

A dark blue world map is visible in the background, showing the outlines of continents and oceans. The map is centered on the Atlantic Ocean, with North and South America on the left and Europe and Africa on the right.

A World of Opportunity: Empowering Whistleblowers to Combat Environmental Crime

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Overview of Today's Presentation



Stronger law enforcement is needed to rescue threatened species and ecosystems from climate change and other threats



Whistleblowers are key to enforcement



A world of opportunity to tap whistleblower reward laws to protect the environment



NGOs can help!

Sustainable use cannot survive in communities overrun by environmental crime



Extractive Forest Reserve in
Machadinho d'Oeste, Brazil



Chico Mendes

Are we doing enough to
protect and encourage
those with knowledge of
crime to assist with
prosecutions?

Law Enforcement is Critical to Success on Environmental Issues



Environmental problems only get worse when laws and treaties designed to address them are blatantly disregarded. Here are just a few of the environmental problems plagued with large-scale law-breaking:

Wildlife Trafficking





Illegal Fishing

Illegal Discharges from Ocean Fishing

File image courtesy of the Office of Response and Restoration





Illegal Logging and Timber Trade

The Need for Enforcement Extends Far Beyond Environmental Regulations



Incentive payments and tax breaks are sometimes an effective way to encourage environmental stewardship – but an enforcement strategy is needed to ensure that these benefits go to the innovators, not the fraudsters



Example: \$387M federal grants to Southern Company for coal gasification and carbon capture services never delivered (now under USDOJ investigation)



Similarly, publicity about environmental achievements is often important for corporate success in an era where consumers increasingly reward stewardship. But laws protecting shareholders and consumers must be enforced to ensure that true progress, not fraud, is rewarded.



Example: Exxon's marketing of gasoline, diesel and oil products to consumers as climate solutions (now the subject of MA State AG's fraud lawsuit)

Key Tool for Environmental Whistleblowers: Domestic Laws with Transnational Reach



Large-scale environmental crimes are highly profitable and typically carried out by criminal syndicates operating on a global scale



International law provides a framework but often lacks meaningful enforcement provisions



Tougher enforcement of well-crafted domestic laws is key to disrupting international criminal syndicates

Whistleblowers are Key to Enforcement



A “whistleblower” is someone (1) with information about wrongdoing that is not widely known, and (2) who takes action to address the wrongdoing.



Today we focus on the subset of whistleblowers who work with government officials to address civil or criminal violations



Because criminals are often effective in hiding their crimes, prosecutors greatly depend on help from whistleblowers to hold criminals accountable



Law enforcement officials prize two types of assistance: “insider” (non-public) information, and analyses of public information

Whistleblowers Need Protection and Encouragement



Individuals considering reporting crimes face risks to their livelihoods and the safety of themselves and their families



Reliable information on the risk-reward calculus is key. Advice from employers is often flawed and sometimes against their interest. Where to turn?



Many countries lack adequate laws and programs protecting whistleblowers from retaliation and enforcement officials cannot be trusted



Long-term challenge: strengthen legal systems worldwide to address environmental crime and protect whistleblowers.



Short-term opportunity: connect whistleblowers with qualified counsel and use domestic laws with a track record of success in protecting and encouraging whistleblowers

Two Categories of Whistleblower Laws

Protection Against Retaliation
for Lawful Disclosures (including provisions allowing confidential filings)

Rewards for Assisting the Government with Recovery of Monetary Sanctions

A Blend of Both is Needed to Enlist Whistleblowers to Counter Environmental Crime

Why Rewards Are Needed

1. **Rewards lead to successful prosecutions!** The United States' 35-year track record shows that rewards incentivize whistleblowing that might otherwise have been deterred due to likely retaliation- and this whistleblowing leads to successful prosecutions.
2. **Rewards incentivize truth-telling.** The only way to prevail in a claim for a whistleblower reward is to be right about wrongdoing.
3. **Pursuing rewards is consistent with pursuing justice.** Research shows that people blow the whistle primarily “to uphold moral principles or values.”

U.S. Whistleblower Reward Laws- Tier One



“Tier One” whistleblower reward provisions give the enforcement agency discretion on whether to reply to the whistleblower’s information and whether / how much to reward the whistleblower



NWC is working to enact H.R. 864 in the U.S. Congress, which would provide a clear mandate to pay whistleblower rewards in cases involving illegal wildlife trafficking, illegal fishing and illegal timber trade.



Tier One provisions are found in many U.S. environmental laws. Whistleblowers have played a key role in helping enforce these laws – but this role could be greatly expanded.



Whistleblowers are
Key to \$60M
Penalties Imposed
on Carnival Cruise
Lines for Pollution
& Cover Up

Whistleblowers
are Key to Jail
Terms for
Criminals
Smuggling
Jaguars into U.S.
from Mexico



U.S. Whistleblower Reward Laws – Tier Two



“Tier Two” whistleblower reward provisions – found in U.S. securities fraud, commodities fraud, bribery and tax fraud laws – give the enforcement agency discretion on whether to reply to the whistleblower’s information but, unlike Tier One, mandate that a prescribed percentage of monetary sanctions be used to reward the whistleblower



Monetary sanctions are typically much larger than Tier One cases.



NWC is assisting a whistleblower with using laws regulating securities fraud to blow the whistle on Facebook and other websites that facilitate illegal wildlife trafficking, as well as to blow the whistle on companies involved with IUU fishing



NWC policy victory: Taxpayer First Act of 2019 requires bi-annual IRS status updates sufficient to allow a whistleblower to monitor the progress of the claim

U.S. Whistleblower Reward Laws – Tier Three



Unlike Tiers One and Two, “Tier Three” whistleblower reward provisions – found in the federal and state False Claims Act – give the enforcement agency no discretion on whether to reply to the whistleblower’s information.



When the whistleblower files a sealed complaint against a private actor in court, the government faces a deadline on whether to take over the case (“intervene”). If no intervention, the whistleblower (“relator”) can proceed in the name of the government (“qui tam”)



Like Tier Two, Tier Three provisions mandate that a prescribed percentage of monetary sanctions be used to reward the whistleblower. Monetary sanctions are typically much larger than in Tier One cases.

U.S. False Claims Act

The most important whistleblower law



Applies to conduct outside the U.S. – so long as there is a financial transaction with the U.S. government (e.g., procurement, customs duties)



Suitable for building criminal cases as well as civil



Treble damages provision, plus mandatory penalty (US \$5500 - \$11K per false claim) sends powerful message to wrongdoers



Whistleblowers (“relators”) receive 15 to 30 percent of amount recovered by government, plus attorney fees and costs



Anyone with original information can serve as a whistleblower, including NGOs. No environmental injury (standing) required.



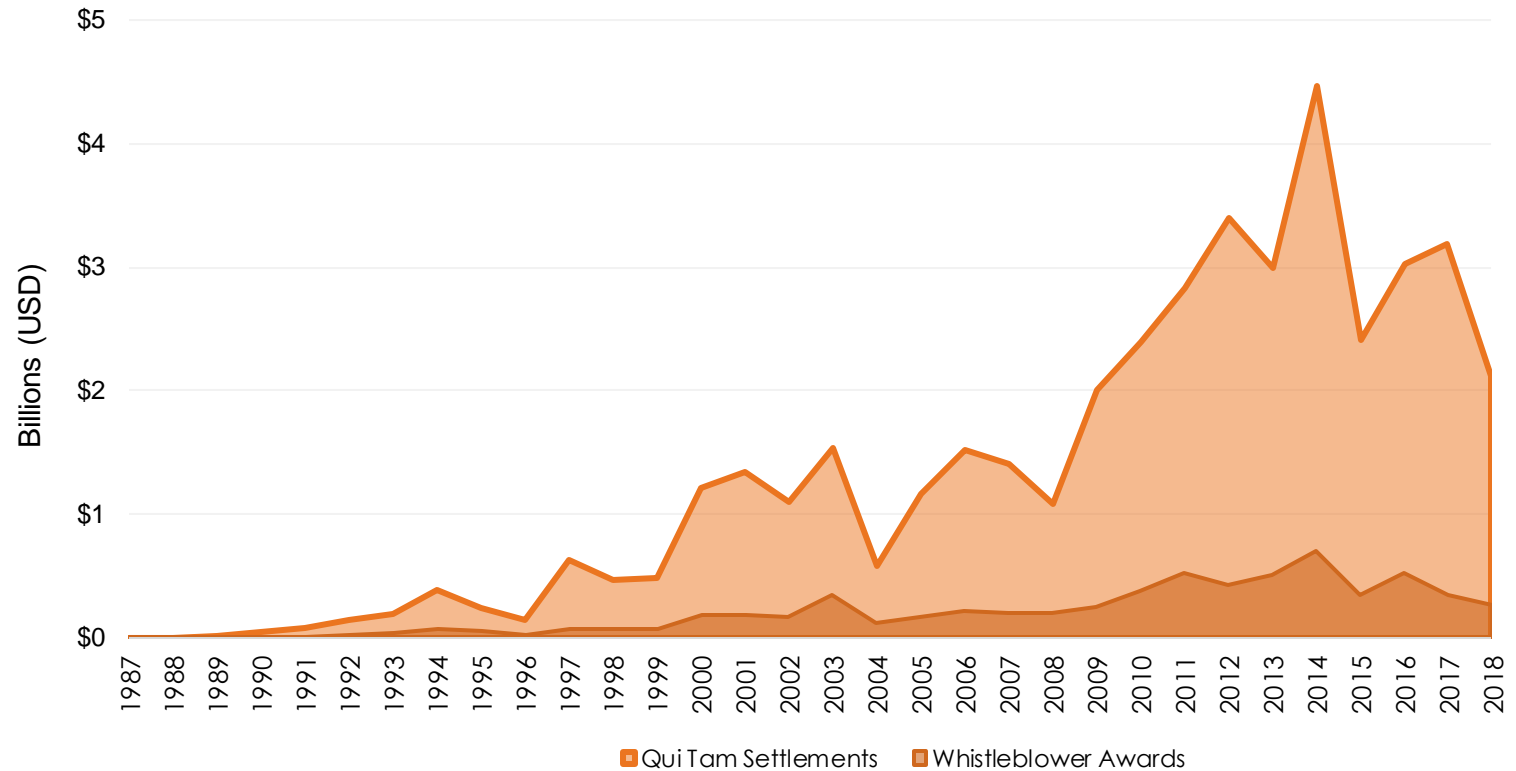
Government litigates 20% of cases itself

U.S. False Claims Act

33-year history of success in empowering whistleblowers to fight corruption

U.S. Government Recovers \$42.5B due to Whistleblower Disclosures under the FCA

FY 1987 - FY 2018



Key Incentive: \$6.4B awarded to whistleblowers

How Can the FCA Be Used to Protect the Global Environment?



False customs declarations regarding illegal shipments of fish, wildlife and plants (including timber)



Government contractor falsely claims that it has complied with requirements for delivering sustainable products or services



False statements on lease or permit applications



Record \$20B
settlement with BP
in 2016 included
False Claims Act
penalties for
falsifying offshore
lease applications

NGOs Can Help Everyday Citizens Make a Difference as Whistleblowers



Many NGOs have extensive field networks that include witnesses to environmental crimes. NGOs can connect these witnesses with attorneys who provide guidance on minimizing risks and representation before agencies and courts



Example: National Whistleblower Center's Legal Assistance Program



Many NGOs have communications experts who can generate favorable publicity when government action is taken on whistleblower-generated cases (and apply pressure when there is inaction or an ineffectual settlement)

Top-Line Messages for Those Assisting Whistleblowers



The safety of whistleblowers and their loved ones is paramount.



Become familiar with encryption and other security strategies to avoid placing them at greater risk.



Tread carefully with media outreach. Identify reporters with a track record of maintaining confidentiality of sources when requested



Provide moral support – communicate widely about the critical importance of protecting and rewarding whistleblowers

Top-Line Messages for Potential Whistleblowers



Consult with qualified legal counsel on securing protected status and rewards, timely filing, evidence collection and preservation, etc.



Consult with loved ones on whether and how to proceed



Minimize risks of retaliation. **Do** use encrypted communications technology; **Do not** use your employer's technology



You are performing a tremendous public service!

Thank you for supporting whistleblowers!

Web: www.whistleblowers.org/take-action/

Facebook: @NationalWhistleblowerCenter

Twitter: @Stopfraud