

A bipartisan whistleblower bill targets wildlife crime

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Wildlife crime threatens the very existence of some of the world's most precious forests, coral reefs, fish, and animals. But the profit motive behind wildlife crime is often unnoticed. The U.S. Agency for International Development (USAID) estimates that the economic costs of illegal timbering alone is as high as \$152 billion annually, impacting honest U.S. business by flooding markets with cheap, illegally harvested wood.

Killing iconic endangered animals such as rhinoceroses and elephants is not only horrific in the images splashed on social media, but as explained by USAID, is an illegal business worth "tens of billions" of dollars annually, and now constitutes one of the "world's largest black markets."

In the face of widespread criminal conduct threatening priceless habitat and iconic species, there has been a push to harness the power of a unique law enforcement tool: whistleblowers.

The same can be said for illegal, unreported and unregulated (IUU) fishing. An estimated 32% of fish imported into the United States violates IUU requirements. That means the fish is harvested in a manner that destroys protected fisheries and reefs, kills endangered species, and is ultimately unsustainable. Again, the profits in illegal fishing are huge. A recent study from the University of British Columbia estimates that the economic costs of IUU fishing alone are as high as \$50 billion annually.

The true costs of wildlife crime far exceed strictly economic factors. Wildlife crime has accelerated unprecedented loss in biodiversity, upended ecosystems, worsened the climate crisis, and pushed species over the brink of extinction. Despite the passage of laws and international accords aimed at fighting wildlife crime, it remains an exceptionally difficult area to enforce.

In recent years, in the face of widespread criminal conduct threatening priceless habitat and iconic species, however, there has been a push to harness the power of a unique law enforcement tool: whistleblowers. Inspired by the immense success of whistleblower award laws under the False Claims and Dodd-Frank Acts, wildlife advocates ranging from the Association of Zoos and Aquariums

to the International Union for Conservation of Nature (IUCN) are supporting the implementation of whistleblower award provisions for wildlife whistleblowers.

For example, at its most recent World Congress, attended by every major wildlife protection organization and official representatives from the governments of over 120 countries, the IUCN overwhelmingly adopted three separate resolutions that advocate for the use of whistleblower awards as a means of incentivizing wildlife whistleblowers.

IUCN resolutions are often used as reference points by governmental bodies around the world as they grapple with critical conservation and development issues, and these recently approved resolutions highlight the widespread global interest in awarding wildlife whistleblowers.

Whistleblower awards have proven to be the most effective means to incentivize insiders to come forward and cooperate with authorities, allowing law enforcement to conserve resources and police crimes which are otherwise difficult to detect. The efficacy of whistleblower award programs transcends political boundaries. The Trump-appointed former Chair of the SEC Jay Clayton noted in a 2020 statement that "[o]ver the past ten years, the whistleblower program has been a critical component of the Commission's efforts to detect wrongdoing and protect investors and the marketplace, particularly where fraud is well-hidden or difficult to detect." ("Strengthening our Whistleblower Program" 9/23/2020)

At a celebration for National Whistleblower Day 2021, the current Biden-appointed SEC Chair Gary Gensler stated that the whistleblower program "helps us be better cops on the beat, execute our mission, and protect investors from misconduct." ("Prepared Remarks for National Whistleblower Day Celebration" 7/30/2021)

In the fight against international bribery, an audit of the U.S. efforts conducted by the Organization for Economic Cooperation and Development praised the Dodd-Frank Act's "multi-faceted" approach to fighting international corruption "given that they provide powerful incentives for qualified whistleblowers to report foreign bribery allegations against issuers." ("Implementing The OECD Anti-Bribery Convention Phase 4 Report United States," 11/17/2020, <https://bit.ly/3uUYxAb>)

Paying monetary awards to wildlife whistleblowers is not without precedent in the U.S. In fact, both the Lacey Act and the

Endangered Species Act, the nation's two most prevalent anti-wildlife crime laws, contain provisions authorizing the payment of whistleblower awards. These provisions, however, were passed over 40-years ago and fail to meet the standards set by modern whistleblower award laws.

Most notably, whistleblower award payments under the Lacey Act and Endangered Species Act are not mandatory. As in the case of other discretionary whistleblower award laws that have been subsequently modernized and amended (including the Securities Exchange Act and the IRS whistleblower law), the ability to leverage whistleblower rewards to obtain access to high-quality inside information on corrupt activities has not been fully utilized.

Whether Congress passes H.R. 6059 or uses another approach to enhance the ability of law enforcement to detect and successfully prosecute wildlife crimes, it is clear that the whistleblower provisions of the Lacey Act need to be modernized in order to become effective.

A scathing Government Accountability Office (GAO) report from 2018 (<https://bit.ly/3zeiDbc>) ("Combating Wildlife Trafficking: Opportunities Exist to Improve the Use of Financial Rewards," 4/23/2018) on the use of wildlife whistleblower awards found that agencies did not prioritize award payments and rarely awarded whistleblowers. In the 11 fiscal years covered by the report, the GAO found that U.S. authorities only paid 27 wildlife whistleblower awards totaling about \$205,000.

The GAO made a number of recommendations in order to better leverage wildlife whistleblower awards, but the laws continue to be severely underutilized. A Freedom of Information Act request by Whistleblower Network News in 2021 revealed that since the 2018 GAO report, there had only been one whistleblower award paid out under the Lacey and Endangered Species Acts.

Thus, while there is widespread belief that whistleblower awards could revolutionize enforcement of wildlife crime, the provisions currently in place are ineffective. This should not come as a surprise to anyone familiar with the history of whistleblower award laws.

When award payments are discretionary, whistleblower programs falter.

For example, during the 40-plus years payments under the False Claims Act were discretionary (between 1943-1986) no awards were paid. Since mandatory awards were established under the False Claims Act in 1986, thousands of whistleblowers have been compensated and the government has recovered over \$70 billion from fraudsters. A similar revolution occurred in securities whistleblowing with the passage of the Dodd-Frank Act in 2010.

The bipartisan Wildlife Conservation and Anti-Trafficking Act of 2021 (H.R. 6059) contains a whistleblower reward provision that would modernize the Lacey Act. It has been endorsed by every major wildlife protection non-profit, including the Association of Zoos and Aquariums, Humane Society International, International Fund for Animal Welfare, and the World Wildlife Fund.

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The most pressing reforms, all included in H.R. 6059, include:

- Award decisions must be made in a timely manner and are subject to judicial review;
- Whistleblower awards are financed through the sanctions collected by the United States as a result of a whistleblower's original information. The taxpayers pay nothing. All of the money comes directly from the fines and penalties paid by those who violate wildlife protection laws;
- Whistleblower Offices are created to receive whistleblower tips, refer whistleblower information to the appropriate law enforcement agencies, and communicate with whistleblowers about their cases;
- Anonymous and confidential reporting procedures are established. These are essential tools to protect whistleblowers from retaliation.

If the United States intends to be serious about protecting wildlife, prosecuting IUU fishing, and stopping illegal deforestation, the Wildlife Conservation and Anti-Trafficking Act, or another similar wildlife whistleblower law, is badly needed. Extinctions are forever.

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About the author



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