

WILDLIFE CRIME

IS HONG KONG DOING ENOUGH?



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The paper builds the position that Hong Kong is both a wildlife trade hub, where large volumes of the world’s threatened species and their products are traded, and a wildlife trafficking hub, used by organized syndicates to supply countries in the region with illegal wildlife products. We thus believe that actions beyond current practices and policies need to be taken by the HKSAR Government, if it is to meet its commitments under the Convention on International Trade in Endangered Species of Wild Flora and Fauna and the Convention on Biological Diversity and if it is to effectively engage in the regional and global fight against wildlife crime.

GLOSSARY

AFCD	Agriculture, Fisheries and Conservation Department (Hong Kong)
AMMTC	ASEAN Ministerial Meeting on Transnational Crime
ASEAN	Association of South East Asian Nations
ASEAN-WEN	Association of South East Asian Nations Wildlife Enforcement Network
ASPCA	American Society for the Prevention of Cruelty to Animals
AWAG	Animal Welfare Advisory Group (Hong Kong)
BSAP	Biodiversity and Strategy Action Plan (Hong Kong)
CBD	Convention on Biological Diversity
CED	Customs and Excise Department (Hong Kong)
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COR	Controlling Officers Report (Hong Kong)
DAB	Democratic Alliance for the Betterment and Progress of Hong Kong
ENV	Education for Nature (Vietnam)
ESAC	Endangered Species Advisory Committee (Hong Kong)
ESPLG	Endangered Species Protection Liaison Group (Hong Kong)
EU	European Union
HKSAR	Hong Kong Special Administrative Region
IATA	International Air Transport Association
ICCWC	International Consortium on Combating Wildlife Crime
INTERPOL	International Criminal Police Police Organisation
IUCN	International Union for Conservation of Nature
LRFFT	Live Reef Fish Food Trade
NAWCC	National Anti-Wildlife Crime Council (Philippines)
NDF	Non Detriment Finding
NEST	National Environmental Security Task Force
NICECG	National Inter-Agencies CITES Enforcement Coordination Group (China)
NPC	National People's Congress (China)
OECD	Organisations for Economic Cooperation and Development
PICECG	Provincial Inter-Agencies CITES Enforcement Coordination Group (China)
RSPCA	Royal Society for the Prevention of Cruelty to Animals
RWE	Round Wood Equivalent
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
WCO	World Customs Organization

EXECUTIVE SUMMARY

The global demand for wildlife products is highest in Asia, where growing affluence has fueled an unprecedented rise in the trafficking of threatened species. The harvesting, transportation and delivery of threatened fauna and flora into legal through laundering and clandestine markets is now recognized to involve considerable levels of criminality. Transnational organized crime networks are increasingly engaged in such activities, not only because of the high profits which can be made, but also because they have the set up and the trade routes and personnel required to conduct and control such operations. 'Black market' prices for several forms of wildlife exceed, sometimes vastly, the monies paid for cocaine, diamonds, gold or heroin.

These same organized crime groups have brought to what, historically, might have been viewed as illicit trade, degrees of violence, intimidation, corruption and fraud that are more commonly associated with the trafficking of narcotics, firearms and human trafficking. Trafficking in wildlife involves money-laundering, counterfeiting of permits and licenses, avoidance of currency controls, taxes and import/exit duties or the acquisition of necessary documents through extortion, coercion and bribery.

The monetary value of all transnational organized environmental crime is estimated at between USD70–213 billion annually. Several

components of this trade represent significant sums: the illegal trade in flora and fauna is valued at USD7-23 billion, illegal fisheries at USD11-30 billion and illegal logging and forest timber crime at USD30-100 billion. Hotspots where wildlife trafficking is rife include the Chinese borders, particularly China's border with Hong Kong, which is also the busiest cargo airport, third-largest passenger airport and the fourth-largest deep-water port in the world. It further aims to be a hub and super-connector as part of mainland China's ambitious "One Belt One Road" initiative looking forward. Utilizing Hong Kong's free port status, the multi-billion dollar wildlife trade industry uses air and sea entry points to access the mainland. Annually, more CITES seizures are made at the international border between Hong Kong and China than at any other border in China.

In response to the threat wildlife crime poses, international decisions, alliances and enforcement collaborations are gaining momentum. Among these, the United States and China are stepping up efforts to combat wildlife crime. As wildlife trade statistics have risen, the Hong Kong government so far has failed to increase enforcement resources relative to the scale and complexity of the problem. Regardless of the fact that the HKSAR authorities continue to encounter large and growing volumes of illegal threatened wildlife consignments, the Government has continued to refuse to acknowledge that Hong

Kong is a major wildlife trafficking hub. This is exemplified by the active trade in ivory, shark fin, live reef food fish, pangolins, totoaba, exotic pets, rhino horn, manta ray gill rakers, as well as the related poaching and laundering of threatened native species.

Hong Kong has enacted the Protection of Endangered Species of Animals and Plants Ordinance (Cap 586) to give effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Obligations to control the trade, are thus limited to the species listed in the Ordinance. These represent a small percentage of the threatened animals commonly imported into the city for local trade, transshipped or re-exported to other destinations in Asia. Currently Hong Kong has no legislation specifically aimed at controlling the import of threatened animals not listed within CITES. Many of these are illegally or unsustainably sourced in their country of origin.

With the extension of the Convention Biological Diversity (CBD) to Hong Kong in 2011, there is an obligation on the part of the HKSAR Government not only to act to protect local biodiversity, but to also take steps to ensure its actions promote and contribute to the conservation of biodiversity internationally. Adherence to the principles of the CBD requires Hong Kong, rather than just profiting from the lack of legislative controls on the harvesting of threatened species in developing countries, to take pro-active steps within its territorial limits to diminish the flow of vulnerable and threatened animals and plants and reduce Hong Kong's destructively large ecological footprint.

Hong Kong's Customs and Excise Department (CED) is charged with the duty to prevent the smuggling of threatened species into Hong Kong. Over the past five years, the market value of wildlife seizures has been increasing, reaching HK\$117 million by October 2015. CED estimates only a 10% seizure success rate. The Agricultural Fisheries and Conservation Department (AFCD) is charged with a duty to check that the countries of origin export permits are compliant with local licensing requirements under Cap 586. In practice, imports are accepted and, where required, import permits for Hong Kong and export permits to the rest of the region are usually issued by AFCD without investigating validity of the CITES permit that supports entry to Hong Kong. While it may be impractical for AFCD to contact corresponding national CITES authorities for every shipment, these export permits are accepted by AFCD at face value, even where animals are being sourced from countries known to have a high occurrence of illegal trade and unsustainable harvesting. Such practice contravenes the rules and spirit of CITES.

Improving legislation and practices to control the trade in threatened species, however, will not assist in meeting the problems highlighted unless improvements are supported by sufficient investigation, effective enforcement, prosecutions and sufficient penalties. Low inspection rates for sea vessels, reporting exemptions that appear to be outdated, lax controls on locally registered fishing boats, ready provision of permits for import and export of CITES listed species, reliance on environmental laws with insufficient enforcement powers and Hong Kong's generally open attitude to commerce have all contributed to making Hong Kong an epicentre for trade in threatened species.

Of great concern is the lack of deterrent sentencing meted out by the courts to those found to have smuggled threatened species into Hong Kong in contravention of Cap 586. Cases are tried in the Magistracy as the maximum penalty under the Ordinance is within the courts' jurisdictional limit (2 years imprisonment). Imprisonment for trade in, as opposed to theft of, critically endangered species is rare. Even when gaol terms are imposed, sentences are short. In addition, cases that should be considered as commercial crimes are not receiving the appropriate level of attention from the courts. A comparison with Australian and UK legislation shows that Hong Kong has vastly more lenient maximum sentences compared to those two jurisdictions. The leniency of the Hong Kong regime is also apparent in comparison with the CITES penalties imposed by EU member states.

The most efficient and successful prosecutions of those responsible globally have been conducted using not wildlife legislation but criminal statutes that seek to penalize offences such as conspiracy and racketeering. This approach also makes clear to the judiciary that the people being brought before them have engaged in serious acts of criminality, which rank alongside those which impact very adversely on society as a whole and which threaten Nature itself.

Further, government departments in Hong Kong, such as the Hong Kong Police, AFCD, Department of Justice and CED need to work closely together to share information, resources, duties and expertise both locally and globally in order to tackle often

complex wildlife crime. Without close and consistent cooperation between the relevant departments and the employment of expert investigative personnel, it will be difficult to convict the masterminds of the trade.

However, cross-departmental collaborations and strategic planning to address wildlife crime in Hong Kong remains unclear and apparently deficient, despite the Government having various advisory and liaison groups in place. While task forces exist within CED to deal with specific illegal trades, both CED and AFCD have faced criticism by the Audit Commission in relation to inadequate performance indicators and long-term strategy. Insufficient allocation of resources to both AFCD and CED is also considered a constraint in policing the illegal wildlife trade and important tools such as forensic and financial investigations are rarely employed.

We believe that, the HKSAR Government could and should be a leader in combatting wildlife crime not just regionally, but globally. It is in a position to demonstrate to the local/international community and the criminal syndicates behind the multi-billion dollar illegal wildlife trade, that although Hong Kong is a free port, it has zero tolerance for wildlife crime. By not taking this opportunity, its reputation as Asia's World City is at risk, particularly as it moves forward with ambitious plans to facilitate global trade with China.

The following recommendations are intended to represent best practice, address loopholes and reflect the increasing global concern relative to international wildlife crime.

WILDLIFE CRIME IS BOTH ORGANISED AND SERIOUS CRIME

In brief, we propose that the HKSAR Government:

Recognizes and defines relevant wildlife crime offences such as wildlife trafficking, as both **'serious'** and **'organised'** crime

Instigates a mainstreaming process whereby relevant departments work closely together in resolving problems

Makes efforts to raise awareness of the judiciary regarding the seriousness of wildlife crime



Actively participates in the global response to combatting wildlife crime

Undertakes a study to determine the need for, extent and nature of legal reform

Reviews the allocation of resources to combatting wildlife crime

Introduces a ban on the trade in ivory



Introduces better regulation on the source of wild animals and the collection of statistics

Requires all live CITES animals to have possession permits irrespective of their origin

Establishes a framework for more active and regular engagement with civil society



Better communicates its overarching strategy to civil society as regards addressing wildlife crime

Establishes a Wildlife Crime Database and a protocol on the provision of data to interested parties

Invests in a consolidated Conservation Forensics Laboratory in Hong Kong

Supports relevant efforts to list threatened species on CITES Appendices





WILDLIFE TRAFFICKING, TRANSNATIONAL AND ORGANISED CRIME

From illicit trade to organised crime

Growing affluence in Asia has fueled an unprecedented rise in wildlife¹ trafficking². Such wildlife crime is threatening the immediate survival of not only iconic species, such as elephants, rhinos, tigers and sharks, but many other threatened species from both the marine and terrestrial environments.

The harvesting, transportation and delivery of fauna and flora into legal and clandestine markets are now recognized to involve considerable levels of criminality. Organised crime groups and networks are increasingly engaged in such activities, not only because of the considerable profits that can be made but also because they have the range of capacities required to conduct such operations. Poaching (on land and at sea), illegal logging of timber and gathering of exotic plants, collecting of live animals, and the subsequent smuggling of contraband across multiple international borders requires levels of sophistication and complexity that are well beyond the means of individuals keen to possess some interesting specimen. 'Black market' prices for several forms of wildlife exceed, sometimes vastly, the monies paid for cocaine, diamonds, gold or heroin³.

These organized crime groups have brought to what, historically, might have been viewed as illicit trade degrees of violence, intimidation, corruption and fraud that are more commonly associated with the trafficking of narcotics and

firearms. Human trafficking is now regularly linked with, for example, poaching of marine species, where fishing vessels are often found to be crewed by persons who have, essentially, been sold into modern-day slavery^{4,5,6,7}. Terrestrial poaching is carried out, in many countries and on several continents, by heavily-armed gangs who do not hesitate to kill the game scouts, wardens and forest guards whose task it is to protect endangered species and their habitats. Residents of rural communities, often living below the poverty line, are exploited by criminal controllers and are regularly dispatched into hazardous terrain to collect the sought-after fauna and flora. In recent years, hundreds of persons have died on both sides of what is often described as the war against wildlife crime.

Trafficking in wildlife involves money-laundering, counterfeiting of permits and licenses, avoidance of currency controls, taxes and import/export duties or the acquisition of necessary documents through extortion, coercion and bribery. Effective responses need the deployment of enforcement techniques, including: controlled delivery; human and electronic surveillance; intelligence-gathering; financial crime investigation; and forensic science support that are usually beyond the capacity of the government agencies and their civil service staff, which have traditionally been responsible for the regulation of trade in fauna and flora. Today, the most efficient and successful prosecutions of those

responsible have been conducted using not wildlife legislation but criminal statutes that seek to penalize offences such as conspiracy and racketeering. This also makes clear to the judiciary that the people being brought before them have engaged in serious acts of criminality, which rank alongside those which impact adversely on society.

OECD, UNODC, UNEP and INTERPOL place the monetary value of all transnational organized environmental crime between USD70–213 billion annually⁸. The illegal trade in flora and fauna is valued at USD7-23 billion, illegal fisheries at USD11-30 billion and illegal logging and forest crime at USD30-100 billion⁹. Wildlife crime is now considered by leading enforcement agencies as one of the largest transnational organized criminal activities alongside drug trafficking, arms, and trafficking in human beings^{10,11}. It is a threat to sustainable development^{12,13} and, is considered a serious and growing danger for global stability and international security¹⁴.

Wildlife crime is thus low risk high profit. Combined with the high value of trafficked products, the comparatively low penalties imposed by courts and the relatively low numbers of cases prosecuted serve to stimulate the criminality as outlined above. Oversight of the trade in key jurisdictions is widely recognized to be poor, both at national and international levels^{15,16}. Furthermore, the costs borne by governments and NGOs through the often lengthy captive care, rehabilitation, and eventual placement or repatriation of species are frequently significant and commonly not considered during the judicial process and imposition of penalties related to the crime¹⁷.

Hotspots where wildlife trafficking is rife include the Chinese borders, and in particular its border with Hong Kong^{18,19}. Utilizing Hong Kong's free port status, the multi-billion dollar wildlife trade industry uses air and sea entry points to access the Mainland. Like China, affluent Hong Kong is itself a centre for consumption and domestic trade of products from wildlife trafficking, which are usually for food (often luxury food), ornaments, medicine, exotic pets and, in some cases, investments²⁰. Notably, the trade in traditional medicine is believed to be growing at a rate of 10% per year²¹.

International movements combatting wildlife crime gain momentum

In response to the threat wildlife crime poses, international decisions, alliances and enforcement collaborations are gaining momentum. The International Consortium on Combating Wildlife Crime (ICWC) established in 2010 which includes CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora), UNODC, INTERPOL, the World Bank and World Customs Organisation (WCO); together with increased collaboration amongst agencies, such as with UNEP, and with countries themselves, ICWC is creating a more effective structure to support countries in terms of policing, customs, prosecution and the judiciary^{22,23}.

The United Nations General Assembly on 30th July, 2015 unanimously adopted resolution No. 69/314 on Tackling Illicit Wildlife Trade, calling for wildlife crime to be treated as serious crime nationally and across borders. In April 2015 the Doha Declaration adopted at the 13th UN Congress on Crime and Prevention called for “*strengthening legislation, international cooperation, capacity-building, criminal*

justice responses and law enforcement efforts aimed at, inter alia, dealing with transnational organized crime, corruption and money-laundering linked to ...trafficking in wildlife and poaching”²⁴.

Importantly, the United States and China are stepping up efforts to combat wildlife crime and in September 2015 announced their intention to enact ‘nearly complete bans’ on the import and export of ivory²⁵. In October 2015, the China’s State Forestry Administration also announced a 1-year ban on the import of ‘trophy ivory’²⁶. Jointly the two governments have pledged to increase cooperative efforts, including: identifying and addressing illegal wildlife trade routes and supply chains; strengthening domestic and global law enforcement efforts; and working with other governments, international governmental organisations, civil society, the private sector, and local communities, for maximum impact on stemming the illegal wildlife trade²⁷.

ASEAN Member States at the 10th ASEAN Ministerial Meeting on Transnational Crime (AMMTC) in October 2015 also reached consensus to officially add the “trafficking of wildlife and timber” to the list of regional priority transnational crime threats²⁸. Accordingly, wildlife and forest crime will now be considered as important as other crimes needing collective regional action, including drug and precursor trafficking, human trafficking and smuggling, terrorism, and arms smuggling²⁹. These States are now calling for a stronger response by law enforcement and criminal justice institutions.

Furthermore, on 8th June, 2015, the International Air Transport Association (IATA) and the Secretariat of CITES signed an MOU to cooperate on reducing illegal trade in wildlife

and their products, as well as ensuring the safe and secure transport of legally traded wildlife³⁰. This reflects the growing trend in the industry to ban or restrict the transport of certain wildlife products³¹.

Meanwhile, numerous international meetings focusing on wildlife trade are on-going, including INTERPOL’s annual meetings of the Wildlife, Pollution and Fisheries Crime Working Groups and its recent biennial conferences on environmental crime.

Hong Kong

The obligations of Hong Kong under CITES and the Convention on Biological Diversity (CBD) require the Government to address the threats that trade within and through Hong Kong pose to biodiversity globally. Notably, concerns associated with extensive wildlife crime / trade into and through Hong Kong and specific recommendations for government action to combat the problem were made by experts engaged as part of the Biodiversity and Strategy Action Plan (BSAP) process in 2014³².

In December 2015, lawmakers from across the political spectrum in Hong Kong gathered in the Legislative Council to unanimously pass a motion which called on the Hong Kong Government to strengthen the fight against wildlife crime and also legislate for a commercial ban on ivory trading in Hong Kong³³. The historic vote, although non-binding, was passed unanimously by 37 out of 38 legislators present with no ‘No’ votes or abstentions. It marked a rare display of unity in Hong Kong’s polarized post-Occupy/Umbrella movement political landscape, and placed the onus back on the Hong Kong Government to quickly legislate the measures called for in the motion.



HONG KONG'S EMERGENCE AS A WILDLIFE TRAFFICKING HOTSPOT

A history of smuggling

Criminal syndicates have long used Hong Kong as a smuggling route, primarily into China³⁴, extending back to the First Opium War (1839–42). In the early 1980s, smuggling of illegal commodities into China was carried out by fishing vessels. After China opened its borders in the early 1990s, luxury consumer goods were increasingly smuggled into the country following political reforms³⁵ and high-powered speedboats known as Tai Fei were purpose-built for carrying electrical goods and stolen vehicles, and were used by criminal syndicates³⁶. In response to the intensified smuggling trends, a joint police/customs Anti-Smuggling Task Force was established in 1991.

Nevertheless, illegal trade continues and to date Hong Kong remains a smuggling hub for numerous products such as narcotics³⁷, tobacco, diesel oil³⁸, electronic gadgets³⁹, live seafood^{40,41} and more recently baby milk powder⁴². Hong Kong's free trade policy and port infrastructure has also allowed the city to become a popular routing choice for threatened species. Trade data and research as outlined in this paper show Hong Kong to be a global hub for the legal and illegal trade in threatened plants, animals and their derivatives. While some imports are for local consumption, such as shark fin and live reef fish, much is transshipped or re-exported^{43,44}. The global demand for wildlife products is at its highest in Asia^{45,46}.

Looking forward, Hong Kong is set to play a key role in China's "One Belt One Road" initiative launched by the National Development and Reform Commission⁴⁷. This initiative aims to promote and accelerate the connectivity of Asian, European and African continents and their adjacent seas, by setting up multi-tiered and composite connectivity networks. This involves highways, railways, waterborne, maritime and aviation transport. In doing so it is intended to facilitate trade and remove trade barriers. "One Belt One Road" is intended to include Hong Kong as part of the 'Guangdong-Hong Kong-Macau Big Bay Area'. Hong Kong is slated to contribute to the advancement of the initiative through its role as a 'Super-connector' and by serving as one of its hub cities. The HKSAR Government's three runways system alone (to be commissioned in 2030) promises to increase passenger and cargo traffic by 60% and 100% respectively, compared to 2014⁴⁸. If not regulated effectively, opening up transport networks further will inevitably provide opportunity for traffickers as well as traders of threatened species en route to China and other destinations in Asia for decades to come.

A wildlife trafficking hub

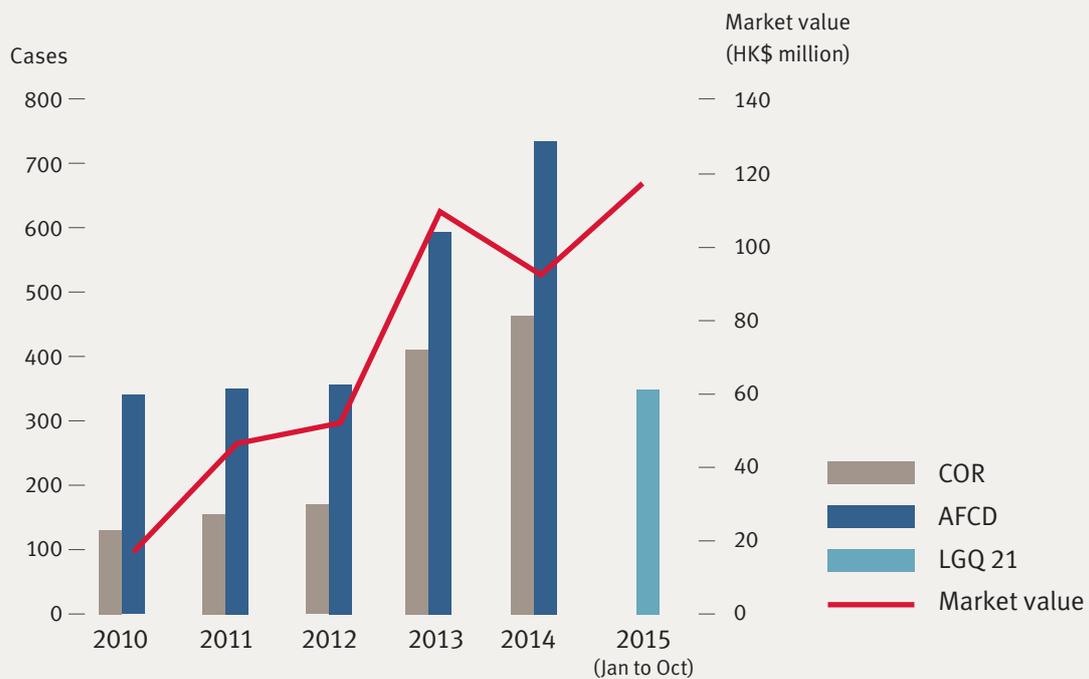
HKSAR Government Environment Bureau statistics show that between 2010 to 2014, the number of cases involving the illegal import and export of species listed by CITES increased by 350% (Figure 1). During the same period,

the quantity of articles seized approximately tripled from 1,239 pieces (3.4 tonnes) to 6,696 pieces (138.4 tonnes) and the market value of products seized increased by 550% from HK\$17 million to HK\$92 million (HK\$110 million in 2013)⁴⁹.

In 2015 (data available up to October) there was a significant increase in the number of pieces of illegal wildlife products being seized, up by nearly 400% from the previous year to

24,852 pieces (1,058 tonnes). With reference to the ivory trade only, it is noted that this may reflect a recent switch of tactic by traffickers whereby a large number of couriers, e.g. air passengers, are used to traffic small pieces of ivory into Hong Kong (often carrying them in tailor made vests), rather than a fewer number of containerized consignments of larger pieces such as raw ivory tusks⁵⁰. Over this period, market value also reached a high of HK\$117million⁵¹.

FIGURE 1 Number of cases involving illegal import and export of endangered species (indicating information source)



KEY:

COR (Controlling Officers report): Environmental Protection Bureau, Controlling Officer reply to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2015-16. Environmental Protection Bureau Reply to Chan Ka-lok, Kenneth
AFCD: May 2015 response to Information request: Application No. ATI 11/2015 in AF GR1-125/9/1
LGQC21: Legco Question 21 Reply to Chan Ka-lok, Kenneth Nov 25 2015.
 2010 case figure source, AFCD May 2015 response to Information request Application No. ATI 11/2015 in AF GR1-125/9/1

Notably, there appears to be some inconsistency in Government statistics with case numbers and convictions provided in response to questions to the Finance Committee (Controlling Officers Report noted above), lower than those provided in response to Legco questions.

Meanwhile, the number of convictions more than doubled from 112 in 2010 to 263 in 2014 and the maximum penalty (which was in 2014) was imprisonment for ten months. Up to October 2015, there were comparatively fewer convictions at 123⁵². However, the severity of the problem in Hong Kong has attracted international attention^{53,54,55,56}.

Annually, more CITES seizures are made at the international border between Hong Kong and China than at any other border in China. In view of the magnitude of the problem, the Chinese Government has provided resources making Shenzhen Customs the largest in the world in terms of staff numbers⁵⁷.

Conversely the Hong Kong Government has failed to increase enforcement resources relative to the scale and complexity of the problem. Regardless of the fact that the HKSAR authorities continue to encounter large and growing volumes of illegal threatened wildlife consignments, the Government has continued to refuse to acknowledge Hong Kong as a wildlife trafficking hub. The Customs and Excise Department (CED) annual departmental reviews (2014, 2013 and 2012)

maintain that “there are still isolated cases of endangered species of plants and animals being smuggled into Hong Kong”⁵⁸. In direct contradiction of these assertions the value of wildlife seizures in 2014 was second only to seizures under the Import and Export Ordinance and the Dangerous Drugs Ordinance (Figure 2).

Of the forty plus Ordinances that are enforced by CED, the number of endangered wildlife cases, arrests and value of seizures has consistently been in the top ten. Whilst some cases may be prosecuted under multiple ordinances, the number of prosecutions alone challenges CED’s position that wildlife smuggling offences are in fact isolated cases. Inspection of animal trading establishments is also not listed, ignoring the reality of smuggling within the region.

The collection and interpretation of data on import / export of wild animals⁶⁰ used in the exotic trade is further complicated by the fact that general import or export permits are not required for shipments of animals to and from the Mainland⁶¹.

FIGURE 2 CED Case Statistics for 2014**By number of cases**

Rank out of 40	Ordinances enforced by CED ranked by case volume	Number of cases	Value (HK\$'000)	Average value (HK\$'000)
1	Dutiable commodities	19447	91886	4.7
2	Public health and municipal svc	1682	1379	0.8
3	Import and export	5412	93264	86.7
4	Dangerous Drugs	797	427655	536.6
5	Protection of Endangered Species	461	94795	205.6

By total value of goods intercepted

Rank out of 40	Ordinances enforced by CED ranked by value	Total value (HK\$'000)	Cases	Average value (HK\$'000)
1	Import and export	549968	5412	101.6
2	Dangerous drugs	427655	797	442
3	Protection of Endangered Species	94795	461	205.6
4	Trade descriptions	93264	1076	86.7
5	Dutiable commodities	91886	19447	4.7

By average value

Rank out of 40	Ordinances enforced by CED ranked by average case value	Average value (HK\$'000)	Cases	Total value (HK\$'000)
1	Criminal procedure/ crimes	12529.0	2	25058
2	Dangerous drugs	536.6	797	427655
3	Control of chemicals	375.0	4	1500
4	Protection of Endangered Species	205.6	461	94795
5	Pharmacy and poisons	136.3	88	11994

Source: Customs and Excise Departmental Review 2014, Case Statistics, pp117



WILDLIFE TRADE, TRAFFICKING AND REGULATION IN HONG KONG

The illegal trade, wildlife trafficking

Hong Kong's key role in wildlife trafficking and trade is exemplified by the following:

- a) **Elephant Ivory:** trade in ivory from the Asian elephant has been controlled under CITES Appendix I since 1975 and ivory from the African elephant since 1989, thus effectively prohibiting international trade in the majority of elephant products from 1990. Since then, however, Hong Kong has remained as a significant consumption point for ivory^{62, 63} as well as an important transshipment hub for illegal ivory destined for China. Over the past decade, the HKSAR Government has seized over 33 tonnes of illegal ivory⁶⁴. Since 2009, the amount seized has risen annually, reaching just under 8 tonnes in 2013⁶⁵. It was estimated that between 1989 to 2011, 13% of seizures of illegal ivory in Asia were made in Hong Kong, making the city the third-largest port for illegal ivory seizures in the region⁶⁶. Yet, despite Hong Kong authorities seizing almost 13,481kg of ivory in the two year period of 2012-2013⁶⁷, there has not been a single case of a kingpin in Hong Kong having been caught and prosecuted for trafficking offences.

Globally, it is estimated that less than 10% of the illicit ivory trade is intercepted⁶⁸. Between 2009 and 2014 criminal networks are reported to have trafficked as much as 170 tonnes of ivory globally; amounting to

as many as 229,729 elephants⁶⁹. With the current population of African elephants estimated at approximately 470,000⁷⁰, the species is listed as vulnerable by the Red List of Threatened Species produced by the International Union for Conservation of Nature (IUCN). Current estimate suggest 33,000 per year, 96 per day, or one elephant poached for their ivory tusks every 15 minutes⁷¹.

Whilst the sale of ivory in China is, to an extent, controlled, in Hong Kong ivory is readily available, in a large part due to a poorly enforced licensing system and lack of deterrent prosecutions. Recent surveys indicate that Hong Kong has more ivory for sale than any other city in the world and although exporting ivory from Hong Kong is illegal, 90% of demand for ivory bought in the city comes from mainland Chinese⁷². Hong Kong's legal ivory trade also masks a parallel illegal trade in post-1989 ivory. Despite the heavy demand from Chinese visitors⁷³, Hong Kong's 'legal' ivory stockpile, as registered with AFCD, has barely declined over the last four years. In 2011, the stockpile of commercial ivory reported by Hong Kong ivory traders was 116.5 tonnes. In 2014, it stood at 111.3 tonnes⁷⁴. Investigation by local NGOs has shown that members of the Hong Kong ivory trade are laundering freshly poached ivory from illegally-killed elephants into the so-called 'legal' stockpile⁷⁵.

Amidst numerous calls to address the situation, the Hong Kong Government reacted positively with 10 new measures to curb the ivory trade. Yet it is believed that a more urgent response is needed in the form of halting the trade. There is currently momentum amongst Hong Kong's law makers to introduce an ivory ban. In February 2015, five lawmakers from the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) announced a bill suggestion to ban the domestic sale and transportation of ivory in China for discussion by the Standing Committee of the National People's Congress (NPC) at the annual 'two meetings' in Beijing. 32 out of 36 Hong Kong NPC lawmakers supported this bid to end China's ivory trade. Furthermore, Hong Kong's Legislative Council's motion to explore further restrictions on the ivory trade, ultimately to achieve a total ban, while not binding has increased the pressure on the authorities to act.

- b) **The live (and increasingly frozen) reef fish food trade (LRFFT)** is largely the result of an unregulated and unquantified fishery that operates the Asia-Pacific region. China and Hong Kong dominate the import of wild-sourced live groupers and other live reef fishes broadly in the Indo-Pacific region, particularly in South East Asia⁷⁷. Many of these fish enter Hong Kong from neighboring South East Asian countries via air and sea and are subsequently exported to mainland China both legally and illegally. This market has emerged regionally to meet culturally driven and growing consumer demand for tropical seafood, mainly in southern Chinese cuisine, with grouper the most highly regarded and popular species.

While relatively small in volume (13,000 metric tonnes in 2013), it has a high unit worth with an estimated retail value of USD1 billion⁷⁸. It is estimated that at least 50% of the global LRFFT is transported into Hong Kong, with an unknown portion being re-exported to China^{79,80}. The trade involves several threatened species (IUCN red list: *Plectropomus areolatus*; squaretailed coral grouper and *Cromileptes altivelis*; mouse grouper and *Epinephelus lanceolatus*; giant grouper) and one species on CITES Appendix II, the Napoleon fish (also known as Humphead Wrasse), *Cheilinus undulatus*^{81,82} and illegal cross border trade into mainland China.

The species in this trade supply the high value seafood trade in Hong Kong and mainland China, a trade that is poorly documented, including for the CITES listed species. As one example, many of the live fish imported into Hong Kong are re-exported into mainland China by sea but are not recorded by either the Hong Kong or Chinese authorities in official CITES documentation⁸³. There is regular smuggling of live fish over the border at Sha Tau Kok, Lau Fau Shan and Yantian⁸⁴. Almost certainly this will include live Napoleon fish at times since it is typically mixed in with other live fish and much live fish comes in by sea.

While much of the live reef fish entering Hong Kong arrives by air, a significant portion is landed by boats⁸⁵ classified as fishing vessels by the HKSAR Government⁸⁶. China imposes an average of 10.9% tax on directly imported fishery products⁸⁷, while Hong Kong is tariff free. By smuggling the fish through Hong Kong, traders are able to significantly improve profits.

There is very little scrutiny of the live reef fish arriving in Hong Kong. The Marine Fish (Marketing) Ordinance, Cap 291, which requires all fresh marine fish to be landed and sold at the wholesale fish markets operated by the Fish Marketing Organisation, excludes live marine fish and transshipped fish⁸⁸. A loophole in reporting requirements for locally registered fishing vessels allows fish to be landed without customs declaration⁸⁹. This is a major challenge to managing and monitoring this trade because vessels that import fishes into Hong Kong are treated as local fishing vessels, when in fact they are vessels that collect fish from other jurisdictions^{90,91}. Such landings of fish currently fall outside the jurisdiction of both AFCD and CED in terms of fishery management and import control; and are only weakly regulated by the Food and Environmental Hygiene Department under Cap 612 Food Safety Ordinance, where trade records are not required to be formerly overseen or reported. This loophole compromises efforts in fishery management and food safety. AFCD has a voluntary system in place for some major traders to report their trade, however according to recent research (see end note 98), these statistics only represent an estimated 30-40% of the total sea shipments.

Most of the tens of thousands of Napoleon fish on sale in mainland China are believed to have been illegally imported from Hong Kong and have no CITES permits⁹². This example emphasizes the need to place more pressure on traders to prove the origin and this key requirement should be enforced across the marine and terrestrial wildlife trade.

In 2013, UNODC estimated the illegal trade in marine wildlife in Asia and the Pacific region, such as live reef fish for food, ornamental reef fish and corals, is estimated to be worth USD850 million to the criminal enterprises involved⁹³. The illegal trade in the CITES Appendix II listed Napoleon fish is of particular concern with an estimated 25,000 fish being traded across the border in China, none of it legally documented and numbers are far in excess of CITES quotas in the region (1,880 individuals from Indonesia, the major exporter); the species exits the Anamabas Islands of Indonesia on Hong Kong vessels on a monthly basis⁹⁴. There is ample evidence via seizures, trader interviews and NGO research^{95,96,97} that Hong Kong is being used as a transit point for this illegal trade. It has also been estimated that as much as 50% of the live reef fish trade imported to Hong Kong is destined for mainland China⁹⁸.

There is further a growing trade in high value frozen reef fishes of the same species as those traded live. Little is known of the trade. Frozen Napoleon fish is exempted from a CITES permit if brought into Hong Kong as personal effect because dead animals brought in for personal use are exempted from permits.

- c) **Pangolins (scaly ant eaters)**, according to the IUCN Red List, are the world's most trafficked wild mammals, with a 50% decline in populations in the past 15 years¹⁰⁰. Pangolins are hunted to satisfy demand for their scales, meat and other body parts for food and Traditional Medicine.

Currently, all eight pangolin species¹⁰¹ are listed under Appendix II of CITES, and while a zero quota has been set for the four Asian species¹⁰², the four African species can still be traded^{103,104,105,106,107}. All four Asian species are already classified as either endangered or critically endangered by the IUCN. With a focus of the illegal trade shifting towards the four African species (currently classified as ‘vulnerable’), and with the recent seizures in China and Hong Kong of African pangolin scales, it is reasonable to conclude that they too will be categorized as endangered in the near future¹⁰⁸.

Permitting a regulated trade in pangolin products of some species sends a complicated message to consumers, and opens a legal loophole through which prohibited trade may be disguised as legal. Without DNA testing, consumers and law enforcement officials have difficulty detecting the origin of pangolin scales¹⁰⁹. It is also relatively easy to forge, duplicate or misrepresent documentation stating that the scales are ‘legal stock’, as has proven to be widespread practice in Hong Kong’s ivory trade¹¹⁰. Slow to reproduce, pangolins will not be able to withstand a prolonged, dual-market trade at the current rate.

Based on seizures reported by the media, it is estimated that 105,410 - 210,820 pangolins were killed in less than three years from 2011 - 2013¹¹¹. The exact volume of pangolin smuggling is unknown, as much of it goes undetected^{112,113}. In particular, the Chinese Pangolin (indigenous to Hong Kong) was listed as endangered by the IUCN in 2008 and up listed to critically endangered in 2014. The IUCN states that the cause of the

species’ rapid decline is international trade, driven largely by market demand in China¹¹⁴. In the past five years (July 2010 to June 2015), 89 cases related to seizure of pangolins were recorded¹¹⁵. A total of about 7.2 tonnes (plus 358 heads) of carcasses and 12.4 tonnes of scales were seized from these cases. In 2014 alone, more than three tonnes of pangolin scales were intercepted by Hong Kong CED and demonstrated the increasing appearance of African pangolins in illegal trade; this was one of the biggest such seizures since 2009. The scales originated in Uganda, and traveled via Kenya and Malaysia, to mainland China¹¹⁶. Another 2,000 kilograms of pangolin scales were intercepted in Kwai Chung Cargo Terminal in March 2015¹¹⁷.

- (d) **The totoaba** has been listed in Appendix I of CITES since 1976 and cannot be traded internationally for commercial purpose. Recent evidence¹¹⁸ however has found the swim bladder of the totoaba being illegally trafficked into and through Hong Kong to satisfy growing Chinese demand for high-end dried sea food products. The trade in this endangered species is also having a significant impact on diminishing populations of the world’s smallest porpoise, the vaquita¹¹⁹. In the past three years, half of the vaquita’s tiny global population has been killed by fishing nets; many of them set illegally to capture the totoaba. Research published in June 2015 estimates the wild vaquita population at less than 100 individuals¹²⁰. The species is expected to go extinct by 2018, unless drastic steps are taken to protect the population¹²¹. Both the totoaba and vaquita are critically endangered according to the IUCN Red List.

Investigative research completed in Hong Kong earlier this year (2015), found one retail outlet selling a totoaba fish bladder weighing 446g for HK\$500,000 (USD64,500), while another retailer offered an additional HK\$2,000 (USD248) smuggling fee to carry the specimen to mainland China¹²². AFCD reportedly inspected some 150 dry seafood shops in May and June, and at least two shops had been found with totoaba fish maw¹²³. Furthermore, while CED intercepted a total of 17 pieces of suspected totoaba fish maw in three cases over the past two years, there have been no prosecutions¹²⁴. On August 24th 2015, a notification to the parties was published by the CITES secretariat, in which Mexico drew attention to the deteriorating situation and appealed for all parties to collaborate in tackling the trade¹²⁵. AFCD wrote letters to the Mexico CITES Management Authority to express the willingness of the Hong Kong Government to strengthen enforcement collaboration and intelligence exchange. This could be seen as a good start, though further concrete actions and impacts have yet to be seen.

Interest in the totoaba swim bladder as an ingredient in Chinese soups increased due to the near extinction of the similar Chinese bahaba (*Bahaba taipingensis*), also highly valued¹²⁶. The *Bahaba* species is also critically endangered and only occurs in China and Hong Kong. While it is protected in China it is not protected in Hong Kong, which has no legislation to protect locally threatened marine fishes and invertebrates (unlike many countries and unlike mainland China). It is anticipated that if the totoaba swim bladders become extremely rare, other

large fish (especially croakers) with similar maw will be targeted and attention should be paid to potential targets to be proactive in conservation actions¹²⁷.

- (e) **The exotic pet trade** and its global demand for some of the world's rarest species has shown an escalating trend with the Middle East and South East Asia driving the demand for exotic pets of all taxa¹²⁸. In recent years the import into Hong Kong of birds, turtles, lizards and snakes for the pet trade has also increased^{129,130}.

According to AFCD, in 2012, the following were imported for pet purposes (see Appendix A)¹³¹:

- nearly 48,000 birds (91 species, 60% of which were endangered);
- more than 384,000 turtles (104 species);
- over 61,000 lizards (134 species, about 32% of which were endangered); and
- over 23,000 snakes (34 species, about 17% of which were endangered).

In 2014 the importation of reptiles for the pet trade had increased to 878,882 individuals¹³². These imports further support the view that Hong Kong is a significant animal trading port.

Currently, wild animals in the exotic pet trade can be legally imported into Hong Kong by obtaining various permits and certificates from AFCD, which is a primarily public health requirement to ensure that diseased animals are not knowingly imported¹³³. CITES-listed animals require an additional valid CITES export permit from the CITES Management Authority of the place of export¹³⁴. There is significant concern about the scale of legal import

alone and that once having arrived in Hong Kong, these hundreds of thousands of animals cannot be easily traced. Only the possession of live CITES I and CITES II listed animals of wild origin require a License to Possess from AFCD, leaving large numbers of supposedly captive bred CITES species imported largely unaccounted for. With the exception of AFCD data to the BSAP Terrestrial Working Group in 2014, there is little publicly available information on how many imported animals remain in Hong Kong and how many have been re-exported to mainland China or the region¹³⁵. AFCD annual reports on endangered species control include only the number of licenses and certificates issued, the number of enforcement and inspection actions, but not the actual volume of animals imported and exported. Importers have been known to split the shipment between different traders or private individuals at the airport for distribution, making provenance even harder to verify later on¹³⁶.

With the exception of mammals, the collection and interpretation of data on import / export of wild animals used in the exotic trade is further complicated by the fact that general import or export permits are not required for shipments to and from mainland China¹³⁷.

The choice of species that are permitted for import is also of great concern. Many commonly imported species listed in the Annex of AFCD's Information Note to the BSAP Terrestrial Biodiversity Working Group¹³⁸, are unsuitable as pets. The keeping of exotic and wild animals as pets is highly problematic and many veterinary and animal welfare organisations such as the RSPCA, ASPCA, British Veterinary

Association and British Zoological Society¹³⁹ have concerns over the welfare of such pet animals. The Euro Group for Animals, a body of European animal welfare organisations that provides advice and technical expertise to the European Commission on animal welfare issues states that "Our primary concern is animal welfare, as exotic pets have complex needs making it difficult, if not impossible, for the average owner to provide specialized care, diet and housing to meet their needs"¹⁴⁰.

Large quantities of unsuitable species are currently being imported into Hong Kong. Two such examples are CITES II listed Green Iguanas (*Iguana iguana*) and CITES III listed Alligator Snapping turtles (*Macrochelys temminckii*). The Alligator Snapping Turtle and the Green Iguana are listed by AFCD as majority species of the 300,000 turtles and over 40,000 endangered lizards imported into Hong Kong in 2012 alone. These species have already been discovered in the Hong Kong countryside^{141,142}. This is problematic for the individual animals' welfare and is also a concern if the species is able to adapt to Hong Kong and become invasive. Such abandoned pets are also difficult to rehome due to their specialised requirements. Most that are found are euthanized by the AFCD. Given that there are no licensing requirements for the possession of non-CITES exotic animals and possession of CITES listed animals is almost impossible to enforce, it is unclear what happens to the hundreds of thousands of exotic animals imported into Hong Kong every year.

Permitting the legal import of wildlife for pets presents ample opportunity for laundering endangered species. The

vast variety of species, as well as the volume and size of shipments make verification difficult, especially for staff with limited specialized training. In Europe, governments are moving to limit the import of exotic pets due to concerns for public health, animal welfare and biodiversity. Countries such as the Netherlands¹⁴³ and Belgium¹⁴⁴ have introduced a 'Positive List', where animals not listed may not be kept or kept only with a special permit and thus have narrowed the burden of regulation and animal management.

For some critically endangered species, individual seizures in Hong Kong have presented a significant impact on the global wild populations of the species. Between February 2009 and June 2014, 41 Ploughshare Tortoises (*Astrochelys yniphora*) believed to be the world's rarest species of tortoise, were seized in Hong Kong¹⁴⁵. With population estimates suggesting only 200 adult individuals exist in the wild, the seized 41 animals could represent 20 percent of the surviving global population¹⁴⁶. Whilst this represents the extreme, the nature of the illegal exotic pet trade is such that it targets the rarest species. Records of seizures in Hong Kong^{147,148} demonstrate its central role as a hub in the global movement of rare and endangered species for trade.

Though biodiversity is important, the welfare of individual animals should not be overlooked. The trade in exotic pets kills millions of animals each year at every stage of the trade, from capture, breeding and transport to the point of sale¹⁴⁹. High mortality rates are common¹⁵⁰ and the industry is dependent on mass sales and turnover. Investigation of a

major international wildlife wholesaler in Texas found that 80% of the 26,400 animals from 171 species were found to be grossly sick, injured or dead¹⁵¹. Those animals that do survive live a fraction of their natural lifespan with their eventual owners. Multiple studies¹⁵² have found that exotic pets are often purchased by inexperienced owners and often suffer and die in captivity.

- (f) **Rhino horn:** Rhinos were among the first animal species to be added to the CITES Appendices when the Convention came into force in 1975¹⁵³. The Sumatran, Javan, Indian, northern and southern white and black rhinos are all listed on Appendix I, thus prohibiting international commercial trade. Rhino horns are a status symbol among wealthy Asian businessmen, particularly Vietnamese¹⁵⁴. They are used in traditional medicines and as dagger handles. As the demand for these has increased, so has the unsustainable exploitation of the rhino, leading to their current endangered status¹⁵⁵.

At the turn of the century there were approximately 500,000 rhinos across Africa and Asia. However, today the Javan and Sumatran rhinos are extremely close to extinction, and northern white is extinct in the wild with just three left in captivity in Kenya^{156,157}. Population figures for the southern white and black rhino are extremely low with the population of southern white rhino estimated at just 18,800 in South Africa in 2012 and as of 2010 just 4880 black rhinos in Africa as a whole, 40% of which were in South Africa¹⁵⁸. Poaching rates which feed the international trade in rhino horn have reached unprecedented levels amounting

to over 1000 animals annually for the past two years in South Africa alone¹⁵⁹, increasing the likelihood of extinction in the wild within the foreseeable future, if the trade is not stopped.

In recent years, large consignments of rhino horn have been seized globally, with South Africa and China topping the list. Several seizures of rhino horn have occurred in Hong Kong and as of 2014 it ranked fourth in number of seizures in Asia, after China, Vietnam and Thailand¹⁶⁰. In recent months^{161,162}, seizures have ranged from about 6kg to 11kg, and with a market value of USD65,000 per kilogram, these are lucrative consignments¹⁶³. Until May 2015, Hong Kong was the site of the largest recorded seizure of 33 horns in November 2011¹⁶⁴. Thus Hong Kong continues to play a key role as a transit hub for rhino horn destined for China and Vietnam.

- (g) **Manta and mobula rays:** Both species are classified as Vulnerable by IUCN and both are subject to significantly declining populations. Some populations have declined by as much as 95% in recent years¹⁶⁶. The species are particularly vulnerable to overfishing due to late sexual maturity and relatively low fertility¹⁶⁷ and thus cannot sustain even modest fishing levels, yet the trade in these creatures is substantial. In 2014 manta rays were listed on Appendix II of CITES.

Hong Kong is a significant hub for the manta gill plate trade in Asia¹⁶⁸. From a 2011 survey, it was estimated that the annual gill plate (both manta and mobula) sales in Hong Kong amounted to 125kg, with manta gills making up 90kg (72%)¹⁶⁹. But, according to a survey in

December 2015, 5-6 tonnes of gill plates were estimated as being distributed in Hong Kong annually¹⁷⁰. If the percentage of manta is still the same as in 2011, the 2015 estimate for Hong Kong would be 3.6 to 4.3 tonnes of manta gills. This would mean the Hong Kong market for manta ray gill plates is now 16 times what it was in 2011.

By contrast, in Guangzhou, the centre for the trade in China, sales are smaller and declining. A survey in December 2015 showed a total stock estimate at around 2.76 tonnes of mobulid gill plates, with manta gills making up 900kg (32%)¹⁷¹. As the stock estimate for 2015 is about half the 2011 assessment, a conservative estimate would put sales in Guangzhou down to less than 12 tonnes (23.8 tonnes in 2011).

Using the estimate of 12 tonnes of manta gills for 2015 Guangzhou sales, the Hong Kong market is now one third of China's sales and 25% of the estimated global market.

Based on this data, one can argue that Hong Kong is a substantial part of the global manta gill plate market. The increase in sales in Hong Kong could be attributed to lack of enforcement of CITES regulations.

- (h) **Timber:** Hong Kong is a transshipment hub for both the legal and illegal timber trade, particularly high-value, tropical species such as rosewood¹⁷². Many of the raw logs traded through Hong Kong are redirected from there to processing factories in mainland China. The market value of the city's timber trade in 2013 was roughly HK\$3.4 billion¹⁷³.

The volume of Hong Kong's timber trade has remained relatively constant over the past decade and statistics show that just less than half of timber imports are re-exported¹⁷⁴, although such high rates of local consumption seem unlikely as Hong Kong no longer has a timber processing industry. Local retailers tend to import finished wood products processed in mainland China and elsewhere. Thus, it is possible imported timber is being re-exported but not officially declared¹⁷⁵. It is estimated that between 20 and 30 percent of the RWE (roundwood equivalent) volume of wood-based products that entered end-use in Hong Kong during 2007 as an example might have been comprised of illegal timber¹⁷⁶. The city's proximity to Shenzhen and Guangzhou, both major processing hubs for tropical hardwood species, might explain the amount of illegally sourced timber entering Hong Kong. Tropical hardwoods such as ebony, mahogany and rosewood are often made into high-end furniture and flooring. They are profitable but increasingly scarce globally. High prices and shrinking supply make the trade attractive to smugglers.

As is the case in mainland China, if a species is not listed in CITES Appendices, no laws exist to empower Hong Kong enforcement officials to seize timber harvested or traded in violation of the law. Consequently, laws prohibiting illegal wood are needed, such as those passed in the EU, U.S., and in Australia, in order to demonstrate Hong Kong's global leadership, while significantly catalyzing momentum for similar laws in mainland China.

Among publicized seizures detailed in the World Customs Organization Illicit Trade Report, 2014, Hong Kong Customs detected the sea-bound smuggling of wood logs in four containers at the Kwai Chung Customhouse Cargo Examination Compound. They seized 92,000kg of wood logs of an endangered species commonly known as Honduras rosewood that was valued at approximately USD3 million. This was their largest case of wood logs smuggling in the last decade¹⁷⁷.

Hong Kong Customs also seized 579kg of smuggled agar wood in April 2014, valued at USD0.76 million. The wood was mix-loaded with general cargo onboard a fishing vessel. Finally, in October 2014, Indian Customs relayed intelligence to Hong Kong Customs involving a transshipment container suspected to be loaded with red sandalwood destined for Hong Kong via Port Klang, Malaysia. Customs detained the container immediately upon arrival and 18,000kg of red sandalwood was seized¹⁷⁹.

- (i) **Poaching and the likelihood of laundering of native Hong Kong species** is a concern to conservation professionals. Hong Kong is home to some unique and or critically endangered native species such as the Big Headed Turtle (*Platysternon megacephalum*), Golden Coin Turtle (*Cuora trifasciata*), Chinese Pangolin (*Manis pentadactyla*) and Yellow-Crested Cockatoo (*Cacatua sulphurea*), and threatened species such as the Hong Kong Newt (*Paramesotriton hongkongensis*) and agar tree (*Aquilaria sinensis*). These are examples of wildlife that have been under poaching pressure locally and should be afforded protection from laundering into the legal international trade.

The agar tree provides a good example of a worsening situation. More than 15 species under the genus *Aquilaria* naturally occur in the tropical forests across South East Asia¹⁸⁰. This genus is best known for producing resin suffused agarwood, used for perfume, incense, medicines and ornaments. *Aquilaria sinensis* is the only *Aquilaria* species found in Hong Kong and South China (but all are listed in CITES Appendix II)¹⁸¹. The resin has become extremely expensive as sources have dried up in Guangdong and Guangxi; consumer demand has remained high¹⁸². Poachers in Hong Kong fell *Aquilaria* trees indiscriminately including in the protected country parks, in search of the agar wood¹⁸³. Cases have increased exponentially in the past few years: from 15 records in 2009 to 134 records in 2014. Some areas such as Pak Kong Au, Sai Kung have lost a significant number of *Aquilaria* trees¹⁸⁵.

Current legislation and implementation mechanisms used by the Hong Kong authorities to enforce CITES regulations leave pathways open that can allow for laundering of local wildlife, including wild caught and threatened specimens, into trade. A key issue is keeping track of wildlife. Identification and traceability mechanisms are needed, for example some form of unique ID should be required when permitting sale, import, or possession of CITES listed species (this is already in place for some species). This could be extended to those native species protected under Cap 170 Wild Animals Protection Ordinance. The United States has several examples where state residents are simply banned from ownership of live specimens of native wildlife¹⁸⁶. This ensures clear and

simple enforcement steps can be taken and native wildlife is afforded a high level of protection from harvest and laundering. Across the E.U., under Regulation (EC) No 338/97, a wide range of live commercially traded CITES species are required to carry a permanent unique individual marking often in the form of a microchip implant, but this is dependent upon species^{187,188}. Microchips, shell notching, tattoos and DNA are all possible ways of identifying animals^{189,190}. There may be no single solution, but as Hong Kong is dealing with a multibillion dollar illegal trade effective action is needed.

The legal wildlife trade

Threatened species in trade

Hong Kong has enacted the Protection of Endangered Species of Animals and Plants Ordinance (Cap 586) to give effect to CITES, which relates to controls on international trade. Obligations to control the trade are thus limited to the species listed in the Ordinance. From 2010 to 2013 over 570 different CITES listed species were imported into Hong Kong¹⁹¹. Those species protected under the Ordinance represent a small percentage of the threatened animals commonly imported into the city for local trade, transshipped or re-exported to other destinations in Asia. Currently Hong Kong has no legislation specifically aimed at controlling the import of threatened animals not listed within CITES, many of which are illegally or unsustainably sourced in their country of origin. Moreover, as noted above, Hong Kong also has no legislation to protect sharks or any other marine fishes or invertebrate species in its waters¹⁹².

One example is the trade in sharks and rays. In September 2014, five species of endangered shark were added to Appendix II of CITES, bringing the number of species afforded some trade protection to eight. These cartilaginous fishes (Chondrichthyes) are under intense pressure, with declines recorded for most populations where data exists, such that annual mortality is estimated in the range of 63-273 million per year¹⁹³. Of the 465 known shark species, only 25% are considered to be of least concern according to the IUCN Red List, meaning that 141 are threatened or near threatened and 45% are data deficient¹⁹⁴. Declines have been noted for Hong Kong and adjacent waters¹⁹⁵. The shark fin trade is a driver of declining populations and for the last 15 years Hong Kong has been responsible for about 50% of the world's shark fin imports¹⁹⁶. According to Hong Kong customs data¹⁹⁷, until the mid-2000s a third to three quarters of these imports were re-exported, primarily to China. However, in recent years, the data show that re-exports to China have dropped dramatically (most recently just 1% of re-exports), and an increasing quantity of fins appear to be staying in Hong Kong. The major re-export destination is now Vietnam.

Historically, Hong Kong's shark fin market has relied largely on the taking of only 14 shark species, which are classified as vulnerable or near threatened by the IUCN Red List.

The role of CBD

With the extension of CBD to Hong Kong in 2011, there is an obligation on the part of the HKSAR Government to not only act to protect local biodiversity, but to also take steps to ensure its actions promote and contribute to the conservation of biodiversity internationally¹⁹⁸. Article 3 of the Convention

requires governments to ensure that activities within their jurisdiction or control do not cause damage to the environment outside of their national jurisdiction; this applies to issues such as sustainable harvesting at source. Article 10 of the Convention provides (in part) that:

“Each Contracting Party shall, as far as possible and as appropriate:

- (a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;*
- (b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity.”*

In addition, Aichi Biodiversity Target 12 is specifically relevant to wildlife trade stating that: *“by 2020, the extinction of known threatened species has been prevented and their conservation status, particularly of those most in decline, has been improved and sustained.”*

Adherence to the principles of the CBD requires Hong Kong, rather than just profiting from the lack of legislative controls on the harvesting of threatened species in developing countries, to take pro-active steps within its territorial limits to diminish the flow of vulnerable and threatened animals and reduce Hong Kong's large ecological footprint. It also calls for sufficient and appropriate legislation to protect local biodiversity and reduce impacts on biodiversity resulting from international trade. Hong Kong has a role to play by ensuring that its trade is responsible, legal and non-harmful.

Enforcement and prosecution

Hong Kong's CED is charged with the duty to prevent the smuggling of threatened species into Hong Kong. Where threatened species or their derivatives are shipped without the appropriate permits, cargo can be seized and confiscated. Over the past five years, the value of such seizures has been increasing, reaching more than HK\$110 million in 2013 and HK\$117 million by October 2015¹⁹⁹. Notably CED estimates that only 10% of illegal goods are successfully seized²⁰⁰. While AFCD is in charge of inspecting and monitoring wildlife products in the local market, without effective collaboration between AFCD and CED, goods that have evaded customs controls on their way into Hong Kong are unlikely to be discovered on their way out, when there is no obligation to check them.

AFCD is charged with a duty to check that the country of origin export permits are compliant with local licensing requirements under Cap 586²⁰¹. Where permits are found to be irregular (e.g. the wrong species is listed), the Department can refuse to issue requisite import or possession licenses²⁰² and may seize animals (parts or products) that contravene CITES restrictions. Notably, import permits to meet the requirement of CITES (under Cap 586) are issued by AFCD only for i) Appendix I listed species and ii) Appendix II listed species that are live animals or plants of wild origin, and thus are not required for wildlife products such as shark fin²⁰³. Appendix I captive bred animals and artificially propagated plants are treated as Appendix II specimens²⁰⁴.

In practice, imports are accepted and where required, import permits for Hong Kong and export permits to the rest of the region are usually issued by AFCD without investigation

of the validity of the CITES exports permits that support entry to Hong Kong²⁰⁵ (see Appendix B for examples). While it may be impractical for AFCD to contact corresponding national CITES authorities for every shipment, these export permits are accepted by AFCD at face value, even where animals are being sourced from countries known to have a high occurrence of illegal trade and unsustainable harvesting. If the HKSAR Government is to ensure that it is not complicit in the laundering of CITES Appendix II and III listed animals by approving import permits on face value without investigation of whether the animals have been sustainably harvested, the current protocols for issuing import licenses should be reviewed²⁰⁶.

Such practices contravene the rules and spirit of CITES which require that trade in Appendix II listed species should only be permitted where there is no detrimental effect to the survival of the species and Appendix III listed species must have been legally harvested to be legally traded²⁰⁷. Parties are also expected to remain in communication regarding trade in listed species.

Improving legislation and practices to control the trade in threatened species will not assist in meeting the problems highlighted in this paper unless such improvements are supported by effective enforcement, prosecutions and sufficient penalties. Low inspection²⁰⁸ rates for sea vessels, reporting exemptions that appear to be outdated, lax controls on locally registered fishing boats that are functionally cargo vessels (not fishing vessels), ready provision of permits for import and export of CITES listed species, and Hong Kong's generally open attitude to commerce have all contributed to making Hong Kong an epicentre for trade in threatened species²⁰⁹.

Also of great concern is the lack of deterrent sentencing meted out by the courts to those found to have smuggled threatened species into Hong Kong in contravention of the Protection of Endangered Species of Animals and Plants Ordinance, Cap 586. Cases are nearly always tried in the Magistracy as the maximum penalty under the Ordinance is within the courts' jurisdictional limit (2 years imprisonment).

The Court of Appeal has stated that the prime considerations in sentencing offenders for illegal exploitation of species, and having regard to the purpose of the ordinance implementing CITES, should be protection and deterrence²¹⁰. In reality however, most sentences for breaches of CITES imposed under Cap 586 are lenient. Imprisonment for trade in, as opposed to theft of, critically endangered species is rare. Even when gaol terms are imposed, sentences are short (see below). Given the extremely valuable nature of wildlife contraband, in some cases on a par with Class A drugs, lenient sentencing and penalties have encouraged the organised crime network that now dominates the trade. Consequently, fines are simply a business expense in a low risk, high profit industry. In addition, cases that should be considered as commercial crimes are not receiving the appropriate level of serious attention by the courts.

While the maximum fine is HK\$5,000,000 for offences proven to be for commercial purposes (as opposed to a level 6 fine of HK\$100,000 for non-commercial), in reality, case information available indicates that most fines are low.

The following cases provide representative examples of the problem. The market values of six highly sought after species are presented in Appendix C:

- HKSAR v Sameh and Abdelaziz (unreported) 15 March 2014: Two men convicted of illegally smuggling into Hong Kong 128 spider and radiated tortoises (both CITES Appendix I listed species), were fined HK\$45,000 and sentenced to two months imprisonment. The prison term was entirely suspended. The fine was considered by the magistrate to be appropriate despite the court being provided with information before sentencing that estimated the market value of the animals at over HK\$320,000. That estimate is considered conservative by local scientists who suggest a more realistic value of the animals would be HK\$760,000.
- HKSAR v Cheung Mo Tak HCMA 89/2012 (unreported) 8 June 2012: A woman who pleaded guilty to smuggling into Hong Kong two rhinoceros horns was sentenced to 2 months imprisonment. On appeal the court ruled this sentence adequate although the defendant had, by her own admission, trafficked rhinoceros horn before. Rhinoceros horn is known to have a value in the region of US\$65-70,000 per kilogram.
- HKSAR v Zhang (unreported) 15 June 2012: A Chinese national who pleaded guilty to smuggling 43 critically endangered Palawan forest turtles (a CITES Appendix II listed species) into Hong Kong from the Philippines was sentenced to 6 weeks imprisonment. The defendant had a prior conviction for smuggling endangered species into Hong Kong that was less than 4 months old. The conservative value of the consignment of 43 Palawan Forest Turtles is estimated to be HK\$40,000.

- 香港特別行政區 訴 曾偉強 HCMA 44/2009 (unreported) 25 June 2009: The defendant was sentenced to a fine of HK\$1,200 for possessing an Appendix I listed scarlet macaw. The estimated market value for the bird in Mainland China is HK\$10,000
- From January to October 2015 out of 97 cases, the Government secured convictions against 25 offenders for smuggling ivory. This amounted to 1,100kg of ivory tusk valued at HK\$11,000,000. The maximum penalty was six months and the minimum fine was HK\$30,000²¹¹.
- On 14 February 2014, 112 Radiated Tortoises and 10 Ploughshare Tortoises (IUCN Red List Critically Endangered) were smuggled into HK. The smuggler was sentenced to 6 weeks imprisonment for the Appendix I species and 4 weeks for the Appendix II species. The two sentences were served concurrently, which means 6 weeks in total. Estimated value of the consignment was HK\$1 million²¹².
- On 1 October 2014, Hong Kong Customs intercepted a man carrying 338 live Black Pond Turtles (a CITES I listed species) at the arrival hall at the Hong Kong International Airport. The animals were found in the man's luggage. The court imposed a sentence of imprisonment for three months²¹³. The estimated market value of the turtles was HK\$676,000.
- According to Hong Kong Customs, in the past five years (July 2010 to June 2015), there have been 89 cases related to seizure of pangolins. A total of about 7.2 tonnes (plus 358 heads) of carcasses and 12.4 tonnes of scales were seized from

these cases. The offenders were sentenced to imprisonment for 4 weeks to 4 months and a fine of HK\$500 to HK\$15,000²¹⁴.

A comparison with Australian and UK legislation shows that Hong Kong has vastly more lenient maximum sentences compared to those two jurisdictions. The relevant Australian legislation is Part 13A (International Movement of Wildlife Specimens) of the Environment Protection and Biodiversity Conservation Act and the relevant UK legislation is the Control of Trade in Endangered Species (Enforcement) Regulations 1997/1372. As noted, in Hong Kong, illegal import / export of Appendix I species for commercial purposes attracts a maximum of 2 years imprisonment. By contrast, in Australia, import / export of CITES species, whether Appendices I, II or III (not necessarily for commercial purposes) attracts a maximum of 10 years imprisonment. In the UK, such offences committed with commercial purpose attract a maximum of 7 years.

The leniency of the Hong Kong regime is also apparent in comparison with the CITES penalties imposed by EU member states. The full table of comparison is set out in Appendix D, but the following examples provide a useful illustration of the inadequacy of the maximum sentences that may be imposed by the Hong Kong courts:

1. Local legislation (section 10 of the Protection of Endangered Species of Animals and Plants Ordinance, Cap 586) provides for a 2 year maximum sentence for the import / export / possession / control of CITES Appendix I listed species for commercial purposes. Nineteen of the twenty eight EU states provide for a higher maximum penalty.

2. Local legislation (section 5-9 of the Protection of Endangered Species of Animals and Plants Ordinance, Cap 586) provides for a 1 year maximum sentence for the import / export / possession / control (for non-commercial purposes) of CITES Appendix I listed species. Twenty four of the twenty eight EU states provide for a higher maximum penalty.
3. Although section 2(3) of the Protection of Endangered Species of Animals and Plants Ordinance allows for a person who misrepresents himself as a trader in endangered species to be sentenced as if the specimen to be traded were in fact what it were purported by the trader to be, there are no written judgments reporting the use of this provision in Cap

586. A similar provision existed under the old legislation, the Animals and Plants (Protection of Endangered Species) Ordinance, Cap 187, the use of which was reported in the following cases:

- 香港特別行政區 訴 張虹霓 HCMA546/2000 (unreported) 2 February 2001. The defendant sold products claimed at the time of sale to contain material from Tibetan antelopes.
- R v Both Prime Co Ltd [1996] 1 HKC 641, R v Ki Chor On [1996] 4 HKC 361, and The Queen v Chong Ping Tung HCMA 1505/1996). Three cases in which Chinese medicine was sold under the claim that it contained endangered species.



COMBATTING WILDLIFE CRIME

Global and regional efforts

By its very nature, wildlife crime is organized crime and requires organized crime-fighting to solve cases and secure convictions. No agency can deal with this on its own; effective collaboration, cooperation and coordination are needed and every trading centre needs to play its part. Put simply, it takes a network to fight a network. Government departments in Hong Kong, such as the Police, AFCD, Justice Department and CED thus need to work closely to share information, resources, duties and expertise both locally and globally in order to tackle often complex wildlife crime. Without close and consistent cooperation between the relevant departments and the employment of expert investigative personnel, it will remain challenging to ensure regular convictions and in particular to convict the masterminds of the trade.

Since 2012, INTERPOL has been advocating and assisting in the development of National Environmental Security Task Forces (NESTS) as a means to combat environmental crime²¹⁵. NESTS are national multi-agency cooperatives formed from police, customs, environmental agencies, other specialized agencies, prosecutors, non-governmental organisations and intergovernmental partners. Since the launch of the NEST initiative, 13 countries have held targeted seminars on environmental

law enforcement on a global level²¹⁶. China is reportedly in the process of establishing a NEST²¹⁷.

In South East Asia, the Association of Southeast Asian Nations Wildlife Enforcement Network (ASEAN–WEN)²¹⁸ has been established as a wildlife enforcement network involving police, customs and environment agencies of all ten ASEAN countries. It provides a forum for the agencies to collaborate and co-ordinate and link with international agencies such as INTERPOL, CITES and the US Fish and Wildlife Service. Though how successful it is in combatting wildlife trade is unclear.

In recent years, many jurisdictions around the world have thus found it necessary and been motivated to develop crime units to combat organized crime including Thailand's Department of National Parks, Wildlife Forensics Crime Unit; and the Philippines Government's recently formed interagency body; the National Anti-Wildlife Crime Council (NAWCC). Cambodia's Wildlife Rapid Rescue Team is staffed by members of the Ministry of National Defense, while the Ministry of Agriculture, Forestry and Fisheries handles up to 90% of the country's wildlife investigations through referrals, its own network of informants and its national hotline.

The Indian Government formed a specialized enforcement unit called the Wildlife Crime Control Bureau which, in addition to disrupting criminal networks on a domestic level, provides training for the country's tiger range states. Indonesia's Wildlife Crimes Unit provides data and technical advice to law enforcement agencies to support the investigation and prosecution of wildlife crimes. In Malaysia, the Ministry of Natural Resources and Environment coordinates a taskforce composed of various ministries. In Vietnam ENV (Education for Nature Vietnam) (an NGO) has a crime unit that uses social media and a large informant network to report crime. In terms of police forces, both Thailand and Vietnam have specialized departments for environmental crimes. Laos and Myanmar also have specialized units, but these are very new²¹⁹.

In China, the National Inter-Agencies CITES Enforcement Coordination Group (NICECG) was established in December 2011 to facilitate the collection and exchange of intelligence, enhance capacity building, and coordinate joint enforcement activities²¹⁷. NICECG comprises the State Forestry Administration, the Ministry of Public Security, the General Administration of Customs, the Ministry of Agriculture and the Administration of Industry and Commerce. The CITES Management Authority of China, hosted by the State Forestry Administration, is the coordinating body of NICECG. Provincial-level work is coordinated through PICECG networks (Provincial Inter-Agencies CITES Enforcement Coordination Group).

HKSAR Government

Cross departmental collaborations and strategic planning to address wildlife crime in Hong Kong remains unclear and deficient, despite the Government having various advisory and liaison groups in place. Meetings may be infrequent, lacking in representation by official members of key departments, seemingly have under representation of individuals with specific knowledge of the matters to be advised on or those committed to the intent of any relevant legislation. The following relevant groups/ committees are known to be in place:

The Endangered Species Advisory Committee (ESAC) is a statutory body that provides advice to AFCD on the administration of Cap 586. The Committee meets twice per year and official members include representatives from AFCD, Environmental Protection Department, CED, and currently 11 non-official members. It could be said on review of the information available on members, that this panel membership could be better balanced, since currently it appears to have more representation from sectors which have interests in the commercial use of species of animals and plants. It should also be pointed out that where the terms of reference are to advise the Director of AFCD upon any question which he may refer to it in connection with the administration of the Protection of Endangered Species of Animals and Plants Ordinance, Cap 586 legislation²²², a member with a background in law, preferably in a related field (such as environmental protection, conservation or animal welfare), would add value as there is no such member currently represented.

The Animal Welfare Advisory Group (AWAG)

provides advice to the Director of AFCD on matters concerning animal welfare. Current membership includes members of the veterinary profession, individuals working with animal welfare NGOs, users of animals (such as pet traders / breeders and medical researchers), individuals working with captive wild animals and involved with fauna conservation and protection, and members with a background in law²²³. Despite the linkages between the welfare of wild animals (captive bred, wild caught or killed for use) and their conservation and protection, there is no official member from Conservation or Fisheries included in the group, nor are their representatives at the meetings. In addition AWAG as a group provides under its terms of reference advice to AFCD. As such, engaging and advising other Departments or Bureaus (such as the Environment Bureau or CED) on animal welfare issues that they encounter or take action over during enforcement of legislation, is problematic.

In addition to the above mentioned advisory committees and liaison groups, under Conservation there are multiple working groups aiming to “better understand our natural assets and facilitate our nature conservation work”²²⁴. These include the Mammal Working Group, Freshwater Fish Working Group, Butterfly Working Group, Dragonfly Working Group, Coastal Community Working Group, Herpetofauna Working Group, Bird Working Group and Plant Working Group. It is however difficult to find information on these groups such as membership, meeting intervals, work undertaken / matters discussed / output. Currently it appears they may be working with in a limited remit and without input / members from outside Conservation as such the groups may be

somewhat disconnected and not best utilised. Output may not be maximized with the valuable information obtained by these groups that may be helpful to other groups or interested parties not being easily accessed and, where there is potential crossover in projects / actions with external parties opportunities may be lost

The Endangered Species Protection Liaison Group (ESPLG)

comprising officials from AFCD, CED and the Police Force, meet to discuss how to strengthen collaboration among their departments and provide advice on policies related to threatened species trade. The group meets once per year with the NGO community to provide an update on issues of concern.

Further, the following HKSAR Government initiatives are known to be in place or planned:

- **CITES training** - AFCD organise training related to the implementation of CITES from time to time. Initiated by the Pew Charitable Trust, AFCD and CED officers have been attending training on shark species identification following the listing of five additional species in Appendix II in 2014.
- **Ivory** - recent indications from the Government on tackling the illegal ivory trade include: licensed traders to display a notice issued by the AFCD and a poster instead of the license itself, labelling pre-convention ivory with holograms, strengthening monitoring of pre-ban worked ivory of a certain weight, stock checking all licensed premises, use of quarantine detector dogs, possible use of radio carbon dating, public awareness training²²⁵.
- **BSAP** - as part of the BSAP process, a large component of Hong Kong academics, experts and NGOs were consulted to inform

Hong Kong's BSAP. Wildlife trafficking and crime was a cause for concern by the several working groups involved and the following specific recommendation provided: Set up a wildlife crime unit / task force with tracking and investigative skills. Close interdepartmental collaboration, and working with Mainland/overseas police, Interpol and specialised NGOs, is needed, along with the use of the most sophisticated intelligence-gathering techniques such as DNA forensics.

- **Felling of agar trees** - Major activities carried out in co-operation with the Police include, gathering and exchange of intelligence, conducting joint operations at black spots, assisting the police in investigations into illegal tree felling cases and enhancing the awareness and vigilance of the public about such offences through the Police Magazine (警訊) television programme.
- **Hong Kong has gone beyond CITES requirements** - for example its introduction of the Possession license. This license is required to possess, for commercial purpose, all Appendix I species and Appendix II live animals or plants of wild origin and is issued for each keeping premises²²⁶. However, these licenses cannot be enforced because traders do not have to report sales against the permitted number. Hence a check of facilities cannot be checked against the original license. This would be the case, if a plant/animal is sold within a few weeks (e.g. live Napoleon fish), but the possession permit lasts for 5 years²²⁷. This huge time lag between stock inventories results in a high risk of illegal wildlife laundering. The existing paperwork can thus be used fraudulently for further imports. To believe that such manipulation

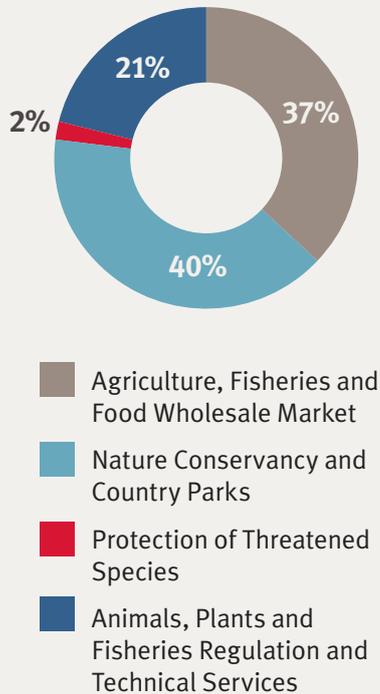
of the existing system does not occur is a naïve and incautious approach. As just one example, monthly sampling of retail outlets in Hong Kong suggest far more fish on sale than reflected by official CITES import records²²⁸. It should be noted, that on inspection it would be almost impossible even with advanced techniques (such as DNA testing) to distinguish any captive bred CITES animals from wild caught and all CITES animals should require licensing.

Resources and performance

AFCD is responsible for three programmes²²⁹. The key agency regarding the protection of threatened species and for implementing CITES falls under the Nature Conservation and Country Parks programme. The specific team that deals with CITES issues sits under the Conservation Branch and within the Endangered Species Protection Division. In the financial year of 2014-2015, the Department had a budget of HK\$1.395 billion²³⁰. Less than 2.5% of this (HK\$31.45 million) was allocated to threatened species protection, of which HK\$2.76 million was for a series of related education and publicity activities (Figure 3)²³¹. This compares to approximately HK\$25 million in the 2012-2013 financial year²³².

Whilst the total number of AFCD staff involved in the implementation of CITES in Hong Kong was 48 in 2014-15, it is understood that AFCD's Endangered Species Protection Division (ESPD) currently only has eight officers specifically charged with active enforcement duties²³³. Generally, insufficient allocation of resources (both to AFCD and CED) is considered a constraint in policing the illegal wildlife trade. Important tools such as forensics are infrequently employed.

FIGURE 3 Allocation of Resources



Agriculture, Fisheries and Conservation Department.
 Budget Estimate 2014-2015
 Source: ENBoo8 Controlling Officers Reply.
 Questions raised by Finance Committee member
<http://www.budget.gov.hk/2014/eng/pdf/heado22.pdf>

Based on departmental data as outlined above, cases involving endangered species have increased in number and value although the total cost of regulation enforcement and seizure is unclear. Nevertheless, overall prosecution rate appears to be low. On average, AFCD manages to successfully prosecute one of every three cases investigated (Appendix E). This is lower than Hong Kong’s 50% conviction rate at Magistrates Courts, whose low conviction rate was singled out this year as being cause for alarm^{234,235}.

While task forces exist within CED to deal with specific illegal trades indicating that capacity exists, the department has also faced criticism in relation to its performance indicators and long term strategy²³⁶. Enforcement agencies AFCD and CED only report output indicators such as number of cases and values of seizures; performance indicators that have been singled out by its own Auditor General for failing to inform stakeholders how efficiently and effectively enforcement is carried out²³⁷.

The overdependence on output-based indicators to justify resources and performance has been brought up in multiple audits of other AFCD and CED functions, such that indicators currently used are not useful in measuring effectiveness and in several reports, the Audit Commission also notes the lack of a general plan or strategy^{238, 239, 240, 241, 242, 243}. The Audit Commission similarly suggested in some reports²⁴⁴ that performance measures (covering performance indicators, targets and actual levels of attainment) be made public. It thus appears that the current quality of indicators needs to be challenged for both departments, something the Audit Commission has pointed out repeatedly.

Furthermore, there is still too much requirement under the present system of governance for Government departments to work on their own issues, where joint teams and networking could greatly benefit desired outcomes.



CONCLUSION

The statistics speak for themselves. Hong Kong is the busiest cargo airport, the third largest passenger airport and the fourth largest deep-water port in the world and it aims to be a hub and super-connector as part of mainland China's ambitious "One Belt One Road" initiative looking forward. It is also currently an important hub for both the legal and illegal wildlife trade in threatened species, a position that has not been acknowledged or adequately addressed by the HKSAR Government. This situation has been and continues to be facilitated by Hong Kong's close proximity to China which allows for quick and cost effective transportation to this destination. Also facilitating is Hong Kong's open port system which permits the vast majority of cargo landed or in transit through Hong Kong to go uninspected.

The issue of where the wildlife is sourced and traded has reached the attention of national governments, academics and NGOs worldwide. Widespread NGO campaigns and media coverage have consequently resulted in increasing public calls for governments including the HKSAR Government to act effectively to combat wildlife crime.

Despite being part of a multi-billion dollar organised industry that in some jurisdictions is treated much the same as arms and drug smuggling, wildlife crime in Hong Kong is

not regarded with sufficient priority by the enforcement authorities or with adequate seriousness by the judiciary as evidenced by lack of deterrent sentencing and imposition of low penalties. The problem is exacerbated by lack of awareness generally and lack of funding to AFCD and CED. It also does not appear to be equipped with the resources necessary to undertake major investigative and enforcement action against the growing trade.

Data availability and statistics are of concern (both accessibility and consistency), as are several identified loopholes in legislation that can facilitate the trafficking of plants and animals. The lack of an apparent strategy or effective performance indicators for the departments involved is also of concern and must be addressed, if the public is to have confidence that the Government is doing its utmost to combat wildlife crime.

We believe that, in contrast, Hong Kong could be a leader in combatting wildlife crime not just regionally, but globally. By not taking this opportunity, its reputation as Asia's World City will be at risk, particularly as it moves forward with ambitious plans to facilitate global trade with China.

The HKSAR Government is in a position to demonstrate to the local and international community and the criminal syndicates behind the multibillion dollar illegal wildlife trade,

CONCLUSION

that although Hong Kong is a free port, it has zero tolerance for wildlife crime. Furthermore, Hong Kong is in the process of preparing a Biodiversity Strategy and Action Plan in accordance with the requirements of CBD such that addressing the issues highlighted herein should be part of that strategy to ensure the relevant Aichi targets are met.

It is the intention of this position paper to urge the HKSAR Government to engage with relevant experts and civil society and allocate the necessary resources to AFCD and CED. This would ensure the problems we have highlighted can be adequately addressed. Our recommendations below are intended to represent best practice, address loopholes and reflect the increasing global concern relative to international wildlife crime.



POLICY CONSIDERATIONS AND RECOMMENDATIONS FOR GOVERNMENT

Wildlife crime is both organised and serious crime

Wildlife crime, such as illegal trade, is largely addressed in Hong Kong through Cap 60 enforced by CED and Cap 586, enforced by AFCD. Cap 60 contains loopholes that facilitate trafficking, specifically of marine species, and Cap 586 is focused on conservation and protection and is not necessarily equipped with the appropriate powers to deter offenders and combat transnational organized wildlife crime. Furthermore, it is only through engagement with highly trained ‘mainstream’ enforcement bodies and agencies that effective response

and combating may be achieved, both locally and between countries. No agency can deal with wildlife crime on its own. Effective deterrence requires collaboration, cooperation and coordination, nationally, regionally and globally.

As such wildlife crime should, where appropriate, be treated as both ‘organised’ crime and ‘serious’ crime (as defined by the UN Convention against Transnational Organised Crime²⁴⁵). It is proposed that:

The HKSAR Government recognizes and defines relevant wildlife crime offences such as wildlife trafficking, as both ‘serious’ and ‘organised’ crime, and deals with it as such

A mainstreaming process be instigated within the HKSAR Government (such as a task force) whereby all relevant departments work closely together in resolving problems where there clearly is overlap in resources, skills and jurisdictions

Efforts are made to raise the awareness of the judiciary and prosecution teams regarding the seriousness of wildlife crime

The HKSAR Government more actively participates in the global response to combatting wildlife crime

A comprehensive study be undertaken to determine the need for, extent and nature of legal reform. This would include reviewing import and export mechanisms to identify and address gaps and loopholes that can facilitate trafficking and undermine enforcement, as well as reviewing the sufficiency of penalties. It would further include assessing whether existing mechanisms adopted with the intention of regulating the wildlife trade are fit for purpose

Trade Regulation

Despite Government indications that it will introduce measures to address the illegal ivory trade, a disproportionate amount of resources will be required to facilitate compliance in relation to the relatively small group of traders. It is therefore proposed that:

The HKSAR Government introduces a ban on the trade in ivory, consisting of a full ban on the domestic trade, import and export, such that legal traders would be given a specified period to sell their remaining “licensed stockpiles” after which no further ivory trade will be allowed and remaining stock should be surrendered.

Better regulation to include due diligence on the source of wild animals and the collection of statistics including but not limited to both the import and export of wild animals alive or dead covering both captive bred and wild caught (including those crossing the boundary between Hong Kong and Mainland China)

All live CITES animals should require possession permits irrespective of their origins (these should be specific to individuals and have additional checks and balances attached)

The HKSAR Government support relevant efforts to list threatened species on CITES Appendices, such as proposed shark and pangolin listings at CITES CoP17 in 2016

Civil Society Liaison

Wildlife trafficking has expanded considerably since 2010 and so to have the civil society organisations working on varying aspects of the issue in Hong Kong. As a result, AFCD is on the front line with respect to engaging with and responding to increasing information and data requests by an expanding number of interested and concerned members of civil society. Specifically, the NGO community and wildlife experts are in a position to positively liaise with the Government, given their active investigative and intelligence gathering work, international connections, connections with the public and proximity to the ground. It is proposed that:

A framework for more active and regular engagement as regards civil society is established

The HKSAR Government educates and better communicates its overarching strategy to civil society as regards addressing wildlife crime

AFCD consider compiling data and statistics on wildlife crime that are consistent with customs data, with a view to establishing a Wildlife Crime Database and a protocol on the provision of data to interested parties. This would serve to reduce resources in responding individually to such parties and assist NGOs and experts working in the field and facilitate existing and future work with the government

Resources

Considering the scale of CITES listed species, volumes of wildlife trade through Hong Kong, increasing wildlife trafficking globally and the use of Hong Kong by trafficking syndicates,

AFCD requires significant resources. These should be put toward the licensing control of international trade in endangered species and curbing the illegal trade. It is proposed that:

The HKSAR Government review the allocation of resources to combatting wildlife crime with a view to allocating additional finances and manpower

Forensics

Genetic data are pivotal in species identification and in some cases permit the identification of specific populations from which an organism was obtained. Geochemical tools can also infer the origins of organisms, and provide vital age estimation for wildlife products. Forensics can thus be a powerful tool in investigating wildlife crime and trafficking. According to the Society for Wildlife Forensic Science, there are 52 associated laboratory members with only 3 listed in Asia²⁴⁶. The AFCD CITES Office is listed as a partner laboratory, however, to our knowledge there is no physical laboratory

operated by AFCD, and wildlife forensic investigations are generally contracted out through open-tendering to local academic institutions on an ad hoc basis. Indeed, the Hong Kong academic community already possesses expertise and maintains infrastructure in molecular biology and geochemistry and can therefore serve the Government on a contract basis. In this way, such a laboratory can function as a vehicle for basic research, but also support Government regulation and enforcement in cases of suspected wildlife trafficking or illegal trade. It is recommended that there is:

Investment in a consolidated Conservation Forensics Laboratory in Hong Kong that can:

- | | | |
|---|--|--|
| <p>1 incorporate advance the development of new forensic testing methods for animal and plant material</p> | <p>2 stimulate the output of basic research on traded species</p> | <p>3 provide rapid and comprehensive evidence for use in enforcing wildlife trade regulations</p> |
|---|--|--|

Such a laboratory would be a first for China and could provide a rapid response for Government enforcement.

APPENDICES

APPENDIX A:

Example of import numbers (for pet and food purposes) – birds, turtles, lizards and snakes in 2012

	Birds	Turtles		Lizards		Snake	
		Pet	Food	Pet	Food	Pet	Food
Number imported (head)	47,655	384,127	154.9t	61,153	6,100	23,102	31,050
Species	91	104	28	134	1	34	1
Endangered							
Endangered species number	55	37		43*		6*	
Endangered species per cent	60%	ND		32%		approx. 17%	
Actual numbers of endangered SP (head)	9,421	169,410		42,286		46,542	

ND - not determined as species for food purposes maybe included

* only 1 species for food purposes t = tonnes

Source: Biodiversity Strategy and Action Plan Terrestrial Biodiversity Working Group, Information Note 5-Wildlife Trade in Hong Kong; 2014, Hong Kong Government.

APPENDIX B:

Taking Export Permits On Face Value - Examples

- Where captive bred threatened species have been shipped out of countries such as Lebanon with ‘legal’ export permits care should be taken to examine the authenticity of the export permits claims. Lebanon, if taken just as an historic example, has exported captive bred species for which there is inadequate proof of breeding of the species in Country. Nevertheless, such consignments could still be imported into Hong Kong as there seems to be no mechanism (such as the US Lacey Act) to investigate and investigations would need to be carried out across international borders. Through face value acceptance of such export permits Hong Kong may be assisting the laundering of threatened species. This is highlighted in Traffic’s 2011 report (on page 20 paragraph 3): “Trade in Malagasy reptiles and amphibians in Thailand”. While there is much focus on exporting countries in implementing CITES, importing countries have a duty to investigate beyond the face value of a CITES export permit before acceptance.
- Enforcement of CITES for shark fins is challenging due to the volume of fins imported, the practice of mixing fins in bags and accurate visual identification. From 28th November to January 2015 shipments of 491kg of CITES II shark species (*Sphyrna lewinin* and *Sphyrna zygaena*) were allowed legitimately to enter Hong Kong²⁴⁷. The Hong Kong authorities based their acceptance of the shipment on the export permit provided by Costa Rica and evidentially did not undertake any verification with the exporting country that the export permit was either genuine or based on a scientifically assessed quota; as it turns out there was in fact no adequate non detriment finding (NDF)²⁴⁸. The development of scientifically robust NDFs and thus export quotas are the cornerstone to CITES being successful in regulating the trade in threatened species. Without this, the objectives of the Convention cannot be achieved. While it is recognized that such verification procedures are not a requirement of CITES, the Convention does provide authority for nations to go beyond their minimum obligations, and in the interests of ensuring the Convention’s effectiveness, many countries do so. Such countries include United States of America, Canada, Australia, United Arab Emirates, as well as the European Union.

APPENDIX C:

Market value of six highly sought after species in the pet trade

Scientific name (Common Name)	Price (HK\$)	CITES Appendix	IUCN Status
<i>Astrochelys radiata</i> (Radiated Tortoise)	6,000-8,000*	I	CR
<i>Astrochelys yniphora</i> (Ploughshare Tortoise)	20,000-40,000*	I	CR
<i>Ara macao</i> (Scarlet Macaw)	10,000-15,000	I	LC
<i>Geoclemys hamiltonii</i> (Black Pond Turtle)	3000-4000*	I	VU
<i>Siebenrockiella leytensis</i> (Palawan Forest Turtle)	1,000-3,000*	II	CR
<i>Pyxis arachnoides</i> (Spider Tortoise)	7,000-10,000*	I	CR

* Price for a hatchling or juvenile.

APPENDIX D:

Wildlife Crime Penalties

(i) Summary table of EU member states regarding enforcement of CITES¹

EU Member State	Max. prison sentence	Max. fines in HKD for private persons, rounded to the nearest HKD1000 (fine for legal entities)
Austria	2 years	15,779, 000 (180 daily units)
Belgium	5 years	2,630, 000
Bulgaria	5 years	88, 000
Croatia	5 years	115, 000 (1,153, 000)
Cyprus	3 years	15, 000
Czech Republic	8 years	515, 000
Denmark	1 year	Variable
Estonia	5 years	570, 000
France	7 years	1,315, 000
Finland	2 years	2, 000 day fines (7,451, 000)
Germany	5 years	15,779, 000(8,766, 000)
Greece	10 years	4,383, 000
Hungary	3 years	3, 000 (per specimen)
Ireland	2 years	877, 000
Italy	1 year	903, 000
Latvia	2 years	249, 000 (249,460, 000)
Lithuania	4 years	330, 000 (16,503, 000)
Luxemburg	6 months	219, 000
Malta	2 years	41, 000 (NOT SPECIFIED)
Netherlands	6 years	684, 000 (6,837,636)
Poland	5 years	1,534, 000 (10,958, 000)
Portugal	-	22, 000 (262, 000)
Romania	3 years	31, 000 (209, 000)
Slovakia	8 years	2,910, 000 (873, 000)
Slovenia	3 years	183, 000 (1,096, 000)
Spain	5 years	Unlimited
Sweden	4 years	Variable (8,766, 000)
UK	7 years ²	Unlimited

(ii) Summary table of other countries regarding enforcement of CITES

Country	Max. prison sentence	Max. fines
Australia ³	10 years	HK\$624,800
Canada ⁴	5 years	Min. HK\$87,100; max. HK\$5,806,713 2nd offence: min. HK\$174,201; max. HK\$11,613,427
India ⁵	7 years (min. 3 years)	HK\$2,908 Tiger offence: min. HK\$5,816; max. HK\$232,645 2nd offence: min. HK\$58,161; max. HK\$581,613
Indonesia ⁶	5 years	HK\$56,209
Kenya ⁷	Minimum of KES20 million fine, HK\$1,518,073 or life imprisonment. To show resolve against the trafficker and poachers, legislative proposals are currently under way in Kenya to increase the penalty to KES100 million, or HK\$ 7,590,366	
New Zealand ⁸	5 years	HK\$1,547,762
USA (Lacey Act ⁹)	Civil: 1 year Criminal: 5 years	Civil HK\$77,500 Criminal: HK\$1,937,500 (individual) HK\$3,875,000 (organisation)
USA (Endangered Species Act ¹⁰)	1 year	Civil HK\$ 193,750 Criminal :HK\$775,000 (individual) Criminal : HK\$1,550,000 (organisation)
South Africa ¹¹	1st offence: 5 years 2nd offence+: 10 years	1st offence: HK\$2,684,497 2nd offence: HK\$5,368,993
Japan ¹²	5 years	HK\$314,919

Note: Exchange rate US\$1 = 7.75HK\$; 1 Kenyan shilling = 0.08HK\$; 1 Australian\$ = \$5.68HK\$; 1 Canadian\$ = \$5.68HK\$; 1 South African Rand = 0.54HK\$; 1 Japanese Yen = 0.06HK\$; 1 Indian Rupee = 0.12HK\$; 1 Indonesian Rupiah = 0.00056HK\$; 1 New Zealand \$ = 5.16HK\$

**APPENDIX E:
Prosecutions**

AFCD*	2011*	2012*	2013*	Up to June 2014*	2015 Jan to Oct**
No. of cases	348	356	596	462	347
No. of prosecutions	117	135	161	122	n/a
No. of convictions	113	125	158	130	123
Maximum penalty	Prison 6 months	Prison 8 months	Prison 4 months	Prison 10 months	Prison 6 months
Minimum penalty	Fine \$100	Fine \$100	Fine \$100	Fine \$100	Fine \$100

* Source: AFCD Response to information request: Application No. ATI 11/2015 in AF GR 1-125/9/1

** LC21 Protection of Endangered Species of animals and plants, Nov 25 2015

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192. Technically marine fish are not considered to be animals according to CAP170 'wild animal' (野生動物) means any animal, other than those classed at common law as domestic (including those so classed which have gone astray or have been abandoned). (Replaced 77 of 1996 s. 2) 'animal' (動物) means any form of animal life other than fish and marine invertebrates; (Amended 58 of 1980 s. 2)
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"Mr. Wong (Intelligence Coordination Division of Hong Kong Customs) shared that Hong Kong, China is one of the busiest ports in the world and a logistics center in Southeast Asia, with a huge volume of cargo and passengers regularly passing through the port as a result of the rapid economic growth of the PRC. At the time of the symposium, customs officers could inspect less than 1% of all incoming cargo and detect only one out of ten illegal wildlife shipments." (p59)
201. http://www.afcd.gov.hk/english/conservation/con_end/con_end_reg/con_end_reg_ord/con_end_reg_ord.html

202. License/permits associated with the implementation of CAP586:

	License permit requirements
Appendix I species:	A valid CITES export permit from the place of previous export License to Import issued by AFCD Possession License issued by AFCD
Appendix II species:	License to Import issued by AFCD <u>only</u> for live animals or plants of wild origin, subject to the production of a valid CITES export permit from the place of previous export. <u>Only</u> for live animals or plants of wild origin a possession License issued by AFCD No license is required for possession of a live animal or plant of Appendix II species of non-wild origin if it can be proved by documentary evidence of its non-wild origin.
Appendix III species	The License to Import is not required subject to the production of a valid CITES export permit
Appendix I animals bred in captivity for commercial purposes from CITES registered farms and Appendix I plants artificially propagated for commercial purposes	Treated as Appendix II specimens and therefore subject to the same control as Appendix II specimens.

Source: AFCD Licensing and Inspection Requirements
https://www.afcd.gov.hk/english/conservation/con_end/con_end_reg/con_end_reg_lic/con_end_reg_lic.html;and
https://www.afcd.gov.hk/english/conservation/con_end/con_end_lc/con_end_lc_guide/files/Import_Cap586e.pdf

203. *ibid*

204. A specimen of an Appendix I species shall be treated as a specimen of an Appendix II species if the animal is bred in captivity for commercial purposes by a CITES-registered captive-breeding operation or the plant is artificially propagated for commercial purposes. A licence is required for the import or possession of the aforesaid specimen.

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221. The current membership can be viewed at: https://www.afcd.gov.hk/textonly/english/aboutus/abt_adv/abt_adv_c.html
222. https://www.afcd.gov.hk/textonly/english/aboutus/abt_adv/abt_adv_c.html
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224. <https://www.afcd.gov.hk/english/conservation/hkbiodiversity/aboutus/aboutus.html>
225. AFCD Pers. comm. Asst Dir (Conservation) (Ag.) September 2015

226. Endangered Species Advisory Committee Background of Non-official Members
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227. "Each License to Import /Introduce from the Sea /Export /Re-export or Re-export Certificate is issued for one shipment at one time and in one lot and is valid for 6 months, while each License to Possess is issued for each keeping premises and is valid for 5 years."
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229. (1) Agriculture, Fisheries and Fresh Food Wholesale Market; (2) Nature Conservation and Country Parks; (3) Animal, Plant and Fisheries Regulation and Technical Services
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234. <http://www.scmp.com/news/hong-kong/law-crime/article/1833802/low-conviction-rates-magistrates-courts-cause-alarm>
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239. http://www.aud.gov.hk/pdf_e/e57cho6.pdf
240. http://www.aud.gov.hk/pdf_e/e54cho4.pdf
241. http://www.aud.gov.hk/pdf_e/e48cho4.pdf
242. http://www.aud.gov.hk/pdf_e/e59cho6.pdf
243. http://www.aud.gov.hk/pdf_e/e52cho2.pdf
244. http://www.aud.gov.hk/pdf_e/e57cho6.pdf
245. Article 2 (a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit; (b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
246. <http://www.wildlifeforensicscience.org/mission/member-labs/>
247. AFCD Pers.comm.
248. <http://www.ticotimes.net/l/shark-fin-scandal-in-costa-rica-has-solis-administration-on-the-defensive>