



In Support: Wildlife Whistleblower Legislation

How the Wildlife Conservation and Anti-Trafficking Act Will Incentivize Wildlife Whistleblowers & Can Halt Wildlife Traffickers

INTRODUCTION

The Importance of Whistleblower Laws and Rewards for Combating Crime



On January 30, 2019, Congressmen John Garamendi (D-CA) and Don Young (R-CA) reintroduced the [Wildlife Conservation & Anti-Trafficking Act](#) to the 116th Congress. The bill was originally introduced on May 8, 2018 in a similarly-bipartisan effort by Reps. Young and Madeleine Bordallo (D-GU). The bipartisan bill would “support wildlife conservation, improve anti-trafficking enforcement, [and] provide dedicated funding for wildlife conservation at no expense to the taxpayer.” It includes critical whistleblower provisions necessary to incentivize informants to risk their careers (or their lives) to report trafficking.

As part of its advocacy for the bill, the National Whistleblower Legal Defense and Education Fund staff wrote a series of blogs posts explaining why this bill is so crucial for preserving wildlife and such a powerful tool for combating international criminal syndicates.

PART 1

Taking a look at the catastrophic problem that this bill is seeking to fix: the extinction of many of the globe's most treasured living creatures.



The Ugly Numbers

The world is currently confronting its [sixth mass extinction](#). Plant and animal species are going extinct by the thousands each year. Humans are directly responsible for the extinctions and near-extinctions of a number of treasured species, including elephants, rhinoceroses, and tigers due to poaching and habitat degradation. Humans are not killing these animals for subsistence, but because, for example, wildlife products make [nice trinkets](#) or are wrongly thought to [cure hangovers](#).

Earlier this year, the Ol Pejeta Conservancy announced [the death](#) of a Northern White Rhino named Sudan— the last male of his kind. His sub-

species is now doomed to extinction. Shortly after Sudan's death, the conservancy posted on its [Facebook page](#) that the “onus is on us to ensure that rhino populations thrive across the planet”, demonstrating the importance of saving rhino populations in light of their rapid population declines. At the forefront of factors contributing to rhino deaths is poaching. In 2007, only 13 rhinos in South Africa died by means of poaching, but by 2014, this number had jumped to 1215 rhino deaths, a 9000% increase in 7 years.

Elephants, [renowned](#) for their intelligence and empathy, are being killed by poachers looking to harvest their ivory. In a three-year period, poachers have killed [100,000 elephants](#), contributing to central Africa's 64 percent elephant decline in the past decade.

Big cat species have been absolutely decimated as well. In China and Vietnam, tiger penises are falsely thought to be useful as medicine, while their claws are considered status symbols. Poachers across Asia are hunting tigers. The [wild tiger population](#) is down to about 4,000. Leopards, on the other hand, are poached for their spotted fur and in India alone, an average of four leopards have been poached each week, equating to approximately 2,000 [leopards](#) in the last decade.

The drastic decrease in the leopard population has not made life easier for some of its prey. Humans have filled the void, and then some. The world's tallest mammal, the giraffe, is killed for just one small body part, [its tail](#). Often offered as a dowry to a bride's father before marriage, or used as fly whisks and good-luck bracelets, giraffe tails are considered to be status symbols in some communities. However, such traditions are enabling poachers to wipe out giraffe populations, contributing to the species' 40% population [decrease](#) in 15 years.

Gorillas are homo sapiens' fellow primate and we share about 98% of the same DNA. But this has not protected them from the poaching pandemic. Adult gorillas are [poached](#) for their meat and other body parts, which are subsequently turned into medicine and charms. Although the extent of poaching's damage to gorilla populations is difficult to measure, an undercover investigation in the Kouilou region of Congo [estimates](#) that 4% of the Kouilou gorilla population is being killed every month. This will halve the Kouilou gorilla population each year.

Worldwide [23,000 species](#) are threatened with extinction, according to the International Union for Conservation of Nature. More than 40% of amphibians and 25% of mammals are in danger of going extinct.

Where We Go From Here

No one solution can stop the mass extinction crisis. But without effective enforcement of the wildlife trafficking laws, numerous species are doomed to extinction. There are three essential pillars for combatting wildlife trafficking: (1) utilizing and incentivizing wildlife whistleblowers, (2) granting law enforcement and prosecutors additional tools to go after the transnational criminal syndicates responsible for wildlife trafficking, and (3) providing additional funds to conservation funds that safeguard these threatened species.

WCATA proposes all of the above. In the posts to follow, we will take a more in-depth look at the bill and explain why it could be a true game-changer for many species on the verge of extinction. The most up-to-date information about the bill can be found at <https://www.whistleblowers.org/campaigns/empower-global-wildlife-whistleblowers/>.

Part 2

The GAO Calls for Improved Wildlife Whistleblower Reward Programs



The U.S. Government Accountability Office (GAO) has issued a report titled: [“Combating Wildlife Trafficking: Opportunities Exist to Improve the Use of Financial Rewards.”](#) It further demonstrates the urgent need for legislation like the Wildlife Conservation and Anti-Trafficking Act which contains provisions for the payment of financial rewards to incentivize wildlife whistleblowers.

The report was prepared at the request of Sen. Ron Wyden (D-OR), Ranking Member of the Committee on Finance. It details the findings of a GAO audit of the U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration (NOAA) regarding their

use of rewards for wildlife crime whistleblowers, ranging from the years 2007-2017.

The report has four main findings. First, it finds that FWS and NOAA have authorization to pay rewards to wildlife whistleblowers under many laws, but they have only paid 27 rewards in a 10-year period, totaling \$205,000. (Note that the National Whistleblower Center, through FOIA requests, was able to see documents pertaining to 66 cases, with over 40 of those during the same time span as covered by the GAO report, suggesting pervasive record-keeping problems.)

Second, it finds that FWS lacks a structured policy when determining the amount of reward that should be paid to whistleblowers. For example, the report states: “one agent submitted a request to his supervisor to pay a \$10,000 reward to a source who provided information on a major wildlife trafficker. But, for reasons unknown to the agent, his supervisor reduced the amount to \$1,000.”

Third, it finds that FWS and NOAA lack communication with the public regarding the possibility of financial rewards for reporting wildlife crime. Out of all the FWS and NOAA offices in the U.S., only the FWS Alaska regional office advertises information on its website regarding the potential for financial rewards if one reports information on wildlife crime. It was also found that these agencies do not communicate to international audiences, despite the transnational nature of wildlife crime.

Fourth, it finds that the agencies have not reviewed the effectiveness of using financial rewards to incentivize the reporting of wildlife crime.

The GAO report provides a set of recommendations to ameliorate these structural and programmatic deficiencies, and both agencies have concurred with the GAO’s guidance in letters of response. NOAA even wrote that it “acknowledges the effectiveness and value in issuing financial rewards to combat wildlife trafficking.”

However, there is no legal obligation ensuring that the agencies will follow through with GAO’s recommendations.

The Wildlife Conservation and Anti-Trafficking Act provides that legal push. It is a legislative fix that builds on GAO’s findings by obligating FWS, NOAA, and many other federal agencies to augment and improve their use of financial rewards to pay wildlife trafficking whistleblowers.

The bill, if passed, will mandate the Department of Interior, the agency that oversees FWS, and the Department of Commerce, the agency that oversees NOAA, to create plans of action to fully implement wildlife whistleblower reward programs. It also mandates the establishment of Whistleblower Offices in several other agencies, and the creation of confidential and anonymous channels to report wildlife crimes. It would guarantee that at least 15%, and as much as 50% of funds recovered from successful prosecution go to the whistleblower.

The bill would bring about a sea change in our enforcement of wildlife trafficking by tapping into a powerful tool that federal agencies have yet to fully activate—whistleblowers. The bill is smart legislation for a complex problem. It is time we mandate that our federal agencies get smart about combating wildlife crime.

Part 3

Whistleblowers are the Missing Piece in Combating Wildlife Trafficking



Whistleblowers have reported on [securities violations](#), alerted the IRS to [tax fraud](#), uncovered [foreign corruption](#), provided information about government [contract fraud](#), and blown the lid off suspect techniques at government [crime labs](#).

As insiders, whistleblowers are best-positioned to report on illegal activity. Strong whistleblower laws have helped curb white collar fraud for decades. Now, it is time to fully activate the power of whistleblowers to diminish and ultimately demolish wildlife trafficking syndicates.

In the first part of our series on the Wildlife Conservation and Anti-Trafficking Act, we chron-

icled the devastation that wildlife trafficking has wrought upon species around the globe. The second part explained why the [Government Accountability Office's report](#) on the Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA) shows the need for an enhanced wildlife whistleblower law.

This portion explains the new enforcement mechanisms that the bill will implement, including augmented wildlife whistleblower provisions. Law enforcement officials and prosecutors need stronger legal tools to eradicate wildlife trafficking. Fortunately, the bill comes stocked with an arsenal of effective enforcement provisions.

The Wildlife Conservation and Anti-Trafficking Act expands the scope of anti-trafficking enforcement in a number of important ways. The law authorizes law enforcement officials and FWS personnel to be stationed abroad in the areas hardest hit by wildlife trafficking. This is a commonsense reform: FWS needs to have more people where wildlife trafficking originates to tackle the trade. The law further empowers federal law enforcement officials to combat the global wildlife trafficking syndicates, ensuring agents on-the-ground that wildlife trafficking is a key priority. The bill will also lead to better policing of our oceans: Section 11 of the bill makes illegal, unreported, and unregulated fishing (IUU fishing) a predicate offense under 18 U.S.C. § 1956(c)(7), a federal money laundering statute.

The whistleblower provisions have the potential to become a game-changer in wildlife trafficking enforcement. Whistleblowing has proven the number one source of detection of illegal behavior in a plethora of contexts. A [2008 study](#) by the [Association of Certified Fraud Examiners](#) found that whistleblower tips were responsible for uncovering 54% of fraud in public companies; external auditors unearthed only 4.1% of such scandals. The False Claims Act (FCA) allows the federal government to bring suits against government contractors who have acted fraudulently. In 2017, 92% of the money recovered under the FCA came from whistleblower tips. [Chad Readler](#), the Acting Assistant Attorney General of the Justice Department's [Civil Division](#), [explained](#) "because those who defraud the government often hide their misconduct from public view, whistleblowers are often essential to uncovering the truth."

The reason for these stunning figures is simple: as insiders, whistleblowers are in a unique position to know about misdeeds. They have special insight into the bad actors, and in-depth knowledge about the methods these lawbreakers are using to commit fraud, embezzle funds, and avoid detection.

The same logic applies to wildlife trafficking. It is hard to gather information about secret syndicates

that operate covertly on in countries that have shaky rule-of-law, less investigative know-how, and fewer prosecutorial resources. Individuals on the ground will have deeper knowledge of the trade: where and when animals are poached, how park rangers and customs officials can be paid, and what social media sites are used to grease the wheels of illegal commerce.

The Wildlife Conservation and Anti-Trafficking Act enacts several critical whistleblower provisions. The bill provides a standardized process for FWS to review whistleblower cases, calls for the establishment of whistleblower offices within relevant agencies, and requires these departments to produce an annual report on their respective whistleblower programs. Critically, the bill also ensures that whistleblowers will receive between 15% and 50% of funds recovered by the United States. For individuals coming from poorer countries where wildlife trafficking is especially problematic, these sums could be enormous. This will give whistleblowers a powerful incentive to come forward.

The education provisions of the bill are more important. Whistleblowers [come forward](#) primarily because they want to stop wrongdoing. David Colapinto, General Counsel of the National Whistleblower Center, has [found](#) that "the number one thing a whistleblower wants is the problem fixed." By showing individuals in Africa, Asia, or other regions that whistleblower programs exist and enforcement actions can fix the problem of wildlife trafficking, the bill will show would-be-whistleblowers that the once fruitless exercise of reporting on wildlife trafficking will now achieve results. And the financial incentives surely won't hurt.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora ([CITES](#)) and the U.S. [Endangered Species Act](#), both passed in 1973, established strong international and American laws against the killing of endangered species. Yet despite these provisions, animals like the elephant, rhino, and tiger are on the verge of extinction. The problem is not that the laws are bad, but that enforcement of them is weak.

Part 4

Utilizing Best Practices to Combat Wildlife Crime: Learning from Successes



Whistleblowers are a key component of fighting fraud and corruption. From securities to regulations to wildlife trafficking, whistleblowers help report, investigate, and prosecute those who fail to follow the rules. The National Whistleblower Center has more than 30 years of history advocating for whistleblowers.

The National Whistleblower Center is proud to offer [this report](#) to highlight some examples of best practices for whistleblower law implementation as seen in this landmark legislation, as well as policies followed by agencies such as the Securities and Exchange Commission (SEC), or advocated for by the Government Accountability Office (GAO). The issues explored fall under three categories: effective public

education and communication campaigns; key components to proper implementation, including clear and concrete policies; and functions for necessary oversight or auditing.

The report, which can be accessed [online](#), highlights the need for the Wildlife Conservation and Anti-Trafficking Act. Its passage will be a step in the right direction for whistleblower protections, and an absolutely necessary one in order to halt the mass extinction crisis.

Part 5

The Power of RICO: Racketeer Influenced and Corrupt Organizations Act.



What do [Atlanta teachers](#), [crooked investors](#), [mafiosos](#), and [Mexican cartel members](#) all have in common? The answer: all were indicted under the [Racketeering Influenced and Corrupt Organizations Act](#) (RICO).

One of the most powerful federal criminal statutes, RICO allows prosecutors to go after large criminal organizations in one fell swoop. If the Wildlife Conservation and Anti-Trafficking Act is passed, wildlife trafficking syndicates may one day be added to the list above.

Originally passed in 1970, RICO was legislated with the intention of making it easier for prosecutors and law enforcement officials to go after organized criminal networks. RICO allows for the indictment of all members of a criminal organization, if individuals acting on behalf of the organization commits two racketeering crimes (known as predicate offenses) over a ten-year period. This makes RICO a powerful weapon for going after illegal syndicates that traffic in humans, weapons, and narcotics.

Applied to the wildlife context, RICO could also have a significant impact. It would allow law enforcement to go after high-level kingpins, corrupt officials, poachers, and other individuals that make up wildlife trafficking enterprises. While it is true that some of these groups are fairly [dispersed and disorganized](#), RICO was specifically written to go after organizations that are more loosely connected than a legal business enterprise. The Supreme Court [has explained](#) that for an association-in-fact enterprise to exist, it must have (1) a purpose, (2) the existence of relationships among those associated with the enterprise, and (3) the longevity sufficient to permit these associates to pursue the enterprises' purpose. Moreover, proof of a pattern of racketeering activity can be enough evidence for a jury to infer the existence of an association-in-fact enterprise. As the [Court stated](#) in another case, RICO "no more excludes criminal enterprises than it does legitimate ones."

Even if the wildlife trafficking syndicates are loosely formed, the network of individuals that conspire

to traffic goods have a purpose, commercial and interpersonal relations, and should have sufficient longevity to sell the wildlife products. As such, they are almost certainly an enterprise under RICO.

RICO is not confined to criminal law. It also has civil provisions that allow plaintiffs who suffer an injury in the United States to bring a case against RICO violators. In other words, businesses, individuals, and potentially nonprofits (along with prosecutors) could drag trafficking syndicates into American courts. While these possible plaintiffs would need to show they have standing (essentially whether a plaintiff has the ability to bring a case), civil RICO could be another tool to curb wildlife trafficking.

The application of RICO to wildlife trafficking would be a game-changer. Combined with increased enforcement mechanisms and [enhanced whistleblower provisions](#), RICO would lead to more traffickers getting caught and deter others from entering the trade. For the endangered species of the world, this is great news.



Part 6

Reinforcing Wildlife Conservation Through Whistleblower Laws Proven to Work



A great strength of the Wildlife Conservation and Anti-Trafficking Act is that it integrates innovative mechanisms for combating the illicit wildlife trade with preexisting wildlife protection methods. This post will explain how front-line enforcement innovations can bolster traditional conservation strategies.

Some of the bill's most critical provisions enhance already-established conservation efforts, such as with the U.S. Fish and Wildlife Service's International Wildlife Conservation Program. Merging these various branches will create a stronger and more effective program to combat trafficking and improve wildlife conservation efforts via inter-agency cooperation.

It also ensures that this new program will be comprehensive in scope and includes important conservation strategies. The bill would provide for the augmentation of wildlife conservation through capacity-building for regional, grassroots organizations. The bill also focuses conservation efforts on the most-at-risk species. Namely, the bill promotes in-country conservation efforts both for Endangered Species Act (ESA) listed species and at-risk wildlife globally.

The conservation efforts will be further strengthened by the new whistleblower and RICO provisions. Under Section 13 of the bill, all the money obtained by the government from the RICO and money laundering provisions of the statute “shall be used for the benefit of the species impacted by the applicable violation.” Sanctuaries for elephants, rhinos, tigers, great apes, marine turtles, various birds, and other critically endangered animals would all benefit from the provision.

And these benefits for conservation programs could be considerable. Individual informants will come forward in greater numbers because of the larger whistleblower rewards and the improved efficacy of whistleblower programs, while the enhanced RICO and money laundering provisions will make it easier for prosecutors to go after leading trafficking syndicates.

For all of these reasons, the bill is supported by the world’s leading conservation organizations including World Wildlife Fund, African Wildlife Foundation, Humane Society Legislative Fund, International Fund for Animal Welfare, Oceana, Sea Turtle Conservancy, Animal Welfare Institute, and Wildlife Conservation Society, among many others.

Conservation efforts are integral to protecting the world’s most endangered species. By ensuring that criminal penalties are used for conservation, the Wildlife Conservation and Anti-Trafficking Act will redistribute funds from wildlife poachers to wildlife protectors. This endeavor has received support from Republicans and Democrats alike. Even in today’s politically polarized climate, smart legislation to halt wildlife trafficking should be a cause that we can all get behind.



Feature: Crossroads Blog: Open Letter

A blog of and by members of the International Union for Conservation of Nature (IUCN)

Empowering whistleblowers is the key to combating wildlife crime

By Scott Hajost

Whistleblowers have been effective at combating financial and corporate crime, but are sorely lacking in the sphere of wildlife crime. If empowered to combat it, whistleblowers could be fundamental to dismantling the wildlife crime economy, writes Scott Hajost, Managing Director, Global Wildlife Whistleblower Program, National Whistleblower Center.

We are in the midst of a global extinction crisis. Wildlife crime, a multibillion dollar industry, is an epidemic that threatens terrestrial and marine life.

Many methods are being deployed on the national, subnational and international levels to combat wildlife trafficking, including anti-poaching campaigns, demand reduction, and public-private partnerships. However, a critical part of the current enforcement regime has yet to be activated – whistleblowers.

At its core, wildlife trafficking is a business. Whistleblowers have been incredibly effective in cracking down on financial and corporate crimes. It is time we apply this methodology to the wildlife sphere.

If we make reporting crime more lucrative than participating in it, there will be a sea change in how the wildlife crime industry operates.

Certain U.S. whistleblower laws provide rewards for information that lead to successful prosecution of criminals. In short – they provide a monetary incentive to report illicit activity. By empowering whis-

tleblowers, we can change the calculus of participating in wildlife crime. If we make reporting crime more lucrative than participating in it, there will be a sea change in how the wildlife crime industry operates.

How it works: the application of US legal tools

There are US whistleblower reward laws with international jurisdiction that can be used to combat wildlife crime. Two of these laws are the False Claims Act (FCA) and the Foreign Corrupt Practices Act (FCPA).

The False Claims Act

The FCA is the U.S.' [number one litigation tool](#) against those who defraud the government. It penalizes customs fraud, among other things, and has been incredibly successful in cracking down on crime in the non-wildlife context. For example, in late 2017, federal prosecutors in the Southern District of New York [settled a case](#) against Notations, a garment wholesaler. The case was originally brought by a whistleblower. Notations admitted to ignoring repeated warning signs that its Chinese importer was lying about the value of its imported goods to avoid paying customs fees. As a result, Notations is being penalized US\$1 million in fines.

While the U.S. Department of Justice did not release the portion of the reward that went to the whistleblower, under the FCA a whistleblower plaintiff is entitled to somewhere between [15% and 30% of the total reward](#).

The principles of this case can and should be applied to the [wildlife crime context](#). Illicit wildlife products are frequently smuggled through ports – by air, land, and sea – and are able to pass through customs based on falsified documents. Evidence of these falsified documents would provide a strong basis for an FCA case. Replace garments with elephant ivory, pangolin scales, or illegal, unreported and unregulated (IUU) fishing products. The method of litigating the case is the same, and the whistleblower reward provision still applies.

In 2017 alone, of the US\$3.7 billion recovered by the US government under the FCA, [US\\$ 3.4 billion was recovered due to whistleblower disclosures](#). Of the recovered funds, whistleblowers received US\$392 million in rewards.

There are multiple reasons as to why the FCA is such a powerful tool for halting wildlife crime. Not only is there a clearly-delineated evidentiary threshold for litigation, but also non-US citizens are eligible for whistleblower rewards. Even NGOs can blow the whistle and be eligible to receive compensation. (In 2017, the Natural Resources Defense Council, a fellow IUCN member, received a portion of a [\\$920,000 award under the FCA](#).)

Foreign Corrupt Practices Act

The FCPA can also be used to litigate wildlife crime cases that occur outside the US.

It prohibits publicly-traded corporations, both US and international, from paying bribes to foreign officials. The FCPA also mandates proper financial record keeping. Jurisdiction is established when foreign companies permit US investors to buy their stocks through the use of American Depositary Receipts (ADRs).

In the wildlife crime context, if an individual has evidence of inaccurate financial record keeping that covers up wildlife trafficking, or papers that show the wiring of funds to pay for illegal wildlife prod-

ucts, there may be sufficient evidence to litigate an FCPA case so long as the company involved is under its jurisdiction. This jurisdiction includes [an extensive list](#) of foreign companies.

Money is an instrumental element to oiling the cogs of the wildlife trade, and illicit transactions leave a paper trail.

From 2011 to 2018, 3,305 whistleblowers from 119 countries filed claims under the FCPA whistleblower reward provision. Over US\$30 million has been paid to non-US citizens who reported bribes paid overseas. FCPA prosecutions have included cases in which bribes were paid at [ports in Kenya](#) and to [government officials in Argentina](#). Whistleblowers are eligible to receive between 10% and 30% of the total amount recovered after a successful prosecution.

Again, this could be a game-changer in the area of wildlife crime. Money is an instrumental element to oiling the cogs of the wildlife trade, and illicit transactions leave a paper trail. If someone has evidence of bribery or other financial transactions passed through a U.S. or U.S.-linked corporation that facilitated wildlife trafficking, there may be a basis for an FCPA case.

The FCA and FCPA are just two examples of U.S. whistleblower award laws that can be applied to the wildlife context. There are numerous other whistleblower award laws, including some that are conservation-specific, that can be leveraged to halt not only wildlife crime but also environmental pollution.

Our Work at the National Whistleblower Center

National Whistleblower Center (NWC) was selected as a [Grand Prize Winner](#) of the 2016 Global Crime Tech Challenge, an initiative of the United States Agency for International Development (USAID) in partnership with fellow IUCN members National Geographic Society, the Smithsonian Institution, and TRAFFIC.

As part of our mandate as a winner of the Crime Tech Challenge, we are promoting the existence of these whistleblower reward laws. Our [Global Wildlife Whistleblower Program](#) seeks to inform wildlife whistleblowers of their rights and educate NGOs about these powerful legal tools at their disposal.

Litigating these cases, and winning, will send a powerful message to both the demand-side of wildlife crime and its facilitators: that they are culpable, and that they must implement internal compliance measures or risk recurring penalties.

Leveraging whistleblower reward laws is about dismantling the wildlife crime system by holding the most powerful players accountable.

It also empowers individuals within the criminal economy to take a stand against the wider systemic forces that they are subject to. Leveraging whistleblower reward laws is about dismantling the wildlife crime system by holding the most powerful players accountable.

Our methodology has great potential but it is sorely underutilized. Only together we can work to successfully dismantle the wildlife crime economy.

