WILDLIFE CRIME:

U.S. POLICY RECOMMENDATIONS
FOR IMPROVED DOMESTIC ENFORCEMENT

by

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WILDLIFE CRIME
U.S.-POLICY RECOMMENDATIONS FOR IMPROVED DOMESTIC ENFORCEMENT

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EXECUTIVE SUMMARY

“The entire world has a stake in protecting the world’s iconic animals, and the United States is strongly committed to meeting its obligations to help preserve the earth’s natural beauty for future generations.”

— President Barack Obama

Wildlife trafficking is now one of the largest criminal enterprises across the globe. UNEP estimates its worth at least $7 billion annually, possibly as high as $23 billion. It is also widely agreed that wildlife poaching and trafficking are increasing.

On July 1, 2013, President Barack Obama issued Executive Order 13648 titled “Combating Wildlife Trafficking”. The Order called for the establishment of a Presidential Task Force on Wildlife Trafficking, and for the Task Force to produce a National Strategy for Combating Wildlife Trafficking, which was released on February 11, 2014. The Strategy strengthens United States “leadership on addressing the serious and urgent conservation and global security threat posed by illegal trade in wildlife”, and centers on three strategic priorities: 1) strengthening domestic and global law enforcement; 2) reducing the demand for illegally-traded wildlife; and 3) expanding international cooperation and commitment.

Wildlife trafficking occurs within and across U.S. borders. The U.S. Government recognizes wildlife trafficking is a serious crime and, as outlined in the Strategy, is committed to ensuring domestic enforcement efforts adequately protect wildlife resources.

This paper analyzes the effectiveness of the enforcement of wildlife crimes in the U.S. Based upon the analysis provided herein, punishment for wildlife crimes in the U.S. is lenient and inconsistent. Even if detected, wildlife criminals enjoy a 96% chance of going without any penalty for their crimes.

6 Id.
7 Id.
Deterrence requires certainty of being caught and prosecuted. To address gaps and ensure that domestic enforcement adequately protects wildlife resources, the Federal government must commit funding and other resources across agencies to:

- increase the number of wildlife inspectors and special agents;
- further develop prosecutorial expertise;
- train judges, clerks and probation officers such that wildlife crimes are consistently treated as “serious crimes”;
- and provide accessible information and tools to support sentencing decision making.
Poaching operations have expanded beyond small-scale, opportunistic actions to coordinated slaughter commissioned by armed and organized criminal syndicates. The survival of protected wildlife species such as elephants, rhinos, great apes, tigers, sharks, tuna, and turtles has beneficial economic, social, and environmental impacts that are important to all nations.”8

— Executive Order – Combating Wildlife Trafficking

Wildlife trafficking is the fifth most profitable illicit trade in the world9. While it’s impossible to ascertain the true extent and value of the illegal trade, the United Nations Environment Programme estimates its value between US$7 billion and $23 billion globally per year10. In 2010, UNODC estimated the value of African and South-East Asian elephant ivory, rhino horn and tiger parts at $75 million.

It is also widely agreed that wildlife poaching and trafficking are increasing11. Global biodiversity is most obviously effected by this trade. Since the 1970’s, the number of African elephants fell from 1.2 million to just over 400,000 in 201412, an unsustainable loss rate as the animals are being killed faster than they can reproduce. India’s tiger population – half of the world’s tigers – dropped by more than 50%, from 3,642 in 2002 to 1,411 in 200813. And 90% of the world’s rhino population has been decimated by poaching and trafficking, with one out of every 20 wild rhinos killed by a poacher in the 2014 alone.14 Unchecked, these and other species may become extinct.

Furthermore, the trade in wildlife also fuels corruption and organized crime in already weakened developing countries. For example, since 2003 Sudan’s Janjaweed militia has killed hundreds of elephants in Chad’s Zakouma National Park, and used the trafficking profits to purchase AK-47’s and other weapons for use in

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8 Supra note 3.
11 Id.
12 Supra note 4 at p. 2.
14 Supra note 1 at p. 2.
Darfur’s killing fields. As such, wildlife trafficking has implications for international security as well.

Finally, illicit trafficking of wildlife across borders facilitates transmission of emerging diseases to humans. Avian influenza, SARS, Heartwater disease and Monkeypox, all carried by animals, are potentially deadly to humans, and catastrophic to economies.

On the demand side, China, the U.S., and the European Union are the largest consumers of illegal wildlife and associated products. The most lucrative of these include elephant ivory, tiger bones, Tibetan antelope, bear gallbladders, rhino horns, and exotic birds and reptiles. For context, black-market ivory is worth more than gold. A pair of bull elephant ivory tusks on the black market is valued at roughly 15 times an average ranger’s annual salary.

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16 Global Financial Integrity report, p. 14

17 Id. at p. 12

18 Supra note 5.

Most fall into three categories: traditional Chinese medicine (TCM), commercial products (clothing and accessories), and exotic pets. The U.S. is the primary source of demand for the latter two. While the illegal trade in wildlife is growing, and violations of federal and international law not rare, only a very small proportion of perpetrators will be detected, prosecuted and convicted.

Investigation and enforcement of wildlife trafficking offenses face a number of hurdles; the most significant problems relate to resourcing, knowledge and attitudes, procedural barriers, and corruption, particularly those involving transnational crime. Wildlife crimes are still not viewed as “serious crimes” (figuratively and procedurally) and they’re often deemed victimless or administrative in nature. And because they’re infrequently seen in the courts, prosecutors, judges and probation officers have little experience and knowledge of the harm caused by trafficking.

Because financial gain is the key motivating factor for those engaged in the trafficking of wildlife, deterrent sentencing is preferred over rehabilitative sentencing. Many believe that penalties for wildlife trafficking violations are too lenient to effect deterrence or to be considered commensurate with the harm caused.

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19 Supra note 5 at p. 12.
Wildlife trafficking occurs within and across U.S. borders. Not only is the U.S. among the world’s major consumers of wildlife and wildlife products – both legal and illegal – but it also serves as a transit point for trafficked wildlife moving from “source” (or “range”) countries to destination markets around the globe, as well as a source for illegally taken wildlife.

Effective enforcement depends on robust legal authorities to disrupt wildlife trafficking networks, apprehend and prosecute traffickers, seize and forfeit proceeds of crimes, and apply penalties that deter others from committing such crimes.

Signaling recognition of the need to do more to address the illegal trade in wildlife, on July 1, 2013, President Barack Obama issued Executive Order 13648 titled “Combating Wildlife Trafficking”. It characterized poaching of protected species and the illegal trade in wildlife – collectively known as "wildlife trafficking" – as a continuously escalating “international crisis” that poses an “urgent threat to conservation and global security” and is in the national interest of the U.S. to combat.

Pursuant to the Order, the President called for U.S. government executive departments and agencies to convene a Presidential Task Force on Wildlife Trafficking, and for the Task Force to develop and implement a National Strategy for Combating Wildlife Trafficking. The National Strategy, released on February 11, 2014 sets forth three strategic priorities: 1) strengthening U.S. domestic and global law enforcement; 2) reducing the demand for illegally-traded wildlife; and 3) expanding international cooperation and commitment. Evaluating the efficacy of U.S. domestic enforcement is the purpose of this study. On February 11, 2015, the Task Force released the Implementation Plan, detailing the goals set out by the National Strategy and progress in achieving them.

21 Supra note 1.
23 Supra note 3.
24 Supra note 4.
25 Supra note 5.
KEY AGENCIES
The Task Force on Wildlife Trafficking is co-chaired by the Secretaries of State and Interior, and the Attorney General, and comprises 17 federal departments and agencies. The U.S. Department of Interior’s Fish & Wildlife Service (FWS) Office of Law Enforcement is the primary agency responsible for enforcing wildlife laws. At ports of entry and border crossings, FWS works in conjunction with Department of Homeland Security’s Custom and Border Protection to inspect goods imported into the U.S.; FWS has primary authority for those shipments involving wildlife goods.

Additionally, state agencies investigate violations of state wildlife laws, which may ultimately develop into federal cases if wildlife has been illegally transported or sold in interstate commerce.

Wildlife crime investigations initiated by FWS and other law enforcement agents are referred to U.S. attorneys’ offices. In coordination with the Department of Justice’s Environment and Natural Resources Division (ENRD), U.S. attorneys prosecute alleged violations of federal wildlife laws, as well as related crimes, such as smuggling, criminal conspiracy, and money laundering.

LEGAL AUTHORITIES
Federal enforcement against those who traffic wildlife dates back to the Lacey Act – passed in 1900 and expanded through amendments – the Endangered Species Act of 1973, the Convention on International Trade in Endangered and Threatened Species (CITES), the Migratory Bird Treaty Act, the Marine Mammal Protection Act, and other more recent statutes and laws.

LACEY ACT
The Lacey Act – 16 U.S.C. §§ 3371-3378 – prohibits interstate and international trafficking in protected wildlife. The Act criminalizes the import, export, sales, acquisition, or purchase of fish, wildlife or plants that have been taken, possessed, transported, or sold in violation of federal, state, Tribal or foreign laws. Violators face civil and criminal fines, property forfeiture and criminal penalties, including incarceration.

Enacted more than a century ago, the Lacey Act is this country’s oldest national wildlife protection law and persists as a critical tool in the fight against wildlife trafficking. Iowa Congressman John Lacey first introduced the Lacey Act to the House of Representatives in the spring of 1900; shortly thereafter it was signed into law by President William McKinley on May 25, 1900.

In its original form, the Lacey Act focused on protection and restoration of birds as a means to...

27 Id. at p. 4
enhance and protect agriculture. It not only authorized the reintroduction declining birds and prohibited the introduction of non-native exotic species, but it also addressed the problems of poaching and wildlife “laundering”.

Until that point, limitations on state control over goods – notably wildlife – traveling in interstate commerce had failed to adequately protect game animals and birds. Lacey’s law addressed the problems of poaching, concealed interstate shipments, and trafficking in three ways: 1) the Act criminalized both the delivery for shipment and the shipment of wildlife, or parts thereof, killed in violation of state law(s); 2) relying on authority granted by the Commerce Clause of the U.S. Constitution, the Act required all interstate shipments of wildlife to be clearly marked and labeled. Shippers were strictly liable for violations of these sections, whereas the consignee or carrier had to know the shipment was mismarked in order to be charged with criminal penalties. If convicted, the maximum penalty for the shipper, the consignee, and/or the carrier was a $200 fine; and 3), rather than “nationalizing game law” – e.g., attempting to place "state-owned" wildlife under direct federal control, which Lacey recognized as unconstitutional, the Act removed federal restrictions on the states' ability to regulate the sale of wildlife within their borders by subjecting all wildlife entering a state to the state’s laws.

The Lacey Act has been amended several times since its inception; the most significant of these occurred in 1969, 1981, and 1988. The 1969 amendments expanded the Act to include amphibians, reptiles, mollusks, and crustaceans. The maximum penalty was increased to $10,000 with the potential for imprisonment for one year. For a criminal violation, the mental-state requirement was increased to "knowingly and willfully," civil penalties were expanded to apply to negligent violations31.

In 1981, Congress removed the heightened proof standard of "willfully" from the statute, making "knowingly" the standard. This came in response to increased illegal trade in fish and wildlife both domestically and abroad. Indigenous plants were also added to the protected species list. The maximum civil fine was increased to $10,000 and a “bifurcated felony/misdemeanor scheme” was created under the law based on the conduct of the offender and the market value of the trafficked species. Under the felony portion of the statute, the maximum

“The Lacey Act now stands as one of the broadest and most comprehensive forces in the federal arsenal to combat wildlife crime. With increasing activity in international and domestic wildlife trafficking, the Act has evolved to become an important weapon to protect animals domestically and abroad.”

penalty was set at $20,000 and/or five years imprisonment; misdemeanor violations were set at $10,000 and/or up to one-year imprisonment.

In 1988, guiding and outfitting services were added under the scope of "sale." Prior to the amendment, big game guides who provided illegal hunts were immune from prosecution based on commercial activity. The amendments also created a separate and distinct violation for falsification of documents pertaining to shipments of wildlife, fish, or plants. The amendments also allowed for warrantless arrest for felony violations under the Act and expansion of the role of federal wildlife agents. The felony provision of this part of the act was amended such that one could be convicted if he or she either knew of the import or export of the species or where he or she was involved in the sale or purchase of wildlife, fish, or plants with a market value greater than $350.

The 2008 Farm Bill amended the Lacey Act by expanding protection to a broader range of plants. It now encompasses plant products, including timber that is derived from illegally harvested plants. Furthermore, it’s now unlawful to import certain plants and plant products without an import declaration. The 2008 amendments were...

32 Id.
enacted to reduce illegal logging and to increase the value of U.S. wood exports.

Because it applies to a wide array of fish, wildlife and plants, and it provides for longer incarceration times than other felony wildlife statutes, the Lacey Act is frequently used by prosecutors. Between 2005 and 2015, 25,562 Lacey Act cases were investigated by FWS. These charges resulted in approximately 711 years of incarceration and the imposition of criminal fines and costs amounting to more than $24 million, along with many civil fines and forfeitures of property and wildlife.

In addition to the Lacey Act, several federal statutes prohibit trade in protected wildlife and wildlife parts:

**ENDANGERED SPECIES ACT (ESA)**
The 1973 Endangered Species Act – 16 U.S.C. §§ 1531–1544 – provides a framework to conserve and protect threatened and endangered species...
and their habitats\textsuperscript{35}. In addition to banning the “take”, possession, sale and transport of all endangered and threatened species in the U.S., the ESA authorizes civil and criminal penalties for violating the Act or regulations. The “take” of an endangered animal is a Class A misdemeanor, with maximum statutory penalties of 1 year in prison and a fine of up to $100,000 for individual defendants, $200,000 for organizations, or twice the gain or loss resulting from the offense. The take prohibition is generally extended to threatened species by regulation. The take of a threatened animal is a Class B misdemeanor, with a maximum sentence of 6 months imprisonment and a fine of $25,000 for individuals or organizations, or twice the gain or loss. While the ESA only provides for misdemeanor penalties, violations constitute a predicate offense for felony charges under the Lacey Act and U.S. smuggling laws, as long as the wildlife or wildlife product is valued at over $350.

In addition to protecting more than 1,500 domestic species, the Act protects 654 foreign ones. While the Act can’t directly protect species from poaching outside of the U.S., listing foreign species creates import and sale barriers within the U.S. market, raises public awareness and pressures source countries to take action, and stimulates research and funding.

\textbf{CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF FAUNA AND FLORA (CITES)}

Signed in 1973 and entered into force in 1975, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), is the first and only treaty that attempts to regulate commercial wildlife trade. Currently, 181 Parties – nearly every nation – have agreed to implement the Convention. Trade in wildlife and their parts is restricted or even prohibited for species listed in CITES’ three appendices. Commercial trade is banned (with rare exceptions) for roughly 1,200 species listed under Appendix I, those threatened with extinction, and restricted for an additional 21,000 species listed under Appendices II and III\textsuperscript{36}.

CITES and the ESA are closely intertwined: Under the ESA, the U.S. FWS has been designated to implement CITES, and enforce programs, incentives, and fines that benefit the species protected under CITES.

\textbf{THE AFRICAN ELEPHANT CONSERVATION ACT}

The 1988 African Elephant Conservation Act – 16 U.S.C. §§ 4201–4245 – directed the Secretary of Interior to establish a moratorium on the import of African elephant ivory from ivory-producing and intermediary countries not meeting requirements meant to guarantee the sustainability of the country’s ivory harvest or market\textsuperscript{37}.

In 1989 the Department of the Interior issued a notice in the Federal Register asserting that no country met the statutory requirements, thereby establishing a near-complete moratorium on the import of raw and worked ivory into the U.S. However, legally taken sport-hunted trophies, which may be imported in accordance with ESA and CITES requirements from countries that have established an ivory quota, even if those countries are otherwise subject to a moratorium are exempted. The AECA also bans all raw ivory exports from the U.S. under any circumstances.

A knowing violation of any of the AECA prohibitions is punishable by a fine, no more than 1 year in prison, or both. As with the ESA, the AECA only provides for misdemeanor penalties, but violations of the statute can also serve as bases for felony charges under the Lacey Act and smuggling laws.

**MARINE MAMMAL PROTECTION ACT**

The 1972 Marine Mammal Protection Act (MMPA) – 16 U.S.C. §§ 1361–1423h – prohibits the sale or purchase of marine mammals or their unworked parts. The MMPA generally prohibits the “take” of marine mammals within U.S. territory or on the high seas. Violations are Class A misdemeanors, subject to up to 1 year of imprisonment and a fine of up to $100,000 for individual defendants, $200,000 for organizations, or twice the gross gain or loss resulting from the offense. As with the ESA, the MMPA requires “knowing” conduct.

All whales, dolphins, porpoises, manatees and dugongs, and several marine carnivores (seals, otters, walrus, and polar bears) are protected under CITES. CITES applies to international shipments of listed species, but does not apply to activities conducted solely within the U.S. Similarly, all whales are protected under the Marine Mammal Protection Act, but only a subset is additionally protected under the ESA.

**ELIMINATE, NEUTRALIZE, AND DISRUPT “END” WILDLIFE TRAFFICKING ACT**

Signed by President Obama on October 7, 2016, “END” – 16 U.S.C. §§ 7601–7644 – supports an interagency approach to disrupting the ability of terrorists and criminal syndicates to profit from wildlife trafficking. Specifically, END requires the Secretary of State to identify countries as sources, transit, or destination markets for illegal wildlife products and to designate countries that actively engage in or profit from wildlife trafficking.

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trafficking as a “country of particular concern”. Additionally, the legislation makes wildlife trafficking a predicate offense for money laundering.40

**OTHER WILDLIFE (SECTION 16) STATUTES**

The *Rhinoceros and Tiger Conservation Act* of 1994 prohibits the “sale, import, or export, or the attempted sale, import, or export, of any product, item, or substance (product) intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger”41. The Act establishes criminal and civil penalties, including seizure and forfeiture of such products; enforcement activities; and use of penalties and fines.

The *Migratory Bird Treaty Act (MBTA)* imposes a felony penalty on “persons who buy, sell, or barter any specimen on the list of migratory bird species”, as well as a misdemeanor penalty for unlawfully killing any of those birds.42 The *Bald and Golden Eagle Protection Act* prohibits the killing, sale, or purchase of these raptors, providing a misdemeanor penalty for a first violation and felony penalty for subsequent violations.43 The *Wild Bird Conservation Act* establishes a temporary moratorium on the import of nearly all exotic birds and a certification scheme for facilities through which captive-reared exotic birds may be imported.44 Importing exotic birds in violation of the Wild Bird Conservation Act may result in misdemeanor or felony penalties.

**TITLE 18 STATUTES**

In addition to charges arising from violations of these wildlife laws, prosecutors may also include Title 18 charges against those who traffic illegally in wildlife.

Sections 545 and 554 of Title 18 prohibit smuggling items into and out of the U.S., respectively. If wildlife is knowingly exported or imported contrary to U.S. laws, including the ESA, a smuggling violation may have occurred, which carries a 20-year maximum prison term and $250,000 fine.

Other offenses may include false statements, money laundering, obstruction, or a Foreign Corrupt Practices Act violation.

“High financial rewards and low risk of detection can create an incentive to commit these crimes, and so there arises an immediate need for all levels of the judiciary to use the full range of appropriate penalties by way of counterbalance.”

— John C. Cruden & David S. Gualtieri

Effective enforcement of wildlife protection laws is critical to shifting the high profit-low risk profile that fuels the illegal trade in wildlife. INTERPOL defines “effective enforcement” as that which “secure[s] convictions that act as a deterrent to environmental criminals, with meaningful sentences, fines and the recovery of assets and proceeds of crime, and the generation of intelligence that leads to the disruption of transnational criminal networks through international communication and cooperation.”

Deterrence requires a certainty of being caught and punished. And such certainty can only be achieved if a sufficient number of traffickers are detected and prosecuted; sentences are consistent; and penalties are sufficiently severe such that costs outweigh perceived rewards of the crime.

As of 2013, only 7.1% of suspected wildlife traffickers are prosecuted, and less than 4% are sentenced for the crime (see Figure 1). Thus, even if detected, criminals enjoy a 96% chance of going without penalty. Such statistics do little to deter and prevent others from committing wildlife crimes.

METHODS

The findings described in this report consists of a quantitative analysis of investigative, prosecutorial and sentencing data, and a qualitative assessment of legal authorities and recent (limited) cases. The trends analysis primarily utilizes the quantitative data detailed below.

Source Data

Data on U.S. FWS Office of Law Enforcement agency staffing, inspection workload(s), and investigative caseload(s) were collected from Law Enforcement Annual Reports and related public information. Data on suspects in matters

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45 Supra note 4 at p. 6
47 United States Department of Justice Executive Office for United States Attorneys Washington, DC 20530, Volume 63 Number 5, September 2015.
investigated and prosecuted by U.S. attorneys, and defendants adjudicated and sentenced in U.S. district court, were collected from the Bureau of Justice’s Federal Justice Statistics database, the Administrative Office of U.S. Courts’ Criminal Data, and the U.S. Sentencing Commission.

Wherever possible, data were selected from fiscal years 2005 through 2013. If available, more recent datasets were included.

Segments were received in various formats: Portable Document Format (PDF), HTML, comma-separated values (CSV), Microsoft Excel and SAS. All were converted and/or uploaded, coded, tabulated and linked in Microsoft Excel as detailed in Appendices A through D.

**Constraints of the Data**

The federal justice system utilizes a unit of analysis consisting of the combination of an individual/corporation and a matter or case. If the same individual is involved in multiple criminal cases during a specified period, then the person is counted multiple times in the tabulation. As such, comparisons of absolute numbers across two or more tables and other data sources may be neither comparable nor valid.

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Furthermore, inconsistencies in reporting and coding are common in large datasets amassed by multiple source agencies.

Variation in data entry methods may result in a single U.S. Criminal Code section and title appearing in more than one form. For example, values such as "18 922 Q", "18 922 Q1", and "18 922 Q1A" may appear in the agency's data referring, respectively, to 18 U.S.C. 922(Q), 18 U.S.C. 922(Q)(1), and 18 U.S.C. 922(Q)(1)(a).

Similarly, some title and section citations may include information and/or trailing codes external to the U.S. Criminal Code. For example, crimes of conspiracy may include a four-digit code developed by the Administrative Office of the U.S. Courts, meant to provide additional detail about the offense.

In such cases, search results based on Criminal Code sections and titles may be incomplete or skewed; however such searches are necessary to distinguish Lacey Act offenses sentenced under Section 2Q2.1 of the U.S. Sentencing Guidelines.\footnote{Effective November 1, 1989, § 2Q2.2 (Lacey Act) was deleted by consolidation with § 2Q2.1.}

**Figure 2: FWS Bureau of Law Enforcement Staffing, 2009 - 2015**
QUANTITATIVE ANALYSIS OF DOMESTIC ENFORCEMENT TRENDS

U.S. FISH & WILDLIFE SERVICE INSPECTIONS & INVESTIGATIONS

FWS Office of Law Enforcement inspectors – the first line of defense against illegal trade in wildlife – ensure that wildlife shipments comply with U.S. and international wildlife protection laws. As of 2015, 124 inspectors patrolled 18 “designated” ports of entry – those designated for the commercial import/export of wildlife, where FWS operates full-time inspection offices – as well as 20 non-designated ports.

Under the strategic priority of strengthening enforcement, the National Strategy commits to strengthen interdiction and enforcement efforts by optimizing “the wildlife inspection presence at U.S. ports of entry”. However, since the 2013 release of President Obama’s Executive Order, the number of inspectors has fallen from a 2011 high of 143 to just 124, a 14% drop; this, despite a record number of wildlife shipments through U.S. ports. As of 2015, wildlife import and export shipments now total 194,000 and are valued at $6.2 billion (see Figure 2).

Similarly, the total number of FWS Office of Law Enforcement special agents investigating wildlife crimes fell from a 2012 high of 222 to 205 in 2015, a nearly 10% drop (see Figure 3). Over the past 5 years, both the total investigative caseload and the number of Lacey Act cases investigated have also fallen by 24% and 17%, respectively (see Figure 3).

While the number of Lacey Act, AECA and RTCA cases have fallen, the number of smuggling charges has risen (see Figure 4); suggestive the Agency is focusing resources on higher profile
cases, where significant sentences can be achieved.

**ANALYSIS OF U.S. SENTENCING COMMISSION & BUREAU OF JUSTICE STATISTICS DATA**

From 2005 to 2014, less than 10% of wildlife cases investigated by U.S. Attorneys resulted in convictions or sentences (see Figure 5).

Each year, from 2005 to 2014, an average of 488 cases were investigated. In 2014, U.S. attorneys investigated 328 wildlife crime cases, a 41% drop from the prior year. Of matters concluded in 2014, 43% were prosecuted by U.S. attorneys and 15.2% disposed by U.S. magistrates. The number of cases declined for prosecution rose sharply from 29.1% in 2012 to 41.8% in 2014.

**Prosecution**

There were 75 felony wildlife cases filed in 2014, down 41% from 126 cases in 2013. Of the felony cases closed, 80.5% were convicted, a 9-year low conviction rate. Between 2005 and 2014, the majority (96%) were convicted following a guilty plea.

With respect to investigations that did not result in prosecutions, the available data does not allow one to assess the merits of such investigations.

**Sentencing**

In 2014, the number of offenders sentenced for felony wildlife crimes rose by nearly 20%, from 43 in fiscal year 2013 to a 9-year high of 53 at fiscal year-end 2014.

Of the 466 felony wildlife cases sentenced between 2005 and 2014, only 140 cases (30.0%)
resulted in custodial sentences. Only 3% of cases resulted in fines only (n=15). The majority of cases (61.4%, n=286) involved probation, either with or without prison and/or fines. In each category, cases may also have resulted in forfeiture and/or restitution\(^2\).

For Lacey Act violations, both misdemeanor and felony, only 12 cases (15%) resulted in custodial sentences, with 3 of these suspended.

For incarceration sentences between 2005 and 2013, the minimum sentence length was less than 1 month and the maximum was 78 to 105 months (n=1). Average length of incarceration rose in 2014 to 14.2 months, up from 10.2 months in 2013. It remained below a high of 18.3 months from 2005.

As seen in Figure 6, the majority of felony wildlife cases (40.5%, n=53) received sentences of less than 6 months. In 2013, this ratio rose to 66.7% of cases. In 2009, a 12- to 18-month sentence occurred more often than a 1- to 6-month sentence. Since then, the number of 12- to 18-month sentences declined steadily, from n=7 (2009) to n=0 (2013). Likewise, the ratio of cases sentenced to greater than 12 months has declined from 55% in 2009 to 13.3% in 2013 (n=11 to n=2). Furthermore, from 2010 through 2013, sentence length never exceeded >37 to <=59 months.

The seriousness of a case, coupled with the defendant’s criminal history, determine the sentencing range. Seriousness is reflected in the final offense level – the more serious the crime, the higher the offense level.

All crimes involving fish, wildlife and plants, even if charged solely as smuggling, fall under § 2Q2.1

\(^{2}\) Not available in the datasets.
of the U.S. Sentencing Guidelines. Pursuant to this section, sentencing calculations begin with a starting point, or base offense level, of 6. For context, kidnapping has a base offense level of 32.

Special offense characteristics enhance the base offense level as follows (excerpted from the U.S. Sentencing Guidelines):

1. Offenses committed for a pecuniary gain or otherwise involved a commercial purpose; or involved a pattern of similar violations, increases 2 levels.

2. Offenses involving fish, wildlife or plants not quarantined as required by law; or otherwise creating a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife or plants, increases 2 levels.

3. Offenses where either (the greater of the two is used):
   a. the market value (i.e., fair market retail price) exceeded $2,500 but did not exceed $6,500, increases 1 level; or exceeded $6,500, increases the number of levels

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55 Supra note 53
from the table in Section 2Bl.1 (Theft, Property Destruction & Fraud); or
b. offense involves a depleted marine mammal population, or a species listed as endangered or threatened by the ESA or on Appendix I to CITES, increases 4 levels.

Of the three, fair market value is the most important factor for sentencing purposes\(^{56}\) as it can dramatically increase the total offense level computation.

The defendant’s role in the crime can also adjust the offense level, both up or down. For example, an “aggravating role” provides for a 2- to 4-level enhancement and a “mitigating role” provides for a 2- to 4-level reduction. “Special skill or abuse of public trust” – an experienced hunter guide being an example of the former – allows for a 2-level enhancement. Obstructing or impeding justice and multiple counts allow for additional enhancements.

In principle, higher offense levels dictate harsher sentences. Final offense levels for felony wildlife crimes in 2013 ranged from 5 to 22. Despite presumptively binding U.S. Sentencing Guidelines, the two cases with final offense levels of 22 received widely varying sentences: no prison in one case, 37 to 59 months in the other.

Across all offense levels, few sentences in 2013 involved prison. Of the custodial sentences, most fell in the 1- to 6-month range. Offense level rarely correlated with severity of the sentence as seen in Figure 7.

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\(^{56}\) Id.

**Figure 7**: Bubble scatterplot of incarceration lengths versus final offense level for felony wildlife convictions, 2013

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23 | Wildlife Crime – U.S. Policy Recommendations for Improved Domestic Enforcement
QUALITATIVE CASE STUDY ANALYSIS

OPERATION CRASH

Operation Crash — the term for a herd of rhinoceros — is a nationwide, multi-agency effort to detect, deter and prosecute illegal trade in rhinoceros horn and elephant ivory, often by sophisticated international criminal syndicates. Led by the FWS Office of Law Enforcement and prosecuted by DOJ, Operation Crash has led to numerous indictments and convictions of individuals and businesses operating large-scale smuggling networks. Prosecutions have involved the smuggling of raw rhinoceros horns from the U.S. to China, the sale and trafficking of Asian art and antiques — including fake antiques — made from rhinoceros horn and elephant ivory, and the fraudulent sale of illegal rhinoceros trophy hunts in South Africa to American hunters. Charges filed include violations of the Endangered Species Act, the Lacey Act, conspiracy, smuggling, both domestic and international money laundering, mail fraud, tax evasion, bribery and falsification documents. As of December 2016, Defendants have been sentenced collectively to 33.75 years in prison, and have paid fines and/or forfeited or made restitution totaling $7.5 million.

United States v. Zhifei Li

Description: Zhifei Li, the owner of Overseas Treasure Finding, an antiques business in China, was arrested in Florida in January 2013 after purchasing two endangered black rhinoceros horns for $59,000 from an undercover FWS special agent. Li was the self-proclaimed “boss” of three U.S. antiques dealers (see U.S. v. Ning Qiu below) who made rhino horn and ivory purchases at Li’s request, buying both raw rhino horns and objects made from horn and ivory. The three concealed the objects by wrapping them in duct or electrical tape and hiding them in porcelain vases. Using fake customs and shipping documents, the packages were shipped to Hong Kong where others received and re-smuggled the items to Li in China. There, Li sold the raw rhino horns to factories that carved them into fake antiques. The leftover pieces were sold for medicinal purposes.

Prosecution/Outcome: Li pled guilty on December 19, 2013, in Federal court in New Jersey to 11 felony counts, including conspiracy, smuggling, making false documents, and wildlife trafficking in connection with his role in leading a black-market network that smuggled 30 raw rhino horns and objects made from ivory and horn, collectively worth more than $4.5 million. U.S. District Court Judge Ester Salas imposed a Guidelines sentence for a final offense level of 27, noting Li’s organizational role – a four-level

57 Summarized in Appendix E
“aggravating role” enhancement -- and the need for deterrence.

“Mr. Li, you would still be doing what you were doing when you were apprehended … You would still be contributing to the epidemic, you would still be feeding the frenzy that now exists.”

At sentencing, Li argued the horns he smuggled were not from freshly killed rhinos and, thus, his crimes were unrelated to the crisis in Africa. Judge Salas responded:

“I look at this case as one would look at a case of child pornography, where defendants often say to courts, I didn’t produce the video, I didn’t produce the images, there is no proof that . . . downloading these images somehow feeds the market and feeds the demands. Those arguments fall on deaf ears often times and the reality is that poaching is at an unprecedented level.”

Li was sentenced to 70 months (just under 6 years) in prison, 2 years of supervised release and forfeited $3.5 million in proceeds from his criminal activity, along with several Asian artifacts. Final Offense Level: 27

Implications for future cases: Li signed a detailed joint factual statement60 that publicly highlighted the wildlife trade and, according to the DOJ, maximized the deterrent impact of prosecution. While Li’s sentence did not reach even 25% of the statutory maximum for smuggling, it is one of the longest sentences ever imposed for wildlife trafficking offenses in the U.S.

**United States v. Ning Qiu**61

*Description:* Ning Qiu, an appraiser of Asian art at an auction house in Texas, was one of three antiques dealers paid by Zhifei Li to obtain wildlife items and smuggle them to Li via Hong Kong. Between 2009 and 2013, Qiu smuggled at least five raw rhino horns weighing approximately 20 pounds.

*Prosecution/Outcome:* Qiu pled guilty on June 24, 2014, in Federal court in Texas to a one count information charging him with conspiracy to smuggle and violate the Lacey Act in connection with his role in a black market network that smuggled rhino horns and objects made from horn and ivory collectively worth nearly $1 million.

Qiu was sentenced to 25 months in prison followed by 3 years of supervised release and paid a $150,000 fine directed to the Lacey Act Reward Fund.

**United States v. Michael Slattery**62

*Description:* The Irish Travellers, an ethnically-Irish organized criminal group, are alleged to have been heavily engaged in theft and illegal trafficking of rhinoceros horns for the traditional Chinese

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60 Id.
medical market\textsuperscript{63}. As part of Operation Crash, investigators focused on evidence that members of the Irish Travellers were trafficking horns in the U.S. – an effort deemed “Operation Shamrock”.

In 2010, Michael Slattery, Jr, an Irish national and member of the group, traveled from England to Texas to acquire black rhinoceros horn. Using a straw buyer in Texas, he and others purchased two horns from an auction house in Austin, traveled to New York where they presented fraudulent endangered species bills of sale, and sold those two and two other horns for $50,000 to a buyer in China. Slattery was arrested in 2014, attempting to leave the U.S.

**Prosecution/Outcome:** Slattery pled guilty on June 24, 2014, in Federal court in New York to conspiracy to violate the Lacey Act. Slattery was sentenced to 14 months in prison followed by 3 years supervised release, paid a $10,000 fine and forfeited $50,000 in proceeds from his criminal activity.

**Final Offense Level:** 17

**Implications for future cases:** At sentencing, the defendant’s lawyer characterized Slattery as an unschooled, illiterate young man being treated like a “poacher with a shotgun in Sub-Saharan Africa, when all he did was buy a head from a long-dead rhino in Texas”. He filed letters from supporters, including a retired detective and a Priest in Ireland; Slattery himself testified:

> “I bought with an intention to get a profit to sell it but not intention of the animal being killed and slaughtered. I bought it as you buy a piece of furniture. You buy an antique chair. You buy a table. You buy a bookcase. I bought it to resell it to get a profit, for someone who buys it to put over their mantelpiece. But I bought it. I know I broke the law and I am sorry, but I bought it intentionally to resell it. I didn’t buy it with the intention for other animals to get slaughtered and other animals to get killed for their horns.”

Prosecutors requested a 2-year prison term, the low end of the 24- to 30-month guideline range for a final offense level of 17. The defense attorney requested that Slattery be released based on time served of 4 months. Judge Gleeson, disagreed with the defense:

> “I didn’t make these drugs, all I did was distribute them’… I didn’t create this child pornography, I just distribute it. He is no naïve kid. He came here from another country to buy, in Texas, this rhino mount.”

Gleeson, who conceded it was his first case involving rhinoceros horns, did however grant a variance in sentencing Slattery to only 14 months, citing mitigating circumstances due to his young age (22 at the time of the offense) and that his father and brothers had brought him into a life of crime.

**Legal Precedent:** In 2015, defense for Xiao Ju Guan (aka “Tony” Guan) cited several Operation Crash cases in the same or nearby districts, including the Slattery case, as supporting a variance in Guan’s

case. In reference to Michael Slattery, the court asserted a variance would be unreasonable as Guan established a business enterprise, where Slattery was merely an opportunist. Likewise, the market value of Slattery’s case was $245,000, below the $400,000 to $1 million range set forth in § 2B1.1(b)(1)(H) utilized in Guan’s sentencing calculation64.

**United States v. Xiao Ju (“Tony”) Guan**65

**Description:** "Tony" Guan, a Canadian citizen and owner of Bao Antiques, flew from Vancouver to New York and purchased two endangered black rhinoceros horns from undercover special agents with the FWS at a storage facility in the Bronx. After purchasing the horns, Guan had the undercover agents drive him to a shipping retailer, where he mailed the horns to an address in Washington state, less than a mile from the Canadian border and 17 miles from his business. Guan falsely labeled the box of black rhino horns as containing “handicrafts.” Guan was arrested on March 29, 2014. At that time, Canadian police searched his antiques store and found ivory, coral and other wildlife items purchased in the U.S., as well as narcotics, including approximately 50,000 ecstasy pills.

**Prosecution/Outcome:** Guan pled guilty to one count of attempted smuggling. He admitted that he and others acting at his direction smuggled more than $400,000 of rhino horns and sculptures made from elephant ivory and coral from various U.S. auction houses to Canada by having packages mailed to Point Roberts, Washington or directly to Canada with false paperwork and without the required declaration or permits. He was sentenced to 30 months in prison and forfeited wildlife items found during the search of his Canadian antiques business.

**Final Offense Level:** 21

**Implications for future cases:** Cooperation between the U.S. and Canadian law enforcement was critical to cracking the case. At sentencing, Guan disagreed on the applicability of a 2-level role enhancement. He sought a substantial variance to achieve a sentence of time-served (10 months). Ultimately he was given a 7-month variance for being a model prisoner while he was detained, and for expressing genuine remorse.66

**United States v. Gene Harris**67

**Description:** Gene Harris, a retailer of wildlife products including taxidermy mounts, pleaded guilty to ESA and Lacey Act charges stemming from the illegal purchase of endangered black rhinoceros horns. Harris was paid a $10,000 finder’s fee to arrange the purchase of rhino horns

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for a customer in California, from a couple in Phoenix, Arizona.

Prosecution/Outcome: Gene Harris pled guilty to ESA and Lacey Act charges. In 2014, he was sentenced to 3 years probation, the first 6 months on home confinement with electronic monitoring, and a fine of $10,000.

**United States v. Edward N. Levine**

*Description:* Edward N. Levine and Lumsden W. Quan, both California residents, were charged with negotiating the sale of two endangered black rhinoceros horns. The two were further alleged and ultimately arrested for attempting to sell two black rhino horns for $55,000.

Prosecution/Outcome: In 2015, Lumsden W. Quan pled guilty to conspiracy violate the Lacey Act and the ESA, and one count of violating the Lacey Act. They were sentenced to 1 year and 2 days in prison, 3 years supervised release, a 3-year ban on work in the art and antiques business, and a fine of $10,000.

**Illegal Importation of Endangered Species**

**United States v. Nathaniel Swanson et al.**

*Description:* Nathaniel Swanson -- owner of Seattle Reptiles & Swanee's Exotics -- worked with Cheuk Yin Ko and Tak Ming Tsang, foreign nationals living in the U.S., and three other co-defendants to illegally export various turtle species, most protected by CITES and the ESA, to buyers located in Hong Kong. Swanson also imported several CITES-protected species from Hong Kong, including the critically endangered Arakan forest turtle. Many of the animals died during or shortly after transport. Seized animals that survived received care at wildlife rehabilitation centers and local zoos.

Prosecution/Outcome: The three defendants pled guilty to conspiracy to smuggle domestic species out of the U.S. and to illegally import Asian species into the U.S. In 2014, they were sentenced to custodial terms of 1 year, 6 months and 5 months, respectively.

**United States v. Patty Chen**

*Description:* In 2009 and 2011, Patty Chen illegally imported shark fins, shark fin noodles, sea horses, dried conch, dried fish, and eel maw into the U.S. from Ecuador. She did so by falsifying customs documentation and denying that she had any wildlife in her possession.

Prosecution/Outcome: In 2014, Patty Chen pled guilty to making false statement and Lacey Act violations for illegally importing wildlife products valued at $30,000. She was sentenced to 3 years of probation and paid $29,760 in restitution to the Lacey Act Reward Fund.

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SAFEGUARDING PROTECTED SPECIES

United States v. Robroy MacInnes

Description: Between 2007 and 2008, Robroy MacInnes and Robert Keszey, co-owners of Glades Herp Farm, Inc., collected protected snakes from the wild in NJ and PA, purchased protected snakes illegally collected in NY, and transported threatened eastern indigo snakes and eastern timber rattlesnakes between FL and PA. The snakes were destined for sale at reptile shows in Europe; those not sold were sold domestically. In addition to trafficking illegal wildlife, the defendants tried to persuade a witness not to provide the government with information on their illegal acts.

Prosecution/Outcome: In 2013, a federal jury found MacInnes and Keszey guilty of conspiracy to traffic in state and federally protected reptiles. MacInnes was also convicted of trafficking in protected timber rattlesnakes in violation of the Lacey Act. MacInnes was sentenced to serve 18 months in prison; Keszey was sentenced to serve 12 months in prison. MacInnes was fined $4,000 and Keszey was fined $2,000.

United States v. Christopher Loncarich

Description: Christopher Loncarich, a big game outfitter and hunting guide who operated mainly in western Colorado, headed a conspiracy that involved illegal hunting and trapping of mountain lions and bobcats. To rig hunts and guarantee an easy kill, Loncarich and his assistant guides would use hunting dogs to pursue mountain lions and bobcats in Colorado and Utah, in advance of their clients' arrival. They'd capture and hold the animal in a cage, or they would place a leghold trap on the animal's leg or paw, or shoot the animal in the leg or paw, making it easier for clients to find and kill once on site. Many of their clients did not have proper tags or licenses to harvest animals in Utah; Loncarich would help them bring the animals back to Colorado, and provide false seals for the hides. Loncarich sold mountain lion hunts for $3,500 - $7,500 and bobcat hunts for $700 to $1,500. Court documents suggest Loncarich's clients expected to be coddled, were too out of shape to hike and track game, and "just wanted to shoot animals without having to hunt them."

Prosecution/Outcome: In 2014, Loncarich pled guilty to a Lacey Act conspiracy charge for illegally capturing and maiming mountain lions and bobcats. Loncarich was sentenced to 27 months in prison and banned from hunting or trapping any wildlife for 3 years following release. In sentencing one of Loncarich's guides, U.S. Judge Christine Arguello stated:

"There was a lot of cruelty to animals that was involved in this case... This conduct occurred over a significant period of time."

Three of Loncarich's hunting clients were issued federal notices for violations of the Lacey Act. Collectively, they've paid a total of $13,100 in fines.


The case was jointly investigated by the FWS Office of Law Enforcement and the state wildlife management agencies: Colorado Parks and Wildlife and the Utah Division of Wildlife Resources.

"The dedication and expertise of the state and federal investigators and prosecuting attorneys in bringing these persons to justice was outstanding. These convictions send a clear message that unlawful commercialization of wildlife will not be tolerated"

- Special Agent in Charge Steve Oberholtzer, FWS

**NARWHAL TUSKS & TEETH**

**United States v. Andrew Zarauskas**

Description: Andrew Zarauskas, a New Jersey resident, was arrested for crimes related to illegal importation and trafficking of narwhal tusks. Zarauskas and co-defendant, Conrad, conspired with persons located in Canada to illegally import the narwhal tusks for re-sale in the U.S. Narwhal are protected by the Marine Mammal Protection Act and listed under Appendix II of CITES. Zarauskas and Conrad also conspired with persons located in Canada to launder the funds used to purchase the tusks by transporting, transmitting, or transferring checks and money orders from the U.S. to Canada, intending that the money be used for further illegal imports of narwhal tusks.

**Prosecution/Outcome.** On February 14, 2014, a jury of nine men and three women found Zarauskas guilty on one count each of conspiracy to smuggle goods into the U.S., conspiracy to launder money, smuggling goods into the U.S. and money laundering. He was sentenced to 33 months in prison followed by 3 years supervised release, and order to pay a $7,500 fine. He was also ordered to forfeit $85,089, six narwhal tusks, ranging from 35 ½ inches to 95 inches in length, and a rare narwhal skull that had two tusks rather than one.

At sentencing, U.S. District Judge John Woodcock told Zarauskas: “You should know, Mr. Zarauskas, that the narwhal are worth more to the rest of us alive than they are to you dead.”

The judge said he imposed the 33-month sentence to send a warning to others that smuggling the body parts of protected species would result in prison terms.

**Implications for Future Cases:** Zarauskas acted as a confidential informant for the FWS in a case not involving narwhal tusks while conducting his illegal activities.

On appeal, Zarauskas contended that the district court erred by “allowing and failing to cure statements by the prosecutor that allegedly violated his Fifth Amendment protections. Prior to being charged, defendant met with FWS and Canadian agents where he did not proclaim his innocence when questioned on the tusks. In the process of showing inconsistency in defendant’s statements, the prosecutor pointed out

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defendant's failure to state his innocence with the federal agents, which defendant claimed improperly burdened him at trial. Other arguments by defendant also pointed to error by the prosecution during direct examination and rebuttal argument with respect to defendant's silence during interviews with agents.” The appellate court found the errors to be harmless or in response to defendant's attorney's statements. Finally, the court found that Treasury Enforcement Communications System (TECS) reports that log date, time, and location of border crossing and license plate of the vehicle were admissible hearsay. The convictions were affirmed.
DISCUSSION & CONCLUSIONS

“It’s a tree,” said the blind man touching the elephant’s leg.
“It’s a wall,” said the blind man touching the elephant’s side.
“It’s a snake,” said the blind man touching the elephant’s trunk.
“It’s a spear,” said the blind man touching the elephant’s tusk.

— Traditional story

An analysis of investigative, prosecutorial and sentencing datasets confirms that Lacey Act and other wildlife crime violations represent a small fraction of Federal convictions, feature relatively weak sentences, and rarely involve associated convictions for money laundering, drug trafficking, fraud, or other offenses associated with organized crime.

Both the Implementation Plan and 2014 Annual Progress Assessment describe “significant strides”\(^\text{74}\) in the goal of strengthening U.S. domestic enforcement. Under the objective “Strengthen Interdiction and Investigative Efforts” – which specifically calls for optimizing “the wildlife inspection presence at U.S. ports of entry” – the Implementation Plan describes the following progress: “wildlife trafficking enforcement and prosecutorial capacity enhanced.”\(^\text{75}\)

Based on the analysis contained in this report, it appears there have been no increases to wildlife inspection presence at U.S. ports of entry; rather, following the release of the Executive Order, the number of both wildlife inspectors and special agents fell from 130 to 124 and 213 to 205, respectively. Given the current Administration’s hiring freeze and proposed deep cuts to federal agencies, it’s unlikely more will be hired.

Similarly, on progress under the objective “Prioritize Wildlife Trafficking Across U.S. Enforcement Agencies “, the Implementation Plan reports “increased multi-agency investigations undertaken.”\(^\text{76}\)

Across all datasets analyzed in this report, 2014 reflected a record low in both investigative caseloads (e.g., detection) and prosecution rates. Furthermore, between 2005 and 2014, the majority of wildlife crime cases resulted in non-custodial sentences. When used, custodial sentences overwhelmingly favored a 1- to 6-month incarceration length. These fall below the statutory maximums for Lacey Act or ESA, are not representative of the seriousness of the crimes, and are too lenient and inconsistent to influence deterrence.

\(^{74}\) Supra note 1.
\(^{75}\) Supra note 26.
\(^{76}\) Id.
RECOMMENDATIONS

“We must take the profit out of wildlife trafficking to stop the criminals who are robbing from our children and grandchildren the great diversity of life on our planet.”

— John C. Cruden, Assistant Attorney General of the Environment and Natural Resources Division of the Department of Justice

The review of existing legal authorities targeting wildlife crime; the progress of the U.S. government to date; and the analysis of investigative, prosecutorial and sentencing data reveal a number of domestic enforcement vulnerabilities. Recommendations for addressing these vulnerabilities follow:

EXECUTIVE ORDER 13648 & THE U.S. NATIONAL STRATEGY FOR COMBATING WILDLIFE TRAFFICKING

The U.S. government must reassert the intent of the Executive Order and redouble the National Strategy’s goal of strengthening U.S. domestic enforcement:

“We will treat wildlife trafficking as the serious crime it is and work to ensure that our enforcement efforts adequately protect wildlife resources.”

Although the Progress Assessment on the National Strategy indicates Task Force agencies have “taken significant strides to continue and enhancement their domestic enforcement efforts”, very little of any detail is provided in the Implementation Plan.

Rather, following the release of the Executive Order, FWS enforcement capacity – e.g., enforcement personnel – has fallen.

As long as the U.S. remains a top consumer of trafficked wildlife, appropriations funding should be secured to hire additional wildlife inspectors at ports of entry, as well as additional special agents.

In order to improve current prosecutions and sentencing for wildlife trade offences, the Task Force must continue to dedicate resources across agencies; develop prosecutorial specialism and expertise; train and update judges and clerks; and provide accessible information and tools to supports sentencing decision-making – for example, a system for calculating real-time fair market value.

Finally, as suggested by the Government Accountability Office, Task Force agencies should identify performance targets, and measure progress against such targets, as well as efficacy and effectiveness of meeting strategic goals outlined in the Implementation Plan.

77 Supra note 4.
78 Supra note 1.
DECLAIM WILDLIFE TRAFFICKING A SERIOUS CRIME UNDER THE UNTOC DEFINITION

In 2013, the U.S. and Peru co-sponsored Draft Resolution IV at the United National Commission on Crime Prevention and Criminal Justice (CCPJ). The resolution encouraged member states to make wildlife trafficking a “serious crime” under the United Nations Convention against Transnational Organized Crime (UNTOC) Article 2(b). A “serious crime” definition would impose a minimum 4-year custodial sentence. To date, the U.S. has failed to join other countries in implementing this recommendation. The U.S. should publicly declare that wildlife trafficking is a serious crime under the UNTOC definition and solicit Congressional action to require that wildlife trafficking carry a minimum 4-year sentence.

THE U.S. SHOULD CONTINUE TO MAKE A SIGNIFICANT AND SUSTAINED COMMITMENT TO COMBATING WILDLIFE TRAFFICKING

The Trump administration must reaffirm U.S. commitment to combating wildlife trafficking. It must ensure the sustainability and durability of efforts and achievements to date; and resources must be allocated such that agencies can continue to prioritize enforcement against wildlife trafficking.

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<th>Year</th>
<th>Enacted Budget (millions)</th>
<th># Special Agents</th>
<th># Inspectors</th>
<th>FY05 Wildlife Imports / Exports</th>
<th>Value of U.S. Wildlife Trade (billion $)</th>
<th># Designated Ports</th>
<th># Other Stuffed Ports</th>
<th>Total Investigative Caseload</th>
<th>Lacey Act Cases</th>
<th>% Total Caseload</th>
<th>Afr Elephant</th>
<th>Rhino Tiger</th>
<th>Smuggling</th>
<th>Aggregate - Fines ($)</th>
<th>Aggregate - Prison (Years)</th>
<th>Aggregate - Probation (Years)</th>
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## Appendix B: Conviction Sentencing Data - Felony Wildlife Offenses

Source: U.S. Sentencing Commission Bureau of Justice Statistics

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<th>Year</th>
<th>Referred to U.S. Attorneys</th>
<th>Investigation Concluded</th>
<th>Prosecuted - US District</th>
<th>Prosecuted - Magistrate</th>
<th>Total Prosecuted</th>
<th>Declined (%)</th>
<th># Declared for Prosecution</th>
<th>Total #</th>
<th>Concluded</th>
<th>Prosecuted - US District</th>
<th>Prosecuted - Magistrate</th>
<th>Total Prosecuted</th>
<th>Declined (%)</th>
<th># Declared for Prosecution</th>
<th>Total #</th>
<th>Guilty Plea</th>
<th>Convicted (%)</th>
<th>Non-Convicted (#s)</th>
<th>% Declared and sentencing to:</th>
<th>% Convicted and sentenced to:</th>
<th>Not-Convicted (#s)</th>
<th>% Convicted and sentenced to:</th>
<th>Not-Convicted (#s)</th>
<th>Type of Sentence (#s)</th>
<th>Average Length (months)</th>
<th># Tried</th>
<th># Found</th>
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**Notes:**


2. Felony Cases Closed may include pre-trial diversions.

3. Defendants released at initial hearing or pretrial hearing make up bulk of difference between # prosecuted and # commenced.

4. Section 2Q2.2 (Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants), effective November 1, 1987, was deleted by consolidation with §2Q2.1 effective November 1, 1989.

5. Section 502.3 (Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants), effective November 1, 1989, was deleted by order of the United States Court of Appeals for the District of Columbia Circuit (No. 89-5026), effective January 1, 1990.

6. Defendants released at initial hearing or pretrial hearing make up bulk of difference between # prosecuted and # commenced.
## Appendix C: Conviction Sentencing Data - Lacey Act Statute

*Source: U.S. Sentencing Commission Bureau of Justice Statistics*

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*Source: U.S. Sentencing Commission Bureau of Justice Statistics*

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<td>United States v. Edward N. Levine and Lumsden W. Quan</td>
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<td>Ning Qiu</td>
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<td>Patty Chen</td>
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<td>United States v. Edward N. Levine and Lumsden W. Quan</td>
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<td>Xiao Ju (&quot;Tony&quot;) Guan</td>
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<td>Zhifei Li</td>
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<td><strong>Outcome</strong> Final Offense 3 years probation</td>
<td><strong>Prison/Probation</strong> 3 years probation</td>
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**Appendix E: Case Study Analysis**

**Source:** U.S. Department of Justice/ENRD Case Documents
Appendix E: Case Study Analysis
Source: U.S. Department of Justice/ENRD Case Documents

United States v. Christopher Loncarich et al. 2007 - 2010
Christopher Loncarich, a big game outfitter and hunting guide who operated mainly in western Colorado, headed a conspiracy that involved illegal hunting and trapping of mountain lions and bobcats. To rig hunts and guarantee an easy kill, Loncarich and his assistant guides would use hunting dogs to pursue mountain lions and bobcats in Colorado and Utah, in advance of their clients’ arrival. They’d capture and hold the animal in a cage, or they would place a leghold trap on the animal’s leg or paw, or shoot the animal in the leg or paw, making it easier for clients to find and kill once on site. Many of their clients did not have proper tags or licenses to harvest animals in Utah; Loncarich would help them bring the animals back to Colorado, and provide false seals for the hides. Loncarich sold mountain lion hunts for $3,500 - $7,500 and bobcat hunts for $700 to $1,500. Court documents suggest Loncarich’s clients expected to be coddled, were too out of shape to hike and track game, and “just wanted to shoot animals without having to hunt them.”

Aggravating Role

Special Skill

Obstructing or Impeding Administration of Justice

Conspiracy to Violate Lacey Act: Illegally capturing and maiming mountain lions and bobcats

Plea Guilty

2014

Loncarich: 27 months in prison; ban from hunting and trapping for 3 years following release

Rodgers: 36 months probation; 50 hours community service

Rodgers: $5,000

5 years in prison

$250,000

Judge: Rodgers had no prior felonies, cooperated with the government.

Narwhal Tusks and Teeth

United States v. Andrew Zarauskas 2007 - 2010
Andrew Zarauskas, a New Jersey resident, was arrested for crimes related to illegal importation and trafficking of narwhal tusks. Zarauskas and co-defendant, Conrad, conspired with persons located in Canada to illegally import the narwhal tusks for resale in the United States. Narwhal are protected by the Marine Mammal Protection Act and listed under Appendix II of CITES. Zarauskas and Conrad also conspired with persons located in Canada to launder the funds used to purchase the tusks by transporting, transmitting, or transferring checks and money orders from the U.S. to Canada, intending that the money be used for further illegal imports of narwhal tusks.

Aggravating Role

Six counts: conspiracy, smuggling violations for buying and illegally importing narwhal tusks into the United States, and money laundering violations associated with the illegal importations.

Plea Guilty

2015

Zarauskas: 33 months in prison; 3 years supervised release

Conrad: 5 years in prison

$7,500

$85,089 (six narwhal tusks and one narwhal skull)

Statutory maximum: 20 years in prison; Guideline range: 33 to 41 months in prison

$500,000

Aggravating factor in the case: Zarauskas acted as a confidential informant for the FWS in a case not involving narwhal tusks while conducting his illegal activities.