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# INTERNATIONAL LEGAL BEST PRACTICES FOR THE CUSTODIAL MANAGEMENT OF TRAFFICKED LIVE WILD ANIMALS

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INTERNATIONAL  
LEGAL BEST PRACTICES FOR THE  
**CUSTODIAL  
MANAGEMENT OF  
TRAFFICKED LIVE WILD  
ANIMALS**



Jane  
Goodall  
Institute

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# INTRODUCTION

## The Need for Further Regulation

Although early efforts in the global accounting of wildlife seizures have succeeded in exposing the general trends and particularities of the illegal wildlife trade, there is still much unknown about the fate of countless live animals being confiscated and how they are being managed in the context of criminal prosecutions.

The most recent understanding of the global trafficking of species protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is summarized by the United Nations Office on Drugs and Crime (UNODC) in their World Wildlife Crime Report.<sup>1</sup> The report is based on the knowledge provided by the UNODC World Wildlife Seizure database (World WISE)<sup>2</sup>, which includes 180,000 seizure events involving almost 6,000 species reported by 149 countries during the period 1999–2018, and it is the only global database available nowadays. Despite this information, World WISE does not detail the exact number of specimens seized and admittedly is only able to capture a small fraction of the overall estimated illegal trade. It nevertheless provides good insight into critical aspects of

the illegal wildlife trade including the most trafficked animal taxa and species, key transportation means and routes, the most common concealment methods, roles played by countries along the supply chains, as well as stats on the identity and nationality of traffickers. However, other crucial aspects of wildlife seizures remain unknown, with no national data being collected, standardized, and aggregated at the global level. Among the many unknowns is the fate of the specimens being confiscated and the outcomes of the criminal prosecution efforts. In sum, it is not possible today to know how many of the seized animals have been returned to nature, are being kept in captivity, or have been euthanized; nor is it possible to access global data on how many traffickers have been investigated, prosecuted, and sentenced; or the penalties that have been imposed for wildlife crimes.

The lack of transparency on the final disposition of wildlife seizures and the results of wildlife criminal prosecution is not just because shortfalls in statistics or management. It is also a reflection of insufficient legal development in many jurisdictions, lacking procedures and guidelines on the management of confiscated specimens in line with the most recent international technical recommendations.

Recent years have been particularly relevant in establishing recommendations and

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1 UNODC, World Wildlife Crime Report 2020: Trafficking in Protected Species

2 World Wise aggregates seizure data from the World Customs Organization, CITES, the United States Fish and

Wildlife Service's (USFWS) Law Enforcement Management Information System (LEMIS), the EU-TWIX, some NGOs and other agents. It is the best statistic resource available today at the global level, although its content is considered limited, lacking consistency, and presenting data deficiencies.

guidelines on the management of confiscated live wild animals.

Recommendations from CITES focus on species protected by the Convention, while guidelines from the International Union for Conservation of Nature (IUCN) are directed at confiscated specimens from any species, regardless their conservation status. These guidelines aim to support national agencies in deciding how to manage confiscations, as well as promote consistency in policy and legislative development across countries. While none of these recommendations and guidelines are legally binding on countries, they provide strong technical input to navigate a complex decision-making process that must balance needs related to conservation, animal welfare, zoonotic disease risks, and criminal prosecution against technical and financial capacity. Although these inputs have significant value, countries remain ill-equipped to properly deal with wildlife confiscations until their legal frameworks are sufficiently robust to provide authorities with the necessary legal tools to implement them.

Some jurisdictions are leading with respect to national legal development on wildlife confiscations, offering lessons for other countries still in need to develop specific legislation. Along with the technical guidelines developed by CITES and IUCN, these jurisdictions naturally form the basis for this first set of international legal best practices being created, which, at this point, cover mostly foundational issues. It is anticipated that the set of legal best practices proposed herein will further expand until they cover all issues related to the regulation of wildlife confiscations.

Users of this publication are encouraged to consider that drafting workable legal best practices is a function of multiple years and requires input from as many sources as feasible. This set of legal best practices covers a smaller area of activity but must nonetheless be understood as a long-term effort.

The study conducted in the development of the best practices reviewed the legislation of several countries that regulate different aspects of wild animal confiscations. The review found practical examples of how technical recommendations can be expressed within legal frameworks. The list of countries includes Australia, Canada, China, France, India, Norway, Philippines, and the United States, along with European Union legislation. For each jurisdiction of reference, the review covered different pieces of legislation, as regulating wildlife confiscations usually involves different areas of law including natural resources legislation, animal law, health law, protected areas, or criminal law.

This publication proposes a total of 26 legal best practices limited to those considered critical to enabling action by enforcement authorities at national level. All of them are aligned with the latest technical and scientific knowledge and seek to contribute to legal consistency among countries.

They have been organized into five major categories or components including governance, animal care, animal transportation, disposition, and criminal enforcement.

Best practices included within each category are presented in three parts: 1) a short name, 2) a statement expressing the legal best

practice or standard and 3) some additional commentary and discussion concerning its need and relevance.

Jurisdictions that have no legal development on live wild animal confiscations may use them as a reference when drafting their national instruments. Those jurisdictions with partial legal development on the topic may use them as standards against which a gap analysis can be conducted to explore and identify what might be improved in their regulations.

## Who is this publication for?

This publication addresses the needs of individuals tasked with the development of law related to wildlife, whether they form part of the executive or legislative branches, or even non-governmental entities supporting legal reform. In that sense, it aims to become a technical resource for advancing legislation on wildlife confiscations directed at the dual goal of promoting wildlife conservation and animal welfare, while combatting wildlife trafficking.

In all cases, the publication may be used to assess the quality of legislation to better address the challenge of increasing confiscations. These best practices may also be used as a guide or check list that identifies core issues and areas that require special attention by regulators.

The primary audience is, therefore, not enforcement personnel. However, they may be considered among its primary beneficiaries. Full implementation of the proposed set of best practices would better equip frontline officers in managing confiscated live wild animals. It is nevertheless expected that enforcement

personnel, due to their understanding of the field realities, should be incorporated into discussions on how to best translate the proposed best practices into law in their own jurisdiction.

## Interpretation

### Jurisdiction versus Country

Law does not exist in an abstract space but rather is tied to a defined geographical area with concrete boundaries, most commonly, a country or nation. However, there are other boundaries defined by law, including multiple approaches to sub-national divisions, e.g., states, provinces, dependent territories, autonomous regions, as well as others at supra-national levels. As a result, this legal publication deliberately avoids using the term ‘country’ in favor of the term ‘jurisdiction’, which refers more generally to the authority to govern or legislate and can be used for any legally defined territory with such authority. The best practices defined here have equal validity for and can be applied at any scale, making ‘jurisdiction’ the more appropriate term.

### Law versus Regulation

There is no standard global definition for the concepts of ‘law’ and ‘regulation,’ with multiple and differing terms and approaches being used across jurisdictions. For purposes of this publication, the authors have deliberately simplified and consolidated all norms intended to have the force of law into two basic groups and defined them as follows. Laws are those norms enacted by Parliaments and come in many flavors and designations including acts, proclamations, decrees, legislative decrees, royal decrees,



supreme decrees, ratification instruments, and presidential decrees, among others. Regulations are those norms enacted either by the parliament, but most often by the executive power, (e.g., Ministries, Agencies, Independent Governmental Bodies), that further develop the content of laws enacted by Parliament. The variety of terms used at the regulatory level is equally diverse and may include protocols, procedures, guidelines, regulations, guides, instructions, instruments, lists, manuals, norms, notices, notifications, orders, ordinances, regulatory decrees, resolutions, and rules.

This publication uses the terms ‘law’ and ‘regulation’ as equivalent concepts for good reason. The proposed best practices are intended to establish global standards without dictating the regulatory approach or attempting to advise on the types of legal instruments each jurisdiction should use to incorporate the proposed standards into their legal frameworks. In that sense, a particular best practice may be incorporated with the same effectiveness in two laws by one jurisdiction, in two regulations by another jurisdiction, in one law and one regulation by a third one, and so on.

Although many jurisdictions share their legal heritage, the truth is that many legal systems have developed over centuries, even millennia, resulting in unique models. This publication recognizes and respects that legal diversity.

### Standard Operating Procedures versus Legal Best Practices

Standard Operating Procedures (SOPs) are among the tools used by authorities to

further regulate the application of law. SOPs are context-based legal instruments providing specific instructions adapted to each jurisdiction’s institutional, educational, and social reality. As the name suggests, they are intended to operationalize the law by describing ‘how to do a thing.’ This publication is not intended to provide that level of detail.

Instead, it is result-oriented and focuses on offering guidance on ‘what legal result to achieve’ by formulating legal best practices as generic concepts or standards, without either pretending to prescribe the exact language required to operationalize the approach. For this reason, some best practices limit to call for technical procedures to be in place, offering a standard on the minimum elements that procedures should contain, without further prescription. This is especially true for best practices on animal care, animal quarantine and health assessments, all of which call for technical procedures to secure implementation of the law, without proposing specific content for those procedures.

### Disposition versus Disposal

The legal tradition concerning confiscations is rooted in two overarching concerns. For general criminal activity, the concern is two-fold – 1) secure evidence of the crime and 2) deny offenders the benefits of crimes. In the context of international trade, however, the historical interest is also driven by economics, specifically an interest in controlling trade and generating income through customs’ tariffs. It makes sense in this context that the regulation of confiscated goods at border points would use of the term ‘disposal,’



often referring to the sale of confiscated goods as a means of recovering lost revenue.

Unfortunately, the approach embodied by the term ‘disposal’ has not evolved in parallel with the development of trade law, which now go beyond economic interests to include others, such as the conservation of fauna and flora or the prevention of pandemics. To meet these concerns means that confiscations of live specimens cannot be treated simply as goods to be sold. And yet, trade legislation governing wildlife confiscations has inherited the term ‘disposal’ and applied it to animals without change. The term can be found today across CITES documents, and many technical guidelines, papers, and manuals related to wildlife.

This publication submits that, in line with a more contemporary understanding of animal welfare and sentience, the use of the term ‘disposal’ is detrimental and outdated. Indeed, the definition contained in the English Oxford Dictionary as the ‘action or process of getting rid of something’ clashes entirely with an endeavor driven by conservation and animal welfare goals.

As an alternative, this publication proposes rather to use the term ‘disposition’ as a synonym for the set of management decisions around the final fate of each confiscated animal, where sale is, moreover, no longer a recommended alternative.

### Seizure versus Confiscation

Despite the different naming conventions across legal systems, it is possible to identify two existing mechanisms providing

the legal status for animals taken by enforcement authorities. The first mechanism, often but not always using the term ‘seizure,’ refers to the temporary custody over the animals by authorities, a provisional period of time while legal ownership of animals is being decided. The second mechanism, often covered by the term ‘confiscation,’ governs the permanent custody after authorities have been declared legal owners with the full right to decide their fate. This distinction is important because it creates a separation between the type of actions that authorities retaining custody are entitled to do with the animals at each stage of the enforcement process.

This publication uses the term ‘seizure’ for the temporary holding of animals taken by enforcement officers, and the term ‘confiscation’ for permanent custody. In addition, the best practices further propose the use of the term ‘custodial management’ to designate the entire period that authorities hold custodial powers over animals, whether temporary or permanent. Custodial management would also include all managerial decisions over the disposition of animals.

## Organization by Categories

This publication contains a total of 26 legal best practices grouped under five conceptual categories. These are for organizational purposes only and do not constitute a legal development or other best practice.

### Legal Best Practices on Wildlife Governance

The first category focuses on practices related to the overarching legal approach to

confiscations of live wild animals to cover governance aspects related to how concepts, procedures, powers, and authorities are defined in law.

As this publication develops, this category may be expanded to include best practices on other governance issues, such as agency personnel, financing, accountability, conflicts of interest, and corruption.

#### Legal Best Practices on Wild Animal Care

This second category includes legal best practices related to the care, quarantine, and health of confiscated wildlife specimens. They address the need to preserve the life of seized and confiscated animals while at the same time preventing the transmission of zoonotic diseases.

It also includes legal best practices addressing animal welfare standards associated with the management of wild animals.

#### Legal Best Practices on Wild Animal Transportation

This section proposes legal best practices for the regulation of key aspects related to the transfer and transportation of confiscated wild animals including the decision-making process, and transportation standards.

#### Legal Best Practices on Disposition of Wild Animals

This category develops legal best practices related to the long-term disposition of wild animals confiscated by enforcement personnel. It includes best practices that should guide disposition, acceptable alternatives for disposition, and disposition procedures. It also incorporates a best practice related to the capacity to enter into repatriation agreements with countries sharing trafficking routes.

#### Legal Best Practices on Wildlife Crime Investigations, Prosecutions, And Adjudications

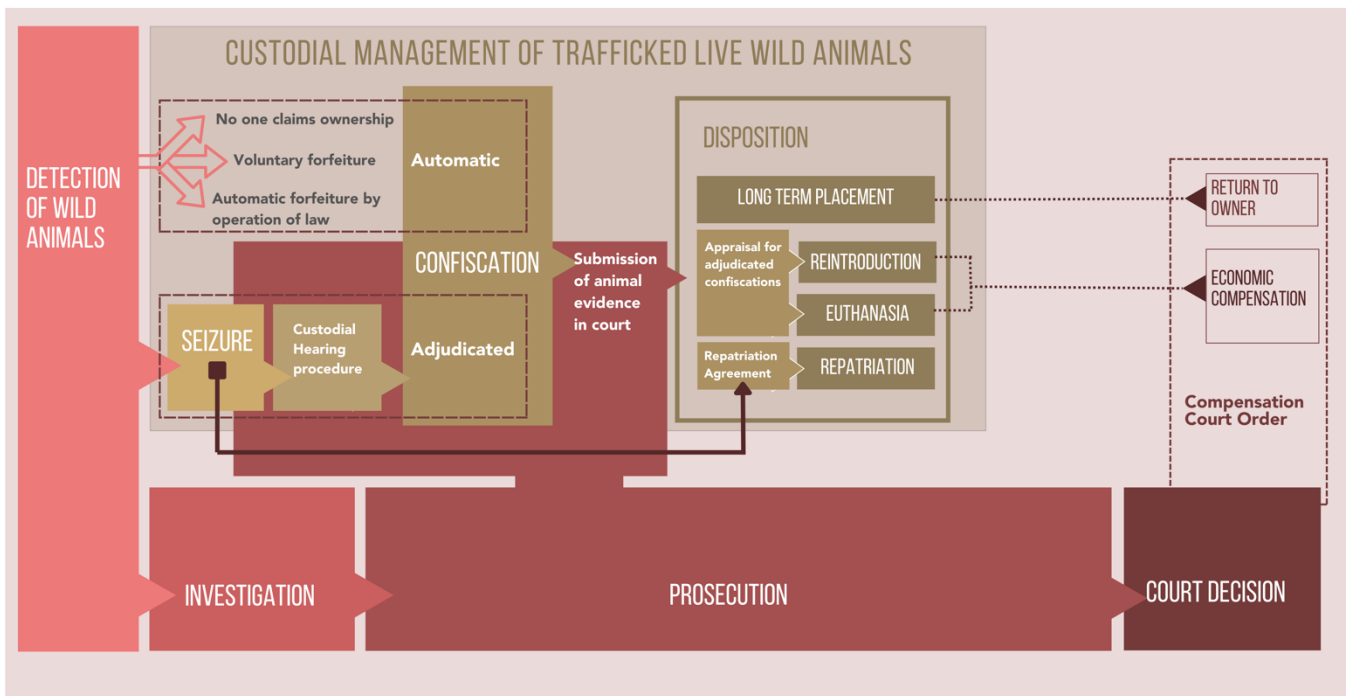
This final category proposes legal best practices related to the interrelated functions of investigations, prosecutions, and adjudications of crimes involving confiscated live animals. While there is often overlap, for purposes of organizing concepts, these terms have been defined as follows. Investigations are understood as all activities carried out to gather evidence of crimes. Prosecution refers to the legal proceedings brought against suspects on behalf of the government. Adjudication refers to decisions taken by a competent court over the wildlife matter in question. Best practices in this category refer to those generic functions, independently from the nature and number of institutions that may be involved in each of them.

# LEGAL BEST PRACTICES

The following visual renders a picture of core elements involved in the custodial management of trafficked live wild animals including major steps of seizure, confiscation, and disposition of animals. The visual shows how the typical enforcement phases of investigation, prosecution, and court adjudication are expected to run independently, in parallel, and at different timing thanks to the proper submission of animal evidence to court ahead of trial and the existence of legal mechanism to compensate, after the trail, any disposition made in favor of the animal but against the due property rights of those suspects acquitted from charges.

## WILDLIFE TRAFFICKING LAW ENFORCEMENT

Legal Best Practices



## 01 Legal Definitions

A minimum set of 24 terms have been identified as necessary to be defined in law to adequately support the multi-agency management of wild animal confiscations. The set is organized following the same categories used for the remaining best practices.

### WILDLIFE GOVERNANCE

Wild Animal	comprises all forms of recognized wild fauna, including their eggs: any wild mammal, bird, amphibian, fish, reptile, crustacean, insect, mollusks, protozoan, or other invertebrate, whether bred in captivity or hatched or born in captivity.
Indigenous range	the known or inferred geographical distribution of a wildlife species, generated from historical (written or verbal) records, or physical evidence of the species' occurrence.
Country of origin	the country in which a wild animal was taken from the wild, bred in captivity or artificially propagated.
Country of export	the country from which a wild animal was shipped prior to seizure or surrender.
Country of re-export	the country through which a wild animal has temporarily entered by passing through customs or other border control point, but which has been re-exported.
Country of transit	the country through which a wild animal has crossed or transited on its way to its destination, but which it has not formally entered either through customs or other border control point.

### WILD ANIMAL CARE

Animal Quarantine	the period when a newly confiscated live wild animal is kept in isolation to prevent possible spread or transmission of disease.
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### WILD ANIMAL TRANSPORTATION

Animal Transportation	the entire process of preparation, loading, shipping, holding, transferring, unloading, and delivery of animals to responsible individuals at the destination.
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### DISPOSITION OF WILD ANIMALS

Disposition	the long-term decisions taken in relation with the fate of confiscated animals following seizure and short-term holding, also referred as Management Decision.
Disposition Plan	the plan containing details on the care and ultimate disposition of a confiscated animal.
Release to Nature	also referred as or Return to the Wild, the intentional movement and release of a wild animal back to nature, including introduction, reintroduction, and translocation of animals.
Introduction	the intentional movement and release of a wild animal inside its indigenous range
Reintroduction	the intentional movement and release of a wild animal inside its indigenous range from which it has disappeared.

Translocation	the human-mediated movement of live wild animals from one area, with release in another, including reintroduction and reinforcement projects.
Repatriation	the return of a confiscated animal, preferably to its country of origin or, if this cannot be determined, to the country of export.
Repatriation Agreement	international agreement establishing mechanisms for the repatriation of confiscated animals between signatory states in the context of international wildlife trafficking.
Animal Captivity	also referred as Long-Term Ex-Situ Management, conditions under which live wild animals are held in controlled environments usually through spatial controls that restrict movement compared to their natural patterns, and are subject to other human interventions, e.g., feeding, and veterinary care.
Placement Facility	facilities selected to place trafficked wild live animals on a temporary or permanent basis, providing a controlled environments for animals to live. Many types of facilities may be used to place trafficked wild live animals including rescue centers, species sanctuaries, zoos, safari parks, aquariums, humane societies, commercial captive breeders, research institutes and universities.
Euthanasia	the end of life based on compassion reasons such as the need of ending animal suffering or because the life and survival of the animal is irremediable compromised.
Destruction	the end of life based on reasons other than compassion, including the killing of fit and healthy animals.
Humane killing	the method for taking of an animal' s life in a painless form, independently of the reason.

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WILDLIFE INVESTIGATIONS, PROSECUTION and ADJUDICATION

Point of seizure	also referred as point of detention, the initial point (time/place) at which an authorized body assumes custody of a live wild animal.
Custody	the temporary or permanent protective care or guardianship of a live wild animal by authority or authorized facility.
Seizure	also referred as Detention, the act of taking hold, possession, or control over property, including live wild animals, by force or legal authority, depriving criminal suspects of their possessory interest on a temporary basis. In such temporary condition, authorities cannot yet take decisions concerning long-term disposition over seized animals.
Confiscation	the act of taking ownership over property, including live wild animals, by legal authority or by force. Confiscation of an animal may be automatic when i) nobody claims an interest in the animal, ii) there is a voluntary surrender of animals to the authorities, or iii) there is an automatic administrative forfeiture based on law of, for example, the animal being stolen or illegally taken. When not automatic, confiscation of seized animals must be adjudicated by court. Confiscation is permanent and allows authorities to take decisions on the long-term disposition of confiscated animals.
Forfeiture	the permanent deprivation of a person' s property or possessory interests in property without compensation because of a legal violation. Forfeiture may be voluntary, when suspects voluntarily surrender the animals to the authority,

automatic based on conditions established by law (i.e. illegal products, lack of proof of ownership) or adjudicated through administrative or judicial procedures.

### Commentary & Discussion

Legal definitions are powerful tools not only because they control the meaning of terms used throughout a legislative text but also, in the absence of a contrary intent, they potentially govern the meaning of terms in all other enactments relating to the same subject-matter. This list proposed does not represent all concepts that may require a legal definition in each jurisdiction, only core concepts in line with the limited set of best practices presented in this publication. There are multiple approaches possible to regulate wildlife confiscations and therefore many other definitions that may be needed in each case. It is also expected that the list of concepts and definitions will grow as the set of best practices extends.

Terms used to name a concept represent the ones most used in English-speaking countries. On some occasions, synonymous terms or expressions have also been included. It is nevertheless important to stress that the relevance is carried by the concept and not the exact term used. It is expected that other equivalent terms will be preferred depending on the existing uses and languages of each legal framework.

Most of the definitions have been derived from CITES and IUCN and are considered relevant to wild animal affairs. Some have been suggested by experts and project partners because of their specific relationship to managing live confiscated fauna. The unifying principle behind all definitions is the need to have an agreed upon and consistent understanding of a given concept that is a foundational element in the regulation of wildlife confiscations. For example, definitions regarding point of seizure, seizure, and confiscation help to create a legal basis for regulating different legal interests based on the temporary or permanent possessory interests in the wildlife in question. Similarly, without standard definitions of country of origin, export, re-export, or transit it would not be possible to consistently regulate the determination of the source of seized or confiscated wildlife for purposes of repatriation. Finally, technical terms provided by CITES and IUCN are also necessary to regulate alternatives for the disposition of animals, e.g., terms such as captivity, introduction, reintroduction, among others.

## 02 Legal Ownership

The law contains procedures for the resolution of questions concerning ownership or custody of confiscated live wild animals that are, to the extent necessary and appropriate, consistent with existing perishable goods and *in rem* proceedings, including at a minimum the following:

- If ownership is not held by the State, the requirement to notify the purported owner of the seized animal wherever an animal's life is compromised or needs veterinary attention.
- A clear statement that a claim of ownership in the wild animals shall not constitute grounds for preventing or challenging the authority to seize, confiscate, or dispose of them when they are the subject of an enforcement action.
- Where appropriate, recognizing the formal transfer of ownership of wild animals to the placement facilities delegated responsibility for long-term care.
- Where ownership is not or cannot be transferred to the delegated care facility, a statement that provides the express right of the care facility to do all things necessary for the care and treatment of the confiscated wild animals, including invasive tests, treatments, euthanasia, or other disposition resulting in the permanent dispossession of the owner's property interest.
- The requirement for the State to indemnify placement facilities lawfully receiving confiscated animals against all claims challenging their right to retain their possession and to implement disposition decisions, including placement in permanent care, reintroduction, or euthanasia.
- Determination of ownership of progeny of wild animals born after seizure or confiscation.

### Commentary & Discussion

Ownership of wild animals is not an issue in all jurisdictions. In China, DR of Congo, Netherlands, Indonesia, Mongolia, and Spain, for example, government authorities retain legal ownership of wild animals and thus, of all confiscated wild animals. In these jurisdictions, there is no need to settle questions of ownership but there may be a need ensure that care facilities have the authority to engage in care and disposition of the animal, subject to court rulings.

However, in other jurisdictions (e.g., South Africa), ownership of a wild animal may legally rest with a private entity or a person pursuant to constitutional or other legally defined rights. Ownership, or some limited form thereof (e.g., a right to possession) may also be created through legally authorized activities (e.g., authorized captive breeding facilities). In all these instances, it will be necessary to make sure that property rights have been addressed in the legislation applicable to confiscations, and that such rights are adjudicated along with any underlying charges. This will require handling animals in a way consistent with rights guaranteed by the constitution, including those that recognize wild animals as sentient,<sup>3</sup> as well as consideration of proceedings directed at seized property, in particular, 'perishable' property.

Most of the legal best practice elements listed are relevant to those jurisdictions where ownership of wild animals can be held by an individual or private entity, and therefore require some degree of adjudication.

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<sup>3</sup> As of November 2019, 32 countries have formally recognized non-human animal sentience. These include: Austria, Australia, Belgium, Bulgaria, Chile, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, New Zealand, the Netherlands, Poland, Portugal, Romania, Spain, Slovakia, Slovenia, Sweden, Switzerland, and the United Kingdom.



### 03 Consistent and Compatible Confiscation Procedures

Procedures for the seizure and confiscation of wild animals are consistent within the same jurisdiction ensuring that equivalent and compatible measures are followed to seize, confiscate, and determine the disposition of wild animals, regardless of the legal instrument that provides the authority for the confiscation, the confiscating agency, or the location where confiscation takes place.

#### Commentary & Discussion

The confiscation of the proceeds or object of a crime is a standard legal practice intended to secure and preserve evidence, as well as to deny the perpetrator the benefit of the crime. Confiscation requirements and procedures can be found in virtually all laws that define offenses and penalties. In the context of wildlife crimes, this may include natural resource legislation directed at forests, protected areas, and wildlife, but also legislation such as trade and customs, and, in all instances, criminal laws.

When different laws are involved, the chances are higher that procedures to deal with confiscations of live animals are not the same or compatible with each other. As an example, legal reviews in several countries in the Horn of Africa during 2021 revealed that customs and wildlife laws tend to present divergent approaches. While customs law focuses on generating customs duties as one of the primary objectives and tends to include ‘sale’ as the only disposition option for confiscated product from illegal trade, wildlife laws, focused on conservation, include a wider set of options, such as reintroduction to nature, long-term care, or repatriation, excluding in some cases the option of sale.

This legal best practice is intended to highlight the importance of consistency to guarantee that a specimen will receive the same treatment independent from which agency is involved (whether it is customs, a ranger unit, police, etc.) or the location where the confiscation takes place (e.g., inside protected areas, ports, airports, border control or highways checkpoints, or in private premises).

One method for achieving consistency in these procedures is through a unique protocol that effectively governs all related laws and implements or requires a consistent approach to seizures and confiscations used across multiple laws. This is the case in the United States, which has a single legal regulatory instrument<sup>4</sup> applicable to all property seized and under nine different laws.<sup>5</sup> This is of course not the only path to consistency and having different laws including equivalent procedures is also a valid approach.

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<sup>4</sup> Title 50 – Wildlife and Fisheries, Chapter I – US Fish and Wildlife Service, Department of the Interior, Subchapter B – Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of wildlife and plants, Part 12 – Seizure and Forfeiture Procedures. 50 C.F.R. Part 12

<sup>5</sup> Scope of regulations. Except as hereinafter provided, the regulations of this part apply to all property seized or subject to forfeiture under any of the following laws: (a) The Eagle Protection Act, 16 U.S.C. 668 et seq.; (b) The National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd et seq.; (c) The Migratory Bird Treaty Act, 16 U.S.C. 703 et seq.; (d) The Migratory Bird Hunting Stamp Act, 16 U.S.C. 718 et seq.; (e) The Airborne Hunting Act, 16 U.S.C. 742j-1; (f) The Black Bass Act, 16 U.S.C. 851 et seq.; (g) The Marine Mammal Protection Act, 16 U.S.C. 1361 et seq.; (h) The Endangered Species Act, 16 U.S.C. 1531 et seq.; and (i) The Lacey Act, 18 U.S.C. 43-44. (j) The Lacey Act Amendments of 1981, 16 U.S.C. 3371 et seq. 50 C.F.R. § 12.2

## 04 Comprehensive Wild Animal Confiscation Powers and Competences

All powers and competences necessary for the successful confiscation of wild animals are defined in the law and their operational regulatory procedures developed through a regulatory instrument. Core legal competences include:

- Conduct of searches related to wildlife crimes
- Interrogation of suspects and witnesses
- Seizure and confiscation of wild animals
- Transportation of wild animals
- Provision of short-term care
- Provision of animal quarantine services
- Health assessment of wild animals
- Notifications to CITES, country of origin or export, WHO, WEN, INTERPOL, etc.
- Designation and monitoring of wild animal care facilities
- Management decisions over confiscated wild animals
- Recording of wild animal confiscations and management decisions (public records, databases, reports, files, statistics, vouchers, agreements, notification to owners, medical history, breeding history)
- Production of court evidence on wild animal confiscations
- Custody of wild animal evidence
- Funding of wild animal confiscation expenses

### Commentary & Discussion

The complexity of managing live wild animal confiscations calls for a core set of legal powers and competences to succeed in the added challenge of prosecuting wildlife crime while ensuring the most appropriate and humane management decisions for animals. The comprehensiveness of law in defining and regulating those powers and competences enables successful implementation. By contrast, the lack of specific legal powers to perform the listed activities, leave enforcement agents without legal power or guidance to act properly when wild live animals are confiscated.

## 05 Shared Competences and Institutional Coherence

Legal competences over wild animal confiscations are explicitly assigned to agencies/organizations based on their capacity, and there are guidelines in place to manage shared competences.

### Commentary & Discussion

Customs officers, police and rangers are the frontline enforcement officers most often involved in wildlife detection and seizures at the point of interdiction. Officers belonging to other agencies, including quarantine facility staff, veterinary experts, wildlife managers, and criminal prosecutors, may come into play to facilitate the transfer of animals to placement facilities, conduct health assessments, or determine their final fate.

In a landscape occupied by multiple agencies and, in many instances, by non-governmental agencies such as private placement facilities, it is a legal best practice that powers and competences related to wild animal confiscations are legally defined and clearly allocated among all those involved, and that all shared competences have adequate procedures in place for their co-management.

Experience in shared governance environments suggests that, in the absence of institutional coherence, there are two probable scenarios - either the efficiency and adequacy of actions taken are compromised by the uncoordinated efforts of the many co-responsible players, or there may be institutional paralysis where no action is taken at all.

## 06 Animal Emergency Information Registry

An up-to-date emergency information registry is required and available to staff with legal competences over live wild animal seizures and confiscations. This registry should list entities involved in wild animal seizures and confiscations, along with the contact information for their focal points, time of availability, specific roles and responsibilities, and the resources they have for the placement, care, and transportation of animals. It should also identify qualified specialists from academic institutions, research projects or NGOs with the capacity to provide expert advice, as well as members of any existing Confiscations Advisory Network

### Commentary & Discussion

When a live animal is confiscated, time is of the essence. Chances of deploying a rapid and effective response increase when quick access to qualified expertise is guaranteed. Up-to-date information on stakeholders with capacity, resources or expertise in animal care, animal health assessments, animal transfer, and placement is crucial to deal with the unique set of challenges that each confiscation brings. Since confiscations can occur at any time of the day or week, 24 hr. availability of at least one decisionmaker is a best practice.

As per IUCN recommendations, Confiscation Advisory Networks (CANs) may already exist in some jurisdictions. Members of these networks are expected to hold expertise in areas such as: taxonomy, veterinary medicine and animal welfare, animal rescue, zoonotic disease, behavior and husbandry, ecological priorities, legislation, enforcement, and logistics. Since CANs are designed to provide expert advice to government agencies and national CITES Management Authorities in support of short and long-term decisions, their members would be obvious candidates to be part of the emergency registry.

## 07 Mandatory Immediate Short-Term Care

Provision of immediate short-term care to wild animals is mandatory for enforcement agencies and officers with seizure powers.

### Commentary & Discussion

The care provided in the first hours and days in the life of a wild animal is crucial to minimize initial stress conditions immediately after seizure and increase the probability of survival. Mandatory immediate care implies the obligation to implement enabling measures, including equipping, and providing basic training for confiscating officers, including animal care guidelines but also the prevention of transmission of zoonotic diseases and other pathogens, among others.

## 08 Immediate Short-Term Care Procedures

Provision of immediate short-term care to animals is regulated to guide implementing agencies regarding:

- Species-based procedures for the provision of suitable water, food, space, light, and shelter
- Supplies for seizing and/or confiscated trafficked animals
- Use of personal protection equipment for handling wild animals
- Methods for handling and capture of animals
- Overall attitude and behavior when dealing with wild animals

### Commentary & Discussion

As already noted, the care provided in the first hours and days in the life of a wild animal is crucial to increase their probability of survival. First response by enforcing officers should be guided by legal procedures informing the many technical aspects of immediate care including the use of supplies and equipment, handling and capture methods, diet needs, the prevention of transmission of zoonotic diseases and other pathogens, among others. Because different species of wildlife have different care and welfare requirements, basic care procedures should be species-based.

It is not necessary, nor always desirable, for the law to provide substantial detail in this regard. It is, however, considered a legal best practice to establish at a minimum the overarching approach with some legally binding reference to practitioners' standards that may be developed independently by a body of professionals responsible for animal or veterinary care.

## 09 Immediate Animal Quarantine

Immediate animal quarantine is mandatory for all seized or confiscated wild animals unless a risk assessment determines otherwise.

### Commentary & Discussion

The management of confiscated wild animals poses high biosecurity risks because of the existence of many unknowns. These include the undetermined disease status of each wild animal at the time of seizure, and also the possibility of being facing novel pathogens not yet studied. Unknowns encompass also typical challenges of illegal trade such as the difficulty in tracing the origin of animals or to know the exact circumstances of their take and transportation, including the possibility that any given wild animal may have been mixed or interacted with other higher risk species. For all these reasons, immediate quarantine of seized or confiscated wild animals is considered a scientific best practice and thus is proposed here as a legal requirement.

The mandate should consider exceptions. When animals are good candidates for fast release to the wild (e.g., health, maturity, likelihood of survival), quarantine periods would be counter-productive if a rapid disease risk analysis (see below) determines that risk for the animals of carrying pathogens is low.



## 10 Rapid Disease Risk Analysis

Rapid disease risk analysis procedures are established to allow for swift management decisions when confiscated wild animals are considered candidates for release to the wild and ownership rights have been appropriately conserved, substituted, or adjudicated.

### Commentary & Discussion

When seized or confiscated wild animals are considered candidates for release to the wild, rapid disease risk analysis enables speedy clearance for safe releases of wild animals that carry low risk. In the absence of a rapid disease risk analysis, postponing releases after a quarantine period may impact the health and well-being of wild animals and their releasability.

It is considered a best practice to have exceptions to mandatory quarantine when the results of a rapid disease risk analysis are positive (See Best Practice 08). Additionally, procedures must be in place to regulate how risk analysis is conducted and by whom.

## 11 Animal Quarantine Procedures

Animal quarantine procedures applying to wild animals are in place and address:

- Generally applicable isolation protocols to provide for examination, treatment, monitoring, and acclimatization.
- Species-appropriate isolation procedures to provide for the additional, specific needs of confiscated species.
- A defined minimum period for quarantine based on the biosecurity risk.
- Technical requirements for the construction and equipment of quarantine facilities.
- Reporting requirements.
- Training requirements for staff involved in animal quarantine.

### Commentary & Discussion

As with the standards for immediate care, it is neither necessary nor desirable for the law to provide substantial detail. It is, however, considered a legal best practice to establish at a minimum the overarching approach to animal quarantine procedures with some legally binding reference to practitioner standards that already exist or may be developed independently by the body of professionals responsible for veterinary care and biosafety of wild animals. Australia provides a strong example of this approach, with its Wildlife Biosecurity Guidelines developed by Wildlife Health Australia (WHA), the coordinating body for wildlife health in Australia.

IUCN technical guidelines are also available to guide legislative development in this area of animal quarantine (IUCN, 2001. Quarantine and health screening protocols for wildlife prior to translocation and release in to the wild).

## 12 Health Assessments

Full veterinary inspection is required in all confiscations to guarantee prevention, detection, treatment, and elimination of infectious diseases and minimize animal welfare issues.

### Commentary & Discussion

Different jurisdictions may approach veterinary examination of seized and confiscated wild animals in different ways, including the circumstances that activate use of this authority, entities appointed for such purpose, authorized locations, accredited staff, and types of exams and tests to perform. While in some jurisdictions it may be a common practice to call veterinarians to examine animals directly at the custom point where the interdiction took place, in most cases those examinations tend to occur in non-governmental facilities where the animals have been moved, including zoos, sanctuaries, rescue centers, and other qualified placement facilities.

Nevertheless, independent of the approach taken, it is a global best practice to legally require health assessments for all seized and confiscated specimens. This ensures that subsequent decisions concerning quarantine, veterinary treatment, and management decisions like release to the wild are science-based and appropriate to the health, welfare, and other needs of each animal.

## 13 Health Assessment and Treatment Procedures

Procedures are in place for the assessment of the health, welfare status, and biosecurity risk of every specimen including:

- Criteria to prioritize welfare screening when more than one specimen is confiscated
- Types of visual, physical, and laboratory exams to be carried out
- Procedures for health treatment
- Guidelines on immunization/vaccination
- Health reporting requirements
- Authorized staff to conduct health assessments.

### Commentary & Discussion

Protocols for implementing a health assessment of confiscated wild animals should be in place and cover some minimum aspects to guarantee adherence with existing technical and scientific standards and ensure proper recording for court purposes. Proper reporting of animal health conditions can further support prosecuting strategies by supplying evidence of other charges, e.g., animal cruelty or propagation of zoonotic diseases.

Implementing procedures should follow international technical best practices for veterinary care of wild animals and be supported by regulations that provide criteria for prioritizing when more than one wild animal requires a health assessment and/or treatment, such as animals with life-threatening injuries, newborn animals with their eyes still closed, etc. These procedures should also list the areas to assess and lab test exams to conduct. They should also provide guidelines on immunization/vaccination of animals and their veterinarian treatment if necessary.

Additionally, some sort of Animal Health Assessment Form should also be part of the existing procedures to record information on the status of the animal, the staff involved, and the results of exams. Photography and video should be taken to document any injury, scar, parasite, skin coat, mark, and or any veterinary concerns found during the examination.

Lastly, procedures should offer guidelines on what staff may be authorized to conduct health assessments, bearing in mind that it is always preferable that only veterinarian professionals receive such authorization. The best base scenario should be requiring the involvement of an experienced veterinarian that is familiar with the species concerned and the epidemiological situation in their area of origin may not be a realistic scenario in all cases. Procedures may allow for other personnel to conduct visual assessments based on checklists and defer the analysis and interpretation of laboratory results to specialists, as well as the diagnosis and treatment of wild animal diseases.

## 14 Animal Welfare Standards

Animal welfare standards are in place to minimize harm and distress of seized and confiscated wild animals, and apply to all activities associated with detention, custody and confiscation including handling, transport, quarantine, placement, release, etc.

Those welfare standards, either expressed as legal requirements or legal prohibitions, cover at the minimum the following areas (expressed as prohibitions here):

- Inadequate supply of water and food
- Exposing animals to harmful substances or unhygienic or contaminated spaces
- Exposing animals to the weather, including extremes of temperature, humidity, or air pressure
- Exposing animals to inadequate fresh air, undue noise, and vibration
- Confining animals with non-compatible species
- Confining animals in inadequate containers and cages
- Overcrowding animals

### Commentary & Discussion

The Five Freedoms model has shaped animal welfare standards globally since the 60's to ensure that basic needs of animals are met. These are:

1. Freedom from hunger or thirst by ready access to fresh water and a diet to maintain full health and vigor.
2. Freedom from discomfort by providing an appropriate environment including shelter and a comfortable resting area.
3. Freedom from pain, injury or disease by prevention or rapid diagnosis and treatment.
4. Freedom to express (most) normal behavior by providing sufficient space, proper facilities, and company of the animal's own kind.
5. Freedom from fear and distress by ensuring conditions and treatment which avoid mental suffering.

When wild animals are trafficked, they are instantly deprived of the natural freedom they enjoy in the wild. Discomfort, fear, distress, isolation, and injury are the norm during illegal capture, concealment, and translocation to end markets. Many animals die while being trafficked and many have their survival highly compromised at the time of detection due to the harsh take and transportation conditions.

Managing confiscations, including isolation for quarantine purposes, conducting physical examinations and tests, or transferring animals in motor vehicles, challenge the ability to provide for the basic needs stated by the five freedoms for confiscated specimens as every step involves some degree of stress, discomfort, or isolation. It is a best practice to legislate for at least minimum welfare standards for confiscated animals. This can be done taking a positive approach of requiring adequate food, containers, ventilation, and others during holding and transferring of animals, or, instead, by taken an approach of banning or prohibiting the opposite situations. In this case, a specific prohibition list should include elements such as providing inadequate food, using unhygienic cages, overcrowding animals, or confining them with incompatible species, as an example.

## 15 Animal Transportation Decision-Making

Legal criteria exist to provide a basis for decisions on where to place each wild animal specimen immediately after interdictions and which transportation mean to use, including at the minimum:

- The expertise/capability of authorized placement facility to accommodate different species.
- The right of refusal by placement facility if they determine they are unable to take care of the animal.
- Time and distance from the point of confiscation to the possible destinations.
- Availability of proper transportation vehicles and containers.
- Availability of expertise in handling wild animal transportation.
- Funding arrangements to cover transportation costs.

### Commentary & Discussion

Having regulations in place containing the criteria to use for decision-making on animal transportation after confiscations enable consistency and transparency in approaches for transportation while providing due flexibility to accommodate transportation solutions on a case-by-case basis.

## 16 Animal Transportation Standards

Regulations are in place that set minimum standards for the transportation of wild animals conducted by commercial carriers, governmental agencies, and private entities. Those regulations should be in line with international standards, including:

- Sanitary standards, to guarantee that animals travel in clean and disinfected environments and cross-contamination with other cargo types is avoided.
- Security standards, to guarantee the health and welfare of animals using containers, cages and boxes that allow breathing and mobility for animals, while facilitating their care, including being watered, fed, and observed.
- Welfare standards, to minimize suffering of animals while moving.
- Reporting standards, to guarantee that animals travel with documentation providing details on their origin, destination, and confiscation circumstances.

### Commentary & Discussion

Successful transfers of wild animals to placement facilities not only depend on timely decision-making for placement and transportation, but also on how animals are being moved. Transfers should be done without compromising the survival of specimens, national biosecurity, the integrity of staff involved, or the criminal investigation strategy.

It is considered a legal best practice to have rules that prescribe minimum animal transportation standards in line with international standards and guidelines (IATA and CITES guidelines for non-air transport) and that guarantee safety and preservation of the animals, protect the chain of custody and condition of associated criminal evidence, and protect staff and the environment.



## 17 Principles for the Disposition of Confiscated Live Wild Animals

Overarching legal principles are stated in the law to frame the regulation of management decisions for confiscated specimens, and include at least the following:

- **Precautionary principle:** to ensure any release to the wild is done without compromising the long-term health or welfare of the animal released, the native species within the release habitat, or the release habitat itself.
- **Humane principle:** to ensure any management decision is implemented in line with humane standards.
- **Deterrence principle:** to ensure management decisions discourage further trafficking of wildlife species.

### Commentary & Discussion

Overarching legal principles play a role in guiding and providing coherence in laws and implementing regulations. They are also of great help during court adjudication as they help with interpretation, providing further information on the reasons and intentions of those who created and approved the law. It is therefore a common legal best practice to state explicitly the foundational political, ethical, or philosophical principles of a law.

For wild animal confiscations, CITES Guidelines for the Disposal of Confiscated Live Animals call for considering three legal principles to combine the need to disincentivize wildlife crime with a humane approach to the management of animals, without compromising biodiversity loss. IUCN Guidelines for the management of confiscated, live organisms concurs in emphasizing the precautionary principle to avoid biodiversity loss, the need to consider the individual welfare of each animal, and the need to guarantee that confiscated specimens are not being put back into illegal trade.

Biodiversity loss is a risk when animals are released inappropriately. The loss can come from the spread of pathogens from the released animals but also from the introduction of animals to a non-native area, which can create competition with native species, hybridization, and loss of genetic material.

The humane principle in the context of confiscations involves finding humane solutions whether the decision is maintaining animals in captivity, returning them to the wild, or employing euthanasia to end their life. Under this principle, no animal should be kept in captivity if its welfare and wellbeing cannot be guaranteed in the long term and no animal should be released if it is not in a healthy and viable condition to survive.

The criminal deterrence principle seeks to avoid any disposition option that encourages further crime. This tends to happen when confiscated wild animals again enter the trade chain through sale or auction or when they are placed in captive-breeding facilities with commercial purposes.

## 18 Alternatives for the Disposition of Confiscated Live Wild Animals

Alternatives are listed in the law, along with their definitions, conditions, or limitations for their application, and implementing procedures, including:

- Return to the wild or release to nature, including introduction, reintroduction, or translocation, limited to cases where i) species are native, ii) specimens are fit enough to survive, iii) health screening and quarantine determine that specimens do not carry a biosecurity risk for other wild populations, and iv) there is capacity to monitor the specimen after release.
- Repatriation or return to the country of origin, limited to cases where i) foreign origin is known, ii) authorities of the country of origin agree, iii) funds are available to cover the cost of repatriation by confiscating or receiving country, and iv) receiving country agrees to take management decisions for the wild animals in line with the preceding overarching principles.
- Captivity, or long-term ex situ management, limited to cases where: i) there is a public or private facility, ii) that agrees to receive the specimen, iii) that has adequate infrastructure, equipment, and expertise to accommodate the animal, iv) where the biological and animal welfare needs can be guaranteed for life, v) where funds are available by public or private entities to cover long-term costs, and vi) the receiving facility can guarantee the wild animal will not be returned to trade.
- Euthanasia, for unfit animals and restricted to the use of humane killing methods.

### Commentary & Discussion

The options of ‘sale’ and ‘destruction’ are not part of the list as they are not considered best practices for disposition of live wild animals. Concerning the sale of confiscated animals to the public, commercial traders, or for captive breeding, the high risk of encouraging further crime and consumer demand for illicit products disfavors this as an option. Concerning destruction, which involves the killing of fit and healthy individuals, it goes against principles of animal sentience and welfare.

Captivity may involve many types of facilities including i) zoos, safari parks or aquariums, ii) rescue centers, iii) species sanctuaries and humane societies, and iv) research institutes and universities for any studies which align with ethical and welfare standards and do not promote additional trade.

## 19 Procedure for Disposition of Confiscated Live Wild Animals

A procedure regulates the decision-making process for determining the management of confiscated wild animal specimens and includes the following elements:

- Required criteria for decision-making, including at least:
- Available information on the individual specimen including species, country and population of origin, health status, biodiversity risk, and fitness to survive.
- Available resources in terms of funds, expertise, personnel, transportation, facilities to implement the different options.
- International legal obligations including CITES or other regional or bilateral treaties and agreements ruling over the animal.
- Conservation criteria, providing disposition priority to protected species.
- Clear delegation of responsibility for the final decision, including mandatory opinion/advice/participation by experts and/or scientific authorities.
- Documentation of the decision-making process, establishing as minimum content, the need to document the disposition solution defined, the justification based on defined criteria, the implementing agency, the timeline, and details on the manner, and the signature of the legally responsible officer.
- Mandatory reporting guidelines including responsible staff, timelines, and national and international agencies to which to report.

### Commentary & Discussion

The ‘one size fits all’ strategy is not a realistic approach for confiscated live animals because of the uniqueness of each confiscation event, and the *sui generis* combination of elements including species involved, number, and health status, trafficking routes, means of transportation or criminal networks. Instead, long-term sustainable solutions for rescued animals depend on the ability to make individual, case-dependent decisions. This approach requires having in place a formal legal procedure standardizing a decision-making process that accommodates the necessary flexibility while avoiding uninformed, arbitrary decisions. This instrument should be tailored to the jurisdiction but apply regardless of the authority making the decision. In all cases, it should ensure that decisions are taken in a transparent way and are thoroughly justified and documented.

Some critical and minimum elements that the procedure should develop include the criteria that must be considered for the decision, the entity/individuals holding the responsibility for the decision, the type of information to include in the written decision, and how decisions should be reported.

When live animal confiscations involve CITES-protected species, CITES Parties are requested to report them to the country of export and to the Secretariat, as per CITES Resolution Conf. 17.8 (Recommendations I.a.ii and III.b). When certain health risks are detected, reporting obligations extend also to WHO as per the 1995 International Health Regulations. Other regional obligations may apply in each jurisdiction belonging to regional enforcement bodies (i.e., WENs, AFRICAPOL). At the national level, sharing confiscation information among agencies with competences or within wildlife crime multi-agency task forces, if in place, is considered a best management practice requiring some degree of regulation.

## 20 Repatriation Agreements with Countries Sharing Trafficking Routes

The power to draft, propose and implement repatriation agreements is delegated to the appropriate management authority, emphasizing the need to engage with countries sharing international trafficking routes. The law should circumscribe the scope and application of repatriation agreements that at a minimum address the following:

- the need for repatriation of animals to the country of origin,
- the need to enforce and prosecute transnational wildlife crime,
- designation of the national agency(ies) that will act as focal points for implementation and its responsibilities,
- the procedures for repatriation,
- funding arrangements to cover repatriation costs, and
- guidelines for the exchange of criminal evidence consistent with the Criminal Code and Mutual Legal Assistance Agreements

### Commentary & Discussion

Repatriation of confiscated live wild animals to their country of origin is more likely to occur when there are legal mechanisms in place between the jurisdictions involved. Without a prior definition of procedures, the speed and coordination demanded to transfer animals internationally may be compromised.

Agreements may be bilateral, regional, or multilateral and address known transnational trafficking routes of the exotic species being seized or confiscated in the greatest numbers in each jurisdiction. These agreements should clarify responsibilities of the confiscating party and the party of origin, provide for clear repatriation procedures, establish collaborative mechanisms to enable criminal prosecution in both jurisdictions, and appoint national agencies as implementing focal points. A critical and necessary part of any repatriation agreement is the financial arrangements enabling the repatriation event. CITES requires country of origin to cover repatriation costs but flexibility is recommended to allow for involvement of NGOs, placement facilities, and private donors in financing repatriation operations. Also, to pursue cost reimbursement by criminals (see BP 26) as a mechanism to finance repatriation of wild animals.

## 21 Law Enforcement Taskforce

A multi-agency taskforce to combat wildlife crime is legally appointed with agencies responsible for the areas of wildlife and forests, protected areas, transportation, customs, taxation, finance, security and defense, intelligence, prosecution, and local government, along with focal points of relevant international conventions. Legal powers provided to the taskforce should include the coordination, at a minimum, of the following actions:

- Criminal intelligence gathering and sharing.
- Joint investigations and operations.
- Rescue and repatriation of live wild animals.
- Harmonization of wildlife related regulations and procedures.
- Joint design of prosecution strategies.
- Cross-border joint investigations and operations.
- Standardized compilation and inter-agency sharing of wildlife crime databases.

### Commentary & Discussion

A broad approach for wildlife trafficking investigations and prosecution involving connected crimes, such as smuggling, money laundering, tax fraud or firearms crimes, requires tight coordination between the core wildlife authority and the many other enforcement agencies including police, customs, tax agency or financial authorities.

The use of multi-agency task forces to combat wildlife crime is increasing across the globe in response to that need. These task forces bring many benefits to the integrity of enforcement operations, including mitigating against corruption due to separate reporting hierarchies in the different agencies involved, enhancing information sharing and coordinating investigations, and improving prosecutions by ensuring field to courtroom transfer of information and evidence. In some jurisdictions, they have also proven to enhance co-operation across borders through participation in international/regional law enforcement networks, intelligence exchange, cross-border coordinated investigations, and transfer of evidence through legal assistance treaties and controlled deliveries.

It is considered a legal best practice to have a legal mandate for the establishment and operation of a special taskforce targeting wildlife crimes. This could be done through a dedicated Wildlife Crime Taskforce but also through structures with wider scopes as is the case in countries establishing Environmental Crime Units (Ethiopia) or Transnational Organize Crime Units. Legal mandate of taskforces should include basic elements providing guidelines to the functioning of the task force, including agencies appointed, reporting mechanisms, legal powers, and operational tools.

When countries are signatories of international conventions relevant to combatting IWT, such as CITES, the Convention of Migratory Species (CMS), the UN Convention against Corruption, or the UN Convention against Transnational Organized Crime, agencies acting as focal points for those convention should also be part of the taskforce. The same situation would apply to countries participating in international enforcement structures such as INTERPOL, EUROPOL, or AFRICAPOL. In some jurisdictions, private placement facilities and conservation NGOs are also part of the taskforces, increasing the ability of those multi agency enforcement structures to coordinate responses around the management of confiscations of live wild animals.

## 22 Court Clearance of Live Wild Animal Evidence

No animal is required to be present in the courtroom because court procedures are in place to certify the list and type of live wild animals seized or confiscated based on other forms of evidence. Court clearance should protect the right of the accused to obtain additional evidence from the seized or confiscated animals for the purpose of case preparation.

### Commentary & Discussion

The many special challenges of managing seized or confiscated wild animals justify avoiding their transfer to a courtroom and their presence in front of a judge or jury. Challenges faced by those jurisdictions still requiring presence of animals in court range from dangerous behaviors to biosecurity risks, transfer difficulties, and existing health conditions, such as injuries or stress to the wild animal incurred during trafficking and later, enforcement custody.

Another major challenge is the impossibility of taking decisions over the disposition of animals during the lengthy periods of times until a trial and sentencing occur. As an alternative, modern technologies offer the possibility to gather probative and admissible forms of evidence that obviate the need for the presence of animals in court. Instead, species, its status, and seizure circumstances can be thoroughly documented using other types of admissible evidence such as photographic, video, DNA and/or tissue samples, as well as eyewitness testimony.

It is therefore a legal best practice to not require the presence of live animals in court but, instead, to allow for obtaining court clearance, a document certifying, confirming, and determining the list, nature, and characteristics of all live wild animals seized or confiscated and having validity as criminal evidence.

Court clearance should be sought immediately after seizure or confiscation, once photographic and other necessary forms of physical evidence have been recorded and reported by enforcement agencies. This is an important step as the animal's condition might change following detection and veterinarian care or might be released into the wild ahead of trial.

## 23 Prompt Forfeiture Proceedings for Trafficked Live Wild Animal

Prompt and harmonized criminal, civil and administrative forfeiture proceedings allow for the speedy determination of lawful possessory interests in the trafficked wild animals so confiscations can be formalized, and disposition plans decided at the earliest possible time and in all cases before trial.

Such procedures should cover the following elements:

- The automatic forfeiture if nobody claims interest in the animals.
- The possibility for voluntary forfeiture of ownership by individuals possessing the live wild animals at the moment of detection and seizure.
- The obligation for the accused to present proof of legal possessory interest or full ownership at the time of the hearing, if not before.
- Automatic forfeiture of animals in favor of the State when accused fails to provide evidence on legal possessory interest or ownership.
- Time limit for hearings to resolve disputes over ownership should be set no later than 2–4 weeks after the initial seizure (detention) and the closest possible to evidence court clearance, and in all instances without requiring full or final prosecution or adjudication of charges.
- Procedures for temporary holding of animals in the case accused presents proof of ownership and animals cannot be forfeited to the State but which remain under its custody.
- Procedures to appraise the value of wildlife anticipating the potential acquittal of the accused during trial or where the case is suspended and compensation may be necessary. Appraisal should be limited to those cases where final disposition of the animals would not allow for restitution to the accused (e.g., repatriated to origin, reintroduced to nature, or euthanized).

### Commentary & Discussion

It should not be necessary to hold wild animals for evidentiary purposes in wild animal trafficking criminal cases. What matters is the trafficking event and the existence of animals at the time of detection, and not the condition of the animals at the time of trial, usually occurring months or years later.

Court requirements on live evidence at the time of trial are detrimental both to the success of the criminal prosecution and the fate of animals. When animals must be detained solely for court proceedings, their death while in custody may jeopardize the entire court case. On the other hand, crucial opportunities for releasing them back to nature when suitable may be compromised. Moreover, in contexts of scarcity of financial and technical resources, investigators and prosecution would be discouraged to fight wildlife trafficking if not enough financial resources are in place to keep the animals in compliance with evidentiary court rules requiring their detention.

Instead, conducting prompt hearings to allow for rapid determination of ownership of seized animals even before the case is prosecuted criminally is considered a legal best practice. Once wild animals are forfeited to the State, as is expected in most wildlife trafficking cases involving protected species, they become the property of the seizing/confiscating agency who may then be entitled to immediately plan for its disposition. The hearing needs to guarantee, on the other hand, that rights of those claiming ownership are also protected, and that pre-trial forfeiture to the State is not automatic if legal private ownership is proven.

This speedy hearing should take place no later than 2–4 weeks after detection, and the accused should carry the burden of proof and present the necessary evidence of legal possession or ownership to avoid forfeiture of the confiscated animals.

Some mechanism needs to be part of the forfeiture procedures to determine possible action in the case the accuser presents proof of ownership of the wild animal. For those cases, procedures should outline limitations of the State in handling animals during its custody until trial. Additionally, in anticipation that the case may be suspended, or the court verdict is not-guilty, appraisal of wild animals during forfeiture procedures is also necessary to guarantee that rightful owner would be compensated economically in the case animals cannot be restituted.

The US is a good example of some of the mechanism listed. The country uses an ‘abandonment by consent’ forms which wildlife crime offenders often sign at time of detection. The forms allow for the surrender of the live wild animals to officials without the offender admitting to any crime because the forms are not accepted as evidence of the trafficking crime. Additionally, the US also has a legal mechanism to conduct civil forfeiture proceedings that take place separately from the criminal process to avoid holding animals and incurring expenses while prosecuting the crimes. In the US, the time limit to conduct such hearings is 60 days.



## 24 Prohibition of the use of pre-trial release bonds or securities

There is a prohibition on the use of any bond (or other form of security cash, property, personal surety, or release on own recognizance) that would allow the return of seized wild animals prior to trial.

### Commentary & Discussion

Bonds (or other forms of security) are common legal mechanisms that allow the temporary release of a person detained or a thing seized from authorities until the moment of trial. When applied to seized wild animals, bonds would allow an accused to retain possession of the animal(s) until the moment of trial by substituting it with a monetary interest held by the court.

Usually structured as an agreement between a court and the accused, bonds are designed to secure both the appearance of the accused at trial and the court's ability to deny the accused the benefit of an alleged violation. Whether a bond is available will usually depend on the circumstances of the case (e.g., the court usually has the discretion to allow or deny) and are typically based on considerations of equity (where a seized item is property that is liable to perish, become greatly reduced in value by keeping, or when it cannot be held without great expense).<sup>6</sup>

Seized wild animals have special needs and, in most instances, trafficked wild animals either cannot or should be returned to the accused because, as may happen with drugs, their possession may remain illegal. This legal best practice of prohibiting the use of bonds would therefore prohibit the use of this legal tool for seized wild animals and substitute it with speedy forfeiture proceedings to avoid returning the animals to the accused.

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<sup>6</sup> United States 27 C.F.R. § 72.26 – Bond for return of seized perishable goods

## 25 Wild Animal Placement Facilities Powers as Court Agents

Any wild animal placement facility that receives seized or confiscated specimens are legally recognized agents of the court with the authority to act as animal caretakers, recordkeepers and expert advisors to carry out court ordered management decisions or other action as may be required.

### Commentary & Discussion

Placement facilities such as rescue centers, sanctuaries or zoos are usually formally appointed facilities to receive confiscated wild live animals for initial quarantine isolation, early health check-ups, veterinarian treatment, as well as to keep and care for animals until a long-term disposition plan has been determined. This is usually done through agreements or memorandums of understanding between the facilities and the wildlife authority.

It is considered a legal best practice to also appoint these facilities where seized and confiscated wild animals are being placed to act as agents for the court, so their role as caretakers is done on the court's behalf and includes performing other duties such as maintaining records the court may need in facilitating court clearance of evidence or participating in trial as an expert witness.

## 26 Compensation for Wild Animal Confiscation

Criminal legal provisions are in place to include compensation of costs to the State (or other entitled entity) and value to the rightful legal owner (possessor), as follows:

For the State (or other entitled entity):

- reimbursement of costs incurred is required as one of the penalty types for any crime resulting in the confiscation of a wild animal.
- costs are defined as those expenditures directly associated with the care, quarantine, health services, transportation, translocation, and implementation of the selected management option.

For the declared legal owner or rightful possessor:

- a requirement to compensate when it has been determined they have a legal interest in the confiscated wild animal and they have been acquitted of all related charges, but wild animals have been disposed and are no longer available to be returned.
- the value of the wild animal as determined by appraisal.
- the waiver to compensate the State for all cost incurred while wild animals were under its custody.

### Commentary & Discussion

The term ‘compensation’ is used here to refer to a legal mechanism by which a public or private entity involved in wild animal confiscation can receive recompense in a form of monetary payments for the cost incurred and/or losses suffered. In some legal systems, other terms, such as ‘reimbursement,’ ‘restitution,’ or ‘damages’ , may be used to refer to such a mechanism.

When a court delivers a guilty verdict for a suspect/s charged with any offense that involved the confiscation of wild animals, it is considered a legal best practice for the penalty to include compensation to the State for all costs incurred in handling the live wild specimens. As financial resources are one of the most important limitations when dealing with confiscated wild animals, cost recovery should be a guiding principle when designing penalties for wildlife crimes. Best practice would be to make this penalty type mandatory or part of the main penalty and not leaving it at the discretion of the court as part of the suite of accessory penalties. The purpose of this best practice is to ensure a comprehensive basis for cost recovery that:

- 1) compensates for the cost of taking care of the animals,
- 2) provides funds for specialized activities associated with disposition, and
- 3) covers the extra costs associated with long term care, repatriation and rehabilitation and release to the wild.

A practical example of this approach is found at the US oldest wildlife protection statute, better known as the ‘Lacey Act’ (16 U.S.C. 3371–3378). This statute allows for those fines set after convictions to be deposited into a special

account (the Lacey Act Reward Account), which is fully dedicated to finance future investigations and the care of animals. Similar provisions can be found in another six wildlife protection statutes in the US.

Compensation may also be required from the State to the individual. This may be the case if a court delivers a not guilty verdict, confirms the legal rights of the accused, and the animals are no longer available. This could occur because animals died while in captivity or were returned to the country of origin or released to nature as part of disposition plans. In cases where animals cannot be returned to their rightful owner, or even if they are returned in a different condition, it is considered a best practice that a compensation mechanism be in place to guarantee losses incurred by the rightful owners are covered, based on an appraised value for the animals.

When animals can be returned to the rightful owner, all costs incurred in the short and long-term care and custody of animals before court sentencing should be carried by the State and the suspect should be completely waived from having to reimburse any cost, without further compensation rights for the temporary loss of custody.

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