

US Attorneys > USAM > Title 5 > USAM Chapter 5-11.000  
prev | next | ENRD Resource Manual

## **5-11.000**

# **ENVIRONMENTAL CRIMES**

5-11.101	Statutes Administered
5-11.102	Other Criminal Provisions
5-11.103	Notice of Case Initiation
5-11.104	Responsibility for Case Development and Prosecution
5-11.105	Coordination of National Initiatives
5-11.106	Foreign Vessel Matters; MOTR Protocols
5-11.107	Other ECS Functions: Policy-Making; Support; Exchanging Case Information; Information and Guidance Clearinghouse
5-11.108	Notification of Case Resolutions
5-11.109	Voluntary Dismissals
5-11.110	Declinations
5-11.111	Staffing
5-11.112	Parallel Proceedings
5-11.113	Coordination with State Programs
5-11.114	Individual and Corporate Defendants
5-11.115	"Global Settlements"; Community Service
5-11.116	Protecting Federal Interests in Plea Agreements
5-11.117	Handling of Appeals
5-11.118	Notice of Appeals
5-11.119	Record on Appeal
5-11.120	Table of Notifications and Coordination

### **5-11.101 Statutes Administered**

The provisions of this chapter apply to all prosecutions initiated pursuant to the statutes identified below. While all of them are considered environmental crimes, for user convenience they are divided into two groups, pollution crimes and wildlife crimes.

**A. Pollution Crimes**

**Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)**, 7 U.S.C. § 136 et seq.

**Energy Supply and Environmental Coordination Act**, 15 U.S.C. § 791 et seq.

**Toxic Substances Control Act (TSCA)**, 15 U.S.C. § 2601 et seq.

**Surface Mining Control and Reclamation Act**, 30 U.S.C. § 1201 et seq.

**Protection of Navigable Waters and of Harbor and River Improvements Generally, Rivers and Harbors Appropriations Act, Refuse Act**, 33 U.S.C. § 401 et seq.

**Federal Water Pollution Control Act** (also known as the Clean Water Act), 33 U.S.C. § 1251 et seq.

**Marine Protection Research and Sanctuaries Act** (also known as the Ocean Dumping Act), 33 U.S.C. § 1401 et seq.

**Deepwater Port Act**, 33 U.S.C. § 1501 et seq.

**Act to Prevent Pollution From Ships**, 33 U.S.C. § 1901 et seq.

**Safe Drinking Water Act**, 42 U.S.C. § 300f et seq.

**Atomic Energy Act**, 42 U.S.C. § 2011 et seq. (violations under 42 U.S.C. §§ 2272 and 2273)

**Noise Control Act**, 42 U.S.C. § 4901 et seq.

**Solid Waste Disposal Act** (including, in Subchapter III, the Resource Conservation and Recovery Act (RCRA)), 42 U.S.C. § 6901 et seq.

**Clean Air Act**, 42 U.S.C. § 7401 et seq.

**Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)**, 42 U.S.C. § 9601 et seq.

**Emergency Planning and Community Right to Know Act (EPCRA)** (also known as SARA Title III), 42 U.S.C. § 11001 et seq.

**Outer Continental Shelf Lands Act**, 43 U.S.C. § 1331 et seq.

**Federal Hazardous Material Transportation Law**, 49 U.S.C. § 5101 et seq.

**B. Wildlife Crimes**

**Fish and Wildlife Coordination Act**, 16 U.S.C. § 661 et seq.

**Bald and Golden Eagle Protection Act**, 16 U.S.C. § 668 et seq.

**National Wildlife Refuge System Administration Act**, 16 U.S.C. § 668dd et seq.

**Sikes Act**, 16 U.S.C. § 670a et seq.

**Migratory Bird Treaty Act**, 16 U.S.C. § 703 et seq.

**Migratory Bird Conservation Act**, 16 U.S.C. § 715 et seq.

**Airborne Hunting Act**, 16 U.S.C. § 742j-1

**Northern Pacific Halibut Act of 1982**, 16 U.S.C. § 773 et seq.

**Whaling Convention Act**, 16 U.S.C. § 916 et seq.

**Fur Seal Act of 1966**, 16 U.S.C. § 1151 et seq.

**Marine Mammal Protection Act**, 16 U.S.C. § 1361 et seq.

**Endangered Species Act of 1973**, 16 U.S.C. § 1531 et seq.

**Magnuson-Stevens Fishery Conservation and Management Act**, 16 U.S.C. § 1801 et seq.

**Antarctic Conservation Act**, 16 U.S.C. § 2401 et seq.  
**Antarctic Marine Living Resources Convention**, 16 U.S.C. § 2431 et seq.  
**Lacey Act Amendments of 1981 ("Lacey Act")**, 16 U.S.C. § 3371 et seq., 18 U.S.C. § 42  
**Atlantic Salmon Convention Act**, 16 U.S.C. § 3601 et seq.  
**Pacific Salmon Fishing Act**, 16 U.S.C. § 3631 et seq.  
**African Elephant Conservation Act**, 16 U.S.C. § 4201 et seq.  
**Wild Exotic Bird Conservation Act**, 16 U.S.C. § 4901 et seq.  
**North Pacific Anadromous Stocks Convention Act**, 16 U.S.C. § 5001 et seq.  
**Atlantic Coastal Fisheries Cooperative Management Act**, 16 U.S.C. § 5101 et seq.  
**Rhinoceros and Tiger Conservation Act**, 16 U.S.C. § 5301 et seq.  
**High Seas Fishing Compliance Act**, 16 U.S.C. § 5501 et seq.  
**Northwest Atlantic Fisheries Convention Act**, 16 U.S.C. § 5601 et seq.  
**Hunting, fishing, trapping; disturbance or injury on wildlife refuges**, 18 U.S.C. § 41

[updated November 2008] [cited in USAM 5-11.102;  
 USAM 5-11.109; USAM 5-11.112; USAM 5-11.114; USAM 5-11.115]  
 USAM 5-11.117] USAM 5-11.119]

## 5-11.102 Other Criminal Provisions

Experience has shown that cases involving violations of the federal environmental laws identified in USAM 5-11.101 also may involve violations of certain other federal statutes or criminal forfeiture. Therefore, the Environmental Crimes Section (ECS) is empowered to investigate and prosecute violations of additional criminal statutes when such violations arise in the course of environmental crimes investigations. Examples of some of the statutes that may be involved in those cases include, but are not limited to, the following:

<b>Statute</b>	<b>Subject Matter</b>
18 U.S.C. § 2	Aiding and Abetting
18 U.S.C. § 4	Misprision of Felony
18 U.S.C. § 287	False Claims
18 U.S.C. § 371	Conspiracy
18 U.S.C. § 545	Smuggling
18 U.S.C. § 641	Theft or Conversion of Public Property or Money
18 U.S.C. § 666	Federal Program Theft
18 U.S.C. § 1001	False Statement
18 U.S.C. § 1341	Mail Fraud
18 U.S.C. § 1343	Wire Fraud
18 U.S.C. §§ 1956	and 1957 Money Laundering
18 U.S.C. § 1501 et seq.	Obstruction of Justice
18 U.S.C. § 1621 et seq.	Perjury

29 U.S.C. § 666(e) Willful OSHA Violation Causing Death  
[updated November 2008]

### **5-11.103 Notice of Case Initiation**

When a United States Attorney's Office opens a file for an environmental case or matter, the Office should enter the case or matter in the Department's computerized case tracking system and identify the case type as "environmental." If the case or matter involves a potential environmental crime, but is not identified as "environmental" in the case tracking system (for example, because of data entry limitations), that office should inform the Environmental Crimes Section by telephone, by electronic mail, or in writing. This notice by the United States Attorney's Office allows ECS to better coordinate efforts nationwide (for example, by being able to alert the United States Attorney's Office that the same defendant is being prosecuted or the same issues are arising in another district) and to be prepared to provide support, if necessary, to the United States Attorney's Office. When ECS opens a file on a case or matter, the Section will notify the United States Attorney's Office for the district in which the crime is alleged to have occurred.

[updated November 2008]

### **5-11.104 Responsibility for Case Development and Prosecution**

United States Attorneys' Offices have responsibility for the investigation and prosecution of environmental crimes within their own districts and the Environmental Crimes Section has responsibility for the investigation and prosecution of environmental crimes on a nation-wide basis. Cooperation and consultation between United States Attorneys' Offices and ECS can make the most effective use of the Department's resources. Close coordination is particularly vital in cases that present novel issues of law (including the first case under a statute, provision, or regulation), involve simultaneous investigations in multiple districts, involve international or foreign policy implications, or are of an urgent or sensitive nature. Often the United States Attorneys' Offices and ECS work jointly on cases. When a United States Attorney's Office and ECS work jointly on a case, the responsibility for that case shall be shared by those two offices, in which case the two offices shall work and act together through consultation and agreement. Neither office shall enter into a case being handled solely by the other except by mutual consent.

[updated November 2008] [cited in USAM 5-11.110]

### **5-11.105 Coordination of National Initiatives**

Enforcement initiatives are valuable means of focusing prosecutorial resources upon particular types of violations of federal laws. With respect to environmental crimes, the expertise of ECS is especially critical during the early phases of a national initiative when the issues involved may be novel and coordination among

districts may be essential.

[updated November 2008]

### **5-11.106 Foreign Vessel Matters; MOTR Protocols**

Environmental crimes, including both pollution and wildlife crimes, may involve the interdiction at sea of foreign-flagged vessels. Because such actions may involve international treaties and laws and may adversely affect the foreign relations of the United States, they are covered by the Maritime Operational Threat Response (MOTR) Protocols which subsumes Presidential Directive 27 of January 19, 1978, establishing a mandatory consultation process among interested federal agencies for non-military incidents that could have such an adverse effect (formerly referred to as the "PD-27 process").

In an environmental context, a potential maritime interdiction generally will be initiated by the Coast Guard, which notifies the Department of State, thereby setting in motion the coordination activities among the MOTR agencies involved. A conference call among the interested MOTR agencies is convened to discuss options and obtain interagency concurrence for an approved course of action. ECS participates in the MOTR coordination activities for situations involving potential pollution or wildlife crimes. When a particular district will be affected by a foreign-flagged vessel interdiction, that United States Attorney's Office is consulted. When MOTR coordination activities are unable to achieve interagency consensus on the course of action, the matter will be resolved by the White House. A proposed MOTR action cannot proceed without either consensus among the agencies or a resolution by the White House.

[added November 2008]

### **5-11.107 Other ECS Functions: Policy-Making; Support; Exchanging Case Information; Information and Guidance Clearinghouse**

In addition to its litigation activities, ECS has the following responsibilities:

- Setting policy nationally for the prosecution of environmental crimes, including both pollution crimes and wildlife crimes;
- Providing training to United States Attorneys' Offices, federal investigative agencies, state and local authorities, law enforcement and regulatory personnel of foreign governments, and others;
- Analyzing and commenting upon legislation that may affect environmental crimes prosecution;
- Conducting liaison with foreign officials and with organizations concerned with international environmental violations; and

- Providing expertise, information, and support concerning environmental prosecutions nationally, including providing a clearinghouse of prosecution-related information and materials.

With respect to the last of those functions, United States Attorneys' Offices are encouraged to communicate with ECS early in environmental investigations and prosecutions to benefit from ECS' information and expertise and to provide ECS with information about successes, obstacles, and strategies that ECS may share with other prosecutors. United States Attorneys' Offices also are encouraged to consult with ECS on indictments and other matters with sufficient lead time for ECS to offer meaningful input. In any event, United States Attorneys' Offices should provide copies of indictments or informations in hard copy or in electronic format as soon as possible, but in no event later than five days after filing, and they should furnish ECS with any associated press releases no later than they are released to the media.

ECS maintains a website on the Department of Justice intranet that includes electronic access to the Environmental Crimes Manual, copies of various types of documents that have been filed by federal environmental crimes prosecutors in cases around the country, and a number of guidance documents, among other things. In order to assist ECS in keeping that website up to date and in providing users with the best possible materials, United States Attorneys' Offices should furnish to ECS electronic (or hard) copies of as-given jury instructions, motions, responses to motions, and other documents that may be useful to federal prosecutors nationwide.

ECS also periodically publishes the Environmental Crimes Bulletin, which summarizes the status of various cases throughout the United States and which is available on the Environmental Crimes website. A valuable resource to other prosecutors handling similar cases, this publication can be current and useful only if federal prosecutors promptly furnish to ECS information about their cases.

[added November 2008]

### **5-11.108 Notification of Case Resolutions**

When ECS is not participating in a case, the United States Attorneys' Offices shall provide ECS with notice of felony case resolutions by providing ECS with copies of disposition documents (including any plea agreements) as soon as possible, but in no event later than seven days after entry of judgment, except as provided in USAM 5-11.109 and 5-11.117.

[updated November 2008]

### **5-11.109 Voluntary Dismissals**

If a United States Attorney's Office intends to voluntarily dismiss an indictment, information, or complaint in a criminal case involving a felony violation of any of the statutes identified in USAM 5-11.101, except when a superseding indictment has



been returned or an information or a complaint has been filed against the same defendant or when the individual defendant has died, notification of the intent to dismiss shall be provided to ECS so that it is received no later than seven days prior to dismissal. In any case handled exclusively by ECS, the Section shall provide equivalent notice to the United States Attorney's Office if voluntary dismissal is contemplated.

[updated November 2008] [cited in USAM 5-11.108]

### **5-11.110 Declinations**

When a United States Attorney's Office for the district in which the crime is alleged to have occurred or ECS declines a felony case, either will promptly advise the other of that action. If either office writes a substantive memorandum to the file or to the investigative agency regarding the declination, either office will promptly provide a copy of the declination memorandum in either hard copy or electronic format to the other office. Nothing in USAM 5-11.104 is intended to limit ECS' authority to prosecute a case declined by a United States Attorney's Office after consultation with that office, nor shall these provisions limit the authority of a United States Attorney's Office to prosecute a case that ECS has declined for reasons that ECS advises do not involve policy considerations.

[updated November 2008]

### **5-11.111 Staffing**

The appointment of Special Assistant United States Attorneys shall be approved by the United States Attorney of the relevant district and the Assistant Attorney General for the ENRD. In their approval process, the United States Attorney and the Assistant Attorney General should seek to insure sensible and efficient use of government resources.

[renumbered November 2008]

### **5-11.112 Parallel Proceedings**

Because many of the environmental statutes specifically provide for criminal, civil, and administrative sanctions (see, e.g., 33 U.S.C. § 1319(a), (b), (c), and (d)), this is an area of the law especially susceptible to parallel proceedings. Such proceedings may be appropriate, for example, when in the course of a civil case the government receives evidence of deliberate violations of the law meriting criminal prosecution or when a criminal investigation uncovers evidence of an on-going violation causing environmental contamination that should be stopped quickly through an injunctive action.

Although they may be appropriate in particular circumstances, parallel proceedings must be handled carefully in order to avoid allegations of improper release of grand jury material or abuse of civil process. Therefore, in any case under any of the statutes identified in USAM 5-11.101 in which parallel proceedings

arise, the United States Attorney's Office may find it useful to contact the Environmental Crimes Section for assistance in coordinating the parallel proceedings. See also USAM Chapter 1-12.000.

[updated November 2008]

### **5-11.113 Coordination with State Programs**

Most states have environmental enforcement programs that overlap, in whole or in part, with federal programs. United States Attorneys should familiarize themselves with state environmental enforcement laws and state enforcement officials. Particular attention should be directed toward the following aspects of state-federal relations in the environmental enforcement field:

- A. State enforcement agencies may be valuable sources of information on suspected violations of federal environmental statutes. United States Attorneys may be in a position to assist in apprising state officials of the nature of the federal enforcement program within the district or state and in developing methods for exchanging information on suspected violations;
- B. State authorities often possess evidentiary materials that are relevant to pending federal investigations and court proceedings. United States Attorneys should be aware of the nature and extent of the states' investigatory resources and should make provision in appropriate circumstances for the exchange of information on pending cases with state authorities;
- C. Frequently a particular activity constitutes a violation of both federal and state laws. When state officials are proceeding with an environmental enforcement case that may include violations of federal law, the United States Attorney in the affected district should monitor that state activity. If it appears that all federal interests in the case will be vindicated in the state court action, action in federal court may be an unnecessary duplication of effort. On the other hand, if federal interests will not be protected completely in state court, federal proceedings may be warranted. See also USAM 9-2.031 and 9-27.240.
- D. A number of United States Attorneys' Offices have found that task forces, which include personnel from state and local agencies and from other federal agencies, are very effective means of coordinating efforts with state and local governments and making optimal use of available resources. Task force formats vary among offices, and ECS can advise United States Attorneys' Offices of other offices that are willing to share the lessons of their experiences.

[updated November 2008]

### **5-11.114 Individual and Corporate Defendants**

- A. Congress has demonstrated its intent that individuals, as well as corporations, should be criminally prosecuted for violations of federal environmental laws,



see, e.g., 33 U.S.C. §§ 1319(c)(6) and 1362(5), thereby recognizing the fact that the unlawful acts or omissions of corporations actually can be traced to individual officers or employees. That Congressional intent should be given serious consideration in the development of prosecutions for violations of the statutes identified under USAM 5-11.101. Prosecution of a corporation is not a substitute for the prosecution of criminally culpable individuals within or without the corporation. Because a corporation can act only through individuals, imposition of individual criminal liability may provide the strongest deterrent against future corporate wrongdoing. Only rarely should provable individual culpability not be pursued, even in the face of offers of corporate guilty pleas. Absent those very rare circumstances, prosecutors should not agree to accept a corporate guilty plea in exchange for non-prosecution or dismissal of charges against individual officers and employees. See USAM Chapter 9.28.000 for specific guidance on federal prosecution of business organizations.

- B. In any case against both a corporation and any of its individual employees the willingness of the offending corporation to enter a guilty plea is not a basis for declining to prosecute an individual. See also USAM 9-16.050.
- C. EPA has adopted a policy that may affect cases involving voluntary disclosure, cooperation, and compliance by potential defendants. During their decision-making process in environmental crimes cases prosecutors should take into account that policy and any departmental policy or policies that may be relevant.

[updated November 2008]

### **5-11.115 "Global Settlements"; Community Service**

- A. Without the express approval of the Assistant Attorney General, Environment and Natural Resources Division, in any criminal case arising under the statutes identified in USAM 5-11.101 no plea agreement will be negotiated which compromises the right of the United States to any civil or administrative remedies under those statutes. Efforts by defendants to effect such results may arise in the context of so-called "global settlement" offers. See ENRD Directive 99-20 (April 20, 1999).
- B. Environmental crimes often can result in widespread degradation of the environment and threaten the health and safety of entire communities. In such circumstances, community service may be used in conjunction with traditional criminal sentencing options, provided that the community service comports with applicable law and furthers the purposes of sentencing set forth in 18 U.S.C. § 3553. Community service is authorized as a discretionary condition of probation under 18 U.S.C. § 3563(b)(12) and it is addressed in U.S.S.G. § 8B1.3.

United States Attorneys' Offices considering the use of community service shall consult with ECS for guidance. See USAM 9-16.325. A guidance document

addressing its use is available on the Environmental Crimes intranet website.

[updated November 2008] [cited in USAM 9-16.325]

### **5-11.116 Protecting Federal Interests in Plea Agreements**

All plea agreements in environmental crimes cases should include language that protects the government's other enforcement options, making it clear that the agreement (1) does not release from criminal liability any person not specifically covered by it (and, particularly, corporate plea agreements should not release any individuals from liability); (2) does not apply to crimes committed in any other federal district; and (3) does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including, but not limited to, penalties, claims for damages to natural resources, suspension, debarment, listing, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement.

[added November 2008]

### **5-11.117 Handling of Appeals**

All appeals in criminal cases arising under the statutes identified in USAM 5-11.101 shall be handled as provided for in USAM 5-8.300 and Title 2. When a United States Attorney's Office makes a request to handle an appeal, such a request will be resolved by agreement between the United States Attorney's Office and the Chief of the Appellate Section of the Environment and Natural Resources Division. In jointly resolving such a request, the following factors, among others, should be considered on a case-by-case basis and, if necessary, discussed:

- The relative advantages of staffing the appeal with an Assistant United States Attorney who tried the case or with an appellate lawyer who was not involved in the trial;
- The relative advantages of the United States Attorney's local perspective or the Environment and Natural Resources Division's national perspective;
- Whether there are issues on which components of the government may have differing viewpoints; and
- The available resources of each office, especially relative to the briefing and argument schedule of the appeal.

Copies of any draft briefs prepared by a United States Attorney's Office on behalf of the government shall be forwarded to the Appellate Section in sufficient time to allow review, comment, and approval by the Section and the Assistant Attorney General. Copies of any draft brief prepared by the Appellate Section shall be forwarded to the United States Attorney's Office in sufficient time to allow review, comment, and approval by that office. In any appeal, copies of all other

briefs by other parties shall be promptly forwarded by the United States Attorney's Office to the Appellate Section.

[updated November 2008] [cited in USAM 5-11.108]

### **5-11.118 Notice of Appeals**

USAM 2-2.200 describes the manner in which United States Attorneys' Offices forward notices of appeal or requests to take an appeal to the Environment and Natural Resources Division. For environmental crimes, the Division designates ECS as the unit to which such notices and requests should be sent. ECS will forward the notices and requests to the Division's Appellate Section.

[renumbered November 2008]

### **5-11.119 Record on Appeal**

Whenever an appeal is taken in a case arising under any statute identified in USAM 5-11.101 for which the United States Attorney has taken primary trial level responsibility, and that appeal is to be handled by the Environment and Natural Resources Division, the United States Attorney is responsible for assembling and transmitting to the ENRD Appellate Section those items which constitute the record of the case at the trial court level.

[updated November 2008]

### **5-11.120 Table of Notifications and Coordination**

The summary below, relating to coordination and approvals, is provided for user convenience. For specific details, see the respective provisions.

USAM 5-11.103	Notice of case initiation	Recommended; required for ECS
USAM 5-11.104	Consultation on case development	Recommended
USAM 5-11.107	Information exchange	Recommended
USAM 5-11.108	Notification of case resolution (felonies)	Required
USAM 5-11.109	Notification of dismissals (felonies)	Required
USAM 5-11.110	Notification of declinations (felonies)	Required
USAM 5-11.111	Approval of SAUSA appointments	Required
USAM 5-11.112	Coordination of parallel proceedings	Recommended
USAM 5-11.115	Approval of global settlements affecting civil or administrative	Required

	remedies; community service	
USAM 5-11.117	Request to handle appeal; forwarding of draft briefs	Required
USAM 5-11.118	Notice of appeal	See USAM 2-2.200
USAM 5-11.119	Assembling and transmitting record on appeal	Required

[added November 2008]