



House of Commons
Environmental Audit
Committee

**Environmental Crime:
Wildlife Crime**

Twelfth Report of Session 2003–04

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written evidence*

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The Environmental Audit Committee

The Environmental Audit Committee is appointed by the House of Commons to consider to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development; to audit their performance against such targets as may be set for them by Her Majesty's Ministers; and to report thereon to the House.

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A list of Reports of the Committee in the present Parliament is at the back of this volume.

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References

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated by page number as in 'Ev12'. number HC *-II

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Conclusions and recommendations

1. The absence of an accepted definition of wildlife crime has, we believe, had a direct and negative impact on the public's perception of wildlife crime. (Paragraph 6)
2. It is unacceptable that those entrusted with the enforcement of our current legislation do not have a clear and agreed definition of the crime they are to police. Without an agreed definition of wildlife crime, which is shared and acted upon by all of those who work in the wildlife arena, we believe it is impossible for any real headway to be made in the fight to reduce the incidence of such crime. We call upon DEFRA, through the Partnership for Action against Wildlife crime (PAW), to lead a cross Government group to establish an agreed definition of wildlife crime, reporting back within the next twelve months. (Paragraph 8)
3. The Government must re-state its commitment to tackling wildlife crime. (Paragraph 9)
4. We see this refusal to accept wildlife crime as an issue deserving of committed police resources as especially short-sighted given the many links made between wildlife crime and serious and organised crime. (Paragraph 10)
5. Wildlife crime must be classified as recordable by the Home Office so that police forces across England and Wales know that sufficient priority needs to be given to tackling wildlife crime and so that they can allocate the necessary resources to this work. We accept that within this classification system there will probably need to be some form of grading of wildlife crimes to reflect the level of gravity of each crime. (Paragraph 11)
6. We believe that a centrally managed, national database which records all incidents of wildlife crime, as well as the details of all successful and unsuccessful prosecutions mounted, must be established as a matter of priority. The location of the database would seem to most naturally sit in the National Wildlife Crime Intelligence Unit (NWCUI) within NCIS. (Paragraph 13)
7. We understand that, at the present time, the NWCUI does not have sufficient staff or funding to allow them to take on responsibility for the creation and maintenance of a national database of wildlife crime. This must be reviewed by the Home Office and DEFRA as a matter of urgency. (Paragraph 14)
8. Given the advent of illegal internet trade, the links to serious and organised crime, and the threat posed by those who use this method to trade in endangered species, we believe that the level of resource allocated to this work by DEFRA is simply not sufficient and must be reviewed as a matter of urgency. At the same time resources within the NWCUI must also be reviewed and the monitoring of the illegal internet trade in endangered species must be central to the tasking for this unit. (Paragraph 18)
9. The damage that mechanically propelled vehicles (MPVs), including 4x4s, can cause is not insignificant and we would encourage DEFRA to move quickly to close any

loopholes created by the CRow Act, either by amending CRow or by means of new legislation. (Paragraph 22)

10. The Environment Agency and DEFRA are working towards publication of a contingency plan to tackle any outbreak of disease within the fisheries environment, and we welcome their stated vigilance with regard to fish imports and movements. We would like to see a firm commitment to publication of the plan as quickly as possible, at the latest by the end of this year. (Paragraph 24)
11. Any central record of wildlife crimes will only be as good as the information fed into it. It is vital, therefore, that all those who contribute to that database do so using consistent and comparable data. (Paragraph 26)
12. We support the work of the Environment Agency and DEFRA seeking long overdue amendments to current legislation which will enable the Agency to police waterways far more effectively. We urge the Government to ensure that sufficient parliamentary time is made available for these amendments. (Paragraph 27)
13. We believe it is essential that DEFRA, again working through PAW, and in conjunction with key partners across government, should establish clear and agreed definitions for those phrases in current legislation whose lack of clarity hinders effective policing and enforcement action. (Paragraph 28)
14. The number and variety of the suggested amendments to both the Wildlife and Countryside Act 1981, and other pieces of current legislation and regulation, prohibits us from referring to all of them in this report but we expect DEFRA to use the evidence provided to this inquiry in their review. (Paragraph 29)
15. DEFRA should re-examine all those sections of Part 1 of the Wildlife and Countryside Act 1981 which currently require intent to be proven and consider whether the word “reckless” can be applied when the Act is amended (Paragraph 30)
16. We would encourage DEFRA to include consideration of the issue of incidental killing or injury in the course of a lawful operation when it reviews Part 1 of the Wildlife and Countryside Act 1981. (Paragraph 31)
17. We look forward to seeing the draft UK Marine Bill currently being prepared by WWF-UK and would encourage DEFRA to work closely with WWF-UK on fine-tuning the draft and securing parliamentary time to take the Bill forward. (Paragraph 32)
18. This failure to recognise the true impact of a wildlife crime, and then apply a punishment commensurate with that impact, simply reinforces the notion that wildlife crime is “low risk and high reward” for offenders. (Paragraph 33)
19. We would support a review of the powers available to English Nature, and, at the very least, feel that it is vital that English Nature’s officers should be able to stop and check vehicles they find on SSSI land. (Paragraph 35)

20. The move to an integrated agency provides an excellent opportunity for an essential review of the role, responsibilities and powers that at the moment sit with English Nature. (Paragraph 35)
21. The rate of disappearance of ponds from our countryside is a matter for concern and we would urge DEFRA to work with the ODPM and local authorities to halt this decline and, if necessary, provide adequate protection through new legislation. (Paragraph 36)
22. We believe that Local Authorities have a duty to ensure that any work they undertake is carried out only after due care and consideration has been given both to the possible impact on local flora and fauna, and in full compliance with their own legal responsibilities. (Paragraph 36)
23. Whilst we can appreciate the value of setting targets for the consideration of planning applications, they should not be so unrealistic as to rule out the possibility of proper consideration of all the pertinent facts, including environmental impact. The targets set for local authorities are now almost ten years old. The ODPM, in conjunction with local planning authorities, should revisit these targets and ensure that they allow sufficient time for all necessary checks to be made. (Paragraph 37)
24. The lack of resources to enable local authorities to fulfil their own statutory duties and responsibilities, in terms of conservation, preservation, planning and in tackling wildlife crime reflects at best a woeful ignorance on the part of those in charge and, at worst, neglect or absolute disdain. Local authorities still have a considerable amount of work to do to educate and train their own workforce on their roles and responsibilities. (Paragraph 38)
25. We urge DEFRA to ensure that no further time is lost and that the necessary amendments are made to COTES to allow the Police to deploy the additional powers provided by the Criminal Justice Act 2003. (Paragraph 39)
26. The absence of any clear, national view of the scale of wildlife crime has a direct impact on the ability of those charged with enforcing current legislation. If the scale and nature of the problem is not known it is unlikely that the correct level of resources can ever be allocated to deal with it. (Paragraph 41)
27. We believe that there must be at least one full-time Wildlife Crime Officer for each Police force. These officers must be fully trained in intelligence gathering. (Paragraph 42)
28. We would encourage Police Forces and those with enforcement responsibilities to consider developing Memoranda of Understanding (MOUs) to enable them to work together for one off operations, identified through the use of intelligence, which will allow them to better target their limited resources. (Paragraph 43)
29. The apparent failure of the Police Service to take advantage of the NWCIUs work must be addressed by the Home Office and DEFRA. It is a nonsense to have the NWCIU expending time and resources on developing intelligence packages for police forces who have no intention of devoting any real resources to the crime

themselves. This only serves to emphasise the need for wildlife crime to be re-classified as recordable so that police forces feel compelled to address these crimes. (Paragraph 44)

30. Whilst we accept that intelligence is the way forward if there is to be any hope of matching resources to activity, we are concerned that the move to an intelligence led approach is not being sufficiently well monitored to demonstrate the benefits of such a move. We would, therefore, like to see a much more robust method of measuring outcomes being devised by HM Customs (Paragraph 46)
31. We are concerned that DEFRA do not have sufficient resources allocated to the proposed review of Part 1 of the Wildlife and Countryside Act 1981, which is due to commence with the publication of a consultation document later this year (2004). As a result, there is a risk that it will extend far beyond a timescale that would be reasonably acceptable to those who depend on this legislation. DEFRA must review the resources assigned to the review and also look beyond the review to securing sufficient Parliamentary time to take through the necessary amendments. (Paragraph 47)
32. Although the UK is not a source country for most of this illegal trade, we are one of the key transit and recipient countries, which makes the international focus of the work of HM Customs, NWCIU and organisations like TRAFFIC, WWF and IFAW of as much value to the UK as it is to the source country. (Paragraph 48)
33. We commend the work of both the North and South Wales Police Forces and the Countryside Council for Wales as an exceptionally good example of how joint working can benefit both parties and better tackle wildlife crime. More secondments of this nature should be considered. (Paragraph 51)
34. The role of the Home Office has been shown to be absolutely crucial in the fight against wildlife crime but their commitment has been sadly lacking. The Home Office must re-engage with wildlife crime. (Paragraph 53)
35. The very fact that PAW has a membership of around ninety we believe can be problematic and suggests to us that there is a need to review and perhaps rationalise the number of agencies, bodies and organisations involved in this area of work. (Paragraph 53)
36. We believe that dialogue with the general public has been rather hit and miss and, for the most part, the Government and, to a certain extent, those working in the wildlife community, has failed to achieve effective communication. (Paragraph 54)
37. We cannot accept the travel industry argument that to hand out leaflets warning their customers of the consequences of purchasing illegal products whilst on holiday will somehow reflect badly on the travel industry itself. This is clearly nonsense. The Department for Trade and Industry should engage the travel industry in discussing how best to get this, and possibly other important campaign leaflets, into the hands of the travelling public. (Paragraph 55)

38. We were encouraged by DEFRA's willingness to consider using the popular media as a means of communicating with and educating the public and would urge them to encourage programme makers to include useful information about relevant current legislation and the possible impact of certain behaviour within the body of their programmes. (Paragraph 57)
39. We urge DEFRA to ensure that the Code of Practice for the horticultural sector is not simply an information leaflet to be ignored but that it has some requirement for compliance built into it which is then backed up by a proper monitoring process. (Paragraph 58)
40. We believe the "Get Hooked on Fishing" campaign has benefits to both the environment, the individuals concerned and the community at large. We would encourage other local authorities and police forces to emulate this campaign in their own areas and to use the same principles for other areas of wildlife crime. We commend the Durham Constabulary for their excellent work. (Paragraph 60)
41. We believe that the link between wildlife crime and other serious crimes, the clear and growing involvement of organised crime, and the increased reliance on the internet for illegal trade in protected species makes the argument for spending time and resources on this area of crime compelling. (Paragraph 61)

Introduction

The Scope of the Inquiry

1. On 4 April 2004, the Sub-committee on Environmental Crime announced that it would be holding an inquiry into wildlife crime. This is the third in a series of four inquiries which have focused on environmental crime and has been preceded by the inquiries into Environmental Crime and the Courts¹, and Fly-tipping, Fly-posting, Litter, Graffiti and Noise².

2. In its press release, the Sub-committee expressed a desire in particular to hear responses to the following questions:

- What is the scale and impact of wildlife crime?
- Is the framework of national and European law and of international regulation robust enough to deal with wildlife crime effectively?
- Do responsible bodies who deal with this type of crime have sufficient resources and powers to do so? Do they treat wildlife crime with proper and due gravity?
- Is there sufficient dialogue and co-operation across Government and amongst various bodies responsible for dealing with this type of crime?

As with previous Reports based upon the work of the Sub-committee, this Report considers only the situation in England and Wales.

3. Thirty-two memoranda were received, some of which were supplementary to evidence sessions. Oral evidence was heard from twelve individuals or organisations. We are grateful for all the evidence given to the Sub-committee during this inquiry.

What is wildlife crime?

4. During the course of the inquiry it became clear that there is no agreed definition of what a wildlife crime actually is. We can, of course, say very generally that wildlife crime is any action which contravenes current legislation which governs the protection of the UK's flora and fauna. There are general distinctions that can be made between those wildlife crimes committed as a result of ignorance, those resulting from neglect and those which occur as the result of a deliberate act. Furthermore, there is an important distinction to be made between those actions which are unlawful and therefore criminal, and those which may cause damage and destruction to both species and habitat, but which are not, under

¹ Environmental Audit Committee, Sixth Report of Session 2003-04, *Environmental Crime and the Courts*, HC126

² Environmental Audit Committee, Ninth Report of Session 2003-04, *Environmental Crime: Fly-tipping, Fly-posting, Litter, Graffiti and Noise*, HC445

current legislation, unlawful. These distinctions do not, however, provide a clear and coherent definition of what constitutes wildlife crime.

5. Most of us remain ignorant, and sometimes deliberately negligent of, the impact that our business or pleasure activities, have on our flora and fauna. If asked what wildlife crime was, some would probably point to those activities more commonly in the news, perhaps badger baiting or the stealing of birds eggs, whilst others might refer to the illegal trade in exotic or rare species. Few, however, would ever describe their own actions, the accidental destruction of a rare and protected plant during their last trip to the countryside to take in the beauty of their local SSSI, or the impact on a particular species or habitat when they disposed of the waste from their garden pond as a wildlife crime.

6. This tension is also reflected in some of the memoranda provided to the Sub-committee. For example, we received written evidence from a number of organisations and individuals concerned about the impact of wildlife crime on the UK's badger population. We also received evidence from The National Gamekeepers' Organisation who expressed the view that many in the countryside believed that badgers had been over-protected as a species and are, in fact, having negative impacts on the land such as "TB, land erosion and crop damage".³ Similarly, bat protection groups highlighted the plight of bat colonies disturbed and possibly destroyed by developers, whilst the developers might well argue that the clearing of a site prior to building is a necessary activity with serious financial implications if delayed. **The absence of an accepted definition of wildlife crime has, we believe, had a direct and negative impact on the public's perception of wildlife crime.**

7. The need to educate the general public on what constitutes a wildlife crime, and how that might be done, will be discussed later in this report. It is not simply a lack of understanding on the part of the public which is the problem here. The absence of an agreed formal, informal, legislative or other legal definition of the term "wildlife crime", affects the work of those charged with protecting our wildlife, principally the Police, H.M Customs, the Environment Agency, local authorities, English Nature, the Countryside Council for Wales and RSPB. Whilst the Wildlife and Countryside Act 1981 provides the Police and the other enforcement agencies with definitions for wild animals, wild birds and wild plants, and also establishes what is deemed to be an offence against these species, it is clear that there is general confusion around many of the terms used in current legislation which allows for obfuscation and avoidance of responsibility.

8. There is also disagreement as to whether "wildlife crime" should be classified as an offence, a crime or a serious crime. In their written memorandum, the Association of Chief Police Officers (ACPO), said that the Police Service has no definition for the term wildlife crime but rather looks to offences falling within specific pieces of legislation as being wildlife crime.⁴ In oral evidence, Martin Brasher of DEFRA said that it would be better if there were an agreed definition of wildlife crime and referred the Sub-committee to the work programme set for the Partnership for Action against Wildlife Crime (PAW) for the next three years. The need for a definition has been made a priority for this group

3 Ev152

4 Ev38

and we commend them for recognising and taking forward this admittedly difficult work. We are, however, concerned at the timeframe.⁵ **It is unacceptable that those entrusted with the enforcement of our current legislation do not have a clear and agreed definition of the crime they are to police. Without an agreed definition of wildlife crime, which is shared and acted upon by all of those who work in the wildlife arena, we believe it is impossible for any real headway to be made in the fight to reduce the incidence of such crime. We call upon DEFRA, through the Partnership for Action against Wildlife crime (PAW), to lead a cross Government group to establish an agreed definition of wildlife crime, reporting back within the next twelve months.**

9. The classification of wildlife crime is also significant. The way in which crime is classified by the Home Office dictates the priority and resources attached to the crime by the various police forces across England and Wales. The Police will initially investigate an offence according to whether it is a “non-arrestable”, “arrestable”, or a “serious arrestable” offence. Most wildlife crimes will be classified as “non-arrestable” offences because they do not attract penalties of five years or more in prison, including those penalties fixed at law and are not specifically listed in the Police and Criminal Evidence Act (PACE) 1984. Furthermore, as many wildlife crimes are classified as “mere offences” rather than crimes they are not deemed recordable by the Home Office. In written evidence we were told by Chief Constable Richard Brunstrom that police forces did have resources that could be diverted to this work but, on the whole, they were not giving priority to tackling wildlife crime because it had not been established as a priority by the Home Office and wider Government.⁶ **The Government must re-state its commitment to tackling wildlife crime.** In evidence before us Police Sergeant Peter Charleston said that an informal approach had been made to the Home Office with regard to a possible review of the current classifications for recording wildlife crime, but that the response had been to suggest that a change to the present system would only serve to add to the bureaucracy placed upon police forces.⁷

10. **We see this refusal to accept wildlife crime as an issue deserving of committed police resources as especially short-sighted given the many links made between wildlife crime and serious and organised crime.** A joint report, *The International Wildlife Trade and Organised Crime*, published in 2002 by WWF and TRAFFIC International estimated that 50% of those prosecuted for wildlife crimes over a 12 month period also had previous convictions for serious offences, including drugs and firearms. Illegal trade in wildlife is also big business and the financial gains to be made by such trade must not be underestimated. Much of this trade, which equated to an import value of almost US\$15 billion in the 1990s according to TRAFFIC International, is legal but TRAFFIC also point out that the “high rewards and the low risks of detection and punishment have made the illegal trade in wildlife attractive to criminals”⁸. We were given graphic evidence of this during an oral evidence session when WWF-UK produced a shatoosh shawl which had

5 Q235

6 Ev40

7 Q110

8 Ev117

been seized in London⁹. The shawl was priced at £2,700 and was one of 135 which had been confiscated. The total street value of the consignment was placed at £350,000 and yet the fine imposed was just £1,500. It is not difficult to see why this is such an attractive and lucrative business for those willing to break the law.

11. The Countryside Council for Wales also demonstrates this link between wildlife crime and other crimes in the South Wales area, providing a list of instances where someone either suspected or convicted of wildlife offences was found to be involved in drug and firearm offences. In one particular case a known badger digger was linked by intelligence to burglaries in the same area.¹⁰ In fact, this link was made in a number of the memoranda put before the Sub-committee, perhaps most notably by the Environment Agency who reported that,

“The agency is acting with offenders well-known to police forces and who, over time are active in different criminal activities—for instance, an individual known for fish movement offences and illegal waste disposal; or salmon poachers known to the police for car thefts and drug dealing. It is apparent that increased pressures on certain areas of crime can lead to a diversion of attention to other illegal activities perceived as lower risk, including wildlife crime and other forms of environmental crime.”¹¹

Wildlife crime must be classified as recordable by the Home Office so that police forces across England and Wales know that sufficient priority needs to be given to tackling wildlife crime and so that they can allocate the necessary resources to this work. We accept that within this classification system there will probably need to be some form of grading of wildlife crimes to reflect the level of gravity of each crime.

Scale and Impact

12. Since wildlife crime remains undefined we cannot possibly know its true scale and impact. Even if there were an agreed definition, we would be no closer to establishing scale and impact because, at present, no central, national system for recording wildlife crime exists.

A National System for Recording Wildlife Crime

13. In their written evidence ACPO admitted that, “the Police service in England, Wales and Northern Ireland has little idea of the scale of wildlife crime”.¹² Adding a personal statement to this, Chief Constable Brunstrom said, “it is my view that at present the UK

9 Q343-344

10 Ev62

11 Ev22, 2.5

12 Ev38

government is not able to properly gauge the extent of wildlife crime”.¹³ This concern was echoed by many of those who contributed evidence to this inquiry. Whilst many of those same organisations collect statistics on wildlife crime in their particular field of interest, this falls far short of a comprehensive database. Without a national system for recording wildlife crime there is currently no way of identifying any emerging trends or potential problem areas and no effective way of directing limited resources to the areas of greatest need. **We believe that a centrally managed, national database which records all incidents of wildlife crime, as well as the details of all successful and unsuccessful prosecutions mounted, must be established as a matter of priority. The location of the database would seem to most naturally sit in the National Wildlife Crime Intelligence Unit (NWCUI) within NCIS.**

14. We believe the NWCUI to be the best location for a national database for a number of reasons. The NWCUI sits within NCIS and has direct support from the Home Office, the Scottish Executive and the Association of Chief Police Officers. It is an intelligence unit whose main role is to combat wildlife crime and to reduce the opportunities to commit such crimes. **We understand that, at the present time, the NWCUI does not have sufficient staff or funding to allow them to take on responsibility for the creation and maintenance of a national database of wildlife crime. This must be reviewed by the Home Office and DEFRA as a matter of urgency.** There is no doubt that if wildlife crime is to be tackled effectively the future lies in the use of properly collected and analysed intelligence which enables enforcement bodies to target their stretched resources towards the areas identified as being of highest priority. The Police have many high priority calls on their resources and, we accept, are more likely to devote their time to those crimes that we would all consider to be serious

15. This resource issue, felt across the board by those involved in tackling wildlife crime, is exacerbated by the sheer scale of that which they are expected to police and protect. English Nature and the Countryside Council for Wales both have statutory responsibility for Sites of Special Scientific Interest (SSSIs) in England and Wales respectively. England has 4,111 SSSIs, covering over 1,076,704 hectares, or approximately 7.6% of the land mass, whilst 12% of land in Wales is designated as SSSIs. Both organisations told us that they operated a rolling programme of inspections of the SSSIs in their care which saw each location visited approximately once every six years. The vast, often remote, tracts of land, and the many thousands of species involved, mean that it would be physically impossible to police these areas effectively without a staff of thousands, on duty around the clock. It is neither practical or desirable to deploy that level of resource, even if it were available.

16. Similarly, it is estimated that more than half the UK’s wildlife is in the sea around our coastline and, as Carol Hatton of WWF told us, when it comes to a marine environment, “it is very difficult because you cannot draw a line around a map in the same way you can on land, where you can say “that area is protected”.¹⁴ She also pointed to a general level of

13 Ev39, 2.6

14 Q328

ignorance about what constitutes a wildlife crime in the marine environment and a corresponding ignorance about who is responsible for its protection.

17. Perhaps the most pressing reasons for ensuring that the NWCIU is at the centre of all wildlife crime recording, however, is not only the increasing involvement of organised crime in wildlife crime but also the significant switch to the internet as the preferred method for trading in protected and endangered species. The latter was highlighted by ACPO in their written evidence when they reported that “it is readily apparent that such trade is extensive but as yet is not monitored sufficiently well to be reflected in crime figures”.¹⁵ This was confirmed in oral evidence, when TRAFFIC International’s Crawford Allan said,

“ I think this is something where I feel we are behind the game on enforcement. This is really the way that nearly all wildlife traders now operate, through the internet. Communications are done by e-mail, bulletin boards, chat rooms, websites and this is how the trading is now being done, particularly for the rarer specimens and the more illegal specimens. The communications are being set up over the internet and I feel that enforcement is just not catching up in tackling this. We have to get smarter in dealing with this.”¹⁶

18. Martin Brasher of DEFRA acknowledged this phenomenon during an oral evidence session, admitting that this was a “relatively new issue” for them but one which they had “started on”.¹⁷ However, it is clear that this is a very tentative start indeed. Mr Brasher went on to say that, in fact, DEFRA has “one of our staff constantly monitoring the internet, particularly e-Bay, which is the largest auction site, although I believe there are thirty altogether”.¹⁸ Supplementary evidence provided by DEFRA did shed some light on the role that the NWCIU is already taking in this area, meeting with the Head of e-Bay, providing e-Bay with detailed notes on wildlife trade and working proactively to develop actionable intelligence from information obtained from e-Bay. The unit is also working proactively in monitoring wildlife sales on the internet outside of auction sites. But DEFRA concede that “the sheer volume of websites and the volume of transactions taking place on these websites makes systematic compliance testing very difficult to achieve and extremely costly in resource terms”.¹⁹ **Given the advent of illegal internet trade, the links to serious and organised crime, and the threat posed by those who use this method to trade in endangered species, we believe that the level of resource allocated to this work by DEFRA is simply not sufficient and must be reviewed as a matter of urgency. At the same time resources within the NWCIU must also be reviewed and the monitoring of the illegal internet trade in endangered species must be central to the tasking for this unit.**

15 Ev38,2.2

16 Q332

17 Q253

18 Q253

19 Ev106

The Figures

19. Records kept by individual organisations, who decry the absence of a national record system, go some way to establishing a partial assessment of the state of our flora and fauna. The variety of species and habitats involved, and the number of memoranda we received, prohibit comprehensive examination of all the statistics provided to the Sub-committee in this report, but we believe these memoranda demonstrate that incidents of wildlife crime are increasing in many areas. The Association of Local Government Ecologists (ALGE) provided us with a general overview of the situation when they said that,

“ALGE’s overall impression of the scale and impact of *“actions that contravene wildlife legislation”* is that of being frequent (i.e. at least weekly) and extensive (i.e. occurring in all local authority areas). On an individual basis, these actions are usually small scale but, cumulatively, their impact represents thousands of individual animals and birds being disturbed, harmed or killed each year. Since many of the species affected enjoy legal protection, this means that wildlife offences are both commonplace and widespread [...] In the majority of the above situations the “wildlife crime” is unrecognised, unreported and no enforcement action is taken forward.”²⁰

20. There are many areas of impact. English Nature report that incidents of damage by owners and occupiers of SSSIs increased by 74% between January 2001 and April 2004.²¹ They also highlight a 168% increase in reported incidents of damage caused by third parties, those who neither own or occupy SSSIs but have accessed them in some way, resulting in damage.²² Clearly, some of this increase reflects improvements in the way in which damage to SSSIs is reported or detected, and for which both English Nature and the Countryside Council for Wales are to be commended, but this does not, we believe, wholly account for the increase in reported incidents seen in the last three years.

21. A recent Parliamentary Question asked the Secretary of State for Environment, Food and Rural Affairs to provide a list of the number, percentage and location of all SSSIs that have been subject to inappropriate development since May 1997. Using the latest condition assessments, as agreed by the Joint Nature Conservation Committee, DEFRA’s response confirmed that,

“1,052 hectares of SSSI land, on 55 different SSSIs, were in unfavourable condition due to activities authorised by development or mineral planning permission, excluding peat permissions. This is equivalent to 0.1 per cent of the total SSSI area in England.”²³

Whilst 0.1 per cent might not seem very much, the fact that it is spread over 55 sites around the country, we believe demonstrates the scale of the problem facing English Nature, and of

20 Ev80, 5

21 27 cases (in year 01/02) increasing to 47 cases (year 03/04)

22 22 cases in (in year 01/02) increasing to 59 cases (year 03/04)

23 HC Deb, 1 September 2004, col 830W-831W

course the Countryside Council for Wales, when they are trying to monitor and police these areas.

22. English Nature also point to the increase in reported incidents of illegal use of mechanically propelled vehicles (MPVs) and 4x4's in the countryside and suggest that this is linked to provisions within the Countryside and Rights of Way (CROW) Act 2000 which allowed MPVs to access "lost" rights of way which, in the past, had only been accessible by horse and cart.²⁴ Whilst this makes the activity legal, it opens up far more opportunities for MPV users to stray off these tracks, whether deliberately or not, and cause significant damage. In their written evidence they state that,

"Illegal vehicle use can subject the flora and fauna of a SSSI to considerable damage, disturbance or destruction by rutting and the widening of illegally established tracks. There are reports of on-going damage from around England, the activities being more prevalent within upland and coastal sites and within Common Land."²⁵

We understand that DEFRA has recognised some of the potential problems arising from the CROW Act and have consulted with a view to introducing new legislation which will prohibit the use of a byway by all traffic simply because, historically, it has been used by other, non-mechanical vehicles. **The damage that mechanically propelled vehicles (MPVs), including 4x4s, can cause is not insignificant and we would encourage DEFRA to move quickly to close any loopholes created by the CROW Act, either by amending CROW or by means of new legislation.**

23. Damage caused by the building and construction industry was also highlighted in memoranda provided to the Sub-committee. Both the RSPB and the Bat Conservation Trust point to significant wildlife losses as a result of building and construction activity. Working together over a two year period they recorded 144 bat offences alone, 67% of which were committed within the building trade.²⁶ ALGE say that this is "the tip of the iceberg and is indicative of a much wider problem within the building and construction industry that affects, very widely, many legally protected species."²⁷ In simply clearing a construction site of existing features, such as old boundary walls and hedges, grassland, heath and tress, or demolishing old buildings, ALGE say that developers can damage or destroy features which ,

"support legally protected species, such as: nesting and breeding birds, roosting and breeding bats, badgers, water voles, great crested newts, dormice, white clawed crayfish and amphibians and reptiles."²⁸

24. Nor should we underestimate the damage caused to native species and their habitats by the introduction of non-native species. In their written evidence, DEFRA described the impact of such actions as "considerable" and said that estimates for the cost of this damage

24 Ev4,3.4.4

25 Ev5 ,3.5.3

26 <http://www.bats.org.uk>

27 Ev80, 9

28 Ev81, 11

were high, “£3 million in lost timber production due to damage by grey squirrels, £52 million needed to clear Japanese knotweed from the banks of affected watercourses. The price of losing a native species can be said to be incalculable”.²⁹ Similarly, The Environment Agency (the Agency) highlighted the impact that the illegal movement of fish can have on native species and habitats.³⁰ In order to reduce the potential for inappropriate fish species to be introduced into our rivers and waterways, as well as limiting the spread of fish diseases, all fish imports and movements of specified non-native species are licensed by DEFRA, whilst the Agency is responsible for giving consent to fish removals and introductions. In 2003/04 the Agency gave consent to over 9,000 legitimate fish removals and introductions and investigated 150 reports of “unconsented” fish movements. Given the number of rivers and waterways for which the Agency is responsible, a figure of 150 possible “unconsented” fish movements may not seem very many. However, the impact of even one such movement could be drastic. In their written evidence, the Agency refer to a situation in Norway which arose as the result of the introduction of fish from the Baltic region which brought with it the parasite *Gyrodactylus salaris*. Significant salmon stocks were lost and chemical intervention was necessary to exterminate whole river stocks so that the parasite could not spread further. The Agency described the outbreak in Norway as “the fisheries equivalent of a Foot and Mouth Disease outbreak” and admitted to being “extremely nervous” about a possible outbreak in the UK.³¹ However, with this in mind the Agency is developing a contingency plan which they hope to publish later this year (2004). **The Environment Agency and DEFRA are working towards publication of a contingency plan to tackle any outbreak of disease within the fisheries environment, and we welcome their stated vigilance with regard to fish imports and movements. We would like to see a firm commitment to publication of the plan as quickly as possible, at the latest by the end of this year.**

25. Without doubt one of the most serious examples of scale and impact we have seen, however, is in relation to birds of prey, and to the persecution of Hen Harriers in particular. In their written evidence, ACPO advise that :

“In England the Hen Harrier faces extinction as a breeding species due primarily to illegal actions such as shooting and illegal burning. Only eight pairs successfully nested in the North of England in 2003 despite there being sufficient habitat to carry in excess of 230 pairs.”³²

Following a meeting with the Joint Nature Conservation Committee in 2003, the Hen Harrier was identified as one of the key conservation objectives the Police could assist with. The NWCIU also has birds of prey as one of its priority areas and has facilitated enforcement action in the UK and many other countries.

26. Whilst we are grateful to those who could provide statistical evidence of abuse within their particular areas of expertise, for clearly without them we would be without any

29 Ev93

30 Ev22

31 Q68, Mr Williams

32 Ev39, 2.8

evidence at all, we have some concern at the way in which these statistics are gathered, interpreted and then used. On a number of occasions we sought clarification as to whether the number of incidents of wildlife crime reported to the organisation or agency concerned, and which many then used as statistics for publication, represented a straight forward head count of phone calls received, but not at that point investigated, or whether they were, in fact, reported incidents that, through investigation, had been confirmed as wildlife crimes. What we found, in fact, was that the statistics could reflect either of those scenarios and indeed, at least one witness was unclear as to which category their statistics fell into. **Any central record of wildlife crimes will only be as good as the information fed into it. It is vital, therefore, that all those who contribute to that database do so using consistent and comparable data.**

The Legal Framework

27. Part 1 of the Wildlife and Countryside Act 1981 is the principal legislation for the protection and conservation of wildlife and their habitats. There are also a number of related regulations and legislation, including the Control of Trade in Endangered Species (Enforcement) Regulations (COTES) 1997, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the Countryside and Rights of Way (CROW) Act 2000, which amended the 1981 Act in part. There are many more, some of which are so outdated as to be almost obsolete or are in other ways outmoded. Indeed, in their evidence the Environment Agency drew attention to the powers currently held by Water Bailiffs.³³ Whilst the Salmon and Fisheries Act 1975 gives the Water Bailiff the same powers and duties as those of a police officer, they can only use the power of arrest, for example, at night. We understand that the Agency has been working with DEFRA to remove the time restrictions on the power of arrest so that it can be used 24hrs a day. This, and other amendments they are proposing, require changes to legislation for which parliamentary time is needed. **We support the work of the Environment Agency and DEFRA seeking long overdue amendments to current legislation which will enable the Agency to police waterways far more effectively. We urge the Government to ensure that sufficient parliamentary time is made available for these amendments.**

28. Most of those who contributed to this inquiry said that they were broadly content that current legislation was generally robust enough to be effective but almost all took the opportunity to highlight some notable exceptions where they said they felt the legislation needed to be amended or re-interpreted. The absence of a commonly accepted legal definition of wildlife crime bears testimony to the need for a fundamental review of some parts of existing legislation and, equally importantly, highlights the need for a rethink about how it is interpreted. We referred earlier to a general confusion about what constitutes a wildlife crime and, indeed, what many of the terms used in current legislation

actually mean. In oral evidence the Countryside Council for Wales referred to a lack of common understanding between themselves, English Nature and Scottish National Heritage about such basic phrases as “in the wild”, “to disturb” or “to take”.³⁴ Similarly, in their written evidence ACPO highlight not only the lack of common understanding of a term but also what it describes as the “lack of clarity on occasions as to what legislators are seeking to protect”.³⁵ They go on to say,

“...damage to bat roosts is an offence under both the Wildlife and Countryside Act and the Conservation (Natural Habitats) Regulations. However, the term “roost” is not defined and there is no guidance as to when a place previously occupied by bats loses its legal protection.”³⁶

We believe it is essential that DEFRA, again working through PAW, and in conjunction with key partners across government, should establish clear and agreed definitions for those phrases in current legislation whose lack of clarity hinders effective policing and enforcement action.

29. Many of those who provided evidence to the Sub-committee eagerly anticipated the promised DEFRA review of Part 1 of the Wildlife and Countryside Act (WCA) 1981, seeing it as their best opportunity to influence and effect change. **The number and variety of the suggested amendments to both the Wildlife and Countryside Act 1981, and other pieces of current legislation and regulation, prohibits us from referring to all of them in this report but we expect DEFRA to use the evidence provided to this inquiry in their review.** The Wildlife and Countryside Act 1981 was amended, in part, by the Countryside and Rights of Way (CROW) Act 2000 and, on the whole, these amendments have been welcomed. The Countryside Council for Wales, for example, told us that the CROW Act had, “brought a massive increase in the protection afforded to SSSIs” and English Nature also welcomed the increased powers they have under CROW.³⁷

30. However, in their written evidence the Wildlife Trust draws attention to particular difficulties arising from some of the CROW amendments which have, in effect, created inequalities within the 1981 Act.

“The Countryside and Rights of Way Act 2000 added the term “reckless” to those sub-sections of the Wildlife and Countryside Act 1981 dealing with the intentional disturbance of breeding birds and other animals occupying resting places, namely sub-sections 1(5) and 9(4) [...] There is now a major inconsistency in the legislation whereby the term “reckless” is added to the lesser offences of disturbance but not to the potentially more important offences of killing, taking or destruction of birds and animals and not at all to any offences involving wild plants. This means that it is hard to prosecute for this type of wildlife crime.”³⁸

34 Q175

35 Ev39

36 Ev39, 3.2

37 Ev59, 2.5

38 Ev163, 2.1

Effectively, this means that for the more serious offences intent has to be proven. This is clearly a nonsense as it provides a legal loophole through which very serious offences can often go unpunished. The Wildlife Trust refers to court cases brought by RSPB, which relate to incidents where protected bird species have been shot and killed, being lost because the defendant has claimed to have misidentified the bird in question as a non-protected species.³⁹ This legal loophole must be closed. **DEFRA should re-examine all those sections of Part 1 of the Wildlife and Countryside Act 1981 which currently require intent to be proven and consider whether the word “reckless” can be applied when the Act is amended.**

31. The Wildlife and Countryside Act 1981 creates a further problem in relation to protected species killed or injured “incidentally” during the course of an otherwise lawful operation. Section 10 (3)(c) of the Act states that a person shall not be guilty of an offence “if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided”. In their written evidence the Wildlife Trust highlighted the bycatch of small cetaceans, turtles and sharks in fisheries and the destruction of species such as the pink sea fan by “rockhopper trawls”.⁴⁰ The primary activities in these cases are entirely legal but the consequences can be dire for what are, in fact, protected species. Clearly there is a need to be practical and realistic and accept that sometimes damage to species or habitat is regrettably unavoidable and that the potential to cause harm is outweighed by the need for the lawful operation. However, the key here is whether efforts have been made to avoid, or at the very least limit, damage in any way and it is here that we believe amendment may be necessary. In oral evidence session DEFRA officials admitted that this was a difficult issue to which, at the moment, they have no solution.⁴¹ They are, we were told, “banking ideas” and would be producing a consultation document, prior to developing ideas for future legislation.⁴² **We would encourage DEFRA to include consideration of the issue of incidental killing or injury in the course of a lawful operation when it reviews Part 1 of the Wildlife and Countryside Act 1981.**

32. The plethora of Acts, Regulations and EU Directives, some of which should have been updated or revised long before now, serve only to over complicate what is already a very complex area of work. This is particularly evident when considering the legislation which governs the marine environment. Under Section 36 of the Wildlife and Countryside Act 1981 statutory Marine Nature Reserves (MNR) can be established to conserve marine flora and fauna and geological and physiographical features of interest. However, these provisions are entirely voluntary and depend largely on the co-operation of the relevant interested parties at the local level. We were advised by WWF-UK that there have been no prosecutions for offences against marine wildlife since the Act was passed in 1981.⁴³ WWF-UK also highlighted the very complex and confusing issue of marine environment legislation in oral evidence session,

39 Ev164

40 Ev164

41 Q259

42 Q260

43 Ev123

“In terms of the marine environment, we have a myriad of layers of national legislation, European legislation and international legislation. This very complicated web is impossible for people to penetrate, both people who want to get consents and permissions and people who want to protect the marine environment. Added to that, you have a situation where the protection of our nationally important sites is all done voluntarily at the moment. So if you have a number of stakeholders involved in trying to protect areas, whether they are fishery, industry, whatever, if that voluntary co-operation breaks down, you very often do not have any protection for the site.”⁴⁴

We understand that WWF-UK are working with DEFRA in an attempt to bring clarity and purpose to the legislation governing the marine environment and have even gone so far as to prepare their own draft Bill.⁴⁵ **We look forward to seeing the draft UK Marine Bill currently being prepared by WWF-UK and would encourage DEFRA to work closely with WWF-UK on fine-tuning the draft and securing parliamentary time to take the Bill forward.**

33. Whilst we do not intend to repeat at length the findings of our earlier inquiry, Environmental Crime and the Courts, it is clear that in wildlife crime terms many of the problems we highlighted in that report are repeated here.⁴⁶ There is a lack of case law and precedent, a problem highlighted by ACPO in their written evidence, where they said,

“The small number of cases being dealt with by the courts has resulted in few stated cases and as a consequence many of the provisions in both acts and regulations are not understood.”⁴⁷

In far too many wildlife crime cases, the sentences handed down do not bear any relation either to the damage caused or the profit gained. This is particularly pertinent to the building and construction industry and is highlighted by WWF-UK in their written evidence when they refer to a case cited by the Bat Conservation Trust and RSPB in which a property developer, having pleaded guilty to damaging a roost site for Natterer’s bats, was fined just £500 and ordered to pay £100 in costs.⁴⁸ Not only did this completely fail to recognise the cost of the damage caused, or take into account either the overall expenditure on the development and the considerable profit to be gained, but it also provided absolutely no deterrent to anyone else considering flouting wildlife legislation or regulations. **This failure to recognise the true impact of a wildlife crime, and then apply a punishment commensurate with that impact, simply reinforces the notion that wildlife crime is “low risk and high reward” for offenders.**

44 Q351

45 see also Environment, Food and Rural Affairs Committee, Sixth Report of Session 2003-04, *The Marine Environment*

46 HC 126

47 Ev39, 3.2

48 Ev126

Powers and Resources

34. There is a number of bodies who have enforcement powers under current wildlife legislation, including the Police, HM Customs, the Environment Agency, local authorities, English Nature, the Countryside Council for Wales and RSPB. There is also a large number of voluntary bodies working in this field, many of whom have contributed to this inquiry, but who have no enforcement powers. They depend heavily on those agencies and organisations who do have enforcement powers to help them detect, identify and then take action against those committing the crime. Failure to either fully utilise those powers, or to resource the enforcement activity sufficiently, can have an immediate and negative impact on the rest of the wildlife community and their ability to tackle the wildlife crimes in their areas.

Powers

35. A distinction must be made between those powers which are deemed insufficient and which must be strengthened, and those powers which are considered to be sufficient but not used to maximum effect by those that hold them. A number of memoranda focused on the need to either strengthen certain existing powers or to create additional ones. English Nature, in particular, stressed the need for additional powers, similar to those held by the Environment Agency and Local Planning Authorities, which would allow it better to police and protect the land for which it is responsible. It lists these as the power to,

- stop people and vehicles within SSSIs and request names and addresses;
- require restoration following damage and disturbance to a SSSI, at the offenders own cost, when it is not in the public interest to bring a prosecution;
- prevent activities being carried out which are in contravention of the legislation;
- demand statements to enable enforcement action to be taken and investigations to take place;
- require information as to those persons having an interest in SSSI land.⁴⁹

We would support a review of the powers available to English Nature, and, at the very least, feel that it is vital that English Nature's officers should be able to stop and check vehicles they find on SSSI land, for example. However, we are aware that DEFRA has recently announced the creation of an integrated agency, intended to help deliver its rural strategy and which will incorporate English Nature.⁵⁰ It is unclear at this early stage what this will mean, both for English Nature and its role in tackling wildlife crime. **However, the move to an integrated agency provides an excellent opportunity for an essential review of the role, responsibilities and powers that at the moment sit with English Nature.**

49 Ev6 4.2.11

50 <http://www.defra.gov.uk>

36. The way in which local authorities elect to interpret and use the powers and responsibilities afforded them by current legislation is troubling. In written evidence, The Association of Local Government Ecologists (ALGE), said,

“Local authorities have a number of very important powers that can enable them to help prevent wildlife crime or to take action when an offence has been committed. However, from experience, ALGE members report that a large proportion of local authorities in England are unaware of and/or are confused about the full extent of powers available for them to take effective action against wildlife crime.”⁵¹

Local authorities have the power to instigate proceedings against anyone found to be committing an offence under Part 1 of the Wildlife and Countryside Act 1981, which should make them a major contributor to the fight against wildlife crime, but ALGE report that many authorities are not aware of these powers, and see wildlife legislation as being “peripheral to core local authority functions”.⁵² Indeed, in some cases the Local Authorities are themselves committing wildlife crimes, whether intentionally or not, simply by conducting their everyday business. In written evidence, ALGE provided an example where the commonplace and necessary act of mowing a roadside verge by highway maintenance staff killed five protected species of reptiles.⁵³ In oral evidence session, Mike Oxford, a Project Officer with ALGE, also referred to several cases where local authority ponds containing Great Crested Newts had been pumped out.⁵⁴ **The rate of disappearance of ponds from our countryside is a matter for concern and we would urge DEFRA to work with the ODPM and local authorities to halt this decline and, if necessary, provide adequate protection through new legislation.** There is, of course, a balance to be struck as essential maintenance work still has to be carried out. However, **we believe that Local Authorities have a duty to ensure that any work they undertake is carried out only after due care and consideration has been given both to the possible impact on local flora and fauna, and in full compliance with their own legal responsibilities.**

37. Local planning authorities also have responsibilities with regard to any development in their region, for example, under the Town and Country Planning Act 1990 and the Habitats Directive. Local planning authorities are required to consider planning applications for development and have performance targets for determining such applications which amount to eight weeks for most applications and sixteen weeks where an Environmental Impact Assessment is necessary. These targets were set in 1995 in the General Development Planning Order and the Office of the Deputy Prime Minister (ODPM) have set additional targets under the Best Value Process. These additional targets require local authorities to determine 60% of major applications within 13 weeks, 65% of minor applications within 8 weeks and 80% of other applications within 8 weeks.

51 Ev82, 23

52 Ev83, 36

53 Ev81

54 Q211

Furthermore, the Planning Policy Guidance No.9 *Nature Conservation* (paragraph 47) states that:

“The presence of a protected species is a material consideration when a local planning authority is considering a development proposal which, if carried out, would be likely to result in harm to the species or its habitat”.

The Guidance also goes on to say that consideration should be given to attaching planning conditions or obligations on the developer to ensure the protection of species. We believe this presents local planning authorities with a fundamental difficulty between, on the one hand, their responsibilities with regard to the protection of species and habitat when considering any planning applications, and, on the other, the amount of time and resources with which they have to consider those planning applications. **Whilst we can appreciate the value of setting targets for the consideration of planning applications, they should not be so unrealistic as to rule out the possibility of proper consideration of all the pertinent facts, including environmental impact. The targets set for local authorities are now almost ten years old. The ODPM, in conjunction with local planning authorities, should revisit these targets and ensure that they allow sufficient time for all necessary checks to be made.**

38. The requirement to consider the environmental impact of a proposed development assumes a level of commitment and, indeed, competence on the part of the local authority concerned which we believe is missing in many authorities. ALGE report that there is “widespread confusion and discrepancy over the amount of advice that they [local planning authorities] should give applicants about the possible presence of protected species”.⁵⁵ This is hardly surprising as we understand from ALGE that only around 35% of local authorities in England actually have a professional ecologist on staff and most are resourced only to deal with the most high profile cases.⁵⁶ We have already referred to the damage caused to both species and their habitats by developers and there is no doubt that some elements within the building and construction industry have capitalised on lax and ineffective processes and procedures in local planning authorities. Not only is the planning application process itself often weak, but there is also every possibility that, even where environmental conditions have been made part of the planning consent, there is only a small chance that the development will be properly monitored for compliance. **The lack of resources to enable local authorities to fulfil their own statutory duties and responsibilities, in terms of conservation, preservation, planning and in tackling wildlife crime reflects at best a woeful ignorance on the part of those in charge and, at worst, neglect or absolute disdain. Local authorities still have a considerable amount of work to do to educate and train their own workforce on their roles and responsibilities.**

39. There would also seem to be a need to review and strengthen certain police powers. In their written evidence ACPO point to the benefits gained from the Countryside and Rights of Way Act 2000 and the Criminal Justice Act 2003, which they say have “done much to

⁵⁵ Ev82, 24

⁵⁶ Ev83

ensure that Police officers have powers to effectively enforce the law”.⁵⁷ However, we have been made aware of a pressing need for legislative amendment before certain of the powers contained within the Criminal Justice Act 2003 can be used by the police. A section was added to the Criminal Justice Act 2003 in order to bring the Control of Trade in Endangered Species (Enforcement) Regulations (COTES) more in line with the Customs and Excise Management Act (CEMA) 1979. COTES is the means by which the Police can implement the EU Wildlife Trade Regulations in the UK. This new section not only increases the maximum custodial sentence for offences under COTES from two to five years but it also makes such offences arrestable under the Police and Criminal Evidence Act (PACE). It gives the Police additional powers to enter and search without a warrant properties owned or occupied by the arrested person. It also grants the Police the power to take fingerprints, obtain DNA samples and compel suspects to be interviewed. These are all essential tools in an investigation of any crime but, unfortunately, they are not currently available to the Police because COTES needs to be revised means of secondary legislation to incorporate these new powers. In oral evidence DEFRA conceded that this work was still outstanding but that they hoped to have something in the public domain within “the next two or three months”.⁵⁸ **We urge DEFRA to ensure that no further time is lost and that the necessary amendments are made to COTES to allow the Police to deploy the additional powers provided by the Criminal Justice Act 2003.**

Resources

40. Many of those organisations who provided evidence focused on the resources of some of their key partners, most significantly, the Police Service, HM Customs and Local Authorities. It is clear to us that resources in some areas are neither adequate nor, in some cases, properly targeted.

41. The Police Forces of England and Wales have primary responsibility for enforcing wildlife legislation and are the lead agency for investigating offences relating to species. The message from ACPO with regard to the adequacy of Police resource levels for dealing with wildlife crime, and the priority attached to such crime was stark and unexpected:

“Chief Constables undoubtedly have sufficient resources to deal with wildlife crime should we decide that such matters should be resourced. However, we receive no messages from government indicating that these matters should have resources directed towards it. Few Chief constables are therefore prepared to dedicate resources toward areas they are not asked to concentrate on.”⁵⁹

In fact, most police forces, if they make any attempt to tackle wildlife crime, do so through what ACPO refer to as a “network of divisional wildlife officers carrying that responsibility in addition to their other roles”.⁶⁰ ACPO report that seventeen forces have full-time wildlife crime officers but that the appointment of these officers is frequently at the expense

57 Ev40, 4.2

58 Q263

59 Ev40, 4.1

60 Ev40, 4.1

of other areas of the force. Making a business case for such posts is made more difficult without sufficient evidence of crimes being committed because there are no central records, no real national or local statistics to make the case. Once again **the absence of any clear, national view of the scale of wildlife crime has a direct impact on the ability of those charged with enforcing current legislation. If the scale and nature of the problem is not known it is unlikely that the correct level of resources can ever be allocated to deal with it.**

42. Even where there are wildlife crime officers ACPO admit that their job is not made easy by the prevailing negative attitude towards wildlife crime:

“The lack of importance attached to wildlife crime by managers within the Police service often results in wildlife crime officers being unable to operate effectively [and] being given little encouragement and time to carry out their duties. It is widely recognised by those with knowledge of the area that were it not for the enthusiasm and dedication of some of those officers wildlife crime would not be investigated.”⁶¹

The consequences of this attitude are made all too obvious in other memoranda we received. The lack of wildlife crime officers was raised by TRAFFIC, who describe the police response to wildlife crime as “extremely varied and patchy in the UK”.⁶² They too point to a lack of support and encouragement for wildlife crime officers and call for their numbers to be increased and for them to be given more time and resources. In their written evidence The National Gamekeepers’ Organisation referred to poaching as “the biggest aspect of wildlife crime” and said that it was “widespread and 90% of gamekeepers have been affected by it at some time or other”. And yet they report that this is considered virtually unpoliceable by some rural police forces, despite many gamekeepers identifying clear patterns of abuse by poachers which could be investigated by police, who have a responsibility to do so under the Game Acts.⁶³ **We believe that there must be at least one full-time Wildlife Crime Officer for each Police force. These officers must be fully trained in intelligence gathering .**

43. Furthermore, we believe there is enormous scope for Police Forces to combine their resources. There is no doubt that even if wildlife crime is given a higher priority by the Home Office, Police Forces will not have unlimited resources with which to deal with such crimes. By moving to a more intelligence led approach, with wildlife crime officers and other enforcement officers feeding properly analysed intelligence into a central database at the NWCIU, it should be easier to identify wildlife crime hotspots and then really target what might only need to be very limited resources at solving the problem. **We would encourage Police Forces and those with enforcement responsibilities to consider developing Memoranda of Understanding (MOUs) to enable them to work together for one off operations, identified through the use of intelligence, which will allow them to better target their limited resources.**

61 Ev40,4.1

62 Ev119, 18

63 Ev152 ,2

44. The negative attitude to wildlife crime in so many police forces calls into question the value of the work currently being undertaken by the NWCIU. DEFRA, in supplementary evidence to the Committee, told us that the NWCIU was proactive in intelligence gathering and that they were able to develop “actionable intelligence packages for law enforcers in the UK and beyond”. They go on to list one of the Unit’s main achievements as being the establishment and maintenance of productive working relationships with, among others, the police service.⁶⁴ **The apparent failure of the Police Service to take advantage of the NWCIUs work must be addressed by the Home Office and DEFRA. It is a nonsense to have the NWCIU expending time and resources on developing intelligence packages for police forces who have no intention of devoting any real resources to the crime themselves. This only serves to emphasise the need for wildlife crime to be re-classified as recordable so that police forces feel compelled to address these crimes.**

45. However, there are some police forces which are attempting to tackle wildlife crime and which are willing and able to devote resources to this work. North and South Wales Police have successfully seconded officers to work with the Countryside Council for Wales. This working partnership has allowed for the exchange of expertise and ideas to the benefit of not only of North Wales Police and the Countryside Council for Wales, but also for the fight against wildlife crime. This should be seen as an example of best practice to be duplicated wherever possible.

46. HM Customs and Excise enforce import and export controls in relation to traffic to and from third countries in those species covered by EU Regulation 338/97. In their written evidence to the Committee HM Customs said that they “apply checks on a risk-assessed and targeted basis in relation to all prohibitions and restrictions that we enforce at the frontier”.⁶⁵ In effect, and this was confirmed by them in evidence before us, this means that they do not attend at UK ports and airports for all arriving ships, aircraft or passengers but rely on intelligence to determine where they should place their resources at any given time. This, they argue, allows them to be more flexible and to keep the opposition guessing. In a move away from having a designated CITES Wildlife and Endangered Species Officer (CWESO) in each Customs region, the majority of the resources are focused in their Customs Intelligence and Research Team (CIRT) and at their specialist CITES Enforcement Team based at Heathrow Airport. The Enforcement Team is considered by many to be a centre of excellence and wins praise from others who have contributed to this inquiry. Whilst in their written evidence TRAFFIC applauded H.M Customs for its support of the Team and acknowledges the Team’s “huge accumulated knowledge”, they also expressed some concern at the reduction in the number of CWESOs.⁶⁶ In evidence session HM Customs acknowledged this disquiet amongst some of its PAW partners, accepting that they could have done more to bring them on-side with the changes to their working practices.⁶⁷ **Whilst we accept that intelligence is the way forward if there is to be**

64 Ev105

65 Ev108, 15

66 Ev119

67 Q290

any hope of matching resources to activity, we are concerned that the move to an intelligence led approach is not being sufficiently well monitored to demonstrate the benefits of such a move. We would, therefore, like to see a much more robust method of measuring outcomes being devised by HM Customs.

47. We remain deeply concerned about the level of resourcing in DEFRA, which will bear the brunt of much of the work involved in amending legislation and increasing powers in so many areas. A lack of team members and the scarcity of sufficient parliamentary time have already been cited as barriers to progress by DEFRA.⁶⁸ **We are concerned that DEFRA do not have sufficient resources allocated to the proposed review of Part 1 of the Wildlife and Countryside Act 1981, which is due to commence with the publication of a consultation document later this year (2004). As a result, there is a risk that it will extend far beyond a timescale that would be reasonably acceptable to those who depend on this legislation. DEFRA must review the resources assigned to the review and also look beyond the review to securing sufficient Parliamentary time to take through the necessary amendments.**

Dialogue and co-operation

48. The diversity of species of flora and fauna, the complexity of the related legislation and regulations, the number of government departments, agencies, charities and pressure groups involved and the increasingly sophisticated and organised nature of some of those involved in wildlife crime makes good co-operation and effective dialogue absolutely essential. This needs to take place on a number of different levels and between a variety of bodies. Communication and co-operation at international level is vital if there is to be any hope of seriously disrupting the cross-border illegal trade in endangered species. We have seen good examples of cross-border co-operation in the course of this inquiry. Through the use of “controlled deliveries” HM Customs, working with counterparts overseas, have been able to disrupt illegal trade and, in some cases, remove the main instigators of the crime.⁶⁹ Working through the World Customs Organisation, HM Customs have also been able to use their CITES expertise to help train other Customs authorities. The NWCIU’s remit means that it too focuses a significant amount of its albeit limited resources on combating cross border illegal trade in endangered species and, from evidence provided to the Sub-committee we know that the unit has been particularly effective in this area. **Although the UK is not a source country for most of this illegal trade, we are one of the key transit and recipient countries, which makes the international focus of the work of HM Customs, NWCIU and organisations like TRAFFIC, WWF and IFAW of as much value to the UK as it is to the source country.**

68 Q263

69 Q308

Inter- departmental and Inter-agency Dialogue and Co-operation

49. Interdepartmental co-operation is essential to ensure that trouble hot spots are quickly identified and resources are allocated to ensure that the problem is dealt with effectively. The memoranda submitted to the Sub-committee reflect a general belief that there is still some way to go before it could be said that inter-departmental and inter-agency dialogue and co-operation within the wildlife community is efficient and effective. In their written evidence, the International Fund for Animal Welfare (IFAW) made this explicit when they said that “in general, there is insufficient dialogue and co-operation across Government and amongst the various bodies responsible for wildlife crime”.⁷⁰ This sentiment has been echoed in other memoranda provided to the Sub-committee. Some organisations, like the memorandum from ALGE, suggest that good relationships at a local level are only possible, and indeed quite common in places, because of the commitment of the individual council and police officers concerned but that “there does not, however, seem to be a great deal of co-operation between senior council officials and police chiefs”.⁷¹ More often than not, it would seem that effective co-operation and dialogue only really works on a local level because of the hard work and determination of the individuals concerned, many of whom do this work on a voluntary basis and in addition to their normal “day job” and who do so largely without the support, moral or financial, of their superiors.

50. The benefits of the relationships that do work are clearly evident. English Nature report good co-operation between themselves and the Police Service which has taken many forms and ranges from the production of a “toolkit” for police forces, which will give them information about offences under the Wildlife and Countryside Act 1981 as well as providing warning letters for offenders and information notices, to undertaking joint operations on SSSIs using section 34 the Road Traffic Act 1988 which relates to the offence of driving a mechanically propelled vehicle on common land.⁷² Similarly, they are also working with the Magistrates Association to raise awareness of wildlife crime and to revise the “Costing the Earth” guidance for sentencers.⁷³ The Countryside Council for Wales also point to very good relationships they have developed, not only with the Police Service, but also with organisations like the RSPB and the National Federation of Badger Groups.

51. Inter-agency secondments appear to have been particularly useful; both TRAFFIC and the Scottish Executive have an officer working within the NWCIU, for example. One of the most successful examples of inter-agency co-operation, however, has been the secondment of two Police Officers from North and South Wales to the Countryside Council for Wales. We were fortunate to take evidence from both officers and found them to be professional, extremely knowledgeable of their subject and very committed to their work. It was clear that their contribution was highly valued by the Countryside Council for Wales. **We commend the work of both the North and South Wales Police Forces and the Countryside Council for Wales as an exceptionally good example of how joint working**

70 Ev147,23

71 Ev84

72 Ev9

73 Ev9

can benefit both parties and better tackle wildlife crime. More secondments of this nature should be considered.

52. A number of the memoranda we received cited the Partnership for Action against Wildlife Crime (PAW) as a positive step toward realising better working relationships and more accessible communication links amongst those in the wildlife community. Founded in 1995, PAW was intended to bring together all those with an interest in wildlife and wildlife law enforcement. Chaired jointly by Chief Constable Richard Brunstrom and Martin Brasher of DEFRA, and with a membership which includes all relevant Government departments, the Police Service, HM Customs and around ninety other bodies, it was seen as the vehicle for strategic co-operation and co-ordination. TRAFFIC describe PAW as “an excellent initiative that has pulled together under one banner a large number of organisations with disparate needs and ambitions”.⁷⁴ RSPB also refer favourably to PAW’s success,

“PAW has been successful in bringing forward proposals for legislative change, highlighting wildlife crime within government and to the public, providing guidance and training for enforcement officers and overseeing the development of forensic techniques.”⁷⁵

53. RSPB however, highlights what we feel is a fundamental problem within PAW, which is the failure of the Treasury and the Home Office, in particular, to play an active role.⁷⁶ **The role of the Home Office has been shown to be absolutely crucial in the fight against wildlife crime but their commitment has been sadly lacking. The Home Office must re-engage with wildlife crime.** Statutory bodies, non-governmental organisations and those groups, large and small, who man the front lines with enormous commitment and energy, need a forum within which they can exchange information and best practice and bring issues into the open. We believe PAW has a crucial role to play here. **The very fact that PAW has a membership of around ninety we believe can be problematic and suggests to us that there is a need to review and perhaps rationalise the number of agencies, bodies and organisations involved in this area of work.**

Dialogue with the public

54. The culmination of effective dialogue and co-operation between the various government departments, agencies and organisations should be the successful communication of what has been decided, what is lawful and what is not, with the public at large. In their written evidence RSPB refer to a Government Campaign entitled “Campaign against Illegal Wildlife Poisoning” which was intended to raise the profile of illegal poisoning and to encourage the public to report such incidents. RSPB do not consider this to have been a successful campaign: not only did the number of birds of prey killed annually by poisoning not decrease, it has actually doubled since 1997.⁷⁷ We have already

⁷⁴ Ev119, 25

⁷⁵ Ev73, 33

⁷⁶ Ev74

⁷⁷ Ev70, 4

reported on the scale and impact of the threat to birds of prey, and to Hen Harriers in particular, but perhaps the failure of this campaign was most graphically demonstrated in August of this year when a gamekeeper in Scotland pleaded guilty to poisoning 20 birds of prey, among them buzzards, a goshawk and a tawny owl. The fine imposed for what was being described as Scotland's worst wildlife crime was just £5,500. **We believe that dialogue with the general public has been rather hit and miss and, for the most part, the Government and, to a certain extent, those working in the wildlife community, has failed to achieve effective communication.**

55. Similarly, WWF referred to a Souvenir Alert campaign they have run jointly with HM Customs and DEFRA.⁷⁸ The campaign is aimed at anyone tempted to bring back souvenirs made from endangered species and warns of the consequences should this happen. However, with ivory continuing to feature in the top ten seizures list it is clear that this has not been a tremendously successful campaign. WWF have said that one of the problems has been in bringing these leaflets to the notice of the British travelling public, the point of purchase being largely outside of their control and the point of arrival in the UK being far too late in the process. We understand that WWF-UK have approached the travel industry in an attempt to get the campaign leaflets into the hands of the traveller at the point of ticket purchase but have been rebuffed on two counts, the first that the travel industry did not want any negative connotations attached to travel, the second that they wanted to brand the campaign themselves which was logistically impossible. **We cannot accept the travel industry argument that to hand out leaflets warning their customers of the consequences of purchasing illegal products whilst on holiday will somehow reflect badly on the travel industry itself. This is clearly nonsense. The Department for Trade and Industry should engage the travel industry in discussing how best to get this, and possibly other important campaign leaflets, into the hands of the travelling public.**

56. There are also other opportunities to inform and educate the public which we believe have not been fully considered. In their written evidence, Plantlife International warned that "the second biggest threat to biodiversity, after habitat destruction, is invasive non-native species".⁷⁹ We have already referred to some of the more obvious examples of this phenomenon, but there are many more less well-known and understood dangers. The last few years has seen a resurgence of interest in home gardening. The enormous popularity of certain home improvement and gardening television programmes, such as "Ground Force" has seen interior design move from the more traditional living spaces within the home, to encompass the garden too. Not only has this seen the introduction of decking, for example, into many gardens, which in itself can have all sorts of implications for the native wildlife normally resident there, but this trend has also meant the introduction of some non-native species of plants which are simply not compatible with our own native species. In oral evidence DEFRA said,

78 Qq361-365

79 Ev158

“We do think that gardening is a significant risk area for bringing non-native plants into the country, perfectly legally but which can cause significant damage if they are then planted in the wild or escape in some way into the wild.”⁸⁰

57. In their written evidence DEFRA also make the point that “much of the problem arises not from deliberate criminal activity but from inadvertent actions, such as the disposal of pond or garden waste containing unidentified problem species”.⁸¹ We believe that these programmes could provide the perfect vehicle for communicating with and educating the public, whether it is about the legal requirements relating to whatever species is being discussed, or more generally about the impact and consequences of their own actions. We raised this with DEFRA at oral evidence session in relation to programmes like “Bargain Hunt” where, for example, an antique made from ivory might be featured which would, we believe, present a perfect opportunity to provide a quick information point about the purchase of goods made from ivory.⁸² **We were encouraged by DEFRA’s willingness to consider using the popular media as a means of communicating with and educating the public and would urge them to encourage programme makers to include useful information about relevant current legislation and the possible impact of certain behaviour within the body of their programmes.**

58. DEFRA are also using a slightly different approach by targeting the source of some of the non-native species of both flora and fauna that are flourishing so rapidly in gardens across the country. An example of this may be the deadly Red Leg virus which is decimating native common frog populations. Many experts believe that the massive increase in this disease has brought the common frog to the brink of extinction and as frogs are an essential part of the food chain for predators such as foxes, stoats and buzzards, the impact will be felt more widely. Whilst it is still not clear how Red Leg entered Britain, one theory is that it was brought in by tropical fish or other amphibians bred for garden centres which are then introduced to garden ponds. DEFRA are in the process of developing a Code of Practice for the horticultural sector and have formed a working group, which includes representatives from other Government departments as well as, for example, the Royal Horticultural Society and the Garden Centres Association, to take this work forward. We understand that the thrust of this Code of Practice will be to educate those involved in the horticultural sector about, effectively, doing the right thing rather than warning against doing anything illegal. **We urge DEFRA to ensure that the Code of Practice for the horticultural sector is not simply an information leaflet to be ignored but that it has some requirement for compliance built into it which is then backed up by a proper monitoring process.**

59. We have heard some very encouraging evidence of attempts to get out into the community and educate the public about what they can do, both to protect wildlife and to prevent wildlife crime. Plantlife International cite the PAW campaign, “Stolen from the Wild”, which is aimed at raising awareness of the little talked about crime of stealing wild

80 Q274

81 Ev93

82 Q255

plants such as bluebells and snowdrops, as a good example of a well-coordinated and relevant campaign.⁸³ DEFRA's dialogue with the Antique Dealers' Association and their recent attendance at a large antiques fair at Olympia demonstrate that they are trying to be proactive and inventive in the way in which they make contact with certain trade groups and the public. We commend DEFRA for their initiative and encourage them to continue to make these potentially very valuable communication links.

60. We believe that the Durham Police Service initiative, called "Get Hooked on Fishing", is also a particularly good example of an effective public relations campaign.⁸⁴ This was brought to our attention by the Environment Agency, who described it as an example of "best practice" which involved a partnership between Durham Constabulary, the Agency, the local authorities and angling organisations and it is now spreading. They explained that :

"it is looking at identifying those youngsters in a locality who potentially are vulnerable to getting involved in crime, and then providing the opportunity to engage in a programme of fishing development, something that is of interest to them getting out in the countryside and enjoying angling."⁸⁵

We believe the "Get Hooked on Fishing" campaign has benefits to both the environment, the individuals concerned and the community at large. We would encourage other local authorities and police forces to emulate this campaign in their own areas and to use the same principles for other areas of wildlife crime. We commend the Durham Constabulary for their excellent work.

Endnote

61. There is little doubt that those who work to protect and preserve the wildlife community are committed, hard working and passionate about their work. They have to be to remain so focused in the face of so much ambivalence. Wildlife crime is so often seen as a victimless crime, something that most of us care about but that many would also agree comes somewhere lower on the priority list than other more "serious" offences when resources are being allocated. Indeed, much of this crime is afforded so little priority that no action is taken at all. However, **we believe that the link between wildlife crime and other serious crimes, the clear and growing involvement of organised crime, and the increased reliance on the internet for illegal trade in protected species makes the argument for spending time and resources on this area of crime compelling.**

83 Ev158

84 www.ghof.org.uk

85 Q102, Mr Williams

Formal minutes

Wednesday 15 September 2004

Members present:

Mr Peter Ainsworth, in the Chair

Mr Colin Challen

Mr Mark Francois

Mr David Chaytor

Mr Simon Thomas

Mrs Helen Clark

Joan Walley

Sue Doughty

The Committee deliberated.

Draft Report (Environmental Crime: Wildlife Crime), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 61 read and agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report.

[Adjourned till Wednesday 13 October at 3.00pm.]

Witnesses

Thursday 13 May 2004

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Dr Tom Tew, Regional Director South East England and General Manager Designated Sites, **Mr Martin Fox**, Site Protection Manager, **Ms Alison Flowers**, SSSI Enforcement Officer, and **Ms Johanna Oldaker**, Species Legislation Officer and Licensing Officer, English Nature. Ev1

Dr David King, Director of Water Management, **Mr Godfrey Williams**, Fisheries Policy and Process Manager, and **Mr Arwyn Jones**, Executive Manager, Environmental Management Process (Acting), Environment Agency. Ev19

Thursday 25 March 2004

Sergeant Peter Charleston, Wildlife and Environment Officer, North Wales Police Ev38

Sergeant Peter Charleston, Wildlife and Environment Officer, North Wales Police further examined, **Mr John Lloyd Jones**, Chairman, **Ms Gill Bilsborough**, Senior Species Officer, and **Sergeant Ian Guildford**, Seconded Police Officer, the Countryside Council for Wales. Ev57

Mr Graham Elliott, Head of Investigations, the Royal Society for the Protection of Birds, **Ms Amy Coyte**, Chief Executive, The Bat Conservation Trust, and **Dr Tony Gent**, The Herpetological Conservation Trust Ev66

Thursday 8 July 2004

Mr Mike Oxford, Project Manager, Association of Local Government Ecologists (ALGE) Ev79

Mr Martin Brasher, Head of Global Wildlife Division, **Mr Martin Capstick**, Head of European Wildlife Division, and **Mr Nick P Williams**, Wildlife Management Team, Department of Environment, Food and Rural Affairs. Ev92

Mr Mark Fuchter, Senior Policy Manager, Restrictions and Sanctions Team, and **Mr Charles Mackay**, Team Leader of the CITES Enforcement Team, her Majesty's Customs and Excise Ev106

Thursday 13 July 2004

Mr Crawford Allan, Regulation Co-ordinator and **Ms Stephanie Pendry**, UK Enforcement Officer, TRAFFIC International, **Ms Carol Hatton**, Environmental Law Officer and **Mr Stuart Chapman**, Species Programme Leader, Campaign Director, Wildlife Trade Campaign, WWF-UK

Ev117

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Anon Worker from the Criminal Justice System	Ev141
Association of Local Government Ecologists (ALGE)	Ev79, 90
Baker, Lisa	Ev143
Bat Conservation Trust	Ev66; Ev74, Ev77
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Department for Environment, Food and Fisheries	Ev92, EV104
English Nature	Ev1
Environment Agency	Ev19
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Mid Sussex Badger Protection Group	Ev148
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Somerset Trust Badger Group & and Somerset Wildlife Trust Mendip Hills Area	
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Traffic International	Ev117, Ev140
UK Environmental Law Association – Nature Conservation Working Group	Ev160
Wildlife and Countryside Link	Ev162
Wildlife Trust	Ev163
WWF-UK	Ev121

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2003-04 Session

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Second	GM Foods – Evaluating the Farm Scale Trials, HC 90
Third	Pre-Budget Report 2003: Aviation follow-up, HC 233
Fourth	Water: The Periodic Review 2004 and the Environmental Programme, HC 416 (<i>Reply, HC 950</i>)
Fifth	GM Foods – Evaluating the Farm Scale Trials, HC 564
Sixth	Environmental Crime and the Court, HC 126
Seventh	Aviation: Sustainability and the Government Response, HC 623 (<i>reply, HC1063</i>)
Eighth	Greening Government 2004, HC 881
Ninth	Environmental Crime: Fly-tipping, Fly-posting, Litter, Graffiti and Noise, HC 445
Tenth	Budget 2004 and Energy, HC 490
Eleventh	Aviation: sustainability and the Government's Second Response HC1063

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First	Pesticides: The Voluntary Initiative, HC100 (<i>Reply, HC 443</i>)
Second	Johannesburg and Back: The World Summit on Sustainable Development–Committee delegation report on proceedings, HC 169
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Fourth	Pre-Budget 2002, HC 167 (<i>Reply, HC 688</i>)
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Eleventh	Sustainable Development Headline Indicators, HC 1080 (<i>Reply, HC 320</i>)
Twelfth	World Summit for Sustainable Development – From rhetoric to reality, HC 98 (<i>Reply, HC 232</i>)
Thirteenth	Greening Government 2003, HC 961 (<i>Reply, HC 489,2003-04</i>)

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First	Departmental Responsibilities for Sustainable Development, HC 326 (<i>Reply, Cm 5519</i>)
Second	Pre-Budget Report 2001: <i>A New Agenda?</i> , HC 363 (<i>HC 1000</i>)
Third	UK Preparations for the World Summit on Sustainable Development, HC 616 (<i>Reply, Cm 5558</i>)
Fourth	Measuring the Quality of Life: The Sustainable Development Headline Indicators, HC 824 (<i>Reply, Cm 5650</i>)
Fifth	A Sustainable Energy Strategy? Renewables and the PIU Review, HC 582 (<i>Reply, HC 471</i>)

Sixth Buying Time for Forests: *Timber Trade and Public Procurement*, HC 792-I ,
(*Reply, HC 909, Session 2002-03*)

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First Environmental Audit: *the first Parliament*, HC 67 (*Reply, Cm 5098*)
Second The Pre-Budget Report 2000: *fuelling the debate*, HC 71 (*Reply*
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Third Comprehensive Spending Review: Government response and follow-up,
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Fourth The Pre-Budget Report 1999: pesticides, aggregates and the Climate
Change Levy, HC 76
Fifth The Greening Government Initiative: first annual report from the Green
Ministers Committee 1998/99, HC 341
Sixth Budget 2000 and the Environment etc., HC 404
Seventh Water Prices and the Environment, HC 597 (*Reply, HC 290, Session 2000-01*)

1998-99 Session

First The Multilateral Agreement on Investment, HC 58 (*Reply, HC 45, Session 1999-*
2000)
Second Climate Change: Government response and follow-up, HC 88
Third The Comprehensive Spending Review and Public Service Agreements,
HC 92 (*Reply, HC 233, Session 1999-2000*)
Fourth The Pre-Budget Report 1998, HC 93
Fifth GMOs and the Environment: Coordination of Government Policy, HC 384
(*Reply Cm 4528*)
Sixth The Greening Government Initiative 1999, HC 426
Seventh Energy Efficiency, HC 159 (*Reply, HC 571, Session 2000-01*)
Eighth The Budget 1999: Environmental Implications, HC 326

1997-98 Session

First The Pre-Budget Report, HC 547 (*Reply, HC 985*)
Second The Greening Government Initiative, HC 517 (*Reply, HC 426, Session 1998-99*)
Third The Pre-Budget Report: Government response and follow-up, HC 985
Fourth Climate Change: UK Emission Reduction Targets and Audit
Arrangements, HC 899 (*Reply, HC 88, Session 1998-99*)

Oral evidence

Taken before the Environmental Audit Committee on Thursday 13 May 2004

Members present:

Mr Peter Ainsworth, in the Chair

Mrs Helen Clark
Sue Doughty

Mr Simon Thomas

Memorandum from English Nature

EXECUTIVE SUMMARY

(a) English Nature aims to be a firm but fair regulator of wildlife crime in its capacity as an enforcement body for offences (under Part II of the Wildlife and Countryside Act 1981 as substituted by Schedule 9 to the Countryside and Rights of Way Act 2000), relating to the protection and enhancement of Sites of Special Scientific Interest (SSSIs). We recognise also the importance of our advisory role in relation to wildlife crime offences (under Part I of the Wildlife and Countryside Act 1981 (as amended) and the Habitats Regulations) as they apply to nationally and internationally protected species.

(b) We consider that we use our enforcement powers appropriately and effectively dependent on the circumstances of the offence and the impact and effect on the SSSI.

(c) The best way of protecting wildlife sites is to build and maintain effective relationships with owners and occupiers of SSSIs and public bodies, to create both understanding and a climate for the delivery of their responsibilities. This avoids the need to use enforcement powers in the majority of cases.

(d) We believe certain wildlife crime affecting SSSIs is increasing. Reported incidents of damage by owners and occupiers of SSSIs has increased by 74%¹ from January 2001 to April 2004. There has also been a 168%² increase in reported incidents of damage by third parties (neither owners nor occupiers of SSSIs).

(e) In a few specific areas, wildlife crime can threaten the conservation of both species and designated sites and it is important that legislation is robustly prosecuted and that courts recognise the seriousness of the offence.

(f) The legislative powers under national and European law to manage and protect SSSIs and Natura 2000 sites³ are powerful but we have identified additional powers that would enhance English Nature's ability to take enforcement action and afford further protection to nationally and internationally important nature conservation sites. Similarly, the legislation protecting species is generally robust but we identify some specific improvements that may be appropriate.

(g) We recognise that we cannot tackle some aspects of environmental crime on our own. We must work with other parties to tackle this through the appropriate mechanisms and legislative provisions. We are working with the police to encourage and inform the prioritisation of their wildlife crime enforcement action in line with nature conservation objectives.

Part I

BACKGROUND

1. INTRODUCTION

1.1 English Nature is the statutory body that champions the conservation and enhancement of the wildlife and geological features of England. We work for wildlife in partnership with others, by:

- advising—Government, other agencies, local authorities, interest groups, businesses, communities and individuals on nature conservation in England;
- regulating—activities affecting the special nature conservation sites in England;
- enabling—others to manage land for nature conservation, through grants, projects and information; and
- enthusing—and advocating nature conservation for all and biodiversity as a key test of sustainable development.

¹ 27 cases (in year 2001–02) increasing to 47 cases (year 2003–04).

² 22 cases (in year 2001–02) increasing to 59 cases (year 2003–04).

³ Known as Special Areas of Conservation and Special Protection Areas.

1.2 We have statutory responsibilities for Sites of Special Scientific Interest (SSSIs), a subset of which are managed as National Nature Reserves.

There are 4,111 SSSIs in England, covering over 1,076,704 hectares, or about 7.6% of England. The sites range from small areas that protect populations of a single species, to large expanses of moorland or mudflat. SSSIs play a key role in achieving the nation's biodiversity goals, they contribute to peoples' quality of life and they bring benefits to the rural economy. The condition of SSSIs is a key measure of the Government's commitment to reducing the rate of biodiversity loss by 2010. The Government has set a Public Service Agreement target that 95% of SSSI land area should be in "favourable" condition by 2010. Legislative powers to protect and manage SSSIs will help to achieve this target.

1.3 This evidence focuses upon English Nature's role as a prosecuting authority in relation to SSSIs under Part II of the Wildlife & Countryside Act 1981 as substituted by Schedule 9 to the Countryside & Rights of Way Act 2000 and its advisory role in relation to enforcement and prosecutions of protected species under Part I of the Wildlife & Countryside Act 1981 (as amended).

2. ENGLISH NATURE'S ENFORCEMENT AND REGULATORY DUTIES

2.1 *Species: duties and role*

2.1.1 English Nature has a statutory duty to issue licences under the Wildlife and Countryside Act 1981, The Habitat Regulations 1994, The Deer Act 1991 and the Protection of Badgers Act 1992. We issue over 3,000 (3,011 in year 2003–04) English Nature licences a year. The bulk of these licences enable scientific and conservation work on protected species. This is one of the major service delivery areas of English Nature. It should be noted that we issue 97% of licence applications within 15 working days.

2.1.2 In addition, English Nature has a duty to advise the Department for Environment, Food and Rural Affairs (Defra) on policy development and the nature conservation implications of their licences (approximately 900 European Protected Species consultations are dealt with per year).

2.1.3 We also have a lead role on species legislation issues and provide advice on licensing policy and species legislation to English Nature staff and a wide range of external customers.

2.2 *SSSI: legislation*

2.2.1 Section 28 of Part II of the Wildlife and Countryside Act 1981 as substituted by Schedule 9 to the Countryside and Rights of Way Act 2000 ("the Wildlife and Countryside Act") gives English Nature duties, powers and responsibilities in respect of SSSIs to make sure they are protected and managed effectively now and in the future.

2.2.2 Section 28(1) and sections 28 A to D concern the notification of land as a SSSI, the variation of the details of the notification, the notification of additional land of similar interest, enlargement of a site to include other special interest features and the denotification of a site where it is no longer of special interest. These processes provide for objections and representations to be made which English Nature considers before confirming with or without amendment or withdrawing the notification.

2.2.3 The notification of land as a SSSI has a number of legal consequences. Firstly under section 28E, the owner or occupier of land included in a SSSI may not carry out, cause or permit to be carried out on that land, any operation specified in the notification as being likely to damage the special interest features of the SSSI, unless English Nature has been given notice of a proposal to carry it out (specifying its nature and the land on which it is proposed to be carried out) and the operation is carried out either in accordance with the terms of a management agreement, management scheme or management notice with English Nature or with English Nature's written consent. English Nature's decision in relation to such consents may be the subject of an appeal to the Secretary of State. An owner or occupier of a SSSI who contravenes these requirements without a reasonable excuse is guilty of a criminal offence under section 28P. Such a reasonable excuse may exist if the operation carried out is an emergency operation, if it was authorised by certain planning permission or if it was permitted by certain public bodies in other circumstances; this is not an exhaustive list.

2.2.4 Under section 28G, public bodies are required to take reasonable steps in the exercise of their own functions, to further the conservation and enhancement of the SSSI, where those functions affect SSSIs. Such public bodies are also required to follow a specific procedure which requires them to take account of English Nature's advice if they propose to carry out, or to give their consent for, any operations that are likely to effect the SSSI. Failure to comply with certain obligations is a criminal offence.

2.2.5 English Nature may also enter into a voluntary agreement with owners and occupiers of any land within a SSSI for the purposes of conserving or restoring the special interest features for which the site was notified. Should voluntary management not be forthcoming we can then, after offering a management agreement and formal consultation, serve a management scheme under section 28J for all or part of the SSSI. We will consider any objections and representations made and within nine months from serving the scheme, confirm it with or without amendment.

2.2.6 If it appears to English Nature that the management scheme is not being adhered to, then we may serve a management notice under section 28K. The effect of the management notice will be to require the owner(s) or occupier(s) to carry out the work on the land in accordance with the management scheme. Anyone served with a management notice has a right of appeal to the Secretary of State. Failure to comply with any requirement of the management notice without a reasonable excuse is a criminal offence and also entitles English Nature to enter the land and carry out the works required and recover any expenses reasonably incurred.

2.2.7 Under section 28N, English Nature may also acquire all or any part of a SSSI compulsorily if we are satisfied that we are unable to conclude an agreement as the management of the land on reasonable terms or if the agreement is breached in such a way that the land is not being managed satisfactorily. If English Nature acquires land by compulsory order, compensation will be paid in accordance with land compensation and compulsory purchase legislation.

2.2.8 Section 28P provides for a range of offences (amongst those mentioned above) and given at Annex 1. Under section 28Q an owner or occupier of a SSSI must inform us of a change of ownership or occupation within a SSSI; again failure to comply is an offence. Section 28R has been extended to provide us with byelaw making powers on SSSIs.

2.2.9 We also have powers of entry to land within SSSIs in specific circumstances under section 51 of the Wildlife and Countryside Act.

2.3 SSSI: enforcement role and approach

2.3.1 We are the prosecuting authority for section 28 of the legislation and can take appropriate enforcement action when the law is broken and when SSSIs are damaged, disturbed or destroyed. We consider that we are a firm but fair regulator in relation to our public enforcement role. There are general enforcement principles that apply to the way in which we approach every case and how we decide what enforcement action to take. We aim to use a range of enforcement options appropriately, effectively and quickly to deal with these criminal offences.

2.3.2 The police lead on enforcement of any offences in contravention of Part I of the Wildlife & Countryside Act 1981 (as amended). English Nature has an advisory role in relation to the investigation and prosecution of these species offences.

2.3.3 We work with over 32,000 separate owners and occupiers, the majority of whom work hard to conserve SSSIs. We recognise that the best way of managing and protecting SSSIs is to build and maintain good relationships with owners and occupiers and public organisations. In doing this, we aim to create an understanding of their responsibilities, which we hope will reduce the damage and disturbance caused to SSSIs and the need to take enforcement action.

2.3.4 However, we will not hesitate to use our enforcement powers to protect and restore the special interest features of SSSIs; in a small number of cases this results in a prosecution. It is worth noting that some of the enforcement action that we take is in response to activities which are carried out by those who neither own nor occupy land within a SSSI.

Part II

ENGLISH NATURE'S RESPONSE TO THE ENVIRONMENTAL AUDIT SUB-COMMITTEE'S QUESTIONS

3. Q1 WHAT IS THE SCALE AND IMPACT OF WILDLIFE CRIME?

3.1 Introduction

Like other areas of crime there is uncertainty about the overall scale and impact of wildlife crime. The compilation of statistics is difficult and relies on infringements of the legislation being reported and/or detected in the first instance. English Nature believes that wildlife crime can be extremely threatening for a few rare species and habitats and moderately threatening for others.

3.2 Species: scale

3.2.1 Although we are not responsible for enforcing species crime under Part I of the Wildlife & Countryside Act and the Habitats Regulations, English Nature recognises that there are several types of criminality affecting native species. These include the illegal persecution of some wild birds, the collection of birds' eggs and bulbs, such as bluebells, for either personal use or commercial profit. Wildlife crime for certain species such as bats and great crested newts is often associated with development locations. In some cases it is likely that the criminal activity is driven by a desire to save the costs associated with considering the presence of protected species and providing the required level of mitigation necessary to secure an appropriate licence.

3.3 *Species: impact*

3.3.1 Through our work with the Partnership Against Wildlife Crime (PAW) and other organisations, we have identified species which are at significant risk from illegal activities. Hen harriers and bats have been identified as species which are significantly affected by wildlife crime and it is likely that further species may be identified in the future.

3.3.2 The hen harrier is one of the few species in England thought to be threatened with extinction as a direct result of wildlife crime. English Nature's Hen Harrier Recovery Project (HHRP) has monitored the hen harrier breeding population in England during the last two years. Only seven successful pairs were found in 2002 and eight successful pairs in 2003. Research has indicated that there is sufficient upland moorland habitat to support at least 230 pairs. The HHRP believes that illegal persecution is the most important factor in limiting the hen harrier breeding population. In the past two years birds have been shot, nests and their contents destroyed, nest sites lost through the inappropriate burning of heather, and nesting attempts have failed because of illegal disturbance close to active nests. It is known that hen harriers breed less successfully on moorland managed for grouse shooting than on moorland managed with conservation as the main priority. Hen harriers range over wide areas of countryside and persecution appears to be sufficiently widespread to hold the population at a dangerously low level despite the efforts of conservation organisations.

3.3.3 Other organisations such as the Secretariat of PAW, RSPB, Plantlife and the National Federation of Badgers Group will be better placed to provide information regarding detailed aspects of species related wildlife crime.

3.4 *SSSI: scale*

3.4.1 There are a wide range of habitats, species and geological features that make up the SSSI series; coupled with the innumerable activities which could potentially cause damage, disturbance or destruction to SSSIs, along with the often remote location and extensive nature of the sites, make quantification very difficult.

3.4.2 However we now have a mandatory reporting system and database for all reported offences under section 28. This facility allows reports to be generated on the type of incidents and offences and to identify issues and trends which we can then focus on in a more pro-active and strategic way. We ensure that our staff and others are vigilant and report all incidents that they encounter, in this way we continue to build upon our information base, monitor trends and respond accordingly in a focused way.

3.4.3 Since the introduction of the Countryside & Rights of Way Act on 30 January 2001 to 23 April 2004, English Nature has taken 235 separate enforcement actions: seven prosecutions (four of which were under the amended provisions of the Wildlife and Countryside Act and three under the Habitats Regulations⁴—see Annex 2); two formal cautions; 25 formal investigations; 40 warning letters from our solicitors; 161 warning letters from English Nature staff.

3.4.4 We believe from incidents reported that the illegal use of mechanically propelled vehicles (MPVs) in the countryside (and within SSSIs) has increased. There is strong circumstantial evidence to suggest that this is linked to certain provisions introduced within the Countryside and Rights of Way Act effectively opening up “lost” rights of way, used in the past only by eg a horse and cart, but with rights now lawfully established for use by MPVs. Consequentially, the majority of users might be undertaking a lawful activity but the opportunity for illegal off-road use is increased. Defra has recognised some anomalies within the legislation and have consulted widely⁵ with a view to introduce new legislation which will make it no longer possible to establish the existence of a byway open to all traffic by reference to historic (pre-commencement) use by, or other evidence relating to, non-mechanically propelled vehicles. This move is welcomed.

3.5 *SSSI: impact*

3.5.1 The impact of any activity could result in varying severity within sites of national or international importance, impacts occurring in both the short and long term. Some SSSIs may be the remaining stronghold for one particular habitat or species. The most frequently reported illegal activities that cause damage and disturbance to SSSIs are as a result of dumping, vehicle activities and the removal of fauna and flora. We can also report that during the period April 2003 to March 2004, the special interest features that are mainly being damaged or disturbed as a result of illegal activities are grassland, heathland, moorland and woodland.

3.5.2 For instance, the single activity of ploughing a hay meadow grassland, a nationally and internationally rare community, could result in that habitat being lost forever on that SSSI and in a national and international context. In other cases, it may be that one repetitive activity on a particular area of land over a period of time, for example 10 people cycling over the same piece of heathland for six months, causes

⁴ Prosecutions under Regulation 23 of the Habitats Regulations for offences under Special Nature Conservation Orders.

⁵ “Use of mechanically propelled vehicles on Rights of Way” Defra 2003.

the heathland to become bare. An area affected by damage or disturbance may recover with appropriate management or restoration measures within a short period of time, whereas other damage may take several years to recover naturally, by simply being left alone but monitored.

3.5.3 Illegal vehicle use can subject the flora and fauna of a SSSI to considerable damage, disturbance or destruction by rutting and the widening of illegally established tracks. There are reports of on-going damage from around England, the activities being more prevalent within upland and coastal sites and within Common land.

3.6 *SSSI and species: effective reporting of wildlife crime*

3.6.1 We note that the majority of wildlife crime offences not only in relation to SSSIs, which result in cautions or prosecutions, are not classed as recordable offences and thus are not recorded on any central system as crimes because the governing legislation does not provide for this. We support the PAW initiative to consider the scope for a UK wildlife incident recording system and the possibility of certain wildlife offences being formally recordable offences (as is currently possible for some offences in Part I of the Wildlife & Countryside Act 1981), to give a more accurate overview of levels of offending, to then identify trends, which in turn affects the deployment of resources.

4. Q2 IS THE FRAMEWORK OF NATIONAL AND EUROPEAN LAW AND OF INTERNATIONAL REGULATION ROBUST ENOUGH TO DEAL WITH WILDLIFE CRIME EFFECTIVELY?

4.1 *Species*

4.1.1 Legislation has a key role to play in preventing the release of non native invasive species. Invasive non-native species are widely recognised as a major threat to biodiversity, causing losses of native species and diluting the distinctive character of native flora and faunas.

4.1.2 At present this legislation is ineffective and extremely difficult to enforce and thus the legislative framework preventing the release of non-native species needs to be amended considerably. For example, anomalies currently exist with regard to the legality of, and ability to control, the release, sale and keeping of non native species in Great Britain. The most conspicuous and problematic anomaly is the non-inclusion of plants (other than the few specified in Schedule 9⁶). Given this, and the significant import of large numbers of non-native plant species, a statutory mechanism is urgently needed to regulate these.

4.1.3 The Joint Nature Conservation Committee (JNCC) agree with English Nature that there are currently insufficient legal constraints and controls to address problematic non native species. The legislative amendments are only one aspect of action which is needed to address problematic non native species, such measure need to be combined with both increased education and the development of codes of conduct for all relevant sectors in a participative fashion.

4.1.4 Non native species policy has been the subject of a Defra working group and national consultation. It is envisaged that a range of legislative amendments will be addressed via the pending review of Part I of the Wildlife and Countryside Act.

4.2 *SSSIs*

4.2.1 Broadly the legislation acts as a deterrent to some and enables us to have a stronger, more robust role in the enforcement of wildlife crime on SSSIs.

4.2.2 The introduction of the Countryside and Rights of Way Act has given English Nature more powers than were afforded under the Wildlife and Countryside Act 1981, in relation to the protection and the enforcement of wildlife crime on SSSIs. These include the power to regulate potentially damaging activities affecting SSSIs; take enforcement action where compliance breaks down or damage, disturbance and destruction of SSSIs occurs; obtain and enforce restoration of SSSIs following a successful prosecution; enter SSSI land where voluntary access is denied to ascertain whether an offence has been or is being committed; and raises the statutory level of fines that can be given for these offences.

4.2.3 Prior to the Countryside and Rights of Way Act, we were unable to enter SSSI land to ascertain whether an offence was being, or had been, committed, (except in limited circumstances where a Nature Conservation Order⁷ was in place). As such we were reliant on obtaining the permission from the landowner of the site, which in cases where we were investigating a potential criminal offence, was not always forthcoming. If voluntary access was denied it proved difficult to collect evidence in relation to an offence and therefore take any enforcement action.

⁶ Wildlife and Countryside Act 1981 (as amended).

⁷ Nature Conservation Orders were made under section 29 of the Wildlife and Countryside Act 1981 and subsequently repealed by the Countryside and Rights of Way Act 2000.

4.2.4 The Countryside and Rights of Way Act also brought in “triable either way”⁸ offences for certain provisions of the SSSI legislation. This classification and the level of statutory fine is recognition of the importance that Parliament puts on this type of environmental crime. One of the problems previously under the Wildlife and Countryside Act was the need to start legal proceedings within six months of the damage occurring; damage to sites would often go undiscovered for many months and this used to prevent prosecution. Although we still aim to take enforcement action as soon as practicable after the offence has occurred and usually within six months of the report of the incident, the triable either way offences allows a longer timescale to start legal proceedings following the offence and avoids the circumstance whereby prosecution is precluded where the damage is not immediately noticed.

4.2.5 Since its implementation we have used the legislation to bring four successful prosecutions under section 28, in relation to damage and destruction of SSSIs, one of which resulted in a record fine for this type of offence (£13,000⁹). Additionally, in three¹⁰ of these cases we have successfully applied to the Court for a Restoration Order to repair the damage caused to the special interest features as a result of an offence being committed. The ability to enforce restoration under this legislation is a powerful tool and can make a real difference to the wildlife of special sites.

4.2.6 The Countryside and Rights of Way Act has also created a new offence whereby any person, without reasonable excuse, would be liable to a prosecution if they knowingly damaged, disturbed or destroyed the special interest features of a SSSI. This is another valuable tool in tackling wildlife crime on SSSIs, since 109 of the offences (44% of total) which were reported to English Nature’s Enforcement Unit since January 2001 were as a result of the activities of third parties. We have brought one prosecution¹¹ under this provision, against a person who damaged a nationally important grassland site by depositing spoil from an excavated pond smothering an orchid population. Had this incident happened under the previous legislation we would have probably been unable to take any enforcement action.

4.2.7 It is, however, worth noting that due to the nature of some activities carried out by third parties (particularly the illegal use of MPVs), it is not always easy to stop the alleged offenders and prove the elements of the offence to the required standard. For example, by the nature of extensive sites in the uplands it is difficult to prove that the alleged offender knew the land was a SSSI and that they intentionally or recklessly intended to damage or disturb the special interest. Additionally, it is very difficult to “police” such sites. English Nature has no powers to stop persons and demand names and addresses and thus identify offenders. Therefore, unless we can effectively engage and work with partners we are often limited in the enforcement action we can take.

4.2.8 The Countryside and Rights of Way Act extended our powers to make byelaws on SSSIs. Whilst we acknowledge that byelaws can be a useful provision in controlling third party activities, we face the same practical problems of “policing” sites and activities. However, where appropriate we will not hesitate to use them. We understand that Defra will be drawing up model byelaws and we welcome being part of the consultation exercise.

4.2.9 Whilst neglect is not wildlife crime *per se*, powers have been provided via management schemes and notices to ensure that SSSIs do not suffer simply from a lack of appropriate management where necessary voluntary management is not forthcoming.

4.2.10 In summary, English Nature welcomes the improved legislative powers. Our recent experience in implementing this legislation has, however, highlighted areas that, in our opinion, would benefit from the provision of further new legislative powers or amendment of existing provisions. Such changes would avert potential damage and disturbance and allow us as a prosecuting authority to deal with enforcement cases more effectively and efficiently.

4.2.11 The additional powers proposed are akin to those currently available to other enforcement bodies, such as the Environment Agency and Local Planning Authorities. English Nature believes it would be helpful to have the following powers to:

- stop people and vehicles within SSSIs and request names and addresses;
- require restoration following damage and disturbance to a SSSI, at the offender’s own cost, when it is not in the public interest to bring a prosecution;
- prevent activities being carried out which are in contravention of the legislation;
- demand statements to enable enforcement action to be taken and investigations to take place; and
- require information as to those persons having an interest in SSSI land.

⁸ offences that can be heard at either the Magistrates or Crown Court.

⁹ English Nature v Ennstone Breedon Ltd February 2004 (River Camel Valley and Tributaries SSSI, Cornwall).

¹⁰ Awaiting Courts consideration and decision on application of a Restoration Order in English Nature v Hall April 2004 (River Camel Valley and Tributaries SSSI, Cornwall).

¹¹ English Nature v Wickens 2003 (Sutton Lane Meadows SSSI, Wiltshire).

5. Q3 DO RESPONSIBLE BODIES WHO DEAL WITH THIS TYPE OF CRIME HAVE SUFFICIENT RESOURCES AND POWERS TO DO SO? DO THEY TREAT WILDLIFE CRIME WITH PROPER AND DUE GRAVITY?

5.1 *Introduction*

5.1.1 English Nature has resources to deal with the majority of wildlife crime in an appropriate and effective manner in our capacity as a prosecuting authority. However we recognise that we cannot tackle some aspects of environmental crime on SSSIs on our own eg in relation to activities by third parties. This type of environmental crime can be tackled by working with local communities, landowners, the general public and other agencies such as the police and local authorities.

5.1.2 On the species side, the police sometimes request certain levels of advice and assistance, that, due to budgetary constraints we cannot always provide. This in turn might reduce the effectiveness of enforcement action.

5.2 *SSSI: resources*

5.2.1 As we have mentioned earlier, we work with 32,000 owners and occupiers and this requires a relationship management role to achieve legislative compliance and protection of SSSIs. This positioning is important to us, as is the need for the long term management and protection of SSSIs. We consider that we are a firm but fair regulator in relation to our enforcement role and will use enforcement powers where appropriate in relation to offences on SSSIs. We believe that the resources we invest with those responsible for managing SSSIs should repay gains in protecting SSSIs and therefore reducing wildlife crime offences (at source) and the need to pursue enforcement action.

5.2.2 We are reassured by the fact that we have had to use our enforcement powers on very few occasions within the 4,111 SSSIs. Since 31 January 2001, we have dealt with 115 reported enforcement cases (46% of offences) involving SSSI owners and occupiers. We have taken three prosecutions against owners/occupiers of SSSIs under the new legislative provisions. We do not see this as a failure to use our enforcement powers, but of having a successful positive partnership with the majority of our customers.

5.2.3 We cannot realistically hope to enjoy the same relationship with those people who neither own nor occupy SSSI land but who commit offences within them (third parties). Although we will use our enforcement powers in such circumstances where we have the necessary evidence and it is in the public interest to do so, this type of activity has resource implications for the organisation. On our own we cannot “police” SSSIs throughout England, therefore we look to work in partnership with others, mainly the police, to assist us in the prevention and detection of this criminal activity. We are in the process of establishing pilot projects in three police regions, primarily aimed at tackling illegal MPV use within SSSIs.

5.2.4 We believe that pro-active enforcement action also plays a beneficial and positive role in raising awareness and educating others in relation to this type of wildlife crime. A good example was a “motorcycle awareness day” aimed at scrambling enthusiasts, organised by a local authority with input from the police, English Nature, local scrambling clubs and bike dealers. The event was organised to promote safe and legal motorcycling.

5.3 *SSSI: powers*

5.3.1 As stated in our response to question 2, whilst we now have the legislation to protect and enhance SSSIs, we have highlighted some areas of the legislation that would in our opinion benefit from amendment, or provision of new powers, to reflect the problems we have come across in dealing with enforcement on SSSIs.

5.4 *SSSI: principles*

5.4.1 As a prosecuting authority we are guided by the Code for Crown Prosecutors, Home Office guidelines relating to cautioning and the Police and Criminal Evidence Act. English Nature staff deal with enforcement cases using internal guidance giving details of the action to be taken in relation to the varying degrees of damage or disturbance to SSSIs and continual non-compliance. A dedicated Enforcement and Protection Unit will progress and manage high level enforcement cases and is always on-hand to provide general advice and guidance. We have clear and strict controls and levels of delegation on the use of enforcement options and how our staff are expected to use them in relation to the gravity of the offence committed.

5.4.2 It should be noted that we will imminently be publishing our public policy statement on enforcement.

5.4.3 The importance that we put on our enforcement role is demonstrated by the following principles and considerations that we take account of in any enforcement case:

- investigate all reported incidents of damage or disturbance to SSSIs fairly and quickly;
- judge all cases individually but consistently;

- have a balanced approach in deciding the level of enforcement action against the nature and seriousness of the offence, the attitude of the person responsible and the damage or disturbance to the SSSI, in a local, national and international context;
- take account of any mitigating factors relating to the case;
- be open when dealing with all enforcement cases, decisions made and action taken;
- create an understanding of the legislation and responsibilities, and clearly explain this and any restoration needed;
- where damage is being caused by other people, work closely with owners and land managers of those SSSIs to decide the most appropriate course of action to take;
- work with and support other enforcement agencies to encourage the use of appropriate powers to tackle environmental crime; and
- in all cases, consider the overall benefits to nature conservation.

5.5 SSSI: enforcement options

5.5.1 As with other prosecuting authorities we use a range of enforcement options to deal with offences on SSSIs. Depending on the circumstances of the incident, we may use one or more enforcement options at the appropriate time during different stages of the case.

Prosecution

We have a discretionary power, not a duty, to prosecute for offences relating to SSSIs. We will only prosecute where the evidential and public interest tests are met. For example, a recent prosecution¹² was taken against a SSSI occupier who had committed an offence by not obtaining English Nature's consent for causing works to be carried out on that site which resulted in significant damage to nationally rare plant species. If we prosecute, we will always try to recover the costs of the formal investigation and legal proceedings.

Caution

In cases where we are of the opinion that a prosecution is not appropriate but a high level of enforcement action should be taken, we will then consider a caution. We will only consider a caution where the necessary evidence we have collected from the formal investigation shows that there is a realistic chance of conviction.

Formal investigations

In certain circumstances, for example where the level of damage is significant or where continual non-compliance with the legislation occurs despite previous enforcement warnings, we may decide that a formal investigation is appropriate to ascertain the full facts of the case. Following a legal assessment of the case we will then decide whether we have the necessary evidence to pursue the matter with a higher level of enforcement action and whether it is in the public interest to do so.

Letters (solicitor, Director, Enforcement Unit, Area Team)

If we send an enforcement warning letter we may ask those responsible to agree that the unauthorised activities will stop and restoration work will be carried out. We will take account of any co-operation when deciding on the appropriate action to take. However, those responsible will not avoid eg prosecution, just because they have carried out, or offered to carry out, restoration work.

Civil mechanisms

In certain limited circumstances, the only option to prevent damage, disturbance or destruction to SSSIs is for English Nature to commence civil proceedings eg injunctions or possession orders. We will only commence these proceedings after voluntary co-operation or other enforcement methods have been explored and there is still a serious threat to the SSSI.

¹² English Nature v Gold 2005 Ltd December 2003 (West Cornwall Bryophytes SSSI, Cornwall).

6. Q4 IS THERE SUFFICIENT DIALOGUE AND CO-OPERATION ACROSS GOVERNMENT AND AMONGST THE VARIOUS BODIES RESPONSIBLE FOR DEALING WITH THIS TYPE OF CRIME?

6.1 *SSSI and species*

6.1.1 From a historic perspective we consider that co-operation and dialogue has not been that good in dealing with the prevention, detection and enforcement of wildlife crime. However, there is now established dialogue with some bodies, such as the police, which is a positive move to achieve co-operation and to benefit nature conservation.

6.1.2 Although we feel that there are areas, probably more at local level currently, where this co-operation is happening, we also feel that there is benefit in taking a more strategic view of this nationally. This would identify areas of best practice which can be used as a model and also identify where we can encourage more partnership working to tackle wildlife crime.

6.1.3 Up to 60% of SSSI land is owned or managed by Government or by other public bodies, or by private companies that have statutory conservation responsibilities. Parliament greatly strengthened the environmental obligations on these bodies through the Countryside and Rights of Way Act. English Nature advises these bodies, as we do with other owners and occupiers, on their responsibilities to hopefully avoid instances of damage and disturbance to SSSIs and the need to pursue criminal prosecutions and penalties. We also expect that these bodies who are responsible for regulating and enforcing legislation affecting SSSIs and species should consider their obligations and powers to benefit nature conservation.

6.1.4 As mentioned before, illegal activities undertaken within SSSIs might also be in contravention of other legislation, such as the Road Traffic Act, Land Drainage Act or planning legislation. Where these incidents affect SSSIs, we recognise the benefit of engagement and co-operation with other enforcement bodies, such as the police, Environment Agency and Local Planning Authorities, to decide upon the most appropriate and effective legislation and enforcement action to take to benefit nature conservation. For example other bodies may have the legislative powers to be able to secure restoration of the SSSI, unlike ourselves, who would have to successfully prosecute and apply to the Court for a restoration order to ensure that the restoration work to the SSSI was undertaken and enforceable.

6.1.5 In a recent incident of damage to a SSSI, which was in breach of both the Wildlife and Countryside Act and the Land Drainage Act, both English Nature and the Environment Agency brought prosecutions¹³ at the same time under the respective legislation. It is hoped that by bringing joint enforcement action such as this, it demonstrates the seriousness in which these offences are held, by those enforcing the legislation.

6.1.6 At a national level we have already met with the representative of both the Association of Chief Police Officers and PAW. We have made a commitment to work with both the police and PAW on their conservation objectives as they apply to England. This includes the persecution of hen harriers; unlawful development and its implications for bats; SSSI habitat protection, in particular the problems associated with third party off-roading activities; illegal dumping of motor vehicles and illegal burning.

6.1.7 Following the identification of the hen harrier as a priority for action, there has been good co-operation between the various statutory and voluntary bodies involved in the monitoring of the populations and those with responsibility for tackling illegal persecution. The police launched “Operation Artemis” this year which is a high profile project to try to tackle the illegal persecution of hen harriers, which we welcome. English Nature and voluntary organisations such as the RSPB and Raptor Study Groups have invested considerable resources into gathering information and identifying the factors limiting hen harriers.

6.1.8 English Nature is producing a “toolkit” for the police forces to use which will detail: offences under the Wildlife & Countryside Act 1981 as they apply to both species and SSSIs; provide warning letters to give to offenders; information notices to be used on site and recording forms to enable information to be put on our database of third party vehicle activity. In some areas of the country English Nature already benefits from working with the police, in particular in tackling illegal off-roading activities. In some cases this has resulted in joint operations on SSSIs where the police have taken enforcement action under the Road Traffic Act. We are also actively establishing pilot projects where both bodies can work together at either force or regional level on both species and SSSI offences.

6.1.9 Whilst we appreciate that the judiciary do not come across this type of offence on a regular basis we have been pleased with the sentences that the Courts have given to the three prosecution cases that we have taken under the new legislation in relation to damage to SSSIs (the fourth is awaiting sentence¹⁴).

6.1.10 We are currently working with the Magistrates Association to have input into their revision of the “Costing the Earth” toolkit to include information on the Wildlife & Countryside legislation as it applies to offences on SSSIs, which we hope will raise the awareness amongst Magistrates of this type of wildlife crime.

¹³ English Nature v Hall April 2004 (River Camel Valley and Tributaries SSSI, Cornwall).

¹⁴ English Nature v Hall April 2004 (River Camel Valley and Tributaries SSSI, Cornwall). Guilty plea made before the Court on 21 April 2004 and adjourned for sentencing on the 6 May 2004.

6.1.11 Given the infrequent number of these types of cases we are conscious of the need to present the Court with detailed information on the scientific interest of the SSSI and the gravity and impact that the offence has caused on the habitat in a local, national and international context (if applicable). Where appropriate we will always submit to the Court an application for a restoration order, which if granted, will put in place appropriate measures to ensure that the area damaged or disturbed would be restored. We will also make the Court aware of any financial gain that we believe the offender has accrued or appears likely to accrue as a consequence of the offence.

Annex 1

<i>Contravention</i>	<i>Offence</i>	<i>Fine at Magistrates Court (summary offence)</i>	<i>Fine at Crown Court (indictable Offence)</i>	<i>Time limit for bringing proceedings</i>
No notice or consent given or obtained by owner/occupier under section 28E ⁽¹⁾	Section 28P ⁽¹⁾	Up to £20,000 per offence	Unlimited	None
No notice given by section 28G body under section 28H ⁽¹⁾	Section 28P ⁽²⁾	Up to £20,000 per offence	Unlimited	None
Section 28G body having complied with section 28H ⁽¹⁾ then does not give notice of the date it proposes to start the operations under section 28H(f)(a)	Section 28P ⁽²⁾	Up to £20,000 per offence	Unlimited	None
Section 28G body having complied with section 28H ⁽¹⁾ does not carry out the operations in such a way that minimises the damage	Section 28P ⁽³⁾	Up to £20,000 per offence	Unlimited	None
Any person/third party damage destruction or disturbance under section 28P ⁽⁶⁾	Section 28P ⁽⁶⁾	Up to £20,000 per offence	Unlimited	None
Failure to comply with the requirements of a management notice under section 28K	Section 28P ⁽⁸⁾	Up to statutory maximum currently £5,000	Unlimited	None
Failure to comply with the requirements to give notice of change of owner or occupier under section 28Q	Section 28Q(4)	Currently up to £200		Six months from offence being committed
Failure to comply with a restoration order under section 31 (following an offence under section 28P)	Section 31 ⁽⁵⁾	Up to £1,000 plus up to £100 per day of continual non-compliance		Six months from offence being committed
Obstructing an officer	Section 5	Up to £200		Six months from offence being committed
Failure to comply with byelaws	Section 28R and 20 of NPACA 1949	Up to £500		Six months from offence being committed

Annex 2

<i>Dates when conviction made</i>	<i>SSSI name, County</i>	<i>Nature of operation(s)</i>	<i>Offence</i>	<i>Outcome</i>
25 Feb 2003	Sutton Lane Meadows, Wiltshire	Excavation of existing pond resulting in spoil dumped onto grassland	Offence under section 28P ⁽⁶⁾	Successful prosecution—fined £4,000, £1,000 costs to EN and to comply with the Restoration Order
2 December 2003	West Cornwall Bryophytes—Tolgus	Tin Works	Unauthorised vegetation clearance, storage & dumping of materials Offence under section 28P ⁽¹⁾	Successful prosecution—fined £2,000, £10,000 costs to EN and to comply with the Restoration Order (cost estimated at £2,000)
16 Feb 2004	River Camel Valley and Tributaries, Cornwall	Unauthorised vegetation clearance and dumping of material	Offence under section 28P ⁽¹⁾	Successful prosecution—fined £13,000, full costs (approx £6,000) to EN and to comply with the Restoration Order
21 April 2004	River Camel Valley and Tributaries, Cornwall	Unauthorised removal of river gravel, river bank works and clearance of vegetation	Offence under section 28P ⁽¹⁾	Successful prosecution (guilty plea)—sentencing will take place on 6 May 2004

Prosecutions brought by English Nature under the Habitats Directive (Regulation 23)

11 June 2001	Dungeness	Kent	Unauthorised activity-damaging shingle (3rd party)	Pleaded guilty, fined £2,000 with £1,200 costs
13 May 2002	Dungeness	Kent	Quad Biking (3rd party)	Two defendants pleaded guilty Given conditional discharge—no financial penalty imposed

Witnesses: **Dr Tom Tew**, Regional Director South East England and General Manager Designated Sites, **Mr Martin Fox**, Site Protection Manager, **Ms Alison Flowers**, SSSI Enforcement Officer, and **Ms Johanna Oldaker**, Species Legislation Officer and Licensing Officer, English Nature, examined.

Q1 Chairman: Good morning. Welcome. We notice in your memorandum that the outcome of a successful prosecution in relation to the unauthorised removal of gravel from the River Camel was due on 6 May for sentencing. Could you give us an update as to what resulted?

Mr Fox: The case was actually adjourned for sentencing to June. That was a joint case between ourselves and the Environment Agency. When we know the outcome we will of course let you know what it is.

Q2 Chairman: We would be very interested to know the outcome.

Dr Tew: The court was busy. It is an anti-climax, but . . .

Q3 Chairman: It is a shame. Keep trying. We are trying to get a feel for the scale of wildlife crime. Throughout the evidence we have been receiving—and thank you for your written evidence, by the way—a theme has emerged that the lack of a

national database to record wildlife offences means that it is very difficult to get any real idea of the scale of the problem. Would you agree with that?

Dr Tew: Yes, we do agree with that. If I may deal with two things separately, species crime and site-based wildlife crime, as I think it is easiest to take them in turn. On species crime it is hard for us to comment because we are not the enforcing authority, but certainly we believe that for some species, particularly rarer species, such as perhaps hen harriers or red kites or bats, there is no doubt that wildlife crime can have a significant effect on the population. It probably has a moderate effect on a range of other species, on badgers and great crested newts and so on. For sites, the scale of that we are much more in touch with because we are the enforcing authority and we can tell you how many enforcement cases we have progressed. The overall scale is that it only affects about 0.5% of the sites by area. One might be led to think therefore that this was a trivial issue and not important but that is not the case. I hope the Committee will not jump to that conclusion because for some species which are restricted to very small numbers of sites an

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individual incident can have clearly a very damaging effect on the whole species. Some of the cases we have prosecuted (bryophytes in Cornwall or marsh orchids in Wiltshire or shingle on Dungeness) are instances where the crime is having a really dramatic effect on the individual habitats. But you are right, Chairman, the issue about recording is a key one for us. The majority of crimes, as you know, are not recordable offences. We would very much welcome a change in that status, because there is a legislative route whereby, if they were recordable, then there would be a national database. Another option which is slightly less legalistic is the PAW initiative. We are strong supporters of that initiative which is to set up a UK wildlife incident database. That, in the absence of a change in legislation, would be a good backstop. Of course, we are after an ability to have a strategic view on wildlife crime so that we are able to analyse trends and threats and therefore prioritise. At the moment we feel we and others are slightly lacking in that strategic view.

Q4 Chairman: Who do you think would be best placed to set up and run a national database?

Ms Oldaker: I think the best place might be the National Wildlife Crime Intelligence Unit which was set up in 2002. They are already established, so that might be one possible outcome, although perhaps the PAW secretariat might be able to give a better opinion of which is the better place.

Q5 Chairman: Shingle at Dungeness, what was going on there?

Dr Tew: Two third-party offences under regulation 23, in which I think eel fishermen were using all-terrain vehicles and ploughing across vegetated shingle. It does not sound a very exciting habitat but it is one of those that takes centuries to form and is destroyed overnight. It is very sensitive to damage. There are details in the back of our evidence.

Q6 Chairman: Thank you. In your memorandum you produce some pretty horrifying figures. For example, incidents of damage by owners and occupiers has increased, you say, by 74% between January 2001 and April this year. The rise in reported incidents of damage by third parties is even worse: 168% increase over the same period. Does this reflect a genuine underlying increase in misdemeanours or better reporting and better attention by the authorities?

Dr Tew: Of course, you have put your finger on the crux and it is actually difficult to tell. On the one hand we have better recording systems these days; on the other hand, the CROW Act has brought in more offences, so it may just be there is more recording. But, to try to answer your question, we do believe that wildlife crime is increasing, and particularly third-party crime.

Q7 Chairman: What is the reason?

Dr Tew: The bulk of this is vehicular damage to wildlife sites. We think there is just an increasing use of 4x4 and multipurpose vehicles out on to sites. English Nature do not want to give the impression in any way that we are against access to the countryside. We are not. We are fully in favour of access to the countryside and it is great to see people out and enjoying the countryside but there is an issue about appropriate enjoyment and about educating and informing people about good ways to enjoy the countryside without damaging it.

Chairman: Sitting in 4x4 trucks is hardly an environmentally friendly way to enjoy the countryside.

Q8 Mr Thomas: On that point of 4x4 damage, I have recently seen something myself in my own constituency where there is a problem. There is a DEFRA consultation which has just ended on access. I think it is called byways open to all traffic. Do you think that consultation and the measures proposed in that would be useful in trying to tackle some of the issues which you just mentioned?

Mr Fox: It would certainly help to restrict the class of vehicles that can use the so-called green lanes. I think the thrust has been at the moment to base establishment rights on historical records, so you could be in the position where someone relies on the fact that someone 100 or 200 years ago used a horse and cart on a route, therefore that translates into a motorcycle now. I think anything that can ensure the correct level of access, the correct level of vehicle is used on the route, must be beneficial.

Q9 Mr Thomas: Is the problem one where the routes themselves could be close to an SSSI or traverse an SSSI, or one where people use these routes to get access to upland and moorland and then just go off wherever they want?

Mr Fox: I think the issue is that, whilst people legally use routes, as new routes are reconfirmed—and we should say, “Once a highway, always a highway”—there is more opportunity for a small minority to deviate from the route because people like an adventurous day out; they do not want to follow a strict line that goes from point A to point B. So there is the opportunity there, I think, for a small minority to stray off the main route.

Dr Tew: But you are right, these routes into the heart of the big SSSIs open up areas to potential disturbance, and when you have sensitive species like ground-nesting birds or rare reptiles they are vulnerable to disturbance. We do not think this is a major issue. I do not want to leave the impression that this is a dramatic issue, but in isolated circumstances it can be serious.

Q10 Chairman: Could you give us an idea of what proportion of reported incidents of damage turn out to be actual incidents of damage?

Dr Tew: You have stumped us, Chairman. We do not have information on that. We could try to follow up.

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Q11 Chairman: I am trying to get a feel for the way you relate to the people who bring concerns to you. Perhaps I could ask a slightly different question: How many of the cases in which you are involved are initiated by you and how many by somebody else who comes to you and says, “We have a problem”?

Ms Flowers: It is very often the case that some of the reports are made by the general public. In those circumstances, we would try to work with the general public local forum groups, local police forces and local authorities to try to raise the awareness to various users of the sites, so that they hopefully can then see that where they are going is not the right place. If the minority then carry on we can then decide on the appropriate course of action to take if that is required.

Q12 Chairman: You say that is very often how it works, but presumably it is almost always that way, is it not? Because you cannot have English Nature enforcers crawling over the countryside waiting for people to do something wrong. We are really entirely dependent on the goodwill and interest of the public to bring these matters up.

Dr Tew: We are greatly dependent on it, but of course our site managers at national nature reserves are very sensitive to looking for damage, so they will certainly have that in mind.

Ms Flowers: We obviously recognise that we do have a problem in actually policing the sites on the ground. That is why we look to other people to help us, such as the police, and to see if they can use the Road Traffic Act legislation as well in certain cases.

Q13 Sue Doughty: In your evidence you point to some successful prosecutions, but the numbers are relatively small in comparison to the numbers of offences reported. What determines whether or not you are going to take a case forward to prosecution?

Mr Fox: Obviously, as a prosecuting authority we take our role very seriously. In that, we follow the Code for Crown Prosecutors, and there are two clear tests within there. There is the evidential test: Do we have the correct level of evidence to take the matter to court? and there is the public interest test: Should we be taking this to court? Whilst we do not always take a prosecution, so far those cases which have arisen, those seven prosecutions, are cases which met the test and ended up in court. We have other mechanisms to deal with enforcement issues as well, such as cautions and warning letters. With cautions, we follow the Home Office guidelines.

Q14 Sue Doughty: What are the barriers you find in bringing forward a successful prosecution?

Mr Fox: I think we would perhaps group this into two: the legislation and the nature of the offence. In the legislation, the Police and Criminal Evidence Act, because of the nature of the offence and how suspects are approached—we do not arrest them—we are not at the police station, so in fact they are

not obliged to take part in the interview. Clearly, if somebody does not cooperate, you are then having to fall back on the evidence you have to hand in deciding whether you can take a case forward. We have no powers to stop people and demand names and addresses. It might seem an obvious point but, of course, if we cannot demand names and addresses, we cannot ascertain who the offender is, we cannot serve papers on that person. In relation to the third-party offence under Section 28P(6), we have practicalities in proving beyond reasonable doubt that a person intentionally or recklessly damaged the site or that they in fact disturbed a species that was present, and in fact we have to show that they knew they were in an SSSI when they committed that act. So there are three key points there. In relation to where the offences take place—and we have touched on this before—often these things happen in remote locations, in anti-social hours; there may be a lack of witnesses or in fact a reluctance for witnesses to give evidence. So I think that is a key point. In relation to the third parties, we have practicalities with policing really. Sometimes the criminal activities are ongoing over large areas, large upland sites, so again we need to cooperate with others to address those issues. I think that would possibly be the main points there.

Dr Tew: In terms of success, we of course want to see the prosecution work, and we want to see the court take substantial action because we want fines to act as a deterrent, but in fact the main one for us is that restoration orders are made, so that the site is repaired as much as possible, so that wildlife is restored. The overall thing I would like to add is that a prosecution is in itself a failure because a prosecution in itself means that sites have been damaged. We would rather not see any prosecutions. We would rather see no one damaging these sites, but where damage is occurring we believe we are firm but fair regulators.

Q15 Sue Doughty: Going on to what happens when you have a successful prosecution—and you have touched on restoration orders—when you are pushing for a restoration order, do you actually take into account the offender’s ability to do the job, whether they are able to afford it or have the wherewithal in other ways to make good that damage personally? How far does that come into account?

Ms Flowers: Just to cite one example, in the Sutton Lane prosecution case, because of the management that was required to reinstate the grassland, we felt that needed to be carried out by a specialist contractor with supervision from ourselves. That was written into the restoration order that was granted by the court. In some cases, it may well be that the site is simply left alone by the owners and in other cases it may well be, as I have described, that it requires appropriate management by specialist contractors.

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Dr Tew: Of course, under caution people can agree to accept a caution and agree to restore the site. That is an effective way of dealing with the issue that may not involve prosecution.

Q16 Sue Doughty: If in fact you do get a conviction and restoration is not what is going to happen here, are you satisfied about the level of punishment? Do you think it is really based on the person's ability to pay, that it is sufficiently punitive, that it takes into account the impact of that offence on the habitat or species?

Mr Fox: With the cases we have had to date, certainly under the CROW Act we have been satisfied with the level of penalty. We have also included the penalties in the annex to our evidence. The courts have taken the matter seriously and they have dealt with it in a robust way.

Q17 Sue Doughty: Looking at the situation, if you have robust penalties and you are reasonably happy about restoration, we then go on to re-offenders. Do you have any measures yourselves about prevention of re-offending? You were talking about a failure if these things come to court because the damage has taken place in the first place, do you set targets? Do you know how many people re-offend? Do you have any follow-up to stop re-offending?

Dr Tew: The issue on these wildlife sites is that the management of the site is going to depend on the owner or occupier or land manager. It is a very strong emphasis for us in getting a good relationship with that owner or occupier. We do not want to have to keep going back, constantly bringing enforcement actions. We will of course go out of our way to make sure that a good relationship is maintained.

Mr Fox: It is quite difficult to measure how effective deterrents are. In our cases, we do obviously keep a record of all the incidents reported to us, we keep a record of the prosecutions taken, and we can take those factors into account when we address issues again if they arrive on sites. Sometimes there are cases where there has been a piecemeal technical infringement of the legislation. We start off by dealing with things with warning letters and if the damage becomes at such a level that further enforcement action is taken, we then look at the next level up of action which might actually be the prosecution route. In terms of figures, we would not have figures as such, but we would know if somebody did re-offend on site.

Q18 Sue Doughty: Then we have the situation when relationships break down altogether; in other words, you have done your best with the owner to sort it all out but you do have the powers of compulsory purchase in the case of an SSSI which is at risk of further damage. How often do you have to use these powers?

Dr Tew: Compulsory purchase power has been used once since 1949. That was in 1979 and it concerned a large national nature reserve on the river with a small piece of land in the middle of it

and no one knew who owned it. Eventually, after a great deal of digging around, it was compulsorily purchased, and I do not think they ever did find out who owned it. That gives an indication, I think. Never say never, but it is very, very rarely used. It raises a question of whether it is a useful tool. We believe it is, however, because it certainly focuses the mind of the people we are talking to. If they are aware the powers are there, it gives you that very severe backstop that you might need. But for us it is absolutely a last resort.

Q19 Chairman: Do you threaten it quite often?

Dr Tew: We point out that the powers are there in the legislation. I do not think English Nature would ever threaten anyone.

Mr Fox: Obviously since the strengthening of the provisions brought in by CROW, we now have a range of mechanisms that we did not have before to address issues on site, so we have broader prosecuting powers, management schemes and management notices which are there now to address neglected sites. Management notices come with an offence of failing to comply with that notice, so there are steps now that we can take without actually going down the CPO route.

Q20 Sue Doughty: I was going to ask you about your processes for looking after those SSSIs, but clearly you are doing everything you can to avoid taking them on. Do you think you are likely to use this more in the future? I appreciate this is a measure of last resort.

Dr Tew: We would hope not.

Q21 Sue Doughty: It sounds as if you are very comfortable with the activities you are doing. We know from earlier written evidence that SSSIs are occupied by a variety of different private individuals, corporations, local authorities or government departments. Who are the worst offenders? In other words, who do you have the major problems with? What are you doing to get them into line out of that wide range of owners?

Dr Tew: If I may answer this question generically and then specifically. We have provided evidence to the Committee which shows the condition of SSSIs under the ownership of various different bodies ranging from MOD to local authorities to the Forestry Commission and because we have a very clear idea of the condition of SSSIs we are able to say what percentage of the sites in any one particular ownership is meeting or not meeting the targets. When you look through those figures, you see that the worst managers in percentage terms appear to be the water companies and Ministry of Defence, but I would like to qualify that remark strongly because that is actually reflecting the pattern of ownership. There are several big issues affecting SSSIs, such as climate change and coastal squeeze, or historic atmospheric pollution, or agricultural incentives to encourage overgrazing, which are actually outside the control of the landowners and so it is unfair to tarnish the reputation of those major landowners with the

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inaction to get the estate into good condition. In actual fact I would say that, via the DEFRA working groups on SSSIs, all of the major landowners now are working very positively and very well with us and with DEFRA to get the condition of sites back into good condition. That is my generic answer. My specific answer in terms of wildlife crime is that the Section 28G bodies, which is broadly public bodies and includes local planning authorities, we have had to take enforcement action against those. We have sent eight enforcement letters to Section 28G bodies to remind them of their statutory obligations towards SSSIs, and in every case that has done the job, so we have not prosecuted any.

Q22 Sue Doughty: Thank you. You mentioned specifically MOD and the water companies. I ought to declare an interest, having worked for a water company at one stage promoting good care of their land assets to take account of conservation and biodiversity, but with the MOD and the water companies are you getting a better dialogue with them? You mentioned you also talk to people about being responsible. How is it going?

Dr Tew: It is going well. I have to say that the PSA target which focuses all our attention on the condition of SSSIs is proving a very effective lever in increasing dialogue. The attitude of these other public bodies to SSSIs has undergone a quantum improvement in the last two or three years and we greatly welcome that.

Q23 Sue Doughty: We have this issue though about the ones who are not doing so much. Are there any particular factors, such as they have a large amount of land? You mentioned that they are not responsible for the way the land is being used at any one time necessarily, but on the area of land or the fact that they have had it in ownership for a long time or a short time, is there anything in there which seems to be an aspect?

Dr Tew: Both of those things certainly figure. I think the key for me would be that these major landowners, public or private, tend not to be owning the land because they like owning land that is of high wildlife value; they are owning it for other reasons. They are owning it to drive tanks around on or to protect water catchments. The key is to make them aware of their obligations in conserving these nationally important wildlife sites. For me, the key is education and awareness and we are working hard in that respect.

Q24 Sue Doughty: We have talked about the sense of commission but what about the sense of omission and neglect. Do you have to deal with neglect or is it abuse to the area?

Dr Tew: Neglect or absence of management is a much bigger issue than damage, deliberate or otherwise, but the new powers under CROW allow us to deal with that. There is a process of management scheme, management notice and then management enforcement that is very helpful. We

are very pleased with those new powers under CROW. That for us was a major benefit from the new Act.

Q25 Chairman: On that issue, you feel you are nibbling away at the fringes of what is a very much bigger problem. I was struck by the fact that Plant Life, for example, reckon that in the last 50 years we have lost 98% of our wildflower meadows. Most of that has not been wilfully destroyed by people who do not like plants. It is not only neglect, is it? It is intensification of agriculture, urbanisation—all those issues. Our inquiry, it seems to me, is focused on a tiny part of what is a very much bigger problem.

Dr Tew: Tiny but important. Remember that the sites themselves only represent 7% of the land area of the country, so we are only talking about a small area, and, for sure, there are bigger issues in a wider environment. If you are talking about farmland birds or lowland meadows, then, yes, you do have to start looking at wider policy measures, particularly agro-environment measures. But, in terms of the sites, before CROW we were nibbling and now we are biting.

Q26 Chairman: You are sound-biting!

Dr Tew: The condition of SSSIs has gone from perhaps 55% favourable three years ago and we are now 63%. That 8% shift I think has been the biggest forward shift in the condition of our nationally important sites for a generation.

Q27 Mrs Clark: I would like to start off by saying how very pleasant it is to see you back with us so soon.

Mr Tew: Thank you.

Q28 Mrs Clark: I do not think I have sat through a session here for a long time when we have had witnesses who seem to be so thoroughly in agreement with what the Government is doing. I am glad you are now biting because of CROW and also because you actually praised the PSA target—which is what I would like to start off with. It states that 95% of SSSI land area should be in what it calls “favourable” condition. As an ex-English teacher that word seems a bit woolly to me. What does it mean? What is “favourable”?

Dr Tew: I fear I do not have time to run through the scientific definition of favourable, but there is a major point to be made here. Favourable can just be that the site is in good condition, in “good nick”, so that if a biologist walks on to the site he sees the birds and the plants and the animals there that say to him, “This site is in good condition.” We have vast technical guidance as to what this actually means and our conservation officers are looking at the percentage of their ground cover, the height of the heather, the number of important invertebrates, so there is a long list of technical guidance about what “good nick” means.

Q29 Mrs Clark: How are we doing against that definition and that target?

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Dr Tew: At the moment 63%. As of 1 May, exactly 63.0%.

Q30 Mrs Clark: Are you relatively satisfied with that?

Dr Tew: Last financial year, we started at 58.9%; the target was to hit 62% and we hit 62.9%.

Q31 Mrs Clark: Earlier on the Chairman was talking about enforcement officers and saying that it surely was not feasible for English Nature to have loads and loads, bands, armies of enforcement officers going up and down the country. I do not necessarily take that view. I take the view that perhaps there should be more rather than less. Perhaps you would like to tell us how many you actually do have, the precise number nationwide, then going on to the sort of preparation and training that they are getting and the remit of their task in terms of scale and area. Is it in fact easy to get people to do this job?

Dr Tew: We do not have a job description of local enforcement officer. We have conservation officers which are based in our area teams and work across the country and we have our field staff, our site managers, who work across our national nature reserves. I confess I do not have those figures off the cuff but I estimate perhaps 250 staff across the country doing those jobs.

Q32 Mrs Clark: Not very many.

Dr Tew: Not very many. Only a small part of their job is to spot wildlife crime and damage to sites and there are 4,000 SSSIs covering over one million hectares. That means that for some of those sites we will only visit once every four or perhaps six years. Six years is a minimum, because we have an internal target whereby we will visit a site every six years, and for the majority of sites we visit much more frequently, but you are right if you are alluding to the fact that noticing and reporting damage may be an issue. That is why we feel strongly that we need to work in partnership both with the police and with other voluntary bodies.

Q33 Mrs Clark: We have talked about CROW and have praised the strengthening of the powers. Are there any barriers to you using the enhanced powers fully?

Dr Tew: It is good legislation but they say no legislation is perfect. There are a few items that we would like to raise where we feel, both under part 1 and part 2, the powers could be improved.

Q34 Mrs Clark: In what sort of way?

Ms Oldaker: Under part 1, which deals with species issues, where we are not the enforcement body, from the powers point of view and what the legislation actually says we are broadly happy with what the legislation contains, but one area that perhaps needs attention is dealing with non-native species, because the release of non-native, invasive species is recognised as a major threat to biodiversity and the legislation needs to be

amended to tackle that issue. Obviously legislation is only one of the different ways that we are going to tackle that issue.

Q35 Chairman: Let us be clear about non-native species. We are talking about flora rather than fauna, are we, or both?

Ms Oldaker: We are talking about both, but the legislation is particularly weak in relation to flora. It is an offence already to release many fauna that are non-native but the legislation is particularly lacking in relation to plants and needs to be looked at in relation to non-natives. That is something of which DEFRA are already aware. They have had a review of non-native issues but the legislation is one of the issues that needs addressing.

Dr Tew: American mink pushing out water voles; American signal crayfish pushing out our native species. There are good animal examples.

Q36 Chairman: Alien bluebells.

Dr Tew: Yes, Spanish bluebells.

Q37 Chairman: It gets a bit dodgy, this conversation!

Mr Fox: Could I take a step back to when we were talking about enforcement officers because it would be remiss of me to skip over the point. We do have an enforcement officer and an assistant enforcement officer who sit within the Site Protection Unit, so in that context we have two officers who deal with the process of taking forward enforcement cases. Moving on to part 2, we have mentioned some of these things before: stopping people in vehicles within SSSIs to request their names and addresses we have touched on and it would be very handy for us, for example, to be able to formally speak to a contractor and say, "Hello. What is your name? What are you doing here? Who is employing you?" That is one key issue for us. Actually to be able to require restoration following damage to an SSSI without having to take a court case. As we say, we are reliant upon voluntary restoration. It would be nice if we had something like the local planning authorities have in relation to historic buildings, to be able to serve a notice saying, "Please restore this site because you have done this." There would obviously be possible powers of appeal that came out of that, but that is something to address at a later date. Also, if we look at preventing activities being carried out which are simply a breach of the legislation: if somebody is about to commence something or they have just started to do work on a site, we would look at that as being akin to a local authority stop notice in relation to planning. It would also help us if we could demand statements from people. That is perhaps a more tricky issue because there is the Police and Criminal Evidence Act that says we cannot do that but it might help us if we could speak to people and say, "We require you to give us a statement because you are the contractor on this site, who has employed you? How long have you been here?" Also, in relation to being able to require information of persons having an interest

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in SSSIs, sometimes land for various reasons is not registered with the land registry. It might have been in the family for a long time and it has passed through various generations, although a new occupier might be on the site, and it might there be handy, if we go through all the routes of doing the land registry search and are unable to find out who the owner or occupier is, possibly to be able to affix a notice to ask if they would come forward and identify themselves. These points we make in the evidence. I was comforted to see that the Environment Agency also made similar points to ours within the Environmental Justice Project which came out previously.

Dr Tew: I do not think these are harsher laws, Chairman; I think they are better laws and give us streamlined, more effective, quicker powers.

Q38 Mrs Clark: I was just thinking that at some point in the future we ought to do an inquiry into the operation of the CROW Act because you have given us a lot of ground to think about here. In some of your evidence you go into detail about the circumstances in which an occupier or indeed owner of an SSSI could actually take the case up to the Secretary of State against you, against a decision you have come down in favour of. Is this frequent? In what circumstances do you think the Secretary of State might support the owner or occupier rather than yourself?

Ms Flowers: That would be in relation to the notice of consent regime in Section 28 of the Wildlife and Countryside Act. There is a route of appeal there.

Q39 Mrs Clark: Could you tell us a bit about it.

Ms Flowers: It is a formal notice and consent mechanism. Owners and occupiers are legally required to give us notice before they carry out activities on SSSIs. We now have the enhanced power through the CROW Act to be able to refuse consent, condition the consent, or give a straightforward consent if we are happy with their proposals. If we refuse the consent or we condition the consent, there is a right of appeal and that appeal can be heard by the Secretary of State. There is also a route of appeal in relation to management notices that we serve as well. I do not have the figures on the number of appeals that we have had through on the notices consents, but I can say on the management notices that as we have not served any we have not had any appealed as yet.

Dr Tew: Once again, I think we would view that as a failure on our part to communicate effectively with the owner and occupier about the value of wildlife and the reasons we would like it to be managed properly.

Q40 Mr Thomas: Could I ask a general question about all the evidence we have heard so far. It has all been about England and I wondered how you coordinate with the bodies in Scotland, Northern Ireland and Wales—in fact I am not sure what the situation is in Northern Ireland. Do you coordinate

with them on these matters? Do they have broadly similar concerns? Are there specific national or regional differences in these wildlife crime issues?

Ms Oldaker: From a species point of view, we do get together with CCW, SNH, the Department of Environment Northern Ireland, and we met with the police, because the police asked us particularly to identify the nature conservation priorities for their wildlife enforcement work and on a national level we agreed the national priorities (that is, the particular species that were most at threat from wildlife crimes) so that we could focus the police's limited efforts. But we obviously need to follow that through at more regional and local levels as well. The PAW initiative is a nationally based initiative and it does capture people from all corners of the UK.

Q41 Mr Thomas: Also the point you have just been saying about the possible changes in legislation that would help you, presumably, as far as you know, that would be shared by the other agencies as well.

Mr Fox: I do not know if we can actually speak on their behalf but I am sure they will make their views known. I should just say, under part 2, that I was party to that with Jo, at the same meeting we set our own priorities there. The legislation in Scotland is changing, as it has in Northern Ireland, and we recently have had enforcement officers visit us to find out how we do enforcement so that they could take away ideas, and we are in contact with those people.

Dr Tew: We hope to ensure best practice lessons are learned both ways across the border, and of course there is the JNCC, which is the UK coordinating body, which serves as a formal forum for that to happen.

Q42 Chairman: There are quite a lot of different organisations with different powers and responsibilities involved in this area. Do you think that is a disadvantage?

Ms Flowers: One of the principles we work to in enforcement action is working with the other agencies as well, particularly when incidents have happened on site, so that we can decide on the most appropriate enforcement action to take and who has the most appropriate powers. It may not always be English Nature that takes the enforcement action as such.

Q43 Chairman: You are not conscious of duplication of effort or gaps in the regime caused by the fact that there are discreet lines of responsibility involving different organisations.

Dr Tew: I do not think there are too many cooks involved, no, but I would have to say that that was not necessarily due to terrific communication in the past. I think more effective dialogue is something we are looking forward to, just to make sure that is not the case.

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Q44 Chairman: In relation to that specific issue, because I noticed in your memorandum you said the dialogue had not been that hot, what role do you think the NCIS could play in pulling that cooperation together?

Ms Flowers: We have submitted evidence to the NWCIS recently in relation to wildlife crime, both on SSSIs and species. We understand they will be issuing a report on the findings from that survey.

Q45 Chairman: Do you think they will take a strategic lead here to help dialogue and cooperation between the various organisations involved?

Ms Oldaker: From a species point of view, I think the PAW initiative, from my understanding, is the best place. It has a large membership and has many sub-working groups and conferences that happen nationally, and there is one in Scotland and one in Wales as well. So I think they are often a good place. They definitely attract the majority of police wildlife crime officers who obviously are usually at the frontline of those cases. I think that is usually a good place to draw them together.

Mr Fox: Whilst PAW are primarily focused on species, they do wish to broaden out their remit to include things such as SSSI crimes now, so they are working closely with them.

Dr Tew: The strategic overview, you are right, is crucial, because actually we need to start picking up whether the 4x4 damage happening in one part of the country is part of a national trend and look at best practice on how that is most effectively dealt with. Secondly, we are able to give guidance to the police on the strategic issues. For instance, we have been working with them on the hen harrier and they are now targeting the hen harrier as a key species where enforcement may be a major help in the survival of a particular species. Lastly, we are producing a toolkit for the police to use which we hope will give guidance and support to officers, and there is separately a similar initiative for the judiciary called "Costing the Earth" in which we are also having input. We think these are terrific examples of good integration and joined-up thinking.

Q46 Chairman: Good. So getting better.

Dr Tew: Getting better.

Q47 Chairman: We have talked about the desirability of establishing a national database, but I wondered to what extent you have access to other people's databases. For example, how long does it take you, should you wish to, to gain access to the Environment Agency's *Flycapture* data? Is that readily available to you?

Q48 Mr Fox: At the moment it is not, but we have not made particular positive moves there to establish a link. We are working more closely with, for example, the police. We have set up our own database specifically aimed at third-party activities, so that incidents can be reported to us and we can share the data with the police. That is one initiative that we are taking forward but we are always

looking to form a relationship with others to share data. There are obviously data protection issues as well to consider.

Ms Oldaker: With the RSPB we work well and share their data that they have about reports of wildlife crimes particularly related to birds and they obviously ask us for information and we ask them for information and it seems to work well. We share information.

Q49 Chairman: So data protection issues are not a frustration to you.

Mr Fox: Not necessarily in relation to our database that we are setting up with the police. It would be in relation to the prevention and detection of crime, and it will help us address that issue that we raised earlier in relation to third parties, to help to demonstrate that a person knew that a site was a SSSI; that is, if they have been stopped before by a police officer or a member of our staff and the matter has been reported to us. The policemen perhaps come to us and ask, "Has this person been stopped before?" We check the records and say, "Yes," and that would inform future action there.

Dr Tew: We are not good enough at that yet.

Q50 Chairman: What are you doing to get better?

Dr Tew: It is the ongoing dialogue and the fact that everyone now is taking it seriously. There are positive steps in place.

Q51 Chairman: We have heard an awful lot this morning about the dreaded 4x4s and the damage that they are doing. What kind of access do you have to DVLA?

Ms Flowers: We do have an arrangement with the DVLA. Where our staff have obtained vehicle numbers on sites, we can then obtain that information through the DVLA. We also obviously look to the police as well for that kind of information.

Q52 Chairman: Do you get that information on a timely basis? As a member of the public, I tend to find DVLA not always the most responsible and efficient organisation to deal with. Is your experience better?

Ms Flowers: When we have requested information, it has come back within the working week.

Q53 Chairman: Is that soon enough for you?

Ms Flowers: Yes, because we will then take enforcement action which is writing to that person, the registered keeper of that vehicle.

Q54 Chairman: Why should it take a week for them to be able to identify the owner of a car?

Mr Fox: You will have to ask the DVLA.

Q55 Chairman: The information is there, is it not?

Ms Flowers: Yes.

Q56 Chairman: It is sitting on a computer.

Mr Fox: I suspect it is the volume of inquiries.

13 May 2004 Dr Tom Tew, Mr Martin Fox, Ms Alison Flowers and Ms Johanna Oldaker

Q57 Chairman: They do not get many from you, of course.

Ms Flowers: No, they do not get that many from us.

Q58 Chairman: And you have been able to take prosecutions, have you, on the basis of information you have had in this way from DVLA?

Ms Flowers: Not yet. We have not taken any prosecutions against third party illegal vehicle use on sites as yet. That is not the obstacle in the way there. We are obviously raising awareness, issuing information leaflets to people. As we said before, we

are having a problem in relation to proving various elements of the offence in relation to this kind of activity.

Dr Tew: Once again, Chairman, prosecution does not represent success to us; it represents failure. The best example I can give is a local motorbike club who were damaging a site, Thames Basin heaths. After several months of good work between us, not only did they stop damaging it but they turned up in their leathers on Sunday to repair the damage they were doing. We would rather go that way than prosecute people.

Chairman: Thank you very much indeed. We have no further questions. We are very grateful to you for your time.

Memorandum from the Environment Agency

SUMMARY

The Environment Agency recognises the impact that wildlife crime has, not only on our ability to conserve the diversity of important fish, animals, birds and plants but also on the value (economic and social) provided by such wildlife. Key issues are:

- (i) The Environment Agency seeks to protect and improve the environment for the benefit of all wildlife. It has specific duties with regard to the conservation of aquatic wildlife. The Agency has a direct enforcement role in detecting and preventing crime with respect to fish and fisheries;
- (ii) The Agency is active in responding to, and in improving its response to those elements of wildlife crime within its jurisdiction;
- (iii) The Agency is in active discussion with Defra to secure improvements in freshwater fisheries legislation and to promote more effective arrangements for coastal fisheries and environmental enforcement;
- (iv) Crimes affecting fisheries and wildlife can have irreversible effects that are difficult and costly to ameliorate, and can take many years to rectify. For instance, illegal fish movements can potentially lead to the virtual elimination of stocks in a water body or river with associated social and economic impacts;
- (v) Penalties used should be regularly reviewed to ensure the most effective and efficient approach is used to deter and punish criminal behaviour;
- (vi) There is a clear need, in the face of criminals operating across regimes for financial gain, to build on and extend integrated working across agencies and across Government;
- (vii) The Agency supports action to divert people from the temptation of crime as well as robustly tackling those who succumb.

1. INTRODUCTION

i. The Environment Agency welcomes this opportunity to submit evidence to the examination of wildlife crime by the Sub-Committee to the Environmental Audit Committee.

ii. The Environment Agency (the Agency) is the principal body for environmental regulation in England and Wales. Its remit includes granting and enforcement of environmental licences, the apprehending of serious, illegal unconsented activity and the prosecution of environmental offences.

iii. The Agency's enforcement and prosecution activities follow a publicly available Enforcement and Prosecution Policy and Functional Guidelines that adhere to the Code for Crown Prosecutors.

iv. Of particular relevance to this inquiry, the Agency has duties to maintain, improve and develop salmon, trout, eel and freshwater (coarse) fisheries in inland and coastal waters (out to six nautical miles). It has powers to regulate and to enforce fisheries laws for these purposes across England and Wales. The Agency also has duties to further the conservation of aquatic wildlife and habitats and is a responsible body within the UK Biodiversity Action Plan for a number of species and habitats. Regulations under the EU Habitats Directive require the Agency to ensure the protection and improvement of specific habitats and species through delivery of its duties. The Agency is the competent authority for the delivery of the Water Framework Directive including out to one nautical mile to sea.

v. The Agency enforces fisheries laws to conserve fish stocks and to protect the social and economic value generated by fish and fishing. In England and Wales:

- Over three million people engage in the sport of angling with an associated annual expenditure by freshwater anglers of £2.5 billion (thousand million).
- Legal net fisheries (for salmon, trout and eels) have an estimated capital value of £3 million.
- Legitimate businesses moving freshwater fish for restocking generate an annual turnover of more than £21 million.

vi. Law-abiding anglers and fishermen, through licence fees, provide over 60% (£17 million) of the revenue supporting the Agency's work to maintain and improve fisheries. The remainder comes from Grant in Aid from Defra and the Welsh Assembly Government. In 2003/04 this amounted to £9.8 million.

vii. The Agency has a broader remit to protect and enhance the environment and to make a contribution to achieving sustainable development. This is subject to guidance from the Secretary of State⁽¹⁾ including guidance specifically on the delivery of the Agency's fisheries and conservation duties. The Agency is an independent advisor on environmental matters affecting policy making within Government and more widely.

viii. Of particular concern to the Agency (in the context of this Inquiry) are illegal fishing for salmon, trout and eels, illegal (unconsented) removals, transfers and introductions of fish and illegal activities impacting on protected aquatic wildlife species and habitats. The latter category includes unconsented or unauthorised discharges, developments or works in or on waterways and illegal disposal of waste affecting wildlife habitats.

ix. It is against this backdrop that the following responses to the Sub-Committee's questions are made. Should the Sub-Committee wish for additional clarification of any aspect, the Agency would be willing to provide further details.

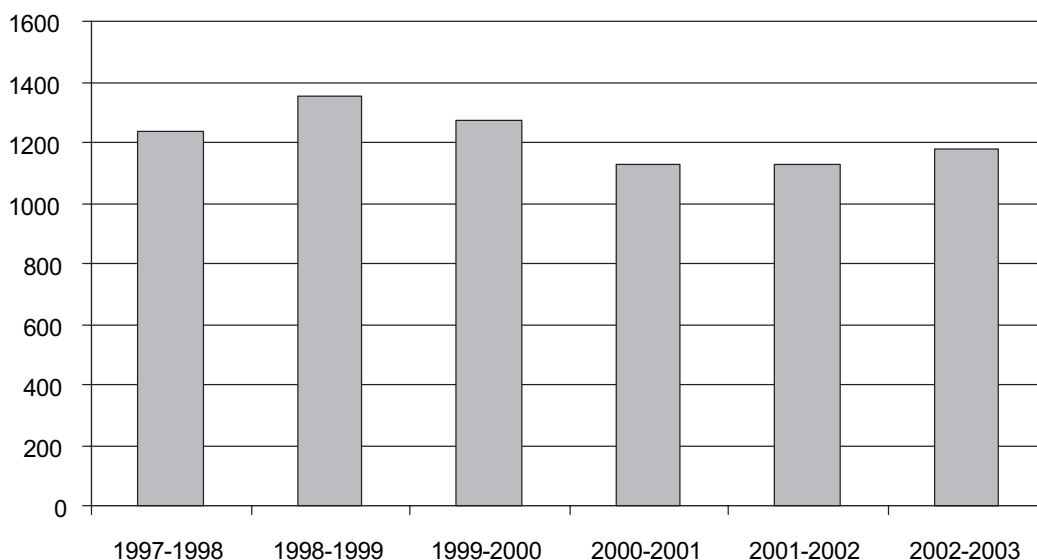
2. WILDLIFE CRIME—SCALE AND IMPACT (“WHAT IS THE SCALE AND IMPACT OF WILDLIFE CRIME?”)

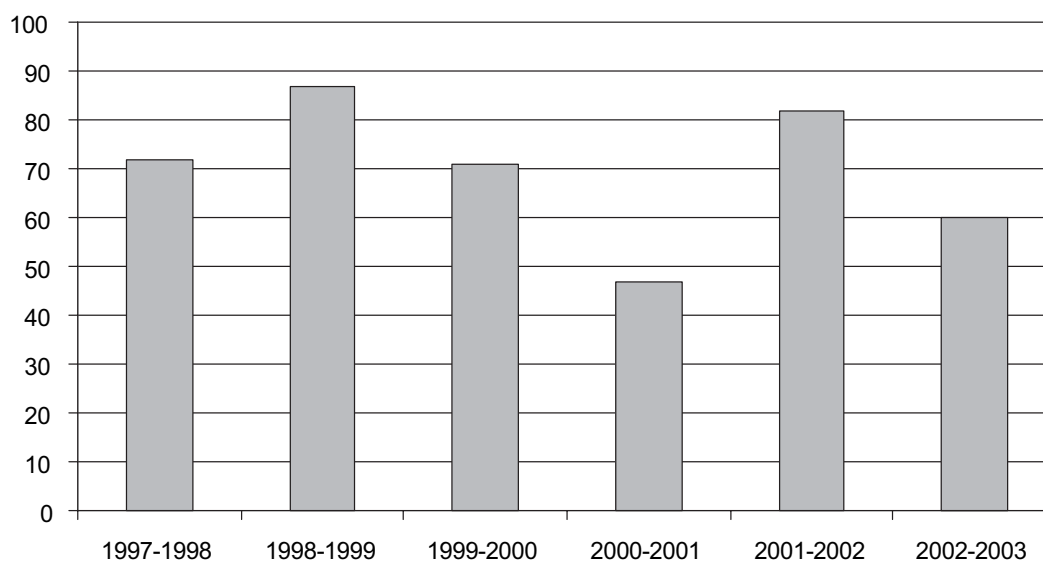
2.1 *Illegal fishing*

Scale

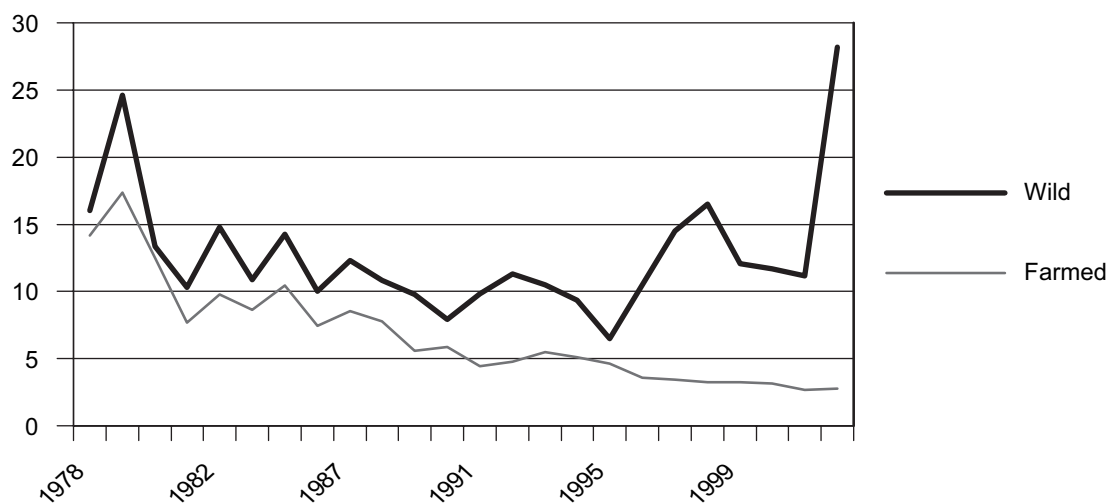
Incidents of suspected illegal fishing come to the Agency's attention through reports from the public and from licensed anglers and fishermen (being promoted via the Emergency Hotline: 0800 80 70 60) and from Agency operations. Numbers of reported incidents across England and Wales have varied annually (see figures below). No clear trend can be detected.

Illegal Fishing Reports 1997 - 2003



Reports of Illegal dealing in salmon

The prices gained for wild salmon have declined over the past 20 years largely due to a significant increase in availability of farmed salmon. There is some evidence that this has reduced illegal fishing. Recent reductions in the legal catch of salmon, brought about by regulations to better conserve and manage stocks, have resulted in a recovery in market price of wild salmon (see below) that may attract more offenders.

Billingsgate salmon price each May (£/kilo)

Impact

Two thirds of the 63 principal salmon rivers across England and Wales have stocks that are under-performing and not achieving their conservation limits. In these circumstances illegal fishing poses an additional threat. Several of these rivers are Special Areas of Conservation under the EU Habitats Directive. The Agency press releases at Annex 1 illustrate the potential scale and impact of illegal fishing for salmon, trout and eels. It might also be noted that salmon and sea trout fisheries often support economic activity in rural and sometimes disadvantaged areas. Expenditure by anglers on such fisheries across England and Wales is estimated to be in the order of £5 million annually. A recent study for the Scottish Executive⁽²⁾ suggests salmon and sea trout angling in Scotland generates £73.5 million per annum. Eel fisheries are subject to unlicensed and other forms of illegal fishing. The European Commission has announced a European-wide eel recovery programme in response to evidence of a very serious decline in the eel population⁽³⁾. In such circumstances it will be important to control legal fishing and to minimise illegal fishing.

2.2 *Illegal fish movements*

Scale

The law requires that all fish imports and movements of specified non-native species are licensed by Defra and that fish removals and introductions are consented by the Agency (excluding those into and out of registered fish farms). These regulations aim to minimise the risks of introductions of inappropriate fish species or of serious fish diseases. In 2003–04 the Agency consented over 9,000 legitimate fish removals and introductions and investigated 150 reports of unconsented fish movements.

Impact

Regulation of imports, introductions and removals of fish aims to minimise the risks of introductions of non-native and inappropriate species and the spread of serious fish diseases and parasites. The former issue parallels the threats posed by transfers of other animals and plants such as the grey squirrel, Japanese knotweed or giant hogweed. Fish moved into a new environment can have a variety of harmful effects on the indigenous stocks and potentially on other wildlife that can be difficult to predict. Transfers of diseases and parasites may be even more harmful. Norway experienced the loss of important salmon stocks in many significant rivers when the parasite *Gyrodactylus salaris* was introduced with fish moved from the Baltic region. The parasite infests the fish resulting in widespread mortalities. The authorities there had to take drastic action including exterminating whole river stocks using chemicals and investing in major stock recovery programmes. Such a situation could be seen as the fisheries equivalent of a Foot and Mouth Disease outbreak. There remains a risk that unregulated movements into and within this country could introduce this or similar pests. A common feature of the introduction of inappropriate fish species or of parasites and disease is that the harmful effects are commonly irreversible and ameliorating the impact is difficult and costly. A relevant example of this is the continued demise of the native crayfish caused by the spread of crayfish plague that is in turn caused by spread of its vector, the non-native, signal crayfish.

2.3 *Unlicensed Fishing*

The Agency also enforces the licensing of rod and line fishing (angling). This is to ensure proper compliance with the law, fairness and to promote a high level of licence purchase that contributes over 60% of the funding to support the Agency's wider activities to maintain and improve fisheries. This enforcement also serves to ensure that anglers are using the permitted, sustainable fishing methods. To achieve this the Agency aims to check the licence holding of angler numbers equivalent to 15% of licence purchases. In 2003–04, 1.24 million angling licences were sold. Agency officers detected non-compliance amongst an average of 4% of people checked at the water-side.

2.4 *Offences affecting the conservation of aquatic wildlife*

The Agency consents and licenses a variety of activities in protecting the environment. These include discharges to the environment, waste management activities and proposed works on rivers and watercourses. The Agency also acts as a statutory consultee in respect to planning authorisations and certain consenting roles of other authorities. People acting illegally, without proper consents, licences or permissions, whilst rarely deliberately acting against wildlife, can have a significant impact on habitats and so, potentially a longer lasting or more extensive effect. Such acts can be of particular significance where they come into contact with specially protected areas or vulnerable species. Statistics are hard to come by. The Agency press releases at Annex 2 provide examples.

2.5 *Drivers for fisheries and wildlife crime*

The experience of Agency officers shows that consistently the main motive for offences against fisheries and environmental law is financial gain. This might be direct gain or by avoidance of the proper costs of legitimate activity. The Agency is interacting with offenders well-known to police forces and who, over time are active in different criminal activities—for instance an individual known for fish movements offences and illegal waste disposal; or salmon poachers known to the police for car thefts and drug dealing. It is apparent that increased pressures on certain areas of crime can lead to a diversion of attention to other illegal activities perceived as lower risk including wildlife and other forms of environmental crime.

3. ADEQUACY OF THE LEGAL FRAMEWORK (“IS THE FRAMEWORK OF . . . LAW AND REGULATION ROBUST ENOUGH TO DEAL WITH WILDLIFE CRIME EFFECTIVELY?”)

3.1 *Protecting aquatic wildlife*

The Agency does not have general powers to further conservation (with the exception of the conservation of fish); it has a general duty. The Agency applies this duty through powers developed for other purposes. Therefore, whilst measures can be taken to conserve wildlife through broader (for instance flood defence, water resource or water quality) consenting and operational activities, the Agency has only limited involvement in related enforcement issues.

There are of course sites with special protection in law—Sites of Special Scientific Interest (SSSIs), Special Areas for Conservation (SACs), Special Protection Areas (SPAs) and RAMSAR sites. Protection of these sites is enforceable by the appropriate authorities (English Nature and Countryside Council for Wales). Although the Agency does not have a direct role it is aware of wider concerns that effective action against criminal harm in connection with these sites is difficult to achieve under current legislation. This applies as much, if not more to marine protected sites as to those on land.

3.2 *Fisheries legislation*

Defra sponsored the Review of Salmon and Freshwater Fisheries that reported in 2000⁽⁴⁾ and recommended a number of improving changes to existing law and policy. The Agency is now working with Defra to draft new legislation to replace and consolidate current laws and to address the agreed recommendations from the Review. It is hoped that this will lead to a better capacity to regulate higher risk aspects, including fish movements and at-risk stocks and will extend the powers available to the Agency. Work is also continuing in collaboration with Defra and the Scottish Executive to refine laws applying to fisheries on the England/Scotland border.

3.3 *Marine fisheries laws*

The Agency’s duties regarding salmon, sea trout and eel fisheries extend out to six miles to sea where it regulates and enforces net and trap fisheries for these species. The Agency also acts as the sea fisheries authority in and around a number of estuaries around England and Wales. It is also represented in several of the Management Groups established to lead integrated action to support the candidate Marine Special Areas for Conservation around our coasts. There have been a number of recent, important reviews of marine management to which the Agency has contributed including:

- The National Audit Office review of fisheries enforcement in England, April 2003⁽⁵⁾.
- The EFRA Select Committee Inquiry into the marine environment, March 2004⁽⁶⁾.
- The Prime Minister’s Strategy Unit report, “Net Benefits: A sustainable and profitable future for UK fishing”, March 2004⁽⁷⁾.

In essence, concerns remain that:

- arrangements between regulators are over complex, inconsistent and with a potential for duplication and inefficiency;
- the current legal framework is not sufficient to give protection to marine species and habitats;
- policy towards marine management needs to be better integrated and follow an ecosystem approach; and
- management arrangements should be improved to support such an approach and make enforcement more effective.

Defra initiated the Review of Marine Fisheries and Environmental Enforcement in September 2003⁽⁸⁾. The Agency is contributing to that Review and has proposed that sea fisheries powers out to six nautical miles should be transferred to the Agency. The view has been offered that this would enable an ecosystem approach, deliver greater efficiency and effectiveness and support delivery under the Water Framework Directive.

4. RESOURCES, POWERS AND RESPONSE (“DO . . . BODIES . . . HAVE SUFFICIENT RESOURCE AND POWERS? DO THEY TREAT WILDLIFE CRIME WITH . . . DUE GRAVITY?”)

4.1 *Corporate commitment*

In its Corporate Strategy (Making it Happen)⁽⁹⁾ the Environment Agency sets out amongst its key roles those of efficient operator, modern regulator and champion of the environment. Its core values include a focus on environmental outcomes, working in effective partnerships and being robust. Relevant to this Inquiry and reflecting the priority given to wildlife crime, three of the Agency’s corporate targets are:

- To reduce the illegal and unreported catch of salmon.

- To reduce the illegal movement of fish.
- Making demonstrable progress towards biodiversity action plan targets.

4.2 *Enforcement and prosecution policy*

The Agency enforces and prosecutes environmental offences according to this published policy. Key principles embraced are firm but fair regulation, proportionality in the application of the law and securing compliance, consistency of approach, transparency about how the Agency operates and targeting of enforcement action. Using its powers under fisheries legislation the Agency prosecuted for serious fisheries offences (excluding for angling licence offences) on 35 occasions in 2002–03 and 27 in 2003–04. Formal cautions were issued in, respectively, another 13 and six cases.

4.3 *Expenditure*

In 2003–04, the Agency spent £3.2 million on enforcement against serious fisheries offences. Grant in Aid to support the Agency's work on fisheries provides a significant proportion of the resource for enforcement. In 2003–04 the combined contribution from Defra and Welsh Assembly Government was £9.8 million. Fishing licences provide the majority of the revenue for the Agency's wider fisheries work, amounting to £17 million in 2003–04.

4.4 *Agency powers*

The Agency has a range of powers under the fisheries legislation. The Salmon and Freshwater Fisheries Act 1975 provides that an officer warranted by the Agency as a water bailiff holds the powers and duties of a police constable. The 2000 Salmon and Freshwater Fisheries Review⁽⁴⁾ recommended a number of improvements to the Agency's powers. The Agency is working with Defra to draft potential new law including addressing these recommendations. The Agency is also contributing to Defra's Review of Marine Fisheries and Environmental Enforcement⁽⁸⁾ to promote consideration of alternative arrangements in that arena (see also paragraphs 3.3 and 5.4).

4.5 *Power of penalty*

The Sub-Committee received evidence from the Agency in its earlier Inquiry into Crime and the Courts. Specific to the current Inquiry, the average level of fines and costs resulting from the Agency's prosecutions of fisheries offences are shown below.

Average fines and costs from fisheries prosecutions (£s)—2003–04

	<i>Illegal fishing for salmon, trout & eels</i>	<i>Fish movement offences</i>	<i>Angling licence offences</i>
Average fine	240 (range 50–1,500)	440	61
Average costs	345 (range 0–1,900)	1,560	58

A minority of the prosecutions for serious fisheries offences led to a custodial sentence. The Agency would prefer to see stronger penalties for those offences that directly represent a risk to fish or their environment. The Agency is currently reviewing the potential use of a fixed penalty arrangement for angling licence offences. More consideration by the courts of alternative penalties (including, for instance community sentences) would be of value. In relation to marine fishing the Prime Minister's Strategy Unit⁽⁷⁾ has recommended wider use of administrative, as opposed to criminal penalties. The Agency can see merit in this approach provided that principles of justice and the ultimate sanction of a criminal penalty for the most serious and persistent offenders are maintained.

4.6 *Specialist judgements*

The 2000 Salmon and Freshwater Fisheries Review⁽⁴⁾ recommended a need for more specialism and greater expertise in courts handling fisheries cases. The Agency has previously recommended to the Sub-Committee that development of nominated judges and magistrates with special knowledge of environmental crime would be beneficial. This should include enhanced understanding of fisheries and other wildlife crimes. The Agency has supported the Magistrates Association in developing training material on environmental crime, including for fisheries offences.

5. DIALOGUE, CO-OPERATION AND INTERACTION (“IS THERE SUFFICIENT DIALOGUE AND CO-OPERATION ACROSS GOVERNMENT AND AMONGST THE VARIOUS RESPONSIBLE BODIES?”)

5.1 *Working with the police*

The Agency has established good relationships with police forces. At a national level a memorandum of understanding has been signed with the Association of Chief Police Officers and recently has been reviewed and improved. This covers such matters as the sharing of intelligence, access to databases and mutual working arrangements. Locally, across the 26 Agency Areas in England and Wales, officers have established contacts with police forces. Good practices, including offering awareness raising seminars on specific areas of environmental crime and developing closer links with police wildlife liaison officers, are actively shared across the Agency.

However, the Police Service has recently implemented the National Intelligence Model with support from the Home office to invest in training and systems. This modern approach to policing aims to be pro-active rather than reactive, an aim common to the Agency. To improve the effectiveness of collaboration with the Police Service the Agency needs to similarly update and modernise its enforcement practices.

There are also staff health and safety issues to consider and the Agency provided evidence to earlier Inquiries in this sequence on the numbers of threatening behaviour incidents experienced by Agency staff—many of these occur during the various forms of fisheries enforcement work.

5.2 *Working with other Government agencies*

In enforcing fish movement laws, the Agency works closely with Defra’s Centre for Environment, Fisheries and Aquaculture Science (CEFAS) Fish Health Inspectorate. The CEFAS Inspectorate focuses on imports of live fish and the movement of non-native fish by dealers and fish farms. The Environment Agency regulates and enforces movements of fish between and into inland fisheries. The two agencies share the Live Fish Movement Database used for recording and tracking transfers and introductions of fish. In this work and in other aspects where protected wildlife species and habitats are concerned, the Agency also collaborates closely with English Nature and, in Wales with the Countryside Council for Wales (CCW).

In addition, the Agency works with HM Customs & Excise, Inland Revenue and the Department for Work & Pensions when evidence suggests there is merit in doing so, for instance in regard to fish imports, VAT, Tax, or benefit fraud.

As suggested in the Agency’s previous evidence to the Sub-Committee, environmental crime covers a wide range of offences and can involve several Government departments and numerous enforcement agencies and services. Evidence to the Environment Agency suggests that determined criminals are clearly operating across regulatory regimes and geography and as financial rewards potentially increase the current pattern may get worse. To combat this and ensure a co-ordinated and effective response, working across Government and associated agencies is essential.

5.3 *Co-operation on the coast*

As noted above, in several estuaries and in some coastal areas the Agency acts as sea fisheries authority and regulates fishing for sea fish and shellfish. In other areas around the coast, contacts are well established with the relevant Sea Fisheries Committee and, as locally appropriate, with Defra’s Sea Fisheries Inspectorate, HM Customs and Excise and/or the Department of Defence. Arrangements include cross-warranting of officers, sharing of equipment, exchange of intelligence and collaborative operations.

5.4 *Recommended improvements for the marine environment*

The 2000 Salmon and Freshwater Fisheries Review⁽⁴⁾ recommended that there should be a review of the working arrangements between the Agency and the Sea Fisheries Committees to promote more effective management of inshore fisheries. The National Audit Office review of fisheries enforcement in England recorded a need to enhance the effectiveness of enforcement of (marine) fisheries regulations⁽⁵⁾. The Defra Review of Marine Fisheries and Environmental Enforcement⁽⁸⁾ is expected to respond to these issues. As noted above (3.3) the Agency has proposed a transfer of sea fisheries powers and duties to the Agency to deliver a more efficient and integrated service. The EFRA Select Committee Inquiry into the marine environment⁽⁶⁾ recommended better integration of policy and approach across Government departments to support better protection of the marine environment. The Agency believes that its proposal to the Defra Review would be a significant step towards achieving that aim.

5.5 Working to prevent crime

The foregoing evidence, as requested, has largely focused on the response to wildlife crime. The Agency in its fisheries activities is also working in a number of partnerships with the potential to reduce the incidence of crime. These arise out of a corporate aim to increase participation in angling and involve schemes to offer coaching and tuition in the sport and in the environmental issues connected with the sport. A key example is the “Get Hooked on Fishing” initiative developed by the Durham Constabulary and now supported in partnership by the Agency. The scheme targets young people in areas and situations where they may be at risk of involvement in crime and offers the opportunity for development through angling. Further information is provided in a brief at Annex 3. The Agency has promoted this scheme across Government to Defra, the Department of Culture, Media and Sport and the Home Office.

April 2004

Attachments: Annex 1—Examples (press releases) of serious fisheries offences
 Annex 2—Examples of offences affecting wildlife
 Annex 3—Angling participation/Get Hooked on Fishing—brief.

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- (4) Salmon and Freshwater Fisheries Review 2000
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- (5) National Audit Office report on fisheries enforcement in England
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<http://www.environment-agency.gov.uk/aboutus>

Annex 1

IMPACT OF ILLEGAL FISHING FOR SALMON, TROUT & EELS

EXAMPLE PRESS RELEASES

Poaching pair fined for taking Cumbrian salmon

Published 25 July 2003

Two men from west Cumbria were yesterday (Thursday) fined £500 each after being caught poaching salmon from River Ehen at Ennerdale Bridge.

John Anthony Taylor, aged 43, of Queens Crescent, Frizington, and Derek Andrew Bulman, aged 22, of Arlecdon Road, Frizington, both pleaded guilty to two offences when they appeared at Whitehaven Magistrates’ Court.

As well as being fined, the men were ordered to pay £125 costs each to the Environment Agency, which brought the prosecution.

Neil Pilling, prosecuting for the Agency, told magistrates that Taylor and Bulman were spotted by an Environment Agency bailiff near Ennerdale Bridge on 14 December 2002.

Taylor was seen bending over tree roots searching for fish in the River Ehen, while Bulman was acting as his guide and “look out”. The two men worked a stretch of the river near Ennerdale village.

The Agency bailiff telephoned for assistance, and a colleague soon arrived. Taylor and Bulman approached a black Ford Sierra parked near the church in Ennerdale village, and as they did so the bailiffs stopped them.

The court was told that the bailiffs found a live salmon, weighing about 5lb, in a plastic bag in Taylor's jacket. The fish had two hookmarks in its stomach. Taylor's jacket also concealed an extendable "gaff hook"—an illegal pole with a hook attached used for landing large fish.

Both the gaff hook and the salmon were confiscated by the Environment Agency bailiffs.

Speaking after the hearing, the Environment Agency's Fisheries Team Leader, Jeremy Westgarth, said: "Poaching is a serious crime and this case shows the Environment Agency is determined to stamp it out. The fish these men had was spawning and contained about 4,000 eggs, which have now been lost from the Ehen river system.

"We have a dedicated and professional team of officers who carry out anti-poaching patrols and surveillance on rivers. We are increasing these patrols and we will take action against anyone we catch poaching."

Custodial sentences for men illegally netting in Cardigan

Published: 5 December 2003

Lee Thomas Davies of Belmont, Pendre, Cardigan and Jason Lee Tamlin of Ridgeway, Cardigan both received custodial sentences at Cardigan Magistrate's Court on 2 December 2003 on charges brought by Environment Agency Wales under the Salmon and Freshwater Fisheries Act 1975. The offences took place between the two town bridges on the River Teifi in Cardigan in May 2003.

Davies had pleaded guilty to illegally netting salmon on 11 and 23 May, while Tamlin had pleaded guilty to the same offence carried out on 23 May. Davies was sentenced to seven days imprisonment on each charge, sentences to run concurrently. Tamlin was sentenced to seven days imprisonment for the offence, which took place on 23 May.

In announcing its decision the Chairman of the Bench told the defendants that they considered these matters to be very serious and not as trivial as their solicitor had tried to persuade the Court. He emphasized the need for fish stocks to be preserved.

Following the case an Agency spokesperson commented: "Salmon stocks are declining and it is vitally important that fish returning to the rivers are protected so that they can spawn. By using the net in this location they could have seriously reduced the numbers of fish able to return to the headwaters of the river and successfully replenish stocks."

Fishing is a very popular sport, particularly on the River Teifi, and it makes a significant contribution to the Welsh tourist economy. People who take fish illegally and have no regard to the consequences of their actions could seriously affect the future viability of fisheries."

Illegal netting on River Neath costs Swansea men £1,100

Published: 15 December 2003

Two Swansea men have pleaded guilty to an illegal netting offence on the River Neath. The offence took place near Giants Grave, Skewen on 22 August this year. At Port Talbot Magistrates' Court on 10 December 2003, Derek Royston John of Lon Hafren, Caemawr, Morriston and Derek Alexander Williams of Llangyfelach Road, Brynhyfryd were both fined £350 and each ordered to pay costs of £200 to Environment Agency Wales who brought the prosecution.

John and Williams both pleaded guilty to using an unauthorised fixed engine (net) in any inland or tidal waters contrary to Section 6(1) of the Salmon and Freshwater Fisheries Act 1975 (as substituted by Section 33(1) of the Salmon Act 1986) and to breaching Byelaw 5(A) of the Agency's Sea Fishery Byelaws by using a prohibited instrument to take sea fish, an offence contrary to Section 211 of the Water Resources Act 1991.

The Court was told that following a report from a member of the public, Agency bailiffs mounted a covert surveillance operation on the site of a submerged net located near the premises of Simms Metal at Giants Grave. As the net became uncovered a number of fish were seen struggling in it. The two defendants subsequently arrived at the net site and were seen to remove a number of fish from the net. Both also removed sticks and weed from the net before resetting it. The two men were subsequently intercepted by the Agency bailiffs and advised that their actions had been witnessed and recorded on video camera.

Five mullet were recovered as well as a 70 metre net which had been fixed to two steel posts. The fish were forfeited and in addition the Agency retained possession of the net under its powers under the Salmon and Freshwater Fisheries Act 1975.

It was emphasized to the court that the primary purpose of the legislation was to protect stocks of salmon and migratory trout and that although only sea fish had been taken on this occasion, the potential existed for any migratory fish present in the river to also be captured as this form of fishing does not discriminate between species.

After the case an Agency spokesperson commented: “Using nets within rivers and tidal estuaries is not only illegal but there is a huge potential to deplete fish stocks as nets are totally indiscriminate. The River Neath like many other rivers is unable to meet spawning targets for salmon and sea trout, to sustain healthy stocks. Poaching can have serious consequences for fish stocks. The Agency is pleased that the magistrate chose to reflect these concerns by issuing significant fines.”

Anyone who sees pollution, illegal tipping of waste, poaching, fish in distress or danger to the natural environment can contact the Agency’s emergency hotline on 0800 80 70 60. The hotline operates 24 hours a day, 365 days a year, calls are free and will be treated in the strictest confidence.

Winchester salmon poacher receives community punishment and tagging order

Published: 30 January 2004

Yesterday at Basingstoke Magistrates Court Aaron Petch of Fivefields Road, Winchester pleaded guilty to illegally taking salmon and failing to state his name and address to a Water Bailiff on 5 January 2003 in a case brought by the Environment Agency.

At 5 am on 5 January last year Mr Petch was observed by Environment Agency Fisheries Officers shining a powerful torch into a private side stream of the River Itchen in Winchester. He then proceeded to use a hand held snatch (a weighted treble hook used to foul hook fish) to snag a pair of spawning salmon. Mr Petch was then approached by the Environment Agency Fisheries Officers who arrested him and, with the assistance of two police officers, took him to Winchester police station where he was interviewed.

Taking into account his previous convictions, Magistrates sentenced Petch to an 80-hour Community Punishment Order for using the snatch and light. He also received a four month Tagging Order with a 10 pm to 6 am curfew, was banned from holding a fishing licence for one year, forfeited the snatch, torch and fish seized by the Fisheries Officers and was ordered to pay costs of £150 to the Environment Agency.

Adrian Saunders, Environment Agency Area Fisheries Technical Support Team Leader said, “The salmon population of the River Itchen is under a great deal of pressure at the moment. The Environment Agency and its partners are putting a huge amount of effort into saving these magnificent fish and licensed anglers are returning 100% of the salmon they catch alive.

“It is therefore extremely disappointing when poachers illegally take spawning fish at the moment when they are making their contribution to completing the life cycle. Environment Agency Fisheries Officers are on duty day and night and working with other enforcement agencies we will ensure that poachers are caught and put before the Courts where they are liable to receive stiff punishments, even prison terms for serious offences, if convicted.”

Otters Endangered by Illegal Eel Nets

Published 4 March 2004

A Dorset fisherman was today ordered to pay £3,000 in fines and costs for setting dozens of illegal eel nets in Poole Harbour. The eel fisherman also had £1,480 worth of nets destroyed by the Environment Agency.

Eel fishing is strictly controlled by the Agency to protect stocks and each net, known as a fyke net, must be licensed. Fishermen must also fit their nets with otter guards to prevent otters from drowning.

On 23 July 2003 fisheries officers were patrolling Poole Harbour when they found 182 fyke nets set in three separate areas within the harbour. A third of the nets weren’t displaying Agency licence tags. There were no otter guards fitted to 37 of the 62 nets seized. Otters are attracted to eels caught in fyke nets and can drown if they get trapped inside a net.

Agency officers traced the owner of the nets to Steven John Charles Matthews, of Poole Road, Upton, Poole. He admitted the nets were his. The fishing boat used to set the nets was called, appropriately, “Silver Eel”. The licensing of nets is important because it provides valuable information on eel stocks.

“Otters are a protected species. We are fortunate in Dorset to have seen an increase in otter numbers on local rivers in recent years. Sadly, there have been fatalities. Two years ago an adult otter and two cubs were found dead in an illegal fyke net in the River Stour and another otter drowned in a net in Poole Harbour. It is therefore very important that eel fishermen ensure their nets are fitted with otter guards,” said Julian Wardlaw for the Environment Agency.

Matthews was today found guilty in his absence by Bournemouth Magistrates who fined the fisherman £1,500 and ordered him to pay £1,500 costs for placing and using unauthorised fyke nets in tidal waters on or about 23 July 2003 contrary to the Salmon and Freshwater Fisheries Act 1975 and the Salmon Act 1986.

Agencies join to halt elver crime

Published: 10 March 2004

On Wednesday 10 March 2004 the Environment Agency, Gloucestershire Police, Gloucester City Council and British Waterways announce a new joint campaign to pool resources and information to combat the anti-social behaviour and lawlessness that gives the traditional activity of elver fishing a bad name.

The agencies involved stress that responsible elver fishermen who operate within the law have nothing to fear. The campaign is not intended to restrict the number of elvers caught, or stop elver fishing, and the intention is to preserve this historic activity along the banks of the River Severn.

Recently, examples of irresponsible behaviour have been on the increase. With elvers fetching up to £300 per kilo on the open market in recent years, this lucrative activity is attracting people who display little regard for their fellow citizens, or the reputations of their responsible colleagues.

Each year, the Environment Agency's enforcement teams patrol the River Severn to catch fishermen operating without a licence or involved in illegal activities, such as the use of equipment that gives them an unfair advantage and harms elvers. The licence fee (currently £20 a year) is ploughed back by the Agency into research and development to secure the future for the next generation of elvers and elver fishermen. By fishing without a licence, illegal fishermen are depriving their colleagues of future catches and may put the very existence of elver fishing in danger.

Environment Agency Fisheries Team Leader, Al Watson, says: "This a heritage activity and well worth preserving. We hope that responsible fishermen who operate legally will support us in trying to ensure they are not cheated out of their legitimate income by their less savoury colleagues. We want to ensure it is a level playing field for everyone. This year, for the first time, we will be sharing resources and information with our colleagues in other agencies to ensure that illegal fishermen do not have an unfair advantage and to stop the irresponsible behaviour that is putting lives at risk.

Gloucestershire Police welcomes the new initiative, which will help to make the most effective use of their resources to tackle a source of criminal damage. Inspector Emma Davies, of Gloucestershire Police, said: "The Constabulary welcomes the opportunity to work in partnership with all of the other agencies and we will be working closely with them to enforce the legislation surrounding elver fishing. We are also committed to combating all aspects of criminal activity and anti-social behaviour relating to this activity."

British Waterways are concerned about the use of unlicensed boats on the river. At the end of the elver season in May, illegal boats are often left unattended in out of the way places where children can use them during the summer months, thereby putting their lives at risk.

Gloucester City Council is concerned about damage to stiles and fences, often using chainsaws, close to a known elver fishing spot. The wood is believed to be used by the fishermen for fires to keep warm during long cold nights fishing. In one incident, a herd of rare breed cows was turned out on to the road. The cost of replacing these fences each year falls on the council tax payers of Gloucester. Derek Brown, City Council Countryside Manager, said: "There has to be mutual respect. We respect the long-standing tradition of elver fishing but there needs to be respect by the fishermen towards the city council's land and our use of it as a nature reserve. Actions which put our visitors and animals at potential risk is unacceptable."

Illegal fishermen are much more likely to get caught under this new initiative and it could prove very expensive indeed. Anyone caught by the Agency fishing illegally will end up with a criminal record and can look forward to a fine of up to £2,500. British Waterways say the maximum fine for an unlicensed boat is £1,000 and Gloucestershire Police and the City Council will act against anyone found causing criminal damage.

Annex 2

EXAMPLE PRESS RELEASES

OFFENCES AFFECTING CONSERVATION OF AQUATIC WILDLIFE

Kent farmer prosecuted for illegal landfill at water vole site

Date published: 24 March 2004

A Kent farmer has been fined £750 and ordered to pay costs of £1,650 for running an illegal landfill site on the Dartford Marshes at a nature conservation site which is home to increasingly rare water voles.

At Dartford Magistrates Court Brian Thomsett, of Joyce Green Lane, Dartford pleaded guilty to the offence, which took place on his farm.

The court heard that on 7 April 2003 an Environment Agency Conservation Officer was alerted to an incident involving waste material being deposited on land at Joyce Green Farm. On 11 April 2003 Agency Environment Officers observed a queue of lorries waiting to deposit waste on the land and witnessed a number of lorries actually tipping.

Under Section 33 of the Environmental Protection Act landowners cannot allow waste to be tipped on their land without a permit from the Environment Agency. This allows the Agency to stipulate conditions that minimise the risk of pollution to the environment or harm to human health.

The investigating officers found the land to be owned by Mr Thomsett. He was warned an offence was being committed but the tipping continued for three more days.

The farmland is situated within the Dartford Marshes and has a local conservation designation—"Site of Nature Conservation Interest"—in recognition of the habitat provided to mammals, birds, insects and invertebrates. Drainage ditches crossing the land are known to house protected species such as the water vole.

The waste deposited at the site included inert wastes such as soils and rock, construction and demolition wastes such as rubble, tarmac and concrete, utility wastes such as plastic pipes and cables, and waste transfer station wastes such as screenings and other fines consisting of plastics and polystyrene.

In his defence Mr Thomsett apologised for his actions. He said as soon as he was aware that an offence was being committed he had tried to stop the tipping but he had been unable to do so.

After the case Paul Bennett for the Environment Agency said, "We hope this case sends a clear message to landowners that they have a duty to the environmental protection of their land. We would advise landowners to contact the Agency for advice before allowing anything to be deposited on their land and to tell the Agency if they are approached by anyone offering free 'topsoil'."

Environment Agency investigates fish kill in Weymouth

Date published: 30 March 2004

Officers from the Environment Agency were this morning (30 March) assessing the impact of a serious pollution that occurred over the weekend of 27–28 March.

The Agency's Blandford Office first received reports of dead fish at Chafeys Lake, Weymouth on Monday 29 March. Officers attended the scene immediately and spent the morning investigating the cause of the fish deaths. They traced the source of a pollutant to premises on the Granby Industrial Estate.

Early indications are that a polluting discharge entered the surface water drains on the Granby Industrial Estate sometime over the weekend. This liquid found its way into the stream in Chafeys Lake that feeds into Radipole Lake. The discharge caused the oxygen level in the lake to plummet, suffocating the fish. Over 300—mainly dace and good quality roach—have so far been recovered by Agency fishery staff.

Kevin Parsons is leading the investigation for the Environment Agency and comments: "We have spent a lot of time working with companies on the Granby Estate, highlighting any risk their sites pose to the watercourse and advising them on pollution prevention measures. It is very disappointing that once again, this stream has been polluted. We must remind everyone on the estate to make sure that all their chemicals are properly contained and polluting discharges can't get into surface water drains."

Kevin added: "As a result of this incident, we will once again be visiting all premises on the estate to remind everyone of the risks."

Pollution kills hundreds of crayfish in Cumbrian river

Date published: 2 April 2004

Environment Agency officers are investigating a major pollution incident that has killed hundreds of native crayfish in a popular Cumbrian beauty spot.

An alert was raised after Environment Agency Officer Bevis Winter discovered large numbers of the dead "White-Clawed" crayfish during routine chemical sampling on the River Lyvennet at Lyvennet Bridge, near Morland in North Cumbria.

Subsequent investigations revealed that all the crayfish had been killed by pollution into the water, which affected five kilometres of the River Lyvennet. The river also acts as a tributary to the nearby River Eden.

In addition to killing hundreds of native crayfish, the incident has also killed a number of other crustaceans in the river including freshwater shrimps.

Agency officers at the scene are currently still investigating the cause of the pollution, which is believed to have been from a local source.

David Scott, the Environment Agency's Ecological Appraisal Officer for the North West commented today (Friday): "The nature of the substance involved in the pollution is still a mystery but we do expect to have a clearer view on the source of the incident fairly soon."

"White clawed crayfish are the most valuable of the crayfish species and we expect this loss to have a significant impact on other creatures locally such as otters, who rely on crayfish as a key food source."

Environment Agency Officer Paul Thompson, who is heading the team investigating the incident, says that although the pollution in the river has now cleared, it is thought it may have been present in the water for several days.

He commented: “We are extremely keen to find out how this pollution could have occurred and we hope to confirm its source as soon as possible.”

Annex 3

ANGLING PARTICIPATION PROGRAMME

The proposed three-year programme will introduce 50,000 new participants to angling, an activity that Government in its response to the Salmon and Freshwater Fisheries Review has endorsed as an enjoyable form of healthy outdoor recreation.

Other key features of the initiative are:

- Based upon best practice pilot schemes with many years of proven effectiveness.
- Special provision for 2,500 disabled people.
- Intensive programmes for 6,000 young people at risk of offending.
- Targeted help for other disadvantaged and difficult-to-reach groups.
- Promotion of best practice angling safety and environmental awareness.

Proven and sustainable benefits

Recent market research shows that some 2.8 million people in England would like to try taking up angling and that the greatest barrier to participation is not being able to obtain the necessary information and authoritative guidance. Because angling is an inexpensive pastime, such help is particularly valuable to disabled people, young people, and disadvantaged groups such as and those who are unemployed or on low incomes. It has been clearly shown that angling can also contribute to social inclusion and deliver sustained reductions in crime and antisocial behaviour among young people.

This initiative will also establish a self-sustaining process for introducing newcomers to the sport of angling; it will increase by 300% the number of places available in existing schemes in England and be capable of developing to meet the needs of future generations.

Key elements of the programme

The programme will entail developing coaches to help partnership groups set up angling participation schemes based on best practice delivery and benefits verification; improving angling guidance and venue information and, where necessary, infrastructure and access for disabled people to club and community-controlled waters; targeting staff time and promotional activities to hard-to-reach groups including young people and especially those at risk of offending, disabled people, the long-term unemployed, women and girls and other poorly represented/minority groups.

DURHAM GET HOOKED ON FISHING SCHEME

Durham based Get Hooked on Fishing (GHoF) exemplifies how Angling can help Working with young people living in deprived areas or who are identified as at serious risk of offending, the scheme has achieved:

- Zero offending rates.
- 85% reduction in truancy.
- 70% post-coaching retention in angling.

These objectives are met by investing a high unit cost per coaching day—up to £300 per person when working with people seriously at risk of offending. The benefits, however, are impressive: for every young person guided away from a court appearance the saving to the tax-payer is £2,500 and, if prevented from detention, up to £160,000 per annum.

GHoF has secured substantial sponsorship to help establish a GHoF Charitable Trust capable of working on a national scale. This bid will provide the necessary short-term funding to launch at least five GHoF schemes each helping 300 “at risk” young people per year and focusing on early intervention (ages eight to 12 years). The chosen locations will be urban areas with high indices of multiple deprivation, where limited angling opportunity is currently available, or where juvenile offending rates are high.

Part 1 of a GHoF programme typically provides a two-day introductory course followed by a year of mentoring and up to 10 extra six-hour sessions. There are annual newsletters and quizzes/competitions, and training for peer-led status. Part 2 of the programme provides free fishing for a year to those who improve their behaviour. Young people suffering exclusion being developed as peer coaches.

GHoF will be harmonised with other angling schemes (in many cases they would be co-located) to prevent stigmatisation and to ensure that equipment and facilities are used most efficiently. The standard AGB coach licensing tuition will be supplemented by courses tailored to the requirements of those on GHoF schemes, disabled people and others with special needs.

Witnesses: **Dr David King**, Director of Water Management, **Mr Godfrey Williams**, Fisheries Policy & Process Manager, and **Mr Arwyn Jones**, Executive Manager, Environmental Management Process (Acting), Environment Agency, examined.

Chairman: Welcome. You have had the benefit of sitting through the last session. Welcome back to Mr Arwyn Jones: we have seen you before quite recently. Thank you for your memorandum as well.

Q59 Sue Doughty: You sent your memorandum in which you referred to illegal fishing. I think it would be useful to the Committee if you could set out what you mean by illegal fishing. Is it fishing without a licence? Is it fishing for the wrong fish? Is it fishing in the wrong place? Are there any other aspects as well on illegal fishing? Could you give us the background on that?

Dr King: Certainly. Illegal fishing covers quite a broad spectrum. There is fishing without a rod licence; there is the illegal deployment of nets and other fish capture methods; there is the theft of fish. We would also classify the illegal introduction of fish into water courses without adequate consent. In addition to that, as conservation measures we have both closed areas and closed seasons and you could have fishing activity taking place during that time and that would be deemed to be illegal.

Q60 Sue Doughty: Thank you. You refer to your hotline. What is the process when you get a call on the hotline?

Dr King: The hotline is a national hotline centre, but once the information about location is received and the nature of the complaint or report, that is then passed on to our local area office. We have 26 of those covering both England and Wales and then that is directed to the appropriate area teams.

Q61 Sue Doughty: Do you have any figures? Obviously you get reports of something that turns up on the hotline and then you have offences and it may or may not be an offence.

Dr King: Again in our submission we have given an indication of the number of reports that we have specifically with high impact illegal fishing, which is not just about rod licences, and that runs to about 1,200 a year. That has been reasonably static. But, obviously, through the follow-up process, the number of prosecutions is significantly less than that. It is in the order of about 30 a year.

Q62 Sue Doughty: How many of those are unlicensed fishing?

Dr King: The number of unlicensed fishing is into the hundreds or thousands.

Mr Williams: The number of offences of anglers without licences that we take is in the order of 4,000 a year. We treat those as, if you like, a relatively routine offence, but the other offences to which Dr

King has referred, serious fisheries offences—which is where there is a higher impact—those translated to between 30 and 60 prosecutions, plus or minus cautions. I think the difference is effectively down to the fact that in not all of those cases are we able to establish the evidence we would like to run a successful prosecution. Equally, the reporting is after the event, if you like, and of course this is by members of the public or by anglers and so on. We would not wish to dissuade people from reporting these things because of course it all adds to the intelligence and information that we collect, and perhaps something that is reported on one day may generate some evidence on which we can take a prosecution at a later time.

Q63 Sue Doughty: I understand. What proportion of the offences are in inland waters and how many are in coastal waters?

Mr Williams: I would say the majority are inland waters. This is very much a figure off the top of the head, but I would think something like 10 to 15% would be related to coastal waters. There is an issue, of course, that coastal waters run into estuaries. For salmon fisheries particularly we find that quite a lot of the offences that we take are actually within the estuary, where the fish are accumulating before they migrate up the river. So there are quite a lot of offences on estuaries, more in fresh waters and a lesser number actually on the coast.

Q64 Sue Doughty: On to individuals fishing illegally. Are these small scale incursions or are some of them large scale incursions?—commercial fishing, effectively, albeit illegal.

Dr King: Again, there is a wide range but there is significant evidence that the individuals who are often involved in fairly large scale operation of illegal nets are also involved in a variety of other crime. They are pursuing this for financial gain, so it may be poaching of salmon today, it may be fly-tipping tomorrow, it may be theft of cars, etcetera. They do operate across a number of different activities. To give an example—and there is a little video that we can leave with the clerk—the BBC put out *Front Line*, which covers really enforcement activity in the northeast. On one evening, there were something like 70 salmon in the net, and that was for one set. Given the price of wild salmon, that is not an insignificant amount of money, so it is quite significant.

Q65 Sue Doughty: Do you regard this as organised crime, then?

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Dr King: It is organised, yes.

Q66 Sue Doughty: Could you give us an example where fish crime has had a serious impact on fishing stocks or on the environment.

Dr King: I will give one example which is in the pack and then defer to my colleagues. I will pick the example of the fisherman in Dorset who was illegally deploying fyke nets, which is the method of capture for eels. You will see in that that he had something in the order of 60 illegal nets. At first sight, that may seem insignificant but you have to view it against the background that the eel population across Europe has been in significant decline. Indeed, there is now a European initiative to try to rebuild the stocks, for example. We are only seeing 10% of the elver returns that we saw in the seventies, so illegal fishing does have a huge impact. In addition to that, these nets were deployed without otter guards, so again it is not just about the impact on that particular fish but also on the wildlife. That is an example of impact, but again my colleague will have other examples.

Mr Williams: Going back to the northeast, we had experience in the mid-nineties of collecting evidence from an individual at the end of the year, in October, who had been involved with two to three colleagues over the previous five months. The evidence was in the form of receipt books, which he inadvisedly kept, that showed to us that over that period he had taken 600 salmon and sea trout from the River Tyne. He and his colleagues had made about £8,000 from that. The weight of those fish was something like 4,500 lbs. Looking at the translation of that, that would have been about one and a half million eggs that otherwise would have spawned into the River Tyne and contributed to that population. Thankfully, the River Tyne is one of the rivers we have which is recovering as a salmon river and doing extremely well, but that would have limited that recovery if that had happened in one of our other rivers around the country. There would have been a serious, damaging effect on rivers under threat. Another area where we have not got a specific case, but in terms of fish movement and introductions, we are very concerned about illegal fish movements because they bring with them the dangers of transfer of disease. Some of these diseases can have the effect of wiping out entirely a stock of fish. Some of the specialist fisheries we have now developed are providing really good venues for people and good value for recreation in the south of Britain of, for instance, carp and if you have the introduction of one of these diseases into that, then you have lost those fish. The value of some of those fisheries is up to about £63,000 per acre, so you can see that the value could be extremely considerable.

Q67 Sue Doughty: It is quite shocking when it is put in those terms. You referred earlier to fish movements and imports, and the various aspects. The written evidence stated that in 2003–04 you gave consent to over 9,000 legitimate fish removals and you investigated 150 reports of unconsented

fish removals. How many of those reports that you received were found to be genuine, and how many were found to be on a large enough scale to justify prosecution?

Mr Williams: In terms of those 150 we could probably say we reported them because they all demonstrated some sort of illegal element to them; they were introductions that had not been consented by us. I am again working from memory, but I believe the number of cases taken to court in the last 12 months is something in the region of 5–10, so that was a relatively small proportion; but the issue there is about having the appropriate evidence to be able to take the case—again it being timely; but looking at the legislation we have to work with, there are grey areas around the law in terms of fish introductions, and we are careful about which cases we take forward in order to achieve successful prosecutions rather than those that go against us.

Q68 Sue Doughty: You gave an example in your evidence of the impact on salmon stocks in Norway of a parasite called *Gyrodactylus salaris*, which came in from fish that were moved from the Baltic region. What risk do we have in the UK from this sort of activity, and could we have a fishy foot-and-mouth or tail or fin rot, or whatever fish get?

Dr King: Foot-and-mouth is perhaps a good analogy. Building on what my colleague has said, there is always the potential for that, and that is why we put significant effort into monitoring fish movement. Carp are particularly susceptible to a viral infection, and we probably see a dozen or more of those outbreaks every year, and they can wipe out 60–70% of the stock. We do not know specifically whether they are due to illegal movement or not, but potentially they could be.

Mr Williams: Referring to *Gyrodactylus salaris*, there is a risk that that could come into this country, and we do have evidence that salmon in this country would be susceptible to it. Research suggests that it takes a year to two years to reach the situation they had in Norway, but it is very much a potential scenario. We have been working with Defra and other bodies across the United Kingdom in recent years to develop a contingency plan in respect to some of these introductions, and particularly around *gyrodactylus*, because this country is extremely nervous that it could be introduced and cause the same sort of effects. Our salmon stocks are under sufficient pressure at the moment, without introducing a disease of that sort.

Q69 Sue Doughty: Do you feel your contingency plans are adequate, should we have an outbreak?

Mr Williams: I would say they are still in development. I believe publication of the final contingency plan is due later this year. We would like to see that coming forward, but we work extremely well with Defra and with CEFAS, the scientific arm. For fish imports, we have a joint database and work very closely with them. All of

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the bodies are so acutely aware of the potential for this disease that a very close watch is being kept on imports and fish movements within the country.

Q70 Chairman: There must be a limit to the planning you can do to prevent a disease of that kind. In order for it to happen, would it necessarily involve somebody importing and installing, as it were, fish from a particular area from a different part of the world?

Mr Williams: Unfortunately not. There are other means by which it can enter, in terms of coming in on equipment that has not been properly disinfected.

Q71 Chairman: Can I ask you about your powers and resources? You say in your memorandum to us that the Defra response to the review of the salmon and freshwater fisheries that reported in 2000 has led to some work that you are doing with Defra to take forward some of the recommendations of that; and that as a result of that you are hoping to extend your powers. What powers do you think you need to extend and what new powers would you like to have?

Dr King: If I could make a general comment first, the freshwater fisheries review had something like 195 recommendations, and many of those have already been implemented, but there are about 50 recommendations that would require primary or secondary legislation. Many of them are, when looked at individually, quite small, but when you put the basket together they would make a significant difference to our effectiveness. Again, Godfrey will give some details.

Mr Williams: In terms of the powers of our officers, at the moment people are appointed to enforce fisheries law, and they have the power of arrest but only at night. We have powers of consort and so on. We would obviously like to extend that power of arrest to do it 24 hours a day. That power of arrest allows us to take people under arrest to police stations and interview them ourselves, and we specially train our people to carry out these operations. To be able to do that would enhance our ability to operate.

Q72 Chairman: Would that change require legislation?

Mr Williams: Yes, it requires an amendment to the current legislation. We would also like to be able to examine, inspect and take samples without necessarily having to suspect an offence, which is largely the way the current law is framed. It would be highly beneficial, particularly in the area of fish movements, to be able to examine the fish and to take a sample of those fish in order to be able to nail down evidence or assure ourselves that things are safe. We would like to be able, in terms of developing the law, to have more flexible and immediate provisions. I think Defra are very much with us on this because at the moment, in order to bring new legislation through by-laws and orders, it generally takes us something between 18 months and two years. Obviously, if we have got a

particular issue that needs additional protection, we would like to be able to bring in subsidiary legislation more speedily to be able to control matters.

Q73 Chairman: Is the absence of progress on these issues a worry to you, in the light of the remarks you have made about the dangers of an outbreak of disease on a grand scale?

Dr King: It is safe to say that we are certainly eager to see fisheries legislation come forward.

Q74 Chairman: Do you have any sense of when that might happen?

Dr King: It certainly is not going to be in the short term. Defra colleagues have done a lot in preparation, should the opportunity present itself.

Mr Williams: We know that the Minister has asked for the draft legislation to be available this year, and in order to assist with that we have been working very closely with Defra to help develop draft legislation. At the moment there is no visible knowledge of parliamentary time to take legislation through.

Q75 Chairman: A familiar story.

Dr King: Another review that is relevant to this is Defra's recent review it has commissioned into marine enforcement. I understand that they are due to open consultation on that later this summer. The area of marine enforcement is certainly one where there is a significant need to improve the joining up of the different agencies. We ourselves have responsibilities in terms of salmon, sea trout and eels up to six nautical miles. In addition to the Agency, enforcement is also carried out by the Sea Fisheries Committees and the Sea Fisheries Inspectorate. The latter primarily focusing on the enforcement of the Common Fisheries policy. The sea fisheries committees are woefully under-funded, and the funding for that comes through local authorities. In many cases, because of lack of funds, they have been pretty ineffective. We effectively act as the sea fisheries committee in many of the estuaries. We believe that there could be much greater efficiency and effectiveness in marine enforcement if that responsibility was given to the Agency.

Q76 Chairman: Forgive me, but I am not clear what the duties of the sea fisheries committees are.

Dr King: They are primarily focused on the enforcement of commercial fisheries in estuaries, but that is both shellfish and indeed other fishing. They are primarily focused on commercial fisheries with far less interest in recreational fisheries.

Q77 Chairman: When you say "enforcement" are we talking about vanishing stocks or health and safety?

Dr King: It is a combination. It is about the wise utilisation and rational management of the resource. Many of our estuaries are nursery grounds for fish stocks, and that does require

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adequate enforcement. Again, as you have heard from my colleague, there is a significant amount of activity on illegal fishing in estuaries.

Q78 Chairman: You are picking up the work that the local authorities ought to have been doing themselves.

Dr King: The local authorities fund the sea fisheries committees through a levy, and it is a question of whether that feeds through into the sea fisheries committee.

Q79 Chairman: Can I ask you about the duties and responsibilities of landowners in terms of making it clear to people fishing on their land what they are entitled to do and what they are not entitled to do? What responsibilities exist at the moment for them?

Mr Williams: Essentially, they are able to apply their own rules to let people fish within their own property. We obviously encourage landowners to inform their clientele of the licensing that is required—because everybody who goes fishing requires a licence from the Agency—and also of the relevant laws. There are no powers to insist on that, and there is nothing that can be done against a landowner if he does not do that.

Q80 Chairman: Is it a case of saying that it should be possible to take action against the landowner in those circumstances?

Mr Williams: I suspect one would have to look at the enforceability of such a measure. Some landowners are very conscious of this and are very responsible and do inform their clientele about fishing licences and the way to fish. Indeed, they employ their own bailiffs and do enforce some of the laws themselves.

Q81 Chairman: By day as well as by night?

Mr Williams: Indeed. To put a legal onus on a landowner—I wonder how complex it might be to take action against a landowner in the event that something has happened, and prove that they have not advised people in the appropriate way. Certainly we would like to register at a strong level with landowners that they have a responsibility and we would like to see that happen. It is a question of how enforceable it might be to put that onus on them specifically.

Q82 Mr Thomas: We have touched already on the marine environment. One of the striking things is that since the Wildlife and Countryside Act came into effect 10 years ago there have been lots of prosecutions and enforcement actions and so forth on *terra firma* but there have been none at all in respect of marine wildlife. As well as the fishing issues we have touched on, are you concerned about the lack of vision there, or is it a lack of enforcement?

Dr King: To seek clarification, are you talking about enforcement of other than marine fisheries?

Q83 Mr Thomas: Yes, I am talking about the wider marine wildlife, because now we have things like special areas of conservation coming into the marine environment, driven by the Habitats Directive and so forth.

Mr Williams: I think it might have been a pertinent question for the previous group, English Nature! From our perspective, looking at it as objective observers, and looking at what we hear from colleagues from other organisations, there is a difficulty about getting the robust protection of sites, particularly in the marine. We have heard a little bit about the landward sites and some of the complications about taking action there, which seemed to be improving. In the marine situation of course it is difficult. There are difficulties about understanding what we mean by “favourable status” and so on in the marine environment. The fact that it is pretty much out of sight, out of mind, it is very difficult when damage occurs to nail it down to particular individuals. I am not certain that the law is currently framed to make easy enforcement action in those circumstances. We are not in a position to take that enforcement action, and I am talking as observers of what goes on elsewhere.

Q84 Mr Thomas: Are you aware that the Defra review, which you mentioned earlier, is looking at this area?

Dr King: The review that I mentioned earlier was largely focused on marine fisheries enforcement and conservation. The review that is more pertinent to this has been the review of marine conservation, and where they have the Irish Sea pilot, and how they could look after areas of protection.

Q85 Mr Thomas: Turning more specifically to fishing and licensing issues with rod and line fishing, can you say whether in general the number of licence-holders is increasing or decreasing, or static?

Dr King: I am quite pleased to say that the number of licence-holders is increasing. We like to think that that is down to a number of activities by the agency. Personally, we have seen a remarkable improvement in quality of our inland waters, which in turn has seen an increase in both the species range and the size of the stocks. In addition to that, we have exploited every opportunity for promoting sales of licence via the Internet, direct debit or the Post Office.

Q86 Mr Thomas: About how much does the licence cost?

Dr King: It depends on what licence. A coarse fishing licence is £22; salmon is £63; and then there are concessions for juniors, pensioners and disabled.

Q87 Mr Thomas: You mentioned about how you are making these more available. If I were to buy even a £50 colour television set available at Dixon's or whatever, I would have to give my name and address to prove I had a television licence. Is there

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any obligation on people, when they buy angling equipment, to say they have a licence, or show a licence?

Dr King: I do not believe there is an obligation.

Q88 Mr Thomas: Is that a particular problem? Do you rely on public awareness, or would you like some enforcement?

Dr King: It would clearly help. The analogous situation, I guess, would be much more serious: you cannot buy cartridges for a gun unless you have a licence.

Q89 Mr Thomas: There are two aspects to this. One is that the licence money brings in about 60% of the money that you use in enforcement. Clearly, if you could increase the number of licences, you would be able to deal with some of these issues better. Secondly, do you have any idea about the number of people who do fish, even if it is only occasionally, and simply do not ever bother to get a licence?

Dr King: We sample about 15% of anglers every year, and our best estimate is that about 4% are fishing without a licence. Again, in the angling fraternity there is a degree of churn, for a better word; and some people fish one year and do not fish the next.

Q90 Mr Thomas: I am not quite sure who sets the level of licences.

Dr King: It is for the Agency's Board to recommend to the Minister.

Q91 Mr Thomas: Why does the licence only cover about 60% of the money you need? Is that a deliberate policy?

Dr King: No. The income stream from fisheries has two components. The licence accounts for some 60%, and then there is grant in aid. In money terms, what comes in from licences is in the order of £17 million, and about £6.9 million in grant in aid. The money for coarse fish covers both enforcement and habitat enhancement, *et cetera*; but the enforcement is largely funded by grant in aid, and that is the most vulnerable part of our income stream because it is clearly dependent on what other pressures are on the Government.

Q92 Mr Thomas: Would you think that in principle it would be better if the angling community paid its own way? We all have to pay for the environmental costs of what we do; would it be better if the licensing regime paid for the enforcement, education and awareness?

Dr King: We would certainly subscribe to the beneficiary paying, and over time a greater component has come from the licence fee than it has from grant in aid, because that gives us greater security.

Q93 Mr Thomas: The 4% that you found were fishing without a licence—what action do you take against those?

Dr King: Again, if you are caught fishing without a licence, that is an offence, and we would take a prosecution against those individuals.

Q94 Mr Thomas: On every occasion?

Dr King: Not on every occasion, but in the majority of occasions. It is difficult because clearly the enforcement sends out a strong signal to the licence fraternity and it would not take very long to get around that fraternity if you were not following up with enforcement.

Q95 Mr Thomas: A successful prosecution presumably leads to a fine.

Dr King: Yes, a fine, but the level of fine—

Q96 Mr Thomas: Is it more or less than the licence?

Dr King: It is on average about £60.

Mr Williams: The Agency proposes the licence duties, but the Minister confirms them. We would generally propose duties, and we do propose duties at what we believe are affordable and marketable levels, and we do carry out market surveys to establish what the level of licence ought to be. We are trying to maximise our income, which means looking at how we can ensure that the most people buy the licence, but within the range that they are likely to be able to afford. In terms of whether they should pay for everything, we would like to think that good fisheries are part of the public good as well, and that anglers should not be the only group paying towards the work that we do to maintain them. We see legitimately that there is a role for government taxation to contribute towards that effort.

Q97 Chairman: Do you get to keep the fines?

Mr Williams: No, we do not. We are actually talking to the Government at the moment about the potential to keep fines, not only for fisheries offences but for broader environmental offences as well.

Q98 Chairman: Are they listening?

Mr Williams: I believe they are listening.

Mr Jones: It is part of our initial evidence, where as part of the wider Home Office review as to whether the prosecuting authorities get that back.

Q99 Mrs Clark: I would like to turn to the whole area of co-operation with other organisations, and start off with the police. When we were listening to the evidence of English Nature, they seemed to indicate they had a very good relationship and co-operation. Would you say you have the same sort of support in the work that you do?

Dr King: We certainly have a significant number of interactions and co-operation not only with the police but with a lot of other organisations as well. Particularly where you are talking about poaching on a commercial scale, and when the individuals that you are dealing with are not the most pleasant, that often requires a combined enforcement activity with the police and ourselves, and there is sharing of information and data.

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Q100 Mrs Clark: They do take these crimes as “real” crimes and do not think it is just something to do with the environment and therefore not really a crime.

Dr King: No. As I pointed out earlier, quite often when you are dealing with poaching on a commercial scale, the individuals involved are often involved in other crime.

Q101 Mrs Clark: What about regional variations in terms of police forces? Are some really more in tune than others?

Dr King: I suspect that when you look across the country there will be variations. Obviously, where we have a lot of enforcement activity, there is a degree of consistency.

Mr Jones: There are two levels in which we interact with the police service. One is at a very tactical level where our local field officers forge very strong links with local police and other agencies; and by and large they work very well. But that is framed by a memorandum of understanding that we have with ACPO, the Association of Chief Police Officers, which sets out the framework by which we will interact with the police service, and that has been very beneficial. There are some variations in how we do the work with some police forces, but we now have a very strong link through the Chief Constable of North Wales, who has the ACPO lead on environmental crime, and I have met him several times over the last 12 months. We are looking at how to review that and strengthen the crime element within that.

Q102 Mrs Clark: You have singled out in your memorandum the Durham Constabulary and a fascinating strategy of theirs called Get Hooked on Fishing, which sounds very appropriate. You are saying that what is good about them is that they are working with you to prevent offences and to promote social inclusion and good behaviour. Would you like to say more about that?

Dr King: It is a phenomenal success.

Mr Williams: We have singled out that particular one because it is so good, but I would like to support the police in saying that is spreading. I think they have forged an example of best practice, which is now being picked up in other places. In essence, the idea did come from Durham Constabulary, and it now involves a partnership

that involves us and local authorities and angling organisations. It is looking at identifying those youngsters in a locality who potentially are vulnerable to getting involved in crime, and then providing the opportunity to engage in a programme of fishing development, something that is of interest to them getting out in the countryside and enjoying angling and so on.

Q103 Mrs Clark: It seems to happen in these deprived areas.

Mr Williams: Yes, and they have had an extremely good success rate. Every youngster that has been through their programme has not re-offended, and whilst you would not expect all of them not to re-offend, you would think some of them might do.

Q104 Mrs Clark: Can you send that to us?

Mr Williams: Certainly. I have quite a lot more material on that. There is an example from there of one youngster who had failed at school who subsequently won the Young Angling Journalist of the Year Award by becoming involved in that initiative. That is a very good example of trying to move people away from the opportunity before they start.

Q105 Mrs Clark: We have not talked very much about local authorities. Do you think they are fully up to the mark? Are they properly engaged in the work with you, and again are there any that you would single out for praise?

Dr King: You have got to look at the different component parts of the fishery story. We do have good co-operation with local authorities, and just like the police we have a memorandum of understanding that underpins the co-operation with local authorities across a wide range of activities. There are a number of local protocols in support of that, fly-tipping being one of them, although there is not one on fisheries. At a local level we have had good co-operation. There is an example in the pack of an elver fishery in the Severn, which again is quite a valuable fishery and highly susceptible to poaching, and where there is good co-operation between the Agency, British Waterways and Gloucester County Council. On the marine side there is co-operation there through the sea fisheries committees.

Chairman: Thank you. That has been very helpful and we are grateful to you for coming along.

Thursday 20 May 2004

Members present:

Mr Peter Ainsworth, in the Chair

Mrs Helen Clark
Sue Doughty

Paul Flynn
Mr Simon Thomas

Memorandum from North Wales Police

1. INTRODUCTION

1.1 I am the Chief Constable of North Wales Police and also the spokesman for the Association of Chief Police Officers (ACPO) on Wildlife Crime. In this letter I will be submitting evidence from both perspectives and will attempt to be clear where my view as Chief Constable may differ from that of ACPO. Where the views of ACPO are expressed they can be taken as the view of the Police Service in England, Wales and Northern Ireland.

1.2 The term wildlife crime appears not to have been identified by the committee. The Police service does not have a definition for the term but generally we would look to offences falling within the following legislation as being wildlife crime:

- Game Acts (including Deer and Salmon and Freshwater Fisheries acts).
- Part i Wildlife and Countryside Act 1981
- Protection of Badgers Act 1992
- Part iii Conservation (Natural Habitats & C) Regulations 1994
- Wild Mammals Protection Act 1996
- Control of Trade in Endangered Species (Enforcement) Regulations 1997

1.3 It is clear from this list that not all wildlife crime is confined to species in the wild as much of the illegal trade in endangered species involves captive bred specimens. It is perhaps better to consider wildlife crime as being crime with a conservation implication. Even here there are difficulties because the Protection of Badgers Act 1992 and the Wild Mammals Protection Act 1996 rather than being conservation based are welfare based. Both ACPO and North Wales Police are of the view that wildlife crime does not include legislation aimed at ensuring the welfare of animals unless those offences are directed at wild animals.

I would now submit views on the questions the committee have raised:

2. WHAT IS THE SCALE AND IMPACT OF WILDLIFE CRIME?

2.1 The Police service in England, Wales and Northern Ireland has little idea of the scale of wildlife crime. We are required to keep statistics in a number of ways but we have no requirement placed upon us to measure to measure the extent of wildlife crime. All Police forces maintain statistics in the following ways:

2.2 Crimes

These are offences that can be tried on indictment or summarily. Few wildlife offences are crimes with the exceptions being offences under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 and the release on non-native species under section 14 of the Wildlife and Countryside Act 1981. Unlike offences such as theft or assault wildlife crime offences only come to light when detected and as such the number of crimes cannot be taken as any indication of the scale of the problem. Recently work has been initiated to gauge the scale of illegal trade in endangered species being conducted through Internet auction sites. It is readily apparent that such trade is extensive but as yet is not monitored sufficiently well to be reflected in crime figures.

2.3 Notifiable offences

Any offence that carries the potential of a custodial sentence where persons have been reported for consideration of prosecution must be recorded for statistical purposes. The majority of wildlife offences are notifiable offences but within the statistical reporting regime they are grouped together with many other types of offences as miscellaneous offences and it is not possible for them to be separated out to establish how many relate to wildlife crime. A further difficulty is that these statistics relate to the number of people reported for offences and do not indicate the levels of undetected offending.

2.4 Event recording

Every Police force is obliged to provide statistics to the Home Office on the types of call they receive. Specific categories of calls have been identified which are standard throughout the country. Those categories include “night poaching”, “poaching” and “wild birds protection” but do not include categories that can be usefully utilised for other wildlife offences such as badger baiting or the destruction of the breeding sites of European Protected Species.

2.5 Within North Wales Police I have appointed a Wildlife and Environmental Crime officer who has for the past three years gathered information on the extent of wildlife crime in North Wales. As a force we now know that we receive about 350 calls annually relating to wildlife crime. In 2002 the four Welsh Police forces participated in a project that tried to gauge the extent of wildlife crime in Wales. Two forces were able to collect information on a day-to-day basis from their event recording systems whilst the other two contributed as they could. That project revealed that in Wales in 2002 over 1,000 incidents of wildlife crime were reported. A copy of the North Wales Police 2003 annual report on wildlife crime is attached as appendix i.

2.6 It is my view that at present the UK government is not able to properly gauge the extent of wildlife crime. It may be that in the future such matters will in appropriate circumstances be dealt with by means of fixed penalties and this would in itself amount to a recording of detected offences. It is the view of ACPO that the best way to establish the extent of wildlife crime both detected and undetected will be via event recording if the present Home Office classifications can be amended to reflect the need for such statistics.

2.7 The impact of wildlife crime ranges from negligible to serious organized criminal activity. The National Criminal Intelligence Service has a national wildlife crime intelligence unit that has initially identified issues of illegal caviar trade, illegal trade in reptiles, birds of prey and parrots, and derivatives of protected species in particular traditional medicines as being priority issues. It is clear that this type of wildlife crime not only threatens the very existence of certain species but also involves organised criminal gangs who are involved because of the substantial financial gain that can accrue from such activities.

2.8 Within the United Kingdom wildlife crime has a substantial impact on our native species. In 2003 the Police service met with the Joint Nature Conservation Committee. As a consequence of that meeting conservation objectives that the Police could assist in achieving were identified as:

- Hen Harrier persecution. In England the Hen Harrier faces extinction as a breeding species due primarily to illegal actions such as shooting and illegal burning. Only eight pairs successfully nested in the North of England in 2003 despite there being sufficient habitat to carry in excess of 230 pairs.
- Bat Crime. All species of bats in the United Kingdom are of conservation concern with illegal activity connected to development being the primary concern.
- Illegal trade in endangered species. This area of criminal activity was identified because of the impact it can have on the global populations of protected species.
- Regional concerns. It was recognised that different areas of the United Kingdom might have areas of conservation concern that are not regarded as a national problem. In Wales regional objectives have been identified as development activity impacting upon European Protected Species in particular Dormice, Great Crested Newt and Otter, illegal burning on Sites of Special Scientific Interest and the illegal use of off road motor vehicles on Sites of Special Scientific Interest.

2.9 Other areas of wildlife crime can also be shown to have had substantial impact on native species. The illegal collection of wild bird eggs has until very recent times impacted upon the populations of such species as Chough and Dartford warbler. The extent of this problem has been much reduced in recent years due to proactive police operations and the availability of recently introduced custodial sentencing.

3. IS THE FRAMEWORK OF NATIONAL AND EUROPEAN LAW AND OF INTERNATIONAL REGULATION ROBUST ENOUGH TO DEAL WITH WILDLIFE CRIME EFFECTIVELY?

3.1 It is the view of ACPO that the framework of law and regulation is sufficiently robust for effective enforcement. There is a view that regulations protecting European Protected Species may in fact be so inflexible that in some circumstances developers will commit offences because of the difficulties in obtaining licences to relocate such species. In such circumstances they may be faced with the choice of committing offences with little chance of prosecution or not being able to carry out proposed works. We feel that it would be of conservation benefit if regulations adopted a more pragmatic approach to dealing with protected species where they are locally common.

3.2 The legislation relating to wildlife is not in itself complicated but does lack clarity on occasion as to what legislators are seeking to protect. The small number of cases being dealt with by courts has resulted in few stated cases and as a consequence many of the provisions in both acts and regulations are not understood. By way of example damage to bat roosts is an offence under both the Wildlife and Countryside Act and the Conservation (Natural Habitats) Regulations. However the term “roost” is not defined and there is no guidance as to when a place previously occupied by bats loses its legal protection.

3.3 Although not an operational Policing issue I am aware that in some instances European Directives have not been fully transposed into regulations. This is of course a matter for government but it is an issue for police wildlife crime officers who are dealing with environmental campaigners who may have an incomplete understanding of the situation. A further matter of concern is that reviews at present being carried out of Part 1 of the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats & c) 1994 must ensure that where species feature in both pieces of legislation that there is consistency between both. The proposed offshore habitats regulations must also be consistent.

4. DO RESPONSIBLE BODIES THAT DEAL WITH THIS TYPE OF CRIME HAVE SUFFICIENT RESOURCES AND POWERS TO DO SO? DO THEY TREAT WILDLIFE CRIME WITH PROPER AND DUE GRAVITY?

4.1 Chief Constables undoubtedly have sufficient resources to deal with wildlife crime should we decide that such matters should be resourced. However we receive no messages from government indicating that these matters should have resources directed towards it. Few Chief Constables are therefore prepared to dedicate resources towards areas they are not asked to concentrate on. Within England, Wales and Northern Ireland the majority of forces recognise wildlife crime as being Police business. Most seek to address the issue via a network of divisional wildlife officers carrying that responsibility in addition to their other roles. These networks sometimes operate through a co-ordinating officer who in the majority of cases also carries out the role in addition to other duties. The lack of importance attached to wildlife crime by managers within the Police service often results in wildlife crime officers being unable to operate effectively being given little encouragement and time to carry out their duties. It is widely recognised by those with knowledge of the area that were it not for the enthusiasm and dedication of some of those officers wildlife crime would not be investigated.

A number of forces (17) have full time wildlife crime officers, of those 11 utilise Police officers, 3 utilise support staff and 3 utilise Police officers who have other duties although they spend a substantial part of their duties addressing wildlife crime. Recent years has seen an increase in the number of forces utilising full time wildlife crime officers. However without records demonstrating the extent of wildlife crime it is difficult to present a business case for such officers and appointments seem in some instances dependent on the views of chief Police officers. A change of senior management within a force more often than not leads to a review of the post of wildlife crime officer and the numbers of officers performing the role full time only shows slight increase because for each post created another may be lost. In my own period in office a number of forces including the Metropolitan Police and South Wales Police have created full time posts but these gains have been offset by the loss of posts in Thames Valley and Lancashire Police areas.

4.2 The passing of legislation primarily the Countryside and Rights of Way Act 2000 and the Criminal Justice Act 2003 have done much to ensure that Police officers have powers to effectively enforce the law. There remain areas where our powers do not permit proactive Police action in particular in relation to offences under the Protection of Badgers Act. We are hopeful however that issues such as this can be addressed during the reviews at present being undertaken of Part 1 of the Wildlife and Countryside Act 1981 and of animal welfare legislation.

4.3 No environmental or wildlife crimes are considered to be serious arrestable offences and the definition of serious crime within the Police Act does not include any environmental or wildlife crime. As a consequence the police are often unable to investigate matters as effectively as they can when investigating serious crime. Wildlife crime sometimes involves threats to the extinction of species locally nationally or internationally. Such matters should surely be seen as serious crime.

4.4 Reducing instances of wildlife crime rather than the prosecution of offenders must be the approach shown by wildlife crime officers and the benefits to wildlife of early intervention need no further explanation. Reports are often received to the effect that development threatens protected species and it would always be the preferred option of the Police to take action to prevent offences taking place. Our reaction to such reports is often limited simply because of a lack of data to show the presence of such species. Whilst planning legislation can often be utilised to prove or disprove presence of protected species many reports of crime cannot depend on this mechanism. In such cases there is in my view a need to provide powers of entry onto land and buildings to the statutory nature conservation agencies. Such powers would enable those officers to carry out surveys of land to confirm or disprove the presence of protected species and this would do much facilitate an effective Police response.

4.5 I would suggest that at present the message received from government is that wildlife crime is not an issue that needs to be given any sort of priority by the Police albeit that the legislation does make it clear that it is Police business. As already explained it is very difficult to obtain any form of national statistics relating to wildlife crime and this suggests indifference to the extent of the problem. This leads to the perception amongst many Police officers that wildlife crime is an unimportant issue. There are certain wildlife crime investigations where the keeping and care of exhibits leads to charges totalling many thousands of pounds. Many officers managing budgets will baulk at the cost of such investigations and matters might not be investigated because of the cost implications. This again occurs because of the perception that wildlife crime is unimportant.

5. IS THERE SUFFICIENT DIALOGUE AND CO-OPERATION ACROSS GOVERNMENT AND AMONGST THE VARIOUS BODIES RESPONSIBLE FOR DEALING WITH THIS SORT OF CRIME?

5.1 The Partnership for Action against Wildlife crime (PAW) has been established to assist enforcement agencies in tackling wildlife crime and is co-chaired by Mr Martin Brasher of DEFRA and myself. The partners consist not only our two organisations but also many other organisations both government and non-government all of whom have an interest in tackling wildlife crime. This partnership has existed for some years and has achieved significant results including the strengthening of Police powers in relation to wildlife crime.

5.2 There are a number of other partnerships that have been initiated with a view to tackling wildlife crime. Within Wales a partnership has been established between the Police service and the Countryside Council for Wales that has seen the secondment of two Police Sergeants to work in the offices of CCW. Those officers are charged with reducing wildlife crime in Wales and act in a coordinating role ensuring that reports of wildlife crime in their areas are dealt with in an effective manner.

5.3 Last year the Police service asked the Joint Nature Conservation Committee to identify conservation objectives that the Police could assist in achieving. As previously explained we are now clear as to what our wildlife priorities are Hen Harrier persecution, crimes directed against bats, the illegal trade in endangered species as well as identified regional objectives.

5.4 The illegal trade in endangered species is one which colleagues in HM Customs and Excise have a great deal of expertise. The Police service is utilising that expertise through joint Police/Customs training courses.

5.5 Non government agencies also work in partnership with the Police service, the RSPB has a respected investigations unit that routinely works in partnership with Police officers and also provides training input to Police forces. Traffic International, the British Association for Shooting and Conservation and the Confederation of Badger Groups are three other organisations with whom we have valuable partnerships and there are many others that could be detailed further.

5.6 This does I feel provide ample evidence that the Police service and others do confer and cooperate when addressing wildlife crime. We should not however think that we have done enough. It is equally clear that in certain areas we need to improve. In particular I believe that the Police service still has much to do to build partnerships with organisations such as Local Authorities, English Nature and the Environment Agency.

6. CONCLUSION

6.1 The committee's press release asks if there are any other areas of environmental crime that need to be considered. The Police service as I explained in my opening statement looks at wildlife crime as crime against species. It is however important that the issue of crime against habitat is considered as without habitat in which to thrive no amount of work will secure the needs of biodiversity. The protected site regime and how offences committed under that regime are dealt with is I feel a further area that could be considered by the environmental audit committee if it is not doing so under this wildlife crime heading.

6.2 The Statutory Nature Conservation Committee who also makes decisions as to how such matters are finalised investigates crimes committed against Sites of Special Scientific Interest (SSSI). Legislation at present being considered in Scotland aims to provide Police officers with powers to investigate such matters and in Wales investigations are conducted by Police officers at the request of the Countryside Council for Wales.

6.3 Such arrangements result in crimes against SSSI's being investigated using any Police resources that are available for any other type of criminal investigation including forensic expertise and specialist equipment such as air support. I would like to see such arrangements in place throughout England, Wales and Northern Ireland.

March 2004

Annex

WILDLIFE CRIME IN NORTH WALES 2003

In October 2000 North Wales Police appointed their first full time wildlife officer Sergeant Pete Charleston. In a unique arrangement the officer has been seconded to work with the Countryside Council for Wales at their headquarters in Bangor.

At that time nobody in North Wales had any idea as to the extent of wildlife crime. Indeed enquiries carried out with the Police suggested that up until October of that year there had been no wildlife offences.

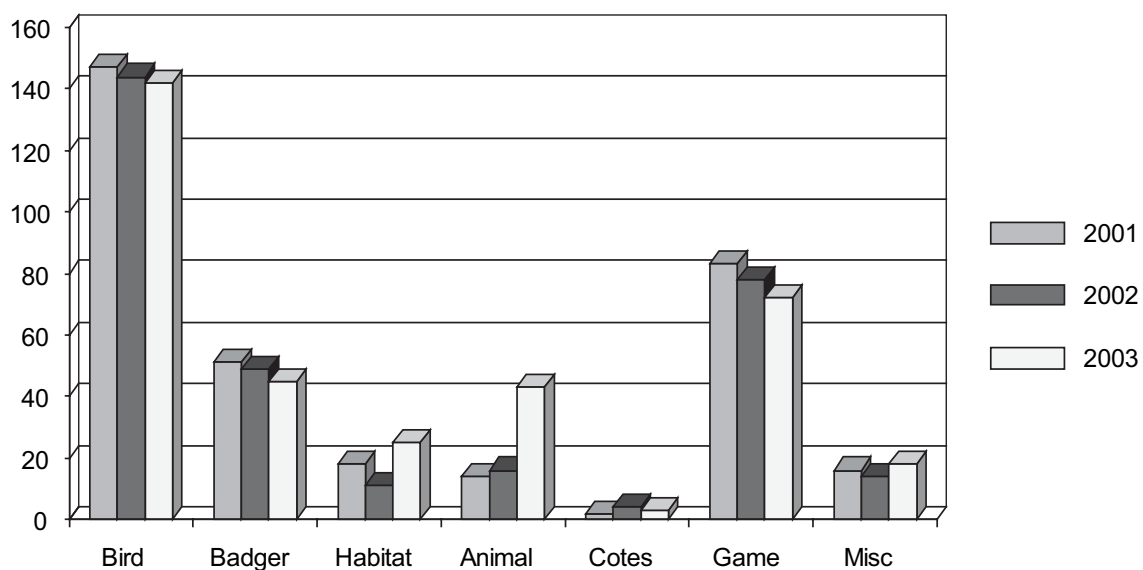
Trying to establish the extent of Wildlife Crime has been a key element of Sergeant Charleston's work. This document considers the extent of wildlife crime in the area since the 1st January 2001. Comparisons are made between 2001, 2002 and 2003 but comments relate only to 2003.

Partnership working has been the key to addressing wildlife crime. North Wales Police and the Countryside Council for Wales see themselves as the lead partners but recognise that little work could have been carried out without the support, guidance and encouragement of many other bodies, both government and non-government.

Total number of wildlife offences recorded in North Wales

Not all reports made to North Wales Police regarding wildlife are reports of offences but roughly one in four reports are. Contacts regarding wild goats, badgers being killed on the road and captive birds escaping are all of value but are not discussed within this report.

With 325 reports of incidents involving wildlife being recorded in 2002 and 351 incidents offences involving wildlife being recorded in 2003 there has been an increase of about 7% in the number of incidents being brought to the attention of North Wales Police.



Bird offences

All reports of offences in sections 1-8 of the Wildlife and Countryside Act 1981 as amended.

Offences against birds are by far the most common type of report received. Whilst the majority of those reports are of what might be called a minor nature often involving air weapons the accumulative affects on wildlife should not be overlooked. Within the reports are a number of serious issues proving that North Wales not only attracts the collectors of eggs from throughout the UK but is also home to a number of people who choose to poison peregrine falcons and shoot other birds of prey. It is of great concern that at least three separate attempts were made to poison peregrines in the force area during 2003 reinforcing the fact that Wales and the West Country is most severely affected by this type of behaviour.

Badger offences

All reports of offences identified under the Protection of Badgers Act 1992.

Offences involving badgers are of two distinct types. On the one hand those who wish to develop land for various reasons may do so or try and do so without regard to the presence of badgers. Where possible North Wales Police will take early action to prevent offences being committed rather than wait to prosecute those who have offended. We believe that during 2003 a number of good results were achieved by this policy saving badgers from harm or preventing destruction of setts. The problem of badger baiting is all too common and is of great concern. It does however have to be recognised that evidencing such offences is very difficult and offenders are unlikely to be convicted of offences unless caught in the act. Any move to add the power to obtain search warrants and to provide a power of arrest within the legislation could only be of benefit.

Habitat offences

All reports of offences identified under Section 13 and Section 28 of the Wildlife and Countryside Act 1981 as amended.

The Countryside Council for Wales is the statutory prosecuting agency in relation to offences connected with Sites of Special Scientific Interest. As part of our partnership approach such matters are investigated by the Police with the Countryside Council for Wales taking decisions on prosecution. Due to the small number of reports involving plants such matters are included within this section.

Animal offences

All reports of offences identified under Section 9 of the Wildlife and Countryside Act 1981 as amended and Regulation 39 of the Conservation (Natural Habitats & c) Regulations 1994.

North East Wales contains a substantial and important population of Great Crested Newts that are vulnerable to unlicensed development. A number of reports have been considered involving Great Crested Newts and bats without the requirement of prosecution. It is perhaps surprising that the number of reports relating to bats is as low as it is.

COTES

All reports of offences involving endangered species.

The detection of offences involving the illegal trade in endangered species their parts and their derivatives is considered to be of priority to Police Wildlife Liaison Officers. It is said that such illegal trade is second only in size to the trade in controlled drugs. In North Wales there has been few reports involving such matters and information on such matters would be particularly welcomed.

Game

All reports of poaching offences including deer and fish.

Whether poaching is a Wildlife Crime is a question often put? Having been involved in a number of reports where wild deer have been coursed with dogs and had their throats torn out I have no doubt that it should be so classified. Links between wildlife crime and other areas of criminal behaviour are all too easy to demonstrate when discussing offences involving game.

Misc

All reports of offences not included elsewhere for example illegal snares, cruelty to wild mammals and offences involving the keeping of dangerous wild animals.

This report contains details of a number of prosecutions resulting in convictions obtained over the past 12 months. Some of the matters described took place in 2002 but only came to court in 2003.

National Conservation Objectives

In 2003 the Police service asked the Joint Nature Conservation Committee to identify conservation priorities that the Police throughout the United Kingdom could assist with. The following priorities were identified and will be the focus of Police attention in 2004.

Persecution of Hen Harriers

The Hen Harrier at present faces extinction in England mainly because of criminal activity carried out because of the perceived threat it poses to Red Grouse. The population is also under pressure in Wales and Scotland.

In Wales the pressure on Hen Harriers is identified as being one of habitat destruction often as a result of illegal burning activity.

Operation Artemis is a national policing operation being established with the aim of reducing levels of criminal persecution directed towards the Hen Harrier.

Bat crime

Offences often concerned with development issues involving bats has been identified as a conservation priority. Operation bat will be implemented with a view to establishing a standard operating procedure for the Police throughout the United Kingdom when dealing with such offences.

Illegal trade in endangered species

The Police have previously identified this as a priority area of work and will be addressed via a number of initiatives including joint Police/Customs training courses and the work of the National Wildlife Crime Intelligence Unit within the National Criminal Intelligence Service.

Regional priorities

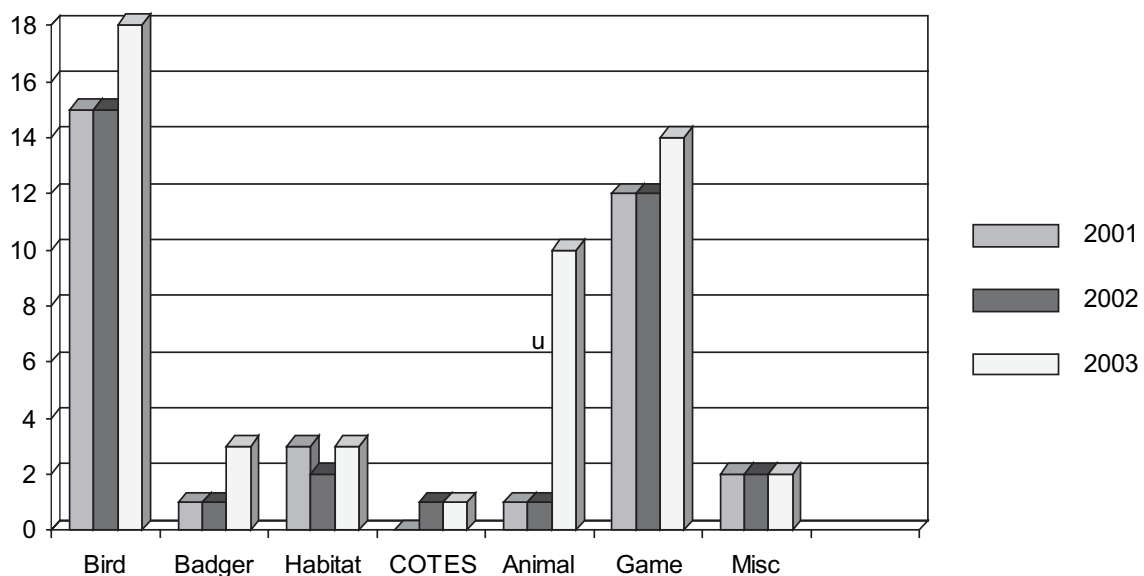
The need for regional priorities has been identified. In Wales those priorities have been identified as:

- European protected species subject of development proposals
- Damage to Sites of Special Scientific Interest in particular damage arising out of illegal burning and illegal use of motor vehicles.

Anglesey

Divisional Wildlife Officers

PC418 Pilbeam Valley



This past year has seen a 50% increase in the number of wildlife incidents reported to North Wales Police. A growing awareness of protected species on land has resulted in a large increase of complaints suggesting that developers are not complying with the law. Investigations have revealed that this has not been the case and highlights the importance of reporting sightings of protected species to the Countryside Council for Wales or other interested organisations.

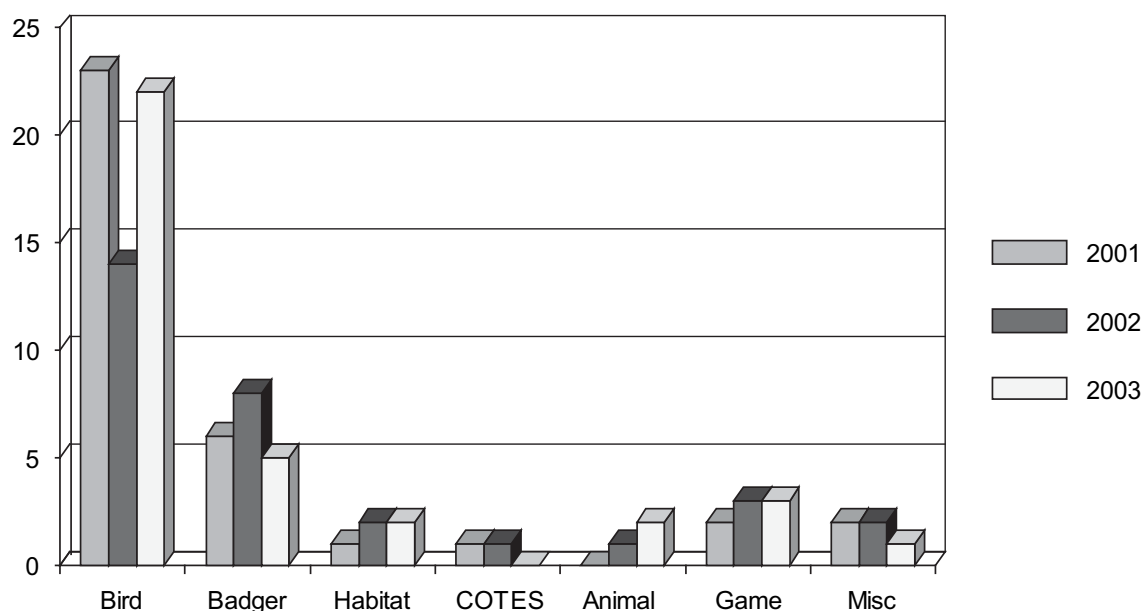
The intentional or reckless disturbance of cetaceans around the coast of Anglesey is an emerging problem and efforts will be made during 2004 to raise levels of knowledge in this area. The Countryside Council for Wales has produced a C-Wise Code of Conduct providing advice on appropriate behaviour when in the vicinity of cetaceans.

During 2003 a man appeared before Llangefni Magistrates and pleaded guilty to two offences of illegally displaying owls at his premises. Twenty four other offences were taken into consideration. The birds are not only protected under the Wildlife and Countryside Act but are also endangered species that required registration with DEFRA.

One of the most disturbing reports this year has related to the illegal intentional killing of an otter on the island. The matter is still being investigated.

Conwy

Divisional Wildlife Officers
 PS1263 Daryl Price, Colwyn Bay
 PC1847 Eryl Lloyd, Crime Team
 PC819 Beardmore, Llanrwst



The level of wildlife crime reporting within Conwy has remained constant over the past 12 months but with different emphasis.

Peregrine poisoning has now emerged as the major wildlife crime issue in the County with one confirmed instance of poisoned bait killing a breeding pair and an unconfirmed report of another pair having been poisoned in similar circumstances. When incidents from previous years are considered the Conwy valley is identified as being one of the worst areas for poisoning in the United Kingdom. Enforcement action has been taken with searches of a number of premises but with no evidence of offences being found. Intelligence relating to offenders is urgently required and if need be confidential reports can be made via Crimestoppers.

Egg theft was a crime featured on BBC's Crimewatch programme and a video of a man stealing the eggs of Chough within the county was transmitted. Although the offender was not identified useful intelligence was gained from the programme.

During this year a man appeared before Llandudno Magistrates Court and was convicted of intentionally killing a Sparrowhawk. He had seen the bird land having taken a pigeon and was observed to drive at the bird killing it when he could have easily avoided it.

A report of two poisoned badgers at the side of a rural road was investigated. Post mortem examination concluded that both animals had in fact died of injuries sustained in road traffic collisions. Other reports of badger persecution in the county failed to reveal sufficient evidence to prosecute and this highlights the importance of obtaining good intelligence in relation to badger persecution.

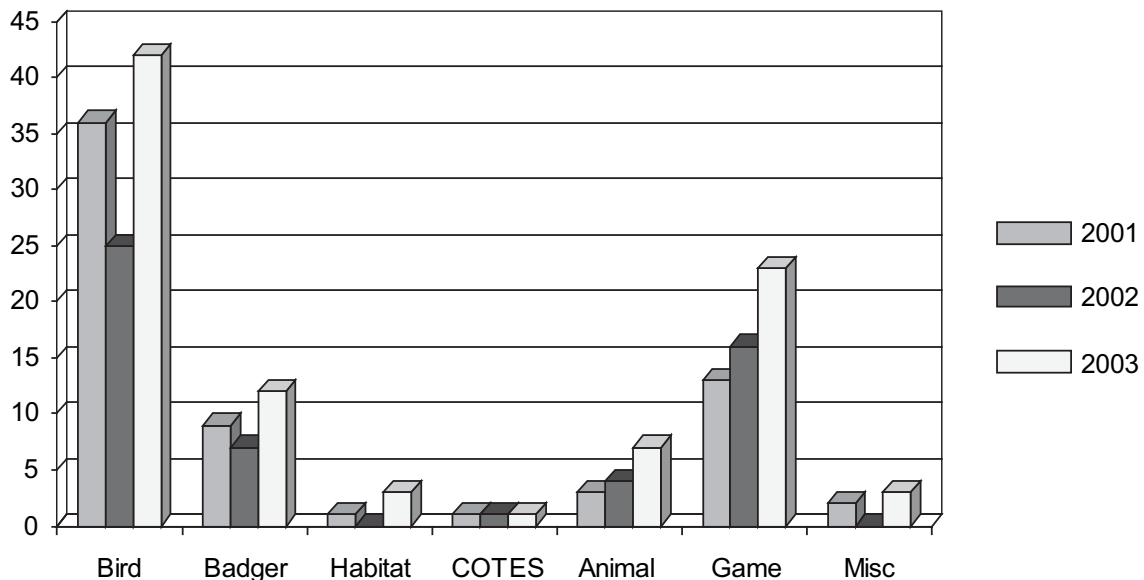
Denbighshire

Divisional Wildlife Officers

PC95 Colin Dyer, Prestatyn

PC1957 Alyn Smith Rhyl

PC101 Ian Jones Ruthin



The year 2003 has as in previous years raised a large number of wildlife crime issues within Denbighshire with the number of incidents being reported up by over 70%.

One particular call led to wildlife crime officers attending a farm in the county where a number of traps were found on poles around pheasant pens. In interview it transpired that the traps were set with the intent of trapping owls perceived as a threat to pheasant poults. A man later appeared before Denbigh Magistrates Court and was convicted of three offences relating to the illegal use of the traps.

The illegal use of motor cycles on sites of special scientific interest continues to be a problem in the area. Operations involving Denbighshire County Council, the Countryside Council for Wales and North Wales Police have been undertaken with enforcement action taken. In one particular case motor cyclists were ordered to pay fines and costs amounting to three hundred pounds each having been seen on the Berwyns by the North Wales Police helicopter which landed and reported the offenders.

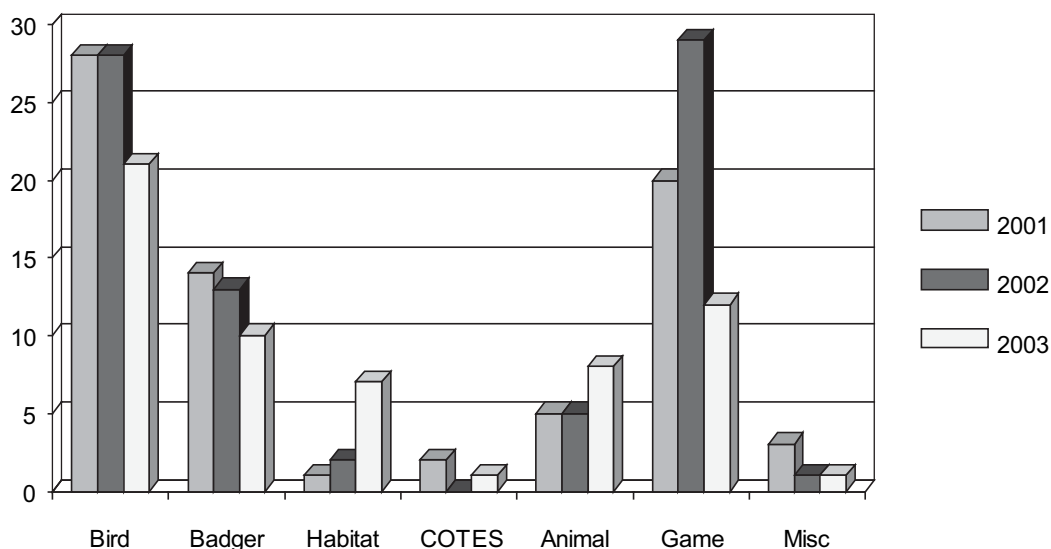
Deer poaching during the winter months of early 2003 was a serious problem in Denbighshire with the animals being taken by both dogs and gun. Police officers were able to carry out a number of stop checks of potential offenders and our presence along with that of estate staff in the area at appropriate times was increased. This might perhaps be an explanation as to why the problem has not been apparent during the latter months of the year.

Frustration is apparent at the lack of progress in dealing with problems of badger baiting in the county. Work continues to amend legislation allowing for proactive Police work but until such time intelligence remains the best opportunity for finding offenders at a sett. Any information even that that might appear trivial is sought.

A dead Red Kite recovered within the county has caused some difficulty. The bird recovered in a decomposed condition was not fit for post mortem or poison analysis to establish cause of death. It was however wearing telemetry equipment but had neither rings on its legs or tags on the wings. The telemetry equipment battery had discharged and as such the origins of the bird remain unknown.

Flintshire

Divisional Wildlife Officers
 PC978 Kelvin Povey, Buckley
 PC436 Kevin Jones, Halkyn
 PC1620 Sue Carrington, Deeside



During the past year as in previous years North Wales Police have investigated a number of complaints relating to offences involving European protected species primarily Great Crested Newts. None of the incidents complained of have produced the required evidence to institute proceedings on the advice of the Crown Prosecution Service previously received.

It can be seen that in the past year a substantial number of offences involving habitat have been investigated, such offences generally relate to section 28 of the Wildlife and Countryside Act. The Countryside Council for Wales are the prosecuting authority for such offences. A significant feature of our partnership is that North Wales Police investigate such matters on behalf of the Countryside Council for Wales. None of the investigations resulted in prosecution as the best interests of nature conservation dictated other means of disposal.

A particular investigation was carried out in relation to Giant Hogweed found growing within the county. It is an offence to cause certain plants including Giant Hogweed to grow in the wild and this investigation produced useful advice on the terms “cause” and “in the wild”.

Another matter subject of investigation related to an incident where a dead badger was seen being towed behind a motor vehicle. When challenged the driver said he was unaware that it was there and this could not be shown otherwise. Post mortem examination failed to reveal a cause of death and it appears likely that the dead animal had been attached to the vehicle without the driver’s knowledge whilst parked.

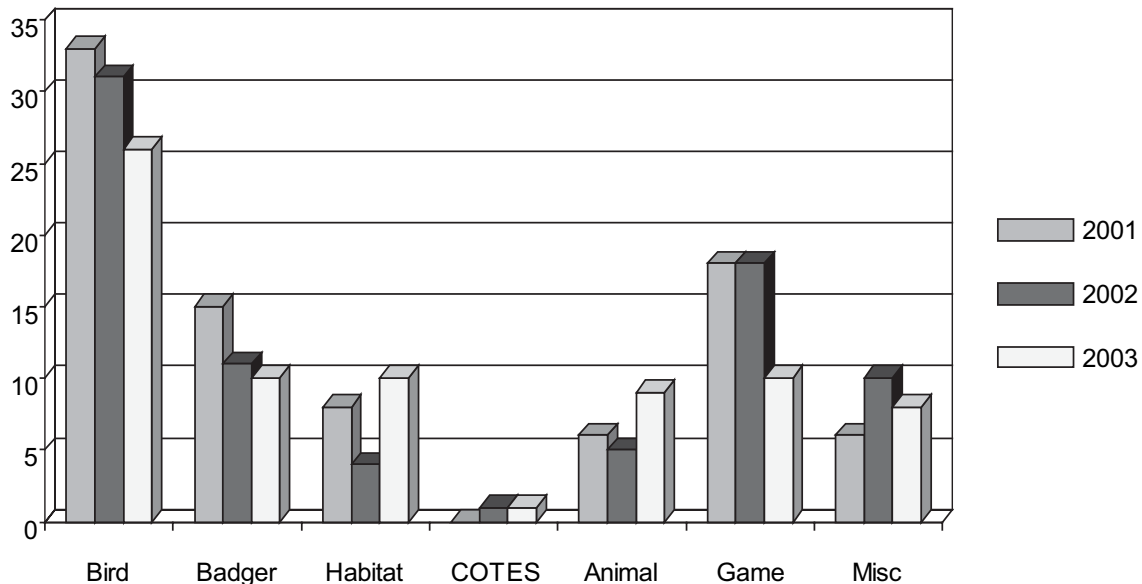
Gwynedd

Divisional Wildlife Officers

PC1188 Kelvin Jones, Penrhyndeudraeth

PC1314 Ian Ellis, Bangor

PC1498 Gareth Jones, Bala



During 2003 there were 73 incidents of wildlife crime reported to North Wales Police a reduction of nearly 10%. North West Wales with its important Chough population attracts the attention of egg collectors from throughout the United Kingdom. There are indications that provisions for custodial sentencing introduced by the Countryside and Rights of Way Act 2000 and now being utilised throughout the United Kingdom is persuading those who were involved to mend their ways.

Despite this birds are still being persecuted within the county with a Peregrine Falcon having poisoned with a baited pigeon in circumstances that appear identical to the incidents in the Conwy valley indicating a degree of organised crime. In another incident for some unknown reason a large rock was placed on a Chough nest.

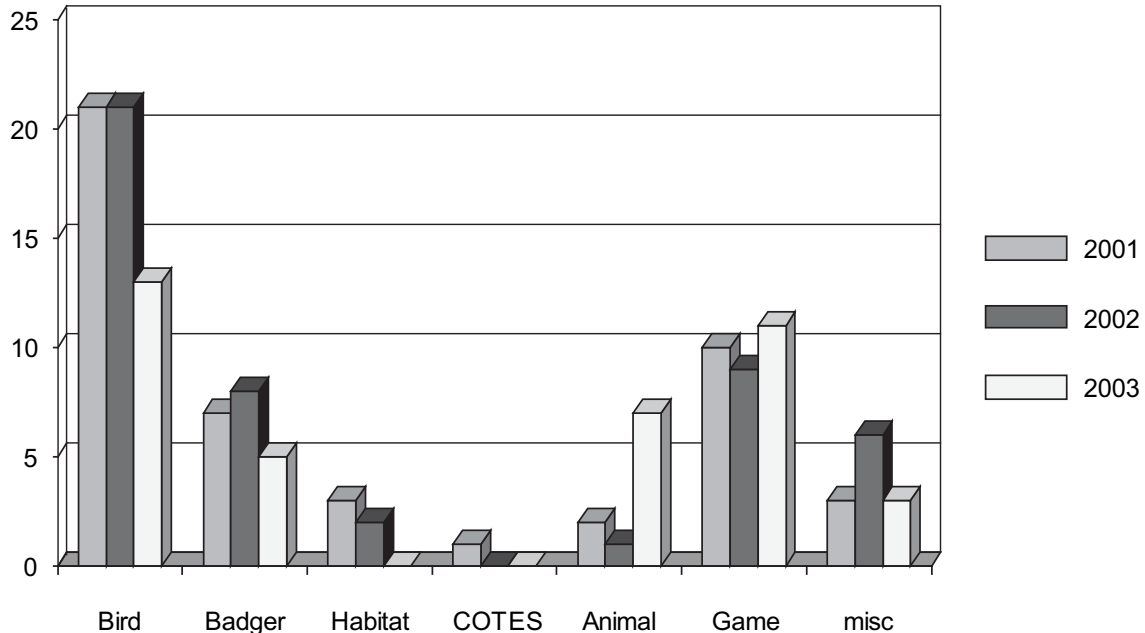
The use of internet auction sites has been identified as a problem in relation to the illegal sale of endangered species with one instance of a stuffed bird of prey being offered for sale and in another instance caviar being offered for sale. Both traders were advised as to their legal liabilities in such matters but the scale of the illegal trade is such that more high profile enforcement activity is likely in the future.

There has been a substantial increase in the number of offences relating to sssi's having been investigated. None have progressed to prosecution either because of insufficient evidence or having been dealt by alternative means.

The number of miscellaneous offences in Gwynedd is substantially higher than in other counties. Many incidents falling within this category relate to the reported sighting of felines of different descriptions. The sightings on the whole are confined to wilderness areas and are not subject of further Police activity.

Wrexham

Divisional Wildlife Officers
PC806 Barry Prole, Gresford

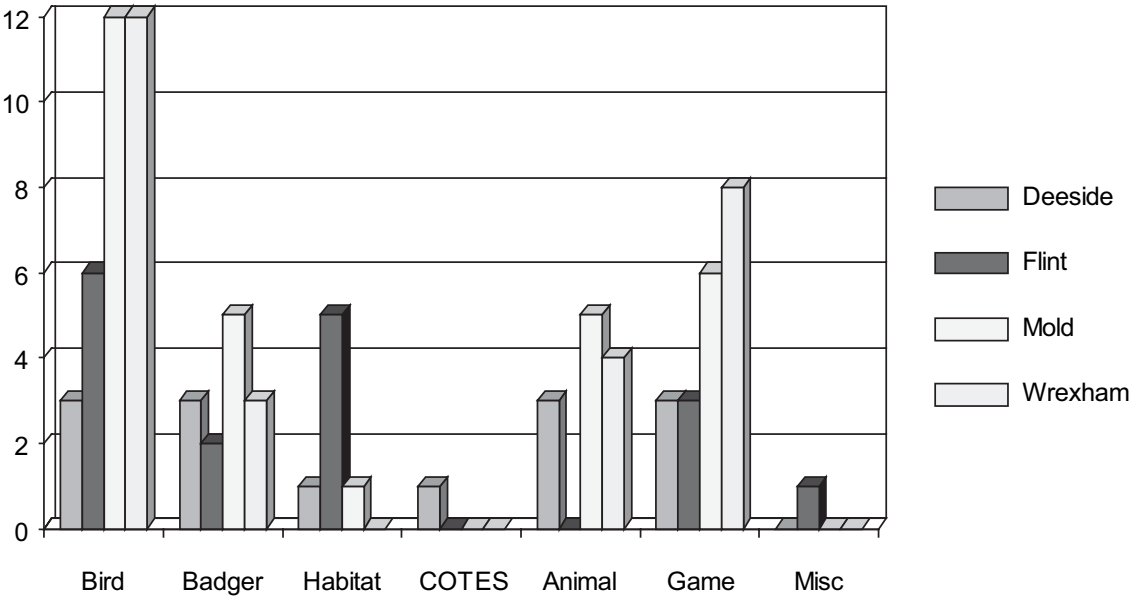


The number of wildlife crime incidents reported in 2003 was 18% less than in 2002 with increases being noted in relation to animals and game. No specific criminal trends can be identified within the animal category. The theft of stocks of coarse fish from fisheries has been identified as a problem within the game category and will be considered in partnership with the Environment Agency (Wales).

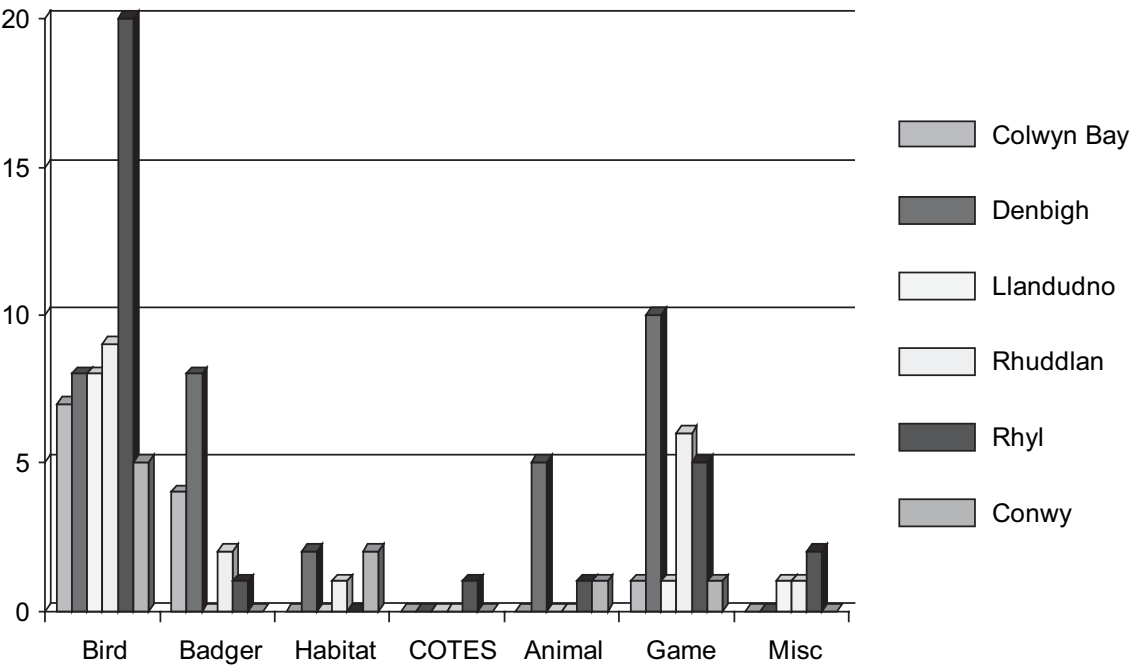
During this past year a man appeared before Wrexham Magistrates where he was convicted on charges relating to the sale of birds taken from the wild. This was a second appearance for this offender and he was fined and disqualified from keeping birds. He had appeared before the same court in 2002 on identical charges.

The nest box placed on top of the tower of Wrexham Police Station was utilised by peregrine falcons with three eggs being laid. One chick was successfully reared. It is hoped that the birds will again utilise the location this year. Consideration is at present being given to relaying pictures of the birds to the public foyer of the station or onto the North Wales Police website.

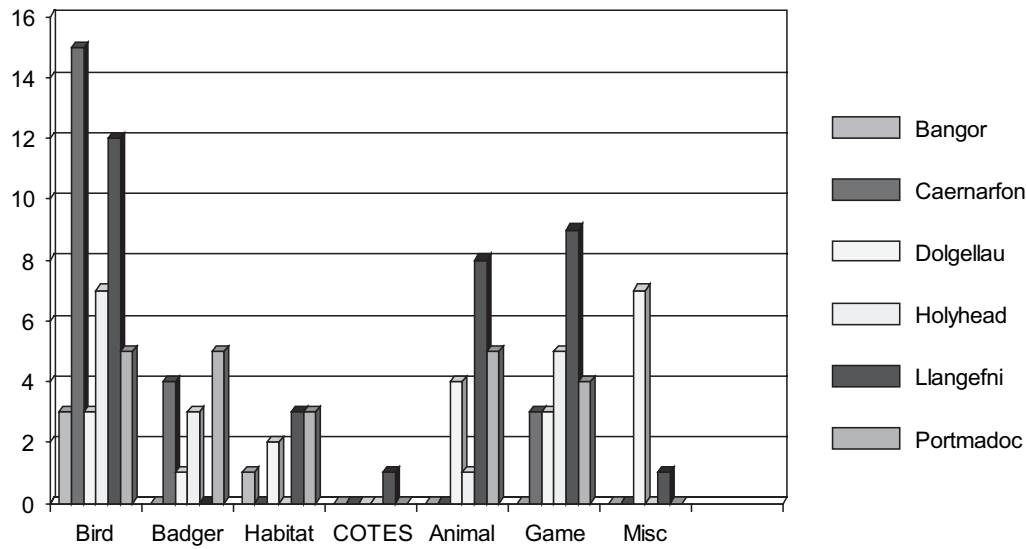
WILDLIFE CRIME BY INSPECTOR AREA
Eastern Division



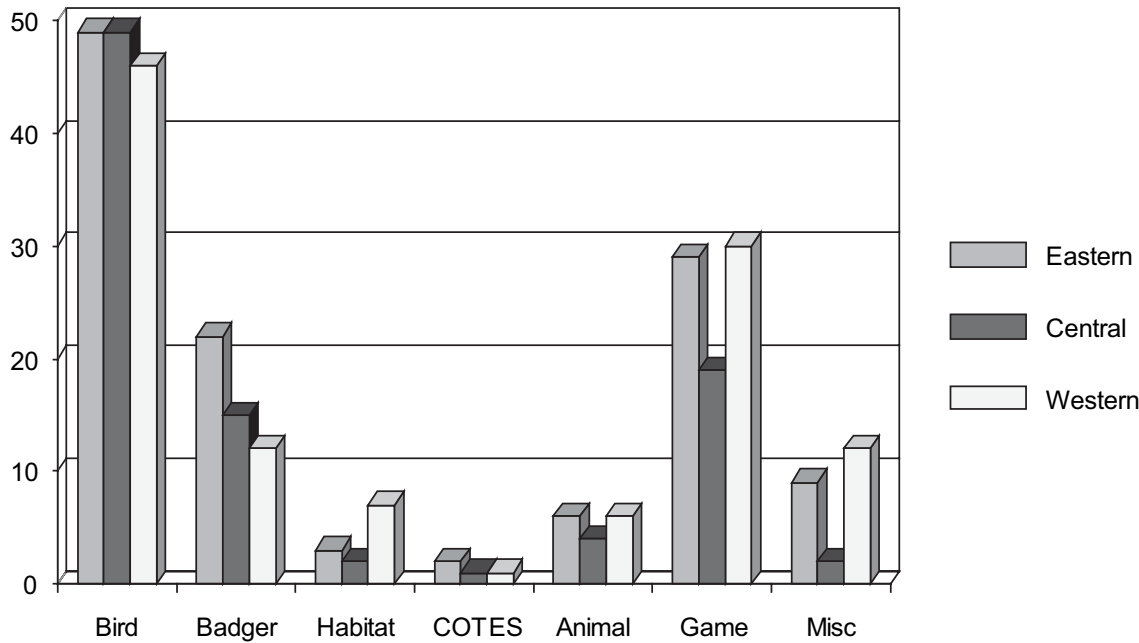
Central Division



Western Division



Divisional comparison



Witness: Sergeant Peter Charleston, Wildlife and Environment Officer, North Wales Police, examined.

Q106 Chairman: Thank you very much for joining us. We have a tight schedule, so would ask you to keep your answers as crisp as possible. Thank you so much for coming. Do you have any introductory remarks you would like to make to us?

Sergeant Charleston: I am here as a North Wales Police Sergeant, representing Mr Brunstrom, the Chief Constable, who is the Association of Chief Police Officers' spokesman on wildlife crime issues.

Q107 Mrs Clark: In the written evidence you have submitted you state that you do not have a definition for wildlife crime, but that you look to offences falling within a variety of legislation to ascertain such types of crime. However, PAW has provided three categories of wildlife crime: illegal trade in endangered species; crime involving native species which are endangered or of conservation concern; and cruelty to and the persecution of wildlife species. Would this type of definition work for the police?

Sergeant Charleston: It depends on individual police forces and what they want their wildlife crime officers to do. There are issues such as dog fighting and cock fighting that are considered by the RSPCA to be crimes, which wildlife crime officers assist them with, and it is very much for individual wildlife crime officers to decide what crimes ought to be within their remit. Nobody has ever provided a definition of what amounts to wildlife crime. It is down to individual officers.

Q108 Mrs Clark: Do you think we really do need to define the term "wildlife crime" in legislation? Is that necessary?

Sergeant Charleston: Not necessarily so, but I think when people use the term "wildlife crime" it is worthwhile knowing the areas we have been talking about.

Q109 Mrs Clark: We have received written evidence from a number of organisations, and some of them have made a distinction between what they call an offence and what they define as a crime. Is there such a distinction in law, and would the police make a distinction?

Sergeant Charleston: In law I am not sure there is a distinction. Offences are criminal offences and therefore regarded as crimes. As a police officer, I can certainly make a distinction, in that a crime for statistical purposes is an offence that can be dealt with either summarily or on indictment.

Q110 Mrs Clark: In your written evidence you state that the best way to establish the extent of wildlife crime, both detected and undetected, is by event recording, but this would only work properly if Home Office classifications were amended to reflect the need for such figures. Have you tried to get this reviewed by the Home Office?

Sergeant Charleston: We have made some informal approaches through PAW and through informal contacts at the Home Office who have indicated that to change the system would be adding to the bureaucracy placed upon police forces.

Q111 Mrs Clark: It would not be straightforward to change it.

Sergeant Charleston: They say not.

Q112 Chairman: Why not?

Sergeant Charleston: I do not know why not, sir.

Chairman: We will have to ask them.

Q113 Mrs Clark: There is an absence of a national database which records all wildlife crime, and this has been a common theme running through the evidence we have seen so far. Do you think there is a need for a national database, and, if so, who should be establishing it and setting it up, and who should be supporting it?

Sergeant Charleston: There is a need for statistics to be kept on wildlife crime. We often hear submissions made that wildlife crime is a serious problem. As things stand, without statistics we cannot make a business case for that. The best way of doing it would be for police forces to record wildlife crime on their event recording systems, and to submit those statistics to the Home Office, where they are on public record.

Q114 Chairman: If there is not a clear definition of wildlife crime, how can they record it?

Sergeant Charleston: Part of the process would be to identify what offences we wanted to record.

Q115 Sue Doughty: The National Wildlife Crime Intelligence Unit is focusing on five priority areas: illegal trade in reptiles, birds of prey and parrots, caviar, traditional East Asian medicines and parts and derivatives. Do you know how these priorities were decided upon and who decided them?

Sergeant Charleston: If I could initially make this point, the National Wildlife Crime Intelligence Unit is part of NCIS, the National Criminal Intelligence Service, and not part of the police service, and therefore I cannot speak on behalf of NCIS. Nevertheless, my understanding is that these priorities were identified initially, pretty much from perception. The unit is only just over two years old. They have no statistics to work from, and it was from making contacts with interested organisations and listening to the views of wildlife crime officers that they were able to arrive at these priorities. They are now undertaking a process of identifying criminal profiles that will lead to further assessment of those priorities.

Q116 Sue Doughty: I appreciate what you say, that this is early days in deciding the agenda for this, but did you get the feeling that you were looking at particularly lucrative crimes, or crimes where it was fairly straightforward, in other words where you get some quick wins, and that this was something you could tackle successfully?

Sergeant Charleston: NCIS as an organisation will look at organised crime, be it international crime or crime that crosses force and regional borders. Certainly the issue of a quick success has been looked upon as an important issue for the unit.

20 May 2004 Sergeant Peter Charleston

Q117 Sue Doughty: In terms of what you are seeing, and from your experience on the ground, do you think the priorities are working out in the right way?

Sergeant Charleston: I would be surprised if the priorities were changed a great deal as a result of the criminal profiles that are being established at the moment.

Q118 Sue Doughty: So it is reasonably successful; you know what you are trying to do, and you have some useful information about it.

Sergeant Charleston: I think so.

Q119 Sue Doughty: We have been told that the NWCIU prepares and disseminates intelligence packages for people like yourselves and enforcement agencies, to see what action is necessary. Effectively they are loading bullets for you, so you can go ahead and get on with it. How many intelligence packages have we had since this was established in 2002?

Sergeant Charleston: I have made some inquiries, and NCIS tell me that that information is not available to me.

Q120 Sue Doughty: Do you know how many in North Wales Police have received these?

Sergeant Charleston: Directly affecting our own force area, I have not had any from NCIS. However, they tend to use me as a conduit for Welsh matters with other Welsh forces, and I have received two via them.

Q121 Chairman: Can you tell us whether the NWCIU is only concerned really with organised crime? That was the implication of something you said earlier.

Sergeant Charleston: It is organised crime in that it is cross-boundary, be it national or international.

Q122 Chairman: It does not have a complete remit; it is dealing with perhaps the more serious end.

Sergeant Charleston: I think a lot of wildlife crime does not involve the crossing of borders, and is at the lower level of criminal offending, or organised criminal offending. NCIS will not generally look at that, but they are approaching the issue of crime profiles with a very broad mind, and will look at anything they think may involve organised activity.

Q123 Paul Flynn: You mentioned in your evidence that there is an initiative to gauge the scale of illegal trade in endangered species being conducted through the Internet. Who is leading this work and how long is it to run for?

Sergeant Charleston: We are aware, sir, that the Internet seems to be one way of carrying out an illegal trade in certain endangered species. NCIS are looking at it, and also Defra to a certain extent, I understand; and likewise individual police forces and Her Majesty's Customs & Excise.

Q124 Paul Flynn: Can you give some examples of what is going on in these sites, and can you give any indication at all about how far NCIS and others have gone?

Sergeant Charleston: Personally, on the searching of the Internet that I carried out, particularly Internet auction sites, there does seem to be a trade in relation to ivory and other derivatives.

Q125 Paul Flynn: One presumes that if the sites are open and if they have to get through to their customers to sell the material, it is open to the general public or anyone else. Surely it is fairly easy to detect the sites and possibly trace them?

Sergeant Charleston: It is easy to establish what is for sale, certainly; it is less easy to find out who is selling it and to react in time to prevent the sale occurring.

Q126 Paul Flynn: In that paragraph you make the point about the undetected crime that is going on and the trade that is going on. Is this a major concern, that it might be on a scale way beyond what we would expect?

Sergeant Charleston: I think the research is still very much at an early stage, and I am not sure we have been able to discover it to an extent where we know how many crimes are involved. If you go on to one of the larger auction sites and merely tap in, like I did, "ivory", you would find many, many lots up for sale. Many of course are legal, but some are illegal.

Q127 Chairman: We have heard evidence from the National Gamekeepers' Organisation, which is, not surprisingly, very concerned about poaching. They have said that particularly illegal hare coursing is very much on the increase, and up to 70 people, four or five times a week are out doing this in some parts of the country; and yet they also complain that the rural police forces say that it is virtually unpoliceable and there is nothing they can do about it. I would have thought that if there were 70 people doing it as regularly as that, they would present quite a big target.

Sergeant Charleston: I am aware that illegal hare coursing causes a number of police forces problems, particularly in eastern England; and I am aware that some police forces have initiatives and operations that have been set up to combat it. Although there may be large numbers of people and vehicles involved, I am aware that you do not know where they come from; they turn up on the ground, use the vehicles and the dogs on the ground, and are away before the police can necessarily respond.

Q128 Chairman: Presumably, members of the National Gamekeepers' Organisation or land-owners and farmers can take down registration numbers and you could follow that up.

Sergeant Charleston: If we had reports of that, I am sure we would make efforts to follow it up. It would be very resource-intensive to do so, and often a lot of people involved in this activity are of no fixed abode; the vehicles may not be registered to the individual, and I think there is more work involved in that than would appear at first instance.

20 May 2004 Sergeant Peter Charleston

Q129 Chairman: So when we are told that this illegal and unpleasant activity is unpoliceable, we are being told in effect the truth!

Sergeant Charleston: It certainly creates policing difficulties for us, but it is an issue that a number of police forces have recognised and are making attempts to combat.

Q130 Chairman: How often have you been involved in taking action against organised poaching?

Sergeant Charleston: In North Wales you do not have the problem of illegal hare coursing because of the geography of the area. Nevertheless, I have problems with poaching of a different nature, namely deer poaching, where we are talking about violent criminals visiting our force area and killing deer. Again, we have a policing operation set up to deal with it. The legislation as it stands at present in relation to game laws, and on other issues of wildlife crime, is such that it is very difficult for the police to be very proactive in the area. It may be possible to follow up and report people if the evidence is available, but we do not have the powers to be proactive against people committing certain offences that may be construed as wildlife crime.

Q131 Chairman: Would you like to see the law changed?

Sergeant Charleston: I think the game laws date back to the 19th century. I understand there is talk of a review, and certainly the police service would be very interesting in co-operating in that review.

Q132 Chairman: Can you tell us a little bit about the penalties that apply if people are prosecuted and found guilty of offences?

Sergeant Charleston: For game offences, my understanding is that in the courts nowadays fines are the normal penalties that are imposed, although I believe legislation does allow for custodial sentences. However, I am not aware of such sentences being imposed.

Q133 Chairman: Is there much re-offending?

Sergeant Charleston: I think poachers, people who indulge in game offences, do re-offend. They look upon it as their pastime, and first-time offenders or single offenders are quite common—re-offending, this is.

Q134 Chairman: It sounds as though whatever the penalties are in place, they are insufficient to act as a deterrent.

Sergeant Charleston: Yes.

Q135 Chairman: Can I move on to the next subject of badgers. Your written evidence says that in relation to protecting badgers the legislation is pretty robust, although there are certain areas where improvement is needed. One of the improvements you want to see is more proactive police action. The National Gamekeepers' Organisation takes a very different view; they regard badgers on the whole as a nuisance and think the rules are too restrictive. Who do you think is right?

Sergeant Charleston: The police service does not have any view on whether or not badgers are a nuisance. The police service has a view on the offences contained within the Protection of Badgers Act. When we are trying to address the problems that are raised by that Act—and the problem I talk of primarily is one of badger digging, or badger baiting—the legislation virtually requires us to capture people in the act of carrying out that activity. If I could draw comparisons for a moment with the issue of the illegal collecting of wild bird eggs, there we have powers to go out and get search warrants, where we can now arrest people and interview them. We can take the challenge of enforcing the law to people when they are not actually out committing offences. With badger baiting we have to catch people committing the offences in order to get a prosecution. Perhaps, if we had a power to obtain search warrants, we would be able to target known badger baiters, execute warrants at addresses, looking for evidence of offences that have been committed in the past.

Q136 Chairman: In your evidence you refer to the regulations for protecting European protected species as being so inflexible that they leave developers, for example, with an attractive option to commit the offence and not go through the proper process; and they pay whatever penalty if they get caught. Is it that the system is too inflexible, or is it just an excuse for people who want to commit offences?

Sergeant Charleston: In my own area, sir, we have great crested newts, a European protected species. They are in fact very locally common in north-east Wales. I am aware that virtually every development that takes place in that area has issues involving great crested newts. I am aware that for small developers the costs of dealing with European protected species may render projects unsustainable, and they are then faced with the situation of either abandoning the project sometimes or carrying out work to deal with the protected species, rather than mitigate for them.

Q137 Chairman: Is there a fixed element of cost or is the cost directly relate to the scale of the work that is being undertaken or the size of the newt population?

Sergeant Charleston: I think the costs relate to the size of the newt population rather than anything else, but it could certainly be considerable. We have recently had a PFI development on one of our divisional headquarters where we have had a great crested newt issue, and I am aware that that has cost our force somewhere in the region of £40,000. That, I would suggest, is a small issue.

Q138 Chairman: That is moving the newts and creating new habitat for them somewhere else.

Sergeant Charleston: It is providing mitigation, trapping them out of the work area and ensuring the work is carried out efficiently.

20 May 2004 Sergeant Peter Charleston

Q139 Chairman: I am struggling to think how you might recommend changes in the recommendations in order to overcome this problem, because clearly the public wish to see the newts protected and the developer has an interest in turning a blind eye if he happens to come across a newt. How can we devise a system that is flexible—to use your word—so that it reduces the cost to a point where people are more happy to comply?

Sergeant Charleston: I do not have the answer to that, sir. I do know that when I go out to speak to people considering developments and we get on to talking about European protected species the question is asked, “what will I get in court if I commit these offences?” When they are told the penalties available, as far as monetary penalties are concerned, they say, “fine, in the scale of the project we would pay that”. We need to address that situation.

Chairman: It sounds as though addressing the penalty might be the solution rather than addressing the legislation and process.

Q140 Mrs Clark: In your evidence you state that it is not that chief constables have insufficient resources to donate to wildlife crime, but it is more the complete absence of a message from government that this should be a priority area to which resources have to be directed which dictates how various forces up and down the country policed it and how many resources they allocate themselves. How often are such priorities reviewed with the Home Office?

Sergeant Charleston: I understand that Home Office targets are produced annually.

Q141 Mrs Clark: Have ACPO raised the need to review the priority attached to wildlife crime with the Home Office?

Sergeant Charleston: ACPO have been in touch with the Home Office on wildlife crime issues, and certainly the Home Office are represented on the steering groups. At the moment we have had no messages to suggest it is likely to become a priority issue.

Q142 Mrs Clark: Perhaps that is something we could usefully flag up during the course of this inquiry. We have had evidence to make a link between wildlife crime and other crimes such as burglary, drug offences and vehicle crime. Have you found this in your own experience, and what action have you taken to tackle it?

Sergeant Charleston: There are certainly links between some wildlife crime and other criminal behaviour.

Q143 Mrs Clark: So if somebody is going to be likely to commit a crime against wildlife, it is also odds on that they are into the other crimes as well.

Sergeant Charleston: I have little doubt that people who are out committing poaching offences against the Game Act are unlikely to walk past an unattended chainsaw and will engage in criminal behaviour of that sort.

Q144 Mrs Clark: If that is the case, is that not sufficient evidence for chief constables up and down the country to move it up their priority list of resources?

Sergeant Charleston: The link is certainly recognised. When we introduce initiatives, that link between wildlife crime and other areas of criminal activity is certainly highlighted as one of the reasons why you should be putting resources into it. Rural crime as a whole is moving up the agenda for chief constables, but still the wildlife crime element plays a very small part in it.

Q145 Mrs Clark: It is very patchy, is it not? Earlier on we talked about hare coursing and my experience with the Cambridge force is that they have really cracked down on it with very high profile initiatives, but obviously there is not national consistency. Finally, to what extent do you think organised crime is involved with wildlife crime?

Sergeant Charleston: I think much of wildlife crime is organised. When we have looked at issues of taking wild bird eggs, we know that people involved in that activity communicate with each other, so to that extent that is organised. The same could be said of those who go out badger baiting or badger hunting. There are most definite links between people living in different police areas and internationally. Much wildlife crime can be said to be organised to a greater or lesser extent.

Q146 Mr Thomas: I want to pick up on that point, Sergeant Charleston. I do not want to drag you too deeply into a political argument, but you will recall that this House is discussing a possible ban on fox hunting in the future. If such a ban were to come about, the evidence we have heard so far is that wildlife crime as a whole is under-manned, under-staffed, under-prioritised generally. Do you think that if the House of Commons and Parliament were to ban fox hunting that that issue would have to be looked at as a wildlife crime issue, or do you think we have to take a completely different view of how you would then go about policing those issues, because some people have said they would continue to organise fox hunting?

Sergeant Charleston: It is likely, were fox hunting to be made illegal, that many police forces would look to their wildlife crime officers to take the lead in addressing the issue.

Q147 Mr Thomas: If it were to be made a crime, are there experiences or links that you have, as a wildlife crime officer, in relation to hare coursing or badger baiting, and would you be using those experiences directly in the fox-hunting context?

Sergeant Charleston: My first reaction would be that we would, but without seeing the legislation I could not say for sure.

Q148 Mr Thomas: I appreciate that. You would not know what the penalties would be, which would be an important consideration. Playing devil's advocate, could there be a ban on fox hunting without wildlife crime becoming one of the Home

20 May 2004 Sergeant Peter Charleston

Office's priorities for police services? Would it be practicable to do it unless the Home Office were involved . . .

Sergeant Charleston: If fox hunting were made illegal, the police force would see it as their business to enforce the legislation. What priority we give to that would depend on the messages we get as to how much resource we can put towards it.

Q149 Paul Flynn: I do not know if you remember the celebrated case involving a dozen of my constituents who were arrested for duck feeding. They were a group of Ramblers who were later compensated by the police in Dyfed-Powys, but they were going to ramble in the Brecon Beacons, stopped on the way to feed some ducks and then were arrested by the local police and put in the slammer for eight hours. The police later compensated each one of them, and the comment at the time was, "when there is a hunt on here, the police go a bit daft." The resources of the police are used energetically, with great diligence, to protect the hunters at the moment, and if fox hunting is banned would it not be a more profitable use of police time if they used the resources they are using now to protect the hunt, which I am sure must be a great burden to them if they are trying to arrest my constituents in such a way, and would there not be an advantage if there was a ban because it would be easier to arrest the fox hunters than to arrest innocent ramblers?

Sergeant Charleston: I have no knowledge of the particular case you refer to.

Q150 Paul Flynn: Do you not see that there is a burden on police at the moment in protecting the hunt?

Sergeant Charleston: Yes, there is.

Q151 Paul Flynn: And it is possibly one that is an unreasonable burden. It would be much easier and a more efficient use of resources if they had to arrest the hunters, whose movements they have, rather than hunt saboteurs or people who are innocent but suspected to be hunt saboteurs? I am trying to make the point that Simon Thomas made. I am suggesting it would reduce the burden on police when the ban on fox hunting, long overdue, is introduced by this House.

Sergeant Charleston: the burden on police in relation to fox hunting is concentrated at the moment on the issues of public order. If fox hunting were to be made

illegal, then our response would depend to a great extent on the powers that were given to us in relation to those matters.

Paul Flynn: Do you think it would be a greater or lesser burden than it is now?

Chairman: We are straying into an area of speculation. We have three minutes left in this part to include questions that I think the Committee might find slightly more relevant to the present inquiry.

Q152 Sue Doughty: I want to touch on the issue of dialogue and co-operation between the different organisations. We have had very positive evidence about your partnerships with PAW and CCW. In your evidence you said that you had to do quite a bit to build relationships with local authorities, with English Nature and the Environment Agency. What dialogue do you have with them now?

Sergeant Charleston: The dialogue at the moment does take place and is patchy. In Wales we have excellent dialogue in particular with the Countryside Council for Wales. I am aware that in England some forces have very good dialogue with agencies in their area; but as a national picture, we can do much to improve the situation.

Q153 Sue Doughty: I understand what you say about it being a national problem, but what are the specific issues that are inhibiting this relationship? Are you doing anything to break it down, or do you think it has to be done at the national level and then cut down?

Sergeant Charleston: One of the issues is the number of police forces there are in England, with each force trying to build up relationships with those agencies. English Nature is based in Peterborough and has regional offices, and has a level of dialogue between those regional offices and the resources they cover. We need to approach it on a more national basis so that the same picture applies throughout.

Q154 Sue Doughty: Customs and Excise deal with import and export of controlled species and non-native species. What is your relationship with them? Do you have co-operation with them?

Sergeant Charleston: We certainly do have co-operation with Her Majesty's Customs and Excise. They have officers called CWESOs (Customs wildlife endangered species officers) and they attend joint conferences with the police, looking at wildlife crime. We have joint courses and Customs also sit on the PAW steering group and take part in the PAW working groups.

Chairman: Bang on time! Thank you.

Memorandum by the Countryside Council for Wales

The Countryside Council for Wales (CCW) is the Government's statutory advisor on sustaining natural beauty, wildlife and the opportunity for outdoor enjoyment in Wales and its inshore waters. We are a Welsh Assembly Government sponsored body. CCW has an all Wales remit operating through three Regions. CCW has statutory responsibility for the protection of notified sites. We are also the licensing authority for certain activities affecting protected species in Wales.

CCW welcomes the inquiry and submits below its responses to the questions specified by the Committee.

Wildlife crime within Wales is a recognised problem and although much of Wales is rural it is in the more urban districts that this type of crime is largely recorded (see annex 1—extracts from exhibition maps—not published).

WILDLIFE CRIME DOESN'T PAY

CCW has put out a message to potential offenders that these are serious crimes, punishable in some instances with custodial sentences. CCW will also take cases to prosecution where necessary (see annex 2).

SECONDED POLICE OFFICERS IN CCW

Uniquely in the UK, CCW is the only organisation to have two full time seconded Police Wildlife Crime Officers work within our offices. These police officers provide support and guidance for CCW when dealing with issues affecting protected sites or species.

WILDLIFE CRIME AND THE QUALITY OF LIFE

Wildlife crime has an impact not only on our natural heritage, but also on those living in and visiting Wales. The Welsh Assembly Government therefore sees the environment as a key driver for peoples quality of life, so safeguarding the countryside and its wildlife is very important in Wales.

SOCIAL INCLUSION

As well as fulfilling our enforcement role, CCW supports and promotes projects for social inclusion such as the Aberdare Country Park Peregrine Watch (see annex 3). Projects such as this indicate the kind of long term measures needed to combat the spread of wildlife crime in Wales by giving "ownership" of our natural surroundings to those who live and work within them.

LINKS WITH OTHER CRIME

There are links between wildlife crime and other criminal activity, such as possession of illegal drugs and burglary. A selection of incidents from the South Wales Police area is attached to illustrate this point (see annex 4).

IMPACT OF DEVOLUTION

Devolution has given CCW a raised profile within Wales and allows us to move faster with initiatives through our close work with the Assembly.

RAISING AWARENESS

Since 2001, CCW and a host police force have held an annual Wildlife and Environmental Crime Conference.

MARINE WILDLIFE CRIME

In May 2003, CCW and Dyfed Powys Police Marine Unit launched the Sea Wise Code (see annex 5).

1. *What is the scale and impact of wildlife crime?*

1.1 Without the facility to formally record wildlife crime statistics, we are unable to gauge the true extent of wildlife crime. This is due partly to the fact that at present the Home Office has not identified wildlife crime as a notifiable offence. However within CCW we have several systems in place which do assist us. These are:

1.1.1 Special Scientific Interest and Enforcement Questionnaires

CCW has established a system to investigate offences relating specifically to Sites of Special Scientific Interest (SSSI). CCW is the statutory body responsible for investigating offences affecting SSSIs whether carried out by the owners or occupiers of such sites, or by third parties.

On discovering a possible offence CCW staff complete a questionnaire specifying the nature of the offence and provide supporting information to assist the investigation process. CCW currently refer all such questionnaires to the Police Wildlife Crime Officers seconded to work with CCW. In utilising their considerable investigative experience we can ensure all cases are dealt with effectively and professionally. All cases are disposed of via a number of mechanisms including, advice, warnings, official cautions and, in extreme cases prosecution. CCW currently processes between 30 to 40 questionnaires per annum and with increased training of staff and use of trained police officers this is expected to rise. It is important to note that the above figure represents reported cases. As the designation coverage of Wales currently stands at over 12% it is therefore difficult to enforce given the large area of land. Therefore the true scale of offences is considered to be far greater.

1.1.2 Casework Recording

Regional staff are required to record all enquiries received regarding incidents or queries where protected species are affected. Where an offence is suspected, these records are forwarded to our seconded Police Wildlife Crime Officers for further investigation. In such instances, CCW staff will provide assistance and where necessary, witness statements.

1.1.3 Seconded Police Wildlife Crime Officers

CCW holds a unique place within the UK in that we second two full time Police Wildlife Crime Officers to work alongside CCW staff. These Officers, from North Wales and South Wales Police, are based within CCW offices in Bangor and Cardiff and assist with both site and species enforcement. Both these Officers record the number of calls they receive relating to wildlife crime. For the year 2003, the statistics for North Wales and South Wales were 350 and 292 respectively (see annex 6—not published).

1.4 Without clear statistics it is not easy to assess the true impact that wildlife crime is having upon protected sites and species. However it is evident that loss of habitat due to burning, unlawful development or unsuitable management will impact upon the distribution and population success of many species either as a direct result of persecution or through the damage of an area known to support many species. The South Wales Peregrine Watch, of which CCW is a partner, provides a clear example of this. The Watch monitor 36 peregrine nest sites in south Wales. On average two thirds of these sites fail every year with a proportion of these failures being directly attributed to persecution. This failure to raise healthy chicks prevents peregrines in south Wales reaching their full distribution potential (see annex 7).

1.5 CCW also considers that the subsequent effects of wildlife crime, such as habitat damage from off road vehicles on protected sites and illegal trapping or poisoning can have a detrimental impact on the public's enjoyment of Wales' countryside and coast.

1.6 Conclusion

Without data and statistics, CCW is unable to make any scientific analysis of the affect of wildlife crime on protected sites and species. Through other means however, we are able to gauge how widespread this type of crime is throughout Wales and what particular criminal activities require tackling as a priority.

2. *Is the framework of national and European law and of international regulation robust enough to deal with wildlife crime effectively?*

2.1 CCW has statutory responsibilities for protected sites and species under the following legislation:

- The Wildlife and Countryside Act 1981
- The Conservation (Natural Habitats &c) Regulations 1994
- The Protection of Badgers Act 1992 (licensing)
- The Deer Act 1991 (licensing)
- The Countryside and Rights of Way Act 2000

2.2 On the whole, CCW considers that for its purposes, the current legislation is robust enough to support effective enforcement. The CRoW Act 2000 has improved the situation with the introduction of enhanced police powers, with the added offence of "reckless" damage or killing and the potential for custodial sentences. However, within regard specifically to SSSI legislation, third party offences are often not detected at the time of the offence. These offences by their very nature prove difficult to enforce against. CCW has to prove prior knowledge by a third party of the SSSI designation and its interest. Offences such as illegal burning and 4 x 4 vehicle damage are also resource intensive to manage. A further problem, which CCW encounters, is that Public Bodies are not treated to the same degree of culpability as owners and occupiers

of SSSI. Public Bodies must follow a consultation process but the Act (CRoW) can be circumnavigated in places, allowing damage to occur without penalty. CCW also considers that the reinstatement of Nature Conservation Orders to restrict unlawful activities being carried out by any person, could be a great asset. The provision for the use of Nature Conservation Orders was removed in 2000 from the Wildlife and Countryside Act 1981.

2.3 CCW has found some aspects of the Conservation Regulations have been drafted with a restrictive approach. For example:

2.3.1 The Conservation Regulations are the UK Governments interpretation of the Habitats Directive. However, there has been poor transposition of the text and spirit of the Directive into the Regulations. This is particularly relevant to defences that appear in the Regulations but not in the Directive.

2.3.2 There is imbalance in applying the legislation at different degrees of threat by setting the appropriate level of “test” with respect to licensing developments affecting European protected species. For example, both house extensions and housing estates are tested against equal parameters.

2.3.3 The recent judgement over the decision not to issue a licence for the translocation of great crested newts at Halkyn Mountain, Flintshire (ref: The Honourable Mr Justice Pitchford. Case No: CO/1872/03) in advance of quarrying, has apparently overturned the protection provided by the Regulations as interpreted by CCW.

2.4 Due largely to lack of case law for any piece of legislation under which CCW has responsibility, it is often difficult to establish our own guidelines where definitions of legal terms are required. Confusion has arisen when, as an organisation, we have attempted to define actions such as “take” or “disturb” within UK and EU legislation. Unfortunately, those same provisions are defined very differently by other enforcement agencies. This inconsistency weakens any legal argument that CCW or other bodies may wish to take and lessens the validity of the legislation. Therefore a clear and concise directory of definitions would strengthen the legislation.

2.5 Conclusion

Generally the legislation is robust enough in itself to deal with the majority of wildlife crime but lack of case law, clear terminology and implementation guidelines, as well as inconsistencies between the Directive and Regulations, make some aspects of the legislation difficult to interpret and apply. With regard to site legislation, there is no doubt that the CRoW Act 2000 has brought a massive increase in the protection afforded to SSSIs. However there is still considerable weakness in relation to third parties, and inconsistencies between the legal terms imposed on owner/occupiers and public bodies. CCW would like consideration to be given to the reinstatement of Nature Conservation Orders.

3. *Do responsible bodies who deal with this type of crime have sufficient resources and powers to do so? Do they treat wildlife crime with proper and true gravity?*

3.1 CCW employs 661 staff. Of those, 73 make up our Regional Conservation Teams. These teams are at the forefront of CCW’s responsibilities for protected sites and for ensuring that protected species are given consideration in local authority plans etc. CCW also employs species specialists throughout its Regions and within its Headquarters. A Site Safeguard Team is also based within Headquarters.

3.2 CCW Headquarters species and site teams, in addition to terrestrial, freshwater and marine scientists provide support and guidance for Regional staff on relevant aspects of legislation and enforcement. In past years, CCW has increased these Teams to reflect the importance of our enforcement responsibilities. For example, CCW now employs a Species Protection Team which has responsibility for producing policy, guidance and training for staff, for ensuring that CCW plays a vital role in the development and implementation of species legislation, especially through its close connections with the police and for the issuing of licenses. This Team has grown from two part time members of staff four years ago to three members of staff at the present time.

3.3 CCW considers it is a priority that staff who deal with protected species and sites are provided with adequate resources in the form of policy and guidance as well as targeted training. Enforcement training has been delivered as part of CCW’s training programme. These courses cover subjects such as evidence gathering techniques and an understanding of CCW’s role within the judicial system. The courses were attended by 80 staff in 2003. However, encouraging staff and partners to report offences has created problems in the past but CCW is now seeing a culture change where staff in particular are reporting offences knowing that they will not be responsible personally for undertaking the investigation. Historically CCW staff have not been trained to investigate offences and saw the enforcement route as confrontational and time consuming.

3.4 CCW has produced and contributed to publicity material promoting the awareness of wildlife crime. We also fund and produce bilingual material for a stand at the Royal Welsh Show with the Partnership for Action Against Wildlife Crime (PAW).

3.5 In April 2000, North Wales Police Chief Constable offered CCW a full time Wildlife Crime Officer on a secondment basis. This Officer took up post within CCW’s Headquarters office in October that year. CCW and North Wales Police worked in partnership to resource this post with North Wales Police paying

salary and CCW providing office facilities, vehicle and staff support. The secondment was considered such a success by CCW in assisting with the delivery of our functions, that in April 2003, CCW fully funded the appointment of a second officer from South Wales Police from our own budget. The second officer is currently on a three year contract to CCW.

3.6 The powers bestowed on CCW to enforce the law are largely provided in the form of protected site legislation, detailed in Schedule 9 of the Countryside and Rights of Way Act 2000. These powers are considered by CCW on the whole to be adequate in meeting our statutory responsibilities, however we would refer the Committee to Section 2 of this memorandum. Licensing powers are the responsibility of CCW and again, we consider that these are largely adequate. However, CCW would wish the Committee to refer to the comments made in section 2.4 of this memorandum in respect of definitions and transposition of European legislation. The powers that CCW does have can be seriously undermined by our concerns addressed here.

3.7 Conclusion

As the body responsible for the protection of notified sites, for the issuing of licences and for ensuring the protection of scheduled species, CCW considers that it does, on the whole, have sufficient resources and powers to fulfil its statutory function. CCW is also willing to resource material and events that highlight the problems of wildlife crime. However, the approach taken by CCW to wildlife crime and the development of policy can only be said to have been considered as an important priority for the organisation in the last four years.

4. *Is there sufficient dialogue and co-operation across Government and amongst various bodies responsible for dealing with this type of crime?*

4.1 CCW considers that dialogue and working relationships with the police is a considerable asset to our organisation. Through the close working partnership CCW has with our seconded Wildlife Crime Officers, we have been able on a number of occasions to prevent offences from being committed. The presence of a uniformed police officer based within CCW has had a major impact for staff by providing an advisory service in house as well giving assistance and back up on site. In addition, through the establishment of the secondments, relations between CCW staff and officers throughout the four Welsh police forces have improved considerably. CCW staff are now in contact with their local Police Wildlife Crime Officer and there is better understanding of the roles and functions of our two organisations. This improvement in liaison and support has also made us aware of the assistance we can provide for each other either when enquiries are being undertaken or when specialist knowledge is required. CCW staff provide witness statements on a regular basis and have assisted the police as witnesses in court. The police in turn have used information and data held by CCW to assist them with enquiries and enforcement action.

4.2 Since 2001, CCW and a host police force have held an annual Wildlife and Environmental Crime Conference. The aim of the conference, which has been attended annually by up to 150 delegates, is to raise awareness of wildlife crime amongst our partners, to share ideas and experiences in how to tackle problems and to discuss and agree issues that can be progressed. As such, an Action Plan has been produced from the last two events detailing issues raised, what actions can be delivered and by whom. An example from the 2002 Conference was the request to provide general guidance to boat users and visitors to Welsh coasts on how this particular natural heritage and its wildlife were protected. In May 2003, CCW and Dyfed Powys Police Marine Unit launched the Sea Wise Code. 20,000 copies have been produced and distributed around Wales. The Conference is the only one of its kind in the UK to be open to delegates from all interested parties, both public, private and voluntary. Such is the success of the conference that delegates attend not only from Wales but also from Scotland, England and Ireland, including Police Wildlife Crime Officers from those countries.

4.3 In September 2003, CCW was invited to attend a meeting with JNCC and the Police to consider what conservation issues were most affected by crime and could therefore benefit from police intervention. A suite of UK wide priorities were identified and CCW was asked to provide its own priorities. The Welsh conservation priorities have been identified as:

- Damage to SSSI by illegal burning
- Damage to SSSI caused by off-road vehicles
- Loss or damage to habitat used by European protected species through unlawful development

CCW has undertaken the management and production of guidelines for the police, which will assist them when dealing with incidents involving any of the above. The guidelines, along with maps and other information, are due to be distributed to the police in August 2004. CCW will also be providing training for its own staff and Police Wildlife Crime Officers on how and when to use the guidelines and to reiterate the importance of maintaining links between local CCW and police officers. The Welsh Conservation Objectives initiative is due to be launched at the 2004 Wildlife and Environmental Crime Conference by Carwyn Jones AM, Minister for Environment, Planning and Countryside.

4.4 CCW supports the objectives of the Partnership for Action Against Wildlife Crime (PAW), which is a body established by DEFRA to assist and unite those organisations, both voluntary and statutory, with a wildlife enforcement remit. CCW has funded the bilingual production of a series of PAW leaflets and has provided input at PAW events.

4.5 CCW has regular liaison meetings with our sister organisations in England and Scotland and although communication is good, the three bodies are inconsistent in their approach to the issue of wildlife crime. This can not only undermine the strength of legislation when we have different interpretations of definitions etc, and thus apply the same legislation differently, but it also causes confusion among those members of the public and professionals who work cross border and therefore seek advice from two or more of the organisations.

4.6 CCW has regular liaison meetings with relevant staff at the Welsh Assembly Government.

4.7 CCW recognises that there is scope for better communication between ourselves and the enforcement teams of bodies such as the Environment Agency and local authorities. This is an internal issue for CCW to address. However, our lines of communication with voluntary organisations such as the RSPB and the National Federation of Badger Groups are generally good. CCW is happy to share and exchange information, where permitted, that can assist the agenda of those organisations. CCW is also very appreciative of the support that such organisations provide for us when undertaking our own enquiries.

4.8 Conclusion

CCW feels very privileged to hold the position that it does within the wildlife enforcement agencies of Wales and indeed further afield. Through the unique secondments with the police, we find that we are able to provide, and be provided with, much improved dialogue which can only assist in reducing wildlife crime. CCW does acknowledge that there remains room for improvement, some of which is an item for CCW to pursue internally. However, we feel that assistance and guidance from central Government would improve consistency between the statutory conservation agencies and strengthen the implementation of the current legislation.

Annex 2

PUMLUMON SSSI

Pumlumon is a well-known location in north Ceredigion. It attracts walkers from all over the UK and is a very popular rambling destination. It is a significant landscape feature and this case was of considerable interest for a number of reasons.

In early 2002 a farmer constructed a 6m wide road across an area of the mountain, damaging fragile blanket bog and mountain heath vegetation. Reluctantly CCW decided to prosecute. In this case we felt it was necessary to take this action in order to restore the site to its former condition. This case illustrates the need for CCW to be consulted before any work is carried out, so that damage to our mountain habitats can be avoided.

The landowner pleaded guilty in January 2004 to damaging a nationally important wildlife site and the Aberystwyth court set a new precedent by ordering that the land should be restored to its former condition, the first time that this has been done in Wales. This was also the first prosecution in Wales under the new provisions of the Wildlife and Countryside Act for damage caused by an occupier to a Site of Special Scientific Interest.

As indicated above this case set a legal precedent in Wales. It also provoked an outcry from the rambling fraternity and the local community who were appalled by the visual and environmental impact. This case clearly had the potential to effect the local green economy by spoiling a popular walking destination. It also had a wider visual impact on the area, being clearly visible from some distance. Finally the outcome prompted members of the public to congratulate CCW for its decision to take action, a clear statement that the protection of our SSSIs is seen as important in the eyes of the public.

Annex 3

DARE VALLEY COUNTRY PARK, CYNON VALLEY, SOUTH WALES

PEREGRINE CAMERA PROJECT

The Dare Valley Peregrine Watch Camera Project was promoted by the South Wales Peregrine Watch Group with the support of partners, the Countryside Council for Wales, RSPB and RSPCA. Rhondda Cynon Taff County Borough Council who run the Park, also contributed greatly to the project.

Peregrines have suffered from deliberate persecution in South Wales and the project was seen as a means of protecting the resident birds from disturbance as well as raising the profile of peregrines in the local area.

By showing live pictures of nesting birds at the Visitor Centre, local residents were encouraged to visit the Country Park and take a greater interest in the wildlife generally to be found there.

The local community did indeed take a great interest in the project, referring to the peregrines as “their birds”. The project has been seen as a good example of wildlife enforcement and social inclusion.

A camera has once again been placed on the nest in 2004.

Annex 4

EXAMPLES OF CONNECTIONS BETWEEN WILDLIFE CRIME AND OTHER CRIMES IN THE SOUTH WALES AREA

1. Warrant executed at the home of a person suspected of offences of disturbing schedule one birds. Evidence of Section 1 Wildlife and Countryside Act 1981 offences recovered and also six cannabis plants found growing in the attic of the house. Culprit cautioned for both offences.

2. Search warrant executed at the premises of a falconer believed involved in the laundering of wild caught raptors into the legal market. Evidence of Wildlife offences recovered but insufficient to take proceedings. Also found illegal skunk cannabis plantation on the premises. Culprit received a 12-month prison sentence for the illegal cultivation of the cannabis.

3. Intelligence received about a known badger digger from the Barry area who was seen in the Gloucestershire area where two badger setts had been attacked and dwelling houses had been burgled. Evidence pointed to the fact that the culprit was responsible for both offences.

4. During the search of an allotment in relation to the illegal taking and possession of wild raptors, an illegal section 1 firearm was recovered. Culprit convicted of wildlife and firearms offences

5. During a search of premises in relation to the illegal use of pesticides in an attempt to kill peregrine falcons, an illegal shotgun and ammunition were recovered. Culprit convicted of wildlife and firearms offences.

6. A convicted badger digger from south Wales was caught poaching in the north of England. When searched he was found to be in possession of drugs. The culprit was convicted of poaching and drug related offences.

Annex 7

SOUTH WALES PEREGRINE WATCH

36 sites monitored across South Wales. 25 failed to produce chicks. 11 sites produced 28 chicks.

BREAKDOWN INTO LA AREAS:

<i>Local Authority</i>	<i>Successful (No. of Chicks)</i>	<i>Failed</i>
Cardiff	2 (6)	1
Neath and Port Talbot	1 (3)	1
Merthyr Tydfil	0	5
Rhondda Cynon Taff	4 (9)	7
Ogwr	1 (3)	2
Vale of Glamorgan	1 (3)	1
Blaina	0	2
Torfaen	0	3
Caerphilly	2 (6)	3
TOTAL	11 (28)	25

INCIDENTS:

<i>Bournville, Blaina:</i>	Two poisoned peregrines and poisoned pigeon bait recovered. Tested positive for Aldicarb.
<i>Graig Fawr, Cwm Parc:</i>	Believed robbed. 5 eggs laid but no chicks present. Evidence of nest robbery having taken place.
<i>Llanfach Quarry:</i>	Nest destroyed by quarry face being blown-up by quarry.
<i>Llanharry:</i>	One bird found dead, believed poisoned (but not confirmed); breeding failed at site.
<i>Swansea Town Centre:</i>	One adult bird found in shop door way. Treated at Gower Bird Hospital for what was believed to be Strychnine poisoning. Bird recovered and was released.

Witnesses: **Sergeant Peter Charleston**, Wildlife and Environment Officer, North Wales Police, further examined, **Mr John Lloyd Jones**, Chairman, **Ms Gill Bilsborough**, Senior Species Officer, and **Sergeant Ian Guildford**, Seconded Police Officer, the Countryside Council for Wales, examined.

Chairman: Can I welcome the rest of the line-up. Thank you for joining us today.

Q155 Paul Flynn: Thank you very much for your evidence. During the oral evidence we had last week from English Nature we heard how difficult it was to monitor the SSSIs. They told the Committee that they had a programme to visit each SSSI once every six years. How do we monitor the sites in Wales?

Mr Lloyd Jones: Can I refer that question to Gil Bilsborough because we have been doing some work now on assessing the conditions of the SSSIs in Wales.

Ms Bilsborough: We have got our own programme as well on a six-yearly basis. The monitoring standards that we follow are those set by the JNCC so they will be the same common standards as English Nature. We have a key target at the moment of 20% of our SAC site, which are the European sites, and many of those wrap up with SSSIs. We have just had a rapid review exercise also, which looks at the features of SSSIs and how they are affected. The very first statistics to come out of that review have shown us that 47% of features of SSSIs are in favourable or encourageable condition. Unfortunately, 52% do not meet that requirement and 1% has been lost.

Q156 Paul Flynn: How many people do you have on this? What is the area they have to cover in each one?

Ms Bilsborough: I understand the rapid review programme covers the whole of Wales and there are five dedicated staff to deal with that.

Mr Lloyd Jones: In fact 12% of Wales is SSSIs, so we are talking about a significant amount of land.

Q157 Paul Flynn: Do you think it was too ambitious and that there are too many SSSIs to control, with the amount of damage that has resulted?

Mr Lloyd Jones: First of all, they have been designated as SSSIs, and therefore we have to make sure that they are in favourable condition. The other thing we have to look at is, if they do not reach the standard, then is it as a result of neglect, or is it the result of criminal activities? Again, we have to be quite certain, if they are not in favourable condition, exactly the reason for that; or, on the other hand, some of them could be in an unfavourable condition simply because of natural processes like global warming.

Q158 Paul Flynn: What is the extent of the damage that occurs? What would be a very bad case? The scale seems to be enormous.

Mr Lloyd Jones: At the extreme end, the damage would be something like a traditional hay meadow that had been ploughed up.

Q159 Paul Flynn: What are the global warming ones?

Mr Lloyd Jones: One classic example would be the Snowdon Lily; exactly where does the Snowdon Lily go to with global warming? It is already very high up Snowdon.

Q160 Paul Flynn: You think it will disappear if global warming goes on; there will be one example growing on the summit and that will be it.

Mr Lloyd Jones: It is an interesting subject. That is why, as an organisation, we are now moving away from concentrating just on designated sites to trying to raise the general standards, and trying to provide corridors so that species and habitats can migrate as a result of changes to local situations.

Q161 Paul Flynn: What proportion of the damage that is reported to you is reported by your own officers or by members of the public?

Ms Bilsborough: A significant number will be reported by our own staff. We have a method of reporting damage or problems with our SSSIs through our own internal enforcement questionnaires. We have certainly seen an increase within our own staff; 100% increase of turnover of these forms submitted to our headquarters staff, so I would say the majority of cases are reported by our own people.

Q162 Paul Flynn: The secondees that you have among the police forces seems to be a good news story and is working very well from your point of view. You state that your staff put through 30-40 questionnaires to the secondees for them to forward. Are these generated from visits or calls? Are they separate from the police?

Ms Bilsborough: They generally would be from observations or calls when our staff have gone to make visits or inquiries on site.

Q163 Paul Flynn: What criteria do you use to decide if something should go through the police?

Ms Bilsborough: It would depend on the sites you were talking about and the features on the site and how they had been damaged. That would require that questionnaire to be sent out. I am not aware of the actual criteria on which that form will be filled in, but I am sure there are criteria that our staff use.

Q164 Paul Flynn: Can you give me some idea of what sort of supporting evidence would be given?

Ms Bilsborough: I am afraid I am not able to give you an example. It is not in my area of work, I am sorry.

Sergeant Charleston: Whether area staff fill in enforcement questionnaires is a matter that is left to their discretion. If they feel that the damage to the site is sufficiently serious to warrant further action from CCW, that action will follow on from the enforcement questionnaire being completed. It does not mean every instance of damage, no matter how minor, has to be dealt with through the enforcement process. They have discretion very similar to those of police officers coming across criminal offences.

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Q165 Mr Thomas: Can you give us any idea of the difficulty you have with third parties, because in your evidence you point out the need to prove that a person knew they were going on to an SSSI? Can you say more about that and how you think that might be improved? Is it on the landlord's side you need to improve that, or is it a matter of general public awareness?

Sergeant Guildford: The problem you have there, as you say, is raising awareness to make sure people are aware that it is an SSSI protected site that they are causing damage on. There are various methods and there is talk about putting signs up, but because you are working with land-owners, some land-owners do not want the signs on their land and create a sort of fortress mentality; so it is very difficult to try and work with them to get this across. Publicity is one way of getting it across when we are looking at 4x4 problems. We try to publicise that within the groups of 4x4 and try and notify and publicise the SSSIs, together with the legislation that goes with them.

Q166 Mr Thomas: On the whole would you advocate that you do it voluntarily with both land-owners and potential users; or would you say there needs to be at least an examination of the legislation? For example, should it be an offence to be on an SSSI, whether you know you are committing an offence or not? Ignorance is no defence in that regard, is it? Are there special circumstances?

Sergeant Guildford: As an enforcement agency, it is very difficult to prove knowledge, and I am not sure how we address that.

Q167 Mr Thomas: Let us turn to the 4x4, illegal burning and things like this that we see happening on our mountains every summer. We have had similar evidence from English Nature about some of the damage that is done in this way. Is some of the work that you have just mentioned starting to pay off? Are you starting to see that users of the bye-ways are taking more consideration about where they take their vehicles?

Sergeant Guildford: Yes. We have recently had a seminar in Wales on the issue, hosted by the CCW, and the Forestry Commission. The whole remit of the seminar was not looking at it from CCW, the Forestry Commission and land-owners, but to get other bodies involved such as the motor cycle union and motor cycle bodies. So you have people who can work together with them. We need to enforce it and say, "this is illegal; you have to stop doing this" but we have also then got to offer them an opportunity to go somewhere else. It is no good saying, "you cannot do this and cannot go there"; they have a legitimate pastime in many respects, which we need to cater for.

Q168 Mr Thomas: Is the stick big enough, forgetting the carrot for a second? The offences can be quite horrendous. I have seen myself in Wales where this happens, and my constituency has a big problem. There are difficulties, and they are not being deterred, are they?

Sergeant Guildford: The legislation, I would say, was enforced. The practicalities of enforcing the legislation is the hard part of it. The legislation is on the ground—the Road Traffic Act; it is the fact of going to enforce that legislation where the difficulty lies.

Mr Lloyd Jones: There is another added complication. Many of these four-wheel drive vehicles bring significant economic gain to some of the rural towns and villages. That is why we are saying it is not only a case of implementing the legislation; there is the very real case of providing opportunities for legitimate uses.

Q169 Mr Thomas: A place where they can go with off-road vehicles, which is excellent. The other thing that was a bit concerning in your evidence was when you said public bodies are not treated with the same degree of culpability on occasions under the new Countryside and Wildlife Act. Can you say a little more about that?

Sergeant Charleston: The legislation makes it quite clear that statutory bodies and government organisations should be consulting with CCW in relation to work being carried out on SSSIs or near them. We are not sure that that is happening as regularly as it should. The fact is that there seems to be at times—it is not made imperative that it carries on. Such bodies do not commit offences by failing to consult. We would like to see legislation that requires in stronger terms than at present that the consultation is entered into.

Q170 Mr Thomas: Can you give examples of where there has been a failure and possibly where that led to some damage or neglect or difficulty for yourselves?

Sergeant Charleston: I would not wish to name any particular bodies at the moment.

Q171 Mr Thomas: That was my next question.

Sergeant Charleston: But we have issues of cabling being put in across sites or trenching being carried out, where, when investigated, damage has not occurred to the designated features, but nevertheless the consultation that the legislation requires has not been fully entered into.

Q172 Mr Thomas: Are we talking more of public utilities rather than local authorities? Is that fair?

Sergeant Charleston: No, I would not say that necessarily.

Q173 Mr Thomas: Local authorities are just as bad?

Sergeant Charleston: There are issues with government and statutory organisations.

Q174 Mr Thomas: So it is the legislation not being clear enough and putting a firm enough duty on these bodies to consult—is that right?

Sergeant Charleston: It is the fact that it does not impose any penalties. I think that the legislation is

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clear as to what they should do, but it does not allow for any penalties if it does not.

Q175 Chairman: I am afraid that we are out of the very limited time that we had available. I know that Sue Doughty was keen to ask about liaison with other parts of the United Kingdom, but we might write to you about that.

Mr Lloyd Jones: Thank you, Chairman. That was one of the things we were hoping to raise. In compiling this evidence, it was quite obvious to me

that one of the big problems here is the lack of common interpretation between Scottish Natural Heritage, English Nature and ourselves as to the legal definitions of simple things like “take” or “disturb”. Through the Joint Nature Conservation Council we have joint standards of monitoring and designations. It is imperative to look at joint systems.

Chairman: Thank you. If you would care to elaborate on that in a short memo to us, we would be extremely grateful.

Supplementary memorandum from the Countryside Council for Wales

I agreed to provide the Chairman with a memorandum in relation to the point raised in our evidence regarding common interpretation of the legislation between ourselves and English Nature and Scottish Natural Heritage (4.5 and 4.8 of our evidence document and Q175 in the uncorrected evidence).

The Countryside Council for Wales acknowledges that in some instances, there is no common approach taken by the Statutory Nature Conservation Organisations (SNCO) in their interpretation and implementation of wildlife legislation. This creates not only problems for staff but gives an inappropriate message to members of the public. This problem is most evident in the licensing and species enforcement remits of the SNCO's. For instance CCW issues licences for the purposes of conservation to permit habitat management of terrestrial areas surrounding ponds known to be used by great crested newts, as newts would also use these areas for foraging. English Nature does not issue such licences but instead relies on the defence in the legislation that makes an action not an offence if it was the incidental part of a lawful operation, which could not reasonably have been avoided.

Whereas there must be scope for individual organisational policy and procedure, CCW is keen to ensure that the legislation, by which the SNCO's have a statutory remit to implement, is interpreted and applied consistently throughout the UK.

CCW therefore recommend that the Joint Nature Conservation Committee*, undertake to seek advice and offer guidance to the SNCO's on how to apply legislation correctly.

I trust this additional information is of interest to the Committee. Please do not hesitate to contact me if you require any further information.

June 2004

Memorandum from the Bat Conservation Trust

1. THE BAT CONSERVATION TRUST

1.1 The Bat Conservation Trust (BCT) is pleased to have the opportunity to comment on the above. The BCT is the only organisation concerned solely with the conservation of bats within the UK. It is a registered charity, serves a network of over 95 bat groups across the UK and Eire, and has a membership of over 4,000. We are supported in our work by government agencies, professionals and expert volunteer bat workers.

1.2 A joint BCT/RSPB two year investigation project into bat related crime was completed in April 2003. As a result of this investigation a report was produced (a copy is available at <http://www.bats.org.uk/downloads/BatCrimeReport.pdf>) which gave an insight into the high levels of crime against bats, its causes, and the way in which it is treated within the criminal justice system. All 16 species occurring in the UK are European Protected Species, protected under the EU Habitats Directive, the UK Habitats Regulations, and the Wildlife & Countryside Act 1981 (as amended by the Countryside & Rights of Way Act 2000). The greater mouse-eared bat became extinct in the UK in 1991, and the greater horseshoe bat is estimated to have declined by over 90% in the last 100 years.

2. THE SCALE AND IMPACT OF BAT RELATED CRIME

2.1 During the two years of the Bat Investigations Project between April 2001 and April 2003, 144 offences were identified in the UK; offences were also reported that had taken place before April 2001, which brought the total number reported to 209. However, this is likely to be the tip of the iceberg because most offences take place on private land and so remain undiscovered, and there is also a reluctance to report wildlife crime incidents to the police.

2.2 Ninety seven per cent of these 144 incidents involved damage or destruction of the roost, obstruction of roost access, or disturbance of bats actually at the roost. This is of particular conservation concern; because female bats gather together from a wide area in the summer to give birth, incidents involving these roosts can have very serious implications for conservation of bats from a whole area. Similarly, in the winter some sites are important for the number of hibernating bats they host. Whole colonies—not just individuals—could effectively be wiped out by these incidents affecting roosts. Over two-thirds of the 144 incidents were caused by the building trade.

3. IS THE LEGAL FRAMEWORK ROBUST ENOUGH TO DEAL WITH BAT RELATED CRIME?

3.1 Amendments to the W&CA 1981 by CRoW 2000 have improved protection for bats in England and Wales. However, equivalent amendments are needed for Scotland and Northern Ireland. Although the legislation is in place to protect bats, there are some improvements to it that could still be made in England and Wales; its enforcement also needs to be made more effective. (The latter will be addressed to an extent by the implementation of Operation Bat by the police—improved handling of and training for bat related offences by the police; bats were made a wildlife crime priority as a result of these BCT/RSPB Bat Investigations Project findings.) In areas where bat workers, statutory nature conservation organizations (SNCOs) and the police work in partnership, this has proved to be effective in enforcing the legislation.

3.2 Changes in the law that would improve protection for bats include the following:

- (a) Bat offences should become “recordable crimes” by the police.
- (b) Legislation in Scotland and Northern Ireland should incorporate the improvements brought about by CRoW 2000 in England and Wales.
- (c) Where actions would affect a protected species the advice sought as a legal requirement from an SNCO must be followed.
- (d) Habitats Regulations derogations must be accurately and consistently applied across the UK.
- (e) All those who have formal responsibilities for implementing wildlife legislation must have thorough training in their area of responsibility.
- (f) A question about presence or absence of European Protected Species needs to be included on all planning application forms, listed building application forms and applications for works to trees with tree preservation orders. EPS must then be taken into account in decisions made in these areas.
- (g) Consideration should be given to how the amendments made by CRoW can be included within the UK Habitats Regulations.

4. DO RESPONSIBLE BODIES HAVE SUFFICIENT RESOURCES AND POWERS? DO THEY TREAT WILDLIFE CRIME WITH PROPER AND DUE GRAVITY?

4.1 SNCOs have traditionally taken a conciliatory approach to bat crime and dealt with offences internally without reporting them to police or taking enforcement action. Contributory factors to this approach may be absence of knowledge about the action to take and the powers that are available, a lack of staff resources, or a reluctance to inform the police because of fear that heavy-handed enforcement action will automatically ensue. However, without enforcement there is no deterrent for those who repeatedly ignore legislation. We would like to see more resources put into training and providing staff to address these issues within SNCOs. With SNCOs working in partnership with bat workers and the police, the police can be guided by their expertise and experience to come to informed decisions about the best possible outcome for long-term bat conservation.

4.2 The police have recently announced that bat related crime is to be one of its wildlife crime priorities; this will lead to improved wildlife crime procedures within the police, training of police wildlife crime officers and a higher profile generally for bat related crime. However, there is still a real shortage of wildlife crime officers (WCOs) across the UK leading to delays and inaction. Some constabularies do not have a WCO, and of those that do, most have to fit wildlife crime work around their other duties which take precedence over wildlife crime. We would like to see this addressed, and for WCOs to have more time dedicated to wildlife crime issues.

4.3 Many local planning authorities do not have the interest in or resources to take account of EPS—probably because their protection comes under legislation other than planning; however, more emphasis needs to be given to the requirement to take EPS matters into account when deciding on planning applications. Resources need to be put into initial planner training courses and continuing professional development to ensure planners understand the importance of EPS legislation and the procedures they must take. Resources also are needed to enable planners to implement these procedures. The forthcoming PPS9 needs be stronger and clearer on the requirements of EPS.

5. IS THERE SUFFICIENT DIALOGUE AND CO-OPERATION ACROSS GOVERNMENT AND AMONGST VARIOUS BODIES DEALING WITH THIS TYPE OF CRIME?

5.1 The BCT/RSPB Bat Crime report highlights areas requiring closer working. In particular, bat workers, SNCOs and the police need to work closely to ensure that bat related crime is properly dealt with. It will act as a deterrent to serial offenders only if it is enforced.

5.2 It is also important that Crown Prosecutors are fully briefed on the conservation significance of bat offences and that this is relayed to magistrates during trial; if not, there is a very real possibility that the penalty will not reflect the seriousness of the crime. There is now an Environmental Crime Toolkit and sentencing guidelines for magistrates—the Magistrates' Association should encourage use of the full range of penalties available.

5.3 BCT wants the best outcome for bat conservation; in conjunction with bat workers and SNCOs, it is keen to see legislation that, when implemented, meets this aim. The UK legislation as it stands is an effective conservation tool, but the points above highlighting problems with the legislation and its enforcement need to be addressed by Government to improve bat conservation.

April 2004

Memorandum from the Herpetological Conservation Trust

1. The Herpetological Conservation Trust is a UK registered charity dedicated to the conservation of amphibians and reptiles and their habitats. We are lead partner, or Joint lead partner, for all five amphibians/reptile Species Action Plans and manage 1,400 ha of nature reserves, most of which is designated SSSI and/or SAC. The Trust is actively involved in promoting species conservation legislation and policy at European, National and local levels being an active member of Wildlife & Countryside Link and working through association with the European Herpetological Society with a European NGO network called the European Habitats Forum (EHF). Through the EHF we represent European NGO interests on an EC Working Group looking at the development and application of Article 12 of the EC Habitats Directive (Strict protection measures for animals species). The Trust is a supporter of the Partnership for Action Against Wildlife Crime. We have a professional staff with work experience in the statutory, local authority and non-Governmental sectors.

2. The HCT is keen to promote a focus on nature conservation “outcomes” through our work on policy and legislation. We believe that the development and application of legislation should address the significance of the impacts of activities. We advocate that there should be a shared appreciation and understanding amongst legislators, law enforcement agencies (eg Police, English Nature, Local Authorities) and judiciary about the importance of biodiversity conservation. We believe that:

- there should be a clear focus in legislation and policy to address activities and measures that have an impact on the conservation status of wildlife; this needs to be a consistent message across the different mechanisms used to ensure and promote biodiversity conservation; we believe that looking at concepts such as “Favourable Conservation Status”, as outlined in the EC Habitats Directive, would provide a useful legislative framework for assessing impacts and looking to achieve appropriate application and enforcement of legislation;
- legislation should support the national and social importance of biodiversity as a key component of “Sustainable Development”; and
- understanding the importance of wildlife, and the duty to conserve it, is often confused by attempts to justify or to quantifying its value in terms of monetary cost.

Against this background, we offer answers framed around the specific queries raised in the press release.

3. With regard to the extent of wildlife crime, this assessment is made difficult because of the lack of clarity about “significance” of what constitutes a criminal act. The impact that is more important than the activity *per se*. Some “real crimes” (such as theft of birds of prey from collections and certain types of poaching) can have little impact on the conservation status of wildlife; yet often “incidental results” (especially of development or release of non-native species) can have much greater impacts and yet less likely to be considered to be criminal. A clearer basis for understanding this significance is needed and a better policy mechanism is needed to fully appreciate the effects of activities that illegally impact on the conservation status of habitats and species.

4. Our focus is on the European species, and our comments are intended to reflect this perspective. We are concerned that the framework for implementing and enforcing legislation is insufficiently robust to deal with wildlife crime effectively.

- the importance of “biodiversity” at the heart of Sustainable Development/Living is being poorly articulated and consequently the context of the wildlife conservation legislation is not widely appreciated. This principle can help underpin the understanding of the importance of conservation at all levels, from the international to the local. CITES for example is essentially about “sustainability” and not about protection for the sake of it, the severity of an offence should be considered by the impact on the conservation status of the species affected;
- greater “joined-up thinking” across the biodiversity agenda would greatly assist the legislative framework;
- there remains a difficulty in interpreting legislation, notably with regards to the European Union Directives. This makes the application difficult and especially hard for enforcement bodies;
- the legislation is too complex; for example there are parallel and largely similar pieces of legislation covering UK species (eg the Wildlife & Countryside Act 1981 and the Conservation (Natural Habitats, etc) Regulations 1994) with subtly different wording and different enforcement provisions and penalties (for effectively the same offence on the same species!). This has been made more complex by the many amendments and variations of schedules, and by the devolution of environmental functions. Consolidation legislation at UK or Country level within a consistent UK framework may assist;
- there have been significant advances within the enforcement agencies over many aspects of wildlife crime, yet the focus has largely remained on the more “traditional” perception of “crime”, such as bird of prey offences, egg collecting and CITES. Comprehension of the broader context of “damaging activities” is poorly understood within the enforcement bodies and the public at large;
- there has been some success in interpreting certain wildlife crime (notably arson on SSSI) as “anti-social behaviour” (this has been particularly successful via Dorset Urban Heaths LIFE project—this is a project funded by the European Commission involving a wide consortium of conservation bodies, police, fire service and local authorities on the urban heaths in and around Bournemouth and Poole that is looking at human impacts on urban heaths). Linking wildlife crime to other social agendas/crimes has helped see enforcement, but has meant that wildlife legislation may be less frequently used or “tested”;
- there is a lack of clarity about and comprehension of biodiversity conservation—effecting both the public and enforcers; heathlands, for example, illustrate this nicely: In some cases burning is management, in others it is arson. Cutting down trees is necessary management (it is an activity) yet is perceived as vandalism. Allowing trees to grow “passively” is in fact negligence and debatably (an on SSSIs) illegal. There needs to be a stronger education role, possibly through the Biodiversity Action Plan, to support the development, understanding and enforcement of conservation legislation. The educative duties of Local Authorities with this regard are not sufficiently exercised; and
- Enforcement and penalties need to be proportional to the direct and indirect impacts on the conservation of biodiversity.

5. Resources are scarce for wildlife crime enforcement. Such crimes will also often be treated with less “importance” than other types of crime as these are frequently considered to be “victim-less”. Penalties for wildlife crime still tend not to reflect the seriousness of some offences, nor stand as a deterrent—especially

in the context development (eg large areas of habitats of protected species are cleared on a regular basis with minimal likelihood of prosecution, and fines that are considerably less than would be the cost of appropriate mitigation or avoidance). However we perceive that increasingly wildlife crime seems to be treated at with increasing importance at the “institutional level” but education is still needed to ensure greater understanding of the issues amongst all those involved within the process, whether in the judiciary, police or other enforcement body.

A greater understanding of duties concerning wildlife crime is needed amongst all appropriate agencies (for example local authorities) both with regard to their duties to enforce and educate, but also in ensuring compliance with wildlife legislation when exercising other functions (for example highways/Rights of Way maintenance).

The further improvement of networks amongst enforcement and statutory bodies, and provision of appropriate support and advice from non-statutory “experts” to provide a greater synergy may help develop more effective public understanding (and therefore reduction in offences) and enforcement, if additional resources cannot be forthcoming. The Dorset Urban Heaths LIFE project is trialling such approaches, eg joint education visits to school with local authority education staff and police.

6. We feel that dialogue across Government in connection with biodiversity conservation, across the board, needs improving. For example, there is insufficient coherence both within the Biodiversity Action Plan (eg from national to local levels)—which provides a key conservation mechanism—and between this and other measure that support conservation. This affects the outlook of key organisations involved in the process (for example local authorities). Inconsistent policy messages and application of conservation policy will undermine the role of the legislation and its enforcement.

Notably this is important in the context of EC legislation, both in terms of its interpretation and application and also in determining what is acceptable level of “derogation”. There is considerable debate at the EC level as to the way the Directives should be applied.

This confusion and poor focus means that for certain damaging activities, no one seems to know what is actually a “crime”, let alone how it should be enforced.

In conclusion, we need to see clearer and more focused policy to set the socio-economic framework for biodiversity conservation to provide an understanding of the importance of wildlife and therefore the significance of wildlife crime. It will also help with enforcement—shifting the emphasis from prosecution of only “acts” that seem criminal to ensuring that action is taken to prevent or to punish activities (or negligence) that actually impact on conservation status and see appropriate penalties given out. Ideally, over time, we would effectively achieve a shift away from “protection” to “conservation”.

While this present Inquiry is focused on Wildlife Crime, we believe that broader policy contexts should be considered to understand the context and that recommendations should be made elsewhere where these would help with the understanding or application of the legislative framework. For example we are keen to see a more explicit link made between the concept of Favourable Conservation Status—which underpins the goals of the European Directive—and national conservation policy and the Biodiversity Action Plan. Setting the BAP on a firmer legislative basis, nationally and locally, would actually help meaningful interpretation and enforcement of the legislation and more explicit definition of roles of Governmental and Public bodies in the prevention and enforcement of Wildlife Crime.

April 2004

Memorandum from the Royal Society for the Protection of Birds

EXECUTIVE SUMMARY

- The RSPB receives reports of around 600 offences involving wild birds each year.
- Illegal persecution of birds of prey in the UK and illegal trade in globally threatened birds are considered significant threats to the populations of a number of species.
- Wildlife offences must be recorded centrally to allow proper evaluation of the scale of wildlife crime and the allocation of sufficient resources to its control.
- We are unaware of any co-ordinated recording of offences relating to damage to Sites of Special Scientific Interest (SSSIs) in England and Wales.
- The framework of national and European law and international regulation is, we believe, generally robust enough to deal effectively with wildlife crime. However, among changes still needed are stricter control of the possession of specimens, tighter controls on pesticide possession and closer monitoring of threatened species held in captivity.
- The powers available to enforcement officers have recently been improved in England, Wales and Scotland and are now believed to be adequate.

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- Whilst the establishment of the National Wildlife Crime Intelligence Unit implies a commitment at national level to policing wildlife crime, we are concerned that wildlife crime is not taken seriously by individual police forces.
 - The response of individual police forces and HM Customs and Excise teams to wildlife crime is not consistent, with few delivering an adequate response.
 - Both the police and HM Customs and Excise focus their enforcement action on national targets. These do not currently include wildlife crime, and this must be addressed.
 - Fully trained wildlife officers are not available within all police forces or customs areas. We believe it is essential that this situation be rectified.
 - When reviewing and drafting wildlife legislation, the Government must attach importance to those sections that provide the enforcement authorities with powers and tools to detect and prosecute offences, and must resist pressure to cut costs that will ultimately reduce or hamper the effectiveness of the legislation.
 - The detection of offences and enforcement of existing protection for SSSIs must be improved. English Nature and the Countryside Council for Wales should make full use of their much-enhanced powers under the 2000 Countryside and Rights of Way Act to deter crime.
 - The Partnership for Action Against Wildlife Crime provides a useful forum for statutory and non-statutory agencies to develop policy on combating wildlife crime. Increased commitment from the Home Office and the Treasury would be welcome.

INTRODUCTION

1. The RSPB is Europe's largest wildlife conservation charity. With the support of more than one million members, we conserve and enhance the populations of wild birds, other wildlife and the habitats in which they live. We focus on priority species, habitats and sites and set clear conservation objectives and actions. These include owning and managing land as nature reserves and influencing land-use practices and government policies to benefit wildlife and the wider countryside.

2. The RSPB has a small Investigations Section whose main function is to support the statutory authorities by providing advice, expert witness and investigative help on investigations into offences involving wild birds. This Section has extensive experience of working very closely with Police Wildlife Crime Officers, the Crown Prosecution Service, Procurators Fiscal and HM Customs and Excise.

THE SCALE AND IMPACT OF WILDLIFE CRIME

3. The RSPB receives reports of around 600 offences involving wild birds each year, and assists the Police with approximately 50 prosecutions annually. Offences of particular conservation concern include the killing of birds of prey, including the deliberate abuse of pesticides, offences involving trade in wild birds and those involving rare breeding birds. Enforcement of legislation is, we believe, crucial in ensuring the recovery of threatened species, as part of a wider programme to deliver the Government's UK Biodiversity Action Plan.

THE PERSECUTION OF BIRDS OF PREY

4. The populations of many birds of prey are still recovering from serious declines during the 20th century. Although killing of birds of prey has been illegal since the Protection of Birds Act 1954, and earlier across much of the country, illegal persecution has continued. The abuse of pesticides, many approved for agricultural uses, to deliberately poison wildlife is the most indiscriminate form of persecution. It continues to pose a threat not just to birds of prey, but also to other wildlife, pets and people. The Government's "Campaign Against Illegal Wildlife Poisoning"—launched in 1991—raised the profile of illegal poisoning and encouraged reporting by the public, but the number of birds of prey killed annually by poison has not decreased. In fact, it has doubled since 1997. The UK Raptor Working Group's report to Ministers, chaired by the then Department of the Environment, Transport and the Regions and the Joint Nature Conservation Committee and published in 2000, highlighted the ongoing problem of bird of prey persecution, and recommend enhanced inter-agency co-ordination to tackle the illegal killing of wildlife and tighter regulation on the possession of pesticides.

THE COMMERCIAL TRADE IN WILD BIRDS

5. Globally, one in eight, or about 12%, of all bird species are at real risk of becoming extinct in the next 100 years, according to the latest World Conservation Union (IUCN) red list published by BirdLife International in 2000. Of these 1,186 species, 113 are directly threatened by exploitation for the cage bird trade. Some bird families are particularly affected, with 57% of threatened parrot species trapped for the trade. These include the South American blue macaws, including Spix's macaw, which has recently become

extinct in the wild, Lear's macaw, which has been reduced to around 260 birds, and the hyacinth macaw, down to around 5,000 in the wild. Amongst the non-parrot species in this list is the Bali starling, of which now only six remain in the wild.

6. Despite regulation at international and national level illegal trade in wildlife, including wild birds, is extensive.

THE TAKING OF WILD BIRDS' EGGS

7. Throughout much of the last hundred years, the activities of egg collectors have caused concern to those involved with protecting some of Britain's rarest breeding birds, including red kite, osprey and, latterly, the white-tailed eagle. Despite numerous successful prosecutions, courts have only recently been able to issue custodial sentences. Since 2000, seven collectors have been imprisoned, leading to a significant reduction in related offences.

OFFENCES RELATING TO PROTECTED SITES

8. We are unaware of any co-ordinated recording of offences relating to damage to Sites of Special Scientific Interest (SSSIs) in England and Wales. Few cases have been brought to court, and it is currently not possible to determine the precise scale and nature of illegal damage to protected wildlife sites.

OFFENCES INVOLVING OTHER WILD ANIMALS AND PLANTS

9. The RSPB has on occasion sought to assist the police and others with the investigation of offences involving taxa other than wild birds, for example protected bats, butterflies and moths. This has resulted in a small number of successful prosecutions. Enforcement of legislation protecting other wildlife is an area that requires further attention from the enforcement authorities.

THE RECORDING OF WILDLIFE CRIME

10. There is no provision for wildlife offences to be recorded centrally by the Government or individual police forces. The RSPB maintains its own records of reported incidents and prosecutions under Part 1 of the Wildlife and Countryside Act, and we depend on police officers and members of the public forwarding information to us. We are unaware of offences in relation to protected sites being recorded centrally. Unlike bird-related crime, we do not maintain our own database of such crimes.

11. It is essential that wildlife offences, both in relation to birds and protected sites, are recorded centrally to evaluate the scale of wildlife crime and allow sufficient police resources to be allocated to fighting the problem.

IS THE FRAMEWORK OF NATIONAL AND EUROPEAN LAW AND OF INTERNATIONAL REGULATION ROBUST ENOUGH TO DEAL WITH WILDLIFE CRIME EFFECTIVELY?

The legislation

12. The major legislation affecting species and protected sites in England, Scotland and Wales is the Wildlife and Countryside Act 1981, amended, in England and Wales only, by the Countryside and Rights of Way Act 2000. Further amendment to Part 1 of the Wildlife and Countryside Act in England and Wales has been proposed by Defra, and a full consultation is expected this year. Amendments to the Act in Scotland currently exist in the form of the Nature Conservation (Scotland) Bill, which the RSPB hopes will be adopted this summer.

13. Similar legislation (The Wildlife (Northern Ireland) Order 1985) (for species protection) and the Environment Order (Northern Ireland) 2002 (for site protection)) is in place in Northern Ireland.

14. The Wildlife and Countryside Act is the primary legislative instrument enacting Council Directive 79/409/EEC on the conservation of wild birds in the United Kingdom.

15. Habitats and species other than birds are also afforded protection in England, Scotland and Wales by The Conservation (Natural Habitats, &c) Regulations 1994, which enact Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. There has recently been consultation by Defra and the devolved authorities in Scotland and Wales on amendments to the domestic regulations.

16. The Control of Trade in Endangered Species (enforcement) Regulations 1997 (COTES) establish a series of offences and penalties for infringements of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade in them. This itself implements within the EU the complex Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Defra has recently undertaken a review of COTES and revised regulations are awaited.

Prosecutions

17. Thirty-three prosecutions involving wild birds were recorded by the RSPB in 2002, compared with 52 in 2001 and 50 in 2000.

18. The majority of summonses or charges were issued under Sections 1(1) and 1(2) of the Wildlife and Countryside Act, and involved the taking or possession of birds and their eggs. A significant number were also issued under Section 18(2)—possession of items for the purpose of committing an offence.

19. Despite the high number of incidents of bird of prey persecution and the abuse of poison, few successful prosecutions are brought each year due to the difficulty of proving the identity of the offender in such cases. The UK Raptor Working Group asserted that recorded incidents reflect only a small proportion of the killing taking place. The Group emphasised that the remote locations and the ease with which evidence can be hidden were two major constraints on illegal killing being discovered. Three offenders were convicted under Section 5 of the Wildlife and Countryside Act in 2002 for setting in position traps or poisons for the purpose of taking or killing wild birds. Of 82 defendants convicted for trapping or killing birds of prey in the UK since 1985, 69 were involved with game shooting—mostly gamekeepers but also farmers who operate a shoot on their land, game shooters and sporting managers.

20. Three prosecutions were brought in 2002 under COTES involving the trade in live and dead wild birds.

21. The RSPB is aware that the majority of prosecutions brought under Part 1 of the Wildlife and Countryside Act relate to wild birds. We believe the number of prosecutions involving other protected wildlife is significantly lower.

Effectiveness of the legislation

22. We believe that the framework of national and European law and of international regulation is generally robust enough to deal with wildlife crime effectively. The situation will be further improved with the completion of the legislative reviews and proposals referred to above. We would particularly like to see tighter controls on the possession of specimens acquired illegally elsewhere in the European Union, as well as on the possession of pesticides without lawful excuse.

23. However, we do believe that a significant problem has arisen associated with the opening of borders within the European Union for trade. This, we believe, has allowed illegal trade to develop, and this change needs to be matched by progress on enforcement at European level. We believe this situation will get worse after enlargement in May 2004.

DO RESPONSIBLE BODIES WHICH DEAL WITH THIS TYPE OF CRIME HAVE SUFFICIENT RESOURCES AND POWERS TO DO SO? DO THEY TREAT WILDLIFE CRIME WITH PROPER AND DUE GRAVITY?

National Wildlife Crime Intelligence Unit

24. A National Wildlife Crime Intelligence Unit (NWCIU) has been established within the National Criminal Intelligence Service (NCIS), a step we support. As wildlife crime becomes more international and organised, it is essential that the UK has a national focus for liaison and work with other countries. We are keen to see the continuation of this unit, particularly in light of the recent Home Office proposals to combine NCIS with a proposed national policing body with national policing priorities. Whilst the establishment of this latter unit implies a commitment by the Government to policing wildlife crime, we are concerned that wildlife crime is not taken seriously enough at local level by individual police forces.

United Kingdom Police

25. Most, if not all, UK Police Forces now have at least one designated Wildlife Crime Officer. A small number have appointed a full time officer to this role, (eg Northumberland and West Yorkshire), but this is the exception. The majority prefer to designate volunteers who are expected to conduct this work in their spare time. The RSPB is currently aware of approximately 700 designated officers, but only ten of these fulfil the role on a full-time basis. Both Thames Valley Police and Lancashire Police have recently discontinued the full-time post of Wildlife Crime Officer. In Wales, two police officers are seconded to the Countryside Council for Wales to assist with the enforcement of wildlife related crime but this model has not been repeated elsewhere in the UK.

HM Customs and Excise

26. HM Customs and Excise maintains a dedicated team of wildlife specialists at Heathrow, but the resource available elsewhere in the country is largely based upon the interest of individual officers. Illegal importation, when detected at the point of entry, is usually dealt with satisfactorily, but the RSPB has experienced difficulties with the investigation of offences involving the import of protected species detected after this point.

Wildlife Crime as a Priority

27. Neither HM Customs and Excise nor individual police forces attach a high priority to the enforcement of wildlife crime and, were it not for the activity of a number of NGOs including the RSPB, few significant wildlife offences would come before the courts. The main problem is caused by the focus of both bodies on national targets which do not currently include wildlife crime. In light of the widespread public interest in wildlife and the countryside, we believe this matter needs to be addressed.

28. The RSPB's experience is that it is of paramount importance that police and other statutory enforcement officers dealing with wildlife offences understand the issues and the legislation. It is not appropriate to expect a police officer with no training to handle what can be a very complicated issue with a high level of criminality. Forces with full time Wildlife Crime Officers have this capability, but those with volunteer posts have a variable level of response, and those which choose not to have designated officers are often unable to respond. Fully trained wildlife officers should be available within each force.

Defra

29. The Wildlife and Countryside Act includes powers for the Secretary of State to make regulations to control activities such as the keeping and sale of birds in captivity. These regulations were originally put in place when the Act came into force, and have proved their worth in preventing offences and providing a useful enforcement tool for the authorities investigating illegal activities. In recent years, government has moved to relax regulation on possession of threatened species. Of current concern is the proposed removal of species from the bird registration scheme which requires listed specimens (on Wildlife and Countryside Act Schedule 4) held in captivity to be registered with Defra and ringed with unique department-issued rings. This establishes an audit trail which can easily be checked and used in conjunction with DNA analysis where offences are suspected (ie that the bird might have been taken illegally from the wild). For high value species, such as peregrine or goshawk, this is a valuable enforcement tool. These two species are involved in more offences each year than any others listed on Schedule 4.

30. The RSPB believes that the regulations currently in place under the Wildlife and Countryside Act, such as the bird registration scheme, have substantially reduced the number of threatened birds being taken from the wild and provide a valuable enforcement tool that should be retained. We also believe that certain species, such as peregrine and goshawk, should remain subject to such controls while they continue to be subject to offences. Such registration should also be extended to other, globally threatened species.

Damage to protected sites

31. The Wildlife and Countryside Act enables the notification of SSSIs, which are protected from damaging activities by owners and third parties. The Countryside and Rights of Way Act 2000 gave a wider range of enforcement powers to English Nature and the Countryside Council for Wales to bring legal action where sites are damaged by either landowners or third parties. We are aware that English Nature has previously brought a small number of prosecutions, but a more strategic approach is now required.

32. The detection of offences and enforcement of existing protection measures for SSSIs must improve. English Nature and the Countryside Council for Wales have been given considerably enhanced tools (such as new powers to enter land in order to detect crime) as well as greater penalties to deter crime. However, there is only limited evidence that these are being comprehensively used. For example, the RSPB is unaware of a single occasion where a Management Order has been issued in order to ensure that management of a SSSI is undertaken. Yet 42% of SSSIs are in unfavourable condition. Both monitoring and enforcement must improve significantly if Defra is to meet its Public Service Agreement target of 95% of SSSIs in favourable condition by 2010, including increased use of police officers to support enforcement. Under the SSSI statutory code of guidance, English Nature is expected to "develop and publicise a strategy for enforcement, including action to address issues relating to use of land by persons other than owners and occupiers. The strategy should clarify the circumstances in which it will expect to take action, and describe the steps it will take". The Countryside Council for Wales is also required to develop such a strategy. We are unaware of any such strategy having been produced by either organisation.

IS THERE SUFFICIENT DIALOGUE AND CO-OPERATION ACROSS GOVERNMENT AND AMONGST THE VARIOUS BODIES RESPONSIBLE FOR DEALING WITH THIS TYPE OF CRIME?

33. Defra, in conjunction with the UK Police, co-chairs the Partnership for Action Against Wildlife Crime (PAW), which provides a forum for taking forward strategic and policy issues. This forum has been successful in bringing together representatives of Defra, the police service and HM Customs and Excise, as well as those of some other Government departments and agencies and most NGOs. Similar partnerships (acting partly as sub-groups) have also been established in Scotland and Wales.

34. PAW has been successful in bringing forward proposals for legislative change, highlighting wildlife crime within government and to the public, providing guidance and training for enforcement officers and overseeing the development of forensic techniques.

35. However, neither the Home Office nor the Treasury are active contributors to the partnership and, consequently, neither engages directly with any parties on matters relating to wildlife law enforcement. More commitment towards combating wildlife crime from these departments would be welcome.

April 2004

Witnesses: **Mr Graham Elliott**, Head of Investigations, the Royal Society for the Protection of Birds, **Ms Amy Coyte**, Chief Executive, The Bat Conservation Trust, and **Dr Tony Gent**, The Herpetological Conservation Trust, examined.

Q176 Chairman: Welcome. Dr Gent, can I ask you about a point made in your evidence, where you say the assessment of wildlife crime is difficult because of lack of clarity about the significance of what constitutes a criminal act. You say—and this is evidence we have had from others as well—that the impact of the Act is more important than the Act itself. How, in these circumstances, would you like to see wildlife crimes recorded, and by whom?

Dr Gent: One of the difficulties is not so much the crimes that are being looked at now—and the crimes that were discussed earlier on—with clearly identifiable actions causing problems, but we are interested in highlighting the difficulties of the crimes that are not perceived as criminal. For example we are talking about crested newts and developers and the general feeling there is “it is alright but it does not really matter because we see where you are coming from”. That is the kind of crime that we are most worried about because we feel that is the one in many ways that has some of the biggest impacts. That is not recorded and not understood as criminalised.

Q177 Chairman: The feeling on that was not that it was all right, but that it is worth paying the fine because it is so insignificant relative to the cost of complying with the law.

Dr Gent: That is the sort of criminal act that we feel is undervalued as a criminal act. I would not want to downplay the evidence that was given here, but the way I have paraphrased it is the way we have encountered elsewhere. That is one of the sorts of crimes that go on all the time, largely through the planning system when we see sites that are cleared before investigations are made and we cannot begin to quantify the level of impact. That is part of the problem.

Q178 Chairman: Who would you like to see recording of wildlife crimes?

Dr Gent: What we would like to see in many ways is a raised awareness of what could constitute a crime and then whether there is a recognition, for example, that clearing a building site is a crime. It would be useful to be recorded by some authority. I personally have no particular preference as to where it should be but it is something that should be recorded, and something that could be quantified and referred to.

Q179 Chairman: It is about awareness-raising.

Dr Gent: Certainly in development related issues, local authorities have relatively little awareness of their role in advising and interpreting legislation relating to wildlife crime, or preventing crime in the first place.

Q180 Chairman: Mr Elliott, you say in your memo that you get reports of around 600 offences involving wild birds each year. You assist the police in some 50 prosecutions every year. How many of the offences reported to you are subsequently confirmed to be offences?

Mr Elliott: We quote approximately 600 incidents each year. They are all recorded by ourselves as offences; otherwise we would not be recording the information passed through to us. This information we receive from the police, from our members and from the general public.

Q181 Chairman: You assume they are offences until they are proven otherwise.

Mr Elliott: We do evaluate the information. The incidents that we record are those which, at face value, appear to constitute an offence.

Q182 Chairman: When it gets to the stage of prosecution, do you tend to generate those cases, or do you offer your services as expert witnesses in cases led by other people?

Mr Elliott: This varies. We work very closely with the police, so will pass all of these incidents to the police. We work very closely with the dedicated wildlife crime officers. Depending on the expertise and interest of that wildlife crime officer, we may provide a simple piece of advice or we may take a very active role in the investigation alongside the police officers.

Q183 Chairman: It all depends on the level of personal interest of a police officer.

Mr Elliott: I think it is the level of experience. Most WCOs work on a voluntary basis so they have a degree of interest in cases we refer to them. But because of the lack of importance attached to this type of crime within the police force, they have very little support by way of training to equip them to fully investigate this type of offence.

Q184 Sue Doughty: Dr Gent, in your written evidence you pointed out that the framework for implementing and enforcing legislation is not sufficiently robust to deal with wildlife crime effectively, but we have had evidence from other people who say there is a robust legislative framework but that it needs some amendment. What is your opinion about this? Where do you see the gaps in the legislation?

Dr Gent: It is looking a little bit beyond the very simple criminal act and enforcement activities, and it is talking about moving to a much wider political environment, the understanding across the board, particularly amongst public authorities, of the duties

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and responsibilities for wildlife conservation, which makes people see things more seriously. Local authorities, for example, when talking about development of related issues—those criminal acts to wildlife are very low on the agendas of these organisations as well. As a consequence, there is no interest in following up and in supporting enforcement nor interest in reporting such activities. It is going beyond the simpler elements of wildlife crime that we are trying to flag up.

Q185 Sue Doughty: Ms Coyte, would you agree that the framework is sufficiently robust?

Ms Coyte: The feeling is the legal framework is robust, except for the issues we brought up in our paper. It is the systems behind the framework, the legislation, that are so unclear and confusing, and that causes the big issues that we are seeing in terms of bat crime throughout the UK. We would like to see a much more consistent approach to delivering legislation and to be giving advice to developers and to people involved in possible disturbing of wildlife. That would make it much easier for them to be compliant with the legislation. The other side though is that we do see certain loopholes in the framework such as the fact that it is a legal responsibility for you, if you have bats, to seek advice, but it is not a legal response for you to take forward that advice. That is a potential loophole. There are no cases, because so few cases are taken all the way to court, to set precedents for this, but that is a large potential loophole in the framework.

Mr Elliott: Generally speaking, the legislation protecting wild birds is robust. As always, there are minor niggles and minor loopholes. For example, it is not an offence to destroy the nest of a breeding bird such as a hen harrier or an eagle when that nest is not in use during the winter period. We believe there is a need for tighter controls on possession of pesticides that are used illegally to kill wild birds. There are other bits of legislation that are not wildlife protection legislation, but perhaps on occasions they restrict the ability of the police to investigate wildlife offences. I am thinking of legislation such as the Regulation of Investigatory Powers Act, which controls the police's ability to undertake surveillance. The difficulty here is that wildlife crime is not classified as a serious crime by the Home Office and therefore the police are not allowed to undertake certain levels of surveillance and such like because of this low grading of wildlife offences. There are other pieces of legislation which I believe also restrict the ability of police to investigate wildlife crime.

Q186 Chairman: Do you think it should be categorised as serious crime, along with, presumably, rape, murder, assault, and those sorts of things?

Mr Elliott: There is probably a difficulty with definitions here. Certainly some offences that are of high conservation value we would classify or want to see classified as serious offences, but I believe there

are some very difficult perception problems in aligning wildlife cases alongside cases such as rape, as you suggest.

Q187 Sue Doughty: Dr Gent, you have concerns also about biodiversity conservation and about lack of clarity and comprehension. Could you give us an example of where there is a lack of clarity?

Dr Gent: One of the issues is that even within the organisations involved in conservation itself—and this is in many ways an issue of the problem starting at home—joining up the thinking between different parts of organisations is surprisingly difficult. We see discussions, for example, of legislation being divorced from discussions on positive conservation, and the way in which statutory plans are taken forward and how they are linked to planning. They all seem to be very disparate objects, things in separate boxes. Because of that, we see each of the problems being addressed disjunctively from each other. We see discussions on legislation being divorced from discussions on positive conservation and the way bio-diversification is dealt with in planning. Because of that, we see each of the problems being addressed disjunctively from each other. As a very general rule, almost everything we are doing on conservation could be better linked to other initiatives, this is illustrated by our dealings with planners, which are focused on controlling impacts over planning issues; but they are not interested in the positive conservation element. Similarly, we deal with SSSI management, which is different from the overall state of lizards in the country. It is a mess. There is a whole series of issues with a knock-on effect, and no clear message is coming out that this is important; that this is part of sustainable living. Therefore, when a wildlife officer gets to court a very trivial, slightly confused message is given as to the significance of the crime. This underpins the problems and undermines enforcement because people just do not think this is an issue. It is considered a victimless crime whereas in reality it is a crime against the whole of society.

Q188 Sue Doughty: How can we overcome it?

Dr Gent: We can promote a lot more joined-up thinking so that there is a very strong, consistent message that this is important. Biodiversity conservation is part of the way of life. Therefore, when there is a crime against it, it is something that matters. We are trying to get some fairly simple key principles and get them reinforced through all the different messages. We have homed in on the EC Habitats Directive that helps us link quite clearly the legislative requirements to the policy requirements, maybe more explicitly than before and within it the concept of Favourable Conservation Status. It is a tricky concept to define, I agree, but nevertheless it would give a consistent theme across all the biodiversity initiatives.

Q189 Sue Doughty: Ms Coyte, we are looking at the legislation in particular for protection of bats, and it appears fairly comprehensive and says what you can and you cannot do, although you made some

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comments earlier. You refer to the findings of the two-year long bat investigation project that brought to light 144 offences in the UK, and adding previous offences we have now got up to 209. Why do you think these offences are so prevalent, and who do you think are the main offenders?

Ms Coyte: Evidence from the report is that two-thirds of that number come from building and industrial development sites, so we do see there is a major problem here with one particular group of people who are obviously not willing—there are two issues. One is that they are ignorant, and, second, when they do know about it, they are not willing to take on the costs of disturbing the biodiversity, so they will basically break the law because they are not willing to take on the cost. It is a combination between ignorance and actual criminal offences. In terms of the rest of our population who are listed as offenders, as it were, many of them—it is about raising awareness issues. There have been many bat offences in the last two decades and a partnership between bat workers and statutory nature conservation organisations can give you advice about bats in your house so that it never gets to a criminal issue. We need to build on that collaborative approach, but at the same time the report also shows that there are serious offences going on against bats, of which 97% are at roosts, so they will have a direct effect on the bat population; and we also need to have the stick issue in terms of relevant enforcement. The fines at the moment—developers will just take that into account before they even develop, it is so paltry.

Q190 Paul Flynn: Ms Coyte, you refer in your evidence to bat crimes being identified by the police as one of their priorities, which we are very happy to see. These delightful, fascinating creatures have not had a good press over the years and we know there is widespread irrational fear of them. You referred to the operation called Operation Bat by the police. What was this?

Ms Coyte: The police have said there were a number of enforcement priorities, one of which had the direct result of this evidence being given in the bat crime report as Operation Bat, so it is a police initiative. The approach is to take forward the recommendations of the report, which is to work in collaboration with the police, statutory conservation nature organisations and bat workers in a partnership approach, to raise awareness especially amongst the target audience in terms of builders and developers, and to setting systems of training. We want to make sure that the law is not broken. We do not want an enforcement issue in bat conservation.

Q191 Paul Flynn: How confident are you that this will work? You also point out that wildlife crime officers are needed for bat crime, but despite that body made by the police, these offences are still not recordable, and so not necessarily an area of crime that the chief constables are likely to devote resources to.

Ms Coyte: I am glad you asked that question because there are two issues there. The principle has been set up but there are no resources dedicated to Operation Bat at all, so it has to be taken forward with existing resources, which are so tiny. As we put forward, without wildlife crime officers throughout the UK, this whole system cannot be taken forward. We do want bat crime to be a recordable crime. At the moment, in our partnership with RSPB, the only reason we know anything about this is this project and these records are kept in partnership with RSPB. As far as I am aware, that is the only recording body of those crimes in the UK.

Q192 Paul Flynn: Mr Elliott, you say in your written evidence that English Nature and the Countryside Council for Wales make full use of their much-enhanced powers under CROW, and this would imply that they are not doing so now.

Mr Elliott: There are mixed messages coming out of the statutory agencies. The CCW now has two police officers working alongside them on these issues. The simple presence of a police uniform provides the threat of a big stick, and appears to be providing some benefits.

The situation in England is far less clear. At this moment it is difficult to say how effective English Nature is at deterring offences by wielding a stick of any sort.

Q193 Paul Flynn: You also refer to the Government's campaign against illegal wildlife poisoning which was launched in 1991. You say that you believe this has little or no effect and the figures have doubled since 1997. Do you know the figures?

Mr Elliott: I only have my own figures, which are not in front of me.

Q194 Paul Flynn: Why do you think it has failed so badly?

Mr Elliott: I think the campaign has been very good at being a publicity campaign, issuing public posters and so on, which has put the message out into the wider communities; but there is this ongoing background of pesticide abuse for poisoning wildlife, whether it be for poisoning pest species such as foxes, or deliberate poisoning of wild birds. One of the difficulties again is there is a good message going out but it is not being backed up with enough enforcement activity or monitoring of pesticide use by the Rural Development Service and Pesticide Safety Directorate of Defra.

Q195 Paul Flynn: How do we reverse the trend? What do you suggest?

Mr Elliott: One option we would like to see that every time a poison incident is reported, there should be visits to the land-owners upon whose land that incident occurred, and an inspection of his pesticide stores and working practices.

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Q196 Mr Thomas: Dr Gent, we have heard a little bit about Operation Bat, and you point out in your evidence the understanding of duties and co-operation between authorities. Can you say what your Trust is also doing in reaction to the sort of thing you heard earlier from the police officers?

Dr Gent: Specifically we are involved with a project in Dorset. We are geographically based in Dorset and a lot of our reserves are there, so we have a slight geographic bias. There is a project funded by the European Union (LIFE funding) in which we are working with a range of other partners. We have noticed increase involvement and co-operation. We have had a long series of meetings over tables over many years but only recently have the parties come together in a fairly active partnership, and there is a lot more information and extending of information over things that would be seen as more trivial. You can now phone up the local wildlife liaison officer just to compare notes on people riding bikes across heath land. It builds up a more complete picture and allows “intelligent policing”, and they suddenly realise there is an ongoing problem, whereas historically because we only reported really serious things, that perception was not there. Through these various partnerships there is a lot more exchange of information and as a consequence the police are a lot keener and better able to act.

Q197 Mr Thomas: That is with institutions. What about the private sector? What about builders; is there any ongoing work there that you are aware of?

Dr Gent: We are really keen to promote such involvement but generally work via agencies eg the Highways Agency, to promote good practice. We are working primarily to promote our work through planning policy statements, notably the revision of PPS9, going back to the idea that if we can get clear, explicit guidance in that, to help define where local authorities have a duty, then it becomes much easier, through this chain of command to guide the private sector; whether it is bats in houses or reptiles on heath lands. People would understand there is a duty and responsibility but that is not happening at the moment and that is what we are trying to tackle through policy.

Q198 Mr Thomas: One of the more specific concerns, Mr Elliott, was with regard to the Customs and Excise and endangered species: you said that co-operation was quite good up to a certain point, but then you seemed to lose contact with what was happening with those cases. Is that something that you want to recommendations about?

Mr Elliott: I think there is a distinct cultural difference between the way in which the police are prepared to work with NGOs such as the RSPB; they are reasonably open and inclusive—to an extent, of course. However, Her Majesty’s Customs and Excise seem to operate in a far more closed manner. They rarely come to us for information and once we pass information to them we get very little feedback, or even very much action in the majority of cases. Their Heathrow team is excellent in the work they do, although I would like to draw to your attention that they measure their success on seizures of restricted goods entering the country, and there are a very small number of prosecutions resulting from the illegal importation or attempted illegal importation. We believe that is something that ought to be addressed.

Q199 Chairman: Do you have anything more you would like to say to us? You have the luxury of one minute!

Ms Coyte: We do have a strong concern over the habitats regulations. They are now being amended to be more compliant with the Directive, and we have a concern that to be more compliant legally they go against the spirit of the Directive unless there are systems put behind this amendment that will enable us to continue to deliver a collaborative approach, whereby when people have bats living in their houses, they can seek good advice and be able to minimise any disturbance they may be carrying out. One interpretation of the habitats regulations could mean that if you have bats in your house and want to extend your loft, you would have to get a consultant in to comply with three tests, and that can be very expensive.

Q200 Chairman: Are you discussing that with the relevant government department?

Ms Coyte: Yes, Defra.

Dr Gent: Part of the problem has actually come from the EC Directive itself, and there is a small working group looking at Article 12 of the Directive, where this comes from. I am involved in the non-government side and we are pushing for an interpretation of the Directive from the European Union to look at the spirit rather than the absolute letter of the law. That is causing all sorts of mayhem, as you can imagine. We are after conservation, as Gil has said.

Ms Coyte: That is our big message; that we want to conserve. I would hate to see our very limited resources going into enforcement rather than active conservation.

Chairman: That is a good positive note on which to end. We are extremely grateful to you, both for your written evidence and your thoughts today.

Supplementary memorandum from the Bat Conservation Trust

The Bat Conservation Trust welcomes the opportunity to submit a further Memorandum to provide information in addition to that given to the Committee on 20 May.

The first point relates to Q185; there are inconsistencies in advice given by SNCOs not only between different countries, but also within individual countries. For instance, the law has been broken in the past because of apparent misunderstanding of the legislation by SNCO staff, and also by a lack of clarity in the

advice letters SNCOs write to householders with bat roosts. Therefore, resources need to be available for training of SNCO staff who deal on a day-to-day basis with inquiries about bat roosts and who send out official letters following up a visit by a Licensed Bat Worker. This advice needs to be consistent and correct across the UK.

Also, we are aware that there are variations in the type of licences issued by SNCOs to bat workers. A “conservation” or “roost visitor” licence is given to those who have undertaken sufficient training which enables them to visit householders with roosts on behalf of the SNCO. In Scotland this licence also covers survey for bats in hibernation sites; in England a “scientific” licence for survey of bats in a hibernation sites is needed; in Wales we understand that the “conservation” and “scientific” aspects of the licence have been merged. This can lead to confusion amongst bat workers as to which licence is needed for what, with the potential for unintentional breaking of the law. Consistency between the countries issuing these licences would clear up confusion.

The second point relates to Q191; Operation Bat is an excellent initiative, but we are unsure as to whether it is able to deliver. BCT has concerns about the lack of resources being put towards it. Currently not all constabularies have wildlife crime officers. Even where there are WCOs, these individuals take on the wildlife crime cases in addition to their normal casework which means that wildlife crime is often not seen as a priority by the individual WCO. BCT would like to see more resources allocated to Operation Bat, and WCOs appointed to ensure coverage across the UK.

Whilst BCT firmly believes that bat conservation is best achieved by education and not through enforcement, the deterrent effect of prosecutions has been shown to be effective in the timber treatment industry. Up to 1990 there had been eight bat related prosecutions, six of which were of the timber treatment industry. We believe that these well-targeted prosecutions combined with education resulted in much improved working practices; since 1990 there have been no reports of bat related crime connected with the timber treatment industry.

The third point relates to Q199; BCT is keen to see the existing method of dealing with roosts in houses remain with the volunteer Licensed Bat Worker and SNCO; we are very concerned about the proposal to make the Habitats Regulations more compliant with the Habitats Directive because we think that interpreting the Directive in this way is taking it out of context. It seems to contrast with what the Directive says in its Article 2. Of all the European Protected Species, we think that bats will fair the worst if these amendments go ahead without a well thought out system of guidance and resources, because of their association with human dwelling places.

If the amendments do go ahead then BCT believes proper interpretation of exactly what Favourable Conservation Status means for each European Protected Species is essential. Without this, no proposal could pass all three of the Habitats Directive “tests”, in which case the proposal could not legally be implemented.

June 2004

Supplementary memorandum from the Herpetological Conservation Trust

Further to our written evidence of 29 April and oral evidence presented on 20 May, I offer Supplementary Evidence. This is to clarify my answer given to the Committee with regard to Q188 in the Manuscript of the Oral evidence session.

In this section I refer to our interest in further developing a concept within the European Union “Habitats Directive”. I gave insufficient elaboration. The concept that we are looking at is “Favourable Conservation Status” (defined in Article 1 of the Directive, and its central role to the interpretation of the Directive being given in Article 2(2)). Its importance is that as a concept enshrined in European law, we feel that this gives guidance as to how the European legislation should be implemented. By this token, we suggest that it could usefully guide enforcement agencies and prosecutors in assessing the significance of a crime. Within the Directive this concept is explicitly referred to in directing the Member States’ “licensing authorities” as to when they are allowed to derogate from the provisions of the Directive.

We have acknowledged that it may be difficult to develop working definitions for the concept and suggest that this should be a role for the Biodiversity Action Plans (BAP). We therefore see BAP as having a useful guiding role in determining species and habitats for which robust enforcement of legislation is particularly important for ensuring effective conservation.

June 2004

Thursday 8 July 2004

Members present:

Mr Peter Ainsworth, in the Chair

Sue Doughty
Paul Flynn

Mr Simon Thomas

Memorandum from the Association of Local Government Ecologists (ALGE)

ALGE

The Association of Local Government Ecologists (ALGE) was established in 1994. It is the association in the UK which provides support for professional officers with responsibility for and interest in biodiversity and nature conservation in Local Authorities and National Parks. ALGE also provides formal professional advice to the Local Government Associations in the UK, governmental organisations and others on biodiversity issues that affect local government.

ALGE's aims are to:

- Promote and develop good principles and practice for biodiversity, nature conservation, and sustainable development in local government, including National Parks, through its members;
- Maintain an active advice and support forum amongst its members for the exchange of information and ideas on biodiversity and nature conservation matters; and
- Provide regular advice on biodiversity and nature conservation matters on behalf of members to government, local authority associations, chief officer societies and others;

ALGE has members in all of the English government regions, and is represented on most of the English regional biodiversity fora. ALGE is also an effective voice in Wales with a strong membership there and has a developing membership in Scotland. All members of ALGE work as specialist professionals, often working alongside a multi-disciplinary team of landscape architects, archaeologists, countryside and public rights of way staff, and other planning colleagues. They may be the sole representative of the ecological profession in their authority, and may therefore often not have the benefit of direct professional support and advice from colleagues within their workplace on nature conservation and biodiversity matters.

Since our evidence in April 2000 to the Environment Sub-Committee and the 20th Report on UK Biodiversity we have been working positively with the Local Government Association to help frame the LGA's biodiversity position statement. This joint working is now at the implementation stage and we are looking to reach out to and support more LAs, provide more advice and build the membership of ALGE further. The financial support of English Nature and the Countryside Council for Wales ALGE has enabled a coordinated set of actions agreed with the LGA to move the position statement forward. In the last three years we have established a website, developed communication systems and increased our membership by 100%. Our recent publication *"Increasing the Momentum A Vision Statement for Biodiversity in Local Government, 2004–10"* sets out the hallmarks for a modern efficient and effective Local Authority. We are now working on a revised Business Plan which we aim to publish in 2005.

EXECUTIVE SUMMARY

ALGE and the LGA are aware of a number of issues relating to wildlife crime (and also of non-compliance with statutory wildlife responsibilities) that fall within the remit of local authorities: These can be summarised as follows:

A. Beside obvious issues of law enforcement, the prevention of wildlife crime should be considered as an integral part of the Government's "holistic" approach to biodiversity conservation and to the achievement of a sustainable society as a whole.¹

B. By using their statutory powers for nature conservation, local authorities have a clear and central role to play in combating wildlife crime and in securing better protection for wild flora and fauna as part of the wider delivery of sustainability and biodiversity conservation.

C. ALGE members are aware of a wide range of wildlife offences that are regularly committed within the development industry either:

- (a) before planning permission is granted ie during site clearance or duration demolition works (which are often deemed to be permitted developments²) or

¹ DEFRA (2002) Chapter 3 A Holistic Approach. Working with the Grain of Nature: A biodiversity strategy for England.

² Permitted developments under The Town and Country Planning (General Permitted Development) Order 1995.

- (b) during actual implementation of development that has been granted permission under planning legislation—often carried out in a reckless manner and/or in a manner that is inadequately controlled by the planning consent.

D. Many local authorities are not fully aware of either their statutory powers and/or legal responsibilities under various wildlife legislation; these include:

- (a) statutory powers enabling local authorities to take action over wildlife crime (ie powers of prosecution under Section 25(2) of the Wildlife and Countryside Act (1981) or under the Hedgerow Regulations (1997), or
- (b) statutory powers to raise awareness with the public of the protection afforded to wildlife (ie under their powers arising from Section 25(1)(a) and (b) of the Wildlife and Countryside Act (1981).
- (c) statutory duties requiring their own legal compliance with various wildlife and environmental legislation when undertaking council activities and works that may impact on protected flora and fauna (ie timing of land management works to avoid clearance of nesting habitat during the bird nesting period).

INTRODUCTION

1. The ALGE membership (200 members in local authorities throughout the UK) regularly reports on and raises issues relating to protected sites and species, and to the interpretation and enforcement of their relevant wildlife legislation.

2. Most ALGE members do not often become involved in wildlife crime involving captive breeding of birds of prey, persecution of birds of prey, or trade in “exotic” species as may be covered under the Convention on International Trade of Endangered Species (CITES). In such cases where they are involved, it is likely to be on a voluntary basis where they may be assisting other agencies or the police. ALGE is therefore not in a position to offer evidence to the Committee relating to this form of wildlife crime.

3. Instead, ALGE’s evidence relates to wildlife crimes committed within the scope of more common local authority functions—and involving domestic sites and native species that are protected by national and European legislation, such as The Wildlife and Countryside Act (1981), The Protection of Badgers Act (1992), the Habitat Regulations (1994) and the CROW Act (2000).

4. Given the current resource pressures on local government and on public expenditure generally, local authorities often find it difficult to allocate sufficient resource to work on biodiversity generally. This is particularly an issue for smaller councils. Our following observations about what local government is able to do to help prevent wildlife crime and to enforce relevant legislation should therefore be taken in this context.

WHAT IS THE SCALE AND IMPACT OF WILDLIFE CRIME?

5. ALGE’s overall impression of the scale and impact of “actions that contravene wildlife legislation” is that of being frequent (ie at least weekly) and extensive (ie occurring in all local authority areas). On an individual basis, these actions are usually small scale, but cumulatively their impact represents thousands of individual animals and birds being disturbed, harmed or killed each year. Since many of the species affected enjoy legal protection, this means that wildlife offences are both commonplace and widespread.

6. In the majority of the above situations the “wildlife crime” is unrecognised, unreported and no enforcement action or prosecution is taken forward

7. With regard to this type of “wildlife offence”, ALGE has two main concerns. The first relates to the building and construction industry. The second relates to the activities of local government departments. These concerns are addressed below.

THE BUILDING AND CONSTRUCTION INDUSTRY

8. As a matter of documented fact, the Royal Society for the Protection of Birds and the Bat Conservation Trust have undertaken research³ that has shown—over a two year period—that 144 bat offences alone were recorded. Of these offences, 67% was committed within the building trade.

9. ALGE believes that this is the “tip of the iceberg” and is indicative of a much wider problem within the building and construction industry that affects, very widely, many legally protected species.

10. For instance, a very large proportion of all construction sites involve works to clear existing features, such as:

- old boundary walls and hedges;
- grassland, heathland, scrub and trees;

³ The Bat Conservation Trust and RSPB (2003) Bat Crime. Is the legislation protecting bats?

- to completely or partially fill or change small watercourses and water bodies; and/or
- to fully or partially demolish or refurbish old buildings and structures.

11. In many cases, there is a very strong likelihood that these features (at least at some times of the year) support legally protected species, such as: nesting and breeding birds, roosting and breeding bats, badgers, water voles, great crested newts, dormice, white clawed crayfish and amphibians and reptiles.

12. On many occasions, the builders and construction contractors on site are oblivious to the wildlife present and ignorant of the harm that their actions may cause. However, in other situations, the contractors know (or have indeed been told) what wild species are present and what the implications of their work will be—but they proceed anyway, knowing that legally protected wildlife will be disturbed, harmed or killed.

13. From ALGE's collective experience, we believe that many construction contractors persist in this behaviour because they think (quite rightly) that they will "get away with it" because no enforcement action or prosecution will be taken against them. Furthermore, the penalties often imposed by the courts do not realistically act as a deterrent, especially when the overall sums involved in development absolutely dwarf the fines issued by the courts.

14. Also, since building, construction and development work is controlled by planning legislation, there is a clear role for stronger local authority involvement in preventing this type of wildlife crime.

ACTIVITIES OF LOCAL AUTHORITIES

15. Notwithstanding the above observations of paragraph 15, many council departments and staff⁴ are unaware of the legal protection afforded to some wild species, and are ignorant about how and when their council actions may cause harm to such species. This applies to both capital schemes and to maintenance works.

16. For instance, in 2003, in one council area, highway maintenance staff mowed a road verge. As a consequence, in one afternoon, five species of reptiles were killed, including:

- three sand lizards;
- one smooth snake;
- four adders;
- two grass snakes; and
- numerous slow-worms.

17. Sand lizards and smooth snakes are of European importance and thus are given full protection under the Wildlife and Countryside Act and the Habitat Regulations. Adders, grass snakes and slow worms are also protected against deliberate killing and injury under the Wildlife and Countryside Act. No legal action was taken over these potential offences.

18. By way of a defence for this action, it can be argued that the killing was "not deliberate" and that the works were "incidental to an otherwise lawful operation". However, it is more difficult to justify that the works could not reasonably have been avoided—or have employed less harmful techniques. Therefore, in this instance, it appears that the council's actions may have been undertaken recklessly.

19. Unfortunately, the above is situation not unique and ALGE members are aware of many other examples where council actions cause harm to protected species—that could very often be avoided through careful seasonal timetabling of works and/or through use of prior species surveys and alternative measures and working practices.

IS THE FRAMEWORK OF NATIONAL AND EUROPEAN LAW AND OF INTERNATIONAL REGULATION ROBUST ENOUGH TO DEAL WITH WILDLIFE CRIME EFFECTIVELY?

20. ALGE is relatively content with the framework of national and international law and regulation.

21. The Association is, however, very concerned about:

- (a) the effectiveness of the publicity and profile given to wildlife legislation and to the sites and species that it is intended to protect; and
- (b) the commitment to, and effectiveness of enforcement action by relevant bodies in response to alleged crimes.

22. The Association would also like the planning system to more effectively embrace the problems of protected sites and species encountered within the construction and development industry. We believe that planning legislation, regulations and guidance all provide for improved control of wildlife crime through land use planning, but in practice the potential effectiveness of the provisions is often not fully realised on the ground.

⁴ Departments and council functions whose actions include vegetation management and clearance are particularly prone to come into conflict with protected species; such as Highway and Engineering, Parks and Grounds Maintenance, Land Drainage and Flood Defence, Pest Control, and Crematoria and Graveyards.

Recommendation No 1

ALGE would like to see Central government consider how other legislation, such as planning, can be used to compliment and augment primary wildlife legislation so that collectively there is a stronger and clearer suite of coordinated powers available to all bodies able to take action.

DO RESPONSIBLE BODIES WHO DEAL WITH THIS TYPE OF CRIME HAVE SUFFICIENT RESOURCES AND POWERS TO DO SO? DO THEY TREAT WILDLIFE CRIME WITH PROPER AND DUE GRAVITY?

Sufficient Powers for Local Authorities?

23. Local authorities have a number of very important powers that can enable them to help prevent wildlife crime or to take action when an offence has been committed. However, from experience, ALGE members report that a large proportion of local authorities in England are unaware of and/or are confused about the full extent of powers available for them to take effective action against wildlife crime.

24. Re Awareness Raising and Publicity: There is among local planning authorities widespread confusion and discrepancy over the amount of advice that they should give applicants about the possible presence of protected species.

25. Section 25(1) of the Wildlife and Countryside Act (1981) states that every local authority shall take such steps as they consider expedient for bringing to the attention of the public and of school children in particular the provisions of Part 1 of the Act.

Recommendation No 2

ALGE believes that local authorities should take greater advantage of their powers under S.25(1) when dealing with planning applications to inform applicants about protected sites and species (for example with the issue of standard information leaflets accompanying planning application forms).

Such guidance could bring to the attention of all planning applicants the importance of wildlife legislation and how any proposed developments may come into conflict with it, and the practical measures that can be taken to avoid potential offences being committed.

Model “information” for dissemination by local authorities could be prepared jointly between relevant bodies (ie EN, LGA, ALGE etc).

This would have the aim, through awareness raising, of hopefully reducing “reckless” harm to protected species and sites during building and construction works (as discussed in sections 8 to 15 above).

26. Re Prosecution of Wildlife Crime: Section 25(2) of the Wildlife and Countryside Act (1981) states that a local authority may institute proceedings for any offence under Part 1 of the Act which is committed within their area. However, many authorities are unaware of the powers and do not assume that they can take action.

Recommendation No 3

ALGE would like greater encouragement and support for local authorities to take forward prosecutions for wildlife offences, particularly where these are committed during development that has received planning consent AND where specific planning conditions/obligations were attached in an attempt to prevent and control harm to protected species or sites.

In this way, potential prosecution by the local planning authority, would send a stronger message of deterrence to builders and construction contractors that habitually, as a matter of “convenience”, disturb, harm and kill protected species on their sites.

27. Re Enforcement Action through Planning Controls: Local authorities also have powers of enforcement under the Town and Country Planning Act (1990). ALGE believes these powers could be better used to help prevent and control wildlife offences occurring on development sites. Again, there appears to be widespread uncertainty over what wildlife action is legitimately within the scope of planning enforcement and consequently many LPAs are hesitant to take action.

Recommendation No 4

ALGE would like to see similar encouragement and support for local planning authorities to take stronger and much more frequent planning enforcement action over wildlife offences committed as part of development works.

SUFFICIENT RESOURCES FOR LOCAL AUTHORITIES?

28. ALGE represents the professional ecologists that work in local government. We believe that such officers are ideally placed to advise their authorities on wildlife crime, and on the potential actions that the authority can take to help prevent and control it. They are also able to offer advice on how the council's own activities can be carried out in a lawful manner that is compliant with wildlife legislation.

29. However, of the 400 hundred local authorities in England, only about 35% employ a professional ecological officer (ie about 140 local authorities). The remaining 65% do not have ecologists. ALGE assumes that many of these authorities operate without the benefit of in-house professional ecological expertise, meaning that they remain unaware of either (i) how they could act to control wildlife crime and at the same time (ii) ensure their own activities do not break the law

30. ALGE assumes that the extra work involved in the implementation of our Recommendations 2, 3 and 4 would have resource implications for local authorities over and above what is currently available at a time when resources are already stretched.

31. At present, local authority staff do not usually have the time or resources to pursue anything other than the most high profile cases/large scale offences. This sends entirely the wrong message out to developers and building contractors who know that, in most instances, the LPA will not take action (because they do not have the time or resources to do so). Assuming, of course, that the LPA is aware that an offence has even been committed and that they know they have powers to take enforcement action.

32. If LAs are to assume a greater role in combating wildlife crime, it is vital that they have sufficient professional officers with the necessary skills and expertise to undertake the work as outlined above. Linked to this is need for professional expert support from other enforcement agencies, such as English Nature and the local police.

33. Additional resources should also be provided in the form of:

- (a) new central explanatory guidance on how LAs can in practice help prevent wildlife crime; and
- (b) the provision of training to equip relevant council officers with appropriate skills and expertise.

34. The provision of training might be something that could be coordinated through the Partnership Against Wildlife Crime Scheme (PAWS). It might also be complimentary to and accommodated within the Government's proposals to strengthen enforcement powers in the new Planning and Compensation Bill. Another alternative, might be to see Police Wildlife Liaison officers seconded to, say, English Nature—as has been done in Wales where two welsh police officers are working very closely with the Countryside Council for Wales to provide stronger and better coordinated enforcement action.

35. Also, many council departments—that come into conflict with protected wildlife—state that they do not have adequate resources to undertake all of their works in a manner that is compliant with wildlife legislation. They argue that if they did, it would make the work too expensive and/or take longer or cause too much delay. ALGE believes that this is totally unacceptable and since, in most instances, alternative good practice exists, there is no excuse for not complying with all legal wildlife constraints.

Recommendation No 5

ALGE would like to see a strong statement from Central Government to all local authorities drawing their attention to their statutory duties regarding protected sites and species. All local authority departments should be reminded that compliance with wildlife legislation is not something that is discretionary and applies only where it is convenient or fits with the “traditional” way of doing things.

DUE GRAVITY?

36. Many elected councillors and senior council officers are often unfamiliar with wildlife legislation since it is perceived, by many, as peripheral to core local authority functions. As a consequence, many local authorities are unaware of the role they could play in preventing and/or controlling wildlife crime.

37. Likewise, many councils do not understand their own statutory responsibilities under wildlife legislation, and do not appreciate that some of their actions are not entirely compliant with either the letter or the spirit of the law—and certainly not good practice (eg mowing protected reptiles species on a road verge—see section above).

38. In this context, ALGE believes that many local authorities do not give the issue of wildlife crime due gravity. They have powers to enforce it, but do not—and they have duties of compliance that they do not always follow themselves.

IS THERE SUFFICIENT DIALOGUE AND CO-OPERATION ACROSS GOVERNMENT AND AMONGST THE VARIOUS BODIES RESPONSIBLE FOR DEALING WITH THIS TYPE OF CRIME?

39. There is valuable co-operation taking place between many organisation and individuals. ALGE supports these efforts and is committed to working in partnership with Government agencies and the various bodies responsible for dealing with this type of crime. To this end, ALGE members are represented on all of the regional Partnerships Against Wildlife Crime, and nationally ALGE has been invited to join the PAWS committee.

40. Also, in the autumn of 2003 ALGE hosted a meeting between English Nature, the Bat Conservation Trust, the Mammal Society and CIRIA (the construction industry's research and information association). The purpose of the meeting was to explore future collaboration and coordination over working with protected species when they are encountered in the planning system and in the construction industry. This meeting particularly looked at measures to raise the awareness and profile of protected species among the two groups that are most likely to encounter them—planners and construction workers. Several initiatives have arisen from this meeting, but nothing was discussed or resolved over how to actually tackle wildlife offences when they occur.

41. So, despite existing efforts at co-operation, ALGE believes more wildlife crime could be effectively prevented or controlled with even greater levels of collaboration between key bodies. All too often, while several organisations could take action, in the end nobody carries out an investigation and/or pursues a prosecution—leaving the impression with many would-be offenders that they will get away with it. Clearer roles need to be defined so that the most appropriate body for action can be quickly identified for each situation encountered, taking into account the availability of local resources and expertise.

42. ALGE is currently working with English Nature, DEFRA and the ODPM over the preparation of good practice guidance that will accompany the new Planning Policy Statement No 9 on Biodiversity and Geological Conservation. ALGE hopes that the guide will provide new and more useful advice to planning authorities and to English Nature to illustrate and explain how practical measures to prevent harm to protected sites and species (occurring during new development) can be incorporated into planning consents—ie through the formulation of more effective and enforceable planning conditions and obligations.

43. ALGE also believes that the practical inter-relationship between planning consents and species licences (as dealt with by English Nature and DEFRA) are not widely understood, nor that these arrangements necessarily work as effectively as they might to prevent harm to protected species.

Recommendation No 6

ALGE would like to see a review of how planning consents (conditions and obligations) could more effectively support and integrate with the aims of species licensing arrangements (notwithstanding proposals to pass licensing arrangements from DEFRA to local authorities).

44. ALGE would like to draw to the attention of the Sub-committee, two pieces of exemplar work undertaken by English Nature and CIRIA.⁵ Firstly, over that last two years, in close partnership with the Department of Trade and Industry, UK wide statutory nature conservation organisations and NGOs, CIRIA has commissioned the preparation and publication of a training resource pack entitled “Working with Wildlife—Compliance and Beyond”. The purpose of the pack is intended to raise awareness in the construction industry about potential conflicts with wildlife and to suggest practical measures that can be implemented on construction sites to avoid harm being caused. While aimed primarily at construction personnel, the pack will also be invaluable to planning professionals and to police officers in so far as it explains the potential conflicts and suggests workable solutions.

45. Secondly, English Nature is also to be commended for the publication of its series of handbooks⁶ that give practical help over dealing with protected species in the planning system.

46. Both the CIRIA and EN publications should be promoted as widely as possible on the basis that prevention of wildlife crime is better than effective prosecution after the event.

47. On another positive note, many ALGE members report that they receive effective support from their local Police Wildlife Liaison Officers. That said, ALGE is aware that not all LAs are able to call upon the specialist assistance of WLOs, because their local constabulary does not have such a dedicated officer.

48. In many instances, cooperation between local authorities and local police forces seems to rely on relationships forged between individual council and police officers. There does not, however, seem to be a great deal of cooperation and discussion over how to tackle wildlife crime between senior council officials and police chiefs. ALGE is not aware of any local initiatives that have been planned and implemented at this level. Ultimately, without senior level support local arrangements based upon personal working relationships can be highly fragile. For instance, one ALGE member has reported that when their Police

⁵ CIRIA is the construction industry's research and information association.

⁶ For instance: Great Crested Newt Mitigation Guidelines (2001) and Bat Mitigation Guidelines (2004).

Wildlife Liaison Officer retired, the local constabulary decided not to replace him because wildlife crime was not seen as a priority—despite written representations to the contrary from a number of key nature conservation organisations.

49. ALGE also believes that the Crown Prosecution Service and magistrates' courts should become more actively engaged in combating wildlife crime. They should be more aware of the conservation significance of such crime, and should be aware of and be prepared to set realistic fines and to consider other sentencing options so that penalties act as real deterrents.

Recommendation No 7

Penalties issued by the courts should more realistically reflect the scale of financial benefits derived by offenders when committing an offence. Penalties should be reviewed so that they truly act as deterrents.

April 2004

Witness: Mr Mike Oxford, Project Manager, Association of Local Government Ecologists, examined.

Q201 Chairman: Do you have any opening remarks you want to make? We have quite a lot of questions for you.

Mr Oxford: I do not think so, no.

Q202 Chairman: We are particularly struck by the incident you referred to in your written evidence, for which we thank you, where some highway maintenance staff managed to eliminate five protected species of reptiles in the course of everyday highways maintenance. Where did that happen?

Mr Oxford: I knew you were going to ask me that! It was either Dorset or Hampshire, one of the counties down in that part of the country.

Q203 Chairman: Why was no action taken?

Mr Oxford: I do not know. I must confess, I found out about the incident probably 18 months or two years ago, and I have not spoken to the person who told me since.

Q204 Chairman: How reliable is this piece of information? Presumably, if you are a highways maintenance officer and you are cutting a verge, you might not be aware that you have destroyed—

Mr Oxford: No, I am sure that is the case. To add to your question, I suspect the reason no action was taken—and I can talk generically of other cases like this, where I know ALGE members as local authority ecologists, have been aware of something that a department within a council has done—is that people do not feel it is their job to take the action; it is their job to report to colleagues, report it up the line, and point out and advise that these actions are not compliant with the legislation.

Q205 Chairman: Is not one of the problems here that if action were to be taken, you would have one part of the local authority prosecuting another part?

Mr Oxford: I suppose that is the case. I do not know about the case with the reptiles on the road verge, but there are other cases where I have been personally involved during a time when I was in local government myself, and action has been taken in liaison with English Nature over them taking possible action. In the cases I have been involved with, ultimately no legal action was taken, although there was an exchange of formal letters between

English Nature and the Council over similar actions that could be construed as non-compliant or a contravention.

Q206 Chairman: Let us get to the heart of why there is this reluctance to take effective action in cases of this kind.

Mr Oxford: I honestly do not know. I would not know why English Nature in some of the cases I know of has not taken action. Because I suspect it is widespread, I would have thought the number of occasions when something like this does come to the attention of English Nature or other bodies that could take action—I am surprised that more action is not taken. The highway verge is just one case of many.

Q207 Chairman: You suggest that councils should conduct species surveys before carrying out this type of work. How practical is that? There are a heck of a lot of highway verges to check, and you would have to check very carefully. You would have to do it every year.

Mr Oxford: I suppose it is a matter of targeting. Part of the problem can be overcome in terms of timing and better liaison between different departments. In cases I have been involved with, either carrying out the work at alternative times of the year or just having the ecologist on site would have—

Q208 Chairman: He cannot be on every grass verge in every county, 365 days a year, can he—or even for crucial periods of the year?

Mr Oxford: No, but I suppose you can identify hotspots in a local authority area where the likelihood of coming across particularly European species, which is the most threatened in the case we cited, and then have contingency measures for when actions are intended for those areas.

Q209 Chairman: On the question of your suggestion about careful timing of work to verges, presumably the verges have to be mown when the grass is long, for visibility reasons and highway safety and so on; so you do not mow them in the winter. The windows of opportunity are limited by the practicalities, are they not?

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Mr Oxford: Let me give you another example that perhaps would make more sense of the timing. There was a highway authority that wanted to carry out works on some very large highway trees in a wooded area—a winding road down through a comb in the south-west. They decided to carry out that work in the middle of the summer when almost certainly there would have been bats and breeding birds present. That is the sort of work where probably they could have been timed for a different period of year when the protected species would not have been present. I suspect that probably the road verge in that sense is misleading.

Q210 Mr Thomas: In my area, which is a very rural area, and I am sure in many other rural parts, highways maintenance is undertaken by the farmers. They go out and cut the highways in a time frame agreed with the local authority, but not on a specific day or even in a specific week; it is when they fit it in—if it is a bit wet for silage they will go out and cut the verge. In that context, how on earth can you have any control over the species that might be affected?
Mr Oxford: I suppose it is consciously and deliberately deciding to do something and taking account of the risks involved.

Q211 Mr Thomas: That underlines how difficult it is for English Nature or CCW to bring a prosecution, because how do you demonstrate intent? That is one of the difficulties, surely?

Mr Oxford: I suppose we use the road verge maintenance issue to illustrate that some very important species can be killed very quickly, but for the purposes of the questions you have asked me today—for instance the trees in the coomb that were clear-felled—that is the sort of thing where that kind of action can be better planned. There can be much closer liaison between the relevant departments to ensure that there is no risk involved and no contravention. I am aware of several other similar cases where a local authority pond was pumped out and it contained Great Crested Newts. That is the sort of thing again where it was not imperative that that was done at a crucial time of year for the newts. Depending on the species, timing is a major factor. It is also part of the lack of awareness in many departments.

Q212 Mr Thomas: That lack of awareness is not just contractors, is it; it goes right up the chain of command in local authorities?

Mr Oxford: It is chief exec right the way down through to the man on the tractor, yes.

Q213 Chairman: Moving on to the legal framework, I note that you say in your evidence that you are relatively content with the framework of national and international law and regulation, but you also say you would like the planning system to more effectively embrace the problems of protected sites and species encountered by the construction and development industry. Is it your view that planning regulations are not sufficiently robust?

Mr Oxford: I think the powers exist, but some of the regulations and guidance are not written with wildlife protection in mind, so opportunities to take explicit action that could assist wildlife protection through the planning system—those opportunities are missed, and certainly the guidance to date has not really tackled the issue. ALGE is working very closely with English Nature, Defra and the ODP, in the preparation of new Planning Policy Statement No. 9 *Biodiversity and Geology*. There is an accompanying legal circular and good practice guide. Those three new documents, we hope, will go a long way towards improving the guidance for local authorities as to what they can do through the planning system.

Q214 Chairman: What sort of things is it suggesting?

Mr Oxford: One critical example would be the use of planning conditions. The local authority needs good information with the planning application to understand whether there is a risk of any harm being done to any protected species; and the Association has just submitted some supplementary evidence today about dealing with information within the planning system. I will come back to that point and start again. There are two major things. The authority needs good information to determine an application. It then needs good information to specify and condition and control planning permission so that any development, building work, construction work that proceeds on a site where protected species may be present, proceeds in a way that as reasonably as possible safeguards those species on the site. We have worked very closely with the Construction Industry's Research and Information Association. I would have brought it with me, but it is a huge tome. However, they have just produced a training resource pack for the construction industry, demand-driven by the industry itself, which provides a lot of very, very good guidance on what can be done on construction sites. We feel that the measures are not unreasonable because the industry has embraced those in the pack. There are a lot of things that can be done, but it is the actual practice and then the motivation. Some construction companies are well motivated and others are not. Driving to the station today, I drove past two sites where recently construction companies have just gone in and cleared vegetation that undoubtedly supports breeding birds at this time of the year. That is the sort of thing where planning conditions could have timed clearance works to be taken outside of the nesting season, and then other measures put in place to ensure that anything else on site is safeguarded.

Q215 Chairman: You are essentially content with the law and the regulations, as they exist; it is the application in practice, but getting the application right depends on the goodwill of the construction industry and the enthusiasm of local authorities in dealing with this when they have everything else to deal with.

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Mr Oxford: Absolutely. To come back to the supplementary evidence we have just submitted, at the heart of that is the performance target that local authorities are under in terms of the timing in which they have to determine a planning application; and for most applications that is eight weeks. We recognise an awful lot of issues need to be tackled during that eight-week period. I know from ALGE members that they regularly report that when they talk to planning colleagues. They say, “yes, we hear what you say about the possibility of protected species being harmed, but we cannot wait until next summer to get the information to make a determination”; or local authorities often condition the submission of further information to tackle the issue after consent has been granted. There is a fairly recent High Court ruling, which we know as the “Cornwall ruling”, in 2001. Cornwall County Council had a planning permission quashed. We make reference to this in the supplementary evidence. They had conditioned bat surveys and bat measures to be an issue that would be dealt with after consent was granted. The Court ruled that that was unlawful because if it was sufficiently significant to warrant a condition, it should have been dealt with prior to consent being granted.

Q216 Sue Doughty: In the memorandum you sent us on page 2 you say that as part of a team you provide support for professional officers with responsibility for biodiversity and conservation in local authorities. Presumably, you are providing advice to local authorities about the actions that will be taken and use of statutory powers; and yet local authorities can be amongst the offenders when it comes to crime. Is there anything more we can be doing to deal with this whole problem?

Mr Oxford: I understand the problem. The chief executive is faced with countless priorities given from on high and created locally. There is one measure that has caught my eye that seems to have worked. I attended a meeting where there was a presentation by somebody from the ODPM talking about procurement strategy, an initiative that the Government was very keen to promote with local authorities, and consequently wrote very high-level letters to chief executives all over the country, drawing their attention to the procurement strategy and the importance of it. I am not aware of any similar initiatives where government has said to chief executives, “we are now aware of various measures that you also should be aware of and taking action on within your authority”. Raising the profile with chief executives, senior councillors and having better written guidance specifically tied to the various areas where non-compliance is likely to occur—and that could be generic documents that are suited to all local authorities—and giving them a steer and making them more aware—

Q217 Sue Doughty: It is very worrying, is it not? I think, Chair, we spend quite a lot of time worrying about the activities of corporates and blaming them; and yet here we have local authorities where the chief executives are not getting this into their line of

vision, and yet they also have the responsibility of conservation in these cases but may be the perpetrators through the actions of staff and contractors. This is something that I think we should return to in the future. We know that not all local authorities have ecologists on their staff, and I can quite understand that for all local authorities this is not going to be their first priority in recruitment. Can you tell us which do and which do not, or give us some indication of how many do; and whether those with a significant percentage of rural land in their area do have conservationists or ecologists?

Mr Oxford: I can certainly submit evidence to let you know which authorities do and do not employ ecologists, as far as the Association knows. As a broad figure, we believe that about 35% do employ ecologists, so 65% have no in-house expertise.

Q218 Chairman: Are we talking here about all local authorities? Presumably counties are more likely to have the space for an ecologist than districts.

Mr Oxford: Traditionally, it has tended to be the counties that have employed ecologists, yes, although in the south-west until very recently that was not the case—although that has now recently changed as well. In terms of county, district, metropolitan, unitary authorities, it is very mixed, and it is very mixed in terms of the split between rural and urban authorities to appoint ecologists. It does not seem to be driven so much by where the authority is as to other factors.

Q219 Mr Thomas: Is that important at all anyway, because surely in England it is English Nature, and in Wales the Countryside Council for Wales, they are important statutory organisations stuffed full of ecologists. Surely that could be overcome by better liaison with these organisations.

Mr Oxford: The simple answer has got to be “no”; that there just is not enough staff time within the statutory bodies to provide the day-to-day advice to be on the end of the phone to say, “we are planning on taking some trees down some time this year; can you come round and have a look?” There is such demand for that expertise.

Q220 Sue Doughty: Could something be done about hiring their services on a voluntary basis? For example, in Surrey, where Surrey Wildlife Trust is responsible for the management of open spaces inside Surrey, would it be possible for borough councils within Surrey to purchase time from the ecologists, since they already hold a lot of the information we are talking about? Are there examples in other areas where somebody is collecting and managing that information, and providing it, and would there be more mileage in saying, “it is not reasonable that a small local authority has a full-time ecologist, but we could associate planning applications with a paid-for service provided by the Wildlife Trust or a similar body”?

Mr Oxford: That is a solution and it is one that is applied in some parts of the country with some authorities. It is probably not as ideal as having

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somebody full-time within the authority, just because of the status, the profile and the presence that an ecologist working for the authority has.

Q221 Sue Doughty: We are already beginning to see that although we might have an ecologist on the council, chief executives are not buying in anyway. I would love to have an ecologist on every council, but I know they have got to be paid for; but in terms of solutions available to councils to really start enforcing it—

Mr Oxford: It is something that the best-value review process would force local authorities to think through the alternatives—they need access to ecological expertise, and one option is in-house and another is with one of the local organisations and perhaps a service level agreement. We are not saying it has to be exclusively in-house, but it is probably better when it is.

Q222 Sue Doughty: Can we move on to the awareness of the powers that local authorities have, because we have a problem about lack of commitment, which would seem to be indicated by the confusion about those powers. It is quite astonishing. We see that local authorities are not always taking the work seriously. How can you improve the knowledge, understanding and responsibility?

Mr Oxford: One initiative that is underway at the moment is an action by Defra, which is looking at establishing a performance indicator or set of performance indicators on biodiversity for local government. It is intended to use that indicator with the comprehensive performance assessment process. The Audit Commission is involved in helping to develop those performance indicators, and I suspect it is probably when something catches the eye of the chief executive that the Audit Commission is monitoring this and being involved; but it suddenly elevates the whole status of an issue to something that other people think is important, and therefore they think they should; whereas at the moment there are so many other priorities for local government, a lot of them driven by central government, that local government understandably responds to where the noise is greatest. Nobody is making a big noise about what local government can do for nature conservation, so understandably chief executives think it is an option.

Q223 Sue Doughty: It does seem to be, because people seem to get the idea that they will not get brought to book about it. I know that in my borough trees take up root and walk at seven o'clock in the morning on a Saturday or a Sunday, on a regular basis, when builders come in.

Mr Oxford: I know exactly what you mean.

Q224 Sue Doughty: Nothing much seems to happen as a result of these trees marching. We do need to move forward. Would it be better if we could see the enforcement powers relating to wildlife crime sitting with just one body so that we have a body that is much stronger rather than take a diverse approach.

Mr Oxford: That certainly has been my problem in the past, where, if I had been made aware of something I have been confused as to what the most appropriate body is to take action. The Partnership Against Wildlife Crimes has been doing a lot to bring a lot of organisations together. In our evidence we have said that we look forward to working more closely with them to examine how local government can play a more effective role, and also a more effective role in partnership at a local level, so that the key players, when something happens, know between them who is the most appropriate person to take that action, and what action they can take. Very often, if I am really honest, we are not quite sure. It is a matter of better guidance and closer working relationships that will help matters.

Q225 Paul Flynn: You mentioned the pack that was produced by the construction industries, *Working with Wildlife—Compliance and Beyond*. Is this still in circulation?

Mr Oxford: It has only just been published, so it is very, very current. It is a fantastic resource, even more fantastic in that it was called for by the industry itself. To that end, it is more frustrating when protected species, for instance, are harmed, because the pack illustrates that there is so much that can be done, both in terms of procedures and actions and practice, that it would help preclude any harm being done, either deliberately or recklessly.

Q226 Chairman: It only works if people read it.

Mr Oxford: Yes, and I was going to say that building regulations, to the extent that I have ever really examined them—I know it fills shelves with prescribed standards that the building industry has to adhere to. There are no prescribed formal standards for wildlife protection within the construction industry. ALGE has just recently met with the British Standards Institute to start to explore whether some form of British standard might take the CIRIA pack a step forward. The CIRIA pack was very actively supported by DTI, so we hope that in the future, if it looks as if a British standard would be useful, Government departments like DTI, ODPM and Defra would lend their support to that sort of initiative.

Q227 Paul Flynn: You placed a lot of emphasis in your document on the impact made by building/construction, and all the other evidence we have received suggests that the building industry has long been contemptuous of the building regulations and any other kind of rules. Do you really think there is hope that they will take notice of this pack now; and what do you think CIRIA might be doing to regulate the industry and make sure we get a beneficial result?

Mr Oxford: With the larger companies, because of market forces and good practice, they have introduced environmental management systems that then set the scene to apply the CIRIA pack. A lot of the larger companies are probably coming on board, but the small and medium size companies' motivation is lacking. A builder friend of mine was telling me that his boss had been saying, because

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they had obviously been talking about a wildlife issue on one of their sites: “Unless they make us do it and can catch us doing it, and prosecute us, we will carry on as we are.”

Q228 Paul Flynn: Is that not the nub of the issue, because of the price of land and the profits to be made from building rapidly and getting into the market, and the weakness of the regulatory system and the small fines that are imposed; and is it not unlikely that they are ever going to be persuaded to do this?

Mr Oxford: I think for some of the small and medium size companies the penalties, if the criminal courts started issuing close to the maximum penalties—they would act as a deterrent, but obviously detection and prosecution comes first.

Q229 Paul Flynn: The perception of the industry is that they are only going to get slapped across the wrist anyway.

Mr Oxford: I think that is very true, yes. To come back to your question about the cost of doing these sorts of things, when you see it done well and effectively, it does not disturb the construction process to any great extent because it is allowed for, and planned for, and actions can be built in. This is where the link with the planning system comes in: if it is done as part of the planning permission, then any breach becomes a breach of planning consent and a breach of wildlife legislation. Then the opportunities for enforcement and prosecution are much better.

Q230 Paul Flynn: You mentioned in your memorandum a meeting that you hosted between English Nature, the Bat Conservation Trust, the Mammal Society and CIRIA, and you said that while several initiatives came from the meeting, nothing was discussed or resolved of how to tackle wildlife offences. Why do you think the meeting was so unproductive on that issue?

Mr Oxford: We did not meet to specifically tackle that aspect. We were at the other end in terms of how we raise awareness amongst some of the relevant bodies, and one of the initiatives that came out was a number of training seminars we ran around the country for planners on protected species. The knock-on effect of that will hopefully be that more planners will understand their part in all of this and hopefully be more prepared either to take action

themselves, because they can understand what they can do, or report it to other bodies that can equally take action.

Q231 Paul Flynn: Are you planning to convene further meetings?

Mr Oxford: I am involved in some of the training seminars. We have one in Hull next week, one in East Anglia at Bury St Edmond’s the week after. We had one in Newark also planned for next week, which I am expecting to be cancelled at lunchtime today because no planners have booked, which I suppose is another reflection of how low the priority is within the planning system at the moment in terms of dealing with protected species.

Q232 Chairman: Thank you for all of that. It looks as though you are fighting a bit of a lonely battle.

Mr Oxford: Could I say one thing, just to emphasise the supplementary evidence that we have submitted today? One of the problems is where local government is under pressure to determine planning applications within eight weeks of most applications. That compromises their ability to obtain sufficient information to really effectively determine planning applications to take account of protected sites and species. In eight weeks, especially if they do not have in-house expertise, it is very difficult for non-ecologists to identify what information is needed and then prescribe what action should follow, and to formulate adequate planning conditions to then control actual works. I find it extraordinary that the Cornwall case has not sent out ripples throughout the planning system and had far more effect. It seems to us that the High Court ruling is that local authorities are regularly acting unlawfully in not dealing with protected species when they determine planning applications; but their argument is that the performance indicator and target they are given is the reason why they cannot. There is an inherent conflict there, and I would hope that that is addressed fully when new legislation and regulations are issued.

Q233 Chairman: We have not, obviously, had a chance to read the supplementary evidence.

Mr Oxford: I know.

Q234 Chairman: That is a very important point, and we will certainly take it on board. Thank you very much indeed.

Mr Oxford: We have a best-seller, with which the Association is trying to raise the issues and the profile of all of this with local authorities. It is our vision statement, and I would like to leave copies for bed-time reading! Thank you.

Supplementary memorandum from The Association of Local Government Ecologists (ALGE)

CONFLICT BETWEEN PLANNING PERFORMANCE TARGETS AND PAYING DUE AND APPROPRIATE REGARD TO PROTECTED SPECIES

1. ALGE believes that there is a significant conflict between (a) performance targets set for the time that local planning authorities have available to determine planning applications, and (b) their ability to process planning applications in a manner that enables them to have sufficient “regard” for protected species that may be affected by some development proposals (see “Supporting Notes” with this evidence).

2. As a consequence of both the tight time scales because of the performance targets (as stated in the General Development Planning Order 1995) and a general lack of competence within the staff of the authority to do so, local planning authorities are unable to adequately assess potential impacts or secure effective mitigation measures for protected species.

3. As a result, without adequate assessment of likely impacts prior to determination, and/or effective protection measures secured via planning conditions and obligations, many developers (either in ignorance or recklessly) go on to disturb, harm or kill plant and animal species—some of which may be protected under national or European legislation—and detrimentally affect the populations involved as part of their construction works. Furthermore, planning permission can give developers a legal defence because it can be argued that they are not committing an offence, since their actions are “incidental to an otherwise lawful operation” ie they are implementing their planning permission (see “Supporting Notes” with this evidence).

4. For the majority of local planning authorities, it appears that the performance targets take precedence over all other statutory duties which require them to have due regard for protected species (especially those of European importance protected by the Habitat Regulations 1994). This in turn leaves protected species vulnerable to harm when development takes place, and in circumstances where enforcement action is unlikely to be possible.

5. On the other hand, where planning authorities do (i) obtain sufficient information prior to determination and (ii) they secure measures for protection through planning conditions, developers cannot cause harm to protected species without a) being in breach of their planning consent, and b) committing an offence under wildlife legislation. In these circumstances, enforcement action is then possible.

BACKGROUND INFORMATION ON PERFORMANCE TARGETS FOR PLANNING

6. Local planning authorities have prescribed target times for determination of planning applications; this is eight weeks for most applications or sixteen weeks where an application is subject to Environmental Impact Assessment.⁷ Furthermore, the Best Value Process requires them to compare themselves against the following indicators:

- 60% of major applications to be determined within 13 weeks.
- 65% of minor applications to be determined within eight weeks.
- 80% of other applications to be determined with eight weeks.

ACTING LAWFULLY WHEN GRANTING PLANNING PERMISSION

7. In many cases, failure to have due regard to protected species seems linked to the imperative of meeting target times for determination and is based on three common scenarios, which can be summarised as follow:

- (a) The application is received at a time of year when the nature conservation interest of the site cannot be determined (eg in mid winter), and rather than wait and compromise performance targets, consent is granted only to find later that there are protected species on site that have not been adequately taken into account in the planning permission;
- (b) In order not to delay determination of an application, many local planning authorities do not obtain information for protected species prior to the grant of planning permission, but instead seek it through a planning condition after consent has been granted (see paragraphs 7 and 8 below);
- (c) The authority has little or no in-house professional ecological expertise,⁸ and are therefore unaware, firstly, of their duties and responsibilities if protected species are found to be present on the application site and, secondly, the correct and lawful course of action to follow to ensure that such species are not harmed if development proceeds. To obtain the necessary expertise from elsewhere would cause additional delay and cost, and therefore they go ahead and determine the application in the absence of any appropriate ecological survey information.

⁷ See Article 20 of the Town and Country Planning (General Development Procedure) Order 1995 (GDPO) and BV109 of the ODPM’s Best Value Guidance (Guidance on Best Value Performance Indicators for 2003–04).

⁸ ALGE believes that nearly 65% of local planning authorities in England do NOT employ an ecologist.

8. ALGE would like to draw the Sub-committees attention to a recent High Court judgement that seems particularly relevant to the above scenarios, especially when an application involves species protected under the Habitat Regulations (1994) and/or applications subject to Environmental Impact Assessment (1999).

9. We refer to a decision by Mr Justice Harrison in *R v Cornwall County Council, ex parte Hardy* (2001). In summary this decision judged:

The application involved the extension of a landfill. Permission was granted by the local planning authority subject to conditions. Condition 8 prohibited development until, amongst other things, a bat survey had been carried out and measures agreed to mitigate disturbance. Mr Harrison held that having concluded a further survey was required, the local planning authority acted unlawfully in granting permission before the survey was to hand. The authority could not rationally conclude that there would be “no significant nature conservation effects” without also the data from the forthcoming surveys.

10. The key issues are therefore:

- (a) The lack of understanding in LAs of their duty to make lawful decisions with regard to protected species;
- (b) The greater profile in both central and local government given to performance indicators over the need for compliance with wildlife legislation and the consequent harm done to protected species;
- (c) The insufficient availability of timely information to enable effective and lawful decision making;
- (d) The concern to ensure the performance target on “time” is achieved regardless of the consequences for important wildlife and compliance with their legal protection; and
- (e) The lack of competent staff to ensure that advice on such matters is available in a time effective manner.

ALGE would also ask for clarification over whether the current precedence of the GDPO over the Habitat Regulations and Wildlife and Countryside Act can be justified in legal terms.

RECOMMENDATION

Firstly, in light of the above evidence, ALGE would ask that the Government examine and resolve what appears to be an inherent conflict between the performance targets set in the GDPO and the capability of any local authority to give due regard to lawful consideration of protected species when acting within the time constraints imposed by the GDPO and Best Value process.

Secondly, the introduction of new planning legislation and regulations should take account of these issues and provide appropriate solutions that encourage and ensure overall compliance with both statutory requirements.

SUPPORTING NOTES

Background Information on Planning Requirements for Protected Species

For England, Planning Policy Guidance No 9 Nature Conservation (paragraph 47) states that:

“The presence of a protected species is a material consideration when a local planning authority is considering a development proposal which, if carried out, would be likely to result in harm to the species or its habitat”.

And

“They should consider attaching planning conditions or entering into planning obligations under which the developer would take steps to secure the protection of the species, particularly if a species is listed on Annex IV to the Habitats Directive would be affected”.

Regulation 3(4) of the Habitat Regulations (1994) states:

“Without prejudice to the preceding provisions, every competent authority in the exercise of their functions, shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of their functions”.

In other words, when an application for planning permission is submitted and the planning authority is informed of the presence of a European protected species on a site, it is bound to take that fact into consideration in determining such an application.⁹

⁹ See paragraph 89 of High Court Judgement of The Honourable Mr Justice Pitchford in *Jeremy Henry Moore Newsum, Mark Anthony Loveday, Robin Sheddton Broadhurst [Trustees of the 4th Duke of Westminster’s 1964 Settlement] and the Welsh Assembly Government* (February 2004).

LEGAL DEFENCES UNDER THE HABITAT REGULATIONS AND THE WILDLIFE AND COUNTRYSIDE ACT

Under both the Habitat Regulations and the Wildlife and Countryside Act a person shall not be guilty of an offence if:

- (a) the act was the incidental act of a lawful operation ie under as part of the implementation of a planning permission;
- (b) the act could not reasonably have been avoided.

July 2004

Memorandum from the Department for Environment Food and Rural Affairs (DEFRA)

INTRODUCTION

This memorandum sets out the response of the Department for Environment, Food and Rural Affairs to the questions on wildlife crime posed by the sub-committee.

There is no commonly accepted definition of wildlife crime. Much of the wildlife legislation administered by the Department arises from the need to translate international agreements into domestic law, notably the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and from EU measures such as the Birds and Habitats Directives. Other legislation covers specific species and has arisen in response to particular concerns or issues.

This memorandum does not attempt to list all the different types of wildlife legislation, or the offences they create; but is intended to be broadly inclusive.

GENERAL

Ministers attach great importance to tackling wildlife crime, and take their responsibilities in this area very seriously. Wildlife crime covers a broad spectrum of activities, including for example illegally blocking access to badger setts, robbing birds' nests and carrying out activities which are detrimental to important habitats, and illegally trading in endangered species (either by smuggling them into and out of the country, or by buying and selling them within the EU without the necessary documentation).

Enforcing wildlife legislation is principally the responsibility of HM Customs and Excise (for imports and exports of controlled species and instances of deliberate unlawful introductions of non-native species) and the police service (for offences occurring within Great Britain). Prosecutions are also brought by private bodies such as the RSPCA in respect of cruelty offences, and English Nature and the Countryside Council for Wales in respect of offences involving certain habitats.

Defra and its predecessors have taken positive steps to contribute to and support wildlife law enforcement effort. In 1995 Ministers launched the Partnership for Action Against Wildlife Crime, to pull together for the first time all the Government and voluntary bodies with an interest in wildlife law enforcement. Its main objectives are to increase awareness of wildlife crime and to raise its profile; to encourage partnership working to ensure effective enforcement; and to support the networks of Police Wildlife Crime Officers and Customs Wildlife and Endangered Species Officers.

Probably the greatest value that PAW provides is the opportunity for networking among the array of bodies involved, and its convening power in terms of conferences and events. More tangible outputs have included the publication of training, guidance and reference materials for wildlife law enforcers, such as the production of an electronic library of resources in CD-Rom format earlier this year. It has also produced awareness-raising and publicity material, including last year a four minute video giving examples of the types of wildlife crime which are being committed and the cruelty which is sometimes involved.

QUESTIONS FOR CONSIDERATION

What is the scale and impact of wildlife crime?

Scale

There is no central, comprehensive record of wildlife offences as most are not required to be "notified" to the Home Office for crime statistics purposes.

HM Customs and Excise keep records of the seizures they make, and some organisations—including the RSPCA and RSPB keep records of the incidents reported to them (Chapter 4—"Wildlife Crime in the UK"—report commissioned by Defra and annexed to this memorandum). We understand that other groups, including for example the Bat Conservation Trust, Plantlife, TRAFFIC International and the National Federation of Badger Groups also keep offence statistics.

There is a large legal trade in wildlife and wildlife products, which provides social and economic benefits to the exporting country by allowing them to gain from trading in specimens which are sustainably harvested or bred. In 2003 Defra issued c 20,000 import and export permits for trade in CITES species, and c 20,000 certificates to allow intra-Community trade.

TRAFFIC International estimated that the annual global value of the legal trade in the early 1990s was nearly US\$15 billion, climbing to nearly US\$160 billion if wild-sourced timber and fish products are included.

It is not possible to put a financial value on the illegal trade in wildlife. One estimate (“The Trade in Wildlife—Regulation for Conservation” (Earthscan publications) suggested that the illegal trade might be worth as much as US\$5-8 billion—but acknowledges that there is no reliable source for this.

IMPACT

Conservation

The conservation status of many species has been affected by a range of factors including illegal trade. For example:

- Tiger populations have declined by 95% from 100,000 to an estimated 5,000 to 7,000 in the last 100 years;
- The Tibetan antelope had a population of over one million animals earlier this century. Now they number only 70,000 individuals—10% of its population 100 years ago. The main cause of this decline is the demand for shahtoosh—the finely woven hair of the antelope—which is highly prized and can be obtained only by killing the animal;
- The Lear’s Macaw has an estimated population of 150–200. It is continuing to decline, principally as a result of trapping for trade.

Commercial implications

The illegal trade in wildlife can undermine the legal trade, and Defra is continuing to work with representatives of the trade through PAW to encourage greater compliance.

There is case study evidence that the illegal wildlife trade can be lucrative. Three examples of areas where the high price of the “commodity” would justify the risk of criminality, and where there appears to be some evidence of illegal activity, are:

- The smuggling of a few high priced birds of prey, especially stud birds with proven breeding success and unusual/desirable colouration, can be worth c US \$ 30,000 per bird;
- Smuggling rare parrot species—highly desirable to certain collectors and again worth upwards of US \$10,000 per bird; and
- Tropical hard woods—extensively illegally logged in South America and Far East (Indonesia etc), worth considerable sums of money and often imported with legitimised export documentation. WTO figures show that timber is the third largest commodity in international trade (US \$100 billion).

Effect of introduction of non-native species

The introduction into the wild of certain invasive non-native species has had a considerable impact on native species and their habitats, either through predation or direct competition for resources. Estimates for the cost of this damage are high: £3 million in lost timber production due to damage by grey squirrels, £52 million needed to clear Japanese knotweed from the banks of affected watercourses. The price of losing a native species can be said to be incalculable.

Much of the problem arises not from deliberate criminal activity but from inadvertent actions, such as the disposal of pond or garden waste containing unidentified problem species. This is more usefully addressed by education and public awareness strategies. Defra is currently working with stakeholders to produce a Code of Practice for use by the horticultural sector, and it is hoped this will provide a template for the development of related codes for other affected sectors such as the pet trade, and fishery, forestry, transport and leisure interests.

Effect on SSSIs

In 2003 English Nature completed a full assessment of the condition of all SSSIs in England, including the factors affecting their condition. Criminal activity is not among the most significant factors causing harm, with illicit use of vehicles, for example, adversely affecting only 0.5% of SSSI land not in favourable condition, (approximately 2,200¹⁰ha). By comparison, unsustainable grazing pressures adversely affects over 200,000ha. Where it does occur, it can cause serious or even irreparable damage.

Other effects

Other impacts may vary depending on the type of crime involved. For example hare-coursing is a legal activity providing that the landowner has given permission. Hare coursing becomes illegal if people trespass on land, setting their dogs on hares and this type of activity may be associated with intimidation of landowners and illegal gambling.

- Is the framework of national and European law and of international regulation robust enough to deal with wildlife crime effectively?

CITES

CITES sets down a framework to regulate the trade in species threatened by commercial over-exploitation. Species are listed in one of three Appendices depending on the extent to which they are threatened, and trade is regulated through a system of permits.

CITES is implemented within the EU by Council Regulation 338/1997 and Commission Regulation 1808/2001. These Regulations require that import permits have to be issued for all CITES specimens. The importing member states must also be satisfied that the trade will not be detrimental to the conservation of the species and that the specimens were lawfully acquired.

Although CITES specimens may circulate freely once imported into the Community, the internal market for the most endangered (Annex A) species is strictly regulated and it is an offence to sell, purchase or even use one of these specimens for commercial purposes without a valid certificate. Detailed provisions, including the prescription of offences against the terms of the EU Regulations are set out in the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES) and are strictly enforced by Customs and the Police.

At the international level, the CITES Standing Committee is empowered to take appropriate action to ensure that species are protected and that Parties implement the Convention effectively. This will include measures to suspend trade in certain species from certain countries, or require trade to be reduced to more sustainable levels.

Within the EU, member states may face infraction proceedings and heavy fines if they do not implement the CITES Regulations properly. If trade in a particular species is considered to be unsustainable imports may be suspended while the European Commission seeks to resolve the matter with the relevant range state. These powers are very flexible and trade bans can be imposed or lifted as circumstances dictate.

CITES has on the whole been quite successful in protecting species from the effects of unsustainable trade. So far only a small number of CITES species (such as the Spix's macaw and pink-headed duck) have actually disappeared from the wild, although the damage here had probably already been done before the listing took place. Other endangered species such as the Vicugna, American alligator, crocodiles and local populations of white rhinos and African elephants have actually been down-listed to Appendix II, as their populations increased to sustainable levels in response to local species conservation/management programmes. In South Africa the number of white rhinos has increased so dramatically that the surplus numbers are being used to restock the herds in other range states. The trade in CITES species is closely monitored and action has been taken to assist those range states where species are in serious decline. Examples include the recent suspension of trade in Saiga Antelope, the missions to the tiger range states and the action plans agreed with the Caspian range states to ensure that sturgeon stocks are managed in a sustainable manner.

The EU CITES Regulations are kept under continuous review and are regularly updated to take account of changes agreed at Conferences of the CITES Parties. Commission Regulation 1808/01 is also being revised to take account of the Decisions and Resolutions agreed at the Santiago meeting. The COTES Regulations are the subject of a current review.

CITES is a dynamic Convention in which the UK plays a full part. Its processes ensure that through a combination of sound science, international cooperation and action and continuous assessment, success is achievable. Enforcement is an important part and we believe that the existing framework of legislation is strong.

¹⁰ A factor affecting part of a SSSI unit is attributed to the entire unit for condition assessment purposes hence the actual area of physical damage would be smaller in the case of vehicular use.

WILDLIFE AND COUNTRYSIDE ACT 1981

The Wildlife and Countryside Act 1981 is the principal legislation in Britain for the protection and conservation of wildlife and their habitat. It applies in England, Wales and Scotland, although provisions within Scotland are slightly different following devolution. The EU Birds Directive is implemented in the UK through this Act.

All wild birds are protected under the 1981 Act, which prohibits activities such as intentional killing, taking, taking of eggs and damage to nests in use. Additionally, certain birds are listed on a Schedule to the Act and it is an offence to intentionally or recklessly disturb any wild bird of these species while it is building a nest or is in, on or near a nest containing eggs or young, or to disturb dependent young of such a bird.

The 1981 Act also protects listed species of wild animals and plants. It prohibits the intentional killing or taking of the listed animals, or intentional or reckless disturbance whilst they are in their breeding site or resting place, and prohibits the intentional picking, uprooting or destruction of listed plants.

Protected species are listed on Schedules to the Wildlife and Countryside Act 1981. Schedules 5 and 8 are subject to quinquennial review, the others can be revised at any time by the Secretary of State.

The Wildlife and Countryside Act 1981 is supplemented by the Conservation (Natural Habitats) Regulations 1994, which implement Council Directive 92/43/EEC on the Conservation Of Natural Habitats And Of Wild Fauna And Flora. The Regulations provide similar protection for European protected species. Under the regulations it is an offence to deliberately capture or kill a wild animal of a European protected species (ie one listed in the Habitats Directive), take or destroy the eggs of such an animal, or damage or destroy a breeding site or resting site of such an animal. There are also prohibitions on keeping, transporting and selling or exchanging specimens of listed species taken from the wild.

The Government has recently consulted on a number of improvements to the Habitats Regulations, and on regulations to transpose the Habitats Directive to cover the offshore area. We are intending to consult on the provisions of Part 1 of the Wildlife and Countryside Act 1981 in England and Wales during 2004 to see if any minor changes are necessary or desirable.

Defra works hard to ensure that effective legislation is in place to ensure that species and habitats are given appropriate protection, and that the powers and penalties available to the enforcement agencies and judiciary are robust and proportionate. It also works hard to support enforcement through PAW.

Wildlife management offences and cruelty offences

All animals (except those exempted by the Small Ground Vermin Traps Order 1958) are protected by section 8 of the Pests Act 1954 from the use of unapproved traps or misuse of approved traps (approved by Spring Traps Approval Orders). The Protection of Animals Act 1911 protects domestic or captive animals from unnecessary suffering. The Wild Mammals Protection Act 1996 protects wild mammals from certain cruel acts. The Abandonment of Animals Act 1960 protects animals from abandonment. There are various Acts (and Rules and Regulations made under them) which protect animals from the misuse of poisons, including the Food and Environment Protection Act 1985, Animals (Cruel Poisons) Act 1962 and the Poisons Act 1972.

Other species are protected by specific domestic legislation. Badgers are protected by the Protection of Badgers Act 1992; Game (hares, pheasants, partridges, grouse, ptarmigan, woodcock, snipe, capercaillie, rabbit or deer) is protected by various game Acts such as the Game Act 1831, Game Licences Act 1860, Night Poaching Act 1828 and Ground Game Act 1880; deer have additional protection via the Deer Act 1991; seals are protected by the Conservation of Seals Act 1970.

Defra is striving to ensure better compliance with wildlife legislation. Following a consultation last year addressing the issue of the misuse of snares, we will be tailoring our policy to help ensure that snares are used correctly and in accordance with the legislation. We are also consulting on the Department's general licences issued allowing the killing or taking of certain birds. The aim of both consultations is not to unduly restrict the legal practitioners of pest control but to ensure that best practice is followed and that the legislation is complied with.

Habitats

Designated wildlife sites are protected against unlawful activity principally through the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000 (CRoW) and the Conservation (Natural Habitats, &c) Regulations 1994.

Internationally important sites in England are underpinned by national Sites of Special Scientific Interest (SSSI) status. The legislation provides protection by making it a criminal offence for owners and occupiers of sites to undertake specified operations likely to damage the sites without first obtaining English Nature's consent and complying with any conditions. Similarly, statutory undertakers and all manner of public bodies must notify English Nature before undertaking operations likely to damage the interests of the sites.

and will be criminally liable if they fail to adhere to the legislation. The 2000 reforms also introduced a new third party offence of intentionally or recklessly causing damage to a SSSI without reasonable excuse. Additionally powers also enable the making of byelaws to regulate other general activities on the sites.

CRoW introduced the possibility of increased penalties for wildlife and habitats offences. It has resulted in recent cases of prison sentences where previously only fines would have been imposed.

Do responsible bodies who deal with this type of crime have sufficient resources and powers to do so? Do they treat wildlife crime with proper and due gravity?

HM Customs and Excise

HMCE enforce the controls on the import and export of CITES species from and to third countries. Its specialist CITES Enforcement Team based at Heathrow airport is internationally recognised, and is frequently called upon to provide advice and expertise. Customs and Excise also have a network of regionally based Customs Wildlife and Endangered Species Officers. Customs powers are contained in the Customs and Excise Management Act 1979.

The Police

The police service has primary responsibility for enforcing wildlife legislation, and most forces have at least a part-time Police Wildlife Crime Officer, who either co-ordinates or investigates reports of wildlife offences in his force area. It is for each Chief Constable to determine how best to ensure that his wildlife law enforcement responsibilities are met and to deploy his resources accordingly. Police powers to investigate wildlife species offences under Part I of the Wildlife and Countryside Act 1981 were increased through the Countryside and Rights of Way Act 2000. The Criminal Justice Act 2003 introduced measures to provide for stronger police powers for the investigation of certain internal trade offences involving CITES species.

On 24 February this year the Police launched “Operation Artemis” at the annual conference of the Partnership for Action against Wildlife Crime (PAW). This is a welcome initiative to tackle illegal persecution of hen harriers and improve protection of this threatened bird of prey. The package of measures involves awareness raising of good practice by land managers, together with increased monitoring of vulnerable sites and a drive for firmer enforcement against those caught illegally persecuting hen harriers. This is an excellent example of the Police working with conservation agencies to address key wildlife priorities.

The National Wildlife Crime Intelligence Unit

Defra increased its contribution to combating wildlife crime at the national and international levels by providing funding of £440,000 to support the establishment and commencement of the National Wildlife Crime Intelligence Unit, which is based at the National Criminal Intelligence Service Headquarters. The Unit was established in April 2002, with direct support from the Scottish Executive, the Home Office and the Association of Chief Police Officers.

The Unit’s main role is to combat wildlife crime and reduce the opportunities to commit such crimes. The Unit’s mission is to make crime-fighting more effective through improved intelligence, co-ordination, and expertise.

The NWCUI is an intelligence unit and has no operational capacity. Its work focuses on priority species groups that are at risk from wildlife trade both within the UK and more widely within Europe, and has initially focussed on five priority areas—the illegal trade in reptiles, birds of prey and parrots, caviar, traditional East Asian medicines, and parts and derivatives. It has prepared and disseminated a number of intelligence packages to the enforcement agencies for them to pursue.

English Nature

For enforcement action relating to habitats, the decision as to what manner of action to take is for English Nature. It has, in appropriate cases where significant damage has been caused to SSSIs, undertaken several successful prosecutions under the new legislation. These cases have resulted in not only a penalty but also orders for the reparation of the damage caused and the cases are publicised by English Nature through the release of press notices.

Is there sufficient dialogue and co-operation across Government and amongst the various bodies responsible for dealing with this type of crime?

The Partnership for Action Against Wildlife Crime (PAW) is the main vehicle for strategic co-operation and co-ordination, as its membership includes all the Government Departments with an interest in wildlife law enforcement, and many non-Government organisations including conservation groups, animal welfare groups, and traders and land management organisations. PAW provided the impetus for a number of initiatives to raise awareness of wildlife crime and to promote enforcement activity, and was instrumental in pushing for the establishment of the NWCIU and for legislative change.

Defra works closely with other Government Departments on issues of common concern. Our principal contacts are with Customs on the enforcement and implementation of CITES and with FCO and DFID on biodiversity issues, particularly where these cut across Government policies on fisheries, forestry and poverty alleviation. We also work with DTI on related trade issues. We have already set up an inter-Departmental working group on illegal logging, which has contributed to the development of Government policy on related issues such as the procurement of timber products by Government offices and global initiatives on forest law enforcement and governance, including the proposed European Regulation on illegal logging. The first meeting of the Inter-departmental Ministerial Group on Biodiversity also took place on 7 April and, amongst other things, tasked officials in DFID, Defra and FCO to develop a co-ordinated approach for dealing with issues relating to the illegal trade in bushmeat that is threatening species diversity, particularly in parts of Central and West Africa.

As part of its CITES management authority role, Defra maintains an extensive dialogue with all areas of the legitimate trade and through them is able to obtain useful intelligence on possible illegal activities. Defra is also able to use these contacts for educational purposes and many talks are given to special interest groups, private collectors and industries affected by CITES controls—eg taxidermists, the antiques trade, falconers etc. A considerable amount of staff effort and resource is put into raising CITES awareness and educating the travelling public. Defra works closely with non-governmental organisations such as WWF and TRAFFIC in publicity campaigns to inform all sectors of society of the controls.

Defra regularly assists enforcement agencies in assessing whether an offence has been committed and advising on the legislation, for licensing matters concerning European protected species and sale on non CITES listed native species.

April 2004

Supplementary memorandum from the Department for Environment, Food and Rural Affairs (DEFRA)

INTRODUCTION

This supplementary memorandum is submitted by the Department for Environment, Food and Rural Affairs to assist the sub-committee in its current inquiry into wildlife crime.

It deals specifically with the role, activities and function of the Partnership for Action Against Wildlife Crime (PAW) and expands on the information already given in the Department's main memorandum.

The Partnership for Action Against Wildlife Crime (PAW)

PAW is a multi-agency body with a shared interest in combating wildlife crime. It comprises around 90 non-Government organisations including conservation groups, animal welfare groups, traders and land management organisations. These groups have a common desire to reduce wildlife crime—but not necessarily for the same reasons. For example, some are concerned solely to promote conservation while others wish to ensure that the illegal trade in wildlife does not undermine the legal trade. All PAW members must sign a statement confirming their support for the objectives of PAW, but they retain the right to lobby and campaign to pursue their organisations' other objectives.

PAW has a steering group comprising representatives of the Government Departments and Agencies with a role in the wildlife law enforcement process (eg the Home Office, the Department for Constitutional Affairs, the Crown Prosecution Service, the Scottish Executive and Welsh Assembly Government and the Government's scientific advisers on conservation issues) and of the statutory enforcement agencies (HM Customs and Excise and the police service). The Steering Group is chaired jointly by a Defra official (the Head of Defra's Global Wildlife Division) and by the Wildlife and Environmental Crime Adviser to the Association of Chief Police Officers (currently the Chief Constable of North Wales Police). The steering group meets three times a year and the Secretariat is provided by Defra.

PAW's focus is strategic. Its mission statement is:

“Working in partnership to reduce wildlife crime by raising awareness and promoting effective enforcement”.

It provides a forum for communication and co-operation. It encourages partnership working as a means of promoting more effective wildlife law enforcement, and seeks to raise awareness of wildlife crime and its implications. Under the auspices of PAW, or as a result of the partnership working it promotes, publicity material and exhibitions have been produced, law enforcement training materials and events (such as an annual seminar and an annual award for the “Enforcer of the Year”) have been arranged, a pool of expertise has been made available to support policy development including leading to legislative change, support for the National Wildlife Crime Intelligence Unit has been garnered, and a model has been established which has already been used in Jordan.

PAW has no legal identity—its strength lies in the combined experience and expertise of all its members.

May 2004

Witnesses: **Mr Martin Brasher**, Head of Global Wildlife Division, **Mr Martin Capstick**, Head of European Wildlife Division, and **Mr Nick P Williams**, Wildlife Management Team, Department of Environment, Food and Rural Affairs, examined.

Q235 Chairman: Good morning and welcome to this gentle stroll through wildlife crime. We are very grateful to you for coming and also for your written memorandum, which we have received with interest. In that, one of the things you highlight is the absence of a central comprehensive record of wildlife offences. The reason for that is that notification is not required by the Home Office. To what extent is that a problem?

Mr Brasher: I suppose the short answer is that it would be better if there were one, and that is why this is one of the priority activities for the Partnership for Action Against Wildlife Crime in its next programme of work over the next three years. It is not easy because it is difficult to have a clear, agreed definition of wildlife crime setting out exactly what you are talking about. It is also true to say that a fair bit of information is collected already. Certainly on my side, which is the Global Wildlife Division within Defra, where we are dealing principally with CITES offences, import and export, a great deal of information is collected by Customs, and they provide some of that for you in their memorandum. Information exists there, and there are other contexts in which information is collected, for example under the auspices of PAW. Attempts have been made to try to gather information in particular areas. There has been an approach within Wales, and this is partly because Richard Brunstrom co-chairs the partnership with me and is very keen on this. It is not that there is no information; there is a lot of information, but it is quite right that there is not a single—

Q236 Chairman: It is the absence of a central reference point that is the issue there.

Mr Brasher: Exactly.

Q237 Chairman: Have you made efforts to try and persuade the Home Office to grasp this?

Mr Brasher: The PAW initiative was reviewed last in 2003. The Home Office is part of the PAW initiative and they attend meetings. A complete review document was produced. It looked at things like the question of definition and the recording, and a great many other things. An enforcement plan was agreed to look in the next three years, 2004–07, at the practicalities of doing this and achieving it. Through PAW we are trying to work towards that.

Q238 Chairman: Your memorandum refers to a good dialogue and co-operation with many departments, such as DTI, Foreign Office and DfID; but it does not mention the Home Office. Am I right in suspecting a slight stand-off between yourselves and the Home Office on this?

Mr Capstick: I am responsible for the European Wildlife Division, which, curiously, has responsibility for biodiversity in England but also co-ordinates for the UK within Europe. We do generally have a pretty good dialogue with the Home Office on lots of the offences for which we are responsible, and we deal jointly with campaigns that we face from, for example badger groups that are concerned about the lack of notifiable offences. I do not think wildlife crime is out of step with other crimes, in the sense that for them to be notifiable, on the whole I understand that these are offences that are potentially triable either way, either by a magistrate or in a crown court, and some wildlife offences are and some are not. It is therefore an issue that we keep under review with the Home Office, and we do discuss with them when they are looking at updating what they are proposing; but at the moment, as the Home Office Official indicated when he appeared before you on a separate discussion on environmental crime more broadly—

Q239 Chairman: Not exactly a priority.

Mr Capstick: Exactly. I do not detect that there is urgent movement on this, though that does not mean that we do not discuss it with them.

Q240 Chairman: Can you help us by giving us a sense of the scale of the improvement that you think might be possible were there to be a centralised database and notification system; would it make a material difference?

Mr Capstick: That is one of the issues, in a way, we have not completely bottomed, because, as Martin said, a lot of the information is held by different people. For example, English Nature, who I sponsor, have very good information on damage to SSSIs, which in a sense they manage themselves, and that is particularly important for their role. Bodies like the Bat Conservation Trust and National Federation of Badger Groups are very good at noting what offences are being prosecuted, and convictions, and drawing those to our attention. The

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main benefit that one could get would be to have a view of the overall scale of activity. Most people who have appeared before the Committee have said, “a lot of what we are doing is speculating.” The difficulty we face there—and this would be an ongoing challenge, even if we had a central register—is non-detected offences, the offences that people think may be happening out there, but nobody is detecting them and nobody is absolutely sure whether something that has happened is an offence or not.

Q241 Chairman: Like the reptiles that we were talking about earlier.

Mr Capstick: Exactly. That would be a classic case. A central register will not provide an answer to solving that problem, and therefore that is one of the things that we also need to think about. I am sure the Committee is thinking about the question of broader enforcement.

Q242 Chairman: We are relieved to notice that you assure us that ministers attach great importance to tackling wildlife crime.

Mr Brasher: Can I come back briefly on the Home Office point, because as there has been mention of a stand-off, I think we should clarify the relationship there.

Q243 Chairman: You are so cautious, are you not?

Mr Brasher: I know it is being recorded! There are some useful examples

Q244 Chairman: I do not think anyone was—

Mr Brasher: No, but even so, to be fair, since they are not here. We do have a joint secondment with the Home Office, for example, to the National Wildlife Crime Intelligence Unit, which you will be hearing more about soon, I suspect. They very kindly allowed us to piggyback the Criminal Justice Bill legislation last year, which allowed us to achieve increased sentences for certain wildlife offences, which is something we have long sought, and it was very opportune to have the opportunity to seize that.

Q245 Chairman: I am glad you have put that on the record! Can we move on to something slightly different. There was a report in the *Observer* at the end of March, entitled *Revealed: UK zoos caught in rare wildlife trade with dealer*, about the way that some British zoos are over-breeding rare forms of wildlife and then selling them to allegedly unscrupulous dealers. Presumably, you are aware of the issue.

Mr Brasher: Yes, I am aware of the article.

Q246 Chairman: Was the article a fair portrayal of the scale and nature of the activity?

Mr Brasher: We did not think so. I think the Zoos Federation spoke on that within the article as well. There are a large number of newspaper stories and information that comes our way which does not get into the newspapers about possible offences, and it is very hard really to be able to identify exactly which ones to follow up and how to do so. What we do

have is a small unit within my Global Wildlife Division, which basically acts as eyes and ears on this sort of thing, and will link in with the appropriate authority. I think that that case is particularly related to a Belgian dealer, so that information we passed on to the Belgian Management Authority because there is constant interaction between management authorities on issues like that when a story comes through.

Q247 Chairman: Had any offence been committed?

Mr Brasher: I think that will be being investigated by the Belgian management authority because zoos operate under a particular regime within the CITES regulations, which allows them to do certain things under an article 30 certificate, but it does mean that if they are dealing with external people they have to be subject to the same provisions as anybody outside the zoos community, and therefore it should be followed up.

Q248 Chairman: So there are some controls on what zoos can and cannot do.

Mr Brasher: There are definitely, yes. Zoos operate under the European Zoos Directive. That, to a large extent, is modelled on the UK's own Zoo Licensing Act, and we are a kind of market leader in that area. That specifies very clearly what they are required to do in terms of complying with the Secretary of State's standards, Modern Zoo Practice which is issued.

Q249 Chairman: Does the Zoo Licensing Act have teeth?

Mr Brasher: Yes.

Q250 Chairman: Can local authorities under that Act revoke licences to zoo operators?

Mr Brasher: Yes, they can.

Q251 Chairman: On grounds of trading in endangered species?

Mr Brasher: I do not know about that. If an offence were committed, the zoo should be prosecuted for that offence. The closing down of a zoo, or the revoking of a licence, would depend more on whether the zoo was complying with standards of animal welfare, the Secretary of State's standards, complying with requirements of the Zoo Licensing Act.

Q252 Chairman: Have any zoos been prosecuted under that Act?

Mr Brasher: I would have to check that. I will come back to you.

Q253 Chairman: We have received evidence from the Association of Chief Police Officers, which referred to the increasing trade in endangered species through Internet sites. What are you doing to tackle that problem?

Mr Brasher: This is a relatively new issue for us. We have started on that. At the moment we have one of our staff constantly monitoring the Internet, particularly e-Bay, which is the largest auction site,

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although I believe there are thirty altogether. She is contacting addresses that are offering apparently illegal items. She has contacted 81 so far, to point out to them what they may be doing. We need to check out that they know what they are doing and have the appropriate paperwork. Fifty-one of those have come back and said they did not realise that there was paperwork they should have had, and ostensibly, as far as we know, they have withdrawn the items from the market. These are probably individual items. It may just be a small personal heirloom or something like that, but she is looking for people trading something which needs appropriate paperwork.

Q254 Chairman: An heirloom?

Mr Brasher: An ivory trinket, for example. One of the problems we have in enforcing CITES is the lack of awareness of the rules. It is a relatively complicated regime. It has been around for some time and has become more complicated as time goes by, as more species are added and taken on or change their status. In particular, we have to target areas where we think there may be a problem. Tourists are a prime example, so we have a Souvenir Alert campaign, which is a leafleting campaign at airports in particular, just reminding people that they cannot go and bring back just anything at all. There are items which it is not appropriate to bring back, even if they do look attractive on the beach or whatever—coral and snakeskin bags and so on. It is that kind of thing which is quite tricky to get at. We have examples of people who have gone to live abroad and have come back after thirty or forty years to be near their family, and they bring with them things which they never suspected would need a bit of paper to allow them to do it. It would not necessarily be that they should not do it, but they do need to have the right paperwork to import it.

Q255 Mr Thomas: When you talk of awareness raising, I just happened to catch Bargain Hunt, or some programme like that, but it was a broadcast programme of that type, in which an ivory piece was featured. The dealer claimed that it was pre-1947, whatever, but no mention was made in the context of the programme, and actually it looked very new. Unless you can prove that, unless you have the paperwork—there was an opportunity missed there, to have a discussion in a popular programme about what these items are. Are you working with the broadcasters and people like that who are promoting, for entertainment purposes, possibly a trade in endangered species?

Mr Brasher: That would have been a good opportunity, and I agree with you that it was missed. We are working quite hard on this sort of thing. Going back to the e-Bay point, where traders or dealers were not interested in complying with the requirements, we then passed information to the National Wildlife Crime Intelligence Unit, and they have started a dialogue with e-Bay in particular. The feedback I have is that e-Bay are being very helpful and positive, and they are looking to amend their display pages, which tell you what they can and

cannot do. We are looking to get more information there so that people know that they will get a prompt or whatever to say, “are you sure you can do this?” That is one point. On the point about publicity, we try hard on that. An example recently is a report by a non-governmental organisation, IFAW, about the illegal trade in ivory within the UK particularly on the markets—Portobello market, I believe—but basically through the market mechanism. We are responding to that by doing a number of things. For example, we have set up a dialogue with the Antique Dealers’ Association so that they can be more aware of what the controls and requirements are. We are in the process of producing a leaflet for dealers generally. Last month we attended the large antiques fair which takes place at Olympia, in order to be around to talk to people about what may or may not be acceptable under the CITES arrangements. Sometimes we have to be prompted by external events that draw something to our attention. In relation to Internet selling and the IFAW report on ivory, we are trying to respond to those by effectively targeting our publicity.

Q256 Sue Doughty: I congratulate you on what you are doing with e-Bay. Those of us who have been trying to deal with constituents who have been victims of various scams are, however, aware of two problems. One is with e-Bay itself, in that they will put warnings on front pages about the conditions, but they are not very good at enforcement, nor have they been very good about assisting in follow-up. I am very delighted to see you have an international body dealing with it, because in terms of the other criminal activity it has been absolutely impossible to get anything done. How effective do you think you are going to be in relation to these people who will put up an advert, get in various e-mail addresses; and once they have done it they can retreat from behind e-Bay so that they are not there in public; but having been there, they have established a trading line with people who might be interested in buying?

Mr Brasher: The best answer I can give you is that the National Wildlife Crime Intelligence Unit is on the job. This is a very recent development. Their meeting with e-Bay was only in mid-June, about three weeks ago. I will happily take that sort of point and advance it to them as well. I cannot answer your question, I am afraid.

Q257 Sue Doughty: I think it falls to me to explore a bit more about the legal framework of what you are doing. We had a number of memoranda that referred to the Defra review of Part I of the Wildlife & Countryside Act 1981. Can you tell us when the review will begin, and what its remit will be?

Mr Capstick: I take the lead on that. We hope that we will publish a consultation document towards the end of this year. Last year we wrote out to a number of interested parties, highlighting the fact that we were planning to consult on this, and that we were effectively seeking views in advance on particular things that people would be interested in covering. We then hope to go out to consultation later this year. I am afraid I was given a note on the precise

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terms of reference, which I put to one side, thinking we would not get into that amount of detail. If you like I can have a quick sift through for it.

Q258 Sue Doughty: If you could let us have it afterwards, that would be very helpful. The Wildlife Trust's evidence is that they have concern because they want the word "reckless" to be added to those sections in Part I of the Wildlife & Countryside Act 1981, whereas at the moment the requirement is to prove "intention", because of the difficulty of proving intention in the court, and so it would be much better to prosecute with the word "reckless". Is this something you are going to look at?

Mr Capstick: It certainly is. On the whole, most of the organisations that we deal with, as a number of bodies have commented to you, are pretty responsible and pretty knowledgeable, so they do not suggest things lightly. Obviously, we take account of that in developing our proposals. We will want to explore with them what the precise practical implications of the changes would be. As I am sure you are aware, sometimes you see theoretical gaps, which, when you analyse them, you find you have to be quite clever to fill, or the gap is more theoretical than practical. Certainly, we have had a number of sensible suggestions already, and we are thinking about those things very seriously.

Q259 Sue Doughty: Another one is this difference between "incidental" and "intentional", the problem of rockhopper trawls and the pink sea fan being one of them. Are you going to be looking at this and the whole issue of where the killing and injuring of protected species occurs incidentally in a lawful operation, which would provide a defence, as opposed to whether the impact of such an action could reasonably be avoided. How can we get over this one, so that we provide the protection that is needed?

Mr Capstick: I do not have an immediate answer to that question. It is a difficult challenge that we are all facing, and we explore things as we go along. That is one that we would want to discuss in more detail with the Wildlife Trusts. I am afraid I have not seen the Wildlife Trusts' note to the Committee.

Q260 Chairman: Are you giving active consideration to this little legal knot, though?

Mr Capstick: Not now, at the moment. We are producing a consultation document, and, clearly, suggestions that are put forward in response to that we will want to explore, with a view to developing proposals for specific legislative changes. We are banking ideas at the moment, and as far as people are giving us ideas, those are the ones that we will take into account.

Q261 Sue Doughty: Are you starting from the premise that you need to provide protection in these cases, and seeing how you can do it, or are you just tinkering with words in the hopes that you will get it right?

Mr Capstick: No, we are hoping we will get it right—if I can start off with that. It is a complicated area where, in particular, there are also some variations between what is in the Wildlife & Countryside Act, and the Habitats Directive, which came later, and what is in the Habitat Regulations which implement the Habitats Directive; so trying to tidy things up a bit and make things more coherent is something that a number of people have again called for. Issues of how strong your defence of intent and recklessness is, and how well you should have known what the implications of your actions were, are going to be part of that. I must admit that today I do not have a solution and a form of wording to that. Everybody will be looking at the overall result of the legislation, rather than saying, "Defra found some quite nice wording, which is very elegant but did not work". I know that we will not score any Brownie points for that.

Q262 Sue Doughty: That is much appreciated. A number of the memoranda we also received referred to the Defra review of COTES, and anticipate revised regulations. What is the state of play on that one?

Mr Williams: We have some very clear ideas of how we are going to go about that. We issued a consultation document, which concluded last year, and part of that document was generated through liaison through PAW, so we believe that the provisions we are planning are very much targeted and focused on effective enforcement. In that initial consultation period, though, we identified two areas which required primary legislation, regarding raising the penalties to five years, and the powers of arrest that follow from that. Because our secondary legislation could not include these provisions, we managed to work with our Home Office colleagues to incorporate them within the Criminal Justice Act, which came in late last year. We moved a stage ahead by securing primary legislation, which has now given us the facility to provide regulations that will give the opportunity for up to five-year penalties, and then include the powers of arrest. We are planning to publish these proposals for the regulation later this year.

Q263 Sue Doughty: You have the powers in the Criminal Justice Act. You need to have the revisions to COTES, so is the delay just getting the consultation in place and then going forward with it, or are there any other reasons for delays or things that would stop this going forward and giving the police the necessary powers?

Mr Williams: There are no other delays. The delays have been that we are a small team. We pushed ahead with the Criminal Justice Act proposals and have now got those in place. We are now driving ahead with the regulation. As I say, it is in the next two or three months that we will have something in the public domain.

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Q264 Sue Doughty: You said in your evidence that you are striving to ensure better compliance with wildlife legislation. What do you see currently are the barriers to compliance?

Mr Brasher: We had better speak separately as there are two sides to that. There is a lack of information, and as I mentioned I have a few examples of our communication efforts. I have a lot of them here, and I am quite happy to leave them with you, but it is the sort of thing we are trying to do to get across to the target audiences, where there may be offences and things may need to be spelled out. In some cases we are dealing with organised crime, which is extremely difficult to identify and come to terms with; it is very sophisticated and we have to try to make sure that our enforcement and identification mechanisms are sophisticated as well.

Q265 Sue Doughty: Is there a resource issue here?

Mr Brasher: There is always more that can be done. We have had a programme of DNA research, which Nick will tell you more about, which has been funded by Defra.

Mr Williams: Within the Partnership for Action Against Wildlife Crime we have identified a number of areas where we are trying to raise awareness. PAW, rather than treating enforcement within the traditional definition of investigation, prosecution and penalties, has stepped back and focused on informed policy-making, to make sure that we provide workable legislation that can be enforced effectively, and then to raise awareness and publicise those controls so that we deliver a holistic approach. One of the things we identified in PAW some time ago was that the forensic techniques that the police are using in other crimes are not necessarily applied across to wildlife crime areas. Defra has financed three separate pieces of research, which has brought together existing human-related DNA research, to bring it up to speed so that it can be used as economically and effectively as possible in wildlife crime investigations.

Mr Brasher: We also need to be sure that the penalties deter criminals. The increased sentences we talked about earlier are helpful in that regard. We believe it is important that the available sentences are used, and we have a dialogue with the Magistrates' Association about that. There was a toolkit issued about 18 months ago for magistrates, and the Magistrates' Association representatives came to our annual PAW seminar to discuss this, in February last year. On the CITES side, we need to keep in touch with developments internationally because there is a potential problem that if criminals are concerned that the UK becomes too tough to access, then they will go elsewhere and try to bring things in illegally through that route into the community and thereafter they would be able to be traded within the community. That is a concern. I went to a seminar on this in Sweden last month. Firstly, it was useful as an exchange of experience, and secondly we have agreed to set up an Internet information network, which is already working and is drawing attention to sentences being given in other parts of Europe. We have been notified of a five-year

sentence for a CITES offence in the Czech Republic; and other snippets are coming through. We need to keep in touch with the international situation.

Q266 Chairman: It is amazing what an innocent little question about resources can produce by way of an answer!

Mr Capstick: Would it be helpful for me to add two quick points on domestic enforcement? There are probably a couple of things to highlight. The first would be a concern over crime which has a particular impact on rare and struggling species, which is why we particularly welcomed for example Operation Artemis, which was launched through the Partnership for Action Against Wildlife Crime to tackle crime against hen harriers, which is a species that is particularly struggling. The other thing would be inadvertent crime against species, which you touched on in the previous discussion. We are having some success in raising awareness. The number of people who, when producing developments now, are applying for a licence from Defra as part of the process is increasing very significantly. I do not think that is because there is a lot more development; I think it is because there is growing awareness. Obviously, as we all know, we are not there yet.

Q267 Paul Flynn: You state in your evidence that the EU regulations, as set out in COTES, are strictly enforced by Police and Customs. How do you know that?

Mr Williams: There is quite a lot of evidence—Customs will be providing you with further evidence shortly—about the number of seizures that they make.

Q268 Paul Flynn: That is a notoriously unreliable way of measuring whether things are strictly controlled by Customs. Customs will give evidence of seizures of drugs but drugs flood in in an uncontrolled way. How are you monitoring this? Seizures are no measure at all; X amount is seized, but twenty times X amount eventually comes in. I am not telling you anything that is not new. Have you any way of monitoring this that would make sense and allow you to make judgments as you did in your paper?

Mr Williams: We collect information through issuing some 20,000 or 30,000 licences a year of CITES import and export permits, and we monitor the information we are asked to provide to the enforcement authorities that are following up potential offences that come to light or are presented to them. We provide information on that. Equally, on the national side, with the bird registration system we provide information on a daily basis to the enforcement authorities that secures whether or not something is a potential offence.

Q269 Paul Flynn: What about police? We have had evidence to the effect that the ability of police forces to deal with wildlife crime is certainly not consistent across the country; there is a very uneven pattern.

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How do you monitor that, and is it strictly controlled? Is it strictly controlled in a small number of areas or universally?

Mr Williams: It is fair to say that where you have a police force with a full-time, fully-trained police wildlife crime officer, and you compare that with a police force that has a part-time or just a nominal officer who is doing it effectively in his spare time, then inevitably you will have a different response if an offence comes to light.

Q270 Paul Flynn: You are saying that as far as the police, the enforcer, is giving you evidence, and the Customs, and on the basis of that you know little else, and on the basis of a very uneven pattern of police activity. Do you think that that comment is justified? You are saying that they are strictly enforced by Customs and Police. Is that entirely accurate, do you think, on reflection?

Mr Brasher: It is very difficult to answer that in those terms. I understand your concern, but we cannot demonstrate to you that that is the case.

Q271 Paul Flynn: There is not any system of monitoring other than the information you get from the parties with an interest in possibly exaggerating the effect of their activities, which would be both police and Customs.

Mr Williams: That is true, but we also get information from the non-government organisations some of which do not have that interest at all; in fact their interest may be completely the opposite, in trying to demonstrate that it has not been properly enforced or there should be more resources or more time put into it.

Q272 Paul Flynn: You also say in your evidence that the illegal trade in wildlife can be lucrative, as is well known, and you provide examples that illustrate that the high price of the commodity, as you describe it, justifies the risk of criminality. Does this not mean that the legislation and the enforcement procedure that you are supporting is just not robust enough to offer an effective deterrent? If that is so, what do we do about it?

Mr Williams: With the Countryside & Rights of Way Act amendment which we made to the national legislation that brought in custodial sentences, that was a major step forward. We have real evidence that some individuals who were convicted on more than one occasion, once they had been prosecuted or seen their friends go inside for a few months, have now contacted the enforcement authorities and said "I am going to give you some information". We think that a real message has gone out on the revised national legislation. Now that we have secured the facility for five-year penalties in the COTES Regulations, the international endangered species offences, when we get that into place we believe that that will be a major deterrent.

Q273 Chairman: How many people have gone inside, as you put it, for this type of activity?

Mr Williams: On the egg-collecting side, there are some figures that the RSPB presented. I think there were four or five individuals who have had custodial sentences for that type of offence.

Mr Brasher: Some examples were given at the back of the Customs memorandum. In one particular case a sentence of six and a half years was given, and there was another one of two and a half years, which was reduced to 18 months on appeal. I do not think we suggest for a second that there are a very large number of these, but it is important to us that from time to time deterrent sentences are given. With the best will in the world to the individual concerned, we were delighted when the six and a half year sentence was given.

Q274 Paul Flynn: In your evidence you refer to a code of practice for the horticultural sector, which you are working on with other stakeholders. When do you expect to see this published? Will it have any teeth to it? How will you persuade people to adopt it?

Mr Capstick: I lead on that as part of tackling non-native species. At the moment, we are still very much in the early stages of that. As chance would have it, we have set up a working group, which includes representatives from the Horticultural Trades' Association, the Royal Horticultural Society, the Garden Centres Association, the Ornamental and Aquatic Trade Association, Gardening Which?, Kew, Plant Life International, the National Trust and various people from government departments, to try and tackle this. The second meeting of this group is due to be held on 13 July—this was organised before we knew the Committee was going to ask us about it. We do think that gardening is a significant risk area for bringing non-native plants into the country, perfectly legally but which can cause significant damage if they are then planted in the wild or escape in some way into the wild. Therefore, it is a very high priority. If you are looking at prioritising your measures to tackle non-native species, it is a very significant way of addressing it. At the moment, I do not know quite what the code will produce. I know you are concerned about what teeth it will have. I think a point I would make about the code of practice, one which applies to a lot of what we have said today, is that tackling crime is one end of the spectrum, where our real aim is to try and encourage good practice and a breadth of biodiversity and wildlife in this country. Therefore, a lot of what we will be looking to do through the code of practice will not be trying to stop people doing illegal things; it will be trying to get people to do things which are perfectly legal, but which we would rather they did not, because of the potential risks attached to it. It is very much focused on the educational and constructive end of the process rather than tackling criminality.

Q275 Paul Flynn: We will hear about that meeting in due course perhaps, on the 21st. There was a report in *The Times* recently about the increase in bovine TB in deer, and it quotes farmers as calling for a badger cull, citing badgers as the principal cause of the disease spreading, which is a familiar call from

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farmers. As we understand it, there is no link that has been established between badgers and TB and the other suggestions put forward such as the re-stocking of cattle after Foot and Mouth. Are you worried that calls like this by farmers and deer hunters could lead to the culling of badgers and so on for whatever reasons they are giving, whether it is infecting cattle or deer?

Mr Capstick: I obviously do not have lead responsibility within Defra on TB policy, although we liaise closely with colleagues who do work on that because the question about badgers' involvement particularly in TB is being trialled at the moment. I do not think that ministers will take precipitate action, they will want to have a chance to consider issues carefully. We do have powers under the Protection of Badgers Act to license the taking or killing of badgers for the purpose of disease prevention, though none have ever been issued since the Act was established in 1992, partly because of the issue of being able to prove that the culling of badgers would lead to the prevention of spread of disease.

Q276 Paul Flynn: The trial was interrupted because of foot and mouth and it will go on for some long time; and it will be some time before we get a

definitive view on whether or not there is a link; but do you not feel a responsibility to deal with the protection of badgers in the meantime and to emphasise that that link has not been established? Is that something that you are actively doing?

Mr Capstick: The Government is constantly updating people on progress and developments, and responding to stories of this sort, by pointing out our position and the Government's policy. I am not sure that we do more than that at this stage.

Q277 Paul Flynn: I am not sure that the responses are as audible or as visible as they might be. Thank you for answer.

Mr Capstick: I am conscious of one or two letters that my Minister, Ben Bradshaw, has written to the newspapers on these issues, which have been in part to try to address these concerns.

Chairman: We are out of time, I am afraid. We are most grateful to you. You mentioned a pack of information, but if you could provide a bit more information about the National Wildlife Crime Intelligence Unit, we would very much welcome that. We were hoping to ask you about that, but have not had time. Can you also give us a short memo on the work you are doing *vis-à-vis* e-Bay and auction sites, which we would also very much appreciate. Thank you.

Second supplementary memorandum from the Department for Environment, Food and Rural Affairs (DEFRA)

INTRODUCTION

This further supplementary memorandum is submitted by the Department for Environment, Food and Rural Affairs. It provides the additional information requested by the sub-committee following the Department's appearance before it on 8 July 2004.

ZOOS PROSECUTIONS

(Q252) Trade in endangered species, including trade involving zoos, is covered by the EC Regulations implementing the Convention on International Trade in Endangered Species of Flora and Fauna (CITES). These are EC Regulations 338/97 and 1808/01.

The Department has records of two prosecutions of zoos since 2000 under the CITES regulations, both in respect of commercial display of specimens without the correct CITES permits. These were Southport Zoo in 2000 (the penalty was a £5,000 fine plus £350 costs and confiscation of 36 specimens) and Anglesey Bird World in 2002 (the penalty was a 12 month conditional discharge and £30 costs).

Zoos are also regulated under the Zoo Licensing Act 1981 (which transposes Directive 1999/22/EEC) to ensure they undertake conservation and education work, and maintain high standards of animal husbandry. The Act provides for a regime of licensing and inspection of zoos, administered by local authorities. The Department has no central record of prosecutions under this Act.

Under the Zoo Licensing Act 1981, local authorities are able to impose and enforce licence conditions on zoos, for example, in relation to animal welfare standards or biodiversity education measures. The Act also provides local authorities with powers to temporarily or permanently close a zoo, or part of a zoo, if they fail to meet their obligations under the Act. The Act ensures that zoo operators are given opportunities to remedy problems and comply with conditions, so compulsory zoo closure or prosecution is a last resort. These provisions were recently amended and improved by the Zoo Licensing Act 1981 (Amendment) (England and Wales) Regulations 2002, which transposed the EC Zoos Directive (Directive 1999/22/EEC) in England and Wales.

REVIEW OF PART I OF THE WILDLIFE AND COUNTRYSIDE ACT 1981

(Q257) The Government is undertaking a Review of Part I of the 1981 Act as it applies in England and Wales. The requirement for a review follows on from a promise made in the Rural White Paper for England—Our Countryside; The Future to review the provisions in Part I of the Wildlife and Countryside Act 1981 with a view to rationalising the identification and protection of rare and endangered species. Part I of the Act has been the principle piece of legislation covering the conservation and protection of birds, other animals and plants. Various amendments have been made over the last 20 years; provisions concerning enforcement for example were dealt with through the provisions of the Countryside and Rights of Ways Act 2000. However, no overall strategic review of the effectiveness of its provisions has been undertaken.

THE HORTICULTURAL CODE OF PRACTICE ON NON-NATIVE SPECIES

(Q274) The use of non-native species in horticulture is widely recognised as an introductory pathway where there is no blanket prohibition on introductions (as there is for animals, for example). Good practice therefore has the potential to deliver significant benefits in terms of preventing the introduction and spread of non-native plants, where these are likely to cause problems. Defra intends to develop and pilot a code of practice in partnership with the horticultural industry and other relevant interests, aimed at encouraging best practice and avoiding unwanted introductions in the wild. There have been extensive discussions on the areas which such a Code might cover, and the level of detail which it might be appropriate to include. Recent discussion has suggested that different approaches may be necessary for different audiences, but that to be successful in reaching these it will also need appropriate and effective publicity. Defra hopes to be in a position to publish an initial Code in this financial year.

NATIONAL WILDLIFE CRIME INTELLIGENCE UNIT (NWCIU)

(Q277) Initially, the Unit concentrated on building links with the organisations which could contribute to its work. This provided the foundation for the Unit's activity in developing its knowledge and understanding of the business of wildlife crime. This in turn has enabled the Unit to be proactive in gathering intelligence and information, and from that to develop actionable intelligence packages for law enforcers in the UK and beyond.

The Unit's main achievements have been:

- Becoming established within the National Criminal Intelligence Service (NCIS), an organisation with an international reputation for excellence in criminal intelligence;
- establishing and maintaining productive working relationships with its main law enforcement partners (Europol, Interpol, the police service and HM Customs and Excise); and
- developing sources of information and intelligence in the agreed five priority areas of illegal trade (reptiles, birds of prey and parrots, caviar, traditional East Asian medicines, and parts and derivatives).

The Unit has made important progress in the development of intelligence in all its priority areas.

Reptiles, birds of prey and parrots

Intelligence has been disseminated to UK enforcement agencies, to EU member states, and beyond.

Enforcement action has taken place and is ongoing in relation to the reptile trade, including in England, Scotland, Wales, the USA, New Zealand, Belgium and the Netherlands. Numerous projects and developments are underway, and it is anticipated that once the current enforcement actions are completed, further disseminations will be possible and will lead to more enforcement action.

Enforcement action in relation to birds of prey and parrots has taken place and is ongoing, including in England, Scotland and Wales, Canada, Australia, New Zealand, South Africa, the Netherlands, Belgium and Germany.

Caviar

Careful preparation and planning with Interpol, Europol and other organisations is underway and likely to lead to forthcoming enforcement action involving UK HM Customs and Excise. After this, the Unit anticipates that it will be in a better position to either confirm or disprove the involvement of serious or organised crime in this trade.

On traditional East Asian medicines and derivatives, smaller numbers of disseminations have taken place. The Unit will take these areas further forward in the forthcoming year.

The NWCIU is now established as the UK's central source of information and intelligence on wildlife crime issues. It is frequently contacted by international bodies and other countries' enforcement agencies. Its future challenges include building on its achievements and further consolidating its role and position.

Because of the intelligence-based nature of the work of the Unit, it is not appropriate to provide detailed information.

MONITORING OF THE INTERNET FOR POSSIBLE ILLEGAL WILDLIFE SALES

(Q277) Defra officials have held meetings with the head of the National Wildlife Criminal Intelligence Unit (NWCIU) and have agreed ways to monitor internet sales and report possible CITES sales infringements to the Unit particularly on e-Bay. In this way the Unit can build up an intelligence picture and possibly spot systematic illegal activity. The head of the NWCIU has also had meetings with e-Bay's UK Management and has found them to be extremely co-operative. As a result of this meeting the Unit has drafted additional more detailed notes on wildlife trade for e-Bay which are currently in the hands of the e-Bay legal advisors, prior to being adopted.

The Unit continues to work proactively to develop actionable intelligence from information obtained from e-Bay and acts as the single point of contact used by Defra as well as UK law enforcement for any e-Bay concerns. The Unit also works proactively in monitoring wildlife sales on the internet outside auction sites.

There have also been spot checks carried out on other web sites offering comparable services to e-Bay. However the sheer volume of web sites and the volume of transactions taking place on these web sites makes systematic compliance testing very difficult to achieve and extremely costly in resource terms. Testing and sampling to date does not appear to indicate that there is widespread abuse of the CITES sales regulations on the e-Bay site. Defra will continue to monitor web sites and will take action over sales infringements whether offered through the internet or by more traditional methods.

July 2004

Memorandum from HM Customs and Excise

INTRODUCTION

1. This memorandum sets out the response of HM Customs and Excise to the questions on wildlife crime in the Sub-Committee's announcement of this current inquiry. Customs have a number of responsibilities at the frontier involving animals and wildlife but we have confined this memorandum to those concerned with the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

CUSTOMS' ROLE IN RELATION TO ENDANGERED SPECIES

2. Customs enforce import and export controls in relation to traffic to and from third countries in those species (and their parts or derivatives) covered by EU Regulation 338/97. Customs contribute to the multi-agency approach to prevent and deter the illegal international trade in endangered species by:

- ensuring that declared trade is accompanied by the correct documentation; and
- detecting illegal goods at import or export and taking enforcement action including seizure and confiscation of the goods and prosecution in appropriate cases.

3. Customs have contributed to a number of initiatives on CITES enforcement, including work with the World Customs Organisation, the EU CITES Enforcement Group, and the Interpol European Wildlife Crime Sub Group, as well as supporting Defra at the Conference of the Parties. Customs are members of PAW—the Partnership for Action against Wildlife Crime, where we have contributed to training and capability raising projects. In addition to using intelligence internally, we work closely with the National Wildlife Crime Intelligence Unit (NWCIU).

Question (1): What is the scale and impact of wildlife crime?

4. Customs are aware of the demand within the UK for exotic species of all descriptions and that some of this demand is met by the smuggling of endangered species or high-value derivatives. We publish current fraud risks and trends in our internal guidance to front line Customs staff. We look to PAW partners, though, and especially Defra and NWCIU, to produce risk assessments of the scale and impact of wildlife crime, which in turn inform our targeting.

5. Appendix A provides summary information of seizures of endangered species by Customs in the last three years. We provide statistical information on seizures to Defra who, as the Management Authority for the UK, remit them to the CITES Secretariat and the European Commission for publication. The current areas of concern in respect of smuggling include:

- live reptiles, in particular chameleons and tortoises;
- plants, including orchids and cycads;
- timber, the majority involving Ramin, but we have also seized Big-leafed mahogany;
- medicines containing controlled animal and plant species associated with the use of traditional East Asian medicines;
- caviar.

Question (2): Is the framework of national and European law and of international regulation robust enough to deal with wildlife crime effectively?

6. From Customs' perspective there are two principal legal provisions governing our activity. We consider that these provisions are sufficient and robust enough to allow us to exercise the proper level of controls. We share responsibility for a third provision with the Police.

EU REGULATION 338/97

7. Council Regulation 338/97 (on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein) imposes import and export controls throughout the European Union on all species (and their parts and derivatives) set out in the CITES appendices. It also imposes controls on some additional species that have been determined to require similar levels of control, including invasive non-native species.

8. The species covered by the EU Regulation are set out in four annexes to the Regulation:

Annex A All CITES Appendix I species; some CITES Appendix II and III species for which the Community has adopted stricter domestic measures; and some non-CITES species.

Annex B All other CITES Appendix II species; some CITES Appendix III species; and some non-CITES species.

Annex C Most CITES Appendix III species.

Annex D Some CITES Appendix III species for which the Community holds a reservation; and some non-CITES species.

9. Any species in these annexes may only be imported from or exported to third countries if the correct permits or other documentation are presented to Customs at the time of arrival or departure at the EU frontier. Many imports involving the more endangered species also require a valid export permit issued by the appropriate authority in the country of origin or the country of re-export.

10. The Regulation enables Customs to treat as a controlled item any product whose labelling or other papers claim that it contains any part of an endangered species, without having to employ scientific analysis to determine that the item is actually present. This assists in the control of those traditional East Asian medicines that purport to contain species such as tiger, bear and leopard.

11. We are occasionally involved in action against CITES goods arriving from other EU member states—which is otherwise a matter for the Police. We intervene when there is no way of legally importing those goods from outside the EU. We then use Regulation 5 of Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES) to seize the goods, with prosecution being brought under CEMA where we can prove that the goods were smuggled into the EU (albeit through another member state).

CUSTOMS AND EXCISE MANAGEMENT ACT 1979

12. General Customs requirements in relation to imports and exports are common throughout the EU and are set out in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. Customs enforcement powers are mainly derived from the Customs and Excise Management Act 1979 (CEMA), which sets out the principal offences and sanctions in the event of an illegal import or export. The most relevant provisions are:

Section 49: makes imported prohibited and restricted goods liable to forfeiture;

Section 68: makes prohibited and restricted goods at export liable to forfeiture, and creates offences in relation to their export;

Section 139: powers to detain or seize goods liable to forfeiture;

Section 141: powers to seize goods packed or found with goods liable to seizure;

Section 167: offences in relation to false or reckless declarations or documents;

Section 170: offences in relation to the import of prohibited and restricted goods.

13. Customs have powers to restore seized goods on terms determined by the Commissioners of Customs and Excise. Persons convicted on indictment of being knowingly concerned in the smuggling of CITES-listed endangered species are liable to a penalty of up to seven years imprisonment and/or an unlimited fine.

14. In appropriate cases we have also made use of the Proceeds of Crime Act 2002 enabling a court to issue a confiscation order for monetary assets earned through criminal activity. In order to do so, we need to establish on balance of probability the amounts of money gained by such unlawful activity rather than legitimate activities.

Question (3): Do responsible bodies who deal with this type of crime have sufficient resources and powers to do so? Do they treat wildlife crime with proper and due gravity?

Customs Approach

15. Customs apply checks on a risk-assessed and targeted basis in relation to all prohibitions and restrictions that we enforce at the frontier. The main endangered species risks concern smuggling, misdescription as non-endangered species, and the use of false or inaccurate permits (for example, excess of numbers specified on permits or breaches of the stipulated conditions). Our objectives are to:

- ensure that prohibited goods (particularly Annex A listed species without permits) are detected and seized on entering the UK;
- ensure that restricted goods (ie other Annex species) are identified on entering or leaving the UK and, if not accompanied by a valid permit, are detained and seized as appropriate; and
- maximise the deterrent effect by confiscation and prosecution together with appropriate publicity.

16. We discharge our role by:

- using our computerised import and export freight systems to highlight if controlled species or their parts or derivatives are being traded commercially;
- profiling and targeting unlicensed shipments of controlled species;
- detecting unlicensed goods and seizing where warranted and seizing smuggled goods;
- dealing with claims against forfeiture, only restoring seized goods in those cases where valid permits are obtained and presented; confiscation in itself can be effective since in many cases, in addition to the cost, endangered specimens are highly prized and difficult to replace;
- detecting illegal goods in transit to other EU member states or third countries and taking enforcement action or arranging controlled deliveries if requested by the appropriate enforcement authorities of the intended country of destination;
- considering for investigation and prosecution cases involving the commercial use of endangered species listed in Annexes A or B, or in circumstances where a deliberate or organised attempt has been made to evade or breach the regulations for commercial gain;
- providing intelligence to NWCIU with our CITES Intelligence staff acting as a point of contact for information and intelligence from Defra, NWCIU and NGOs such as TRAFFIC; and working up packages from information received to enable detections to be made or past breaches prosecuted;
- disposing of seized goods—any live specimens are, subject to health requirements, found the most suitable homes with zoos, bird parks or specialist keepers, and confiscated parts and derivatives are either destroyed or donated to museums, zoos etc for scientific or educational use; and
- working with Defra and NGOs such as WWF and others to raise public awareness of the controls through participating in joint media events.

17. Identification of species can be highly complex and the presence of some fauna, especially if live, can pose a number of practical problems. We have developed a specialised training package dealing with key issues such as species identification and the safe handling of live specimens. We also developed, in partnership with a private contractor, a species identification CD-Rom, called “Green Parrot”, which contains high quality images of species and derivatives with diagnostic features highlighted to assist identification. This is also in use by a number of other agencies.

Customs’ Resources

18. Customs’ objectives and the Government’s key priorities are set out in our Public Service Agreement. The two main objectives are to collect the right revenue at the right time from indirect taxes, and to reduce crime and dependency by detecting and deterring the smuggling of illegal drugs and other prohibited and restricted goods.

19. To do this HM Customs & Excise is organised into two main areas of activity: Business Services and Taxes (BST) and Law Enforcement (LE). It is Customs LE that combats revenue evasion and the smuggling of a wide range of prohibitions and restrictions, and maintains frontier security.

20. To fulfil these law enforcement responsibilities, Customs deploy resources across the UK on an intelligence-led, flexible and mobile basis. Experience demonstrates that fixed teams of officers at every port and airport, on routine duty patterns, are not the most efficient or effective way to tackle modern smuggling.

Flexible mobile teams allow Customs to deploy in larger numbers, less predictably and with greater impact, to any area of the UK, wherever intelligence identifies a risk. This makes things much more difficult for the smugglers, who are less able to know what to expect.

21. All front-line Customs staff dealing with imports and exports include CITES restrictions among their responsibilities and are provided with guidance on how to tackle a detection involving a CITES-listed item.

22. Customs established a dedicated specialist CITES Enforcement Team (CET) at Heathrow Airport in 1992. This team co-ordinates and undertakes profiling and enforcement action, providing technical advice to other Customs staff and to police and NWCIU on a 24-hour basis. It has now developed considerable expertise in this field and takes the lead on a number of the activities set out in this memorandum.

23. Customs also have dedicated intelligence and investigation officers who have built up expertise in CITES regulations. Criminal investigations in CITES cases often pose a number of complex practical problems.

24. Customs have brought together CITES intelligence activity in the Customs Intelligence and Research Team (CIRT) who ensure that intelligence is received and co-ordinated in one place. Their role is to progress and disseminate intelligence appropriately, working closely with the CITES Enforcement Team and police, NWCIU and other internal and external parties as each case requires. Prior to this, intelligence co-ordination was the responsibility of a small network of CITES Wildlife and Endangered Species Officers (CWESOs), based in each of our regions. Current arrangements allow for more efficient links between the CITES Enforcement Team, CIRT, the remaining CWESOs who act in an anti-smuggling role and our enforcement partners.

25. Customs have worked closely with NWCIU since its inception and have made a significant contribution to their intelligence packages. We have agreed to pilot the secondment of an intelligence officer to the unit who will take up post shortly.

Question (4): Is there sufficient dialogue and co-operation across Government and amongst the various bodies responsible for dealing with this type of crime?

26. Customs play an active role in PAW, the Partnership for Action against Wildlife Crime, in a number of ways. CITES training is delivered to Customs staff jointly with the Police. Our CET have worked in partnership with the Royal Botanical Gardens to produce enforcement material to aid capacity building in other agencies and countries. We have contributed to PAW publications such as the Guide to Combating Wildlife Crime. As members of its Steering Group we have been able to work closely with PAW partners such as Defra, ACPO, RSPB and TRAFFIC in a number of areas to ensure that enforcement is joined up. We are also actively involved in several of the PAW Sub Groups working on publicity, training and improved enforcement. Active involvement in PAW has built on years of already effective links with groups such as the RSPB and TRAFFIC, who have on occasion been directly involved in supporting our enforcement staff in dealing with the smuggling of wildlife.

27. Customs have also made our specialist training and awareness raising material available to other Customs authorities either directly or as part of initiatives led by the World Customs Organisation or TRAFFIC. We have provided input into training workshops in several overseas countries, most recently in Slovenia, Poland and Estonia. We made a major contribution in developing the Traditional East Asian Medicine Guide for Enforcers, on behalf of the CITES Secretariat.

28. At operational levels we have developed close links with Police Wildlife Crime Officers (PWCs), enhanced through contact at PAW events and our annual joint conference. We look to identify enforcement projects involving serious offences and which would benefit by being tackled jointly. Where there is any likelihood of a Customs interest in a police case we provide advice and attend the enquiry if it is appropriate. CET regularly provide advice to PWCs on species identification, legislation, confiscation and disposal of live animals. Our intelligence team ensures that all relevant information is made available to NWCIU, who act as a conduit for information received from regional police forces and others. We also liaise with the CITES team at the European Commission's anti-fraud unit, OLAF, who forward any relevant intelligence received from other Member States.

June 2004

APPENDIX A

CUSTOMS' CITES SEIZURES SINCE 2001

Customs provide statistical information on seizures to Defra who, as the Management Authority for the UK, remit them to the CITES Secretariat and the European Commission for publication. Figures for the 9 months 1 April 2003–31 December 2003 were published in Customs' Spring Report (Cm 6224), and financial year-end figures will be published in Customs' Annual Report.

Seizures may be recorded by weight or number, and seizures of items such as traditional Chinese medicines may be recorded either according to the individual count of capsules or according to the quantity of containers.

<i>2001</i>	<i>Number of seizures</i>	<i>Number of items seized</i>	<i>Weight of items seized (kg)</i>
Live animals and birds	49	5,196	
Parts and derivatives of endangered species	204	15,908	711,071
Ivory	19		
	40	347	
	4		476,850
Plants	28	3,923	
	1		4,800
Other CITES listed species	45	1,489	
	20		29,376
Preparations of oriental medicines that include parts or derivatives of endangered species	50	37,205	
<hr/>			
<i>2002</i>	<i>Number of seizures</i>	<i>Number of items seized</i>	<i>Weight of items seized (kg)</i>
Live animals and birds	114	8,685	
Parts and derivatives of endangered species	238	9,672,827	227,600
	4		
Ivory	29	156	
Plants	13	758	
Other CITES listed species	51	6,664,307	
	30		107,675
Preparations of oriental medicines that include parts or derivatives of endangered species	60	5,597,596	
<hr/>			
<i>2003</i>	<i>Number of seizures</i>	<i>Number of items seized</i>	<i>Weight of items seized (kg)</i>
Live animals and birds	99	2,925	
Parts and derivatives of endangered species	144	2,143	
Ivory	33	145	
Plants	15	2,044	
Other CITES listed species	53	18,972	
	29		73.5
Preparations of oriental medicines that include parts or derivatives of endangered species	20	5,042,728	
	18		469.3

APPENDIX B

ENFORCEMENT CASE STUDIES

1. LIVE PARROTS AND MACAWS

Mr Sissen had previous convictions for smuggling live birds—particularly parrots—and was suspected of using vehicles to smuggle birds into the UK. His farm contained a number of large purpose built aviaries holding a wide range of parrot-like birds. A joint operation was planned involving Customs, Police, the CITES Enforcement Team, the RSPCA and a specialist bird vet. The operation led to the seizure of three Lear's Macaws and a number of other endangered parrot species. Overall, more than 140 birds were seized. Lear's Macaws are highly endangered, and it is thought that less than 100 remain in the wild in Brazil.

Mr Sissen was convicted of smuggling offences in April 2000 and was sentenced to 2½ years—later reduced to 18 months on appeal.

2. WILDLIFE DEALER

Mr Humphrey was arrested along with two couriers who he was meeting from a flight arriving at Heathrow from Bangkok. Customs found 23 birds of prey concealed in tubes in their luggage. Several of the birds were dead on arrival.

Mr Humphrey's premises were searched for evidence of earlier smuggling runs. A rare sub-species of Gibbon from Asia was found sedated. Other birds and mammals were also found, as was direct evidence of a previous smuggling run. Most animals were later seized.

In January 2002 Mr Humphrey and the two couriers stood trial on a number of smuggling charges. Mr Humphrey was sentenced to 6½ years—the highest penalty yet for a Customs CITES prosecution. Of the two couriers, one was sentenced to 22 months with 11 months suspended, the other was acquitted.

3. TRADER IN ANIMAL CURIOS

Mr Hudson was intercepted on arrival from Africa at Gatwick. Customs found in his baggage a number of animal skulls (later identified as monkeys and covered by CITES) for which he had no import permits. A search of his shop revealed further skulls and animal curios.

In April 2004 he stood trial and pleaded guilty to three separate offences involving the illegal importation of animal skulls derived from CITES species. He was sentenced to 120 hours community service for each offence.

Witnesses: **Mr Mark Fuchter**, Senior Policy Manager, Restrictions and Sanctions Team, and **Mr Charles Mackay**, Team Leader of the CITES Enforcement Team, Her Majesty's Customs and Excise, examined.

Chairman: Welcome.

Q278 Sue Doughty: Let us start off with wildlife crime and crimes against CITES species. Do you think it is increasing?

Mr Fuchter: I would say from our seizure levels that it does not suggest it is hugely increasing. We are conscious that some of the PAW partners and the NGOs who are PAW partners with us are reporting an increase. I do not think we are seeing that, but I do not think we would dispute it.

Q279 Sue Doughty: What do you think are the key drivers for these crimes?

Mr Fuchter: I suspect money, as always. An increasing trend that Customs has spotted over many years is that traditional smugglers, who might have smuggled a single commodity once upon a time, are now making themselves available to smuggle anything if they are approached by any particular organisation wishing to do so. It is more flexible, and that is why our response has to be more flexible as well.

Q280 Sue Doughty: Moving quickly to the e-Bay question, you will have heard said earlier that we have concerns about auction sites. Has that touched on any work you are doing? Have you had an awareness of it, and have you been involved with combating this crime?

Mr Fuchter: Yes, we have, in a number of ways. In respect of endangered species, Charles's team first raised that at one of the PAW working groups where we were sitting alongside police officers and we did a trial exercise which suggested quite a high level of *prima facie* evidence of protected and endangered species. Of course, there is always the issue that we only deal with third country imports. We took that issue to the wildlife crime working

group, and we are very keen to continue to play a part in it. Another of my responsibilities concerns firearms smuggling, and the same issue applies there. We are very active and very aware of it. In terms of our response, the stuff still has to come into the UK in some way, and our response is to use intelligence from e-Bay and any other sources we can, to tackle the means of transmitting material into the UK.

Q281 Sue Doughty: It is a very different approach because of your particular duties.

Mr Fuchter: Yes.

Q282 Sue Doughty: We have heard a lot about the lack of a centralised system for recording wildlife offences. We see from your evidence that you provide Defra with statistics relating to the number of seizures you make of CITES species. Do you collect any statistics relating to your actions under COTES or CEMA and, if so, where are they held?

Mr Fuchter: We will record under our CEDRIC system, our system for recording all our prosecutions; we record any CITES or Endangered Species Offence actions. There are several things but it depends on the lead department and the overall government agenda. If it is seizure statistics, we are able to provide fairly basic information, and we are committed to do so, via Defra as the management authority, to the European Commission and the CITES secretariat. We are keen to share any information that is required of us to bodies like NWCIU and to Defra, as the lead department in the UK.

Q283 Chairman: Your evidence says that you feel the legislation you are operating within is not robust. Is there anything you would like to see changed?

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Mr Fuchter: Top of our list would be something that relates to the CITES convention itself, and that is an increasing trend to introduce exemptions for people bringing material into countries of destination, in our case the UK. How these exemptions apply is that a passenger can arrive at Heathrow and claim that a certain amount of the handbags they may have or whatever are exempted under the convention. That does two main things for us. This starts from pressure from the source countries, which do not wish to issue permits for every small—they want to introduce *de minimis* limits on, say, certain pieces of coral from Australia. They wish to have a *de minimis* sensible limit, but that does send completely different messages to us as the enforcement authority. We are very keen, in respect of all the prohibitions and restrictions that we enforce at the external border, to get the message across the travelling public. As Martin Brasher said earlier, “if you go abroad, do not buy the stuff. Do not bring it in; you are supporting an illegal trade.” We think it mixes the message, in terms of educating the public; but in fact if a party of four turn up at Heathrow, they might all be entitled to—if it is five pieces of coral—20 pieces of coral. A piece of coral is not strictly defined yet. The second impact is on us, as enforcement staff, in having to sort out that party of four and the various pieces they may or may not have with them. It gets in the way. There is one exemption introduced already. The conference of the parties has already agreed to proceed with two or three more, and we understand that there will be more to come. We see this as an increasing in the trend, and it is a concern. It is not impossible, but it makes it complicated.

Q284 Chairman: It means that the whole system becomes rather flaky at the edges, does it not?

Mr Fuchter: Yes.

Q285 Chairman: The British Government is taking a position on this, is it?

Mr Fuchter: I am quoting my colleagues from Global Wildlife, but they did accept our arguments. We have lobbied in Europe, but I am not sure if we have won the point yet. We will continue at a working level to do whatever we can so that the decision-makers understand the implications for enforcement.

Q286 Chairman: We have heard mentioned earlier the connection between wildlife crime and the trade in endangered species and other forms of protected material, and the link between all of that and organised crime. Do you have any feel for the scale of the profits that are being made out of this sort of activity?

Mr Mackay: It is very difficult to estimate. I do not know if you are talking about other crimes that wildlife goes into, but it is very difficult to say what the profitability is because it depends on what a person is prepared to pay, for instance a very rare bird. The normal trade we see is trade that is quite happily traded as long as it has licences. We find that they have technical problems, either no licence

or a falsified permit, and that is generally for the market. That can be quite substantial if it is in large numbers, but to determine the number would be extremely difficult.

Mr Fuchter: We do not have a feel for that. We would really look to plug in to NWCIU, if it adopts the role of producing strategic assessments in this particular area of crime, as NCIS in other areas as well, and look to their assessment. We can only speak anecdotally of cases we have had. The biggest sentence we had was six and a half years. He was a criminal—I am sorry, can I say that?

Q287 Chairman: Mr Humphrey; he was a crook.

Mr Fuchter: Yes, he had a record. These are not necessarily the organised crime that they are often said to be.

Q288 Chairman: How many prosecutions have there been under CEMA in the last few years?

Mr Fuchter: I am afraid I do not have that information with me, but I do know that the TRAFFIC submission to the Committee contained an annex of all the offences, and my colleagues checked that those related to Customs were accurate.

Q289 Chairman: Obviously, we know about Mr Humphrey and the six and a half years. He is a bit of a totemic case, is he not? Do you think that in general the punishments are sufficiently severe for the people found guilty of this type of activity?

Mr Fuchter: In terms of Customs offences, I would say absolutely yes. We had another case, which we reported in annex B, of Mr Sisson, which was reduced on appeal. Bear in mind that we will, where we can, take confiscation action, if that is appropriate. We feel that in terms of the smuggling offences, it is pretty robust.

Q290 Paul Flynn: In their evidence, TRAFFIC expressed some concern about the reduction of Customs Wildlife and Endangered Species Officers, CWESOs. Have the number of CWESOs decreased?

Mr Fuchter: The number of CWESOs has decreased. I have to say that I do not suppose we have managed this very well in how we have presented it to our PAW partners. I do get my leg pulled about this one quite a bit. There was an appropriate paragraph in our memorandum. The point about the CWESO role is that it originally had two main functions. The first was local intelligence activity. We took a strategic decision in Customs when we reorganised on a functional basis, that intelligence is far better delivered centrally. Intelligence has two broad activities: one is collecting the stuff, and the other is assessing its worth and getting it out to customers. That latter activity is best done centrally. In essence, we re-deployed some of the people who were working locally to other Customs priorities, but put the activity in the centre in our intelligence and research team. We feel the staff figures may have gone down, but it is a more effective operation

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because they are sitting together; they are plugged in with the NWCIU now, and they are more easily able in this day of global communications to liaise with key resources.

Q291 Paul Flynn: My questions are conditioned by a notice that I saw of another matter at Cardiff Airport, which said there were no Customs officers on duty, and that if I had anything to confess, to ring the number. I rang the number out of curiosity and I was attached to an answerphone. I had just arrived from Amsterdam, from which there might be a reasonable assumption I might have had some drugs on me. I assume that was a centralised system. Do you think that centralising all of seven CWESOs you have in the whole of the UK is working effectively, and how do you know it is working?

Mr Fuchter: To go back to Cardiff Airport, I hope the notice asked you if you had anything to declare rather than confess.

Q292 Paul Flynn: Yes, indeed.

Mr Fuchter: I am sorry, I cannot stop being a Customs officer. As I tried to say to colleagues in PAW, I really do not think that this is a huge issue. I am convinced, and I see it from the information that those intelligence officers shared with NCIS, with the NWCIU—I think that two people working centrally are better and more effective.

Q293 Paul Flynn: How do you monitor that?

Mr Fuchter: We no longer manage in terms of vast amounts of numeric output-based targets, but we monitor it by intelligence flows, and the managers of intelligence are accountable for the service that we provide to NWCIU.

Q294 Paul Flynn: I understand the process, but what about the outcome?

Mr Fuchter: The outcome would ultimately be on the impact we are having—we collectively—in other words including under Defra's overall strategic leadership, ourselves, police forces and NWCIU—in terms of either disruption activity, by which I mean gangs of endangered species smugglers who are either prosecuted and convicted or just taken out, in our language.

Q295 Paul Flynn: But you have no evidence of any improvement or any difference so far. This is a hope that it will be, as you say.

Mr Fuchter: I cannot produce hard evidence, but I can say that we are providing information to NWCIU, which I do not think would have happened before under disparately dispersed CWESOs sitting in various regional offices. Superficially they can be very attractive because they can have face-to-face dialogue with police officers, and there is a bit of Parkinson's Law about it—the work expands to fill the time available. It is far better to centralise the activity and get better value for money out of it.

Q296 Paul Flynn: We look forward with interest to the results of that. We have heard some very positive evidence about the CITES team at Heathrow, but we understand that this is the only such team in the UK. Why is this?

Mr Fuchter: Yes it is. They are called a unit of expertise. We only need one such team because, again, it is economies of scale. Charles's team gives all the technical input and support on detailed operational issues, and that will inevitably be around particular issues with handling endangered species and identifying them, or actually dealing with them when we seize them. We do not see a need for other teams to be deployed similar to Charles's team at other ports and airports, mainly because if there is intelligence of smuggling coming through Felixstowe or any other port or airport, we deploy the resources to address it.

Q297 Paul Flynn: What about the intelligence of the people who want to break the law? Would they not realise there is one team and then go elsewhere?

Mr Fuchter: It would be very dangerous if they do. In the last year—and I cannot go back any further—of the seizures we made, although a hefty chunk, 40%, were made at Heathrow, in the round, we also seized at 22 other locations. We do make a lot of seizures where passengers fly in to the European Union and transit either at Heathrow or Frankfurt and Paris and come through to airports like Edinburgh, Cardiff or Belfast.

Q298 Chairman: Had Mr Humphrey arrived at Gatwick instead of at Heathrow, would you have got him?

Mr Mackay: Yes.

Q299 Chairman: What if he had arrived at Cardiff and decided that he wanted to declare all the birds stuffed down the tubes and got the answerphone message, and thought that that day he would not leave a message?

Mr Mackay: In the circumstances we are talking about, this was all built on intelligence in the first place. The fact that Mr Humphrey was involved in either, we thought, importing drugs or birds of prey, because he was involved in birds of prey, we were well aware of his movements. Our intelligence told us which particular people were acting as couriers and which flights they were coming in on; so whether they come in in Glasgow, Cardiff, Gatwick, we would have still been waiting for them.

Q300 Chairman: Does your team also deal with illegal bush meat, or is that separate?

Mr Mackay: To a certain degree we do, in terms of whether it is covered by CITES or not; so that is our main issue. We have had some dealings with illegal bush meat in terms of CITES species being involved, but that is as far as we take it.

Mr Fuchter: Customs have been given separate resources to deal with a separate piece of law (I am sounding awfully like a civil servant!) and we have put new teams in Customs to address all products

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of animal origin and foodstuffs under those separate regulations. There is an overlap because bush meat, which is covered by those regulations, obviously includes some endangered species. Charles's team will major on endangered species and dealing with intelligence there, but we have other officers where the strategy is slightly different—it is really to take the stuff out; we do not want the stuff coming through our controls, so we look for surrenders. We encourage people to surrender the stuff; we have announcements on the planes where we can, and we are far more active, for example with sniffer dogs being introduced.

Q301 Chairman: How many sniffer dogs are there now?

Mr Fuchter: Six, and we are looking to put in another four during this financial year.

Q302 Chairman: It is hardly a pack!

Mr Fuchter: It is very effective, because all the bags come through at one place together. The beauty of a dog compared to a human is that they can whiz through quite quickly.

Q303 Paul Flynn: I am slightly confused on what you say about the role of Defra and the NWCIU to do risk assessments to inform your targeting. What then was the intelligence research team focused on?

Mr Fuchter: In our money, it would be operational intelligence, which would be case-specific about person X or company Y; but it would also be interfacing with the police, and it may be about saying “we are getting a lot of intelligence about a certain trend” and making sure that NWCIU know that. It is the lower level of intelligence rather than at the more strategic level.

Q304 Paul Flynn: Are you suggesting the role of the Customs intelligence research team is to progress and disseminate intelligence, working closely with CITES and police and so on?

Mr Fuchter: Yes.

Q305 Paul Flynn: But you then said earlier in the memorandum that you have to rely on your PAW partners, particularly Defra, to do risk assessments of the scale of wildlife crimes, which informs your target. Can you explain the capabilities?

Mr Fuchter: Determining the strategic picture, in terms of strategic threat, is something for Defra—we do have our own strategic analysts who look at our primary responsibilities—alcohol, tobacco—but we do not deploy those in areas where the lead is taken by another department, mainly because we are not experts in this area. Every time I listen to the two Martins, I realise how little I know about this area. They are much more specialised. They are accountable for the Government's overall response, or advising ministers on it, and they know the risks and threats better than we do, and know the risk and threat assessments to commission. We are reluctant to expend our own strategic assessment resources on that work. That work would lead to

a strategy that would have resources identified and have outcomes identified. That is the sort of approach that I am talking about. We should be driven ideally by a strategy that gets us there. Underneath that, Customs is dealing with the information on seizures that we find. We are learning from those seizures. We are working at an operational level, which is very specific, looking at the trends from seizures and cases, and referring that back. It has to be a two-way flow. It has to go back up the chain to inform the strategic picture. Are there many like Mr Humphrey or is there just one? Equally, we need something from the top that says, “our priorities are to do something slightly different”. If Defra said, “we want far less effort at the frontier and far more on, say, Operation Artemis”—although I know that is unrealistic, we would expect as the enforcement authority at the frontier to be guided by that approach.

Q306 Paul Flynn: Do you think the number of seizures is an accurate way of measuring the amount of traffic coming through?

Mr Fuchter: No, I agree with the way you assessed it earlier. Seizures tell you just one part of the picture.

Q307 Sue Doughty: I take your point that a lot of what you do is intelligence-driven, but is the work that you are doing with other customs organisations internationally to prevent the trade in CITES species part of the intelligence you are using?

Mr Mackay: Unfortunately, with CITES it is a strange one when it comes to who enforces it because in a lot of countries it is not customs that enforce CITES; it will be other government departments, mainly the police. We have ourselves built up some very good contacts in quite a few countries, but there are big gaps, and that has been recognised at the international level inside the secretariat. We had an experts' meeting in Washington specifically about issues like co-operation between enforcement authorities around the world and the fact that in a lot of cases there were no contacts to be made, and we could not find out who was responsible in certain countries; so they are trying to address that at the next conference of the parties with a resolution. On a day-to-day basis we have quite a good working relationship. Where we are finding them in transit, we are informing the end country and their authorities that we have an issue and ask if they want to take it on, or whether they want us to take it where we are. We have what we call a controlled delivery situation therefore, and we are able to pass it on to them, and they can take action at their end. It is not as good as it should be, and hopefully that will be addressed at the conference.

Q308 Sue Doughty: I take on board what you say. Have you had any successes? Are there any areas where you can say that this international working has led to a drop in a particular trade or activity?

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Mr Mackay: I am not sure about a drop in the trade, but I can say that we have had success for instance in controlled delivery, for example one that we did to China where we had no contact. There is the World Custom Organisation fortunately, which was able to give us a contact in China and we were able to effect a very good

controlled delivery, in which they took out the main people involved in China. That was a success in itself. I cannot tell you that that is going to reduce the amount of ivory smuggled, only that that particular person will not be involved.

Chairman: The clock strikes 12! We have reached the end of our questions. We are extremely grateful to you for your time. Thank you very much indeed.

Oral evidence

Taken before the Environmental Audit Sub-Committee

on Tuesday 13 July 2004

Members present:

Mr Peter Ainsworth, in the Chair

Mrs Helen Clark
Sue Doughty

Paul Flynn

Memorandum from TRAFFIC International

INTRODUCTION

1. Since its founding in 1976, TRAFFIC has grown to become the world's largest wildlife trade monitoring programme and a global expert on wildlife trade issues. TRAFFIC's mission is to ensure that trade in wild plants and animals is not a threat to the conservation of nature. TRAFFIC is an international network, with culturally diverse staff on five continents in 22 countries and territories, and ongoing research in dozens of others. TRAFFIC's information and advice are based on fact and sound analysis. Its research and recommendations successfully shape conservation actions and policies on wildlife trade at national, regional and international levels. TRAFFIC actively monitors wildlife trade and provides its information to a diverse audience worldwide as a basis for effective conservation policies and programmes. TRAFFIC is the joint wildlife trade monitoring programme of WWF—World Wide Fund for Nature and IUCN—The World Conservation Union.

2. Since 1991, the Department for Environment, Food & Rural Affairs (Defra) and WWF-UK have funded TRAFFIC's Enforcement Project in the UK. This project aims to ensure that the implementation of CITES and enforcement of wildlife trade laws in the UK are effective. When confirming continued funding in February 2004, the Minister Elliott Morley stated that "TRAFFIC's reputation as a professional and competent organisation is well-deserved, and its work to support wildlife investigations and law enforcement in the UK continues to make an important contribution to our work to reduce wildlife crime."

Q.1 *What is the scale and impact of wildlife (trade) crime?*

3. The global wildlife trade is huge, with an annual turnover estimated at billions of dollars and involving hundreds of millions of individual plants and animals every year. Most of the trade is legal but a significant portion of it is not. TRAFFIC estimated an import value in the early 1990s approaching US\$15 billion for all wildlife products, climbing to nearly US\$160 billion if wild-sourced timber and fish products are included. The global international trade in medicinal and aromatic plants alone exceeded 440,000 tonnes in 1996, and was valued at US\$1.3 billion¹.

4. The EU is one of the largest and most diverse markets for wild animal and plant species and their products. Worth billions of dollars, the trade includes pets, houseplants, food, leather, ivory, tourist curios, and medicines. A great deal of this wildlife trade is legal and likely to be conducted at sustainable levels. But some of the trade is illegal and threatens the survival of many species, from parrots to sturgeon to cacti. The current EU is a huge market for wild animal and plant species and their products. Legal importation covered by CITES into the EU between 1996 and 2002 included 5.4 million live birds (87% of global trade), 1.2 million live reptiles (16% of global trade), over 7 million live cacti (19% of global trade), 15 million live orchids (17% of global trade), and 383 tonnes of sturgeon caviar (40% of global trade)².

5. In the UK as elsewhere in the world, illegal trade in wildlife presents a serious threat to the survival of many endangered species. High rewards and the low risks of detection and punishment have made the illegal wildlife trade attractive to criminals. Although most wildlife trade is legal, wherever trading is regulated by bans and prohibitions to conserve species, there will also be opportunities for a lucrative illegal trade. The illegal wildlife trade involves serious offences, many committed by serious offenders. In the UK it has been estimated that 50% of those prosecuted for wildlife crimes over a 12-month period had previous convictions for serious offences including drugs and firearms³.

¹ The trade in wildlife: regulation for conservation. Edited by Sara Oldfield, 2003.

² Expanding borders: new challenges for wildlife trade controls in the EU. Stephanie Theile, TRAFFIC Europe 2004.

³ The international wildlife trade and organised crime. WWF/TRAFFIC report, 2002.

6. TRAFFIC have compiled information on CITES cases that have been successfully prosecuted at court in the UK (see table attached). Between October 1987 and May 2003 there were a total of 93 cases heard that resulted in a conviction. The information contained in this table has been compiled from a number of different sources including the Police, HMCE, Defra and NGOs. Although every attempt has been made to ensure it is complete, this cannot be guaranteed.

7. Of these 93 cases, 50% related to bird offences, 30% to parts and derivatives, 15% to amphibians and reptiles and 5% to plants. HMCE prosecuted 35% of the cases, with the Crown Prosecution Service (on behalf of the Police) prosecuting the remaining 65% of the cases. The high number of bird related offences can be explained in part by the active role the Royal Society for the Protection of Birds plays in supporting and advising the Police in regard to bird related crimes. Plant crime often goes undetected, partly because of a lack of knowledge of what constitutes such crime amongst the general public, and partly because enforcers have very little experience in this area. However, in recent years plant criminals have been prosecuted under legislation other than wildlife, such as the Theft Act, with some successes.

Q.2 Is the framework of national and European law and of international regulation robust enough to deal with wildlife (trade) crime effectively?

8. The response of the UK's legal system to the illegal wildlife trade is inconsistent. It does not adequately reflect the nature and impact of the crimes, resulting in offences being perceived as a low priority within the judiciary and magistracy.

9. In terms of the laws regulating the trade in wildlife, UK laws reflect a tripartite system of control encompassing international, European Community (EC) and UK domestic laws. Within each tier there is the potential for difference in implementation, and while the EC is a strong centralising force and framework, for the member states there remain discrepancies in implementation and practice.

10. The relative ineffectiveness of the UK's laws regulating the wildlife trade does not derive from lack of effort by the enforcing authorities, but by laws which, in theory and in practice, do not provide an appropriate deterrent to offenders. There is an apparent lack of seriousness attached to wildlife trade offences, which is surprising given the potentially high rewards at stake for very little risk of detection and penalty, and the seriousness of their impact on species sustainability. Issues of seriousness and tolerance need to be examined and attitudes—public and judicial—towards such offences re-shaped accordingly.

11. Compared to other jurisdictions the UK has a relatively well-developed system of laws. This is however no reason for complacency. Our membership of the European Union and the free market without borders offers great assistance through the framing of effective law, but presents a challenge towards greater internal control. At the same time, the position in the UK does not compare favourably with that in the US, where levels of fines are higher and custodial sentences often imposed for wildlife trade offences. The UK has the potential to impose higher penalties, but chooses not to. The current UK system of precedent based guidance is insufficient given the very few cases that reach the higher courts⁴.

12. There are two main laws that control trade in wildlife in the UK. The Customs and Excise Management Act (CEMA) has a power of arrest, a maximum prison sentence of seven years and unlimited fines at court. The Control of Trade in Endangered Species (Enforcement) Regulations (COTES) is the means by which the police can implement the EU Wildlife Trade Regulations in the UK. Currently there is no power of arrest under COTES, and maximum prison sentence at Crown Court is two years with unlimited fines.

13. To bring COTES more in line with CEMA, an initiative run by WWF and TRAFFIC led to a section being added into the Criminal Justice Act which has increased the maximum possible custodial sentence for offences under COTES from two to five years. This will make such offences arrestable, under s24 PACE 1984 and gives the police additional powers such as the power to enter and search without a warrant premises that are owned or occupied by a person under arrest for such an offence. Additionally, it will also grant the police the powers to take fingerprints, obtain DNA samples, compel suspects to be interviewed, and where appropriated, bail suspects to court with conditions.

14. However, for police to be able to make use of these additional and necessary powers, COTES 1997 needs to be amended. Until that time, police are hindered in their ability to investigate wildlife trade crimes. It is a matter of urgency that the Government make the necessary revisions to COTES and by so doing, allow the police access to the new powers as outlined in the Criminal Justice Act 2003.

15. There is an ongoing concern that the majority of wildlife crime goes both under reported and unrecorded. COTES and CEMA offences are recordable, and details should be centrally held by the Home Office and accessible to obtain a national picture. However, comparing TRAFFIC's record of COTES prosecutions in 2000 and 2001 with figures from the Home Office has highlighted a number of discrepancies as illustrated in the table below (TRAFFIC data is in brackets). This shows that there are a few cases where TRAFFIC has recorded more instances of persons being fined or discharged than has the Home Office. It is essential that all Police forces and HMCE are made aware that CITES offences are notifiable, and report them as such.

⁴ Crime and punishment in the wildlife trade. WWF / TRAFFIC report 2002.

<i>Year</i>	<i>Found guilty</i>	<i>Discharged</i>	<i>Fined</i>	<i>Custody</i>
2000	6 (5)	5 (6)	1 (1)	- (1)
2001	7 (7)	- (3)	3 (7)	3 (2)

16. In addition, it is also vital that other types of wildlife crime are recorded. One way to achieve this would be to make all wildlife crime notifiable and therefore recordable by the Home Office. It is essential that both wildlife crime incidents and wildlife offences are recorded on a national basis to allow enforcers to prioritise their efforts where they are most needed and allow policy makers and enforcement bodies be better placed to set targets and priorities.

Q.3a Do responsible bodies⁵ who deal with this type of (wildlife trade) crime have sufficient resources and powers to do so?

17. The main enforcement bodies addressing wildlife crime include the Police Service and HMCE. The Police Service is the lead agency for investigating offences relating to species. Most forces have at least one Wildlife Crime Officer (WCO), although they commonly carry out these duties in addition to their other policing responsibilities. However, the number of forces that have a full-time WCO is at an all time low with only 11 forces out of 55 nation-wide maintaining a full-time WCO post. It is essential that this situation is improved, and that each Police force has at least one full time WCO in post.

18. Current Police response is extremely varied and patchy in the UK and a more uniform level of positive response from Police forces to issues relating to wildlife crime would be possible if there were dedicated wildlife crime officers in each force.

19. WCOs also need support and recognition of the important work they undertake in tackling wildlife crime from their superior officers, to allow WCOs to allocate sufficient time and resources to investigating wildlife crime.

20. One factor that may also hinder wildlife investigations and prosecutions is the high cost of such operations. It is known that financing for wildlife operations and investigations is extremely difficult to obtain, and can seriously jeopardise wildlife cases. It is suggested that a centralised budget be provided and managed by Defra to fund the associated costs of wildlife investigations (such as the cost of housing animals that are the subject of court cases) to ensure that a lack of Police resources does not impact negatively on the Polices' ability to take forward a wildlife investigation.

21. In the past each Customs region in the UK had a designated Customs Wildlife and Endangered Species Officer (CWESO). However, this is no longer the case, and there has been a significant reduction in staffing within this sector of HMCE. It is imperative that this situation be reversed. At the current time, there are only seven CWESOs in the whole of the UK, and not all of these are full time, with an additional three staff members in Customs Investigations and Intelligence who are only able to commit some time to wildlife crime issues. There is an urgent need for at least one full time CWESO in each Customs region and a CWESO representative in each port and airport.

22. However, HMCE must be applauded for their continued support to the HMCE CITES Team which is based at Heathrow airport. The CITES team is made up of eight officers, who have a huge accumulated knowledge of CITES trade and combat wildlife trade crime on a daily basis.

23. All enforcement agencies will benefit from being trained in wildlife crime issues. The turnover of staff within the Police and Customs services is such that institutional knowledge never attains a very high level except under rare circumstances where an officer has been in post for a number of years (for example the CITES team at Heathrow, and six full-time WCOs who have been in post for five years or more).

24. The enforcement agencies are aided by the activities of a number of voluntary bodies. Those most active in the field of wildlife trade include the Royal Society for the Protection of Birds (RSPB), the Environmental Investigations Agency (EIA), TRAFFIC International and WWF-UK.

25. The Partnership for Action against Wildlife Crime (PAW) was launched in 1995 and brings together the Police Service, HM Customs and Excise, representatives of Government departments and approximately 90 other bodies with an interest in wildlife law enforcement. It provides a strategic overview of enforcement activities, considers and develops responses to strategic problems and examines issues of strategic concern. Its main objective is to support the networks of WCOs and CWESOs, but it is also concerned with awareness raising, publicity, training and education. It is an excellent initiative that has pulled together under one wildlife banner a large number of organisations with disparate needs and ambitions.

26. In April 2002, under the guidance of PAW, the National Wildlife Crime Intelligence Unit (NWCUI) was established at the National Criminal Intelligence Service (NCIS). For the first time in the UK there is a national focal point for all wildlife crime related intelligence. NCIS provides leadership and excellence in criminal intelligence in the UK and works on behalf of all UK law enforcement agencies in the fight against

⁵ TRAFFIC has defined responsible bodies to include regulatory bodies and the judiciary.

serious and organised crime. The NWCIU is the national focal point for the collation, analysis and development of strategic assessments on the most serious offenders in wildlife crime. It identifies trends and patterns in wildlife crime and the links to other serious crimes. The Unit develops sources to gather intelligence, provides a nucleus of expertise and knowledge on the subject and establishes links with domestic and international agencies dealing with wildlife crime. Initial funding was provided for a two-year duration and a further one-year of funding has now been granted. It is vital that this Unit's existence continues into the future and that funding is secured for a viable period of time, and not on a yearly basis. The Unit plays a critical role in the development and dissemination of intelligence on wildlife related crimes in the UK.

Q.3b Do responsible bodies treat wildlife crime with proper and due gravity?

27. Between 1997 and March 2002 a total of 191 Wildlife and Countryside Act cases came to court consisting entirely of bird related offences. In the same time frame, only 42 CEMA and COTES cases came to court. The maximum prison sentence to date under WCA has been six months, compared to 18 months under COTES and six and a half years under CEMA. However, the vast majority of cases ending in a conviction result in small fines well under GBP1000. It is important that some parity is found across the board as there is a need to ensure tougher penalties and custodial sentences are addressed consistently throughout the UK and that the penalties available for wildlife crime offences are used to their fullest when such a deterrent is needed.

28. While the UK has a legislative framework that is generally supportive, it lacks effectiveness in some areas as a result of the imposition of low penalties in the majority of prosecuted cases, and the fact that there are limited provisions for "joined-up" working between the principal agencies involved.

29. Overall, it appears that there are varying and inconsistent approaches to the law and the imposition of penalties for illegal wildlife trade. This clearly raises questions concerning any deterrent value. The fear of a high judicial penalty is not sufficient on its own to deter offending—the potential offender must perceive there is a certainty of detection, arrest, and a clear belief that the authorities will prosecute. This is currently an unlikely scenario in the UK context. The risk to wildlife offenders is minimal, and the rewards are extremely high when balanced against the chance of getting caught or the likely penalty that would be imposed.⁶

30. The penalties associated with wildlife trade offences often bear little or no relation to the profit to be made by those committing the offences. When presenting wildlife cases, it is imperative that prosecutors are aware of the seriousness of these crimes, and bring this information to the attention of the judiciary in a clear and concise manner. When considering the seriousness of these offences, the judiciary should take into account the ecological impact of the offence and the impact on the sustainability of the species. When endangered species are involved it will often be that the case is more appropriately tried/sentenced in the Crown Court, and the level of fine should reflect any economic gain from the offence. These recommendations are laid down in more detail in "Costing the Earth" information for sentencers produced by the Magistrates Association in 2003.

Q.4 Is there sufficient dialogue and co-operation across Government and amongst the various bodies responsible for dealing with this type of crime?

31. Although lines of communication between government agencies responsible for combating wildlife crime have improved, there remains some ground to cover to bring about a truly integrated enforcement response to wildlife crime. A number of different agencies are required to respond to incidences of wildlife crime as part of their core work. This includes the Police Service, HMCE, NCIS, Defra and Local Authorities. It is imperative that there are mechanisms in place to allow for fast communication and exchange of information between these agencies as a matter of course. Currently, the ability to communicate effectively between agencies is only achieved in some instances, and is reliant on pre-existing good relations between individual officers. Co-operation between the Police and HMCE has improved in recent years, and the addition of a Customs Officer in the NWCIU at NCIS will progress this further.

32. However, there is some way to go in improving communications between Local Authorities and enforcement agencies. Local Authorities cover a number of wildlife related issues including zoo and petshop licensing, dangerous wild animal licensing and Balai registration, as well environmental health issues such as the sale of wild meat for human consumption, and the sale of medicines that may contain controlled species. It is imperative that a mechanism is established to allow regular communications between these authorities and other enforcement agencies. For each region in the UK, there is a Trading Standards co-ordinator, who can act as a liaison point with WCOs and CWESOs. In London within some boroughs, regular meetings are held between Local authority officers and the police, to explore areas of ongoing and future collaboration. This initiative should be encouraged nation-wide.

⁶ Crime and punishment in the wildlife trade. WWF/TRAFFIC report 2002.

33. Defra have been instrumental in encouraging greater co-operation amongst the many agencies that are members of PAW. However, it is important that one of the main objectives of PAW is not forgotten—to support the networks of WCOs and CWESOs. It is key that all sections of Defra (licensing and animal health) continue to follow this remit closely, and to provide all the information they can to enforcement agencies both reactively and proactively in a bid to combat wildlife crime.

34. The development of a central database that holds records of licenses issued by Local Authorities would greatly assist enforcement agencies in furthering certain wildlife crime related enquiries. This database would need to be run by a central agency, such as Defra or the Joint Nature Conservation Committee.

35. In summary, TRAFFIC recommends that:

- (a) The Government make the necessary amendments to the Control of Trade in Endangered Species (Enforcement) Regulations 1997 so that it can be updated and become law as soon as is practically possible, thereby giving the police access to the additional powers made available by the Criminal Justice Act.
- (b) All police forces and HMCE are made aware that CITES offences are notifiable, and that they report them as such.
- (c) A national recording system for all wildlife incidents and offences is established.
- (d) Each Police force has at least one full time Wildlife Crime Officer.
- (e) Each Customs region has one full time Customs Wildlife and Endangered Species Officer, and that each airport and port has a CWESO representative.
- (f) Central funding is allocated to support the high cost of wildlife investigations and prosecutions such as housing of animals subject to a court case. These funds could be managed by Defra.
- (g) Continued funding is assured for the National Wildlife Intelligence Unit based at the National Criminal Intelligence Service.
- (h) Initiate a programme to encourage prosecutors and the judiciary to regard offences against wildlife with due seriousness and to use the full range of sentencing options available to them in order to deter offenders.
- (i) Better lines of communication are established between all agencies involved in wildlife law enforcement, including the Police, HMCE, NCIS, Defra and Local Authorities.
- (j) A central database is developed to hold licensing records from all Local Authorities.

TRAFFIC International

April 2004

Letter and Memorandum from WWF-UK

INTRODUCTION

1. WWF is the world's largest and most experienced independent conservation organisation, with 52 offices working in more than 90 countries, and over five million supporters world wide. WWF-UK was launched in 1961 and since then it has funded more than 3,000 projects in the UK and spent some £64 million on conservation work overseas. WWF-UK has offices in Northern Ireland, Scotland and Wales and a network of around 200 volunteer groups. It is a challenging, constructive, science-based organisation that addresses issues from the survival of species and habitats to climate change, sustainable business and environmental education.

2. In the last 15 years, WWF-UK has undertaken, or financially supported, a large number of high-profile environmental and wildlife cases in the UK and European Courts. This submission is made by the Legal Unit, whose role is to provide legal support to the organisation and to pursue projects, which establish WWF-UK as a nationally and internationally recognised Centre of Excellence with regard to environmental law and citizens' environmental rights.

Q.1 *What is the scale and impact of wildlife crime?*

3. For the purposes of the EJP Report⁷, English Nature (EN) confirmed that less than 1% of Sites of Special Scientific Interest (SSSIs) are subject to criminal acts every year⁸. However, it would be misleading to suggest this figure is a true reflection of wildlife crime. The exploitation of wildlife is big business—Interpol estimates the world wide trade in endangered species is worth billion of US dollars a year and it seems illegal exploitation, including international smuggling of endangered species, is on the increase.

⁷ See <http://www.wwf.org.uk/filelibrary/pdf/envirojustice.pdf>

⁸ EJP Report, Appendix 5, figure 6.1.

4. For offences involving wildlife trade and native species, the highest number of charges or summonses between 1987 and 2002 involved birds or birds' eggs and the lowest involved plants⁹. Table 1 (below) summarises the percentage of actions for each species group between 1987–2002 on the basis of data provided by TRAFFIC and WWF¹⁰. It can be seen that the proportion of cases for birds and their eggs increased from 47% to 63% in the study period.

5. There are a number of reasons why the highest number of charges or summonses involved birds or birds' eggs. First, the RSPB is extremely active in the prosecution arena—it has its own enforcement team and a network of volunteers providing support to police officers investigating bird crimes. The RSPB receives in excess of 600 reports of wild bird incidents each year relating to the destruction of birds and their nests and eggs. Second, TRAFFIC observes that a number of bird species involved in CITES are native to the UK and therefore appear more commonly in trade offences because they are more readily available than, for example, CITES listed mammals not native to the UK. Finally, bird cases are more likely to be prosecuted as there is a long history of prosecutions and case precedents and, therefore, a greater likelihood that prosecutors will progress bird cases than other species.

Table 1

PERCENTAGE OF ACTIONS IN EACH SPECIES GROUP (1987-2002)

<i>Period</i>	<i>Birds and bird eggs</i>	<i>Reptiles, spiders and amphibians</i>	<i>Plants</i>	<i>Artifacts</i>	<i>Mixture</i>	<i>Total</i>
1987–90	46.7%	26.7%	13.3%		13.3%	100%
1991–94	50%	27.8%	5.6%	16.7%		100%
1995–98	52.4%	4.8%	4.8%	33.3%	4.8%	100%
1999–2002	62.5%	6.3%	3.1%	12.5%	15.6%	100%
Total	54.7%	14%	5.8%	16.3%	9.3%	100%

6. Plant crimes¹¹ are not detected as often as those involving animals—partly because the public are not so aware that they are indeed crimes and are less likely to report them, and partly because there seems to be less interest in pursuing plant crime by enforcers. TRAFFIC observes this is not only about public awareness. Ultimately, there is so much trade in genuine artificially propagated plants that there is less need for illegal trade. Plant propagation in rare species offsets the need for illegal collection, especially due to the large volumes that can be produced from a few plants. Plants, if smuggled or illegally traded, are easier to conceal than animals and far less likely to be detected, especially if in seed form. Finally, the Police Service acknowledges that it is responsible for plant crime, but points out that the wording of Section 14 WCA 1981 causes difficulties for enforcers in relation to non-native species. Nonetheless, a number of convictions relating to the theft of wild plants have been obtained. Such theft is recognised as being financially rewarding and links to other areas of criminal behaviour are often found¹².

Q.2 *Is the framework of national and European law and of international regulation robust enough to deal with wildlife crime effectively?*

7. The protection of SSSIs was much improved by the passage of the Countryside and Rights of Way Act (CroW) 2000, which created a new statutory right of access to mountain, moor, heath, down and registered common land and increased the protection afforded to SSSIs. EN can now refuse consent for damaging activities and have new powers to combat neglect. There are increased penalties for deliberate damage to SSSIs and a new court power to order restoration. The Act also placed a duty on public bodies to further the conservation and enhancement of SSSIs and introduced improved powers to act against third party damage.

8. EN brought the first successful prosecution under these new provisions for third party damage to Sutton Lane Meadows SSSI in Wiltshire in February 2003¹³. The Court also made a restoration order to make the offender restore the SSSI to its former condition prior to the damage occurring. Similarly, in December 2003 EN also brought the first successful prosecution for damage caused by an occupier of an SSSI¹⁴. In September 2002, Cornish Goldsmiths allowed clearance work in preparation for a miniature railway on part of the West Cornwall Bryophytes SSSI, which resulted in the destruction of rare mosses and liverworts. The company was fined £3,000, ordered to pay costs of £10,000 and carry out restoration works estimated by EN to cost around £2,000.

⁹ EJP Report Appendix 5, figure 7.1.

¹⁰ EJP Report Appendix 5, figure 7.13.

¹¹ Part I, Wildlife and Countryside Act 1981.

¹² Sergeant Peter Charleston, North Wales Police, Pers Comm.

¹³ See www.english-nature.org.uk/news/story.

¹⁴ Under S.28P(1) of the Wildlife and Countryside Act 1981 (as substituted by the Countryside and Rights of Way Act 2000).

9. EN now finds its powers to prosecute broadly adequate, although a few difficulties remain, including:

- many offences are committed by third parties but EN officers are unable to stop people/vehicles and request names and addresses. This sometimes hinders the investigation and detection process;
- EN investigators can also only request that suspected offenders take part in interviews (PACE 1984)—again this can hinder the investigation process; and
- EN does not have a formal and immediate power to require restoration following an offence being committed, but where it might not be in the public interest to bring a prosecution.

10. A number of EJP respondents are keen to improve powers regulating the marine environment. Section 36 of the Wildlife and Countryside Act 1981 empowers the Secretaries of State to establish statutory Marine Nature Reserves (MNR) to conserve marine flora and fauna and geological and physiographical features of interest. The MNR arrangements are, however, based upon the “voluntary” approach and are thus entirely dependent on securing the co-operation of all the local interests concerned, eg fishermen, divers, district and unitary authorities—to agree the detailed provisions for protecting a site. Furthermore, provisions within the WCA 1981 developed in a piecemeal fashion and were primarily targeted at crimes against terrestrial wildlife. As a result there have been no prosecutions for offences against marine wildlife since its passage in 1981¹⁵.

11. Below low water, there is no equivalent to the Town and Country Planning system of development control that brings together regulation over the wide range of activities in a common framework. The management and consenting regimes for activities that are potentially damaging to the marine environment are largely sectoral, and environmental considerations are incidental to the main purposes and powers of the bodies that operate them.

12. The existing statutory structure in relation to the marine environment is extremely complex. In the 1990s, a myriad of policies came into effect in response to events and international obligations including the Water Resources Act 1991, the Water Industry Act 1991, the Transport and Works Act 1992, various Merchant Shipping regulations, offshore regulations and the Sea Fisheries (Wildlife Conservation) Act 1992. All of these place varying degrees of environmental responsibility on relevant bodies to take account of nature conservation when carrying out their functions, however, in the absence of an overarching marine policy framework, these responsibilities may be overlooked or poorly co-ordinated. Additionally, much of the policy and regulation governing the marine environment has been generated by international or European obligations including EC Directives on Environmental Assessment, Strategic Environmental Assessment, Wild Birds and Habitats and Species. Until recently, the Government believed the need to identify and designate Special Areas of Conservation (SAC) did not extend beyond twelve nautical miles, however, in *R v Secretary of State for Trade & Industry & Ors, ex parte Greenpeace Ltd*¹⁶ the High Court held that the EC Habitats Directive could only achieve its aims if it extended beyond territorial waters. In late 2003, DEFRA consulted the public on proposals to extend the Regulations offshore—a welcome step forward.

13. However, this is only one piece of an intricate jigsaw. The UK Government’s Interim Report on a Review of Marine Nature Conservation (RMNC)¹⁷ revealed a widespread view that there was a need to revise and reform the present arrangements. WWF believes there is a need for a review of existing legislation and policies and that the solution is to produce overarching legislation—a UK Marine Act. WWF believes that anything less is unlikely to provide a proper framework for the necessary integrated and strategic approach to the management of the marine environment as a complete ecosystem.

14. The Countryside and Rights of Way Act 2000 introduced a number of important amendments to Part I of the WCA 1981 (which concerns the protection of species), including six months custodial sentences. For example, in the year after the CroW Act 2000 came into effect:

- Northumbria Police claimed the first search warrant and arrest with a suspect arrested for possession of a goshawk on the day the CroW Act 2000 came into effect;
- Norfolk Police used Section 18 of PACE to search 3 addresses after four men were arrested for taking little tern eggs;
- Merseyside Police made the first arrest for disturbance of a bat roost; and
- Northumbria Police secured its first prison sentence of four months for an egg collector.

15. While welcoming these amendments, a number of EJP respondents remain concerned about species protection. In general, legislation protecting species listed on the Schedules of the WCA 1981 has evolved in a piecemeal fashion and, as a result, some of it is poorly worded. For example, Devon and Cornwall Constabulary notes that Section 9 of the WCA 1981 requires the protection of areas important for animals listed on Schedule 5, but defining areas important for resting or shelter for cetaceans and basking sharks can be very problematic.

¹⁵ Devon and Cornwall Constabulary, Pers Comm.

¹⁶ (2000) Env LR 221.

¹⁷ See <http://jncc.gov.uk/marine/marine—habitat/survey/mnncr.htm>

16. There are a number of other shortfalls remaining in the legislative framework for species protection. An analysis of data provided by the Home Office relating to various wildlife acts¹⁸ shows a very low conviction rate for offences under the Protection of Badgers Act 1992¹⁹. North Wales Police explained that the enforcement of this Act often depends upon offenders being caught in the act of committing offences. Improving the success rate therefore turns on granting the Police powers of entry onto land, arrest, and search warrants.

17. The absence of a specific power of arrest for some wildlife offences is a significant shortfall in Police powers. HCT cited a case at Branksome (Poole), where an Inspector had decided that the lower half of a single coastal development plot should be left natural for its three protected lizards and their habitat. The house was built, but the owner immediately set-to landscaping the whole plot. HCT discovered the work and called the Police, who threatened to arrest the gardener unless he stopped. The landowner correctly challenged the Police's power of arrest, and duly completed his landscaping.

18. The RSPB report that another constraint on the Police is the Regulation of Investigatory Powers Act (RIPA) 2000 which governs the circumstances in which the statutory enforcement authorities can undertake surveillance, what permissions are required etc. It exists to safeguard the authorities from accusations, such as an invasion of privacy, under Human Rights legislation. The problem is the Police can only obtain permission for surveillance with respect to serious crime, and wildlife crime is not classified as serious crime, which makes the investigation of wildlife offences impossible.

19. To summarise, the EJP found the statutory regime within which the enforcement agencies operate to be broadly satisfactory, with the exception of the marine environment, species conservation and some specific powers of the enforcement agencies, which should be augmented as follows:

English Nature should be granted additional powers to:

- stop people/vehicles and request names and addresses;
- require suspected offenders to take part in interviews (PACE 1984); and
- require immediate restoration following an offence being committed when not in the public interest to bring a prosecution.

The Police Service:

- should be granted the power of entry onto land, arrest, and search warrants for wildlife offences; and
- wildlife offences should be listed as “notifiable” offences.

In addition, the statutory regime should be strengthened by:

- the introduction of a UK Marine Act, which enables stakeholders to take an integrated and strategic approach to the protection and management of the marine environment; and
- comprehensive species legislation, including a review Part I of the WCA 1981 with regard to its effectiveness for species conservation, including marine species, invertebrates and plants.

Q.3 *Do responsible bodies*²⁰ who deal with this type of crime have sufficient resources and powers to do so?

20. The main enforcement bodies addressing wildlife crime include English Nature and the Countryside Council for Wales (in England and Wales respectively) and the Police Service. EN and CCW have statutory powers to protect land of nature conservation importance in England and Wales including Special Protection Areas (under the EC Wild Birds Directive), Special Areas of Conservation (under the EC Habitats and Species Directive), National Nature Reserves (NNR) and Sites of Special Scientific Interest (SSSI).

21. The Police Service is the lead agency for investigating offences relating to species, working closely with HM Customs and Excise, voluntary organisations and other groups. Most forces now have at least one Police Wildlife Liaison Officer (PWLO), although they commonly carry out these duties in addition to their other policing responsibilities. Each Customs region has a designated Customs Wildlife and Endangered Species Officer (CWESO).

22. The enforcement agencies are aided by the activities of a number of voluntary bodies. Those most active in the field of wildlife trade include the Royal Society for the Protection of Birds (RSPB), the Environmental Investigations Agency (EIA), TRAFFIC International and WWF. NGOs assisting the

¹⁸ EJP Report, Appendix 5, figure 5.1.

¹⁹ 21% convicted in 1998, 33% convicted in 1999 and 19% convicted in 2000.

²⁰ WWF has defined responsible bodies to include regulatory bodies and the judiciary.

Police Service to address offences against native wildlife include, amongst others, the Bat Conservation Trust (BCT), Buglife, Butterfly Conservation, Herpetological Conservation Trust (HCT), Plantlife, RSPCA, RSPB, Whale and Dolphin Conservation Society and the Shark Trust.

23. The Partnership for Action Against Wildlife Crime (PAW) was launched in 1995 and brings together the Police Service, HM Customs and Excise, representatives of Government departments and approximately 90 other bodies with an interest in wildlife law enforcement. It provides a strategic overview of enforcement activities, considers and develops responses to strategic problems and examines issues of strategic concern. Its main objective is to support the networks of PWLOs and CWESOs, but it is also concerned with awareness raising, publicity, training and education, as well as supporting investigations.

24. WWF has addressed any statutory limitations in paragraphs 6-14 (above), however, in relation to resources, we note that both North Wales Police and Devon and Cornwall Constabulary highlight cost as an obstacle to prosecution. One operation involving the illegal trade in endangered species is known to have cost in excess of £1,000,000, but while wildlife crime is a policing issue it is not a policing *priority*, and finance for such operations and investigations is extremely difficult to obtain. As a result, a gulf exists between the Police's legal duty and their practical ability (and resources) to deal with environmental investigations. The PAW reports that some Police Forces have successfully attracted sponsorship, but that more struggle to find the resources to progress investigations. Consequently, the PAW believes that some investigations may be falling by the wayside and that research to develop DNA technology is also being delayed²¹.

25. A number of specialist NGOs cited resource restrictions as a reason for not pursuing enforcement action themselves, particularly as that would mean displacing activities in other areas such as site management, species recording etc. However, most also believed enforcement action was "*not their role*"²².

26. WWF calls for the Enforcement agencies such as the Police Service, CPS, Environment Agency and district and unitary authorities to be adequately resourced to investigate offences and pursue the full range of enforcement options available to them. Similarly, NGOs should be adequately resourced to support the enforcement agencies in fulfilling their statutory duties.

Do [enforcement bodies and the judiciary] treat wildlife crime with proper and due gravity?

Treatment of environmental issues

27. With respect to the judiciary, Magistrates routinely encounter only one or two cases relating to wildlife crime a year. The conviction rate for wildlife offences is generally lower than for environmental crime (typically 66% as opposed to between 90–100%), however, this may reflect statutory, resource and evidential limitations. While two EJP respondents reported Magistrates recognise these offences as serious²³—others, such as Andrew Wiseman²⁴, report their lack of understanding of environmental issues to be "*very worrying*". Both the RSPCA and Devon and Cornwall Constabulary note the sentences imposed by the Magistrates vary from Court to Court, and do not necessarily bear any reflection on the seriousness of the case.

28. On a more positive note, EN found the views of Magistrates to be proportionate with society's view of the environment and, while they may occasionally struggle with the issues, they generally provide a "level playing field" for environmental justice. Many respondents are confident that the *information for sentencers*²⁵ will significantly help to address such inconsistencies—at least with respect to the judiciary.

29. The EJP also noted that the Magistrates' Association for London is considering the feasibility of transferring all non-CPS prosecutions to one dedicated location—in effect forming a specialist environmental court building out of administrative expediency. The EJP encourages and supports this proposal.

PENALTIES

30. Any person carrying out, without reasonable excuse, an operation which damages the special features of an SSSI is liable to a fine of up to £20,000 on summary conviction or an unlimited amount on conviction on indictment. The Courts are also empowered to make an order requiring that person to take certain actions to restore the land to its former condition. Failure to comply with such an order may be punishable by a fine of up to £5,000 and a further fine of up to £100 per day for as long as the offence continues. Despite

²¹ This may include a DNA test for tiger derivatives in traditional medicines, a technique to extract DNA from feather tissue rather than blood from certain birds of prey, a test for establishing parentage and relatedness amongst parrots, a test to establish the age of ivory and a test to identify shahtoosh in cloth.

²² eg Bat Conservation Trust, Butterfly Conservation, EIA.

²³ eg RSPB and English Nature, Pers. Comm.

²⁴ Trowers Hamblins Solicitors.

²⁵ *Costing the Earth: information for sentencers*. (202) Magistrates Association and the Environmental Law Foundation: London.

this, EN highlighted the particular difficulty in relation to habitats, which are often valued purely on their monetary value of the land itself, not the broader value that they have to society in general. EN believes that, in general, whilst the Courts take wildlife offences seriously, the fines remain relatively low.

31. An analysis of the RSPB's Spreadsheet of Wild Bird Offenders indicates the average fines for offences against birds vary from £30 (possessing an article capable of being used in an offence) to £1,800 (trading in wild birds)²⁶. The RSPB explained that the wide range in fines reflect the different offences included within the data. First, there are two levels of protection afforded to wild birds under the WCA 1981²⁷, namely ordinary protection for commoner species and special protection for rarer species. Offences involving ordinarily protected species are punishable by level 3 fines while offences involving specially protected species can attract a level 5 fine. Offences involving trading in wild birds include prosecutions under COTES and possibly CEMA. Such charges are few in number, but can result in much higher penalties due to the importance of the species concerned and the higher maximum penalties.

32. TRAFFIC supplied the EJP with a table of successful prosecutions reported by the Police, HM Customs & Excise and DEFRA under COTES and CEMA (wildlife trade offences). This showed that the majority of penalties imposed were fines and costs of between £1 and £500 (41%). The next highest category was fines and costs above £500 (35%). Custodial sentences were only imposed in 20% of cases. In general, TRAFFIC reports that the fiscal value of wildlife is entirely subjective, and Judges base it on what they view society's values of the environment are.

33. Similarly, the RSPCA believes the level of penalties imposed by the courts has little correlation with the environmental impact caused by the offence. For example, in 1998, a Maltese national was found to be in possession of 800 British finches, which bore all the signs of having been recently taken from the wild. He was in the process of placing illegal rings on the birds in an attempt to pass them off as captive bred, so that they could be exported to Malta for sale in pet shops and open-air markets. A greenfinch caught in the wild would be worth around £2 in the UK, but can be sold as a captive-bred specimen for £6–8 in Malta. Using various contacts, the individual's travel record was checked and it was estimated that during the previous 12 months, he had been responsible for exporting in excess of 25,000 birds—which means he stood to make a clear profit well in excess of £100,000.

34. WWF notes the penalties associated with wildlife trade offences often bear little or no relation to the profit to be made by those committing the offences. For example, highly lucrative “shatoosh” shawls, made from the fine hair of slaughtered Tibetan antelope, typically retail at between £2,000–4,000, black market rhino horn for up to £10,000 a kilo, and a pair of Lear's macaws is worth up to £50,000 on the black market. WWF believes that when considering the seriousness of these offences, the judiciary should first take into account the ecological impact of the offence and the impact on the sustainability of the species. When endangered species are involved it will often be the case that the case is more appropriately tried/sentenced in the Crown Court. In line with *R v Howe*, the level of fine should reflect any economic gain from the offence.

35. In relation to crimes against native species, a report by the Bat Conservation Trust and the RSPB refers to a case in which a property developer pleaded guilty to damaging a roost site for Natterer's bats contrary to Section 39(1)(d) of The Conservation (Natural Habitats, &c.) Regulations 1994. The developer was fined £500 and ordered to pay £100 costs. The NGOs were disappointed with the fine on the basis that it did not reflect the environmental damage caused and was unlikely to deter those who may choose to disregard bat legislation in other building projects²⁸.

36. In relation to crimes committed by property developers, it is important for courts to take into consideration the environmental damage caused to species such as badgers, great crested newts and bats and the impact the development has on their habitats. It is often the case that fines are so small in relation to the profits being made by developers that they willingly accept the risk of court action and associated penalty as part of their business costs, rather than pay for expensive relocation or restoration projects.

37. The EJP notes that the average fine per case in relation to health and safety offences in 2001–02 was 39% higher than in previous years. The HSE feels that while there is still some way to go “we hope that this is a step towards fines which are truly proportionate to seriousness and which better reflect huge variations in the “wealth” of organisations”²⁹. Many respondents believe a similar line of reasoning should be applied with respect to sentencing in environmental and wildlife cases.

38. EJP respondents noted that higher fines are not always a sufficient deterrent to would-be wildlife criminals. The RSPB reports a number of egg collectors repeatedly offend despite having received substantial fines—but that when custodial sentences are awarded (which they have been on at least five occasions for egg collectors since 2000) the number of reported nest robberies has fallen dramatically.

²⁶ EJP Report, Appendix 5, figure 8.5.

²⁷ Now amended by the CroW Act 2000.

²⁸ BCT and RSPB (2003) *Bat Crime: Is the legislation protecting bats?*

²⁹ Health and Safety Executive (2002) *Health and Safety Offences and Penalties 2001/2002*. HSE.

39. The EJP Report shows that custodial sentences are presently a rarity for environmental offences and represent a very low percentage of general criminal sentences³⁰. However, the percentage of custodial sentences imposed for wildlife offences is rather more encouraging. Table 2 (below) indicates the proportion of custodial sentences awarded for a number of environmental and wildlife offences.

40. This data confirms a growing recognition of the nature and impact of wildlife trade offences within the higher judiciary. For example, in *R v Sissen*, a case involving the illegal import into the EC of one of the most endangered birds in the world, the Lear's macaw (only 150 birds remain in the wild), the defendant was imprisoned for 30 months. Of as much interest as the jail term is the comment of Mr Justice Ousley who stated that: "the law is clear as to where the interests of conservation lie. These are serious offences. An immediate custodial sentence is usually appropriate to mark the gravity and the need for deterrence."

Table 7

PROPORTION OF CUSTODIAL SENTENCES IMPOSED IN RELATION TO VARIOUS ENVIRONMENTAL AND WILDLIFE OFFENCES

<i>Datasource</i>	<i>Type of Offence</i>	<i>Custodial Sentences (as % of total penalties)</i>
Environment Agency (1999–2002)	Waste ³¹	1.83%
TRAFFIC/WWF ³² (between 1987–2002)	Trade in:	
	Birds and bird eggs	19.1%
	Reptiles, spiders and amphibians	8.3%
	Plants	20%
	Artifacts	14.3%
	Mixture	50%

41. EJP respondents welcomed the judiciary's approach in this regard, but the RSPB believes the use of custodial sentences should also be considered more routinely for those committing serious and persistent crimes against native species. Graham Elliott observes "apprehending collectors is comparatively easy but catching those responsible for killing birds of prey is far more difficult. At the moment, those responsible still believe they cannot be caught, and even if they were would still most probably receive a fixed penalty on conviction. Until one or two are convicted and awarded a custodial sentence, financial penalties alone are unlikely to change the situation".

42. North Wales Police highlight the need to ensure tougher penalties and custodial sentences are addressed consistently across the UK. In this respect, the *Guidance for sentencers* should be adapted, if necessary, for use in the Crown Court and other UK jurisdictions. Furthermore, the guidelines should be revised to incorporate other, perhaps less frequently encountered, but nonetheless important areas of environmental crime, such as "bread and butter" offences dealt with by the RSPCA and the Police Service on a daily basis³³.

43. Finally, WWF was pleased to report that the Criminal Justice Act 2003 has increased the maximum possible custodial sentence for offences under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES) from two to five years³⁴. This will make such offences "arrestable offences" under s 24 PACE 1984 and give the police additional powers, eg the power to enter and search premises without a warrant that are owned or occupied by a person under arrest for such an offence³⁵. Similarly, it will also grant the police the powers to take fingerprints, obtain DNA samples, compel suspects to be interviewed and, where appropriate, bail suspects to court with conditions.

44. With respect to wildlife trade offences, the *Magistrates' Court Sentencing Guidelines 2002* recommend the prosecuting authority should be awarded reasonable costs reflecting the costs of the investigation, file preparation and presentation. The Court of Appeal set out principles in *R v Associated Octel Ltd*³⁶, which were approved and reviewed in *R v Northallerton Magistrates' Court, ex parte*³⁷, which determined that costs should not be seen as disproportionate to the fine.

³⁰ We note that Environment Agency data for 2002–03 shows prison sentences were awarded on six occasions, all for waste offences, with five being in the Midlands ENDS Report 346 (November) 2003, pp 9–10.

³¹ Extrapolated from EJP Report, Appendix 5, Figure 2.4.

³² EJP Report, Appendix 5, Figure 7.22.

³³ RSPCA, Pers. Comm.

³⁴ See S.307(2) Criminal Justice Act 2003 (ISBN 0 10 544403 0).

³⁵ S. 18 PACE 1984.

³⁶ (1997) 1 Cr App R (S) 435.

³⁷ *Dove* (2000) 1 Cr App R (S) 136.

45. In relation to penalties for wildlife crime, the EJP Report calls for:

- the introduction and application of tariff guidelines for environmental and wildlife offences, operating alongside the Guidance;
- the judiciary to place particular emphasis on the environmental or ecological impact, or potential ecological impact, of an offence. Wherever possible, the level of fine should reflect the economic gain arising from the offence. Magistrates should be encouraged to take account of the maximum fine available for wildlife offences;
- the judiciary to apply the full range of sentencing options available to them, ie the imposition of Community Service Orders and the greater use of custodial sentences for serious environmental or ecological offences, including offences under the WCA 1981 and CroW Act 2000;
- The Courts are urged to routinely award successful individuals and organisations bringing environmental and wildlife cases all reasonable costs of investigation and legal costs. With respect to corporate offenders and offences involving wildlife trade, the order for costs should not be disproportionate to the fine imposed; and
- enforcement agencies and voluntary organisations to publicise enforcement action wherever possible and appropriate.

46. The EJP also recommended the *information for sentencers* be expanded to cover other “bread and butter” issues dealt with by the Police Service and the RSPCA and information on sustainable development. Guidance should be produced for use in the Crown Courts and accompanied by a programme of training for Crown Court Judges (a responsibility of the Department of Constitutional Affairs). The effectiveness of the *information for sentencers* should be monitored and evaluated.

47. Finally, the EJP supports the designation of specialised Magistrates’ Courts and/or Magistrates.

Q.4 Is there sufficient dialogue and co-operation across Government and amongst the various bodies responsible for dealing with this type of crime?

48. There is no central record of reports of wildlife offences, nor any comprehensive information about how many reports lead to action by the enforcement authorities, and subsequent prosecution. In fact, the Police Service reports that wildlife offences do not have to be recorded as crimes, to the extent that only a few forces could supply data showing the extent of the issue. This makes it difficult for enforcers to prioritise their efforts where they are most needed, assess the extent to which their activities are making an impact on wildlife crime and, in turn, pass information back to the relevant scientists, policy makers and enforcement bodies responsible for setting targets and priorities.

49. In April 2002, PAW launched the National Wildlife Crime Intelligence Unit (NWCUI) as the national focal point for wildlife crime related intelligence. The priorities identified by the Unit are the illegal trade in caviar, birds of prey and parrots, reptiles, illegal trading of traditional East Asian medicines and the illegal trade in derivatives such as ivory and shahtoosh. The Unit also welcomes information about issues such as badger baiting and other bird crime. WWF suggest that one possibility could be that the National Wildlife Crime Intelligence Unit (NWCUI) could be funded to establish and maintain a central record of wildlife offences, including not only convictions but all recorded incidents. In order to facilitate this, wildlife offences should be “notifiable” offences.

50. Finally, to support this in policy terms, the EJP notes the recommendation made by Capacity Global that the delivery of policy relating not only to environmental quality, but also regeneration, social inclusion, health and legal services, is required from the DCA, DEFRA, the Office of the Deputy Prime Minister and the Department of Health³⁸.

CONCLUDING REMARKS

51. The EJP Report shows that despite a number of recent improvements in domestic legislation and awareness within the judiciary, there are still significant shortfalls in the protection of wild species and their habitats. WWF calls on the Sub-Committee to highlight inadequacies in the protection of the marine environment, species legislation and some specific powers of the regulatory bodies. We also call on the Sub-Committee to encourage the judiciary to regard offences against wildlife with due seriousness and to use the full range of sentencing options available to them in order to deter would-be and persistent offenders. Finally, we call upon the Sub-Committee to press for the central recording of wildlife offences, to enable the Government to obtain a clear and objective picture of the scale of wildlife crime.

April 2004

³⁸ Adebowale, M (2003) *Using the Law: Barriers and Opportunities for Environmental Justice*. Capacity Global.

Witnesses: **Mr Crawford Allan**, Regulation Co-ordinator and **Ms Stephanie Pendry**, UK Enforcement Officer, TRAFFIC International; **Ms Carol Hatton**, Environmental Law Officer and **Mr Stuart Chapman**, Species Programme Leader, Campaign Director, Wildlife Trade Campaign, WWF-UK, examined.

Q309 Chairman: Welcome. Thank you very much for coming along. I do not know how you are going to allocate these questions between yourselves but we will take you as you want to be taken. One of the things we have been trying to do in the course of this inquiry is to establish the scale of wildlife crime. We have established that one of the problems is there is no central recording system for this type of crime and, also, there is no clear definition in law of what a wildlife crime is. Do you think that a centralised database is as important as some of the other witnesses we have had seem to believe?

Ms Hatton: We do. We do feel it is very important—that is why we put it in our evidence—partly because it is very difficult: if you have no idea of the scale of what is going on you cannot then prioritise your resources, so if you do not know where the main problems are you cannot follow that up. Also, in terms of how effective prosecutions are, you cannot tell whether prosecutions are actually making a difference if you are not monitoring the number of crimes there are and whether the trend is actually going up or down. So in order to get an overall picture as to what is going on we feel it is actually very important to have a national, central database of all the different crimes. I think Stephanie will talk more about wildlife trade but from WWF's point of view we feel that should be a comprehensive database of other offences, not just wildlife.

Q310 Chairman: Who should run that database?

Ms Hatton: That is a good question. One possibility would be the National Wildlife Crime Intelligence Unit which already gathers data about those sorts of offences, but they would need to be funded, I would have thought, to establish and maintain a database of that extent.

Ms Pendry: Following on from what Carol said, I think it is a big job to try and do this on a centralised and national level. I think the best way to do that would be to try and do it through some sort of recordable criteria that had been set up by the Home Office, in the way that both COTES and CEMA are currently recording crimes. Things are recorded through the Home Office, such as whether prosecutions take place, and if those types of recording categories can be applied to other types of wildlife crime and wildlife trade crimes we would like to see it, and I think that would give us a better indication for what the level of crime is—not only in terms of prosecutions, we are very keen to see the number of incidents to be recorded as well, because very rarely do these go to prosecution in comparison to the amount of investigations that take place. So the amount of incidents could be recorded and, also, in terms of the number of cautions when it comes to COTES offences; there is no record of how many cautions have been given, so how can you have an estimate of the differences between the level of cautions and the level of prosecutions and so on?

Q311 Chairman: The absence of data on this reflects the relative lack of resources, which in turn reflects the fact that most people in this country, I suspect, do not care very much about this issue. What have you got to say about that? Why should extra taxpayers' money be made available to tackling this when, clearly, it is not on the radar screen of most of our citizens?

Ms Pendry: I would disagree, actually; I think it is on the radar screen of a lot of citizens and I can base that, mainly, on the information that is received both at WWF—which I think Stuart can mention something about in a moment—and which gets channelled through to TRAFFIC in terms of the concerns that the public have about issues about both wildlife trade and, also, other issues that come to our attention, because the public does not segregate it out in their own minds as to what is a welfare concern and what is an importation concern, and so on. We get to hear about a whole range of concerns from the public, and I think they feel very strongly—strongly enough to take the effort of finding out how do they report such a crime and who do they report it to, giving witness statements to the police and so on. I think they are concerned. I think it is the public who have a strong feeling about this, and obviously that is not definitely reflected among government departments, who have their own challenges as to where funding must go.

Mr Chapman: In the last year WWF and TRAFFIC ran a wildlife trade campaign, and during the course of that campaign we collected over 120,000 signatures calling for the amendment that was eventually brought to the Criminal Justice Bill. We also had the backing of the majority of MPs from the House of Commons, again based on constituency concerns over, in this case, wildlife trade crime. Again, being the largest conservation organisation in the world, where we have over five million members, this is very much seen as a major source of public concern in terms of wildlife trade crime but, more broadly, environmental crime as well.

Q312 Chairman: So, there is a need for a central database. How likely is it that the need for an agreed definition on wildlife crime is going to be achieved?

Ms Hatton: In terms of how it is defined as an offence, do you mean?

Q313 Chairman: We need all the key players to sign up to what a wildlife crime constitutes in law. How far away are we from achieving that?

Ms Pendry: I think there was a submission that you received from the North Wales Police which touched on this slightly, in terms of trying to come up with a list of the legislation under which we could qualify what a wildlife crime would be. I think that is a very good starting point because, as I mentioned before, it is very easy to get distracted, perhaps, into welfare issues when we are talking about animals, in particular. Whether that constitutes a wildlife crime or not, I think, is what we need to decide, and one of the ways we can do that is to be able to look at the

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different pieces of legislation we have and say, "Well, the crime is committed under COTES". If a crime is committed under the Animal Welfare Bill, as it is at the moment, then does that constitute a wildlife crime or not? That is our starting point. I do not have the answer because being a wildlife trade organisation we concentrate very much on COTES and similar issues where knowledge of the other areas of wildlife crime legislation is not that strong, but that is where I think we should start.

Q314 Chairman: You do agree there is a need to obtain a definition soon? Without a definition there is no basis to go forward at all.

Ms Hatton: Yes, absolutely. I think Stephanie is right. One of the ways that we attempted to define environmental crime when we looked at the EJP report¹ was in exactly that way. Environmental Crimes more difficult to define than wildlife crime, obviously, because the environment is that much more all around us. We found that listing out the various offences was the best—at least the clearest—way for us to do it, and it was a starting point at least. I think it is very important.

Q315 Sue Doughty: I would like to turn to plant crime because this does not seem to have the profile that we see with animal crime. Do you have any ideas on why you think it does not achieve its profile?

Mr Allan: I think with plant crime it is a much more difficult issue to get to terms with. I think it is a far less emotive issue and, therefore, there is far less enthusiasm about the level of crime. To be honest, if you think about somebody removing a plant from the wild it is quite different to somebody thinking about the mother of a baby orang-utan being shot so that somebody can actually take that almost human-like primate. It is a very different issue; it is very emotive, and plant crime is not thought of in the same way. It does go very much undetected and the scale and nature is not really known because it is so difficult to detect. When it comes down to enforcement it is very, very difficult to determine what is legal and what is illegal. There are huge problems with identification, very often. You have got 28,000 species of plants, over 20,000 of which are orchids and very often those are traded and transported just as a bundle of green leaves, and even top experts will not know what species they are until they have flowered. So to the enforcer and the layperson it is almost impossible to determine what is the species they are looking at, and so on. So it is difficult because it is not emotive and therefore there is less enthusiasm, but also there is this lack of resources, knowledge and expertise within enforcement agencies. There is one key problem here and that is the issue of propagation of plants, in that by nature their biology is so different to animals that you can take seeds from plants and you can propagate them in their thousands, so from one plant you can make many. Therefore, in relation to some of the most endangered plant species in the

world, where there may only be a handful of plants left in the wild, you can actually find them in very large numbers commercially. So how do you sift between the multitude of many thousands of plants you might see, even, on the supermarket shelf and the really rare ones that have actually been taken from the wild? It is a great dilemma for law enforcement. So this issue of propagation, whether or not it is artificially propagated or whether or not it is from the wild, is very, very difficult. Also, when you talk about plants, you have got a huge diversity in terms of people involved in the illegal trade in plants; the range and profile is immense from those involved in the large-scale commercial importation of timber worth hundreds of thousands of pounds in one shipment, through to the individual person who sees themselves as an academic at the frontline of science who is actually out there in the forests of Peru collecting plants and taking them back home in a suitcase, who will then just keep them at home for their own pleasure, but they have actually, probably, just collected the last specimen left in the wild. There are those who also collect from the wild but for commercial purposes, so they will be bringing back and propagating them and trading them. It is a very complicated problem to tackle for those reasons. I think there is very little understanding of this. I can give you a few examples of some cases that show why this is serious and why we need to think of it seriously. There was a species of orchid from Vietnam which was not even described in science; it had never been known before in science. The first time this species actually appeared was when it was being sold in Germany, before even being described. This species was described—from illegal specimens in some cases they are described—and they ended up actually not far from where we are sitting today; very shortly after a period in Germany they were sold in London. So a species that is so rare that it has never been seen before, before it is even known to science, it has ended up being sold in London.

Q316 Chairman: When was that?

Mr Allan: That was last year, and they were detected by wildlife inspectors at an orchid fair.

Q317 Chairman: This is a testing question: can you name the plant?

Mr Allan: *Paphiopedilum vietnamense*, from Vietnam. Also, just another example closer to home, there are collection trips for interested botanists to go to nice places like the deserts of Mexico; groups of UK citizens go on trips organised by particular companies who set about showing them the best sites for species like rare cacti, species found only in small sites in deserts in Mexico. I think two years ago there was a group of UK botanists who were caught in Mexico collecting rare and endemic cacti species from protected areas on an organised collection trip in the name of botany, and so on, which they will then be taking back to the UK, either to keep for their personal use or for propagation for commercial benefit. Those are some sorts of highlights of the impact of plant crime.

¹ A report by the Environmental Justice Project (comprising WWF, The Environmental Law Foundation and Leigh, Day and Co Solicitors) which was published in March 2004.

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Q318 Paul Flynn: What happened to them?

Mr Allan: This was something we heard about and looked into it further. They were caught by the authorities in Mexico and they were held in jail for a while. The organiser of the trip was known to the Mexico authorities as doing this before—he was actually a Greek guide—and in the end they were simply fined and let go and the plants were retained.

Ms Hatton: Are you interested in native (?) wildlife crime as well, or just the wildlife trade angle that Crawford was mentioning?

Q319 Sue Doughty: At the moment we are doing gardening—certainly on that area. Have you got some—

Ms Hatton: In terms of one of the points that was made to us when we did the research for the Environmental Justice Report, by North Wales' Police, they had a difficulty with Section 14 of the Wildlife and Countryside Act which basically tries to control the spread of non-native species in the country. It does provide that if any person plants or otherwise causes to grow in the wild any plant which is included within Schedule 9 they shall be guilty of an offence. If you look in Schedule 9 that covers things like Japanese Knotweed, which you may have seen growing prolifically along lots of wetlands in the UK, and the problem is then our own native flora cannot compete with those species, so they get knocked out of the way. One of the problems the police have is that the wording of Section 14 makes it difficult for them to undertake prosecutions, in that nobody really knows what "in the wild" means. Does that include people's gardens? Would it cover a huge private estate in Scotland? There seems to be very little land in the UK that is termed to be "wild". Also, the definition of "causes to grow"—does that require somebody to go out and plant and tend something, or does it mean that they can just, by an act of omission, allow something to grow unchecked on their land and spread to other areas where it causes problems? North Wales' Police are saying that with regard to the latter it does seem that some sort of act is required in terms of propagating these plants outside of the area. So they have particular problems in not being able to bring any prosecutions under that Section of the Act and they are not aware of any other police forces that have managed to do so either.

Q320 Sue Doughty: One of the areas we have got concern about is gardening and gardening programmes—the huge expansion of decking and different varieties of plants that traditionally have not been grown in this country. Of course, one has to distinguish between what one might call plant collections and exotic plants. Really, have we got an issue here—and this is a country that has for hundreds of years introduced non-native species—where it has now gone too far? If so, how do we persuade people about what they should be planting and what they should not be planting, and what the effects of that might be? What is your view on that?

Ms Hatton: I think it goes back to what I was talking about before. As you say, it is exactly that, is it not: it might be just as much people with private collections of animals as it is with plants; that you bring all of these species into garden—again, is a garden a wild place or not—and then they spread out. I suspect that is the way that many species like Himalayan Balsam or Japanese Knotweed in this country actually started out. How I think you might be able to control it is to have some better definition of what is meant by "in the wild" and "causes to grow". That would enable prosecutors to try and address these problems—and perhaps more guidance about the type of plants that people would be advised to grow. As you say, gardening is a massive, public interest, is it not? There is a huge amount of interest in it. If there was more guidance to people in ways such as "Please don't use peat; use peat alternatives" or there was some guidance about the type of plants that (a) will grow in this climate (because I am sure we all grow lots of things that do not actually survive) and (b) are the sorts of things that are not going to cause a problem when they escape out into the countryside.

Mr Allan: The only thing to add, probably, is what you mentioned, which is that the use of the media to promote gardening is probably the exact tool you use to dissuade people from using invasives. You turn it on its head and you have those particular celebrities or programmes doing features regularly on particular problematic species, and you have books produced such as *The Bad Gardening Guide* rather than *The Good Gardening Guide*!

Q321 Sue Doughty: So we are missing a trick, are we not, because we should be seeing things fed into programmes about plant crime—

Ms Hatton: Absolutely.

Sue Doughty: We have had a lot of high profile changes in the use of chemicals in the garden, but this is something we hear very little about.

Q322 Chairman: You have mentioned several times that we need to redefine and better define the phrase "in the wild". Would you actually support the idea of legislating for what people can put into their own gardens?

Ms Hatton: I think you would have to ask the police about that because they would have to be the people who would enforce it. It sounds to me as if it would be very difficult to enforce that.

Q323 Chairman: The problem is, if you have got a garden that backs on to "the wild" and you put in Himalayan Balsam, it is going to get into the wild, yet there is in law no power to prevent you from doing that. Do you think there should be?

Ms Hatton: There is in terms of if, say, you live next door to an SSSI. Presumably then the legislation protecting SSSIs would cover land adjacent to it as well as the SSSI itself. However, that is a very small proportion of the land in this country—I think there are 5,500 SSSIs for the whole of the UK.

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Q324 Chairman: In which case, when you say define better what “in the wild” means, do you have any suggestions as to how?

Ms Hatton: I think you would need to ask the wildlife group PAW (Partnership Against Wildlife Crime) to sit down and have that out with groups like Plantlife, the police forces themselves and other bodies involved in enforcing that.

Mr Allan: I think the way to approach this is, perhaps, in tandem with the importers and wholesalers who are bringing in the species that may be problematic, and getting through to them. If the plants are not available to consumers in the first place because you are applying certain guidelines on what they will trade in, I think that is going to be a very good deterrent.

Q325 Sue Doughty: It is a problem. We have got another issue here about the evidence we had from Plantlife and about the threat to native plants, such as bluebells, snowdrops and primroses. Again, we are getting some measure of protection but do you have any more thoughts about policing on this one?

Ms Pendry: It is an area that the police have had a few successes on in terms of looking at plant crime on this level, especially in the eastern half of the country where there seems to be a proliferation of organised gangs almost, going out and targeting both bluebell woods and areas where snowdrops are, digging them out with JCBs and collecting thousands of these which are not very valuable in themselves individually but if you are talking about hundreds and hundreds of thousands of bulbs you are talking about a fairly large amount of money. There have been a number of prosecutions but it is not necessarily based under wildlife legislation; the police have found that it has been easier to prosecute under something like the Theft Act because, of course, they are stealing from somebody’s land and a plant can be somebody’s property. So they would be prosecuted under the Theft Act. There has been one case of a prison sentence being received. The Theft Act was for the bluebell theft and there was also a prosecution under the COTES legislation as well, where they received a community service order. So there have been some improvements in that sense, but I think we come back to the question of awareness; a police officer on the beat is not going to understand or really be terribly aware that this is possibly a crime if someone is out there digging, and if they come across a van full of snowdrop bulbs with men with spades they are very rarely going to stop them and say “What have you been doing? Is it a crime?” That comes back to the awareness issue, and it is something that a number of forces within East Anglia, in particular, have tried to concentrate on. During the season when this happens they do put out publicity both to the public to say, “Look out for this” and, also, amongst their own police forces to try and highlight this issue as well. It always comes back down to awareness, really.

Q326 Sue Doughty: Particularly to WWF, you have been identifying some of these problems in Section 14, and we have touched on them just now. Is there

anything else that needs to happen around Section 14 in terms of amendment or strengthening definitions?

Ms Hatton: Other than those two things there was nothing else that was raised to me by the enforcers.

Q327 Sue Doughty: Are you going to feed that into Defra when they review the Act?

Ms Hatton: Yes, absolutely.

Q328 Sue Doughty: One further area I am interested in is the impact of wildlife crime on marine life. Do you think it is a case of “out of sight out of mind”?

Ms Hatton: I think that is absolutely true. I think there are two basic areas with marine crime. The first relates to the lack of any sort of coherent legislation for the marine environment, and the second relates to species protection, perhaps, as you say, under the waves where people are not aware of the species and there is a very low level of awareness. In fact, we spoke to Devon and Cornwall Constabulary who have done a lot of work on marine crime, and they were originally talking to us about the problems they had with cetaceans (that is dolphins) and the basking shark in terms of areas that were important for them for resting and shelter, and how the old Wildlife and Countryside Act tried to protect those areas. However, doing that in a marine environment is very difficult because you cannot draw a line around a map in the same way you can on land, where you can say “That area is protected”. In fact, the CroW Act has actually now addressed that problem and protects species everywhere they occur in marine environments, so it is not such a problem. The thing they do say is absolutely the point you made, which is the low level of awareness about marine crime, and they gave us a good example of a very recent case just off the Isle of Man where some divers swam close to some basking sharks—literally within two metres of them. When they looked into how close you can go before you cause an animal like that disturbance it really was not very clear; some people said four metres, some said 100 metres, and there was a lot of confusion. Plus if you are disturbing it who do you report it to? Who is responsible for enforcing all of this marine wildlife legislation? So I think there is a problem of people not knowing what marine crime is going on, and even if they do see it they might not always know it is a crime and they will not necessarily know where to go to report it.

Q329 Sue Doughty: There are areas in California where you have very clear notices stating that if they come up to you, you are in the wrong; you have got to keep that distance. Is there anything more we could be doing in that direction, closer to the point, about making people know that it is their responsibility to allow the freedom of movement of animals such as sharks?

Ms Hatton: One of the things that the Constabulary suggested was a sort of code of conduct for the marine environment in much the same way as we have the Highway Code or the Countryside Code. We all know that when you go in the countryside you close your gates and you do not drop litter—it is

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something we are all brought up with. They said it would be very useful if we had a marine wildlife code of conduct. We all like to go to the seaside and have our holidays, but if we were brought up with a code of standards of behaviour in the marine environment that would help a lot. They said that could apply to all sorts of users; it could be for people who are above the water, on jet-skis or boats, in the water, in terms of divers, or under the water—so that would cover things like contractors and larger diving companies. As you say, that would set down some standards of behaviour and make sure that people were better informed about how they might behave or not. They mentioned as well the recent Nature Conservation for Scotland Bill—the equivalent of the CroW Act in Scotland—where they introduced a code of conduct for watching marine wildlife into the statute, and they said that was a real step forward and they would like to see something similar introduced for the rest of the UK.

Q330 Paul Flynn: There was an article in *The Observer* in March about Chris Beinvenue and his alleged activities as what appears to be a very irresponsible dealer in selling animals to British zoos (there were three zoos named) and actually buying some of the surplus animals in the zoos. He confessed he does not mind what happens to the animals after he sells them, including very rare animals; he said you could eat them, if you want to. We raised this with Defra and I think they are getting back to us. Do you think that article reflects what the true situation is? Is this trade going on? Is it significant?

Ms Pendry: I think there are elements of truth in that and there will always be or could always be certainly perhaps some of the smaller zoo establishments that have set themselves up which are able to or do, possibly, trade in this way. I think, from what came out of that article and what was stated, really, in that article, no law has been broken; it was simply outlining that this was, perhaps, morally wrong and that, really, the principle of zoos is that the zoos are there to carry out two functions, and when they apply for their zoo licences the two functions they have to fulfil are the conservation benefit of the species and to play an educational role with members of the public who come to see those zoos. If a zoo is then trading and returning profit primarily rather than being there for the benefit of species and for educational purposes then I feel that they are not meeting the requirements of their application for these zoo licences. Perhaps that is one area that should be looked at in terms of who licenses zoos. That is where we come across another problem, really, in that it is local authorities who license the zoos but it is Defra who licenses the zoos in terms of being able to apply for an Article 30 certificate which allows zoos to trade between themselves without the necessity of other paperwork. This gives them more of a free hand to trade. My view is that that is a good thing because they are working for the conservation of the species. So we have a bit of a disjointed system where we have local authorities issuing licences for zoos without consultation with other agencies such

as Defra, who are responsible for other aspects of licensing the zoos. I think that opens up an opportunity for people to, perhaps, deal in animals or trade in animals where the prime aim is not their conservation. I think it is certainly something that does happen both in the UK and, also, throughout Europe. If a zoo is not able to receive the licences they need in the UK from Defra then they may be able to get animals with licences that have been authorised from other parts of Europe and other Member States where the ability to do that is a lot easier

Q331 Paul Flynn: There does seem to be an implication that there were crimes committed. He was touting round some rare chimpanzees from Africa without any details as to their provenance. He was also forced to return two sea eagles to a bird zoo in Britain where he did not have the correct paperwork.

Ms Pendry: Yes, I think the offences were committed by him rather than by zoos here in the UK.

Q332 Paul Flynn: He is notorious apparently, and there have been complaints about him elsewhere in Europe. ACPO in their written evidence referred to an increasing trade in endangered species on the internet, and they were saying that they were taking some action, and Defra and Customs were saying that they were starting to look at this. Is this something that concerns you? Are there any practical steps you can take to reduce the trade which is becoming a problem?

Mr Allan: I think this is something where I feel we are behind the game on enforcement. This is really the way that nearly all wildlife traders now operate, through the internet. Communications are done by e-mail, bulletin boards, chat rooms, websites, and this is how the trading is now being done, particularly for the rarer specimens and the more illegal specimens. The communications are being set up over the internet and I feel that enforcement is just not catching up in tackling this. We have to get smarter in dealing with this; we have to learn from other areas of enforcement that are doing very good work in tackling internet crime, like in paedophilia and so on. There needs to be the technology put in place to try to get to this because it is very difficult to find out actually who the perpetrator is. There are major questions over the jurisdiction because you do not know where that perpetrator is; they may have set up a website that appears to be based in one country when, in fact, they are from a different country altogether. Also, preserving the evidence is necessary to achieve. There are many, many convoluted areas to this that make it very difficult for your average police or customs officer who deals with wildlife to tackle. We have seen a very rapid growth in internet trading, not just auction sites but just the way that wildlife traders operate. In the past it was very difficult, perhaps, for an illegal exporter to find out who was a suitable illegal importer who was like-minded and not going to cause any problems. In the past communications were done through 'phone and fax, but during the period of

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time I have worked, the past 10 years, we have seen this huge growth in traders who have got illegal specimens being able very quickly to find customers and other traders who are like-minded. This network internationally through the internet is building up. For enforcers, the problem is that to get into it you have to have good knowledge of the trade and species because there is an internet shorthand which is used. You can go into orchid list services or orchid chat rooms where people are just talking about their orchids and talking about particular specimens and there are, literally, hundreds if not thousands of people discussing species of particular interest over the web, and also there are trade deals going on; people are offering certain things and it is all done in a shorthand way in trade terms. Unless you are very specialised you will not know that that species that they are offering is actually a very rare species that there is no way they could have acquired legally. So it is very difficult. I think there needs to be some specialism set up to do that—certainly the National Wildlife Crime Intelligence Unit—to ensure that they have the planning and resources that work to actually start to focus in on this and, through their priorities, start to tackle it one group of species at a time, whatever that may be. I really feel that this is the biggest challenge because this is the way that the trade is happening now, over the internet.

Q333 Paul Flynn: That is very depressing. I think there must be an orchid dealer outside trying to sabotage the session! Knowing the worldwide web is anarchic and anyone committing a crime has a great lead on anyone trying to stop it, but is there really much chance of closing it down? You have talked about it as growing, but have you any idea of what the scale is?

Mr Allan: It is frightening. There was a study done by a French NGO, I think, about four years ago, just looking at the trade in parrots on the internet. I cannot remember the figures but I can certainly get you that information, but they did a study looking at all the websites trading in parrots and, basically, produced volumes of paper this big of just the website pages. It is staggering the growth there has been. However, I do not think it is all negative. I think the internet is a huge resource for enforcement as well. Anybody who has knowledge of a certain trade element can sit there, search the web and you can detect illegal trade. If you have the resources to be able to track that back to the perpetrator then you have a good advantage, whereas before it was very difficult to break into the networks. You can sit in your office or in your police station monitoring what is going on from your desk, you can see the discussions going on over the internet through chat rooms and so on, you can see who is offering what on the websites, and you can see those people who are saying, “We’ve always got the rarest things in stock; if we don’t have it we can get it for you”, and you always know that is a very good indication of the people to look at.

Q334 Paul Flynn: So our concern should be the internet rather than traders like Mr Bienvenue?

Mr Allan: I think if we want to look strategically at this and look at the problem and deal with it systematically we need to work out a way in which we can deal with this over the internet, definitely. It needs to bring together both law enforcement agencies and experts in the fields of the types of groups of species that are mainly problematic.

Q335 Chairman: We heard last week from Defra and Customs and Excise about some of the work they are doing on monitoring internet sales and so on. Are you involved in that work?

Mr Allan: TRAFFIC is, yes. We have been monitoring trading on the internet for a very long time. You are talking about Defra particularly—

Q336 Chairman: It is the National Wildlife Criminal Intelligence Unit that is actually doing this. Do you feed into them the work you are doing?

Mr Allan: We feed very closely into the Intelligence Unit, basically because one of our staff number is actually seconded to it on a part-time basis, so we have a direct linkage there. We are bringing expertise into the unit by this secondment and we are providing expertise and knowledge of the trade to help the crime unit in its work. This is a way of working very closely with the unit. We have worked with Defra for over 10 years and they have been supporting us in the work we are doing, and they are actually guiding what work we are focusing on. The only way ahead now is to use the internet to detect crime as a starter and then take it further.

Q337 Chairman: So, I take it, you are happy with the attention being paid to that by the authorities?

Mr Allan: I think it has to be measured and I think it has to be put into context. If you are looking at, perhaps, web auction houses where you have individuals selling individual items, that is very interesting and, yes, it shows the scale of the smaller trade and so on, but I do not think you can necessarily find the larger-scale, more significant trade being done through particular web auction houses. I think most of the more significant trade is done by traders through their websites or individually with other traders; I do not think it is necessarily the internet auction systems that are the big problem, mainly because, largely, those people who are selling cannot really remain anonymous because their contact details have to be there and the auction houses know who these people are through, maybe, credit card details in paying for the service, or whatever it may be. So they can always be tracked back through those systems, so the big players necessarily are not using the auction houses, they are doing it through web pages, through chat rooms and just using the internet for communication.

Q338 Chairman: So focusing on e-bay would be a mistake?

Mr Allan: I think focusing on e-bay is not necessarily a mistake, I think it is very useful because it can provide some leads. Focusing on e-bay was very

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useful until recently. I think there was a lack of regulation on internet auction sites but there are auction sites that are being much more responsible now, like e-bay, who are starting to regulate the systems and they are starting to ask for help on how do we stop this. Those people who are trading in illegal items are being cut out of the system, so very quickly somebody is expelled from the system. It is going to be a knock-on process: the police will call customs, and whoever it may be will find those people trading on a different auction site; they will get to that auction site and that auction site will start to smarten up its act and resolve the problem, but it will just happen as a result of events like this.

Q339 Mrs Clark: This is for Mr Chapman and Ms Hatton. In terms of your evidence, you have talked about the limits—the stranglehold, perhaps, some people might say—on police by the RIPA Act passed in 2000, which means, in layman’s terms, that policemen can only obtain permission for surveillance in respect of what are determined as serious crimes. You are saying that because wildlife crime is not considered or indeed legally classified as serious crime that really purposeful investigation of such offences is not feasible—in fact, quite impossible. What are you doing about this? Are you pressing for RIPA to be amended? In fact, what should we do?

Ms Hatton: We obviously know all about the issue—I do not need to tell you what that is. The reason we raised RIPA within the Environmental Justice Report, which looked at both civil and criminal law was because when we were trying to identify which basically looked across both civil and criminal law, we were trying to identify what barriers there were to environmental justice. So within the criminal sphere we talked to all the different enforcement bodies and the NGOs involved in enforcement activity, and it was the RSPB who reported, “Well, RIPA is a particular problem for us”, and they exactly described it in the terms you have given. In terms of what we are doing about it, we are not doing very much other than to highlight the problem through that publication. However, I know Stephanie wanted to say something about RIPA in the trade context as well. Do you want to mention that now?

Ms Pendry: It was not in the trade context, it was just an example whereby police forces had been able to work within the boundaries of RIPA for an operation that was done at the beginning of this year to protect the hen-harriers, which I think is something you are aware of.

Q340 Mrs Clark: Yes.

Ms Pendry: They did manage to be able to get a sanction so that they would be able to carry out surveillance under this, so I think the fact that this precedent has now been set and that at least two police forces have been able to do this, I am hoping, will—

Q341 Mrs Clark: Which are they?

Ms Pendry: I cannot tell you for sure. I am pretty sure it was somewhere in the north, like West Yorkshire, but I am not entirely sure. I can come back to you on that.

Q342 Mrs Clark: It would be useful to know who they are.

Ms Hatton: One of the things we talked about was the precedent that has been set by this case and, perhaps, the need for a lower threshold for surveillance to be able to be undertaken—it would be a shame if that was just a one-off. What we really need to do, I think, is formalise the situation where surveillance could take place for wildlife crimes as well. Whether that is by amending the guidance, or whatever, we certainly need to see that something more formal happens rather than just having a one-off case-study.

Q343 Mrs Clark: And we could, indeed, consider this in our report. For both of you: you have actually done a joint report *The International Wildlife Trade and Organised Crime*, which was published in 2002. In this report you have stated that 50% of persons prosecuted for wildlife crimes over a one-year period actually had previous convictions for serious offences including drugs and firearms. Just slightly diverging, during the process of this inquiry we have found from other people we have interviewed that people who are likely to commit wildlife crime, when investigated, are found to have done lots of other really serious crime as well. So you are not the first body of witnesses coming through to tell us this. However, despite this link to serious crime, which seems to me not to have been flagged up in the media or, indeed, on the floor of the House of Commons, it seems that few police forces are actually attaching sufficient priority, or indeed financial resources, to wildlife crime and that, actually, until chief constables receive not only a signal but, I would say, an instruction from government that taking this seriously and tackling wildlife crime is a top priority—because it can be a lead in, if you like, to some of the targets that the Government is telling chief constables that they have to be hitting—nothing is going to change. Is there, in your view, a need for a fresh commitment from Government to tackling wildlife crime? I say “a fresh commitment” but I am not aware there has been even an initial commitment. Would you agree with that?

Mr Chapman: I think, firstly, one needs to look at the intent, and it has come up with a number of questions relating to plant crime and zoo cases as well, which is why do criminals get involved in the first place? The reason is that there are, of course, high rewards linked to trading in some of the world’s most endangered species and there is low risk of detection. There are also, generally, low penalties, whether it is custodial sentences or fines. So that is the attraction; that attracts the serious criminal. In some cases, gram-for-gram, some wildlife products are worth more than narcotics—they are high-value

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products. I have here with me today an example of something that was seized on the streets of London. I can pass it round as evidence.

Q344 Mrs Clark: Can we touch it?

Mr Chapman: You can. It is a shatoosh shawl, made from the wool of the endangered Tibetan antelope. The price tag on that shawl, as you will see, is somewhere in the region of £2,700. This is one of 135 shawls that were seized in London a few years ago. The street value was in the region of £350,000, yet when the company was prosecuted they were given a fine of £1,500. Now, if we just ignore for a second the ecological impact of this trade or the conservation impact in terms of protecting an endangered species, the maths just do not add up. How can somebody be, clearly, labelling something with a street value of £350,000 and get a £1,500 fine? That is why criminals are interested in trading in endangered species, because of the high financial returns. To come to the second part of your question, which is what is the UK Government doing about it, well, in November of last year, as you will be aware, there was an amendment to the Criminal Justice Bill. Unfortunately, that amendment—which was held up as a victory at the time because it increased the custodial sentence from two to five years—has sat on the statute books and has yet to be used. The reason it cannot be used is that the Control of Trade in Endangered Species regulation, the COTES regulation, has not been amended by Defra. So the powers that you talk about, the powers of arrest which would come with this and the powers to collect evidence in terms of DNA evidence and in order to search premises, are lying there unused. It was a hollow victory, in a way. Our overriding message to you is can you, as this Committee, take the message to Defra that the Government did a great thing by getting this amendment through but until we can get that COTES regulation turned into enforcement action there is no way that we can use those powers to prevent further cases like this happening again.

Mrs Clark: That is a really, really powerful message. I do not think any of us expected this. I am not going to ask you how you came across this but I think you can guarantee that we will take this very seriously on board.

Chairman: We did raise this very matter with Defra officials last week, so you can rest assured that we are on the case.

Q345 Mrs Clark: This is for Mr Allan and Ms Pendry, specifically. In the evidence that you have submitted to us you actually say that the current law does not provide for what you describe as an effective deterrent, and that wildlife crime, as we have stated earlier on (in fact, just now) is really not taken seriously. In fact, you are calling for the issues of seriousness and, indeed, tolerance to be examined and attitudes, both public and judicial also, towards such offences to be reshaped accordingly. It is very difficult to reshape attitudes. We have the media, we have the tabloids, etc, etc, and it seems to me they do most of the reshaping or the shaping. How do we go

about it? How can we go about it legally through the courts and the legal system? I do not know the answer.

Ms Pendry: Just to come to your first point about our comment on the legislation as it stands, I think in terms of the statutes that we have in the UK we have some quite strong legislation, but the trouble is it is not being implemented.

Q346 Mrs Clark: Or known about?

Ms Pendry: Or known about.

Q347 Mrs Clark: It is not publicised, is it?

Ms Pendry: It is not publicised, and when it is implemented and when people are taken to court, as we have seen, the fine or punishment they get—

Q348 Mrs Clark: Paltry.

Ms Pendry:—does not seem to correspond with the crime they have committed. So that has a spiralling effect whereby magistrates will look at previous court cases when they are trying their own cases and take from that a certain yardstick, I suppose, in terms of what levels they should be fining or the levels they should be prosecuting and punishing at. I think that has an on-going effect, and hopefully one of the things that will be improved by having the new COTES regulations coming in is the fact that the judiciary will be able to look at the fact that this has gone from two to five years, and the possibility to imprison somebody to five years is obviously a much more serious offence than to imprison someone for two. We are hoping that will have a knock-on effect, and once prosecutions start to go through to the courts and they are using new COTES, which as we know has yet to come in, then there will be case history there whereby we are hoping people will get higher fines and penalties.

Q349 Mrs Clark: Do you think that penalties should be financial or would you like to see an increase in custodial? That is on the one hand. On the second hand, can you talk about the magistrates, please, because during the course of this inquiry, on the wider range of issues of enforcement we have been looking at, there have been quite a few serious questions raised over magistrates and their conduct, their behaviour and, even indeed, their knowledge of their powers. Do you think they actually understand this? Do they know what their powers are? Is there a uniform sense of awareness? If there is not, how do you bring it about?

Ms Pendry: With regard to your last point about magistrates, they have a difficult job; they have to be responsible and have knowledge of a very wide range of legislation, not just, obviously, talking about stuff to do with wildlife crime and wildlife trade issues.

Q350 Mrs Clark: Are we instructing them well enough?

Ms Pendry: We have certainly taken steps, both ourselves and WWF, in trying to improve the access to information that magistrates have in terms of drawing up guidelines that they now have both on environmental crime and, also, for wildlife and

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conservation offences. One of the problems that magistrates face is that they very rarely see these types of cases coming before them so they do not build up their own personal case history; it is very rare for them to see these cases. So that is one problem, and it stems back to how many cases are coming to court and why are not more cases coming to court. That leads us on to the question of resources, yet again, with enforcement agencies; if they do not have the resources to carry out the investigations, cases will not be presented to the CPS, the CPS do not have the knowledge to put the case together and they will not go ahead to the magistrates.

Q351 Mrs Clark: This question is for Mr Chapman and Ms Hatton. Obviously, concern has been expressed, and I think you have done this yourself, that marine/fishing law is too complex/convoluted/difficult/inconsistent, and actually provides for wastage with duplication and inefficiency. You have suggested, quite clearly, that there is a need for an over-arching Act and also a proper, clear, policy framework. What have you done about this in terms of the Government? Who have you spoken to, how far have you got and what can we do?

Ms Hatton: Absolutely; all of the above. You are absolutely right. In terms of the marine environment, we have a myriad of layers of national legislation, European legislation and international legislation. This very complicated web is impossible for people to penetrate, both people who want to get consents and permissions and people who want to protect the marine environment. Added to that, you have a situation where the protection of our nationally important sites is all done voluntarily at the moment. So if you have a number of stakeholders involved in trying to protect areas, whether they are fishery, industry, whatever, if that voluntary cooperation breaks down, you very often do not have any protection for the site. In terms of what we need to do about it, we have been very clear, as you say, in asking for a UK Marine Act—and we have written one².

Q352 Mrs Clark: Could we see that?

Ms Hatton: Yes. It is here. It has not been published yet; it is just being finalised at the moment.

Q353 Mrs Clark: Perhaps we could see it when it is finalised.

Ms Hatton: Absolutely. It should be finalised very soon. It is an over-arching marine Act, and it puts marine spatial planning right at the heart of the legislation. That gives you the framework within which all the other uses of the sea, including inshore or offshore fisheries, pollution, shipping, nationally important sites, species, renewable energies, sit within that framework. It is a new piece of thinking. We very much hope it will do for the sea what the Wildlife and Countryside Act did for the land, which means it probably will not be perfect but at least it will be a start. We are working very closely with

Defra and we are just about to meet them to discuss this and to push it forward. But we would say that, whilst Defra have recognised that we do need some marine legislation, we have not seen anything from them yet. So obviously, one of the messages we would give to you is please could you put some pressure on Defra to move ahead with this, because it is a priority as far as we are concerned.

Q354 Mrs Clark: I am really delighted that you have said that. As a member of this Committee, hearing your earlier remarks about the reference to marine protection in the CroW Bill, because that is my baby; that was my amendment, and I pushed it forward and I did it in conjunction with the Whale and Dolphin Society. It is great for me that you have recognised that today, and I will remember this. That is marvellous. You pointed to a need—and I am so glad that you have said that, and I am really pleased about that document—to improve powers regulating the marine environment. In fact, you have made the point that there have not been any prosecutions for offences against marine wildlife since the Wildlife and Countryside Act came into force in 1981, and we know that CroW came into force three years ago. So despite my wonderful amendment, where are the prosecutions? Is this a matter of failing, inadequate legislation—I think we would agree that it was—or is it an inability or unwillingness to take action by those charged to do so? We are back to Defra again. Are they regarding what is in the sea as less attractive, if you like, and therefore less worthy of protection than what runs along and the lawns and grasses? I feel that is the case.

Ms Hatton: Unfortunately, I cannot answer for Defra. All we can do is continue to pressurise them to bring this forward, but I think it does go back to the point that Sue Doughty made earlier on about the marine species side of things. Is it simply out of sight, out of mind? It is very much the case, is it not, that we do not see these crimes being committed anything like as often as we would witness crimes in the countryside?

Q355 Mrs Clark: Also, it is cold, wet and unappealing.

Ms Hatton: Absolutely. People see crimes against birds, they go and report it to the RSPB, the RSPB work very closely with the Police Wildlife Liaison Officers. It is all very clear, it is all set up, and it works. Where do you go if you witness somebody harassing a harbour porpoise? It is not clear, is it? Nobody knows where to go. I think it is primarily a problem of awareness on the marine side. Let us get some legislation.

Q356 Chairman: In order for us to help, it would be helpful if we could see a copy of your draft Bill before we actually draw our conclusions and recommendations.

Ms Hatton: I will probably crash your computer by sending it by email. I could send you a hard copy.

² Draft submitted to the Committee. Not published or currently in the public domain.

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Q357 Chairman: Do send it to the clerk, whose computer is probably more robust than mine! Back on dry land, do you think there is a need to reduce the number of agencies and enforcement bodies that are involved in tackling wildlife crime? There is a huge number of organisations involved in all of this, and sometimes they seem to step on each other's toes and fall over each other's tails. Is there a case for revamping the entire regime and cutting down on the number of organisations involved in this?

Mr Allan: I do not have the answer to that. It is a very good point, a very important point. I think it would take more than me to answer the question. There is a need for a review on that point exactly, on the issue of co-ordination and communication between the relevant agencies responsible for wildlife crime enforcement in this country. You have the PAW partnership, which is a very good vehicle to bring people together, but the finer detail of how things work is not really dealt with by PAW. I would suggest, in response to your question, that a review be undertaken, perhaps under the auspices of PAW, to really get to grips with the detail of the problems of co-ordination and communication and to work out ways in which the agencies can co-ordinate and communicate more effectively in the future to try and overcome some of the problems. Maybe it should look at this more radical idea that you are suggesting.

Q358 Chairman: Is PAW the organisation to do that? It is, of course, the creature of the abundance of other organisations, so it may be part of the problem rather than the solution.

Mr Allan: Maybe it should be more independent then perhaps. I do feel that there should be some objective review of what is going on, that pulls together recommendations on the way to improve things, be that reducing the number and pulling people together under one roof or be that trying to work out ways to improve the situation. I think a review should be done, basically.

Q359 Chairman: Has anyone anything to add to that?

Mr Chapman: I would add that if we take, for example, the police and Customs forces, even though if we were to look at the national coverage it is extensive, in terms of the actual expertise in terms of wildlife crime, it is very poor. I think out of the police forces in England and Wales, 52 police forces, there are only seven full-time police wildlife crime officers. Not every force has one. In some cases it is voluntary; there are two or three voluntary officers. So even though the coverage looks great, the reality is that many of these forces are under-resourced. The next step on from having the legislation amended and being able to use it is then to have the capacity to enforce it. I think that is the next target for the UK Government, to ensure that, having got the great legislation, they then have the resources to enforce it. That applies to Customs officers too.

Q360 Chairman: This is a question for TRAFFIC. You draw attention in your written evidence—for which we thank you very much—to the imperative need to restore the number of Customs Wildlife and Endangered Species Officers at ports of entry. We quizzed Customs & Excise about this last week, and they were insistent that their current system is working extremely well, and that they are able to identify who is likely to be importing endangered species and able to apprehend them. They cited the case of Mr Humphreys, who is currently serving a six-and-a-half-year jail sentence for importing rare birds, I think. On the other hand, we heard compelling evidence from Paul Flynn that it is possible to walk into Cardiff Airport, see a signal saying “No Customs Officers on duty”, be offered a telephone number to ring if you wish to report the number of rare parrots you happen to have in your suitcase, and if you do that, you get an answerphone service. They were, however, sincere, I think, in saying that the present system is working well. Do you really feel that it is a numbers game in terms of officers, or is it more to do with intelligence, as they were arguing?

Ms Pendry: I think typically it is both, in this instance. Yes, intelligence plays a very big role, and to be able to direct your enforcement efforts based on intelligence is so much more efficient. However, you cannot leave it entirely to intelligence. Where is the intelligence going to come from if you do not have officers on the ground, looking and seeing what is coming into the various ports and airports that we have in our country? We have only two full-time CITES officers in the whole of the country, and then we have the team of experts in terms of the eight officers at Heathrow. If we look at the seizures data that Customs collect themselves, and we look at where the seizures take place, we can see that a lot of seizures occur at Heathrow, a lot occur at Felixstowe, where the other full-time officer is, and where else? Surely, this correlation is between the fact that there is not any cover, any CITES officers, at other international and very important airports and ports. When there used to be a full-time CITES officer in Manchester, there was a large number of seizures occurring at Manchester. We now know that that officer has been taken off CITES duties and has been redirected, I believe, to looking for cigarettes and alcohol, and he no longer does CITES work, despite the fact that he has built up a large amount of expertise in the years that he was in post, and now we do not see any seizures in terms of CITES in Manchester. So yes, I believe intelligence is important, but I do not think it can be done entirely using one intelligence officer and a team of eight people at Heathrow. I do not think that is going to give us national coverage. In terms of looking at the information that the Customs collect as well, that is another issue we should bear in mind. It is very useful that they do collect information on seizures; it is a great help for us to be able to see and try to understand what trends are going on, but they seem to be somewhat sporadic on the types of information they collect on each seizure. It is important for us to be able to have information on

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where the consignment was coming from and where the person with the consignment has come from and where their end destination is, what the flight route they took was, to try and get from this information some sort of pattern and trend in terms of the intelligence that can be received from it. With all that detailed information, which seems to be somewhat sporadic in their data collection, I think we are missing a trick. If we look in particular at the Coventry hub for the post coming in, again, information collected there was very sporadic. Seizures do take place at Coventry. If a seizure takes place, it is imperative to write down or make a note of who that parcel came from and who it was going to, so as to be able to have an understanding of whether the same person is committing an offence time and again. But this information does not seem to be collected or passed on to any other agency for follow-up and enforcement. There is a gap there.

Q361 Chairman: Do you at WWF have the same view of this?

Mr Chapman: Yes. I would add another point to that. In many cases, the impact on endangered species is almost too late once the item has been seized at Customs. So there is a responsibility also to educate, particularly the travelling public before they go on holiday. There is a chance that a large chunk of this trade could be casual. It might not be targeted or planned in any way. I must say that Defra has been very supportive of that kind of work. For the last ten years they have been running various awareness campaigns. For example, there is a souvenir Alert campaign jointly funded between Customs, Defra and WWF, where we warn of the perils of bringing back souvenirs made out of endangered species and trying to raise awareness on the consequences of doing so. That said, ivory continues to appear in the top 10 of seizures based on the trinket seizures, and that, of course, is a species about which there should be high awareness amongst the British travelling public. Part of the problem is that at the point of sale in other countries awareness materials may be low. Somebody going to a market may be told by the seller that it is fine to bring this item back into the UK. So there is a need for international cooperation in terms of raising awareness of these issues, to try and cut off the market before it becomes a problem coming back into either the UK or Europe.

Q362 Chairman: Where are those brochures available?

Mr Chapman: This is possibly one of the problems with this campaign: getting this information out into the public domain. It is highly unlikely that anyone travelling through one of the UK airports will see one of these on display.

Q363 Chairman: I have never seen one.

Mr Chapman: Exactly. That is the problem. It is getting that message out, and getting a point of contact where the travelling public will see it. These

leaflets are available; they are available in poster form, in leaflet form. Getting them into the hands of the traveller has proved difficult.

Q364 Chairman: What about encouraging travel agents to distribute them with tickets, for example?

Mr Chapman: We have investigated that. We have tried that as a collaborative way of working. We got two messages back from the travel industry. One was that they did not want any negative connotation attached to travel. They did not want any do's or don'ts linked to travel that could put people off travelling. So they were reluctant to put this kind of messaging in, even though—and I can pass these examples round—the messaging is not in a way that is going to put people off. It is not gory or dramatic in that sense. That was the first thing. The second thing was the competitive nature of the travel industry. They wanted their own campaign with their own branded company. That proved logistically impossible to do. We wanted something generic that they could all use, but they only wanted to use materials that had their own branding, which proved difficult to do.

Q365 Chairman: What about airlines?

Mr Chapman: We have in the past had in-flight videos on some airlines. Again, this had to be tailor-made to the individual airline and again, there seemed to be a reluctance also to put over a negative message on the airline. But I think the point at which you have a captive audience is actually when you are sitting down on the flight, looking at the information that is in front of you or looking at the TV screen. That is an opportunity, certainly, for the Government to explore with airlines in terms of getting this message across.

Q366 Sue Doughty: I would like to turn to local authorities, because we have heard quite a bit of comment about local authorities in the memoranda we have received, in terms of the need for them to understand and then use their statutory powers, in cooperation with other organisations. What level of involvement do you have with local authorities? Is it sufficient?

Ms Pendry: We do try and work with local authorities, and it is through that work that we have discovered that they appear to be a bit disjointed from the rest of the enforcement efforts in the UK. Part of that is basically because of their structure: they are local. They are set up on a local basis, with the information that they hold and also the duties that they carry out with regard to the work that we do, licensing pet shops, zoos and the dangerous wild animals. These are all duties that they carry out, and they do so locally, and the information they hold is local. So when it comes to another enforcement agency wishing to make use of the information that they have in follow-up to any investigation they have, it is very difficult, if not impossible, to obtain this information quickly and directly, because first of all you have to identify which part of the local authority is responsible, and there is no uniform structure of a local authority; each local authority

13 July 2004 Mr Crawford Allan, Ms Stephanie Pendry, Ms Carol Hatton and Mr Stuart Chapman

has set itself up in a slightly different way and divided up its responsibilities slightly differently as well, and either devolved it down to a district level or some of it is still done at a general level. There is a difficulty there, where the information that is held by local authorities is not shared very easily, if at all, with enforcement agencies, either with the police or with Customs. One of the suggestions we came up with was whether there is a way in which we can centralise that information, a centralised database that is managed in the same way as the CITES permit system is managed by Defra, where local authorities can input the information but other enforcement agencies can have access to it. This would also help other local authorities, because if you want to register yourself as a pet shop but you have been banned from keeping animals and one local authority knows this, what is to stop you going to the next local authority and applying? How is that local authority going to check with anybody else to know if they have been banned or if they have had an application in anywhere else? If there were a generalised, centralised database that was national, it would make that so much easier.

Q367 Sue Doughty: You also mentioned the network of Trading Standards co-ordinators as being key to improving communication between local authorities and other enforcement agencies. How do you see it in practice?

Ms Pendry: The only place I have seen this in practice is in London. It is something I came across quite recently, and it sparked off the idea in my mind that perhaps this was something we could again encourage at a national level. How you would go about that I am still not clear, because, again, would it be that we go to every local authority and try and encourage them to have meetings with their local police officer to try and encourage more and better communication between them on issues that they share? That is certainly what has happened in London. Whether that is because it is unique in being such a large area and they needed these extra lines of communication to try and establish a better means by which they could progress cases together I am not sure, but that is certainly something that we are looking at at the moment, and it is a bit of a new area for us.

Q368 Sue Doughty: Given that it is new, have you had the opportunity to try it out with any local authorities or Trading Standards officers?

Ms Pendry: Not outside London yet.

Q369 Chairman: Unless anyone has any more questions, that has been really helpful. Thank you very much indeed. It would be helpful if we could have that little note about the parrots that came from France that you mentioned, Mr Allan.

Mr Allan: Of course, yes.

Chairman: We are very grateful to you for your time and for your written evidence as well as the evidence you have given us this afternoon. It has been most helpful.

Supplementary memorandum from TRAFFIC

STUDY OF PARROT TRADE ON THE INTERNET

Commerce et Trafic de Perroquets sur Internet

By Conservatoire des Espèces Psittacines, Kerret, Grand Champ, France 2000

Produced a large dossier on the internet sites and a report (in French and hard copy only).

- Surfing the web for 500 hours between 1997 and 1999.
- At the start of the study period, 10,930 internet sites were found on which parrots are traded. By January 1999 that figure had increased to 99,542 internet sites.
- The number of parrot species sold from these sites was 161 species and 68 subspecies.
- 28 species were on Annex A of the EU Wildlife Trade Regulations.
- Without carrying out in depth investigations into each advertiser it was impossible to state how many of the parrots were being offered illegally. Many of the adverts requested further communication to be conducted privately, either by email or by fax.
- The number of visitors to these parrot internet sites that advertised birds for sale increased throughout the study period. One site had 10,388 visitors in June 1997, which had increased to 101,430 by January 1999. Another site had a total of 186,487 visitors in May 1998 that had increased to 383,982 by January 1999. Yet another site had an increase of 337,102 visitors in a 19 month period.

Author—Jerôme Pensu, Conseiller Technique du Conservatoire des Espèces Psittacines
(Translated by TRAFFIC International).

July 2004

Written evidence

Taken before the Environmental Audit Committee

APPENDIX 1

Memorandum by a worker in the criminal justice system

I wish my personal details to remain confidential and am therefore writing this Memorandum to the Committee anonymously. I work in the Criminal Justice system in England and have a keen interest in environmental, and in particular, wildlife crime.

I very much welcome the Committee's inquiry into Wildlife Crime. However, I am concerned that the inquiry does not seem to have been widely publicised by the committee. Enquiries I have made with local Police Wildlife Crime Officers (WCO's), the Crown Prosecution Service (CPS), English Nature and Defra official has shown a complete lack of knowledge of the Inquiry.

I will now respond to each of the four points specifically raised in your press release and then add further points at the end.

1. WHAT IS THE SCALE AND IMPACT OF WILDLIFE CRIME?

The Police are primarily the responsible agency for investigating wildlife crime and its Wildlife Crime Officers would be best able to answer the first part of this question. However, I am aware that most wildlife crime is not recorded in Home Office figures and is therefore not seen by many Police forces as a priority for investigation.

As a result of this lack of central record keeping, I suspect that the Home Office and Ministers would not be able to answer this question.

One of the main impacts of wildlife crime is that we are losing unreplaceable habitats and species of the more uncommon and rarer types.

Another is that wild birds and mammals suffer cruel and agonising deaths as people continue to misuse legitimate killing/trapping/poisoning techniques and continue to use illegal ones.

2. IS THE FRAMEWORK OF NATIONAL AND EUROPEAN LAW AND OF INTERNATIONAL REGULATION ROBUST ENOUGH TO DEAL WITH WILDLIFE CRIME EFFECTIVELY?

I believe not. One of the most frustrating points I encounter with the current law is the apparent lack of thought put in to the drafting of enforcement provisions of the various Acts, SIs, etc. For example, for a number of wildlife offences there is no power of arrest. As such, suspects can refuse to be interviewed. This results in the investigation of cases being much more difficult, time consuming and thus more costly to the taxpayer.

There are also a number of Acts that give no powers to the Police or other investigating agencies to enter land or property (including dwelling house) if they suspect a crime has been committed.

There is sometimes not even the power to obtain search warrants through the Magistrates court. As a result, vital evidence can often not be gained. The powers to take photographs, samples, documents, etc are also often lacking.

There are also limited powers for prosecutions to be taken against the managers and employers (be it family firms, limited or public limited companies, or partnerships) of offenders even when it can be proven that they knew, encouraged, caused, or permitted etc the offence(s). Where there is provision for this to be done, there are often difficulties in proving management structure and responsibility.

A number of offences are subject to time limits which mean that the defendant has to be tried within three (for example, in the case of the Game Acts) or six months (for example, in the case of the Protection of Badgers Act 1992) of the offence or detection of the offence. With the difficulties in obtaining evidence (mentioned above) a number of cases never proceed because they effectively run out of time. Indeed, some cases seem to run out of time because the investigating/prosecuting authorities do not know how to proceed in such cases and effectively "let them" run out of time so they do not have to prosecute them. Central Government urgently needs to draw up Public Interest Criteria, which should be subject to consultation and then published, setting out how cases should be dealt with (fixed penalty, caution, warning, prosecution etc) and when it is in the public interest to do each of these.

Nature Watch and the National Federation of Badger Groups have interesting material on their web pages on the above weaknesses in the legislation.

There is often too little interpretation of key terms in the Acts, SI's etc which then means investigations are not started or prosecutions are not taken as no one knows whether the case will succeed or not. Good examples are to be found in the Protection of Badgers Act 1992. For example, what is meant by: "serious

damage”, “Current use”, “the incidental result of an otherwise lawful operation that could not have been reasonably avoided”? In my experience, government policy divisions are not willing to provide guidance on how to interpret these uninterpreted phrases stating “it can only be tested in the courts”, which is far from helpful.

3. DO RESPONSIBLE BODIES WHO DEAL WITH THIS TYPE OF CRIME HAVE SUFFICIENT RESOURCES AND POWERS TO DO SO? DO THEY TREAT WILDLIFE CRIME WITH PROPER AND DUE GRAVITY?

The majority of Police Forces do not have full time or even part-time Wildlife Crime Officers. Most forces rely on dedicated and interested officers to fulfil these roles in addition to their normal policing roles and/or in the officer’s own time. This is completely unrealistic in today’s world. Officers cannot undertake these roles effectively when they have time away from other duties, as they never get such time. The result is poorly investigated or worse still not investigated crime, which fails to get past the initial investigation stage.

This situation is, I believe, as a result of two factors. The first being that as there are no national targets etc for wildlife crime, Chief Police Officers, do not in the main, give wildlife crime sufficient priority or resources. Secondly, a majority of officers do not see wildlife crime as important when compared to violent/drug/sex crime. This means that every time, wildlife crime takes a lesser priority.

The CPS to my knowledge has no dedicated wildlife crime prosecutors, which hampers the efforts of the Police to bring cases to trial.

It is my experience that outside the Police, other statutory organisations do not generally have the necessary in-team dedicated legal training or legal team to effectively deal with wildlife crime. They are often engaged to some degree with wildlife crime, but this makes up a small part of their overall job and with increasing workloads in the public sector, means that it does not get the attention it deserves.

Most prosecutors—with the exception of those in the Environment Agency and at least one Crown Prosecutor, have little knowledge of wildlife crime. This is particularly so in the CPS. As a result, a number of cases fail to get past the Prosecutor for prosecution. This I feel to be largely as a result of the lack of knowledge and reluctance to seek out expert help from non-lawyers by prosecutors. They either do not have the time to carry out the research (because of unrealistic caseloads) or simply do not believe that wildlife crime cases are worth bothering about.

There is also a persuasive argument for a special wildlife and environmental court.

I believe an answer to the whole questions could be the establishment of specialist wildlife and environmental crime prosecutors and courts, coupled with a new national environmental, wildlife and crime agency (or NEWCA). This would be along the lines of the United States Fish & Wildlife service. It could combine the roles currently carried out by the Environment Agency enforcement teams, Police Wildlife Crime Officers, English Nature’s wildlife licensing and enforcement functions, the licensing and pesticide poisoning investigation functions of Defra’s Rural Development Service National Wildlife Management Team, along with some of the functions of local authority Environmental Health and Trading Standards teams and some HSE functions.

4. IS THERE SUFFICIENT DIALOGUE AND CO-OPERATION ACROSS GOVERNMENT AND AMONGST THE VARIOUS BODIES RESPONSIBLE FOR DEALING WITH THIS TYPE OF CRIME?

No. The current wildlife enforcement bodies are not joined up in their current working. There has been an attempt to seek increased co-operation between enforcement bodies by the creation of the Partnership against Wildlife Crime (PAW), whose secretariat is within Defra.

There has also been the creation of the National Wildlife Crime Unit in NCIS. However, PAW is limited in that it is mainly an information exchange network. NCIS tends to deal (quite rightly with the more serious, organised and international wildlife crime).

A number of enforcement bodies fail to take prosecutions even when there is clear evidence of offences. This I see mainly as a result of them having to work with landowners/managers and do not want to get a bad name by those bodies for prosecuting the same (English Nature is often criticised for this).

The lack of proper training of civilian enforcement bodies in evidence gathering, Police and Criminal Evidence Act procedure etc is one of the main reasons why cases are not properly investigated. It is no use parliament giving the powers to these bodies if they are untrained and unprepared to use them when necessary.

Another major obstacle is the fear by enforcement bodies of breaching data protection legislation when sharing intelligence and information.

April 2004

APPENDIX 2

Memorandum from Lisa Baker

I would like to make a comment concerning Wildlife Crime. It isn't just about wildlife crime, its bigger than that, people behind crime against wildlife are very often involved in drugs, serious violence and sometimes weapons. Somebody high up within the Police or parliament must have the guts to stand up and say "we must put decent funds into wildlife crime because it will lead us to bigger things". I know it is all about facts and figures for the government but if the public is aware of what sort of people actually commit these offences and being tough on them will prevent human suffering as well, they would be all for it.

We must be strong and stand up for what we believe in.

April 2004

APPENDIX 3

Memorandum from the Environmental Justice Project

The Environmental Justice Project (EJP) is pleased to submit evidence to the Environmental Audit Sub-Committee inquiry into Wildlife Crime.

The EJP comprises the Environmental Law Foundation (ELF), Leigh, Day & Co and WWF. For the last 18 months, we have conducted a review of access to environmental justice in the civil and criminal justice systems in England and Wales. Our final report was launched on 24 March 2004 and represents the first in-depth, across the board investigation into the efficacy of environmental justice in the 21st century.

We are pleased to enclose a copy of our final Report (not published, see footnote¹) and refer the Sub-Committee to the following paragraphs in relation to the questions posed:

Question 1: What is the scale and impact of wildlife crime? Please see paragraphs 95–97 and 121–125.

Question 2: Is the framework of national and European law and of international regulation robust enough to deal with wildlife crime effectively? Please see paragraphs 148–161 and the Executive Summary and Recommendations on pages 14–18 of the Report.

Question 3: Do responsible bodies² who deal with this type of crime have sufficient resources and powers to do so? Do they treat wildlife crime with proper and due gravity? Please see paragraphs 100–108, 165–166, 176–179, 193–195, 197–201, 202, 208 and 219 and the Executive Summary and Recommendations on pages 14–18 of the Report.

Question 4: Is there sufficient dialogue and co-operation across Government and amongst the various bodies responsible for dealing with this type of crime? Please see paragraphs 220–222 and the Executive Summary and Recommendations on pages 14–18 of the Report.

We hope that this information assists the Sub-Committee in its deliberations. The EJP would be delighted to submit oral evidence to the Sub-Committee to amplify these points. Please contact myself, or any other member of the EJP (details provided below).

April 2004

APPENDIX 4

Memorandum from the Greater Manchester Police Service

I am a police wildlife liaison officer in the Greater Manchester police service and would submit this thought for your consideration. Most Chief officers in the service though not all view wildlife offences as non starters with all the pressures placed upon them to compete with performance indicators and targets placed on them by the Home office as respects the more serious offences of robbery, rape, burglary etc it is hardly surprising that wildlife crime receives more often than not lip service. If we are to deal with offences in the wildlife field with the same degree of attention as other crimes then the offences under the ceiling of wildlife crime must become if not crime recordable at least performance driven.

April 2004

¹ The report can be found at: <http://www.wwf.org.uk/filelibrary/pdf/envirojustice.pdf>

² Defined to include regulatory bodies and the judiciary.

APPENDIX 5

Memorandum from the Hertfordshire and Middlesex Badger Group

I am writing in response to your request for views on the questions given below. The views expressed relate to offences against badgers in Hertfordshire and Middlesex.

1. *What is the scale and the impact of wildlife crime?*
2. *Is the framework of national and European law and of international regulation robust enough to deal with wildlife crime effectively?*
3. *Do responsible bodies who deal with this type of crime have sufficient resources and powers to do so? Do they treat wildlife crime with proper and due gravity?*
4. *Is there sufficient dialogue and co-operation across Government and amongst the various bodies for dealing with this type of crime?*

OUR VIEWS ARE AS FOLLOWS:

1. Under the present government regulations most crimes against badgers are not available as they do not meet any of the criteria required for recording such offences. Police officers are hardly likely to take the time and trouble to investigate cases that do not reflect positively in their performance targets.
2. The laws and regulations are in most cases excellent but without the resources and will to implement them, they are meaningless.
3. In Hertfordshire there is one part-time Wildlife Liaison Police Officer with volunteer officers in most local stations who have a general interest in wildlife. Without some training these officers cannot be expected to know the laws relating to wildlife or have the skill and expertise to collect any evidence to contribute to an enquiry. Over the 20 years since the badger group was formed only two cases have ever gone to court and yet an average of 10 incidents a year are reported to the police. A large part of Hertfordshire is rural, in spite of its proximity to London and we are very concerned that wildlife crime is not treated with proper and due gravity.
4. The lack of dialogue and co-operation across all bodies involved in this type of work is very evident from our point of view. There are considerable differences in the way the regulations are interpreted and very little communication between the organisations involved to improve this situation.

In a recent case where a police officer worked closely with an RSPCA Inspector and the neighbouring police force to follow up a badger sett digging incident there was a considerable improvement in the response and the outcome. A good example of organisations working together to uphold the law.

I hope these comments will be of some use to you and should you require any further information please let me know. I wish your committee well in their deliberations, I think there is much to be done to protect our wildlife.

May 2004

APPENDIX 6

Memorandum from the International Fund for Animal Welfare (IFAW)

I am writing on behalf of IFAW—the International Fund For Animal Welfare—to submit evidence to the inquiry on wildlife crime being carried out by the Sub-committee to the Environmental Audit Committee (EAC). IFAW welcomes this inquiry and we are confident that it can make an important contribution to ensure greater protection for wildlife in the UK and internationally.

IFAW works through bases in 15 countries to improve the welfare of wild and domestic animals throughout the world, by reducing commercial exploitation of animals, protecting wildlife habitats and assisting animals in distress. In the UK, IFAW's priority areas are reduction of wildlife trade, protection of marine wildlife and an end to hunting with dogs. This work is actively supported by over 800,000 people in the UK.

IFAW's work is therefore of great relevance to this inquiry. The attached memorandum addresses in turn the questions posed in the EAC press release of 2 April 2004. IFAW's evidence focuses on areas of crime where IFAW has specific expertise and experience—trade in endangered species, hare coursing and badger baiting. Attached as an appendix is a recent IFAW report “Elephants on the High Street—an investigation into ivory trade in the UK” which contains further information relevant to the inquiry. I would be pleased to provide hard copies of this report on request.

QUESTION 1: WHAT IS THE SCALE AND IMPACT OF WILDLIFE CRIME?

Illegal international wildlife trade

1. Wildlife crime is an extremely broad area and has a huge impact on the welfare and conservation status of species in the UK and around the world. Wild animals and their parts and derivatives are traded internationally, both legally and illegally, to meet human demand for food, medicine, clothing, jewellery, tourist souvenirs, ornaments and pets. Illegal wildlife trade is estimated by Interpol to be worth billions of pounds annually, ranking alongside the illegal trade in drugs and weapons, although the very nature of the trade means that it is impossible to estimate its worth accurately.

2. The devastating impact of illegal wildlife trade on species is clear. Due to this and other threats, species are being driven to extinction at a rate hundreds of times faster than a century ago. One fifth of the world's animal and plant species could vanish within 30 years. The tiger, rhinoceros, Tibetan antelope, elephant, marine turtle and countless other species are already on the brink of extinction due to human demand for their parts and products. In the case of many species, such as the Asian elephant, only geographically isolated populations now remain. The consequent lack of genetic diversity within those populations means that extinction of the species in the wild is only a matter of time.

3. The UK is a major centre for illegal wildlife trade and specimens move into, within and out of the UK on a huge scale. Those involved range from tourists unwittingly bringing back souvenirs made from endangered species to highly organised criminal gangs. The use of antiques outlets and internet trading sites for this purpose is of particular concern. A 2004 investigation by IFAW into ivory trade in the UK, provided with this memorandum, found thousands of pieces on sale illegally. Antique ivory, defined as pre-1947, can legally be sold in the UK but only with documentation proving the age of the piece or a government-issued certificate. Not one of the pieces IFAW found for sale in antiques outlets and on the internet had any documentation. While much of this trade is conducted unwittingly, there are cases of new ivory (from recently poached elephants) being carved, cracked or stained to look "antique".

4. Some traditional Asian medicines on sale in the UK contain products from highly endangered species including bear, leopard, musk deer and tiger. Police have made several seizures of such products on sale in traditional medicine retail outlets.

5. Illegal trade in the meat of wild animals, in Africa known as "bushmeat", is a problem in the UK. Action is being taken to prevent this trade by responsible bodies as a response to the potential risk to human and animal health. However, the impact of the trade on wildlife is often overlooked by Government and enforcement agencies. Tropical forests across Africa are being emptied of large mammals to supply the demand for bushmeat. This trade is considered to be the single major threat to the survival of endangered species such as the chimpanzee, gorilla and forest elephant.

6. The Tibetan antelope (*Pantholops hodgsonii*) is highly endangered due to poaching for its wool, known as "shahtoosh", used to make fine woollen shawls. Only around 50,000 of these animals are believed to remain. In 1997, the Metropolitan Police Wildlife Crime Unit seized 138 shahtoosh shawls from a shop in London. The total value of the price tags was £353,000 and it is estimated that more than 1,000 Tibetan antelope were killed to supply the wool used to make the seized shawls.

Hare coursing and badger baiting

7. Wildlife crime also causes distress and suffering to thousands of animals. In the UK, hare coursing and badger baiting are prime examples of unnecessary cruelty to wild animals. IFAW believes that all hare coursing and hunting with dogs should be made illegal as it is cruel and unnecessary. Hare coursing involves the setting of two dogs onto a hare, with spectators often gambling on the outcome. There is considerable evidence that hares suffer when coursed. Evidence from the Universities Federation for Animal Welfare (UFAW) found that none of the 53 coursed hares on which they conducted post mortems had been killed by a "bite to the neck" (UFAW study, 1977–79). Hares can be caught between the dogs' jaws and sustain serious injuries before death.

8. It is difficult to determine the exact numbers of hares killed in illegal hare coursing but in 2000 the Committee of Inquiry into Hunting with Dogs, led by Lord Burns, found that: "In terms of the number of hares killed, unregulated coursing, including illegal coursing, where the landowner's permission has not been obtained, is thought to be very significant. The actual numbers killed can only be inferred from the estimated number of working lurchers, which, at its lowest, is put at 70,000 and, by another survey, at over 200,000. [...] Hunting hares for the pot is also carried out with dogs but there is no reliable evidence of the numbers killed." (Para 2.56).

9. Badger baiting was made illegal in 1835, but incidents still occur. The Metropolitan Police Wildlife Crime Unit states that it has become more common in the last 20 years and it is estimated that 10,000 badgers are killed in this way every year. Baiting involves badgers being dug out of their setts and then attacked by dogs for entertainment. Spectators often gamble on the outcome. Badgers suffer severe injuries before they are killed and the dogs used can also sustain injuries.

QUESTION 2: IS THE FRAMEWORK OF NATIONAL AND EUROPEAN LAW AND OF INTERNATIONAL REGULATION ROBUST ENOUGH TO DEAL WITH WILDLIFE CRIME EFFECTIVELY?

Illegal international wildlife trade

10. The Convention on International Trade in Endangered Species of Fauna and Flora (CITES) is a crucial regulatory tool and forum for the protection of wild animals globally, and can act as a robust framework for protecting wildlife from the potentially devastating effects of international trade. However, the concept of “sustainable” wildlife trade can be used to justify CITES decisions which in practice are not sustainable for the species. IFAW recommends that the CITES framework should integrate more fully a precautionary approach to regulation—that any trade must be proven not to be detrimental to the species before it is allowed.

11. In the European Union (EU), Council Regulation (EC) No 338/97 and Commission Regulation (EC) No 1808/2001 implement CITES and contain some provisions which are stricter than CITES. All EU member states must have national legislation to enforce the regulations. Some states have stricter domestic measures. The UK has some of the strictest implementing legislation of all EU members, the Control of Trade in Endangered Species Regulations 1997 (COTES). IFAW welcomes the Criminal Justice Act 2003 which provides increased powers and penalties for COTES offences. This is a crucial step forward in preventing illegal wildlife trade. However, COTES has not been amended to allow enforcement agencies to make use of the new powers and penalties. IFAW urges the Sub-committee to recommend that these amendments be made without further delay.

Illegal hare coursing

12. The law relating to hare coursing, contained in The Night Poaching Act 1828, The Game Act 1831 and The Poaching Prevention Act 1862, is problematic because it relies on the landowner confirming to the police that the coursing occurred without their permission. Furthermore, gangs operating illegal coursing have been known to use intimidation tactics. In a news release dated 13 September 2002, Sgt Richard Stonecliffe of Bedfordshire police commented that “violence has been used by illegal coursers when they have been challenged by farmers and landowners”. The Committee of Inquiry into Hunting with Dogs in 2000, also found that “Illegal coursing is sometimes accompanied by threats or physical violence to landowners, leading some farmers and landowners to ‘shoot out’ hares in order to deter illegal coursers and poachers” (Para 2.57).

13. IFAW supports legislation to ban hare coursing contained in the Government’s Hunting Bill, as passed the by House of Commons in 2003 and rejected by the House of Lords. This would assist police in addressing illegal hare coursing through an increase in the level of penalty, the removal of the “defence” of claiming landowner’s permission and the subsequent inability of coursing gangs to intimidate farmers and landowners.

Badgers

14. The National Federation of Badger Groups (NFBG) identifies two areas in the Protection of Badgers Act 1992 which need strengthening to protect badgers effectively. Currently, offences under the Act are not supported by a power of arrest, which means that suspected offenders cannot be arrested at the scene of a crime and taken to a police station for questioning. Individuals can only be invited to attend for interview by which time they may have agreed their alibis. Individuals may refuse to be interviewed, hampering police investigations. This can be resolved by providing law enforcers with a power of arrest under the 1992 Act. Furthermore, the Act does not include powers to access property and land, which means that law enforcers cannot properly investigate alleged offences if access to land is denied. The NFBG states that this is frequently the case if the landowner is involved or knows the suspected offenders (“The Badger Manifesto”, NFBG). This weakness can be resolved by providing law enforcers with a power of entry to property and land under the 1992 Act. Lastly, there is currently no corporate liability for disturbance and destruction of badger setts, for example by construction companies. This is crucial and should be introduced without delay.

QUESTION 3: DO RESPONSIBLE BODIES WHO DEAL WITH THIS TYPE OF CRIME HAVE SUFFICIENT RESOURCES AND POWERS TO DO SO? DO THEY TREAT WILDLIFE CRIME WITH PROPER AND DUE GRAVITY?

15. Enforcement agencies dealing with wildlife crime in the UK do not have sufficient powers to do this work effectively. As mentioned above, the COTES Regulation must be amended without further delay to implement the Criminal Justice Act 2003. Increased powers are also needed to implement the Protection of Badgers Act 1992 effectively.

16. Given the scale and impact of this area of crime outlined above, the level of resources devoted to tackling it is desperately low. Even given a robust legal framework and adequate powers, enforcement agencies have nowhere near sufficient resources. The use of the internet and other modern communication methods to organise illegal wildlife trade and other wildlife crime presents new challenges and sophisticated techniques are required. Low levels of enforcement provide little or no deterrent to criminals involved in

this trade who can make huge profits with a very low risk of detection or prosecution. In addition, many of the new EU member states from 1 May 2004 will become frontline entry points into the EU and yet have weak border controls. This is expected to lead to an increase in illegal wildlife products entering the EU. Once inside the EU, illegally imported products can be circulated without any controls.

17. HM Customs and Excise deploy a nine-member CITES enforcement team based at Heathrow Airport, with responsibility for customs enforcement of CITES nationwide. This team has built up an international reputation for effectiveness. However, customs must deal with CITES enforcement for 60 million passengers travelling through Heathrow Airport alone each year, as well as the vast quantities of goods entering the country by post and courier services. As little as 10% of contraband passing through customs controls may be intercepted. In relation to the bushmeat trade and CITES, there is no available data on the proportion of illegal bushmeat trade into the UK originating from endangered species, as customs seizures of illegal meats are not tested to identify the species. This means that the tougher penalties for CITES offences cannot be used. In these circumstances, enforcement of CITES at UK borders is hugely inadequate.

18. Most police forces now have a wildlife crime liaison officer and the Metropolitan Police Wildlife Crime Unit has had some notable successes. However, it is not an overall police priority. Most police officers take on wildlife crime duties because of a personal passion and they work part-time or voluntarily on top of their regular duties. The Metropolitan Police Wildlife Crime Unit has only recently been provided with dedicated enforcement officers. IFAW recommends that dedicated wildlife crime officers be provided in each police force. In addition, more formal recognition of the importance of this role is crucial, as are the training and resources to carry out the role effectively.

19. The laws regarding trade in CITES-listed specimens in the UK are very complex and often too difficult even for police wildlife crime liaison officers to understand fully. Officers rarely have sufficient time, knowledge or support from superiors to proceed in “difficult to prove” cases such as illegal ivory trading. Information provided by Defra on this issue to both the police and traders’ associations is often insufficient and unduly complicated. IFAW recommends that Defra produce more accessible, plain language information in relevant languages outlining legislation, powers and penalties, and rigorously promote and distribute this information widely.

20. There is little evidence of the judiciary treating wildlife crime with due gravity. The penalties provided by law are rarely used. With few such crimes being prosecuted, they remain a novelty in many courts and have so far attracted only minimal sentences. In the case mentioned in paragraph 6 where 138 shahtoosh shawls were seized, the company involved were fined just £1,500 and ordered to forfeit the shawls. Given that the shawls had a retail value of £353,000, this sentence provides very little deterrent. IFAW recommends that the sentencing guidelines produced by the Environmental Law Foundation and the Magistrates Association in 2002 be actively promoted among members of the judiciary in order to provide a deterrent to criminals.

QUESTION 4: IS THERE SUFFICIENT DIALOGUE AND CO-OPERATION ACROSS GOVERNMENT AND AMONGST THE VARIOUS BODIES RESPONSIBLE FOR DEALING WITH THIS TYPE OF CRIME?

21. IFAW welcomes the establishment of the Partnership for Action Against Wildlife Crime (PAW) and the National Wildlife Crime Intelligence Unit (NWCUI) at the National Criminal Intelligence Service (NCIS). IFAW recommends that all bodies responsible for dealing with wildlife crime should work more closely with Interpol and relevant bodies in other countries to tackle international illegal wildlife trade and bring to justice those suspected of committing offences. Each time there is a seizure of a CITES-listed specimen, the responsible body should file an Ecomessage—a system designed to transmit information on wildlife crime to Interpol.

22. IFAW works closely in partnership with Government and other bodies responsible for dealing with wildlife crime, including as a member of the Wildlife and Countryside Link coalition of non-governmental organizations (NGOs). While some level of dialogue and cooperation exists between Government and NGOs, IFAW recommends increased cooperation on areas of mutual interest and increased transparency and NGO involvement in decision-making.

23. In general, there is insufficient dialogue and co-operation across Government and amongst the various bodies responsible for dealing with wildlife crime. As noted above, information provided by Defra on wildlife protection legislation and its implementation is insufficient and unduly complicated. Most stakeholders interviewed by IFAW during its investigation into UK ivory trade responded that the current system of permits and certificates covering the trade and movement of endangered species products is chaotic, impractical and highly subject to abuse, while a large amount of traders operate without any required documentation whatsoever. Without clear communication between all the relevant parties, it is hard to see how a more workable system can be devised.

24. At present, most wildlife crimes are not “notifiable” so there is no central record-keeping system of individual cases. IFAW recommends the establishment of a central register of wildlife seizures, investigations and prosecutions to ensure more effective understanding of the trends and scale of this area of crime.

APPENDIX 7

Memorandum from the Mid Sussex Badger Protection Group

There is currently a spate of badger digging incidents taking place within the MSBPG area. These are being perpetrated by a small group of individuals known to the Police and RSPCA and have been witnessed by several members of the public. This has been going on since late last year, so far as the Police know, and may have been going on longer than that.

MSBPGs experience is that the Police and RSPCA do not have the resources to carry out a full and proper investigation into these incidents. Witness statements are not taken and forensic evidence is not collected within sufficient time to be of any value. The Wildlife Liaison Officer has told us that he has other duties to perform and of course is not himself available 24X7. It has also been suggested that any prosecution is more likely to be undertaken by the RSPCA than by the CPS. Quite clearly wildlife crime is regarded as low priority.

The WLO has stated that, when he has finished collecting evidence he “hopes” to get a six month custodial sentence. This is the maximum which can be imposed for a single incident of badger digging, but what we are seeing in Sussex is a systematic plundering of wildlife for the perverted entertainment of a bunch of sadists. The sentient creatures which have been dug out of their homes are not found dead nearby. Which suggests that they are being transported to be abused and tormented to death elsewhere. Surely this type of crime should carry a much heavier sentence than a mere six months.

If we claim to be a civilised society we should not tolerate this sickening brutality in our midst. We must put sufficient resources into catching these people, and then lock them away for a very long time. Systematic and calculated brutality against vulnerable creatures is just as un-civilised as the same type of crime against vulnerable humans, and the perpetrators of this kind of wildlife crime are very often violent against people too. Life sentences should be imposed, and should mean life.

April 2004

APPENDIX 8

Memorandum from the National Federation of Badger Groups

WILDLIFE CRIME AND BADGERS

INTRODUCTION

The National Federation of Badger Groups (NFBG) is the only UK-wide organisation solely dedicated to protecting badgers in Britain. We represent over 80 local voluntary badger protection groups and are recognised as a source of authoritative and accurate information on all badger-related issues. For example, we are a major commentator on bovine TB and have given evidence to inquiries held by the Environment, Food and Rural Affairs Committee.

Sadly, badgers are still persecuted in Britain and the NFBG and its members have expertise in badger crime and law enforcement issues. We have developed excellent working relationships with law enforcers across Britain and play a key role in providing advice, guidance and training to a range of organisations and individuals. In particular, we provide training for Police Wildlife Crime Officers and speak at regional and national police conferences. The NFBG is also an active member of the Partnership for Action Against Wildlife Crime (PAW).

In this report, we outline the major threats facing badgers in Britain and demonstrate that, while the badger may be the most protected British animal on paper, this is not the case in practice. We describe the weaknesses and loopholes in current legislation covering badgers and outline the measures that need to be taken to improve the law. This report also discusses the wider problem associated with wildlife legislation and its enforcement.

WILDLIFE LAW ENFORCEMENT

Most wildlife crime is not recorded by the Home Office and, inevitably, is considered a low priority by many police forces which have limited financial budgets. While most police forces have a system for dealing with wildlife crime, not all police forces have dedicated Wildlife Crime Officers (WCOs). Furthermore, WCOs are frequently hampered by having limited or no financial budgets or time allocated to their wildlife work. Many WCOs carry out their wildlife work in their own time: on rest days, at weekends and in the evenings. There are some notable exceptions where police forces do dedicate significant time and resources to dealing with wildlife crime, and the NFBG welcomes this approach, but unfortunately these forces are in the minority.

WCOs are also vitally important in supporting the work of voluntary organisations in ensuring the enforcement of the law. For example, voluntary badger group members record and monitor setts for illegal activity but it is the police who are vital in enforcing the law and securing the successful convictions of offenders.

The NFBG takes the view that a more strategic approach to wildlife crime, coupled with proper funding, could have a significant impact on dealing with other types of crime. It is well documented that individuals involved in wildlife crime are also frequently involved in other crimes, such as drugs, violence, theft and those involving firearms.

The NFBG believes that the Home Office, to enable quantification of the problem, should record all crime against wildlife. Chief Constables should be provided with sufficient resources specifically to address wildlife crime. Each police force should have at least one full time WCO, as a police officer or a civilian coordinator, with a network of professionally trained WCOs that are available 24 hours a day. WCOs should be allowed official time out of their normal duties to attend relevant training courses and conferences (this is currently not always the case). WCOs should also have sufficient resources allocated to fund their work.

An additional problem with tackling wildlife crime is that others involved in enforcing the law may not have the necessary knowledge or expertise. For example, a report commissioned by DEFRA, published in November 2003, found “a lack of consistency in environmental sentencing” with courts being too lenient in many cases [1]. Researchers found that there is a “very limited use” of custodial sentences, the severest form of penalty, and “infrequent” use of other sentencing options such as community service and compensation orders. They also found that most environmental offences are punished by fines but that the average fine is “well below the maximum”. There was also a decrease in the costs awarded against defendants, meaning a greater cost to the taxpayer. Researchers also found that magistrates are exposed to a very low level of exposure to environmental offences and that less than 25% of magistrates are familiar with official sentencing guidelines for environmental offences that were published in 2001.

BADGER CRIME

Badgers and their setts are legally protected from intentional cruelty, such as badger digging and badger baiting, and from the results of lawful human activities, such as building developments. The primary legislation covering badgers is the Protection of Badgers Act 1992. Badgers are also listed on Schedule 6 of the Wildlife and Countryside Act 1981, which includes animals where certain methods of taking or killing are prohibited, such as the use of self-locking snares. The Protection of Animals Act 1911 is also frequently used in badger-related court cases, where defendants alleged to have used dogs to fight badgers may be charged with cruelty to dogs and causing “unnecessary suffering”. Annex II³ comprises an NFBG fact sheet which describes the legislation in more detail.

However, since the Protection of Badgers Act 1992 was introduced, there have been relatively few successful convictions, compared to the number of offences committed. Weaknesses in the 1992 Act result in the legislation being simply unworkable and unenforceable. Some of these weaknesses result from concessions being made to the “pro-hunting” lobby that had otherwise threatened to sabotage the bill as it passed through Parliament.

In addition, courts rarely impose the maximum penalty for crimes committed against badgers and in most cases offenders are simply given a limited fine. This does not act as a deterrent or send out the message that intentional cruelty to animals is unacceptable in a civilised society. Annex II⁴ gives examples of penalties imposed by courts for badger-related offences.

Twelve years after the Protection of Badgers Act 1992 was enacted, serious consideration must now be given to closing the current loopholes in the Act. Many of the provisions needed to strengthen the Protection of Badgers Act 1992 were provided to other wildlife in the CRow Act 2000, such as powers of arrest, powers of entry to land and increased sentencing. Unfortunately, while the CRow Act has improved protection for many wildlife in Britain, the changes were introduced in isolation of the 1992 Act and do not apply to badgers.

The Scottish Parliament has recognised that there are weaknesses in the 1992 Act. In April 2004, the Environmental and Rural Affairs Committee unanimously voted to accept a series of amendments to the Nature Conservation (Scotland) Bill, improving the Protection of Badgers Act 1992 as it applies to Scotland.

Annex III⁵ outlines the current weaknesses in the 1992 Act, some of which have been addressed by the Scottish Parliament. The appendix also outlines the implications of these weaknesses and makes recommendations.

May 2004

³ Not published. See www.badger.org.uk/questions/index.html.

⁴ Not published. www.badger.org.uk.

⁵ Appended.

WEAKNESSES AND LOOPHOLES IN PROTECTION OF BADGERS ACT 1992

<i>Weakness/loophole</i>	<i>Practical implications</i>	<i>Recommended action</i>
Offences are not supported by a power of arrest.	Suspected offenders cannot be arrested at the scene of a crime and taken to a police station for questioning. Individuals can only be invited to attend for interview, by which time they may have an alibi. Many cases fail to reach court because solicitors advise their clients to refuse interview, hampering the investigation.	Provide law enforcers with an unconditional power of arrest.
No powers to access property and land.	Law enforcers cannot properly investigate alleged offences if access to land is denied. This is frequently the case if the landowner is involved or knows the suspected offenders.	Provide law enforcers with a power of entry to property and land.
Court proceedings must commence within six months of an offence being committed.	Offenders can fail to be prosecuted when there is insufficient time for a full and thorough investigation. Some offences may come to light many months after they took place, such as through the discovery of video footage.	Increase the “six-month rule” so that proceedings may commence within three years of an offence being committed.
Limited penalties for offences do not act as deterrents. No provision for increased penalties where the offence involves significant financial gain, eg developers.	The maximum penalty under the 1992 Act is up to six months’ imprisonment or a fine at level 5 (£5,000), or both. Penalties imposed in badger cases are usually well below the maximum.	Increase penalties to include an unlimited fine and three years imprisonment for the severest offences, such as badger baiting. Include offences and appropriate penalties for bodies corporate.
Free-running snares can be used legally to capture foxes and rabbits, but frequently kill and injure badgers.	Badgers can be injured and killed in snares. Illegal self-locking snares are still used and cause severe injuries to a variety of animals. Snaring badgers and other protected species is prohibited by section 11 of the Wildlife and Countryside Act 1981, but its enforcement is difficult.	Ban the manufacture, possession and use of all snares.
Named persons within foxhunts are allowed to block badger setts to prevent a fox seeking refuge underground.	Setts are often blocked illegally using material not permitted by the Act. Badgers can suffocate underground or be driven from their setts.	Ban hunting with dogs. If not, ban the blocking of badger setts, as recommended by the Burns Inquiry.
Hunt personnel, usually terriermen, are allowed to dig foxes from their earths.	Badger setts can be damaged and destroyed, and badgers injured or killed, when foxes are dug out of badger setts. Digging for foxes is one of the most common covers used by badger diggers.	Ban hunting with dogs. If not, ban all terrier-work and “digging out” by hunts and others.
Hunt registers do not have evidential status or compulsory disclosure.	When the Police investigate alleged offences of illegal sett stopping, they require the names of sett stoppers. Currently, hunts can (and do) refuse to name stoppers and can (and do) refuse to provide the register to the police. The result is that prosecutions cannot proceed, as alleged offenders cannot be identified.	Legislate to ensure that hunt registers have evidential status and are subject to compulsory disclosure. Create an offence of failing to produce a hunt register for police when reasonably required.

<i>Weakness/loophole</i>	<i>Practical implications</i>	<i>Recommended action</i>
Hunt registers are not kept to a specified format.	If a register is provided to the Police as evidence, there may still be insufficient information to be of value to the investigation.	Legislate that hunt registers must contain information including: name of all sett stoppers; date of birth (to facilitate checking for criminal records); address; date of appointment; date of cessation of employment and reason for leaving; location of setts stopped; identification of setts stopped by each stopper; time; date; method used; and, signature. Create an offence for failure to keep the register up to date and in the required format.
Hunt registers are not the responsibility of a specific individual within a hunt.	Some hunts have more than one master, which can hamper police investigations. It can be particularly difficult to obtain information from the hunt register and so attribute liability for offences.	The hunt register should be kept by the hunt Secretary, who should be liable for any offences in relation to the register.
Hunt sett stoppers can practise even if they have previous convictions.	Over the years, some hunt personnel, including sett stoppers and terriermen, have been convicted of offences against badgers and other animals. Voluntary codes of conduct have proved ineffective.	Anyone convicted of a specified offence should not be permitted to be a registered sett stopper. Specified offences should include those against badgers, other wildlife and domestic animals.
The status of a sett can be difficult to prove, particularly that it was “in current use” at the time an offence was committed.	Many offences cannot be prosecuted due to lack of firm evidence of the status of the sett before the offence took place. It is still wrongly supposed by some people, and even accepted by courts, that a sett has to be in use by badgers at the time of the offence. The true test is whether the sett was a structure or place displaying signs indicating “current use” by badgers. “Current use” may include seasonal use, even though there may be no actual use at the time of the offence.	A national register of badger setts should be set up. Hunts should be required to register setts, with confirmation by statutory nature conservation agencies and recognised local badger groups. Offences involving a hunt at a registered sett should be treated as an “aggravated” offence, carrying a heavier penalty.
The Government can claim “Crown immunity”.	The Government can (and does) kill protected species (including badgers) by claiming exemption from legislation. The Government and its departments are unaccountable for their actions.	Remove the ability for Government to claim Crown immunity by making legislation binding upon the Crown.
Legislation does not protect badger habitat, including feeding areas.	Road and building development can result in the loss of vital feeding areas to badgers. The result has implications for badger conservation and welfare. Badgers may starve, be killed on roads and/or social groups may be fragmented.	Provide legal protection for badger habitats. Introduce strict guidelines for the maximum proportion of a territory that can be developed. Refuse planning consent if development exceeds the maximum figure. Avoid habitat destruction through piecemeal development over time.

<i>Weakness/loophole</i>	<i>Practical implications</i>	<i>Recommended action</i>
The 1992 Act allows for anyone to “tend” in captivity sick or injured adult badgers and orphaned cubs.	Badgers need specialist care, but no licensing or accreditation system exists. Badger welfare can be seriously compromised through people who are inexperienced and do not use approved guidelines. NFBG/RPSCA/Secret World Wildlife Rescue guidelines advocate high standards of animal welfare and disease control.	All individuals and facilities dealing with badgers should be accredited, licensed and inspected. Licensees must use formally approved methods. Note: NFBG <i>et al</i> published guidelines may be incorporated into DEFRA’s draft Animal Welfare Bill.

References

[1] Trends in Environmental Sentencing in England and Wales. Claire Dupont and Paul Zakkour, Environmental Resources Management. November 2003.

See: <http://www.defra.gov.uk/environment/justice/index.htm>

APPENDIX 9

Memorandum from the National Gamekeepers Organisation

INTRODUCTION

The National Gamekeepers’ Organisation (NGO) is pleased to make this short submission to the Environmental Audit Committee’s sub-committee investigating wildlife crime. For the record, the NGO was founded in 1997 and now has over 8,000 members. It represents the gamekeeping profession in England and Wales. More details about the organisation can be found on our website: www.nationalgamekeepers.org.uk

GENERAL POINTS

1. Wildlife crime, whilst important, is on the whole very rare.
2. The only exception to this general statement is in the case of poaching, which remains a significant problem and is largely unpoliced.
3. In terms of environmental impact and species conservation at the population level, crimes against individual plants and animals are insignificant.
4. However, crimes against wildlife often receive widespread publicity out of all proportion to their true significance, it is important always to bear this in mind.

DETAILED COMMENTS

1. *Field Sports and Wildlife Management*

It is our belief that field sports and the sorts of wildlife management conducted by gamekeepers (for example: deer culling, fox control, rat poisoning and pigeon shooting) are invariably conducted within the law and additionally within self-imposed codes of good practice. Considering the number of people involved on a regular basis in these activities, the level of prosecutions is almost immeasurably small, amounting to no more than a handful each year. We believe this is strong evidence that there is no necessity for action in these areas.

2. *Poaching*

The biggest aspect of wildlife crime, however, is poaching. By contrast, this is quite widespread and 90% of gamekeepers have been affected by it at some time or another.⁶ Poaching of reared pheasants from pens or of trout from fishponds cannot truly be described as wildlife crime, as the birds are captive and are thus property, but poaching released gamebirds from their roosts at night, or chasing wild deer or hares with running dogs by day is indeed wildlife crime. It is a serious matter not just because of the economic damage it can do to the estates which suffer it⁷ but also because there can be severe welfare implications, for example where a deer’s rear quarters are torn at by a pursuing dog and it then escapes to die a lingering death.

⁶ The NGO carried out a Rural Crime Survey in December 2000. 10% of Britain’s gamekeepers responded. 90% said they had experienced poaching at some time and 78% said “on a regular basis”.

⁷ Estimated at anything from £500 to £10,000 per estate per year (NGO Rural Crime Survey 2000).

Quotes on Poaching from the NGO Rural Crime Survey 2000

“We regularly get gangs of illegal hare coursers—up to 70 people four or five times a week.”

Part-time 'keeper, Cambridgeshire.

“Last year we caught 17 different sets of poachers and dog men.”

Headkeeper, North Yorkshire.

“I myself am retired due to injury suffered from dealing with poachers. I feel that the law is not severe enough with poachers brought before the courts.”

Retired 'keeper, Bedfordshire.

Poaching offences are largely defined in the nineteenth century Game Acts, which are quite archaic and nowadays make relevant evidence-gathering and convictions hard to come by. Often, magistrates hand down minor penalties that do little to discourage further offending.

The things that could be done to improve on this situation include:

- Clearer offences for poaching, especially if the Game Acts are to be revised as the Minister Ben Bradshaw has recently stated in a Parliamentary reply.
- More resources to be allocated to rural police forces, who often now regard poaching as unpoliceable.⁸
- Imposition of higher penalties, in particular the confiscation of equipment, vehicles and dogs, to prevent convicted poachers from re-offending.

3. *Over-Protection of Species*

There is a strongly held view in the countryside that some species, which can become problematic if their numbers go unchecked, have been over-protected by law. The most serious example is the badger. The significance of this species to the current review is that increasing numbers of farmers and others are now openly talking about taking the law into their own hands to deal with the problems of TB, land erosion and crop damage by killing badgers. *This should be an early warning that a traditionally very law-abiding sector of the community is becoming fed up with bad law passed at a distance by those removed from the practicalities of rural management.*

We ask that within the Government's wider ongoing review of the Wildlife and Countryside Act and related legislation, the whole issue of badger protection and management is fully researched and re-examined. Badger numbers must be brought back under control before they get completely out of hand and it is unlikely that tinkering with the current licensing procedures will be sufficient to ensure this. The consequences of inaction will be a significant increase in wildlife crime against this species.

To a lesser extent the same arguments apply to cormorants, which are now significant predators of fish farms, and to certain birds of prey that are increasing countrywide and endangering wildlife and gamekeeping interests. Unless politicians and civil servants can “get real” about these issues and allow reasonable and well-regulated species management, our prediction is that there will be a dramatic increase in wildlife crimes related to them in the coming years. If resources for policing in rural areas are not increased, such crimes will go very largely undetected. It would be far better to address the *cause* of crime at source by re-examining the over-protection currently afforded to these species.

4. *EU Law and the UK Situation*

It is a weakness of legislation at the EU level that it is hard to pass wildlife laws that are as relevant to olive groves as they are to grouse moors. Habitats and wildlife populations vary from place to place and wildlife laws need to vary also.

A current Defra review of the General Licences under which pest birds can be controlled in the UK is a case in point. It suggests among other things that rooks, herring gulls and jays should no longer be controlled for the purpose of conserving wild birds, yet all three species are egg predators and can do great damage to game and wildlife. The reason for the proposed change, we are told by Defra, is that the UK licences are at odds with the EU Birds Directive. If this is so, it is the Birds Directive that needs to change, to make it more flexible to the specific needs of member states, rather than the UK licences.

The same sorts of issues arise in relation to other aspects of wildlife law. For example, the Birds Directive links the shooting seasons for birds to their breeding and migration periods. Migration and breeding not surprisingly take place at different times in different parts of the EU. Even general principles such as not shooting during the breeding season can break down in some cases. The woodpigeon breeds all year round in the UK, so control to prevent agricultural damage must inevitably overlap with breeding, yet this too is under attack from protectionists in Brussels.

⁸ 63% of gamekeepers rate the police response to poaching reports as “poor” or worse.

All these are examples of the need for legislative flexibility when dealing with something as dynamic as wildlife management. Anything the EAC sub-committee can do to advance the idea of a more flexible approach to wildlife management will be welcomed by the National Gamekeeper's Organisation.

Postscript: Fly Tipping

Whilst it is not strictly a wildlife law issue, we feel we must take this opportunity to draw your sub-committee's attention to a serious increase in the amount of fly tipping our members are experiencing. As the eyes and ears of the countryside, gamekeepers are often the first to pick up on this sort of problem. Recent changes in the law requiring people to pay for the correct disposal of cars and electrical goods, coupled with increases in Landfill Tax, are leading to the countryside becoming an unofficial dustbin. We urge your sub-committee, perhaps as part of a separate investigation, to look into this increasingly serious problem and to encourage the Government to do something about it.

April 2004

APPENDIX 10

Memorandum from North East Derbyshire Badger Group

1. SCALE AND IMPACT OF WILDLIFE CRIME

Clearly the particular experience of our Group relates to offences against badgers but we are individuals who are active “in the field” and are therefore aware of a range of problems. Offences against badgers and their setts are commonplace. Less than two hours ago, for example, I returned home having been called out to a sett at Dronfield (near Chesterfield) where five of 11 entrances had deliberately been blocked solid with earth. No doubt more would have been blocked had not a lady walking her dog shouted at the man responsible. This, unfortunately, is no isolated incident and badger digging continues to be a problem in this area. Indeed cruelty inflicted in the name of sport appears endemic. Perhaps not classed as crime (although it should be) I have twice found foxes nailed to trees apparently whilst still alive, making it clear that a small minority still derive some sort of pleasure from inflicting pain and suffering. This small minority have the capacity to cause damage to wildlife quite disproportionate to their numbers. I regularly see children wandering in the woods armed with quite powerful air rifles and there is no doubt in my mind that many birds pay the price. Probably threatened species among them. But perhaps the most indiscriminate and destructive force are the lampers, these are often violent people openly threatening landowners with arson and other forms of damage if they report their activities. I have no confidence that the Hunting with dogs Bill will stop this or even do a lot to slow it down in the present climate.

2. IS THE FRAMEWORK OF THE LAW ROBUST ENOUGH TO DEAL WITH WILDLIFE CRIME?

The scope of International and European law is beyond the remit of a small wildlife Group such as this. So far as the laws of this Country are concerned we feel there is much to be done. Again our particular expertise and experience lies with badgers but in general terms there are things that make no sense to any thinking person with a conscience of any kind. How can it possibly be right to differentiate between a captive animal and a wild one when someone is inflicting gross pain and suffering upon it? Does one suffer less than the other?

If there is a clear need for controls to be imposed upon a problem species we go along with that. However, the law needs first to insist that the clear need is proven before requiring the control to be carried out as humanely as possible. Deliberately causing unnecessary suffering should always be a criminal offence.

3. RESOURCES

A review of current badger legislation to close loopholes would be very welcome. Many people believe badger diggers to be “casual amateurs”. A few are perhaps, but most are hard core regulars who set out very well prepared not only with equipment but with good knowledge of the area and an agreed story to tell in the unlikely event of their capture. Capture is probably not a good word to use since there is no power of arrest and a power of arrest is most definitely needed to allow the Police to deal effectively with the few who do get caught. Badger digging is linked up with drugs and gambling. Not in every case of course but where it is, it is hard core crime and the Police need the powers to do more than just scratch the surface, and that is what is happening now. Many of these people are serious thugs and they rely on limited Police powers. To demonstrate just how organised they are, there is a “team” comprising a solicitor and a professional witness who travel around the country defending just about every badger digging case that is brought to Court. In comparison, at local level you will be fortunate to find a prosecutor with any knowledge of wildlife issues or perhaps much interest either.

The prosecution of wildlife crime requires specialised investigation and a prosecutor with a really good background in the subject. At the scene much evidence can be lost if suspects leave before the arrival of experienced badger group members (but there is no power to detain them). From personal knowledge I know that clear cut cases are lost because prosecutors don’t know when or how to challenge claims and statements made in defence. I believe the only way to redress this altogether unsatisfactory situation is to locate an enthusiastic prosecutor and provide them with both the training and funding that will allow them too to travel round the Country providing the necessary prosecution skills allowing the Courts to arrive at a more just and balanced verdict. That certainly is not happening at present.

The Protection of Badgers Act 1992 uses the term “current use” but fails to define it. The prosecution is thus faced with the problem of having to establish that badgers were at home on the day of the dig. The only way to do this is to have someone sit outside the sett for many hours or maybe days so they can say they saw a badger come out of a hole. This is unrealistic and the term needs to be defined properly and in line with the intentions of the Act.

4. DIALOGUE AND CO-OPERATION

I am in no doubt that bodies like English Nature and the Environment Agency have, within their ranks, many who have a very good understanding of what needs to be done to improve matters for wildlife in this Country. I have no doubt either that both are tragically under resourced. Under the circumstances I can't see either of these two major players volunteering to take on further responsibilities. Perhaps not relevant to wildlife issues but examples of how this under resourcing does cause concern are the way that the Environment Agency encourages self monitoring of both dust and water pollution at opencast sites. On another occasion a report of a farmer spraying foul smelling waste foodstuff on land at 10.30 pm met with a promise to see if somebody could be found to have a look at the situation—and no subsequent feedback. I don't believe this is down to apathy, it's lack of resources.

With two Government bodies who ought to be the major players in supporting wildlife sidelined by a lack of funding who will deal with wildlife crime? In truth, nobody really has a handle on how much wildlife crime there is. If, for example, we report an incident of badger digging to the Police all we are given is an incident number. Because it is not a recordable crime it is not separated from the many hundreds of other reports of nuisance handled by the Police on a weekly basis and it becomes lost amid this mass. As a result it is not seen as a problem and we have stopped bothering to report anything that doesn't require an immediate response.

Events that are really crimes against wildlife are frequently impossible to deal with as wildlife crime. In a local river we have a population of threatened native crayfish. The river runs in a privately owned woodland through which there is a permissive right of way for walkers. Over the past couple of years a group of trail riders have taken to riding their motor cycles up a significant length of this river bed. Requests to stop have met with abuse and the Police seem unable to find the resources to deal with them, indeed, at the end of the day what would they deal with them for? Certainly not for wildlife crime.

Also in our area we have quite a large piece of land, formerly an ash tip, that is owned by a construction company located many miles away in Durham. It came into their possession as a part of some take over or other, it is not available for development and although it may appear on their books as an asset it is of little use or interest to them. Over a good number of years the place has gone wild and badgers have established a couple of setts on there. In the past 12 months or so it has been "discovered" by owners of not only motor cycles but four wheel motors. A number of trees have been chopped down and some of the bikers are racing over and around the badger setts. The chances of bringing a successful prosecution for interfering with a badger sett are poor indeed since we would realistically have to prove knowledge they knew there was a sett there. And that's if we could raise sufficient enthusiasm in CPS to take the case.

Wildlife generally needs a better deal than it is getting. On behalf of the membership of the North East Derbyshire Badger Group I sincerely hope the Committee will be pushing to see that it happens.

April 2004

APPENDIX 11

Memorandum from the Oxford Badger Group

Unfortunately other pressures only allow time for me to make the smallest of contributions to this important area. I am Vice Chair of the Oxfordshire Badger Group, a prosecution solicitor in local government and a former crown prosecutor. The main point I wish to make concerns the woefully small number of police wildlife liaison officers especially in the Thames Valley area. I am told that TVP in fact has no WLO at present. This creates significant problems for bodies such as badger groups who need support in dealing with incidents they are called to which could have involved wildlife crime. The lack of public awareness concerning innocent acts which could result in wildlife crime are also a concern. For example the carrying out of landscape work during the nesting season resulting in damage, death to species. Education/publicity in this area would help.

April 2004

APPENDIX 12

Memorandum from Plantlife International

INTRODUCTION

Plantlife is the UK's only national membership charity dedicated exclusively to conserving all forms of plant life in their natural habitats. It has approximately 12,000 members and owns 22 nature reserves with a total land holding of 3,900 acres. Plantlife is "Lead Partner" for 77 species under the Government's Biodiversity Initiative. Conservation of these is delivered through a recovery programme called *Back from the Brink*. The programme implements Species Action Plans for plants through survey, research, practical action and advice, in partnership with other key players. Plantlife involves its members as volunteers (called *Flora Guardians*) in delivering many aspects of this work; at present over 200 people contribute towards *Back from the Brink* in this way. Plantlife also acts as the secretariat for *Planta Europa*, the European network of organisations and individuals working for plant conservation and botanical research.

Plantlife responds regularly to policy consultations in England, Wales and Scotland and offers evidence where necessary on issues that directly affect plants and the places where they grow. The charity is particularly active in the areas of invasive non native species, plant crime and wildlife legislation. Plantlife is a member of the Partnership for Action Against Wildlife Crime (PAW) and contributes to projects and training across the UK.

What is the scale and impact of wildlife crime?

Few plants are endangered by illegal collection and existing legislation is sufficient, although increased vigilance/education of police wildlife crime officers to encourage enforcement is still a problem. Plants targeted for illegal collection include spring bulbs and mosses, while illegal collection of other plants and fungi is less well known. One of the main problems is with detection and monitoring the scale of the problem. The solution partly requires higher prioritisation for action in the police force, through police operational orders for example, as the success to date of Operation Artemis (2004) is showing.

There is still a lack of case law and prosecutions are rare, although recent changes to wildlife legislation, including the increase in penalty, may help if enforcement actually takes place. It has unfortunately been the case that even if caught and fined, wildlife crime can still pay because of the imbalance between fine levels and profit. In addition, an ongoing case of illegal moss collection in Scotland has demonstrated that plant crime can be a small part of a much larger network of criminal activity.

While ongoing training through PAW for police officers, to which Plantlife contributes, is resulting in effective action, policing of wildlife crime is more effective in some areas than others, resulting in a lottery in terms of investigation and prosecution. This is compounded by problems in getting wildlife crime cases to court related to time pressures and insufficient knowledge within the judiciary. There is an urgent need for co-ordinated campaigns that are properly planned and resourced that can break through current restrictions of lack of prioritisation, lack of time resource and lack of knowledge within the court system to bring about successful prosecutions.

Is the framework of national and European law and of international regulation robust enough to deal with wildlife crime effectively?

Most plants are endangered by habitat destruction and the existing legislation fails to provide sufficient protection to the places where threatened plants grow, although changes in legislation with the Countryside and Rights Of Way Act 2000 in England and Wales and the Criminal Justice (Scotland) Act 2003 with the Nature Conservation (Scotland) Act 2004 have increased the power of enforcement by introducing custodial sentences and increasing the level of fines. However, habitat crime must be tackled before it actually occurs and this requires investment in relationship building with land owners plus awareness raising of the issues with penalties. Once habitat has been adversely affected by damaging activity, it is often too late to be able to do anything more than make an example of the case. This was very well illustrated by the prosecution in December 2003 of a company following damage to an SSSI in Cornwall and its rare mosses and liverworts.⁹ Wildlife crime involving habitat damage is one particular area where education and awareness raising is crucial and is one of the most effective preventative measures that can be put in place.

There is in addition a need for wildlife crime specialists both in the judiciary and in the police force through wildlife crime officers who understand the issues and have sufficient knowledge of EU, UK and national law to be able to bring cases to court successfully. This lack of specialist knowledge at local level is hampering prosecutions for wildlife crime.

Do responsible bodies who deal with this type of crime have sufficient resources and powers to do so? Do they treat wildlife crime with proper and due gravity?

The second biggest threat to biodiversity, after habitat destruction, is invasive non native species and these remain inadequately addressed in legislation. We gave our full support to the review of non native species commissioned by Defra (2003) and we await with interest, the outcome of the recent Government consultation on this issue, in England, Wales and Scotland. We would like to see this issue tackled with some urgency as the costs of invasive species control and eradication rise exponentially with time while rare species disappear and habitats are degraded. We strongly welcomed the legislation to ban the sale of the most invasive plants in Scotland and would like to see similar measures in England and Wales alongside a duty to control invasive non native species in all three countries (see below). Just as non native invasive species need to be tackled in a coherent manner throughout England, Wales and Scotland, they similarly would be better tackled in Northern Ireland from an all Ireland perspective.

In terms of species crime and the illegal collection of plants and fungi in particular, there is an urgent need for education and awareness raising. There are generally low levels of awareness of wildlife crime issues and people do not realise what is illegal, where licences are needed, or what they can do to help combat these crimes. There need to be co-ordinated campaigns, hung on relevant themes, like illegal moss collection for

⁹ <http://www.defra.gov.uk/paw/prosecutions/default.htm#Plants>

example, that can highlight what damage illegal collection can do, why it is illegal and what people can do to make sure it doesn't happen. The PAW initiative *Stolen from the wild* illustrates a useful example of this (see Appendix 1).

One of the answers to species crime is setting up a kite mark for products that have been sustainably collected. At the moment, consumers and retailers rely on the word of their supplier on the source of products and have no way of verifying if that product has been legally and sustainably sourced. Taking forward Target 12 of the Global Strategy for Plant Conservation¹⁰ will help in this regard and will help the public and retailers support sustainably managed plant products while highlighting areas of illegal and unsustainable collection.

Is there sufficient dialogue and co-operation across Government and amongst the various bodies responsible for dealing with this type of crime?

Since the passage of the Nature Conservation (Scotland) Act 2004, England, Wales and Northern Ireland now lag behind Scotland in terms of legal measures available to combat problem invasive species. One of the most effective tools in stopping the spread of non native invasive species into the wild is a ban on sale of the most invasive species and the new legislation in Scotland now provides a framework for this to happen. However, there remains in all three countries a lack of political commitment to introduce a duty to control and this will continue to cause problems in controlling and eradicating non native invasive plants. It is possible that the Water Framework Directive may provide some impetus to controlling invasive aquatic species where these cause a loss of ecological status but the agencies responsible for compliance remain without effective legislative back-up to be able to tackle the problem of spread and control effectively. We would also suggest that there is an urgent need for a new GB body to take a co-ordinating role in this issue and that without co-ordination and co-operation across the UK, effective action to stop the spread and threat of non native invasive species will be hampered.

June 2004

Annex

Stolen from the Wild

Stolen from the Wild is a new national campaign to raise awareness about the little known crime of stealing wild plants for commercial and private use. The Partnership for Action Against Wildlife Crime (PAW), which includes all organisations for wildlife crime enforcement in the UK, is distributing postcards of bluebells with the message: *Stolen from the Wild*, warning the public that many favourite garden bulbs such as bluebells and snowdrops, moss for hanging baskets or Christmas wreaths, and rare plants such as the Scottish Primrose, are taken in significant quantities from the wild, and could endanger species.

The PAW campaign has been organised by Scottish Natural Heritage, the wild plant conservation charity Plantlife Scotland and Strathclyde Police, with funding from the Scottish Executive. The postcards are aimed at the general public—particularly gardeners—and will be distributed through conservation organisations, public visitor centres and garden centres. In the longer term, PAW hopes to develop guidelines with garden centres to ensure that products are bought from sustainable sources.

Problems facing bluebells and other native plants

In March 2003, the UK's favourite flower was announced as the bluebell (*Hyacinthoides non-scripta*), following Plantlife's County Flowers campaign, when everyone was encouraged to vote for their favourite flower. This celebration of the bluebell reflects the high esteem in which the plant is held and increases demand for native bluebells both in the countryside and in our gardens. However, up to 50% of the world's bluebells grow in the UK, so we have an obligation to protect them. A number of other native plants are similarly wanted for the garden.

These plants are facing a number of threats. For the native bluebell, for example, the three biggest threats are unsustainable collection, genetic pollution through interbreeding with the non native species, the Spanish bluebell (*Hyacinthoides hispanica*) and climate change:

1. Unsustainable collection: bluebells, snowdrops and primroses are all in demand for the garden. Significant sums can be generated from the collection of wild bulbs, which are therefore sometimes targeted by bulb diggers, not all of whom are collecting legally. In 1998, the native bluebell was listed on Schedule 8 of the Countryside and Wildlife Act 1981, which protects it from exploitation for commercial sale. Snowdrop is protected under Convention on International Trade in Endangered Species (CITES). In addition, where permission of the landowner has not been obtained for collection, bulb and plant collection is recognised as theft. Since 1998 there have been a number of successful prosecutions for stealing bluebell bulbs, where the permission of the land owner had not been obtained. Schedule 8 protection applies throughout the UK,

¹⁰ Defra, DoE Northern Ireland, National Assembly of Wales and Scottish Executive (2004) *Plant Diversity Challenge: the UK's response to the Global Strategy for Plant Conservation*. Joint JNCC, Plantlife International and RBG Kew publication.

and in 2000 with the Countryside and Rights of Way Act for England and Wales, penalties for wild plant crime were increased and included custodial sentences. The current draft Nature Conservation (Scotland) Bill supports similar legislation for Scotland.

2. Genetic pollution through hybridisation: current legislation means that it is difficult for suppliers to source native bluebell bulbs for sale. It is more usual to see Spanish bluebells for sale. However, Spanish bluebells cross breed with the native bluebell and produce fertile hybrids. This means that the genetic status of the native bluebell is threatened as hybrids become increasingly widespread. The current bluebell survey being run by Plantlife, called Bluebells for Britain, aims to track the extent of Spanish, hybrid and native bluebells and to assess the significance of the problem in hybridisation and the resulting decline in native bluebells.

3. Climate change: if current predictions about wetter winters and hot, dry summers are realised, then the bluebell and other woodland plants may be threatened by resulting changes to their habitat. Warmer winters are also allowing competitive plants such as garlic mustard and cow parsley to start leaf growth earlier in the year, so that bulbs, including bluebells and snowdrops, are losing their advantage in setting growth early.

How you can help

Through the *Stolen from the Wild* campaign, partners of the Partnership Against Wildlife Crime are encouraging people to take action. For bluebells and other woodland plants, there are a number of things that members of the public can do:

- Check sources of bulbs and double check that they have not been sourced illegally from the wild by asking your supplier and consulting Fauna & Flora International's Good Bulb Guide, available at www.fauna-flora.org or tel 01223 571000.
- Use non moss alternatives or moss raked from your lawn instead of buying moss to line baskets or mulch pot plants.
- Never plant or dump garden plants in the countryside.
- Always compost excess garden material carefully.
- Do not allow garden plants to colonise natural environments.
- Keep up to date on information about potentially damaging non-native species, like the Spanish bluebell, and avoid buying them.

For suppliers, there are a number of actions that reflect responsible sales and would help to protect native plants like the bluebell:

- Check sources of bulbs in particular and other plants that may have been gathered from the wild within the UK and beyond. This includes mosses for example. Retailers should take care to ensure that bulbs sold are appropriately sourced from native stock grown under licence in nurseries.
- Consider signing up to the joint Flora locale / Plantlife code of practice for collectors, growers and suppliers of wild flora. For more information see www.floralocale.org

For more information on wild plant crime contact:

Sarah Roe, Scottish Natural Heritage on tel 0131 446 2270 or see www.snh.org.uk and www.plantlife.org.uk

APPENDIX 13

Memorandum from Sett Recorder

BADGERS AND THE LAW

The law is not giving badgers much protection

Most offences happen without being detected at the time. As a sett recorder who makes hundreds of visits to setts, I see the signs of dug setts at many sites. Those caught in the act represent the tip of the iceberg, yet even when they are caught they often evade conviction or are convicted but given lenient sentences.

This leaves badgers vulnerable to future persecution. For example:

1. In Gwynedd, North Wales men doing "fox control" were found at a badger sett with dogs, one of which had badger hairs in its mouth. They boasted about their experience over the years yet they were acquitted because the sett was not an obvious one! A badger is a large animal and produces unmistakeable field signs! This appears to me to be a blatant miscarriage of justice and since then more setts have been attacked in Gwynedd.

Sending dogs underground should be an offence—foxes, badgers and dogs are known to die of suffocation due to collapses during underground scuffles and battles. Fox destruction groups have used bulldozers (*Shooting Times* and *Shooting News*) to “rescue” dogs—or more usually their carcasses!

2. After the sounds of dogs baiting a badger at a dug sett, near Bylchau police were called out but were refused entry by the land owner. No action was taken and the badger population has declined around this part of North East Wales due to illegal persecution. Details available.

3. Last year near Mold a farmer pleaded guilty to pouring diesel down a sett. He was not fined, only had to pay costs.

Badgers *are* still protected by law?

April 2004

APPENDIX 14

Memorandum from the Somerset Trust Badger Group, and the Somerset Wildlife Trust Mendip Hills Area Conservation Committee

I would wish to declare the following views in support of the New Inquiry—Wildlife Crime. I would add, simply to give some credence to my views, that I am chairman of the Somerset Trust Badger Group, and the Somerset Wildlife Trust Mendip Hills Area Conservation Committee, also I work as a professional wildlife consultant often helping the local police with wildlife crime issues.

1. I believe that the scale and impact of wildlife crime is significantly under estimated. There are very many occurrences where the result of a crime is evident but it is to late or impractical to pursue. Although anecdotal I frequently come across reports of persecution to a wide range of species, many of which are legally protected. There are very many instances of loss of wildlife, and indeed habitats, which use the cover of an accidental/incidental result of a legal activity. Unfortunately there are elements of our society which believe the law does not apply to them, they are only doing what they have always done, or it is clever to selectively kill wildlife.

2. The framework of national and European law etc is not robust enough as it is too complicated, does not give the Police adequate powers, and provides too many loopholes to evade prosecution on technicalities.

3. The responsible bodies in my experience do not have sufficient resources and powers. The consideration given to wildlife crime does depend on the culture and missions of organisations and the interest of individuals. We have examples of both excellent commitment and deliberate unwillingness. Also until the measurement of wildlife crime detection and prosecution becomes a performance measure within our police forces we have little chance of seeing assignment of adequate resources given the many other requirements put on our Police.

4. The dialogue and co-operation across Government and the various bodies although generally well meaning is insufficient and not helped by the many bodies involved. With several Government departments, other statutory bodies, the police, recognised NGO's, animal welfare organisations, and others it is no wonder.

If we genuinely wish to protect our wildlife and habitats for future generations then I would suggest we need a single dedicated body which can adequately police, detect, investigate, and prosecute wildlife crime. That body will also have to educate and enlighten the public at large. Fortunately many younger members of our community are better educated and committed to conserving “their” wildlife, than us older and wiser folks.

April 2004

APPENDIX 15

Memorandum from the UK Environmental Law Association— Nature Conservation Working Group

In response to the press release of 2nd April 2004, this Working Group makes the following submissions.

A. CREDENTIALS.

A1.1 The UK Environmental Law Association is already known to Government and Parliament having been consulted on a wide range of issues since its formation in 1987. A copy of its Constitution including its aims and objects is available if requested.

A1.2 The Nature Conservation Working Group is one of a number of standing working parties which has been in existence for a number of years meeting from time to time to discuss issues relating to the legal framework for wildlife protection.

A1.3 Membership of the Group is open to anyone within UKELA and, as would be expected, is composed of these with a particular interest in wildlife protection. It draws support from lawyers in private practice, public and administration, academic institutions and NGOs together with other organisations involved in administration of this area of law.

A1.4 This means that it is able to comment from both a theoretical and practical point of view about the scope and operation of law; and to suggest where there are problem areas and possible solutions.

A1.5 The Group has links with the Partnership Against Wildlife Crime; and so it is able to understand matters of enforcement of wildlife law in practice.

A1.6 This submission is intended as a brief overview only. The Group would be happy to give further details and evidence if this would be helpful.

B. TRENDS.

B1.1 During its time, the Group has found that there has been a gradual widening and deepening of understanding of wildlife crime as a topic of increasing significance and concern to the public, reflected in the enactment of legislation at European and UK level, the obligations voluntarily entered into by the UK Government in international treaties; the growth in the activities of NGOs and such bodies as PAW and the creation of specialist expertise within local constabularies such as wildlife liaison officers.

B1.2 At the same time, however, this growing awareness of the scope and importance of wildlife crime and the wish of the public to ensure that it is tackled effectively has to be contrasted with the difficulties created for effective enforcement due to a number of factors, particularly the timescale between the imposition of obligations and expectations and the provision of guidance, understanding and resources. The Group has had brought to its attention a number of these, some of a continuing recurring nature (eg the obligations relating to protected species). The Group therefore welcomes this Inquiry into Wildlife Crime, and as is indicated below in answer to the specific questions raised by the sub-committee would recommend that there be ongoing monitoring of progress and resources provided, not only to raise the profile of this area of law but to ensure that sufficient priority is given to it within the wider sphere of law and order. This is particularly so where obligations are imposed upon public bodies both at national and local authority level who are often found to be either profoundly ignorant of their duties and/or inactive in the discharge of the duties which fall to them to carry out or enforce rather than the police authorities.

C. ANSWERS TO THE SPECIFIC QUESTIONS.

C(1) What is the scale and impact of wildlife crime? It is impossible to answer this question other than by general impression, anecdotal report and particular areas as there is no consistent and reliable mechanism for compilation of statistical evidence. It appears to be widespread, eg:

- (i) Some statutory bodies such as English Nature produce statistics in their annual report of extensive losses of habitat due to interference with SSSIs etc;
- (ii) Local authorities continue to grant planning permissions for developments affecting protected species owing to misunderstandings of and/or failure to observe and correctly apply Regulations 38–46 of the Conservation (Natural Habitats & c) Regulations 1994, its relationship to EC Council Directive 92/43/EEC and inadequate Planning Policy Guidance in PPG9;
- (iii) Whilst it is no longer common to see members of the public picking or uprooting plants as was once common, NGOs report organised gangs digging up wild plants protected under s13 of the Wildlife & Countryside Act 1981, no doubt for onward sale to specialist collectors;
- (iv) RSPB will no doubt be submitting their own memoranda about the depredations to birds contrary to Section 1 of the Wildlife & Countryside Act 1981.

These are examples only. The general impact is well known and well publicised, and no doubt others will comment. Our perception, which is anecdotal, is that it is substantial.

C(2) Is the framework of national (etc) law robust enough to deal with wildlife crime effectively?

In general terms, we would say that it is, provided it is enforced but with some qualifications.

- (i) There are too many instances where the burden of proof is too onerous in that the prosecutor has to prove intent (eg Section 1 of the Wildlife & Countryside Act 1981 and Section 28P(6) of the Wildlife & Countryside Act 1981 (inserted by Schedule 9 of CROW 2000)). There are many other instances of infringement of environmental law where there is strict liability. Intention is so difficult to prove whereas it is not unreasonable to assure that careful landowners and visitors to wildlife sites will, or should, act carefully;
- (ii) There are too many exceptions which are ill defined eg the defence afforded by Regulation 40(3)(c) of the Conservation (Natural Habitats) Regulation 1994. This has resulted in the unfortunate decision of the High Court in *Newsum and Others -v- Welsh Assembly Government* [2004] EWHC 50 Admin. (Whilst this case is being appealed by the Welsh Assembly Government, we would urge the Committee to recommend that if the effect of the decision remains as decided in the High Court then this needs to be amended.);

- (iii) Some lateral thinking would help. The well publicised comment of Professor David Bellamy that if every cat owner were made responsible for putting a bell collar on the household cats which kill millions of birds is a simple homely analogy, but never the less worth repeating in view of the serious decline in numbers of common birds which are generally protected under Section 1 of the Wildlife & Countryside Act 1981;
- (iv) There is no comprehensive protection of marine wildlife which is subject to a number of ongoing consultations;
- (v) The law is now enacted in a number of statutes and regulations, often an odd clause added into a statute about something else. Consolidation as far as possible would go a long way to dispel ignorance and ensure clarity.

C(3) Do responsible bodies who deal with this type of crime have sufficient resources and powers to do so? Subject to what we have said in this paper, the bodies do have sufficient powers but our impression is that:

- (i) Some are more vigilant than others. Those with a particular remit (eg English Nature) rank best. Those with other remits do not set it as high in their priorities or at all (eg some Internal Drainage Boards);
- (ii) The police have a particular problem which is obvious enough. Compared with murder, violence, burglary, terrorism etc, it inevitably ranks low, although PAW is striving to improve this. Inevitably, public profile also plays a part, eg badger baiting usually involves violence and so receives high profile;
- (iii) It would be useful to have Government guidance on the level of profile to be given with performance targets;
- (iv) Resources are scarce in all aspects;
- (v) Local authorities are often ineffective, despite having relevant powers.

C(4) Is there sufficient dialogue? No. A whole paper could be prepared about this. Some links are very good, eg JNCC, English Nature, CCW. Others are sporadic, eg Government departments. Some are almost non-existent. PAW has a good link up between constabularies, but local authorities (charged for instance with bio-diversity powers) have no ostensible mechanism for co-ordination on this subject.

This is an area of study that would be usefully audited, and given Government time resources and a framework.

May 2004

APPENDIX 16

Memorandum from the Wildlife and Countryside Link (LINK)

Wildlife and Countryside Link (Link) is a coalition of the UK's major environmental non-governmental organisations (NGOs), united by their common interest in the conservation and enjoyment of the natural and historic environment. Between them, Link's members have the support of approximately seven million people, and the help of 81,000 volunteers in the UK.

Link welcomes the Sub-committee's inquiry looking at the important and wide ranging issue of wildlife crime and we appreciate the opportunity for NGOs to contribute. Wildlife Crime has a major impact on biodiversity and affects the work of a number of our member organisations. Many of these organisations have considerable expertise in relation to wildlife crime and will be responding to the inquiry with detailed evidence from a wide range of perspectives—from local incidences of illegal damage to species and habitats to the vast, illegal, international trade in endangered species. We hope that the Sub-committee will recognise the experience of the NGOs and hear evidence from a number of these organisations.

The undersigned organisations wish to draw attention to their commonly held view that much greater political commitment and resources must be devoted to stopping wildlife crime, both on land and at sea. While the UK has already undertaken many commendable initiatives to protect wildlife, wildlife crime is frequently not treated with proper and due gravity, as illustrated by the following examples:

- Most wildlife crime is not recordable and therefore is often treated as a low priority by many police forces, under pressure to commit resources to meeting Home Office targets. Most police forces do have a system for addressing wildlife crime. However, there is a great deal of variation in the effectiveness of these systems, with some being particularly ineffective. For example, Lancashire and Humberside Police forces do not have designated wildlife crime officers.
- Current legislation does not always provide enforcement agencies with the powers necessary for them to properly investigate offences. For example, the Protection of Badgers Act 1992 does not provide enforcement agencies with powers of arrest or access to land. This frequently results in cases being dropped through lack of evidence.
- Where prosecutions are brought in wildlife crime cases, resulting penalties are often too minor to act as deterrents. For example, in cases that have led to prosecutions under the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and the

Nature Conservation (Habitats &c) Regulations 1994, the fines handed down have been lower than would have been the cost of taking the protected species into account and avoiding the offence—ie it has been a cheaper option to break the law.

- Link members successfully campaigned for new powers and penalties provided for enforcement of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) in the Criminal Justice Act passed by Parliament in November 2003. These should pave the way for more effective prevention of illegal wildlife trade in the UK, but almost six months later, the necessary amendments to the Control of Trade in Endangered Species Regulations 1997 (COTES) have not been made to allow enforcement agencies to make use of the legislation.

We would welcome any actions the Sub-committee can take to address these issues, and we look forward with great interest to the outcomes of this inquiry.

May 2004

APPENDIX 17

Memorandum from The Wildlife Trusts

1. BACKGROUND

Thank you for giving The Wildlife Trusts the opportunity to give evidence to the Environmental Audit Committee inquiry into Wildlife Crime.

The Wildlife Trusts are a unique partnership of 47 local Wildlife Trusts covering the whole of the UK, the Isle of Man and Alderney. The partnership campaigns for the protection of wildlife and invests in the future by helping people of all ages to gain a greater appreciation and understanding of nature. Collectively The Wildlife Trusts have approximately 560,000 members and manage almost 2,550 nature reserves, covering more than 80,000 hectares of land, ranging from inner city urban sites to the UK's finest wildlife areas.

The principal legislation that affords protection to species and habitats in England and Wales is Part I of the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats, &c) Regulations 1994. There are welcome proposals to review and, where appropriate, amend both these pieces of legislation which we hope will address some of our concerns. The Wildlife Trusts have inputted extensively to consultations on both these statutory instruments (copied for additional info). We have limited our comments to this inquiry to four areas of wildlife law that we feel are in need of urgent amendment.

2. AREAS OF LEGISLATION THAT REQUIRE ADDRESSING TO COMBAT WILDLIFE CRIME

2.1 *Addition of Reckless*

The Countryside and Rights of Way Act 2000 added the term “reckless” to those sub-sections of the Wildlife and Countryside Act dealing with the intentional disturbance of breeding birds and other animals occupying resting places, namely sub-sections 1(5) and 9(4) of the Wildlife and Countryside Act 1981. There is now a major inconsistency in the legislation whereby the term “reckless” is added to the lesser offences of disturbance but not to the potentially more important offences of killing, taking or destruction of birds and other animals and not at all to any offences involving wild plants. This means that it is hard to prosecute for this type of wildlife crime.

Proving beyond reasonable doubt that an offence was “intentionally” committed can be very difficult and many otherwise good cases have been lost as a result. The RSPB have reported seeing court cases lost where a protected bird species has been shot but the defendant claims that although they did kill the bird in question, they had not intended to shoot that species and had misidentified it as a non-protected species. In cases such as this, whilst it may be hard to prove the act was “intentional”, it was at least “reckless” to pull the trigger before identifying the target.

To overcome these inconsistencies and to overcome the difficulty of proving intent on the part of the offender we propose that the term “reckless” be added to all appropriate sub-sections which currently demand that intent is proven, namely 1(1), 3(1)(a), 9(1), 13(1)(a) and 13(1)(b).

Less straightforward are those situations involving the killing and injuring of protected species ‘incidentally’ to a lawful operation under the Wildlife and Countryside Act 1981. There is no such wording in the Conservation (Natural Habitats, &c) Regulations 1994 although various derogations exist.

Examples of this “loophole” include the bycatch of small cetaceans, turtles and sharks in fisheries and the destruction of benthic species such as the pink sea fan (*Eunicella verrucosa*) by “rockhopper trawls”. Although these events may be well documented and even predictable in some cases, they are not usually viewed as “intentional acts” but rather as incidental to the primary activity and therefore no offence has been committed.

In some circumstances, such as when the killing or injuring of a protected species occurs regularly as the result of an act, or when an act known to endanger a particular species is carried out in an area known to contain relatively high abundances of that species, then these should be considered “reckless” acts.

There needs to be tightening of the defence that an impact was the result of a lawful operation which could not reasonably have been avoided. The problem is that the definition of “reasonableness” can be interpreted widely.

One possibility for new wording is that put forward in the proposed Nature Conservation (Scotland) Bill which states that no offence has occurred as long as the following conditions are satisfied:

- (a) that the unlawful act was the incidental result of a lawful operation or other activity;
- (b) that the person who carried out the lawful operation or other activity:
 - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
 - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
- (c) that the person who carried out the unlawful act took, immediately upon the consequences of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.”

2.2 Non-Native Species

The introduction of non-native species is identified as one of the main causes of biodiversity loss world-wide¹¹

The Wildlife Trusts strongly believe that new legislation will be needed as part of the package to tackle non-native invasive species if we are to prevent future biodiversity loss. We suggest that legislative changes should include:

- As a matter of priority, an update of schedule 9 to include a number of problem invasive species such as *Crassula helmsii* (Australian swamp stonecrop) *Hydrocotyle ranunculoides* (floating pennywort), *Myriophyllum aquaticum* (parrot’s-feather) and *Pacifastacus leniusculus* (signal crayfish). In addition Part II of schedule 9 should be extended to include non-native species which evidence suggests are likely to cause significant environmental damage thus adopting the precautionary approach.
- We suggest that the Secretary of State should be able to add invasive species to the schedule by order rather than wait for the conclusions of the lengthy and protracted quinquennial review process. For example it is over a year since the Joint Nature Conservation Committee made the recommendation under the last quinquennial review that the water vole be given full protection. Defra has yet to consult on this recommendation.
- There should be a ban on sale of species of those plants listed on Part II of schedule 9 of The Wildlife and Countryside Act.

2.3 Habitat protection

We believe there is a need for improved protection from habitat destruction to help combat wildlife crime. This needs to look more widely than the current definition of “nests” for birds in Section 1 of the Wildlife and Countryside Act and “places used for shelter and protection” for animals in Section 9 of the same Act, and should include habitat features that are important for maintaining the status of populations of a species. This would require a definition of such habitat features and could be linked to sustaining Favourable Conservation Status (as required under the Habitats Directive).

A mechanism to require the restoration of the habitat of a protected species and even the re-instatement of populations of protected species following an offence should be required by law. Attempts should be made, where possible, to restore the habitat or species numbers to levels present before the offence was committed. There is currently no legislative mechanism for off-setting the criminal destruction of protected species or their habitats. Once a person has been found guilty of the offence, provision needs to be in the legislation to either require the offender to restore or to fund restoration carried out via a Statutory Body or its Agents.

¹¹ Working Group Report of the Review of Non-native Species Policy, Defra 2003.

Undoubtedly restoration will not always be possible but there are examples where techniques are being developed to allow for the recovery of certain marine habitats and the legislation should therefore allow for this possibility. Seagrass recovery and saltmarsh restoration techniques have been developed with some success. In line with Regulation 53 of the Conservation (Natural Habitats, &c) Regulations 1994, if a development impacts on a European marine site but there are reasons of overriding public interest which mean it must go ahead, compensatory measures have to be put forward to ensure the overall coherence of Natura 2000 is protected. As a result, creation of new habitat is being proposed as a compensatory measure, eg the creation of new inter-tidal habitat to compensate for an area of inter-tidal habitat that would be lost in an SPA due to dredging (Harwich Harbour dredge, Hamford water SPA). It seems likely that this requirement will encourage the further development of techniques to allow the creation or restoration of marine habitats.

Greater protection is needed for Local Sites. These are sites that are important for wildlife and geology in a local context (many are of SSSI quality and important in a national and international context) and we believe they should all be afforded protection from developmental activities through the planning process. However, planning policies are frequently weak and even where they exist, we know from a recent survey that almost a third of those responsible for running Local Site systems consider these policies to be inconsistently or poorly implemented by local authorities (Ref The Wildlife Trusts' Status of UK Wildlife Site systems report 2002). One such example is Newlyn Downs in Cornwall. This vast area of lowland heath includes the largest area of Dorset Heath (which is listed on the European Habitats Directive) in Cornwall. In 1996, despite policies to protect such sites, the County Council granted planning permission for a waste transfer and recycling centre, which would detrimentally impact part of the Local Site. Fortunately, in this case, the site was saved from destruction by an intervention from the Secretary of State.

Such interventions are unusual, resulting in many sites being damaged or lost. Local Sites are still being lost to development in the East Midlands Region, despite the presence of protective policies in many local development plans. In Nottinghamshire alone, 35% of such sites have been lost or become severely degraded in the last decade, of which more than 13% has been due to development. This constitutes a substantial degradation of the biodiversity resource and a loss of natural assets.

To reverse this trend, there needs to be stronger guidance and planning policies to ensure better protection of Local Sites. We would like to see a statutory role for Local Sites within the planning system. The revised PPS9 should include policies to protect Local Sites in all Local Development Frameworks and make a presumption against development proposals that would directly or indirectly damage or destroy a Local Site. The new PPS9 needs to be closely integrated with Defra's guidance on operating Local Site systems. The guidance, in its draft form is making a positive recommendation for Local Authorities to ensure that effective Local Site systems are established and maintained. Further protection would be afforded to Local Sites if Government made this recommendation a legal duty.

Finally Local Sites are being lost to non-developmental activities at an alarming rate. For example a sample survey of Shropshire's Local Sites revealed a 44% loss of meadowland between 1978 and 1991. 72% of unimproved grassland and fen in Carlisle district has been lost in the last 10 years and 24% of grassland Local Sites in Suffolk remain under threat from inappropriate management or neglect. Among a more insidious decline due to agricultural intensification and neglect, the most consistent reason for habitat loss given by Local Authorities in a report commissioned by Defra¹² in 2002 include lack of statutory/policies powers with respect to criminal damage eg by deliberate fires and other vandalism, recreational damage, tipping and dumping, inappropriate grazing etc.

Since the EIA Regulations came into force in 2002, a number of Wildlife Trusts have reported concerns about failure to implement these regulations effectively leading to habitat loss. The Wildlife Trusts can supply more facts and figures on request.

2.4 *Recording Wildlife Crime*

At present, there is no national system for recording wildlife crime incidents and numbers of successful and unsuccessful prosecutions. This is much needed, for both terrestrial and marine environments. Without this national system, and the associated resources it would require, it is impossible to accurately identify trends or particular problem areas, and only speculation is possible about the effectiveness of any protective measures in place. Establishing a centrally co-ordinated system for recording wildlife crime incidents and associated liaison with Police Wildlife Crime Officers would result in a more effective use of resources as they could be directed towards conservation priorities and also wildlife crime "hotspots" could be identified.

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¹² Study into non-development damage to Local Sites, possible solutions to damage and provision of resources, Just Ecology 2002.