



Australian Government
Department of the Environment

Environmental Crime: The role of Police Agencies, Customs and Port Authorities and Environmental Regulatory Agencies in respect to enforcement responses

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Today's presentation

Part 1 - Overview/Context:

- Department of the Environment (DoE)
- Transnational Environmental Crime Research Project

Part 2 - Research into Law Enforcement Responses to Transnational Environmental Crime:

- Choices, Challenges and Culture, and*
 - Practical Considerations And Suggested Improvements Arising From An International Analysis*
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Part 1 - Department of the Environment (DoE)

- General overview
 - Administered National Environmental Laws
 - Introduction of the Environmental Regulatory Spectrum (including challenges and partnerships)
 - Partners and activities to improve our regulatory performance
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DoE general overview:

- < 3000 staff
 - main offices; Canberra (x4), Darwin (Parks Australia, Hobart (Aust. Antarctic Div.)
 - ~ 15 Divisions
 - main activities; policy, programme, regulation
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DoE - National Environmental Laws:

- ~ between 15-18 (portfolio reshuffle dependant) pieces of administered legislation that contain '*regulatory compliance*' provisions
 - most covered by International Multilateral Environmental Agreement/s (primary piece of legislation is distinguishable by its 9 triggers of Matter of National Environmental Significance (MNES))
 - spanning a diverse range of commodities, sectors and regulated communities
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DoE – partners and activities:

- Co regulators (International, National, Provincial and Local)
 - Environmental Enforcement Networks (AELERT and INECE)
 - Enforcement Networks (INTERPOL Environment Crime Programme and World Customs Organisation)
 - Academic and Research Institutions (Australian National University and Australian Institute of Criminology)
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TEC Research Project:

This research sits within broader research undertaken into TEC

- forms part of a three year research project operating under the auspice of an Australian Research Council Linkage Grant

Three contributing entities/research partners

- Australian National University, University of Wollongong, and Department of the Environment (DoE).
 - DoE is the (Industry) Partner Organisation
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TEC Research Project – three themes:

- **advancing our understanding** of the ways in which environmental commodities that are either sourced illegally or destined for illegal markets are traded and the ways in which profits are then laundered into the legal economy.
 - **applying conceptual tools** to advance our understanding of the organization of TEC and the asset structures that sustain illicit chains of custody and profit laundering
 - **mapping and analysing** existing transnational and intergovernmental practices in the areas of policy-making, compliance and enforcement.
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TEC Research Project – five broad commodity/areas of focus:

- Wildlife trafficking
 - Ozone Depleting Substances/Chemicals
 - Forestry
 - Fisheries
 - Carbon/Climate Change
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TEC Research Project – Theme three:

- More specifically, for this departmental research
“...to examine and analyse existing transnational policy and **operational law enforcement responses**, particularly those that function through network arrangements, **to arrive at a more comprehensive understanding of the strengths and weaknesses** of the ways in which governments and other actors are responding to the challenges of TEC”
(Elliott, 2011:1)
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Part 2 - Research into Law Enforcement Responses to TEC

(a) Choices, Challenges and Culture

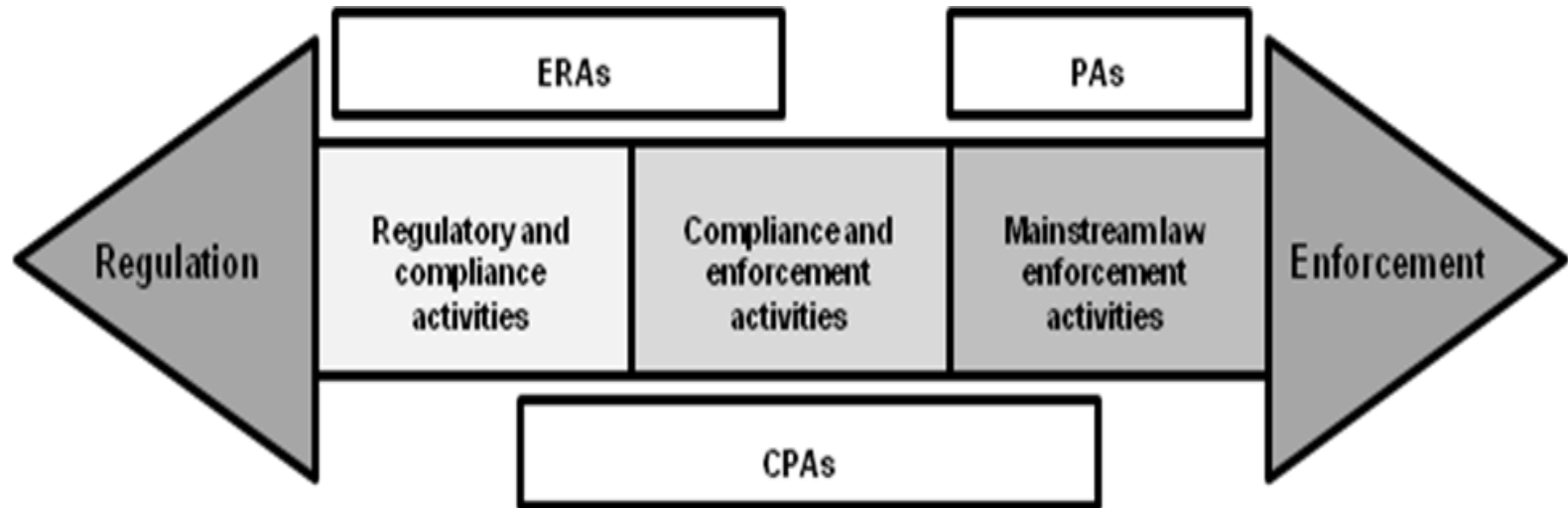
Literature Review Component

Operating context for Environmental Regulatory Agencies (ERAs) :

Additional complexities associated with:

- Providing a 'public service'
 - Having a licensing/permitting role
 - Having activities that span the entire
 - 'Agency Culture' not always conducive to undertaking regulatory or enforcement roles (especially escalated responses) either individually or collectively
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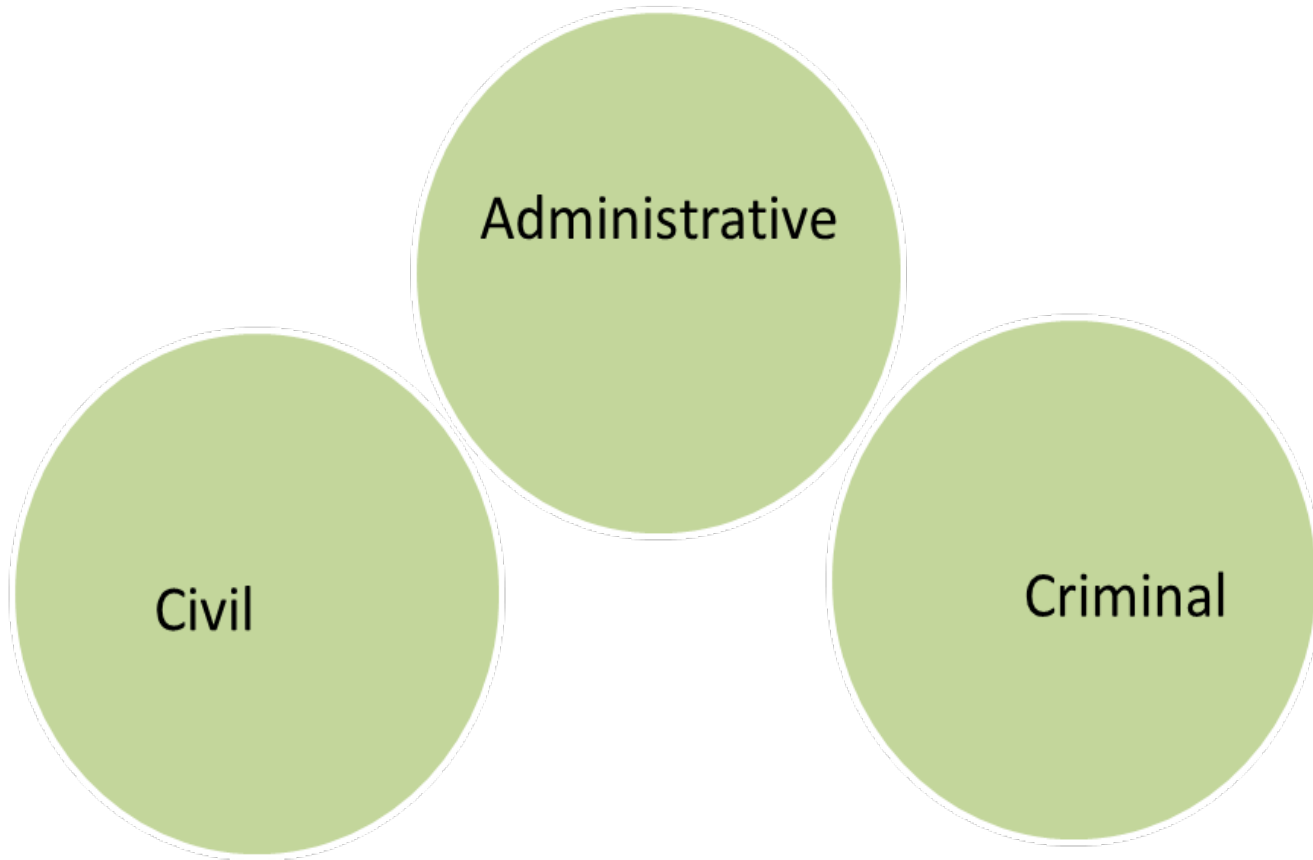
Operating context for Environmental Regulatory Agencies (ERAs) :



Globally the three main combat agencies (‘the Three Core Agencies’):



Globally the three main response choices:



Use of the three main response choices:

Agency Type	Administrative LER	Civil LER	Criminal LER
EEAs	Used extensively	Used Frequently	Used Infrequently
CPAs	Used frequently	Used Occasionally	Used Frequently
PAs	Used infrequently (in limited circumstances)	Not available	Used Extensively (predominantly)

Definitions and Concepts:

Critically important in determining

- Involvement
 - Lead and Support Agency identification
 - Overall approach to Regulatory/Law Enforcement Response
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Influence of Literature on Regulators and Enforcers:

Five groups/types considered

- Responsive Regulation
 - Problem Solving
 - Sanctions
 - Tools
 - Risk Management
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Environmental Enforcement Networks (EENs):

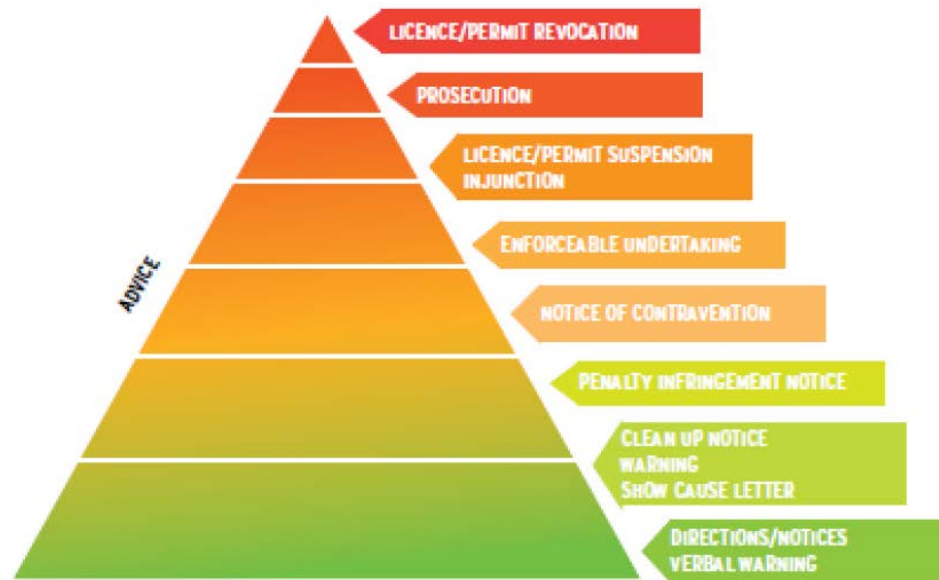
EENs and their

- Proliferation
 - Role in Capacity Building of ERAs, CPAs and PAs
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Summary use of Sanctions and Law Enforcement Responses to TEC:

Influenced by:

- Choices, Challenges and Culture, and
- Five groups/types considered



Source: VIC EPA (2011: 120).

Part 2 - Research into Law Enforcement Responses to TEC

(b) *Practical Considerations And Suggested Improvements Arising From An International Analysis*

Primary Research Component

Recap, Theme Three: –

- This focus of this contribution of the Department of the Environment's first piece of research was “...to examine and analyse existing transnational policy and **operational law enforcement responses**, particularly those that function through network arrangements, **to arrive at a more comprehensive understanding of the strengths and weaknesses** of the ways in which governments and other actors are responding to the challenges of TEC” (Elliott, 2011:1).
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Research Overview:

- Research Method
 - Research Participants
 - Data Collection
 - Data Analysis (iterative thematic and SWOT)
 - Results
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Research - iterative thematic analysis:

Q 1, 2, 3 4 & 5 (questionnaire) Q 1 (interview)		Q 6 (questionnaire) Q 2, 3 & 4 (interview)	
Staff experience	Organisational aspects	Operational and Policy challenges	Suggested improvements
<ul style="list-style-type: none"> • Environmental Crime • Transnational Environmental Crime • Mainstream Law Enforcement • Using various LER (admin., civil, criminal) 	<ul style="list-style-type: none"> • Discipline • Sector • Geographically • Hybrid • Other 	<ul style="list-style-type: none"> • Resources and Funding • Priorities • Organizational aspects • Legislation • Other 	<ul style="list-style-type: none"> • Policy (organisational approach towards) • Jurisdiction • Political • Priorities • Other

Research – results considered:

- Perspective of Key National Informants
 - Perspectives of Key International Informants
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Research – SWOT analysis:

Analysis of strengths, weaknesses, opportunities, and threats		
	Supportive	Detrimental
Internal (to agencies)	<p><i>Strengths</i></p> <ul style="list-style-type: none"> • Staff skills • Existing contacts and networks • Sharing and co-developing operational and policy better practices 	<p><i>Weaknesses</i></p> <ul style="list-style-type: none"> • Priority afforded TEC • Inadequate or inappropriate enforcement culture • Inadequate or inappropriate prioritisation procedures • Lack of resources
	<p><i>Opportunities</i></p> <ul style="list-style-type: none"> • Generally raise the profile of TEC • Develop stronger relationships with core and non-core partner agencies • Share resources and harness enforcement efforts 	<p><i>Threats</i></p> <ul style="list-style-type: none"> • Changing political priorities • Changing policy priorities • Legislative deficiencies
External (to agencies)		

Source: based on Prunckun (2010: 137, Table 10.1)

Research – SWOT analysis:

Box 1 Strengths: An overview and options for regulators

Strength 1: Staff skills

Agencies should recognise the skills of staff as an asset. Furthermore, they should commit to the continued professional development of all staff directly engaged in and whose work supports the use of LERs.

Strength 2: Existing contacts and networks

Agencies should consider network engagement as a core component of their regulatory and compliance and enforcement capacity building. Such engagement enables the benchmarking of their current activities and to also be best positioned to access and leverage future developments.

Strength 3: Ability to share operational and policy better priorities

Agencies should determine and shape the operational and policy aspects of their law enforcement activities based upon the collective experience of competent authorities around world. Such an approach avoids using resources to develop generic material from first principles (scratch) instead achieving efficiencies by redirecting resources to customising operational and policy aspects where necessary.

Research – SWOT analysis:

Box 2 Weaknesses: An overview and options for regulators

Weakness 1: Priority afforded TEC

Agencies should ensure that their priorities are informed by national, regional, and international priorities. Priorities should then be clearly articulated, publicised (where publication does not compromise operational integrity and disclose enforcement strategies), and regularly reported against.

Weakness 2: Inadequate or inappropriate enforcement culture

Agencies should acknowledge that senior management within and across all three core agencies have a critical role to play when it comes to shaping and enabling appropriate cultures to respond to TEC. Agencies should therefore consider providing each other with an overview of their existing approach to TEC in terms of their agency's respective (policing, enforcement, or regulatory) culture.

Weakness 3: Inadequate or inappropriate prioritization procedures

Agencies should recognise that even if enforcement and regulatory activities are not considered a 'core function' they should be recognised as an 'important function'. As these activities can expose responding agencies to a different type of risk, it is appropriate for agencies to take a risk management approach which enables priorities to be established around a range of factors, including likelihood and impact.

Weakness 4: Lack of resources

Agencies should determine their priorities and then identify the corresponding outcomes sought. Agencies should then apportion their resources judiciously with the application of these finite resources determined by the most efficacious means and with due consideration of delivery models (whether centralised, de-centralised or hybrid).

Research – SWOT analysis:

Box 3 Opportunities: An overview and options for regulators

Opportunity 1: Generally raise the profile of TEC

Agencies should ensure that their priorities are informed by national, regional, and international priorities. Priorities should then be clearly articulated, publicised (where publication does not compromise operational integrity and disclose enforcement strategies), and reported against.

Opportunity 2: Develop stronger relationships with core and non-core partner agencies

Agencies should undertake a gap analysis of the relationships they require with partner and co-regulators to meet their enforcement and regulatory obligations. Agencies should then ensure that they have appropriate arrangements (informal, semi-formal, or formal as the case requires) in place which are then subject to regular review and senior executive sign off.

Opportunity 3: Share resources and harness enforcement efforts

Agencies should consider pooling and sharing resources (human and physical) especially those that are either used infrequently or for which the acquisition is not feasible for individual agencies. Taskforce or joint investigation situations are examples of where pooling and sharing enables a variety of resources to be considered.

Research – SWOT analysis:

Box 4 Threats: An overview and options for regulators

Threat 1: Changing political priorities

Where possible agencies should ensure that their priorities are informed by national, regional, and international priorities. The priorities of agencies should, where possible, incorporate economic, social, and environmental considerations. Agencies should then report their successes in doing so demonstrating how their environmental enforcement activities actually progress the economic, social, and environmental platform of governments.

Threat 2: Changing policy priorities

Agencies could improve and influence thinking more strategically and consider the international trends and issues so that they can ensure that policy development and foundational aspects can be attended to before it becomes an issue that then requires a reactive response.

Threat 3: Legislative deficiencies

Agencies could improve in this area by sharing their experiences in legislative development and the ‘lessons learned’ from the use of various sanctions and tools. Further, much like the enforcement and policy disconnect outlined above, it would seem that combined input from enforcement staff, policy staff, and legislative drafters would be useful.

Key areas worth further *practitioner* consideration:

- The three core agencies vary greatly in their approaches to combating TEC
 - The three core agencies have access to and utilise the three broad LER responses with different frequency and abilities
 - The profile of TEC could be raised
 - Staff using LER against TEC require a unique skill set
 - There should be greater transparency in the application of LER and an increase in reporting against their use
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Key areas worth further academic consideration:

- 1)
 - conducting a cross-country analysis to determine whether differences exist in the use of LERs to TEC in developing, transition or developed countries –
 - to assist in identifying opportunities and leverage points for cross-country and interagency cooperation;
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Key areas worth further academic consideration:

2)

- undertaking a temporal study of agencies to see if the use of LERs to TEC has varied over time –
 - to identify common themes and areas of influence that drive change; and
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Key areas worth further academic consideration:

- 3)
- closer examination of the influence of ‘agency culture’ and ‘enforcement culture’ with a view to a quantitative assessment of the role that culture might have on the successful application of LERs to TEC –
 - so that cultural differences can be accommodated for mutual benefit
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Final comments:

Application and use of LER varies greatly across the countries and commodities studied further this variation occurs as a result of a range of variables and factors which include:

- whether or not they have **access to the full suite of LERs**
- which agency has the **lead** on enforcement action
- training and **resources to pursue** a particular LER
- **intent** of the action (tactical, operational or strategic)
- **reconciling imperatives** (policy and operational)
- existing **organisational culture towards and level of comfort with LER** (as above) in terms of; complexity of cases, the adversarial nature of the work and the fact that litigation can be protracted & costly

The application of LER in terms of ECE is highly nuanced.

Further **greater consideration is given to the 'environmental outcomes'** by environmental regulatory agencies when initiating, continuing and concluding a LER when compared to more traditional (mainstream) law enforcement agencies.



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Thank you for your attention.

Questions & Discussion.

