

ASEAN-WEN: ASEAN Wildlife Enforcement Network





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Wildlife Enforcement Network



USAID

FROM THE AMERICAN PEOPLE

JUDICIARY WORKSHOP ON WILDLIFE CRIME AND PROSECUTION

[insert date and location]

Transnational Wildlife Crime: Unique Investigative Issues



Unique Considerations

1. Has a crime even been committed?
2. What laws apply to this conduct?
3. What agency investigates/arrests?
4. Do we need international cooperation?
5. Wildlife evidence collection/disposal?

1. Was A Crime Committed?

- Most transactions concerning wildlife are legal under some circumstances
 - Most wildlife trade is legal, with the necessary permits and declarations
 - So, wildlife is not automatically contraband, like drugs
 - No victim comes forward to “press charges”

Permits and Science

- Investigators and prosecutors of wildlife smuggling cases must learn:
 - Taxonomy issues involved in the case
 - How to prove species?
 - Sometimes DNA, and other expert scientific opinion issues
 - CITES classification of species and populations
 - Were permits issued or applied for?

DNA Analysis in Wildlife Cases

Used for:

1. Species Identification
2. Gender determination
3. Individual identity
4. Minimum number of animals
5. Parent-offspring relationships
6. Population identification



The U.S. Experience Suggests:

- Specialized wildlife agents are trained to know the specific laws and species at issue, and their regulatory status;
- Go slow, document every step of the investigation;
- Take time to work with prosecutor, CITES experts, NGOs (if possible) to understand the trade you are investigating;

2. What Laws Apply?

- CITES Implementing law?
- Customs/anti-smuggling laws?
- Fraud/false statement laws?
- Money Laundering laws?
- Conspiracy laws?
- Others?
 - Aiding and Abetting
 - Attempt
 - Substantive Crimes

What is the “unit of prosecution”

- How many charges?
 - 1 charge for each animal smuggled?
 - 1 charge for each species smuggled?
 - 1 charge for all animals in the shipment?
 - 1 charge for each separate smuggling event?
- Is sentencing affected by the number or type of charges filed?

Can you use the “KISS” rule?

- “Keep It Simple, Sir!”
- Use laws of general applicability, rather than complicated environmental laws, if possible
 - Conspiracy
 - Customs/smuggling
 - Fraud, money laundering
- Keep it simple for prosecutors, judges, juries.

3. Who investigates/arrests?

- Customs?
- CITES Management Authority agency?
- Federal Police?
- Who can search, arrest, seize, refer?
- Can one agency do it all, or is cooperation needed?
- When does a judge/prosecutor get involved? How?

Our experience:

- Agencies have to work together, or the bad guys aren't detected or charged;
- Bring a prosecutor into the case early, to help advise on how best to investigate the case;
 - The prosecutor doesn't make charging promises at this stage, just helps investigators decide what steps to take, minimizing the chance that charges are declined for lack of evidence later.

Closer ongoing prosecutor contact

- To help evaluate the case's worth early;
- To ensure:
 - Development of prosecutable case;
 - “Buy in” from prosecutor's office
 - Faster assistance with prosecutor tasks (warrants, MLAT requests, extradition, etc.)
 - Understanding of elements and proof requirements;
 - Better coordination when charges are sought and filed;
- This is not unethical: it's just good common sense!

What Type of Investigation?

- Ongoing criminal conduct: undercover investigation
 - Covert agent identities
 - Undercover business operation (sometimes)
 - Surveillance of targets
 - Recorded contacts with witnesses, subjects, targets
- “Overt” investigation in “reactive” cases
 - Witness interviews
 - Evidence collection
 - Search warrants; subpoenas

Digital evidence

Computers and digital media are increasingly involved in unlawful activities

Investigation of criminal activity may produce electronic evidence

Digital evidence (cont'd)

The computer may be:

- contraband,
- fruits of the crime,
- a tool of the offence, or
- a storage container holding evidence of the crime or offence



4. International Cooperation?

- Frequent: informal “person to person” contact
 - Use “informal” cooperation (phone calls, e-mail) to ask agency in corresponding country about shipments, individuals, available records or information
- Infrequent: “formal” cooperation
 - MLAT: to obtain evidence for admission in court
 - Extradition: to obtain physical jurisdiction over a defendant in another country

5. Wildlife Seizure/Preservation

- Seized wildlife – what to do with them?
 - Have a plan beforehand, if possible
 - Better not to kill them, right?
 - Who will pay costs of keeping them?
- Identifying seized wildlife – how to prove species?
 - Get an admission
 - Take a photograph
 - Ask an expert (university, zoo, NGO – doesn't matter, so long as qualified)

How To Prove Species In Court?

- Admission of defendant during investigation; admissible?
- Photograph and expert testimony?
- DNA?
- How to apply the “KISS” rule in your legal system?

Disposal of Seized Animals?

- Auction?
- Zoo donation?
- Euthanasia?
- Repatriation?
- Sale to Public?
- What does your legal system require/allow?