

CARIBBEAN WILDLIFE LEGISLATIVE CHECKLIST



UNODC

United Nations Office on Drugs and Crime



CENTRE FOR BIOSECURITY STUDIES

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CONTENTS

CARIBBEAN WILDLIFE LEGISLATIVE CHECKLIST	3
WHAT IS THIS LEGISLATIVE CHECKLIST ABOUT?	4
KEY CONCERNS	4
WILDLIFE LEGISLATIVE CHECKLIST TOOL	5
EXPLANATORY NOTES	6
ADDITIONAL RESOURCES	12

Caribbean Wildlife Legislative Checklist

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Caribbean Wildlife Legislative Checklist

With the emerging importance of understanding and combatting wildlife crime (i.e. taking, trading (supplying, selling or trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild fauna and flora, in contravention of national or international law) to several global agencies and the potential global health and international trade impacts, it is imperative the Caribbean seeks to remedy the deficiency in its regulatory frameworks in a proactive manner. One step to make this a reality is to establish a checklist of various impactful legislative details to provide Caribbean Community (CARICOM) countries a means of self-assessment and a set of practical guidelines to address these crucial issues in preparation or revision of wildlife crime laws.

Why change Caribbean wildlife laws now?

The development of adequate regulatory frameworks on international trade in species of wild fauna and flora and on wildlife crime is highly necessary and timely for Caribbean countries to meet specific global standards. This framework is critical to aid Caribbean economic development through unencumbered trade and foreign direct investment (FDI), which is increasingly linked to anti-money laundering (AML) practices within a country. The recent European Union (EU) blacklisting of several Caribbean countries [following grey listing by the Financial Action Task Force (FATF)] has been disruptive to the global image of the region, access to global financial systems and investment opportunities for specific Caribbean countries. Caribbean countries also run the risk of similar measures by global regulatory bodies regarding the wildlife trade, including under the *Convention on International Trade*

in Endangered Species of Wild Fauna and Flora (CITES) which can potentially suspend international trade of fauna and flora [e.g. Queen conch (*Strombus gigas*)]. This can have a further damaging effect on the reputation and trade relationships of Caribbean states. The World Wildlife Fund (WWF)'s 2020 Living Planet Report estimates an average decline of 94% in population sizes of monitored species in the Caribbean & Latin America since the 1970s¹. One critical action is to reform the Caribbean regulatory framework to deter and halt this decline and the extended impacts of wildlife crimes.

Legislative drafting is often comprised fundamentally of two stages,

- a) policy development, and
- b) the preparation of the relevant legislative text to give effect to the policy.

This checklist seeks to address both of these stages, identifying key international obligations which must be factored into national policy as well as technical compliance requirements to be addressed in legislative text. The checklist draws on the experience garnered from the drafting of wildlife crime legislation in other regions, including East Africa and South-East Asia, facilitated through the kind assistance of the CITES Secretariat and the United Nations Office of Drugs & Crime (UNODC). The checklist is designed to provide a practical tool for all those responsible for drafting or revising legislation that protects wildlife from (use or) trade.

¹. Almond, R.E.A., Grooten, M. and Peterson, T., 2020. *Living Planet Report 2020-Bending the curve of biodiversity loss*. World Wildlife Fund.

What is this legislative checklist about?

This checklist is not exhaustive but provides key guidance to offer protection and regulation against wildlife crime. Key international agreements to which Caribbean countries are parties to in this context are CITES and the United Nations Convention Against Transnational Organised Crime (UNTOC). The checklist also seeks to address the protection of threatened or endangered species and regulation of activities that adversely affect species and their habitats (e.g. hunting) under Special Protected Areas and Wildlife (SPAW). SPAW is a regional agreement addressing the protection and sustainable use of terrestrial, coastal and marine biodiversity in the wider Caribbean region. CITES addresses the regulation of international trade in endangered species, while UNTOC requires signatories to enable provisions to adequately address different forms of organized crime, including key offences, investigative powers and international cooperation – essential to tackle those crimes that cross international borders.

Legislative guidance approved by the UNODC, and experience drawn from other jurisdictions, can provide a roadmap for Caribbean stakeholders engaged in the legal drafting process; thereby making the legislative frameworks in the region truly hostile to wildlife crime.

KEY CONCERNS

■ BIODIVERSITY DECLINE

Over-exploitation of wildlife populations from terrestrial, aquatic and marine habitats.

■ DISEASE TRANSMISSION

Threat of disease outbreaks, epidemics, and pandemics associated with IWT and wildlife crime due to potential zoonotic transmission of pathogens.

■ MONEY LAUNDERING

Threat of greylisting and blacklisting by the Financial Action Task Force (FATF) and European Commission (EC) due to deficient regulation provided by wildlife laws and the links to money laundering and illicit wildlife trade (IWT) and wildlife crime.

■ INTERNATIONAL TRADE SUSPENSIONS

Suspension of the international trade of wild flora and fauna due to deficient regulation provided by wildlife laws.

Caribbean Wildlife Legislative Checklist

- ☐ Definitions
- ☐ Jurisdictions
- ☐ Schedule/Scope
- ☐ Management of Trade in Wildlife
- ☐ Management of International Trade in Wildlife
- ☐ Regulation of Trade
- ☐ Investigation & Evidence
- ☐ Investigative Powers
- ☐ Evidence
- ☐ Offences
- ☐ Criminal Offences
- ☐ Human Wildlife Conflict
- ☐ Inchoate Offences
- ☐ Prosecution & Judicial Powers
- ☐ Prosecution Powers
- ☐ Sentencing
- ☐ International Cooperation
- ☐ MLA & Extradition
- ☐ Handling of Confiscated Specimens
- ☐ Management of Confiscated Specimens

EXPLANATORY NOTES



Definitions

For legislation to be effective, it is vital that jurisdiction, definitions and classifications or schedules are clear, consistent and comprehensive, to avoid confusion. Problems where definitions have been incomplete or inconsistent have stymied investigations and prosecutions in other jurisdictions. For example, in Kenya, an offence of 'logging' lacks the definition of that term. This has led to challenge by defence teams and a reluctance to charge by prosecutors in some instances. In Cambodia, an inconsistency in the classification of wildlife under different statutes means that export of a CITES Appendix I marine species might be met with 1 to 5 years imprisonment under one law (and investigative body), or an administrative fine only, under another. Criminals – and their defence teams – are able to exploit these gaps and inconsistencies. Comprehensive definitions are provided in **existing guides (see below)** produced by UNODC and CITES – these can be adapted according to national context but they do provide a helpful framework of what should be included.

KEY TERMS

- CITES
- SPAW
- UNTOC
- enforcement officer
- export
- import
- trophy
- introduction from the sea
- invasive alien species
- re-export
- bushmeat' or 'wild meat'
- species
- specimen
- hunting
- dealing
- possession
- problem animal
- dangerous animal
- protected area
- subsistence hunting
- trap
- organized criminal group
- person and trafficking
- permits/licenses/certificates
- management authority
- scientific authority
- transfer/transshipment
- wildlife
- biopiracy

Relevant Guides

UNODC <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/publications.html>

CITES <https://cites.org/sites/default/files/eng/prog/Legislation/ChecklistEN.pdf>

CITES <https://cites.org/eng/legislation>

EXPLANATORY NOTES



Jurisdictions

N.B. Provisions should ensure jurisdiction encompasses the whole territory (including territorial waters) and not be restricted to only protected areas. States should also consider that there are adequate provisions in domestic law to facilitate requesting or providing mutual legal assistance in IWT matters, including for prosecution, extradition and asset forfeiture

Also consider if a national coordinating body should be contained in the statute, to be established by the relevant Minister.



Schedules/Scope

Schedules identifying species of wildlife used in international trade should ideally include reference to the CITES Appendices AND provision for amendments to CITES to have automatic effect or to be adopted by Ministerial order to minimize delay. Such schedules should include plants within the definition of 'wildlife' to enable protection of all forms of threatened biodiversity.

Drafters should also ensure that all species in the Appendices are included, irrespective of their occurrence in the wild.

A Schedule on prohibited and regulated weapons, devices and methods for hunting is also recommended.

A Schedule identifying protected areas is essential – this will have a bearing on offence and sentencing provisions.



Management & Regulation of International Trade in Wildlife

Under CITES, the designation of bodies responsible for managing and regulating international trade is a State responsibility as a party to that Convention. The absence of authority to trade is often the basis of a criminal prosecution in cases of illegal wildlife trade and wildlife crime. Accordingly, it is advised that any legislation addresses this issue, either within or by reference to any existing regulation covering the same issue in order to 'import' those provisions for effective implementation in the context of violations.

Designations of CITES Management and CITES Scientific Authorities

Responsibilities of the designated CITES authorities.

Conditions for authorizing export, import, re-export or introduction from the sea of specimens of species included in Appendix I, II or III.

Provide for exemptions and special provisions.

EXPLANATORY NOTES



Investigation & Evidence

As indicated above, the mandate or jurisdiction of investigative bodies within multiple agencies must be made clear at the outset. Whatever division of competencies a State adopts, the State must ensure that each agency has the powers of prevention, detection and investigation expressly articulated in the legislation. This is to ensure not only effective coordination and implementation between agencies but also to ensure the legality and admissibility of any evidence obtained for the purposes of prosecution. Enabling the use of digital technology such as digital photography and video interviews - and copies of the same - should be included to reflect modern investigative techniques, minimize unnecessary costs and ensure admissibility at trial.

- Crime scene management (some countries require CSOs to be 'gazetted')
- Carry and use of firearms
- Issue of summons to attend court
- To 'investigate' any offence where there is a nexus to an offence committed under this Act.
- Request access to financial and other records
- Specialized investigative techniques including controlled delivery, covert surveillance and undercover investigations
- Suspend, vary or revoke relevant permits or certificates
- Disqualification of suspected offenders from holding relevant permits or certificates
- Exchange of information with foreign law enforcement agencies
- Coordinate joint investigations with national and foreign law enforcement agencies
- Consider extending money laundering legislation to include officers from the wildlife agencies so as to enable them to utilize ancillary powers under that law.
- Civil asset forfeiture/confiscation of the profits from and or instrumentalities of illegal wildlife trade – include lifestyle assumptions, unexplained wealth and reference procedures under wildlife and anti-money laundering laws.
- Consider wildlife cybercrime and digital crime regarding the sale and distribution of illegal wildlife species or their wildlife derivatives using relevant social media platforms, search engines and e-commerce platforms as in accordance with CITES 17.93.
- Consider provision for establishment of links to public health and endangerment of the public (public health legislation in country and possible additional charges)



Investigative Powers

INVESTIGATIVE POWERS of "ENFORCEMENT OFFICERS".

Must include but is not limited to:

- Stop and search
- Search and seizure
- Ancillary powers to include: forfeiture/confiscation of goods and equipment, disqualification, enquiry into profits from illegal trade – include lifestyle assumptions and reference procedures under anti-money laundering laws.
- Detention and interview (ideally this should not be left to police; might require delegated powers or 'special constable' status or equivalent)
- Inspection and production of documents
- Crime scene photography and audio recordings of interviews or exhibits seized

EXPLANATORY NOTES



Evidence

EVIDENCE might include:

- Digital evidence (including social media, and online evidence e.g. online advertisements for illegally traded wildlife) – admissibility – can link to investigative powers.
- Destruction of degradable exhibits prior to trial.
- Valuation of trophies with reference to expert wildlife officers.



Offences

Criminal offences generally comprise two components – the physical act (known as the 'actus reus') and the mental element (the 'mens rea'). The degree of mental element will differ as to whether the criminality is determined by intention, recklessness or knowledge (which may be imputed). Some offences may be established without any mental element required – these are known as 'strict liability'. It is vital that the offences provided for in a statute carefully articulate the requirements for proof of both the physical act and the mental state of the defendant. This will enable investigators and prosecutors to make key decisions at an early stage in terms of investigative routes, timing and selection of charges and how the case should be presented at trial.

The offences applicable in the context of wildlife crime are wide and can encompass money laundering, corruption, immigration violations and more. They also should address criminality that might arise in the context of human-wildlife conflict, fraud (in relation to

permits) and corporate liability. Any legislation drafted to address this criminality should be holistic in order to give investigators, prosecutors and judges a wide scope of powers to address the criminality involved whilst also protecting the rights of the accused.

Offences in protected areas can include any of the above, as well as offences such as residence, entry, causing fire, pollution, extractive activities, cultivation of land, illegal logging.

CRIMINAL OFFENCES to include but not limited to:

Offences relating to scheduled species with variation of sentence according to the protection applicable, AND whether the species is live, dead or a trophy; offences relating to unauthorized hunting/capture/killing; trading, dealing (to include possession with intent to supply in the definitions above), possession, import, export, re-export, introduction from the sea, transit, purchase, advertising (which can include failure of internet service provider (ISP) to take reasonable steps to prevent sale/advertising).

Offences relating to non-protected species – to mirror the above but with lesser penalties.

Offences relating to prohibited methods of hunting: reference the Schedules above; also include additional offence of poisoning or discharging a hazardous substance with intent to hunt/capture/kill.

Miscellaneous offences: to include forgery/alteration of permits, biopiracy, etc.

EXPLANATORY NOTES



Offences

Corporate liability providing for directors, partners and absence of due diligence and/or reasonable knowledge or suspicion.



Human Wildlife Conflict

Killing of a problem animal – shift burden of proof to the accused person.

Killing of a dangerous animal – shift burden of proof to the accused person.

An offence relating to either of the above will relate to the failing to report such a killing or injury.



Inchoate Offences

Conspiracy, aiding and abetting etc. should be expressly included in one 'catch-all' provision.



Prosecution & Judicial Powers

Prosecution authorities and judicial authorities will derive their mandate from existing Constitutional provisions and/or enabling legislation. However, as awareness of new crimes emerge as in the case of international wildlife trafficking and its impact upon economies, public health and biodiversity, legislation too must adapt and enable new powers to emerge in order to tackle these issues.

The role of the prosecutor does not stop at the conclusion of a trial – there may be a role to play post-conviction as in the case of overly lenient sentences imposed by a court. In this way, the prosecutor will continue to serve the public interest by ensuring proportionate and consistent sentencing is imposed; and for the judiciary, ancillary powers in relation to compensation, deportation and more, should be expressly provided for. A proportionate and consistent approach to sentencing is essential to avoid 'forum shopping' by defendants and to ensure a consistent deterrent message is given to the public. The Caribbean already has sentencing guidelines for certain crimes – these should be extended to this arena.



Prosecution Powers

Include powers of appeal against a lenient sentence.

Consider if delegated powers of prosecution to the wildlife authority are desirable. If so, ensure insertion of provision that captures national prosecution policy, practice directions, etc. have application e.g. a plea bargaining policy if it exists.

EXPLANATORY NOTES



Sentencing

- Legislative provisions allowing for the development of consistent sentencing guidelines for crimes concerning international wildlife trafficking and identification of aggravating features e.g. endangerment to public health.
- Ancillary powers to include: forfeiture/confiscation of goods and equipment, disqualification, enquiry into profits from illegal trade – include lifestyle assumptions and reference procedures under money laundering laws.
- Visa restrictions to foreign nationals and consideration of extension of such measures to closely-related family members or associates.
- Compensation.
- Costs of caring for seized/confiscated live animals, restitution, rehabilitation, transport and prosecution costs.
- Deportation and immigration powers



International Cooperation

Illegal wildlife trafficking knows no boundaries and international cooperation is therefore vital to tackle such crimes. Information sharing between investigative agencies should be enabled through statute (if not already) and the exchange of evidence and extradition of suspects who have fled abroad is a vital tool in ensuring that the Caribbean becomes hostile to such offenders.

Mutual legal assistance in the exchange of evidence. Extradition is about enabling the Caribbean to fulfil its obligations under existing conventions and ensuring that offenders are brought to justice wherever they may be.



MLA & Extradition

Consider if possible to 'import' the relevant laws on international cooperation by reference. E.g. the provisions of the MLA Act shall apply to this Act or 'offences under section x of this Act shall constitute 'extraditable offences' for the purposes of extradition under the Extradition Act'.



Handling of Confiscated Specimens

This is often overlooked in legislation and in other jurisdictions has caused immense problems in terms of how such specimens are handled, particularly where they might be exhibited in a criminal trial. Learning from those other countries, the Caribbean is in a strong position to take advantage of lessons learned and avoid the same pitfalls such as disposal of decaying specimens that are then required by defence at trial and used as an argument for abuse of process and dismissal of criminal charges. The management of live specimens is an expensive endeavour, and the management and disposal of high value trophies such as ivory or rhino horn must be carefully

EXPLANATORY NOTES

☐ Handling of Confiscated Specimens

addressed to avoid 'leakage' back into the black market. Guidance from CITES can be utilized in framing such provisions such as under Resolution 17.8 and CITES Convention under Article 8.

☐ Management of Confiscated Specimens

Designation of who is in charge of confiscation.

Designation of where confiscated items are stored prior to trial.

Marking of items.

Designation of who makes the final decision. A Court or agency?

Instruction of what happens to live confiscated animals.

Mode of destruction.

Return of live animals to the country of origin.

☐ Additional Resources

CITES <https://cites.org/sites/default/files/eng/prog/Legislation/ChecklistEN.pdf>

CITES <https://cites.org/eng/legislation>

UNODC <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/publications.html>

