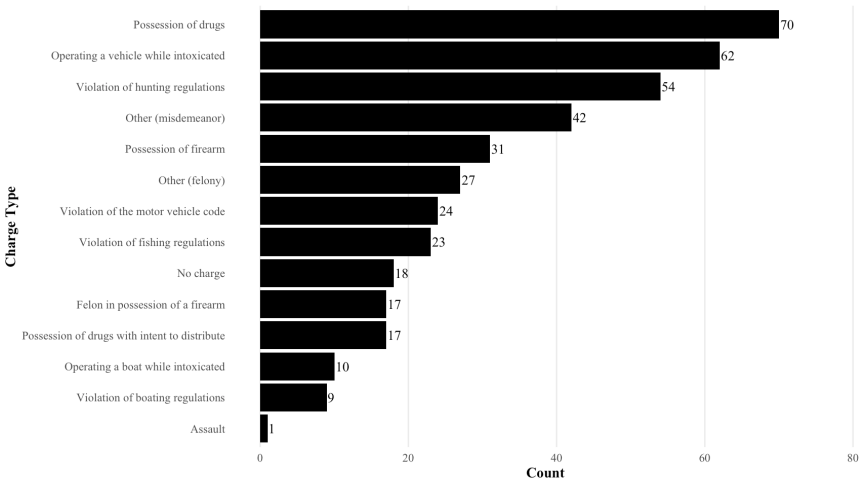
conservation enforcement, such as violation of fishing regulations. More than seventy percent of cases revealed evidence of traditional police matters, such as trespassing, assault, or possessing a controlled substance, suggesting that conservation officers frequently uncover criminal conduct that extends beyond their specialized mandate.<sup>163</sup>

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<sup>163</sup> The seventy percent figure reflects the composition of litigated cases, not the universe of conservation encounters in the field. Conservation violations are predominantly misdemeanors and infractions carrying modest penalties that defendants rarely contest. When a conservation stop produces evidence of more serious criminal conduct — a felony drug charge, an assault, a firearms violation — the stakes rise and so does the likelihood of litigation, appeal, and a published opinion. The database therefore captures a disproportionate share of encounters that produced evidence of traditional crimes, because those are the cases defendants had reason to fight. But even discounting for this selection effect, the frequency with which traditional criminal evidence surfaces in the case law has significant implications for the doctrinal analysis that follows.

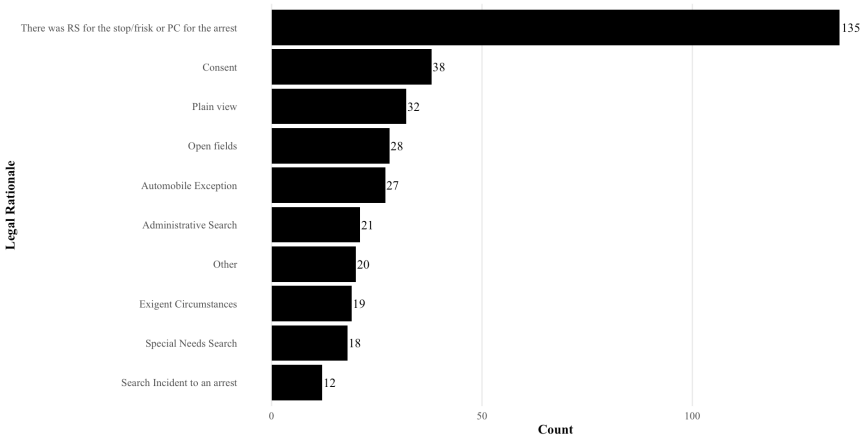
Figure 3: Distribution of Charges in Conservation Officer Cases



In more than three-quarters of the cases I reviewed, the court found no violation of the Fourth Amendment either as a matter of law or because the facts did not conclusively show a violation. In over half of these cases (55.6%), courts found reasonable suspicion justified the stop, frisk, or search. The remaining cases relied on various Fourth Amendment exceptions — including consent (15.6%), plain view (13.2%), and the open fields doctrine (11.5%) — that permitted the search or seizure regardless of whether officers had individualized suspicion.

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Figure 4: Legal Rationales for Finding No Constitutional Violation<sup>164</sup>



2. Analyzing the Data

After creating the database of cases, I read a sample of cases and identified questions of interest — which included contextual factors and doctrinal rationales — to develop codes that would allow me to find similar factors in other cases. Unlike traditional legal analysis, which typically reads cases sequentially for doctrinal principles, this coding process allowed me to systematically compare cases across categories, revealing patterns in judicial reasoning that would be difficult to detect through conventional case-by-case review.<sup>165</sup> This coding process enabled systematic examination of patterns across the data, revealing structured insights within the cases.<sup>166</sup>

Working with a team of trained research assistants, I systematically coded information by sorting identifiable factors and concepts to identify patterns, themes, and deeper insights, including: context (for example, boating or hiking), normative conclusions (for example, hunters’ diminished expectations of privacy), special government interest (for example, protection of wildlife), pragmatic concerns (for example, topography), and distinctions from traditional doctrine (for

<sup>164</sup> N=243. Not shown on this chart are those cases (4.1%) in which the court refused to suppress the evidence because it applied an exception to the Exclusionary Rule.

<sup>165</sup> See Juliet Corbin & Anselm Strauss, *Grounded Theory Research: Procedures, Canons, and Evaluative Criteria*, 13 QUALITATIVE SOC. 3, 5-6 (1990).

<sup>166</sup> See *id.*

example, cars versus boats). By tagging these factors across all cases, I could identify when and how courts applied Fourth Amendment doctrine differently in conservation contexts compared to traditional policing contexts.

After completing this systematic content analysis, I examined the cases for patterns in reasoning and analysis that might explain the legal outcomes, then returned to each category for a closer interpretive review of the language courts used to justify their decisions.<sup>167</sup> What emerged most clearly from this process is a pattern of threshold gatekeeping: courts frequently narrow the reach of the Fourth Amendment by holding that conservation officers' investigative actions do not constitute "searches" within the meaning of the Constitution. Once a court concludes that no search occurred, the Fourth Amendment drops out of the analysis entirely — and in the cases involving conservation law enforcement, that threshold determination is often where the constitutional inquiry both begins and ends.

### *B. Narrowing the Scope of Fourth Amendment Protection*

The Constitution prohibits only unreasonable searches, so a defendant must first establish that they were in fact searched within the meaning of the Fourth Amendment.<sup>168</sup> Whether government action constitutes a "search" depends on whether it violates an individual's reasonable expectation of privacy. This determination has proven particularly challenging in conservation law enforcement, where unique settings complicate traditional privacy analysis.

Until 1967, whether police action constituted a search under the Fourth Amendment depended only on whether the government trespassed on an individual's property rights.<sup>169</sup> In *Katz v. United States*, the Supreme Court declared that the Fourth Amendment "protected

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<sup>167</sup> This approach to analyzing data is commonly referred to as "grounded theory," which generates conclusions through careful analysis of accumulated data, rather than testing a predetermined hypothesis. See generally KATHY CHARMAN, CONSTRUCTING GROUNDED THEORY (Jai Seaman ed., 2d ed. 2014) (providing a guide to grounded theory).

<sup>168</sup> A defendant might also claim they were subjected to a seizure. See *California v. Hodari D.*, 499 U.S. 621, 629 (1991).

<sup>169</sup> *Goldman v. United States*, 316 U.S. 129, 135 (1942); *Olmstead v. United States*, 277 U.S. 438, 466 (1928).

people . . . not places”<sup>170</sup> and that a search occurs if the government violates an individual’s “reasonable expectation of privacy.”<sup>171</sup> Later cases clarified that a “reasonable expectation of privacy” means both that the individual believed they had an expectation of privacy in the information sought and that society would accept that expectation as legitimate.<sup>172</sup>

Courts struggle to apply these principles to the distinctive circumstances that surround conservation officers’ investigations.<sup>173</sup> The settings in which conservation enforcement occurs — forests, waterways, and public lands — are often expansive, sparsely populated, and remote.<sup>174</sup> These are different places than cities, where individuals must contend with crowded streets and housing complexes that necessarily diminish their expectations of privacy.<sup>175</sup> One might expect, therefore, that an individual’s privacy interests would be heightened in these contexts — after all, they are out in nature, often sequestered from those they have not invited to join them. Yet, courts have found the opposite to be true. The following subsections explain how.

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<sup>170</sup> *Katz v. United States*, 389 U.S. 347, 351 (1967).

<sup>171</sup> *Id.* at 360-61 (Harlan, J., concurring).

<sup>172</sup> *Kyllo v. United States*, 533 U.S. 27, 32-33 (2001) (discussing the development of the “reasonable expectation of privacy” doctrine). Some commentators suggest that the distinction between “objective” and “subjective” expectations of privacy is meaningless. See Orin S. Kerr, *Katz Has Only One Step: The Irrelevance of Subjective Expectations*, 82 U. CHI. L. REV. 113, 122 (2015).

<sup>173</sup> See Katrina Fischer Kuh, *Environmental Privacy*, 2015 UTAH L. REV. 1, 37; see also, e.g., *State v. Larsen*, 650 N.W.2d 144, 148-50 (Minn. 2002) (determining whether there was a reasonable expectation of privacy in a fish house); *Tullos v. State*, 2018-KA-01206-COA (¶¶ 13-18), 287 So. 3d 1014, 1017-19 (Miss. 2019) (deciding whether a grandson could have a reasonable expectation of privacy on his grandmother’s land); *State v. Mittleider*, 2011 ND 42, ¶¶ 12-17, 809 N.W.2d 303, 307-08 (resolving whether there was a reasonable expectation on the defendants’ farm); *Highlander v. Va. Dep’t of Wildlife Res.*, 914 S.E.2d 200, 218-20 (Va. Ct. App. 2025) (considering whether there was a reasonable expectation of privacy in a wildlife camera).

<sup>174</sup> See generally *Where to Hunt*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/hunting/map> (last visited Feb. 13, 2025) [<https://perma.cc/P58Z-U8XJ>] (identifying hunting areas regulated by the U.S. Fish & Wildlife Service).

<sup>175</sup> See William J. Stuntz, *Distribution of Fourth Amendment Privacy*, 67 GEO. WASH. L. REV. 1265, 1270-72 (1999).

### 1. The Open Fields Doctrine

The areas in which people usually boat, fish, and hunt are quintessential examples of what the Supreme Court has dubbed “open fields.”<sup>176</sup> In these places, government actors do not need a warrant or any level of suspicion to enter onto lands that are outside the home and its curtilage.<sup>177</sup> As the Court reiterated in *Florida v. Jardines*, “open fields” receive no protection “because such fields are not enumerated in the Amendment’s text.”<sup>178</sup>

Courts evaluating conservation law enforcement searches regularly invoke the open fields doctrine to hold that no search occurred — and thus that the Fourth Amendment does not apply.<sup>179</sup> The open fields doctrine is available to all government actors, but it is an especially powerful tool in the conservation law enforcement context.<sup>180</sup> Courts have reasoned that conservation law enforcement officers have greater justification for entering private land because wildlife, which recognize

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<sup>176</sup> *Id.*

<sup>177</sup> See *Hester v. United States*, 265 U.S. 57, 59 (1924); see also *Oliver v. United States*, 466 U.S. 170, 179 (1984).

<sup>178</sup> *Florida v. Jardines*, 569 U.S. 1, 6 (2013).

<sup>179</sup> The Court first recognized the open fields doctrine in *Hester v. United States*, when it summarily held that officers located on private land fifty to one hundred yards from a house had not committed an illegal search because the land was distinctly different from the house explicitly protected by the Fourth Amendment. *Hester*, 265 U.S. 57. One recent study found that at least ninety-six percent of all private land in the country — or about 1.2 billion acres — falls outside the curtilage. Joshua Windham & David Warren, *Good Fences? Good Luck*, CATO INST. REGUL. (2024), <https://www.cato.org/regulation/spring-2024/good-fences-good-luck>. The Court did not define open field, but instead relied upon the perceived distinction between open fields and the home that “was as old as the common law.” *Hester*, 265 U.S. at 58. The Court elaborated on this rationale in *Oliver v. United States*, specifying that “open fields do not provide the setting for those intimate activities that the Amendment is intended to shelter from government interference or surveillance,” and “these lands usually are accessible to the public and the police in ways that a home, an office, or commercial structure would not be.” *Oliver*, 466 U.S. at 179; e.g., *United States v. Beene*, 818 F.3d 157, 162 (5th Cir. 2016); *Spann v. Carter*, 648 F. App’x 586, 589 (6th Cir. 2016); *United States v. Sweeney*, 821 F.3d 893, 901 (7th Cir. 2016).

<sup>180</sup> See, e.g., Joe A. Carrier, *Open Fields and Conservation Law Enforcement*, 37 PROC. ANN. CONF. SE. ASS’N FISH & WILDLIFE AGENCIES 519, 519-22 (1983) (“The open fields concept is particularly important in the field of conservation law enforcement, where the bulk of patrol work and investigation is done quite literally in the open fields.”).

no property boundaries, can only be protected by patrols that extend across those bounds.<sup>181</sup> As a practical matter, the doctrine falls most heavily on hunters, anglers, and other outdoor recreationists.<sup>182</sup> After all, hunting, fishing, and other outdoor recreational activity takes place far from homes and curtilage, and the open fields doctrine gives conservation officers broad latitude to patrol and surveil the areas in which they are present.<sup>183</sup>

The scope of that latitude has not gone uncontested. Across the country, landowners have mounted a sustained challenge to conservation officers' reliance on the open fields doctrine, and the pattern of these disputes reveals how deeply the doctrine shapes the Green Fourth Amendment. Indeed, landowners are waging a heated battle against the open fields doctrine.<sup>184</sup> In Tennessee, two landowners successfully challenged a statute that allowed game wardens to go onto

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<sup>181</sup> See, e.g., *Betchart v. Dep't of Fish & Game*, 158 Cal. App. 3d 1104, 1109 (Ct. App. 1984) ("California's pervasive scheme of regulating wild game hunting would be a futile pursuit without frequent and unannounced patrols."); *Cason v. State*, 44,474 (La. App. 2 Cir. 07/15/09); 16 So. 3d 598, 602 (recognizing that the open fields doctrine had "far-reaching implications" for conservation officers whose duty it was to further the state's "compelling interest in safeguarding the wildlife and fisheries for the benefit of the people"); *Commonwealth v. Russo*, 934 A.2d 1199, 1212-13 (Pa. 2007) (declining to depart from open fields doctrine with respect to conservation officers because their ability to go onto private land is necessary for and consistent with state's interest in protecting wildlife).

<sup>182</sup> See Norman Young & Todd Radabaugh, *General Guidelines for Prosecuting Wildlife and Boating Cases in North Carolina*, U.N.C. SCH. GOV'T 2 (June 22, 2011), [https://www.sog.unc.edu/sites/default/files/course\\_materials/Young\\_WildlifeHandout.pdf](https://www.sog.unc.edu/sites/default/files/course_materials/Young_WildlifeHandout.pdf) [<https://perma.cc/YYZ4-7R47>].

<sup>183</sup> See *Hester*, 265 U.S. at 59 (holding that the Fourth Amendment does not apply to private land because "the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to the open fields"); see also Michael T. Rossler & Michael J. Suttmoeller, *Conservation Officer Perceptions of Search Authority*, 23 POLICE PRAC. & RSCH. 61, 69 (2022) [hereinafter Rossler & Suttmoeller, *Conservation Officer Perceptions of Search Authority*] (finding that nearly half of all conservation officers who responded to a nationwide survey believe they have greater authority to search private lands than their counterparts in traditional police forces).

<sup>184</sup> See Joshua Windham, *States May Close the "Open Fields" Exception to the Fourth Amendment*, ST. CT. REP. (May 21, 2024), <https://statecourtreport.org/our-work/analysis-opinion/states-may-close-open-fields-exception-fourth-amendment> [<https://perma.cc/2RYX-686T>].

private land without a warrant to look for evidence of hunting violations.<sup>185</sup> In Vermont, a landowner successfully suppressed evidence derived from a game warden's warrantless search of his property because the court found that posted "no trespassing" signs sufficiently evidenced the landowner's expectation of privacy on those lands.<sup>186</sup> In Louisiana and Virginia, landowners have brought affirmative suits against wildlife agencies after officers entered their property without permission — the Louisiana case involving officers who repeatedly confronted a private forester on his own land,<sup>187</sup> and the Virginia case involving the confiscation of a game camera from private property.<sup>188</sup> In Pennsylvania, private hunting clubs have sued to keep conservation law enforcement officers off their lands.<sup>189</sup> These cases are significant for what they collectively represent: a growing insistence that the open fields doctrine cannot function as an automatic exemption from Fourth Amendment scrutiny whenever conservation enforcement is at stake. The landowners in these disputes are resisting the very gatekeeping mechanism that sustains the Green Fourth Amendment — the threshold determination that no search occurred and that constitutional protections therefore never attach. In doing so, they are demanding courts confront a question the open fields doctrine has allowed them to avoid: whether the Fourth Amendment has anything to say about how conservation officers investigate on private land.

## 2. Implied Consent

The open fields doctrine, however, addresses only part of the threshold question. It allows conservation officers to be in the places

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<sup>185</sup> *Rainwaters v. Tenn. Wildlife Res. Agency*, No. W2022-00514-COA-R3-CV, 2024 Tenn. App. LEXIS 208, at \*2 (Tenn. Ct. App. May 9, 2024).

<sup>186</sup> *State v. Dupuis*, 2018 VT 86, ¶ 22, 197 A.3d 343, 353.

<sup>187</sup> See Andrew Wimer, "*No Trespassing*" Signs Should Apply to the Government Too, *FORBES MAG.* (Mar. 8, 2024), <https://www.forbes.com/sites/instituteforjustice/2024/03/08/no-trespassing-signs-should-apply-to-the-government-too>.

<sup>188</sup> Complaint at 2, *Highlander v. Va. Dep't of Wildlife Resources*, No. CL23004100-00 (Va. Cir. June 7, 2023), <https://ij.org/wp-content/uploads/2023/06/VA-Open-Fields-Complaint.pdf> [<https://perma.cc/PAW6-PZW5>].

<sup>189</sup> *Punxsutawney Hunting Club, Inc. v. Pa. Game Comm'n*, 305 A.3d 630, at \*2 (Pa. Commw. Ct. 2023).

where hunting, fishing, and boating occur; it says nothing about what they may do once they are there. When a conservation officer lawfully present on open land encounters a hunter with a game bag or an angler with a cooler, the question shifts from whether the officer's presence triggers the Fourth Amendment to whether the officer's examination of the person or their belongings does. The Supreme Court has repeatedly held that people do have a reasonable expectation of privacy in their bodies and, also, to some extent, in their possessions.<sup>190</sup> Yet, some courts have found that those who engage in activities like fishing and hunting cannot reasonably expect privacy in things such as game bags and coolers.<sup>191</sup> The effect is a second layer of threshold gatekeeping: even after the open fields doctrine removes constitutional protection from the land itself, courts further narrow the reach of the Fourth Amendment by holding that the items hunters and anglers carry into the field are not constitutionally protected either.

Consider, for example, *People v. Johnson*.<sup>192</sup> In that case, the defendant moved to suppress drugs found in a bag in their car, which was stopped by a California game warden in a pheasant club area.<sup>193</sup> The government argued that the search was lawful because the bag that was opened appeared to be the kind commonly used to carry pheasants.<sup>194</sup> The court denied the defendant's motion to suppress the drugs, reasoning that the warden had authority to inspect game and the warden's "knowledge that pheasants are commonly placed in paper sacks," combined with what he felt when touching the sack and believing it to contain a pheasant "constituted sufficient causes" to justify the search.<sup>195</sup>

*Johnson* rested on the specific factual circumstances of the encounter — the officer's training, the type of bag, and what the officer felt. But other courts have adopted a broader rationale that does not depend on the facts of any particular encounter. These courts hold that individuals who obtain a license or permit to hunt, fish, or boat have impliedly

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<sup>190</sup> See generally *Bond v. United States*, 529 U.S. 334 (2000) (finding that probing manipulation of luggage by law enforcement was an unreasonable search).

<sup>191</sup> E.g., *State v. Colosimo*, 669 N.W.2d 1, 6 (Minn. 2003).

<sup>192</sup> 108 Cal. App. 3d 175, 178 (Ct. App. 1980).

<sup>193</sup> See *id.*

<sup>194</sup> See *id.*

<sup>195</sup> *Id.* at 179.

consented to warrantless inspections of their gear and catch simply by accepting the license, meaning that the question of whether a search occurred never arises, regardless of what the officer knew or suspected at the time.

Courts have been most willing to find implied consent in the context of commercial fishing, which several courts have classified as a “closely regulated industry” subject to significant government oversight.<sup>196</sup> Some courts have extended the implied consent rationale beyond commercial operators to recreational anglers, boaters, and hunters.<sup>197</sup> In *State v. Nobles*, for example, the North Carolina Court of Appeals suggested that hunting and fishing licenses function similarly to business licenses in heavily regulated industries, which have long been

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<sup>196</sup> *State v. Erickson*, 303 N.W.2d 850, 852 (Wis. Ct. App. 1981). The “closely regulated industry” exception to the warrant requirement originated with the Supreme Court’s decision in *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 77 (1970) (holding that liquor store owners had diminished expectation of privacy because the liquor industry had been “long subject to close supervision and inspection”). In *United States v. Biswell*, the Court extended this exception to the firearms industry. *United States v. Biswell*, 406 U.S. 311, 315 (1972); *see also* *Donovan v. Dewey*, 452 U.S. 594, 596 (1981) (recognizing coal mining as a “closely regulated industry”). In *Marshall v. Barlow’s, Inc.*, the Court cautioned against overly expansive definitions of “closely regulated industry,” *Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 313 (1978), and in *New York v. Burger*, it outlined the considerations courts should take into account when determining whether to apply the “closely regulated industry” exception. *New York v. Burger*, 482 U.S. 691, 708-12 (1987). Relying on this test, most state courts have concluded that commercial fishing is a “closely regulated industry.” *See, e.g., State v. Nobles*, 422 S.E.2d 78, 81 (N.C. Ct. App. 1992). *But see* *State v. Larsen*, 650 N.W.2d 144, 152 (Minn. 2002) (finding the *Colonnade* exception inapplicable where officer searched an ice fishing house).

<sup>197</sup> *People v. Layton*, 552 N.E.2d 1280, 1286-87 (Ill. App. Ct. 1990); *see* White, *supra* note 83, at 147. This analogy is flawed. First, the “pervasively regulated industry” exception applies to commercial enterprises — businesses that operate in industries with a long history of regulation, where proprietors can have no reasonable expectation of privacy. *See Burger*, 482 U.S. at 707. Hunting and fishing, while regulated, are not commercial enterprises for most participants; they are recreational activities (and for some, subsistence activities) conducted by private individuals on public lands. Second, even in the commercial context, the administrative search doctrine requires that the regulatory scheme provide adequate notice of the possibility of inspections, limit the discretion of inspecting officers, and tailor the searches to the regulatory purposes. *City of Los Angeles v. Patel*, 576 U.S. 409, 421 (2015). None of these safeguards typically apply to conservation searches.

subject to warrantless administrative inspections.<sup>198</sup> Another court went further, reasoning that, because hunters and anglers are informed of the pertinent regulations when they apply for permits, they cannot claim a reasonable expectation of privacy in any items used in those activities, including game bags and guns.<sup>199</sup>

The implied-consent rationale, however, is not universally accepted.<sup>200</sup> In *United States v. Azevedo*, a federal district court rejected the government's argument that a defendant who entered a wildlife refuge to hunt had impliedly consented to searches simply by engaging in a heavily regulated activity.<sup>201</sup> The court noted that even if hunting were a heavily regulated activity, the defendant was entitled to notice that he would be subject to search upon entering the property.<sup>202</sup> The court's insistence on notice reflects a foundational principle of Fourth Amendment waiver doctrine: that the relinquishment of constitutional rights must be knowing and voluntary, not constructed after the fact by courts or agencies.

The divergence between *Nobles* and *Azevedo* exposes a fault line running through the implied-consent rationale. Some courts treat the act of obtaining a license — or even the act of participating in a regulated activity — as sufficient to extinguish Fourth Amendment protection over a person's belongings. Others insist that consent cannot be implied where the individual received no meaningful notice that a license would be treated as a waiver of constitutional rights. This uncertainty is compounded by the apparent absence of explicit consent provisions in many state licensing statutes themselves.<sup>203</sup> When courts find implied

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<sup>198</sup> *Nobles*, 422 S.E.2d at 82-83.

<sup>199</sup> *State v. Colosimo*, 669 N.W.2d 1, 6 (Minn. 2003).

<sup>200</sup> See, e.g., 3 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 8.2(1), at 219-21 (6th ed. 2017) (arguing that the theory of implied consent is "unconvincing" and problematic).

<sup>201</sup> *United States v. Azevedo*, No. CR. S-10-MJ-0058 DAD, 2010 WL 2902370, at \*3 (E.D. Cal. 2010).

<sup>202</sup> *Id.* at 2.

<sup>203</sup> One might expect explicit consent-to-search provisions in licensing statutes, similar to implied consent laws in the DUI context. Cf. Robert B. Voas, Tara Kelley-Baker, Eduardo Romano & Radha Vishnuvajjala, *Implied-Consent Laws: A Review of the Literature and Examination of Current Problems and Related Statutes*, 40 J. SAFETY RES. 77,

consent without clear statutory language requiring it as a condition of licensure, they are not locating consent in an act of the license-holder; they are constructing it through judicial interpretation. The result is a body of doctrine in which the threshold question — whether a search occurred at all — turns not on established Fourth Amendment principles but on whether the court is willing to infer a waiver of constitutional protection from the bare fact of holding a hunting or fishing license. That willingness varies from court to court, but where it exists, it operates as yet another mechanism through which the Green Fourth Amendment narrows the reach of constitutional protection before any inquiry into reasonableness begins.

### *C. Justifying Conservation Officers' Seizures*

The Green Fourth Amendment does not operate solely by keeping cases outside the Fourth Amendment's reach. It also operates within it. This can be seen most clearly in the courts' discussions of seizures. When courts acknowledge that a conservation officer's stop of a hunter, angler, or boater constitutes a seizure within the meaning of the Fourth Amendment, the question becomes whether that seizure was reasonable.<sup>204</sup> In the conservation law enforcement cases, defendants commonly assert that the seizure of their persons, cars, boats, or other things was unreasonable because the officer lacked reasonable suspicion, let alone probable cause.<sup>205</sup> State courts confronted with this

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83-84 (2009). However, such provisions are largely absent from hunting and fishing licensing schemes.

<sup>204</sup> Notably, the Fourth Amendment does not demand a warrant before officers can search and/or seize. It requires only that the searches and seizures are reasonable. *See* Sam Kamin & Justin Marceau, *Double Reasonableness and the Fourth Amendment*, 68 U. MIA. L. REV. 589, 600-02 (2014). Considerable disagreement persists over the meaning of Fourth Amendment "reasonableness." *See* Sherry F. Colb, *The Qualitative Dimension of Fourth Amendment "Reasonableness,"* 98 COLUM. L. REV. 1642, 1648-49 (1998).

<sup>205</sup> *See, e.g.,* *People v. Maikhio*, 253 P.3d 247, 252 (Cal. 2011) (deciding whether a game warden who reasonably believes that a person has recently been fishing or hunting, but lacks reasonable suspicion that the person has violated an applicable fish or game statute or regulation, may stop a vehicle in which the person is riding and demand the person display all fish or game the person has caught or taken); *State v. McKeen*, 2009 ME 89, ¶¶ 2, 977 A.2d 382, 384 (upholding state statute authorizing game wardens to stop any all-terrain vehicle); *Drane v. State*, 493 So. 2d 294, 296 (Miss. 1986) (rejecting

question often reject such arguments, finding that conservation officers' stops are reasonable because they are for administrative purposes.<sup>206</sup>

The doctrinal framework courts apply to evaluate the reasonableness of seizures comes almost entirely from a single line of Supreme Court precedent: the administrative checkpoint cases.<sup>207</sup> In such cases, the Court carved out a narrow exception to the usual requirement of individualized suspicion, permitting brief, suspicionless seizures when officers pursue regulatory or administrative objectives, such as verifying immigration status at a fixed border checkpoint, or checking sobriety at a highway roadblock, rather than investigating criminal conduct.<sup>208</sup> Because conservation officers frequently justify their stops as serving administrative purposes — such as verifying licenses, checking bag limits, or ensuring compliance with equipment regulations — state and lower federal courts have treated the Court's checkpoint cases as the governing framework for evaluating conservation stops.<sup>209</sup> Three

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defendant's argument that conservation officers' suspicionless stop of his vehicle was unconstitutional); *State v. Pike*, 532 S.E.2d 543, 545 (N.C. Ct. App. 2000) (upholding conservation officers' suspicionless boat stop); *Commonwealth v. Karash*, 309 A.3d 1159, 1162-63 (Pa. Commw. Ct. 2024) (rejecting defendant's argument that conservation officers' suspicionless stop and detention of his boat was unconstitutional).

<sup>206</sup> See *supra* note 173.

<sup>207</sup> See, e.g., *Illinois v. Lidster*, 540 U.S. 419, 428 (2004) (holding that sobriety checkpoint did not violate the Fourth Amendment because it satisfied an important state interest and imposed minimal intrusion on motorists); *City of Indianapolis v. Edmond*, 531 U.S. 32, 41-42 (2000) (holding that a checkpoint whose primary purpose is indistinguishable from a general interest in crime control violates the Fourth Amendment); *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 454-55 (1990) (holding that highway sobriety checkpoints do not violate the Fourth and Fourteenth Amendments because the state has a legitimate interest, checkpoints are effective in achieving that interest, and the intrusion on motorists is slight); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (holding that absent at least reasonable suspicion that a motorist is unlicensed or an automobile is unregistered, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment); *United States v. Martinez-Fuerte*, 428 U.S. 543, 566-67 (1976) (holding that the Border Patrol's routine stopping of a vehicle at a permanent checkpoint along the U.S.-Mexico border for brief questioning of the vehicle's occupants is consistent with the Fourth Amendment).

<sup>208</sup> See *Lidster*, 540 U.S. at 428; *Sitz*, 496 U.S. at 454-55; *Martinez-Fuerte*, 428 U.S. at 566-67.

<sup>209</sup> See, e.g., *Maikhiq*, 253 P.3d at 259 ("In our view, the aforementioned factors to which the high court has looked in its special needs and administrative inspection cases

contexts from this line of precedent have proved especially influential: immigration enforcement at the border, highway sobriety and license checkpoints, and inspections of waterborne commerce. The following sections examine each in turn and trace how courts have transplanted them into the conservation setting.

### 1. Immigration Enforcement

The first line of checkpoint cases involve suspicionless stops of vehicles by the U.S. Border Patrol for the ostensible purpose of preventing illegal immigration. In *United States v. Martinez-Fuerte*, the Supreme Court held that Border Patrol agents require no articulable suspicion to stop and question motorists at a roadblock within one hundred miles of the Mexican border.<sup>210</sup> The stops at issue in the case took place at three permanent immigration checkpoints in Southern California.<sup>211</sup> Both checkpoints were marked with large black-on-yellow signs, flashing lights, and subsequent warning signs as motorists got closer.<sup>212</sup> Writing for the majority, Justice Powell emphasized that the location and operation of the checkpoints was determined by “officials responsible for making overall decisions as to the most effective allocation of limited enforcement resources,” and “the decision to ‘seize’ [was] not entirely in the hands of the officer in the field.”<sup>213</sup>

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are the appropriate factors to be considered in determining the reasonableness, for purposes of the Fourth Amendment, of the fish and game procedure at issue here.”); *People v. Butorac*, 2013 IL App (2d) 110953, ¶¶ 16–31, 3 N.E.3d 438, 445–50 (reviewing cases in which courts considered the reasonableness of motor-vehicle checkpoints under the Fourth Amendment); *McKeen*, 2009 ME 89, ¶¶ 14–16, 977 A.2d at 386 (applying the balancing test articulated in checkpoint cases to consider the constitutionality of provisions allowing wardens to stop ATVs without suspicion); *State v. Tourtillott*, 618 P.2d 423, 428 (Or. 1980) (“The rationale underlying Supreme Court decisions in the area of Border Patrol activity and enforcement of driver license and vehicle registration laws suggests that game checkpoints, including the one at issue, may be maintained without violating Fourth Amendment rights.”); *Schenkl v. State*, 996 S.W.2d 305, 309–11 (Tex. Ct. App. 1999) (assessing the constitutionality of a state statute allowing for suspicionless boat stops and recognizing that courts have “addressed the issue in other contexts”).

<sup>210</sup> *Martinez-Fuerte*, 428 U.S. at 566–67.

<sup>211</sup> *See id.* at 545.

<sup>212</sup> *See id.* at 545–46.

<sup>213</sup> *Id.* at 559, 566.

Moreover, the intrusion on motorists was “quite limited,” in Justice Powell’s words, because it required only a “brief detention,” “a response to a brief question or two,” and “possibly the production of a document evidencing a right to be in the United States.”<sup>214</sup> Justice Powell found persuasive the evidence of the checkpoint’s effectiveness in detecting illegal immigrants, noting that, in 1973, the California checkpoint resulted in the apprehension of 17,000 illegal immigrants from about ten million cars that passed through the checkpoint.<sup>215</sup>

*Martinez-Fuerte* marked a significant departure from previous border checkpoint cases — *Almeida-Sanchez v. United States*, *United States v. Ortiz*, and *United States v. Brignoni-Ponce*— which all required some level of suspicion to stop and search vehicles at the border.<sup>216</sup> Justice Powell distinguished *Martinez-Fuerte* because the prior cases had all involved roving patrols rather than a fixed checkpoint. The fixed checkpoint must be regarded differently, he clarified, because “the subjective intrusion — the generating of concern or even fright on the part of lawful travelers — is appreciably less in the case of a checkpoint stop.”<sup>217</sup> Whereas random roving patrols threatened to interfere with “legitimate traffic” and permitted officers to exercise “unreviewable discretion” that could “be abused by some officers in the field,” fixed checkpoints did “not intrude similarly on the motoring public,” and “since field officers may stop only those cars passing the checkpoint, there is less room for abusive or harassing stops of individuals.”<sup>218</sup>

The Court’s skepticism of roving patrols extends beyond the border context. In *Delaware v. Prouse*, the Court was asked to consider whether

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<sup>214</sup> *Id.* at 558.

<sup>215</sup> *See id.* at 554.

<sup>216</sup> *United States v. Ortiz*, 422 U.S. 891, 897-98 (1975); *United States v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266, 273 (1973); *see also* Aliza Hochman Bloom, *The Emerging Firearms Hypocrisy of Terry: The Fifth Circuit in United States v. Wilson*, 78 STAN. L. REV. ONLINE 137, 146 & n.54 (suggesting *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637 (U.S. Sept. 8, 2025) (Kavanaugh, J., concurring in the grant of application for stay) appears to “drop the individuality of suspicion” required by *Brignoni-Ponce*).

<sup>217</sup> *Martinez-Fuerte*, 428 U.S. at 558; *see also Ortiz*, 422 U.S. at 895 (“[T]he differences between a roving patrol and a checkpoint would be significant in determining the propriety of a stop . . .”).

<sup>218</sup> *Martinez-Fuerte*, 428 U.S. at 559.

a suspicionless stop of an automobile on a public highway for the purpose of checking the driver's license and the car's registration was an unreasonable seizure in violation of the Fourth Amendment.<sup>219</sup> It determined that it was.<sup>220</sup> Although the officer characterized the stop as "routine," he admitted that the stop was not made pursuant to any guidelines and, in fact, no such guidelines existed.<sup>221</sup> The Court acknowledged the state's important interest in highway safety but questioned whether random roving stops were an effective means of advancing the interest because less intrusive alternatives — including fixed checkpoints — could serve the same purpose.<sup>222</sup>

A footnote in *Prouse* specified that the holding should not be read to "cast doubt on the permissibility of roadside truck weigh-stations and inspection checkpoints."<sup>223</sup> That carve-out did not go far enough for Justice Blackmun. Writing separately, and joined by Justice Powell, he cautioned that the opinion should also not be read to cast doubt on other "not purely random stops (such as every 10th car to pass a given point)" or on "the necessarily somewhat individualized, and perhaps largely random, examinations by game wardens in the performance of their duties."<sup>224</sup> The Court has never returned to either issue. Justice Blackmun's aside thus remains the only moment in the Supreme Court's Fourth Amendment jurisprudence in which a Justice has directly addressed conservation law enforcement. It is telling that the closest the Supreme Court has come to examining conservation law enforcement under the Fourth Amendment is a parenthetical in a two-Justice concurrence — not a holding, or even dicta, but an aside urging restraint in a context the Court had never scrutinized.

What cases like *Prouse* and *Martinez-Fuente* did establish, however, is that roving, discretionary stops are constitutionally suspect, and the government's interest in regulatory compliance must proceed through means that constrain officer discretion, such as fixed checkpoints with

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<sup>219</sup> Delaware v. Prouse, 440 U.S. 648, 650 (1979).

<sup>220</sup> See *id.* at 663.

<sup>221</sup> *Id.* at 650.

<sup>222</sup> See *id.* at 661-63.

<sup>223</sup> *Id.* at 663 n.26.

<sup>224</sup> *Id.* at 664 (Blackmun, J., concurring).

neutral criteria. As Part III.C.4 demonstrates, conservation enforcement has developed in tension with precisely this principle.

## 2. Highway Checkpoints

The Court applied a closely related analysis in the highway checkpoint context, where it developed the balancing test that would become the primary framework for evaluating conservation stops.<sup>225</sup> In *Michigan v. Sitz*, the Court upheld the suspicionless stopping of every motorist passing through a sobriety checkpoint.<sup>226</sup> Nineteen officers participated in the roadblocks, which were established and run pursuant to predetermined guidelines.<sup>227</sup> All motorists passing through the checkpoint were stopped and examined for signs of intoxication.<sup>228</sup> The police immediately released drivers who appeared sober but directed those whose sobriety was in doubt to an out-of-traffic location, where they might be subjected to further sobriety tests.<sup>229</sup>

Chief Justice Rehnquist's majority opinion confined its analysis to the reasonableness of the initial seizure — the brief stop, the questioning, and the officer's observation — without deciding whether extended detention for field sobriety testing required individualized suspicion.<sup>230</sup> Thus limited, the Court held that the balancing test favored the government.<sup>231</sup> Three features proved decisive. First, the government interest was substantial: the severity of the drunk-driving problem justified aggressive regulatory measures.<sup>232</sup> Second, the intrusion was minimal: each stop was brief, the investigation was limited in intensity, and the fixed checkpoint generated less "fear and surprise" in law-abiding motorists than a roving patrol would have.<sup>233</sup> Third, the checkpoint operated under predetermined guidelines that dictated its

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<sup>225</sup> Mich. Dep't State Police v. Sitz, 496 U.S. 444, 450-53 (1990).

<sup>226</sup> *Id.* at 453.

<sup>227</sup> *See id.* at 447; *id.* at 460 (Stevens, J., dissenting).

<sup>228</sup> *See id.* at 447 (majority opinion).

<sup>229</sup> *See id.*

<sup>230</sup> *See id.* at 455.

<sup>231</sup> *See id.*

<sup>232</sup> *See id.* at 451.

<sup>233</sup> *Id.* at 451-52.

timing and location, constraining officer discretion and diminishing the potential for its abuse.<sup>234</sup>

Later, in *City of Indianapolis v. Edmond*, the Court distinguished between checkpoints where officers' primary purpose is to detect evidence of ordinary criminal wrongdoing and those where the primary purpose overlaps with a lawful state regulatory interest.<sup>235</sup> The checkpoints at issue in the case all operated pursuant to written directives from the chief of police.<sup>236</sup> Officers stopped every car passing through, and at least one officer checked the driver's license and vehicle registration.<sup>237</sup> The officer also looked for signs of impairment and conducted an open-view examination of the vehicle from the outside.<sup>238</sup> At the same time, a narcotics detection dog walked around the outside of each stopped vehicle.<sup>239</sup> The directives instructed the officers to conduct each stop in the same manner until particularized suspicion developed, and the officers had no discretion to stop any vehicle apart from the established order.<sup>240</sup> Despite those structural safeguards, the Court held the checkpoints unconstitutional because their primary purpose was to detect evidence of ordinary criminal wrongdoing.<sup>241</sup> *Edmond* thus established that even a well-administered checkpoint fails constitutional scrutiny if there is an absence of individualized suspicion and the checkpoint's animating purpose is indistinguishable from general crime control.

### 3. Waterborne Commerce

The border and highway cases establish that suspicionless stops are constitutionally tolerable only under tight constraints: fixed locations, predetermined guidelines, regulatory rather than criminal purposes,

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<sup>234</sup> *See id.*

<sup>235</sup> *See Indianapolis v. Edmond*, 531 U.S. 32, 39-40 (2000).

<sup>236</sup> *See id.* at 35.

<sup>237</sup> *See id.*

<sup>238</sup> *See id.*

<sup>239</sup> *See id.*

<sup>240</sup> *See id.*

<sup>241</sup> *See id.* at 40, 44. *But see Illinois v. Lidster*, 540 U.S. 419, 427-28 (2004) (holding constitutional a checkpoint stop used to obtain information about a hit-and-run but that did not target drivers based on suspected involvement in the crime).

and minimal intrusion. But the Court struck a markedly different balance when it turned from land to water. In *United States v. Villamonte-Marquez*, the Court considered whether customs officers could board and inspect a vessel in inland waters without any suspicion of wrongdoing.<sup>242</sup> The facts were suggestive but legally irrelevant to the holding. Customs officers, accompanied by a Louisiana state policeman, were patrolling a shipping channel near the Gulf of Mexico when they observed a sailboat anchored in a secluded area frequently used for smuggling.<sup>243</sup> The officers boarded the vessel to inspect documentation as authorized by federal statute.<sup>244</sup> During the inspection, they observed bales of marijuana in plain view and subsequently arrested the occupants.<sup>245</sup>

The Court upheld the boarding without requiring articulable suspicion.<sup>246</sup> Justice Rehnquist's majority opinion rested on several grounds. The opinion emphasized that the statute authorizing vessel boardings served important federal interests in regulating maritime commerce and preventing smuggling.<sup>247</sup> Moreover, it suggested that vessel boardings were less intrusive than vehicle stops because boaters have a reduced expectation of privacy in heavily regulated waterways.<sup>248</sup> Third, it concluded that fixed checkpoint alternatives were impractical in the maritime context, where vessels can access open waters through numerous channels and anchorages.<sup>249</sup> This impracticability finding effectively excused the government from the structural constraint the Court had insisted upon on land.<sup>250</sup> Finally, the majority distinguished the case from *Prouse* by reasoning that the boarding statute contained "inherent limits" on officer discretion because officers could only board vessels and only in waters where vessels were reasonably expected to be

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<sup>242</sup> *United States v. Villamonte-Marquez*, 462 U.S. 579, 580-81 (1983).

<sup>243</sup> *See id.* at 582.

<sup>244</sup> *See id.* at 583, 585.

<sup>245</sup> *See id.* at 583.

<sup>246</sup> *See id.* at 593.

<sup>247</sup> *See id.* at 589.

<sup>248</sup> *See id.*

<sup>249</sup> *See id.*

<sup>250</sup> *See id.*

found.<sup>251</sup> Taking all these factors together, the majority concluded that the balancing test favored the government.<sup>252</sup>

*Villamonte-Marquez* is the most permissive decision in the checkpoint line, and it is no coincidence that it is one courts have found useful in evaluating stops by conservation officers. The decision loosened each of the constraints that the border and highway cases had imposed. It excused the absence of a fixed checkpoint by deeming fixed locations impractical. It accepted reduced privacy expectations as a feature of the regulated environment rather than requiring the government to demonstrate them. And it treated statutory authorization as a sufficient constraint on officer discretion, replacing the predetermined guidelines and supervisory oversight that *Sitz* and *Martínez-Fuerte* had demanded. For courts evaluating conservation enforcement, *Villamonte-Marquez* offers a template: if fixed checkpoints are impractical in the maritime context because waterways are too numerous and too dispersed, the same reasoning applies with even greater force to the forests, fields, and backcountry where hunting and trapping take place. But *Villamonte-Marquez* involved federal customs officers boarding commercial vessels in a shipping channel pursuant to a comprehensive maritime regulatory scheme. The next subsection examines how courts have managed the translation of *Villamonte-Marquez* and other checkpoint cases to the conservation law enforcement context — and what has been lost along the way.

#### 4. Conservation “Checkpoints”

While the Supreme Court has articulated general principles governing administrative stops, it has not directly addressed the constitutionality of stops by conservation officers. That task has fallen to state and lower federal courts, which must determine whether and how the checkpoint doctrine applies to the diverse circumstances faced by conservation law enforcement officers. In some cases, the doctrine provides a useful touchstone because the challenged stop occurred at a fixed checkpoint. In *State v. Tourtillott*, for example, the Supreme Court of Oregon considered the constitutionality of a game checkpoint stop set up to

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<sup>251</sup> *Id.* at 592.

<sup>252</sup> *See id.* at 593.

check hunters' compliance with game laws, check hunting licenses, and gather statistics on hunter success on the opening day of deer season.<sup>253</sup> Although this was a roadblock-type stop, the record did not contain any references to overarching policy or guidelines, and the stops were not entirely random.<sup>254</sup> The officer would sometimes wave through cars whose passengers "did not appear to have been hunting."<sup>255</sup> Likening the stop to that approved in *Martinez-Fuerte*, a majority of justices held that the roadblock stop was not unreasonable.<sup>256</sup> The justices were not troubled by the selective wave-throughs because they interpreted "discretion" to be problematic only when it applied to the decision to stop a vehicle, which was here uniformly applied to everyone who appeared to have been hunting.<sup>257</sup>

Although citing the state's interest in the preservation of wildlife as a compelling reason to set up the checkpoint, the majority also found Oregon's rural topography to be a persuasive factor in their analysis.<sup>258</sup> First, the fact that the checkpoint was "placed on an isolated road" minimized, in their view, the intrusion on "legitimate traffic."<sup>259</sup> They explicitly declined to consider "whether a game checkpoint located in a metropolitan area would be overly intrusive."<sup>260</sup> Second, and even more compelling, was the fact that sixty percent of Oregon's population held a hunting or fishing license and could make use of it on over one-half of Oregon's 96,981 square miles.<sup>261</sup> Given the "vast expanse of Oregon's territory" and the numbers of sportsmen who make use of it, the justices opined that the checkpoint method "would be one of the most effective

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<sup>253</sup> State v. Tourtillott, 618 P.2d 423, 424 (Or. 1980).

<sup>254</sup> *Id.* at 430.

<sup>255</sup> *Id.* at 425.

<sup>256</sup> *See id.* at 430.

<sup>257</sup> *See id.* ("There was no exercise of discretion in the sense that the policeman would pull over any vehicle based upon a 'hunch.' The fact that the roadblock was set during hunting season, in an area frequented by hunters, and subjected all vehicles to being stopped or slowed circumscribes the possibility of an abuse of discretion on the patrolman's part.").

<sup>258</sup> *See id.* at 429-30.

<sup>259</sup> *Id.* at 430 n.13 (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 559 (1976)).

<sup>260</sup> *Id.*

<sup>261</sup> *See id.* at 430.

ones to meet [the State's] goals" of ensuring compliance with their game laws.<sup>262</sup>

The dissenting justice took issue with much of the majority opinion, but especially its characterization of the checkpoint as effectuating administrative, as opposed to criminal, purposes.<sup>263</sup> As an initial matter, the dissent pointed out that there was no evidence that preventing unlawful hunting protected loss of game.<sup>264</sup> Moreover, the dissenting justice explained, this was not the kind of activity covered by a special or administrative need, which would allow warrantless preemptive checks of unsafe conditions that might arise from failure to comply with regulatory policy.<sup>265</sup> In compliance checks, criminal sanctions were secondary to the program designed to detect, and ultimately correct, the harmful condition itself.<sup>266</sup> In contrast, the game checkpoint at issue in *Tourtillott* was directed at those who had already been hunting rather than those about to go hunting — too late to save the game or ensure that those who hunted were licensed to do so.<sup>267</sup> Therefore, the dissent maintained that the primary purpose of the stop was to investigate violations of hunting laws.<sup>268</sup> In other words, it failed the primary purpose test: it was not an administrative stop but was instead designed primarily to detect criminal violations.<sup>269</sup>

The tension between administrative and criminal purposes becomes even more pronounced when conservation officers conduct stops outside the checkpoint context — as they most often do. Conservation officers frequently stop hunters and anglers not at fixed checkpoints but as they encounter individuals leaving the field, either on foot or by car.<sup>270</sup> The timing and location of these stops are not set by policy or

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<sup>262</sup> *Id.*

<sup>263</sup> *See id.* at 438–40 (Linde, J., dissenting).

<sup>264</sup> *See id.* at 441.

<sup>265</sup> *See id.* at 442.

<sup>266</sup> *Cf. Indianapolis v. Edmond*, 531 U.S. 32, 48 (2000) (holding unconstitutional suspicionless stops of motorists at a checkpoint whose primary purpose “is ultimately indistinguishable from the general interest in crime control”).

<sup>267</sup> *Tourtillott*, 618 P.2d at 441, 448 (Linde, J., dissenting).

<sup>268</sup> *Id.* at 448.

<sup>269</sup> *See id.* at 428–29 (majority opinion) (discussing *Martinez-Fuerte* and *Prouse*).

<sup>270</sup> *See* Chapman & Hartman, *supra* note 67, at 389.

guidelines; indeed, the stops sometimes follow a period of prolonged surveillance and suspicion of wrongdoing that nonetheless falls short of the articulable suspicion that *Terry* requires.<sup>271</sup>

The Iowa Supreme Court's decision in *State v. Keehner* illustrates how courts analyze these encounters, and how far they are willing to stretch the checkpoint framework to accommodate them.<sup>272</sup> In that case, a conservation law enforcement officer responded to a tip that Keehner had engaged in illegal deer hunting and subsequently stopped Keehner's truck on a public highway.<sup>273</sup> After asking to see Keehner's hunting license and fur harvester's license, the officer discovered that Keehner's gun unlawfully contained shells in the magazine.<sup>274</sup> At the suppression hearing, the officer indicated he was not making random stops but instead had a specific reason for stopping Keehner and acted upon it.<sup>275</sup> The court accepted the district court's finding that the officer lacked adequate grounds to reasonably believe Keehner had violated the law yet upheld the stop as constitutional.<sup>276</sup> Invoking the checkpoint cases and Justice Brennan's concurrence in *Prouse*, the court characterized the stop as administrative.<sup>277</sup>

Turning to the balancing test, it found the state's interest "substantial" and Keehner's Fourth Amendment interest diminished because, as a hunter, he was required to display his license upon request and "should know that he could be stopped to briefly display that license."<sup>278</sup> This reasoning required the court to distinguish *Prouse*, which had rejected a virtually identical argument in the highway context. The *Keehner* court found what it perceived to be a critical

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<sup>271</sup> See *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (explaining that "whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience"). On the difficulty of distinguishing between "suspicion" and "hunch," see generally Craig S. Lerner, *Reasonable Suspicion and Mere Hunches*, 59 VAND. L. REV. 407 (2006).

<sup>272</sup> *State v. Keehner*, 425 N.W.2d. 41 (Iowa 1988).

<sup>273</sup> See *id.* at 42-43.

<sup>274</sup> See *id.* at 43.

<sup>275</sup> See *id.* at 42.

<sup>276</sup> See *id.* at 45.

<sup>277</sup> See *id.* at 44.

<sup>278</sup> See *id.* at 44-45.

distinction: Prouse was engaged in random activity — driving — but Keehner was not.<sup>279</sup> Keehner was stopped because the officer reasonably believed he was a hunter.<sup>280</sup> The seizure was therefore reasonable, the court held, because it implicated an identifiable subpopulation that had implicitly acquiesced to being stopped, and the stop served a substantial state interest.<sup>281</sup>

Yet this was the argument considered and rejected in *Prouse* that licensing serves the state's substantial interest in road safety and that a driver on a public road knows they are subject to government enforcement.<sup>282</sup> The distinction underlying the different outcomes thus rests on little more than the identity of the person stopped — one a hunter, the other a driver.<sup>283</sup> The court's logic intimates that by choosing to engage in a lawful licensed activity, a hunter passes through a kind of perpetual checkpoint, one where an officer may detain and question them at any moment, with no fixed location, no neutral guidelines, and no constraints on discretion.

*Keehner* reveals a deeper asymmetry in how courts apply the checkpoint framework to conservation stops. In the checkpoint cases, an officer's intent to detect crime undermines any attempt to characterize the stop as administrative.<sup>284</sup> *Edmond* held that a

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<sup>279</sup> *Delaware v. Prouse*, 440 U.S. 648, 662 (1978) (noting that “[a]n individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation”). *But see* Eve Brensike Primus, *Disentangling Administrative Searches*, 111 COLUM. L. REV. 254, 308 (2011) (“Comparing the automobile exception with the special subpopulation searches classified as administrative thus demonstrates that the requirement of individualized suspicion need not disappear simply because the person to be searched has reduced expectations of privacy.”).

<sup>280</sup> *Keehner*, 425 N.W.2d. at 42.

<sup>281</sup> *Id.* at 44-45.

<sup>282</sup> *Prouse*, 440 U.S. at 658 (noting that “[a]utomobile licenses are issued periodically to evidence that the drivers holding them are sufficiently familiar with the rules of the road and are physically qualified to operate a motor vehicle”).

<sup>283</sup> *Keehner*, 425 N.W.2d. at 45 (noting that “an individual engaging in activity that may reasonably be interpreted as hunting, knows that he or she may be stopped briefly and asked to display a license. . . . Expectations to the contrary are unreasonable”).

<sup>284</sup> The Supreme Court suggests that an inquiry into subjective intentions is necessary and proper whenever law enforcement purports to make an administrative stop. *See* Gabriel J. Chin & Charles J. Vernon, *Reasonable but Unconstitutional: Racial*

checkpoint whose primary purpose is indistinguishable from general crime control is unconstitutional, regardless of how well administered it is. Yet in *Keehner*, the officer acted on a tip about illegal hunting, targeted a specific individual, and acknowledged that the stop was not random. If the same facts had arisen in a highway checkpoint case, the stop would almost certainly have failed under *Edmond*. That it survived in the conservation context illustrates the double standard at the heart of the Green Fourth Amendment: constraints apply in full when traditional police invoke it, but they loosen — sometimes to the point of disappearing — when conservation officers do.<sup>285</sup>

The Iowa Supreme Court's approach is not unique. In *State v. McHugh*, the Louisiana Supreme Court examined the lawfulness of conservation officers' seizure of a hunter boating in a wildlife habitat during hunting season.<sup>286</sup> The officers candidly admitted that their "primary objective" was to detect persons engaged in illegal duck hunting.<sup>287</sup> They purportedly set out to check every boat headed toward the boat landing but in practice allowed some boats to pass without stopping.<sup>288</sup> The court nonetheless upheld the stop. Treating the encounter as a checkpoint, it applied the balancing test and found the state's interest "compelling" because wildlife and fisheries could not be protected by any less intrusive means because, "[u]nlike drugs or drunk drivers, dead

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*Profiling and the Radical Objectivity of Whren v. United States*, 83 GEO. WASH. L. REV. 882, 914 (2015). In *Whren v. United States*, the Supreme Court held that "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis" but expressly distinguished those cases in which probable cause plays no role in the analysis. *Whren v. United States*, 517 U.S. 806, 813 (1996); see also *City of Indianapolis v. Edmond*, 531 U.S. 32, 45 (noting that *Whren* does not preclude an inquiry into programmatic purposes of administrative checkpoints and the rejection of such checkpoints as unconstitutional if such purposes are non-existent or insufficiently articulated); DAVID S. RUDSTEIN, C. PETER ERLINDER & DAVID C. THOMAS, CRIMINAL CONSTITUTIONAL LAW § 3.06[3][d] (1998) (using an administrative search as pretext for criminal investigation will render it unconstitutional); *Showers v. Spangler*, 182 F.3d 165, 174 (3d Cir. 1999) (ruling unconstitutional the use of administrative inspections to "randomly and extensively search for evidence of crimes").

<sup>285</sup> McLain, *supra* note 78, at 725 (surveying state court cases upholding suspicionless stops by conservation law enforcement for the purpose of ferreting out crime).

<sup>286</sup> See *State v. McHugh*, 630 So. 2d 1259, 1261 (La. 1994).

<sup>287</sup> *Id.*

<sup>288</sup> See *id.* at 1262.

ducks evince no telltale signs, smells or behavior plainly indicating criminal activity.”<sup>289</sup> The court dismissed the concern that officers might abuse their discretion in deciding whom to stop, reasoning that the officers were adequately constrained by the statutory scheme that authorized them to check hunting licenses.<sup>290</sup> Even though the officers’ actual operation extended well beyond that scheme and added what the court itself acknowledged was an “extra element of intrusiveness,” the court concluded it was not significant enough to tip the balance against the government.<sup>291</sup>

*McHugh* compounds the problems identified with *Keehner*. In *Keehner*, the officer acted on a specific tip and targeted a specific individual, but the court called it administrative. In *McHugh*, the officers admitted their primary objective was to detect criminal activity, but the court called it a checkpoint. In neither case did the court grapple seriously with *Edmond*’s primary purpose test — a principle that, if applied with the rigor courts bring to highway and drug-interdiction checkpoints, would likely have invalidated both stops. Instead, both courts reached the same destination by the same route: characterizing the stop as administrative, invoking the state’s interest in wildlife protection, finding the individual’s Fourth Amendment interest diminished by virtue of holding a license, and concluding that the balance favored the government.

This pattern reveals the architecture of the Green Fourth Amendment’s seizure doctrine.<sup>292</sup> Courts borrow the checkpoint framework’s vocabulary and analytical structure but apply it without the constraints that give that framework its constitutional legitimacy.<sup>293</sup> Fixed locations become optional. Neutral guidelines give way to officer judgment. The prohibition on stops motivated by criminal suspicion softens into a formality. And the balancing test, which the Supreme

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<sup>289</sup> *Id.* at 1266-67.

<sup>290</sup> *See id.* at 1266.

<sup>291</sup> *Id.*

<sup>292</sup> *See* Rossler & Suttmoeller, *Conservation Officer Perceptions of Search Authority*, *supra* note 183, at 66 (discussing cases); *see also supra* Figure 4 (showing approximately sixteen percent of courts denied defendant’s motion to suppress evidence because the conservation officer’s search was justified by administrative or special needs).

<sup>293</sup> *See* Michael T. O’Connor, Note, *Fishing for Evidence: The Expansive Warrantless Search Powers of Fish and Game Wardens*, 13 HASTINGS CONST. L.Q. 119, 140-42 (1985).

Court designed to impose genuine limits on suspicionless seizures, becomes a vehicle for ratifying them. The result is a body of seizure law that operates in the name of the checkpoint doctrine but bears little resemblance to it.

*D. Conservation Officers' Perceptions of Their Investigatory Authority*

Before examining how courts have applied the checkpoint framework to conservation stops, it is worth pausing to consider how the officers who conduct those stops understand their own authority. The preceding sections mapped the Green Fourth Amendment as it exists in statutes and Supreme Court doctrine — the law on the books. But the picture those sources provide is necessarily incomplete. Most conservation encounters never result in a legal challenge.<sup>294</sup> Conservation violations are predominantly misdemeanors and infractions; defendants rarely have the resources or incentive to litigate a motion to suppress.<sup>295</sup> What conservation officers believe they are authorized to do therefore shapes the practical reach of the Green Fourth Amendment far more than what any court has held.

This matters for the doctrinal analysis that follows. If officers understand their authority to be broader than what the checkpoint cases would permit then the case law examined in the next Part represents only the visible surface of a much larger body of enforcement practice. The gap between what courts have sanctioned and what officers believe they can do is itself a feature of the Green Fourth Amendment — one that cannot be seen in judicial opinions alone.<sup>296</sup>

Although few empirical studies have examined encounters between conservation officers and the public,<sup>297</sup> the available evidence — drawn

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<sup>294</sup> See Stuntz, *Warrants and Fourth Amendment Remedies*, *supra* note 113, at 886-87.

<sup>295</sup> See *id.*

<sup>296</sup> See Austin Sarat, *The Litigation Explosion, Access to Justice, and Court Reform: Examining the Critical Assumptions*, 37 RUTGERS L. REV. 319, 329-35 (1985).

<sup>297</sup> But see Alyse Bertenthal, *In the Face of Lawbreaking*, U.C. IRVINE L. REV. (forthcoming) (on file with author) (analyzing encounters between conservation officers and the public through observations of body-worn camera footage and interviews with officers); Timothy J. Carter, *Force Against and by Game Wardens in Citizen Encounters*, 7 POLICE Q. 489, 492-93 (2004) (using police reports to examine use of force by and against game wardens); Michael R. Pendleton, *Policing the Park: Understanding*

from public perceptions, professional culture, and officers' own self-reports — consistently suggests that conservation officers are widely understood to possess investigatory powers that exceed those of traditional police. When the limits on conservation officers' search and seizure authority are perceived to be broad, officers are likely to act on those perceived powers, and the public is unlikely to challenge their exercise of authority.

The public widely believes that conservation officers have more authority to search than traditional police officers and that they can search most places without a warrant.<sup>298</sup> Conservation officers do little to correct that impression. To the contrary, many adopt enforcement strategies designed to reinforce it and cultivate the notion that “there is a game warden behind every tree.”<sup>299</sup> As one Virginia conservation officer explained, the perpetuation of these myths is useful because they “nudge some would-be violators away from breaking the law” and encourage “honest outdoor enthusiasts [to remain] honest.”<sup>300</sup>

Officers' perceptions of their own authority mirror the public's.<sup>301</sup> A study by criminologists Rossler and Suttmoeller surveyed more than 1,500 conservation officers across fifteen states and found that many believe they have expanded discretion to search relative to traditional police.<sup>302</sup> Nearly forty-five percent of respondents agreed or strongly agreed that they had more power to search private property, and more than twenty-five percent agreed or strongly agreed that they had more

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*Soft Enforcement*, 30 J. LEISURE RSCH. 552, 554-56 (1998) (employing participant observation to study wardens' enforcement strategies in a Canadian national park).

<sup>298</sup> See Haden & Israel, *supra* note 3, at 79; McLain, *supra* note 78, at 721-23; see also LaCaze, *supra* note 82 (noting that one of the greatest game warden myths is that wardens have more search authority than traditional police officers).

<sup>299</sup> Call of the Outdoors, *Penn's Woods Law: Busting Poachers & Protecting Wildlife*, PA. GAME COMM'N, at 15:09 (Nov. 6, 2024), <https://call-of-the-outdoors.castos.com/episodes/call-of-the-outdoors-episode-51-penns-woods-law-busting-poachers-protecting-wildlife>.

<sup>300</sup> Scott Naff, *A Day in the Life of a Conservation Police Officer*, VA. DWR (Nov. 26, 2018), <https://dwr.virginia.gov/blog/a-day-in-the-life-of-a-conservation-police-officer/> [<https://perma.cc/A6EF-MY28>].

<sup>301</sup> See Eugene A. Paoline III & William Terrill, *The Impact of Police Culture on Traffic Stop Searches: An Analysis of Attitudes and Behavior*, 28 POLICING 455, 456 (2005).

<sup>302</sup> Rossler & Suttmoeller, *Conservation Officer Perceptions of Search Authority*, *supra* note 183, at 62.

power to search vehicles.<sup>303</sup> These perceptions matter because, in an enforcement environment where judicial oversight is rare, the authority officers believe they possess becomes the authority they exercise. When officers widely depend on self-regulation to govern their search activity, the breadth of the power they believe they hold directly determines the scope of the searches they conduct, even when a court might otherwise find those actions to be unconstitutional.<sup>304</sup>

The consequences extend beyond the conservation context. Rossler and Suttmoeller's research suggests that traditional police officers share this broad conception of conservation officers' authority and have learned to exploit it.<sup>305</sup> They document cases in which traditional police officers, suspecting contraband in a vehicle but lacking probable cause, found reason to believe the occupants had been hunting or fishing and called in a conservation officer to conduct the search.<sup>306</sup> In another case, municipal police reported that exotic pets were present on a suspected drug dealer's property, enabling them to recruit a conservation officer to inspect the premises for wild animals and seize any drugs discovered in the process — all without obtaining a warrant.<sup>307</sup>

These practices expose a troubling dynamic at the heart of the Green Fourth Amendment. The authority it bestows migrates into traditional policing through interagency partnerships, informal cooperation, and the shared perception that conservation enforcement operates beyond ordinary Fourth Amendment constraints. And because most conservation violations result in minor penalties — often citations that defendants pay rather than litigate — the encounters that test the boundaries of that authority rarely reach a courtroom.

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<sup>303</sup> See *id.* at 69.

<sup>304</sup> See Nirej Sekhon, *Police and the Limit of Law*, 119 COLUM. L. REV. 1711, 1728 (2019) (noting that “[c]riminal procedure’s answer has . . . conceive[d] of police officers as street magistrates, who can be induced to check their own discretion”).

<sup>305</sup> Rossler & Suttmoeller, *Conservation Officer Perceptions of Search Authority*, *supra* note 183, at 71-73.

<sup>306</sup> See *id.* at 73.

<sup>307</sup> See *id.* at 73-74.

## IV. DOCTRINAL DISRUPTION AND SPILLOVER EFFECTS

Legal scholars have devoted tremendous energy to articulating and critiquing the rules that govern police investigations, but they have paid virtually no attention to the rules that govern conservation policing.<sup>308</sup> Perhaps this is unsurprising. Legal scholars focus disproportionately on what the Supreme Court writes,<sup>309</sup> and conservation law enforcement officers are never the subjects of those opinions. The paucity of research may also stem from the tendency to treat conservation enforcement as

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<sup>308</sup> A handful of scholars have addressed the question of conservation officers' investigatory authority. However, they focus on a select few cases or statutory rules in only a few states. *See, e.g.*, Charles F. Hickox III, *Rhode Island Game Wardens Go Fishing for Evidence*, 22 BUS. L. REV. 61, 62-64 (1989) (discussing cases involving conservation officers' search authority in Michigan, Missouri, and Tennessee); McLain, *supra* note 78, at 724-28 (discussing the constitutionality of searches and seizures by fish and wildlife officers in Missouri); Bryan M. Mull, Comment, *The Hidden Cost of Rod and Rifle: Why State Fish and Game Laws Must Be Amended in Order to Protect Against Unreasonable Searches and Seizures in the Great Outdoors*, 42 U. BALT. L. REV. 801, 814-16 (2013) (discussing law in California, Minnesota, and Montana); Malin J. Stearns, Note, *It's Good to Be the Game Warden: State v. Boyer and the Erosion of Privacy Protection for Montana Sportsmen*, 65 MONT. L. REV. 187, 204-05 (2004) (discussing law governing game wardens' searches and seizures in Montana). For a more expansive discussion of conservation officer's investigatory authority, see generally Haden & Israel, *supra* note 3 (arguing that the Fourth Amendment should apply equally to game wardens and police in other contexts); O'Connor, *supra* note 90 (arguing that game wardens have greater authority to search than police or administrative inspectors); Overturf, *Keeping it Regulatory*, *supra* note 83 (analyzing state statutes authorizing warrantless search authority held by conservation officers); MICHAEL J. SUTTMOELLER & MICHAEL T. ROSSLER, CONSERVATION LAW ENFORCEMENT (2022) (providing an overview of conservation law enforcement, including general search authority); White, *supra* note 83 (noting that "a large number of states" require "a lower level of suspicion than probable cause, or no suspicion whatsoever" to justify conservation officers' searches).

<sup>309</sup> *Cf.* Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1 (2002) (surveying empirical legal scholarship, which almost exclusively deals with Supreme Court cases). Some empirical scholarship does take into account state and lower federal court cases, *see generally, e.g.*, Megan M. La Belle, *Against Settlement of (Some) Patent Cases*, 67 VAND. L. REV. 375 (2014) (canvassing patent case law); Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036 (1991) (examining the factors that influence judicial outcomes in cases involving an asserted "corporate veil"); Matthew Tokson, *The Aftermath of Carpenter: An Empirical Study of Fourth Amendment Law 2018-2021*, 135 HARV. L. REV. 1790 (analyzing 857 federal and state judgments citing *Carpenter*), but these are exceptional — both in employing an empirical methodology and in incorporating state and lower federal court judicial opinions.

purely administrative, a domain of license checks and bag limits rather than criminal investigation.<sup>310</sup> Whatever the reason for the oversight, it is a consequential one. As the preceding Parts demonstrate, conservation officers are certified law enforcement officers who exercise the full range of investigatory powers, yet they operate under a distinct set of rules that, as one state supreme court justice observed, “selectively authorize[] a class of searches that, at one and the same time, violates the Constitution and creates a class of peace officers that do not have to follow the search and seizure strictures that bind other law enforcement officers.”<sup>311</sup>

This Part considers why the emergence of a Green Fourth Amendment matters for criminal procedure more broadly. Because conservation officers operate primarily in rural and wilderness areas, one might assume that the doctrinal distortions documented in this Article are confined to those contexts — of limited consequence for the urban and suburban settings where most Americans live and most policing occurs.<sup>312</sup> That assumption would be mistaken. The doctrinal erosion documented in the preceding Parts does not respect geographic boundaries. When courts accept suspicionless stops based on identity, collapse the distinction between administrative and criminal searches, or treat the government’s interest in wildlife protection as self-evidently compelling without genuine scrutiny, they create precedent. And once established, doctrinal exceptions tend to expand rather than contract.<sup>313</sup>

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<sup>310</sup> See Bertenthal, *Environmentalists’ Latent Abolitionism*, *supra* note 9, at 1140, 1168; see also Alyse Bertenthal, *Toxic Narratives, Toxic Communities, and Enforcement of Environmental (In)Justice*, 99 WASH. L. REV. 1053, 1091 (2024) (observing that beliefs about the unique purposes of regulatory enforcement influence the decisions and actions of environmental enforcement staff); Farhang Heydari, *The Invisible Driver of Policing*, 76 STAN. L. REV. 1, 77 (2024) (arguing that “any distinction between ‘ordinary’ and ‘crime control’ agencies is artificial”).

<sup>311</sup> *State v. Boyer*, 2002 MT 33, ¶ 93, 42 P.3d 771, 787 (Nelson, J., dissenting in part).

<sup>312</sup> See Jacob Migdall, *Urban and Rural: Everything in-Between and Why It Matters*, NAT’L LEAGUE CITIES (Apr. 28, 2025), <https://www.nlc.org/article/2025/04/28/urban-and-rural-everything-in-between-and-why-it-matters> [https://perma.cc/7TWR-HM7N] (reporting that eighty percent of the U.S. population lived in urban communities according to the 2020 Census).

<sup>313</sup> See Phyllis T. Bookspan, *Reworking the Warrant Requirement: Resuscitating the Fourth Amendment*, 44 VAND. L. REV. 473, 503 (1991); David Gray, *Fourth Amendment Remedies as Rights: The Warrant Requirement*, 96 B.U. L. REV. 425, 428 (2016).

That risk is exacerbated because conservation officers increasingly act like traditional law enforcement officers and partner with traditional police in ways that import the Green Fourth Amendment's diminished protections directly into conventional crime control.<sup>314</sup> These collaborations — in which traditional police enlist conservation officers to conduct searches they could not lawfully perform themselves — reveal that the Green Fourth Amendment operates not only as a separate regime for conservation enforcement, but as a vehicle for circumventing constitutional constraints in drug investigations, weapons cases, and prosecutions for violent crime.<sup>315</sup>

Beyond these immediate spillover effects, the Green Fourth Amendment threatens to extend a logic that, if accepted, will be difficult to constrain to the conservation context. Courts have long recognized that some regulated activities — most notably driving — carry reduced expectations of privacy and permit certain warrantless searches.<sup>316</sup> But the Green Fourth Amendment goes further. It permits suspicionless searches and seizures without the constraints that limit other such encounters. Unlike highway checkpoints, which must be fixed in location, conducted according to neutral guidelines, and limited in scope, conservation stops do not need to satisfy these requirements.<sup>317</sup>

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<sup>314</sup> See, e.g., *State v. Mogen*, 2000 MT 14, ¶ 8, 993 P.2d 699, 700-01 (considering lawfulness of a joint effort by police officer and game warden to investigate suspected marijuana plants on the defendant's property); *State v. Albaugh*, 1997 ND 229, ¶ 27, 571 N.W.2d 345, 351 (holding that game warden had authority to detain the defendant at a checkpoint until a police officer could arrive when the warden observed alcohol in plain view, even after it was determined that he had not been hunting).

<sup>315</sup> See, e.g., *United States v. Blair*, 493 F. Supp. 398, 412-17 (D. Md. 1980) (ruling that search of a boat and boxes therein for drugs in a joint effort by Natural Resources Police and Customs Patrol Officers was constitutional when the conservation officer boarded the boat to perform a safety check after smelling marijuana); *People v. Slavin*, 2011 IL App. (2d) 100764, ¶ 21, 964 N.E.2d 150, 157 (affirming conviction for possession of marijuana after a conservation officer conducted a warrantless search of the defendant's ice fishing shanty upon hearing coughing and an occupant say "pack the bowl").

<sup>316</sup> See *California v. Carney*, 471 U.S. 386, 391-93 (1985) (reinforcing that there is a lesser expectation of privacy in vehicles due to the "compelling governmental need for regulation"); see also *New York v. Burger*, 482 U.S. 691, 707 (1987) (junkyard); *United States v. Biswell*, 406 U.S. 311, 316 (1972) (firearm dealer).

<sup>317</sup> See *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 451 (1990); *United States v. Martinez-Fuerte*, 428 U.S. 543, 559, 567 (1976).

And unlike regulatory inspections of commercial businesses, which the Court has cabined to “closely regulated industries” with a history of pervasive oversight,<sup>318</sup> conservation searches apply to recreational activities that millions of Americans engage in on public lands. If the rationale accepted in conservation cases — that participation in a regulated activity, standing alone, justifies warrantless and suspicionless stops and searches — is extended beyond its current bounds, it could reach any activity subject to licensing or permitting requirements.

The following sections explore these implications in greater depth, examining how the Green Fourth Amendment challenges place-based constitutional protections, destabilizes core Fourth Amendment doctrines, and creates precedents whose reach extends well beyond the forests, waterways, and open fields where they originated.

*A. Rejecting the Distinction Between Administrative and Criminal Searches*

One of the Green Fourth Amendment’s most significant consequences is its erosion of the distinction between administrative and criminal searches — a distinction the Supreme Court has carefully maintained as a structural constraint on government investigatory power.<sup>319</sup> A fundamental principle of the administrative search doctrine is that searches cannot serve as pretext for criminal investigations. In *South Dakota v. Opperman*, the Supreme Court held that police do not need a warrant to inventory a lawfully impounded vehicle.<sup>320</sup> The Court noted that standardized procedures prohibiting discretionary searches were essential features of such searches,<sup>321</sup> and Justice Powell’s concurrence underscored the point that “no significant discretion . . . [should be] placed in the hands of the individual officer: he usually has no choice as to the subject of the search or its scope.”<sup>322</sup> In later cases,

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<sup>318</sup> See *Burger*, 482 U.S. at 707; *Biswell*, 406 U.S. at 316.

<sup>319</sup> Primus, *supra* note 279, at 260; Perry S. Reich, *Administrative Searches for Evidence of a Crime: The Impact of New York v. Burger*, 5 *TOURO L. REV.* 31, 32 (1988); see *Camara v. Mun. Ct.*, 387 U.S. 523, 531-33 (1967).

<sup>320</sup> *South Dakota v. Opperman*, 428 U.S. 364, 373 (1976).

<sup>321</sup> See *id.* at 365, 370-72, 374.

<sup>322</sup> *Id.* at 384.

the Court reiterated its holding that warrantless inventory searches were justifiable only if they proceeded according to standardized criteria and were based on something other than suspicion of criminal activity.<sup>323</sup>

The Court has drawn this line even where administrative and law enforcement purposes coexist. In *Ferguson v. City of Charleston*, the Court ruled unconstitutional a hospital's practice of subjecting pregnant women to nonconsensual drug tests.<sup>324</sup> The hospital argued that the searches were lawful under the special needs exception because the program identified mothers who should enroll in drug treatment.<sup>325</sup> The Court disagreed.<sup>326</sup> Referring to the special needs exception as "a closely guarded" class of permissible suspicionless searches," the Court refused to apply it as a justification for the searches at issue in *Ferguson* because the immediate objective of the searches was to generate evidence for law enforcement purposes, not to get women into treatment.<sup>327</sup> Although programs serving both law enforcement and administrative needs are not per se unconstitutional, the Court reasoned that the government must show that the law enforcement purposes were "merely incidental to the purposes of the administrative search."<sup>328</sup> Because the record in *Ferguson* indicated that "the policy was specifically designed to gather evidence of violation of penal laws," it did not qualify as a special needs search.<sup>329</sup>

That carefully drawn line between administrative and criminal objectives starts to blur — and, in some cases, disappears altogether — in the lower courts' evaluation of conservation law enforcement officers' stops and searches. *People v. Maikhio* illustrates how completely the distinction can collapse in such cases.<sup>330</sup> The case arose after a game warden was surreptitiously observing a San Diego public pier at night

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<sup>323</sup> See *Colorado v. Bertine*, 479 U.S. 367, 372 (1987); see also LAFAVE, *supra* note 200, at 451-63.

<sup>324</sup> *Ferguson v. City of Charleston*, 532 U.S. 67, 85-86 (2001).

<sup>325</sup> See *id.* at 82.

<sup>326</sup> See *id.* at 82-84.

<sup>327</sup> *Id.* at 80 n.17, 83.

<sup>328</sup> *Id.* at 83 n.21.

<sup>329</sup> *Id.*

<sup>330</sup> *People v. Maikhio*, 51 Cal. 4th 1074, 1077-79 (2011).

using a spotting telescope.<sup>331</sup> Around 11:00 pm, the warden observed Maikhio using “handlining,” an illegal method of catching lobsters, on the pier.<sup>332</sup> After seeing Maikhio catch something, place it in a bag, and leave the parking lot, the warden stopped Maikhio’s vehicle several blocks from the pier because, as he later testified, he had “seen him fishing on the pier and . . . had seen him catch something.”<sup>333</sup> Moreover, the warden stated that he generally waited to investigate a person until after they left the pier, so he didn’t “blow [his] cover” and could be sure the person had no intention of releasing whatever they had caught.<sup>334</sup>

The warden candidly admitted that, at the time of the stop, he lacked reasonable suspicion that Maikhio had broken the law.<sup>335</sup> Nonetheless, after stopping Maikhio’s car, the officer asked him if he had any fish or lobsters in his vehicle.<sup>336</sup> When Maikhio said “no,” the officer conducted a search of the interior of the vehicle and found a bag in the left rear passenger area.<sup>337</sup> The officer opened the bag and found a spiny lobster, which was out of season and illegal to take by any method at that time of year.<sup>338</sup> The officer seized the lobster, placed Maikhio in handcuffs, and searched the rest of the vehicle.<sup>339</sup>

The district court granted Maikhio’s motion to suppress, but the appellate court reversed in part.<sup>340</sup> The California Supreme Court took up the case to “address the important general question” of whether a California game warden is statutorily authorized to stop a vehicle solely on the belief that the person has recently been hunting or fishing and, if so, whether that suspicionless stop is unconstitutional under the Fourth Amendment.<sup>341</sup> After concluding that the stop was authorized by California law, a unanimous court held that the authority the statute

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<sup>331</sup> *See id.* at 1078.

<sup>332</sup> *See id.* at 1079.

<sup>333</sup> *Id.* at 1082.

<sup>334</sup> *Id.* at 1083.

<sup>335</sup> *See id.*

<sup>336</sup> *See id.*

<sup>337</sup> *Id.* at 1082.

<sup>338</sup> *See id.*

<sup>339</sup> *See id.*

<sup>340</sup> *See id.* at 1084.

<sup>341</sup> *Id.*

granted conservation officers fulfilled administrative and special needs and was therefore constitutional on its face.<sup>342</sup> Turning to the question of whether the suspicionless stop was lawful under the particular circumstances of the case, the court held that, even under these facts, the stop was justified by administrative needs.<sup>343</sup>

The court rejected Maikhio's claim that criminal enforcement was the primary purpose of the stop.<sup>344</sup> Instead, it reasoned that, because the suspected violation concerned the unlawful taking of fish, the motivation behind the stop was to preserve the wildlife of the state and not general crime control.<sup>345</sup> In effect, the court suggested that it should determine the line between administrative and criminal purposes not by looking at the officer's motivations, but by examining the nature of the specific violation at issue.<sup>346</sup>

This reasoning represents a fundamental departure from Fourth Amendment principles.<sup>347</sup> By recharacterizing a criminal investigation as "administrative" simply because it involves a wildlife violation rather than another type of crime, the *Maikhio* court collapsed the very distinction the doctrine is designed to maintain. The *Ferguson* framework requires courts to determine whether the administrative or the criminal purpose is primary and thus assumes the two purposes can be meaningfully distinguished.<sup>348</sup> However, for conservation law enforcement, the administrative and criminal purposes are functionally identical, making the *Ferguson* test impossible to apply meaningfully. To

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<sup>342</sup> See *id.* at 1080.

<sup>343</sup> See *id.*

<sup>344</sup> See *id.* at 1092-93.

<sup>345</sup> See *id.* at 1100.

<sup>346</sup> See *id.*

<sup>347</sup> See *Colorado v. Bertine*, 479 U.S. 367, 372 (1987) (requiring a showing of bad faith or investigatory purpose for an inventory search to be unconstitutional); *South Dakota v. Opperman*, 428 U.S. 364, 370 n.5 (1976) ("With respect to noninvestigative police inventories of automobiles lawfully within governmental custody, however, the policies underlying the warrant requirement . . . are inapplicable."); *Camara v. Mun. Ct.*, 387 U.S. 523, 538 (1967) (holding that health and safety inspectors must obtain a warrant supported by probable cause to inspect a dwelling if the administrative standards are otherwise satisfied).

<sup>348</sup> See *City of Los Angeles v. Patel*, 576 U.S. 409, 421 (2015) (requiring judicial review of a proposed administrative search to ensure that the compliance check was not pretextual); *Ferguson v. City of Charleston*, 532 U.S. 67, 82-83 (2001).

illustrate this point, consider again the facts of *Maikhio*. The officer stopped Maikhio because he had seen him fishing and wanted to determine whether he had caught anything illegal.<sup>349</sup> The officer could plausibly characterize the seizure as either a compliance check or a criminal investigation, noting either that he was checking whether Maikhio complied with bag limits and seasonal restrictions (administrative) or that he was investigating whether Maikhio violated fish and game laws (criminal). But these are simply two ways of describing the same conduct. Checking regulatory compliance is investigating potential violations; the two purposes cannot be separated.

This is not a problem of officers claiming false purposes or courts failing to scrutinize officer motivations carefully enough. It is a structural feature of conservation law enforcement. Unlike the drug testing program in *Ferguson* — where the Court could meaningfully distinguish between the medical treatment purpose and the law enforcement purpose — conservation stops do not present two distinct purposes that can be weighed against each other. Every regulatory check is simultaneously a criminal investigation, and every criminal investigation can be reframed as a regulatory check.

Courts have responded to this problem by framing conservation law enforcement to be “administrative” regardless of the officer’s actual motivation or investigatory conduct. This in turn signals that the constitutional constraints carefully developed over decades can be circumvented through artful recharacterization of the government’s purpose. This undermines Fourth Amendment protections not only for hunters and anglers but also for anyone subject to a regulatory regime in which compliance checks and criminal investigations overlap. If the distinction between administrative and criminal purposes no longer holds in the conservation context, it becomes difficult to maintain that distinction elsewhere, potentially opening the door to warrantless searches across a wider range of regulatory programs that were previously understood to require greater constitutional constraints.<sup>350</sup>

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<sup>349</sup> *Maikhio*, 51 Cal. 4th at 1082.

<sup>350</sup> The risk that administrative authority will be repurposed for criminal enforcement is not hypothetical. In January 2026, the Department of Homeland Security issued a memorandum instructing Immigration and Customs Enforcement

*B. Reformulating the Fourth Amendment Balancing Test*

The collapse of the administrative-criminal distinction is not the only way the Green Fourth Amendment destabilizes core Fourth Amendment doctrine. This also happens in courts' application of the balancing test that the Supreme Court has adopted as the "ultimate standard" of reasonableness under the Fourth Amendment.<sup>351</sup> Balancing individual and government interests can be difficult and is often resolved by giving "full force to one or the other side of the balance."<sup>352</sup> In cases involving conservation law enforcement, lower courts consistently give full force to the government's side, emphasizing the importance of protecting wildlife and the state's natural resources.<sup>353</sup>

In a few states, courts ground this assertion in constitutional text. Minnesota's constitution, for example, provides that "[h]unting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good."<sup>354</sup> Citing this provision, the Minnesota Supreme Court justified a warrantless search of a boat by noting that conservation officers act "not only as law enforcement officers, but as public trustees protecting and conserving [the state]'s wildlife and habitat for all its citizens."<sup>355</sup> The court then went further, suggesting that the government's interest not only outweighed the

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officers that they are permitted to enter homes to conduct immigration arrests without judicial authorization — a position that relies on characterizing what is functionally a criminal arrest as an administrative immigration action. *See* WHISTLEBLOWER AID, ANONYMOUS WHISTLEBLOWER DISCLOSURE 2 (2026), <https://www.documentcloud.org/documents/26499371-dhs-ice-memo-1-21-26/> [<https://perma.cc/ZV5U-NYCG>].

<sup>351</sup> Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of Camara and Terry*, 72 MINN. L. REV. 383, 384 (1988).

<sup>352</sup> *New Jersey v. T.L.O.*, 469 U.S. 325, 332 n.2 (1985).

<sup>353</sup> *See, e.g., Betchart v. Dep't of Fish & Game*, 205 Cal. Rptr. 135, 138 (Ct. App. 2002) (noting the state's interest in protecting wildlife is "compelling"); *State v. Keehner*, 425 N.W.2d 41, 45 (Iowa 1988) (acknowledging the state's interest in regulating wildlife and hunting is "substantial"); *State v. McHugh*, 630 So. 2d 1259, 1270 (La. 1994) ("No one can seriously dispute the magnitude of the task of preserving and conserving the wildlife, or the state's special and compelling interest in regulating hunting through the strict enforcement of license and limit laws.").

<sup>354</sup> MINN. CONST. art. XIII, § 12.

<sup>355</sup> *See State v. Colosimo*, 669 N.W.2d 1, 6 (Minn. 2003).

individual's interests but also justified the suspicionless search because to require otherwise "would be the unnecessary depletion of [the state's] wildlife and fish."<sup>356</sup>

Most states, though, lack this constitutional language, or any constitutional protection for their wildlife and natural resources.<sup>357</sup> Yet courts invoke the government's interest with the same force, asserting its "important," "significant," or "compelling" interest in protecting wildlife and natural resources.<sup>358</sup> This logic has even extended to cases involving standard boat safety checks, where courts invoke the state's interest in its citizens' "health and well-being"<sup>359</sup> — an interest that, while real, is also present in highway safety and other contexts where courts have demanded more rigorous justification for suspicionless stops.<sup>360</sup> The government interest in wildlife protection appears to carry more weight in the conservation law enforcement context than

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<sup>356</sup> *Id.* at 8-9.

<sup>357</sup> Only seven states explicitly provide a right to a clean or healthy environment. HAW. CONST. art. XI, § 9 ("Each person has the right to a clean and healthful environment . . ."); ILL. CONST. art. XI, § 2 ("Each person has the right to a healthful environment."); MASS. CONST. pt. 1, art. XLIX ("The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment . . ."); MONT. CONST. art. II, § 3 ("All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment . . ."); N.Y. CONST. art. I, § 19 ("Each person shall have a right to clean air and water, and a healthful environment."); PA. CONST. art. I, § 27 ("The people have a right to clean air, pure water, and to the natural, scenic, historic and esthetic values of the environment."); R.I. CONST. art. I, § 17 ("[T]hey shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values . . .").

<sup>358</sup> Although it has provided some guidance in assessing an individual's interests, the Supreme Court has never specified the showing necessary to establish the government's interest. Lower courts have been inconsistent in referring to it as "important," "compelling," "legitimate," and "substantial," among other characterizations. See Steven T. Wax, *The Fourth Amendment, Administrative Searches and the Loss of Liberty*, 18 ENV'T L. 911, 926-27 (1988).

<sup>359</sup> *Schenekl v. State*, 30 S.W.3d 412, 415 (Tex. Ct. App. 2000); see, e.g., *State v. Pike*, 532 S.E.2d 543, 549 (N.C. Ct. App. 2000) (the state has a substantial interest in ensuring safety of boaters).

<sup>360</sup> See *Colosimo*, 669 N.W.2d at 13 (Page, J., dissenting) (arguing that the court "implicitly concludes that the state's interest in protecting and regulating its wildlife resource is more important than its interest in protecting human life by deterring drunk driving").

comparably important interests carry elsewhere, but courts have not explained why.

This is problematic because it substitutes assertion for analysis. Courts rarely require the government to demonstrate empirically that the challenged search actually serves the stated conservation interest, or that less intrusive means would be insufficient.<sup>361</sup> As one Oregon Supreme Court justice noted, there is a “fallacy” in simply accepting the government’s claim that its actions further wildlife protection without examining whether they actually advance that goal or whether the intrusion is proportionate to any benefit achieved.<sup>362</sup>

The lack of genuine scrutiny becomes especially apparent when one considers how selectively states invoke their interest in wildlife protection. States readily assert a “compelling” interest in protecting wildlife to justify warrantless searches of hunters and anglers, but the same interest is conspicuously absent in other contexts where protecting wildlife would impose costs on economic development.<sup>363</sup> States permit development, logging, mining, and agricultural practices that destroy habitat and threaten species populations — activities that proceed without the level of government intervention otherwise deemed to be “compelling” in justifying investigations by conservation law enforcement.<sup>364</sup> As one state supreme court justice observed in dissenting from the denial of a defendant’s motion to suppress:

I can only hope that the State remembers well this argument and just as vigorously enforces this constitutional imperative the

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<sup>361</sup> See *supra* Part IV.

<sup>362</sup> State v. Tourtillott, 618 P.2d 423, 441-42 (Or. 1980) (Linde, J., dissenting).

<sup>363</sup> See, e.g., Margaret Renkl, *Tennessee’s Dangerous Waters*, N.Y. TIMES (Oct. 28, 2019), <https://www.nytimes.com/2019/10/28/opinion/tennessees-dangerous-waters.html> (“For nearly a decade, the 3M Company’s plant in Decatur, Ala., illegally released toxic chemicals into the Tennessee River with the full knowledge of the Alabama Department of Environmental Management.”); Jennifer Solis, *State Upholds Thacker Pass Permit, Conservation Group Warns of Toxic Slurry in the Making*, NEV. CURRENT (June 30, 2022), <https://nevadacurrent.com/2022/06/30/state-upholds-thacker-ppass-permit-conservation-group-warns-of-toxic-slurry-in-the-making/> (“The Nevada State Environmental Commission’s five-member appeals board ruled against the conservation group’s appeal of a state permit allowing the mine to produce and store at least 60 million tons of toxic mining waste on Nevada’s landscape.”).

<sup>364</sup> See State v. Boyer, 42 P.3d 771, 789 (Mont. 2002) (Nelson, J., dissenting).

next time some individual or business poisons [the state]'s ground, water and air with toxic wastes and pollutants and when laws and administrative rules are enacted which weaken the protections afforded by this part of our Constitution and which allow degradation of its precious natural resources.<sup>365</sup>

The point is not that states should impose warrantless searches but that the selective invocation of wildlife protection — vigorous when it justifies searches of individuals, absent when it might constrain economic activity — suggests that courts are not actually evaluating the weight of the government's interest whenever the government invokes it to justify law enforcement activity. This reflexive deference is especially troubling because the government's interest in protecting wildlife justifies the stop only if that interest is treated as self-evidently compelling regardless of the circumstances. In *Delaware v. Prouse*, the Court rejected suspicionless stops for license checks despite the state's substantial interest in highway safety, finding that the intrusion outweighed the marginal benefit.<sup>366</sup> Yet in *Keehner*, the Iowa Supreme Court upheld a functionally identical stop of a hunter without explaining why the government's interest in wildlife protection should receive greater deference than its interest in preventing traffic fatalities.<sup>367</sup> The absence of any explanation suggests that the court did not conduct the balancing analysis the Fourth Amendment requires. It treats the government's invocation of wildlife protection as dispositive. Under that formulation, every hunter is subject to search simply by virtue of hunting, and every angler by virtue of fishing. The government's interest, untethered from the facts of any particular encounter, transforms from a justification for targeted enforcement into a blank check for the suspicionless surveillance of an entire category of lawful activity. The invocation of a particular governmental interest thus ends the constitutional analysis rather than beginning the careful balancing that Fourth Amendment doctrine requires.

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<sup>365</sup> *Id.*

<sup>366</sup> *Delaware v. Prouse*, 440 U.S. 648, 660-63 (1979).

<sup>367</sup> *State v. Keehner*, 425 N.W.2d 41, 43-45 (Iowa 1988).

*C. Creating a Suspicious Class of Persons*

The Green Fourth Amendment stretches constitutional doctrine in yet another way: it permits officers to stop individuals not because of what they have done but because of who they appear to be. Many of the courts appraising the constitutionality of seizures suggest that an officer's reasonable suspicion that the person had been fishing or hunting justifies a stop. In practice, this means that a stop is permissible whenever its subject fits the profile of an angler or hunter.<sup>368</sup> The result is a form of identity-based policing, or "sportsman profiling."

Courts have deployed profiling to rescue otherwise unconstitutional statutes from facial challenges.<sup>369</sup> When confronted with statutes authorizing suspicionless stops of anyone engaged in hunting or fishing, courts have read an implicit limitation into the statute: the stop is permissible only when the officer has reasonable suspicion that the person is a hunter or angler.<sup>370</sup> This interpretive move saves the statute from facial invalidity, but it comes at a cost. It transforms suspicionless search authority into profile-based search authority, where individual stops are justified not by any suspicion that the person has violated the law but by the officer's belief that the person belongs to a particular class of people.<sup>371</sup>

Sportsman profiling also departs from the framework the Supreme Court has established for evaluating profile-based stops. The constitutionality of using profiles to justify stops has been contested for

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<sup>368</sup> See, e.g., *People v. Levens*, 713 N.E.2d 1275, 1277 (Ill. App. Ct. 1999) (affirming that the defendant fit a "hunter's profile" when driving slowly in a wildlife area and wearing orange hunting gear); *People v. Layton*, 552 N.E.2d 1280, 1287 (Ill. App. Ct. 1990) (recognizing a limited exception of implied consent for conservation officers to perform searches of containers for game based on a "hunter's profile").

<sup>369</sup> See *Layton*, 552 N.E.2d at 1287.

<sup>370</sup> See *id.*

<sup>371</sup> See, e.g., *People v. Maikhio*, 51 Cal. 4th 1074, 1098 (2011) (concluding that "even when there is not reasonable suspicion that an angler or hunter has violated a statute or regulation . . . when a game warden reasonably believes that an occupant of a vehicle has recently been fishing or hunting, the warden does not violate the Fourth Amendment by stopping the vehicle to demand the display of all fish or game that have been taken"); *Dodd v. Virginia*, No. 0777-95-3, 1996 WL 205990, at \*1 (Va. Ct. App. Apr. 30, 1996) (finding the officer was justified in making a vehicle stop because he "had a reasonable suspicion that [driver and passengers] were road hunting").

decades, most commonly in the context of drug courier interdiction at airports.<sup>372</sup> Courts have grappled with how much weight to accord the profile in assessing the presence or absence of reasonable suspicion.<sup>373</sup> In *United States v. Sokolow*, the Supreme Court upheld a DEA agent's stop of a suspected drug courier based on the agent's belief that the traveler's behavior was consistent with one of the DEA's "drug courier profiles."<sup>374</sup> Writing for the majority, Chief Justice Rehnquist held that the profile factors, when taken together, amounted to reasonable suspicion.<sup>375</sup> He further reasoned that the Fourth Amendment does not preclude the use of "probabilistic" facts describing 'personal characteristics' of drug couriers" as a basis for a finding of "reasonable suspicion."<sup>376</sup>

Although *Sokolow* arguably permits the use of profiles to justify searches and seizures, it also reaffirmed the longstanding principle that "reasonable suspicion" must be defined by the totality of the

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<sup>372</sup> See, e.g., *United States v. Forero-Rincon*, 626 F.2d 218, 221-24 (2d Cir. 1980) (recognizing that DEA agents relied on a drug courier profile but holding that the reasonableness of the agent's suspicion must be judged with reference to the particular facts of each case); *United States v. Hill*, 626 F.2d 429, 433 n.6 (5th Cir. 1980) (distinguishing cases finding justification for a seizure based on profiles alone because agents also benefited from an anonymous tip); *United States v. Sullivan*, 625 F.2d 9, 11-13 (4th Cir. 1980) (holding that observed characteristics matching those of a drug courier profile justified use of a dog to investigate defendant's luggage); *United States v. Beck*, 598 F.2d 497, 500-02 (9th Cir. 1979) (concluding that profile characteristics did not provide probable cause for arrest).

<sup>373</sup> See, e.g., *Florida v. Royer*, 460 U.S. 491, 525 n.6 (1983) (Rehnquist, J., dissenting) (noting that characteristics accumulated into a "profile" should be given weight in assessing whether officers had suspicion for a stop); *United States v. Mendenhall*, 446 U.S. 544, 550 (1980) (plurality opinion) (noting that the Court of Appeals had "disapproved of the Government's reliance on the so-called 'drug-courier profile'"); *Reid v. Georgia*, 448 U.S. 438, 439-42 (1980) (per curiam) (noting that the Court of Appeals concluded that a DEA agent's stop of suspected drug courier was permissible because the suspect fit the profile of a drug courier in a number of respects); *United States v. Simpson*, 910 F.2d 154, 157 (4th Cir. 1990) (noting that, when added to other evidence, "the drug courier profile is a powerful investigative tool" and can support the reasonable suspicion necessary to justify a *Terry* stop); *United States v. Nunley*, 873 F.2d 182, 183-85 (8th Cir. 1989) (upholding an investigatory stop of a defendant whose characteristics fit a drug-courier profile, but noting that it relied on the articulation of those characteristics, not the mechanical application of a profile).

<sup>374</sup> *United States v. Sokolow*, 490 U.S. 1, 10 (1989).

<sup>375</sup> See *id.*

<sup>376</sup> *Id.* at 1.

circumstances.<sup>377</sup> It would not be enough to say that there was reasonable suspicion for a stop simply because an individual fit a profile; rather, the factors comprising the profile must, in combination, be sufficiently specific and weighty to amount to a reasonable suspicion that crime is afoot.<sup>378</sup>

The test courts apply to assess conservation officers' stops bears little resemblance to *Sokolow's* framework. *Schlegel v. Department of Licensing* is illustrative.<sup>379</sup> In that case, a conservation officer stopped a driver because he was "wearing hunting-type clothes and driving a hunting-type vehicle in an elk hunting area."<sup>380</sup> This was not probabilistic evidence of criminal activity in any sense contemplated by *Sokolow*, and the government offered nothing to suggest that the defendant had violated any law or regulation. Yet the court found that this rationale justified the initial stop and upheld the defendant's subsequent conviction for driving under the influence.<sup>381</sup>

The acceptance of "sportsman profiling" represents a dangerous expansion of seizure doctrine. Unlike drug courier profiling, which at least purports to identify behaviors associated with criminal activity, sportsman profiling targets individuals engaged in entirely lawful conduct. If merely appearing to be a hunter subjects an individual to warrantless stops and searches, then the Fourth Amendment offers no protection to anyone who chooses to engage in — or even appears to engage in — such activities. Compounding this issue, the factors courts accept as constituting a sportsman profile are vague and overbroad. Wearing warm clothing in cold weather,<sup>382</sup> driving a truck on a dirt

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<sup>377</sup> *Id.* at 8.

<sup>378</sup> *See id.*

<sup>379</sup> *See* *Schlegel v. Dep't of Licensing*, 153 P.3d 244, 246 (Wash. Ct. App. 2007).

<sup>380</sup> *Id.*

<sup>381</sup> *See id.* There is little doubt the court was accepting a hunter profile, yet the facts of the case do not make it at all clear that the defendant fit that profile. He was driving a truck on a dirt road and "wearing suitably warm clothing for the 20-degree weather. Nothing in the record indicates that the road to the wildlife area was specifically for hunters or that Mr. Schlegel was attired in hunter orange clothing." *Id.* at 247 (Schultheis, J., dissenting).

<sup>382</sup> *See id.* at 245.

road,<sup>383</sup> or being in a wildlife area<sup>384</sup> are the kinds of factors that could apply to countless individuals who are not hunting at all. The acceptance of such thin profiles invites arbitrary enforcement and creates opportunities for pretextual stops. As the Rossler and Suttmoeller study documented, some police officers already exploit conservation authority to conduct searches they could not otherwise perform.<sup>385</sup> Permitting stops based on sportsman profiles further facilitates this evasion of Fourth Amendment constraints.

The implications of this profiling extend beyond stops. Under *Terry v. Ohio*, officers may conduct a protective frisk when they have reasonable suspicion that a person is “armed and dangerous.”<sup>386</sup> Some courts have interpreted this standard to mean that anyone who is armed is presumptively dangerous, thus eliminating any independent showing of dangerousness.<sup>387</sup> In the context of conservation law enforcement, this creates a troubling chain of inference: if an officer may stop a person based on the reasonable belief that the person is a hunter, and if hunters presumptively carry weapons, and if carrying a weapon makes a person presumptively dangerous, then the officer may frisk any person who fits the sportsman profile. A hunter’s lawful participation in outdoor recreation then becomes not only grounds for a stop but also for a search of their person.

What makes sportsman profiling doctrinally distinctive — and doctrinally dangerous — is that it targets individuals engaged in entirely lawful conduct. Unlike drug courier profiling, which at least purports to identify behaviors associated with criminal activity, sportsman profiling

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<sup>383</sup> See *id.*

<sup>384</sup> See, e.g., *People v. Layton*, 552 N.E.2d 1280, 1287 (Ill. App. Ct. 1990) (noting that “reason to believe” that an individual has been hunting “might include wearing hunting garb, carrying a weapon, and carrying game or a game bag, in conjunction with location in or near a hunting situs”).

<sup>385</sup> See Rossler & Suttmoeller, *Conservation Officer Perceptions of Search Authority*, *supra* note 183, at 73.

<sup>386</sup> *Terry v. Ohio*, 392 U.S. 1, 30 (1968); see also *Michigan v. Long*, 463 U.S. 1032, 1034-35 (1983).

<sup>387</sup> E.g., *United States v. Robinson*, 846 F.3d 694, 700 (4th Cir. 2017) (stating that an individual who is armed is therefore dangerous); *United States v. Orman*, 486 F.3d 1170, 1176 (9th Cir. 2007) (holding that “reasonable suspicion that [defendant] was carrying a gun . . . is all that is required for a protective search under *Terry*”).

targets individuals engaged in entirely lawful conduct. It treats lawful participation in outdoor recreation as grounds for suspicion and creates a category of persons who may be stopped, and potentially searched based on their apparent engagement in a hobby rather than on any suspected wrongdoing. Like the collapse of the administrative-criminal distinction and the talismanic invocation of government interest, the application of a sportsman profile is a mechanism through which the Green Fourth Amendment operates: it permits the government to seize individuals based on who they are rather than what they have done, and it does so under the banner of a constitutional framework that was designed to prevent just that sort of result.

#### CONCLUSION

Conservation officers perform important work. Without them, we risk a tragedy of the commons: unregulated harvesting has driven species to extinction and continues to threaten wildlife populations worldwide.<sup>388</sup> Effective enforcement of harvest limits, seasons, and licensing requirements is essential to preventing the collapse of fish and game populations. Conservation officers also protect more than wildlife. In remote regions where police may be hours away, conservation officers often serve as the primary — sometimes the only — law enforcement presence, responding not only to wildlife violations but also to emergencies, aiding lost or injured recreationists, and serving as general peacekeepers.<sup>389</sup>

The practical realities of conservation law enforcement are also distinctive in ways that matter constitutionally. Officers must act quickly to detect violations that leave little physical evidence and can be concealed or remedied before any investigation begins. Fixed

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<sup>388</sup> See Frances Davis, Andrew Szopa-Comley, Sarah Rouse, Aude Caromel, Andy Arnell, Saloni Basrur, Nina Bhola, Holly Brooks, Giulia Costa-Domingo, Cleo Cunningham, Katie Hunter, Matt Kaplan, Abigail Sheppard & Kelly Malsch, U.N. Env't Programme, *State of the World's Migratory Species* 31 (2024), [https://www.cms.int/sites/default/files/publication/State%20of%20the%20Worlds%20Migratory%20Species%20report\\_E.pdf](https://www.cms.int/sites/default/files/publication/State%20of%20the%20Worlds%20Migratory%20Species%20report_E.pdf) [<https://perma.cc/5YFL-7WNA>].

<sup>389</sup> See Kenneth J. Peak, *Enforcing the Laws of Wildlife and Recreation (Part One)*, FBI L. ENF'T BULL. (Sept. 27, 2017), <https://leb.fbi.gov/articles/featured-articles/enforcing-the-laws-of-wildlife-and-recreation-part-one>.

checkpoint systems are often impractical across dispersed wilderness areas. Warrant requirements may be unworkable when evidence can be destroyed immediately and the nearest magistrate is hours away. These are genuine enforcement challenges that distinguish conservation policing from many other types of policing. Although such concerns do not justify constitutional erosion, they do counsel against reflexive calls for reform that may be unworkable or undesirable in practice.

The question is not whether conservation officers need effective enforcement tools — they plainly do — but whether effective enforcement requires the abandonment of the constitutional constraints that govern other law enforcement officers. The doctrinal distortions documented here are choices courts and legislatures have made, and they are choices that can be made differently. Making them differently, however, requires first seeing them clearly, and until now, there has been no vocabulary for describing these choices as a coherent phenomenon. The concept of the Green Fourth Amendment names what has been, until now, an invisible architecture of constitutional law: a regime of search and seizure authority that has been cleaved from the Fourth Amendment built by cases and statutes and operating by its own rules. Identifying and mapping that architecture is one of this Article's central contributions. It is a contribution that carries both warnings and opportunities.

The warnings are substantial. The opportunities, however, are also apparent. Targeted reforms could prevent the most troubling spillover effects while preserving effective conservation enforcement. Requiring the visible display of hunting and fishing licenses would eliminate the most common justification for suspicionless stops, allowing officers to verify compliance through observation rather than detention. Combined with a tiered enforcement system that addresses minor violations through administrative citations and reserves criminal prosecution for serious offenses like commercial poaching, visible display requirements would remove the pretextual justification that currently enables conservation stops to function as general criminal investigations. States could further prohibit other law enforcement officers from coordinating with conservation officers to conduct searches that would otherwise require a warrant, with evidence from such coordinated stops excluded when obtained without a warrant or

applicable exceptions to the warrant requirement. Courts could apply heightened scrutiny when conservation stops yield evidence of other crimes, requiring the government to demonstrate that the stop was genuinely motivated by a conservation purpose and that evidence of other crimes was discovered inadvertently. Agencies could implement mandatory data collection documenting all conservation stops — their frequency, location, stated justification, and outcome — creating the transparency necessary to monitor for discriminatory patterns and pretextual use.

Such proposals are feasible and can be effective. They target the spillover effects and doctrinal distortions documented in this Article rather than restructuring conservation enforcement comprehensively. They emphasize transparency and accountability over rigid prohibitions. They can be implemented legislatively without requiring courts to reconsider existing precedent.

Reforming conservation enforcement practices, however, is only one of the opportunities that naming the Green Fourth Amendment creates. The concept also opens a conversation that is rare in criminal procedure scholarship — one that cuts across the political divisions that typically fracture debates about policing and constitutional rights. The rights at stake belong to hunters, anglers, boaters, and rural landowners: constituencies that span the ideological spectrum, from those animated by concerns about government overreach to those committed to environmental stewardship. It is uncommon to identify a constitutional problem that speaks simultaneously to civil libertarians and to communities that have traditionally supported robust law enforcement. The Green Fourth Amendment is such a problem, and engaging with it now — as the nation confronts both the erosion of environmental regulatory capacity and persistent public scrutiny of policing — could catalyze a broader conversation about the scope of constitutional protections against unreasonable searches and seizures. Now that the Green Fourth Amendment has been identified and described, courts, legislatures, and scholars are better positioned to decide whether its framework should stand.

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## APPENDIX A

Figure 1 catalogues the statutory enforcement authority granted to conservation law enforcement officers in each of the fifty states. The dataset used to create that figure is the product of a comprehensive survey of state statutes, supplemented where necessary by attorney general opinions and relevant caselaw. The survey reflects the law as of the date of this Article's publication and provides a systematic, comparative account of the scope of law enforcement powers that state legislatures have conferred upon conservation officers. It classifies officers' authority into one of three categories based on the scope of enforcement authority conferred by the state's governing statutes: Full Authority, Conditional Authority, or Agency-Specific Authority.

*Full Authority* indicates that conservation law enforcement officers possess statewide, general law enforcement powers that are coextensive — or substantially coextensive — with those of other certified peace officers in the state. This category represents states that have conferred upon conservation officers “all the powers” of peace officers, sheriffs, or police officers, or otherwise authorize them to enforce “all laws of the state” without subject-matter or geographic limitation. The defining feature of this category is the absence of any statutory condition, trigger, or subject-matter limitation that narrows the officer's enforcement jurisdiction below the baseline authority enjoyed by other state law enforcement officers.

*Conditional Authority* indicates that conservation officers possess enforcement powers that extend beyond the fish, wildlife, and natural resources laws assigned to their agency, but their powers are subject to one or more express statutory conditions or limitations. The conditions vary by state and may include geographic restrictions (for example, authority to enforce general criminal laws only on state-owned or agency-managed lands), situational triggers (for example, authority to enforce general criminal laws only when a violation is committed in conjunction with a wildlife offense, or only upon request from another law enforcement agency), or temporal or duty-nexus requirements (for example, authority to exercise general peace officer powers only while actively performing their duties). The defining feature of this category is that the legislature has granted authority beyond the agency's core subject matter but has expressly cabined that expanded authority with

one or more operative conditions that do not apply to general-jurisdiction peace officers in the same state.

*Agency-Specific Authority* indicates that conservation officers are authorized to enforce only those laws that fall within the specific subject-matter jurisdiction of their employing agency. Officers in this category may enforce fish, wildlife, boating, and natural resources statutes — and, in some states, a defined set of additional statutes such as parks and recreation codes, snowmobile regulations, or all-terrain vehicle laws — but they lack any statutory grant of general criminal enforcement authority, whether conditional or unconditional. The defining feature of this category is that the officer’s enforcement jurisdiction is bounded by the substantive scope of the agency’s statutory mandate and does not extend to the general criminal laws of the state, even in a limited or conditional fashion.

The three-category framework is intended to capture the most salient distinctions among state approaches, but it necessarily simplifies a complex statutory landscape. Reasonable interpreters may disagree about the proper classification of particular states, especially those whose statutes contain overlapping or potentially conflicting provisions. The underlying statutory citations and authority summaries are provided in the dataset to permit independent evaluation of each classification.

Table 2: Conservation Officer Authority by State

| State   | Authority Summary                                                                                                                                                                                                                                                                        | Authority Category |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Alabama | Conservation officers are empowered to enforce fish and game laws and have the authority to arrest an individual for violating a criminal statute.<br>Key Statutes & Law: ALA. ADMIN. CODE r. 9-11-5, 9-13-10, 33-5-5; <i>see also Ex parte Duvall</i> , 782 So.2d 244, 247 (Ala. 2000). | Full Authority     |
| Alaska  | Enforcement is conducted by the Alaska Wildlife Troopers (AWT), a division of                                                                                                                                                                                                            | Full Authority     |

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|            | <p>the Department of Public Safety. They are general peace officers who enforce all state laws, including traffic and criminal codes.</p> <p>Key Statutes &amp; Law: ALASKA STAT. §§ 16.05.150, 41.15.950 (2025).</p>                                                                                                                                                                                                                                                                                                                                                                          |                |
| Arizona    | <p>Conservation officers can generally exercise the powers of peace officers but have the primary duty of enforcing fish and game regulations.</p> <p>Key Statutes &amp; Law: ARIZ. REV. STAT. ANN. §§ 17-211(E)(6), 41-511.09 (2025).</p>                                                                                                                                                                                                                                                                                                                                                     | Full Authority |
| Arkansas   | <p>Conservation officers are primarily responsible for the enforcement of all fish and game regulations, but are capable of enforcing all state laws as well.</p> <p>Key Statutes &amp; Law: ARK. CONST. amend. XXXV, § 8; ARK. CODE ANN. §§ 16-81-106(f), 22-4-103(3)(9) (2026); <i>see also Becoming a Game Warden</i>, ARK. GAME &amp; FISH COMM’N, <a href="https://www.agfc.com/enforcement/becoming-a-game-warden/">https://www.agfc.com/enforcement/becoming-a-game-warden/</a> (last visited Apr. 20, 2026) [<a href="https://perma.cc/X2HR-MHXM">https://perma.cc/X2HR-MHXM</a>].</p> | Full Authority |
| California | <p>Conservation officers can generally exercise the powers of peace officers but have the primary duty of enforcing fish and game regulations.</p> <p>Key Statutes &amp; Law: CAL. PENAL CODE § 830.2(e)–(g) (2025).</p>                                                                                                                                                                                                                                                                                                                                                                       | Full Authority |
| Colorado   | <p>Conservation officers’ authority includes the enforcement of all laws of the state.</p> <p>Key Statutes &amp; Law: COLO. REV. STAT. § 16-2.5-116 to -117 (2024).</p>                                                                                                                                                                                                                                                                                                                                                                                                                        | Full Authority |

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| Connecticut | Any full-time conservation officer shall, incident to a lawful arrest, have the same powers with respect to criminal matters and the enforcement of the law.<br>Key Statutes & Law: CONN. GEN. STAT. §§ 26-5 to -6(b) (2024).                                                                          | Conditional Authority |
| Delaware    | A law enforcement officer of the Department of Natural Resources and Environmental Control has the same arrest powers as other police officers in the state.<br>Key Statutes & Law: DEL. CODE ANN. tit. 11, § 1911 (2025); <i>id.</i> tit. 29, § 8003(13)(a).                                          | Full Authority        |
| Florida     | Conservation officers are authorized to make arrests for violations of state laws when committed in their presence or when committed on lands under the supervision of specific agencies.<br>Key Statutes & Law: FLA. STAT. § 379.3311(1)-(2) (2025).                                                  | Full Authority        |
| Georgia     | Game wardens have authority to enforce any state law on property owned or controlled by the Department of Game and Fish or when the violation of a law is committed in conjunction with a violation of law assigned to the department.<br>Key Statutes & Law: GA. CODE ANN. §§ 27-1-16(a), -20 (2026). | Conditional Authority |
| Hawaii      | Conservation officers may enforce state laws and rules, and county ordinances within all lands and waters of the State, provided that such powers shall remain in force and effect only while in actual performance of their duties.                                                                   | Conditional Authority |

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|          | Key Statutes & Law: HAW. REV. STAT. §§ 199-3 to -4 (2025).                                                                                                                                                                                |                |
| Idaho    | Certified officers have all the authority given by statute to peace officers of the state.<br>Key Statutes & Law: IDAHO CODE §§ 36-1301(1)-(3), 67-7028 (2025).                                                                           | Full Authority |
| Illinois | Conservation officers have all powers possessed by policemen and may exercise those powers anywhere in the State.<br>Key Statutes & Law: 20 ILL. COMP. STAT. 805/805-535 (2025); 70 ILL. COMP. STAT. 1205/4-7.                            | Full Authority |
| Indiana  | Conservation officers have the power to enforce state laws and may exercise all powers granted by law to state police officers, sheriffs, and members of police departments.<br>Key Statutes & Law: IND. CODE §§ 14-9-8-16 to -17 (2025). | Full Authority |
| Iowa     | Conservation officers have the same powers that are conferred by law on peace officers in the enforcement of all laws of the state and the apprehension of violators.<br>Key Statutes & Law: IOWA CODE §§ 456A.13, 804.7 (2026).          | Full Authority |
| Kansas   | Conservation officers have the power to enforce all laws of the state anywhere within the state.<br>Key Statutes & Law: KAN. STAT. ANN. § 32-808(b)(1) (2025).                                                                            | Full Authority |

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| Kentucky      | Conservation officers have full powers as peace officers for the enforcement of all of the laws of the Commonwealth.<br>Key Statutes & Law: KY. REV. STAT. ANN. §§ 148.056, 150.090, 235.310 (2025).                                                                                                               | Full Authority |
| Louisiana     | Conservation officers are vested with the same authority and powers conferred by law upon other law enforcement officers of the state.<br>Key Statutes & Law: LA. STAT. ANN. §§ 56:55.2, 56:1688 (2025).                                                                                                           | Full Authority |
| Maine         | Game Wardens' primary responsibility is enforcement of laws protecting fish and wildlife but they also have the same duties and powers as sheriffs.<br>Key Statutes & Law: ME. STAT. tit. 12, §§ 6025, 10353 (2025).                                                                                               | Full Authority |
| Maryland      | Natural Resources police officers are specifically charged with enforcing the natural resource and conservation laws but have all powers conferred upon police officers of the state and may exercise them anywhere within the state.<br>Key Statutes & Law: MD. CODE ANN., NAT. RES. §§ 1-201.2, 1-204(a) (2025). | Full Authority |
| Massachusetts | Environmental police officers exercise all the authority of police officers and constables throughout the Commonwealth, except for the service of civil process.<br>Key Statutes & Law: MASS. GEN. LAWS ch. 21A, § 10C (2025); <i>id.</i> ch. 92, § 34B(4).                                                        | Full Authority |
| Michigan      | Conservation Officers are vested with all powers, privileges, and immunities                                                                                                                                                                                                                                       | Full Authority |

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|             | conferred upon peace officers by the general laws of the state.<br>Key Statutes & Law: MICH. COMP. LAWS §§ 324.1501, .1606 (2026).                                                                                                                                                                                                           |                       |
| Minnesota   | Conservation officers are charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and have the full power of arrest.<br>Key Statutes & Law: MINN. STAT. §§ 626.84, 97A.205 (2025).                                                                                                  | Full Authority        |
| Mississippi | Conservation officers can arrest, without warrant, any person committing a misdemeanor or felony within their presence anywhere in the state.<br>Key Statutes & Law: MISS. CODE ANN. §§ 49-1-43, 55-3-33 (2026); <i>see also</i> Miss. Att’y Gen. Op. Re: Conservation Officers’ Authority to Issue Traffic Tickets, 2024 WL 5235771 (2025). | Full Authority        |
| Missouri    | Conservation officers are peace officers whose powers and authority are limited to certain places, certain violations, or certain special requests from other agencies.<br>Key Statutes & Law: MO. REV. STAT. §§ 252.080, .085 (2025).                                                                                                       | Conditional Authority |
| Montana     | Game wardens primarily enforce laws under the jurisdiction of the Fish, Wildlife, & Parks Department but can exercise other powers of a peace officer when enforcing those laws.<br>Key Statutes & Law: MONT. CODE ANN. §§ 23-1-122, 87-1-502 (2025).                                                                                        | Conditional Authority |

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| Nebraska      | Conservation officers are peace officers with the powers of sheriffs.<br>Key Statutes & Law: NEB. REV. STAT. §§ 37-603-608 (2024).                                                                                                                                                 | Full Authority            |
| Nevada        | Game wardens are designated as peace officers for the purpose of enforcing the wildlife and boating laws, as well as the enforcement of all laws of the State while performing those duties.<br>Key Statutes & Law: NEV. REV. STAT. §§ 289.260, .280 (2025).                       | Conditional Authority     |
| New Hampshire | Conservation officers have general power to enforce all criminal laws of the state.<br>Key Statutes & Law: N.H. REV. STAT. ANN. §§ 206:26-b, 270:12-a (2025).                                                                                                                      | Full Authority            |
| New Jersey    | Conservation officers have the power to arrest without warrant any person violating any law of this State committed in their presence.<br>Key Statutes & Law: N.J. STAT. ANN. §§ 13:1A-6.1, 53:1-11.14 (2025).                                                                     | Full Authority            |
| New Mexico    | Conservation officers enforce game and fish and outdoor recreation laws. They may enforce provisions of the criminal code and motor vehicle code under emergency circumstances and while on official duty only.<br>Key Statutes & Law: N.M. STAT. ANN. §§ 16-2-30, 17-2-19 (2026). | Agency-Specific Authority |
| New York      | Conservation officers are peace officers who enforce all laws of the state relating to fish and wildlife. They are authorized to exercise any other power of peace officers whenever acting pursuant to their                                                                      | Conditional Authority     |

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|                | <p>special duties. Peace officers have the same powers as conservation officers, except the power to search without warrant.</p> <p>Key Statutes &amp; Law: N.Y. CRIM. PROC. LAW §§ 1.20(34), 140.10 (McKinney 2026); N.Y. ENV'T CONSERV. LAW § 71-0907.</p>                                                                                                                                                                                                                              |                           |
| North Carolina | <p>Conservation officers have the powers of peace officers anywhere in this State, and beyond its boundaries to the extent provided by law, in enforcing all matters within their respective subject-matter jurisdiction. They can enforce other criminal laws when specifically requested to do so or when they have probable cause to believe a person has committed an offense within their presence.</p> <p>Key Statutes &amp; Law: N.C. GEN. STAT. §§ 113-28.1, -136(d1) (2025).</p> | Conditional Authority     |
| North Dakota   | <p>Conservation officers have powers of a peace officer for purposes of enforcing game, fish, and boating laws. They can arrest for violations of fish, game, and boating laws or any other state laws and rules relating to wildlife.</p> <p>Key Statutes &amp; Law: N.D. CENT. CODE § 20.1-02-15.1 (2026).</p>                                                                                                                                                                          | Agency-Specific Authority |
| Ohio           | <p>Conservation officers may enforce any law violation within their territorial jurisdiction.</p> <p>Key Statutes &amp; Law: OHIO REV. CODE ANN. §§ 1531.13, 2935.03(A) (2025).</p>                                                                                                                                                                                                                                                                                                       | Conditional Authority     |

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| Oklahoma       | Game wardens are authorized to enforce all state laws, with the same power and authority as sheriffs.<br>Key Statutes & Law: OKLA. STAT. tit. 29, § 3-201 (2026); <i>id.</i> tit. 47, § 2-105.6.                                                                                                       | Full Authority            |
| Oregon         | Special enforcement officers with the State Police are authorized to enforce the wildlife laws.<br>Key Statutes & Law: OR. REV. STAT. §§ 390.050, 496.610 (2025).                                                                                                                                      | Full Authority            |
| Pennsylvania   | Conservation officers can apprehend or arrest any individual suspected of violating any provision of the state Crimes Code or of committing any misdemeanor or felony when the offense occurs in their presence.<br>Key Statutes & Law: 34 PA. CONS. STAT. § 901 (2026); 71 PA. CONS. STAT. § 1340.303 | Full Authority            |
| Rhode Island   | Conservation officers have the power to enforce fish, wildlife, boating, and other specific laws, including firearms, littering, and all-terrain vehicles.<br>Key Statutes & Law: 12 R.I. GEN. LAWS § 12-7-21 (2026); 20 R.I. GEN. LAWS § 20-1-8.                                                      | Agency-Specific Authority |
| South Carolina | Conservation officers possess and exercise all of the power and authorities held and exercised by the constable at common law and under state statutes.<br>Key Statutes & Law: S.C. CODE ANN. §§ 50-3-400, -410 (2025).                                                                                | Full Authority            |
| South Dakota   | Conservation officers have the power to enforce all violations under the criminal statutes as well as specified violations under other statutes.                                                                                                                                                       | Full Authority            |

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|           | Key Statutes & Law: S.D. CODIFIED LAWS § 41-15-10.1 (2026).                                                                                                                                                                                                                                                                                                                            |                       |
| Tennessee | Conservation officers can arrest any person committing or attempting to commit a criminal offense in violation of any of the laws of the state if the offense is committed on public lands, rights-of-way, or waters under the agency's management or control through lease, cooperative agreement, or otherwise.<br>Key Statutes & Law: TENN. CODE ANN. §§ 11-3-107, 70-1-305 (2025). | Conditional Authority |
| Texas     | Conservation officers have the same powers, privileges, and immunities as peace officers anywhere in the state.<br>Key Statutes & Law: TEX. PARKS & WILD. CODE ANN. § 11.019 (2025); TEX. CODE CRIM. PROC. ANN. art. 2A.001 (2025).                                                                                                                                                    | Full Authority        |
| Utah      | Conservation officers have statewide full-spectrum peace officer authority.<br>Key Statutes & Law: UTAH CODE ANN. §§ 23A-5-201, 53-13-103 (2025).                                                                                                                                                                                                                                      | Full Authority        |
| Vermont   | Game wardens have the same law enforcement authority, duties, and powers as State Police, sheriffs, constables, and municipal police.<br>Key Statutes & Law: VT. STAT. ANN. tit. 10, § 4198 (2026).                                                                                                                                                                                    | Full Authority        |
| Virginia  | Conservation officers are vested with the same authority as sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth.<br>Key Statutes & Law: VA. CODE ANN. §§ 10.-115(E), 29.1-205 (2025).                                                                                                                                                  | Full Authority        |

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| Washington    | Fish and wildlife officers are general authority Washington peace officers.<br>Key Statutes & Law: WASH. REV. CODE §§ 77.15.075, 79A.05.160 (2025).                                                                                                                | Full Authority        |
| West Virginia | Natural resources police can arrest any person or persons committing a criminal offense in violation of any law of this state in the presence of the officer.<br>Key Statutes & Law: W. VA. CODE § 20-7-4 (2026).                                                  | Full Authority        |
| Wisconsin     | Wardens may enforce Public Lands, Waters, and Natural Resources laws and may arrest for any crime committed on state lands.<br>Key Statutes & Laws: WIS. STAT. §§ 23.11(4), 29.921 (2025).                                                                         | Conditional Authority |
| Wyoming       | Game and fish law enforcement officers enforce violations of the fish and game code and felonies observed during performance of their official duties. They can assist other peace officers upon request.<br>Key Statutes & Law: WYO. STAT. ANN. § 7-2-101 (2025). | Conditional Authority |

## APPENDIX B

State conservation statutes use a wide variety of phrases to describe the evidentiary standard required for a warrantless search. These formulations do not map neatly onto the established Fourth Amendment standards of probable cause and reasonable suspicion, and in most cases neither the legislature that enacted the phrase nor the courts that have applied it have specified which constitutional standard, if any, the phrase is intended to approximate. The classifications in Figure 2 reflect an interpretation of the statutory language based on the text of each statute and, where available, judicial interpretation. Several principles guided the classification.

First, where a statute expressly uses the phrase “probable cause,” “probable cause to believe,” or “sufficient cause to believe,” the statute is classified as requiring probable cause. A further distinction is drawn between those that also require a warrant for searches of containers, vehicles, and similar items and those that require probable cause but dispense with the warrant requirement.

Second, where a statute uses phrases such as “reason to believe,” “good reason to believe,” “cause to believe,” or “good cause to believe” — formulations that omit the word “probable” or “sufficient” and that no state court has authoritatively interpreted as requiring probable cause — the statute is classified as requiring a sub-probable-cause standard.

Third, where a statute authorizes inspections, license checks, or searches of persons engaged in a licensed activity without any stated standard of justification — or where the triggering fact is the individual’s engagement in hunting, fishing, or trapping rather than any suspicion of a violation — the statute is classified as requiring no suspicion.

Fourth, many state statutes are layered: they impose different standards for different contexts within a single statutory scheme. A state may, for example, require probable cause to search a building but only “reason to believe” to search a vehicle. Similarly, some statutes apply more permissive standards to commercial operations — such as commercial fishing or the commercial sale and transport of game — while imposing more restrictive standards on searches of individual recreational hunters and anglers. Where a statute contains these layered

rules, the classification reflects the standard that applies to the most common type of conservation encounter: a field-level interaction between a conservation officer and an individual recreational hunter, angler, or boater. This approach ensures that the classification captures the evidentiary standard that governs routine stops and searches of individuals engaged in lawful outdoor recreation rather than the standard that applies to specialized commercial or post-arrest contexts.

Finally, a small number of states are labeled as “Classification Uncertain.” Some states do not appear to have enacted a statute specifically addressing conservation officers’ search authority. Others have enacted statutes that, on their face, incorporate the general law of search and seizure — using language such as “may conduct searches as provided by law” or through provisions that track the constitutional standards governing search incident to arrest — rather than creating a separate or expanded search authority for conservation officers. Because the purpose of Figure 2 is to map where state legislatures have departed from the Fourth Amendment framework governing traditional police, states whose statutes do not clearly depart from that framework are classified as uncertain rather than forced into a substantive category.

Based on these classification principles, the fifty states fall into five categories, organized from most restrictive to least restrictive relative to the probable cause baseline. These classifications capture the current state of ambiguity, which is itself a feature of the Green Fourth Amendment: a body of law whose evidentiary standards are not merely lower than those governing traditional police but are often undefined in ways that leave the boundaries of officers’ authority uncertain and largely within their own discretion to determine. The following summary lists each state with its corresponding statutory citation and, where relevant, the operative statutory language on which the classification is based.

*Probable Cause & Warrant Required* ( $n = 3$ ). States in this category require conservation officers to obtain both probable cause and a warrant before conducting a search. Warrantless searches are permitted only under narrow exceptions, such as when obtaining a warrant is not feasible or when the individual consents. *See* MD. CODE ANN., NAT. RES. § 4-1204 (2025) (authorizing warrantless searches only when “it is not possible or feasible to secure a search warrant in time”); MINN. STAT.

§ 97A.215(1)(a) (2025) (requiring probable cause to “enter and inspect any place or vehicle” and to “open and inspect any package or container”); WYO. STAT. ANN. § 23-6-109(c) (2025) (requiring search warrant for “any place or property” where there is “probable cause to believe [wildlife] was taken or . . . possessed unlawfully”).

*Probable Cause — No Warrant* ( $n = 9$ ). States in this category require probable cause but dispense with the warrant requirement for containers, vehicles, or other items that would normally require a warrant. *See* ARIZ. REV. STAT. ANN. § 17-211(E)(3) (2025) (authorizing warrantless search of “any aircraft, boat, vehicle, box, game bag or other package where there is sufficient cause to believe that wildlife or parts of wildlife are possessed in violation of law”); COLO. REV. STAT. § 33-6-101(1) (2024) (requiring probable cause “to open, enter, and search all places of concealment”); CONN. GEN. STAT. § 26-6(c) (2024) (authorizing warrantless examination of contents of “any boat, ship, automobile or other vehicle, box, locker, basket, creel, crate, game bag or game coat” upon probable cause); LA. STAT. ANN. § 56:55(A) (2025) (authorizing warrantless inspection of “records, any cold storage plant, warehouse, boat, store, car, conveyance, automobile or other vehicle, airplane or other aircraft, basket or other receptacle . . . whenever there is probable cause to believe that a violation has occurred”); ME. STAT. tit. 12, § 6025(4) (2025) (requiring probable cause for warrantless searches of aircraft, watercraft, and containers for marine organisms); MICH. COMP. LAWS § 324.1602 (2026) (permitting warrantless search of “any boat, conveyance, vehicle, automobile, fish box, fish basket, game bag, game coat, or any other receptacle or place” upon probable cause); 30 PA. CONS. STAT. § 901(a)(5) (2026) (requiring probable cause for search of boats, vehicles, and receptacles); 20 R.I. GEN. LAWS § 20-1-8(7) (2026) (authorizing boarding of fishing vessels for license inspection and compliance checks, but providing that evidence obtained without probable cause “may not be used in a criminal prosecution”); WIS. STAT. § 29.931(1) (2025) (authorizing warrantless entry and examination of “all buildings, camps, boats, . . . vehicles, valises, packages and other places where the officer has probable cause to believe” wildlife taken in violation of the law).

*Sub-Probable Cause* ( $n = 19$ ). States in this category authorize warrantless searches under standards that are lower than probable

cause. These standards include “reason to believe” and “good reason to believe” — formulations whose precise doctrinal equivalents have not been authoritatively determined by the courts. *See* DEL. CODE ANN. tit. 7, § 111 (2025) (authorizing warrantless search of “any person, conveyance, vehicle, game bag, game coat or other receptacle” when agent has “reason to believe” wildlife laws have been violated); FLA. STAT. § 379.3313 (2025) (stating that “authority to search and inspect without a search warrant is limited to those cases in which such law enforcement officers have reason to believe that fish or any saltwater products are taken or kept for sale, barter, transportation, or other purposes in violation of laws or rules adopted under this law”); 520 ILL. COMP. STAT. 5/1.19 (2025) (authorizing examination of “all buildings, . . . vessels, cars, . . . conveyances, vehicles, . . . tents, game bags, game coats or other receptacles” where there is “reason to believe” they contain wildlife held contrary to law); IND. CODE § 14-22-39-3 (2025) (authorizing search of “a boat, a conveyance, a vehicle, . . . a fish box, a fish basket, a game bag, a game coat, or other receptacle” where officer has “good reason to believe . . . evidence of a violation” will be found); MASS. GEN. LAWS ch. 130, § 9 (2025) (authorizing warrantless searches for “any boat, vessel, fish car, bag, box, locker, package, crate, any motor vehicle . . . or any other personal property” if officer “has reasonable cause to believe, and does believe” fish were taken in violation of the law); MISS. CODE ANN. § 49-1-43(4)(b) (2025) (authorizing examination of “any boat, car, automobile or other vehicle, box, locker, basket, creel, crate, game bag or other package” where “officer has cause to believe and does believe” wildlife is possessed in violation of law); MO. REV. STAT. § 252.100(2) (2025) (authorizing warrantless search of “any creel, container, gamebag, hunting coat, or boat” where officer has “reason to believe wildlife is unlawfully possessed or concealed”); MONT. CODE ANN. § 87-1-502(6) (2025) (authorizing inspection of “any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling”); NEB. REV. STAT. § 37-607 (2024) (authorizing warrantless entry and examination of “all camps, wagons, cars, stages, tents, packs, warehouses, stores, outhouses, stables, barns and other places, boxes, barrels, and packages where [there is] reason to believe” wildlife has been taken in violation

of law); NEV. REV. STAT. § 501.375(2)(a) (2025) (authorizing warrantless search of “any camp, structure, aircraft, vessel, vehicle, box, game bag or other package where the officer has reason to believe any wildlife taken or held in violation”); N.H. REV. STAT. ANN. § 206:26(VI) (2025) (authorizing warrantless search of “any person . . . when there is reasonable and articulable suspicion to believe that any wildlife, or any illegal apparatus subject to forfeiture, is concealed thereon or therein”); N.J. STAT. ANN. § 23:10-20 (2025) (authorizing warrantless search and examination of “any boat, conveyance, vehicle, fish box, fish basket, game bag, game coat, or other receptacle for game and fish” when officer “has reason to believe that a provision . . . has been violated”); N.M. STAT. ANN. § 17-2-19(A)(3) (2026) (authorizing officers to “open, enter and examine all camps, wagons, cars, tents, packs, boxes, barrels and packages where [there is] reason to believe [wildlife] taken or held in violation”); N.Y. ENV’T CONSERV. LAW § 71-0907(4)(b) (McKinney 2026) (authorizing warrantless search of “any boat or vehicle of any kind, any box, locker, basket, creel, crate, game bag, package or any container . . . and the contents of any building other than a dwelling whenever [officers] have cause to believe” a violation has occurred); N.C. GEN. STAT. § 113-136(k) (2025) (authorizing inspections of “weapons or equipment if the officer reasonably believes them to be possessed” in relation to a wildlife violation); OHIO REV. CODE ANN. § 1531.13 (2025) (authorizing entry and inspection of containers and packages when officer has “good cause to believe” wildlife laws are being violated); TEX. PARKS & WILD. CODE ANN. §§ 12.104(a) (2025) (authorizing search of vehicles and receptacles upon “reasonable, articulable suspicion” of unlawful taking); WASH. REV. CODE § 77.15.094 (2025) (authorizing warrantless search of “a vessel, conveyances, vehicles, containers, packages, or other receptacles” which officers “have reason to believe contain evidence of a violation”); W. VA. CODE § 20-7-4(b)(3) (2026) (authorizing search and examination of “any boat, vehicle, automobile, conveyance, . . . fish box, fish bucket or creel, game bag or game coat or other place . . . whenever [officers] have reason to believe that they would . . . secure or discover evidence of the violation”).

*No Suspicion Required* ( $n = 13$ ). States in this category authorize conservation officers to search or inspect at least some persons,

equipment, or catch without any showing that a violation has occurred. The triggering fact is the individual's engagement in a licensed activity — hunting, fishing, or trapping — rather than any suspicion of wrongdoing. *See* ALA. CODE § 9-11-303 (2025) (authorizing warrantless search of “any automobile, wagon, truck or other vehicle or any hunting sack or hunting coat within any wildlife management area”); ALASKA STAT. § 16.05.180 (2025) (authorizing warrantless search of “any thing or place if the search is reasonable or is not protected from searches and seizures without warrant” under the Alaska Constitution); ARK. CODE ANN. § 15-41-203 (authorizing search of “any person . . . to ascertain whether or not the game and fish laws are being violated”); CAL. FISH & GAME CODE § 1006(a) (2025) (authorizing inspection of “[a]ll boats, markets, stores and other buildings, except dwellings, and all receptacles . . . where [wildlife] may be stored”); GA. CODE ANN. § 27-1-3(d) (2025) (providing that any person exercising the right to hunt, trap, fish, possess, or transport wildlife is subject to inspection); HAW. REV. STAT. § 199-8(a) (2025) (authorizing inspections of “any license, . . . game or aquatic life . . . , including the contents of any receptable or container . . . , and any equipment, article, or device capable of taking the” wildlife upon reasonable belief that a person “is, or recently has been, engaged in hunting or fishing”); IDAHO CODE § 36-1201 (2025) (requiring hunters, fishers, and trappers to produce wildlife and licenses for inspection and stop at check stations when directed); IOWA CODE §§ 462A.66, 481A.52 (2026) (requiring any person “in possession of any game” to “exhibit” it to an officer upon request and authorizing suspicionless boarding and inspection of vessels); KAN. STAT. ANN. § 32-1004(7)–(8) (2025) (making it unlawful to “refuse to allow [officers] to inspect and count any wildlife” or “to inspect any devices or facilities . . . used in taking, possessing, transporting, storing, or processing any wildlife”); KY. REV. STAT. ANN. § 150.090(5) (2025) (authorizing officers to “call for and inspect the license or tag, bag or creel of any person engaged in any activity for the performance of which a license is required” and to “inspect any and all firearms and any other device that may be used in taking wildlife”); OR. REV. STAT. § 497.036 (2025) (requiring license holders to “consent to the inspection of any such license, tag or permit and any wildlife taken pursuant to such license”); S.D. CODIFIED LAWS § 41-15-6 (2026) (requiring persons

possessing game to “permit the inspection and count” of wildlife); UTAH CODE ANN. § 23A-5-207(1) (2025) (authorizing officers to inspect licenses, devices, and wildlife of people “engaged in an activity regulated under [fish and game laws]”).

*Classification Uncertain (n = 6).* Some states do not specify search authority for conservation officers. These include North Dakota, Oklahoma, and Vermont. South Carolina authorizes officers to “conduct searches as provided by law,” S.C. CODE ANN. § 50-15-80 (2025) — a cross-reference that, on its face, incorporates whatever standard the law otherwise requires rather than creating a separate or expanded search authority for conservation officers. Similarly, Tennessee authorizes “warrantless searches as provided by law,” TENN. CODE ANN. § 70-8-108(c) (2025), and Virginia’s primary search provision authorizes searches of containers and places incident to a lawful arrest — language that, in context, appears to track rather than depart from the constitutional standards governing warrantless searches. VA. CODE ANN. §§ 29.1-208, -209 (2025).