

FIGHTING TOOTH AND NAIL: DETERRING WILDLIFE TRAFFICKING IN THE ERA OF MASS EXTINCTION

L.S. Stegman*

INTRODUCTION

Below decks on a fishing ship, crates overflow with hundreds of severed shark fins, grisly harbingers of a changing seascape.¹ Stuffed into a small car, dozens of baby parrots are smuggled across the border for sale as pets in the United States.² Narwhal tusks are smuggled into the country and sold on Nantucket, with the help of a corrupt law enforcement officer.³ These macabre examples provide a window into one of the world's largest criminal enterprises: the illegal wildlife trade.

The illegal wildlife trade is massive, generating estimated profits of almost twenty billion dollars per year.⁴ Using conservative estimates, wildlife trafficking is the fourth most profitable criminal enterprise in the world, surpassed only by the narcotics trade, the illegal weapons trade, and human trafficking.⁵ There is one key difference between the wildlife trade and the other members of the black market 'big four': combatting illegal wildlife trafficking is not a top law enforcement priority.⁶

This perspective needs to change. There is a scientific consensus that our planet is currently in the throes of a mass extinction crisis.⁷ Although this piece does not discuss the crisis at length, the scale of loss is

*L.S. Stegman is a *juris doctor* candidate at the Georgetown University Law Center. He is a Featured Online Contributor for Volume 57 of the *American Criminal Law Review*.

¹ See *United States v. Approximately 64,695 Pounds of Shark Fins*, 520 F.3d 976, 977 (9th Cir. 2008) (forfeiture action).

² See *United States v. Freeman*, 77 F.3d 812, 815 (5th Cir. 1996).

³ See *United States v. Place*, 693 F.3d 219, 220–24 (1st Cir. 2012).

⁴ See Am. Society of Int'l L., *United States Takes Steps to Combat Illegal Trade in Wildlife*, 108 AM. J. INT'L L. 334, 334 (2014) (citing a report by then-Secretary of State John Kerry, then-Attorney General Eric Holder, and then-Secretary of the Interior Sally Jewell).

⁵ See UNEP-INTERPOL, *THE RISE OF ENVIRONMENTAL CRIME* 4 (Christian Nellemann et al. eds., 2016). There is apparent disagreement over the relative ranking of the four largest black market enterprises. Other estimates put wildlife crime as the second most profitable enterprise. See, e.g., Christine Fisher, *Conspiring to Violate the Lacey Act*, 32 ENVTL. LAW. 475, 375 (2002) (“[I]llegally taken wildlife is the second largest trade on the black market, second only to the drug trade.”). Still, others rank it as the third largest. See Melissa M. Morgan, *Exotic Addiction*, 65 DUKE L.J. ONLINE 1, 2 (2015).

⁶ See UNEP-INTERPOL, *supra* note 5, at 9, 11 (discussing how governments across the world put fewer resources than necessary to prosecute wildlife crimes); see also Fisher, *supra* note 5, at 477 (“little mention (or money) is given to the war on illegal wildlife trafficking”).

⁷ See, e.g., Damian Carrington, *Earth's Sixth Mass Extinction Event Under Way, Scientists Warn*, GUARDIAN (July 10, 2017), <https://www.theguardian.com/environment/2017/jul/10/earths-sixth-mass-extinction-event-already-underway-scientists-warn>.

staggering: out of approximately eight million species on the planet, over a million species are threatened with extinction.⁸ While redressing much of this harm is outside of the purview of criminal law, limiting the damage and cruelty of the wildlife trade is a worthwhile and legitimate goal of our criminal justice system. This can also help to limit some of the serious harm that wildlife trafficking does to species across the globe.⁹

Misleadingly, the United States is often credited as having the strongest laws against wildlife trafficking in the world.¹⁰ Specifically, prosecutors, agents, and commentators cite to the Lacey Act, the “country’s oldest national wildlife protection statute.”¹¹ The Act is meant to impose criminal punishments of fines and prison sentences upon defendants who traffic, sell, or purchase wildlife in violation of federal, state, and even international laws.¹² This piece will argue that the Lacey Act, as currently structured and enforced, misses the mark. It will discuss how the Act’s seemingly harsh penalties are not effective at deterring international wildlife smuggling. It will then address the enforcement and perception issues underlying the Lacey Act, finding that limited law enforcement resources should be focused on apprehending and charging international wildlife traffickers rather than prosecuting domestic recipients of wildlife contraband.

⁸ UNITED NATIONS, UN Reports: Nature’s Dangerous Decline ‘Unprecedented’; Species Extinction Rates ‘Accelerating,’ (May 6, 2019), <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>.

⁹ See Fisher, *supra* note 5, at 479–80 (discussing how wildlife trafficking decreases wild populations); see also John C. Cruden & David S. Gualtieri, *Toward a More Coordinated, Integrated Response to Wildlife Trafficking and Other Natural Resource Crime*, 12 U. PENN. ASIAN L. REV. 23, 26–29 (2016) (discussing the connection between wildlife trafficking and species extirpation).

¹⁰ See Jonathan P. Kazmar, *The International Illegal Plant and Wildlife Trade: Biological Genocide?*, 6 U.C. DAVIS J. INT’L L. & POL’Y 105, 115 (2000).

¹¹ Robert S. Anderson, *The Lacey Act: America’s Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 PUB. LAND L. REV. 27, 29 (1995) (discussing the history and applications of the Lacey Act). The Lacey Act is frequently held up as a ‘model law’ that could be exported to other nations in order to combat wildlife trafficking. See Jonathan Gonzalez, *Putting the Illegal Wildlife Trade in the Crosshairs: How the Global Conservation Crisis Demonstrates the Need for Lacey Act Enforcement of Foreign Laws*, 41 WM. & MARY ENVTL. L. & POL’Y REV. 321, 322 (2016) (Note); Mara E. Zimmerman, *The Black Market for Wildlife: Combatting Transnational Organized Crime in the Illegal Wildlife Trade*, 36 VAND. J. TRANSNAT’L L. 1657, 1681 (2003); see also Jessica B. Izzo, *PC Pets for a Price: Combatting Online and Traditional Wildlife Crime Through International Harmonization and Authoritative Policies*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 965, 991 (2010) (praising the Lacey Act’s strict liability scheme).

¹² 16 U.S.C. § 3371–78 (2019).

I. THE CURRENT STATUTORY SCHEME

Passed in 1900, the Lacey Act was originally designed to protect domestic wildlife, especially birds, from overharvesting.¹³ However, the Act's purview has significantly expanded through a series of amendments: it has been transformed into the primary tool for prosecuting wildlife traffickers in the United States.¹⁴ The Lacey Act makes it unlawful to "import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States."¹⁵ It also makes it unlawful to trade in "fish or wildlife" that were "taken, possessed, transported, or sold in violation of any law . . . of any State or in violation of any foreign law."¹⁶

Due to its capacious language, the statute applies to a wider range of fish and wildlife than any other environmental law.¹⁷ The statute applies not only to living wildlife, but to deceased animals as well, and also to "part[s], product[s], egg[s], or offspring."¹⁸ This is significant because many smugglers trade in deceased animal parts, such as shark fins or elephant tusks.¹⁹

The Lacey Act lays out statutory penalties, both civil and criminal, for wildlife trafficking violations.²⁰ At first glance, these penalties can seem harsh. For instance, if a defendant *knowingly* imports or exports fish, wildlife, or plants in violation of the Act, the defendant could face statutory penalties up to a \$250,000 fine and five years in prison.²¹ The same penalties apply to defendants who *knowingly* sell or purchase illegal wildlife.²² Defendants who should have known *in the exercise of due care* that the wildlife, fish, or plants that they sold, purchased, or imported had been taken in violation of the law face a lower penalty: up to a \$100,000

¹³ See Anderson, *supra* note 11, at 36.

¹⁴ For a thorough discussion of the expansion of the Lacey Act since 1900, see C. Jarrett Dieterle, Note, *The Lacey Act: A Case Study in the Mechanism of Overcriminalization*, 102 GEO. L.J. 1279, 1286–93 (2014).

¹⁵ 16 U.S.C. § 3372(a)(1) (2019).

¹⁶ *Id.* § 3372(a)(2)(A).

¹⁷ See Fisher, *supra* note 5, at 481.

¹⁸ 16 U.S.C. § 3371(a) (2019) (defining "fish or wildlife" in the context of the Lacey Act).

¹⁹ See, e.g., *United States v. Hess*, 829 F.3d 700, 703 (8th Cir. 2016) (trafficking in rhino horns); *United States v. Proceeds from Sale of Approximately 15, 537 Panulirus Argus Lobster Tails*, 834 F. Supp. 385, 390–91 (S.D. Fla. 1993) (trafficking in lobster tails).

²⁰ Discussion of civil penalties is outside the scope of this article. See 16 U.S.C. § 3373(a) (2019).

²¹ See *id.* § 3373(d)(1)(A). However, federal sentencing guidelines complicate the calculus for determining fines because the Sentencing Reform Act of 1984 replaced the listed fines in the Lacey Act. As a result, *knowing* wildlife importers, sellers, or purchasers could incur fines up to a maximum of \$250,000. Defendants who fall under the *exercise of due care* provision face a maximum fine of \$100,000. See Anderson, *supra* note 11, at 71.

²² See 16 U.S.C. § 3371(d)(1)(B) (2019).

fine and one year in prison.²³ There is also a forfeiture provision, requiring the contraband wildlife to be turned over to the federal government.²⁴

Critics are dubious about the Lacey Act's incorporation of foreign laws (which do not even need to be criminal) as "predicate laws" that carry serious criminal penalties if violated.²⁵ The Lacey Act criminalizes trafficking wildlife in violation of "any foreign law."²⁶ In addition to any foreign statute, the Act also criminalizes violations of foreign regulations that have the "force and effect of law."²⁷

Criticism of the lack of proportionality between minor punishments abroad and relatively strict sentences in the United States has been especially harsh.²⁸ This practice has caused concerns about whether the Lacey Act "overcriminalizes" behavior and can lead to harsh punishment even when the defendant did not have the "specific intent" to violate any serious laws or do any wrong.²⁹

These critics ignore an important truth about the Act: though it may be broad and seem harsh on its face, the Act fails to effectively deter criminal wildlife trafficking behavior.

II. THE LACEY ACT AS AN INSUFFICIENT DETERRENT

Despite the facially harsh penalties, the Lacey Act does not adequately deter intentional wildlife smuggling. This section will discuss (a) how potential criminal gains outweigh relatively lax penalties under the Act, (b) how violators of the Act are under-punished by prosecutors and judges, and (c) how punishments for wildlife trafficking are significantly lower than punishments for other contraband trafficking crimes.

A. High Profit, Low Risk Crime

There is a reason why organized criminals are turning to the illegal wildlife trade: it is an area of "high profit and low risk."³⁰ Assessing the

²³ See *id.* § 3373(d)(2). See *Anderson supra* note 11, at 71 (discussing the enhanced fines under the Sentencing Reform Act of 1984).

²⁴ See 16 U.S.C. § 3374(a)(1) (2019). The forfeiture provision can also result in the seizure of "vessels, aircraft, and other equipment" used in the commission of the crime. *Id.* § 3374(a)(2).

²⁵ See, e.g., Francis G. Tanczos, *A New Crime: Possession of Wood—Remedying the Due Care Double Standard of the Lacey Act*, 42 RUTGERS L.J. 549, 550 (2011) (discussing the difficulties and injustice of complying with a "seemingly infinite number of foreign laws and regulations"); Dieterle, *supra* note 14, at 1282.

²⁶ See 16 U.S.C. § 3372(a)(2)(A) (2019).

²⁷ See *United States v. McNab*, 331 F.3d 1228, 1235, 1239 (11th Cir. 2003).

²⁸ See Matthew S. White, *Overcriminalization Based on Foreign Law: How the Lacey Act Incorporates Foreign Law to Overcriminalize Importers and Users of Timber Products*, WASH. U. GLOBAL STUD. L. REV. 381, 399 (2019).

²⁹ See, e.g., Dieterle, *supra* note 14, at 1305.

³⁰ Vanessa Dick, *Dirty Money and Wildlife Trafficking: Using the Money Laundering Control Act to Prosecute the Illegal Wildlife Trade*, 49 ENVTL. L. REP. NEWS &

“risk” of wildlife trafficking requires looking at the penalties that the Act provides. On the face of the Act, the penalties may seem harsh; given the Sentencing Guidelines’ fine enhancements, traffickers can face up to five years in prison and a fine of \$250,000.³¹

However, the “high profits” that can be gained from trafficking in wildlife far outweigh the potential penalties, and thus criminals remain undeterred. For instance, in *United States v. Bengis*, smugglers illegally trafficked South African rock lobsters to the United States.³² When calculating the amount of damage caused, the court estimated the market value of the trafficked lobsters at between 49 million and 62 million dollars.³³ However, the defendant in that case was only sentenced to pay a fine between \$10,000 and \$100,000³⁴ and serve forty-six months in prison.³⁵ *Bengis* is far from an aberration: it is part of a larger pattern.³⁶

B. Under-Punishment of Lacey Violations

Worse, judges and prosecutors tend to punish wildlife crimes leniently, doling out fines and prison sentences well below the statutory maximum.³⁷ They view wildlife crimes as minor, even trivial offenses, rather than part of an organized black market.³⁸ Theoretically, the

ANALYSIS 10334, 10334 (2019). For instance, one woolly spider monkey can fetch up to \$50,000 on the black market. See Kazmar, *supra* note 10, at 123.

³¹ See Anderson, *supra* note 11, at 71.

³² 631 F.3d 33 (2d Cir. 2011).

³³ *Id.* at 37.

³⁴ *United States v. Bengis*, 2004 WL 7324829 (S.D.N.Y. 2004) (verdict) (stating the range of potential fines under the Sentencing Guidelines).

³⁵ See Marcus A. Asner, *To Catch a Wildlife Thief: Strategies and Suggestions for the Fight Against Illegal Wildlife Trafficking*, 12 U. PENN. ASIAN L. REV. 1, 16 (2016) (discussing the *Bengis* prosecution); Cruden & Gualtieri, *supra* note 9, at 27–29.

³⁶ See Kazmar *supra* note 10, at 123 (“Criminals with any degree of financial savvy will accept the risk of a \$20,000 fine for smuggling wildlife contraband with a value of \$1,000,000.”). For instance, in *United States v. Oehlenschlager*, defendants trafficked almost \$55,000 in smuggled duck eggs. The court fined the defendant only \$10,000 and sentenced him to fifteen months in prison with work release privileges. See *United States v. Oehlenschlager*, 895 F. Supp. 245, 248 (D. Minn. 1995). Of course, this trend is not universal. See *United States v. Siyam*, 596 F. Supp. 1078, 1090 (N.D. Ohio 2008) (imposing five-year prison sentence and \$100,000 fine for the trafficking of elephant ivory tusks).

³⁷ See Fisher, *supra* note 5, at 483–84, 483 nn.81–84 (synthesizing sources to find that wildlife crimes are a low priority for the judiciary and often are punished leniently).

³⁸ *Id.* at 483 n.83 (discussing how judges tend to downplay wildlife crimes and provide light sentences). Other sources discuss how judges tend to under-punish environmental crimes. See, e.g., Jane Barrett, *Sentencing Environmental Crimes Under the United States Sentencing Guidelines- A Sentencing Lottery*, 22 ENVTL. L. 1421, 1422 (1992) (finding that lenient sentencing of environmental crimes has continued in some districts). Marcus Asner, a former member of President Obama’s Advisory Council on wildlife, notes that “[e]nsuring that judges and prosecutors treat wildlife trafficking as a serious crime . . . has the immediate and obvious benefit of helping ensure that traffickers are punished for their crimes.” Asner also notes that it also has the benefit of “deter[ring]

Sentencing Guidelines reduce judicial discretion and suggest minimum punishments for all Lacey Act violations.³⁹ However, judges often depart from the Sentencing Guidelines for wildlife trafficking cases to leniently punish wildlife smugglers.⁴⁰ Sometimes it is “possible that [wildlife traffickers] won’t even do jail time” for a first offense.⁴¹

C. Lacey Penalties Compared to Other Contraband Violations

Furthermore, the Lacey Act punishes wildlife traffickers to a much lesser extent than traffickers in other types of contraband, particularly drugs. This is often evidenced by a significant disparity between the punishments for trafficking similar amounts of narcotics and wildlife.⁴² This may actually incentivize criminals to traffic in safer, more profitable wildlife contraband.

Emblematic of this imbalanced punishment scheme is the prosecution of Wolfgang Kloe, a trafficker who smuggled exotic reptiles worth \$250,000 into the United States.⁴³ Based on the Lacey Act, Kloe received a 46-month prison sentence (out of a potential maximum of sixty months) and a fine of \$10,000.⁴⁴ Trafficking the same value of narcotics would

others from entering the wildlife trafficking business in the first place.” *See Asner, supra* note 35, at 16.

³⁹ The Supreme Court found that the Federal Sentencing Guidelines are discretionary, not mandatory. Therefore, judges may grant upward or downward variances. However, the Guidelines must still be considered by federal judges making sentencing decisions. *See United States v. Booker*, 543 U.S. 220, 245 (2005).

⁴⁰ *See Fisher, supra* note 5, at 483 n.83 (discussing how judges will often grant downward variances from the Sentencing Guidelines or entirely depart from the Guidelines when sentencing perpetrators of wildlife crimes); Barrett, *supra* note 38, at 1447 (discussing how lenient sentences for environmental crimes are inconsistent with the Sentencing Guidelines).

⁴¹ *See Kazmar, supra* note 10, at 108. Why are judges so reluctant to impose prison sentences for wildlife trafficking? In my view, the reason can be best summed up in a quote from Jessica Speart’s *Winged Obsession*. The book tells the story of a notorious international butterfly smuggler who was finally caught and sent to prison for twenty-one months after a lengthy and expensive investigation. After the smuggler was sentenced, the confidential informant who turned him in revealed that he had second thoughts about what he had done, saying: “I have trouble putting anybody in prison for catching a bug.” JESSICA SPEART, *WINGED OBSESSION: THE PURSUIT OF THE WORLD’S MOST NOTORIOUS BUTTERFLY SMUGGLER* 284 (2011).

⁴² Here, the “amount” is measured in terms of value. Of course, financial value is not the only reason why drug crimes might be punished more harshly than wildlife crimes. There is a more direct impact on human health and safety from drug trafficking; however, this cannot be entire reason because wildlife crime also has a significant nexus with human health and safety issues. There is also the potential perception that drug trafficking is more morally reprehensible than wildlife trafficking. However, again this ignores a key part of the wildlife trafficking issue. Wildlife trafficking can result in the permanent loss and extinction of wild species.

⁴³ *See Kazmar, supra* note 10, at 108 (discussing the Kloe prosecution); *see also Zimmerman, supra* note 11, at 1676 (same).

⁴⁴ *See Kazmar, supra* note 10, at 108.

result in a prison sentence of 121 to 151 months and a fine of at least \$175,000.⁴⁵

There is no moral justification for punishing wildlife trafficking crimes less harshly than drug trafficking crimes. Although it could be argued that drugs contribute more to human loss of life and thus should be a higher priority, this ignores both the severity of the mass extinction crisis and the violent aspects of the trade.⁴⁶ It also ignores one of the tragically unique features of the extinction crisis: when a species is gone, it is gone forever.

There is also no financial justification for this disparity in punishment. In today's world, "pound for pound, there is more profit for smugglers in exotic birds than there is in cocaine."⁴⁷ Punishing the drug trade more harshly than the wildlife trade per unit dollar will not decrease overall crime. Instead, it may incentivize criminals to traffic in safer, more profitable wildlife contraband.⁴⁸

Therefore, the reward-to-risk ratio is much higher for wildlife trafficking than narcotics, even when considering the maximum penalties under the Lacey Act. In wildlife trafficking cases, defendants are more likely to get a slap on the wrist than the maximum punishment,⁴⁹ further decreasing the deterrent effect of the Lacey Act.

III. A MORE EFFICIENT LACEY ACT

The Lacey Act is also not efficiently enforced. This section will discuss (a) the limited resources available for Lacey Act enforcement and prosecution, and (b) suggest a different scheme of Lacey Act enforcement: law enforcement should focus on punishing international wildlife smugglers, rather than the domestic recipients of wildlife products.

A. *Limited Resources*

Many wildlife trafficking cases do not result in criminal charges. Instead, prosecutors are most likely to seek only forfeiture of the contraband wildlife.⁵⁰ Forfeiture alone is an inadequate deterrent; it

⁴⁵ *Id.*

⁴⁶ See David H. Barron, *How the Illegal Wildlife Trade Is Fueling Armed Conflict*, GEO. J. INTL'L AFF. 217, 218 (2015).

⁴⁷ See Zimmerman, *supra* note 11, at 1659 (quoting Customs and Fish and Wildlife Agents Snare Huge Animal Smuggling Ring, PR NEWSWIRE, May 29, 1998).

⁴⁸ See UNEP-INTERPOL, *supra* note 5, at 8, 11.

⁴⁹ See *supra* notes 37–41.

⁵⁰ See Fisher, *supra* note 5, at 483 n.82 (citing a Government Accountability Office Wildlife Report).

provides little incentive for poachers and smugglers to change their habits when weighed against the potential rewards.⁵¹

As discussed above, part of this leniency can likely be attributed to an underestimation of the severity of crimes against wildlife.⁵² However, critics have also pointed to chronic understaffing and underfunding in the U.S. Fish & Wildlife Service, the Department of the Interior Office of the Solicitor, and the Department of Justice as potential reasons why forfeiture, rather than prosecutorial proceedings are preferred.⁵³ Funding issues severely limit the Fish & Wildlife Service's ability to inspect incoming shipments at ports of entry.⁵⁴ This further decreases the deterrent effect.

This problem could be addressed by reapportioning enforcement resources to focus primarily on apprehending and prosecuting wildlife smugglers, rather than the end recipients of wildlife products.

B. Refocusing Lacey Act Resources

As discussed above, the Lacey Act has been criticized as criminalizing the violation of an “unquantifiable number” of foreign laws.⁵⁵ While there might be truth to this, the Act has also suffered from bad press: a 2011 raid on Gibson Guitars in search of wood allegedly imported in violation of Indian law generated a significant amount of negative coverage.⁵⁶ Critics decried it as another example of overcriminalization run amok and legislators considered amending the Lacey Act.⁵⁷

But the Lacey Act has the potential to become an ever more potent tool in the fight against the illegal wildlife trade. That potency is put at risk if the Lacey Act is viewed by legislators as a vehicle of overcriminalization instead of an important tool for catching wrongdoers. In order to avoid that perception (and the accompanying chance the Act's “teeth” would be amended away), the Act's enforcement priorities should change.

In order to mitigate the perception that it provides harsh penalties for behavior that is not “inherently criminal,”⁵⁸ enforcement of the Lacey Act should be focused on smugglers in the illegal wildlife trade, rather than

⁵¹ *Id.* (“According to FWS officials, the lack of penalties and fines and other punitive measures assessed for violation detected by the wildlife inspection program does little to instill in potential violators the need to voluntarily comply with the laws and treaties governing wildlife trade.”).

⁵² *See supra* notes 36–41.

⁵³ *See Fisher, supra* note 5, at 483 & n.82.

⁵⁴ The Fisher article discusses enforcement issues at some length. *Id.* at 482–83. It cites some staggering statistics: for instance, in 1994, a GAO Report estimated that it only catches ten percent of illegal wildlife in declared shipments; for undeclared shipments, the percentage is even lower. *Id.*

⁵⁵ *See Dieterle, supra* note 14, at 1298.

⁵⁶ *See White, supra* note 28, at 384–85; *see also* Dieterle, *supra* note 14, at 1281.

⁵⁷ *See White, supra* note 28, at 384–85.

⁵⁸ *See Dieterle, supra* note 14, at 1306.

domestic recipients of wildlife products. This would transform the Act into a tool to combat a widespread, violent, and cruel criminal enterprise. Focusing more on prosecuting *knowing* traffickers and importers, and those who willfully smuggle across international and state borders, would also more effectively combat the more pernicious evil: the trade of wildlife on the international black market.⁵⁹

CONCLUSION

In the present mass extinction crisis, it is more important than ever that the Lacey Act remains potent. Despite its reputation as the world's strongest wildlife protection statute, the Act's flaws, both in terms of punishment and enforcement schemes, detract from its ability to challenge the illegal wildlife trade.

What can we do to make the Lacey Act a more effective deterrent? To begin, penalties for wildlife trafficking should be aligned with penalties for trafficking other contraband, such as narcotics. The discretion of judges to treat environmental crimes as less than serious should also be curtailed. Finally, prosecutors and agents should focus their limited resources on tracking down international traffickers, rather than overcriminalizing domestic possession of trafficked goods. This will more effectively catch smugglers and will ensure that the Lacey Act keeps its teeth.

⁵⁹ See 16 U.S.C. § 3373(d)(1) (2019).