The Work of the Department of Justice Environment and Natural Resources Division: Promoting Environmental Rule of Law and the Advancement of Sustainable Development Goals

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THE WORK OF THE DEPARTMENT OF
JUSTICE ENVIRONMENT AND NATURAL
RESOURCES DIVISION: PROMOTING
ENVIRONMENTAL RULE OF LAW AND
THE ADVANCEMENT OF SUSTAINABLE
DEVELOPMENT GOALS

* John C. Cruden*

INTRODUCTION

On September 25, 2015, the 193 Member States of the United Nations reached a consensus on the outcome document of a new sustainable development agenda entitled, “Transforming Our World: The 2030 Agenda for Sustainable Development.”1 This sustainable development agenda includes seventeen global goals and 169 targets focused on advancing the three interconnected elements of sustainable development: economic growth, social inclusion, and environmental

* This article is based on two speeches delivered by Mr. Cruden during his tenure, from December 2014 through January 2017, as Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice under the Obama Administration: a speech delivered at the World Bank’s Law, Justice and Development Week 2015 in a session on “Rule of Law and Development: Sustainable Development Goals and Environmental and Social Frameworks for Investment Financing” (Washington, DC, November 19, 2015); and Keynote Remarks at the University of South Carolina JusTRAC Symposium at the Woodrow Wilson Center on “Intersection of Rule of Law and the Environment” (Washington, DC, January 19, 2016). Since the article was written while Mr. Cruden was serving as Assistant Attorney General, it describes the work being conducted by, and the priorities of, the Division during his tenure. It also describes certain initiatives and regulatory actions pursued the Department of Justice, the Environmental Protection Agency, and other agencies during the Obama Administration.

Mr. Cruden would like to extend a special thanks to Thomas Swegle, Senior Counsel in the Environment and Natural Resources Division of the U.S. Department of Justice, for his valuable contributions to this article.

1 See G.A. Res. 70/1 (Sept. 25, 2015).
protection.\textsuperscript{2} Importantly, the outcome document recognizes that democracy, good governance, and the rule of law are essential elements of sustainable development, including protection of the environment.\textsuperscript{3}

The Department of Justice Environment and Natural Resources Division (hereinafter ENRD) has sometimes been called “the nation’s largest environmental law firm.”\textsuperscript{4} Its 600 employees, including nearly 450 attorneys, represent the U.S. Government in all cases in U.S. federal courts relating to the protection of the environment and natural resources, as well as cases relating to the rights of Native Americans.\textsuperscript{5} The ENRD 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.\textsuperscript{6}

While many of the 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, the Department’s work also includes a variety of actions that protect the environment and natural resources outside U.S. national borders.\textsuperscript{7} The ENRD enforces several important environmental statutes that outlaw transnational environmental crimes, such as wildlife trafficking, trafficking in illegally harvested timber, and the pollution of U.S. oceans. The Department increasingly works to build the capacity of law enforcement counterparts in other countries so that they can serve as capable partners in prosecuting these crimes and working with the ENRD to combat the criminal enterprises that perpetrate these lucrative and harmful activities. As this Article will explain, the work of the ENRD advances the attainment of many of the United Nation’s newly-established

\textsuperscript{2} See id at ¶ 3.
\textsuperscript{3} Id. at ¶ 9.
\textsuperscript{4} See generally Environment and Natural Resources Division, DEPT. OF JUSTICE, https://www.justice.gov/enrd (last visited March 5, 2017).
\textsuperscript{7} See id.
sustainable development goals and targets relating to the protection of the environment and natural resources, and advances the rule of law with respect to environmental governance.

I. THE U.S. DEPARTMENT OF JUSTICE ENVIRONMENT AND NATURAL RESOURCES DIVISION

The ENRD celebrated its centennial anniversary in November 2009. Originally named the “Public Lands Division,” it was created to handle “[a]ll suits and proceedings concerning the enforcement of the Public Land law,” including suits related to Indian lands, on behalf of the U.S.\(^8\) As the U.S. developed over the twentieth century and as new laws were enacted to protect the nation’s environment and natural resources, the ENRD’s mission has significantly expanded. While it continues to carry out its original mission, the ENRD now has responsibility for enforcing 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 Superfund).\(^9\) In federal court, the ENRD also defends a variety of federal agencies tasked with carrying out land management responsibilities, protecting and managing natural resources, and promulgating regulations on a myriad of subjects relating to the environment and natural resources.\(^10\)

Because the ENRD is responsible for a wide variety of subject areas, it is divided into nine litigating sections that handle specific types of work.\(^11\) The Environmental Enforcement Section and Environmental Crimes Section have primary responsibility for civil and criminal enforcement of U.S. environmental and natural resource laws.\(^12\) The Environmental Defense Section and Natural Resources Section primarily have responsibility for defending the U.S. in a wide range of civil cases, such as legal challenges to agency rulemaking, challenges to federal agency actions in managing lands and natural resources, and cases in which U.S. agencies are alleged to be

\(^10\) See id.
\(^11\) See id.
\(^12\) Id.
responsible for violations of environmental laws.\textsuperscript{13} The ENRD has a variety of sections tasked with monitoring distinct areas of the law, which include: the Wildlife and Marine Resources Section, which litigates cases under federal wildlife laws and laws concerning the protection of marine fish and mammals; the Land Acquisition Section, responsible for acquiring land for the federal government for a variety of uses, such as parks or courthouses; the Appellate Section, which handles the Division’s cases in the federal circuit courts of appeals; the Law and Policy Section, responsible for advising Department leadership on environmental and legal policy questions and legislative matters related to the Division’s work; and the Indian Resources Section, which represents the U.S. in its trust capacity for Indian tribes and their members.\textsuperscript{14}

The ENRD has a docket of over 6,000 active cases, representing virtually every federal agency in connection with cases arising in all fifty states and the U.S. territories. The Department brings cases on behalf of its clients, federal agencies, which include the Environmental Protection Agency (EPA), the Department of the Interior, the Department of Agriculture, and the National Oceanic and Atmospheric Administration in the Department of Commerce.

Priorities of the ENRD include: (1) enforcement of the nation’s bedrock environmental laws that protect air, land, and water for all Americans; (2) vigorously representing the U.S. in federal trial and appellate courts, including defending the EPA’s rulemaking authority and effectively advancing other agencies’ missions and priorities; (3) protecting the public fisc and defending the interests of the U.S.; (4) advancement of environmental justice and the promotion and defense of tribal sovereignty, treaty obligations, and the rights of Native Americans; and (5) the provision of effective stewardship of the nation’s public lands, natural resources, and animals, including fighting for the survival of the world’s most threatened and iconic species and marine resources, and working across the government and the globe to end the illegal trade in wildlife.\textsuperscript{15} These goals, along with their implementation, will advance and support the sustainable development agenda as will be discussed further in this Article.

\textsuperscript{13} Id.
\textsuperscript{14} Id.
\textsuperscript{15} John C. Cruden identified these priorities in his time serving as the Assistant Attorney General for the Environment and Natural Resources Division.
II. THE UNITED NATION’S 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

In 2000, the United Nations established important goals known as the “Millennium Development Goals” to advance its sustainable development agenda and set 2015 as the target year by which to achieve those goals.\textsuperscript{16} While many of those goals were achieved, countries agreed in 2012 at the United Nations Conference on Sustainable Development (commonly called Rio+20), held in Rio de Janeiro, Brazil, to develop a further set of sustainable development goals as a future roadmap for the international development agenda.\textsuperscript{17} Contemporaneously with Rio+20, the World Congress on Justice, Governance and Law for Environmental Sustainability, a gathering of judges, attorneys general, prosecutors, and auditors general, was held in Rio de Janeiro to advance the rule of law and promote environmental governance. An aspirational declaration from that conference recognized “the important contribution made by the legal and auditing community worldwide to the enforcement of standards and safeguards for environmental sustainability,” and noted that judicial independence is indispensable for the dispensation of environmental justice.\textsuperscript{18} The declaration stated that “judges, public prosecutors[,] and auditors have the responsibility to emphasize the necessity of law to achieve sustainable development,” and that “[e]nvironmental sustainability can only be achieved in the context of fair, effective[,] and transparent national governance arrangements and the rule of law.”\textsuperscript{19}

Following Rio+20, an international working group made up of representatives of many countries prepared recommendations for

\textsuperscript{19} Id.
seventeen sustainable development goals. On September 25, 2015, at a high level plenary session of the United Nations General Assembly, the member countries of the United Nations unanimously adopted the outcome document titled “Transforming our World: the 2030 Agenda for Sustainable Development.” These goals are comprehensive, transformative, and achievable. They represent a path forward to a sustainable economy that promotes the environment, safeguards individual rights, and achieves economic growth.

The seventeen sustainable development goals call for action on a variety of topics for the benefit of individuals, societies, and our natural world. The sustainable development goals are based on the premise that for sustainable development to be achieved, three core elements—economic growth, social inclusion, and environmental protection—must be attained. The goals include topics ranging from ending extreme poverty and hunger, ensuring quality education, gender equality, economic growth, making cities safe, resilient, and stable, and promoting peaceful and inclusive societies. Several of the goals relate specifically to environmental topics, including: ensuring availability and sustainable management of water and sanitation for all (Goal 6); taking urgent action to combat climate change and its impacts (Goal 13); conserving and sustainably using the oceans, seas, and marine resources (Goal 14); and protecting, restoring, and promoting sustainable use of terrestrial ecosystems, sustainably managing forests, combating desertification, and halting and reversing land degradation and biodiversity loss (Goal 15). Importantly for the work of the Department of Justice, the outcome document also calls for providing access to justice for all and building

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22 Id.
23 Id. at 3.
24 Id.
25 Id. at 14.
26 Id.
27 Id.
28 Id.
effective, accountable, and inclusive institutions at all levels (Goal 16).\textsuperscript{29}

The United Nations outcome document identifies the vision guiding these newly established goals.\textsuperscript{30} This vision statement includes a commitment to “a world . . . in which consumption and production patterns and use of all natural resources—from air to land, from rivers, lakes and aquifers to oceans and seas—are sustainable.\textsuperscript{31} One in which democracy, good governance and the rule of law, as well as an enabling environment at national and international levels, are essential for sustainable development, including . . . environmental protection. . .\textsuperscript{32} One in which humanity lives in harmony with nature and in which wildlife and other living species are protected.”\textsuperscript{33}

The sustainable development goals agreed to by the world community are ambitious,\textsuperscript{34} and in order for them to be achieved, the world community will have to engage in a sustained and determined effort.\textsuperscript{35} At this time, certain trends in the protection of the world’s environment are heading in the wrong direction.\textsuperscript{36} For example, African elephants, an iconic wildlife species, are being depleted at an alarming rate, with estimates that over 35,000 were killed in 2013 for their ivory.\textsuperscript{37} Wildlife traffickers make billions of dollars each year trading ivory, rhino horn, and other animal parts.\textsuperscript{38} Some of the world’s great forests—the Amazon, the Congo Basin, and the forests of Southeast Asia—are being illegally burned and depleted by illegal timber harvests.\textsuperscript{39} Yet, at the same time, the international community is united as never before in addressing this global tragedy.

\textsuperscript{29} Id.
\textsuperscript{30} Id. at 3-4.
\textsuperscript{31} Id. at 4.
\textsuperscript{32} Id.
\textsuperscript{33} Id.
\textsuperscript{34} Id. at 4.
\textsuperscript{35} Id. at 10.
\textsuperscript{36} Id. at 5-6.
\textsuperscript{38} Id.
\textsuperscript{39} www.fao.org/docrep/014/i2247e/i2247e00.pdf
One can hope that the 2030 Sustainable Development Goals will serve to galvanize action and commitment by the world community. At certain points in history, nations and the world community have recognized that action must be taken to protect environmental and natural resources. In the early 1970s, the United States recognized the polluted state of the air and water, and enacted far reaching legislation such as the Clean Air Act and Clean Water Act, which put the U.S. on track toward a cleaner environment.\textsuperscript{40} In 1970, the U.S. enacted the National Environmental Policy Act (hereinafter NEPA), which required the government to consider the environmental consequences of proposed actions during government decision-making.\textsuperscript{41} By the 1990s, a significant number of nations followed the U.S.\textsuperscript{’} lead in requiring such environmental impact assessments for government actions, making the NEPA possibly the most imitated law ever enacted by the U.S.\textsuperscript{42} The agreement by the world community on the 2030 Sustainable Development Goals marks an inflection point, recognizing the need for action and engaging in a determined effort to achieve these goals. By aiming high and galvanizing international support and awareness of these goals, they can achieve real success in important areas. Written by officers of the court, this Article looks first to the application of the Rule of Law.

III. ENVIRONMENTAL RULE OF LAW

Good governance and the rule of law are necessary predicates for achievement of the sustainable development goals. The draft, “Outcome Document of the 1st IUCN World Environmental Law Congress,” created at the conference held in Rio de Janeiro, Brazil, in April 2016, states that the environmental rule of law is premised on important governance elements, including the following:

(1) the development, enactment and implementation of clear, strict, enforceable, and effective laws, regulations and policies that are efficiently administered through fair and inclusive processes to achieve the highest standards of environmental quality . . . ; (2) [m]easures to ensure effective compliance with laws, regulations, and policies, including adequate criminal, civil and administrative enforcement

\textsuperscript{42} See generally id.
actions, and mechanisms for timely, impartial and independent dispute resolution; (3) [e]ffective rules on access to information, public participation in decision-making and access to justice; and (4) [e]nvironmental auditing and reporting, together with other effective accountability, integrity, and anti-corruption mechanisms.\textsuperscript{43}

Similarly, the Governing Council of the United Nations Environment Program (UNEP) previously issued a decision document in 2013, noting the importance of environmental rule of law to advance the elements of sustainable development and environmental protection.\textsuperscript{44} The Governing Council called on UNEP to support the development and implementation of environmental rule of law with attention to specific governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial, and independent dispute resolution.\textsuperscript{45}

At the heart of the rule of law is enforcement. A nation can have the best of laws, but unless they are adequately enforced they have no meaning. Adequate enforcement ensures a level playing field for those who do comply with the law by taking away the profit that violators make through their misconduct. Adequate enforcement requires that all entities are subject to the law. There simply cannot be a situation where the illegal conduct is too widespread to address, or the company too big to enforce against. This principle was illustrated by the recent settlement resolving civil claims against BP arising from the April 20, 2010 Deepwater Horizon well blowout and the massive oil spill that followed in the Gulf of Mexico.\textsuperscript{46} This historic settlement resolved the


\textsuperscript{45} \textit{Id.} at ¶ 6(a).

\textsuperscript{46} See Consent Decree, \textit{In re Oil Spill by the Oil Rig “Deepwater Horizon”} in the Gulf of Mexico on Apr. 20, 2010 (E.D. La. 2016) (No. MDL 2179).
U.S. government’s civil penalty claims under the Clean Water Act and natural resources damage claims under the Oil Pollution Act, and also implements a related settlement of economic damage claims of the Gulf States and local governments.\textsuperscript{47} Taken together, this resolution of civil claims is worth more than $20 billion and is the largest settlement with a single entity in the history of federal law enforcement.\textsuperscript{48}

Another example of the ENRD’s work to advance the rule of law is its work to promote and encourage environmental justice. The Department’s promotion of environmental justice advances the United Nation’s Sustainable Development Goal 16, which calls on the international community to “provide access to justice for all and to build effective, accountable, and inclusive institutions.” \textsuperscript{49} One example of environmental justice provided by the ENRD is a Clean Air Act settlement with several utility companies that was announced in June 2015 with respect to the Four Corners Power Plant located on the Navajo Nation near Shiprock, New Mexico.\textsuperscript{50} The settlement requires an estimated $160 million in upgrades to the plant’s sulfur dioxide and nitrogen oxide pollution controls and payment of a civil penalty of $1.5 million.\textsuperscript{51} Sulfur dioxide and nitrogen oxide have numerous adverse effects on human health, including severe respiratory and cardiovascular impacts.\textsuperscript{52} From an environmental justice perspective, the settlement also required the defendants to pay $6.7 million in mitigation funds for three types of projects that will benefit the Navajo people.\textsuperscript{53} One defendant will pay approximately $3.2 million on a project to replace or retrofit local residents’ inefficient, higher-polluting wood-burning or coal-burning appliances with cleaner burning, more energy-efficient heating systems.\textsuperscript{54} Defendants will also spend approximately $1.5 million for

\textsuperscript{47} See id. at 4-10.
\textsuperscript{48} See id. at 22-31.
\textsuperscript{49} G.A. Res. 70/1, The 2030 Agenda for Sustainable Development, at 30 (Sept. 27, 2015).
\textsuperscript{51} Id. at 17-27.
\textsuperscript{52} Id. at 5.
\textsuperscript{53} Consent Decree, supra note 7, at 89.
\textsuperscript{54} See id. at 90.
weatherization projects for local homes to reduce energy use. Finally, defendants will spend $2 million to establish a Health Care Project trust fund. The Health Care Project trust will pay for certain medical expenses for people living near the Four Corners Power Plant who require respiratory health care in the Navajo Nation. The funds may be used to pay for complete medical examinations, tests, reviews of current medications, prescriptions, oxygen tanks, and transportation to and from the hospital or doctors’ offices.

IV. THE ENVIRONMENT DIVISION’S WORK THAT ADVANCES THE UNITED NATION’S SUSTAINABLE DEVELOPMENT GOALS

The work of the ENRD advances the attainment of many of the newly-established sustainable development goals, targets relating to protection of the environment and natural resources, as well as good environmental governance and the rule of law.

- First, the ENRD vigorously enforces U.S. environmental and natural resources laws, particularly laws prohibiting transnational environmental crimes such as wildlife trafficking, trade in illegal timber, illegal fishing, and pollution of the seas.

- Second, the Department works to build the capacity of judges, prosecutors, and law enforcement officials in other countries so they can combat crimes such as wildlife trafficking and illegal logging in their own countries and serve as effective partners to fight transnational environmental crimes. Improving the ability of investigators, prosecutors, and judges to effectively enforce environmental laws in their countries also advances the rule of law and good governance, other important goals of the 2030 Agenda.

See id. at 92.
See id. at 93.
See id. at 94.
See id.
See id.
See G.A. Res. 70/1(Sept. 25, 2015).
Third, the ENRD defends the Administration’s regulatory actions and implements administrative policies intended to protect the environment and natural resources. During the Obama Administration, these actions included regulations issued by the EPA intended to dramatically lower emissions of greenhouse gases from cars, other vehicles, coal-fired power plants, and other electricity generating facilities. The Department also took a leading role in implementing key administrative policies such as those relating to wildlife trafficking and illegal, unregulated, and unreported (hereinafter IUU) fishing.

The following sections contain specific examples of how the ENRD’s work advances specific sustainable development goals.

A. WILDLIFE TRAFFICKING AND ILLEGAL FISHING

The newly established sustainable development goals include several goals that are ambitious targets aimed at preserving wildlife and fish species that are threatened by poaching and harm to their terrestrial and aquatic ecosystems.

- Sustainable Development Goal 15 calls on the world community to “[p]rotect, restore[,] and promote sustainable ecosystems, sustainably manage forests . . . and halt biodiversity loss.”

- Target 15.7 calls for “urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products.”

- Sustainable Development Goal 14 aims to “[c]onserve and sustainably use the oceans, seas[,] and marine resources for sustainable development.”

- Target 14.4 provides that “[b]y 2020, [nations should] effectively regulate harvesting and end overfishing,

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62 See id.
63 See G.A. Res 70/1, supra note 1 at 28-29.
64 Id. at 24.
65 Id. at 25
66 Id. at 23.
illegal, unreported, and unregulated fishing and destructive fishing practices . . . .\textsuperscript{67}

The ENRD has long been a leader in the fight against wildlife trafficking. For decades the Department has prosecuted those who poach wildlife and traffic in protected wildlife and wildlife parts. President Obama’s Executive Order on Combating Wildlife Trafficking, issued on July 1, 2013, and the Presidential Memorandum on Establishing a Comprehensive Framework to Combat IUU Fishing and Seafood Fraud, issued on June 17, 2014, brought increased attention to the severity of the crisis.\textsuperscript{68} Wildlife trafficking is an illicit, multi-billion dollar business that decimates species such as elephants, rhinoceroses, tigers, and sea turtles.\textsuperscript{69} It leads to the extinction of these species—some in our lifetime. Wildlife trafficking also threatens security, hinders sustainable economic development, finances armed groups, and undermines the rule of law.

The Executive Order on Wildlife Trafficking recognized the urgent need for concerted action and established a Presidential Task Force on Wildlife Trafficking to lead a coordinated and government-wide effort to stop poaching and wildlife trafficking.\textsuperscript{70} The task force includes 14 U.S. Government agencies and offices, along with co-chairs and senior representatives from the Departments of State and the Interior. In February 2014, based on the work of the Task Force, the White House issued the National Strategy for Combating Wildlife Trafficking.\textsuperscript{71} This 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.\textsuperscript{72} The Task Force agencies released an Implementation

\textsuperscript{67} Id. at 24
\textsuperscript{69} See id. at § 1.
\textsuperscript{70} Id.
\textsuperscript{72} Id. at 2.
Plan in 2015 that sets out specific steps to achieve each strategic priority.\textsuperscript{73}

The Presidential Memorandum on IUU Fishing recognized a similar need for action to combat trafficking in illegally harvested fish.\textsuperscript{74} The Memorandum also established a Presidential Task Force on Combating IUU Fishing and Seafood Fraud, co-chaired by the Departments of Commerce and State (of which the Department of Justice is a member).\textsuperscript{75} The IUU Fishing Task Force published a set of recommendations for action to combat IUU fishing and seafood fraud; in 2015 it issued additional recommendations in an Action Plan for Implementing the Recommendations of the Presidential Task Force.\textsuperscript{76}

Combating wildlife trafficking is a top priority for the Department of Justice. At the Kasane Conference on the Illegal Wildlife Trade in Botswana, I presented the position of the U.S. before representatives from more than thirty nations. Participants in the Kasane Conference pledged to establish and strengthen partnerships among source, transit, and destination countries to combat the illegal wildlife trade and strengthen national legislation to further these goals.\textsuperscript{77} In addition, the participating nations agreed to ensure that law enforcement authorities, prosecutors, and judges have the resources and capacity to investigate and prosecute financial crimes associated with wildlife crime.\textsuperscript{78} While in Botswana, I also participated in the second African Elephant Summit. The Summit focused on international efforts to implement 14 “urgent measures” to stop the illegal slaughter of elephants. The measures include (1) obtaining heightened criminal sentences that more effectively deter wildlife crimes, (2) enhancing the capacity of

\textsuperscript{73} The Presidential Task Force on Wildlife Trafficking, \textit{supra note 68}.
\textsuperscript{74} Memorandum on Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud, 2014 \textsc{Daily Comp. Pres. Doc.} 464 (June 17, 2014).
\textsuperscript{75} \textit{Id.} at 4.
\textsuperscript{78} \textit{Id.}
law enforcement and wildlife protection agencies to respond to well-armed and highly organized poaching syndicates, and (3) strengthening legislation to classify wildlife trafficking involving criminal groups as a “serious crime”; strengthening legislation will allow law enforcement cooperation under the United Nations Convention against Transnational Organized Crime.  

The Department of Justice’s efforts on both wildlife trafficking and IUU fishing focus on enforcement. Strong enforcement, both at home and abroad, is critical to stopping those who kill and traffic in protected animals and engage in illegal fishing. The Environmental Crimes Section of the ENRD has forty-three prosecutors devoted exclusively to the prosecution of environmental crimes; this includes wildlife crime. The organizations work together with U.S. Attorneys’ offices around the country, federal agency partners such as the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the Department of Homeland Security in prosecuting wildlife trafficking cases. The Department of Justice has seen significant success in prosecuting those who smuggle and traffic in elephant ivory, endangered rhinoceros horns, turtle shells, and other forms of protected wildlife.  

“Operation Crash” is a prominent example of the ENRD’s robust prosecution of illegal wildlife and an ongoing, multi-agency effort to detect, deter, and prosecute those engaged in the illegal killing of rhinoceros and illegal trafficking of endangered rhinoceros horns. All rhinoceros species are protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) due to their dwindling populations. Rhinoceros horns are highly prized in China and Vietnam due to the mistaken belief that the

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81 Supra at note 64.


83 Id.
horns have medicinal value, increasing their demand on the black market. Operation Crash has resulted in more than twenty-five successful prosecutions thus far and the ENRD is continuing to unravel the sophisticated, international criminal networks involved in these crimes. In these cases, defendants have been sentenced to significant terms of imprisonment and compelled to forfeit millions of dollars in cash, gold bars, rhinoceros horns, luxury vehicles, and jewelry.

For example, as part of Operation Crash, the ENRD prosecuted a case which involved Xiao Ju Guan, also known as “Tony Guan.” Guan, a Canadian resident, was sentenced to thirty months in prison for smuggling rhinoceros horns, elephant ivory, and coral from the U.S. to Canada in 2015. In addition, Guan was 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.

In November 2015, Linxun Liao, a Canadian citizen, was sentenced to two years in prison for his role in a wildlife trafficking scheme in which he purchased and smuggled sixteen “libation cups” from the U.S. to China. The “libation cups” were carved from rhinoceros horns 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 CITES. In addition to his prison term, Liao was ordered to serve two years of supervised release, forfeit $1 million and 304 pieces of carved ivory, and was banned from future

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84 Id.
85 Id.
86 Id.
88 Id.
89 Id.
91 Id.
92 Id.
involvement in the wildlife trade. The ENRD believes that significant sentences in cases such as this are necessary to deter illegal trafficking in wildlife and wildlife parts, which is threatening the extinction of species such as the rhinoceros.

B. ILLEGAL LOGGING

Through these efforts, the ENRD is committed to working to achieve the Sustainable Development Goal of ending poaching and addressing the demand for illegal wildlife products. The ENRD is also working to end the trafficking of protected flora, particularly the trade of illegally harvested timber and wood products, resulting from illegal deforestation. As previously noted, Sustainable Development Goal 15 calls for protection of terrestrial ecosystems and sustainable management of forests. Target 15.2 calls for a halt to deforestation and promotion of sustainable management of all types of forests by 2020.

In 2008, the U.S. Congress amended the Lacey Act, the country’s oldest wildlife protection statute, to prohibit the trade of illegal plants and plant products, including timber, taken in violation of U.S. or foreign laws. With the Lacey Act amendments, the law can now be used to prevent the U.S. from being a market for products made from illegally harvested timber. The Act will also help the U.S. combat deforestation, one of the leading contributors to climate change.

A recently concluded criminal enforcement case serves as an example of the ENRD’s commitment to prosecute those who trade in illegally harvested wood products. 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

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93 Id.
94 See G.A. Res. 70/1 (Sept. 25, 2015).
95 See supra at note 1.
96 Id.
the Russian Far East.99 The temperate forests of the Russian Far East are home to the last remaining Siberian tigers and Amur leopards, with only an estimated 450 tigers and 57 leopards remaining in the wild.100 The primary contributors to these species’ risk of extinction are illegal logging and detrimental logging practices.101 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.102

Under the sentence imposed by the court, Lumber Liquidators will be required to pay over $13 million in criminal fines, including community service payments, other payments, and the forfeiture of goods.103 Included in the $13 million fine, Lumber Liquidators will pay over $1.2 million in community service payments to two Congressionally-chartered recipients: the National Fish and Wildlife Foundation (NWFW) and the USFWS Rhinoceros and Tiger Conservation Fund.104 One project that will 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.105 Other projects to be funded by Lumber Liquidators are expected to support research and preservation of the Siberian tiger, Amur leopard, and their habitats.106

Lumber Liquidators also agreed to a five-year term of probation and the mandatory implementation of a government-approved environmental compliance plan that is rigorous and public. The plan will help guide Lumber Liquidators and other companies to comply with the Lacey Act and purchase only legally harvested wood.107 The ENRD’s hope is that the compliance plan will serve as a model for other companies that participate in the international trade of wood products.

99 Id.
100 Id.
101 Id.
104 Id.
105 Id.
106 Id.
107 Id.
C. CAPACITY BUILDING FOR OUR LAW ENFORCEMENT COUNTERPARTS

Although the ENRD will continue to aggressively enforce environmental laws intended to combat transnational environmental crimes, it recognizes that its efforts alone cannot stop environmental crimes that decimate wildlife species and some of the world’s most important forests. Trained and independent judges, experienced prosecutors, and effective investigators must also be in the countries where these crimes originate in order to advance the rule of law. This would give these countries more capacity to prosecute and adjudicate wildlife trafficking and illegal logging cases.

The ENRD is committed to building the capacity of other countries’ enforcement counterparts and judges by advancing the achievement of Sustainable Development Goal 16. Goal 16 calls on the world community to “provide access to justice for all and build effective, accountable[,] and inclusive institutions at all levels.”¹⁰⁸ This includes strengthening national institutions to prevent violence, terrorism, and crime.¹⁰⁹ The ENRD promotes the rule of law at the national and international levels by building capacity to enforce laws that protect natural resources, wildlife, and the world’s great forests. Such capacity building is critical to development efforts on the national level.¹¹⁰

The ENRD helps train law enforcement partners, particularly in countries where illegal wildlife poaching and deforestation occurs, to strengthen their investigative and evidence gathering capabilities, and to improve their judicial and prosecutorial effectiveness. Through these trainings, the ENRD develops more effective partners to investigate and prosecute transnational environmental crimes, and increases the ENRD’s ability to enforce criminal statutes such as the Lacey Act and Endangered Species Act that have extraterritorial dimensions. These training initiatives also foster positive relationships with prosecutors in other countries in a way that better enables information sharing with the ENRD. Additionally, these relationships allow the ENRD to assist other countries in prosecuting transnational crimes.

¹⁰⁸ G.A. Res. 70/1, at 25 (Sept. 25, 2015).
¹⁰⁹ Id. at 26.
¹¹⁰ See id. at 33.
D. CAPACITY BUILDING AND TRAINING WORKSHOPS

In October 2015, with funding from the U.S. State Department and assistance from the U.S. Agency for International Development (USAID), four senior level ENRD attorneys, as well as experts from the United Nations Office on Drugs and Crime (UNODC) implemented a regional workshop for prosecutors and magistrates from six Sub-Saharan African countries on combating wildlife trafficking. Thirty-two prosecutors and judicial officers from Angola, Botswana, Malawi, Mozambique, Namibia, and Zambia participated, along with experts from the UNODC and nongovernmental organizations.111 The workshop included sessions on evidentiary and prosecutorial issues unique to wildlife trafficking cases, as well as sessions on money laundering, asset tracing, and corruption issues.112 A follow up session was conducted in August 2016 in Windhoek, Namibia with many of the same participants.113 Division attorneys also delivered a similar wildlife trafficking workshop in Accra, Ghana, for judicial officers and prosecutors from west and central Africa.114

In addition, in May 2016 ENRD attorneys, with support from UNODC, implemented a Congo Basin regional workshop for investigators and prosecutors from Cameroon, Gabon, the Republic of Congo, and the Democratic of Congo on investigating and prosecuting illegal logging cases.115 In the last several years, ENRD attorneys have also delivered several well-received, illegal logging enforcement training programs for investigators, prosecutors, and judges in Brazil, Peru, and Honduras.116 The ENRD has also participated extensively in training and providing support for foreign investigators, prosecutors, and judges through the various Wildlife Enforcement Networks (WENs), including the Association of Southeast Asian Nations WEN and the Central American WEN.117

In addition to collaborating with other U.S. agencies and foreign governments on capacity building work, the ENRD partners with

112 Id.
113 Id.
114 Id.
115 Id. at 88-89.
116 See id. at 88.
117 See id. at 65.
international organizations to utilize their skills and resources in building the capacity of enforcement counterparts in other countries. For example, the ENRD is working with UNODC to create a forensic sampling and wood identification manual as a tool in the investigation and prosecution of illegal logging cases. The World Bank has also provided valuable support to WENs and worked with the ENRD on enforcement training relating to wildlife trafficking.\textsuperscript{118} The ENRD also actively participates in the International Criminal Police Organization’s (INTERPOL) environmental, wildlife, and forestry crimes working groups, and collaborates with them on training enforcement officials.\textsuperscript{119}

\textbf{E. Vessel Pollution}

In addition to the ENRD’s enforcement efforts to fight the transnational crimes of wildlife trafficking, illegal fishing, and illegal logging, the Division has long worked to prosecute those who discharge waste oil from ships at sea. Sustainable Development Goal 14 calls for the conservation and sustainable use of oceans and seas, and Target 14.1 calls for the international community to prevent and significantly reduce marine pollution of all kinds by 2025.\textsuperscript{120} The task that the ENRD faces in meeting this target is formidable. Over 40 years after the International Convention for the Prevention of Pollution from Ships (MARPOL) entered into force, U.S. oceans continue to be polluted by oil and waste deliberately discharged by ships at sea.\textsuperscript{121} An Organisation for Economic Co-operation and Development (OECD) report estimated that illegal discharges of oil each year amount to over eight times the amount spilled in the 1989 Exxon Valdez disaster in Alaska, which resulted in the discharge of 11 million


\textsuperscript{119} U.S. DEP’T OF JUST. ENV’T AND NAT. RESOURCE DIV., \textit{supra} note 104 at 65, 89.

\textsuperscript{120} U.N. General Assembly, United Nations Conference to Support the Implementation of Sustainable Development Goal 14:Conserve and sustainably use the oceans, seas and marine /resources for sustainable development, https://www.justice.gov/enr

gallons of oil.\textsuperscript{122} International cooperation is key to prosecuting these illegal discharges. Vessel pollution is inherently international in important respects, since it frequently involves ships operating under foreign flags, pollution occurring in international waters, and ship owners and crew members who are citizens of foreign countries.

The Department of Justice, alongside partners at the Coast Guard, EPA, and other federal agencies, launched an initiative to crack down on MARPOL violations.\textsuperscript{123} Since launching that initiative, the U.S. has collected criminal fines totaling more than $300 million and sentences totaling more than 30 years of incarceration. In October 2015, the ENRD successfully convicted a company known as DSD Shipping and three employees with violation of the U.S. law known as the Act to Prevent Pollution from Ships, as well as obstruction of justice, witness tampering, and conspiracy.\textsuperscript{124} The evidence presented at trial demonstrated that a crude oil tanker, operated by DSD Shipping, had an inoperable oily-water separator, a device that is necessary to filter oil-contaminated wastewater.\textsuperscript{125} Rather than repair or replace the broken device, the company bypassed the device and discharged approximately 20,000 gallons of oil-contaminated wastewater directly into the ocean during the last months of the vessel’s operation before it arrived into port in Mobile, Alabama.\textsuperscript{126} Crew members also loaded approximately 270 gallons of oil sludge into plastic bags and threw them overboard into the ocean.\textsuperscript{127} Through prosecution of cases such as these, the ENRD demonstrates that the U.S. will not tolerate the use of the world’s oceans as a dumping grounds for contaminated waste.

\textsuperscript{122} \textit{Id.}

\textsuperscript{123} \textit{See generally, Marpol Annex VI, EPA.GOV,} https://www.epa.gov/enforcement/marpol-annex-vi


\textsuperscript{125} \textit{Id.}

\textsuperscript{126} \textit{Id.}

\textsuperscript{127} \textit{Norwegian Shipping Company Sentenced in Alabama to Pay $2.5 Million for Illegally Discharging Oil into the Ocean, JUSTICE.GOV,} https://www.justice.gov/opa/pr/norwegian-shipping-company-sentenced-alabama-pay-25-million-illegally-discharging-oil-ocean
F. DEFENDING REGULATIONS COMBATING CLIMATE CHANGE

Through the enforcement of laws against transnational crimes, such as wildlife trafficking, illegal logging, and vessel pollution, and the capacity building for law enforcement counterparts, the ENRD works to meet sustainable development goals. During my tenure, the Division also advanced these goals through the important work done in defending Administration policies, such as the Obama Administration’s efforts to combat climate change. Sustainable Development Goal 13 calls for urgent action to combat climate change and its impacts, with Target 13.2 asking to integrate climate change measures into national policies, strategies, and planning.

During the Obama Administration, the U.S. Environmental Protection Agency engaged in several regulatory efforts to achieve the goals of President Obama’s Climate Action Plan through reductions in greenhouse gas emissions from some of the largest sources, such as electricity generating power plants and motor vehicles. The ENRD played an important role by defending the EPA’s regulations when challenged in federal court. The Division successfully defended the EPA’s authority to regulate emissions of greenhouse gases against legal challenges that were ultimately determined in the ENRD’s favor by the Supreme Court. The Division worked to defend challenges to the EPA’s rules to limit greenhouse gas emissions from mobile sources such as automobiles. ENRD also defended the EPA’s rules known as the Clean Power Plan, which would limit carbon pollution from power plants under the Clean Air Act. By targeting power plants, which were responsible for 31 percent of U.S. greenhouse gas emissions.

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128 G.A. Res. 70/1 (Sept. 25, 2015).
129 G.A. Res. 70/1 supra, 13.2.
130 Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 40 C.F.R §§ 60, 70, 71, and 98 (Oct. 23, 2015).
133 See Carbon Pollution Emission Guidelines, 40 C.F.R. part 60, at 64662.
emissions in 2013, the plan would strengthen America’s trend toward
cleaner and lower-polluting energy and would cut pollution to
The final Clean Power Plan set
flexible and achievable standards to reduce carbon dioxide emissions
by 32 percent from 2005 levels by 2030 – cutting carbon pollution by
870 million tons, or the equivalent of the annual emissions from more
than 166 million cars.\footnote{Id.} The ENRD’s work defending the U.S.
Government’s regulatory actions was important in promoting a cleaner
environment and advancing the UN’s Sustainable Development Goals.

IV. CONCLUSION

The task set for the world community in the 2030 sustainable
development goals for protection of U.S. environment and natural
resources is daunting. However, the sustainable development goals
serve as a challenge and a new lens through which to view the ENRD’s
work. The Division has long been committed to just and vigorous
enforcement of U.S. laws to protect American land, water, air, and
wildlife. The 2030 Sustainable Development Goals clarify that the
ENRD’s work is part of a larger effort by the world community to
protect America’s common home, the earth, and shared resources. The
Division is committed to advancing the achievement of the sustainable
development goals related to the protection of the environment. As
America has witnessed the decline of iconic and endangered species,
the ENRD knows that even good laws do not take the place of timely
and effective enforcement. Finally, effective and accountable
governance institutions should be the goal, along with fairness, due
process, and a commitment to human liberties. In all this, we can be
challenged by the words of Margaret Mead: “Never doubt that a small
group of thoughtful, committed citizens can change the world; indeed,
it’s the only thing that ever has.”