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FROM THE AMERICAN PEOPLE



SCALING EFFORTS TO COUNTER- WILDLIFE TRAFFICKING THROUGH LEGISLATIVE REFORMS

A SELECTION OF BEST PRACTICES – KEY PROVISIONS,
KEY INNOVATIONS AND MODEL PROVISIONS



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USAID WILDLIFE ASIA

The USAID Wildlife Asia works to address wildlife trafficking as a transnational crime. The project aims to reduce consumer demand for wildlife parts and products, strengthen law enforcement, enhance legal and political commitment, and support regional collaboration to reduce wildlife crime in Southeast Asia, particularly Cambodia, China, Laos, Thailand and Vietnam. USAID Wildlife Asia focuses on four species: elephant, rhinoceros, tiger and pangolin. For more information, please visit www.usaidwildlifeasia.org

This monograph was prepared for USAID Wildlife Asia activity's Objective 3, which aims to increase the political will of decision-makers and the commitment of focal countries to countering wildlife crime, including through national legislative, policy, and regulatory reform. This monograph was created as a generic guide for policymakers in CWT legislation review and policy analyses, inspired by USAID Wildlife Asia's Thailand CWT legislative frameworks and policy reform recommendations package developed for the Royal Thai Government and the ASEAN Inter-Parliamentary Assembly.

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DISCLAIMER

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FOREWORD

ASEAN INTER-PARLIAMENTARY ASSEMBLY

In 2012, the ASEAN Inter-Parliamentary Assembly (AIPA) issued a General Assembly resolution calling for the Association of Southeast Asian Nations (ASEAN) ministers to prioritize combatting wildlife crime. This was followed by AIPA's participation in ASEAN regional consultations, which led to the issuance by the ASEAN ministers of the Kuala Lumpur Declaration on Transnational Organized Crimes. The Declaration upgraded wildlife and timber trafficking as a priority agenda item, on par with other serious transnational organized crimes.

AIPA's efforts are bearing fruit—with this comes more responsibility for ASEAN legislators to act and support enforcement efforts on the ground. A groundswell of support rose through continuous discussion and dialogue with partners to pursue the review and analysis of counter wildlife trafficking national legislation. This monograph comprises years of comparative studies of best practices and model provisions from ASEAN and across the globe. With our combined resources and knowledge, we now have the necessary tools to consider, in our respective parliaments, methods to enhance wildlife law enforcement and the protection of our iconic and protected species.

Strengthening relevant laws and their enforcement remains the biggest challenge ahead but represents a crucial strategy to create effective deterrents to illegal wildlife trade and the criminal syndicates behind it.

I am excited to see this level of collaboration, but most importantly, the challenge remains for us to be innovative in policy development and support executive-level efforts to counter wildlife trafficking.

Isra Sunthornvut
Secretary General

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LIST OF ACRONYMS

AIPA	ASEAN Inter-Parliamentary Assembly
AMLO	Anti-Money Laundering Office
AMS	ASEAN Member States
ARREST	Asia's Regional Response to Endangered Species Trafficking
ASEAN	Association of Southeast Asian Nations
ASEAN WEN	ASEAN Wildlife Enforcement Network
ASW	ASEAN Single Window
B.E.	Buddhist Era
CITES	Convention on International Trade in Endangered Species of Wild Flora and Fauna
CLMV	Cambodia, Laos, Myanmar and Vietnam
CWT	Counter-Wildlife trafficking
EIA	Environmental Investigation Agency
FOI	Freedom of Information
GDP	Gross Domestic Product
ISO	International Organization for Standardization
KP	Key Provisions
Lao PDR	Lao People's Democratic Republic
NSW	National Single Window
SEZ	Special Economic Zones
SLAPP	Strategic Lawsuit Against Public Participation
UN	United Nations
UNCAC	United Nations Convention against Corruption
UN/CEFACT	United Nations Center for Trade Facilitation and Electronic Business
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations against Transnational Organised Crime
USAID	United States Agency for International Development
WCO	World Customs Organization
WEO	Wildlife Enforcement Officer
WTO	World Trade Organization

I BRIEF INTRODUCTION

I.1 Background

The wildlife trafficking market has expanded significantly over the last decade, spreading from Europe and the West, where demand originated, to states of the Association of Southeast Asian Nations (ASEAN), where demand has increased. Indeed, many ASEAN states, such as Thailand and Myanmar, have now become wildlife trafficking hubs. Animals on the brink of extinction are being poached, encroached, and traded every day; about 35,000 African elephants were killed each year due to the growing ivory market in ASEAN states (Bellini, 2015).¹ In light of this unsustainable killing, it is vital that states with prominent wildlife trafficking implement laws and regulations to decrease the illegal wildlife trade.

This monograph provides a short description and highlights key provisions of a selection of legislative and policy innovations and best practices available in the ASEAN region and other jurisdictions. It also provides examples of model provisions that could enhance counter wildlife trafficking efforts. The following events led or co-hosted by United States Agency for International Development (USAID) Wildlife Asia (Objective 3) produced the recommendations and outputs, which were considered when developing this monograph:

- Policy and Legislative Session of the 3rd Rosewood Dialogue, Bangkok, Thailand (March 2017)
- Thematic Session “Innovations in Rule of Law, Policies and Environmental Jurisprudence,” USAID Wildlife Asia Innovations Conference, Bangkok, Thailand (March 2017)
- Special session on counter wildlife trafficking of the Standing Committee on Environment and Natural Resources of the National Legislative Assembly, Bangkok, Thailand (April 2017)
- United Nations (UN) Africa-Asia Pacific Symposium on Strengthening Legal Frameworks to Combat Wildlife Crime Symposium, Bangkok, Thailand (July 2017)
- 9th ASEAN Inter-Parliamentary Assembly (AIPA) Caucus Meeting: Working Group on Convention on International Trade of Endangered Species (CITES) and Wildlife Protection, Jakarta, Indonesia (July 2017)
- 4th Regional Dialogue on Combating Trafficking of Wild Fauna and Flora, Bangkok, Thailand (September 2017)
- 38th AIPA General Assembly Organizational Committee Meeting, Manila, Philippines (September 2017)

The reported insights were further obtained from consultations with various government stakeholders, during USAID Wildlife Asia’s technical support in legislative and policy review such as:

- Consultations with National Legislative Assembly, National Reform Council, the Department of National Parks, Wildlife and Plant Conservation, and the Ministry of Environment and Natural Resources in the development of the policy tool “Scaling Efforts to Counter-Wildlife Trafficking Through Legislative Reforms” in reviewing the proposed wildlife law (Thailand, 2017-2019);
- Consultations with National Assembly and Senate of Cambodia and the technical working group appointed by the Ministry of Environment and Natural Resources to create the Environmental Code of Cambodia, in reviewing the wildlife-related provisions (Cambodia 2017-2018);

¹ Bellini, J. (2015). Price of ivory? 100 elephants killed per day – The short answer. *Wall Street Journal*. Retrieved December 20, 2017, from <https://blogs.wsj.com/briefly/2015/03/19/price-of-ivory-100-elephants-killed-per-day-the-short-answer/>

- Consultations with Government of Lao PDR on CITES NIAP (national Ivory Action Plan) and other CITES commitments, in policy and legislative review (Lao PDR, 2018-2019).

The aim of this monograph is to address systemic impact solutions and provide various examples of implementation and model provisions from different countries. These examples encourage ASEAN member states (AMS) to employ legislation and policy as tools to combat wildlife trafficking, drawing on the research done for specific best practices and model provisions identified by a focus country for adoption or adaptation in its wildlife legislation. Through providing model laws and key innovations that are effective in deterring wildlife trafficking, we hope that ASEAN states will incorporate these laws and create a strong regional legislative framework to combat wildlife trafficking. The laws aim to ensure effective handling of wildlife crimes through compensation and procedural instructions, enable a proactive approach to preventing wildlife trafficking by rewarding informants, and suggest key innovations that states can employ to either improve existing legislation or add new laws.

1.2 Key Provisions

By providing a list and description of key provisions for combatting wildlife crimes, i.e., chapters, articles, or sections in national wildlife legislation,² the USAID Wildlife Asia Counter Wildlife Trafficking (CWT) activity aims to highlight relevant topics AMS should contemplate when considering effective wildlife legislation. The key provisions presented in Chapter 2 of this monograph address critical aspects of wildlife trafficking, such as hunting, trading, importing, exporting, re-exporting, transiting, possessing, obtaining, and consuming wildlife. They also include enabling mechanisms, such as the protected species review mechanism, handling and disposal of confiscated wildlife, compensation, reward for informants, establishment of conservation funds, and appointment of a special prosecutor for wildlife crimes. The key provisions identify elements that constitute these offences. As such, the key provisions listed go beyond the four basic requirements of CITES on national legislation compliance.³

1.3 Best Practices and Model Provisions

The best practices and model provisions can be broadly categorized into the following themes for ease of reference:

- Harmonizing the protected species list
- Enhancing enforcement efficacy
- Sustainability and funding mechanism
- Governance
- Incentives and compensation
- Enhancing deterrent effect of penalties

² This list of key provisions was developed during the USAID-funded Asia's Regional Response for Endangered Species Trafficking (ARREST) Program implemented by Freeland, in cooperation with the United States Fish and Wildlife Service, United Nations Office on Drugs and Crimes, Asia Pacific Centre for Environmental Law, United States Department of Justice, and AIPA. It is broadly endorsed by the ASEAN-Wildlife Enforcement Network. In developing this monograph, we referenced the UN Office on Drugs and Crimes Wildlife and Forest Crime Analytic Toolkit, published in 2012, and UN Convention Against Transnational Organized Crime requirements (UNODC, 2012).

³ Under CITES, [Resolution Conf. 8.4 \(Rev. CoP15\) on National laws for implementation of the Convention](#), directs the secretariat, within available resources, to identify those parties whose domestic measures do not provide them with the authority to (1) designate at least one management authority and one scientific authority, (2) prohibit trade in specimens in violation of the Convention, (3) penalize such trade, or (4) confiscate specimens illegally traded or possessed. All four minimum requirements must be met by the national laws. Under the National Legislation Project created thereto, and in consultation with the concerned party, national legislation is analyzed by the secretariat in relation to these four minimum requirements and placed in one of three categories, as follows: Category 1: legislation that is believed generally to meet the requirements for implementation of CITES, Category 2: legislation that is believed generally not to meet all of the requirements for the implementation of CITES, or Category 3: legislation that is believed generally not to meet the requirements for the implementation of CITES. This information is available at https://cites.org/eng/legislation/National_Legislation_Project.

In selecting the best practices and model provisions to showcase, we considered how relevant each topic was to combatting wildlife trafficking and how it would impact the system. For example, the governance theme provides systemic solutions at the legislative level, such as e-petitions, parliamentary oversight, and access to information. Other solutions are focused on legislative enhancement of counter wildlife trafficking enforcement capability, such as appointing specialized prosecutors/units, appointing community or private-sector deputies as wildlife enforcement officers, legally protecting environmental law enforcers from strategic lawsuits against public participation (SLAPPs), and dealing with online illegal wildlife trading. A state must possess an adequate penalty system that ensures the perpetrators are appropriately punished and that acts as an effective deterrent. Further, states must have several best practices, such as a minimum level of penalty, mandatory imprisonment terms, and automatic fine adjustments. We also recognized that such efforts need sustainable resources, which is what we sought to address by giving examples of funding mechanisms, such as the creation of a wildlife conservation fund, restitution, attaching proceeds of crime, rewards for informants, and compensation.

The reader is reminded that each chapter and sub-chapter warrants its own monograph, where issues can be delved in depth, more model provisions compared and solutions explored. It is purely for editorial management that this monograph is moderated to the contents contained herein. We further hope this monograph becomes a live document, and more best practices and model provisions can be added to the list as the legislative and policy reform arena continues to innovate.

1.4 Emerging Trends in Legislative and Policy Innovations Relevant to CWT Efforts

It is important to note that trends in combatting wildlife trafficking are always evolving. In this regard, two areas worth special mention and which should be monitored as they develop are special economic zones (SEZs) and judiciary innovations.

SEZs

The primary objective of SEZs is to generate economic growth by increasing trade between the borders of neighboring countries. According to the ASEAN Investment Report of 2017, regarding Foreign Direct Investment and Economic Zones in ASEAN countries, Cambodia has 16 SEZs; Lao PDR has 12; Myanmar, 3; and Thailand, 10 (see **Figure 1**).⁴

Figure 1: SEZs in ASEAN as of December 2016

Country	Type of economic zone											
	FIZ	FCZ	EPZ	IE	EZ	SEZ	BEZ	CEZ	TP	REC	ITC	Other
Brunei Darussalam	..	..	..	>25	..	..	..	..	..	..	..	..
Cambodia	..	..	..	<10	..	16	..	..	..	..	..	..
Indonesia	3 ^a	..	..	75	..	11	..	..	..	..	..	14 ^b
Lao People's Democratic Republic	..	..	..	..	..	12	..	..	..	..	..	..
Malaysia	22	18	..	>500	..	..	..	..	..	5	..	..
Myanmar	..	..	..	<20	..	3	..	..	..	..	..	..
Philippines ^c	..	..	..	74	21 ^d	19 ^e	..	..	49 ^f	..	200	2
Singapore	10	..	..	>75 ^g	..	..	..	..	..	..	..	..
Thailand	..	..	10	58	..	10	..	..	..	..	..	..
Viet Nam ^h	..	..	3	325	..	..	28	16	3	..	..	..

Source: ASEAN Investment Report 2017 research.
 Notes: BEZ = border economic zone and border-gate economic zone; CEZ = coastal economic zone; EPZ = export processing zone; EZ = economic zone; FCZ = free commercial zone; FIZ = free industrial zone; E = industrial estate or park; ITC = information technology centre; LMW = licensed manufacturing warehouse or bonded warehouse; REC = regional economic corridor; SEZ = special economic zone; TP = technology park.
^a FTZs in Bintan, Batam and Karimun in Riau Province.
^b 14 KAPETs, a type of integrated economic development zone introduced in 1998.
^c Refers to economic zones registered with the Philippine Economic Zone Authority only.
^d Refers to agro-industrial economic zones.
^e Refers to tourism SEZs.
^f IT parks.
^g An estimate that covers industrial parks and business hubs developed by JTC, the Housing Development Board and Ascendas-Singbridge, as well as a few privately owned business parks that house light manufacturing activities.
^h BEZs and CEZs are considered economic zones in Viet Nam.

Source: ASEAN Investment Report 2017, Chapter 4, Economic Zone Development in ASEAN, p 103.

⁴ ASEAN Investment Report 2017 – Foreign Direct Investment and Economic Zones in ASEAN
 Jakarta: ASEAN Secretariat, October 2017

Alongside the stimulation of economic growth is the potential risk of concurrent increases in wildlife trafficking, as highlighted in reports in recent years (Krishnasamy, Shepherd, & Or, 2018; Environmental Investigation Agency [EIA], 2015).⁵ Whether an SEZ increases the risk of trafficking largely depends on the geographical location and the potential religious, political, or insurgent conflicts that exist in the area. Trafficking can arise because SEZs not only increase the number of imports and exports within a country, but also include areas of “exceptions,” including refugee camps, that have historically been employed for trafficking (N. Thabchumpon, C. Middleton, Z. Aung, S. Chundasutathanakul, and F. A. Tarmedi (2014)).⁶ During the 4th Asian Borderlands Research Network Conference, held in 2014, participants found that the primary aim of SEZs was to increase economic growth. They noted that inter-governmental policies for strengthened governance and control were necessary to address mutual issues, such as wildlife and human trafficking (ASEAN, 2017).⁷ It is worth noting the potential influence of SEZs on the effectiveness of policies and legislation to combat wildlife trafficking.

Environmental constitutionalism: The role of the judiciary

Since the 1972 Stockholm Declaration linking human rights and environmental protection, dozens of countries have adopted provisions that, in some way, address environmental matters—some more impressive than others. Further, the most inhabited countries (about three-quarters of global nations) have constitutions that address environmental matters in some fashion. Sometimes addressed as environmental constitutionalism, these provisions are either governmental duties or substantive rights of nature. Some countries’ constitutions require all government branches to protect nature. For example, Germany’s constitution requires the government to protect “the natural bases of life and the animals within the framework of the constitutional order by legislation, and in accordance with law and justice, by executive and judicial power” (Daly & Daly, 2018, p. 18).⁸ Additionally, a few countries in South America, including Bolivia, Colombia, and Ecuador, emphatically include biocentric environmental constitutionalism, i.e., recognizing the right of nature. In 2008, Ecuador amended its constitution to recognize the right of nature, providing that “Nature, or Pachamama, where life is reproduced and created, has the right to integral respect for her existence, her maintenance, and for the regeneration of her vital cycles, structure, functions, and evolutionary processes” (Daly & Daly, 2018, p. 18)⁹ In a nine-paragraph chapter devoted exclusively to the rights of nature, the Ecuadorian constitution empowers each person, community, people or nationality to exercise public authority to enforce those rights, according to normal constitutional processes. Bolivia also has a framework law recognizing the rights of nature and, most recently, the Colombian Supreme Court ruled that a river has rights that must be protected (Daly & Daly, 2018, p. 18).¹⁰

In New Zealand, members of the indigenous Maori tribe disputed with the Crown for 140 years the status of the Whanganui River in the framework interpreting the Treaty of Waitangi.¹¹ The treaty declared British Sovereignty in 1840 and defined the Maori’s land ownership; it is generally considered the founding document of New Zealand as a nation. Despite this, many Maori felt that the British Crown did not fulfill its obligations under the Treaty and presented evidence of this to the Waitangi Tribunal

⁵K Krishnasamy, CR Shepherd, OC Or (2018). Observations of illegal wildlife trade in Boten, a Chinese border town within a Specific Economic Zone in northern Lao PDR, - *Global Ecology and Conservation*, 2018 – Elsevier; Environmental Investigation Agency (EIA). Sin City: Illegal wildlife trade in Laos’ Special Economic Zone, , <https://eia-international.org/report/sin-city-illegal-wildlife-trade-in-laos-special-economic-zone/>

⁶ N. Thabchumpon, C. Middleton, Z. Aung, S. Chundasutathanakul, and F. A. Tarmedi (2014)

4th Conference of the Asian Borderlands Research Network conference, Military Brotherhood between Thailand and Myanmar: From Ruling to Governing the Borderlands.

https://static1.squarespace.com/static/575fb39762cd94c2d69dc556/t/5772a083d2b85707e1daa714/1467129993955/Thabchumpon-et-al-AsianBorderlands2014_30.11.14.pdf.

⁷ ASEAN Secretariat, October 2017: ASEAN Investment Report 2017 – Foreign Direct Investment and Economic Zones in ASEAN

⁸ May, J.R., & Daly, E. (2018). *Global judicial handbook on environmental constitutionalism*, 2nd edition. New York: United Nations Environment Programme (p19). <https://www.ajne.org/sites/default/files/resource/publications/7227/global-judicial-handbook-on-environmental-constitutionalism-2nd-ed.pdf>

⁹ Ibid.

¹⁰ Ibid,

¹¹ The Treaty of Waitangi is the treaty between the British Crown and the indigenous Maori agreed to in 1840 to enable British settlement of New Zealand. The Treaty of Waitangi/Te Tiriti O Waitangi, from the New Zealand Ministry of Justice, is available at <http://www.waitangitribunal.govt.nz/treaty-of-waitangi/>

(Waitangi Tribunal, 1998).¹² Many activities of the New Zealand government over the years from the 1800s not only breached the guarantees given to the Whanganui iwi by treaty, but also violated what they view as the life force or spirit of the river (Magallanes, 2017).¹³ In 2014, the Crown and Maori people reached a settlement that granted the river its own legal identity, Te Awa Tupua. In 2017, the settlement was turned into the *Te Awa Tupua Act*. According to Part 2, Article 14, of the Act, Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person (Pecharroman, 2018).¹⁴ The Act stipulates that the Whanganui is a legal person that can be represented in court proceedings and has two guardians: one from the Crown and one from the Whanganui iwi. This is an excellent model of law being created as a result of a non-legislative settlement.

We cannot overemphasize the role the judiciary holds in furthering and creating precedents. When courts implement environmental rights, in particular, they tend to import many of the principles and values of environmental law that have either been incorporated into the country's constitution or are widely accepted throughout the world in similar cases (e.g., the precautionary principle, which states that the polluter should pay for the damage), principles of sustainable development and intergenerational equity, and sometimes procedural principles that are unique to environmental litigation, including the reversal of the burden of proof and the acceptance of probabilistic evidence. The incremental growth of a body of law through case-by-case application can ensure that the law develops progressively and relatively smoothly over time. This, in turn, increases its acceptance in local society. In the Philippines, the landmark case, *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Secretary Angelo Reyes, G.R. No. 180771* (2015), is a good example of how the judiciary, through a combination of judicial interpretation and Rules of Procedure for Environmental Cases of 2010¹⁵ managed to confer *locus standi*, i.e., the right to be heard, to defenders of resident marine mammals to overturn a concession that would have had an adverse and detrimental impact on protected areas (*Resident Marine Mammals v. Reyes, 2015*).¹⁶

Another pivotal judiciary initiative that put environmental justice on the map was the move by the global judicial community to establish environment courts and tribunals. There has been a "world-wide explosion of tribunals and courts focusing on lawsuits involving environmental issues" (Pring & Pring, 2016).¹⁷ Although efforts to empower the civil environmental courts have been in progress, momentum is now gathering to institutionalize environmental crime within the mandate of the environment courts. Within ASEAN, the Philippines, Indonesia, Malaysia, Cambodia, and Thailand have established some form of environment courts and tribunals. On July 18, 2017, a major decision was made by Thailand's National Reform Steering Assembly to approve and endorse to the cabinet the proposal and policy paper on the Establishment of the Environment Court of Thailand. This proposal and its accompanying dossier aimed to improve and elevate environmental crimes as a priority state agenda in Thailand's jurisprudence. The policy document outlines innovative policies and rules that the courts may adopt to strengthen responses and deter wildlife trafficking, such as precautionary principle, public participation, public interest litigation, anti-SLAPP, strict liability, and sustainability principle. The bill, if passed into national law, will enable the court and the executive bodies to act swiftly and appropriately when ruling on environmental or wildlife cases. With mandate and emphasis from the courts, Thailand's Office of the Attorney General can create a dedicated unit of environmental prosecutors to support the work of the environment court.

¹²Waitangi Tribunal, *Te Ika Whenua Rivers Report* (1998),

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68382633/Te%20Ika%20Whenua%20Rivers%201998-compressed.pdf

¹³ Magallanes, C.I. (May 2017), Using human rights to recognize human responsibilities toward nature *New Frontiers In Environmental Constitutionalism* (p241), <https://wedocs.unep.org/bitstream/handle/20.500.11822/20819/Frontiers-Environmental-Constitutionalism.pdf?sequence=1&isAllowed=y>

¹⁴ Rights of Nature: Rivers That Can Stand in Court, Lidia Cano Pecharroman, OrclD AC4, Earth Institute, Columbia University, New York, NY 10027, USA Received: 7 December 2017 / Accepted: 1 February 2018 / Published: 14 February 2018, <http://www.mdpi.com/2079-9276/7/1/13/html>

¹⁵ A.M. No. 09-6-8-SC, effective April 29, 2010.

¹⁶*Resident Marine Mammals of the Protected Seascape Tañon Strait v. Secretary Angelo Reyes, G.R. No. 180771*,

https://www.informea.org/sites/default/files/court-decisions/Resident%20Marine%20Mammals%20of%20the%20Protected%20Seascape%20Tanon%20Strait%20v.%20Secretary%20Angelo%20Reyes_0.pdf

¹⁷ 12. Pring, G. and Pring, C., *Environmental Courts & Tribunals: A Guide for Policy Makers* (UN Environment Programme 2016) | <http://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf?sequence=1&isAllowed=y> accessed 26 February 2018..

2 KEY PROVISIONS IN CWT: A SHORT DESCRIPTION

The key provisions below address aspects of wildlife trafficking, such as hunting, trading, importing, exporting, re-exporting, moving, possessing, obtaining and consuming wildlife. They identify elements of such offences and go beyond the four basic requirements of CITES on national legislation compliance.¹⁸

	KEY PROVISIONS (KP) ¹⁹	SHORT DESCRIPTION
KP-1	Interagency national task force mandated to implement/enforce wildlife laws and other associated laws relevant to combating wildlife trafficking	Countering wildlife trafficking, especially those crimes involving transnational organized crime, requires the cooperation of different agencies in charge of diverse areas of enforcement. For the different agencies to work together effectively to combat trafficking, it is crucial that a national task force be mandated by legislation to coordinate, collaborate, implement, and enforce the different law areas.
KP-2	Wildlife trafficking is a serious crime as defined under section 2(b) of the UN Convention Against Transnational Organized Crime (UNTOC), punishable by at least 4 years imprisonment or a more serious penalty or by law ²⁰	<p>In light of the expanding illegal wildlife trade, it is important to qualify wildlife crimes as serious both nationally and regionally. Most ASEAN member states (AMS) already have legislation or stipulations in place stating the severity of wildlife crimes, as most AMS have signed, if not ratified, the UNTOC. However, those that have signed the convention still need to enact and implement laws domestically to ratify and fulfill the aims of the agreement.</p> <p>At least 4-year imprisonment sentence is required to qualify as a serious crime under UNTOC. Although all AMS have signed UNTOC, a great disparity still exists in imprisonment terms. For example, while Singapore has a maximum sentence of 2 years for wildlife crimes, other AMS, including Malaysia and Brunei, incorporate UNTOC's 4-year imprisonment, with maximum up to 10 years' imprisonment.</p>
KP-3	CITES non-native species	Multiple national wildlife protection laws may have existed before a country became a part of CITES. The process of adapting existing national legislation to international CITES commitments can be challenging, as many CITES-protected species may not be protected under national laws. At the regional level, the lack of regional harmonization of protected CITES lists and the non-inclusion by AMS of certain non-native but severely endangered species on the CITES list is a significant limitation on legislation' effective ability to sanction and prevent wildlife crime. To curb the wildlife trafficking market on the supply side and, consequently, overall, the AMS should

¹⁸ See footnote 4.

¹⁹ The description and terms used in this column are generic and should be read in conjunction with the definitions of terms used in the specific laws reviewed. For example, protected wildlife described in this column include other categories of wildlife as defined in the specific laws.

²⁰ Section 2(b) UNTOC is available at https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/united_nations_convention_against_transnational_organized_crime_and_the_protocols_thereto.pdf

	KEY PROVISIONS (KP) ¹⁹	SHORT DESCRIPTION
		harmonize the list of protected species to avoid creating hot spots for wildlife traffickers. ²¹ Please see further discussion and model provision in Chapter 3.1.
KP-4	Mechanism for review and update of protected species list	The CITES process of classifying species into Appendices I–III is well established and accepted by the parties. Although all AMS are parties to CITES, many do not have a formal or adequate mechanism to review and update the list of protected species. In the absence of a working mechanism, we recommend that the law provide for an automatic adjustment of the national protected species list to the prevailing CITES list. Please see further discussion in Chapter 3.1.
KP-5	Hunting of wildlife	This addresses the frontline of enforcement—illegal hunting at the source. An interesting consideration is a provision that deals with illegal hunting of protected species overseas.
KP-6	Captivity breeding	The existence of a legal trade would inevitably encourage illegal trade. In the case of captive breeding, the risk of laundering wild specimens is a real threat. Provisions should ensure that proper records of stocks and transactions be kept and updated. Consider DNA and microchip records. Laundering of wild species must be duly penalized.
KP-7	Illegal trade of wildlife species, live animals, dead animals, trophies, animal parts, and products made from wildlife	Trade is defined as import, export, and re-export of goods under CITES model law, but many AMS have separate definitions of trade from the acts of import, export, and re-export. All commercial activities, including sale, purchase, advertising, offer for sale, and display should be addressed. Provisions should also deal with both domestic and international trade.
KP-8	Illegal online trade of wildlife species, live animals, dead animals, trophies, animal parts, and products made from wildlife	With the advent of online social/commercial platforms (e.g., Facebook/Alibaba), including online messaging services, such as WeChat, WhatsApp, and Facebook messenger, the illegal wildlife trade has migrated to these mediums. This also means that online crime has become borderless. Investigating online crimes is complex; it includes issues of jurisdiction of the commission of the crimes, including poaching, advertising, transporting, transacting, and possessing the illegal wildlife, as well as perpetrator’s location and the physical location of all the above (which all could be in different countries). Therefore, this becomes a multi-jurisdiction practical and legal labyrinth. It is crucial that the laws keep up with such trends and adequately protect wildlife legislation. This will require at the minimum, wildlife enforcement agencies’ coordination with the advertising and cybercrime agencies of all affected countries. Please see further discussion and model provisions in Chapter 4.7.
KP-9	Illegal consumption and use of protected wildlife	Many laws focus on the supply of illegal wildlife and not the consumption. Making the consumption of protected wildlife illegal will help close a significant gap in the enforcement continuum.

²¹ This suggestion comes from the conclusion of the ASEAN Wildlife Enforcement Network *Handbook on Legal Cooperation to Combat Wildlife Crime*. The regional unification of laws regarding the inclusion of non-native species—specifically CITES Category I—was Objective 1 of the ASEAN Regional Action Plan on Trade in Wild Fauna and Flora, 2005–2010. While progress has been made in terms of a harmonization of laws regarding the CITES Category I, it is essential to push further for the inclusion of Category II and III as well (ASEAN Wildlife Enforcement Network, 2016, p. 31). The handbook is available at <http://www.aipasecretariat.org/webassets/pdf/10.pdf>.

	KEY PROVISIONS (KP) ¹⁹	SHORT DESCRIPTION
KP-10	Transportation of wildlife species, live animals, dead animals, trophies, animal parts, and products made from wildlife	Transportation (in this case we refer to transportation within national borders) of illegal wildlife is an important provision to ensure that wildlife successfully trafficked into the country remains illegal and, hence, transporting such wildlife shall also constitute an offence.
KP-11	Import/export of wildlife species, live animals, dead animals, trophies, animal parts, and products made from wildlife	This KP is one of the elements of trade under CITES. Forgery or fraudulent CITES documentation and counterfeits should also be addressed in these provisions.
KP-12	Re-export of wildlife species, live animals, dead animals, trophies, animal parts, and products made from wildlife	This KP is one of the elements of trade under CITES. Forgery or fraudulent CITES documentation and counterfeits should also be addressed in these provisions.
KP-13	Transit of wildlife species, live animals, dead animals, trophies, animal parts, and products made from wildlife	As many of the AMS are part of the transit route for wildlife trafficking, transit should be covered in tandem with import/export/re-export to ensure the traffickers do not fall through this loophole. Forgery or fraudulent CITES documentation and counterfeits should also be addressed in these provisions.
KP-14	Introduction from the sea of marine wildlife species, live animals, dead animals, trophies, animal parts, and products made from wildlife	This KP is one of the elements of trade under CITES. It is defined in the Convention [Article I, paragraph e] as "transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State". Forgery or fraudulent CITES documentation and counterfeits should also be addressed in these provisions.
KP-15	Illegal possession of protected wildlife	This provision ensures that wildlife successfully trafficked into the country remains illegal and, hence, possession of such illegal wildlife shall also constitute as an offence.
KP-16	Enforcement powers: entry, evidence collection, interview/interrogation, search, sampling, seizure, arrest, and confiscation	The provisions on enforcement powers are relevant to ensure that law enforcers are properly and adequately empowered to conduct their duties. Provisions include powers of entry, evidence collection, interview/interrogation, search, sampling, seizure, arrest, and confiscation. In certain AMS, this is referred to the criminal procedure code.
KP-17	Sale of confiscated specimens	This provision is highlighted as the sale of confiscated specimens. It is counterproductive to counter-trafficking efforts because it circulates illegal wildlife into the market and encourages possession, use or consumption of such wildlife. We recommended that sale of confiscated specimens not be allowed.
KP-18	Handling procedures for live, confiscated specimen	<p>A specific issue in the handling of live specimens is the legal requirement that many AMS must keep specimens for a specified period of time, sometimes up to 5 years, as evidence (usually pursuant to the criminal procedure code, which in its drafting did not anticipate live evidence) until the conclusion of the investigation and/or trial. This can take a long time and creates a number of difficulties, including not having adequate facilities or experts to keep such animals, especially non-native species requiring special care or living conditions and species that do not survive in captivity.</p> <p>This unnecessary situation can be remedied by legislation that ensures live specimens are not required to be retained as evidence, provided proper documentation of the seizure is recorded</p>

	KEY PROVISIONS (KP) ¹⁹	SHORT DESCRIPTION
		in accordance with the law of evidence and criminal procedure code. The animals should then be promptly rehabilitated, released, and/or repatriated.
KP-19	Compensation for victims/rehabilitation/costs of repatriation of seized wildlife	Provisions that hold perpetrators liable to compensation, rehabilitation, and repatriation costs of enforcement shall ensure that the cost and damages incurred are properly compensated by the those accountable. Please see Chapter 7.2 for further discussion.
KP-20	Reward for informants	This provision ensures that informants are rewarded for providing useful information/intelligence that will lead to successful arrest and prosecution of wildlife criminals. Please see Chapter 7.1 for further discussion.
KP-21	Establishment of conservation fund where proceeds from seized assets of wildlife offences go to a dedicated fund, which can be used by wildlife enforcement agencies	Insufficient funding is a significant impediment to CITES enforcement (Douglas, 2012). ²² Various solutions have been proposed for this issue, one of which is the creation of a national—or regional—fund in which proceeds from seized wildlife crimes would in part, or in whole, go into the fund. Appropriate funding is necessary to effectively deter crime through employing enough officers to conduct investigations, seizures, proceedings, for the protection of wildlife sanctuaries or hunting forbidden zones, to establish rescue centers for seized animals, and to be employed as rewards to informants. Furthermore, if proceeds from the fund are derived from seizures in wildlife crime or fees to criminals, this would ensure a cyclical self-sufficient and functioning enforcement mechanism, which could eventually remove itself from government funding. The establishment of a conservation fund is discussed in more detail in Chapter 5.
KP-22	Animal welfare	Wildlife that are trafficked usually suffer horrendous conditions as they are hidden to avoid detection. Such conditions include suffocation, starvation, dehydration, physical injuries, and death. Having robust animal welfare law will lend an extra hand in ensuring that the traffickers are penalized to the full extent of the law.
KP-23	Aiding and abetting; attempt	Wildlife trafficking involves multiple parties, and the line between the main perpetrators and the accomplices are hard to draw, especially in organized crimes. It is important that the offences of attempts, aiding, and abetting attract the same penalties as the primary offence to effectively deal with organized wildlife crime.
KP-24	Penalties - Minimum threshold and mandatory imprisonment - Penalties corresponding with the species' level of protection	Punishment for wildlife crimes is highly dependent on prosecutorial discretion and whether a judge views the crime seriously (Douglas, 2012). ²³ Moreover, courts often hand down a reduced or suspended sentence, so that, in many cases, an offender may avoid facing the actual jail term because of the nature of wildlife crimes (DLA Piper, 2015). ²⁴ Many of those prosecuted for

²² Frances, D. USA: Reducing Illegal Wildlife Trafficking - CITES and Caviar Environmental Policy and Law; Amsterdam Vol. 42, Iss. 1, (Feb 2012): 57-63., <https://search.proquest.com/openview/72042422e97a0d58d302040893a213b9/1?pq-origsite=gscholar&cbl=33885>.

²³ Douglas, F. (2012). Reducing illegal wildlife trafficking: CITES and caviar. *Environmental Policy and Law*, 42(1), 57–63. Envtl. Pol'y & L. 50 2012 Provided by: Aix Marseille University, Reducing Illegal Wildlife Trafficking - CITES and Caviar by Frances Douglas.

, <https://search.proquest.com/openview/72042422e97a0d58d302040893a213b9/1?pq-origsite=gscholar&cbl=33885>.

²⁴ DLA Piper: Empty Threat 2015: Does the Law Combat Illegal Wildlife.

	KEY PROVISIONS (KP) ¹⁹	SHORT DESCRIPTION
		offences in contravention of wildlife legislation escape with fines that are meager in comparison to the profits accrued ²⁵ and the damages done (EIA, 2016). The limited sanctions are enabled by the lack of minimum imprisonment terms in the distinct domestic legislations of AMS and by a lack of knowledge of the impacts of wildlife crime. Conversely, it is also equally important to have different levels of penalties that correspond with the severity of the crime and do not unduly penalize less severe offences. For further discussions, please see Chapters 8.1 and 8.2.
KP-25	Liability of legal entity/corporate body, directors and officers	When a crime is committed by a legal entity or corporate body, the main issues are how to ensure the penalties are adequate, ensure the penalties are a deterrent of future crimes and how the individual perpetrators within the legal entity are held accountable and do not hide behind the corporate veil. This is discussed in more detail in Chapter 8.2.
KP-35	Automatic fine adjustments to compensate for inflation and to maintain deterrent functions	Legislation is complex and slow to change. Often, laws do not evolve as rapidly as necessary. Consequently, non-deterrent penalties can arise because legislation does not increase in line with inflation or change in the impact of an area of criminal activity, such as wildlife trafficking. For suggested model provision, see Chapter 8.5.
KP-36	Appointment of special prosecutor and retained counsel	Environmental crime is a specialized area that requires specialized knowledge to successfully investigate and prosecute the perpetrators. Wildlife crime, a subset of environmental crime, requires even more specialized knowledge. Without such specialized knowledge, the successful prosecution of wildlife crime inevitably falls behind that of other higher priority and profile cases (such as human and drug trafficking). A wildlife special prosecutor is an effective way of ensuring that wildlife crimes are considered, effectively prosecuted, and sentenced. This is discussed in more detail in Chapter 4.1.
KP-37	Incorporating a provision to institutionalize parliamentary role through oversight	To ensure there is proper legislature oversight to monitor the implementation of laws, review the implementing rules and regulations, and ensure the accountability of the executive, wildlife laws should include a parliamentary oversight committee. For suggested model provisions, please refer to Chapter 6.2.

²⁵ Environmental Investigation Agency (2016): Time for action, End the criminality and the corruption fueling wildlife crime,

3 HARMONIZING PROTECTED SPECIES LISTS

3.1 Harmonizing Protected Native and Non-Native CITES-Listed Species

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Regional harmonization of protected native and non-native CITES-listed species</p> <p>All AMS have signed and ratified, to various degrees, CITES.²⁶ A crucial role of the convention is listing species as endangered and into three levels of protection: Appendices I, II, and III:²⁷</p> <p>Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.</p> <p>Appendix II includes species that are not necessarily threatened with extinction, but in which trade must be controlled to ensure survival of the species.</p> <p>Appendix III contains species that are protected in at least one country, which has asked other CITES parties for assistance in controlling trade.</p> <p>As most AMS already had their own national wildlife protection laws prior to CITES, upgrading AMS laws to incorporate CITES commitments can result in the consistency of definitions and protection of wildlife species. Note that it is common that native species are protected in accordance with the CITES Appendices, while the list of protected non-native species often does not correspond with CITES Appendices and, in some cases, the species are omitted from protection under national law.</p> <p>Another issue is that the national schedule(s) of protected species are often incorporated into the wildlife laws via an amendment to the schedule. This can cause a disparity in the protected list if the laws are not regularly updated. A</p>	<p>CONVENTION ON INTERNATIONAL TRADE OF ENDANGERED SPECIES: MODEL LAWS³⁰</p> <p>(a) "Species" means any species, subspecies, or geographically separate population thereof</p> <p>(b) "Specimen" means:</p> <ul style="list-style-type: none"> (i) any animal or plant, whether alive or dead; (ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and (iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species; <p>1. Appendix I shall include all species threatened with extinction, which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.</p> <p>2. Appendix II shall include:</p> <ul style="list-style-type: none"> (a) all species, which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and (b) other species, which must be subject to regulation in order that trade in specimens of certain species referred to in subparagraph (a) of this paragraph may be brought under effective control.

²⁶ CITES information available at <https://www.cites.org/eng/disc/parties/index.php>

²⁷ CITES information available at <https://www.cites.org/eng/disc/text.php#II>

³⁰ CITES information available at <https://cites.org/sites/default/files/eng/prog/Legislation/E-Model%20law-updated-clean.pdf>

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>related issue is situations where the national protected species lists do not cover all species of a particular animal. For example, there are eight species of pangolins in CITES Appendix I, but only two species may be fully protected in national legislation. Another example is where the protected list for import/transit/export is different from the protected list for possessing, transporting, hunting, and other wildlife offences. According to the Environmental Investigation Agency's 2016 report, this means that wildlife laws do not apply to certain critically endangered animals, including some listed in CITES Appendix I (the most endangered species).²⁸</p> <p>At the regional level, the lack of regional harmonization of protected CITES lists and the absence of certain non-native but severely endangered species from those lists is a significant limitation on legislation's effective ability to sanction and prevent wildlife crime. To curb the wildlife trafficking market on the supply side and overall, the AMS should harmonize the list of protected species to avoid creating hot spots for wildlife traffickers (ASEAN Wildlife Enforcement Network, 2016).²⁹</p> <p>Although all AMS have legislation defining differing lists of wildlife CITES species, the most thorough and effective legislation nationally and regionally would need to incorporate the CITES definitions and Appendices I, II, and III, including all lists of non-native species and any amendments.</p> <p>The definitions of Appendices I, II, and III and Convention in Brunei's Wild and Flora Order, 2007 provides a good model for ensuring that national protections correspond with CITES protected lists, including any amendments.</p>	<p>3. Appendix III shall include all species which any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.</p> <p>BRUNEI DARUSSALAM, WILD AND FLORA ORDER, 2007</p> <p>Article 2</p> <p>"Appendix" means the Appendix I, II or III to the convention and any amendment thereto, which may come into force.</p> <p>"Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed at Washington, District of Columbia on the 3rd day of March 1973 and any amendment made thereto, which has come into force and has been accepted by the Government.</p> <p>"Appendix I" means the Appendix I to the convention, which lists all species threatened with extinction which are or may be affected by trade.</p> <p>"Appendix II" means the Appendix II to the convention, which lists all species that are not threatened with extinction but may become so if trade is not regulated.</p> <p>"Appendix III" means the Appendix III to the convention which lists all species identified by any party to the convention that require regulation in its jurisdiction for the purpose of preventing or restricting, exploitation and require the cooperation of other parties in the control of trade.</p>

²⁸ Environmental Investigation Agency (2016); Time for action, End the criminality and the corruption fueling wildlife crime, p.6.

²⁹ ASEAN -WEN/Freeland, January 2016. ASEAN Handbook on Legal Cooperation to Combat Wildlife Crime, Conclusion, p.31. <http://www.aipasecretariat.org/webassets/pdf/10.pdf>. The regional unification of laws regarding the inclusion of non-native species, specifically CITES Appendix I category, was objective one of the ASEAN Regional Action Plan on Trade in Wild Fauna and Flora, 2005–2010. Although progress has been made in terms of harmonizing laws regarding the CITES Appendix I category, it is essential to push further for the inclusion of Appendices II and III.

4 ENHANCING ENFORCEMENT EFFICACY

4.1 Appointment of Specialized CWT Prosecutors

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISION
<p>Appointment of specialized CWT prosecutors</p> <p>Wildlife crime is often underestimated; its impact on the world and society, its role in pandemic diseases, in economic losses, and in loss of biological diversity is profound (Social Impact, 2013).³¹ Wildlife markets pack diverse species in close proximity, which means that illnesses spread and intermingle to create new strands of diseases, such as the avian influenza virus, which would not have occurred naturally in the wild. These illnesses can spread to humans and risk pandemics. Inadequate numbers of prosecutors, judges, and support staff, as well as a lack of specialization among judges and prosecutors, pose a barrier to addressing the large number of wildlife crimes (Human Rights Watch, 2008).³²</p> <p>Environmental crime is a specialized topic that requires specialized knowledge to successfully investigate and prosecute the perpetrators. Wildlife crime, as a subset of environmental crime, would naturally require even more specialized knowledge. Without such specialized knowledge, successful prosecution would inevitably fall behind other higher priority and profile cases (such as human and drug trafficking).</p> <p>While AMS have recognized the importance of a specialized wildlife enforcement task force under the ASEAN Wildlife Enforcement Network, now known as the ASEAN Working Group on CITES and Wildlife Enforcement, and an environmental court, the momentum for forming a specialized prosecutor unit has still not arisen. Since prosecution is a critical link—deciding whether to pursue a case or to push for deterrent sentences—it is thus crucial that an effective wildlife prosecutor and/or unit be included in a country’s enforcement continuum.</p>	<p>PHILIPPINES –REPUBLIC ACT NO. 7586, NATIONAL INTEGRATED PROTECTED AREAS SYSTEM ACT 1992, AS AMENDED BY REPUBLIC ACT NO. 11038</p> <p><i>Section 19. Special Prosecutor and Retained Counsel. – Within 30 days from the effectivity of this Act the Department of Justice shall appoint a special prosecutor prosecute violations of laws, rules and regulations in the protected area. Such special prosecutor shall coordinate with the PAMB [Protected Area Management Board] and PASU [Protected Area Superintendent] in the performance of duties and assist in the training of wardens and rangers in arrest and criminal procedures. The PAMB may retain the services of counsel to prosecute and/or assist in the prosecution cases under the direct control and supervision of the regular or special prosecutor and to defend the members of the PAMB, the PASU and the staff, or any person assisting in the prosecution, conservation and sustainable development of protected area, against any legal action related to their powers, functions and responsibilities as provided in this Act or as delegated or tasked by the PAMB.</i></p>

³¹ USAID, October 2013. Mid-Term Performance Evaluation of Asia’s Regional Response to Endangered Species Trafficking Program, Evaluation report, , recommendations. https://rmpportal.net/combating-wildlife-trafficking/documents/mid-term-performance-evaluation-of-asia2019s-regional-response-to-endangered-species-trafficking-arrest-program/at_download/file

³² Human Right Watch – Bringing Justice for War Crimes, Crimes against Humanity – IV. Staffing and Specialization of Judges and Prosecutors. <https://www.hrw.org/report/2008/07/10/still-waiting/bringing-justice-war-crimes-crimes-against-humanity-and-genocide>

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISION
<p>A wildlife special prosecutor would be an effective way of ensuring that wildlife crimes are considered and effectively prosecuted and sentenced.</p> <p>As written in Philippines Republic Act No. 7586, National Integrated Protected Areas System Act 1992, As Amended by Republic Act No. 11038, a special prosecutor would coordinate and educate judges, wardens, and rangers in arrest and criminal procedures and would ensure that cases are appropriately dealt with. The special prosecutor would coordinate the work with other sectors of government. The existence of a special prosecutor in itself is a symbol that the government takes wildlife crimes seriously, and such crimes will be punished.</p>	

4.2 Community or Private Sector Deputation as Wildlife Enforcement Officers

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Community or Private Sector Deputation as Wildlife Enforcement Officers (WEOS)</p> <p>Wildlife trafficking has increasingly spread across ASEAN borders. This is due to increased interest in wild species, but also to the increase in available transportation, including from individuals in the private sector. It is important for legislation to address the private sector’s role in trafficking. Policies to implement voluntary private-sector systems and mandatory government tracking systems could significantly hamper wildlife trafficking.</p> <p>To this end, the Philippines’ Wildlife Resources Conservation and Protection Act No. 9417 includes the deputation of WEOs with the full authority to seize illegally traded wildlife and arrest violators of wildlife laws. The allocation of responsibility ensures not only that surveillance is overarching but also that knowledge of wildlife trafficking’s consequences is spread. Individuals must comply with their new responsibility to protect and report—which will increase observation of any trafficking activity. More surveillance is more deterrence to wildlife crime.</p>	<p>PHILIPPINES, REPUBLIC ACT NO. 9417, WILDLIFE RESOURCES CONSERVATION AND PROTECTION ACT</p> <p><i>Section 30. Deputation of Wildlife Enforcement Officers. — The Secretary shall deputize wildlife enforcement officers from nongovernment organizations, citizens groups, community organizations and other volunteers who have undergone the necessary training for this purpose. The Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the National Bureau of Investigation (NBI) and other law-enforcement agencies shall designate wildlife enforcement officers. As such, the wildlife enforcement officers shall have the full authority to seize illegally traded wildlife and to arrest violators of this Act subject to existing laws, rules and regulations on arrest and detention.</i></p>

4.3 Recovery of Criminal Proceeds

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Recovery of Criminal Proceeds</p> <p>Wildlife trafficking profits encourage wildlife traffickers. To make wildlife trafficking less profitable, we must seize any financial gains of wildlife traffickers through prosecutions, using all appropriate tools such as forfeiture of assets. Prosecution of corruption related to wildlife trafficking has not been widely publicized, and the perception of pervasive corruption is widespread among wildlife traders. Seizing assets will help fight that perception.</p> <p>Forfeiture and seizure can be especially useful if the trafficker cannot be otherwise punished, because he has fled, cannot be apprehended, or even has died. Enhanced enforcement power for asset recovery increases the risk to offenders even when they themselves are beyond the reach of law enforcement.</p> <p>While many wildlife laws in the region have provisions empowering law enforcers to confiscate assets of wildlife criminals. These are restricted to assets used in the perpetration of the wildlife crime. Other laws, such as anti-money laundering laws, may enhance power to confiscate and liquidate assets of criminals. It is interesting to note that in Brunei, a fund has been established under the Criminal Asset Recovery Order of 2012, called the Criminal Assets Confiscation Fund, that derives part of its money from proceeds forfeited/confiscated/recovered from criminals.³³ The fund is to be applied (inter-alia) to “enable the law-enforcement agencies to continue their fight against money laundering, serious offences or unlawful activity”³⁴ and “any matters that, in his opinion may assist in preventing, suppressing or otherwise dealing with criminal conduct.”³⁵ The United Kingdom³⁶ and Australia³⁷ have robust legal frameworks for such mechanisms under the Proceeds</p>	<p>BRUNEI DARUSSALAM, CRIMINAL ASSET RECOVERY ORDER, 2012</p> <p><i>Criminal Assets Confiscation Fund.</i></p> <p>123. (1) There is hereby established a fund called the Criminal Assets Confiscation Fund, which subject to this section, shall be managed and controlled by the Permanent Secretary.</p> <p>(2) The Minister may authorise the payment into the Fund of such sum or sums as may be necessary to set up or maintain it, and any such payments shall be charged on and paid out of the Consolidated Fund.</p> <p>(3) All amounts (a) contributed by the Government towards the establishment or maintenance of the Fund; (b) recovered under or in satisfaction of a forfeited cash under section 461 confiscation order under section 68, a payment order under section 74, benefit recovery order under section 75, non-conviction based forfeiture order under section 83 or unexplained wealth declaration under section 85; or (c) received under an assets-sharing agreement; (d) paid to Brunei Darussalam by a foreign country, under a treaty or arrangement or otherwise, for providing for mutual assistance in criminal matters; and (e) other than amounts referred to in paragraph (d), paid to Brunei Darussalam by a foreign country in connection with assistance provided by Brunei Darussalam in relation to the recovery by that country of the proceeds of unlawful activity or the investigation or prosecution of unlawful activity, shall be included in the monies which are paid into the Fund.</p> <p>(4) Monies paid into the Fund shall not form part of the Consolidated Fund.</p>

³³ Criminal Asset Recovery Order, 2012.

³⁴ Article 123(5)(c) Criminal Asset Recovery Order, 2012.

³⁵ Article 123(5)(e) Criminal Asset Recovery Order, 2012.

³⁶ United Kingdom Proceeds of Crime Act 2002

³⁷ Proceeds of Crime Act 2002 No. 85, 2002. Australian Federal Register of Legislation.

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>of Crime Act, both promulgated in 2002. The UK was able to use its Proceeds of Crime Act 2002 in two recent cases, one of which was for seizure of assets of £100,000. This case involved rhinoceros horn, elephant tusk, and hippo teeth and resulted in a 14-month prison sentence. The UK's National Wildlife Crime Unit supports investigations into rhinoceros offences and records prosecutions.³⁸</p> <p>Additional sources of funding could arise from successful collaboration between wildlife law enforcers and anti-money laundering agencies, where an element of wildlife crime is present. A good example is the Chaiyamat case in Thailand (The Nation, 2014).³⁹ In May 2014, following the arrest of Kampanart Chaiyamat by the Thai Royal Police, Thailand's Anti-Money Laundering Office seized over 1 billion Thai baht (US\$36.5 million) from a wildlife trafficking syndicate. If a wildlife conservation fund existed, it could receive a portion of such proceeds.</p>	<p>(5) Subject to subsection (6), monies in the Fund shall be applied by the Permanent Secretary to - (a) compensate victims who have suffered losses as a result of serious offences; (b) satisfy a compensation order under this Order; (c) enable the appropriate law-enforcement agencies to continue their fight against money laundering, serious offences or unlawful activity; (d) discharging the obligations of Brunei Darussalam under any assets-sharing agreement; (e) any matters that, in his opinion may assist in preventing, suppressing or otherwise dealing with criminal conduct and in dealing with criminal conduct; (f) meeting the expenses incurred by the Permanent Secretary in administering the Fund.</p> <p>(6) Before applying any measure under subsection (5), the Permanent Secretary shall consult the Public Prosecutor and such other persons as he may consider appropriate.</p> <p>(7) Monies paid into the Fund, which not applied for any of the purposes mentioned in subsection (5) may be (a) held in the custody of the Permanent Secretary; or (b) placed in the name of the Fund, in a current or deposit account, with one or more banks approved by the Permanent Secretary, and any interest earned on such monies while held in such an account shall be credited to such account.</p> <p>(8) In this section, "Permanent Secretary" means the Permanent Secretary of the Ministry of Finance.</p>

³⁸ Information from the CITES Seventieth meeting of the Standing Committee for Rhinoceroses report is available at , <https://cites.org/sites/default/files/eng/com/sc/70/E-SC70-56.pdf>

³⁹ P. Tumnuksetchai, The Nation (2014), AMLO reveals huge seizures. <http://www.nationmultimedia.com/national/AMLO-reveals-huge-seizures-30233037.html>.

4.4 Violation of Foreign Laws as Predicate Offense and Civil Proceeding

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Violation of foreign laws as predicate offense and civil proceeding</p> <p>To address transnational wildlife crime, a nation must be able to recognize violation of foreign laws as a predicate offense. The provisions of the Lacey Act stipulate that violation of foreign laws has legal significance. This is effectively demonstrated by the case of <i>United States v. Fifty-Three Eclectus Parrots</i> (Krost, 2018).⁴⁰ The appellant had purchased his parrots from a man in Singapore, who in turn had bought them from their native home, Indonesia. However, the law in Indonesia prohibits the exports of these parrots, and thus the appellant, even though in the U.S., had violated the Lacey Act by violating the law of in Indonesia. While the appellant contested, it was held that the lack of knowledge of a foreign law was no defense against the Lacey Act seizure of property acquired through violation of any foreign law concerning fish, wildlife, or plants. The Act concerns the violation not only of statutes, but also of regulations and administrative decisions (Krost, 2018).⁴¹</p> <p>This is a powerful enabling agent to aid in the global struggle against wildlife trafficking. It ensures that even if a crime is committed in a foreign country, it can still be charged in the country in which the perpetrator is found. This limits the number of safe havens for wildlife criminals, and results in a more thorough and broad reach for wildlife enforcement.</p>	<p>USA, LACEY ACT</p> <p><i>Article 3372 Prohibited Acts</i></p> <p>(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce -</p> <p>(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law;</p> <p>(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; or</p> <p>(C) any prohibited wildlife species (subject to subsection (e) of this section);</p> <p>(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18) -</p> <p>(A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law or Indian tribal law, or</p> <p>(B) to possess any plant taken, possessed, transported, or sold in violation of any law or regulation of any State</p> <p>CIVIL PENALTIES</p> <p><i>Article 3373</i></p> <p>(a) Civil penalties</p> <p>(1) Any person who engages in conduct prohibited by any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, and any person who knowingly violates section 3372 (d) of this title, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation: Provided, That when the violation involves fish or wildlife or plants with a market value of less than \$350,</p>

⁴⁰ Krost, T (2018). The World's Laws in American Justice: The Foreign Law Provisions of the 2008 Lacey Act Amendments, *Journal of Environmental and Public Health Law*, Volume 8 Issue 1, Winter 2013 <https://pjepl.law.pitt.edu/ojs/index.php/pjepl/article/viewFile/65/56>

⁴¹ Ibid. Ibid.

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p><i>and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, or \$10,000, whichever is less.</i></p> <p><i>(2) Any person who violates section 3372 (b) of this title may be assessed a civil penalty by the Secretary of not more than \$250.</i></p> <p><i>(3) For purposes of paragraphs (1) and (2), any reference to a provision of this chapter or to a section of this chapter shall be treated as including any regulation issued to carry out any such provision or section.</i></p> <p><i>(4) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which a person may have taken or been in possession of the said fish or wildlife or plants.</i></p> <p><i>(5) Any civil penalty assessed under this subsection may be remitted or mitigated by the Secretary.</i></p> <p><i>(6) In determining the amount of any penalty assessed pursuant to paragraphs (1) and (2), the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed, and with respect to the violator, the degree of culpability, ability to pay, and such other matters as justice may require.</i></p> <p>CRIMINAL PENALTIES</p> <p>Article 3373 (d) Criminal penalties</p> <p>(1) Any person who—</p>

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p>(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title), or</p> <p>(B) violates any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350, knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than \$20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.</p> <p>(2) Any person who knowingly engages in conduct prohibited by any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation shall be fined not more than \$10,000, or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.</p> <p>(3) Any person who knowingly violates section 3372 (d) of this title—</p> <p>(A) shall be fined under title 18 or imprisoned for not more than 5 years, or both, if the offense involves— (i) the importation or exportation of fish or wildlife or plants; or (ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than \$350; and</p> <p>(B) shall be fined under title 18 or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (A).</p>

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p data-bbox="1122 240 2054 272">FORFEITURE</p> <p data-bbox="1122 308 2054 339"><i>Article 3374</i></p> <p data-bbox="1122 339 2054 491"><i>(1) All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3372 of this title (other than section 3372 (b) of this title), or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution included in section 3373 of this title.</i></p> <p data-bbox="1122 523 2054 651"><i>(2) All vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife or plants in a criminal violation of this chapter for which a felony conviction is obtained shall be subject to forfeiture to the United States if</i></p> <p data-bbox="1122 683 2054 802"><i>(A) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting party or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of this chapter, and</i></p> <p data-bbox="1122 834 2054 898"><i>(B) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants.</i></p> <p data-bbox="1122 930 2054 1265"><i>(b) Application of customs laws</i> <i>All provisions of law relating to the seizure, forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter, except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department may, for the purposes of this chapter, also be exercised or performed by the Secretary or by such persons as he may designate: Provided, That any warrant for search or seizure shall be issued in accordance with rule 41 of the Federal Rules of Criminal Procedure.</i></p> <p data-bbox="1122 1297 2054 1420"><i>(c) Storage cost</i> <i>Any person convicted of an offense, or assessed a civil penalty, under section 3373 of this title shall be liable for the costs incurred in the storage, care, and maintenance of any fish or wildlife or plant seized in connection with the violation concerned</i></p>

Dual Criminality

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL OF PROVISIONS
<p>Dual Criminality</p> <p>To ensure effective deterrence and limit loopholes open to wildlife criminals, the concept of dual criminal provisions should be considered. Under the United Nations Convention against Transnational Organized Crime, “Dual or double, criminality is a concept prevalent in the law of extradition. The dual criminality will be met if the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.”⁴² This concept again places emphasis on the harmonization or unification of regional law. “No person may be extradited whose deed is not a crime according to criminal law of the State which is asked to extradite as well as the state which demands extradition,”⁴³ according to one authority (Williams, 1991). Thus, a lack of coherent, regional legislation on wildlife creates safe havens and easy means to escape penalties.</p> <p>Another aspect of dual criminality is the idea that an individual can be charged for two different crimes for one act. One example is the Philippine’s model legislation, the Anti-Money Laundering Act, RA9160, which ensures that a criminal may be charged for both the offence of money laundering and for the unlawful activity itself. “Extradition...means the Surrender by one state to another state which requests the surrender of a person who is accused or convicted on account of the commission of crime outside the territory of the surrendering state and within the jurisdiction of the territory the state requesting the said surrender based on its right to try and convict the said person,” according to Indonesia’s model legislation, The Law Act No. 1 of 1979 on Extradition (ASEAN Wildlife Enforcement Network, 2016).⁴⁴ Thailand’s Extradition Act B.E., 2551, proposes a model legislation that criminalizes an extraditable offence, which is punishable under the laws of both the requesting and the requested state. While it is recommended that dual criminality laws be harmonized regionally, the United Nations Convention Against Corruption</p>	<p>PHILIPPINES –REPUBLIC ACT NO.9160, ANTI--MONEY LAUNDERING ACT, AS AMENDED, REPUBLIC ACT NO. 10365.</p> <p><i>Prosecution of money laundering.</i></p> <p><i>a. Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as herein defined.</i></p> <p><i>b. The prosecution of any offense or violation under this Act shall proceed independently of any proceeding relating to the unlawful activity</i></p>

⁴² Article 16, §1, United Nations Convention against Transnational Organized Crime.

⁴³ Williams, S. (1991). The double criminality rule and extradition: A comparative analysis. *Nova Law Review*, 15(2), 581-624. <http://dx.doi.org/10.1017/s0021223700016964>

⁴⁴ ASEAN -WEN/Freeland, January 2016. ASEAN Handbook on Legal Cooperation to Combat Wildlife Crime. <http://www.aipasecretariat.org/webassets/pdf/10.pdf>

of 2014, signed by all AMS, provides policies and guidelines that can be a useful tool for states dealing with cross-jurisdictional cases.

INDONESIA, LAW NO. 1 OF 1979, EXTRADITION

In this law “Extradition” means the Surrender by one State to another state which requests the surrender of a person who is accused or convicted on account of the commission of crime outside the territory of the surrendering state and within the jurisdiction of the territory the state requesting the said surrender based on its right to try and convict the said person.

(1) who’s surrender is requested by the competent authorities of a foreign state on account of his being accused of committing a crime or being wanted for the carrying out of sentence or a warrant of arrest.

THAILAND, EXTRADITION ACT B.E. 2551

An extraditable offence shall be criminal and punishable under the laws of requesting State and Thailand by death penalty, imprisonment, deprivation of liberty, or other detention forms for a period of more than one year, to an offense of the same Chapter or same offense in both States.

4.5 Legally Protecting Environmental Law Enforcers from SLAPP Cases

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Legally protecting environmental law enforcers from SLAPP cases</p> <p>While efforts are being made to deter wildlife crimes through law enforcement, some social and policy factors still prevent a transformative success. One such issue is law enforcement’s fear of repercussions when arresting, seizing, and prosecuting environmental crimes. Lawsuits against law enforcement, including police, lawyers, judges, and plaintiffs, among others, are an occupational hazard that impedes effective prosecution of wildlife crimes. In order to remedy this issue, laws granting immunity of law enforcement from lawsuits in the line of duties may be introduced, and a law implemented to prevent strategic lawsuits against public participation (SLAPP)⁴⁵ would be useful (Chamberlain & Chait, 2015).</p> <p>If they are not adequately protected by the law when doing their jobs, then law enforcers are less likely to make arrests. A lack of clear procedures and rules for law enforcers means that there is a greater likelihood of criminals filing a case against the law enforcer. Brunei’s Wild Fauna and Flora Order 2007,⁴⁶ Section 56, provides a model provision to prevent this.</p> <p>SLAPPs often intend to intimidate an individual, company, or group of individuals from publicly or legally expressing their views. The filer of a SLAPP does not necessarily intend to win the case, but rather to drain the monetary and emotional resources of the defendants (Chamberlain & Chait, 2015).⁴⁷ SLAPP cases therefore deter law enforcement officers, who are resource weak and at risk for such lawsuits, from arresting criminals.</p> <p>Anti-SLAPP legislation is intended to dismiss SLAPPs in a short amount of time, to prevent severe damage and the intended effect of the SLAPP. One model example can be found in the Philippines Rules of Procedures for Environmental Cases, Rule 6, of 2010.⁴⁸ It defines a SLAPP as a legal action filed to harass, vex, exert undue</p>	<p>BRUNEI DARUSSALAM, WILD FAUNA AND FLORA ORDER 2007</p> <p><i>Protection of authorized officers and others</i></p> <p>56. Any person who does any act in pursuance or intended pursuance of any of the functions conferred on him by or under this Order shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, mistake of law or fact or on any other ground, unless he has acted, or omitted to act, in bad faith or without reason.</p> <p>PHILIPPINES, A.M. No. 09-6-8-SC</p> <p>RULES OF PROCEDURE FOR ENVIRONMENTAL CASES</p> <p><i>Rule 6 Strategic Lawsuit Against Public Participation</i></p> <p><i>Section 1. Strategic lawsuit against public participation (SLAPP). - A legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules.</i></p> <p><i>Section 2. SLAPP as a defense; how alleged. - In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney’s fees and costs of suit.</i></p> <p><i>The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.</i></p>

⁴⁵ Chamberlain, H., & Chait, L. (2015). The “nuts and bolts” of anti-SLAPP. Buchalter.com <<https://www.buchalter.com/wp-content/uploads/2017/06/The-Nuts-and-Bolts-of-Anti-SLAPP.pdf>>

⁴⁶ Wild Flora Order 2007. Available at: [http://www.agc.gov.bn/AGC%20Images/LOB/Order/U-Z/Wild%20Fauna%20and%20Flora%20Order,%202007%20\(S%2077\).pdf](http://www.agc.gov.bn/AGC%20Images/LOB/Order/U-Z/Wild%20Fauna%20and%20Flora%20Order,%202007%20(S%2077).pdf)

⁴⁷ Chamberlain, H., & Chait, L. (2015). The “nuts and bolts” of anti-SLAPP. Buchalter.com <<https://www.buchalter.com/wp-content/uploads/2017/06/The-Nuts-and-Bolts-of-Anti-SLAPP.pdf>>.

⁴⁸ AM No. 09-6-8-SC, Rules of Procedures for Environmental Cases, Available at: http://www.lawphil.net/courts/supreme/am/am_09-6-8-sc_2010.html

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>pressure, or stifle any legal recourse that any person, institution, or the government has taken or may take in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights.</p> <p>In dismissing a SLAPP lawsuit, the party seeking the dismissal of the case must prove by substantial evidence that their act enforcing environmental law was a legitimate action for the protection, preservation, and rehabilitation of the environment. The party filing the action assailed as a SLAPP must prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.</p> <p>In addition to this, the Philippines law ensures that the defense of a SLAPP will be set for hearing by the court after issuance of the order to file an opposition within 15 days from filing of the comment or the lapse of the period. And the resolution of the defense of a SLAPP must be completed within 30 days after the summary hearing. If the court dismisses the action, the court may award damages, attorney's fees, and costs of suit under a counterclaim if one has been filed under the Philippines Rules of Procedures for Environmental Cases, Rule 6, of 2010.⁴⁹ The dismissal will be with prejudice. Thus, the Philippines law creates a time limit that diminishes the resource costs for defendants, ensures that SLAPPs can be dismissed, and consequently diminishes the risks to law enforcement that are associated with increased seizures of wildlife/environmental criminals.</p>	<p><i>The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within 15 (15) days from filing of the comment or the lapse of the period.</i></p> <p><i>Section 3. Summary hearing. - The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his act for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.</i></p> <p><i>Section 4. Resolution of the defense of a SLAPP. - The affirmative defense of a SLAPP shall be resolved within 30 (30) days after the summary hearing. If the court dismisses the action, the court may award damages, attorney's fees and costs of suit under a counterclaim if such has been filed. The dismissal shall be with prejudice.</i></p> <p><i>If the court rejects the defense of a SLAPP, the evidence adduced during the summary hearing shall be treated as evidence of the parties on the merits of the case. The action shall proceed in accordance with the Rules of Court.</i></p>

⁴⁹ Ibid.

4.6 Online Wildlife Trade

DESCRIPTION OF KEY INNOVATIONS	MODEL PROVISIONS & KEY INNOVATIONS
<p>Online wildlife trading</p> <p>Wildlife trafficking has significantly expanded as a market over the last decade. There has been an increase in demand and supply, alongside which there has been an increase in suppliers, hunters, transportation, and platforms for communications (Schaedla, 2016).⁵⁰ The online web has become a new forum for interaction between consumers and producers—not on the “dark web,” but on regular platforms such as Facebook, e-commerce websites, and online auction sites. Indeed, a 2016 study found little evidence of illegal wildlife trade on the dark web, likely because lax enforcement on the mainstream web renders such obfuscation unnecessary; wildlife products are openly sold online (Harrison, Roberts, & Hernandez-Castro, 2016).⁵¹ The use of media platforms is problematic as they open the wildlife market to many more consumers, expanding the overall market. Suppliers face easier access, cross-borders and cross-continent. To counter this, governments should monitor the scale of trade online and legislate against online sales, as well as investigate the individuals and companies involved in such trade (EIA, 2016).⁵²</p> <p>One aspect of online crimes that increases the complexity of investigation is the issue of jurisdiction of the commission of the crimes. Poaching, advertising, transporting, the transaction, possession of the illegal wildlife, the perpetrator, and just the mere physical location of all the above (which all could be in different countries) becomes a multi-jurisdiction practical and legal labyrinth. It is crucial that the laws keep up with appropriate trends to ensure that wildlife are adequately protected. This will require, at a minimum, wildlife enforcement agencies’ coordinating with the advertising and cybercrime agencies of all affected countries.</p>	<p>PHILIPPINES, REPUBLIC ACT NO. 10175, CYBERCRIME PREVENTION ACT</p> <p><i>Chapter II – Punishable Acts</i> <i>SEC. 4. Cybercrime Offenses. — The following acts constitute the offense of cybercrime punishable under this Act:</i></p> <p><i>(a) Offenses against the confidentiality, integrity and availability of computer data and systems:</i></p> <p><i>(5) Misuse of Devices.</i></p> <p><i>(i) The use, production, sale, procurement, importation, distribution, or otherwise making available, without right, of:</i></p> <p><i>(aa) A device, including a computer program, designed or adapted primarily for the purpose of committing any of the offenses under this Act; or</i></p> <p><i>(bb) A computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed with intent that it be used for the purpose of committing any of the offenses under this Act.</i></p> <p><i>(c) Content-related Offenses:</i></p> <p><i>(3) Unsolicited Commercial Communications. — The transmission of commercial electronic communication with the use of computer system which seek to advertise, sell, or offer for sale products and services are prohibited unless:</i></p> <p><i>(i) There is prior affirmative consent from the recipient; or</i></p> <p><i>(ii) The primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or</i></p> <p><i>(iii) The following conditions are present:</i></p> <p><i>(aa) The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject receipt of further commercial electronic messages (opt-out) from the same source;</i></p> <p><i>(bb) The commercial electronic communication does not purposely disguise the source of the electronic message; and</i></p>

⁵⁰ Schaedla, W.H. 2016. Local sociocultural, economic and political facilitators of transnational wildlife crime. Elliott, L. and Schaedla, W.H. (eds). 2016. Handbook of Transnational Environmental Crime.

⁵¹ Harrison, J. R., Roberts, D. L. and Hernandez-Castro, J. (2016), Assessing the extent and nature of wildlife trade on the dark web. Conservation Biology, 30: 900–904.

⁵² Environmental Investigation Agency (2016): Time for action, End the criminality and the corruption fueling wildlife crime, November 2016.

DESCRIPTION OF KEY INNOVATIONS	MODEL PROVISIONS & KEY INNOVATIONS
<p>Only a few countries have adapted their wildlife-specific laws to accommodate the growing relevance of the media. China, Portugal, the Czech Republic, France, Mongolia, and the UK have expressly criminalized illicit wildlife trade online (Wingard & Pascual, 2018).⁵³</p> <p>China's Wildlife Protection Law of 2017 provides a good model: not only does it prohibit advertising online, it also seeks to hold the media platform responsible.⁵⁴</p> <p>In the UK, the Control of Trade in Endangered Species Regulation 2018 requires that the reference number of the CITES certificate granted under the said regulation be included in any advertisement for the sale of the specimen.</p> <p>In the ASEAN region, the Philippines Cybercrime Prevention Act prescribed penalties for selling goods without a license, or any goods that are prohibited. Similarly, Thailand's draft wildlife legislation of 2016⁵⁵ proposed that broadcasting, advertising, or presenting via television, radio, print, computer system, or any media for commercial purposes is included in the definition of trade. This quite effectively legislates against illegal trade of wildlife online or through any form of media.</p>	<p><i>(cc) The commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.</i></p> <p>THAILAND, DRAFT WILDLIFE CONSERVATION AND PROTECTION ACT (26 DECEMBER 2016)</p> <p>Section 4. <i>"Trade" means to purchase, sell, exchange, dispose of, distribute, or transfer the ownership for the purpose of trading, including having or showing for such purposes, broadcasting, advertising or presenting via television, radio, print, computer systems or any media for commercial purposes.</i></p> <p>CHINA, WILDLIFE PROTECTION LAW OF THE PEOPLE'S REPUBLIC OF CHINA 2017</p> <p>Article 31 <i>Publishing of advertisements relating to the sale, purchase or utilization of wildlife or prohibited hunting equipment shall be prohibited. Publishing of adverts relating to the illegal sale, purchase or utilization of wildlife products shall be prohibited.</i></p> <p>Article 32 <i>The provision of trading platforms for the illegal sale, purchase or utilization of wildlife and the products thereof or prohibited hunting equipment by internet trading platforms, goods exchange markets or other trading space is prohibited.</i></p> <p>Article 50 <i>If anyone, in violation of Article 31, publishes an advertisement relating to the illegal sale, purchase or utilization of wildlife and the products thereof or prohibited hunting equipment, they shall be punished according to the Advertising Law of the People's Republic of China [2015]⁵⁶.</i></p>

⁵³ Wingard, J., & Pascual, M. (2018, July). Catch me if you can – Legal challenges to illicit wildlife trafficking over the internet. The Global Initiative Against Transnational Organized Crime. <http://globalinitiative.net/legal-challenges-to-preventing-iwt-online/>.

⁵⁴ Articles 31 and 32 Wildlife Protection Law of the People's Republic of China 2017

⁵⁵ Thailand's Draft Wildlife Conservation and Protection Act (26 December 2016) is available at <http://www.dnp.go.th/wildlaw/doc/draft.pdf>. Note, the proposed draft is under consideration at the National Council of State, Thailand. It seeks to replace the existing WARPA.

⁵⁶ Articles 37 and 57, Advertising Law of the People's Republic of China (2015).

DESCRIPTION OF KEY INNOVATIONS	MODEL PROVISIONS & KEY INNOVATIONS
	<p>Article 51 <i>If anyone, in violation of Article 32, provides a trading platform for the illegal sale, purchase or utilisation of wildlife or the products thereof or prohibited hunting equipment, the administrative authority for industry and commerce under the people’s government at county level and above shall issue an order to cease this illegal behaviour and make corrections within a prescribed time limit; shall confiscate all unlawful income; and shall issue a fine of between two and five times the amount of this unlawful income. Where no unlawful income was gained, a fine shall be issued of between 10,000 and 50,000 yuan. Where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law.</i></p>

5 SUSTAINABILITY AND FUNDING MECHANISM

5.1 Conservation Fund for Wildlife Law Enforcement

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Conservation fund for wildlife law enforcement</p> <p>Insufficient funding is a significant impediment to CITES enforcement (Douglas, 2012).⁵⁷ Various solutions have been proposed for this issue, one of which is the creation of a national or regional fund in which proceeds from seized wildlife crimes would in part, or in whole, go. Appropriate funding is necessary to effectively deter crime—to pay for enough officers to conduct investigations, seizures, and proceedings; to fund the protection of wildlife sanctuaries or hunting forbidden zones; to establish rescue centers for seized animals; and to reward informants. Furthermore, if proceeds from the fund are derived from seizures in wildlife crime or fines from criminals, this would ensure a cyclical, self-sufficient, and functioning enforcement mechanism, which could eventually be removed from government funding.</p> <p>A model example of legislation establishing a fund is the Philippines Republic Act No. 9147, which provides for the creation of a Wildlife Management Fund with funds deriving from “fines imposed, and damages awarded, fees, charges, donations, endowments, administrative fees or grants in the form of contributions.” The Philippines Fisheries Code of 1998 also provides for a Fisheries Management Fund to conserve, preserve, and protect aquatic resources.</p> <p>Other suggestions for funding exist in the U.S. The Multinational Species Conservation Fund Semipostal Stamp Act of 2009 provides a way for the general public to contribute to the fund through voluntarily employing the wildlife stamp from which proceeds enter the wildlife fund. Alternatively, the Endangered Species Act of 1973 (7 U.S.C. § 136, 16 U.S.C. § 1531 et seq.)⁵⁸ requires direct appropriation into a special fund known as the cooperative endangered species</p>	<p>PHILIPPINES, REPUBLIC ACT NO. 9147, WILDLIFE RESOURCES CONSERVATION AND PROTECTION ACT</p> <p><i>Section 29 Wildlife management fund.</i></p> <p><i>There is hereby established a Wildlife Management Fund to be administrated by the department as a special account in the national Treasury which shall finance rehabilitation or restoration of habitats affected by acts committed in violation of this Act and support scientific research, enforcement and monitoring activities, as well as enhancement of capabilities of relevant agencies.</i></p> <p><i>The fund shall derive from fines imposed and damages awarded, fees, charges, donations, endowments, administrative fees or grants in the form of contributions. Contributions to the Fund shall be exempted from donor taxes and all other tax charges or fees imposed by the government.</i></p> <p>REPUBLIC ACT NO. 8550, FISHERIES CODE OF 1998, AS AMENDED BY REPUBLIC ACT 10654</p> <p><i>Section 142 Fisheries Management Fund.</i></p> <p><i>A Fisheries Management Fund is hereby established to enhance the budget for: the conservation, preservation, protection, management, development and regulation of the fishery and aquatic resources; research and development and capability building of the various stakeholders including provision for scholarships; supplementary live hood for poverty alleviation; and improvement of productivity and processes of the various stakeholders. It shall be administrated by the Bureau of Fisheries and Aquatic Resources as a special account in any government financial institution.</i></p>

⁵⁷Douglas, F. (2012). Reducing illegal wildlife trafficking: CITES and caviar. *Environmental Policy and Law*, 42(1), 57–63. Envtl. Pol’y & L. 50 2012 Provided by: Aix Marseille University, Reducing Illegal Wildlife Trafficking - CITES and Caviar by Frances Douglas

<https://search.proquest.com/openview/72042422e97a0d58d302040893a213b9/1?pq-origsite=gscholar&cbl=33885>.

⁵⁸ (7 U.S.C. § 136, 16 U.S.C. § 1531 et seq.)

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>conservation fund to assist states in the development of programs for the conservation of endangered and threatened species.</p> <p>Both sources of funding, from criminal recoveries and voluntary contributions through sales, could be incorporated into legislation to ensure both public and governmental contribution.</p> <p>Please refer to the USAID Wildlife Asia monograph, <i>The Principles of Wildlife Conservation Funds and Restitution</i>, for further discussion (USAID/AIPA, 2017).⁵⁹ This monograph introduces the concept of establishing a wildlife conservation fund and the principles of restitution as a method of funding wildlife enforcement efforts. The paper includes discussions on the purpose of a wildlife conservation fund, how it can be funded, examples of such conservation funds, the status in the ASEAN region, and recommendations. It was prepared as part of USAID Wildlife Asia's Thailand CWT Legislative Frameworks and Policy Reform Recommendations Package being developed for the National Legislative Assembly of Thailand and the AIPA.</p>	<p><i>It shall be funded from administrative fines and penalties imposed under this Code, from the proceeds of the sale of forfeited fish, fishing gears, paraphernalia and fishing vessels, and contributions in the form of endowments, grants and donations to the fund, which shall be exempted from donor and other taxes, charges or fees imposed by the government.</i></p> <p><i>The fund shall be exclusively utilized as follows:</i></p> <ul style="list-style-type: none"> <i>a. Fifteen percent for the purchase, upgrade and maintenance of vessels, communication and other equipment used for the monitoring, control and surveillance of Philippine waters and distant water fishing;</i> <i>b. Five percent for the payment of litigation expenses, cost of conveyance of witnesses and others costs due to cases filed by or against the republic of the Philippines in international Courts arising from the implementation of this Code or where apprehending party or parties become respondents or defendants in any tribunal court of law;</i> <i>c. Twenty-five percent for the operating costs and capability building of the NFARMC, INFARMCs and C/MFARMCs and payment for the cost of rehabilitation, medical expenses for injury, or indemnity for death of law-enforcement officers, including deputized volunteers, distributed as follows: five percent to all C/MFARMCs and ten percent to C/MFARMCs for the apprehension and successful prosecution of a fisheries offense;</i> <i>d. five percent for the continued upgrading of laboratory facilities and equipment;</i> <i>e. five percent for the research and development activities of the NFRDI;</i> <i>f. five percent for the capability development of BFAR personnel, deputized law-enforcement agencies and volunteers and stakeholders;</i> <i>g. ten percent for scholarship grants for children of fisher-folks and fish workers in fish catch, aquaculture, fishing and fish processing;</i> <i>h. fifteen percent for live hood programs for production enhancement and poverty alleviation; and</i> <i>i. fifteen percent for assistance to fishermen in the form of shared facilities”</i>

⁵⁹ USAID/ AIPA Secretariat, November 2017. *The Principles of Wildlife Conservation Funds and Restitution – Additional Remedy to Wildlife and Forest Offences.*
http://www.aipasecretariat.org/webassets/file/file_management_1521102037.pdf

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p data-bbox="1128 245 2040 304">USA, MULTINATIONAL SPECIES CONSERVATION FUND SEMIPOSTAL STAMP ACT OF 2009</p> <p data-bbox="1128 341 1823 368"><i>Section 2. Multinational species conservation funds semipostal stamp</i></p> <p data-bbox="1128 403 2033 555"><i>(a) In general. In order to afford a convenient way for members of the public to contribute to funding for the operations supported by the Multinational Species Conservation Funds, the United States Postal Service shall issue a semipostal stamp (hereinafter in this Act referred to as the “Multinational Species Conservation Funds Semipostal Stamp”) in accordance with succeeding provisions of this section.</i></p> <p data-bbox="1128 590 1301 617"><i>(b) Cost and use.</i></p> <p data-bbox="1128 652 2029 772"><i>(1) In general. The Multinational Species Conservation Funds Semipostal Stamp shall be offered at a cost equal to the cost of mailing a letter weighing one ounce or less at the nonautomation single-piece first-ounce letter rate, in effect at the time of purchase, plus a differential of not less than 15 percent.</i></p> <p data-bbox="1128 775 2011 834"><i>(2) Voluntary use. The use of any semipostal issued under this section shall be voluntary on the part of postal patrons.</i></p> <p data-bbox="1128 837 2033 896"><i>(3) Special rate. The special rate of postage of an individual stamp under this section shall be an amount that is evenly divisible by 5.</i></p> <p data-bbox="1128 900 2018 1019"><i>(c) Other terms and conditions. The issuance and sale of the Multinational Species Conservation Funds Semipostal Stamp shall be governed by the provisions of section 416 of title 39, United States Code, and regulations issued under such section, subject to subsection (b).</i></p> <p data-bbox="1128 1054 1783 1082">TANZANIA, THE WILDLIFE CONSERVATION ACT 2009</p> <p data-bbox="1128 1117 1957 1176"><i>91- (1) There shall continue to exist a Fund to be known as the Tanzania Wildlife Protection Fund, in its acronym known as “TWPF”.</i></p> <p data-bbox="1128 1179 1973 1238"><i>(2) The objectives of the Tanzania Wildlife Protection Fund shall be to facilitate and support wildlife conservation, inside and outside protected areas particularly in –</i></p> <p data-bbox="1128 1273 1630 1300"><i>(a) antipoaching operations and law-enforcement;</i></p> <p data-bbox="1128 1303 1585 1331"><i>(b) Operations of the Wildlife Protection Unit</i></p> <p data-bbox="1128 1334 1458 1361"><i>(c) The conservation of wildlife; |</i></p> <p data-bbox="1128 1364 1989 1423"><i>(d) the development of communities living in rural areas adjacent to wildlife protected areas;</i></p>

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p>(e) conservation education, training and awareness creation in wildlife matters;</p> <p>(f) capacity building in wildlife management;</p> <p>(g) the wildlife management research; and</p> <p>(h) any other activity related to conservation of wildlife.</p> <p>(3) the sources of the Fund shall consist of-</p> <p>(a) such sums of money as may be appropriated by the Parliament;</p> <p>(b) twenty- five percentum of the proceeds of the sale of every animal, trophy, weapon vehicle, vessel, aircraft, tent or other article which is forfeited pursuant to section 110 of this Act and sold or disposed of in any manner for money including proceeds accrued from non-consumptive use of wildlife outside national parks and the Ngorongoro Conservation Area;</p> <p>(c) any sum or property which may in any manner become payable into the fund: and</p> <p>(d) any sum payable or donation, bequest, gift or grant made or given to the fund by other agencies, institutions, persons or other government or international organisations.</p> <p>92. (1) There is established a Board to be known as the Board of Trustees of the Tanzania Wildlife Protection Fund which shall-</p> <p>(a) have perpetual succession and common seal;</p> <p>(b) in its corporate name capable of suing and being sued</p> <p>(c) be capable of purchasing or acquiring and managing in any manner and alienating any movable and immovable property.</p>

6 GOVERNANCE

6.1 Online Petitions

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Online Petitions Due to many competing priorities in a government’s agenda, some issues may be not addressed effectively. In this case, it is possible for the public to issue a petition to bring awareness of certain issues to the government. A petition is a formally written request or document, signed by those agreeing to it and addressed to those in authority, asking for some favor, right, or benefit. Petitions can be useful tools for wildlife protection and curbing wildlife trafficking because they bring awareness not only to the government, but also to the greater public.</p> <p>The UK government and parliament has an online petition system through which anyone can start a petition as long as they are a British citizen or UK resident. If a petition gets 10,000 signatures, the government will respond. If a petition gets 100,000 signatures, it will be automatically considered for a debate in Parliament. The government of Germany also provides an online site where citizens can submit online petitions.⁶⁰</p> <p>An excellent example of the efficacy of such sites is the online petition to shut down the domestic ivory market in the UK, as described by Georgia Diebelius in a Metro article of November 28, 2016:</p> <p style="text-align: center;">Shut down the domestic ivory market in the UK</p> <p><i>The Conservatives pledged to shut down the UK’s domestic ivory market in their manifesto for the past two elections. 30,000 African Elephants are slaughtered a year for their tusks yet, the government has still not outlawed the trade. From 2009 to 2014, 40% of UK customs seizures were ivory items. Many African</i></p>	<p style="text-align: center;">UNITED KINGDOM GOVERNMENT AND PARLIAMENT</p> <p><i>E-petitions: a collaborative system⁶³</i></p> <p><i>On 8 May 2014, the House agreed to a motion supporting the establishment, at the start of the next Parliament, of a “collaborative” e-petition system which would enable members of the public to petition the House of Commons and press for action from Government. The motion called on the Procedure Committee to work with the Government and other interested parties on the development of detailed proposals. The motion states: “That this House supports the establishment, at the start of the next Parliament, of a collaborative e-petitions system, which enables members of the public to petition the House of Commons and press for action from Government; and calls on the Procedure Committee to work with the Government and other interested parties on the development of detailed proposals.</i></p> <p><i>Oversight of the joint e-petition system will be undertaken on behalf of the House by a Petitions Committee, chaired by a member elected by the whole House. The Committee will also assume responsibility for oversight of the paper petitioning system. The Committee will be able to consider petitions submitted by either means, and as appropriate, and at its discretion:</i></p> <ul style="list-style-type: none"> <i>• correspond with petitioners on their petition;</i> <i>• call petitioners for oral evidence;</i> <i>• refer a petition to the relevant select committee;</i> <i>• seek further information from the Government, orally or in writing, on the subject of a petition; and</i> <i>• put forward petitions for debate.</i>

⁶⁰ Information on the German e-petitions systems is available at <https://www.dw.com/en/citizen-petitions-the-german-peoples-hotline-to-government/a-38877238>

⁶³ Information on the UK e-petitions system is available at <https://www.parliament.uk/documents/commons-committees/petitions/e-petitions-a-collaborative-system.pdf>

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p><i>nations, the U.S., France and even China have committed to outlawing the markets. There are only around 450,000 African Elephants left, in another six years there will be almost half this amount if governments continue to turn a blind eye; the UK are putting Elephants at risk from extinction. If there were not a market, then the elephants would no longer be in danger. The UK needs to set an example that the only tusks of value are those on a live Elephant, before they cease to exist.</i>⁶¹</p> <p>In all, 108,530 signatures were gathered, and the UK parliament debated this topic on February 6, 2017. The ivory bill was hence conceived and drafted. It has passed the House of Commons and the House of Lords committee stage. Royal assent was given on 20 December 2018 and is now an Act of Parliament.⁶²</p> <p>Implementing laws for petitions would not only aid the fight against wildlife trafficking but would also bring awareness to both the government and the public of the importance of environmental and wildlife conservation. While there are external non-governmental arenas, such as Avaas or change.org, that play an important role in creating global awareness of issues and catalyzing actions by governments/parliaments, citizens' access to a direct avenue to petition the government/parliament ensures that the issues are recognized and addressed on a national level by the government system.</p>	<p><i>Estimated set up costs: £188,000. The estimate of the ongoing annual cost of running the system was £115,000.</i>⁶⁴</p>

⁶¹ <https://metro.co.uk/2016/11/28/someone-has-started-a-petition-to-ban-all-ivory-sales-in-the-uk-6287151/>

⁶² <https://services.parliament.uk/bills/2017-19/ivory.html>

⁶⁴ House of Commons Procedure Committee E-petitions: a collaborative system Third Report of Session 2014–15 Ordered by the House of Commons to be 26 November 2014, p28 - <https://www.parliament.uk/documents/commons-committees/petitions/e-petitions-a-collaborative-system.pdf>

6.2 Parliamentary Oversight Committee

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Parliamentary Oversight Committee</p> <p>In order to ensure there is proper legislative oversight to monitor implementation of the laws, to review the implementing rules and regulations, and to ensure the accountability of the executive, wildlife laws should include a parliamentary or congressional oversight committee. As illustrated in Canada's parliamentary oversight of national security, the mandate of the committee should be to overview the legislative, regulatory, policy, and administrative framework of wildlife laws, the fund, operations, and special prosecutors.</p>	<p>PHILIPPINES, REPUBLIC ACT NO. 9275, CHAPTER. 33</p>
	<p><i>SECTION 33. Joint Congressional Oversight Committee. - There is hereby created a Joint Congressional Oversight Committee to monitor the implementation of this Act and to review the implementing rules and regulations promulgated by the Department. The Committee shall be composed of five (5) Senators and five; (5) Representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The Oversight Committee shall be co-chaired by the Chairpersons of the Committee on Environment of the Senate and the Committee on Ecology of the House of Representatives.</i></p>
	<p>PHILIPPINES, HOUSE BILL NO. 143, SECTION 14.</p> <p><i>SEC. 14. Congressional Oversight committee on the delineation of the permanent Forest Limits- There is hereby created a Congressional Oversight Committee to oversee the implementation of this Act composed of seven (7) members from the senate committee on environment and Natural Resources and seven (7) Members from the house of representatives Committee on Natural Resources.</i></p> <p><i>The congressional Oversight Committee shall exist for a period of 5 years. Thereafter, its oversight functions shall be exercised by the Committee on Environment and Natural Resources of the Senate and the Committee on Natural Resources of the house of representatives, acting separately. The Secretariat of the congressional oversight committee shall come from the secretariat personnel of the committees of the Senate and the house of representatives.</i></p>

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p data-bbox="1131 247 1971 303">CANADA, NATIONAL SECURITY AND INTELLIGENCE COMMITTEE OF PARLIAMENTARIANS ACT⁶⁵</p> <p data-bbox="1131 343 1545 367">Review of national security matters</p> <p data-bbox="1131 375 1646 399">8 (1) <i>The mandate of the Committee is to review</i></p> <p data-bbox="1131 406 2016 462">(a) <i>the legislative, regulatory, policy, administrative and financial framework for national security and intelligence;</i></p> <p data-bbox="1131 470 1971 558">(b) <i>any activity carried out by a department that relates to national security or intelligence, unless the activity is an ongoing operation and the appropriate Minister determines that the review would be injurious to national security; and</i></p> <p data-bbox="1131 566 2004 622">(c) <i>any matter relating to national security or intelligence that a minister of the Crown refers to the Committee.</i></p> <p data-bbox="1131 654 1556 678">Review injurious to national security</p> <p data-bbox="1131 686 2004 774">(2) <i>If the appropriate Minister determines that a review would be injurious to national security, he or she must inform the Committee of his or her determination and the reasons for it.</i></p> <p data-bbox="1131 805 1444 829">Review no longer injurious</p> <p data-bbox="1131 837 2027 925">(3) <i>If the appropriate Minister determines that the review would no longer be injurious to national security or if the appropriate Minister is informed that the activity is no longer ongoing, he or she must inform the Committee that the review may be conducted.</i></p> <p data-bbox="1131 965 1288 989">Cooperation</p> <p data-bbox="1131 997 2027 1085">9 <i>The Committee and each review body are to take all reasonable steps to cooperate with each other to avoid any unnecessary duplication of work by the Committee and that review body in relation to the fulfilment of their respective mandates.</i></p>

⁶⁵ https://laws-lois.justice.gc.ca/eng/annualstatutes/2017_15/FullText.html

6.3 Access to Information

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Access to Information</p> <p>In order to ensure transparency and hold government officials accountable for their actions or inactions, the right of public access to information such as official records, public records, and documents and papers pertaining to official acts, transactions, or decisions is crucial. Such rights are typically secured by freedom of information (FOI) regulations.⁶⁶</p> <p>The Philippines has entrenched such FOI rights in its Constitution,⁶⁷ and the enabling legislation is Executive Order No. 2 “Freedom of Information Order” (EO2).⁶⁸ EO2 is an important enabling mechanism to promote transparency in the government’s administrative process. Through FOI, citizens are empowered to make a formal request to get information held by the government, barring certain sensitive and important data related to the nation’s security. FOI complements continuing proactive information disclosure efforts where agencies are duty-bound to publish information in the spirit of openness and transparency.</p> <p>In the context of combatting wildlife trafficking, FOI rights ensure that any wildlife trafficking activities that involved the complicity of government officials and corruption can be properly prevented and/or investigated. They also facilitate the implementation of laws that impose perpetual disqualification from holding office for any public official convicted of wildlife crime.⁶⁹</p>	<p>PHILIPPINES, EXECUTIVE ORDER NO. 2 “FREEDOM OF INFORMATION ORDER”</p> <p><i>Section 3. Access to information. Every Filipino shall have access to information, official records, public records and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development.</i></p> <p><i>Section 4. Exception. Access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing law or jurisprudence.</i></p> <p><i>The Department of Justice and the Office of the Solicitor General are hereby directed to prepare an inventory of such exceptions and submit the same to the Office of the President within thirty (30) calendar days from the date of effectivity of this Order.</i></p> <p><i>The Office of the President shall, thereafter, immediately circularize the inventory of exceptions for the guidance of all government offices and instrumentalities covered by this Order and the general public.</i></p> <p><i>Said inventory of exceptions shall periodically be updated to properly reflect any change in existing law and jurisprudence and the Department of Justice and the Office of the Solicitor General are directed to update the inventory of exceptions as the need to do so arises, for circularization as hereinabove stated.</i></p>

⁶⁶ For a list of countries with FOI laws, please see <https://www.rti-rating.org/country-data/by-section/right-of-access/>. Other AMS that have some form of FOI laws are Malaysia, Indonesia, Thailand, and Vietnam.

⁶⁷ Section 28, Article II and section 7, Article III of the 1987 Constitution of the Philippines.

⁶⁸ <https://www.foi.gov.ph/downloads/EO-2-s-2016-signed-copy.pdf>

⁶⁹ See chapter 8.4 of this monograph: Imposition Of Perpetual Disqualification To Public Office Of Convicted Government Official.

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p data-bbox="1128 293 2040 341">PHILIPPINES, HOUSE BILL NO. 143</p> <p data-bbox="1128 376 2018 560"><i>Section 2. Declaration of Policy- It is the policy of the state to conserve, protect and develop the forest resources of the country in order to attain ecological balance, preserve valuable ecosystems, prevent environmental degradation, and promote sustainable development for the present and future generations. To achieve these ends, Section 4, article XII of the 1987 Constitution Mandates Congress to determine by law the specific limits of forest lands, marking clearly their boundaries on the ground.</i></p> <p data-bbox="1128 595 2029 683"><i>Section 13. Accessibility of Record to the Public- All records and information pertaining to the specific forest limits delineated pursuant to this Act shall be made available to all local government units (LGUs), other government agencies and to the general public.</i></p>

6.4 Cites E-Permits

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>CITES E-Permits</p> <p>The objective of CITES e-permits, or eCITES, is to improve the implementation of the Convention by using modern information and communication technologies to simplify compliant trade and to combat illegal trade.</p> <p>Electronic CITES permits together with simplified and automated trade procedures help government agencies better target their inspections and identify those actors who break the law. CITES Management Authorities will be able to save time and resources for checking and issuing permits, dedicate time to other important tasks in implementing the Convention, and provide better services to traders. Parties will benefit from faster and more robust reporting and better data to decide on non-detriment findings. The exchange of electronic permits and information across borders will increase transparency and prevent use of fraudulent permits. Finally, simplified and automated procedures create new business opportunities for compliant traders and rural communities.</p> <p>With decision 17.157, the Conference of the Parties requested the Standing Committee to re-establish the CITES Working Group on electronic systems and information technology. The Working Group was established on the 69th meeting of the Standing Committee (November 27–December 2, 2017, Geneva, Switzerland). The Working Group, in close collaboration with the CITES Secretariat, will revise existing documents and develop new standards and tools. This work will be done in collaboration with the United Nations Center for Trade Facilitation and Electronic Business, United Nations Conference on Trade and Development, World Trade Organization, World Customs Organization, International Planet Protection Convention, United Nations Environment</p>	<p>CITES⁷¹</p> <p><i>A best practice framework for eCITES implementations. The eCITES Implementation Framework provides national project managers with a best practice approach to plan and manage the automation of their CITES processes. A standard implementation approach using a tested framework greatly reduces eCITES project’s risks and costs and achieves improved results and synergies at the regional and global level. The Framework was developed by experienced project managers, taking into account lessons learned from similar projects around the world. The eCITES Implementation Framework consist of four pillars:</i></p> <ul style="list-style-type: none"> • <i>Automation of the CITES permit issuance process in the Management Authorities, including electronic application of CITES permits; transparent and automated controls during inspection, approval, and issuance of all permits; electronic payment of fees and electronic repository of all valid permits</i> • <i>Electronic information exchange of CITES permits with customs authorities; automated risk assessment and targeted inspections for export, import, and transit; and coordinated border controls</i> • <i>Automated generation of reports and statistics to monitor legality and sustainability of trade, including CITES annual trade reports</i> <p><i>Electronic exchange of CITES permit information between Government authorities of export, import and transit countries to prevent use of forged documents and establish end-to-end control of trade Each pillar in the Framework is a project in itself, with a defined outcome and benefits. This means that a country can implement eCITES pillars in a stepwise approach and according to its own readiness. An off-the-shelf software solution for eCITES. The eCITES system is an off-the-shelf software solution for Parties that want to implement eCITES.</i></p> <p><i>The system provides automation of all four pillars of the eCITES Implementation Framework. The eCITES system is built on the UNCTAD ASYCUDA technical platform, an electronic system used by nearly 100 customs organizations around the world to manage</i></p>

⁷¹CITES Secretariat : Automation of CITES permit procedures and electronic information exchange for improved control of international trade in endangered species (eCITES), https://cites.org/sites/default/files/eng/prog/e/eCITES_policy_briefing.pdf

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Programme, and other relevant partners to ensure integration of eCITES into the global agendas.⁷⁰</p>	<p><i>customs export and import control and clearance. eCITES is fully based on open, international standards for trade and electronic business defined inter alia by the International Organization for Standardization (ISO), the World Customs Organization (WCO), the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) and the World Trade Organization (WTO). It is fully configurable to national legislation and workflows and can exchange standard based electronic messages with other systems such as the national Single Window or the customs data management system.</i></p> <p>ASEAN, ASEAN SINGLE WINDOW⁷²</p> <p><i>ASEAN Member States agreed to establish an ASEAN Single Window (“ASW”) by 2012 to connect ten national single windows. Each national window will expedite border clearance of goods by providing traders a single point for submitting clearance documentation and data. The ASW will provide a secure and efficient mechanism for communication among the ten national windows that reduces the cost of doing business for ASEAN traders, encourages trade and investment in and with ASEAN, and results in greater transparency, efficiency, and savings in government operations. With the establishment of the ASEAN Single Window, it will create a simplified, standardized and integrated environment for cargo clearance in line with international best practices and norms.</i></p> <p><i>At the national level Singapore has operated its world-renowned single window for over two decades. Brunei Darussalam, Indonesia, Malaysia, Philippines, and Thailand are at relatively advanced stages of national single NSW completion, while CLMV countries are implementing e-Customs platforms and launching NSW efforts. As these national efforts proceed, Member States have designed and are currently implementing a regional ASW architecture on a pilot basis with a view to further facilitate the exchange of cargo clearance data.</i></p>

⁷⁰ The intersessional Working Group was established at SC69 with the following membership: Switzerland (Chair), Australia, Bahamas, Canada, China, France, Georgia, Germany, Guatemala, Japan, Kenya, Kuwait, Malaysia, Norway, Portugal, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, South Africa, Switzerland, Thailand, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, and Vietnam; and Associazione Piscicoltori Italiani, Environmental Investigation Agency, International Wood Products Association, Legal Atlas, United Nations Economic Commission for Europe and United Nations Environment Programme.

⁷² <http://asw.asean.org/component/content/category/13-static-pages>

7 INCENTIVES AND COMPENSATION

7.1 Effective Rewards Systems for Enforcers

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Effective rewards systems for enforcers</p> <p>Proactive policies to combat wildlife crimes are essential; reactive policies applied after the crime do not always help the wildlife. Frequently, following seizures and forfeitures, animals cannot return to the wild because they are too ill, domesticated, or too weak. This means the crime’s impacts are often irreversible; rescue centers for seized animals have high costs, for instance. This can make officers reluctant to seize animals, knowing the difficulties and lack of appropriate areas for them. By being proactive, law enforcement can ensure animals will remain in the wild without detrimental impact, which will also decrease the costs to the government.</p> <p>An effective way to be proactive in preventing wildlife trafficking is to seek out information from an informant. A significant incentive is required, however, to encourage the transfer of information and number of informants (Funk, 2017).⁷³</p> <p>Various proposals have introduced differing ways to quantify informant rewards. The U.S. Lacey Act first highlights that the information must lead to an arrest or criminal conviction, then the reward amount will be determined by the Secretary of the Interior or the Secretary of the Treasury. Singapore’s legislation, Wild Animals and Birds Act Chapter 351, suggests that the court may direct any fine or portion of a fine imposed to be paid to the informer. Contrastingly, Nepal’s National Parks and Wildlife Conservation Act 2029 (1973)⁷⁴ provides that the government issue the reward, and that the amount depend on the type of animal impacted (poached) so that protection of the most endangered species results in greater monetary rewards.</p>	<p>USA, LACEY ACT</p> <p>(d) Rewards and incidental expenses</p> <p><i>Beginning in fiscal year 1983, the Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder</i></p> <p>(1) <i>a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection, and</i></p> <p>(2) <i>The reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect it that fish, wildlife, or plant.</i></p>

⁷³ Funk, W. (2017). *Making it easier and safer for informants to turn in wildlife criminals*. *Ensa*. Retrieved 13 December 2017, from <https://ensia.com/features/wildlife-whistleblower/>

⁷⁴ <http://www.lawcommission.gov.np/en/archives/13512>

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<p>However, enabling laws are insufficient to ensure that the informants will step up. They may put their lives or their family at risk if found out. The Global Wildlife Whistle-blower Program is an online, safe, and anonymous site. It provides a secure and completely confidential online platform where individuals across the world can connect with attorneys who can help submit their reports to U.S. authorities and help them apply for rewards under the appropriate U.S. law(s)⁷⁵ if the information results in a successful seizure or criminal proceedings. It is an interesting and innovative platform that states could use as a model to implement their own or re-create a similar platform.</p>	<p>UNITED STATES, ENDANGERED SPECIES ACT OF 1973</p> <p><i>Through federal action and by encouraging the establishment of state programs, the 1973 Endangered Species Act provided for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend. The Act:</i></p> <p>...</p> <p><i>authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the Act or any regulation issued thereunder.⁷⁶</i></p>
	<p>THAILAND, FISHERIES ACT B.E, 2497</p> <p>Article 71.</p> <p><i>Any person who commits an offence under this Act must pay the informer a reward in money not exceeding two thousand baht according to the rules determined by the Minister and must compensate for the expenses which the competent official has spent in the carrying out of Section 59. In the case where the offender is punished by the Court, he must be adjudged to pay the said monies, failing which Section 18 of the Penal Code shall be dealt with as in the case of fine.</i></p>
	<p>NEPAL, NATIONAL PARKS AND WILDLIFE CONSERVATION ACT, 2029 (1973)</p> <p>Article 25.</p> <p>Reward may be given:</p> <p>1. <i>Any person who furnishes information that leads to the arrest of a poacher who has killed or injured rhinoceros, tiger, elephant, musk deer, clouded leopard, snow leopard or bison, may be rewarded with an amount of up to 50,000 rupees. Any person who furnishes information about a poacher who has killed or injured any other protected animals, other than the wildlife mentioned above, and leads to his arrest may be rewarded with an amount of up to 25,000 rupees.</i></p>

⁷⁵ The whistleblower program is available at <https://www.whistleblowers.org/wildlife>

⁷⁶ Section 6. The ESA also provides for reward of informants under section 11(c).

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	<ol style="list-style-type: none"> <li data-bbox="1131 279 2031 491">2. <i>Any person who furnishes information about a person, who is in unlawful possession of trophies and if the information leads to the arrest of the illegal possessor, or who captures such person may be rewarded 50 percent of the amount collected from the auction of the trophies if such trophies are auctioned. In case the trophies cannot be sold by auction from the point of view of wildlife conservation, an amount of up to ten thousand rupees could be rewarded, considering the condition, importance and quantity of such trophies.</i> <li data-bbox="1131 526 2031 614">3. <i>Any person who furnishes information about an offense under this Act other than those mentioned in Subsection (1) and (2), which leads to the arrest of the accused may be rewarded with up to one thousand rupees.</i>

7.2 Restoration and Compensation

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Restoration and compensation</p> <p>Illegal wildlife trade in wild species and products is an urgent global conservation challenge that has escalated dramatically in the last decade (Challender & MacMillan, 2014).⁷⁷ Such products include rhino horn and elephant ivory, medicinal plants, timber, shark fins, pangolins, and more. Compensation is necessary for the crimes committed and the consequences that arose as a result. Compensation can, for instance, offset the non-reducible harmful impacts caused by a development project or plan, in order to maintain biodiversity in a similar or better state to that observed prior to the implementation of the project.⁷⁸ Through compensation policies, the risks associated with committing wildlife crime are increased, as well as the penalties, and the consequences of crimes are to a degree remedied. Compensation thus acts as both a deterrent and a solution.</p> <p>The 10th draft of Cambodia Environmental and Natural Resources Code innovates in this matter. It proposes that liability for environmental compensation does not require proof of intention or knowledge, and that both natural persons and government officials are liable for compensation under this act. Environmental compensation includes the full cost of restoring the environment to the condition prior to harm, the full costs to fulfill the restoration, and in cases of human life, monetary compensation of total economic value, including direct or indirect values. The compensation will additionally cover the costs of monitoring and insuring the success of restoration and other such costs arising from restoration.</p>	<p>CAMBODIA, ENVIRONMENTAL AND NATURAL RESOURCES CODE OF CAMBODIA (DRAFT 10)</p> <p><i>CHAPTER 2 LIABILITY FOR THE ENVIRONMENT ARTICLE 926 LIABILITY FOR ENVIRONMENTAL COMPENSATION</i></p> <p><i>Natural persons or legal entities or government officials shall be liable for environmental compensation and are not required to provide proof of intention or knowledge in the following cases:</i></p> <ol style="list-style-type: none"> <i>1) Where actions are not carried out or failures to take prevention measures, which results in environmental harm; and</i> <i>2) Acting beyond their authority or in violation of this Code, laws, and legal instruments, which results in environmental harm.</i> <p><i>CHAPTER 4 COMPENSATION FOR ENVIRONMENTAL HARM ARTICLE 932 COMPENSATION FOR ENVIRONMENTAL HARM</i></p> <p><i>The compensation for environmental harm includes the following:</i></p> <ol style="list-style-type: none"> <i>1) The full cost to restore the environment to the condition existing prior to harm;</i> <i>2) The full cost to undertake additional restoration sufficient to offset fully harm not compensated by the restoration as stipulated in (1) above;</i> <i>3) The value of the un-restorable aspect of the harmed environment, where restoration will be undertaken, but some portion or aspect of the harmed environment are not amenable to restoration;</i> <i>4) The lost ecological and human value resulting from environmental harm that may not otherwise be fully compensated as stipulated in (1), (2), and (3) above, including economic value determined by detailed economic valuation methods;</i> <i>5) All costs incurred by claimants acting to claim for environmental compensation including:</i>

⁷⁷ Challender, D.W.S. & MacMillan, D.C. (2014): Poaching is more than an Enforcement Problem .; <https://onlinelibrary.wiley.com/doi/full/10.1111/conl.12082>

⁷⁸ La compensation écologique des dommages causés à la biodiversité, Valérie Dupont, octobre 2016.

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	<ul style="list-style-type: none"> a) <i>The actual costs and other expenses of the Restoration Planning Working Group;</i> b) <i>The expenses of restoration and compensation evaluation;</i> c) <i>All costs spent by the Restoration Planning Working Group; and</i> d) <i>Costs of the consultation process;</i> 6) <i>The costs to monitor and insure the success of the restoration activities as determined;</i> 7) <i>The cost to compensate for business and economic losses resulting from environmental harm;</i> 8) <i>The cost to compensate through restoration or otherwise for loss of subsistence use of the environment;</i> 9) <i>The net loss of fees, royalties, premiums, rents, or net profit shares due to the environmental harm;</i> 10) <i>The loss of profits or impairment of earning capacity due to the environmental harm;</i> 11) <i>Net costs of providing increased or additional public services in response to the environmental harm;</i> 12) <i>All compliant costs, fees, and expenses incurred towards and in litigation;</i> 13) <i>The net loss of fees, royalties, premiums, taxes, or other revenues to be paid to the competent ministries or institutions; and</i> 14) <i>The cost of providing patrol services equivalent to patrol services lost during the apprehension and prosecution of a violation.</i>

7.3 Restitution

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Restitution</p> <p>Wildlife crimes are notorious for resulting in negative environmental externalities,⁷⁹ including the destruction of wildlife and forest and the costs of housing and caring for rescued animals, rehabilitation and/or restoration of wildlife, and/or damaged forest habitats.⁸⁰ The costs incurred impact the government: money for rescue centers, for the citizens who may have lost crops or income, and for society as a whole as it is affected by the changed ecosystem—by disease outbreaks, for example.</p> <p>In light of these costs, it is reasonable to expect criminals to pay—literally—for their crimes. Under the U.S. Lacey Act, the perpetrator of the crime is liable for any economic damage resulting from the offenses, including loss of food production or farm income. The U.S. Mandatory Victims Restitution Act establishes a key innovation: the restitution can be in addition to criminal penalties, and if the victim is deceased, restitution should go to the victim’s estate. Another key innovation comes from Canada’s British Columbia Wildlife Act, which introduces the idea of “creative sentencing.”⁸¹ Under creative sentencing, the court may direct the perpetrator to—at the same time and separate from the criminal proceedings—provide restitution in the form of performing community service, paying money to the court, prohibiting the person from engaging in acts that may lead to the repetition of such crimes, and similar additional restitutions that the court may deem fitting for the crime. The purpose is to combine punishment (confiscation of property, fines, and imprisonment) with environmental protection, funding of victim compensation, and assistance programs (the remedy of restitution).</p>	<p>USA, LACEY ACT</p> <p><i>(c) Restitution. An order of restitution under section 3663 or 3663A of this title with respect to a violation of this section may also include restitution</i></p> <p><i>(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense;</i></p> <p><i>(2) the loss of food production or farm income reasonably attributable to the offense; and</i></p> <p><i>(3) for any other economic damage resulting from the offense⁸²</i></p> <p>USA, MANDATORY VICTIMS RESTITUTION ACT⁸³</p> <p><i>(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim’s estate.</i></p> <p><i>(2) For the purposes of this section, the term “victim” means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed</i></p>

⁷⁹ An economic concept describing the process when consequences from an economic activity impacts an unrelated third party. Negative externalities. (2017). *Economicsonline.co.uk*. Retrieved 19 December 2017, from http://www.economicsonline.co.uk/Market_failures/Externalities.html

⁸⁰ USAID/ AIPA Secretariat, November 2017. The Principles of Wildlife Conservation Funds and Restitution – Additional Remedy to Wildlife and Forest Offences. http://www.aipasecretariat.org/webassets/file/file_management_1521102037.pdf

⁸¹ Section 84.1, Wildlife Act [RSBC 1996] Chapter 488.

⁸² Lacey Act US - (16 U.S.C. §§ 3371–3378) - §43 Animal enterprise terrorism - (c) restitution.

⁸³ Mandatory Victims Restitution Act, 18 U.S.C. §3663A

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<p>Please refer to the USAID Wildlife Asia monograph, <i>The Principles of Wildlife Conservation Funds and Restitution</i>, for further discussion. This monograph introduces the concept of establishing a wildlife conservation fund and the principles of restitution as a method of funding wildlife protection legislation enforcement efforts. The paper includes discussions of the purpose of a wildlife conservation fund, how it can be funded, examples of such conservation funds, the status in the ASEAN region, and recommendations. It was prepared as part of USAID Wildlife Asia's Thailand CWT Legislative Frameworks and Policy Reform Recommendations Package being developed for the National Legislative Assembly of Thailand and AIPA.</p>	<p><i>as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.</i></p> <p><i>(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offence.</i></p> <p>CANADA, BRITISH COLUMBIA WILDLIFE ACT [RSBC 1996] Chapter 488</p> <p><i>Creative sentencing</i></p> <p><i>84.1 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the Court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:</i></p> <p><i>(a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;</i></p> <p><i>(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment or any wildlife, endangered species or threatened species, that resulted or may result from the commission of the offence;</i></p> <p><i>(c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;</i></p> <p><i>(d) directing the person to perform community service;</i></p> <p><i>(e) directing the person to pay an amount of money the court considers appropriate;</i></p> <p><i>(f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;</i></p> <p><i>(g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;</i></p>

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	<p><i>(h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;</i></p> <p><i>(i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act .</i></p>

8 ENHANCING DETERRENT EFFECT OF PENALTIES

8.1 Penalties: Minimum Imprisonment and Fines

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Penalties: Minimum imprisonment and fines</p> <p>Punishment for wildlife crimes is highly dependent on prosecutorial discretion and whether a judge views the crime seriously (Douglas, 2012).⁸⁴ Moreover, it is a reality that courts often hand down a reduced or suspended sentence, so that in many cases an offender may avoid facing the actual jail term because of the nature of wildlife crimes (DLA Piper, 2015).⁸⁵ Many of those prosecuted for offences in contravention of wildlife legislation escape with fines that are meagre in comparison to the profits accrued⁸⁶ and the damage done (EIA, 2016). The limited sanctions are also enabled by the lack of minimum imprisonment terms in AMS domestic legislation and by a lack of knowledge of the impacts of wildlife crime.</p> <p>Within ASEAN, only the Lao PDR, and Vietnam had imposed minimum imprisonment terms and fines for wildlife-related crimes.⁸⁷</p> <p>Both imprisonment and fines act as deterrents to wildlife crime. If these are enhanced to be significantly costly to criminals, it would change the perception of wildlife crime as low-risk and high-reward (EIA, 2016).⁸⁸</p> <p>Both Thailand and Cambodia are planning to introduce mandatory fines and imprisonment terms, increasing the minimum threshold for both forms of penalty. This ensures that there are more appropriate penalties that address the costs of the crimes on the environment, wildlife, and individuals.</p>	<p>PHILIPPINES, HOUSE BILL NO. 4375, A BILL SEEKING TO AMEND REPUBLIC ACT NO. 9147</p> <p><i>Philippines – House Bill No. 4375</i> <i>Section 28 of Republic Act No. 9147 is hereby amended as follows:</i></p> <p><i>Section 28. Penalties for violations of this act. For any person who undertakes illegal acts under paragraph (a) of the immediately preceding section to any species as may be categorized pursuant to this act, the following penalties and/or fines shall be imposed;</i></p> <p><i>(a) imprisonment of a minimum of six years and one day to twelve years and/or a fine of one million pesos to ten million pesos if inflicted or undertaken against species listed as critical if inflicted or undertaken against more than one head of such species, the initial penalty in the immediately preceding paragraph shall be imposed;</i></p> <p><i>(b) imprisonment of three years and one day to five years and/or fine of five hundred thousand pesos to five million pesos, if inflicted or undertaken against more than one head of such species, the initial penalty in the immediately preceding paragraph shall be imposed;</i></p> <p><i>(d) imprisonment of two years and one day to four years and/or fine of five hundred thousand pesos to five million pesos if inflicted or undertaken against other threatened species, if inflicted or undertaken against more than one head of such species, the initial penalty in the immediately preceding paragraph shall be imposed;</i></p>

⁸⁴ Douglas, F. (2012). Reducing illegal wildlife trafficking: CITES and caviar. *Environmental Policy and Law*, 42(1), 57–63. Envtl. Pol'y & L. 50 2012 Provided by: Aix Marseille University, Reducing Illegal Wildlife Trafficking - CITES and Caviar by Frances Douglas. .

⁸⁵ DLA Piper Report: Empty Threat 2015: Does The Law Combat Illegal Wildlife.

⁸⁶ Environmental Investigation Agency (EIA). Time for action, End the criminality and the corruption fueling wildlife crime, November 2016..

⁸⁷ As at December 2018

⁸⁸ Ibid.

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<p>Indeed, it is important to harmonize penalties regionally. In ASEAN countries, the maximum penalty regionally ranged from 0.04 to 230 times the GDP per capita (UNODC & Freeland, 2015).⁸⁹ This huge disparity regionally means that the effectiveness of penalties is limited, as neither extreme, 0.04 nor 230, is a reasonable penalty for judges to employ. The lack of consistency in penalties means some states become safe havens⁹⁰ and prominent trafficking hubs (UNODC & Freeland, 2015; ASEAN Wildlife Enforcement Network, 2016).⁹¹</p>	<p><i>(e) imprisonment of one year and day to two years and/or fine of three hundred thousand pesos to three million pesos, if inflicted or undertaken against wildlife species, if inflicted or undertaken against more than one head, of such species, the initial penalty in the immediately preceding paragraph shall be imposed.</i></p> <p>REPUBLIC ACT NO. 8550, FISHERIES CODE OF 1998, AS AMENDED BY REPUBLIC ACT 10654</p> <p><i>SEC. 105. Importation or Exportation of Fish or Fishery Species. – Any importation or exportation of fish or fishery species in violation of this Code shall be unlawful. Failure on the part of the shipping or forwarding company from whose possession the fish or fishery species imported or exported are discovered or seized to fully cooperate in the investigation conducted by concerned government authorities shall create a presumption that there is connivance or conspiracy between the shipping company and the shipper to perpetrate the aforementioned offense.</i></p> <p><i>Upon a summary finding of administrative liability, the offender shall be punished with an administrative fine of five (5) times the value of the species or Three hundred thousand pesos (P300,000.00) to Five hundred thousand pesos (P500,000.00), whichever is higher, and forfeiture and/or destruction of the species.</i></p> <p><i>Upon conviction by a court of law, the offender shall be punished with eight (8) years of imprisonment and fine of twice the administrative fine, forfeiture and/or destruction of the species: Provided, that offenders shall be banned from being members or stockholders of companies currently engaged in fisheries or companies to be created in the future, the guidelines for which shall be promulgated by the Department.</i></p> <p><i>SEC. 124. Noncompliance with the Requirements for the Introduction of Foreign or Exotic Aquatic Species. – It shall be unlawful to import, introduce, or breed, foreign or exotic aquatic species without the conduct of risk analysis and prior approval of the Department.</i></p>

⁸⁹ UNODC, Freeland, 2015. Legal Framework To Address Wildlife And Timber Trafficking In The ASEAN Region, A Rapid Assessment https://www.unodc.org/documents/southeastasiaandpacific/Publications/wildlife/Legal_Study_WTT_12_13June2015.pdf

⁹⁰ Ibid.

⁹¹ ASEAN -WEN/Freeland, January 2016. ASEAN Handbook on Legal Cooperation to Combat Wildlife Crime. <http://www.aipasecretariat.org/webassets/pdf/10.pdf>, regional comparison of penalties under existing wildlife laws, p23-24.

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	<p><i>Upon a summary finding of administrative liability, the offender shall be punished with a fine of Two hundred thousand pesos (P200,000.00) to Six million pesos (P6,000,000.00) and confiscation and destruction of the foreign or exotic species. Should the species become invasive and result to predation of native aquatic biota, loss of income or damage to the habitat, the offender shall bear the costs of containment, eradication and/or restoration.</i></p> <p><i>Upon conviction by a court of law the offender shall suffer the penalty of imprisonment of six (6) years to (12) years and fine from Four hundred thousand pesos (P400,000.00) to Twelve million pesos (P12,000,000.00), confiscation of foreign or exotic species and the costs for containment, eradication or restoration.</i></p> <p><i>SEC. 126. Possessing, Dealing in, or Disposing Illegally Caught or Taken Fish. – It shall be unlawful to ship, commercially transport, offer for sale, sell, import, export, or have custody, control, or possession of, or to deal in or in any manner dispose of any fish or species caught, taken or retained in violation of this Code.</i></p> <p><i>The discovery of any fish or species caught with the use of explosives or noxious or poisonous substances shall constitute a prima facie presumption that the possessor, seller, fish dealer, transporter, importer, or exporter thereof has knowledge that the fish or species was caught or taken in violation of this Code.</i></p> <p><i>Upon a summary finding of administrative liability, the offender shall be punished with an administrative fine of Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00) or five (5) times the value of fish or species, whichever is higher, and confiscation of the same.</i></p> <p><i>Upon conviction by a court of law, the offender shall suffer the penalty of imprisonment from six (6) months to two (2) years, and fine of eight (8) times the value of the species or from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00), whichever is higher and confiscation of the fish or fishery products and suspension or revocation of registration or license.</i></p>

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	<p data-bbox="1131 245 1962 272">VIETNAM, PENAL CODE LAW NO. 100/2015/QH13, AS AMENDED 2017</p> <p data-bbox="1131 309 1984 368">Article 244. Breaching regulations on the management and protection of endangered, precious and rare animals</p> <p data-bbox="1131 403 2036 584"><i>1. The persons, who violate regulations on the management and protection of animals in the list of endangered, precious and rare species prioritized for protection; endangered, precious and rare animals under Group IB or under Annex I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora in one of the following circumstances, shall be sentenced to a fine of between 500.000.000 dong and 2.000.000.000 dong or sentenced to imprisonment of between 1 year and 5 years.</i></p> <ul style="list-style-type: none"> <li data-bbox="1182 624 2022 683"><i>a) Illegally hunting, killing, raising, caging, transporting, trafficking in animals in the list of endangered, precious and rare species prioritized for protection;</i> <li data-bbox="1182 691 2022 815"><i>b) Illegally storing, transporting, trafficking in individuals, body parts or products of animals specified in point a of this clause; ivories weigh between two kilograms and under 20 kilograms; rhino horns weigh between 0.05 kilograms and under 1 kilogram;</i> <li data-bbox="1182 823 2022 1011"><i>c) Illegally hunting, killing, raising, caging, transporting, trafficking in endangered, precious and rare animals under Group IB or under Annex I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which are not the species prescribed under point a of this clause, in the quantity of between 3 and 7 individuals of mammals, 7 and 10 individuals of birds, reptiles or between 10 and 15 individuals of other classes of animals;</i> <li data-bbox="1182 1019 2022 1144"><i>d) Illegally storing, transporting, trafficking in from 3 to 7 body parts of the same category that are inseparable from alive bodies of mammals, of between 7 to 10 individuals of birds, reptiles or between 10 to 15 individuals of other classes of animals under the species specified in point c of this clause;</i> <li data-bbox="1182 1152 2022 1340"><i>e) Illegally hunting, killing, raising, caging, transporting, trafficking in animals or illegally storing, transporting, trafficking in body parts of the same category that are inseparable from alive bodies of animals in the quantity lower than the lowest level specified in point b, c and d of this clause; but having been administratively sanctioned for these acts or been sentenced for this crime, and continue to commit the act while the criminal record has not yet been expunged.</i>

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	<p>2. Committing the crime in any of the following circumstances, offenders shall be sentenced to between 5 years and 10 years of imprisonment:</p> <ul style="list-style-type: none"> a) In an organized manner; b) Abusing the position, power or abusing the name of agencies and organizations; c) Using prohibited hunting tools or devices; a) Hunting in restricted zones or restricted periods; b) d) Trafficking, transporting cross borders; c) The number of animals in the list of endangered, precious and rare species prioritized for protection; or body parts of the same category that are inseparable from alive bodies of from 7 to 10 individuals of mammals, from 7 to 10 individuals of birds, reptiles or from 10 to 15 individuals of other classes in the list of endangered, precious and rare species prioritized for protection. d) The number of animals in the list of endangered, precious and rare species prescribed at point c clause 1 of this Article; or the number of body parts of the same category that are inseparable from alive bodies of from 8 to 11 individuals of mammals, from 11 to 15 individuals of birds, reptiles or from 16 to 20 individuals of other classes; e) From 1 to 2 individuals of elephants, rhinos or body parts of the same category that are inseparable from alive bodies; from 3 to 5 individuals of bears, tigers or body parts of the same category that are inseparable from alive bodies; ivories weigh from 20 kilograms to under 90 kilograms; rhino horns weigh from one kilogram to under 9 kilograms; f) Dangerous recidivism. <p>3. Committing the crime in one of the following circumstances, offenders shall be sentenced to between 10 years and 15 years of imprisonment:</p> <ul style="list-style-type: none"> a) The number of animals in the list of endangered, precious and rare species prioritized for protection; or the number of body parts of the same category that are inseparable from alive bodies of from eight or more individuals of mammals, 11 or more individuals of birds, reptiles, or 16 or more individuals of other classes in the list of endangered, precious and rare species prioritized for protection. b) The number of animals in the list of endangered, precious and rare species prescribed at point c clause 1 of this Article; or the number of body parts of the same category that are inseparable from alive bodies of 12 or more individuals

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	<p>of mammals, 16 or more individuals of birds, reptiles, or 21 or more individuals of other classes;</p> <p>c) From three or more individuals of elephants, rhinos or body parts of the same category that are inseparable from alive bodies; 6 or more individuals of bears, tigers or body parts of the same category that are inseparable from alive bodies; ivories weigh 90 kilograms or higher; rhino horns weigh 9 kilograms or higher.</p> <p>4. The offenders may also be subject to a fine of between 50.000.000dong and 200.000.000 dong, prohibited from holding certain posts or practicing certain professions or performing certain jobs for between 1 year and 5 years</p> <p>5. Committing the crime stipulated under this article, commercial legal entities shall be subject to the penalties as follows:</p> <p>a) Committing the crime in the circumstances stipulated at clause 1 of this Article, legal commercial entities shall be subject to a fine of between 1.000.000.000 dong and 5.000.000.000 dong;</p> <p>b) Committing the crime in the circumstances stipulated at clause 2 of this Article, legal commercial entities shall be subject to a fine of between 5.000.000.000 dong and 10.000.000.000 dong;</p> <p>c) Committing the crime in the circumstances stipulated at clause 3 of this Article, legal commercial entities shall be subject to a fine of between 10.000.000.000 dong and 15.000.000.000 dong, or the suspension of operation for a fixed term of between 6 months and 3 years;</p> <p>d) Committing the crime in the circumstances stipulated in Article 79 of this Code, legal commercial entities shall be subject to the permanent suspension of operation;</p> <p>e) d) Legal commercial entities may also be subject to a fine of between 300.000.000 dong and 600.000.000 dong, prohibited from doing business, operating in certain areas or mobilizing capitals for between 1 year and 3 years.</p>

8.2 Penalties for Corporate Bodies and Liability of Directors and Officers

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Penalties for legal entities/corporate bodies and liability of directors and officers</p> <p>When a crime is committed by a legal entity or corporate body, the main issues are how to ensure the penalties are adequate and maintain a deterrent effect, and how to hold the individual perpetrators within the legal entity accountable, ensuring they cannot hide behind the corporate veil.</p> <p>For the penalties to be effective, the fines should be higher so that they have a significant impact on the entity’s financial statement (which in turn holds the executive management accountable to the board of directors and shareholders). The directors and/or officers of the legal entity must be held individually accountable and therefore liable to suffer both fines and, more importantly, imprisonment.</p> <p>Philippines House Bill No. 4375 ensures that corporations pay fines and directors and officers face imprisonment. Similarly, Brunei’s Wild Flora and Fauna Order 2007 addresses corporate entities, with Article No. 48 of the Order specifically stipulating that they pay fines for crimes committed. Brunei’s Criminal Asset Recovery Order 2012, alternatively, has model legislation addressing the liability of government officials aiding and abetting a crime, through penalizing the rendering of assistance to a wildlife crime—which specifically addresses corruption. Malaysia International Trade in Endangered Species Act also addresses the duration of permits and registrations for corporations, to ensure that wildlife is appropriately handled upon the dissolution of a company.</p> <p>Vietnam has also amended its Penal Code in 2017 to extend penalties to legal entities.</p> <p>Brunei, Cambodia, Malaysia, the Philippines, and Vietnam have all passed legislation to address the issue of corporations and corruption. However, to effectively counter wildlife trafficking within the ASEAN region, there must be a level of harmonization to ensure no one AMS becomes a hotspot or haven for such activities, as a result of highly uneven penalties for similar offences.</p>	<p>PHILIPPINES, HOUSE BILL NO. 4375, A BILL SEEKING TO AMEND REPUBLIC ACT NO. 9147</p> <p><i>Section 28A In addition to the penalties prescribed for the prohibited acts in the previous section, the following are likewise imposed for any violations of this act:</i></p> <p><i>(d) If the offender is an association or corporation, payment of fines shall be an amount twice that as prescribed by this act, and the directors and officers shall suffer the imprisonment.</i></p> <p>BRUNEI DARUSSALAM, WILD FLORA AND FAUNA ORDER 2007</p> <p>Article No. 47</p> <p><i>Trading species without permit or certificate.</i></p> <p><i>(1) Any person who –</i></p> <p><i>a. trades in any specimen of any species listed in Appendix I without the appropriate permit or certificate granted under any of section 10 to 13;</i></p> <p><i>b. trades in any specimen of any species listed in Appendix I without the appropriate permit or certificate granted under any of section 14 to 17;</i></p> <p><i>c. trades in any specimen of any species listed in Appendix I without the appropriate permit or certificate granted under any of section 18 to 21;</i></p> <p><i>(2) Any person who commits an offence against subsection (1)(a) is liable on conviction –</i></p> <p><i>b. In the case of a body corporate, to a fine not exceeding \$200,000.</i></p> <p><i>(3) Any person who commits an offence against subsection (1)(b) is liable on conviction –</i></p> <p><i>b. In the case of body corporate, to a fine not exceeding \$100,000</i></p> <p><i>(4) Any person who commits an offence against subsection (1)(c) is liable on conviction –</i></p>

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	<p><i>b. In the case of a body corporate, to a fine not exceeding \$75,000</i></p> <p>Article No. 48</p> <p><i>(2) Any person who commits an offence against subsection (1) in respect of a specimen of any species listed in Appendix I is liable on conviction</i></p> <p><i>b. in the case of a body corporate, to a fine not exceeding \$200,000</i></p> <p><i>(3) Any person who commits an offence against subsection in respect of a specimen of any species listed in Appendix II is liable on conviction</i></p> <p><i>b. in the case of a body corporate, to a fine not exceeding \$100,000.</i></p> <p><i>(4) Any person who commits an offence against subsection (1) in respect of a specimen of any species listed in Appendix III is liable on conviction –</i></p> <p><i>b. in the case of a body corporate, to a fine not exceeding \$75,000</i></p> <p>BRUNEI DARUSSALAM, CRIMINAL ASSET RECOVERY ORDER 2012</p> <p><i>(1) A person commits the offence of money laundering if the person –</i></p> <ul style="list-style-type: none"> <i>a. engages, directly, or indirectly in a transaction that involves money, or property, that is the proceeds of crime;</i> <i>b. acquires, receives, converts, exchanges, carries, possesses, conceals, uses, disposes of, remove from or brings into Brunei Darussalam any money, or property that are proceeds of crime;</i> <i>c. converts or transfers money or property derived directly or indirectly from a serious offence, with the aim of concealing or disguising the illicit origin of that money or property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof;</i> <i>d. conceals or disguises the true nature, origin, location, disposition, movement, title of, rights with respect to the property derived directly or indirectly by the commission of a serious offence; or</i>

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p>e. renders assistance to a person falling with paragraph (a), (b), (c), or (d), and the person knows or has reasonable grounds to believe or suspect that it is derived or realized directly or indirectly from the commission of an unlawful activity or fails to take reasonable steps to ascertain whether or not the property is proceeds of crime, is liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 10 years or both, and in the case of a body corporate to a fine not exceeding \$1,000,000.</p> <p>VIETNAM, PENAL CODE LAW NO. 100/2015/QH13, AS AMENDED 2017</p> <p>Article 33. Penalties applied to commercial legal entities committing crime⁹²</p> <p>1. Principal penalties include:</p> <ul style="list-style-type: none"> a) Fine; b) Suspension of operation for a certain term; c) Permanent suspension of operation; <p>2. Additional penalties include:</p> <ul style="list-style-type: none"> a) Prohibition from doing business, operating in certain areas; b) Prohibition from raising capital; c) Fine, when it is not applied as the principal penalty. <p>3. For each crime, legal entities committing the crime, shall be subject to only one principle penalty and may be subject to one or more additional penalties.</p>

⁹² Please also see Chapter 8.1 for penalties to legal entities in wildlife specific provisions of Vietnam’s Penal Code.

8.3 Fines Calculated Based on Actual Value of the Goods

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Fines calculated based on actual value of the goods</p> <p>Fines are a significant tool of the judicial arm to deter crimes. Imposing significant fines for crimes shows the state takes these crimes seriously and that there are stringent consequences. Wildlife crime can no longer be perceived as a low-risk and high-reward crime. To illustrate: a single male elephant’s two tusks can weigh more than 250 pounds (113 kilos), with ivory in 2014 fetching as much as US\$1,500 a pound (The Week, 2014).⁹³ The fine imposed in Myanmar for killing, hunting, or wounding a protected animal is 50,000 Kyats, or about US\$40. There is a stark contrast between the reward for successfully executing the crime, earning thousands, and the meagre risk of being caught and paying US\$40 (Linn, 2017).⁹⁴</p> <p>One reason for the regionally low fines and the limited number of convictions is that wildlife crime is often not perceived by the judiciary as deserving of significant fines or punishments. Even when legislation does exist, as in the case of Lao PDR’s Wildlife and Aquatic Law of 2007, which prescribes up to 5 years’ imprisonment for illegal import/export, it may not be effective: In Lao PDR, through 2015, not a single custodial sentence was imposed (DLA Piper, 2015).⁹⁵</p> <p>This lack of penalties stems from many reasons. China, for instance, perceives ivory as a “natural heritage”⁹⁶ used for medical purposes, along with other wildlife products, and as a symbol of status among the wealthy. Yet wildlife trafficking has a significant negative impact: Only 30,000 Asian elephants remain, and 15,000 of them are living in captivity (The Week, 2014).⁹⁷ Thus, it is important to educate the judicial arm regarding the impacts of wildlife crimes and the importance of stringent sentencing to deter them. Fines must be reasonable and in proportion to the crime to ensure judges impose them.</p>	<p>PHILIPPINES, HOUSE BILL NO. 4375, A BILL SEEKING TO AMEND REPUBLIC ACT NO. 9147</p> <p><i>Section 28A) In addition to the penalties prescribed for the prohibited acts in the previous section, the following are likewise imposed for any violations of this act:</i></p> <p><i>(a) Payment of a fine equivalent to the cost of the removal of the wildlife species involved from its natural habitat, as determined after assessment by experts from the DENR taking into consideration number of such species in the wild, biological impact, ecological balance, and other criteria, using current valuation standards.</i></p> <p>BRUNEI DARUSSALAM, CUSTOM ORDER 2006</p> <p><i>Article 140 Sells, exchanges or gives away or offers to sell, exchange or give away to any person in Brunei Darussalam, goods which are his duty-free allowances in Brunei Darussalam, shall be guilty of an offence and liable on conviction –</i></p> <p><i>ii) In the case of unaccustomed goods, such goods not being dutiable or prohibited, to a fine not exceeding twice the value of the goods or \$8,000, whichever is the greater amount:</i></p> <p><i>Provided that where the value cannot be ascertained, the penalty may amount to a fine not exceeding \$8,000;</i></p> <p><i>(iii) Subject to subparagraph (iv), in the case of prohibited goods, to a fine of not less than twice the value of the goods or \$40,000, whichever is the lesser amount, and of not more than five times the value of the goods or \$40,000, whichever the greater amount;</i></p>

⁹³ The Week. (2014). *The tragic price of ivory*. *Theweek.com*. Retrieved 18 December 2017, from <http://theweek.com/articles/449437/tragic-price-ivory>

⁹⁴ Foundation, T. (2017). *In Bago Range, authorities struggle to stop rise in elephant poaching | Myanmar Now*. *Myanmar-now.org*. Retrieved 18 December 2017, from <http://www.myanmar-now.org/news/i?id=9a2421d2-babe-4799-a372-a530dda3d8d0=>

⁹⁵ DLA Piper Report: Empty Threat 2015: Does The Law Combat Illegal Wildlife.

⁹⁶ The Week (2014). *The tragic price of ivory*. *Theweek.com*. Retrieved 18 December 2017, from <http://theweek.com/articles/449437/tragic-price-ivory>

⁹⁷ Ibid.

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Several laws attempt to provide a baseline for measuring a fine. Philippines House Bill No. 4375 suggests that the fine be equivalent to the cost of the removal of the wildlife species involved from its natural habitat, as determined by experts of the Department of the Environment and Natural Resources and taking into consideration the number of species in the wild, the biological impact, and ecological balance, using current valuation standards. Malaysia's Customs Act 1967 likewise requires fines to be (depending on the severity) not less than 10 times the value of the good, or no less than 20 times the value of the prohibited good. Along the same lines, but slightly less efficient in its aims to deter wildlife crime, Brunei Customs Order 2006 requires the fine to be no less than twice the value of the good or \$40,000, whichever is the greater amount and no more than five times the value of the good or \$40,000, whichever is the greater amount. While a step towards deterring wildlife crime, a maximum value limits the effectiveness of legislation, as it may not be enough to compensate for the true costs of the crime (ASEAN Wildlife Enforcement Network, 2016).⁹⁸</p>	<p><i>Provided that where the value of the goods cannot be ascertained, the penalty may amount exceeding \$40,000</i></p>
	<p>MALAYSIA, CUSTOMS ACT 1967</p>
	<p><i>Article 135</i> <i>(iii) In the case of prohibited goods –</i></p> <p><i>aa. be liable for the first offence to a fine of not less than ten times the value of the goods or 50,000 ringgit, whichever is the lesser amount, and not more than 20 times the value of the goods or one hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding three years or to both; and</i></p> <p><i>bb. be liable for a second or any subsequent offence to a fine of not less than ten times the value of the goods or one hundred thousand ringgits, whichever is the lesser amount, and of not more than 40 times the value of the goods or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding five years or to both.</i></p>
<p>THAILAND, EXPORT AND IMPORT OF GOODS ACT B.E, 2522</p>	
<p><i>Article 5 Whoever exports or imports goods prohibited shall be liable to a term of imprisonment not exceeding ten years or to a fine equivalent to five times the value of exported or imported goods, or to both, and the goods including containers and vehicles used in connection with the transport thereof as well as vehicles used in the haulage thereof shall be confiscated.</i></p>	

⁹⁸ ASEAN -WEN/Freeland, January 2016. ASEAN Handbook on Legal Cooperation To Combat Wildlife Crime. <http://www.aipasecretariat.org/webassets/pdf/10.pdf>.

8.4 Imposition of Perpetual Disqualification for Public Office of Convicted Government Official

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Imposition of perpetual disqualification for public office of convicted government official</p> <p>Corruption is a significant issue in the effective protection of wildlife in ASEAN states. Often wildlife trafficking ringleaders escape because of law enforcement collusion, while local villagers aiding the crime for a boost to their meagre incomes⁹⁹ are arrested (Linn, 2017). Officers are paid off to allow a majority of trafficked animals or animal products to cross borders. In Chaung Sauk Village in the foothills of the Bago Range, inhabited by Asian elephants, the village tract administrator was found to have colluded and aided wildlife traffickers in locating the elephants (Linn, 2017).¹⁰⁰ In this instance, and in many more, corruption is a significant impediment to the effective enforcement of wildlife laws and the curbing of wildlife crime (EIA, 2016).¹⁰¹</p> <p>While all ASEAN states committed to “zero tolerance” of corruption under the London Declaration, implementing this domestically has been more challenging. Nevertheless, there are two model legislation, Philippines House Bill No. 177, and House Bill No. 4375, that are influential in that they propose applying an additional penalty if the criminal is a government officer, such as and perpetual disqualification from office. This results in an additional risk to deter acts of corruption in wildlife crime.</p>	<p>PHILIPPINES, HOUSE BILL NO. 177</p>
	<p><i>Section 16(D) Conviction for any offence under this Act of a Public officer or Officer of the law shall carry the accessory penalty of perpetual disqualification from public office.</i></p> <p>PHILIPPINES, HOUSE BILL NO. 4375, A BILL SEEKING TO AMEND REPUBLIC ACT NO. 9147</p> <p><i>Section 24(f) If the offender is a government official or employee, the penalty of perpetual disqualification from public office shall be imposed.</i></p>

⁹⁹ Foundation, T. (2017). *In Bago Range, authorities struggle to stop rise in elephant poaching* | Myanmar Now. Myanmar-now.org. Retrieved 18 December 2017, from <http://www.myanmar-now.org/news/i/?id=9a2421d2-babe-4799-a372-a530dda3d8d0>

¹⁰⁰ Ibid.

¹⁰¹ , Environmental Investigation Agency: Time for action, End the criminality and the corruption fueling wildlife crime, November 2016.

8.5 Automatic Adjustments of Fines to Compensate for Inflation and to Maintain Deterrent Functions

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Automatic adjustments of fines to compensate for inflation and to maintain deterrent functions</p> <p>Legislation is by nature complex and slow in change and evolution—which can mean that its deterrent effect against crime wears thin. It is important to ensure that fines and prison sentences effectively—over time—deter criminal activity against wildlife. Philippines House Bill No. 4375 is a key innovation that increases fines automatically by at least 10% every 3 years to compensate for inflation and maintain its deterrent function. This means the legislation will have the same implications and impact as time goes on.¹⁰²</p>	<p>PHILIPPINES, HOUSE BILL NO. 4375</p> <p><i>Section 28 The fines herein prescribed shall be increased by at least ten percent (10%) every three years to compensate for inflation and to maintain the deterrent function of such fines</i></p>

¹⁰² House of Representatives, Philippines, Press releases, Press and public affairs bureau, Bill strengthening the enforcement and regulatory functions of BFAR approved on 2nd Reading, Pryde Henry Teves (3rd District, Negros Oriental). <http://congress.gov.ph/press/details.php?pressid=7924>

8.6 Penalties Corresponding with the Level of Protection Under CITES Appendices

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
<p>Penalties corresponding with the level of protection under CITES appendices</p> <p>While it is important to enforce high penalties for deterrent effect, it is also crucial that the sentencing correspond to the severity of the offence. In the case of wildlife trafficking, a reasonable benchmark will be the level of protection a species is accorded under the CITES appendices.</p> <p>In Brunei and Vietnam, as noted in Chapter 8.1, for instance,¹⁰³ the level of penalty increases with the level of protection accorded to the species. This ensures the sentencing judge has an appropriate benchmark to adhere to, avoiding the imposition of excessively high or low penalties.</p>	<p>BRUNEI DARUSSALAM, WILD FAUNA AND FLORA ORDER, 2007</p> <p>Article 2 –</p> <p>“Appendix” means the Appendix I, II or III to the Convention and any amendment thereto which may come into force;</p> <p>“Appendix I” means the Appendix I to the Convention which lists all species threatened with extinction which are or may be affected by trade;</p> <p>“Appendix II” means the Appendix II to the Convention which lists all species that are not threatened with extinction but may become so if trade is not regulated;</p> <p>“Appendix III” means the Appendix III to the Convention which lists all species identified by any party to the Convention that require regulation in its jurisdiction for the purpose of preventing or restricting, exploitation and require the cooperation of other parties in the control of trade;</p> <p>Trading in species without permit or certificate.</p> <p>(1) Any person who-</p> <p>a. trades in any specimen of any species listed in the appendix I without appropriate permit or certificate granted under any sections 10 to 13.</p> <p>b. trades in any specimen of any species listed in Appendix II without the appropriate permit or certificate granted under any of sections 14 to 17; or</p> <p>c. trades in any specimen of any species listed in Appendix III without the appropriate permit or certificate granted under any of sections 18 to 21,</p> <p>(2) Any person who commits an offence against subsection (1)(a) is liable on conviction –</p> <p>a. in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000 or both;</p> <p>b. in the case of a body corporate, to a fine not exceeding \$200,000.</p> <p>(3) Any person who commits an offence against subsection (1)(b) is liable on conviction –</p>

¹⁰³ See chapter 8.1, Vietnam’s Penal Code.

DESCRIPTION OF KEY INNOVATION/ BEST PRACTICE	MODEL PROVISIONS
	<p>(a) in the case of an individual, to imprisonment for a term not exceeding 3 years, a fine not exceeding \$50,000 or both;</p> <p>(b) in the case of a body corporate, to a fine not exceeding \$100,000.</p> <p>(4) Any person who commits an offence against subsection (1)(c) is liable on conviction –</p> <p>(a) in the case of an individual, to a fine not exceeding \$37, 500;</p> <p>(b) the case of body corporate, to a fine not exceeding \$75,000.</p> <p>Possession of specimens of species.</p> <p>48. (1) Any person who has in his possession or has under his control though under the custody of another, any specimen of any species listed in the Appendix that he knows or has reasonable grounds of suspecting –</p> <p>(a) has been imported or introduced from the sea into Brunei Darussalam otherwise than in accordance with this Order; or</p> <p>(b) is intended to be exported or re-exported from Brunei Darussalam otherwise than in accordance with this Order,</p> <p>Is guilty if an offence.</p> <p>(2) Any person who commits an offence against subsection (1) in respect of a specimen of any species listed in Appendix I is liable on conviction –</p> <p>(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000 or both;</p> <p>(b) in the case of a body corporate, to a fine not exceeding \$200,000.</p> <p>(3) Any person who commits an offence against subsection (1) in respect of a specimen of any species listed in Appendix II is liable on conviction –</p> <p>(a) in the case of an individual, to imprisonment for a term not exceeding 3 years, a fine not exceeding \$50,000 or both;</p> <p>(b) in the case of a body corporate, to a fine no exceeding \$100,000.</p> <p>(4) Any person who commits an offence against subsection (1) in respect of a specimen of any species listed in Appendix III is liable on conviction –</p> <p>(a) in the case of an individual, to a fine not exceeding \$37,500;</p> <p>(b) in the case of a body corporate, to a fine not exceeding \$75,000.</p>

LIST OF LAWS CITED (IN ALPHABETICAL ORDER OF COUNTRIES)

1. AUSTRALIA - Proceeds of Crime Act 2002 No. 85, 2002. Australian Federal Register of Legislation.
2. BRUNEI DARUSSALAM -Criminal Asset Recovery Order, 2012
3. BRUNEI DARUSSALAM – Custom Order 2006
4. BRUNEI DARUSSALAM -Wild And Flora Order, 2007
5. CAMBODIA -Draft Environment and Natural Resources Code (draft 10)
6. CANADA -National Security And Intelligence Committee Of Parliamentarians Act
7. CANADA – British Columbia Wildlife Act [RSBC 1996] Chapter 488
8. CHINA - Wildlife Protection Law Of The People’s Republic Of China (2017)
9. CHINA - Advertising Law of the People’s Republic of China (2015).
10. INDONESIA –Law No. 1 Of 1979 – Extradition
11. MALAYSIA – Customs Act 1967
12. NEPAL - National Parks and Wildlife Conservation Act 2029 (1973)
13. PHILIPPINES, Executive Order No. 2 “Freedom Of Information Order 2016.
14. PHILIPPINES – Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC.
15. PHILIPPINES –Republic Act No. 7586, National Integrated Protected Areas System Act 1992, As Amended by Republic Act No. 11038.
16. PHILIPPINES - Republic Act No. 9275, The Philippine Clean Water Act of 2004
17. PHILIPPINES –Republic Act No. 9417, Wildlife Resources Conservation And Protection Act
18. PHILIPPINES –Republic Act No.9160, Anti--Money Laundering Act, As Amended, Republic Act No. 10365.
19. PHILIPPINES – Republic Act No. 10175, Cybercrime Prevention Act
20. PHILIPPINES – Republic Act No. 8550, Fisheries Code Of 1998, As Amended By Republic Act 10654
21. PHILIPPINES - House Bill No. 143
22. PHILIPPINES – House Bill No.177
23. PHILIPPINES – House Bill No. 4375, A Bill Seeking to Amend Republic Act No. 9417.
24. SINGAPORE- Wild Animals and Birds Act, Chapter 351
25. TANZANIA – The Wildlife Conservation Act 2009
26. THAILAND – Export and Import of Goods Act B.E. 2522
27. THAILAND – Extradition Act B.E, 2551
28. THAILAND – FISHERIES ACT B.E, 2497
29. THAILAND - Draft Wildlife Conservation and Protection Act (26 December 2016),
30. UNITED KINGDOM - Proceeds of Crime Act 2002
31. UNITED STATES OF AMERICA - Endangered Species Act of 1973
32. UNITED STATES OF AMERICA - Lacey Act
33. UNITED STATES OF AMERICA - Mandatory Victims Restitution Act
34. UNITED STATES OF AMERICA - Multinational Species Conservation Fund Semipostal Stamp Act of 2009
35. VIETNAM - Penal Code Law No. 100/2015/QH13, as amended 2017