

# ASEAN-WEN: ASEAN Wildlife Enforcement Network





**ASEAN-WEN**

**Wildlife Enforcement Network**



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## JUDICIARY WORKSHOP ON WILDLIFE CRIME AND PROSECUTION

[insert date and location]

# Evaluating and Prosecuting The Wildlife Trafficking Crime



# Step One: How Serious Is This Crime?

- How much investigative resources should be invested in it?
- How much prosecutor time should be invested in it?
- How seriously should judges treat the crime in determining a sentence?

# Suggested “Valuation” Methodology

- Use the same criteria as for any economic crime:
  - Commercial value of trafficked items?
  - Endangered national resource?
  - Disease/biosecurity risk?
  - Repeat offender?
  - Organized criminal syndicate?

# My Point

- Evaluate wildlife crime like you would any other type of crime:
  - Allocate investigative resources accordingly
  - Prosecute using the most serious provable charges (using the KISS method wherever possible)
  - Impose punishments that fit the crime
  - Make adjustments as your knowledge of the case increases

# Take-Away Prosecution Messages

Treat wildlife crime as any other crime;

Use the simplest, most common-sense charges available

These may often involve general criminal statutes without the need for specialized environmental statutes.

# U.S. Statutes Applicable to Wildlife Crime

**Conspiracy** (18 USC § 371)

**Smuggling** (18 USC § 541)

Lacey Act (16 USC § § 3371, et seq)

Endangered Species Act (16 USC § 1531-43)

Migratory Bird Treaty Act (16 USC § § 701-718j)

Bald and Golden Eagle Protection Act (16 USC § 668)

Marine Mammal Protection Act (16 USC § § 1372-1407)

# U.S. Statutes Applicable to Wildlife Crime

Airborne Hunting Act (16 U.S.C. § 742j-1)

Rhinoceros and Tiger Conservation Act (16 USC § § 5301-5306)

African Elephant Conservation Act (16 USC § § 4201-45)

Wild Bird Conservation Act (16 USC § § 4901-16)

**False Statement** (18 USC § 1001)

**Money Laundering** (18 USC § § 1956(a)(2)(A))

# Recent U.S. Example: “Operation Central”

Undercover investigation into Mexican and Chinese syndicates smuggling sea turtle (and other skins and products) into the U.S.

Defendants charged only with smuggling and money laundering (not ESA/CITES, or Lacey Act);

Sentences calculated in same way as if charged with environmental crimes

# Examples (cont'd)

## Import of Merchandise Contrary to Law (“smuggling”)

### 18 U.S.C. § 545

Makes it a crime to knowingly import “merchandise” (including wildlife parts/products) contrary to any U.S. law (or conceal/buy/sell the merchandise knowing it was smuggled)

“Contrary to law” includes CITES or ESA or simple wildlife declaration requirement;

Felony: 20 year, \$500,000 maximum penalty

# U.S. Examples of General Criminal Statutes

## **Conspiracy (18 U.S.C. § 371):**

If two people agree to violate a U.S. law or defraud the government, and one of them takes any action to further that agreement, they may be convicted of conspiracy;

The “overt act” can be a legal act

The agreement is any “meeting of the minds”

Guilty even if the objective of the agreement is not realized

Felony or misdemeanor, depending on the objective

# Examples (cont'd)

## **Making A False Statement (18 U.S.C. § 1001)**

Prohibits knowingly making a materially false statement to a government agency, or concealing a material fact or using a false statement or writing;

“Material” means that it has the capacity to affect an agency decision, such as a lie on a declaration form or a CITES permit or to a customs inspector;

Felony: 5 year maximum incarceration; \$250,000 fine

# Examples (cont'd)

## **Money Laundering (18 U.S.C. § 1956(a))**

Prohibits knowingly transporting, transferring or transmitting monetary instruments or funds to or from the U.S. with the intent to promote smuggling;

Note: “with the intent to promote:” smuggling need be accomplished or completed;

No need to prove the money is “proceeds” or was concealed; simple international payment for wildlife intended to be smuggled completes the crime.

Felony: 20 years maximum incarceration, \$500,000 fine

# My point here:

- Use laws of general applicability where possible in wildlife smuggling cases
  - Simpler for prosecutors and the courts to understand
  - In U.S. at least, sentences are unaffected by using these laws instead of specialized environmental laws
  - Is that true here as well?

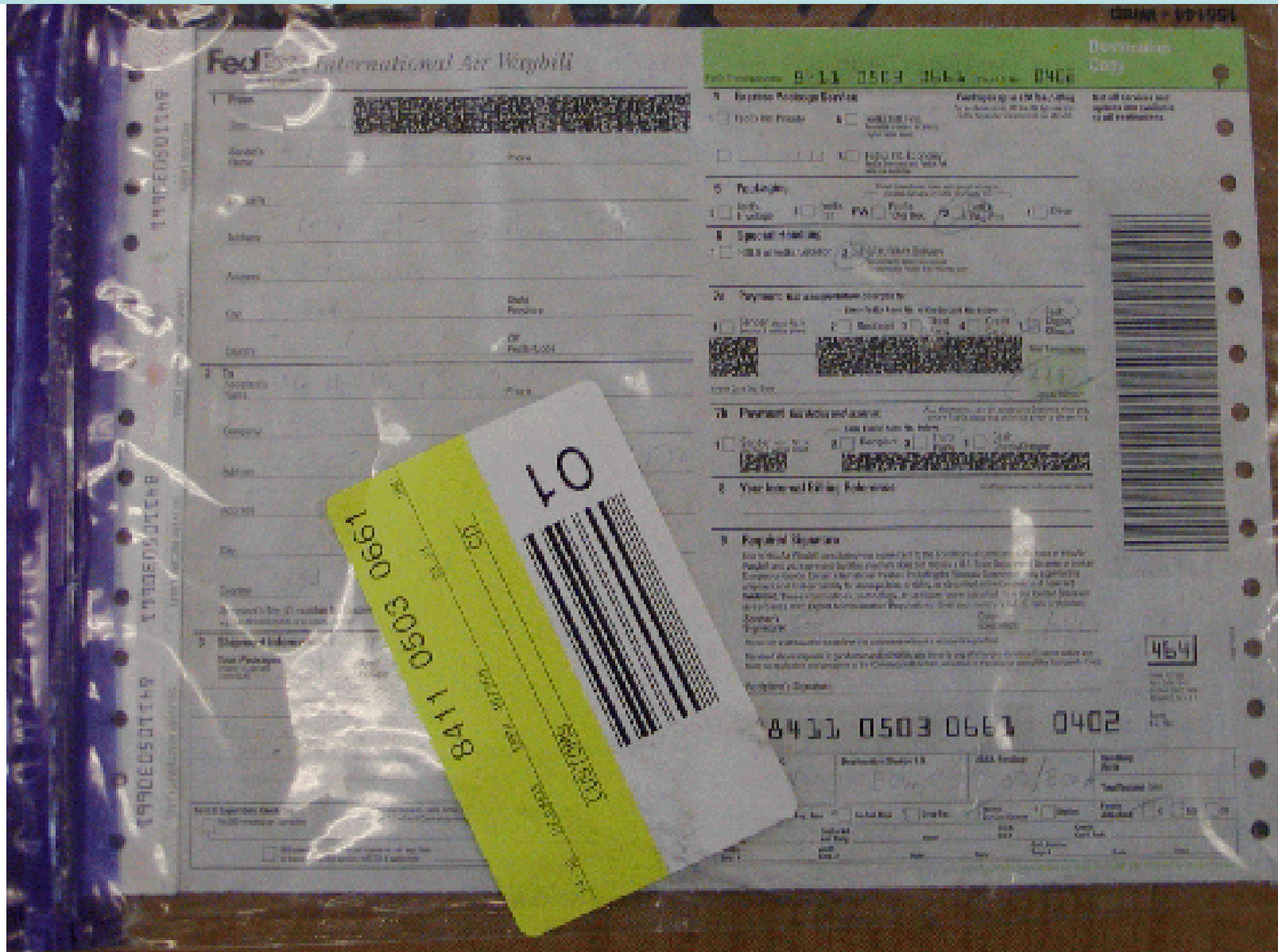
# How does it work here?

- Are laws of general applicability available in wildlife smuggling cases?
- Group discussion:
  - Does your general customs law apply to wildlife smuggling?
    - If so, what are the advantages or disadvantages to using it instead of the CITES statute?
    - Does using it change the agency that can investigate the crimes?
    - Any effect on prosecutors or potential sentence?

# Example: US v. Chye, Kum

- Thai nationals who smuggled hundreds of reptiles in approximately 12 FedEx-style shipments to various customers in US with whom they'd negotiated on-line;
- Traveled to US in June 2003 to meet customers; arrested in Florida;

# US v. Chye, Kum (cont'd)



# US v. Chye, Kum (cont'd)



# US v. Chye, Kum (cont'd)

Chye indicted on conspiracy and smuggling charges;  
pleaded guilty and sentenced to 37 months imprisonment;

Kum transferred to Wisconsin (the site of his shipment  
entries); pleaded guilty to conspiracy, money laundering  
charges; sentenced to 37 months imprisonment;

US customers similarly charged and sentenced.

# Disadvantages of Using General Criminal Statutes To Prosecute Environmental Crimes

Statistical analysis masks the true number of environmental cases being prosecuted;

If wildlife protection agents don't have authority to enforce general criminal statutes, or if national police will not use these crimes in wildlife cases;

# Advantages Of Using Crimes of “General Applicability”

Emphasizes to police, judges and prosecutors that environmental crime is real crime

Police, judges and prosecutors are comfortable with these statutes, which are commonly used

Makes the case simpler: - juries and the public understand smuggling more easily than specific environmental statutes

# Advantages (cont'd)

May allow a felony sanction where the applicable wildlife statute does not

May apply to extradition treaty more easily than specialized wildlife statutes;

# “Important Cases, Many Tools, Good Results”

Use all the tools in your toolbox