



House of Commons
Environmental Audit
Committee

**Wildlife Crime:
Government Response
to the Committee's
Third Report of Session
2012–13**

**Fourth Special Report of Session
2012–13**

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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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The constitution and powers are set out in House of Commons Standing Orders, principally in SO No 152A. These are available on the internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/eacom. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Committee staff

The current staff of the Committee are Simon Fiander (Clerk), Nicholas Beech (Second Clerk), Lee Nicholson (Committee Specialist), Andrew Wallace (Senior Committee Assistant), Anna Browning (Committee Assistant), Yago Zayed (Committee Support Assistant) and Nicholas Davies (Media Officer).

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Fourth Special Report

The Environmental Audit Committee reported on Wildlife Crime in its Third Report of Session 2012–13, published on 18 October 2012 (HC 140). On 23 January 2013 Richard Benyon MP, Parliamentary Under-Secretary for Natural Environment, Water and Rural Affairs, announced 2013–14 funding for the National Wildlife Crime Unit. Between 3 and 14 March, the sixteenth meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was held in Bangkok, Thailand. The Committee's report had dealt with these matters. The Government response to the Committee's Report was received on 8 March and is appended below.

Appendix—Government response

Introduction

The Government welcomes the Committee's report into wildlife crime. We welcome the Committee's finding that we have made good progress since its 2004 inquiry, and also welcome its assessment of the challenges which face Government and wildlife law enforcement agencies.

The Government will look carefully at the evidence the Committee has gathered and its report of its findings, conclusions and recommendations. We have taken them into account in our preparation for the CITES Conference of the Parties (March 2013); in our work to support the Law Commission's review of wildlife management legislation; and in our wider policy development work.

The Government's response to the Committee's recommendations is set out below.

International wildlife crime

1. The current focus of UK CITES enforcement on trafficking related to traditional medicine may be misplaced, because our findings on the nature of demand in southeast Asia and China for illegal wildlife products suggest that wildlife crime driven by investment and conspicuous consumption is more significant. (Paragraph 13)

The Government agrees with the Committee that investment and conspicuous consumption are emerging as significant drivers of demand, particularly for species such as rhino. Defra is already tackling such emerging issues through, for example, our work as Chair of the CITES appointed rhino working group which is examining the drivers of demand for rhino horn and possible mitigating actions. The group's report will be considered at the CITES Conference. In the UK we are combating such trends through the stricter application of criteria for the re-export of antique horns such that most applications for re-export are now refused unless related to genuine scientific research;

cultural or artistic exchange between institutions such as museums; or have not been sold and are part of a genuine house move or bequest. We have gained agreement that the same approach should be used throughout the other EU Member States and continue to lobby for a similar approach on a global scale. Our international work on this issue will continue through CITES.

Wildlife crime priorities in the UK are established every two years according to assessed risk. Emerging issues can be incorporated into these priorities at any time if considered to be of sufficient threat and risk but we are currently content that existing awareness, priorities and procedures are sufficient to pick up items entering or exiting UK borders which may be destined for a use which could drive illegal trade. This includes traditional medicine usage. Belief in some south-east Asian communities in the curative properties of certain wild animal parts and derivatives such as rhino horn and tiger bone continue to be a factor and it may be a mistake to remove too much focus from that area. Whatever the driver it is clear that only by reducing demand can we hope to achieve significant reduction in poaching levels. Through Multilateral Environmental Agreements such as CITES the UK is already engaged in work developing demand reduction strategies.

2. It is a matter of grave concern that increased poaching, driven by demand for illegal wildlife products, threatens the rhino, tiger and elephant with extinction. The Government must take a leading role in exerting robust diplomatic pressure in favour of the development and enforcement of wildlife law at the next CITES Conference of the Parties in March 2013. In particular, the Government should focus attention on the damaging effect of ‘one-off’ sales of impounded ivory, which undermine the international CITES regime and fuel demand for ivory products, and seek an unequivocal international ban on all forms of ivory trade. Such commitments are essential but may not be sufficient to protect those species that are most endangered because of the persistent demand for products derived from them. Ultimately, rhinos, tigers and elephants will only survive as wild species if attitudes change. In the run-up to the 2013 CITES Conference, the Government should seek international support for an exploration of new ideas to challenge demand for such illegal wildlife products. (Paragraph 22)

We share the Committee’s grave concerns about current levels of poaching for species like elephant, rhino and tiger. This is a priority for this Government and we will continue to argue for and support measures which build enforcement capacity in the respective range States for the various species affected to tackle poaching. The Government has been a major contributor to the African Elephant Fund which funds the African Elephant Plan, agreed by all the African elephant range countries, and which has as its first objective the reduction in illegal killing of elephants and illegal trade in their parts and derivatives.

At its core CITES is a Convention that governs sustainable trade, and legal trade in some forms of ivory, such as antiques, brings economic benefits without posing a threat to living populations. However, we want to maintain the existing ban on trade in raw ivory. We would only consider supporting future sales if we were convinced that they would reduce poaching and illegal trade. We are not aware that any such evidence currently exists. The CITES Conference will consider a Decision-Making Mechanism to set criteria that must be met before any future sales of ivory can take place. The UK is playing a leading role in the

development of this mechanism and will continue to push for a highly precautionary approach to setting any such criteria.

Defra is heavily engaged with the World Bank led Global Tiger Initiative which aims to double the number of tigers in the wild by 2022. We are the first country to contribute to its Multi Donor Trust Fund providing US\$500,000 and also sit on the Steering Group. This fund will, amongst other things look to finance global programmes across the tiger range States areas such as enforcement and demand reduction. Additionally, the Government has recently supported projects such as Operation Predator, led by INTERPOL, which aims to build enforcement capacity across the tiger range countries and culminate in a multi-country enforcement operation. Similarly the UK continues to play a leading role in tackling the illegal trade in rhino horn and reducing demand for this product as set out in the response to the previous recommendation. These issues feature heavily on the agenda at the CITES Conference and will be priorities for the Government. We undertake bi-lateral and multi-lateral discussions with other countries on a regular basis but this was especially true in the lead up to the Conference as we looked to build support. In addition the UK recently co-sponsored an IUCN motion calling for a range State meeting to discuss the ivory poaching crisis. This should take place by June 2013 and will be an ideal forum in which to discuss ideas.

3. In order to ensure the efficient operation of the CITES regime in the UK, Defra must amend the COTES Regulations, focusing on the effectiveness of Regulations 5, 9(3) and 9(4) and their scope for consistent application by the various wildlife crime enforcement agencies. (Paragraph 24)

The Government agrees that effective domestic Regulations are necessary to support the efficient operation of the CITES regime in the UK. Council Regulation 338/97 requires Member States to have proportionate and effective offences, powers to enforce and penalties in place. These requirements are addressed in the UK by the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES). However the current Regulation does not cover some of the changes that have taken place in the EU since it came into force in 1997. As such we agree that COTES needs to be reviewed and changes made, to ensure its effectiveness. This review is underway.

As a starting principle the CITES related legislation: the COTES regulations referred to above; the Control of Trade in Endangered Species (Ports of Entry) Regulations 1985 and still extant provisions of the Endangered Species (Import and Export) Act 1976 are to be rationalised by merging their provisions into one Statutory Instrument (SI). In developing this SI we will look to include improvements and updates that better reflect the requirements of amended EU regulations, will review penalties and consider civil sanctions, look at changes in trade practices and enforcement techniques, as well as the designations of ports of entry and exit to be used when bringing CITES specimens into or out of the UK.

Initial discussions have taken place with key bodies, including the UK Border Force, Metropolitan Police, National Wildlife Crime Unit, and the Home Office. These focused on what should and could be included in a composite SI and discussed the provisions on seizure of specimens, powers of entry, the taking of samples by vets and the inclusion of

sanctions relating to caviar, all of which have been highlighted by the Committee as needing attention.

Further work is needed to develop and refine proposals. However, the Regulations highlighted by the Committee (COTES Regulations 5, 9(3) and 9(4)) are clearly within the scope of the review. Public consultation on the proposals is likely this Autumn and a revised SI is expected to be in force during the course of 2014.

Domestic wildlife crime

4. To discharge its obligations under the EC Birds Directive, to demonstrate its commitment to addressing raptor persecution and to send a clear signal that it regards poisoning birds of prey as wholly unacceptable, we recommend that the Government immediately introduces an Order under Section 43 of the Natural Environment and Rural Communities Act 2006 proscribing possession of carbofuran and other similar substances in England and Wales. (Paragraph 36)

The Government is firmly committed to addressing raptor persecution in England and Wales and this is one of the UK's wildlife crime priorities (with a focus on hen harrier, goshawk, golden eagle, white-tailed eagle, red kite and peregrine). There is a robust legal framework for protecting birds of prey with penalties which can include imprisonment for offenders.

Approvals for pesticide products containing carbofuran were revoked in 2001; this means that the advertisement, sale, supply, storage or use of products containing carbofuran is already a criminal offence under existing UK pesticide legislation.¹ This offence carries, on conviction, an unlimited fine.

Similar restrictions apply to all other pesticides as the basis of UK and EU pesticide legislation² is that no pesticide may be sold, stored or used unless it is first approved. All sale, storage and use of approved pesticides are subject to strict legislative control and are also subject to a code of practice³ as published by Defra.

Additionally the use of any poisonous substance to kill or take wild birds is already an offence under section 5 of the Wildlife and Countryside Act 1981.

The laws surrounding the possession of pesticides, such as carbofuran, which are harmful to wildlife, have been considered, and the conclusion is that there are alternative ways to handle the issue other than introducing an Order under s.43 of the Natural Environment and Rural Communities Act 2006. These include the existing powers under UK pesticide legislation (the Plant Protection Products Regulations 2011 and the Plant Protection

1 The Plant Protection Products Regulations 2011 and the Plant Protection Products (Sustainable Use) Regulations 2012

2 EU controls on plant protection products are set out in Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC and in Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides. Penalties and enforcement powers for Regulation (EC) No. 1107/2009 are provided for under the Plant Protection Products Regulations 2011 and Directive 2009/128/EC is implemented in the UK by the Plant Protection Products (Sustainable Use) Regulations 2012.

3 <http://www.pesticides.gov.uk/guidance/industries/pesticides/topics/using-pesticides/codes-of-practice/code-of-practice-for-using-plant-protection-products.htm>

Products (Sustainable Use) Regulations 2012),⁴ or by encouraging participation in amnesty initiatives, such as the Home Office's pesticide amnesty, which have already been run very successfully.

It is difficult to see what more the Government could do that could make it any worse for someone caught using or possessing carbofuran or other similar pesticides.

5. Given the scale of ongoing persecution of birds of prey, the current law appears to carry insufficient deterrent weight. We recommend that the Government evaluates the effect of the introduction of an offence of vicarious liability in relation to raptor persecution in Scotland and considers introducing a similar offence in England and Wales in that light. We expect the Government to report to us, or otherwise publish, the results of that review within the next 12 months. (Paragraph 43 and 44)

There is already strong legal protection afforded to birds of prey through the provisions of the Wildlife and Countryside Act 1981 where it is an offence to intentionally kill or injure any wild bird; take, damage or destroy the nest of any wild bird while that nest is in use or being built; or take or destroy an egg of any wild bird.

Some birds are further protected by their listing in Schedule 1 to the Act. It is an offence to intentionally or recklessly disturb them while they are building a nest, or are on, in, or near a nest containing eggs or their young. Native raptors are listed in the Schedule and so are afforded this additional protection.

The Scottish Government introduced the concept of vicarious liability for certain offences by an employee or agent through the Wildlife and Natural Environment Act (Scotland) 2011 which inserted a new section 18A into the Wildlife and Countryside Act 1981 (as it applies in Scotland). This provision came into force in January 2012 but it is early days, and as yet there have not been any convictions under the new provisions. While there are no plans to introduce similar vicarious liability offences in England, we will be looking closely at how the new offences in Scotland work in practice and once prosecutions begin to be brought forward it will be possible to start to assess the impact that the introduction of this legislation has made. It is important that such measures are able to deliver a real improvement in the enforcement of wildlife offences if they are to be considered in the shaping of our future wildlife crime policy in England and as yet it is not possible to assess the effect of these measures.

We are happy to review this as soon as suitable statistics are available.

6. Defra should examine with the Scottish Government and the Welsh Assembly Government how their commitment to joint strategic action on invasive non-native species in Britain could be refocused, with an emphasis on bolstering a strategy of prevention and setting clear milestones for implementation. In its 2013 review of The Invasive Non-Native Species Framework Strategy for Great Britain, Defra should study (a) the impact of the Wildlife and Natural Environment (Scotland) Act 2011; (b) the impact of third-country imports via other EU countries; (c) the scope for promoting

⁴ In addition to prosecution both the Plant Protection Product Regulations 2011 and Plant Protection Product (Sustainable Use) Regulations 2012 provide a range of enforcement powers for authorised persons these include the power to enter premises, conduct searches, take samples, inspect and copy documents, take photographs, seize computers, seize and dispose of a plant protection product or anything treated with a plant protection product and to issue enforcement notices.

11. We recommend that the Government reinforces the success of the National Wildlife Crime Unit by implementing long-term funding arrangements to allow it to plan for being even more effective in the future, including enhanced long-term funding to enable it effectively to monitor wildlife crime on the internet. (Paragraph 68)

Defra and the Home Office have each committed to provide funding of £136,000 for 2013–14. This, together with important contributions being made by the Scottish Government, Northern Ireland Government, Association of Chief Police Officers and the Association of Chief Police Officers (Scotland), will secure the NWCU for a further year. No decisions have so far been taken in relation to funding in 2014–15.

12. Partnerships between the police and NGOs can effectively increase funding for wildlife crime enforcement, and the Home Office should encourage all police forces to consider implementing them. This model might usefully be extended to fund other facets of wildlife crime enforcement, such as the NWCU. (Paragraph 69)

The Government welcomes NGOs strengthening their involvement in tackling wildlife crime. Indeed, the Government recognises the benefits of working in partnership across a range of stakeholders (including NGOs, industry, academia and others) to tackle all sorts of crime. However, it is not the role of Government to prescribe the exact shape and nature of those relationships, which is a matter for the police.

The Government is clear that due regard must always be paid to governance arrangements to ensure the propriety of third party funding for law enforcement activities, in particular that such funding does not compromise the operational independence of the police.

13. The NWCU should be directed and funded to develop a wildlife crime database to encompass all available information on incidents reported to the police and on prosecutions in the courts in the UK. (Paragraph 71)

The recording of incident data alone is not the answer. Key is actionable intelligence being progressed and relevant support being provided to enable this. A single point of contact for Police Force Intelligence Bureaus to recognise, prioritise appropriately and disseminate information to relevant partner agencies is key.

14. The Home Office should instruct all police forces to submit the data on wildlife crime required by the NWCU. (Paragraph 74)

Many incidents of wildlife crime are reported to agencies other than the police, so requiring forces to seek out and record all such incidents and crimes would mean Government imposing a substantial new bureaucratic burden. We believe this would be disproportionate and inconsistent with the principle of elected Police and Crime Commissioners.

On the question of instructing forces to submit data to the NWCU, the Government understands from the NWCU that it has renewed efforts to encourage police forces to recognise wildlife crime, linking with Force Intelligence Bureaus, to gather intelligence about what is happening in force areas rather than collecting data about the number of reported incidents. The Government supports this renewed activity between police forces

both organisations as Arm's Length Bodies will also consider how their regulatory functions operate and evidence shared between the separate two reviews.

18. PAW's position and influence could be more fully exploited by active ministerial involvement and visible strategic political direction. The PAW Scotland Executive Group is currently chaired by the Scottish Minister for the Environment and Climate Change, an arrangement which appears to have worked well in practice, and a similar arrangement would send an important signal about the UK Government's commitment to tackling wildlife crime. We recommend that a Defra Minister takes the Chair of the Partnership for Action against Wildlife Crime Steering Group to signal the Government's commitment to addressing wildlife crime and to provide strategic direction and political leadership in order to harness the extensive skills, experience and resources represented in this forum. In our view, such ministerial involvement need not be an excessive burden, if the police and Defra maintain their current level of involvement. (Paragraph 84)

We are concerned that PAW should continue to be a strong force in supporting wildlife law enforcement and in raising awareness of the harm wildlife crime can cause. We agree with the Committee that there is a need to make sure that the strengths of PAW are harnessed, and to this end, we are reviewing the membership of PAW to gain a better understanding of the contributions members can make and to ensure that their skills and expertise are used to best effect.

We have considered carefully the Committee's recommendation that a Defra Minister should take the Chair of PAW but are not convinced that this will be a better way to deliver the strategic direction and leadership that the Committee envisages.

Nature conservation is a devolved matter and each of the four UK administrations is free to decide how to take this forward. A Defra Minister would have no authority to direct UK countries in this respect. This means that whilst PAW Scotland is chaired by a Scottish Minister it will consider purely Scottish matters. A Defra Minister could only chair a group which would consider English matters, leaving a gap for colleagues in Wales and Northern Ireland. As part of considering whether there would be any merit in establishing a specific PAW England Group, for the past two years the PAW UK Steering Group has invited discussion of specific 'English' issues, but so far there have been very few items which are uniquely 'English'.

The Government believes that a key strength of PAW UK is its partnership approach through which the different administrations can contribute towards a common aim. That it is co-Chaired by Defra and by a senior police officer is a further strength—is direct link, at a senior level, between policy-makers and the statutory enforcement agencies, has helped with communication and also with improving understanding. PAW UK also provides opportunities for UK countries to share their information and expertise, to compare their approaches to particular issues, and to work together wherever possible. The Government has concluded that the existing collaborative arrangements continue to provide the most practical and workable approach.