

## TOWARD A MORE COORDINATED, INTEGRATED RESPONSE TO WILDLIFE TRAFFICKING AND OTHER NATURAL RESOURCE CRIME

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### I. INTRODUCTION

There is little doubt that international wildlife trafficking has reached crisis proportions. Recent years have seen an enormous surge in this incredibly lucrative illicit trade, estimated to be on the order of \$10 billion, with recent estimates ranging as high as \$23 billion,<sup>1</sup> and increasingly dominated by sophisticated transnational

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<sup>1</sup> UNITED NATIONS ENV’T PROGRAMME [UNEP], THE RISE OF ENVIRONMENTAL CRIME 20 (2016). Estimates of the worldwide scale of environmental crime—including wildlife trafficking, illegal logging and illegal fisheries—vary widely and, like any clandestine or black market activity, are notoriously difficult to estimate accurately. The specific dollar amount is less important than the scale that is consistently represented. These are all crimes with an economic impact in the billions of dollars and combined values easily in the tens of billions.

criminal networks. The mounting statistics can be both grim and daunting, as criminal activity on this scale has devastating effects on the species being targeted, destabilizes the countries involved in the trade, hinders economic development, fuels corruption and armed conflict (especially in Africa), and undermines the rule of law. No longer the province of opportunistic local poachers, the illegal wildlife trade and its associated poaching for high-value species are now conducted on an industrial scale commensurate with the profit generated.

But this article focuses on developments in the more positive side of this story—the response. International organizations, governments, civil society, and the private sector all have recognized the serious threats posed by wildlife trafficking. Recent years have seen significant actions at all levels to attempt to reverse the trends that are so evident from the statistics and global headlines, and there are signs of progress.

For example, in 2015, the United Nations General Assembly issued its first-ever resolution on illicit wildlife trafficking and inclusion of wildlife trafficking in the annual General Assembly omnibus resolution on crime prevention and criminal justice matters. The September 2015 agreement is a major bilateral development between Chinese President Xi Jinping and President Obama to enact nearly complete bans on ivory imports and exports and to take significant and timely steps to halt the domestic commercial trade of ivory. As just one example of major domestic action, the United States, through the U.S. Fish and Wildlife Service, issued a rule under the Endangered Species Act (“ESA”) in June 2016 to institute a near-total ban on the domestic commercial trade of African elephant ivory.<sup>2</sup> This action will significantly reduce the ability of wildlife traffickers to trade illegal ivory under the guise of a legal product.

There also are myriad signs of increased public awareness and concern worldwide that is moving public opinion in the right direction and hopefully dampening consumer demand for wildlife-derived products. For instance, in airports, trains and train stations, and other public spaces across the globe (but especially in Africa and Asia), signs and public service announcements speak out against

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<sup>2</sup> Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant, 81 Fed. Reg. 36,388 (June 6, 2016) (amending 50 C.F.R. § 17.40(e)).

wildlife crime and discourage the purchase of these products. Additionally, 2015 saw the United States and many other countries (among them China, Ethiopia, Mozambique, Republic of the Congo, Sri Lanka, Thailand, and the United Arab Emirates) either crushing or burning some or all of their seized ivory stockpiles.<sup>3</sup> Perhaps most notably, on April 30, 2016, the government of Kenya set ablaze 105 metric tons of seized ivory valued at \$105 million. This was the largest such burn ever, with the destroyed ivory representing 6,000 to 7,000 dead elephants.<sup>4</sup>

The United States also has responded forcefully to this crisis. Long a world leader in combatting wildlife trafficking, the United States intensified its efforts as a result of President Obama's July 2013 Executive Order,<sup>5</sup> which established the Task Force on Wildlife Trafficking, co-chaired by the Secretaries of State and the Interior and the Attorney General and comprising seventeen federal departments and agencies.<sup>6</sup> In February 2014, President Obama issued the National Strategy for Combating Wildlife Trafficking ("National Strategy").<sup>7</sup> One year later, the Task Force issued the Implementation Plan for the National Strategy. Coinciding with the celebration of World Wildlife Day in March 2016, the Task Force agencies held public events at the State Department and Great Hall of the Department of Justice to issue the first-ever Annual Progress Assessment, which documents the Task Force agencies' progress in implementing the National Strategy and describes the actions of multiple federal agencies, working worldwide, to counter wildlife trafficking through effective enforcement, reducing demand for wildlife products, and engaging governments and stakeholders around the world to join the fight.<sup>8</sup>

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<sup>3</sup> U.S. TASK FORCE ON WILDLIFE TRAFFICKING, U.S. NATIONAL STRATEGY FOR COMBATING WILDLIFE TRAFFICKING: 2015 ANNUAL PROGRESS ASSESSMENT 20, 23, <https://www.justice.gov/enrd/2015-annual-progress-assessment>, archived at <https://perma.cc/Q749-TC3F>.

<sup>4</sup> Jeffrey Gettleman, *Kenya Burns Elephant Ivory Worth \$105 Million to Defy Poachers*, N.Y. TIMES (Apr. 30, 2016), [http://www.nytimes.com/2016/05/01/world/africa/kenya-burns-poached-ivory-uhuru-kenyatta.html?\\_r=0](http://www.nytimes.com/2016/05/01/world/africa/kenya-burns-poached-ivory-uhuru-kenyatta.html?_r=0), archived at <https://perma.cc/RA2V-BSTL>.

<sup>5</sup> Exec. Order No. 13,648, 78 Fed. Reg. 40,621 (July 1, 2013).

<sup>6</sup> U.S. TASK FORCE ON WILDLIFE TRAFFICKING, *supra* note 3, at 4.

<sup>7</sup> See generally NATIONAL STRATEGY FOR COMBATING WILDLIFE TRAFFICKING (Feb. 11, 2014), <https://www.whitehouse.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf> (establishing U.S. priorities to combat wildlife trafficking).

<sup>8</sup> U.S. TASK FORCE ON WILDLIFE TRAFFICKING, *supra* note 3, at 24.

Congress has also acted in recognition of the scale of this problem by enacting on a bipartisan basis the Eliminate, Neutralize, and Disrupt (“E.N.D.”) Wildlife Trafficking Act of 2016,<sup>9</sup> which President Obama signed on October 6, 2016. The E.N.D. Wildlife Trafficking Act recognizes and looks to the Task Force to support a collaborative, interagency approach to addressing wildlife trafficking. It also gives the United States and partner countries additional tools to combat poaching and wildlife trafficking. Moreover, according to a recent report of the Government Accountability Office, Congress has directed that at least \$180 million be made available to federal agencies in fiscal years 2014 to 2016 to combat wildlife trafficking.<sup>10</sup>

This article highlights the approach adopted by and the efforts of the Department of Justice to tackle wildlife trafficking against this broader backdrop. First, this article briefly introduces the wildlife trafficking crisis and the scale of the challenge faced by the United States and other governments. Second, this article describes the role of the Department of Justice in addressing this problem, both in terms of its individual enforcement work and its role in the inter-agency response exemplified by the Presidential Task Force on Wildlife Trafficking. Third, this article broadens the canvas to recognize that the Department of Justice enforces the Nation’s laws with respect to natural resources beyond wildlife and to offer a more holistic approach to addressing natural resource crime. Through the prism of some recent major prosecutions, this article will explore the many dynamics shared by the phenomena of wildlife trafficking, illegal logging, and illegal, unregulated and unreported (“IUU”) fishing and the strategies deployed to counter them.

## II. THE PROBLEM OF WILDLIFE TRAFFICKING AND OTHER NATURAL RESOURCE CRIME

The statistics tell a disturbing story and call out for decisive action. From 2002–2011, the forest elephant population in Africa plummeted by 62%.<sup>11</sup> From 2010–2012 alone, an estimated 100,000

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<sup>9</sup> Eliminate, Neutralize, and Disrupt (“E.N.D.”) Wildlife Trafficking Act of 2016, Pub. L. 114-231, 130 Stat. 951.

<sup>10</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO-16-717, COMBATING WILDLIFE TRAFFICKING 12–13 (2016).

<sup>11</sup> SAVE THE ELEPHANTS, STATISTICS, <http://savetheelephants.org/about-elephants/statistics/>, archived at <https://perma.cc/4LCH-X5FF> (last visited Oct. 24, 2016).

elephants were killed for their ivory.<sup>12</sup> Accounting for births, Africa's wild elephant population declines by a net 2–3% per year.<sup>13</sup> The recently-completed Great Elephant Census, a highly sophisticated study of savanna elephants that counted over 93% of the elephants in eighteen African range states, served only to confirm the already foreboding trends. Some of the study's lead findings included: a total population of only 352,271 elephants in those eighteen countries; a 30% population decline in just seven years (between 2007 and 2014); an estimated 8% annual rate of decline; and massive declines in Angola, Mozambique, and Tanzania pointing to local extinction there and in other countries.<sup>14</sup> Without a serious change of course, that way extinction lies for the African elephant.

It likely is already too late for Africa's northern white rhinoceros. With only four remaining on the planet, the clock is running out.<sup>15</sup> The situation is hardly better for the Javan and Sumatran rhinos, with populations in the wild under 100.<sup>16</sup> Even for the black rhinoceros, there remain only approximately 5,000 in the wild, from a population of 65,000 in 1970.<sup>17</sup> While not the only threat to these magnificent creatures, the gravest danger is poaching driven by an intense demand in Asia and elsewhere for rhino horn as a luxury good or for its faux medicinal properties, ranging from curing impotence to cancer. Most estimates peg the black market price of rhino horn—which is made of keratin, the same material as the human fingernail—as ranging between \$3,000 per pound in South Africa and up to \$30,000 per pound in Asian black markets.<sup>18</sup> On the high end,

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> GREAT ELEPHANT CENSUS, THE FINAL REPORT, <http://www.greatelephantcensus.com/final-report>, archived at <https://perma.cc/DPZ3-4BSU>. The results of the 2016 African Elephant Status Report of the International Union for Conservation of Nature were similarly distressing. IUCN found an approximately 118,000 decline in elephant populations since 2007, largely attributable to poaching. INT'L UNION FOR CONSERVATION OF NATURE [IUCN], AFRICAN ELEPHANT STATUS REPORT 2016 3 (2016).

<sup>15</sup> Maya Wei-Haas, *Rare White Rhino Dies, Leaving Only Four Left on the Planet*, NAT'L GEOGRAPHIC (July 29, 2015), <http://news.nationalgeographic.com/2015/07/150729-rhinos-death-animals-science-endangered-species/>, archived at <https://perma.cc/9TRZ-5DYM>.

<sup>16</sup> SAVE THE RHINO INT'L, RHINO POPULATION FIGURES, [https://www.savetherhino.org/rhino\\_info/rhino\\_population\\_figures](https://www.savetherhino.org/rhino_info/rhino_population_figures), archived at <https://perma.cc/W3SW-HUPY> (last visited Oct. 24, 2016).

<sup>17</sup> *Id.*

<sup>18</sup> Bryan Christy, *Special Investigation: Inside the Deadly Rhino Horn Trade*, NAT'L GEOGRAPHIC (Oct. 2016), <http://www.nationalgeographic.com/magazine/2016/10/dark->

that price makes the value of rhino horn, by weight, greater than that of gold, diamonds, and cocaine.<sup>19</sup>

Elephant and rhino are just two of the many threatened and protected marine and terrestrial species decimated by illicit trade and in critical need of an international will to stanch poaching and illegal trade. Two critically endangered marine species that have the misfortune of swimming together exclusively in the northern Gulf of California are on the brink of extinction, thanks to a robust black market trade, especially in China and Hong Kong. Dried swim bladders from the totoaba (known as “maw”) are prized for supposed medicinal benefits.<sup>20</sup> Intense overfishing led to totoaba being listed as critically endangered in 1996.<sup>21</sup> Despite a Mexican ban on totoaba fishing in 1975, illegal fishing for this species continues and has intensified in recent years (with the fish fetching up to \$8500/kg on the black market).<sup>22</sup> Though tragic on its own, gill net fishing for totoaba (and other species) also ensnares the vaquita—the smallest and most endangered cetacean species on the planet.<sup>23</sup> It is estimated that less than ninety-seven vaquita remain, and experts predict this species could be extinct by 2018 unless emergency measures are deployed (such as a total ban on gill net fishing in their habitat).<sup>24</sup>

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world-of-the-rhino-horn-trade/, archived at <https://perma.cc/C3VP-N873>. Other estimates of black market value for rhino horn are similar. See U.N. OFF. ON DRUGS AND CRIME [UNODC], WORLD WILDLIFE CRIME REPORT: TRAFFICKING IN PROTECTED SPECIES, at 70 n.1 (2016), [https://www.unodc.org/documents/data-and-analysis/wildlife/World\\_Wildlife\\_Crime\\_Report\\_2016\\_final.pdf](https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf), archived at <https://perma.cc/URQ4-GLW5>; KATHERINE LAWSON & ALEX VINES, GLOBAL IMPACTS OF THE ILLEGAL WILDLIFE TRADE: THE COSTS OF CRIME, INSECURITY AND INSTITUTIONAL EROSION viii (Feb. 2014), <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0214Wildlife.pdf>, archived at <https://perma.cc/88SA-QCJL>; WORLD WIDE FUND FOR NATURE, FIGHTING ILLICIT WILDLIFE TRAFFICKING: A CONSULTATION WITH GOVERNMENTS 11 (2012), [http://www.dalberg.com/documents/WWF\\_Wildlife\\_Trafficking.pdf](http://www.dalberg.com/documents/WWF_Wildlife_Trafficking.pdf), archived at <https://perma.cc/NR8M-63GQ>.

<sup>19</sup> William J. Ripple et al., *Collapse of the World's Largest Herbivores*, SCI. ADVANCES, May 1, 2015, at 3.

<sup>20</sup> ENVTL. INVESTIGATION AGENCY, DUAL EXTINCTION: THE ILLEGAL TRADE IN THE ENDANGERED TOTOABA AND ITS IMPACT ON THE CRITICALLY ENDANGERED VAQUITA, BRIEFING TO THE 66TH STANDING COMMITTEE OF CITES 6 (Jan. 2016), <https://eia-international.org/wp-content/uploads/EIA-Dual-Extinction.pdf>, archived at <https://perma.cc/8QNP-W726>.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 3–4.

The connection between illegal trade and species extirpation is far from theoretical.

Wildlife trafficking spans continents and species. For example, Defenders of Wildlife analyzed the massive volume of wildlife trafficked between Latin America, including Mexico and the Caribbean, and the United States. From 2005 to 2014, 13,325 shipments of wildlife and wildlife products out of 49,334 worldwide originated in Latin America and were denied entry by the U.S. Fish and Wildlife Service at U.S. ports of entry.<sup>25</sup> Included in those shipments were 54,886 live animals, 620,014 individual specimens, and 3 million pounds of wildlife and wildlife products.<sup>26</sup> Most of this trade came from wild populations and half of the blocked shipments contained CITES-listed animals or their parts.<sup>27</sup> More than 3,000 live animals were seized (mostly parakeets, parrots and tortoises) and the most heavily trafficked animals were conches, sea turtles, caimans, crocodiles, and iguanas.<sup>28</sup>

Wildlife trafficking is but one form of natural resource crime, and it is not the only one on the rise. Trafficking in protected flora, particularly the trade in illegally harvested timber and wood products resulting from illegal deforestation, is estimated to have a value of \$50.7–\$152 billion.<sup>29</sup> Illegal logging takes many forms, including outright theft of timber from public or private forests, exploitation of endangered and legally protected wood species, and evading timber taxes and royalties by, for example, logging outside designated and approved areas and in excess of permits. The United Nations Environment Programme (“UNEP”) estimates that as much as 50–90% of wood harvested in the Amazon and Southeast Asia is likely illegal, and that 10–30% of the total global timber trade is illegal.<sup>30</sup> The ecological consequences of illegal trade of this scale are also massive. Among them are species threat, biodiversity and habitat

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<sup>25</sup> DEFENDERS OF WILDLIFE, FACT SHEET 1: TRENDS IN WILDLIFE IMPORTS FROM LATIN AMERICA DENIED ENTRY TO THE UNITED STATES 1 (2014), [https://www.defenders.org/sites/default/files/publications/trends\\_in\\_wildlife\\_trade\\_from\\_latin\\_america\\_to\\_the\\_us.pdf](https://www.defenders.org/sites/default/files/publications/trends_in_wildlife_trade_from_latin_america_to_the_us.pdf), archived at <https://perma.cc/S8ES-ZDDA>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.*

<sup>29</sup> UNEP, *supra* note 1, at 20.

<sup>30</sup> UNITED NATIONS ENV'T PROGRAMME [UNEP], THE ENVIRONMENTAL CRIME CRISIS: THREATS TO SUSTAINABLE DEVELOPMENT FROM ILLEGAL EXPLOITATION AND TRADE IN WILDLIFE AND FOREST RESOURCES 61 (2014).

loss, erosion and water quality impacts, and the loss of critical carbon sinks.

Massive global economic losses, on the order of \$11–\$23.5 billion annually according to UNEP,<sup>31</sup> also accompany IUU fishing. IUU fishing is a problem of global dimension that threatens ocean ecosystems and sustainable fisheries. IUU fishing entails the evasion of conservation and management measures, such as quotas or bycatch limits, that are followed by those fishing legally to their economic detriment. The environmental harm associated with illegal fisheries can also be great, resulting from the use of illegal (and environmentally damaging) gear and methods or the bycatch of threatened species (e.g., sharks, turtles).

In short, the problems of large-scale natural resource crime are grave, growing, and global. They are also complex and call for a multi-dimensional and multi-disciplinary approach. The balance of this article addresses the aspects of this dilemma that can be addressed as part of the mission of the Department of Justice.

### III. THE ENVIRONMENT AND NATURAL RESOURCES DIVISION

The responsibility for enforcing the laws prohibiting the natural resource crimes addressed in this article (concerning wildlife, timber, and fishing) falls to the Environment and Natural Resources Division of the Department of Justice (hereinafter “Environment Division” or “ENRD”), which has been called the nation’s largest environmental law firm. ENRD has a long and proud history and celebrated its centennial in 2009. Originally named the “Public Lands Division,” the Environment Division was created to handle on behalf of the United States “[a]ll suits and proceedings concerning the enforcement of the Public Land law,” including suits related to Indian lands.<sup>32</sup> As the United States developed over the twentieth century and as new laws were enacted to protect the nation’s environment and natural resources, the Environment Division’s mission significantly expanded. While the Environment Division

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<sup>31</sup> UNEP, *supra* note 1, at 20.

<sup>32</sup> U.S. DEP’T OF JUSTICE, ENV’T AND NAT. RESOURCES DIVISION, HISTORY OF THE SECTION, <https://www.justice.gov/enrd/history-section> (last visited Nov. 15, 2016); *see also* U.S. DEP’T OF JUSTICE, ANNUAL REPORT OF THE ATTORNEY GENERAL OF THE UNITED STATES 26 (1910).

continues to carry out its original mission, it now has responsibility for enforcing an array of environmental protection and natural resource statutes. Owing to the breadth of this work, the Environment Division is divided into nine litigating sections that handle specific types of work.

The Environment Division's 600+ employees include nearly 450 attorneys who represent the U.S. Government in all cases in federal courts relating to protection of the environment and natural resources, as well as cases relating to the rights of Native Americans.<sup>33</sup> With a docket of over 6,500 active cases and matters, the Environment Division has responsibility for cases involving the prevention and cleanup of pollution, environmental challenges to federal programs, stewardship of public lands and natural resources, acquisition of federal property, wildlife protection, and Indian rights and claims. The Environment Division has represented virtually every federal agency in connection with cases arising in all fifty states and the U.S. territories.<sup>34</sup>

While most of ENRD's responsibilities relate to protection of the domestic environment and natural resources, defending U.S. agencies that are sued in federal courts, and representing the interests of Indian tribes,<sup>35</sup> ENRD also enforces several important environmental statutes that outlaw transnational environmental crimes, such as wildlife trafficking, trafficking in illegally harvested timber, and IUU fishing. The Environment Division is also increasingly working to build the capacity of law enforcement counterparts in other countries to serve as capable partners in prosecuting these crimes and collaborating to combat the criminal enterprises that perpetrate these lucrative and harmful activities. ENRD's capacity-building efforts with respect to wildlife crime, in particular, are discussed below.

Of principal interest here is the enforcement work of the Environment Division, which includes both civil and criminal enforcement, as most environmental statutes provide for both. On the

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<sup>33</sup> John C. Cruden, Assistant Attorney General, Keynote Address at the 2016 World Environmental Law Congress (Apr. 29, 2016).

<sup>34</sup> *Id.*

<sup>35</sup> The Environment Division produces an annual report highlighting some aspects of its work across the full spectrum of matters handled by the Environment Division. *See, e.g., Env't and Nat. Resources Division, Accomplishments Report Fiscal Year 2016* (Jan. 12, 2017), <https://www.justice.gov/enrd/page/file/925411/download>, archived at <https://perma.cc/M5MZ-D8ZG>.

civil side, the Environmental Enforcement Section is ENRD's largest section and enforces environmental protection statutes, such as the Clean Water Act, the Clean Air Act, and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA," also known as the "Superfund law"). The great majority of ENRD's enforcement work consists of civil actions brought in federal district courts under the federal environmental laws, almost all of which provide for civil judicial enforcement to secure some combination of injunctive relief, civil penalties, recovery of government response (e.g., cleanup) costs, or the enforcement of administrative orders issued by federal regulatory agencies, such as the U.S. Environmental Protection Agency.

The criminal enforcement of the Nation's environmental laws is a key component to the overall enforcement regime. Many federal environmental statutes include criminal sanctions for significant violations. Criminal prosecution is most likely where the conduct creates an endangerment, has severe environmental effects, shows a disregard for human safety or the environment, or results from a pattern of dishonest or false conduct. The imposition of criminal sanctions (which can include imprisonment, monetary criminal penalties, restitution, and other penal measures not available under civil law) serves an important deterrence function and, among other effects, expresses society's disapproval of the underlying conduct and demonstrates the seriousness of environmental crimes.

Criminal prosecution under federal environmental laws falls to the more than forty federal prosecutors in ENRD's Environmental Crimes Section. In addition to the criminal provisions of statutes such as the Clean Water Act, the Environmental Crimes Section also prosecutes federal wildlife, timber, and fishing crimes, including violations of the Lacey Act, Endangered Species Act, Migratory Bird Treaty Act, Marine Mammal Protection Act, and the Magnuson-Stevens Fishery Conservation and Management Act. The Division also prosecutes related crimes, such as smuggling, money laundering, fraud, and criminal conspiracy.

The Environmental Crimes Section brings cases on behalf of the United States, working in close partnership with federal investigative agencies, such as the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration ("NOAA"), the U.S. Coast Guard, and the Department of Homeland Security Immigration and Customs Enforcement. The U.S. Attorney offices

around the country are also critical to criminal enforcement of the Nation's environmental laws, bringing many prosecutions on their own or in partnership with the Environmental Crimes Section.

A third Environment Division section figures prominently in ENRD's work in combatting wildlife trafficking, illegal logging, and IUU fishing. The Law and Policy Section works with Department leadership on environmental and legal policy questions and legislative matters related to the Division's work. This section has cross-cutting responsibilities that include, among other things, coordinating the Division's international work (e.g., capacity building) and representing the Division on inter-agency matters, such as the Presidential Task Force on Wildlife Trafficking and the Presidential Task Force on Combating IUU Fishing and Seafood Fraud.

#### IV. ENRD'S ROLE IN COUNTER-WILDLIFE TRAFFICKING

The Division's work countering natural resource crime can be organized into three general baskets. The first, and the one most readily associated with the Department of Justice, is the prosecution of violations of the Nation's laws on wildlife trafficking, illegal logging, and IUU fishing. The second is the considerable amount of training, or capacity building, on investigative and prosecutorial techniques conducted by Division attorneys worldwide. Third, the Division actively participates in broader policy-oriented efforts on these issues, such as by serving as a co-chair of the Presidential Task Force on Wildlife Trafficking, attending or leading international conferences on illegal wildlife activities, or participating with other agencies in the annual U.S.-China Strategic and Economic Dialogue.<sup>36</sup>

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<sup>36</sup> Together with the other Task Force co-chairs, Assistant Attorney General Cruden testified before the House Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade on April 22, 2015 and described ENRD's counter-wildlife trafficking efforts. For his testimony, see *Poaching and Terrorism: A National Security Challenge: Hearing before the Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade*, 114th Cong. 33–42 (2015) (statement of John C. Cruden, Assistant Attorney General), <http://docs.house.gov/meetings/FA/FA18/20150422/103355/HHRG-114-FA18-Wstate-CrudenJ-20150422.pdf>, archived at <https://perma.cc/A7ZJ-VZH5>. The hearing addressed the complex, much-debated, and difficult to confirm subject of "Poaching and Terrorism: A National Security Challenge." There are divergent views as to the degree that wildlife trafficking proceeds finance the activities of terrorist groups, such as Boko Haram or al-Shabaab, or armed militant groups that are not formally recognized as terrorist organizations,

### A. Prosecutions

The Department of Justice has long been a world leader in prosecuting natural resource crimes. It has had significant success in prosecuting those who smuggle and traffic in elephant ivory, endangered rhinoceros horns, turtle shells, and other forms of protected wildlife. Though there have been many more cases over the past few years, the cases discussed below exemplify the Division's robust prosecution of natural resource crimes. Indeed, enforcing U.S. wildlife protection laws in federal court is one of the Department of Justice's highest priorities.

The first two cases arise from "Operation Crash," an ongoing multi-agency effort to detect, deter, and prosecute those engaged in the illegal killing of rhinoceros and the illegal trafficking in endangered rhinoceros horns. A "crash" is the term for a herd of rhinoceros. Operation Crash, which is led by the U.S. Fish and Wildlife Service and prosecuted by the Department of Justice, has resulted in charges against more than forty individuals and businesses, resulting in thirty successful prosecutions so far, with prison terms as high as seventy months and total forfeitures and restitution of \$5.5 million (including cash, gold, jewelry, luxury vehicles, rhino horn, and ivory).<sup>37</sup>

One Operation Crash example involves Xiao Ju Guan, also known as "Tony Guan," a resident of Canada who was sentenced in 2015 to thirty months in prison for smuggling rhinoceros horns, elephant ivory, and coral from the United States to Canada. In addition, Guan was also ordered to forfeit wildlife items found in a search of his business. In this case, authorities from Environment Canada and other Canadian agencies were valuable partners in bringing Guan to justice.<sup>38</sup>

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such as Janjaweed and the Lord's Resistance Army. See United States Government Accountability Office, *supra* note 10, at 15–16 (Sept. 2016) (discussing "mixed views" regarding terrorist group involvement in wildlife trafficking), <http://www.gao.gov/assets/680/679968.pdf>, archived at <https://perma.cc/S77Q-8R7R>.

<sup>37</sup> *Operation Crash Fact Sheet*, U.S. FISH & WILDLIFE SERVICE (Dec. 2, 2016), <https://www.fws.gov/le/pdf/Operation-Crash-Fact-Sheet.pdf>, archived at <https://perma.cc/M9D8-QSL4>.

<sup>38</sup> Press Release, Department of Justice, Canadian Antiques Dealer Sentenced to 30 Months in Prison for Smuggling Rhinoceros Horns, Elephant Ivory and Coral (Mar. 25, 2015), <https://www.justice.gov/opa/pr/canadian-antiques-dealer-sentenced-30-months-prison-smuggling-rhinoceros-horns-elephant-ivory>, archived at <https://perma.cc/2U4Q-T6ZB>.

A second Operation Crash case led to the sentencing in November 2015 of Linxun Liao, also a citizen of Canada, to two years in prison for his role in a wildlife trafficking scheme in which he purchased and smuggled from the United States to China sixteen libation cups carved from rhinoceros horn and valued at more than \$1 million. Liao did not declare the rhinoceros exports to the U.S. Fish and Wildlife Service or obtain permits required under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (“CITES”). In addition to his prison term, Liao was ordered to serve two years of supervised release, required to forfeit \$1 million and 304 pieces of carved ivory, and banned from future involvement in the wildlife trade.<sup>39</sup> Significant sentences in cases such as this are necessary to deter illegal trafficking in wildlife and wildlife parts and to demonstrate the seriousness of these crimes, which threaten the extinction of species such as the rhinoceros.

Another case prosecuted by the Environment Division is almost perfectly emblematic of several of the themes addressed in this article and the intersecting dynamics of natural resource crimes. On February 1, 2016, Lumber Liquidators, a large U.S. wood products retailer, was sentenced in federal court for violations of the Lacey Act and customs laws related to its illegal importation of hardwood flooring, much of which was manufactured in China from timber that had been illegally logged in the Russian Far East.<sup>40</sup> The temperate forests of the Russian Far East are home to the last remaining Siberian tigers and Amur leopards, with only an estimated 450 of the tigers and fifty-seven of the leopards remaining in the wild. The primary contributors to these species’ risk of extinction are illegal logging and detrimental logging practices.<sup>41</sup> The illegally harvested wood traded in by Lumber Liquidators included Mongolian oak, which was listed on CITES Appendix III in 2014 in response to illegal logging and the decline in tiger populations.

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<sup>39</sup> Press Release, Dep’t of Justice, Antiques Dealer Sentenced in Manhattan Federal Court to Two Years in Prison for Smuggling Cups Made from Rhinoceros Horns to China (Nov. 13, 2015), <https://www.justice.gov/usao-sdny/pr/antiques-dealer-sentenced-manhatt-an-federal-court-two-years-prison-smuggling-cups-made>, *archived at* <https://perma.cc/FU38-7SZ9>.

<sup>40</sup> *See generally* Statement of Facts 3–4, [https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764_ex10-1.htm), *archived at* <https://perma.cc/2W8Q-P63T>.

<sup>41</sup> Statement of Facts 3, [https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764_ex10-1.htm), *archived at* <https://perma.cc/CMX5-E4E2>.

Under the sentence imposed by the court, Lumber Liquidators will pay over \$13 million in criminal fines, community service and other payments, and forfeiture of goods.<sup>42</sup> Of that amount, over \$1.2 million in community service payments by Lumber Liquidators will be provided to two Congressionally-chartered recipients: the National Fish and Wildlife Foundation, and the U.S. Fish and Wildlife Service Rhinoceros and Tiger Conservation Fund.<sup>43</sup> One project to be funded is the development of a wood identification device that would be able to identify CITES-listed species of wood at the border or in an enforcement scenario. Other projects to be funded by Lumber Liquidators are expected to support research and preservation of the Siberian tiger, Amur leopard, and their habitat.

Lumber Liquidators has also agreed to a five-year term of probation and mandatory implementation of a government-approved environmental compliance plan that is rigorous, public, and will help guide Lumber Liquidators and other companies in complying with the Lacey Act by purchasing only legally harvested wood.<sup>44</sup> The hope is that this compliance plan will be a model for other companies that participate in the international trade in wood products. In terms of notoriety and potential deterrent effect, National Geographic announced this case as one of the biggest wins against wildlife exploitation of 2015.<sup>45</sup>

Finally, Department of Justice wildlife trafficking prosecutions may also target those who traffic illegally in marine and other species. For example, “Operation Totoaba Drama” is a Department of Homeland Security Immigration and Customs Enforcement (“ICE”)-led enforcement initiative, in conjunction with

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<sup>42</sup> Plea Agreement 3–6, [https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764_ex10-1.htm).

<sup>43</sup> *Id.*

<sup>44</sup> See generally Plea Agreement Statement of Facts 6–7, [https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764_ex10-1.htm), archived at <https://perma.cc/86ZZ-MF9H> (specifying defendant’s probation and environmental compliance plan); see also Press Release, Department of Justice, Lumber Liquidators Inc. Sentenced for Illegal Importation of Hardwood and Related Environmental Crimes (Feb. 1, 2016), <https://www.justice.gov/opa/pr/lumber-liquidators-inc-sentenced-illegal-importation-hardwood-and-related-environmental>, archived at <https://perma.cc/5X2P-B6D3> (providing details on the facts of the case against Lumber Liquidators and the company’s sentencing).

<sup>45</sup> Rachael Bale, *Seven of the Year’s Biggest Wins Against Wildlife Exploitation*, NAT’L GEOGRAPHIC (Dec. 22, 2015), <http://news.nationalgeographic.com/2015/12/151222-wildlife-crime-victories-2015/>, archived at <https://perma.cc/LQ7A-DLSC>.

the U.S. Fish and Wildlife Service, Department of Homeland Security Customs and Border Protection, prosecuted by the United States Attorney's Office in the Southern District of California. This multi-year investigation resulted in seizures exceeding 500 totoaba swim bladders smuggled into the United States and charges against eleven defendants. Defendants have received prison terms and forfeited significant sums.<sup>46</sup>

*B. Capacity Building for Law Enforcement Partners*

The Department of Justice will continue to aggressively enforce these environmental laws intended to combat transnational environmental crimes. But it goes without saying that the U.S. Government cannot prosecute its way out of this crisis. And, more to the point, prosecutions in U.S. courts will not be sufficient to combat a global problem that involves range (or source) states around the world, countless transit states, and transnational criminal groups with ties to still more countries. As such, building the capacity of our international partners to address all dimensions of the illegal wildlife trade is a vital component of the National Strategy and the work of the Presidential Task Force agencies. The State Department, USAID, the United States Fish and Wildlife Service, and many other federal agencies conduct training in dozens of countries aimed at strengthening national laws, improving anti-poaching and other on-the-ground enforcement, improving investigative and evidence-gathering capabilities, and working toward more successful prosecutions through improved prosecutorial and judicial capabilities.<sup>47</sup> These efforts are documented in detail in the Task Force's 2015 Annual Progress Assessment.<sup>48</sup> For instance, in 2015 alone, State Department capacity building sessions reached over 1,000 law enforcement officers from more than thirty different countries.<sup>49</sup> USAID supports sixty programs related to counter wildlife trafficking through on the ground capabilities in more than twenty-five countries.<sup>50</sup>

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<sup>46</sup> U.S. TASK FORCE ON WILDLIFE TRAFFICKING, *supra* note 3, at 7–8.

<sup>47</sup> *Id.*, at 10.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*, at 10–11.

The Environment Division has vigorously joined this effort through multiple training programs aimed at improving enforcement through increasing the capacity of investigators, prosecutors and judges in key countries. With more than 100 years' experience prosecuting wildlife and other natural resource crimes, U.S. prosecutors are uniquely positioned to share methods and best practices with our international enforcement partners. During the many years of conducting such training, it is evident that this training contributes to developing more effective partners to investigate and prosecute transnational environmental crimes, increases the ability to enforce U.S. criminal statutes that have extraterritorial dimensions, and helps law enforcement officials in the United States and other countries to meet their enforcement obligations under international environmental and free trade agreements. These training initiatives also foster positive relationships with prosecutors in other countries and facilitate information-sharing and obtaining prosecutorial assistance.

ENRD's most significant program in the area of counter-wildlife trafficking is a series of regional workshops in Africa conducted in 2015 and 2016 (and continuing in 2017) for the benefit of dozens of prosecutors and judges from eleven African countries. The workshops are funded by the State Department and conducted in collaboration with USAID and the United Nations Office on Drugs and Crime. These workshops are typically week-long, include more than thirty prosecutors and judges, and cover a wide array of topics tailored to the issues of concern in the region. One set of sessions focuses on the southern African countries of Angola, Botswana, Malawi, Mozambique, Namibia, and Zambia. The other set of sessions involves the western and central African countries of Gabon, Ghana, Nigeria, Republic of Congo, and Togo.

The topics covered at these workshops demonstrate the complexity of addressing this type of crime, going well beyond standard prosecutorial best practices and techniques. The topics include: a primer on the escalation of wildlife poaching and the operation of the international wildlife trade (provided by conservation NGOs with expertise in the region); application of wildlife and other criminal laws to wildlife crimes; country-specific issues in addressing wildlife, timber, and fisheries crime; best practices in charging, prosecution, and evidence presentation; the characteristics of organized (enterprise) crime in natural resources

crime; money laundering and asset forfeiture; sentencing strategies; international legal cooperation; corruption issues; and the role of CITES and other applicable international instruments.

As discussed further in this article, these sessions also recognize and elaborate on the many commonalities between wildlife trafficking, illegal logging, and illegal fisheries, most notably the enforcement methodologies that are effective in addressing all of these natural resource crimes. The Environment Division also includes in these capacity-building workshops experts from its federal investigative partners, such as the U.S. Fish and Wildlife Service or the Federal Bureau of Investigation, to provide a more in-depth understanding of issues faced on the ground. For example, given the prevalence of illegal fisheries in the coastal countries of western and central Africa (and the centrality of that resource as a commodity and food supply in that region), a June 2016 training session in Accra, Ghana included a site visit to a major fishing port and a detailed presentation on fisheries enforcement by a NOAA Office of Law Enforcement Assistant Special Agent.

Also focused on Africa, in 2016 the Environment Division presented a workshop in Douala, Cameroon, on investigating and prosecuting illegal logging cases. The workshop was for investigators and prosecutors from the Congo Basin countries of Cameroon, Gabon, the Republic of the Congo, and the Democratic Republic of the Congo. The workshop also included content on counter-wildlife trafficking. Prosecutors and other ENRD attorneys have also participated extensively in training and providing support for foreign investigators, prosecutors, and judges through the various Wildlife Enforcement Networks (“WENs”). These include the Association of Southeast Asian Nations WEN (“ASEAN-WEN”), South Asia WEN, and Central American WEN, as well as the launch of WENs in Central Africa, Southern Africa, and the Horn of Africa. Finally, over the last several years, ENRD attorneys have delivered several well-received illegal logging training programs for investigators, prosecutors, and judges in Brazil, Peru, Colombia, and Honduras. Increasingly, these sessions are incorporating counter-wildlife trafficking elements.

### C. *Inter-Agency and International Collaboration*

Beyond prosecutions and implementing capacity building programs, a substantial portion of the Environment Division's work to counter the scourge of wildlife trafficking and other natural resource crimes occurs in the day-to-day operation of the federal government. The Environment Division is an active player in multiple fora, always with the goal of achieving and enhancing prosecutions here and abroad. The most noteworthy example has already been mentioned—ENRD's role representing the Department of Justice as co-chair of President Obama's Task Force on Wildlife Trafficking.

The Executive Order on Wildlife Trafficking recognized the urgent need for concerted action and called for a coordinated, government-wide effort to stop poaching and other wildlife trafficking. As such, in addition to the other co-chair agencies (the Departments of State and the Interior), the Task Force also includes fourteen other U.S. Government agencies and offices. The Task Force also receives advice and assistance from the Advisory Council on Wildlife Trafficking established under the Executive Order, which reflects the expertise of a diverse group of non-governmental experts on wildlife trafficking and related issues.

In February 2014, the White House issued the National Strategy for Combating Wildlife Trafficking, based on the work of the Task Force. The Strategy reflects a "whole-of-government" approach and calls for increased federal coordination to address three key priorities: (1) strengthening domestic and international law enforcement to curb the illegal flow of wildlife; (2) reducing demand for illegally traded wildlife; and (3) building global cooperation and public/private partnerships to support the fight against wildlife trafficking.<sup>51</sup> The Task Force agencies released an Implementation Plan in 2015 that sets out specific steps to achieve twenty-four objectives arrayed under the three strategic priorities.<sup>52</sup>

While the Environment Division has been deeply engaged in counter-wildlife trafficking for decades, that work has been facilitated, organized, and invigorated by the framework and

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<sup>51</sup> National Strategy for Combating Wildlife Trafficking, *supra* note 7, at 2.

<sup>52</sup> For the full text of the 2015 Implementation Plan, see PRESIDENTIAL TASK FORCE ON WILDLIFE TRAFFICKING, IMPLEMENTATION PLAN (Feb. 11, 2015) <http://www.state.gov/documents/organization/237592.pdf>, archived at <https://perma.cc/5K8M-S5H4>.

ambitions of the National Strategy and the Implementation Plan. Notably, ENRD's work in this arena has benefited greatly from the enhanced coordination and collaboration that has resulted from the Task Force and the "whole-of-government" approach it applies. Since the advent of the Executive Order, a framework for coordinated agency effort (which did not exist before) has arisen that includes weekly staff-level calls among the co-chair Agencies and USAID (a significant player in this sphere); a monthly subgroup meeting to discuss counter-wildlife trafficking programming and finance issues; quarterly staff-level meetings of the full Task Force (seventeen federal agencies and departments); and regular high-level, principals meetings. With the increased awareness of other agencies' activities and the considerable degree of relationship-building that occurs from so many interactions, the post-Task Force world of counter-wildlife trafficking is well-positioned for success.

The Environment Division is also involved in other international activities to strengthen international cooperation. In 2016, Environment Division attorneys continued their longstanding participation in the seventeenth CITES Conference of the Parties ("COP") held in Johannesburg, South Africa, from September 24–October 4, 2016. This seventeenth COP was notably productive in combatting wildlife trafficking, and U.S. proposals had great success.<sup>53</sup> Among other things, parties at the COP agreed to: extend CITES' highest protection level (Appendix I) to all species of pangolin and the grey parrot; impose trade restrictions via a CITES Appendix II listing for nine species of devil rays, all three thresher shark species, the silky shark, and all species of rosewood; adopt resolutions; and make decisions on issues such as recommending steps by all CITES parties to close down domestic ivory markets, strengthening the National Ivory Action Plan process for strengthening their parties counter ivory tracking enforcement regimes, specific measures to combat corruption and other aspects of the illegal wildlife trade, and a proposal and framework for parties to

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<sup>53</sup> Darryl Fears, *The World Just Agreed to the Strongest Protections Ever for Endangered Animals*, WASHINGTON POST (Oct. 5, 2016), [https://www.washingtonpost.com/news/animalia/wp/2016/10/05/the-world-just-agreed-to-the-strongest-protections-ever-for-endangered-animals/?utm\\_term=.1936026f282a](https://www.washingtonpost.com/news/animalia/wp/2016/10/05/the-world-just-agreed-to-the-strongest-protections-ever-for-endangered-animals/?utm_term=.1936026f282a), archived at <https://perma.cc/A82P-3M85>.

pursue demand reduction measures.<sup>54</sup> Other aspects of the COP are supportive of counter-wildlife trafficking efforts, including side events, working groups, and meetings such as the global meeting of the regional Wildlife Enforcement Networks.<sup>55</sup> As a member of the U.S. delegation, Environment Division attorneys collaborated on agenda items related to law enforcement, legal interpretation, and other enforcement and compliance issues.

An important pre-cursor to the COP is the International Union for Conservation of Nature (“IUCN”) World Conservation Congress in Honolulu, Hawaii, in September 2016, many elements of which both formally and informally anticipated the COP that followed immediately thereafter.<sup>56</sup> IUCN is a major voice in conservation and species protection, with a membership union comprising both government and civil society organizations with counter-wildlife trafficking programs in conjunction with NGO partners such as the World Wildlife Fund and TRAFFIC. The World Conservation Congress is held every four years and brings together thousands of leaders and decision-makers from government, civil society, the private sector, and academia to address a wide range of environmental and conservation issues, such as passing a resolution calling on governments globally to shut down domestic ivory trade.<sup>57</sup> Assistant Attorney General Cruden joined his Task Force co-chairs at the World Conservation Congress to describe the counter-wildlife trafficking work of the Department and the Task Force at several events featuring wildlife trafficking, illegal logging, and IUU fishing.

The Department of Justice has led the U.S. delegation to a series of global conferences on the illegal wildlife trade, the first of

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<sup>54</sup> See *CITES CoP17 Concludes on the Side of Wildlife*, VOICES FOR WILDLIFE (Oct. 4, 2016), <http://voices.nationalgeographic.com/2016/10/04/cites-cop17-concludes-on-the-side-of-wildlife/>, archived at <https://perma.cc/BN28-TALZ> (summarizing major COP developments).

<sup>55</sup> As noted *supra*, the Division has a longstanding involvement with WENs.

<sup>56</sup> For Assistant Attorney General Cruden’s remarks at the 2016 ICUN World Conservation Congress, see Press Release, Dep’t of Justice, Assistant Attorney General John C. Cruden Delivers Remarks on Combating Wildlife Trafficking at the International Union for Conservation of Nature World Conservation Congress (Sept. 2, 2016), <https://www.justice.gov/opa/speech/assistant-attorney-general-john-c-cruden-delivers-remarks-combating-wildlife-trafficking>, archived at <https://perma.cc/J4TZ-8DK5>.

<sup>57</sup> Guy Dinmore, *Conservation Congress Votes to Ban All Domestic Trade in Elephant Ivory*, INTER PRESS SERVICE (Sept. 11, 2016), <http://www.ipsnews.net/2016/09/conservation-congress-votes-to-ban-all-domestic-trade-in-elephant-ivory/>, archived at <https://perma.cc/Z9SH-4APH>.

which occurred in London in 2014 and resulted in the Declaration of the London Conference on Illegal Wildlife Trade signed by forty-six countries and eleven NGOs.<sup>58</sup> There have been two follow-on conferences to review the parties' progress and strengthen action, one in Kasane, Botswana in 2015 and the most recent in Hanoi in November 2016. Assistant Attorney General Cruden led the U.S. delegation at both conferences and presented the U.S. position. The London Declaration and the statements emanating from Kasane<sup>59</sup> and Hanoi<sup>60</sup> stress measures, such as establishing and strengthening partnerships among source, transit, and destination countries to combat the illegal wildlife trade; strengthening national legislation as appropriate; and ensuring that law enforcement authorities, prosecutors, and judges have the resources and capacity to investigate and prosecute financial crimes associated with wildlife crime.

For the past three years, the Environment Division has also participated, along with other Task Force agencies, in the U.S.-China Strategic and Economic Dialogue ("S&ED"). This high-level, bilateral meeting alternates between Washington and Beijing each year and, in recent years, has included a day-long breakout session on wildlife trafficking. The meetings have resulted in significant and often mutual commitments, and the June 2016 session in Beijing resulted in a number of continuing commitments on these areas, including: a general recognition of the urgency of combating wildlife trafficking and the need to enhance cooperation; China's announcement on December 30, 2016, of its plans for implementing a ban on domestic commercial trade of ivory; prioritizing reducing the impact of wildlife trafficking on marine species such as totoaba and sea turtles; and a number of other general commitments to

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<sup>58</sup> Conference Report, Kasane Conference on the Illegal Wildlife Trade, Declaration: London Conference on the Illegal Wildlife Trade (Feb. 13, 2014), <https://www.gov.uk/government/publications/declaration-london-conference-on-the-illegal-wildlife-trade>, archived at <https://perma.cc/CCH7-Q22A>.

<sup>59</sup> Conference Report, Kasane Conference on the Illegal Wildlife Trade, Kasane Statement on the Illegal Wildlife Trade (Mar. 25, 2015), [www.mofa.go.jp/mofaj/files/000074311.pdf](http://www.mofa.go.jp/mofaj/files/000074311.pdf), archived at <https://perma.cc/QY42-YY4G>.

<sup>60</sup> Conference Report, Hanoi Conference on Illegal Wildlife Trade, Hanoi Statement on the Illegal Wildlife Trade (Nov. 18, 2016), [http://iwthanoi.vn/wp-content/themes/cites/template/statement/Hanoi%20Statement%20on%20Illegal%20Wildlife%20Trade%20\(English\).pdf](http://iwthanoi.vn/wp-content/themes/cites/template/statement/Hanoi%20Statement%20on%20Illegal%20Wildlife%20Trade%20(English).pdf), archived at <https://perma.cc/B5GV-AH9H>.

strengthen and enhance cooperation and collaboration between the two countries on counter-wildlife trafficking.<sup>61</sup>

Less formally, and working through the State Department, ENRD also participates with other Task Force agencies in occasional digital videoconferences on wildlife trafficking with its Chinese counterparts. Similar interaction occurs with the European Union, particularly in light of the fact that on June 20, 2016, the European Council endorsed the EU Action Plan against Wildlife Trafficking, which had been adopted by the European Commission in February 2016. The EU Action Plan<sup>62</sup> has a form and structure similar to the National Strategy in that it sets out three “priorities”: preventing wildlife trafficking and addressing its root causes (in other words, demand reduction); implementing and enforcing existing rules and combating organized wildlife crime more effectively (i.e., improving enforcement and building enforcement capacity); and strengthening the global partnership of source, consumer, and transit countries. Also, like the National Strategy and Implementation Plan, the EU Action Plan targets the entire supply chain of illegal trade in wildlife, from source to transit to end consumer.

The Environment Division is also active in INTERPOL’s environmental crimes working groups, including the wildlife and forestry crimes working groups, and collaborates with them on training enforcement officials. ENRD also promotes outreach and international collaboration by hosting government officials in Washington. For example, in 2015, through the State Department’s International Visitor Leadership Program, ENRD wildlife trafficking experts hosted and met with wildlife officials from Togo and Indonesia.

Given the focus of the next section on the significant overlap between the problems and responses common to natural resource crimes, it is important to also note that the Department of Justice also sits on the Presidential Task Force on Combating IUU Fishing and Seafood Fraud (“IUU Fishing Task Force”), which was established

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<sup>61</sup> Press Release, U.S. Dep’t of State, U.S.-China Strategic & Economic Dialogue Outcomes of the Strategic Track (June 7, 2016), <http://www.state.gov/r/pa/prs/ps/2016/06/258146.htm>, archived at <https://perma.cc/49TC-DKFT>.

<sup>62</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Action Plan against Wildlife Trafficking (Feb. 26, 2016), [http://ec.europa.eu/environment/cites/trafficking\\_en.htm](http://ec.europa.eu/environment/cites/trafficking_en.htm), archived at <https://perma.cc/ZY8N-Z6DG>.

by Presidential Memorandum on June 17, 2014.<sup>63</sup> As noted, IUU fishing and seafood fraud threaten the vitality of fish stocks and the sustainability of domestic and global fisheries, create a black market that undermines economic opportunity for law-abiding fishermen, and undermine consumer confidence. The IUU Fishing Task Force, co-chaired by the Departments of Commerce and State, published a set of fifteen recommendations for action to combat IUU fishing and seafood fraud that recognize the critical importance of strong and effective criminal enforcement in stopping this widespread and destructive practice. In 2015, the Task Force issued an Action Plan for implementing those recommendations.

## V. TOWARD A MORE INTEGRATED APPROACH TO NATURAL RESOURCE CRIME

National and international attention has, for good reason, put a spotlight on the wildlife trafficking crisis. The plight of iconic, instantly identifiable and relatable species such as the elephant, rhino, big cats, and other creatures on the African plains or in Siberian forests captures the imagination. While Environment Division prosecutors may be as captivated and horrified as the public by the devastation of charismatic, iconic species wrought by wildlife trafficking, ENRD is duty-bound to take a broader view. The Environment Division prosecutes multiple forms of natural resource crime, including the three major transnational resource crimes discussed above: wildlife trafficking, illegal logging, and IUU fishing. As such, ENRD prosecutors necessarily recognize and exploit the commonalities between these crimes in terms of detecting and investigating them, understanding their causes and impacts, formulating responses to them, and working with international law enforcement partners to combat them (including through Department-of-Justice-led capacity building).

Governmental operations can tend to be compartmentalized, or “stove piped,” in a way that addresses problems in isolation. Such specialization has some benefits, as problems with fewer dimensions

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<sup>63</sup> Presidential Memorandum, Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (June 17, 2014), <https://www.whitehouse.gov/the-press-office/2014/06/17/presidential-memorandum-comprehensive-framework-combat-illegal-unreporte>, archived at <https://perma.cc/XXX7-T5KL>.

may be more manageable and expertise can be developed and applied effectively to a specific situation. However, an approach that is too focused on a single issue (or one dimension of a larger issue) may miss opportunities to apply skills and knowledge to a closely related problem set.

To take just one example, consider a forest ranger and other law enforcement officers combating illegal logging who are focused on finding violations of logging concessions that can be referred for prosecution. With just some basic knowledge of the practice of the poachers pursued by their park ranger colleagues, these forest rangers may also uncover evidence of poachers who use logging roads for ingress and egress to wildlife areas and who can more readily spot, and kill, wildlife in illegally-logged forest areas. But if government operations are “stove piped,” forest rangers likely will lack the training and inclination to look for criminal activity beyond their specific area of expertise (and vice versa for the park ranger). Moreover, investigators (be they wildlife or forestry authorities) must be well-coordinated with the appropriate prosecutor office to ensure that the case is properly developed and moves through the justice system. In assessing the effectiveness of enforcement efforts, too much emphasis is often placed on arrest and seizure figures, glossing over the reality that poor coordination between investigators/law enforcement personnel and prosecutors can lead to no, or ineffective, prosecution. An increased emphasis on prosecution and conviction rates in source and transit countries could provide a better measure of effectiveness.

Consider also a case like the Lumber Liquidator prosecution, where the conservation and species impacts of illegal logging activity are manifest. In that case, documented and well-known illegal logging activities directly impacted the already tenuous prospects of endangered species. The wood flooring that Lumber Liquidators imported from Chinese suppliers was originally harvested in Far East Russia (among other places), shipped to China, and then imported by Lumber Liquidators in the form of wood flooring. Far East Russia is a remote area that sits between Siberia and the Pacific Ocean. Within the old-growth temperate rainforests there (among the last remaining) are two tree species, Mongolian oak and Korean pine, that are critical to the survival of the Siberian tiger and Amur leopard, of which only 450 and fifty-seven, respectively, are estimated to remain in the

wild.<sup>64</sup> Not only do these majestic cats require intact forests as habitat and hunting ground, but proof positive of the domino effect caused by illegal logging is that the acorns and pine nuts from these particular tree species are the primary food source for the cats' prey species, such as red deer, roe deer, and wild boar.

Illegal logging in this region has been well-known to both the Russian government and conservation NGOs working there, as is the fact that illegal logging and detrimental logging practices are the principal threats to these big cats. In fact, in response to these findings, Korean pine was added to CITES Appendix III<sup>65</sup> in October 2010, meaning that trade in this species requires appropriate permitting and authorization. For the same reasons, Mongolian oak was added to CITES Appendix III in June 2014.<sup>66</sup>

From a prosecutorial standpoint, within the Environment Division and prosecutors' offices in many countries, the real-world distinctions between the above-mentioned three types of natural resource crimes are insignificant because prosecutors are responsible for prosecuting all three, irrespective of label. For example, the Environment Division prosecutes wildlife trafficking, illegal logging and illegal fishing cases under the authority of at least two of the same statutes: the Lacey Act and the Endangered Species Act. Moreover, while there are, to be sure, some dissimilarities and elements unique to each form of natural resource crime, there are far more similarities. As such, when the Environment Division engages in capacity building in partner countries on these subjects, the necessity and the practical benefits of addressing the broader topic of natural resource crime become obvious. As a result, ENRD urges the investigators, prosecutors, and judges in attendance at these capacity-building trainings to aggressively pursue cases in all of these categories and to apply the techniques learned to all three types of cases.

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<sup>64</sup> Statement of Facts 3, [https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1396033/000114420415058462/v421764_ex10-1.htm), archived at <https://perma.cc/GM7A-L353>.

<sup>65</sup> For a listing of species added to CITES Appendices I, II, and III, see Convention on International Trade in Endangered Species of Wild Fauna and Flora appx. I–III, Mar. 3, 1973, <https://cites.org/sites/default/files/eng/app/2016/E-Appendices-2016-03-10.pdf>, archived at <https://perma.cc/DN8W-3RL4>.

<sup>66</sup> Dep't of Justice, *supra* note 44.

### A. *Shared Dynamics of Natural Resource Crimes*

Wildlife trafficking, illegal logging, and IUU fishing share numerous characteristics and present similar challenges to law enforcement efforts to stanch them. While accurate estimates are very difficult to pin down, it is beyond dispute that (1) the trade in these illegal goods is in the many billions of dollars and (2) the amount of illegal trade in all three is on the rise. UNEP estimates the combined value wildlife trafficking, illegal logging and IUU fishing at \$69–199 billion per year, with an annual growth rate of 5–7% for environmental crime generally.<sup>67</sup> It is equally clear that illegal trade at this scale threatens the existence of protected wildlife and timber species and puts the sustainability of certain fish stocks at risk. Of course, the massive illegal taking and trade in wildlife, timber, and fish also undermines conservation efforts.

There are also commonalities in the conditions giving rise to these illegal markets in all three cases, namely weak national laws and, even where adequate laws exist, weak national enforcement. Also abetting the development of black markets in many countries, and closely tied to the weak legal systems and enforcement just noted, is the prevalence of official corruption. For all of these reasons, wildlife trafficking, illegal logging, and IUU fishing continue to be perceived as low-risk/high reward crimes.

As predictably would follow from the above conditions, much of the crime in these categories is perpetrated by transnational criminal groups. It is only logical that organized criminal groups would view wildlife products, timber, and illegally harvested fish as just another product that could move through their existing supply chain or transportation networks. The involvement of these groups in lucrative areas of environmental crime—and especially natural resource crime—has long been known.<sup>68</sup> Indeed, the Executive Order establishing the Presidential Task Force on Wildlife Trafficking notes the involvement of “armed and organized criminal syndicates” and calls for counter-wildlife trafficking efforts to “assist

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<sup>67</sup> UNEP, *supra* note 1, at 7–8 (growth rate), 20 (summing estimates in table).

<sup>68</sup> See UNITED NATIONS OFF. ON DRUGS AND CRIME [UNODC], THE GLOBALIZATION OF CRIME: A TRANSNATIONAL ORGANIZED CRIME THREAT ASSESSMENT 9–10 (2011) (describing the connection between the globalization of organized crime and transnational environmental crime).

in combating transnational organized crime.”<sup>69</sup> Similarly, the United Nations General Assembly Resolution on Tackling Illicit Trafficking in Wildlife states that wildlife trafficking is “an increasingly sophisticated form of transnational organized crime.”<sup>70</sup> Illegal logging, likely even more profitable than wildlife trafficking, has also attracted organized criminal groups. UNEP has noted the involvement of transnational crime groups in many aspects of the illegal timber trade (e.g., rosewood smuggling and the “laundering” of illegal tropical timber through faux plantations).<sup>71</sup> UNODC has found multiple links between illegal fishing and many forms of transnational organized criminality.<sup>72</sup>

Equally predictable is that organized criminal groups would use their existing financial networks to handle their considerable profits, making money laundering one of many crimes to accompany the underlying trafficking. The full suite of financial crimes typically associated with transnational organized criminal groups can be seen in the criminal enterprises engaging in wildlife trafficking, illegal logging, and IUU fishing.

A key shared characteristic of these three crimes is that they have a sizable legal (or licit) market, and several consequences flow

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<sup>69</sup> Exec. Order No. 13,648, *supra* note 5, § 1. The President’s Strategy to Combat Transnational Organized Crime defines transnational organized crime, in part, as

[S]elf-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms.

STRATEGY TO COMBAT TRANSNATIONAL ORGANIZED CRIME: ADDRESSING CONVERGING THREATS TO NATIONAL SECURITY ii (July 2011), <https://www.whitehouse.gov/sites/default/files/microsites/2011-strategy-combat-transnational-organized-crime.pdf>, *archived at* <https://perma.cc/42HQ-4BYG>.

<sup>70</sup> G.A. Res. 69/314, pmb. (July 30, 2015). UNODC analysis of ivory seizures indicates a geographic concentration of seizures in east Africa, especially Kenya and Tanzania, and predominance (over 70%) of seizures of large shipments (>500 kg). These facts suggest the involvement of organized crime and a market dominated by a handful of actors. UNODC, *supra* note 18, at 44–46.

<sup>71</sup> UNEP, *supra* note 1, at 51.

<sup>72</sup> UNITED NATIONS OFF. ON DRUGS AND CRIME [UNODC], TRANSNATIONAL ORGANIZED CRIME IN THE FISHING INDUSTRY 127–28 (2011), [http://www.unodc.org/documents/human-trafficking/Issue\\_Paper\\_-\\_TOC\\_in\\_the\\_Fishing\\_Industry.pdf](http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf), *archived at* <https://perma.cc/HN5Z-V5HQ>.

from this fact. The presence of a legal trade in wildlife, timber and fish products makes it difficult, if not impossible, to detect the illegal product that is “laundered” through licit channels for the same products. For example, law enforcement is significantly challenged by the difficulty in differentiating protected species that are illegally traded from nearly identical species for which trade is permitted. The same wood species logged outside of a permitted concession, or the same fish species caught within and beyond a permitted fishing grounds may be impossible for law enforcement to distinguish.

Relatedly, given the existence of legal trade in these products, the legality of any particular transaction is often determined through multiple forms of paperwork (hunting, logging, and fishing permits; customs forms; declarations and the like). Consequently, trafficking in any of these products typically is accompanied by a host of other crimes, such as false documentation, mislabeling, forgery, fraud, customs violations, tax offenses, smuggling, and many others. Finally, the existence of legal markets for these products and the administrative apparatus in source and transit countries needed to facilitate that market fosters conditions for official corruption at all levels. Not only does corruption lubricate the trafficking in these products, but it significantly mitigates the risk to organized criminal groups that are particularly adept at using corruption to circumvent legal controls.

*B. Common Social and Economic Impacts of Natural Resource Crimes*

While this article is not the space to explore the varied and complex effects of natural resource crime, it is worth noting that all three forms have similar undeniable social and economic consequences for the range (or source) states involved well beyond the negative ecological consequences for protected species and their habitat. Many range states are less developed and economically challenged countries, and natural resource crime on the scale observed amounts to theft of consequential public resources that these countries can ill-afford to surrender. Elephant, rhino, and other poaching decimates species whose survival is critical to existing or budding ecotourism in many range states. Illegally logged timber not only depletes the resource and the value associated with sustainable, legal harvesting, but also robs the source country of permit, tax, and

other revenue. The same situation obtains with large-scale IUU fishing, which robs states with fisheries of the value of the resource and administrative revenue while also threatening artisanal fisheries that provide a desperately needed nutritional source for local populations. Illicit trade in all of these products stifles legitimate trade and distorts legitimate markets.

The social impacts are also abundant. The black market in these products subverts legitimate trade and other legitimate economic activity, thus hindering sustainable local development (for example, discouraging ecotourism in areas where poaching is prevalent or where wildlife habitat has been decimated by illegal logging). The operation of sophisticated criminal organizations, and the corruption that comes along with it, undermines the rule of law, destabilizes institutions, and ultimately undermines governance. The operation of sophisticated and well-armed criminal groups also poses obvious security threats for local communities, none more obvious or direct than the than 1,000 African park rangers estimated to have been killed from 2004 to 2014.<sup>73</sup>

Of course, significant concerns arise from indications that armed militant groups (such as the Janjaweed, the Lord's Resistance Army, and al-Shabaab) derive income from environmental crime, such as illegal trade in ivory, timber, and charcoal.<sup>74</sup> Though the extent of involvement of these groups in the illicit trade in natural resources is difficult to determine precisely (like any clandestine activity), and is subject to some debate, such groups unquestionably contribute to the violence and instability in the regions where they operate.<sup>75</sup>

### C. *Prosecution Strategies for Natural Resource Crimes*

As expected, the many similarities between the three forms of natural resource crime drive several similar established and emerging law enforcement responses. There are several excellent sources describing the various enforcement responses, among them the

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<sup>73</sup> UNEP, *supra* note 30, at 90 (2014); *see also* THE THIN GREEN LINE FOUNDATION, OUR STORY, <https://www.thingreenline.org.au/story/>, archived at <https://perma.cc/GE5N-ZGEQ> (last visited Oct. 25, 2016) (describing the purpose of the Thin Green Line Foundation and the organization's work in supporting the conservation efforts of park rangers).

<sup>74</sup> UNEP, *supra* note 30, at 48–51.

<sup>75</sup> *See* GAO, *supra* note 10, at 16–27.

Presidential Task Force National Strategy and Implementation Plan, UNODC's Wildlife and Forest Crime Analytic Toolkit, and the IUU Fishing Task Force's Action Plan for Implementing Task Force Recommendations. These articulated enforcement responses and objectives are wide-ranging. They address everything from improving field investigation and forensic capabilities (including through new technologies) to enacting national legislation to implement obligations under international agreements, such as CITES and the United Nations Convention against Transnational Organized Crime.

A subset of these shared enforcement strategies relate to the best practices in prosecuting natural resource criminals, an area where the Department of Justice is deeply experienced and conducts a great deal of capacity building. The objectives of the methods and practices that the Environment Division pursues in its own cases and teaches in its training sessions for investigators, prosecutors and judges, has been succinctly captured by INTERPOL's definition of "effective enforcement" against environmental crime as "secur[ing] convictions that act as a deterrent to environmental criminals, with meaningful sentences, fines and the recovery of assets and proceeds of crime, and the generation of intelligence that leads to the disruption of transnational criminal networks through international."<sup>76</sup>

As this definition reflects, perhaps the biggest driver in 2016 for formulating strategies for effective prosecution is recognition that wildlife and timber trafficking, along with illegal fishing, have become highly profitable and the province of sophisticated, organized criminal networks. No longer are these crimes perpetrated by individual, opportunistic poachers and thieves looking to reap a small profit or food "for the pot," as subsistence poaching has been described.

Rather, this illegal conduct is now seen in the law enforcement community as the serious crime that it is; one that merely traffics in a different form of profitable contraband. Based on the experience of the Environment Division, the following enforcement methodologies should be considered for all three forms of natural resource crime:

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<sup>76</sup> ANITA SUNDARI AKELLA & CRAWFORD ALLAN, DISMANTLING WILDLIFE CRIME: EXECUTIVE SUMMARY 7 (2012).

- Directing investigation efforts along the entire supply chain, from outright poaching and theft of resources, to permit or concessions violations, to customs or other transit-related violations.
- Recognizing that illegal activity often crosses borders to assure effective communication strategies among countries.
- Moving beyond apprehension, arrest and seizure to analyze the rates of prosecution, conviction, and sanctions imposed.
- Prosecuting not only the arrested, often low-level actors (poachers, drivers, boat operators), but also addressing the broader criminal enterprise (from middle-men to financiers). Potential defendants in a broader investigation may also include corrupt officials who facilitate illegal activity.
- Moving beyond prosecution of violators apprehended in the act *in flagrante delicto* and deploying methods such as controlled delivery, plea bargaining and cooperating witnesses or informants to move up the organizational chain.
- Improving cooperation and coordination between investigators and prosecutors, particularly in order to develop larger scale investigations and cases.
- Attacking the financial heart of transnational criminal organizations through prosecution of financial crimes (such as money laundering and tax violations) and using legal tools to freeze, seize, and forfeit the natural resources being trafficked, instrumentalities, and illicit proceeds derived from trafficking.
- Ensuring that charging documents encompass all related criminal activity, which could include smuggling, conspiracy, fraud, falsifying records, false labelling, customs violations, and the aforementioned financial crimes. Of particular note in numerous range and transit countries, criminal activity is also likely to include bribery and official corruption.
- Pushing for significant criminal penalties, including fines and incarceration that provide a real deterrent value. Achieving this result can be enhanced through compelling and educational sentencing presentations that describe for judges the harmful ecological, societal, and economic impacts of the illegal activity.

- Finally, building the knowledge and capacity of actors at all stages of the justice system, from investigators to judges.

## VI. CONCLUSION

The threats from the illegal trade in wildlife and other natural resources are numerous, tangible, profound and, at this point, well-known. While the tragedy of impending species extinction and devastating biodiversity loss understandably has driven much of the public interest in this crisis, governments and other world actors have also been spurred to action by the major threats to security, government and social institutions, and sustainable economic development posed by this multi-billion dollar, organized transnational criminal activity. Whether the illegal trade is in wildlife, timber and plants, or fish, the causes, effects, and well-considered responses to these natural resource crimes share enough similarities to merit an integrated and coordinated approach to stanch these crimes. This article has noted several of the most significant commonalities that can be considered in adapting strategies to improve enforcement. Efforts and progress in fighting one form of natural resource crime can have ancillary benefits in combatting the others.

From a law enforcement standpoint, the international community has made significant strides in the last few years to support the rule of law, address corruption, enhance enforcement capacity worldwide, and deliver coordinated strategies that are now starting to make a difference. The United States has long been a leader in this area, and the Task Force on Wildlife Trafficking has proved an excellent vehicle to develop, share with our international partners, and implement effective enforcement strategies. The Department of Justice, led by the Environment and Natural Resources Division, has vigorously contributed to this effort and ramped up its own enforcement efforts, while also working to share its expertise in capacity building workshops across the world. No doubt, much remains to be done. But increased focus has led to real progress toward the ultimate goal of all nations effectively protecting their precious wildlife and other natural resources.

## ILLICIT WILDLIFE TRADE AND THE ROLE OF CUSTOMS

*Kunio Mikuriya\**

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### I. WORLD CUSTOMS ORGANIZATION (WCO) AND CUSTOMS

The WCO is an intergovernmental organization specialized in Customs matters with 180 members that cover 98% of world trade.<sup>1</sup> Over the years, the mission of Customs has evolved from its traditional task of collecting revenue at borders to a wider range of tasks, including facilitating trade, improving economic competitiveness, ensuring security at borders, and protecting society from illicit trade.<sup>2</sup> To assist its Members in discharging their responsibilities in an efficient and effective manner, the WCO develops and maintains standards for Customs procedures, promotes international cooperation in sharing information and best practices and provides technical and capacity building assistance. The vision of the WCO is “Borders Divide, Customs Connects.”<sup>3</sup> However, it

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<sup>1</sup> *WCO in Brief*, WORLD CUSTOMS ORG., <http://www.wcoomd.org/en/about-us/what-is-the-wco.aspx> (last visited Dec. 13, 2016).

<sup>2</sup> *WCO Mission Statement*, WORLD CUSTOMS ORG., [http://www.wcoomd.org/en/about-us/what-is-the-wco/mission\\_statement.aspx](http://www.wcoomd.org/en/about-us/what-is-the-wco/mission_statement.aspx) (last visited Dec. 13, 2016).

<sup>3</sup> *WCO Vision Statement*, WORLD CUSTOMS ORG., [http://www.wcoomd.org/en/about-us/what-is-the-wco/vision\\_statement.aspx](http://www.wcoomd.org/en/about-us/what-is-the-wco/vision_statement.aspx) (last visited Dec. 13, 2016).

should be emphasized that Customs should connect and facilitate only legitimate goods and serve as the first line of defense against the cross-border movement of prohibited or controlled goods. Modern Customs procedures employ technology and risk management techniques to integrate the dual Customs functions of trade facilitation and protection of society.

Since global trade represents vast sources of income, opportunists often disregard national laws in order to reap additional earnings. Such opportunists include criminal organizations and, reportedly, terrorist groups. Consequently, illicit trade is often the preferred means for criminal organizations to gain illegal profit in a systematic way, as they can easily exploit differences in legal systems, cultures, and people caused by the division at borders. The commodities most commonly trafficked include narcotics, cigarettes, fake medicines and other counterfeit trades; however, wildlife crime has recently gained prominence in the global agenda. In fact, the majority of illegal goods are seized at borders as it can prove extremely difficult to trace these goods once they have entered the domestic market. As a result, Customs authorities are increasingly called upon to contribute toward the fight against illicit forms of trade by expertly managing evolving and emerging risks at borders.

## **II. THE IDENTIFIED GAPS IN EFFECTIVE BORDER CONTROL**

Through its activities in improving the performance of Customs administrations, the WCO has identified several gaps in effective border control over illegal wildlife trade.

Firstly, awareness or prioritization of governments with respect to the protection of wildlife is often lacking, and consequently, the issue is not accorded priority status. As Customs administrations are an integral part of the government, they naturally follow priorities set by government. Furthermore, it is difficult for Customs and law enforcement agencies to assume their function if there is no understanding or support from the public on the need to conserve biodiversity and wildlife. It is therefore essential to raise awareness amongst not only governments, but also citizens and consumers, in order to change the government policy in wildlife protection, as governmental priorities usually reflect those of international and local communities.

Secondly, another common shortfall is the lack of capacity among border control officers. As all consignments are accompanied by commercial documents, Customs should analyze data, evaluate the risk associated with regard to consignments, and determine the best way to intervene—whether goods can be released immediately, or if they require further documental or physical inspection. The use of information technology greatly enhances the capability of Customs to process the ever-growing volume of trade. This requires knowledge on how to analyze the trade data to target suspicious consignments and identify the goods in infringement of wildlife protection. Consequently, it becomes necessary to provide adequate training to Customs officers on the use of information technology to manage data and carry out risk profiling and targeting. Investment in human resources and technology would be helpful.

Thirdly, collaboration with other law enforcement agencies and judicial authorities is frequently insufficient in ensuring a consequence phase is enacted following the seizure of goods in infringement of wildlife protection. While Customs administrations have expertise in identifying goods that represent a deviation from normal practice, exhibiting risks of illegality in trade, police and other law enforcement agencies have expertise in criminality and criminal organizations. Equally important is collaboration with judicial authorities, as adequate comprehension of the issue among judges and prosecutors is indispensable in bringing consequence to criminals and criminal networks. Collaboration would, for that reason, provide a good opportunity to link the seizure of goods to the arrest of criminals and bring justice. Moreover, judicial cooperation at the international level is a powerful tool in dismantling the international criminal supply chain.

Fourthly, the enhancement of cooperation with business represents a key area of focus. Modern Customs operations are based on Customs-business partnerships because the effectiveness of Customs control relies on the compliance of businesses. Compliant business receives benefits with increased facilitation from Customs but also reputational recognition. As illegal wildlife trade involves logistics and other commercial sectors, it would be crucial to raise awareness and engage with the private sector to partner with them in raising compliance and preventing the movement of illicit wildlife goods.

### III. THE WCO'S APPROACH

The WCO takes a pragmatic approach in addressing the abovementioned gaps through raising awareness, providing training and communication tools, partnering with the private sector and coordinating operations.

Recognizing the important role Customs plays in a coordinated manner, the WCO joined the establishment of the ICCWC (International Consortium on Combating Wildlife Crime) in 2010 together with CITES, Interpol, UNODC, and World Bank.<sup>4</sup> Since then, the five international organizations work in close cooperation in bringing coordinated support to national wildlife law enforcement agencies and regional networks. In 2012, the ICCWC launched the Wildlife and Forest Crime Analytical Toolkit<sup>5</sup>, which was developed to provide a comprehensive overview on issues related to wildlife and forest crime aimed at government officials in wildlife and forestry authorities, as well as Customs and other relevant agencies.

In response to its Members' needs, in 2012 the WCO launched the Environmental Programme to contribute to the combat against environmental crime, in particular, illegal wildlife trade, illegal trade in hazardous and other waste, ozone depleting substances (ODSs) and the illegal trade in timber.<sup>6</sup> The Illicit Trade Report provides further information on each component of the Programme on an annual basis.

In addition to the different tools and instruments offered by the WCO to its Members, ENVIRONET<sup>7</sup> —a real-time communication tool for information exchange among all competent

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<sup>4</sup> *The International Consortium on Combating Wildlife Crime*, CONVENTION ON INT'L TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, <https://cites.org/eng/prog/iccwc.php>, archived at <https://perma.cc/C34P-XZBY> (last visited Sept. 27, 2016).

<sup>5</sup> United Nations Offices on Drugs and Crime [UNODC], *Wildlife and Forest Crime Analytic Toolkit—Revised Edition*, CONVENTION ON INT'L TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (Nov. 2012), [https://cites.org/common/resources/pub/ICCWC\\_Toolkit\\_v2\\_english.pdf](https://cites.org/common/resources/pub/ICCWC_Toolkit_v2_english.pdf), archived at <https://perma.cc/8LL5-WDG5>.

<sup>6</sup> *Environmental Programme*, WORLD CUSTOMS ORG., <http://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/environmental-programme.aspx> (last visited Dec. 13, 2016).

<sup>7</sup> *Environet: Real-Time Global Communication Tool for Environmental Issues*, WORLD CUSTOMS ORG., <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/environmental-crime/environment/concept-note-en.pdf?la=en> (last visited Sept. 27, 2016).

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national authorities, international organizations and regional networks—and CLiKC, the WCO e-learning facility containing training courses on environmental crime, are of particular importance.

Within the framework of the Environmental Programme, the WCO works consistently to broaden the scope of partnerships with other organizations working in the area of the fight against environmental crime. Throughout the past few years, the WCO signed Memoranda of Understanding (MoUs) with the CITES Secretariat<sup>8</sup> at the international level and the Lusaka Agreement Task Force<sup>9</sup> at the regional level, in addition to TRAFFIC<sup>10</sup> and the Wildlife Conservation Society,<sup>11</sup> NGOs active in the area of trade in plants and wild animals in the context of sustainable development and biodiversity conservation.

Having worked tirelessly to ensure that policy makers' attention is drawn toward the issue of environmental crimes, the WCO gained additional momentum in June 2014. The WCO Council—consisting of 180 Members—adopted the “WCO Declaration on the Illegal Wildlife Trade”<sup>12</sup> demonstrating the commitment of the global Customs community to address these crimes in a timely, coherent and coordinated manner. This Declaration urges Customs administrations to prioritize the issue of combating wildlife crime and urges governments to invest financial, human and technological resources in Customs to enable them to strengthen their capacities to protect wildlife. Results from a WCO

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<sup>8</sup> *Memorandum of Understanding between the World Customs Organization and the Cites Secretariat*, WORLD CUSTOMS ORG. (July 4, 1996), [http://www.wcoomd.org/~media/wco/public/global/pdf/about-us/partners/mou/034\\_mou.pdf?la=en](http://www.wcoomd.org/~media/wco/public/global/pdf/about-us/partners/mou/034_mou.pdf?la=en).

<sup>9</sup> *Memorandum of Understanding Between the World Customs Organization and the Lusaka Agreement Task Force*, WORLD CUSTOMS ORG. (Feb. 8, 2008), [http://www.wcoomd.org/~media/wco/public/global/pdf/about-us/partners/mou/158\\_mou.pdf?la=en](http://www.wcoomd.org/~media/wco/public/global/pdf/about-us/partners/mou/158_mou.pdf?la=en).

<sup>10</sup> *WCO and TRAFFIC Sign MOU to Build the Enforcement Capabilities of Customs Frontline Officers in the Fight Against Illicit Trafficking in Wild Fauna and Flora*, WORLD CUSTOMS ORG. (Oct. 21, 2013), <http://www.wcoomd.org/en/media/newsroom/2013/october/wco-and-traffic-sign-mou.aspx>.

<sup>11</sup> *WCO and WCS to Collaborate on Illegal Wildlife Trade*, WORLD CUSTOMS ORG. (Jan. 7, 2016), <http://www.wcoomd.org/en/media/newsroom/2016/january/wco-and-wcs-to-collaborate-on-illegal-wildlife-trade.aspx>.

<sup>12</sup> *Declaration of the Customs Co-Operation Council on The Illegal Wildlife Trade*, WORLD CUSTOMS ORG. (2014), <http://www.wcoomd.org/en/about-us/legal-instruments/~media/BC96FE063BF848AD83E3ADB56B0A79BE.ashx>.

research questionnaire<sup>13</sup> conducted prior to the 2014 WCO Council show that while Customs administrations are well-positioned to fight against illegal wildlife trade, the priority accorded by them to the fight against wildlife crime is lower than for other types of smuggling. The research maintains that most Customs administrations, however, share the notion that illegal wildlife trade is a global concern against which the global Customs community should strongly contribute. It concludes that most Customs administrations around the world aspire to tackle illegal wildlife trade activities more actively, and none indicated they want to de-emphasize combating illegal wildlife trade.

In March 2016, the WCO signed the “United for Wildlife Transport Taskforce Buckingham Palace Declaration”<sup>14</sup> in London. The Declaration, which was developed by the United for Wildlife Transport Taskforce to crack down on illegal wildlife trafficking routes, is the result of a year of work carried out by leaders from the global transportation industry, conservation organizations, and several international organizations at the request of HRH The Duke of Cambridge, President of United for Wildlife. The WCO contributed to the work with its expertise on, and partnership with, transport companies active in the global supply chain. The Declaration contains eleven commitments under four distinct headings, each representing concrete steps for transport companies to ensure that they are not involved in illicit wildlife trade.

#### IV. COORDINATION OF OPERATIONS

The WCO coordinates international operations to build the capacity of Customs administrations in combating against illicit wildlife trafficking. These operations are aimed at raising awareness, providing training on the evaluation of risks and use of intelligence, and enhancing communication and collaboration with other wildlife enforcement agencies and business.

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<sup>13</sup> Chang-Ryung Han, *A Survey of Customs Administration Perceptions on Illegal Wildlife Trade*, WORLD CUSTOMS ORG. (2014), [http://www.wcoomd.org/~media/wco/public/global/pdf/topics/research/research-paper-series/34\\_wildlife\\_han\\_en.pdf?la=en](http://www.wcoomd.org/~media/wco/public/global/pdf/topics/research/research-paper-series/34_wildlife_han_en.pdf?la=en).

<sup>14</sup> *WCO Signs United for Wildlife Transport Taskforce Buckingham Palace Declaration*, WORLD CUSTOMS ORG. (Mar. 15, 2016), <http://www.wcoomd.org/en/media/newsroom/2016/march/wco-signs-united-for-wildlife-transport-taskforce-buckingham-palace-declaration.aspx>.

### A. *WCO Operations in Africa*

In 2010 the WCO launched project GAPIN, which stands for “Great Apes and Integrity,” aiming at raising awareness and building the enforcement and integrity capacity in fourteen African countries in implementing the CITES (The Convention of International Trade in Endangered Species of Wild Fauna and Flora) Convention. The project’s particular focus was combating illicit trafficking of great apes (chimpanzees, gorillas, and bonobos) and other animals in danger of extinction.<sup>15</sup> The initial training in Mombasa, Kenya, consisted of identification of goods, risk management techniques, and methods on how to detain animals and their products. It also emphasized the integrity aspect, as criminals often target officers from Customs and other border agencies to bribe them to ensure that illegal goods pass through the border. Once the training courses were completed, a two-week operation was carried out in early 2011 with the support of twenty-five Customs administrations in Asia and Europe, as well as many international and regional organizations, including the CITES Secretariat and WCO Regional Intelligence Liaison Offices. The operation resulted in over 100 seizures covering more than thirty-one species of protected wildlife.<sup>16</sup>

Subsequently, the WCO moved to the second phase of the GAPIN project in 2012, where the training activities were considerably expanded, and introduced the concept of an ownership approach by developing a pool of local experts by employing the train-the-trainer method. In a similar vein, those involved in the first phase of the project were nominated as GAPIN ambassadors and dispatched to neighboring countries to advocate their participation in the project. Another two-week operation was organized in 2012, which became an operation of global and inter-disciplinary proportions with the participation of forty-one Customs administrations in Africa, Asia and Europe. The operation also had

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<sup>15</sup> *Project GAPIN Against Illicit Trafficking in Wildlife*, WORLD CUSTOMS ORG. (2010), <http://www.wcoomd.org/~media/WCO/Public/Global/PDF/Topics/Enforcement%20and%20Compliance/Activities%20and%20Programmes/Environmental%20Crime/GAPIN/GAPIN%20factsheet%20EN%20copy>.

<sup>16</sup> *Debriefing Meeting for Operation GAPIN*, WORLD CUSTOMS ORG. (Mar. 1, 2011), <http://www.wcoomd.org/en/media/newsroom/2011/march/debriefing-meeting-for-operation-gapin.aspx>.

the support of the CITES Secretariat, Interpol, and the Lusaka Agreement Task Force, as well as CITES management authorities of some countries, wildlife enforcement agencies and police. The two-week operation in 2012 resulted in the seizure of 2100 items, including two rhino horns, fifty-three rhino skins, 450 kg of raw ivory and 150 kg of bush meat.<sup>17</sup> Moreover, the project sought a wider target audience of the local and international public in raising awareness through press conferences and thus leveraging increased political support.

In recognition of the success in operational capacity building shown by the GAPIN project, funded by Sweden, a multi-donor INAMA (meaning “wild animal” in the language of Zambian Bemba tribe) project administered by the WCO was launched in 2014. The on-going project will support Sub-Saharan Customs administrations with institutional assessment, intelligence training and inter-agency cooperation in implementing the CITES Convention, funded by CITES, Germany, Sweden and the United States.<sup>18</sup> The project is expected to provide further encouragement to African governments to raise the policy priorities for wildlife protection.

### B. *WCO Operations in Other Regions*

The WCO has been active in combating illicit wildlife trade in other regions as well, including in South America and Mexico. The WCO Regional Intelligence Liaison Office in South America, located in Chile, coordinated operation FLYAWAY in 2015, focused on air passengers, air cargo, and postal and express courier shipments in fourteen countries either as origin (South America and Mexico), transit, or destination (United States and Europe).<sup>19</sup> In addition to the seizure of over 775 animal specimens, such as live tortoises, parrots and monkeys and 2000 timber logs, the operation

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<sup>17</sup> *Criminals Trading in Protected Wildlife Targeted in Global Customs Enforcement Operation*, WORLD CUSTOMS ORG. (Nov. 22, 2012), <http://www.wcoomd.org/en/media/%20newsroom/2012/november/operation-hope.aspx>.

<sup>18</sup> *The WCO—INAMA Project*, WORLD CUSTOMS ORG. (Oct. 2015), <http://www.wcoomd.org/en/topics/capacity-building/activities-and-programmes/cooperation-programmes/wco-sweden-programme/the-wco-inama-project.aspx>.

<sup>19</sup> *Multi-agency Efforts Disrupt Wildlife Trafficking*, WORLD CUSTOMS ORG. (July 15, 2015), <http://www.wcoomd.org/en/media/newsroom/2015/july/multi-agency-efforts-disrupt-wildlife-trafficking.aspx>.

resulted in twenty-three arrests in an effort to dismantle the criminal supply chain by mobilizing Customs, police, and wildlife authorities at the national level.<sup>20</sup>

### C. *Collaboration with ICCWC Partners*

As part of a tangible joint activity, the ICCWC organized operation Cobra to combat wildlife crime and bring criminals to justice since 2013. The Cobra III operation, organized in 2015, resulted in 139 arrests and more than 247 seizures of items, such as elephant ivory, rhino horns, rosewood, and other plant and animal specimens.<sup>21</sup> The ICCWC describes the success as follows:

Key successes during the operation included the arrest of a Chinese national believed to have been coordinating rhino horn smuggling from Namibia, the arrest of a notorious elephant poacher in India, and the seizure of 340 elephant tusks and 65 rhino horns in Mozambique. Over 50,000 illegal wildlife items were seized in the United Kingdom, as well as an additional 10,000 in Austria and 5,000 in Germany, which included large volumes of illegal supplement capsules containing wildlife products. Other countries where large numbers of illegal items were seized include China, Singapore and South Africa. In total, thirty-seven countries reported seizures and/or arrests during the operation. CENcomm, the WCO's secure and encrypted communication tool, was deployed during the operation, as it is systematically during all Customs operations. The tool enabled investigators to exchange real-time intelligence and information, and to target and track suspicious cargoes, poachers and traffickers of endangered species.<sup>22</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Successful Operation Highlights Growing International Cooperation to Combat Wildlife Crime*, CONVENTION ON INT'L TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (June 18, 2015), [https://cites.org/eng/news/pr/iccwc\\_press\\_release\\_cobra\\_III](https://cites.org/eng/news/pr/iccwc_press_release_cobra_III), archived at <https://perma.cc/42C9-28Z3>.

<sup>22</sup> *Id.*

## **V. CONCLUSION**

The international Customs community has progressively strengthened the fight against illicit wildlife trade through the WCO. Fortunately, in the past few years, there has been growing recognition and support from the international community on the role Customs have to play in this field. At the same time, collaboration with other law enforcement agencies and business has gained significant momentum of late. Joint efforts in protecting wildlife have only recently commenced, however, and we need to continue our collaborative efforts.