

JOHN KOSTYACK

NATIONAL
WHISTLEBLOWER
CENTER

JUNE 2019

Enlisting Everyday Citizens to Help Fight Environmental Crime

Overview of Today's Presentation



Stronger law enforcement is needed to rescue threatened species & ecosystems



Everyday citizens can help!



Whistleblower reward laws are the key



NGOs can help!



Vaquita

Environmental crime
devastates wildlife,
ecosystems and the
communities that
depend on them

Environmental crime is
often part of a larger
criminal enterprise



Oscar Parra

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 support
and protect
environmental
heroes?

For Many
Types of
Conservation
Work,
Fighting
Corruption is
Essential to
Success



Corruption is central to these environmental problems:

Wildlife Trafficking

Illegal Fishing

Illegal Discharges from Ocean Vessels

Illegal Logging and Timber Trade

Needed: Tougher Law Enforcement



Large-scale environmental crimes are highly profitable and typically carried out by deeply-entrenched, well-connected criminal syndicates



International law often lacks meaningful enforcement provisions



Enforcement of tough domestic laws is key to disrupting criminal syndicates

Everyday Citizens Can Help!

*But...the well-known
“citizen suit”
framework of U.S.
environmental law has
limited value*



Limited applicability to conduct outside the U.S.



“Injury in fact” standing often difficult to achieve



Few incentives for witnesses to cooperate



Not applicable to criminal prosecutions

United States Whistleblower Laws

*U.S. laws are well-suited
for enlisting citizens to
help fight global
environmental crime*



Whistleblowers have played a key role in helping enforce environmental laws such as the Lacey Act and the Act to Prevent Pollution from Ships



Laws regulating securities fraud, tax evasion, customs and government procurement fraud and bribery can be used to help advance environmental goals



The Westerdam (file image courtesy Holland America)

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

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



False Claims Act

The most important whistleblower law

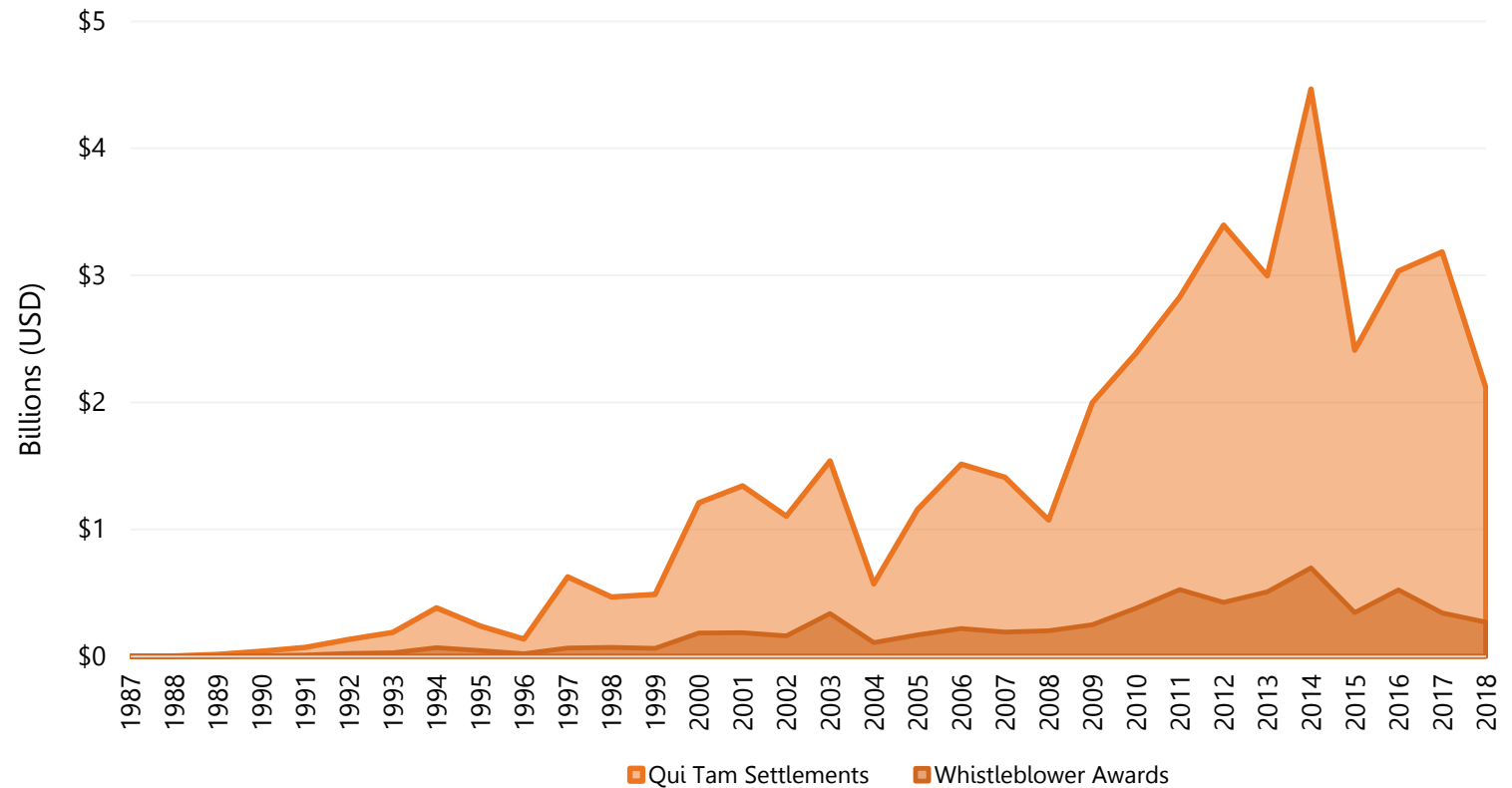
- » Applies to conduct outside the U.S. – so long as there is federal spending, procurement or contracting
- » Suitable for building criminal cases as well as civil
- » No environmental injury (standing) required
- » Treble damages provision sends powerful message to wrongdoers
- » Whistleblowers (“relators”) receive 15 to 30 percent of amount recovered by government, plus attorney fees and costs
- » Anyone can serve as a whistleblower, including NGOs
- » Government litigates 20% of cases itself

False Claims Act

A 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 the law or the terms of the contract



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 who trust them



Many have communications capacity to ensure that key enforcement officials earn favorable publicity



Many can connect whistleblowers with qualified attorneys

*Example:
National
Whistleblower
Center's Legal
Assistance
Program*

Educating Whistleblowers



Risks and rewards of stepping forward



Best practices on evidence collection



Importance of "original information" and timely filing

Protecting Whistleblowers



The security of the whistleblower must be the paramount consideration in exposing environmental crimes



Qualified attorneys can ensure that disclosures of wrongdoing are privileged and not used as the basis for retaliation



NGOs and attorneys working with whistleblowers must use the *latest encryption technologies*



Whistleblowers seeking publicity should be connected to *reporters who will protect the confidentiality of their sources* if requested

Thank you for
supporting
whistleblowers!

<https://www.whistleblowers.org/take-action/>



Thank you for supporting whistleblowers!

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

Facebook: @NationalWhistleblowerCenter

Twitter: @Stopfraud