

Why Wildlife Whistleblower Rewards Need Work

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In recent years, there has been a noticeable increase in wildlife crime, threatening the “security, political stability, economy, natural resources and cultural heritage of many countries.”[1] The urgency and irreparable harm caused by wildlife trafficking is supported by the reality of an inverse incentive system:[2] The profitability of wildlife trafficking becomes higher as species become rarer.[3] Unfortunately, “[wildlife trafficking] is a multibillion-dollar international industry, with a low number of arrests and convictions,” and “rhino horn is more valuable by weight than gold or cocaine.”[4] Traffickers see an opportunity for a large payout, with a low risk of getting caught. These observations only bolster the need to effectively utilize whistleblowers — insiders — in the wildlife trafficking arena.



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Incentivizing people to report significantly assists in detection, making illegal trafficking costlier for wrongdoers. Whistleblowers can help take down this lucrative industry the same way they have improved detection and enforcement in every other area where whistleblower laws have been effectively implemented. As John C. Cruden, former assistant attorney general for the Environment and Natural Resources Division confirmed, “[The U.S. government is] so dependent on others to bring information to our attention ... whistleblowers are so important to us, [and we need to be] honoring and protecting those individuals, and compensating those individuals.”[5]



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Fortunately, there is a legal framework in place — many U.S. wildlife protection laws such as the Lacey Act,[6] Endangered Species Act,[7] and Fish and Wildlife Improvement Act,[8] among others, include provisions that make monetary rewards available to insiders who report wildlife trafficking. Congress amended the Lacey Act in 1981 to include powerful enforcement mechanisms rewarding whistleblowers: “Powerful tools are needed to combat and control the massive illegal trade in wildlife which threatens the survival of numerous species, threatens the welfare of our agricultural and pet industries, and imposes untold costs upon the American taxpayers.”[9] The whistleblower provision that Congress added “directs the Secretary”[10] to pay rewards to persons who furnish information leading to an arrest, conviction, assessment or forfeiture from sums received as penalties, fines or

forfeitures.[11]

These wildlife reward laws have existed for over 30 years, and apply to informants who provide information on crimes covering animals, fish and plants. Unfortunately, they have not been effectively utilized as the powerful tool that Congress intended by those agencies entrusted with their implementation — including the U.S. Departments of Interior, Treasury, Commerce and Agriculture. [12] Not one of the four agencies empowered to pay rewards to wildlife whistleblowers has publicized any rules or procedures on transmitting information or applying for awards, there are no wildlife-related whistleblower offices (like the exemplary [U.S. Securities and Exchange Commission Office](#) of the Whistleblower[13]), there is no evidence that the [Department of Commerce](#) (which has jurisdiction over all illegal fishing), or the [Department of Agriculture](#) (which has jurisdiction over illegal deforestation), or the Department of Treasury (which was explicitly empowered to pay the rewards) have ever paid one penny to a whistleblower under these laws, and the Department of Interior has only paid token amounts to a handful of informants. The U.S. [Government Accountability Office](#) is now reviewing how these agencies have utilized these laws over the past three decades.

Whistleblower Reward Laws: Incentivizing Detection and Increasing Enforcement

It is no surprise that Congress included whistleblower reward provisions within U.S. wildlife protection laws. Whistleblowers are the “single most important source of information regarding fraud” and other violations of law.[14] However, most whistleblowers never come forward with their information or report internally within the company. Congress addressed this issue by creating whistleblower reward laws, which have proven to be “the most effective means to obtain critical information on any corrupt enterprise.”[15] The success of these laws has been profound, strengthening the ability of the government to detect and prosecute crime. In total, whistleblower rewards laws have resulted in almost \$40 billion in fines and penalties and over \$6.3 billion in compensation to whistleblowers.[16]

Both the False Claims Act[17] and SEC whistleblower reward programs demonstrate the unquestionable benefit of whistleblower incentives on crime detection and law enforcement capacity, and serve as an indicator of how successful wildlife whistleblower reward laws could be if appropriately employed. The SEC’s leadership praised their whistleblower program’s profound impact, affirming, “[T]he SEC’s whistleblower awards program ... has proven to be a game changer,”[18] and it “has rapidly become a tremendously effective force-multiplier, generating high-quality tips, and in some cases virtual blueprints laying out an entire enterprise, directing us to the heart of the alleged fraud.”[19] Rewards incentivize reporting by “persuad[ing] people to step forward. They put fraudulent conduct on our radar that we may not have found ourselves or as quickly. And they deter wrongdoing by making a would-be-violators ask themselves — who else is watching me?”[20] This powerful force-multiplier could be a game changer in detecting wildlife crime and halting the extinction crisis.

A Path Forward

Reward programs have been remarkably successful in every context for which they have been

implemented, and the agencies responsible for investigating whistleblower claims and paying rewards under these established programs have been proactive, instituting well-defined procedures to govern these programs.[21]

Given the threats to wildlife, including extinction and the irreparable loss of habitat, it is essential that the secretaries of interior, commerce, treasury and agriculture aggressively implement the wildlife whistleblower laws, as intended by Congress, to protect endangered species and stop illegal wildlife trafficking. Incentivizing whistleblowers to report illegal trafficking creates a reporting structure that, as in other areas of the economy where such laws have been utilized, revolutionizes the enforcement capabilities of the appropriate government authorities.

Combating wildlife crime is a national prosecutorial imperative. In 2013, then-President Barack Obama issued Executive Order 13648, recognizing wildlife trafficking as an “international crisis that continues to escalate,”[22] and the current administration echoed this sentiment in issuing Executive Order 13773 on transnational crime, reinforcing the responsibility of the executive branch to thwart the groups perpetrating illegal wildlife trafficking.[23] Furthermore, Congress reiterated the importance tackling this urgent, global scourge by unanimously passing the Eliminate, Neutralize, and Disrupt [END] Wildlife Trafficking Act of 2016 — which underscored that “it is the policy of the United States to take immediate actions to stop the illegal global trade in wildlife and wildlife products and associated transnational organized crime.”[24]

Fortunately, the United States has a powerful, yet underutilized, tool it can deploy in the fight against wildlife trafficking: wildlife whistleblowers. Those agencies responsible for implementation must simply choose to activate this powerful tool that Congress provided them.

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[1] Strategic Programme 2016-2020, International Consortium on Combating Wildlife Crime, July 2016, https://cites.org/sites/default/files/eng/prog/iccwc/ICCWC_Strategic_Programme_2016-2020_final.pdf (last visited Sept. 22, 2016).

[2] See, e.g., World Wildlife Fund, <http://www.worldwildlife.org/threats/illegal-wildlife-trade>; see also Exec. Order No. 13648, 78 Fed. Reg. 40619 (July 5, 2013).

[3] Emerging Technologies: Smarter Ways to Fight Wildlife Crime, [United Nations Environmental Programme Global Environmental Alert Service](http://na.unep.net/geas/archive/pdfs/GEAS_Jun2014_EmergingTechnologies_illegalwildlife.pdf), June 2014, http://na.unep.net/geas/archive/pdfs/GEAS_Jun2014_EmergingTechnologies_illegalwildlife.pdf (last visited Sept. 21, 2016).

[4] Statement of John C. Cruden, Assistant Attorney General for the Environment and Natural Resources Division. Panel Discussion in Recognition of World Wildlife Day. Washington, D.C. March 3, 2016, available at <https://www.justice.gov/opa/video/world-wildlife-day>; see also Testimony of Dan Ashe, Director, U.S. Fish and Wildlife Service, Department of the Interior, Before the Senate Committee on Foreign Relations, Subcommittee on African Affairs and Subcommittee on East and Asian Pacific Affairs, Regarding the Escalating International Wildlife Trafficking Crisis: Ecological, Economic and National Security Issues. May 21, 2014, available at https://www.foreign.senate.gov/imo/media/doc/Ashe_Testimony.pdf.

[5] *Id.*

[6] 16 U.S.C. §§3371 et seq.

[7] 16 U.S.C. §§1531 et seq.

[8] 16 U.S.C. §742l, part of the Fish and Wildlife Act of 1956, 16 U.S.C. §§742a et seq. In the Fish and Wildlife Improvement Act, Congress again demonstrated its desire to reward wildlife whistleblowers. In its 1982 amendment of this act, Congress authorized the secretary of commerce or the secretary of the interior to go beyond collected proceeds and “use appropriations” to pay awards. “The Secretary of the Interior or the Secretary of Commerce may, notwithstanding any other provision of law use appropriations for payment for information, rewards, or evidence concerning violations, without reference to any rewards to which such persons may otherwise be entitled by law...” 16 U.S.C. §742l (k)(2).

[9] H.R. Rep. No. 97-276 (Oct. 19, 1981).

[10] The Lacey Act is enforced by the Fish and Wildlife Service (FWS) of the Department of the Interior, the [National Oceanic and Atmospheric Administration](#) of the Department of Commerce, [U.S. Customs and Border Protection](#) (CBP) of the [U.S. Department of Homeland Security](#), and the [Animal and Plant Health Inspection Service](#) (APHIS) and the Forest Service of the Department of Agriculture. See 16 U.S.C. §3371(h) (defining secretary as the secretary of the interior and the secretary of agriculture); 16 U.S.C. §3373(a) (stating that the provisions will be enforced by “the Secretary, the Secretary of Transportation, or the Secretary of the Treasury”). Furthermore, the term “secretary” means, except as otherwise provided in this chapter, the secretary of the interior or the secretary of commerce, as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090); except that with respect to the provisions of this chapter which pertain to the importation or exportation of plants the term means the secretary of agriculture. 16 U.S.C. §3371 (h).

[11] See *supra*, note 11 (emphasis added).

[12] See *supra*, note 12.

[13] www.sec.gov/whistleblower.

[14] See, e.g., Report to the Nations, Assoc. of Certified Fraud Examiners, 2014, available at <https://www.acfe.com/rtnn/docs/2014-report-to-nations.pdf>. See also Stephen M. Kohn, Monetary Rewards for Wildlife Whistleblowers: A Game-Changer in Wildlife Trafficking Detection and Deterrence, 46 *Envr. L. Rev.* 10054, 10056 (2016).

[15] *Id.* at 10057.

[16] See, e.g., U.S. Dept. of Justice, Fraud Statistics Overview: October 1, 1987- Sept. 30, 2016. (2016). Available at <https://www.justice.gov/opa/press-release/file/918361/download>.

[17] 31 U.S.C. §§3729 et seq.

[18] Mary Jo White, Chair, U.S. Securities & Exchange Comm'n, Remarks at the Ray Garrett, Jr. Corporate and Securities Law Institute-Northwestern University School of Law Chicago, Illinois. April 30, 2015.

[19] Mary Jo White, Chair, U.S. Securities & Exchange Comm'n., Remarks at the Securities Enforcement Forum (Oct. 9, 2013), <https://www.sec.gov/News/Speech/Detail/Speech/1370539872100>.

[20] Mary Jo White, Chair, Securities & Exchange Comm'n. Remarks at the Securities Enforcement Forum (Oct. 9, 2013), available at <https://www.sec.gov/news/speech/spch100913mjw>.

[21] See e.g. SEC's Office of the Whistleblower at <https://www.sec.gov/whistleblower/>; SEC's Final Rules for the whistleblower program at <https://www.sec.gov/about/offices/owb/reg-21f.pdf>; SEC's online submission portal at <https://denebleo.sec.gov/TCRExternal/disclaimer.xhtml>; and SEC's announcement of whistleblower awards at <https://www.sec.gov/page/whistleblower-100million>; see, also, Kohn, *supra* note 16 at 10057.

[22] Exec. Order No. 13648, 78 Fed. Reg.129 (2013).

[23] See Presidential Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking, No. 13773, 82 Fed. Reg. 10,691 (Feb. 9, 2017) ("It shall be the policy of the executive branch to strengthen enforcement of Federal law in order to thwart transnational criminal organizations ... that present a threat to public safety and national security and that are related to ... illegal smuggling and trafficking of humans, drugs or other substances, wildlife, and weapons.").

[24] Eliminate, Neutralize, and Disrupt [END] Wildlife Trafficking Act of 2016, 16 U.S.C. § 7612(1).