

Dirty Money and Wildlife Trafficking: Using the Money Laundering Control Act to Prosecute Illegal Wildlife Trade

by Vanessa Dick

Vanessa Dick recently graduated with an LL.M. in Environmental, Natural Resources, and Energy Law from Lewis and Clark Law School. She previously worked in Washington, D.C., on environmental policy, including as Deputy Director of Government Relations at World Wildlife Fund US.

Boonchai Bach is a very rich man.¹ He and his brother operate businesses in agricultural and forest products, construction materials, electrical equipment, and hotels and food services.² But these operations allegedly serve as fronts for laundering the profits generated from one of the largest and most notorious international illegal wildlife supply chains.³ Known as a kingpin⁴ in illegal wildlife trade, Mr. Bach, a Vietnamese national with Thai citizenship, is part of a crime family identified as “the centre of Asia’s animal trafficking network,”⁵ which supplies rhino horn, tiger parts, and other poached wildlife products captured in Asia and Africa to buyers in China, Laos, and Vietnam.⁶ His alleged list of customers includes the Xaysavang Network,⁷ a notorious international criminal syndicate engaged in a range of high-profit, illegal activities. Currently, the U.S. government is offering a \$1 million reward for information leading to the Xaysavang Network’s demise.⁸

Although Mr. Bach’s questionable activities are well known to authorities, he has been labeled as “untouchable.”⁹ Consequently, the international conservation community rejoiced when he was arrested by Thai police in January 2018 after legal authorities uncovered a connection between Bach and 11 kilograms of rhino horn, valued at \$700,000, discovered by the Suvarnabhumi (Bangkok) Airport Police in the bag of a Chinese courier. The celebrations subsided when Mr. Bach received a sentence of only 2.5 years in prison, and his case was later dismissed when a key witness changed his testimony.¹⁰

The illegal wildlife trade is often described as a crime with high profit and low risk.¹¹ Studies show that the majority of criminal prosecutions involve charges limited to violations of wildlife statutes that primarily have low fines, minimal jail time, and forfeiture provisions restricted to the illegal wildlife products. In the case of Mr. Bach, his sentence was based on “wildlife related crimes,” as characterized by Thai officials, specific to the 11 kilograms of rhino horn seized.¹²

1. David Feige, *Wildlife Traffickers Eye Money Laundering*, FRAUD MAG., Mar. 2018, <http://www.fraud-magazine.com/article.aspx?id=4295001665>.

2. *Id.*

3. Oliver Holmes, *Thai Police Arrest Notorious Wildlife Trafficking Suspect*, GUARDIAN, Jan. 20, 2018, <https://www.theguardian.com/environment/2018/jan/20/thai-police-arrest-notorious-wildlife-trafficking-suspect>.

4. *Alleged Wildlife Smuggling Kingpin Jailed in Thailand*, ASSOCIATED PRESS, May 11, 2018, <https://www.apnews.com/8fd49c22ddb34600bd540d139e0ea466>; Amy Held, *Animal Trafficking “Kingpin” Arrested in Thailand*, NAT’L PUB. RADIO, Jan. 20, 2018, <https://www.npr.org/sections/thertwo-way/2018/01/20/579340736/animal-trafficking-kingpin-arrested-in-thailandNPR>.

5. Nick Davies & Oliver Holmes, *The Crime Family at the Centre of Asia’s Animal Trafficking Network*, GUARDIAN, Sept. 26, 2016, <https://www.theguardian.com/environment/2016/sep/26/bach-brothers-ivory-asias-animal-trafficking-network>.

6. *Id.*

7. “*Untouchable*” *Wildlife Kingpin Arrested—Thai Police Nab Notorious Trafficker Hunted for Over a Decade*, FREELAND, Jan. 20, 2018 [hereinafter “*Untouchable*” *Wildlife Kingpin Arrested*], <https://www.freeland.org/newsroom/untouchable-wildlife-kingpin-arrested-thai-police-nab-notorious-trafficker-hunted-for-over-a-dec>.

8. BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, U.S. DEPARTMENT OF STATE, TRANSNATIONAL ORGANIZED CRIME REWARDS PROGRAM: XAYSAVANG NETWORK, <https://www.state.gov/documents/organization/224458.pdf>.

9. See “*Untouchable*” *Wildlife Kingpin Arrested*, *supra* note 7.

10. Jim Pollard, *Key Wildlife Smuggler Gets 2.5 Years in Jail After Rhino Haul Found*, ASIA TIMES, May 11, 2018, <http://www.atimes.com/article/key-wildlife-smuggler-gets-2-5-years-in-jail-after-rhino-haul-found/>; Rachel Nuwer, *How the Case Against an Alleged Poaching Kingpin Fell Apart*, NAT’L GEOGRAPHIC, Feb. 19, 2019, <https://www.nationalgeographic.com/animals/2019/02/thai-court-dismisses-case-against-suspected-poaching-kingpin/>.

11. Andy Coghlan, *UN Puts Wildlife Crime on a Par With Drug and People Trafficking*, NEW SCIENTIST, Aug. 3, 2015 (quoting Sabri Zain, director at TRAFFIC: “For years now, wildlife crime has been viewed by criminal syndicates as a high-profit, low-risk activity, not least because penalties for those caught have been minuscule.”), <https://www.newscientist.com/article/dn27995-un-puts-wildlife-crime-on-a-par-with-drug-and-people-trafficking/>; UNITED NATIONS OFFICE ON DRUGS AND CRIME & ASIA/PACIFIC GROUP ON MONEY LAUNDERING, ENHANCING THE DETECTION, INVESTIGATION, AND DISRUPTION OF ILLICIT FINANCIAL FLOWS FROM WILDLIFE CRIME 25 (2017) (citing the results of a survey of 45 jurisdictions, the report finds that 67% of survey participants had maximum penalties for wildlife crimes of four years or more or one-third of jurisdictions did not have lengthy prison sentences as potential penalties for wildlife crimes).

12. *Wildlife Trafficking Kingpin Jailed: Boonchai Bach Convicted by Thai Court*, FREELAND, May 10, 2018 (“Bach is charged under the Thai Customs Act (Sec. 244 and Sec. 244—Phase 1), Wild Animal Reservation and Protection Act, B.E. 2535 (Sec. 23—Phase 1, Sec. 24—Phase 1 and Sec. 47), and Animal Epidemics Act B.E. 2558 (Sec. 31—Phase 1 and Sec. 68.”); Pollard, *supra* note 10.

His case highlights the lost opportunity to connect wildlife trade crimes to the more serious consequences of violating financial crime statutes.

Recent studies find that financial crimes exist at each step of wildlife trafficking.¹³ For example, traffickers often depend on bribes paid to local and government officials in order to secure and deliver illegal products to buyers. Profits from illegal wildlife trafficking also make it across borders through illegal cash transfers and poorly regulated financial systems. These illicit profits are then filtered through seemingly legitimate businesses, thereby masking the profits' illegal origins, an activity known as money laundering.

With the option of including financial offenses in wildlife crime prosecutions, prosecutors can use laws that carry harsher penalties than most wildlife trafficking statutes. Increasing the penalties may act as a deterrent and, at least for a while, disrupt the ability of the major kingpins in wildlife trafficking to successfully engage in their businesses.¹⁴ For example, a conviction for a money laundering offense includes a 10-year imprisonment and the seizure of any property related to the crime.¹⁵ This is a stark contrast to the 2.5-year prison sentence Mr. Bach received.

Another case in Thailand provides an example of how a money laundering conviction can be disruptive for a wildlife trafficking network. "Mr. K" and his wife were arrested while the couple was on a trip to purchase illegal rosewood in the Khao Yai Forest.¹⁶ Following the arrest, the Thai Anti-Money Laundering Office immediately opened a financial investigation into Mr. K's business operations. The investigation revealed a sophisticated network of businesses, international associates, and multi-jurisdictional money transfers designed to smuggle rosewood, ivory, and live pangolins into China. Mr. K tried to hide his transactions in the daily operations of the Star Tiger Zoo. Authorities estimated Mr. K's network laundered up to US\$35 million between 2011 and 2014. At Mr. K's sentencing, Thai authorities seized a significant quantity of his assets, including 24 plots of land owned by members of Mr. K's smuggling ring. The government also seized the Star Tiger Zoo and appointed a trustee to manage the zoo's pending forfeiture.¹⁷

The global community is awakening to the extent and sophistication of the illegal wildlife trade. With an estimated annual value of \$5 billion to \$23 billion, the seriousness of the problem increases when calculated with other illicit natural resource trade in timber and fish and totals

more than \$200 billion annually, ranking second only to international drug trafficking.¹⁸

The trade's profitability depends on the existence of powerful transnational criminal networks connecting the supply, often in Southeast Asia and Africa, with consumer demand, largely in Asia, Europe, and the United States.¹⁹ Experts agree that efforts to stop wildlife trafficking must include disruption of the opaque global financial flows that propel and reward the traders. Existing money laundering statutes could serve as this disruption, but they are historically underutilized. A recent survey by the United Nations Office on Drugs and Crime (UNODC) showed that only 1% of 45 countries surveyed reported including money laundering investigations, charges, or prosecutions in wildlife crime cases.²⁰

The United States is one of the world's largest end-markets for illegal wildlife traffickers.²¹ This Comment explains the existing legal framework in the United States for integrating money laundering statutes into international wildlife trafficking prosecutions. It also unpacks the statutory and political weaknesses that are limiting this strategy's effectiveness. While the United States has a good foundation criminalizing wildlife trafficking and recently, to a degree, made wildlife trafficking a predicate offense to money laundering, the current system could be strengthened in two important ways:

1. The legal framework should leverage the Lacey Act²² as a predicate offense to money laundering, not limiting the predicate offense to the trafficking of specific species but instead leveraging the illegality of the trafficking itself.
2. Those U.S. government agencies with specific expertise in financial crime investigations should prioritize international wildlife trafficking prosecutions and integrate their financial crime investigations in international wildlife trafficking prosecutions.

Specifically, Part I outlines the existing U.S. legal framework for combating the illegal wildlife trade and highlights how money laundering is currently integrated

13. Julie Viollaz et al., *Using Script Analysis to Understand the Financial Crimes Involved in Wildlife Trafficking*, 69 CRIME L. SOC. CHANGE 595 (2018).

14. See UNITED NATIONS OFFICE ON DRUGS AND CRIME & ASIA/PACIFIC GROUP ON MONEY LAUNDERING, *supra* note 11, at 6.

15. Anti-Money Laundering Act of B.E. 2542 (2015) (Thail.), <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019171.pdf>.

16. See UNITED NATIONS OFFICE ON DRUGS AND CRIME & ASIA/PACIFIC GROUP ON MONEY LAUNDERING, *supra* note 11, at 21.

17. *Id.*

18. CHANNING MAY, GLOBAL FINANCIAL INTEGRITY, TRANSNATIONAL CRIME, AND THE DEVELOPING WORLD xi (2017).

19. Oliver Holmes & Nick Davies, *Revealed: The Criminals Making Millions From Illegal Wildlife Trafficking*, GUARDIAN, Sept. 26, 2016 (*The Guardian* reports that one kilo of ivory sells for \$150 in Africa but as much as \$2,025 in Beijing), <https://www.theguardian.com/environment/2016/sep/26/revealed-the-criminals-making-millions-from-illegal-wildlife-trafficking>.

20. See UNITED NATIONS OFFICE ON DRUGS AND CRIME & ASIA/PACIFIC GROUP ON MONEY LAUNDERING, *supra* note 11, at 6.

21. Monica Medina & Johan Bergenas, *Five Myths About Illegal Wildlife Trafficking*, WASH. POST, Apr. 17, 2015, https://www.washingtonpost.com/opinions/five-myths-about-illegal-wildlife-trafficking/2015/04/17/b43182fe-e3a1-11e4-b510-962fcfab310_story.html.

22. 16 U.S.C. §§3371-3378.

into some wildlife crime prosecutions. Recent changes due to the Eliminate, Neutralize, and Disrupt (END) Wildlife Trafficking Act of 2016²³ have somewhat strengthened the path to using money laundering statutes. Nonetheless, the part concludes with a discussion on the weaknesses in the current legal framework and how they could be corrected.

Part II unpacks the challenges in constructing a money laundering case within an illegal wildlife trade investigation, and discusses the political and resource gaps in the U.S. approach that make it especially difficult to build these types of cases. Part III summarizes my conclusions.

I. Overview of the U.S. Framework for Combating Illegal Wildlife Trade and Possible Integration of Money Laundering Statutes

Historically, the Money Laundering Control Act²⁴ did not list the violation of any U.S. conservation statute as a predicate offense, meaning a violation of the conservation statute is an initial offense that leverages a money laundering offense. Consequently, money laundering prosecutions within the context of wildlife trafficking cases often relied on a smuggling violation as the predicate offense. The list of predicate offenses was recently amended, and now specific conservation statutes are explicitly listed. Despite this progress, wildlife crime prosecutions that include money laundering violations have not increased. Adding the Lacey Act as a predicate offense would be a better and more efficient means of connecting wildlife trafficking to money laundering.

A. The Current Legal Framework for Preventing Illegal Wildlife Trade

The United States is one of the world's largest end-markets for illegal wildlife.²⁵ Illegal wildlife trade is the take and trade of wildlife and wildlife products in violation of national law or international agreements or conventions.²⁶ Examples include harvesting or killing wildlife illegally and then moving it across international borders; trading specimens without the necessary permits or with fraudulent permits (this typically applies to trade in legally protected species or harvesting from areas where the take or harvest is prohibited during specific seasons, or the type or quantity of harvest is closely regulated); intentionally mislabeling products on export or import declarations as "look-a-like" species, therefore masking the specimen's true identity (a common practice in the illegal timber and fish trade); and trading in a manner that fraudulently avoids

required fees or taxes—of course, all of these examples could be happening congruently.²⁷

The United States, along with 183 other countries, is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),²⁸ the primary international mechanism for regulating wildlife trade.²⁹ CITES defines "trade" as "any export, re-export and introduction from the sea" of a wildlife specimen. The Convention applies a permit scheme using rules based on a specific specimen's appendix listing.³⁰ Approximately 5,800 species of animals and 30,000 species of plants are listed in the CITES appendices.³¹ The United States implements CITES under the Endangered Species Act (ESA) and its accompanying endangered species list.³² Under this law, it is unlawful for any person subject to the jurisdiction of the United States to engage in any trade or possess any specimen contrary to the CITES treaty.³³ In addition to CITES' permit rules, the ESA requires that all wildlife shipments (whether involving a CITES- or ESA-listed species or not) entering the United States be accurately declared and presented for inspection and clearance by the U.S. Fish and Wildlife Service (FWS) or Customs and Border Protection.³⁴

The United States also uses the Lacey Act to enforce rules involving wildlife trade. The Lacey Act makes it illegal for persons to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States, in violation of any Indian tribal law, or in violation of any foreign law.³⁵ The reference to

27. *Id.*

28. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, T.I.A.S. No. 8249, 93 U.N.T.S. 243 [hereinafter CITES].

29. CITES, *What Is CITES*, <https://cites.org/eng/disc/what.php> (last visited Jan. 30, 2019).

30. CITES, *CITES Glossary: Trade*, <https://www.cites.org/eng/resources/terms/glossary.php#trade> (last visited Jan. 30, 2019); CITES arts. III-IV.

31. A full listing of CITES species is available at <https://www.cites.org/eng/disc/species.php> (last visited Jan. 30, 2019).

32. 16 U.S.C. §§1531-1544, ELR STAT. ESA §§2-18.; U.S. Fish and Wildlife Service, *U.S. Endangered Species*, <https://www.fws.gov/endangered/species/us-species.html> (last updated Dec. 12, 2018).

33. 16 U.S.C. §1538(e)(1).

34. *Id.* §1538(e); 50 C.F.R. §§14.52, 14.61, 14.63 ("All animals imported into the United States must be presented to and cleared by the USFWS prior to its lawful importation."); Form 3-177, 50 C.F.R. §14.61 ("All importers and exporters must file a completed Declaration for Importation or Exportation of Fish or Wildlife.").

35. 16 U.S.C. §3372. Note that §3372(2)(B) provides limitations on the foreign laws that define a plant species as illegally imported, exported, transported, sold, received, acquired, or purchased in interstate or foreign commerce. They include:

- i. taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—
 - I. the theft of plants;
 - II. the taking of plants from a park, forest reserve, or other officially protected area;
 - III. the taking of plants from an officially designated area; or
 - IV. the taking of plants without, or contrary to, required authorization;
- ii. taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees re-

23. Pub. L. No. 114-231, §201 (2016).

24. 18 U.S.C. §§1956-1957.

25. *Id.*

26. UNITED NATIONS ENVIRONMENT PROGRAM, ANALYSIS OF THE ENVIRONMENTAL IMPACTS OF ILLEGAL TRADE IN WILDLIFE 6 (2017).

foreign law is especially relevant in international wildlife trafficking cases. For example, a giraffe tail shipped to the United States that was taken from a giraffe illegally killed in South Africa is likely to be a Lacey Act violation.

Additionally, there are a handful of statutes that provide further trade protections for species considered especially vulnerable. The African Elephant Conservation Act prohibits the import of raw ivory from non-ivory producing countries and the exportation of raw ivory from the United States.³⁶ Worked ivory must be imported according to the export requirements of the ivory-producing country and CITES, including a certification that such ivory derived from a legal source (there is an exception for personal effects).³⁷ The Barack Obama Administration further tightened ivory imports with a final rule on July 6, 2016, that provides a “near-total ban” on the commercial importation of objects containing African ivory.³⁸ The Rhinoceros and Tiger Conservation Act prohibits the actual or attempted sale, importation, or exportation of any product, item, or substance intended for human consumption or application, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.³⁹

B. Connecting the Dots: Integrating Money Laundering With Wildlife Trafficking Prosecutions

The Money Laundering Control Act of 1986 is complex, with many interrelated parts and elements.⁴⁰ In basic terms, §1956(a)(1) describes what constitutes specific intent money laundering. A violation of the statute includes a person “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction” with the intent to “promote the carrying on of specified unlawful activity” or “engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986.”⁴¹ It could also involve knowing a transaction is designed to “conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity” or “avoid a transaction reporting requirement under State or Federal law.”⁴² Section 1956(a)(2) applies to international money laundering, with many of the same elements, except that the “financial transaction” must include property into or out of the United

States and the property or proceeds do not have to be traceable to the predicate offense. This Act carries severe penalties that exceed those of U.S. conservation statutes, including a maximum of 20 years imprisonment and/or a fine up to “\$500,000 or twice the value of the property involved in the transaction, whichever is greater.”⁴³

In addition to the harsh fine and prison penalties, 18 U.S.C. §§982(a)(1) and 981(a)(1)(A) authorize criminal and civil forfeiture for Title 18 cases, including §1956. Specially, the criminal forfeiture provision applies to all property “involved” in the money laundering offense.⁴⁴ In other words, the forfeiture is not limited to the proceeds of the wildlife trafficking⁴⁵ and can also include property purchased in whole or in part with the proceeds of the crime,⁴⁶ and facilitating property—property that makes the offense easier to commit, such as a legitimate business used to obscure the dirty money.⁴⁷ The government must show there is a substantial connection between the property and the money laundering offense.⁴⁸ As a practical matter, the forfeiture statute can apply to property that is outside the United States, but additional legal matters apply that are outside the scope of this Comment.⁴⁹

Historically, wildlife trafficking cases that included money laundering offenses used smuggling, specifically 18 U.S.C.A. §545, as the predicate offense, or specific unlawful activity, to trigger a money laundering charge, as conservation statutes were not available predicate offenses. The smuggling statute provides two potential charges for wildlife prosecutors. First, anyone that “knowingly or willfully, with intent to defraud the United States . . . makes out or passes, or attempts to pass . . . any false, forged or fraudulent invoice, or other document or paper” through the customhouse is liable.⁵⁰ This is noteworthy as all wildlife and wildlife products entering the United States must

quired for the plant by any law or regulation of any State or any foreign law; or

- iii. taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants.

36. *Id.* §4223.

37. *Id.* §4223(4).

38. 50 C.F.R. §17 (2016).

39. 16 U.S.C. §5305(a).

40. 18 U.S.C. §§1956-1957.

41. *Id.* §1956(a)(1)(A).

42. *Id.* §1956(a)(1)(B).

43. *Id.* §1956(a)(1).

44. *Id.* §982(a)(1) (“The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.”).

45. *United States v. Huber*, 404 F.3d 1047, 1056, 1058 (8th Cir. 2005) (“Forfeiture under section 982(a)(1) in a money laundering case allows the Government to obtain a money judgment representing the value of all property ‘involved in’ the offense, including the money or other property being laundered [the corpus], and ‘any property used to facilitate the laundering offense’; the corpus includes untainted, commingled property.”); *United States v. Nicolo*, 597 F. Supp. 2d 342, 347-48 (W.D.N.Y. 2009) (“The term ‘involved in’ has consistently been interpreted broadly by courts to include property involved in, used to commit, or used to facilitate the money laundering offense.”).

46. STEFAN D. CASSELLA, ASSET FORFEITURE LAW, LLC, THE MONEY LAUNDERING FORFEITURE STATUTES 22-24; *United States v. Overstreet*, No. 1:11-cr-00207-BLW (D. Idaho Nov. 29, 2012) (Mexican resort that defendant built with commingled funds from night club and illegal gambling business, using third-party names in violation of §1956(a)(2)(B)(i), was “involved in” the money laundering offense).

47. *United States v. Wylly*, 193 F.3d 289, 302 (5th Cir. 1999) (forfeiture under the facilitation theory is not limited to commingled money; facilitating property is anything that makes the money laundering offense less difficult or more or less free from obstruction or hindrance).

48. 18 U.S.C. §983(c)(3).

49. Jack de Klavier, *International Forfeiture Cooperation*, 61 U.S. ATT’YS’ BULL. 36 (2013).

50. 18 U.S.C. §545.

be declared with Form 3-177,⁵¹ as well as any necessary CITES permits.⁵² Second, anyone that “fraudulently or knowingly imports” to the United States “any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported . . . contrary to law” shall be liable.⁵³

Some recent examples of the use of smuggling for a successful money laundering charge within a wildlife trafficking prosecution include *United States v. Logan et al.*⁵⁴ and *United States v. Kha*.⁵⁵ In *Logan*, Paul Logan, a former Canadian Mountie, pled guilty in 2016 to conspiracy, smuggling, and money laundering after illegally importing 250 narwhal tusks, equaling \$1.5 to \$3 million in value, to the United States from Canada. Canadian and U.S. authorities worked closely in his prosecution as he faced charges in both countries.⁵⁶ Mr. Logan had concealed the tusks in a false compartment in his vehicle and trailer, crossed the border into Canada, and then utilized a shipping store in Ellsworth, Maine, to send the tusks to customers in the United States who would then resell the tusks to other customers. Payments were received via direct wires to a U.S. bank account (where he withdrew the money with an ATM card in Canada), or checks were sent to a post office box in Maine. Mr. Logan’s sentence in the United States was 62 months in jail,⁵⁷ and forfeiture, with a co-defendant, of narwhal tusks and almost \$90,000.⁵⁸

In *Kha*, Vihn “Jimmy” Kha and Felix Kha (father and son-in-law businessmen living in Los Angeles) pled guilty to charges of conspiracy, smuggling, wildlife trafficking in violation of the Lacey Act, money laundering, and tax fraud.⁵⁹ The Khases ran an ongoing operation in which they purchased rhino horns and parts, estimated to value \$1 million to \$2.5 million, from U.S. suppliers and then shipped these items to sellers in Asia. The Khases admitted to illegal payments to Vietnamese custom officials to ensure clearance of the horn shipments.⁶⁰ Their sentences included

42 and 46 months in jail, respectively, as well as criminal fines totaling \$20,000, and a \$185,000 tax fraud penalty and assessment. They also, with the Win Lee Corporation, were ordered to pay \$800,000 in restitution to the Multi-national Species Conservation Fund, a statutorily created fund that is managed by FWS to support international efforts to conserve rhinos and other critically endangered species around the world.⁶¹

Recently, END amended U.S. money laundering statutes to include certain conservation statutes within the list of predicate offenses, or specified unlawful acts. A predicate offense now includes criminal violations of the ESA, the African Elephant Conservation Act, and the Rhinoceros and Tiger Conservation Act, as long as the animal products involved have a total value in excess of \$10,000.⁶² END was largely a response to the global rallying cry to recognize wildlife trafficking as a serious crime, exemplified with the 2015 United Nations General Assembly resolution *Tackling Illicit Trafficking in Wildlife*.⁶³ In addition, the February 2014 U.S. National Strategy for Combating Wildlife Trafficking included a commitment by the Obama Administration to seek legislation that recognized wildlife trafficking as a predicate offense to money laundering.⁶⁴ END provides that one of its purposes is “to disrupt regional and global transnational organized criminal networks and to prevent the illegal wildlife trade from being used as a source of financing for criminal groups that undermine United States and global security interests.”⁶⁵

Within the rhetoric that framed END’s passage, it seemed the legislation marked a turning point for wildlife prosecutors,⁶⁶ and although the political victories

51. 16 U.S.C. §1538(e); 50 C.F.R. §§14.52, 14.61, 14.63 (“All animals imported into the United States must be presented to and cleared by the USFWS prior to its lawful importation.”); Form 3-177. 50 C.F.R. §14.61 (“All importers and exporters must file a completed Declaration for Importation or Exportation of Fish or Wildlife.”).

52. 16 U.S.C. §1538(c).

53. 18 U.S.C. §545.

54. No. 1:12-CR-00188-JAW (D. Me. Sept. 20, 2017). This is an unpublished case with more information from DOJ. Press Release, U.S. Department of Justice, Former Canadian Mountie Sentenced to Money Laundering Charges Stemming From a Conspiracy to Smuggle Ivory Tusks (Sept. 20, 2017), <https://www.justice.gov/opa/pr/former-canadian-mountie-sentenced-money-laundering-charges-stemming-conspiracy-smuggle-ivory>.

55. No. 12-202(B)-CAS (C.D. Cal. June 15, 2015). This is an unpublished case with more information from DOJ. Press Release, U.S. Department of Justice, Smuggling Ring Sentenced in Los Angeles for Criminal Trafficking of Endangered Rhinoceros Horn (May 15, 2013), <https://www.justice.gov/opa/pr/smuggling-ring-sentenced-los-angeles-criminal-trafficking-endangered-rhinoceros-horn>.

56. *Logan*, No. 1:12-CR-00188-JAW.

57. *Id.*

58. *United States v. Zaruskas*, No. 1:12-CR-00188-JAW (D. Me. Apr. 10, 2015).

59. *Kha*, No. 12-202(B)-CAS.

60. *Id.*

61. *Id.*

62. 18 U.S.C. §1956(c)(7)(G) (“any act that is a criminal violation of subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1) of section 9(a) of the Endangered Species Act of 1973 (16 U.S.C. §1538(a)(1)), section 2203 of the African Elephant Conservation Act (16 U.S.C. §4223), or section 7(a) of the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. §5305a(a)), if the endangered or threatened species of fish or wildlife, products, items, or substances involved in the violation and relevant conduct, as applicable, have a total value of more than \$10,000”).

63. *Tackling Illicit Trafficking in Wildlife*, G.A. Res. 69/314, U.N. Doc. A/RES/69/314 (2015) (“Calls upon Member States to make illicit trafficking in protected species of wild fauna and flora involving organized criminal groups a serious crime.” A “serious crime” is “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.” And calls upon Member States to amend and review legislation “so that offences connected to the illegal wildlife trade are treated as predicate offences . . . for the purposes of domestic money-laundering offences.”)

64. OFFICE OF THE PRESIDENT, NATIONAL STRATEGY FOR COMBATING WILDLIFE TRAFFICKING 6 (2014), available at <https://obamawhitehouse.archives.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf>.

65. 16 U.S.C. §7611(3).

66. The passage of END was seen as a huge victory in the fight against wildlife trafficking. Rep. Ed Royce (R-Cal.), a leading sponsor of the bill within the U.S. House of Representatives, released a statement after the bill became law stating that “(t)his legislation combats today’s unprecedented level of poaching and wildlife trafficking . . . adding greater consequences for participating in this lucrative illicit trade.” See U.S. Representative Ed Royce, *Is-sues: Endangered Animals*, <https://edroyce.com/issues/endangered-animals/> (last visited Jan. 30, 2019); Sen. Dianne Feinstein (D-Cal.), one of the bill’s sponsors in the Senate, explained:

High demand and weak penalties for wildlife trafficking has helped push many iconic species to the brink of extinction. No longer will criminals receive just a slap on the wrist . . . (o)ur bill

are significant,⁶⁷ the prosecutorial realities are less compelling. A recent search within Bloomberg Law finds no money laundering cases that cite the predicate offenses created by END.

C. Fixing the Weaknesses⁶⁸

As shown above, there is case law demonstrating the use of smuggling to obtain money laundering charges in wildlife trafficking cases. However, the lack of analytical data makes it difficult to quantify how often money laundering charges are raised and the percentage of successful prosecutions. In the limited data that are publicly available, cases with both wildlife trafficking and money laundering offenses appear to be the exception rather than the rule. In 2015, *E&E News* obtained figures from FWS regarding prosecutions for illegal ivory and rhino trade between 1999 and 2014. They reported that the majority of cases were prosecuted as misdemeanors.⁶⁹ The criminal penalties for ivory trafficking averaged only three days in jail, five days of probation, and a \$320 fine.⁷⁰ Rhino horn criminal prosecutions were typically harsher, averaging 120 days in jail, 99 days of probation, and a \$78,427 fine.⁷¹ The data as described by *E&E News* are limited in that it does not list what charges were brought, which charges were successful, or differentiate between the scale of the crime, but the penalties suggest that money laundering was not included.

finally gives law enforcement tools necessary to go after poachers and criminal enterprises that are illegally profiting at the expense of endangered species.

Press Release, Office of Sen. Dianne Feinstein, Senate Strengthens Wildlife Trafficking Laws (Sept. 15, 2016), <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=2E35FDEB-0BCF-4FC5-9CD9-F258F2E7EB24>.

67. END does signify an import political victory in the U.S. government's efforts to combat wildlife trafficking. Despite its introduction in the Republican-controlled 114th Congress, "the most polarized Congress in more than 100 years" as characterized by the *Washington Post* based on an analysis of historical voting trends by Voteview, it enjoyed bipartisan support in both the House of Representatives and Senate, was passed by voice vote, and was signed by the Democratic Obama Administration. Philip Bump, *Farewell to the Most Polarized Congress in More Than 100 Years!*, WASH. POST, Dec. 21, 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/12/21/farewell-to-the-most-polarized-congress-in-over-100-years/>; H.R. 2494, 114th Cong. (2016); for a list of cosponsors, see <https://www.congress.gov/bill/114th-congress/house-bill/2494/cosponsors?q=%7B%22search%22%3A%5B%22HR+2494%22%5D%7D&tr=3> (last visited Jan. 30, 2019); S. 27, 114th Cong. (2015); for a list of cosponsors, see <https://www.congress.gov/bill/114th-congress/senate-bill/27/cosponsors> (last visited Jan. 30, 2019).
68. The scope of this Comment is limited to analysis of the use of money laundering as an alternate offense in a wildlife trafficking case, but another valuable tool currently unavailable in the prosecution of wildlife trafficking cases is the Racketeer Influenced and Corrupt Organizations (RICO) Act. Like money laundering offenses, RICO requires a predicate offense, as outlined in the definition of a racketeering activity (18 U.S.C. §1961(1)), and wildlife trafficking is currently not within those listed. RICO allows prosecutors to build a case against an organized crime group rather than prosecuting crimes individually.
69. Dylan Brown, *Lenient Penalties Hamstring Trafficking Crackdown*, E&E NEWS, May 13, 2015, <https://www.eenews.net/stories/1060018497>.
70. *Id.*
71. *Id.*

One reason for the minimal use of smuggling as a predicate offense in wildlife trafficking cases is the indirect approach that smuggling requires when building a money laundering charge within a wildlife trafficking case. In other words, those attorneys within the Environment and Natural Resources Division (ENRD) of the U.S. Department of Justice (DOJ) with specific expertise in conservation law are being asked to build a case within three separate areas of law—conservation, smuggling, and money laundering. A wildlife crime is not the predicate offense, and a smuggling and money laundering case is being constructed within the resource and political gaps that are discussed later in this Comment. The END amendments to §1956 of the money laundering statutes potentially shift that dynamic (although not completely) by including wildlife crime as a predicate offense, but END does so within a very limited species-specific framework that excludes trafficking of plants.

The exclusion of plant products from the END amendments is not insignificant. Timber is the world's most valuable wildlife commodity in trade with an estimated global value in 2016 of \$227 billion.⁷² TRAFFIC estimates that 10%-30% of global timber trade is illegal,⁷³ and that the United States imports as much as \$3 billion worth of illegal wood every year.⁷⁴ The amount of illegal timber imports to the United States has dropped 32%-42% since the U.S. Congress amended the Lacey Act in 2008 to include a prohibition on illegal plant imports.⁷⁵ Many attribute this drop to better business practices by timber-importing companies to understand the source of their imports and avoid high-risk products from high-risk countries,⁷⁶ as well as successful prosecutions, including a settlement in 2015 with Lumber Liquidators that resulted in \$13 million in fines and penalties, the largest Lacey Act enforcement penalty to date.⁷⁷ By excluding plant products from the END amendments, politicians intentionally chose to frustrate a potential tool in combating illegal timber trade specifically, and illegal wildlife trade generally.

A better approach to integrating money laundering and wildlife trafficking cases would be to include the Lacey Act as a predicate offense to U.S. money laundering statutes. The Lacey Act is the most powerful tool in U.S. law for

72. TRAFFIC, *Timber Species*, <https://www.traffic.org/what-we-do/species/timber/> (last visited Jan. 30, 2019).

73. *Id.*

74. Mike Gaworecki, *Illegal Wood Imports to US Are Way Down, but Still Worth as Much as \$3b a Year*, MONGABAY, Oct. 15, 2015.

75. *Id.*; Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, 122 Stat. 923 (to be codified at 16 U.S.C. §3372).

76. UNION OF CONCERNED SCIENTISTS, *THE LACEY ACT'S EFFECTIVENESS IN REDUCING ILLEGAL WOOD IMPORTS 15* (2015) ("Where Lacey has had an impact, it has been mostly due to U.S. buyers' avoidance of high-risk products or high-risk countries, rather than an attempt on their part to discriminate between legal and illegal wood in like products.")

77. *United States v. Lumber Liquidators, Inc.*, No. 2:15-cr-126 (Oct. 22, 2015); plea agreement available at https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764_ex10-1.htm (last visited Jan. 30, 2019); Gaworecki, *supra* note 74.

combating wildlife trafficking.⁷⁸ Its penalties are severe,⁷⁹ and in 1981, Congress added a felony punishment scheme to encourage DOJ prioritization of Lacey Act cases.⁸⁰ (Note that the ESA does not include a felony penalty.) In addition, the Lacey Act focuses on the legality of how the specimen was acquired and/or traded, rather than the species being traded. This is not to say that a species-specific approach is not valuable, especially when focusing on critically endangered species, but when talking about wildlife trafficking and money laundering, it may not matter what species is being illegally traded as much as the fact that illegal trafficking has taken place.

In the eyes of a trafficker, a commodity is a commodity. Many traffickers trade in multiple species of wildlife, and in many cases, legally unprotected species.⁸¹ The most recent example is the crisis now facing giraffes, an unlisted species in both CITES and the ESA. Giraffes are facing extreme levels of poaching and illegal trade.⁸² The END amendments would require prosecutors to wait to build a money laundering case until the giraffe is listed at the next CITES Conference of Parties or on the ESA list. That process could take decades.⁸³

An illegal trafficker's ability to profit from wildlife trafficking in the U.S. market is not necessarily due to the specific species involved. It is based on the existence of a successful chain of illegal activities that begin in a source country and end with a U.S. buyer. The Lacey Act, in finding violations of foreign laws to trigger a violation of U.S. trade law,⁸⁴ condemns the entire chain of illegality, promoting the entry of legal natural resources in U.S. borders

and upholding the legal frameworks in other countries to manage their natural resources. If the Lacey Act was a predicate offense to money laundering offenses, prosecutors could use a powerful, broadly applicable, and often-used conservation law to attack both the chain of illegality and the money that fuels and rewards the illicit trade. It would likely be a tool reserved for severe offenders, or "kingpins," but an appropriate tool when faced with an opportunity to handicap a wildlife trafficking network.

II. Challenges in Constructing a Money Laundering Case Focused on Illegal Wildlife Trade

Within a money laundering case, gathering the evidence needed to reconstruct the financial flows that fund and reward wildlife trafficking is challenging. Attorneys within ENRD often cooperate with agencies and departments within the U.S. government that traditionally do not prioritize wildlife trafficking investigations but house resourceful financial investigation units (FIUs). Consequently, political and resource gaps exist that challenge money laundering investigations and cases.

A. Following the Money

The typical supply chain of wildlife trafficking is often complex (see Figure 1). Generally, it involves various phases of source, transportation, processing, and sale.⁸⁵ The individuals involved include poachers, intermediaries to facilitate local and international smuggling (by use of shell companies, corruption of authorities, etc.), couriers, logistics specialists, traders, and wholesalers.⁸⁶ Illegal products are often harvested (i.e., poached) in a source country and then make their way via air or cargo ship, along indirect routes with multiple stops (to avoid detection), to a destination country for sale.⁸⁷ Various organizations such as TRAFFIC and Freeland have dedicated teams of analysts to try to track the trade.⁸⁸

The use of falsified paperwork and/or sophisticated techniques for hiding contraband within legitimate products for import makes detection of illegal wildlife products extremely difficult for customs agents. For example, in 2017, Vietnam discovered three tons of ivory originating from South Africa hidden in boxes of fruit.⁸⁹ In Cambodia, officials found nearly a ton of ivory that originated from Mozambique hidden in hollow logs in an abandoned cargo

78. Marcus A. Asner, *To Catch a Wildlife Thief: Strategies and Suggestions for the Fight Against Illegal Wildlife Trafficking*, 12 U. PA. ASIAN L. REV. 1, 11 n.32 (2016) ("one of the oldest and certainly one of the most powerful anti-trafficking tools around"; Robert S. Anderson, *The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 PUB. LAND L. REV. 27, 36-52 (1995) (providing an overview of the Lacey Act's history and development); see also Elinor Colbourn & Thomas W. Swegle, *The Lacey Act Amendments of 2008: Curbing International Trafficking in Illegal Timber*, STO36 ALI-ABA 365, 373-77 (Apr. 26, 2012)) (explaining the importance and potency of the Lacey Act in the fight against widespread illegal wildlife trafficking).

79. 16 U.S.C. §3373 (In addition to civil penalties and forfeiture, felony criminal sanctions are provided for violations involving imports or exports, or violations of a commercial nature in which the value of the wildlife is in excess of \$350. A misdemeanor violation was established, with a fine of up to \$10,000 and imprisonment of up to one year, or both. Maximum fines for felonies are \$250,000 for individuals and \$500,000 for organizations.).

80. *Why Should Americans Have to Comply With the Laws of Foreign Nations?: Hearing Before the House Committee on Natural Resources*, 113th Cong. (2013) (statement of Marcus Asner, Arnold and Porter, LLP), 4; see also H.R. REP. NO. 97-276, at 11 (1981):

Providing for felony penalty scheme for unlawful importations of wildlife is consistent with existing customs law . . . By specifying in this Act that such importations are felonies, notice is given to all wildlife importers who are unaware of the fact that the customs felony law applies to their activities [and] that their illegal activities may subject them to a felony punishment scheme.

81. See UNITED NATIONS ENVIRONMENT PROGRAM, *supra* note 26, at 14.

82. Oliver Milman, *Giraffes Must Be Listed as Endangered, Conservationists Formally Tell US*, GUARDIAN, Apr. 19, 2017.

83. Center for Biological Diversity, *Listing Species Under the Endangered Species Act* (2018), https://www.biologicaldiversity.org/programs/biodiversity/endangered_species_act/listing_species_under_the_endangered_species_act/index.html (last visited Mar. 3, 2019).

84. 16 U.S.C. §§3371-3378.

85. See UNITED NATIONS OFFICE ON DRUGS AND CRIME & ASIA/PACIFIC GROUP ON MONEY LAUNDERING, *supra* note 11, at 13.

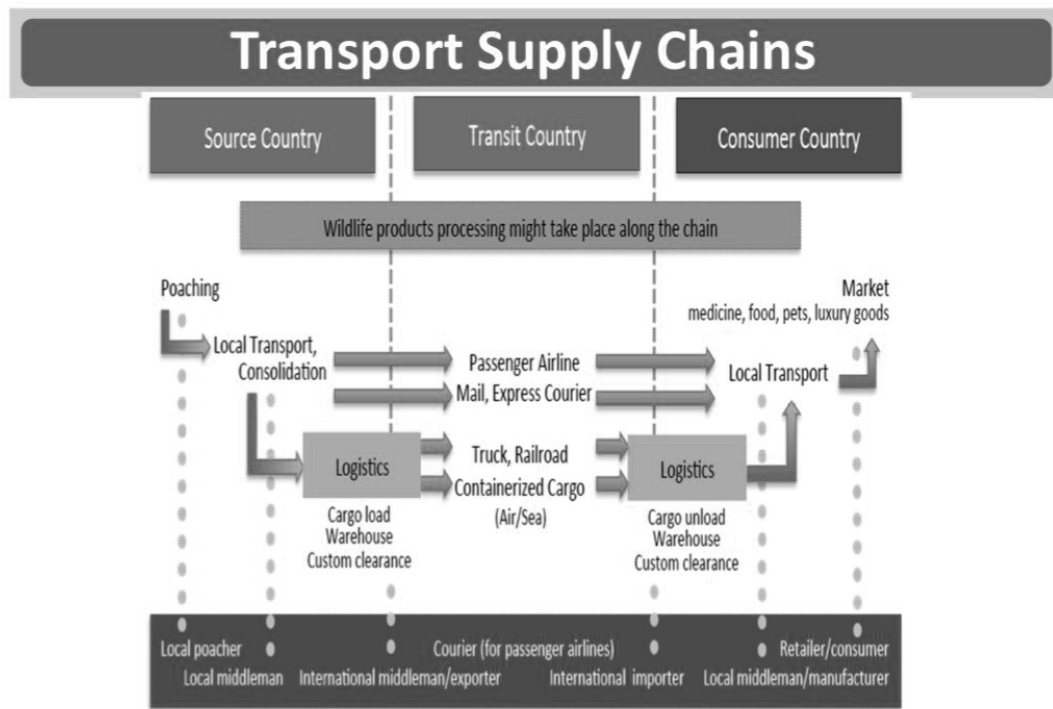
86. *Id.*

87. *Id.* at 12.

88. More information on TRAFFIC is available at <https://www.traffic.org> (last visited Jan. 30, 2019). More information on Freeland is available at <https://www.freeland.org> (last visited Jan. 30, 2019).

89. *Vietnam Seizes Tons of Elephant Tusks "Originating From South Africa"*, DW, Sept. 7, 2017, <https://www.dw.com/en/vietnam-seizes-tons-of-elephant-tusks-originating-from-south-africa/a-39617146>.

Figure 1. Transport Supply Chains



Source: James Compton, *The Illegal Trade in Wild Animals and Plants: Collaborative Actions With the Transport and Logistics Sector*, Remarks at the FIATA World Congress (Sept. 2015), <https://bit.ly/2HxMqCj>.

container.⁹⁰ A major challenge for those wishing to stop these illegal flows is building a case that targets the brains and money that drive these operations, not merely opting to arrest the courier or confiscate the wildlife linked to a single shipment.

In the case of elephant ivory, law enforcement agents are turning to science to help identify the individuals at the heart of the illegal ivory trade. Samuel Wasser, director of the Center for Conservation Biology and a professor at the University of Washington in Seattle, has used DNA testing to identify the origin and points of shipment of the majority of elephant ivory being shipped out of Africa, narrowing the culprits to three major cartels.⁹¹ He did this by comparing the DNA results of seized tusks with the bones and scat of poached elephants.⁹² Dr. Wasser's work demonstrates the complexity for tracing a single specimen of illicit wildlife trade. Efforts to follow the money are as complex.

The initial challenge in tracing the financial flows driving and rewarding illegal wildlife trafficking are the nearly

invisible audit trails.⁹³ The trade itself is often done with cash, bulk currency smuggling, informal financial systems, financial transfer services (such as Western Union or pre-paid cards), and even cryptocurrencies such as Bitcoin.⁹⁴ The profits are often laundered through shell companies, otherwise known as money laundering.⁹⁵ Unpacking these flows is easier with the resources found in FIUs that integrate their findings within a broader criminal investigation.

However, in a survey of 45 countries, UNODC found that only 26% incorporate financial investigations in wildlife crime cases.⁹⁶ This means investigations typically do not include basic measures, such as asking financial questions during the interviewing of suspects, analyzing shipping cost payments or travel costs, or unpacking money flows.⁹⁷ In this situation, even if the legal framework is in place to allow for money laundering offenses in wildlife trafficking prosecutions, prosecutors and their teams must have access to the necessary resources and interagency cooperation to implement money laundering prosecutions.

90. *Cambodia Seizes Nearly a Ton of Ivory Hidden in Hollow Logs*, DW, June 12, 2017, <https://www.dw.com/en/cambodia-seizes-nearly-a-ton-of-ivory-hidden-in-hollow-logs/a-41671483>.

91. Laura Geggel, *Scientists Just Found the Guys Who Are Killing Africa's Elephants*, LIVE SCI., Sept. 19, 2018, <https://www.livescience.com/63624-cartels-smuggle-ivory.html>.

92. *Id.*

93. *See* Feige, *supra* note 1.

94. *See* UNITED NATIONS OFFICE ON DRUGS AND CRIME & ASIA/PACIFIC GROUP ON MONEY LAUNDERING, *supra* note 11, at 13.

95. *See* Feige, *supra* note 1.

96. *See* UNITED NATIONS OFFICE ON DRUGS AND CRIME & ASIA/PACIFIC GROUP ON MONEY LAUNDERING, *supra* note 11, at 6.

97. *Id.*

B. Political and Resource Gaps

At the beginning of the Donald Trump Administration, it seemed all the tools were in place for more money laundering prosecutions within wildlife trafficking cases. END, despite the legal weaknesses discussed earlier, broke wildlife trafficking from its environmental crimes box, statutorily acknowledging with explicit legal references that wildlife crimes should be seen as a predicate offense and within the same lens as other forms of sophisticated organized crime. In addition, one of the very first Executive Orders issued by President Trump, Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking,⁹⁸ called for a strengthening of federal law in order to thwart transnational criminal organizations and specifically listed the illegal trafficking of wildlife as an example of the kind of crime it wished to prevent. It also called on federal law enforcement agencies to give efforts to combat wildlife trade a high priority and devote sufficient resources to such efforts.⁹⁹

It is possible that cases are currently being built behind the scenes, but two years into the Trump presidency, even with END and the Executive Order, little evidence points to increased use of money laundering offenses in wildlife trafficking cases. Improving the integration of FIUs in wildlife trafficking investigations would mean encouraging the cooperation of U.S. government agencies that house this special expertise and/or hold the investigatory jurisdiction.

The decision to enforce a statute is within the discretion of an agency.¹⁰⁰ Authorization involves a delicate assessment of the alleged violation itself, whether the agency is likely to succeed, whether the enforcement action fits the agency's overall policies, and whether there are sufficient resources.¹⁰¹ President Trump's Executive Order definitely provides guidance on this assessment, but there is always a political calculation that weighs the decision to advance the investigation with other priorities, such as pursuing drug and human trafficking violations, and within the context of finite resources.

For investigations of §1956, specific-intent money laundering of the Money Laundering Control Act of 1986, each Treasury bureau¹⁰² is assigned investigatory jurisdiction. In other words, a lead bureau is designated for money laundering investigations that relate to a specific criminal offense. For criminal offenses relating to the entry of goods into the United States by means of false statements

or smuggling, the U.S. Customs Service has investigatory jurisdiction.¹⁰³ This is significant, as the U.S. Customs Service has not traditionally prioritized wildlife trafficking investigations. This is slowly changing, largely with the encouragement of Congress.

In 2015, Congress passed the Trade Facilitation and Trade Enforcement Act.¹⁰⁴ It included a directive to the commissioner and the director of U.S. Immigration and Customs Enforcement (ICE) to ensure that appropriate personnel are trained in the detection, identification, seizure, and forfeiture of illegally trafficked fish, wildlife, and plants.¹⁰⁵ In 2017, ICE stated a commitment to combating wildlife trafficking and the illegal trading of other natural resources in its report *Illegal Trafficking of Wildlife and Other Natural Resources*, created in response to a request by the U.S. Senate in the Fiscal Year 2017 Department of Homeland Security (DHS) Appropriations Act.¹⁰⁶ In addition, in the joint explanatory statement accompanying the DHS Appropriations Act of 2018 (DHS houses the Customs Service) Congress calls on DHS to work in partnership with FWS to improve cooperative efforts to address wildlife trafficking.¹⁰⁷ These steps are significant in increasing the profile of wildlife trafficking in the priorities of the Customs Service and can ultimately lead to more money laundering investigations.

A second critical U.S. government agency in the investigation of money laundering is the U.S. Department of Treasury and its Office of Terrorism and Financial Intelligence (TFI). It is difficult to ascertain the priorities of TFI, but the latest National Money Laundering and Risk Assessment it prepared in 2015 lists fraud, drug trafficking, human smuggling, organized crime, and public corruption as the primary threats.¹⁰⁸ Within the discussion of these threats, wildlife trafficking is not mentioned. It appears that Congress is trying to change that as the joint explanatory statement that accompanies the Financial Services and General Government Appropriations Act for Fiscal Year 2018 calls on the Treasury to pursue and enforce money laundering and other laws as related to wildlife trafficking.¹⁰⁹

With the cooperation of Customs and TFI, wildlife trafficking cases with money laundering elements could be a more common occurrence. U.S. government agencies dedicate resources based on the priorities identified, and it appears more political pressure from the White House and Congress is needed in order to provide ENRD the resources it needs.

98. Exec. Order No. 13773, 82 Fed. Reg. 10691 (Feb. 14, 2017).

99. *Id.*

100. Heckler v. Chaney, 470 U.S. 821, 831, 15 ELR 20335 (1985) ("This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.")

101. Heckler, 470 U.S. at 831.

102. Memorandum of Understanding—Investigatory Authority and Procedures of Treasury and Justice Bureaus and the Postal Service Under 18 U.S.C. §§1956 and 1957, as reprinted in the U.S. DEPARTMENT OF JUSTICE CRIMINAL RESOURCE MANUAL 2186 (2018) ("Treasury bureaus" is defined as "the Internal Revenue Service (IRS), the United States Customs Service, the Bureau of Alcohol, Tobacco, and Firearms (ATF), and the United States Secret Service.")

103. *Id.* Sec. III, A. Treasury Bureaus, 2. United States Customs Service.

104. 19 U.S.C. §4402.

105. *Id.* §§4402, 606(a).

106. U.S. DEPARTMENT OF HOMELAND SECURITY, ILLEGAL TRAFFICKING OF WILDLIFE AND OTHER NATURAL RESOURCES: FISCAL YEAR 2017 REPORT TO CONGRESS 6 (2017).

107. H.R. 1625, Consolidated Appropriations Act, 2018, Joint Explanatory Statement, Division F, tit. I, p. 3.

108. DEPARTMENT OF THE TREASURY, NATIONAL MONEY LAUNDERING RISK ASSESSMENT (2015).

109. H.R. 1625, Consolidated Appropriations Act, 2018, Joint Explanatory Statement, Division E, tit. I, p. 2.

III. Conclusion

Global wildlife populations have fallen 60% in the past 40 years.¹¹⁰ Species overexploitation due to unsustainable hunting, poaching, or harvesting for subsistence or for trade is one of the primary threats causing this dramatic decline.¹¹¹ Many of these overexploited species are found on the wildlife black market, feeding a seemingly insatiable demand that transforms criminals like Mr. Bach into multimillionaires.

The global community has signaled that it no longer wishes to tolerate the chain of illegality that leads to such environmental and social destruction.¹¹² Consequently, countries are looking to fill the legal, political, and resource gaps that have traditionally caused illegal wildlife trafficking to be defined as a crime of high profit and low risk. One important part of a multi-tiered strategy is to disrupt the opaque financial flows that fuel the illegal trade by using existing money laundering statutes in wildlife crime prosecutions.

The United States can lead the way in the implementation of laws that integrate wildlife trafficking and money laundering. The United States has a strong foundation in criminalization of wildlife trafficking, and explicitly employs wildlife trafficking as a predicate offense to money laundering. Still, the system could be strengthened in two significant ways: (1) the legal framework should leverage the Lacey Act as a predicate offense to money laundering, not limiting the predicate offense to the trafficking of specific species but instead leveraging the illegality of the trafficking itself; and (2) those U.S. government agencies with specific expertise in financial crime investigations should prioritize international wildlife trafficking prosecutions and integrate their financial crime investigations in international wildlife trafficking prosecutions. There is no single solution for ending illegal wildlife trafficking, but strengthening the existing framework to more effectively leverage money laundering investigations and prosecutions within wildlife trafficking cases would be a step in the right direction.

110. MONIQUE GROOTEN & ROSAMUNDE ALMOND, WORLD WILDLIFE FUND, *LIVING PLANET REPORT—2018: AIMING HIGHER 4* (2018).

111. *Id.* at 74.

112. *Tackling Illicit Trafficking in Wildlife*, G.A. Res. 69/314, U.N. Doc. A/RES/69/314 (2015).