

Implications for policy

This report has documented the great lengths to which traffickers go to exploit loopholes in the international controls. This is a testament to the strength of the international controls. But it has also highlighted several significant gaps that, if addressed, could dramatically reduce the negative impact trafficking is having on wildlife. These gaps can be categorized under three headings:

- 1. Informational
- 2. Legislative
- 3. Operational

The first gap is *informational*. Until recently, there was no real mechanism by which the illegal trade as such could be assessed. The recently mandated CITES Annual Illegal Trade Report requires, for the first time, that comprehensive seizure records be submitted by all parties.¹ Some parties may have trouble complying with this obligation, either because the information is not systematically gathered at this point or due to intra-governmental communication issues. In either case, some parties may require technical assistance to fulfill this reporting requirement.

Once in place, though, reporting on wildlife seizures only makes sense if it is complemented with qualitative research, as well as additional trade and criminal justice data. This information could be regularly assessed and reports issued to the international community. Targeted by the quantitative data, qualitative research could cost-effectively provide a diagnostic tool to policy makers, and even front-line law enforcement. If collected and disseminated on a real-time basis, it could also provide an agile early warning system.

Beyond attracting attention to issues and trends, the findings of this research could be used to provide the evidentiary basis for internationally coordinated wildlife crime prevention strategies. Strategic analysis requires an assessment of the tools available

and their relative utility – in addition to researching the crime, it is necessary to separately research the capacity for response. For this assessment, the ICCWC Wildlife and Forest Crime Analytic Toolkit provides a good starting point.² Good research can focus international efforts on those portions of the trafficking chain where leverage is optimal.

It is also crucial for countries to be capable of measuring and monitoring the effectiveness of their own law enforcement responses to wildlife and forest crime. The ICCWC Indicator Framework for Wildlife and Forest Crime, which complements the Analytic Toolkit, is a valuable tool which enables a party to independently monitor performance over time to identify any changes in the effectiveness of its law enforcement responses, following a standardized approach.³

The second gap relates to *legislation and regulations*. The greatest shortcoming in the current international system is best exemplified by the rosewood example, where trees illegally harvested or exported from one part of the world are legally imported and sold in another. The CITES regime is designed to prevent this from happening with protected species, but it has no mandate when it comes to non-listed species, including those general fishing and forestry operations where the species are not protected. In the current regime, countries seeking to slow the rate of general deforestation can impose log export bans, but other countries might not be able to refuse their logs. Perhaps they should be able to.

Countries could draft laws that recognize the illegal status of wildlife products that have been illegally harvested or trafficked from another country – even if what is illegal in one country is not illegal in another. There are many ways this objective could be accomplished, on a national, regional, or international basis. The point is to have a legal basis to seize wildlife

illegally harvested or exported from other countries, without reference to international protected species lists.

It may also be possible to pursue these sort of prosecutions, under existing legal regimes. For example, the natural resources of many countries are deemed to be held under state stewardship, to be exploited for the benefit of the country as a whole. In these jurisdictions, the unauthorized taking of these resources could be regarded as theft of state property. In some cases, this theft could be covered under anti-corruption laws and, thus, under the UN Convention against Corruption. If the value of these resources were high enough, the crime is generally punishable by sentences of sufficient length to be categorized as “serious crime” under the UN Convention against Transnational Organized Crime. The recovery of these stolen assets could also be pursued under both conventions’ mutual legal assistance provisions or via existing bilateral mutual legal assistance treaties.

Of course, many countries experience difficulties in simply implementing the present regime, let alone taking on the additional burden of adjudicating cases based on events that occurred on the other side of the world. But authorities, notified of illegal shipments, could address them at the border, and international cooperation to apprehend high profile offenders would be possible. At the very least, countries would know not to import logs from countries with log export bans. To facilitate such a system, an information sharing platform would be helpful – for example, an online forum for countries to post national wildlife regulations.

Another legal gap lies in the national environmental protection legislation of many countries, which was drafted for the purpose of protecting local species. In addition to prohibiting poaching, these laws often regulate the possession, use, or sale of products



made from the most threatened species. But the threatened species lists in question are generally limited to domestic species, so there is nothing regulating the possession, use, or sale of the most threatened wildlife products from other parts of the world. Some countries do individually add some foreign wildlife species to their domestic protection lists, such as elephant ivory or rhino horn, on an ad hoc basis. Since protected species lists are dynamic, simply compiling them would seem to pose an insurmountable administrative barrier to extending local protections to foreign species.

While CITES Appendix I does provide an internationally agreed list of species in need of the highest protection, the CITES Convention is designed to regulate international trade, and has no role in domestic markets. In theory, CITES parties could detain those in possession of questionable Appendix I products, but, in most, the burden would remain on the state to demonstrate these products were imported illegally. It is possible, however, to reverse the onus, and to require those in possession of Appendix I species to maintain documented proof of their legality through, for example, retention of a copy of the import documentation, or registration in a national database.

Even with these protections in place, there will remain wildlife crimes that CITES does not directly address. Poaching, or the illegal taking of wildlife, generally takes place in a single country, and the damage is done whether or not the resulting product is exported. Poaching often takes place in remote areas of some of the poorest countries in the world, countries with limited capacity to protect wildlife. The international community can also assist with coordinated operations against poachers and their buyers if they extend across borders.

Another point of insertion is to influence the practices of those industries making use of wildlife products. This report has reviewed several of them, and they are different in character

and consolidation. Still, good practices could be communicated and voluntarily adopted by those firms interested in responsible corporate environmental stewardship. Track and trace technology has been successfully applied to wild source industries like fishing. German buyers of fresh fish, for example, have access to a bar code that allows them to identify exactly where, when, how, and by whom their catch was landed. Similar approaches to other wildlife products could be adopted as industry standards, limiting the scope for the introduction of illegally sourced products. Trade bodies could self-police, since flouting industry standards could give an unfair advantage to competitors. Non-compliant merchandise would be immediately suspect, and avoided by legitimate wholesalers, retailers and consumers.

The final gap relates to the *enhancement of law enforcement operational capacity*. Legislation can go some way toward enhancing the profile of wildlife crime, but law enforcement prioritization is the decisive factor. National agencies in source, transit, and destination countries will only prosecute wildlife crime if they have the tools to do so, and this is one area where the international community can assist.

Since it appears the bulk of international wildlife crime enforcement is conducted by customs agents, it is important that they are enabled and motivated to detect and prevent wildlife trafficking. Although value intensive items like rhino horn may be air couriered, most volume consignments of illegal wildlife are transported in shipping containers. Further training for customs officials to profile suspect shipments and identify the species within would greatly enhance interdiction capacity. Excellent work in both regards is ongoing, and needs continued support.

Another difficulty faced in international wildlife law enforcement is species identification. Since the existing controls are species-specific,

whether a shipment is legal or not can come down to distinguishing species, and there is no easier way to evade the system than to simply claim a protected species is a non-protected lookalike. For this reason, the enhancement of forensic capacity is not only an essential part of law enforcement, but it is at the heart of wildlife protection. And as the examples of ivory, rhino horn, and caviar show, intelligent use of DNA analysis can yield penetrating insights into wildlife crime. A wide range of assistance, from the international use of specialized labs to the provision of reference texts and selected samples, can be provided to countries to strengthen response to these crimes.

Not every country encounters enough wildlife crime to justify a specialized lab, and universal provision of reference samples would be a major task. In some parts of the world, regional labs may make more sense. For some species, a single international facility could cover the forensic needs of global enforcement.

Once wildlife contraband is seized, the effective and universal implementation of international standards for the storage, stockpiling, and disposal of protected wildlife products and contraband is essential.⁴ At present, the logistic problems associated with disposing of large illegal wildlife shipments has provided formidable disincentives to enforcement. For example, multi-container loads of rosewood have recently been seized in Hong Kong, China; Singapore; and Sri Lanka. Without the facility to store or dispose of this material, customs authorities will have little capacity to seize more. It is crucial that the provisions provided for in CITES Resolutions are drawn upon to the fullest extent possible to address the challenges that are often associated with large scale seizures, including by making legislative provision to require the guilty importer or the carrier, or both, to bear related costs.

In addition to species-specific protections, the international community

should continue to contribute to the creation and defense of protected areas. Protecting and maintaining wildlife reserves can be an expensive project for developing countries. Simply setting aside the range has its opportunity costs, as the land could be used to improve the lives of growing populations. International bodies concerned with the preservation of these species should consider an expanded role in helping maintain them.

Finally, as this report emphasized at the outset, corruption plays an important role in wildlife crime. Because officials can transform contraband into legal product with a single piece of documentation, these documents have a large cash value. Officials authorizing imports and exports can similarly assure smooth passage, and once inside the destination market, most wildlife products can be sold without question. The officials who control these gateways bear a tremendous responsibility, and are therefore subject to considerable scrutiny. The use of audit and oversight techniques should be strengthened.

This report has shown that the markets for illegal wildlife are typically transcontinental, and consequently that addressing them is an inherently international affair. Without cooperation, criminals that know no boundaries can easily outmaneuver national law enforcement. Through research, information sharing, joint operations, legal coordination, and technical assistance, the international community can cooperate to protect threatened species, species that can never be replaced.

Endnotes

- 1 <https://cites.org/sites/default/files/notif/E-Notif-2016-007.pdf>.
- 2 <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/wildlife-and-forest-crime-analytic-toolkit.html>
- 3 <https://cites.org/eng/prog/iccwc.php/Tools>
- 4 See: <https://cites.org/eng/res/10/10-07R15.php>
<https://cites.org/eng/res/10/10-10R16.php>
<https://cites.org/eng/res/09/09-10R15.php>