

Repainting the Thin Green Line: The Enforcement of UK Wildlife Law

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Green criminology applies a broad green perspective to environmental harms, ecological justice, and the study of environmental laws and criminality. Within the green perspective, many NGOs argue for stronger wildlife laws and a more punitive regime, yet the reality is that UK wildlife laws are broadly sufficient, given their purpose as conservation rather than criminal justice legislation.

This paper critically evaluates debates on the need for a more punitive wildlife enforcement regime. First, its analysis of the wildlife law enforcement regime in the UK reveals that in practice enforcement rather than legislative deficiencies are the problem. As a result, calls for tougher laws and sentencing are unlikely to be effective without corresponding improvements in the enforcement regime. Secondly it argues that NGOs operating within the wildlife crime arena consider wildlife crime primarily from an environmental, conservation, or animal rights perspective, rather than considering criminological theory, explanations of crime and ideology. This paper argues that while there is scope to review UK wildlife law, inherent failures in the existing enforcement regime and policy perspectives that underpin it need to be addressed before effective wildlife law enforcement can be achieved.

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Introduction

This article examines debates on the need for changes to wildlife law enforcement in the UK. Primarily led by NGOs, calls for a more punitive regime suggest that there are deficiencies in current legislation. However, Nurse (2003, 2009, and 2011) analysed the UK's wildlife law enforcement regime and the role of NGOs in practical wildlife crime enforcement and policy development. This analysis identified that NGO enforcement of wildlife law has different drivers than criminal justice enforcement, thus criticism of the wildlife law enforcement regime must be seen in context. However, current political drivers on streamlining regulation and police resources must also be considered as factors in the effectiveness of wildlife law enforcement. This article outlines the legislative background and both perceived and actual problems of wildlife crime. It identifies that while there is scope to review UK wildlife law, inherent failures in the existing enforcement regime and policy perspectives that underpin it need to be addressed before effective wildlife law enforcement can be achieved.

Green criminology encompasses broad green perspectives which, among other things, provide a mechanism for rethinking the study of criminal laws, ethics, crime and criminal behaviour and regulatory approaches to environmental problems (e.g. Situ and Emmons 2000, Lynch and Stretesky 2003). Wildlife crime, while primarily situated within the sub-category of animal rights and species justice (White 2008) is a topic which allows for the study of private policing and the influence of Non-Governmental Organisations (NGOs) on policy development and law enforcement policy. In the UK, wildlife NGOs play a significant role in wildlife crime enforcement with major organisations like the Royal Society for the Protection of Birds (RSPB) and the League against Cruel Sports (LACS) directly influencing policy and acting in an investigative capacity, while the Royal Society for the Prevention of Cruelty to Animals (RSPCA) also retains a significant prosecutorial role. Many NGO campaigners argue for stronger wildlife laws, reflecting the perception that current laws are inadequate and a more punitive regime is required to address wildlife crime (Naturewatch 2005), yet it is in the enforcement of UK legislation that problems occur rather than in any inherent weakness in the legislative regime. This paper argues that changes to legislation and a more punitive regime are unlikely to have a substantial effect on wildlife crime levels unless attention is also paid to existing enforcement problems. It also argues that NGOs involved in wildlife crime are influenced by moral or conservationist ideologies rather than integrating policy in mainstream criminology. As a result, criminological explanations of crime and theoretical perspectives that could inform enforcement policy and practice are not always considered. While there is a case for reforming wildlife legislation to eliminate or address some of the identified problems of wildlife crime (Nurse 2003, 2009, 2011 and Wellsmith 2011) this paper argues that a rethink is required to address the UK's wildlife crime problems.

The Legislative Background

The historical background to UK wildlife law enforcement is one of wildlife crime being a fringe area of policing whose public policy response was driven almost entirely by NGOs (Nurse 2003 and 2009, Kirkwood 1994, and Ankers 1993). From the outset a distinction should be made between crimes involving wildlife and

impacting on animals in the wild; and animal welfare or cruelty offences that mainly involve domesticated or farmed animals. The definition of 'wildlife' (and wildlife crime) used in this paper is an extension of the 'wild bird' definition found in the *Wildlife and Countryside Act 1981* and is concerned primarily with naturally occurring wildlife. This means any, bird, animal, mammal or reptile which is resident in or a visitor to the UK in a wild state, or is a non-native bird, animal mammal or reptile which is subject to UK legislation by virtue of its conservation status. It does not, therefore, include offences such as the possession of dead non-native endangered species, as this, by itself, may not be subject to UK legislation. It does however, include the possession or sale of those native species that are recognised as visitors to the UK and are classed as endangered species by the European Union (EU) and subject to UK legislative control such as the *Control of Trade in Endangered Species Regulations* (COTES). Wildlife crimes should also be distinguished from poaching offences involving species of game birds or animals specially bred for game shooting as game species are subject to a different legislative regime arguably based on consideration of animals as property. For a discussion of game laws see Munche (2008) and Parkes and Thornley (1991).

One difficulty with wildlife legislation is its intended use as conservation or wildlife management legislation rather than as species protection and/or criminal justice legislation. Rather than there being one piece of legislation protecting native wildlife, a vast, fragmented range of statutes and subordinate legislation are used to protect wildlife, or more accurately, allow for management of wildlife in line with its economic value, and to prosecute offences once committed.

UK Wildlife crime encompasses a wide range of offences and much UK wildlife law is shaped by international regulations. For example the 1973 *Convention on International Trade in Endangered Species of Wild Flora and Fauna* (CITES) which came into force in 1975 regulates international trade in endangered species. It prohibits trade of around 800 species, and controls the trade of around a further 23,000 species. CITES is a complex evolving treaty (Holden 1998) implemented in the European Union (EU) by the *European Union Wildlife Trade Regulations* (EUWTR), which deal with imports and exports of wildlife and wildlife trade products to and from the EU, as well as trade within the EU and both between and within individual member states. In addition, UK law establishes CITES offences and penalties by the *Customs and Excise Management Act 1979* (CEMA), the *Control of Trade in Endangered Species (Enforcement) Regulations 1997* (COTES) and the *Control of Trade in Endangered Species (Enforcement)(Amendment) Regulations 2005* (COTES) which created a number of new offences and increased penalties for certain COTES offences using Section 307 of the *Criminal Justice Act 2003* to do so. The *Wildlife and Countryside Act 1981* was recently amended by the *Countryside and Rights of Way Act 2000* in England and Wales (CRoW), although the offences remain similar. Birds and other scheduled animal species are protected from prescribed killing methods, there is a prohibition on the taking or possessing of certain species, or parts or derivatives of them (such as birds' eggs), a prohibition on the uprooting of scheduled plant species and a general offence of introducing non-native plant or animal species (*Wildlife and Countryside Act 1981* and subsequent related legislation such as the *Wildlife and Natural Environment (Scotland) Act 2011* and the *Wildlife and Natural Environment Act (Northern Ireland) 2011*).

Within the UK's complex wildlife protection regime, legislation has been enacted at species level with such pieces of legislation as the *Protection of Badgers Act 1992* and the *Deer Act 1991* and as general legislation protecting a wide range of wild animals and mammals, such as the *Wildlife & Countryside Act 1981* and the *Wild Mammals (Protection) Act 1996*. However, legislation has also been enacted to implement international and European legislation on the protection of wildlife. For example, the wild bird provisions of the *Wildlife and Countryside Act 1981* were intended to implement the 1979 *EC Directive 2009/147/EC on the conservation of Wild Birds* and give protection to all forms of native wild birds (with certain exceptions for pest control and agricultural purposes). In addition to this, wildlife offences can also be caught by other forms of legislation aimed at regulating commercial activities or creating offences in relation to other activities (e.g. the *Customs and Excise Management Act 1979* which regulates the import and export of prohibited items, including wildlife). It is also important to note that devolved legislation sometimes provides for different protection. For example, the *Wildlife and Natural Environment (Scotland) Act 2011 s.18* provides for the offence of 'vicarious liability' which is not yet replicated in other wildlife legislation.

NGOs are especially important in shaping wildlife crime policy because the NGOs that have accepted (moral) responsibility for dealing with wildlife crime act as policy advisors, researchers, field investigators, expert witnesses at court, scientific advisors, and casework managers. In the case of a small number of organisations, NGOs are also prosecutors and NGOs and their policy networks play a significant practical role in policy development and law enforcement. Acting together, NGOs also contribute greatly to the public debate on wildlife crime, generating considerable publicity for the issue and co-ordinating (and undertaking or funding) much of the research. They can also develop public support for a range of policies, influencing policy and, in the current climate, being seen by Government as having responsibility for its implementation (Cabinet Office, 2010). Yet these NGOs operate mainly from an environmental or animal welfare standpoint rather than a criminal justice or policing one. While this does not in any way impugn their effectiveness as campaigners or policy professionals it does raise questions about the integration of wildlife crime policy within mainstream criminal justice policy.

Perceived Problems

Despite the perception of inadequacy in UK wildlife law, closer examination reveals that practical enforcement problems have been a feature of the UK's wildlife law system for some time. In May 2002 the University of Wolverhampton published a report on *Crime and Punishment in the Wildlife Trade*, concluding that:

The attitude of the UK's legal system towards the ever-increasing illegal wildlife trade is inconsistent. It does not adequately reflect the nature and impact of the crimes, and it is erratic in its response. The result is that the courts perceive wildlife crime as low priority, even though it is on the increase.

(Lowther, Cook, and Roberts 2002)

Although Wolverhampton's report focused solely on wildlife trade, its conclusions on the inadequacies of legislation and inconsistency in the way that legislation is enforced are echoed by NGOs in looking at other aspects of wildlife crime (Nurse

2003, 2011). The picture that emerges of wildlife crime through the available literature is that of inconsistent legislation inadequate to the task of wildlife protection, subject to an equally inconsistent enforcement regime (albeit one where individual police officers contribute significant amounts of time and effort within their own area). Problems of under-resourcing and marginalisation, inadequacies in recording wildlife crime such that a 'dark figure' of wildlife crime exists and the lack of seriousness attached to wildlife crime and the lack of effective deterrent mechanisms have all also been identified as enforcement problems (Conway 1999, Nurse 2003, Wellsmith 2011). While there is no doubt that there is an inconsistency in wildlife legislation (for example different penalties and different police powers exist across different pieces of legislation), this is often reflected in NGO policies as demonstrating that wildlife legislation is inadequate and needs wholesale reform. Government perspectives, however, would have it that UK wildlife and environmental legislation risks imposing an excessive regulatory regime (The Cabinet Office, 2011). However, the ad-hoc development of wildlife policing creates with it a risk that no matter what the legislative regime; the enforcement of wildlife legislation may itself be inconsistent and inadequate even if campaigners become fully satisfied with the legislation and any sentencing provisions.

A further University of Wolverhampton report published in June 2002 considered the role of organised crime in the wildlife trade. Here, Cook, Roberts and Lowther (commissioned by the Worldwide Fund for Nature [WWF] and TRAFFIC) analysed the evidence of organised crime involvement in this form of wildlife crime (illegal trade) and concluded:

There is evidence that organised crime elements are becoming increasingly involved in the most lucrative parts of the illegal trade and they are prepared to use intimidation and violence: the report gives examples of wildlife wardens and border guards killed by organised and armed gangs. Where links with the drugs trade are concerned, these may take different forms, including:

- Parallel trafficking of drugs and wildlife along shared smuggling routes, with the latter as a subsidiary trade;
- The use of ostensibly legal shipments of wildlife to conceal drugs; and
- Using wildlife products as a currency to 'barter' for drugs, and the exchange of drugs for wildlife as part of the laundering of drug traffic proceeds.

(Cook, Roberts and Lowther 2002)

Linking wildlife crime to organised crime and, in particular, the trade in drugs is an important step in bringing wildlife crime (albeit only this one aspect) within the remit of mainstream criminal justice and establishing it as an area of study within green criminology. All statutory law enforcement bodies recognise the influence of drug related crime on other forms of criminal activity and society as a whole. The statutory authorities also recognise the importance of taking action to control the activities of organised crime and to prevent money laundering by organised crime. In addition, wildlife trade is easily understood by traditional law enforcement agencies and policymakers because of it can be identified with both classicist or rational choice

explanations of crime (Vold and Bernard 1986) or positivist notions of offenders driven to commit crime by psychology or society. It involves offenders who are clearly motivated by profit, particularly with respect to trade in endangered species which can sell for thousands of pounds (Green 1999, Zimmerman 2003, South and Wyatt 2011) and, as Cook, Roberts, and Lowther (2002) argued, involves criminal actors involved in other recognised forms of crime (Hutton 1981 and Linzey 2009).

Practical Enforcement Issues

The lack of resources for the statutory agencies is identified as being a specific problem in the enforcement of wildlife law. The particular issues identified include:

- Lack of resources for investigation and lack of specialist wildlife knowledge among police officers and the Crown Prosecution Service (CPS).
- Poor contact with NGOs/experts and poor police response times

The difficulties of obtaining resources can be linked both to the status of wildlife crime within UK policing priorities and the relative (lack of) importance attached to wildlife crime within individual police forces (Roberts et al. 2001, Conway 1999). Much wildlife crime is still reported directly to NGOs by members of the public, meaning that NGOs are often in the position of ‘lobbying’ the statutory agencies to have wildlife crimes investigated. This means that investigation of wildlife crimes varies across police forces and can be subject to force specific priorities and local resource issues. At the outset there are difficulties in enforcement due to the general lack of knowledge that most ordinary operational police officers have of wildlife law. This is not because of any particular lack of interest on the part of police officers in general, more that wildlife law and wildlife crime does not form a core part of police training (although in some areas courses are provided).

In practice, however, the immediate problems are those of practical enforcement, identified by research carried out by Nurse between 2001 and 2008 (Nurse 2011). A major problem raised was that the often part-time nature of wildlife duties (Kirkwood 1994) meant that dedicated wildlife policing did not take place and so much enforcement activity was reactive and heavily reliant on volunteers and NGOs. These problems are likely exacerbated by the recent economic crisis and the Government’s austerity measures which have resulted in policing cuts which affect the role of Police Wildlife Crime Officers (PWCOs) with several forces cutting the role (Select Committee on Environmental Audit, 2012). Rather than a change in legislation, the problems highlighted in interviews with NGOs and enforcers are those that require a more coherent regime to address (Nurse 2009 and 2011). Increasing the tariffs available to judges under wildlife legislation will count for little if the problems of lack of resources, gathering evidence, investigating cases and having experienced prosecutors bring expertise to bear at court are not also addressed (Akella and Cannon 2004 cited in White 2009). The issue is not solely whether a case can attract a five year prison sentence (for example) but whether that case will be detected, investigated and brought to court in a manner that makes it likely that a potential offender believes that a five year prison sentence is a real likelihood. That the level of detection, investigation and prosecution of wildlife offences differs throughout the UK, is also an issue that needs to be addressed so that offenders are not left believing that there are soft spots within the UK where no matter what the level of fines, there is little real prospect of a stiff penalty being applied. Here the lack of reliable official information

on wildlife crime has potential impact. Wildlife crimes are considered to be significantly under-reported so that a 'dark figure' of wildlife crime is likely to exist, those crimes known to the public but not reported or acted upon by statutory bodies (Lea and Young 1993, Nurse 2003, Wellsmith 2011). The dark figure is of some relevance in that a proportion of wildlife crimes may only be known to the perpetrators thus the certainty and severity of punishment may be lessened in their minds. But the likelihood of a wildlife crime being detected, investigated and prosecuted can be directly influenced by the involvement of NGOs in an investigative, advocacy, advisory, or prosecutorial capacity (Lowther et al. 2002, Nurse 2003).

Policy Issues

In general, NGO policies call for a more punitive regime for wildlife crime and for the subject to be given a higher priority within the criminal justice system (Nurse 2003 and 2009).

Specific policies being supported fall into the following categories:

1. Statutory recording of wildlife crime
2. Increased resources for the statutory enforcement agencies to combat wildlife crime
3. Changes to wildlife legislation (to create new offences, close perceived loopholes in current legislation and to create new offences)
4. Increased/stiffer sentencing options for wildlife offences
5. Better use of existing sentencing options (to achieve greater consistency and to improve the deterrent effect)

(Nurse 2003 and 2009, Brunstrum 2006, Roberts et al 2001)

The specifics of these policy perspectives vary according to the organisation's specific objectives. However an analysis of all the available NGOs policies from both documentary evidence and primary (interview and letter) evidence (Nurse 2011) suggests that these issues represent the most significant issues in the enforcement of wildlife legislation.

Complex attitudes to animals persist in the UK resulting in a situation where animals are generally protected by law, but are still reared specifically for shooting and where resistance to legislation to control field sports continues. The campaign against the *Hunting Act 2004* was often characterised as 'town versus country' (Burns et al. 2000) and discussions of traditional fieldsports and hunting activities that become subject to legislation often contain debates concerning perceptions that affluent sections of society seek to impose their will on poorer rural members of society. Lowe and Ginsberg (2002) concluded that the animal rights movement (in the US) has a disproportionately well-educated membership reflecting what Parkin (1968) called 'middle class radicalism'. Certainly the NGOs involved in wildlife crime in the UK while not all pursuing policies from an animal rights perspective, represent a professional movement comprising large professional organisations (comparable with medium to large businesses) rather than being a grass roots or 'activists' movement. Figures for certain major wildlife or animal protection NGOs show annual running costs in excess of several £million per organisation (see for example RSPB 2010a,

RSPCA 2005, 2006). The public support that these organisations have (the RSPB has over a million members) together with the resources available for campaigning and political lobbying, allows the main environmental NGOs to take the lead in promoting wildlife crime as an issue of importance. It also places the organisations in a position to employ expertise, for example, specialist investigators and political lobbyists, to promote their policy objectives and adopt a position of being expert in their chosen field, while their socio-economic position allows them to exploit that perceived expertise. Kean (1998) assessed attitudes towards animal rights in the context of political and social change in Britain since 1800. She explains how following the introduction of Martin's 1822 animal protection legislation, the Society for the Prevention of Cruelty to Animals (which became the RSPCA in 1840) was set up. She explained that "the Society did not come into being to campaign for new legislation as such, but rather to ensure that the law which had been passed would be implemented" (Kean 1998:35). NGOs primarily achieve their objectives through public campaigning to raise awareness of an issue commonly commissioning or carrying out their own research to prove the case for a particular issue. Such research is then used to lobby for legislative change or to convince the public of the need for a particular policy, change to the law or the need for Government intervention.

The objective of ensuring that legislation is effectively enforced, however, is pursued by some NGOs through practical law enforcement as a means of ensuring that legislation is used effectively and prosecutions taken where the statutory agencies might not do this. Jasper (1997) in discussing 'postmaterial' social movements explained that these are comprised mainly of people already integrated into their society's political, economic and educational systems and who by virtue of their affluence did not need to campaign for basic rights for themselves but could pursue protections and benefits for others. Well organised NGOs may thus step into perceived enforcement or policy gaps and develop quasi-statutory roles as an alternative to the perceived inadequacy of statutory enforcers or weak public policy. Jasper's arguments could certainly be applied to the animal rights, animal protection and environmental movements in the UK which from their activist roots have certainly grown to embrace animal protection and conservation corporations with considerable economic and political power. These organisations are often placed at the upper end of the NGO scale both in terms of their income and their position within the UK NGO establishment. The RSPB and RSPCA, for example are both incorporated under Royal Charter giving them considerable legitimacy within the policy environment and providing them with a middle class social position indicated by Jasper (1997) as vital for many successful campaigning organisations. In addition the economic power of these organisations and others like LACS, the Wildlife Trusts and the Badger Trust (which have smaller support groups throughout England and Wales), WWF and Greenpeace allows for campaigning on a national scale ensuring widespread saturation of the campaigning message through mass market mailing, advertisements and editorials in national magazines and newspapers, and the provision of campaigning materials to television news programmes and documentary film makers.

An examination of the different NGOs involved in wildlife crime (Nurse 2003, 2011) identified the following different types of NGO:

1. Campaigning NGOS

2. Law Enforcement NGOs
3. Political Lobbying NGOS

It is possible for an NGO to operate in more than one of these areas but in relation to their activities concerning wildlife crime, NGOs generally adopt one of these functions as a primary role (e.g. law enforcement) which dictates how the issue of wildlife crime is pursued, even though a secondary objective (e.g. political lobbying) may be pursued alongside this. NGOs operating in the field of wildlife crime primarily develop their policies from the ideological positions of:

1. Moral culpability – censuring activities that they believe are morally wrong
2. Political priorities – censuring activities that they consider should be given a higher profile in public policy (which may include issues that they consider are worthy of being a higher law enforcement priority or which should be the subject of law enforcement activity and/or legislative change); and
3. Animal Rights – a belief in rights for animals which includes policies that demonstrate either the case for legal animal rights or which demonstrate breaches of the existing rights perceived held by animals.

Policy objectives may overlap and more than one ideological perspective may inform an NGOs specific policies, yet a clear ideological position usually informs an NGOs wildlife crime actions. Thus policy networks can be organised around shared political priorities, for example for increased wildlife law enforcement or an animal rights agenda. It should be noted, however, that an overall policy network exists in the shape of the Partnership for Action on Wildlife Crime (PAW) the Department for the Environment's (DEFRA) wildlife crime co-ordinating body. The absence of specialist criminal justice NGOs (such as NACRO, The Howard League and Justice) as members of PAW or as policy advisers within the field of wildlife crime is perhaps surprising. Criminal justice NGOs have considerable expertise in prisons and policing policy as well as in crime prevention and programmes aimed at diverting young offenders from crime and preventing re-offending. This expertise allows criminal justice NGOs to contribute to the criminal justice policy debate on crime prevention, sentencing and treatment of offenders but their evidence and policy proposals are not integrated into wildlife crime policies. Instead NGOs develop their own policies based on the specific species or conservation priorities that each organisation is pursuing or considers to be a priority.

Although bodies such as PAW and Wildlife and Countryside Link exist as policy forums, individual NGOs naturally direct their resources to those matters that fall within their remit, ideological position and are in those areas for which they have a perceived public and institutionally mandated remit to act. As a result, the policies that are promoted by each organisation often relate simply to one aspect of wildlife crime and may not be effective in any integrated approach to dealing with wildlife offenders. NGO enforcement action, though sometimes effective on individual wildlife crime problems, may thus also fail to deal with the wider problems of criminality and criminal justice indicated by wildlife crime. The absence of the criminal justice NGOs also means that the wildlife crime policy network that determines policy (Marsh and Rhodes 1992) is less a criminal justice one than an

environmental justice one with the emphasis being on developing policies aimed at addressing illegal persecution of birds and animals, animal welfare issues, and offences of conservation significance. While these policies are aimed mainly at crimes, the network's principles are those of species protection, species justice, environmentalism and conservationism rather than being criminal justice orientated. As a result policies aimed at wildlife crime offenders also ignore the realities of mainstream criminal justice and existing (and past) problems within policing, the courts and the prison system which criminal justice NGOs are well-placed to advise on. At best, the Home Office and Ministry of Justice are weak members of this policy network with limited involvement in any policy development driven by NGOs through DEFRA, but do have control over whether any policy initiatives developed through the wildlife crime policy network are then incorporated into policing, sentencing and prison policies. Where this is not the case, the effectiveness of the wildlife policy network is severely compromised although this does not negate its important role in debating and raising public awareness of wildlife crime and related environmental issues and the threats facing UK birds and animals from criminal activity.

To be truly effective the wildlife policy network needs to incorporate mainstream criminal justice professionals or criminological expertise in order to consider wildlife crime within the context of wider criminal justice concerns. But although there has been some success in engaging individual police forces in wildlife crime enforcement and species protection initiatives the network has yet to expand sufficiently to incorporate the main statutory criminal justice policy departments in central government as fully active participants. (In part this may be due to the perception within criminal justice and of criminal justice experts that wildlife crime is not serious crime or is victimless crime.) Thus, the dominant position that NGOs have held in relation to wildlife crime enforcement and policy development in the UK is one which considers wildlife crime from an environmentalist and animal protection viewpoint rather than a criminal justice one.

Theoretical Issues and Wildlife Crime

While the ideological positions of NGOs explain their policy positions, considering the motivations of offenders within their theoretical contexts aids understanding of the criminality that wildlife law enforcement policy and practice is intended to address. Despite improvements and high profile publicity for wildlife crime it is still not seen as serious crime within the context of mainstream criminal justice. This allows offenders such as gamekeepers caught poisoning or trapping wildlife (RSPB 2010b) to deny that they are criminals although they can easily admit and identify criminality in others such as poachers. Thus offenders employed within the game rearing industry may deny that their actions are a crime, explaining them away as legitimate predator control or a necessary part of their employment or may accept that they have committed an 'error of judgment' but not a criminal act (Nurse 2011). Law enforcement policy needs to consider these realities and accept that offender behaviour is complex and varies between types of wildlife offence (Nurse 2011). Thus, as Matza (1964) explains, individuals can drift in and out of crime and delinquency and wildlife offenders (of different types) may generally accept societal norms while developing a special set of justifications for specific aspects of their behaviour which allows them to commit wildlife crimes. These techniques of neutralisation (Eliason 2003, du Rées 2001, Sykes and Matza 1957) allow wildlife

offenders to express guilt over their illegal acts but also to rationalise between those whom they can victimise and those they cannot. This means that offenders are not immune to the demands of conformity but can find a way to rationalise when and where they should conform and when it may be acceptable to break the law. As an example, for those offenders whose activities have only recently been the subject of legislation, the legitimacy of the law itself may be questioned allowing for unlawful activities to be justified. Many fox hunting enthusiasts, for example, strongly opposed the *Hunting Act 2004* as being an illegitimate and unnecessary interference with their existing (lawful) activity and mounted formal legal challenges to the legitimacy of the *Hunting Act 2004* in *R v Jackson* [2005] and the *Countryside Alliance* cases [2007]) and in the European Court of Human Rights (*Friend v the United Kingdom* application no 16072/06). Thus their continued hunting with dogs is seen as legitimate protest against an unjust law and is denied as being criminal (Skidelsky 2003, Prado and Prato 2005).

A central difficulty in wildlife crime policy is the focus on criminals and punishment rather than any integrated approach to crime prevention or the social causes of crime prior to offences being committed. Bright (1993) outlined three main perspectives in crime prevention discourse:

“a belief in the preventive effect of law enforcement and the criminal justice agencies; situational crime prevention in which opportunities for committing crime are reduced by modifying the design or management of the situation in which crime is known to occur; and social crime prevention, which aims to prevent people drifting into crime by improving social conditions, strengthening community institutions and enhancing recreational, educational and employment opportunities.”

(Bright 1993)

The law enforcement perspective dominates in the USA, exerts a powerful influence in the UK, and is almost exclusively the policy response in wildlife crime with the emphasis being on detection and apprehension and the subsequent punishment of offenders. Bright's (1993) explanation demonstrates that law and order policies can have a range of different objectives including; reducing levels of crime, punishing offenders, preventing victimisation (and repeat victimisation), preventing repeat offending, and promoting law and order and protecting the public. Yet it is not always clear which of these objectives is being pursued by policy and under-developed or poorly thought out policies can result in a regime that simply punishes offenders but fails to achieve any of the other objectives.

Despite its flaws, the law enforcement perspective focused on offender-rationality (i.e. neo-classicism) remains one of the dominant policy perspectives for dealing with wildlife crime. Conservative perspectives argue that by making the potential outcome of the decision to commit a crime one that is unacceptable to the individual s/he will be less likely to commit a crime. Theoretically if the punishment is severe enough and the likelihood of apprehension and receiving punishment is known (e.g. by providing and publicising detection rates and severe mandatory sentences for

offences) the rational offender will choose not to commit crime. Such policies based on deterrence theories (Cavadino and Dignan 1994) feature heavily in wildlife crime yet investigators regularly encounter the same offender over and over again and evidence exists that even those offenders who are repeatedly caught convicted and fined are not deterred. Egg collector Colin Watson for example was caught and convicted six times; had paid fines of thousands of pounds and had his collection of eggs confiscated. Despite the fact that he was known to police and staff involved in protecting rare birds' nests he was suspected of still being involved in an egg collecting expedition when he fell to his death in May 2006 (Wainwright 2006).

It can, of course, be argued that fines (such as those imposed on Watson) are inadequate and that prison regimes need to be made tough and austere in order to make the punishment sufficiently unpleasant that an offender would not wish to repeat it. However, reliance on deterrence has been largely unsuccessful with other crimes (Cavadino and Dignan, 1994) and thus there is little basis on which to conclude it will be successful in dealing with the UK's wildlife crime problems (Nurse 2003, 2011). Indeed evidence from the USA, where incarceration and high fines are commonplace in convictions for wildlife crimes indicates that a strict punishment regime has not reduced the level of wildlife crime (Schneider 2008).

Publicity given to sentencing is essential in establishing general deterrence, as the public must be encouraged to believe that punishment automatically follows the commission of a crime. General deterrence is extremely difficult to evaluate because it is impossible to measure and identify those potential offenders who do not commit crime for fear of punishment. But common-sense logic dictates that punishment will have general deterrent effects and the publicity given to wildlife crimes is a core element of this deterrence function. Publicity for particular enforcement campaigns such as *Operation Easter*, the nationwide operation against egg collectors co-ordinated by Tayside Police, *Operation Lepus*, the police operation against illegal hare and deer coursing, *Operation Charm*, the Metropolitan Police operation against the trade in endangered species in London and *Operation Artemis* a national police investigation and campaign into the illegal killing of hen harriers also highlighted increased police and NGO investigation of wildlife crime. Websites such as www.operationcharm.org also allow for the reporting of incidents online and casework successes and statistics on wildlife crime are regularly published by the RSPB, RSPCA and others, and disseminated to local and national media.

Yet deterrence theory's main problem is the assumption that offenders are rational, responsible individuals who calculate the risks associated with crime before deciding whether to commit an offence. This conclusion is questionable given the reality of varied criminality in wildlife crime (Nurse 2011, South and Wyatt 2011). While wildlife crime prosecutions are routinely publicised by NGOs, many offences will not achieve full publicity throughout the UK. The varied nature of wildlife criminality also makes it unlikely that all offenders conduct a full assessment of their offending behaviour before the commission of an offence. However for those offenders who are informed, such as those employed in the game rearing industry; knowledge of the realities of wildlife crime enforcement, combined with other pressures, can be a decision-making factor. Wasik (1992) explains that 'a burglar sufficiently well-informed to have read the sentencing reports will also have read the criminological literature which tells him that the police detection and clear-up rate for burglary is less

than 15 per cent' (1992:123). The deterrent effect is therefore limited if a rational offender concludes that his chances of being caught and receiving the punishment are minimal. This is especially so in wildlife crime where a relatively small number of prosecutions take place when compared to the total number of reported incidents.¹ A well-informed offender would certainly know that a significant proportion of the law enforcement activity in wildlife crime is carried out by NGOs with limited resources or police officers acting in a part-time capacity.

However there is a case for reforming wildlife laws to provide a framework for a better and more consistent enforcement regime. One of UK wildlife legislation's problems is that a range of legislation provides different levels of protection. This causes confusion both for the public and enforcers. The Government's *Red Tape Challenge* (The Cabinet Office, 2011), for example, suggests that there are 159 regulations that relate to biodiversity, wildlife management, landscape, countryside and recreation, raising questions about the desirability of retaining the scale of regulation and current enforcement regime. But while the Government questions whether wildlife regulations should be scrapped or their purpose achieved through non-regulatory means, what is needed is to take what is good in existing wildlife law and to develop proper effective legislation that recognises wildlife crime as part of mainstream criminal justice, and does not continue to see it solely as an environmental problem.

Wildlife crime is currently enforced reactively, relying on charities to do the bulk of the investigative work into certain aspects of wildlife crime and to receive the majority of crime notifications. While the UK has an excellent network of PWCOs (Kirkwood 1994, Roberts Cook Jones and Lowther 2001) both public and seemingly Governmental perception is that charity support is an integral part of the enforcement system. However integration of wildlife crime into mainstream policing and consideration of more preventative approaches, particularly using situational measures potentially provides an alternative to the current enforcement system (Nurse 2009, Wellsmith 2010, 2011).

Provisional Conclusions on Reviewing Wildlife Law

Conceptually, different approaches to law and order and dealing with crime exist; specific policies such as 'target hardening', the 'short, sharp, shock' and use of non-custodial and community sentences or restorative justice go in and out of fashion. However, western criminal justice policy is mainly centred around a law enforcement perspective based on ideas of deterrence and punishment. While initiatives to address the social causes of crime have been, and continue to be tried, mainstream criminal justice policy continues to rely heavily on enforcement action by the police and problem-oriented policing and situational measures (Tilley 2009, Felson and Boba 2010), sentencing in the courts and the use of custodial sentences. This is especially so in the UK's response to wildlife crime where NGOs policies are primarily centred on the role of the offender, theories of deterrence and reliance on the law enforcement perspective. Analysis of these policy perspectives confirms that they mainly call for a

¹ Dependent on which definition of wildlife crime is used but comprehensive data on number of wildlife offences occurring in the UK each year is still not collated or readily available. But, for example, analysis of RSPB figures suggests an 'average' of 500 actual wild bird incidents takes place each year but on average only 36 prosecutions take place each year.

more punitive regime and stiffer sentences (including use of prison) to be imposed against wildlife offenders. Yet mainstream criminal justice experience suggests that such policies are unlikely to be effective in reducing or addressing persistent wildlife crime problems.

The ineffectiveness of imprisonment as a long-term solution is well documented, despite the benefits elicited from temporary incapacitation of offenders. Reconviction rates notwithstanding, reliance on incarceration and punitive measures aimed at those already established in criminal careers ignores the emergence of new offenders each year. This is a significant problem in wildlife crime where despite considerable publicity for court successes and those prison sentences that are available, new offenders continue to enter the population of active wildlife offenders. The evidence that a more punitive regime is effective in achieving deterrence is also lacking. NGO policies promoted through policy and campaign documents argue that sentencing of wildlife offenders is lenient and that there are significant flaws in wildlife legislation. In line with this perception, it has been concluded that wildlife crimes are not taken seriously (Nurse 2003, Roberts et al. 2001) and that a stricter enforcement regime comprising of stiffer sentences and a more punitive approach to offenders is needed to provide an effective deterrent. While NGO policy documents and campaign materials may identify inadequacies in legislation and weak sentencing provisions as the primary problems in wildlife crime, a more detailed analysis of policy, opinions and case materials (Nurse 2003, 2009 and 2011) reveals a regime containing significant problems in practical enforcement of legislation and the detection, investigation and prosecution of offences. The evidence suggests, therefore, that rather than the existing legislative regime being inherently weak, practical implementation and operational enforcement of wildlife legislation requires attention if efforts to reduce wildlife crime are to be successful. Despite the considerable efforts of a number of dedicated officers, wildlife laws are still enforced in a part-time manner in the UK and the resources allocated to this area of crime are inadequate to the task. This is in part due to the relatively low priority that wildlife crime has within the criminal justice system, being primarily seen as an environmental issue rather than a mainstream criminal justice one. Problems of practical enforcement exist in almost all areas of wildlife crime meaning that even where sufficient legislation exists it is poorly and inconsistently enforced.

In principle at least, UK wildlife law is broadly adequate to its purpose as conservation or species management legislation. While there are some problems inherent in a piecemeal wildlife legislation system, the *Countryside and Rights of Way Act 2000* (CRoW) and the *Wildlife and Natural Environment (Scotland) Act 2011* provide some improvements in wildlife law and, in CRoW's case, clarify some of the identified problems of inconsistent powers. However wildlife investigators and campaigners often complain about ambiguous wording and different standards of protection across wildlife legislation (Childs 2003, Nurse 2003, Wilson et al 2007) so that a high level of legal expertise is often required even at the investigative stage. The UK wildlife law enforcement regime also makes little provision for crime prevention so that its primary function in practice is to detect and apprehend the offender after the offence has been committed. It is here that the problems are really experienced, in an enforcement system that is largely voluntary, lacks resources and relies too heavily on the NGO sector.

However UK wildlife laws should be reviewed with a view to consolidation and provision of a coherent system of wildlife protection. As a minimum, reviewing all wildlife law to ensure consistency in penalties, police powers and specification of offence is required. There is also a strong case to review all legislation to close loopholes or ambiguous wording. For example a longstanding problem with the *Conservation of Seals Act 1970* was that seals could be killed ‘in the vicinity’ of fishing gear (Section 9(1)(c) of the Act). There was no definition of ‘in the vicinity’ in the Act and the Seals Forum has reported that there was also confusion over what constitutes nets or fishing gear (Wilson et al. 2007). Such loopholes allow the killing of wildlife that are otherwise protected and should be removed across UK wildlife laws. There is also inconsistency on UK Wildlife law concerning whether killing injuring or taking of wildlife is required to be ‘wilful’ or ‘intentional’ before it constitutes an offence. The difficulty for investigators and prosecutors is proving the required mental state of an offender. Thus any review should also remove all references to wilfully or intentionally in wildlife law and include ‘intentionally or recklessly’ but define what recklessly means e.g. *R v Caldwell* [1982] AC 341 ‘obvious’ recklessness or *R v Cunningham* [1957] 2 QB 396 ‘reasonable person’ recklessness. While it should be noted that recent case law, *R v G* [2003] UKHL 50, [2004] 1 AC 1034 and *R v D* [2008] EWCA Crim 2360, [2009] Crim LR 280, means that ‘wilful’ can be interpreted as including subjective recklessness (Ormerod, 2011:127) problems of wording within legislation continue to present a challenge. New wording, consistently applied, should allow investigators to proceed with cases where an offence has clearly been committed, without also having to prove the wildlife knowledge or intentions towards wildlife of the offender. Thus a definition that incorporates both accidental and deliberate disturbance and harm to wildlife *and* addresses the failure of an offender to modify their action when it should have been obvious that there would be consequences should be consistently applied across *all* wildlife legislation. Wildlife legislation should also be reviewed to eliminate all indiscriminate forms of killing wildlife (such as snares) by conducting a comprehensive review of prohibited forms of killing wildlife and specifying additional ones accordingly.

The Law Commission’s review of wildlife legislation published on 14 August 2012 is timely and seeks to produce an integrated Wildlife Management Bill by 2015 that will streamline UK wildlife law (Law Commission 2012).² However much wildlife crime law enforcement activity takes place on a voluntary basis and many existing problems are due to the lack of dedicated wildlife crime resources. Thus new legislation by itself can have only limited effect on addressing deficiencies in effective wildlife crime enforcement. Central to this problem is the perception among policy makers and government that wildlife crime is not mainstream criminal activity. While the work of the PAW Secretariat is helpful in addressing some wildlife crime problems, a fundamental problem exists in that wildlife crime is not seen as a national policing or criminal justice priority and this impacts on the resources available for law enforcement, educational or crime prevention measures. The location of wildlife crime within the remit of DEFRA rather than the Ministry of Justice or Home Office is a factor from which it can be concluded that Chief Constables are not directed to

² At time of writing the Commission’s proposals are subject to consultation and it is by no means certain that final proposals will be adopted by Government or find time within the parliamentary calendar before the next election.

allocate resources to wildlife crime, and will only do so where the individual Chief Constable considers it necessary to do so or where force priorities dictate that importance be attached to wildlife crime.

Separate from the resource issue is the specialist knowledge required to carry out wildlife law enforcement. Specialist wildlife crime knowledge is unevenly distributed across police forces in the UK (Ankers 1993, Kirkwood 1994, Nurse 2003, 2009). With the exception of the National Wildlife Crime Unit at NCIS, there is a lack of centralised expertise in wildlife crime, although WCOs who remain in post for long enough will inevitably develop some expertise and there are now specialist wildlife prosecutors in Scotland (Crown Office and Procurator Fiscal Service 2011), meaning that statutory enforcement agencies continue to rely on the expertise of NGOs and others. There is, therefore, a need for a centralised resource to be made available for statutory agencies in the fields of wildlife identification, scientific and forensic analysis, wildlife habitats, populations and behaviours and threats to wildlife legislation and conservation priorities in the same way that until recently centralised forensic science and serious fraud investigative resources were made available for mainstream crimes.

Calls for a more punitive regime for wildlife crime might be justified on moral and campaigning grounds. In terms of campaigning, it is relatively easy to explain to the public that existing wildlife legislation and the current enforcement regime are ineffective in reducing wildlife crime and so need to be replaced with a more punitive regime. The argument that persistent crime and repeat offenders are a consequence of weak legislation and ineffective sentencing reflects the 'commonsense' approach to crime often portrayed in tabloid newspapers and other media. It therefore represents an easy 'sell' to the public. It would be far harder to campaign for community sentences, target hardening, rehabilitative regimes and increased education and to promote the often complex arguments and reasoning behind persistent wildlife crime problems. Instead policies that appear to represent a get tough policy on wildlife crime and offer stiffer punishment for offenders that are considered to be wilful in their actions and offensive to the normal morals of society are promoted; these are policies that the public can easily identify with and which can easily be sold to policy makers.

In practice, however, while the perception might be that wildlife laws are inadequate and a more punitive regime is required, the reality is that it is in enforcement of wildlife legislation that problems occur. Even where the available penalties are considered to be sufficient, they are inconsistently applied, penalties are often at the lower end of the available scale and enforcement is carried out on an ad-hoc, largely voluntary basis across the UK (Nurse 2003, 2009, 2011). The chances of wildlife crimes being detected *and* an offender being apprehended, prosecuted, and receiving a sentence that has either a deterrent effect or contains sufficient rehabilitative elements to prevent further offending is slight. Even though the Law Commissions reforms, if implemented, could do much to clarify wildlife law the problems within its enforcement regime and its reliance on NGOs remains in place. This being the case, a more punitive regime or wholesale change to wildlife legislation is unlikely to be effective unless enforcement problems are also addressed and wildlife crime is seen as mainstream criminal justice.

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