

Special Report to the U.S. Congress:
The Urgent Need for H.R. 5697



Why the Wildlife Conservation and Anti-Trafficking Act of 2018 is a landmark piece of legislation that will combat wildlife crime around the globe

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INTRODUCTION

On May 8th, 2018, Representative Madeleine Bordallo (D-GU) and Representative Donald Young (R-AK) [introduced the Wildlife Conservation and Anti-Trafficking Act of 2018 \(H.R. 5697\)](#) in the U.S. House of Representatives.

This landmark, bipartisan legislation will be a game-changer in the enforcement of wildlife trafficking in the U.S. and globally.

H.R. 5697 builds upon the [END Wildlife Trafficking Act of 2016](#), signed by President Obama, and fulfills President Trump's [Executive Order 13773](#) which calls for the greater protection of wildlife.

This report focuses on the importance of the whistleblower provisions of H.R. 5697. However, the enhanced law enforcement tools and the ability to use collected proceeds from whistleblower enforcement cases to support wildlife conservation are crucial as well.

This bill comes at a time when species' populations around the globe are being decimated due to wildlife trafficking. It's time for H.R. 5697 to be part of the toolbox available to halt these crimes and fight against the extinction crisis.

PART I

Three Key Facts About H.R. 5697

1 It will strengthen wildlife crime detection.



H.R. 5697 mandates whistleblower rewards for citizens and NGOs, in the U.S. and internationally, who report information on wildlife crime after a successful prosecution. Monetary rewards will incentivize whistleblowers, those with insider information, to step forward with evidence of wildlife crime.

2 It will enhance wildlife crime law enforcement mechanisms.



H.R. 5697 expands transnational law enforcement to stop wildlife trafficking at the source. It also mandates that wildlife trafficking becomes an offense under the federal racketeering and organized crime statutes, the RICO and Travel Acts. This is the first bill to recognize wildlife trafficking as a form of organized crime, finally giving enforcement the legal teeth to combat this type of crime.

3 It will generate and increase wildlife conservation funding.



H.R. 5697 mandates that monies recovered from successful prosecution under the RICO and Travel Acts as well as other wildlife protection laws must be put directly into conservation efforts. That is, the funding for conservation will come directly from the criminals, with no cost to the taxpayer.

PART II

The Key Role of Whistleblowers in Combating Wildlife Trafficking

Whistleblowers are a critical source for detecting wildlife crime.

Poachers, park rangers, customs officials, public officials, ship crews, and bankers, whether participants or bystanders, have an intimate understanding and insight into the wildlife crime supply chain.¹ They are the best source we have for detecting wildlife crime. Incentives should and must be put forth to encourage them to step forward with information.



That [the whistleblower] provided substantial information that led to the investigation and conviction of all defendants in this matter is beyond dispute. [...] The government was otherwise unaware of this crime and unlikely to learn about it because the very essence of the offense was obstructive and involved concealment and use of false records to avoid detection.²

— U.S. Attorney Rod J. Rosenstein, et al.
U.S. v. Efploia Shipping Co., S.A. and



In the words of FWS law enforcement agents:

“Without Mr. [redacted]’s candor in coming forward with this information, his willingness to aid Service agents by contacting former employees, and to provide testimony in federal court, this case would have never reached fruition.”

— [Lochridge Ranch, FWS Second FOIA, P. 210](#)

“Without the assistance of [redacted] it would have been unlikely we would have received the information about the illegal activity.”

— [Operation Plantando Las Semillas, FWS First FOIA, P. 0012](#)

“The case would not have been possible had [redacted] not first made law enforcement aware of the crime and second, worked with law enforcement.”

— [Sheldrake Game Ranch Leopards, FWS First FOIA, P. 0053](#)

[The whistleblower] “voluntarily came forward and provided critical eye witness information regarding a conversation he overheard about the illegal hunting activities...”

— [\[Case Title Redacted\], FWS Second FOIA, P. 318](#)

Whistleblowers are instrumental in providing crucial information to law enforcement agents.

In other whistleblower programs, the quality of the information produced by whistleblowers has been identified and praised. One such example is the U.S. Securities and Exchange Commission (SEC) whistleblower program.



The whistleblower program . . . 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 an alleged fraud.³

– Chair of the SEC, Mary Jo White



In the words of FWS law enforcement agents:

“Without the individual’s cooperation, knowledge, and commitment the investigation would not have been successful. [...] The investigation and prosecution of the main defendant in this case, was a direct result of [redacted]’s assistance and expertise.”

– [Black and Whites, FWS Second FOIA, P. 377](#)

“[The whistleblower] provided information for prosecution; including who [redacted] sold the angelfish to and the amount he earned for the sales of the fish. [...] In receiving this information, [redacted] was able to approximate the total number of fish that were illegally imported and was able to identify and corroborate testimony from individuals who has purchased the fish...”

– [Operation Angelfish, FWS Second FOIA, P. 334](#)

“Without the information provided by the informant, the defendant in the investigation would not have been apprehended for violation of the Endangered Species Act and Lacey Act.”

– [\[Case Title Redacted\], FWS Second FOIA, P. 431](#)

Whistleblowers save the government time and money.

Whistleblowers alert the government to fraud that would otherwise go undetected. As such, incentivizing whistleblowers is a powerful tool to recover tax dollars.

Other laws with whistleblower reward provisions, such as the False Claims Act (FCA), have led to the recovery of billions of dollars in federal funds. In 2017 alone, whistleblowers helped recover \$3.4 billion under the FCA.⁴



The False Claims Act and its [whistleblower] provisions remains the government's most effective civil tool in protecting vital government programs from fraud . . . The dollars involved are staggering.⁵

— Former Associate Attorney General Bill Baer



In the words of FWS law enforcement agents:

“Mr. [redacted]’s involvement saved the covert team thousands of dollars... [and] without the cooperation of Mr. [redacted] it would have taken in excess of five years...”

— [Operation Hanging Rock, FWS Second FOIA, P. 418](#)

[The whistleblower] “provided crucial information resulting in saving the U.S. Fish and Wildlife service thousands of dollars and investigator hours...”

— [Asian Elephant Tusk and QT Aquarium, FWS First FOIA, P. 20](#)

“[W]ithout the assistance of [the whistleblower the costs to the FWS] would be in excess of \$90,000...”

— [Operation Board, FWS Second FOIA, P. 087](#)

“Without [the whistleblower’s] assistance, the Service would have... requir[ed] additional agents, investigative hours and equipment at significant cost.”

— [Iowa Army Ammo Plant, FWS Second FOIA, P. 160](#)

Whistleblowers take enormous risk and contend with adverse consequences for assisting the government.

Whistleblowers are frequently victims of retaliation from their employers or other parties when they decide to come forward with information.



This stresses the importance of a monetary reward for whistleblowers. They might be risking their career or even personal security when they decide to blow the whistle.

Not only is honest behavior not rewarded by the market, but it is penalized . . . Given these costs, however, the surprising part is not that most [...] do not talk; it is that some talk at all.⁶

– Dyck, et al., Booth School of Business



In the words of FWS law enforcement agents:

“[The whistleblower] began receiving threats, harassment and property damage. [...] One of the defendants blamed him for the entire investigation and indicated that the whistleblower ‘would pay’ [...]”

– [Operation Board, FWS Second FOIA, P. 88](#)

“[M]ade numerous threats against federal witnesses. [...] U.S. District Judge Susan Weber Wright found the threats by [redacted] against the witness so credible that she detained the defendant pending formal sentencing...”

– [U.S. v. Craft \[Redacted\], FWS Second FOIA, P. 220](#)

“In January 2005, the informant was physically assaulted as he entered his residence. The informant suffered minor lacerations and was bruised all over his head and body...”

– [Operation Angelfish, FWS Second FOIA, P. 334](#)

[The whistleblower] “exposed himself to possible severe repercussions by the main defendant in this investigation.”

– [\[Case Title Redacted\], FWS Second FOIA, P. 318](#)

[The whistleblower] “voluntarily came forward and provided critical information regarding [redacted] smuggling activity at the expense of losing her job and financial hardship.”

– [Oak Creek Elk Ranch, FWS Second FOIA, P. 324](#)

The quality of whistleblower information is key to successful implementation of law.

Whistleblowers provide critical information for successful investigations and prosecutions. Their assistance has been recognized in uncovering other types of criminal activity, such as APPS prosecutions.

It is important that monetary rewards are utilized to (i) incentivize individuals to come forward with information and (ii) to compensate the individual for their assistance and the quality of information.



An award to [the] witness . . . encourage[s] those with information about unlawful conduct to come forward and disclose that information to authorities—information otherwise difficult, if not virtually impossible, to obtain.⁷

— U.S. Attorney Brian Albritton
U.S. v. STX Pan Ocean Co., Ltd.



In the words of FWS law enforcement agents:

“Without the assistance of [redacted] it would have been unlikely we would have received the information about the illegal activity and never been able to identify the subjects involved. [...] In the unlikely event that we were able to identify the subjects, it easily could have taken additional years...”

— [Operation Plantando Las Semillas, FWS First FOIA, P. 0012](#)

The whistleblower “[w]illingly met with investigators and provided them information critical to the investigation. [...] If [redacted] had not come forward, the investigation would not have resulted in the successful prosecution of the three defendants because critical evidence had been destroyed or covered up.”

— [\[Case Title Redacted\], FWS Second FOIA, P. 263](#)

“Information received by [redacted] was essential in this investigation as well [sic] the prosecution of the subjects involved. In addition to [redacted] providing essential information throughout the entire investigation, he was additionally helpful in providing crucial testimony in the trial...”

— [Operation Stone Duck, FWS Second FOIA, P. 098](#)

PART III

The U.S. Government Accountability Office Has Confirmed Federal Agencies Can Improve Their Whistleblower Programs to Combat Wildlife Trafficking

The GAO released a report in April 2018, "Combating Wildlife Trafficking: Opportunities Exist to Improve the Use of Financial Rewards," provides an audit of FWS and NOAA's wildlife whistleblower programs. Below is a summary of the report's findings and recommendations. Both FWS and NOAA have concurred with GAO's recommendations in letters of response. The findings from the report demonstrate the urgent need for legislative action to fully activate wildlife crime whistleblowers.

The Reports findings include:

FWS **lacks a structured policy** in giving out rewards to whistleblowers.

FWS and NOAA **lack communication with the public** regarding obtaining rewards for reporting wildlife crime.

FWS and NOAA **have not reviewed the effectiveness** of utilizing financial rewards to incentivize those with information to step forward.

From 2007-2017, the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration have only paid **27 awards**, totaling **\$205,000**.

The Report's recommendations include:

FWS and NOAA should **standardize their system** to track the payment of rewards to wildlife whistleblowers.

FWS should **develop a set of factors** for agents to consider to propose whistleblower reward amounts.

FWS and NOAA should **develop plans to better communicate** opportunities for whistleblower rewards to the public.

FWS and NOAA should **review the effectiveness** of using rewards for those who report information on wildlife crime.

CONCLUSION

FWS law enforcement agency testimony and the GAO report both confirm 1) the importance role whistleblowers play in combating wildlife crime and 2) that whistleblower programs in federal agencies have room for improvement.

H.R. 5697 addresses these concerns, and it would bring about a sea change in our enforcement of wildlife trafficking by tapping into the many powerful tools for detecting wildlife crimes such as trafficking violations.

In addition to the enhanced ability to detect these crimes, H.R. 5697 gives law enforcement the legal tools to hold traffickers accountable. It also provides, at no expense whatsoever to taxpayers, resources to protect critically endangered species (such as elephants, rhinos, tigers, and marine life).

H.R. 5697 is smart legislation for a complex problem. It should be passed by Congress, signed by President Trump, and enacted with utmost haste.

Endnotes

- 1 Kohn, Kohn & Colapinto, "Rule 12: Wildlife Trafficking," FWS responses to NWC FOIA requests on the Lacey Act Reward Fund, <https://www.kkc.com/handbook/wildlife-trafficking>.
- 2 United States of America v. Efploia Shipping Co., S.A. and U.S.A. v. Aquarose Shipping A/S, United States' Motion in Support of Whistleblower Award (2012), <https://www.whistleblowers.org/storage/docs2/APPS/EfploiaShippingCo/motion%20for%20reward.pdf>.
- 3 U.S. Securities and Exchange Commission, Remarks at the Securities Enforcement Forum, by Chair Mary Jo White (2013), <https://www.sec.gov/news/speech/spch100913mjw#.VQgsm9LBvLs>.
- 4 U.S. Department of Justice, Department Recovers Over \$3.7 Billion from False Claims Act Cases in Fiscal Year 2017 (2017), <https://www.justice.gov/opa/pr/justice-department-recovers-over-37-billion-false-claims-act-cases-fiscal-year-2017>.
- 5 U.S. Department of Justice, Acting Associate Attorney General Bill Baer Delivers Remarks on Individual Accountability at American Bar Association's 11th National Institute on Civil False Claims Act and Qui Tam Enforcement (2016), <https://www.justice.gov/opa/speech/acting-associate-attorney-general-bill-baer-delivers-remarks-individual-accountability>.
- 6 Alexander Dyck, et al., "Who Blows the Whistle On Corporate Fraud," The Initiative on Global Markets Working Paper No. 3, Chicago Booth School (September 2009), <https://www.whistleblowers.org/storage/documents/univofchicagowhoblowswhistle.pdf>; also published as: Alexander Dyck, Adair Morse, and Luigi Zingales. "Who blows the whistle on corporate fraud?" The Journal of Finance 65, no. 6 (2010): 2213-2253. <https://doi.org/10.1111/j.1540-6261.2010.01614.x>.
- 7 United States of America v. Stx Pan Ocean Co., Ltd., United States' Motion in Support of Whistleblower Award (2009), https://www.kkc.com/assets/site_18/files/apps/stx_2009_motion.pdf.