



WWF

REPORT

SEPTEMBER

2016

A photograph of several elephants in a savanna landscape. The elephants are in the foreground and middle ground, with their heads and tusks visible. The background shows a green field and a blue sky.

# SENTENCING WILDLIFE TRADE OFFENCES IN ENGLAND AND WALES

CONSISTENCY, APPROPRIATENESS AND THE ROLE OF  
SENTENCING GUIDELINES

## CONTENTS

Executive summary and recommendations .....	4
Project overview .....	8
Acknowledgements.....	8
The author .....	10
Chapter 1: Literature review and research aims .....	11
Background and rationale.....	11
Coverage .....	13
Controlling wildlife trade .....	14
The nature of illegal wildlife trade .....	18
The extent and value of illegal wildlife trade.....	20
The risks of engaging in wildlife trade.....	22
The harms of illegal wildlife trade.....	23
Sentencing offences involving illegal wildlife trade.....	25
Decision making.....	30
Current sentencing guidelines in England and Wales.....	33
Other approaches .....	42
Conclusion .....	44
Chapter 2: State of sentencing .....	47
Introduction.....	47
Methodology .....	47
Source data.....	48
Ethical considerations .....	50
Analysis.....	50
Case and offence comparison .....	50
Findings.....	51
Analysis of TRAFFIC penalty data.....	51
Comparison with other offences.....	70
Summary and discussion .....	76

Chapter 3: Prosecutor experience and knowledge (with Ashley Cartwright and Charlotte Sanson) .....	82
Introduction.....	82
Methodology .....	82
Approach and data gathering.....	82
Sampling and access .....	83
Ethical considerations .....	84
Analysis approach.....	85
Findings.....	86
Themes.....	86
Thematic analysis .....	88
Summary and discussion .....	105
Chapter 4: Experts' views .....	107
Introduction.....	107
Methodology .....	107
Invites and attendees.....	107
Format for the day.....	108
Ethical considerations .....	108
Findings.....	109
Key Issues .....	109
Ways forward .....	114
Sentencing Guidelines .....	115
Summary and discussion .....	116
Chapter 5: Discussion .....	118
Sentencing guidelines .....	123
What would guidelines look like? .....	124
Chapter 6: Recommendations and points for action.....	128
Sentencing .....	128
Sentencing Guidelines .....	129
Other recommended actions .....	129
Conclusion.....	130

References.....131

Appendices.....139

    Appendix A: Invitation to participate.....139

    Appendix B: Information Sheet.....141

    Appendix C: Consent form.....143

    Appendix D: Structured interview schedule.....145

    Appendix E: Workshop Invite Letter .....154

## EXECUTIVE SUMMARY

Wildlife trafficking is the fourth largest transnational illegal trade in the world<sup>1</sup>. It is a serious crime, often involving organised criminal syndicates, with links to corruption and other organised crimes, and it has impacts on security, the rule of law and the economic development of some of the world's poorest countries.

In 2015, WWF-UK commissioned research to investigate the state of sentencing for wildlife trade offences in England and Wales, and to explore the possible benefits of creating sentencing guidelines for such offences.

This technical report provides detailed discussion and findings of the research. It summarises the literature, the approach taken, the main research findings and makes recommendations for improving sentencing and introducing sentencing guidelines.

The research examined 174 cases of illegal wildlife trade between 1986 and 2013 that resulted in convictions in courts of England and Wales and found that:

- Most cases (74%) resulted in non-custodial sentences with only 58% included a fine
- Fines were low - 88% were for £2,500 or less and 70% were less than the wildlife product value
- When custodial sentences were used, the length of imprisonment was short – usually under ten months

Overall, sentencing was considered to be somewhat inconsistent as well as lenient when the high profits and significant harms of offending were taken into account. It was also found that there was little knowledge or experience of illegal wildlife trade or its impacts amongst criminal justice organisations, beyond a small number of dedicated, often part-time individuals. This was particularly the case for the magistracy and judiciary. It was also found that wildlife crime, including illegal trade, was not always viewed as seriously as it ought to be and that there were limited resources available for tackling it.

Because of the problems with inappropriate sentencing and lack of knowledge, particularly amongst sentencers, it is proposed that sentencing guidelines be introduced, in keeping with the recommendations of the Environmental Audit Committee (2012a) and other commentators. Sentences should be set so as to have a deterrent effect and consideration ought to be given to methods of incorporating reparation. Suggestions are made as to possible features of sentencing guidelines for wildlife trade offences. The overall project recommendations are presented below.

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<sup>1</sup> IUCN 2014

## RECOMMENDATIONS

### Sentencing

1. Sentencing for wildlife trade offences should be more consistent for like cases and more explicitly draw on a graduated approach. Those offences causing the least harm and/or involving less culpable offenders should receive lesser sentences than those causing greater harm and/or involving more culpability.
2. Sentencing for wildlife trade offences needs to be appropriate, by being commensurate with the harm caused and the culpability of the offender.
3. The full range of available sentences should be used up to the maximum in the most serious cases.
4. Sentencing should aim to have a deterrent effect.
5. In determining the severity of offences for sentencing, consideration should be given to:
  - a. The impact of the offending, in other words the harm(s) caused. Where appropriate this should include any harm or potential harm to: the individual animal(s) involved; the species population; biodiversity and the local ecosystem; human populations (in the UK and range states, including local populations relying on wildlife and rangers protecting it); flora and fauna in the UK; and any wider social harm that may be caused by those involved in or profiting from such offending (e.g. organised crime groups). When the UK is a transit state, potential harm to humans, flora and fauna in the intended destination state should also be considered, though it is recognised that in many cases this may not be possible.
  - b. The potential 'profit' to be gained (based on the estimated commercial value and any financial benefits gained through offending).
6. In order to determine the impact of offending, appropriate information needs to be presented to the court in an accessible manner. The most appropriate way to do this would be through the impact statement, which needs to cover all the issues in recommendation five, be clear and be supported by expert evidence.
7. In determining the culpability of the offender, consideration should be given, amongst other things, to the degree of involvement, the level of intention, the degree of commercial activity, the degree of organisation and the involvement of organised crime.
8. For sentencing to be appropriate it should make use of higher levels of fine, and/or greater use of community penalties, and/or more frequent and longer periods of custody depending upon the circumstances in the case.
9. There should also be an exploration of the use of more reparative sentences (as well or instead of deterrent approaches). These should, if possible, be tailored to

repairing conservation harm, either (a) directly through compensating for the costs of repatriation and repair or by undertaking unpaid conservation work or (b) indirectly through financial contributions to, or work with, relevant organisations.

10. Changes should be made to existing legislation to allow for ancillary orders for wildlife trade offences (for example trading bans).

### **Sentencing Guidelines**

1. Sentencing guidelines for wildlife trade offences should be produced by the Sentencing Council.
2. WWF-UK and other relevant organisations should advocate for the introduction of sentencing guidelines on the grounds that illegal wildlife trade is a serious offence and current sentencing is inappropriate. Sentencing guidelines would help address this problem and the arguments for not introducing them cannot be sustained, given that sentencers clearly need support when making sentencing decisions in (rare) cases of which they have little or no experience.
3. To produce sentencing guidelines the Sentencing Council should, as is their practice, consult with interested and expert parties. They may also be informed by the suggestions made in this report regarding features of offender culpability, harm caused and aggravating and mitigating factors.

### **Other recommended actions**

1. The Crown Prosecution Service (CPS) should continue to implement its action plan in relation to wildlife crime and its development of COTES/CITES<sup>2</sup> guidance for prosecutors.
2. The Magistrates' Association should consider updating 'Costing the Earth' or producing a similar document specifically focusing on wildlife crime/illegal wildlife trade. There are various organisations that are in a position to help with this (and have already offered to do so).
3. Consideration should be given to establishing a wildlife crime prosecution unit or at least to dedicating specialist prosecutors to this task. Further training, knowledge-sharing and resources should be made available to support this.
4. Consideration should also be given to expanding the scope of the current Environmental Tribunal to that of a court capable of hearing wildlife and environmental crime cases. If this is not possible, the feasibility of referring cases to a limited number of existing courts (in order to build up judicial expertise) should be explored.

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<sup>2</sup> Control of Trade in Endangered Species (Enforcement) Regulations 1997 as amended. Convention on International Trade in Endangered Species of Wild Fauna and Flora

5. All police forces should be made aware that wildlife trade offences under COTES and CEMA<sup>3</sup> are notifiable in order to increase their perceived seriousness as well as to improve data collection.

### **Research update**

This research, and the report that has come out of it, was conducted by Melanie Flynn during 2014-2015. Since then, there have been a number of developments that have changed the way that illegal wildlife trade offenses are dealt with in English and Welsh courts. These changes include:

- There is now greater communication between the court and wildlife trade experts at Joint Nature Conservation Committee (JNCC) and Kew Gardens (through the NWCU Investigative Support Officers). These experts are able to advise on the impact of and harm caused by the wildlife trade offenses, including the harm caused and seriousness. Impact assessments are now being used more commonly to lay out the environmental, social and economic consequences of illegal wildlife trade on the specific species that are found in any criminal case. These assessments are used with the aim of detailing to prosecutors and sentencers the seriousness of the crime so that sentences will be commensurate with the harm caused.
- There are now dedicated Crown Prosecution Service (CPS) Prosecutors within England and Wales that are involved in supporting prosecuting illegal wildlife trade cases, who are there to help build the case and ensure that the prosecutors in Court have the right information and the detail required to prosecute in a way that matches the harm and seriousness of the case.

These recent developments are applauded and certainly should assist in allowing sentencers to decide on sentences that are more in line with the harm and seriousness of each case. However, sentencing guidelines are still required to provide further information on the range of harms caused to ensure that the penalty matches the degree of harm.

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<sup>3</sup> Customs and Excise Management Act 1979



## **Project overview**

This project is the result of a call for research by WWF-UK to look at the nature of sentencing for offences relating to illegal trade in wildlife in the UK and the possible usefulness of sentencing guidelines for such offences. As this has a potentially wide scope, the project focuses on offences relating to the illegal trade in endangered species in England and Wales, the purposes of sentencing, the ability of current sentencing to achieve these purposes, most notably deterrence, and ways sentencing can be improved. In order to do this it was necessary to carry out a review of the literature relating to the trade in endangered species, the legislation that prohibits or limits this trade, the current state of sentencing and potential problems that might be faced in ensuring sentencing is consistent and appropriate. In direct response to the call for research, particular attention has also been paid to the role of sentencing guidelines. In order to achieve this, a number of research aims were developed (listed below) and three key data collection and analysis exercises were carried out. This report details the final findings of this research project and makes recommendations regarding sentencing and sentencing guidelines, as well as further suggestions raised throughout the course of the project for better investigating and prosecuting such offences.

The report proceeds with a list of the aims of the project, acknowledgements and a brief author biography. Chapter one then provides some background to the project, a review of the literature and a brief summary of the research strategy adopted. Chapter two presents the methodology, findings and a brief discussion of the first research element; a predominantly quantitative analysis of penalties imposed for wildlife trade offences. Chapter three follows the same format, presenting on the second piece of empirical research, which is a thematic analysis of interviews carried out with specialist CPS prosecutors. Chapter four details the final data collection exercise; an experts' workshop that met to discuss current approaches to sentencing and ways that these could be improved (including a consideration of sentencing guidelines). Chapter five ties these different elements together with a discussion of the overall project findings, in the context of the extant literature. Finally chapter six makes a series of recommendations relating to sentencing, sentencing guidelines and other important issues that were raised during the research.

## **Acknowledgements**

The author would like to thank WWF-UK for the opportunity to be involved in this research project. She would also like to thank, from the University of Huddersfield, Dr Jason Roach, Reader, for his support and mentorship and postgraduate students Ashley Cartwright and Charlotte Sanson, who provided research assistance for the project. Finally, she would particularly like to thank all the individuals who agreed to participate, both formally and informally, for sharing their expertise and knowledge (and to TRAFFIC

for supplying invaluable data). It is testament to the dedication of these individuals and the organisations they work for that they gave up their time for no reward other than to help contribute to a project that seeks to, in some small way, reduce the suffering and harm caused to endangered species and the wider environment by illegal trade. Thank you.

## **The author**

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Melanie has published work on burglary, offender detection, crime locations, researcher-practitioner collaborations, the illicit trade in endangered species and the problems of enforcing wildlife crime legislation. Most recently she has written and presented on issues relating to animal harm, animal victimology, wildlife law reform and criminalisation and the prevention of wildlife crime.

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## CHAPTER 1: LITERATURE REVIEW AND RESEARCH AIMS

### Background and rationale

Wildlife crime is encompassed by a vast array of legislation. With respect to the illegal trade in wildlife, the United Kingdom is a signatory of CITES (The Convention on International Trade in Endangered Species of Wild Fauna and Flora). The key domestic legislation relating to such offences is COTES, the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (as amended) which enacts EC Regulation 338/97. Offences may also be committed under the Customs and Excise Management Act 1979 (CEMA) s170, with regards the import or export of restricted or prohibited items. The existing legislation seeks to control (and limit where necessary) the trade in endangered species.

There are a number of ways in which criminal legislation may control behaviour. Ultimately, however, it can be argued that criminalisation has two key preventative effects: the moralisation of the general public (and the associated exertion of informal control) and both specific (individual) and general deterrence. For deterrence to be effective there must be swift justice, a certainty of being detected and successfully prosecuted, and a sufficiently severe (though not draconian) punishment. The rational offender weighs up the risk of experiencing this punishment (and the effort needed) against the likely rewards in deciding whether to carry out an illegal act. Whilst it may be argued that not all potential offenders act rationally, this approach tends to dominate in sentencing, particularly for crimes associated with profit-making and those involving organised crime groups.

Thus, for sentencing to have a deterrent effect it is important that sufficient numbers of offenders are detected and prosecuted (increasing certainty of being 'caught'), that sentencing practices are consistent (increasing certainty of punishment) and that penalties are sufficiently harsh enough that the (financial) costs to the offender are greater than the rewards they would gain for trading illegally.

The Environmental Audit Committee's 2012 report on the illegal trade in wildlife identified that sentencing for such offences was inconsistent (2012a). There was also a general consensus in the evidence given to the Committee (particularly from NGOs) over concerns regarding how the criminal justice system operated with respect to illegal wildlife trade and particularly the lack of proportionality in sentencing, given the large profits that can be made from such activities and the serious consequences of uncontrolled trade in endangered species. Such concerns are echoed throughout the literature on wildlife crime as will be discussed below. The Environmental Audit Committee (2012a) thus recommended that the Government carry out a review of existing penalties and that sentencing guidelines be developed for offences associated

with the illegal trade in wildlife. However, these recommendations have been rejected in favour of continuing with a 'case-by-case' approach to determining harm and culpability (Environmental Audit Committee, 2013). In part this was related to the view that there is a lack of evidence to show that more severe punishments have a greater deterrent effect.

It is accepted that the literature and research on deterrence and formal punishment is inconclusive with respect to the effects of harsher sentences,<sup>4</sup> however deterrence *is* included as a (reductive) purpose of sentencing in s142 Criminal Justice Act 2003. Further, EC Regulation 425/87 when applied to EC Regulation 338/97 requires that Member States ensure penalties for infringements act as a deterrent, are applied consistently and that market value and conservation value (as well as costs) are taken into account when determining what penalty to apply. Thus sentences do not have to be 'severe', but they must be commensurate with the harm and costs caused and the benefits gained and seek to achieve deterrence. It is suggested that current sentences for illegal trade in wildlife fail to meet these criteria.

It is therefore argued that if deterrence can be achieved this will only be through a consistent application of penalties commensurate with the harm caused (and profits gained). The evidence to date is that such penalties are not being imposed for wildlife trade offences. *This research seeks to gather further evidence to determine if this is the case, and to develop ideas for sentencing guidelines based on appropriate penalties (as determined by research and expert opinion) and relevant factors to be taken into consideration.*

It is further argued that the moralising effects of criminal law are undermined by 'derisory' and inconsistent penalties. In other words, wildlife crime is presented as being a minor infraction. However, there is now a growing body of literature suggesting that wildlife crime, in particular the illegal trade in endangered species, is associated with organised crime groups and other trafficking activities. *This research seeks to show, through an assessment of the harm caused by such offences and a review of the literature that the illegal wildlife trade should be constructed as 'serious crime', attracting more appropriate penalties.*

To achieve this, the following research aims were developed:

**Aim 1:** To establish the current state of sentencing in England and Wales for offences of illegal trade in wildlife.

- How severe are the penalties imposed?

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<sup>4</sup> For a discussion of the problems of relying on deterrent sentencing (and enforcement approaches more generally) for wildlife crime see Wellsmith (2011)

- How consistent are the penalties imposed?
- Are the penalties imposed commensurate with the harm caused by offending?
- Are the penalties imposed commensurate with the benefits (profits) gained by offending?

**Aim 2:** To establish the current state of CPS knowledge and expertise with regards to prosecuting wildlife crime (focusing on illegal trade) in England and Wales.

**Aim 3:** To explore experts' opinion on the most appropriate penalties for offences of illegal trade in wildlife<sup>5</sup> and the benefits of having sentencing guidelines.

**Aim 4:** To recommend ways to improve the sentencing of wildlife trade offences in England and Wales.

In addition, a review of the literature was carried out, focusing on the extent and nature of the illegal wildlife trade, links to other forms of crime, the harm caused by such behaviours and the sentencing of wildlife trade offences, in order to contextualise the research data and to support recommendations regarding sentencing such crimes.

### **Coverage**

This report details findings relating to wildlife trade offences. For the purposes of this report, illegal wildlife trade is taken to mean any offences<sup>6</sup> related to trading in CITES-listed species (except where specifically stated otherwise). During the research on which it is based, respondents often referred to illegal wildlife trade alongside other wildlife offences, or drew on their experience within this broader field. Those issues that were relevant to illegal trade are considered in this report. Findings and recommendations solely relating to other types of wildlife crime (such as hare coursing, bird persecution and so forth) are excluded.

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<sup>5</sup> Including live specimens, parts, products or derivatives of animals and plants

<sup>6</sup> The UK legislation relating to wildlife trade offences is set out below.

## **Controlling wildlife trade**

As UNODC (2012) point out, wildlife and forest offences are complex, involve the “interplay of a multitude of factors” and are fundamentally different to other forms of crime (p1). Notably, this is in respect to the fact that there is (often) no individual human victim that has been harmed by the behaviour; rather – as will be discussed below – harm is caused to the species involved (and in many cases individual animals), the ecosystem of which they are a part and the availability, thus benefits, of natural resources for current and future generations. It is also difficult to define wildlife crime as it may cover a large and heterogeneous set of behaviours. The UNODC (2012) define it as “the taking, trading (supplying, selling or trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild fauna and flora...in contravention of national or international law” (p2).

Offences relating to wildlife in England and Wales are broad, complex and subject to many different statutes, statutory instruments and regulations, many of which are outdated or have been ‘patched up’ in an attempt to cope with contemporary offending (Environmental Audit Committee, 2012a). Therefore, it is not possible to easily develop one definition covering all such offences. However, this project is particularly focused on that subset of offences relating to illicit trade in wildlife. Whilst other offences are likely to be committed to facilitate this trade (for example the illegal ‘taking’ of specimens from the wild: poaching), this review concentrates on those offences that UNODC (2012) refer to as ‘trading’: the supplying, selling or trafficking, as well as importing and exporting, of prohibited species. As such, trading can occur entirely domestically (the prohibited specimen is taken and sold without crossing international borders) or may involve international crime, when the prohibited specimen (illegally) crosses a border.

In order to critique the offences and behaviours involved, it is also necessary to understand the rationale for controlling or prohibiting the trade in certain species, with a particular focus on international trade.

For the past fifty years the International Union for Conservation of Nature (IUCN) has published a list of the conservation status of wild flora and fauna populations. They are categorised as *Not Evaluated* or *Data Deficient*; *Of Least Concern* or *Near Threatened*; *Vulnerable*, *Endangered* or *Critically Endangered* (this set of three categories are classed as ‘Threatened’); or *Extinct in the Wild* or *Extinct*. The risk of extinction clearly increases through these categories (IUCN, n.d.). There are numerous debates to be had about the value and worth of individual animals (or plants), species and sub-species, the broader ecosystems that they inhabit and ecosystem services they provide, as well as biodiversity more generally. A full critical discussion of wildlife ‘value’ is unfortunately outside the scope of this project, though it is considered later in the report in relation to

assessing harm. For now it is noted that this research is predicated on the premise that conservation of threatened species of wild fauna and flora is important; hence effectively utilising legislation that seeks to reduce this threat is also an important issue.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) became effective in 1975 and the United Kingdom ratified the convention in 1976. The purpose of CITES is to control the trade in species of wild fauna and flora, in circumstances where lack of restriction would significantly threaten wild populations. As such, the convention lists species in three appendices. The first relates to those species, sub-species and distinct geographic populations that are the most threatened by trade, and effectively banning commercial international trade. Trade in Appendix II species is subject to strictly controlled quotas, as some international trade is deemed sustainable, but this needs to be limited. Appendix III is somewhat different as it involves species that are of concern by signatories to the convention. Appendix III works as a way of requesting cooperation from other CITES parties in helping restrict international trade in otherwise unlisted specimens that are deemed as at risk by the requesting country.

Bans and restrictions relate to import, export, re-export and introduction from the sea (except Appendix III). There are exceptions that allow the cross-border movement in otherwise prohibited specimens given certain conditions (though how these are interpreted will depend upon domestic legislation). These include specimens acquired prior to being covered by CITES; personal or household effects; captive-bred animals or artificially propagated plants; specimens to be used in scientific research; and specimens that are part of travelling exhibitions or collections (CITES, n.d.).

Fundamentally, therefore, contraventions of the convention relate to trafficking/smuggling behaviours and/or the use of fraudulent or illegitimately obtained paperwork (suggesting a licence is held to move the specimen across the border or to sell it). The latter may be the reason why, in some cases, such offences are seen not as serious crimes, but rather administrative ones. Signatories are required to designate a Management Authority that administers a licensing system and a Scientific Authority to advise on the effects of trade and species status (CITES, n.d.).<sup>7</sup>

There are a number of other conventions in place that seek to protect particular species of wildlife from interference, such as the International Convention for the Regulation of Whaling. Ultimately, however, conventions have little or no influence unless signatories introduce domestic legislation that enforces their commitments. In the European Union,

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<sup>7</sup> In England & Wales the Management Authority is Defra, the Department for Environment, Food and Rural Affairs, including the Animal Health and Veterinary Laboratories Agency (now renamed the Animal and Plant Health Agency), which issues permits and certificates. The Scientific Authorities are the Joint Nature Conservation Committee (JNCC) for fauna and the Royal Botanic Gardens Kew for flora.



the relevant regulation is EC Regulation 338/97.<sup>8</sup> This covers, and goes beyond, CITES commitments, listing regulated species in four Annexes with different import, export and movement restrictions and permit requirements. The UK legislation that implements this is the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (as amended); known as COTES. Offences may also be committed under s170 of the Customs and Excise Management Act 1979 (CEMA) as protected species are items subject to restriction or prohibition of import or export for the purposes of this Act. There need be no intention to trade the species; it is the attempt to avoid the restriction or prohibition of cross-border movement placed on those goods that is the offence. The behaviours covered by these Acts include import, export, sale, supply and purchase of protected species as well as falsifying, altering or wrongfully using permits and making false statements (in relation to obtaining a permit or certificate). In some cases, other offences may also be committed in pursuance of illegal wildlife trade, notably fraud offences.<sup>9</sup>

Domestically, illegal wildlife trade may also fall foul of further legislation, most notably the Wildlife and Countryside Act 1981. This protects wild birds<sup>10</sup> and their eggs (as well as some designated other animals, as listed) from being killed, injured or taken from the wild, with further provisions and special penalties for Schedule 1 listed birds. There are restrictions on possession of certain species and the Act also creates offences in relation to the release of non-native species into the wild. Trade is included as it restricts sale or other forms of trade in wild birds or their eggs and other protected species. These trade offences can, therefore, be committed entirely domestically. However, it is noted that most attention in the literature is paid to international trade offences, thus these constitute the majority of the discussion herein.

As well as specific offences of trading in controlled species, a number of other offences may also be associated with such activity, either because they help facilitate it, or they tend to go 'hand-in-hand'. These include fraud offences (in relation to paperwork, licences, provenance of specimens and so forth), bribery and other forms of corruption, evasion of custom duty, licence violations and money laundering and/or domestic tax offences (because of the need to hide illegitimate income) (see, for example, Cook, Roberts & Lowther, 2002; WCO, 2014). There may also be breaches of trading standards regulations. Of course, a number of other non-trade offences are also committed in order to feed illicit wildlife markets, most notably poaching offences, but also crimes

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<sup>8</sup> It should be noted that this report was compiled prior to the results of the UK Referendum of 23 June 2016, which resulted in a majority vote for Britain to leave the European Union. Whilst legislative directives and obligations may change if and when Britain leaves the EU, the problem of illegal wildlife trade and the need for appropriate sentencing remains valid regardless of Britain's membership.

<sup>9</sup> The link between illegal wildlife trade and other offences is discussed further, below.

<sup>10</sup> Originally those that were native to Great Britain, but now amended to cover the EU Wild Birds Directive so as to protect all wild birds native to a Member State.

such as animal cruelty/welfare offences, trespass, possession of illegal firearms and violence (UNODC, 2010). This includes actions leading to the death of rangers tasked with protecting endangered species and their habitats (International Ranger Federation, n.d.; IUCN, 2014a).

In recent years there has been growing evidence that there are connections between the wildlife trade and serious organised crime, and it is now generally accepted that some wildlife trade, particularly at the international level, involves organised crime groups and trafficking networks (Cook, Roberts & Lowther, 2002; Cowdrey, 2002; UNEP, 2014; UNODC, 2010; Zimmerman, 2003). This links illicit international wildlife trade to other trafficking offences, including drugs, arms, people and counterfeit goods (IUCN, 2014b; UNEP, 2014). They may also be linked to more recently emerging illicit commodities such as antiquities and cultural items.

It has been suggested that offenders are using their established networks and routes to gain profits from smuggling endangered species as well. These profits may fund the activities of organised crime groups, and in some countries can cause local instability and affect international security (Haken, 2011; UNEP, 2014; UNODC, 2010).

On the other hand a recent threat assessment carried out by Europol (2013) reports that organised crime groups involved in trafficking endangered species are highly specialised, typically small in size and serve a niche market focused on such commodities. It may be, as claimed by Haken (2011), that specialist wildlife crime traffickers overlap with transnational organised crime groups, or may pay them to use their established trafficking routes. A transnational organized crime threat assessment carried out by UNODC (2010) suggests that the degree of professionalism and organisation amongst poachers depends on the area in which they operate, the commodities poached and the enforcement resistance they may face.

The actual extent of involvement and the importance that wildlife products play within criminal organisations is not evidentially well established. Some have claimed it is second only to drug trafficking (Zimmerman, 2003), whilst others place it on a par with drugs, people and arms smuggling (UNEP, 2014). The IUCN (2014b) claim that wildlife crime (including illegal sourcing, transitioning and trading) is the “fourth largest illegal activity in the world after drug trafficking, counterfeiting and human trafficking” (online). As the balance between the profits that can be made and the risks of detection and sanction (as discussed below) are extremely favourable towards offenders, it is likely that illicit wildlife commodities will be increasingly important in criminal profiteering.

Cook, Roberts and Lowther (2002) also report that it is generally believed amongst enforcement personnel that those involved in illegally trading wildlife are habitual offenders who are also involved in other forms of crime. There is a degree of

organisation involved here as well, including networks of collectors, businesses (which may also be trading legally) and local organised gangs, often also committing other offences, including both other wildlife and more traditional crimes. It would be reasonable to assume there may also be involvement in systemic violent crime associated with market protection and expansion, as is seen with illicit drug markets (Goldstein, 1985). However, there remains a lack of research in this area, so it is difficult to ascertain the extent and nature of this potential wider criminality.

There have been cases of offenders obtaining wildlife products via criminal means other than taking them from the wild, such as thefts from museums (zoos and private collections may also be targets). Whilst this may be viewed as less harmful in terms of the direct impact on endangered species, the supply of such commodities is likely to have the effect of supporting or even stimulating demand, which could in turn increase poaching efforts. In any case, thefts and burglaries themselves are clearly undesirable behaviours that are actually viewed as more serious forms of offending (an issue that will be explored in the research).

Finally in terms of wider criminality, we know from research into criminal careers generally that regular offenders are rarely crime specialists, committing many different types of offence at different intensities throughout their careers (see, for example, Farrington, Snyder & Finnegan, 1988; Piquero, 2000). There is also evidence from the field of 'self-selection' research, that those involved in more serious offending also tend to commit minor offences or regulatory breaches (such as traffic, vehicle and parking offences) (Chenery, Henshaw & Pease, 1999; Roach, 2007; Wellsmith & Guille, 2005). There is a lack of research into concurrent criminality of wildlife offenders, so it is difficult to ascertain the extent to which they may commit other offences, and the nature of these. However, from what we do know, it is reasonable to hypothesise that those committing wildlife trade offences will, like more 'traditional' offenders, also be engaged in other forms of criminality. In other words, wildlife offenders are unlikely to be qualitatively different and should, therefore, be viewed as 'real' criminals.

### **The nature of illegal wildlife trade**

Not all trade in wildlife is illegal. There is a large legal trade in species that are not at risk or where sustainable harvesting practices are used. Timber and fisheries make up the majority of the legal trade in wildlife, but many other forms of wildlife are also used to supply food, medicine, clothing, collectibles and luxury goods, as well as to provide entertainment and companionship (for example, through sport hunting and pet supply). It is these same 'services' that protected species provide, but in doing so they are put at increased risk of extinction, hence trade is controlled, restricted or prohibited. A full consideration of the purposes for which different species are traded and the motivations relating to both supply and demand, is beyond the scope of this project.

Suffice to say it is important to recognise that the species involved, the range and destination states and the purposes for which specimens are traded vary greatly. Illegal trading of endangered species includes:

**Non-exhaustive examples of illegally traded species and the reasons for demand**

Many species for furs/skins for clothing or display (e.g. snow leopard, Tibetan antelope)	Rhino horn, tiger bone and bear bile for 'traditional Asian medicines' (TAMs)	Elephant ivory to be worked for ornamentation
Big cats, bears or primates for display (e.g. gorilla hands) as luxury goods or trophies	Orchids for display and collection	Potentially any species for collectors (birds and eggs are popular, but any animal may be taxidermied)
Many species are traded for food, particularly as 'luxury items'. This includes pangolins, gorillas, sharks, sturgeon, etc.	Potentially any species for the pet trade, though birds and reptiles are the most numerous and small primates are also popular	Big cats may be taken from the wild and traded to those providing sports hunting, particularly 'canned hunting'
Timber for furniture or luxury goods	Many species, but notably primates, for research (vivisection)	To supply circuses and other forms of 'entertainment' (e.g. bear dancing)

Wildlife may also be traded as a secondary purpose. For example, some wild animals (e.g. carnivores and elephants) may be killed by local farmers to protect crops or animals (or in revenge for causing damage) and the corpse may then be sold for extra income, though this is not the primary motivating factor. The same may be true for timber, which may be cleared to provide space for local populations to expand, and may as well then be sold.

It is clear, therefore, that on the demand side there will be many different motivations for purchasing illegally obtained specimens and the people involved will play different roles. This is also the case on the supply side, which may involve poachers, processors, transporters, exporters/importers and traders both large and small, including regular and one-off offenders. However, for many of those on the demand (trade) side of the equation the motivation will be the same regardless of the purpose to which the specimen is going to eventually be put: profit.<sup>11</sup>

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<sup>11</sup> It is recognised that this is a simple conclusion to draw and there are many other factors at play here (for example, the availability of legitimate incomes and opportunities). This is particularly the case for local populations that may be involved in supplying the trade. However a full consideration of this is beyond the scope of this report, as well as not being directly relevant to the project, which focuses on those committing trade and import/export offences in England and Wales.

As such, the key explanatory theory that is applicable here is the rational actor model. This proposes that offending takes place when a potential offender has the opportunity to offend (Cohen & Felson, 1979) and the perceived rewards of offending are greater than the perceived risks and efforts of doing so (Cornish & Clarke, 1986). If this is the case, methods of reducing such offending should draw on the situational crime prevention approach, which seeks to alter the environment to reduce opportunities to offend and to redress the balance of risk, effort and reward (Clarke, 1983; 1997). As rational offender theory is a form of neo-classicism, this also suggests that when punishment is dispensed it should seek to have a deterrent effect. In other words, it should demonstrate to the offender and the wider public that the costs of offending (pain of punishment) are greater than the potential benefits (pleasure) of doing so, in order that people choose not to engage in such behaviours.

Approaches to sentencing, and the emphasis placed upon different objectives, varies by political imperative. The sentencing guidelines for individual environmental offences specifically mention that penalties should serve the objectives of punishment, *deterrence* and removal of gain (Sentencing Council, 2014a: 18). Further, the Government's Modern Slavery Strategy (resulting in the Modern Slavery Act 2015) repeatedly mentions the need to deter offenders (HM Government, 2014).

### **The extent and value of illegal wildlife trade**

The global legal wildlife trade has been estimated as worth around US\$323 billion per annum (the majority of which relates to timber and fisheries) whilst trade in the EU is thought to be nearly €100 billion (TRAFFIC, n.d.). Due to its very nature, it is impossible to ascertain the true extent and value of the illegal trade (TRAFFIC, n.d.; UNODC, 2012) though there are diverse claims in the literature. UNEP (2014) for example, give an estimate range from US\$50-150 billion pa, so an estimate of US\$7.8 to \$10 billion globally per annum (Hacken, 2011 and WWF/Dalberg 2012) seems a modestly reasonable assumption.<sup>12</sup> During the period 2005 to 2009, there were over 12,000 seizures of illegal wildlife products by EU enforcement authorities (TRAFFIC n.d.).

It is also generally felt that wildlife poaching and trafficking are increasing (see UNEP (2014) amongst others). However it is also well accepted that only a very small proportion of illegal wildlife trade will ever come to the attention of authorities: meaning officially gathered data will be just a fraction of that actually taking place and very few offenders will be identified, prosecuted and convicted (McMullan & Perrier, 2002). For many species, data collection is insufficient to be able to assess trends, but there is evidence that poaching and wildlife trade offences relating to elephants and rhino are increasing (UNEP, 2014; WWF, 2014a).

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<sup>12</sup> This figure, although not explicitly stated, seems to exclude illegal logging (though probably includes trade in endangered timber) and IUU fishing (though again it probably includes trafficked endangered species).

Whilst many offences relating to illegal wildlife trade may be perceived as occurring outside Europe (in terms of both supply and demand), it is recognised that “the EU is one of the most important markets for [trade in endangered species] and also a destination and source region for endangered species” (Europol, 2013: 3). Globalisation has made international trade easier and much more extensive, particularly within the ‘borderless’ EU, which is both an important transit and destination region (European Commission, 2014b); therefore efforts need to be made by all Member States to ensure they have appropriate legislation and reductive responses in place. The UK appears to have signalled its commitment to tackling illegal wildlife trade through the 2014 London Conference.

With respect to how wildlife trade offences brought before the courts should be viewed, these global estimates indicate the severity of the wider problem and help contextualise the impact of the offenders’ activities. Thus, it is argued that there is a need to send an appropriate message both domestically and internationally about the unacceptability of such behaviour, through the penalties imposed. The value of specific items, however, is also likely to be of interest to the sentencing court in determining an appropriate response (how this information should be assessed and used is discussed further in this chapter and in chapter 5). Many conservation organisations do not like to publicly put figures on illegal wildlife commodities, as this could highlight the benefits of offending, however estimates are readily available. Prices in destination countries are significantly higher than the amounts paid to poachers in source countries, which may be as little as 1% (UNODC, 2010). Prices are also higher for worked or prepared products (e.g. ornamental ivory or powdered rhino horn) (UNODC, 2010).

## **The risks of engaging in wildlife trade**

There are increasing numbers of reports in the conservation and monitoring literature of capture of poachers, individuals wanted for serious wildlife trafficking offences (for example, Interpol releasing a 'Most Wanted' list of environmental fugitives in 2014) and cases brought before the courts; but the overall numbers remain small. It seems that illegal wildlife trade and associated offences are not rare, but only a very small proportion of illegal wildlife trade will ever come to the attention of authorities meaning officially gathered data will be just a fraction of that actually taking place, so that few cases result in detection and, ultimately, prosecution (McMullan & Perrier, 2002). Indeed, considering the broader category of environmental crimes, it is estimated that only around 10% of *known* crimes come before the court and many more will never come to the attention of the authorities (Select Committee on Environmental Audit, 2004). There are many reasons proposed for this. It is not the purpose of this project to explore the difficulties facing investigation and enforcement of wildlife trade offences, as these have been discussed elsewhere (see, for example, Garstecki, 2006; Lowther, Cook & Roberts, 2002; Nurse, 2012; Wellsmith, 2011), however the main issues are worth briefly reiterating, as these also impact upon prosecution and court processes.

The repeatedly identified problems relate to resourcing, knowledge and attitudes, procedural barriers and corruption. These issues make it difficult to pursue successful investigations, particularly those relating to transnational crime, and for which intelligence or technical expertise are required. This is compounded by the fact that endangered species and their parts may be very difficult to identify, even without efforts to conceal or disguise them. There are also often limited *dedicated* resources and personnel dealing with wildlife trade offences (e.g. Brack, 2002; Garstecki, 2006; McMullan and Perrier, 2002; Schmidt, 2004). The UK, with its National Wildlife Crime Unit, may be seen as taking a co-ordinated and cohesive approach (NWCU, 2010), however there is still a significant over-reliance on a small number of dedicated individuals within police services and the CPS (as well as NGOs and charities) and wildlife crime enforcement is generally perceived as marginalised (Fyfe & Reeves, 2008) and under-resourced.

It is also generally felt throughout the literature that people, notably the courts (but also investigators and prosecutors), do not view wildlife trade offences as serious. This may be because it is ostensibly a 'victimless' crime (there being no human victim to provide evidence) (Eurojust, 2014). It may also reflect the generally anthropocentric nature of modern societies and justice systems. It may also be because it is a crime that is rarely seen in the courts, thus there is little experience and knowledge amongst prosecutors and sentencers regarding the nature of, and harm caused by, such offending. It may also be construed as a predominantly administrative crime related to licensing and paperwork violations. Indeed, when considering environmental crimes more generally,

Du Rées (2001) found evidence of 'techniques of neutralisation' amongst enforcement and supervisory agencies, which resulted in them constructing infringements more as regulatory breaches or 'not real crime'. If wildlife trade offences are viewed in this way then (moral) culpability and severity will be assessed as lower (Magistrates' Court Association, 2002; McMullan & Perrier, 2002; Select Committee on Environmental Audit, 2004), which will result in lower sentences. Ultimately, many commentators, NGOs and enforcement organisations consider sentencing for wildlife trade offences to be lenient, inappropriate and/or inconsistent (Eurojust, 2014; Lowther, Cook & Roberts, 2002; Nurse, 2012; see also Wellsmith, 2011 for a summary of the literature).

### **The harms of illegal wildlife trade**

As already mentioned above, illegal wildlife trade results in various direct and indirect harms. These are harm to individual live animals that are taken from the wild; harm to the species as a whole; and harm to biodiversity and the ecosphere. It may not always be apparent, but such offences can also potentially cause harm to the human population, flora or fauna of destination/consumer countries; legal trade and sustainable business; the local population of the range state; governments of range and destination states; and the rule of law and legitimate governance.

Individual live animals suffer harm as they have been taken from their natural habitats. They may be badly treated, experience pain and fear, and many will die in transit, often as a result of the smuggling methods utilised. Animals not sold-on alive will also suffer as they are killed or injured for their parts, for example rhino horns that are hacked out leaving animals (if not already killed) to bleed to death. Other animals may be killed for their pelts, bones, 'meat', and so forth.

The species will clearly also suffer harm (European Commission, 2015). The very reason trade is controlled is because without this protection, taking specimens from the wild will result in a significant risk of extinction. Therefore, any trade in species covered by CITES will reduce already at-risk wild populations, thus causing harm.

Harm is also caused to biodiversity and the broader ecosphere (Eurojust, 2014). No part of the environment, including humans and other animals, acts in isolation. Biodiversity is important in a healthy, functioning environment and the removal of any wild flora or fauna (or in the worst case, a whole species) will affect this delicate balance, having knock-on effects for other indigenous species and even the whole ecosphere. Many species also perform important ecosystem services. For example, the presence of elephants has significant benefits to areas they inhabit. The landscape is moulded by their activities as they uproot trees and grass and spread seeds. This assists in producing a more diverse environment that supports other animals and humans, as well as being more able to cope with diseases and extreme weather conditions. They are also a key species for (sustainable) tourism activities (UNEP, 2014). Reduction or



removal of elephants from an area will therefore have a significant impact upon that environment's resilience to adverse conditions as well as upon the other species that inhabit it. Ecosystems sustain societies, which create economies. It does not work any other way round (WWF, 2014b).

Illegal trade in wildlife also poses a risk to consumer countries. Illegally imported wildlife might carry diseases that could be harmful to the health of human or animal populations. It may also lead to the (inadvertent) introduction of invasive species to the detriment of indigenous ones (Haken, 2011).

More indirectly, illegal trade may cause harm as it undermines legitimate trade and sustainable practices (Eurojust, 2014), as these will have to work within constraints that do not apply to illicit businesses and with greater overheads. Thus sustainable, legal business may be undercut and supplanted. Further, illegal removal of wildlife may affect and even deprive indigenous populations of their livelihood and natural resources (European Commission, 2015); for example subsistence 'farming', sustainable use and sale and tourism (Haken, 2011). Loss of these legitimate opportunities could, in turn, drive local people into crime, including wildlife crime. Illegal wildlife trade also causes harm through lost revenue to governments, for example from avoidance of duty payments (European Commission, 2015; Haken, 2011).

As already discussed, there is now evidence of a link between illegal wildlife trade and other forms of serious and/or organised crime. Thus, illegal wildlife trade helps fund and support the commission of other crimes (such as drug smuggling). Organised crime groups are also closely linked to corruption offences, which if they go unpunished may undermine the rule of law (Eurojust, 2014; European Commission, 2015). Profits that are allegedly used to fund militia and rebel groups in unstable regions would further undermine legitimate governance, whilst also increasing the likelihood of further wildlife and humanitarian crimes because of the lack of effective formal control (European Commission, 2015; Haken, 2011).

The extent of the harm caused to at risk species, the involvement of transnational organised crime groups and the links to other crimes have been recognised at the international and European level. In 2013, the UN Commission on Crime Prevention and Criminal Justice defined illegal wildlife trafficking in which organised criminal groups are involved as 'serious crime', calling for Members to ensure their legislation followed suit (by making such behaviour a criminal offence punishable by up to four years imprisonment or more – which COTES and CEMA already do) (UN Commission on Crime Prevention and Criminal Justice, 2013:39). This was echoed by the European Parliament in a 2014 motion for a resolution (2013/2747(RSP)). The European Commission (2014a) adopted a Communication on the future EU approach against wildlife trafficking, noting that such behaviour (along with other organised environmental crime) had been

identified as an emerging threat by Europol (2013).<sup>13</sup> The UN Commission also said that poaching and wildlife trafficking required an *urgent* need for attention by the international community (UN Commission on Crime Prevention and Criminal Justice, 2013:72).

### **Sentencing offences involving illegal wildlife trade**

The Criminal Justice Act 2003 sets out the purposes of sentencing for criminal offences. These are: punishment of offenders; reduction of crime (including by deterrence); reform and rehabilitation of offenders; protection of the public; and the making of reparation (by offenders to persons affected) (s142). When a court is making a decision on sentence they must have regard to one or more of these aims. Though not mutually exclusive, it may be very difficult to achieve all these purposes, therefore the court is likely to pass a sentence that seeks to achieve one or more (but probably not all) of these aims. Which of these it favours is likely to be affected by the type of crime committed, the circumstances surrounding the offence and the motivations and personal circumstances of the offender.

Considering the literature reviewed above, it has already been noted that the key motivating factor for those involved in the illegal trade in wildlife (particularly on the supply side) is financial gain. As such, although rehabilitative sentencing may be appropriate in some cases, deterrent sentencing would seem much more suitable. Given the harms caused by such offences, it would also seem apposite for courts to consider reparative disposals.

The literature shows that most commentators think penalties for wildlife trade offences are too lenient to achieve deterrence or to be considered commensurate with the harm caused (Eurojust, 2014; Garstecki, 2006; Lowther, Cook & Roberts, 2002; Nurse, 2012; St. John, 2012; Wellsmith, 2011. See also evidence submitted by various organisations to the Environmental Audit Committee, including by WWF (EAC, 2012b)). As noted, Lowther, Cook and Roberts (2002) considered wildlife trade offences in the UK and were extremely critical of the sentences passed in (most of) the cases they looked at. There are numerous examples in the literature of lenient sentences, typically fines that are not commensurate with the profits made from illegal trading, or custodial sentences that are suspended. For example, in 2000 The Renaissance Corporation (an Indian company, with an outlet in London) was fined £1,500 by Horseferry Road Magistrates Court (London) for trading in shatoosh shawls (also forfeited) worth £353,000 made from endangered Tibetan antelope (Lowther, Cook and Roberts, 2002). This leniency is echoed throughout the literature and media reports (which are too numerous to cite) for wildlife offences across the globe.

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<sup>13</sup> They also launched a consultation on the EU approach against wildlife trafficking and the summary responses were published in November 2014 (EC, 2014b).

That said, there are examples of harsher sentences being passed. In England and Wales, for example, there are three key cases involving longer sentences: Lendrum, Humphrey and Sissen. The Sissen [2001] case involved a rare parrot breeder who was found guilty of offences under CEMA relating to Lear's macaws and blue-headed macaws. He was sentenced to concurrent terms of 30 months' imprisonment on each count, but this was reduced to 18 months on appeal. Similarly, the Lendrum [2011] case also resulted in a 30 month sentence, reduced to 18 on appeal, after the defendant (who had previously been convicted in other countries for wildlife offences) was convicted of attempting to smuggle peregrine falcon eggs (reportedly worth £70,000) out of the UK to trade in the Middle East. Finally, in the case of Humphrey [2003] the defendant was convicted of numerous COTES (and a theft) offence and given a total of six and a half years imprisonment. Again, however, this was considered too harsh and was reduced on appeal by one year, through a reduction from three to two years on one of the counts relating to the illegal importation of 23 birds of prey, many of which had died in transit. It was noted by the courts in all three cases that the offences were serious and the Court of Appeal in Humphrey also supported the trial judge in passing an exemplary sentence. However, they also all resulted in appeals that led to reductions in sentence, suggesting the court of first instance was adjudged to have sentenced incorrectly.

Sentencing approaches (see below) and maximum fine amounts also vary dramatically across EU member states (see Garstecki 2006, p34). However, high maxima are irrelevant if they are never used, which seems to be the case (or was at the turn of the century) as Anton (2002) reports that in many cases related to illegal wildlife trade, sentences reached only around one quarter or less of the available maximum (in terms of fine amount or custodial length).

In comparison to the level of sentencing across much of Europe, penalties for federal wildlife trade offences in the US (predominantly brought under the Lacey Act 1900 (amended in 2008)) tend to be harsher. Examples from 2014 given by the US Department of Justice (2015) include Zhifei Li who was found guilty of multiple smuggling, trafficking and false documentation offences relating to rhino horn. He admitted to organising an illegal wildlife smuggling conspiracy involving 30 rhino horns and was sentenced to 70 months' imprisonment and forfeiture of several artefacts as well as US\$3.5 million in criminal proceeds; one of the longest sentences ever passed for wildlife trade offences in the US (US Department of Justice, 2015; WWF, 2014c). Andrew Zaruskas was involved in purchasing 33 narwhal tusks valued at between US\$120-200,000 from Canada. Offending occurred over a six year period and Zaruskas was convicted of conspiracy, smuggling and money laundering offences. He was sentenced to 33 months imprisonment, forfeiture of over US\$85,000 and several narwhal parts, and a fine of US\$7,500 (US Department of Justice, 2015). As a final example, Duncan was sentenced to a US\$15,000 fine, US\$55,000 restitution (to the

National Fish and Wildlife Fund), two years' probation, 50 hours community service and forfeiture of over 1,700 pounds of illegally trafficked ginseng (US Department of Justice, 2015). From the several examples given by the US Department of Justice (2015), it would seem prison sentences may tend to be longer than is the case in England and Wales, forfeiture of proceeds may be used more, other punishments may also be given (for example community service as well as incarceration and fines), and there is some use of restitution.

There are also examples of harsher penalties being dispensed in other countries, though this does not mean they are the norm. Recently, Malawi has passed 'record sentences' for wildlife offences, including the recent conviction of Ganizani Nkhata who will serve 48 months imprisonment after being unable to pay a fine of MK450,000 (\$US1,000) for poaching a serval cat (Africa Geographic, 2015). Though the fine may not seem high it must be considered in the local context. The Magistrate in the case apparently made it clear that he wished to demonstrate wildlife crime was being taken seriously, and the sentence now sets a precedent for future cases (Africa Geographic, 2015). In February 2015, Rajkumar Praja was arrested in Malaysia after being subject to an Interpol Red Notice and featuring on their international most wanted list (as part of Operation Infra Terra). He had been convicted in Nepal for his role as leader of a rhino poaching ring believed to have killed 19 rhinos and trading horn internationally. The severity of the offences was reflected in the 15 year prison term to which he was sentenced (Environment News Service, 2015; WWF, 2015). Given the differences in approaches and sentences highlighted here, there is significant scope for further research on impacts, as well as knowledge-transfer and good practice sharing across countries and jurisdictions.

As noted, the United Nations and the European Commission have called for Members to recognise wildlife trafficking involving organised crime groups as 'serious crime'. They have sought to encourage international co-operation and the use of interventions targeted at such organised networks. They have also called for greater commitment of resources, awareness raising and support (through UNODC and the ICCWC) for improved enforcement, prosecution and adjudication (European Commission, 2014a; UN Commission on Crime Prevention and Criminal Justice, 2013). To assist this UNODC (2012) have produced a Wildlife and Forest Crime Analytic Toolkit for governments to use in understanding the issues involved and assessing their "preventative and criminal justice responses" to such offences. The toolkit covers (1) legislation, (2) enforcement, (3) judiciary and prosecution, (4) drivers and prevention and (5) data and analysis. Key themes that can be drawn from this document are the need to understand and respond to the seriousness of wildlife crime (and associated offending); the need to commit sufficient and appropriate resources to enforcement, punishment and prevention; the importance of communication, intelligence gathering and (international) co-operation;

and of particular relevance for our purposes, ensuring judicial responses reflect the severity of the crime and harms caused and *seek to deter potential offenders*. It has also been explicitly stated elsewhere that wildlife trade offences should be subject to penalties that reflect the harm caused and the seriousness of such offences and that such penalties should act as a deterrent and take into account the potential benefits (profits) of offending (European Commission, 2014a; European Parliament, 2014; London Conference, 2014).

Action taken by courts in the UK can have a significant effect, in terms of both specific deterrence, but also general deterrence and moralising individuals against environmentally harmful activities, both domestically and internationally, as the penalties passed reinforce the seriousness with which such offences should be viewed (de Pres, 2000; Du Rées, 2001). Thus the role of the judiciary is extremely important (Akella & Cannon, 2004).

In response to the claims in the literature, this project aims to explore sentencing in England and Wales for wildlife trade offences to determine if it is inconsistent and lenient, as claimed. It also seeks to establish why this might be the case and how it can be addressed, in light of literature demonstrating the need to reduce such crimes and to sentence appropriately for their seriousness and impact.

Garstecki (2006) considers the implementation of Regulation 338/97 across the EU, including sentencing approaches. He summarises these as falling into one or more of four different categories:

(1) the market value of the species concerned (e.g. Italy, Spain), (2) the threat or conservation status of the specimens involved (e.g. Austria, Germany), (3) the estimated cost of measures necessary to compensate for the environmental damage done (e.g. Finland), and (4) the financial situation of offenders (e.g. Austria, Sweden). (p2)<sup>14</sup>

The approaches in categories one, two and four are relatively self-explanatory (though obtaining, understanding and applying such information may not always be straightforward). The approach used in Finland is interesting. A sentence is passed made up of a penalty (imprisonment, fine, conditional discharge, and so forth) plus a compensatory amount that is based on a value calculation, with the aim of having a “pronounced preventative effect” (Miettinen, 2002: 54). At the time of writing (2002) the value (V) was determined using the equation:

$$V = R \times S / P \times \text{€}201.60$$

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<sup>14</sup> Different EU approaches are considered in more detail in Anton et al. (2002).

Where R = renewal capacity (logarithm of species specific weight in grams), S = need of protection (based on the IUCN red list categories)<sup>15</sup> and P = population size (in the country or area concerned)<sup>16</sup> (Miettinen, 2002). Example compensatory amounts appear relatively low, however, with the highest being reported as €9,744 (although this is per specimen). Forfeiture may also be used.

It is interesting that this approach, albeit reportedly preventative, produces a 'conservation' value. That is to say it is based on the cost to the environment of removing the specimen. The values are relatively low, therefore, because it does not take into account market value. This may in part be because the legislation covers a number of conservation offences, not just illegal wildlife trade. The approach may also be criticised as being too reductionist as it seeks to turn environmental harm into something that can be quantified. However, when passing monetary sentences, this type of quantification will always take place, albeit not always as explicitly. This approach also provides for greater consistency in the compensation element of the penalty, though for trade offences, it may need to include an assessment of the potential profit that could be made as well. Alone, such an approach may not provide sufficient deterrence. Further, whilst the threat value is taken into consideration (S), the approach also runs the risk of creating the impression that species can simply be replaced, as they have a 'replacement' value. However, it is used as an additional compensatory measure alongside a penalty, therefore if an appropriate punitive penalty is passed, this could be a useful way of assessing compensation amount.

As the Finnish approach seeks to determine the cost of addressing the environmental damage done, it may also be seen as partly reparative. That is to say, it in some way seeks to repair the harm caused by offending, though how the compensation is then used will determine whether it is truly reparative. With regards to the illegal trade in endangered species, the best outcome is to prevent crimes from happening in the first place, even more so than for many other 'traditional' offences, as once a species becomes extinct that cannot be reversed. The next best outcome is to be able to (or at least attempt to) reverse the damage caused by offending, for example through repatriation of specimens or repopulation efforts. Finally reductive sentencing (such as deterrence) seeks to prevent any further offences. Therefore, ideally we would prevent, restore and – if it became necessary – deter. This research focuses on deterrent sentencing, but prevention has been discussed elsewhere (see, for example, Wellsmith, 2010; 2011) and possible restorative interventions are briefly considered in the discussion (chapter five).

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<sup>15</sup> S=1 for least concern species; s=5 for near threatened; s=10 for vulnerable species; and s=20 for endangered species.

<sup>16</sup> P can range from 2 (for less than 100 pairs of birds or 200 specimens of mammals) to 20 (for greater than 1 million or 2 million respectively).

Contemporary restorative justice has its origins in the traditional justice approaches of the Maori (New Zealand) and First Nations People (Canada) and encompasses a range of mediatory and community approaches. Restorative justice may be applied in many different ways (for example as an 'add-on' to other sentences or as diversion from the criminal court system) and may be used widely, or just for certain populations (notably young people).<sup>17</sup> A full consideration of these approaches is far beyond the scope of this review, however, some elements of restorative justice and reparative sentencing could be beneficial if incorporated into sentencing for illegal wildlife trade (and other environmental crimes), so are briefly considered here.

In simple terms restorative justice is based on the theory of reintegrative shaming (Braithwaite, 1989). An offender is 'disqualified' from society through being publicly and symbolically shamed (this may equate to a finding of guilt and a punishment, if the behaviour is dealt with by the courts) and then 'requalifies' for society through making reparation and showing they have been reformed, thus they are welcomed back as a fully integrated societal member. Traditional justice has a tendency to be de-integrative, by stopping at the disqualification stage (Braithwaite, 1989; 2002). There are many more important features of restorative justice, but for our purposes the reparative element is key.

To be reintegrated, the offender must make reparation for the harm that has been caused by his offending. That is to say, the process seeks to restore society back to how it was before the offending took place. If this were to be applied to illegal wildlife trade, we would be looking to ameliorate the harm caused by taking endangered species from the wild. In broad terms, this would be done through repatriation of viable seized specimens, re-population and other conservation interventions in the area affected. For the offender, this would mean forfeiture of any illegally obtained specimens and a financial contribution to cover the costs of reparation. If direct reparation was not possible, it could be more symbolic and made 'in kind' through contributions to relevant organisations, such as Natural England (monetary or unpaid work). How this might be incorporated into current sentencing is discussed further in chapter five.

### **Decision making**

So how are sentencing decisions made in England and Wales? There is no approach specific to wildlife crimes (as is the case for conservation crimes in Finland, for example), therefore sentences for such offences are considered in the same way as any other. As already stated, courts must consider the statutory purposes of sentencing. They must also abide by any minimum or mandatory sentences and must not sentence over the maximum for each offence. There are no minimum or mandatory sentences for wildlife trade offences and the maxima on indictment are seven years' custody and an

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<sup>17</sup> For a full consideration of restorative justice theory, origins and practices see Johnstone and van Ness (2007)

unlimited fine for CEMA offences and five years' custody and an unlimited fine for those under COTES. For cases heard in the Magistrates' court, the maximum sentences are recorded as 6 months' custody and/or a level 5 fine (£5,000). However, since March 2015 the sentencing cap has been removed for offences attracting a fine of £5,000 or more; that is to say any offence where the previous statutory maximum was a level 5 fine, or those for which higher sentencing powers had been granted, such as environmental offences.<sup>18</sup> This change was introduced to reduce the amount of cases committed to the Crown Court solely because of the limited sentencing powers of the Magistrates' courts. As yet the impact on sentencing in practice is not known. Alongside this change, the maximum fine amounts for each level below five have been increased. Courts must also consider the general severity of the offence(s) before them in determining whether they reach the threshold to pass a community order (with appropriately tailored requirements) or a custodial sentence. If not, the lowest level of sentence will be passed, which includes fines and discharges. In all cases, compensation should also be considered.

Within the range of available sentences, the court must then decide exactly what sentence is appropriate given the circumstances, the motivations and the degree of culpability, as well as which purpose or purposes they are seeking to achieve (as certain types and lengths of sentence may be more likely to satisfy different aims). In order to determine an appropriate sentence, the judiciary turn to precedent; those decisions already made by the courts that must either be followed as being similar or are distinguished, thus discounted. However, because wildlife trade offences are rarely brought before the courts there are few existing case decisions to refer to. Even more importantly, the decisions of higher courts are binding on the lower courts. Therefore, precedent requires cases to be heard by the superior courts. This usually occurs when convictions or sentences are appealed. Again, there are very few wildlife trade cases that have made their way to the higher courts, thus the lower courts are left to make decisions with little direction.

Sentencing decision-making is also supported by sentencing guidelines. The form these take, the extent to which they are binding and the way sentences are 'calculated' varies across those jurisdictions that have them. For example, in the US, federal sentencing guidelines are presumptively binding and allow little discretion, taking the form of a table of offence level versus criminal history (see United States Sentencing Commission, 2013). In England and Wales, sentencing guidelines are also binding, though departure is allowable. The Sentencing Council of England and Wales was established in 2010 (Coroners and Justice Act 2009), when it replaced the Sentencing Advisory Panel and the Sentencing Guidelines Council. The Sentencing Council describes itself as "an

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<sup>18</sup> After the enactment of section 85 Legal Aid, Sentencing and Punishment of Offenders Act 2012.



independent, non-departmental public body of the Ministry of Justice”, which was set up to “promote greater transparency and consistency in sentencing...” (Sentencing Council, n.d.b, online). This body develops sentencing guidelines and monitors their use, also assessing their impact on sentencing practice. In producing guidelines it also carries out consultation with relevant professionals and the public, as well as with Parliament, which is statutorily required to do (Sentencing Council, n.d.b). The Coroners and Justice Act 2009 provides that guidelines *must* be prepared by the council regarding guilty pleas and totality of sentences (s120(3)) and that the Council *may* prepare guidelines “about any other matter” (s120(4)). The Act further goes on to state that when exercising their functions under s120:

...the Council must have regard to...(a) the sentences imposed by courts in England and Wales for offences; (b) the need to promote consistency in sentencing; (c) the impact of sentencing decisions on victims of offences; (d) the need to promote public confidence in the criminal justice system; (e) the cost of different sentences and their relative effectiveness in preventing re-offending; (f) the results of the monitoring carried out under section 128 [which covers issues around the operation and effectiveness of guidelines, departure rates and so forth] (s120(11)).

Therefore it can be seen that the Sentencing Council is independent from, but consults with, Parliament and has a remit allowing the production of definitive guidelines for any offence it deems appropriate (after carrying out research and consulting on draft guidelines).

Prior to 2010, the courts had to have regard to any relevant guidelines and give reasons if they departed from these. The 2009 Act now states that the courts *must follow* any guidelines unless to do so would not be in the interests of justice. Again, any departure requires justification (Roberts, 2010). It should be noted that the sentencing guidelines have not yet been updated to reflect the removal of the level 5 fine cap.

The key purpose of sentencing guidelines is to ensure consistency (and appropriateness) of sentencing (Roberts, 2011; Sentencing Council, n.d.a; Tata & Hutton, 1998). This is important in terms of the rule of law, as well as the just deserts element of punishment. In other words, in the same circumstances, the same (or similar) sentence should be passed, and there should be some certainty for the general public (thus potential offenders) as to what the likely penalty for offending will be. However, sentencing guidelines also reduce judicial discretion, therefore they are not always popular. Indeed, very prescriptive, narrow sentencing ranges may result in unfair and inappropriate penalties as they would not account for the combination of unique circumstances, motivations, culpabilities and histories involved in individual cases. Even binding guidelines must, therefore, allow for some sort of ‘departure’. Thus although

seeking consistency, very broad sentencing ranges (with low departure rates) and very narrow ranges (with high departure rates) will fail to achieve this, regardless of the existence of guidelines. There is a balance, therefore, to be achieved.

There has been little research on the use of guidelines and departure rates in England and Wales compared to other jurisdictions (Roberts, 2011). A limited data collection was carried out by the Sentencing Commission Working Group, which surveyed ten Crown Courts for one month, finding departure rates of 48% (much higher than those reported in the US, for example, which tend to be around 10 to 25%). However, offender history is not taken into account by guidelines in England and Wales (whereas it is a fundamental part of the US Federal guidelines), thus once this is considered it may legitimately take the sentence passed out of the guideline range. Although measured as departure, this would not be considered non-compliance, so the true rate is likely much lower than 48% (Roberts, 2011). Taking this into account, and the greater flexibility allowed by guidelines in England and Wales, it would seem that the current approach achieves a good balance and is likely to be adhered to. As Roberts (2011) points out, current guidelines also "...provide a detailed and structured methodology..." (p1011), so that when different sentences are passed this is likely to be because of "...legally relevant factors." (p1011).

It would seem, therefore, that well-constructed guidelines can allow for some degree of discretion and appropriate tailoring of sentences to the circumstances presented to the court, whilst improving the likelihood of consistency, but can this be achieved without them? Tata and Hutton's (1998) research in Scotland suggests this is possible, but it is more likely in small jurisdictions where sentencers are aware of each other's practices and decisions; in other words, where some sort of institutional memory can develop. It is also much more likely that consistent sentencing will occur for more common offences (Tata and Hutton, 1998) as this knowledge (as well as precedent) will build up more readily and completely.

### **Current sentencing guidelines in England and Wales**

Whilst considering the changes that would be made to the administration of guidelines in England and Wales, the Sentencing Commission Working Group (in 2008) rejected the US Federal guidelines format as being too restrictive. Instead, guidelines continue to stratify (most) offences, with appropriate sentence ranges given for each stratum. Guidance is given on things to consider when determining the seriousness of the offence (through a consideration of the *harm* caused and offender *culpability*) thus the appropriate starting point. Next, relevant aggravating and mitigating factors are set out to aid sentencers in determining where within the range the sentence should sit. Having formed a preliminary view of an appropriate sentence, offender mitigation and guilty plea discounts are then taken into account, before any ancillary orders and

compensation are considered, and the final sentence is determined (with a reason given in every case) (Sentencing Guidelines Council, 2008). Issues that are relevant to all offences are set out in overarching guidelines, whilst specific guidelines have been produced for numerous offences. The Magistrates' Court Definitive Sentencing Guidelines state it is the "...most extensive guideline produced by the Council and covers most of the offences regularly coming before a magistrates' court..." (Sentencing Council, 2008: foreword).

Therefore when deciding on the appropriate sentence to pass in a case of, say, drug smuggling, the court will make reference to statutory provisions, precedent and sentencing guidelines, as well as the sentencer's own knowledge, experience and past decisions. When faced with a case of illegal wildlife trade the maximum available sentence and the statutory purposes of punishment will apply, but there is likely to be no, or little, precedent and there are no sentencing guidelines. Given the relative rarity of such convictions, the sentencer is likely to have little or no experience of such cases and probably has no knowledge of the impact or harm that the crime has caused. This is compounded by the lack of specialist training available regarding this type of offence; making it very difficult for sentencers to assess the degree of harm caused (Magistrates' Court Association, 2002). Indeed, research by St. John, Edwards-Jones and Jones (2012) found, using conjoint analysis, that Magistrates and the public thought that illegal profit was the most important feature when determining sentencing for wildlife trade offences, whereas conservation professionals thought the most important feature was the threat status of the traded specimens. In other words, sentencers (and the public) focus on criminal gain of offending, whilst conservationists are more concerned with the impact, or harm caused. That said, threat status was the second most important feature for magistrates (and the public) and in the research they did consider this factor (thus the legal protection afforded a species) when presented with adequate information. Thus the authors point out the importance of making sure illegal profit and conservation impact information is made available to sentencers, a point echoed by Eurojust (2014).

This means that the court is heavily dependent on the prosecutor to clearly and fully communicate relevant information on these important issues: how serious a crime it is, how culpable the offender is, the extent and range of harm(s) caused or likely to be caused by the activity, the gains made by the offender and previous, relevant sentencing decisions. This places a great degree of responsibility on prosecutors, but the existing literature suggests they too may not possess the necessary knowledge, understanding or resources to be in a position to do this. Even if they do, it is not clear whether sentencers will take such information into account in practice (though the St. John, Edwards-Jones and Jones (2012) research suggests they would). This project also, therefore, looks at prosecutor knowledge and experience.

In 2002 the Magistrates' Association produced an insert for the Magistrates' Court Sentencing Guidelines that gave some pointers about wildlife trade and conservation offences, including some suggested aggravating and mitigating factors and information regarding key cases and approaches to disposal. There are also case studies related to wildlife trade offences in the Costing the Earth document produced by the same organisation (Magistrates' Association, 2009). These are welcome additions, in the absence of anything else, to support magistrates when dealing with wildlife (and environmental) crimes, but they do not provide the necessary detail and sentencing ranges included in official sentencing guidelines and they have no statutory weight, meaning Magistrates can ignore them, or they may not even know about them.

As a result of their research, St. John, Edwards-Jones and Jones (2012) "...urge sentencing councils to develop appropriate guidelines to support judiciaries in their sentencing of wildlife crime." (p160). The Environmental Audit Committee (2012a) report also quite clearly called for sentencing guidelines for wildlife crime. The Guardian (2012), reporting on the publication, quotes the Committee Chair as stating "Wildlife protection law in the UK is in a mess after being patched up too many times in an effort to keep pace with offending. The law needs to be consolidated and the courts need to be given clear sentencing guidelines." (online). The government response was that cases were, and should continue to be, dealt with on a case-by-case basis (Environmental Audit Committee, 2013). It also noted that the Ministry of Justice had alerted the Sentencing Council to this recommendation, but stated that the preparation of guidelines is prioritised by those coming to the courts in the highest numbers. They acknowledged that the relatively small number of wildlife crimes being considered does not make them any less important, but does mean they are not a guideline priority (Environmental Audit Committee, 2013). However, considering the literature, it would seem that the best way to support courts in sentencing for wildlife trade offences would be for sentencing guidance to be produced for such crimes as it has been for a number of environmental offences.

The recommendations also called for the government to review whether current penalties had sufficient deterrent effect. The response pointed out that sentencing was determined by the courts, not by the Executive, and that the government's role was to ensure suitable frameworks were in place to allow the courts to be able to make appropriate decisions (e.g. sufficiently high sentencing powers). It also stated that maximum sentences would rarely be passed as they existed for the 'worst case' offences. With regards to calls for harsher sentences, the response was that the evidence regarding increasing severity of sentencing leading to greater deterrence was weak, and that certainty of punishment was more important. It is recognised that seeking to increase the deterrent effects of sentencing through the use of harsher sentences is likely to be less effective than detecting and successfully prosecuting more

offenders. Research around illegal wildlife killing in rural Taiwan found that the risk of detection and prosecution was perceived to be very low, but there was some indication that those who perceived a lesser risk of being punished once caught were also slightly more likely to admit to killing wildlife in the previous three years. However, this relationship was too marginal to be confirmed or further explored and social norms seemed to have a greater impact on behaviour (which has implications for prevention beyond the scope of this research) (St. John, Mai & Pei, 2015). Severity of punishment is still important, however, as when the certainty of punishment becomes greater the link between severity and behaviour increases also (Grasmick & Bryjak, 1980). As there is little evidence of support for improved enforcement, and whilst people continue to offend and be prosecuted, the sentences that are passed should aim to serve a relevant (deterrent) function. The argument is not, therefore, that deterrence will be achieved by the passing of draconian sentences for wildlife trade offences, but that when people *are* prosecuted, sentences need to be consistent (given the circumstances) and severe enough to be commensurate with harm; which in many cases they are not.

The possible benefits of guidelines have been discussed, within the context of ensuring penalties are consistent and commensurate with the harm caused and culpability of offenders thus reflecting the serious nature of illegal wildlife trade. General arguments against the use of sentencing guidelines have also been introduced, notably that they reduce judicial discretion too much and do not necessarily result in low departure rates. However, guidelines *are* used for other offences, so this argument does not stand. Against the introduction of guidelines for wildlife crimes more specifically are the arguments that cases are too rare and that each should be judged on its own merits, because of the breadth of behaviours and impacts that may be covered by such a category of offending. However, a consideration of the coverage of current sentencing guidelines raises questions about the strength of this argument.

Guidelines exist for numerous offences. The Magistrates' Court Sentencing Guidelines (Sentencing Council, 2008) are the most up-to-date version (including amendments and new guidance passed since this date) for offences coming before the Magistrates' Court for allocation decision (triable either way offences) or sentence (triable either way and summary offences). The alphabetical index of offences runs to seven pages and the group index lists offences under the categories of: Animals; Breaches; Communications; Criminal damage; Drugs; Education Act; Environmental offences; Motoring offences; Public order; Sexual offences; Theft, fraud and evasion; and Violence against the person. Further offences are also included in the Sentencing Councils definitive guidelines.<sup>19</sup> The offence categories covered by these are shown in table 1.3.

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<sup>19</sup> For example, the definitive guidelines for sexual offences include rape, which is not covered in the Magistrates' Court Sentencing Guidelines as it is an indictable only offence.

**List of offence categories for which Sentencing Council Definitive Guidelines are available online**

Assault	Assault on children and cruelty to a child	Attempted murder
Breach of Antisocial Behaviour Order	Breach of a Protective Order	Burglary
Causing death by driving	Corporate manslaughter & health and safety offences causing death	Dangerous dog offences
Drug offences	Environmental offences	Failure to surrender to bail
Fraud, bribery & money laundering	Manslaughter by reason of provocation	Robbery
Sexual offences	Theft & burglary in a building other than dwelling	

Source:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=definitive-guideline&topic=&year=>

In addition, there are guidelines and overarching principles published to cover sentencing considerations in such cases as those involving young offenders, domestic violence, guilty pleas and so forth.

Guidelines exist for three particular ‘types’ of offence that raise questions about the exclusion of illegal trading in wildlife. These were offences that:

- (1) Are low in severity and have low maximum sentences reflecting this (as well as very small available sentence ranges, reducing the likelihood of inconsistency and inappropriateness);
- (2) Involve similar types of impact to wildlife trade offences (upon animals and /or the wider environment);
- (3) Involve similar types of behaviour, in that they relate to crossing borders without declaring goods or are, fundamentally, smuggling offences.

With regards to category (1), offences that are low in severity and have small, low sentence ranges, we may consider TV licence payment evasion, railway fare evasion and some motoring offences; all of which are included in the Magistrates’ Court Sentencing Guidelines.<sup>20</sup>

<sup>20</sup> See the 2008 Guidelines available at <http://www.sentencingcouncil.org.uk/publications/item/magistrates-court-sentencing-guidelines/> as updated October 2014

For TV license evasion (Communications Act 2003, s363) the maximum statutory sentence is a level 3 fine, which makes the possible range of sentences small, therefore there should be less likelihood of inconsistency. The starting points and category range in the Guidelines, therefore, are also limited, so sentencers do not really have a great amount of discretion to apply here. Further, the factors that may be considered relevant for reducing culpability are also quite limited and commonsensical. The same can be said for railway fare evasion (under the Regulation of Railways Act 1889), where offences of failing to produce a ticket (s5(1)) have a maximum sentence of a level 2 fine and travelling without paying fare, with intent to avoid payment (s5(3)) can attract up to a level 3 fine or 3 months custody. The starting points for these behaviours are Band A and Band B fines (respectively), again with relatively small sentence ranges and few specific factors affecting assessment of culpability or harm.

With regards to motoring offences, a number of offences are listed that are considered “appropriate for imposition of fine or discharge” (p135). In these cases, the maximum sentence, number of licence points and starting point are listed along with special considerations (such as if committed during the course of a business). Again, there seems to be little additional guidance given, or necessary, and for many offences the starting points and maximum sentences are relatively low, raising the question of the value of such guidelines *in comparison to other types of offence*.

It seems, therefore, that consistent and appropriate sentencing could be likely achieved for a number of offences without such guidelines and it is assumed that the reason they exist is because the approach of guideline bodies has been to focus on those offences most commonly appearing before the courts, rather than those where greater guidance is needed because of the rarity, severity, complexity or diversity of cases the court may come across.

With regards to category (2), there are examples of inclusions relating to animals (and their welfare) and environmental offences. The former are limited, however, to three offences covered by the Animal Welfare Act 2006 and offences under the Dangerous Dogs Act 1991. With regards the latter, of most relevance here is the inclusion of guidance covering the possession of a prohibited dog (s1(3)) and the offence of breeding, selling, exchanging or advertising a prohibited dog (s1(2)). It is recognised that this Act was introduced because of concerns over particular so-called ‘dangerous’ breeds of dog that may cause harm to humans if not properly controlled or if used as ‘weapons’, but it is interesting that guidelines have been produced to aid the court in sentencing what is ultimately an illegal animal trade offence, when the same has not been done for illegal (endangered) wildlife trade. The offences included here, which are triable only summarily, have a maximum sentence of 26 weeks’ custody and a range set out in the guidelines of a discharge up to the maximum. It is also interesting to note

that amongst the factors indicating greater harm is “Injury to another animal(s)” (p268) and amongst factors indicating higher culpability is “Offence committed for gain” (p268); thus suggesting that harming animals and making profit from trading in prohibited dogs are issues that should be considered as raising the severity of the offence (both potential features of wildlife trade offences). The guidelines also include under aggravating factors the ill treatment or neglect of welfare needs of the prohibited animal in question and “Established evidence of community impact” (p269). Again, these are the types of issue that would likely be included in illegal wildlife trade guidelines and it seems the Sentencing Council have recognised the need to provide guidance by highlighting that such issues be taken into account when sentencing decisions are made.

The welfare offences covered in the guidance are limited to animal cruelty covered by s4 (causing unnecessary suffering), s8 (use of animals in fighting) and s9 (breach of duty of a person responsible for an animal to ensure its welfare). All the offences are triable only summarily and attract maximum sentences of £20,000 and/or 6 months’ custody (ss4 & 8) or a Level 5 fine and/or 6 months (s9). What is of particular interest here is that there is a relatively large range of available sentences (though not as large as for wildlife trade offences), thus the guidance is useful in helping identify the seriousness and relevant aggravating and mitigating factors – exactly what it is supposed to do, and a benefit that similar guidelines would also bring to offences relating to illegal trade in wildlife.

Turning to environmental offences, the same argument can be proposed. These offences may be committed by organisations or by individuals (the guidelines are separated to cover both types of offender), may cover a diverse range of circumstances, result in a very broad range of harm or risk of harm and involve varying degrees of culpability (categorised into four grades by the guidance: low or none, negligent, reckless and deliberate). The guidance, therefore, is relatively comprehensive; though it is limited to offences relating to illegal discharges and waste offences (Environmental Protection Act 1990 s33 and Environmental Permitting (England and Wales) Regulations 2010, regs 12 and 38(1), (2) & (3) and a number of related offences, as listed on page 9 (Sentencing Council, 2014a)). It appears extremely helpful in supporting appropriate and consistent sentencing and it is contended that a similar approach would significantly benefit sentencers when dealing with wildlife trade offences; a point which will be returned to later when we consider what such guidelines might cover.

This category of offences was picked out as being in some ways similar to wildlife trade offences. It is particularly noteworthy that in producing guidelines for environmental offences and responding to the recommendations of the Environmental Audit Commission (2012) the government felt that wildlife crimes should continue to be dealt



with on a case by case basis (Environmental Audit Committee, 2013). Further, when devising guidelines for *environmental* offences, wildlife trade offences have been excluded; this despite the fact that many organisations, including the EU and UN, include such offences within their definitions of environmental crime. Interestingly, the Sentencing Council (2014b) press release on the new guidelines for environmental offences stated: “The guideline was introduced due to a lack of familiarity, particularly amongst magistrates, with sentencing these offences and because following their review of current sentencing practice, the Council concluded that the levels of some fines were too low and did not reflect the seriousness of the offence committed” (online). Given the critiques of sentencing for wildlife trade offences in the literature it can clearly be argued that these points also apply to wildlife trade offences, yet they continue to be excluded from the benefits of guidelines.

Further, in the sentencing guidelines for individual environmental offences it is stated that fines should reflect the seriousness of the offence and:

The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take appropriate precautions. (Sentencing Council, 2014a: 18)

The Magistrates’ Association (2002) have also recognised this in their (non-statutory) guidance insert regarding wildlife trade and conservation offences, where it is stated that, in line with *R v Howe* [1999] “the level of fine should reflect any economic gain from the offence” (p6). Thus the validity of deterrence as a sentencing aim is explicitly stated, despite arguments that an increase in sentence severity for wildlife crimes is not justified on these grounds.

The third category of offence for which guidelines exist that is relevant to the current project, is that involving illegal trade. Although it must be noted that wildlife trade offences can take place domestically, consideration here is of specifically cross-country border offences relating to non-declaration of goods upon which duty should have been paid, or the import/export of prohibited goods, covered by the Customs and Excise Management Act 1979 and offences relating to drug smuggling – identified by this project as being viewed as similar in nature and severity to the illegal international trade in endangered species.

The guidelines include offences of fraudulent evasion of excise duty and improper importation of goods under ss50, 170 & 170B of CEMA. These triable either way offences have a maximum sentence of 7 years’ custody and the guidelines identify an offence range of a Band C fine to 6 years and 6 months’ custody. The role played by the offender (e.g. sophisticated nature of offence or significant planning is seen as

demonstrating the highest level of culpability) and the gain or intended gain to the offender are highlighted in order to determine the offence category (seriousness). What is of significant interest is that the guidelines do not cover all s170 offences. They specifically relate to s170 (1)(a)(i), (ii), (b), 170(2)(a) and s170B (p344). These sections cover:

- Knowingly acquiring possession of goods that “have been unlawfully removed from a warehouse or Queen’s warehouse” (s170(1)(a)(i)) or that “are chargeable with a duty which has not been paid” (s170(1)(a)(ii)) or “is in any way knowingly concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any such goods” (s170(1)(b))
- Being knowingly concerned in relation to any goods with fraudulent evasion or attempted evasion of chargeable duty on such goods (s170(2)(a))
- The “taking of preparatory steps for evasion of excise duty” (s170B)

Thus, excluded from these guidelines are offences committed under s170(1)(a)(iii) and s170(2)(b), which relate to the possession of restricted or prohibited goods, or (attempted) evasion of restrictions or prohibitions with respect to such goods; which includes those offences covered by CEMA that would relate to prohibited endangered species.

Further, offences under s50(1)(a) and (2) of the Act are also included in the guidelines, relating to the improper importation of goods that are chargeable with a duty; whilst s50(1)(b) goods (prohibited or restricted) are again excluded.

It is clear, therefore, that the focus is on offences relating to avoidance of duty (which would be expected, given that these offences fall within the revenue fraud section of the guidelines). This in itself is not problematic, as it makes sense to have guidelines for such offences, which in many cases will relate to attempts to avoid excise on goods such as alcohol and tobacco. What is strange, however, is that if guidelines were deemed necessary for these offences, why were they not deemed necessary for those relating to the importation of prohibited goods (except controlled drugs, which are covered elsewhere)?

Guidelines have also been produced relating to importation of, or fraudulent evasion of a prohibition by bringing into or taking out of the UK, a controlled drug (under the Misuse of Drugs Act 1971 s3 and CEMA 1979 s170(2)) as one would expect given the potential seriousness of such an offence. It is argued that smuggling of wildlife may be seen as commensurate with other trafficking offences, as the modus operandi and motivation are very similar (as noted by the US Department of Justice, 2015) and the literature reviewed suggests that there is at least some degree of overlap between these offence types and the individuals and organisations involved in their commission.

It will be seen through the subsequent analysis, that at least some of the prosecutors, investigators and other experts who have provided data and opinions to this project felt that wildlife trade offences should be seen as on a par with the importation/exportation of Class A drugs, given that the behaviours and motivations are similar, there is some evidence of an overlap in this type of offending and the significant harm that can occur to an endangered species when specimens are illegally removed from the wild.

Existing sentencing guidelines cover a large range of offences of varying severity, frequency and complexity. Therefore, it seems it is not the seriousness of the offence, or the need to provide guidance on a potentially broad range of circumstances and factors that may be involved that prompts the production of sentencing guidelines. It may indeed be that it is the commonality with which such offences may end up before the courts, albeit guidelines do exist for offences that are less frequently prosecuted (though perhaps not as rarely as wildlife trade cases). It is also worth noting crimes that are relatively 'new' or have otherwise not received much enforcement attention until recently, such as trafficking in people (for purposes other than sexual exploitation), cyber-crime and heritage crime, are also missing from the guidelines. One also wonders whether offences that are notifiable may be more likely to result in guidelines being produced.

Whilst it is recognised that creating guidelines (including consultation) will be a lengthy process, and that these types of crime may currently contribute a very small proportion of prosecutions, their exclusion is hard to justify. It is argued that the lack of precedent and judicial experience regarding such offences – for our purposes illegal wildlife trade – is the very reason why guidelines are needed. These may not be easy to produce, as assessing the (potential) harms caused by such offending may be difficult, but again, this is the very reason why the courts need this assistance. Guidelines that highlight what sentencers should be considering, thus the information they should expect to be presented with by the prosecution (predominantly through an impact statement) would be invaluable to those who have little or no experience of dealing with this type of case. Therefore, in light of the literature presented here, prosecutors' and experts' opinions on the usefulness of guidelines (and the issues that should be included within them) are considered in chapters three and four.

### **Other approaches**

Finally, it is worth briefly noting other responses to wildlife crime taken from the literature, that may be used alongside sentencing guidelines and other improvements to practice, or that may be viable alternatives: de-criminalisation, situational crime prevention, specialist prosecutors and environmental courts.

Arguments relating to de-criminalisation are outside the scope of this project, but it should be noted that they exist. These normally relate to the use of regulatory as

opposed to criminal responses (resulting in such penalties as warnings, civil fines and trade license revocation) either with respect to existing methods of control or the removal of trade bans, which some commentators believe make interference with endangered species worse, particularly when analysed from an economic perspective (for a good overview see Conrad, 2012).

It has already been noted that the ideal response to crime (of any type) is prevention, even more so for that which has such an impact on threatened species. Many different prevention approaches may be applied and these should be tailored to the circumstances, locations and individuals involved. For example, measures that provide alternative sources of income may help reduce poaching in deprived range states where this is motivated by the need for subsistence. Situational crime prevention techniques may be employed in range, transit and destination states to increase the risk or effort of offending or remove the opportunities to do so, such as through surveillance of at risk populations, genetic marking, ivory dying, horn removal, explicit customs declarations and so forth (Wellsmith, 2010). Finally market reduction approaches may be used alongside enforcement techniques in demand states (Schneider, 2008). Again, further critical consideration of crime prevention falls outwith this project.

It has been noted that few crown prosecutors will have knowledge or direct experience of prosecuting wildlife crime cases, particularly trade offences. England and Wales do have wildlife and heritage co-ordinators working within the CPS who can advise on such cases and take forward some prosecutions, but this is done alongside regular prosecutions. This project involves interviews with such prosecutors to ascertain their current knowledge and experience, as it is anticipated that even these more specialist personnel will have limited familiarity with such cases. Garstecki (2006) and Nurse (2015) have recommended the use of specialist prosecutors or a specialist prosecution unit for wildlife trade cases. This would involve dedicated full-time prosecutors taking on all, or the majority, of relevant cases. This approach is used in Scotland for wildlife and environmental crimes and may help to tackle issues relating to lack of experience and specialist legal and environmental knowledge, develop better relationships with enforcement specialists, barristers and scientific experts, and improve referral and continuity of cases from investigation, through charge to prosecution and sentencing.

Another approach that seeks to address the specialist nature of wildlife (or environmental) offences is the use of dedicated courts. There are reportedly over 350 environmental courts or tribunals operating in 41 different countries, over half of which have been created since 2004. Much of this growth is put down to the need to provide access to justice for those affected by environmental issues, the increase in the number and complexity of environmental laws and greater public awareness and concern about environmental issues. Environmental courts and tribunals are also a good way of

incorporating alternative dispute resolution and restorative practices where these are appropriate (Pring and Pring, 2009).

Successful environmental courts result in an experienced judiciary that are “educated about and attuned to environmental issues and the legal and policy responses”; that is to say they are “environmentally literate” (Preston, 2014: 17). They are more likely, therefore, to produce consistent (and informed) findings and sentences (Preston, 2014). Approaches to establishing and tailoring such a forum for dealing with environmental (including wildlife crime) cases, best practice and issues to consider are set out in Greening Justice (Pring and Pring, 2009). There are many successful examples of environmental courts and tribunals (though these do tend to focus on planning and physical environment issues, as opposed to crimes, particularly involving wildlife) and a wide literature, which should be considered outside of this project.<sup>21</sup> In the absence of specialist courts, specialist (experienced) environmental judges could instead sit in Magistrates’ courts to hear relevant cases (UKELA, n.d.), for example in Indonesia environmental cases are all heard by environmental law trained “green” judges (Pring and Pring, 2009).

In 2010 an Environmental Tribunal was established in England and Wales, predominantly to deal with appeals relating to administrative sanctions. Criminal cases and judicial reviews continue to be heard in the traditional criminal courts. There is scope, however, for this to be expanded to deal with a broader range of statutory appeals or overseeing the wider safeguards that seek to protect the environment (Macrory, 2013; UKELA, n.d.; Woolf, 1992). This has not, however, happened and suggestions to develop an environmental division of the High Court have also (so far) not been taken up. That said, most writing in this area tends to focus on a narrower definition of ‘environment’, thus wildlife offences may not be included; though there is no reason why these could not, in principle, be referred to a specialist court or specialist panels sitting in criminal courts.

## **Conclusion**

Trade in at-risk species of wild flora and fauna is controlled through international convention and domestic legislation in an attempt to reduce the threat of extinction. However, there is a seemingly large black market in wildlife resulting in illegal international and domestic trade and associated offences. Illegal trade in wildlife is a serious crime of international concern that, if allowed to flourish, will have significant and devastating impacts on at-risk species, but the number of cases coming to the attention of law enforcement, thus being prosecuted, remains low. There is now a growing body of evidence that illegal wildlife trade has connections with other trafficking offences and with organised crime groups.

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<sup>21</sup> See Pring and Pring (2009) for a suitable bibliography

There are wide-spread concerns throughout the literature that enforcement, prosecutorial and adjudicatory bodies do not take such offences seriously enough, perhaps because they are constructed as merely regulatory, there is no identifiable human victim and detections are rare. Further, there is a perceived lack of specialist knowledge and experience amongst many of those tasked with prosecuting and sentencing offenders. All of this results in sentences that are reportedly far too lenient to reflect the harm caused and the significant profits gained and, ultimately, to deter offending; despite an almost universal call for deterrent sentencing for illegal wildlife trade offences. It has been recognised that deterrence relies not just on severity of sentencing, but also on certainty. However, whilst individuals continue to offend, penalties must be dispensed and these need to be appropriate.

Action taken by courts in the UK can have a significant effect domestically and internationally. Indeed the Environmental Audit Committee (2012a) has called for the UK government to exert diplomatic pressure on other CITES members regarding development and enforcement of wildlife laws, something which seems to have been taken seriously given the London Conference (2014). However, it is important that this does not become a case of “do as I say, not as I do”. If the UK is to ask other countries to take illegal wildlife trade seriously, then it must be seen to do so itself, through applying and effectively enforcing the existing legislation, and passing sentences that reflect the significant impacts of such crimes.

Garstecki (2006) makes a number of recommendations that are supported by this review of the literature. These include awareness raising and communication regarding the seriousness of illegal wildlife trade and the links to organised crime; establishing specialist prosecution units to deal with environmental offences, including wildlife crime; and seizure of specimens. With regards to sentencing, he recommends that penalties are selected or calculated based on both the market and conservation values (which seems to be supported by the work of St. John, Edwards-Jones and Jones, 2012) and that discretion in sentencing be reduced.<sup>22</sup>

The literature suggests that an inexperienced magistracy and judiciary would be helped in their endeavours with the introduction of sentencing guidelines, which have been shown to support appropriate and consistent sentencing, especially across large jurisdictions, where there is a lack of institutional memory and knowledge transfer.

This report now goes on to test some of the conclusions drawn out of the literature; notably regarding the consistency and appropriateness of sentences for illegal wildlife trade brought under COTES and/or CEMA and the opinions of specialist prosecutors

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<sup>22</sup> These suggestions relate to EU members generally; therefore some points may not apply to individual countries who may already have that feature in their system

and experts in the field on the state of contemporary sentencing and the usefulness of sentencing guidelines.

## CHAPTER 2: STATE OF SENTENCING

### Introduction

This chapter addresses Aim 1 and therefore seeks to establish the current state of sentencing in England and Wales for offences of illegal trade in wildlife. In particular it seeks to establish the severity of penalties imposed, how consistent these are, and whether they are commensurate with the harm caused and the likely gain of the offender.

It has been noted in the literature review that one of the criticisms consistently raised by commentators is that illegal wildlife trade *across the globe* is not punished sufficiently. Mostly, these comments relate to the perceived leniency of sentences that have been dispensed and their inability to therefore achieve either sufficient retribution for the harm caused and/or a sufficient individual or general deterrent effect. Critique has been raised regarding whether people can be deterred from committing wildlife trade offences when so few cases are brought before the courts but it was also recognised that whilst offences continue to take place – and even more so if enforcement does improve – then the courts will find themselves faced with such offenders. Therefore, in the interests of justice and in attempting to achieve the statutory aims of sentencing and the deterrent effect explicitly called for by the EU in relation to such offences, disposals ought to be commensurate with the harm caused and culpability of the offender and consistent, within a given set of similar circumstances. As such, this chapter reports on research carried out that sought to establish whether sentencing for wildlife trade offences meets the requirements for deterrence or is lenient and inconsistent as has been claimed.

It should be noted that similar unpublished research has been carried out by St. John (2012). Her research also includes an analysis of TRAFFIC data (which overlaps with that used for the current project). However, this was combined with RSPB and Bat Trust data, so it includes a greater number of offences including those committed under the WCA, but the analysis carried out was much more limited. St. John found sentence severity tended to increase with protection status (so custodial sentences were more likely to be given for CITES App I cases than for CITES App II and WCA offences; and sentences within a given type tended to be harsher for the App I cases). This research also indicated that sentences were harsher when cases involved multiple specimens.

### Methodology

In order to consider the state of sentencing for wildlife trade offences, this part of the research contains two elements: a quantitative analysis of sentencing data and a (limited) comparison with other cases and offences.



The main part of the research is an analysis of prosecution data supplied by TRAFFIC<sup>23</sup>, which is detailed below. RSPB data are also available in the form of their annual Bird Crime publication. Initially it had been intended to identify instances involving trade, or likely trade, offences and include these in the analysis (for both completeness and comparison). However, the decision was taken not to include the Bird Crime reports due to the time constraints of re-coding and inputting the data and also because some of these cases were already included in the TRAFFIC dataset and it was important not to double-count.

### Source data

The data were supplied to the researcher by TRAFFIC as a spreadsheet of cases they have recorded relating to illegal trade in wildlife between 1986 and 2013, prosecuted in the UK.<sup>24</sup> The data were recoded and inputted into IBM SPSS for further analysis. As the project is focused on cases dealt with in England and Wales, those clearly identifiable as occurring outside these jurisdictions (notably Scotland) were excluded. However, when it was not possible to make a determination (for example because the court was not recorded), cases were included. All the cases analysed involve offences of illegal trade in endangered species and all resulted in conviction (though information is not available regarding the plea submitted). It should be noted that this is not a definitive record of all such prosecutions, only those about which TRAFFIC was aware.

The offences analysed were brought under the Customs and Excise Management Act 1979 and/or the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (as amended, or in previous forms). The *maximum* current sentences are:

- CEMA: summarily a £1000 fine or 3x value of the goods (whichever is greater) and/or maximum 6 months imprisonment; on indictment, an unlimited fine and/or maximum of 7 years imprisonment.
- COTES: Summarily a £5000 fine and/or 6 months imprisonment; on indictment, an unlimited fine and/or 5 years imprisonment.

It should be noted, however, that the penalties under COTES have increased over the period of study (having previously been imprisonment of up to 3 months summarily or 2 years on indictment; the change taking place in July 2005). Each case was coded by the

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<sup>23</sup> The data were kindly supplied by TRAFFIC to the author. These data covered convictions for offences brought in the UK, relating to CITES. The majority of these were cases brought under COTES, CEMA or both. Some cases also involved further offences (e.g. frauds). There were also theft offences involving CITES-listed goods. The database reflects information collated by TRAFFIC from numerous open sources and enforcement agencies, such as the National Wildlife Crime Unit, Metropolitan Police, Border Force and news bulletins such as the RSPB Legal Eagle.

<sup>24</sup> It should be noted that these are not official statistics. The data are collated from numerous sources, as set out in the previous footnote, but may not include all such cases brought before UK courts. It should also be noted that some of the earlier information was collated retrospectively, therefore it may be less representative than more recent data.

legislation under which charges were brought. Nearly every case was brought under CEMA or COTES (or both), though there were also a small number of cases recorded under the Theft Act 1968 (and some cases involved fraud charges being laid as well). These cases are not included in the results reported below.

In order to compare sentences by type of specimen, these were coded as *Bird*, *Reptile*, *Fish*, *Amphibian*, *Mammal*, *Plant*, *Arthropod* or *Mixed* (multiple). The status of the specimen was coded (from the information supplied) as either *CITES Appendix I (Annex A)*, *CITES Appendix II (Annex A/B)*, *Mixed* or *Not Known*. As Appendix I species are considered more at risk (and trade is effectively banned), we would expect to see harsher sentences passed for offences involving such specimens. A dichotomous variable was also created so that it was possible to select just those cases involving elephant ivory, rhino horn or tiger parts (as these cases seem to be of particular interest in the media).

The data were also coded by the penalty the offender received. This could be *Imprisonment*, *Fine* (including compensation), *Conditional Discharge*, *Community Order* (or equivalent in older cases), *Absolute Discharge*, *Other* or *Not Known*. In a number of cases, more than one penalty was given. Therefore two variables were created *pen\_type* in which the highest penalty was recorded and *pen\_type2* in which the second highest penalty was awarded. Following each of these variables were two string variables (*Penalty* and *Penalty2*) in which information regarding that penalty was recorded for further reference. If a third (or more) penalty was given, information regarding these was recorded in *Penalty2*. As the most common sentences were fines and custodial sentences, two additional dichotomous variables were created: *Custody* (was a custodial sentence passed) and *Fine* (was a fine given). In this way it was possible to select all cases given a custodial sentence (regardless of any other penalties, including fines) or to select all cases given a fine (regardless of any other penalties, including custody). Where relevant, the number of months' imprisonment was recorded in a further variable, as was the fine amount. The value of costs and forfeiture were excluded here as the information relating to this across the cases was not always complete, therefore inclusion would have skewed the results. It should be noted that this means the actual financial costs to the offender are under-estimated in some cases. Finally, further variables were created to identify those cases where a custodial sentence was suspended (dichotomous variable *Suspended*), and the length of the suspension period (*Sus\_length*). Information was also included from the original spreadsheet regarding: the date of the court hearing, the year of the court hearing, the defendant name (not used in the analysis), descriptive data on the species involved and the estimated commercial value (though this was not known in a number of cases).

One of the aims of this part of the research was to determine if sentences were commensurate with the harm caused by offending. As noted in the literature review, wildlife trade offences cause a range of different harms, most notably to the individual specimens, the species as a whole and the ecosystem that it inhabits, but harm may also be caused to indigenous species, local populations, future generations and even governance and political stability. It was clearly not possible to quantify such harm for the cases analysed in this section, thus determining if sentences were appropriate was limited to the potential gain to offenders (based on estimated commercial value) and the protection status of the species involved (thus it has been assumed that trade in Appendix I species causes greater harm than in Appendix II species, though it is recognised that this assumption is far too simplistic).

### **Ethical considerations**

Although individuals' names are included in the data, this is public information as it relates to court convictions. As the analysis is of secondary data, therefore, there are limited ethical considerations, beyond those relating to veracity, researcher safety and limitation of bias.

### **Analysis**

Where the defendant was a person and a business this was counted as one case. Where the defendants were two or more people, these were recorded separately (regardless of whether they received the same or different sentences). This resulted in 174 cases for analysis, however it should be noted that not all totals add up to 174 because some defendants received multiple penalties.

A variety of analyses were carried out in order to explore the data and address the research aims. Descriptive statistics were produced to explore distributions of sentences and to compare sentences across a number of different variables (specimen type, legislation and protection status). Scatter plots were produced to consider sentencing over time. Where relevant, possible relationships between variables or differences across groups were tested statistically using Spearman's rank order correlations or the Mann-Whitney U test. Non-parametric tests were used throughout as sentences were not normally distributed. Finally, the sentences for rhino horn cases were compared, paying particular attention to the legislation under which charges were brought.

### **Case and offence comparison**

It was intended that law reports would be used to qualitatively consider both the circumstances involved in individual cases (and, if possible, how this might impact upon the sentence passed) and the sentencing decision-making process. In order to identify a sample, legislation and keyword searches were carried out on three different databases: [www.lawpages.com](http://www.lawpages.com), Westlaw and Lexis Nexis. However, there were so few

cases that it was not possible to carry out any meaningful analysis. Individual cases of selected other offences are presented, however, in order to compare the sentences passed. In addition, the sentencing guidelines for offences deemed comparable with wildlife crime/trafficking are also used to consider the 'typical' sentences that might be passed. These offence categories are drug smuggling, environmental crimes and animal cruelty.

## **Findings**

### **Analysis of TRAFFIC penalty data**

#### ***Sentence type***

Of the 174 cases, 129 (74.1%) resulted in a non-custodial sentence whilst 45 (25.9%) resulted in custody. Of these 45 cases, 15 of the sentences were suspended, meaning 30 defendants (17.2%) received immediate custody.

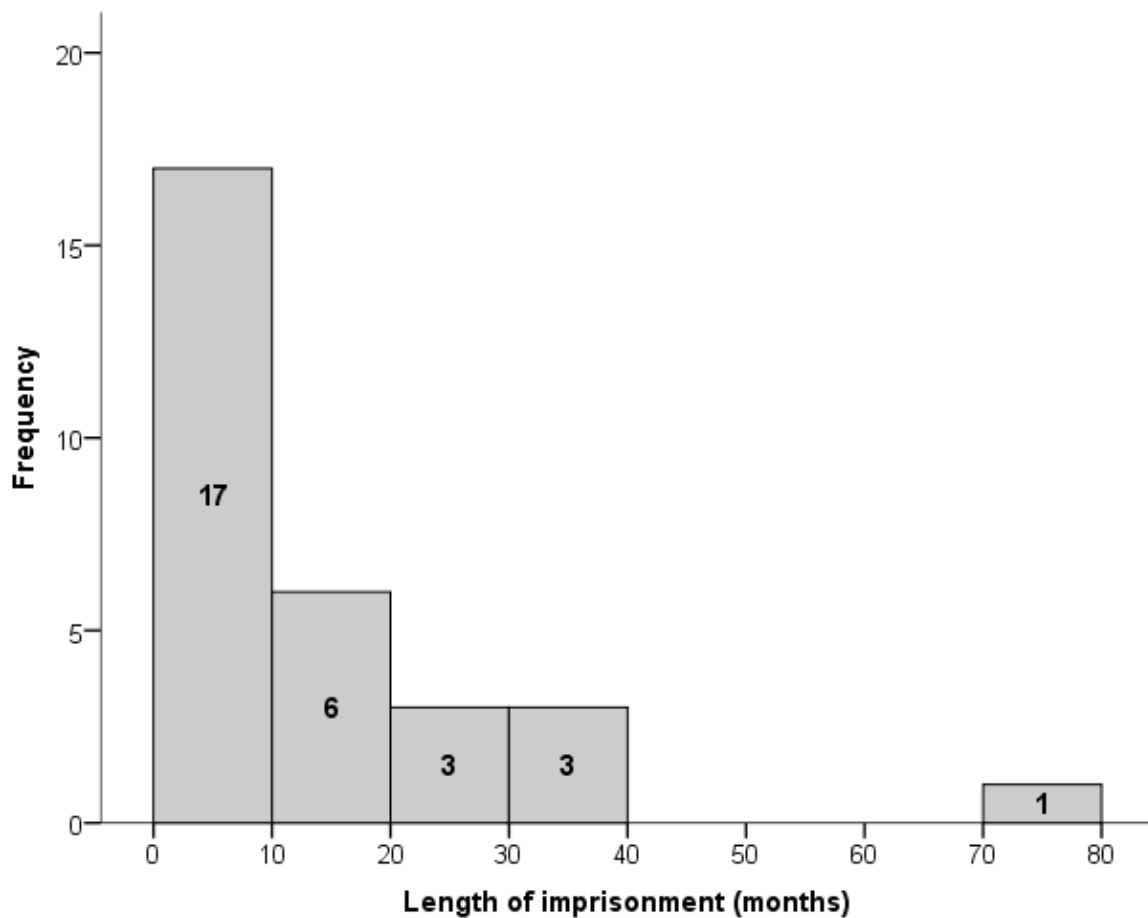
Of the total, 101 cases (58.0%) resulted in a fine (including asset seizure and compensation, but excluding costs and forfeiture) for the defendant (some of these may also have faced custody).

Other penalties dispensed included conditional discharges (n=29), community orders (n=14, usually this was unpaid work) and absolute discharges (n=4). There were 25 cases where defendants received 3 or more penalties (e.g. a fine, community order and curfew).

#### ***Custodial sentences***

For immediate (i.e. not suspended) custodial sentences, the minimum sentence length was 2 months, the maximum was 78 months and the mean was 14 months. However, this is skewed by the one outlier (of 78 months). The 5% trimmed mean (which removes the top and bottom 5% of cases to reduce the effects of statistical outliers) was 12 months and the median (the middle value) was 8 months. The standard deviation, which measures the dispersion of the data, was 14.9, which may be considered high given the mean. In order to compare dispersion across different sentences and groups, however, the co-efficient of variation ( $C_v$ ) must be calculated (this being a standardised measure showing the ratio of the SD to the mean). The  $C_v$  in this case was 1.1.

When these sentences are displayed in a histogram, it is clear to see that the majority of cases (n=17) are 10 months or less (see figure 2.1). The most common immediate custodial sentences were 4 months (n=6), 6 months (n=5) and 8 months (n=4).



**Fig 2.1: Histogram of length of imprisonment in months (immediate custody), binned at 10 month intervals**

Examples of defendants receiving immediate custodial sentences include:

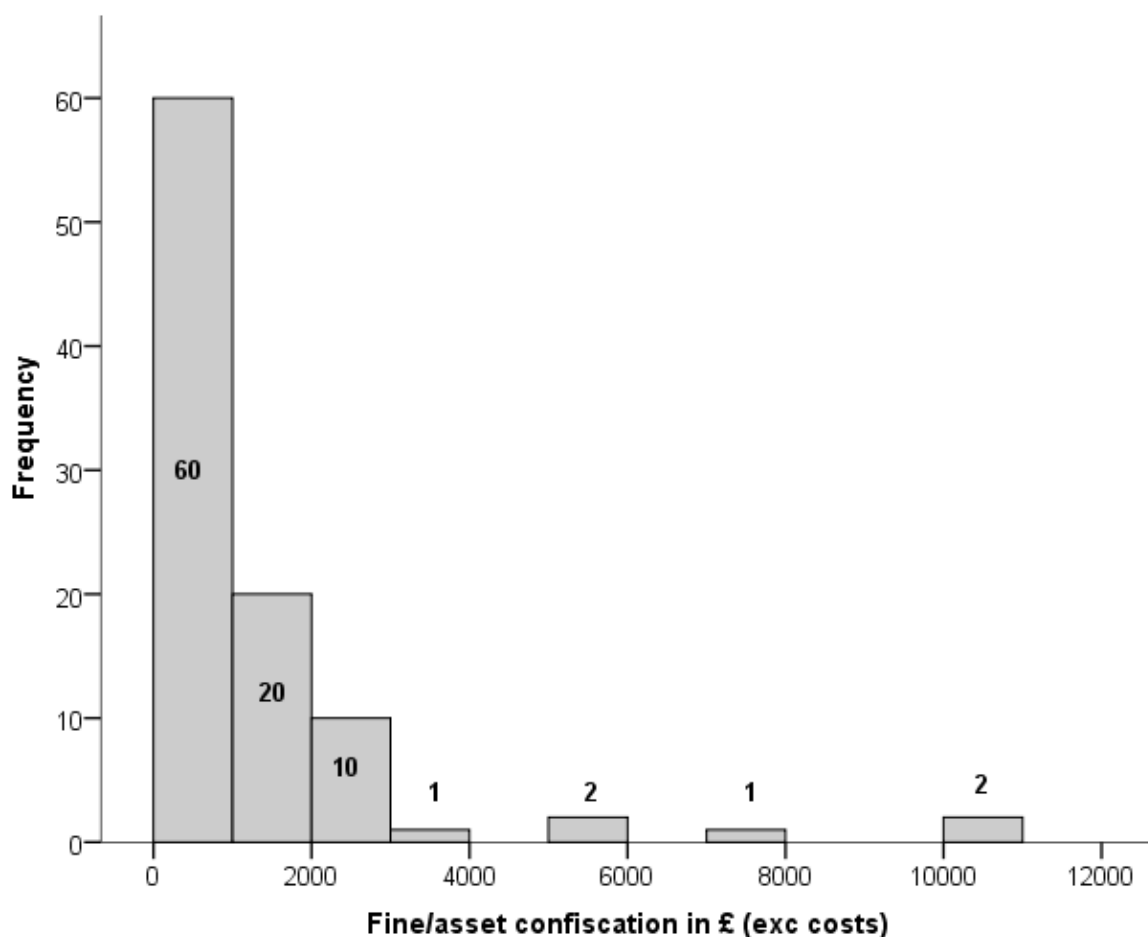
- Robert Sclare (2000) received 6 months for COTES offences involving 65 specimens (including tigers, leopard, gorilla and elephant tusk).
- Nicholas Noonan (2009) was sentenced to 10 months imprisonment for illegally trading internationally in elephant ivory and whale teeth (charged under COTES and CEMA).
- Two defendants, Mobolaji Osakuade and Rose Kinnane were found guilty in 2001 of COTES and CEMA offences relating to Tantalus monkey, African pangolin, monitor skins and rock python skins. They were both sentenced to 4 months imprisonment.
- In 2009, David Milnes was sentenced to 6 months for offering for sale 2 barn owls (without the appropriate A10s, an offence under COTES).
- Jeffrey Lendrum was sentenced to 30 months imprisonment for attempting to smuggle 14 peregrine falcon eggs from the UK to Dubai (charged under CEMA).

Further information shows this sentence was reduced to 18 months on appeal (but the original sentence has been used in this analysis).

### **Fines**

Considering now those defendants who received fines, the minimum was £30, the maximum was £150,000 (note, this includes asset seizures) and the mean was £3,825. Again, the mean is skewed by the high outlier. The 5% trimmed mean was a more modest £1,194 (and the median was £700). The standard deviation was 16,104 and the  $C_v$  was 4.2; much higher than for custodial length, suggesting that fine amounts are more dispersed than are lengths of custodial sentence. Of course, the range of fines available (unlimited in the Crown Court) is much greater, so this is to be expected.

Again a histogram was produced to consider the spread of these fines. This showed that nearly all the fines were £50,000 or less, with the vast majority ( $n=94$ , 93.1%) being up to £10,000. A further histogram of just those fines up to and including £10,000 (binned in £1,000 intervals) is shown in figure 2.2.



**Fig 2.2: Histogram of fine amount (£), binned at £1,000 intervals**

As with lengths of custody, fine amounts are massively skewed towards the lower end of the range. To look at the most frequent fine amounts we need only to consider those

up to £2,500 (which account for around 88% of all fines). The frequency of fines, in £500 increments, is shown in table 2.1.

**Table 2.1: Frequency of cases involving fines of different amounts, shown in £500 increments up to £2500**

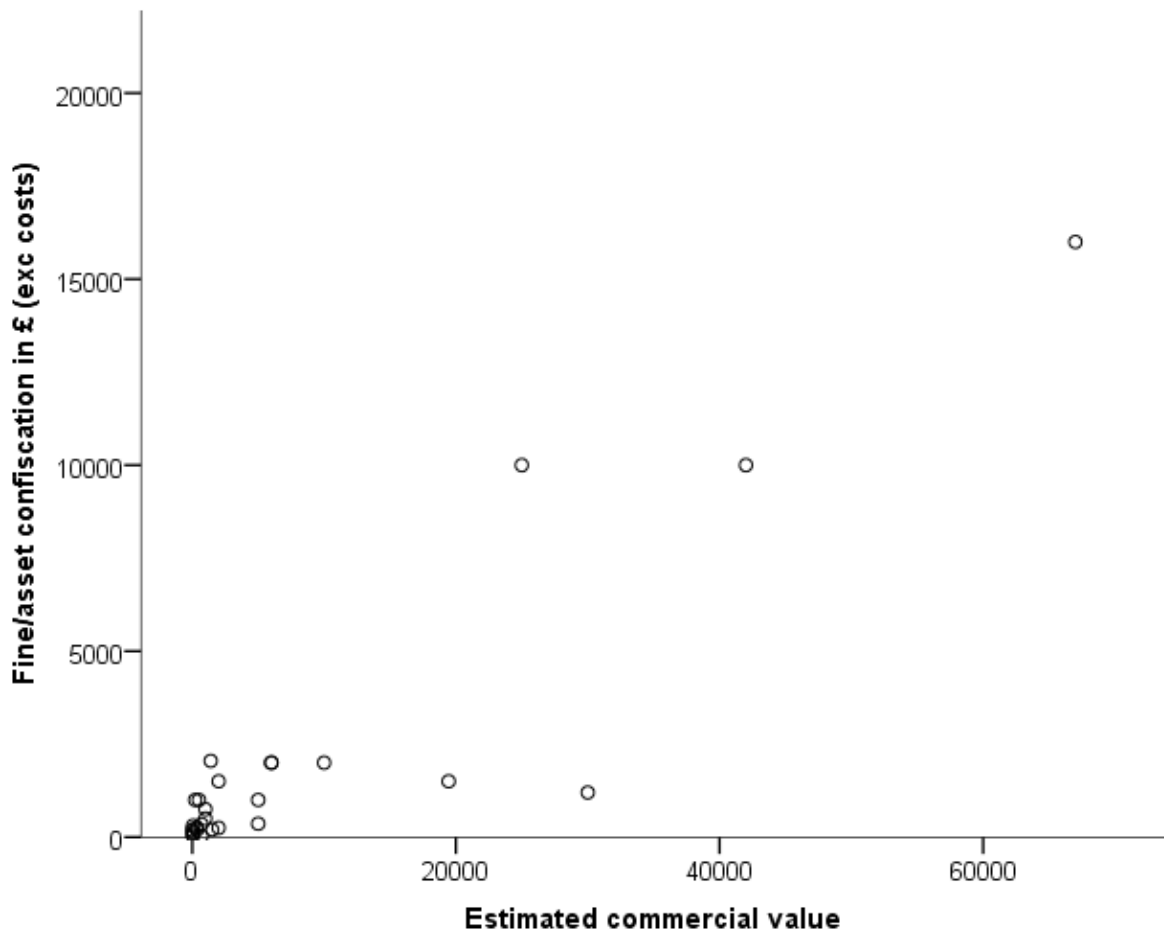
Fine increment £s	Frequency (%)
1-500	36 (35.6%)
501-1000	24 (23.8%)
1001-1500	14 (13.9%)
1501-2000	6 (5.9%)
2001-2500	9 (8.9%)

In the data set, there were 55 cases (31.6%) where an estimated commercial value was recorded. This ranged from £0 to £28.8m. Again, this high outlier skews the mean (£88,256), thus the 5% trimmed mean provides a more appropriate measure of central tendency, being £24,430 (the median was £6,000). Of these 55 cases, 30 resulted in a fine for the defendant. Initially it was thought to compare the value of the specimens involved with the fine imposed, to determine if the offender was left 'out of pocket' by the penalty given. However, as the fine amount excluded court costs and the costs of forfeiture, it was decided that this would not be an accurate measure, and that regardless of the fine amount, offenders would normally be left out of pocket because the specimens would be seized and they could not gain profit from their trade. However, with respect to the *general deterrent effect* that fines could have, and as an assessment of how economically serious the courts viewed such offences, such a comparison still has value. To do this, the fine/asset seizure amount was deducted from the estimated commercial value. A negative result meant the costs of offending (fine) were greater than the potential rewards (value), whilst a positive result meant the opposite (that the potential rewards were greater than the costs).

For the 30 cases where information was available, 8 resulted in fines greater than the specimen value (range = -£10 to -£50,000), in 1 case the amounts were the same and in the remaining 21 cases, the potential benefits were greater than the costs (again, remembering that this excludes forfeiture and court costs), ranging from +£50 to +£351,500. The mean difference for those cases when the potential benefits were greater was £31,281 and the median was £4,000.

Using the fine and estimated value data (30 cases) it was also possible to see if cases that were more serious (from a potential financial gain perspective) were likely to result in higher fines. We have already noted that in most cases the amount of fine was less than the estimated value of the specimens, but the fine amount did tend to be higher for higher commercial value (see figure 2.3). This relationship was tested using a

Spearman's rank order correlation, which showed a strong and statistically significant correlation between fine amount and value ( $R_s=0.817$ ,  $n=30$ ,  $p<0.001$ ). Though the sample size is small, these two pieces of analysis suggest that although fines may not be commensurate with commercial value, more 'serious' cases do tend to attract higher financial penalties.



**Fig2.3: Scatterplot of estimated commercial value versus fine amount (for values  $\leq$ £67,000 to remove two outliers)**

***Changes over time and sentencing consistency***

There was quite a degree of variation in the number of cases recorded for each year, ranging from just one case in 1986, 1988 and 2005 (with none recorded in 1993) to 15 cases in 2001, 14 in 2010 and 10 in 2000 and 1989. Table 2.2 shows the number of cases recorded each year and the percentage of these resulting in a custodial sentence (including suspended).

**Table 2.2: Number of cases recorded each year and number and percentage of cases resulting in a custodial sentence**

Year	Number of	Cases resulting in custodial
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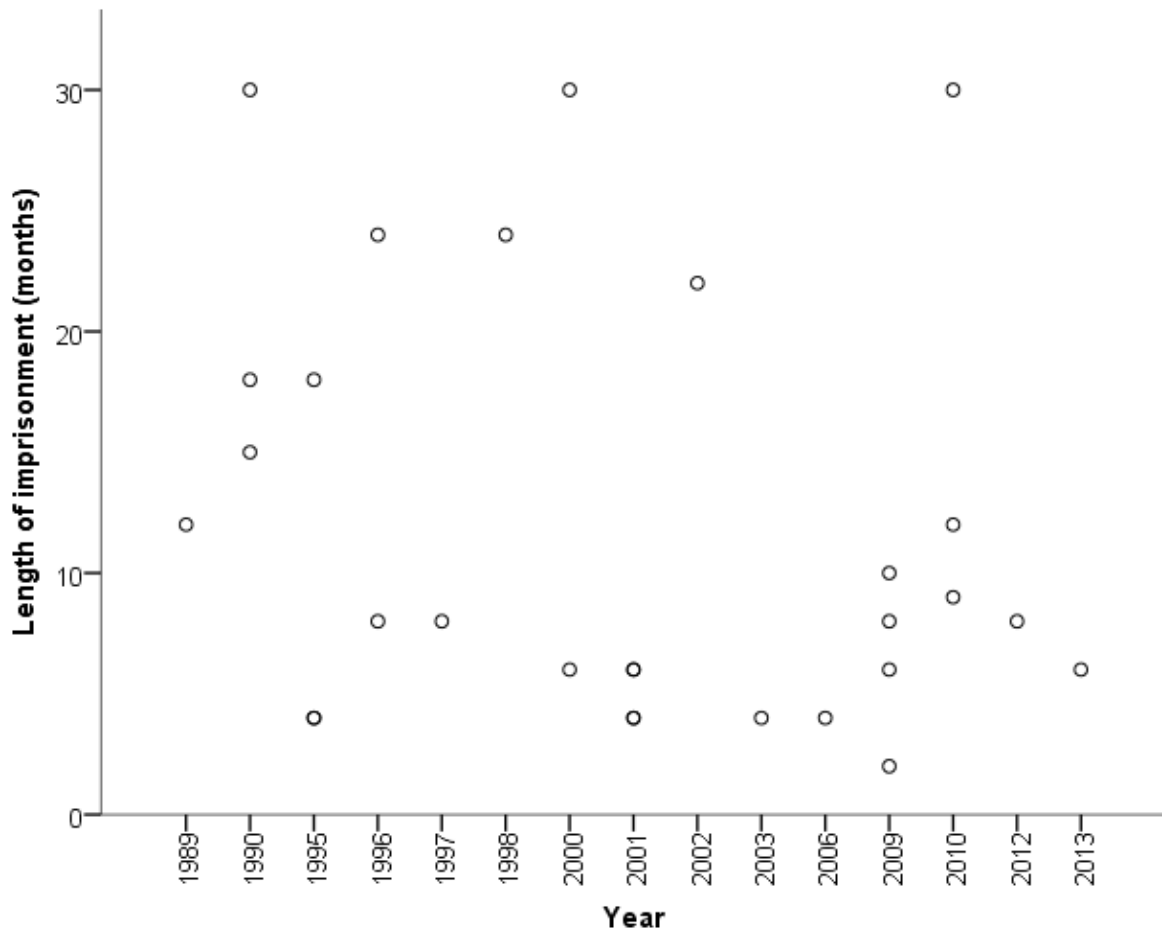


	<b>recorded cases</b>	<b>n</b>	<b>sentence % (to 0 dp)</b>
<b>1986</b>	1	0	0
<b>1987</b>	4	0	0
<b>1988</b>	1	0	0
<b>1989</b>	10	2	20
<b>1990</b>	5	3	60
<b>1991</b>	7	0	0
<b>1992</b>	8	2	25
<b>1993</b>	0	0	n/a
<b>1994</b>	4	0	0
<b>1995</b>	8	3	38
<b>1996</b>	4	2	50
<b>1997</b>	6	1	17
<b>1998</b>	5	1	20
<b>1999</b>	5	0	0
<b>2000</b>	10	2	20
<b>2001</b>	15	5	33
<b>2002</b>	8	2	25
<b>2003</b>	6	1	17
<b>2004</b>	5	0	0
<b>2005</b>	1	0	0
<b>2006</b>	9	2	22
<b>2007</b>	3	0	0
<b>2008</b>	6	1	17
<b>2009</b>	9	4	44
<b>2010</b>	14	9	64
<b>2011</b>	4	2	50
<b>2012</b>	8	1	13
<b>2013</b>	8	2	25

The variation in custodial rates by year is large, ranging from 0% to 64%. Visual inspection of the data does not reveal any noticeable pattern with regards to the proportion of custodial sentences passed over time, the highest proportions occurring in 2010, followed by 1990 and then 1996 and 2011. When there are very few offences in a year, there is less chance of seeing a custodial sentence, as one would expect, but the opposite cannot be said for when there are higher numbers of cases. In other words the years with the most recorded cases do not necessarily also see the highest proportion of custodial penalties.

Moving now to consider immediate custodial sentence length, a simple scatter plot showing sentence length over time did not indicate any noticeable changes (see figure 2.4, which shows the data with the one large outlier of 78 months removed). It was difficult to further explore sentence lengths over time, as no year saw more than four

immediate custodial sentences passed (with seven years seeing only one). That said, the data displayed in figure 2.4 could indicate slightly less dispersion in more recent years (suggesting the possibility of greater consistency), but also fewer longer sentences passed.



**Figure 2.4: Scatterplot of sentence length (months) for immediate imprisonment, by year (outlier removed)**

Noting that the maximum sentence for COTES offences increased in 2005, there is no indication in figure 2.4 that it resulted in increases to the length of custodial sentences passed after this time. To explore this further, scatterplots were produced for just CEMA offences and just COTES offences, and the mean (trimmed mean and median) sentence lengths for COTES offences were compared for cases pre-2006 and 2006 or later. The scatter plots showed similar patterns to the above, with no clear change over time (and very few data points, making it difficult to draw any conclusions). There were only 13 COTES cases resulting in immediate custodial sentences, 8 in 2005 or earlier and 5 in

2006 or later<sup>25</sup>. The different measures of central tendency and the dispersion of sentence length are shown in Table 2.3

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<sup>25</sup> It should be remembered that the date used is the date the case was heard in court. The date when the offence was committed is not recorded. The year 2006 has been picked as a cut-off point as the change occurred mid-2005 but it is not possible to say with certainty what maximum sentence was applicable in each case.

**Table 2.3: Measures of central tendency for COTES offences, comparing length of immediate custody (in months) for cases heard in 2005 or earlier and those heard since 2006 (to the nearest whole month)**

	<b>2005 and earlier (pre-change group)</b>	<b>2006 and later (post-change group)</b>
<b>n</b>	8	5
<b>Mean</b>	10	6
<b>5% trimmed mean</b>	9	6
<b>Median</b>	6	6
<b>Minimum</b>	4	2
<b>Maximum</b>	24	8
<b>Standard deviation</b>	7.4	2.6

From this it can be seen that even when controlling for outliers, the average custodial sentence length for COTES offences actually decreased after the statutory maximum sentence was increased. Including suspended sentences made very little difference to this pattern. The measure of standard deviation is lower for 2006 onwards. The  $C_v$  for the pre-change group is 0.74 and for the post-change group is 0.43, suggesting the latter has less dispersed data. Therefore it seems that the pattern perceived in the scatterplots is correct and that for COTES offences, the length of immediate custodial sentences tended to be lower after the maximum sentence was increased, but there was greater similarity (consistency) in the sentences passed.<sup>26</sup>

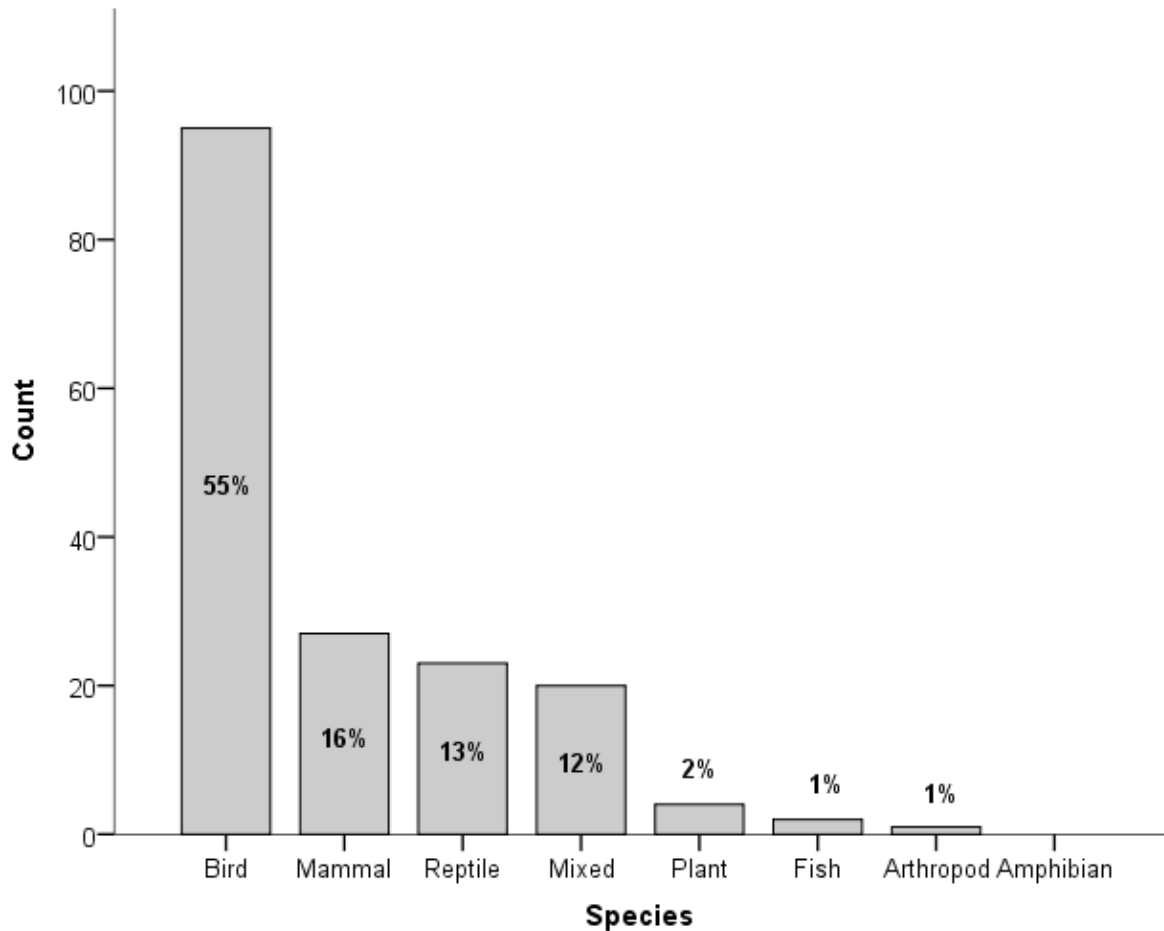
### ***Sentencing differences***

Further analyses were also carried out to determine whether the type of specimen involved, the protection status of the specimens or the legislation under which the case was brought affected the penalty given.

### **Type of specimen**

The majority of cases recorded involved birds, followed by similar numbers of mammals, reptiles and 'mixed' specimens (i.e. more than one of the category types was present). The distribution of cases by specimen type is shown in figure 2.5.

<sup>26</sup> In light of the mean sentence length (6 months) it was hypothesised that the reason for greater consistency of custodial sentence length from 2006 onward may have been because they had all been heard in the Magistrates Court and the maximum single offence limit had been used. For three of the cases the court was not recorded (and sentences of 2 months, 4 months and 6 months were passed). The other two cases were heard in two different Crown Courts (which both passed 8 month sentences) therefore, this suggestion was disproven.



**Figure 2.5: Count and percentage (to 0 dp) of recorded cases by specimen type**

The type of specimen had little effect on whether the defendant was imprisoned (including suspended sentences). It could be argued that cases involving mammals were slightly more likely to receive custody than the general pattern ( $n=8$ , 29.6%). Where the class was recorded as 'mixed' there was an even split between custodial and non-custodial sentences (10 cases of each), though this is more likely to reflect that more specimens were involved, thus the case was likely to be considered more serious. When only immediate custody was considered, there was again a slightly higher proportion of mixed (25.0%) and mammal (22.2%) cases resulting in this penalty than bird cases (16.8%); other types were either not represented or the number of cases was too few to include. Statistically the number of custodial sentences given for mixed cases was a little higher than expected, but a chi-square test showed no statistically significant associations between specimen type and whether a custodial sentence (immediate or suspended) was awarded or not ( $\chi^2=5.918$ ,  $df=2$ ,  $p=0.052$ ).

Considering custodial sentence length (all custodial sentences and just immediate custody), bird cases had the longest mean sentences, followed by mammals, then mixed types. This remained the case when the 5% trimmed mean was used to control

for outliers (with one bird case originally sentenced to 78 months, as noted above). The median custodial length was slightly longer for mammals, but reverted to the previous pattern when only immediate custody was considered (see table 2.4, below). When tested using the Kruskal-Wallis  $H$  test, the mean rank difference between the groups (with regards to sentence length) was not statistically significant ( $H=3.134$ ,  $df=2$ ,  $p=0.209$ ), though the sample sizes were small.

Bird cases also saw the largest range of lengths of imprisonment (mammal and mixed cases did not see any sentences longer than two years passed, whether suspended or not), had the largest standard deviations and the greatest coefficients of variation (though these were not much larger than for mixed cases), as shown in table 2.4. Thus cases involving birds were less likely to result in a custodial sentence than for mammals or mixed cases, but when they did, the average sentence passed was likely to be longer but also more dispersed, however these patterns were not statistically significant.

**Table 2.4: Measures of central tendency and dispersion for all custodial sentences and immediate custody only; sentence lengths (months) by specimen type**

Sentence length (months)	Bird		Mammal		Mixed	
	Custody	Immediate custody only	Custody	Immediate custody only	Custody	Immediate custody only
Mean	15	18	11	11	7	9
5% trimmed mean	12	15	10	10	7	9
Median	9	12	10	8	5	6
Min	2	2	6	6	2	4
Max	78	78	24	24	24	24
SD (to 1 dp)	16.8	18.9	6.4	7.0	6.5	8.4
C <sub>v</sub> (to 1 dp)	1.1	1.1	0.6	0.7	0.9	0.9

Fines were dispensed in around half of cases for birds (56%), mammals (56%) and mixed (45%) types. They were more common in reptile cases (70%) and in the small number of fish (100%), plant (75%) and arthropod (100%) cases. The proportion of cases receiving fines, by specimen type, was not statistically different to what would be expected.

The average fine amounts imposed were explored for the categories bird, reptile, mammal and mixed (the others were too small to include), as shown in table 2.5.

**Table 2.5: Measures of central tendency and dispersion for fine amounts imposed (£s) by specimen type**

<b>Fine amount (£s)</b>	<b>Birds</b>	<b>Reptiles</b>	<b>Mammals</b>	<b>Mixed</b>
<b>Mean</b>	4,491	2,916	1,524	7,204
<b>5% trimmed mean</b>	1,006	1,285	1,135	5,405
<b>Median</b>	500	700	900	2,000
<b>Min</b>	30	200	50	300
<b>Max</b>	150,000	35,000	10,000	46,500
<b>SD</b>	20,872	8,573	2,451	14,845
<b>C<sub>v</sub> (to 1 dp)</b>	4.6	2.9	1.6	2.1

Covering the most cases, bird offences also had the greatest range of fines imposed, with both the lowest minimum (£30) and the highest maximum (£150,000). This also meant the greatest standard deviation and the highest coefficient of variation. That is to say, fines for bird cases, like for custodial sentences, were the most dispersed. However, even with the very high outlier fine for bird cases, mixed cases recorded the highest mean fine amount at £7,204. This pattern held when the 5% trimmed mean, and the median, were used instead. Therefore it can be seen that the average fine amounts for bird, reptile and mammal cases were fairly similar, whilst mixed cases were much higher. A Kruskal-Wallis  $H$  test showed that there was a statistically significant difference in the mean rank fine amount between the different groups ( $H=8.028$ ,  $df=3$ ,  $p=0.045$ ). In order to explore further where this difference was, each pair of categories was compared using the Mann-Whitney  $U$  test. This showed there were no significant differences between mean rank fines for birds, reptiles or mammals, but the mean rank fine for mixed cases was statistically significantly different to all other groups (vs Birds:  $U=369.500$ ,  $n_1=9$ ,  $n_2=53$ ,  $p=0.009$ ; vs Reptiles:  $U=112.500$ ,  $n_1=9$ ,  $n_2=16$ ,  $p=0.020$ ; vs Mammals:  $U=100.500$ ,  $n_1=9$ ,  $n_2=15$ ,  $p=0.048$ ). In other words, we can confirm that higher fines tended to be awarded in mixed cases than in those involving any other, single type of specimen (though the small sample sizes require a note of caution in drawing conclusions).

As noted above, this may reflect the fact that mixed cases would be more likely to include multiple specimens (thus be viewed more seriously). It may also be hypothesised (though cannot be tested with these data) that cases with multiple, mixed specimens are more likely to involve offenders operating a business (as opposed to individual collectors or one-off sales). Alternatively, it could be that traders are more likely to specialise in a particular type of specimen (e.g. birds).

### **Protection status**

From the data provided it was possible to categorise cases as either Appendix I/Annex A or Appendix II/Annex A/B (or mixed, or missing). The former was deemed to have a higher protection status than the latter (given the CITES Appendix in which it was listed). There were 77 Appendix I cases (44%), 74 Appendix II cases (43%) and 20 mixed cases (with 3 records that did not have data recorded). In order to consider any differences in sentencing by protection status, just those 151 cases that could be assigned to one category were considered.

With regards to sentences, 25 Appendix I cases (32.5%) and 9 Appendix II cases (26.5%) resulted in a custodial penalty (immediate or suspended). Of these, 19 Appendix I cases resulted in immediate imprisonment as did 5 Appendix II cases. Looked at the other way, 52 cases (67.5%) involving an Appendix I listed species did not result in even suspended custody. That said, Appendix I cases *were* more likely to result in custody than Appendix II cases and this association was statistically significant ( $\chi^2=8.918$ ,  $df=1$ ,  $p=0.003$ ).

Considering sentence length, as expected, Appendix I cases resulted in longer penalties for both immediate and suspended custody, than did Appendix II cases.<sup>27</sup> However, this difference was not statistically significant (Mann-Whitney  $U=73.000$ ,  $n_1=24$ ,  $n_2=9$ ,  $p=0.166$ ). The range and dispersion of sentence lengths was also greater for Appendix I cases, all as shown in table 2.6.

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<sup>27</sup> For sentence length, Appendix I cases  $N=24$  not 25. The sentence was recorded as custody, but the sentence length was missing, therefore this is excluded from the analysis.



**Table 2.6: Measures of central tendency and dispersion for all custodial sentences and immediate custody only; sentence lengths (months) by protection status**

Sentence length (months)	Appendix I		Appendix II	
	Custody	Immediate custody only	Custody	Immediate custody only
Mean	12	13	6	7
5% trimmed mean	11	13	6	7
Median	9	10	6	8
Min	2	2	2	4
Max	30	30	10	8
SD (to 1 dp)	9.0	9.4	2.6	1.8
C <sub>v</sub> (to 1 dp)	0.8	0.7	0.4	0.3

Appendix I cases resulted in a fine 48% of the time (n=37), whilst for Appendix II cases this was 70% (n=52). The number of Appendix I cases resulting in fines was lower than statistically expected, whilst it was higher than expected for Appendix II cases. This association was statistically significant ( $\chi^2=7.697$ , df=1, p=0.006).

Next, the amount of fine was considered, as shown in table 2.7. The mean fine for Appendix I cases was much higher than for Appendix II cases, as would be expected. However, Appendix I is affected by a very large outlier. When the 5% trimmed mean and the median are compared, although still higher for Appendix I the difference is not as great (and as noted above, the fines are very modest, with medians of £700 and £500). As expected, the spread of Appendix I fines is greater. Testing showed that the difference in mean rank fine amount between Appendix I cases and Appendix II cases was not statistically significant (Mann-Whitney  $U=799.500$ ,  $n_1=37$ ,  $n_2=52$ , p=0.175).

**Table 2.7: Measures of central tendency and dispersion for fine amounts imposed (£s) by protection status**

Fine amount (£s)	Appendix I	Appendix II
Mean	6,309	1,400
5% trimmed mean	1,607	741
Median	700	500
Min	50	30
Max	150,000	29,500
SD	24,997	4,115
C <sub>v</sub> (to 1 dp)	4.0	2.9

Therefore, even though cases involving Appendix I species would be generally considered more serious than those involving Appendix II species, there is no statistically significant difference between them and either the length of custody or the amount of fine passed by the court. However, it must again be acknowledged that the circumstances in these cases are not known. For example, it may be that the Appendix II cases were more likely to be committed by offenders with previous convictions, those were deemed more culpable for some reason, or involve large numbers of specimens.

## Legislation

Within the data set, 45 cases were brought under CEMA, 118 were brought under COTES, 1 was not recorded and 10 were brought under more than one Act. Including suspended sentences, a greater proportion of CEMA cases resulted in custody (33.3%, n=15) than did COTES cases (16.1%, n=19), whilst all 10 of the 'multiple Act' cases did. There was a statistically significant association between the legislation under which the case was brought and the passing of a custodial sentence, with 'multiple Act' cases much more likely than expected to be given a custodial sentence ( $\chi^2=36.217$ ,  $df=2$ ,  $p<0.000$ ). When multiple cases were removed from the analysis, so that only CEMA and COTES were compared, again there was a statistically significant association between legislation and custodial penalty, with CEMA cases more likely than expected and COTES cases less likely than expected to result in imprisonment (suspended or immediate) ( $\chi^2=5.680$ ,  $df=1$ ,  $p=0.015$ ).

When only immediate custody cases were looked at 13 (43.3%) of them were brought under CEMA, 13 (43.3%) were brought under COTES and 4 (13.3%) involved multiple Acts.

**Table 2.8: Measures of central tendency and dispersion for all custodial sentences and immediate custody only; sentence lengths (months) by legislation**

Sentence length (months)	CEMA		COTES		Multiple	
	Custody	Immediate custody only	Custody	Immediate custody only	Custody	Immediate custody only
Mean	20	22	8	8	7	7
5% trimmed mean	18	20	7	7	7	7
Median	15	18	6	6	7	7
Min	2	4	2	2	3	4
Max	78	78	24	24	10	10
SD (to 1 dp)	18.8	19.1	5.6	6.2	2.9	3.2
C <sub>v</sub> (to 1 dp)	0.9	0.87	0.7	0.8	0.4	0.5

As shown in table 2.8, as well as being more likely to result in imprisonment, offences under CEMA also attracted longer average sentences, even when controlling for outliers, than COTES offences. They also attracted longer sentences than cases brought under multiple legislation. In fact, multiple cases and COTES cases were very similar, whilst CEMA averages were much higher, regardless of whether the sentence was suspended or not.

A Kruskal-Wallis  $H$  test, indicated that there was a statistically significant difference between the legislation under which a case was brought and the length of custodial

sentence ( $H=8.385$ ,  $df=2$ ,  $p=0.015$ ). Given the mean rank scores, it was expected this difference lay between CEMA cases and both COTES and multiple cases (with no difference between COTES and multiple cases), which was confirmed by a Mann-Whitney U test (vs COTES:  $U=64.000$ ,  $n_1=15$ ,  $n_2=18$ ,  $p=0.009$ ; vs Multiple:  $U=33.000$ ,  $n_1=15$ ,  $n_2=10$ ,  $p=0.019$ ).<sup>28</sup>

Therefore, CEMA offences were statistically significantly more likely to result in a custodial sentence being passed and for this sentence to be longer.

Moving now to compare fines by legislation. Only one out of ten cases brought under multiple legislation resulted in a fine (10%). For CEMA cases 67% were given a fine ( $n=30$ ) and for COTES cases this was 59% ( $n=69$ ). Comparing just CEMA and COTES offences, the observed counts were similar to the expected counts and a Chi-square test showed no statistically significant association between legislation and the passing of a fine ( $\chi^2=0.917$ ,  $df=1$ ,  $p=0.338$ ).

Fine amount was then compared for CEMA and COTES cases, as shown in table 2.9. The spread of fines was greater for CEMA offences, but these contained a very large outlier. The 5% trimmed mean and the median fine amount were more similar, though still higher for CEMA cases. However, a Mann-Whitney U test confirmed that the difference in mean ranks (average fine amount) was not statistically significant ( $U=950.500$ ,  $n_1=30$ ,  $n_2=69$ ,  $p=0.519$ ).

**Table 2.9: Measures of central tendency and dispersion for fine amounts imposed (£s) by legislation**

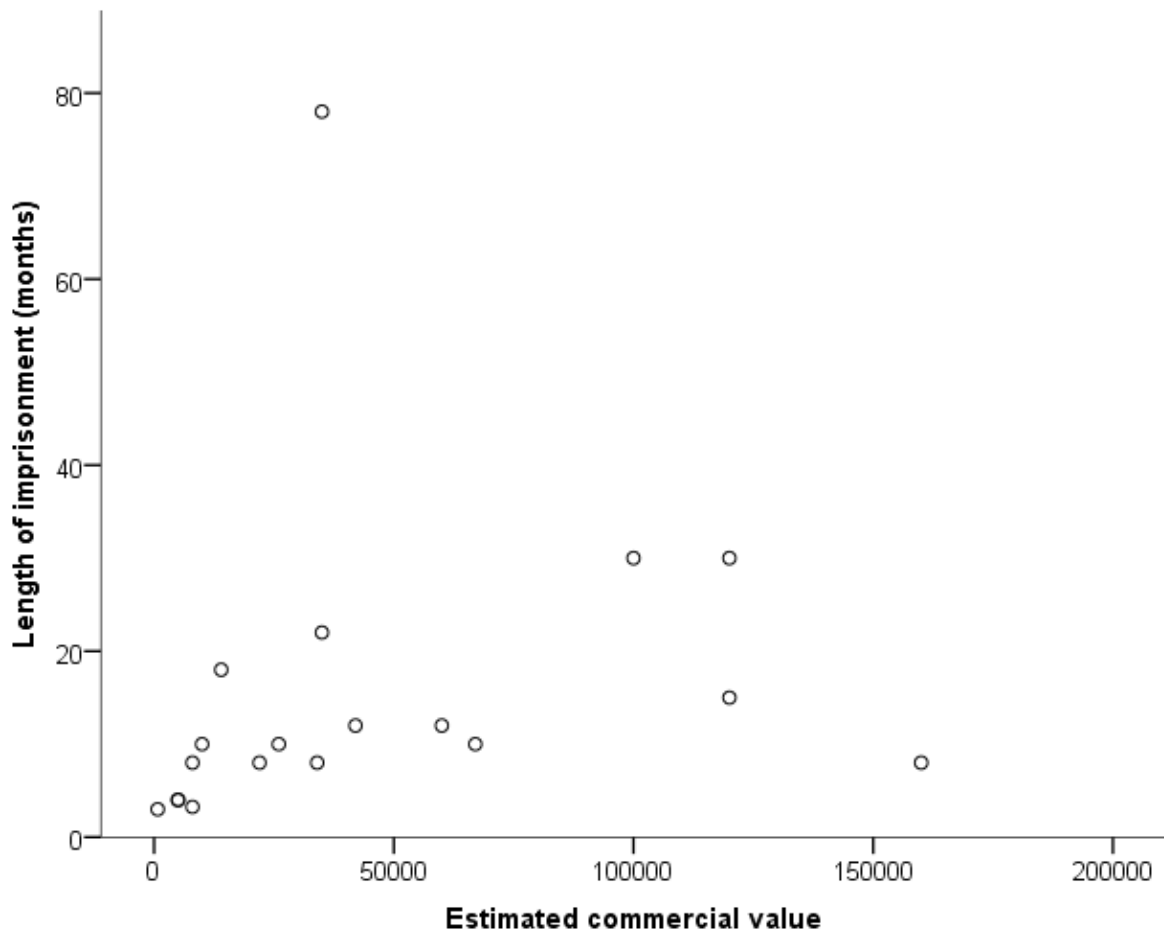
<b>Fine amount (£s)</b>	<b>CEMA</b>	<b>COTES</b>
<b>Mean</b>	7,003	1,648
<b>5% trimmed mean</b>	1,673	952
<b>Median</b>	750	500
<b>Min</b>	50	30
<b>Max</b>	150,000	35,000
<b>SD</b>	27,557	4,397
<b>C<sub>v</sub> (to 1 dp)</b>	3.9	2.7

### **Commercial Value**

The relationship between fine amounts and commercial value has already been considered. There were 22 cases involving custodial sentences (including suspended) for which estimated commercial value information was recorded. As with fines, it

<sup>28</sup> As noted, the n for COTES cases used when considering sentence length is one less than the recorded total, as for one case sentence length was not included in the dataset.

appeared that higher commercial value resulted in lengthier custody, though the relationship appeared to be less strong (see figure 2.6). When tested, there was again a strong and statistically significant correlation between custodial sentence length and value ( $R_s=0.706$ ,  $n=22$ ,  $p<0.001$ ) suggesting some degree of appropriate gradation of sentencing.



**Fig 2.6: Scatterplot of estimated commercial value versus custodial sentence length (for values  $\leq$ £160,000 to remove two outliers)**

**Other sentences**

Community orders were the highest sentence passed in seven cases. These related to ivory, black rhino horn, various specimens including primate skulls, chameleons and three cases where the specimen type was not listed. There was only commercial value information for two cases, the black rhino horn (worth an estimated £14,700) and one of the unlisted cases (value of £1,200). All seven community orders involved unpaid work ranging from 80 to 300 hours. There were also additional penalties in four of these cases: two curfew orders, a fine, a five year ban and, in a number of cases, costs. There were also a further six cases where a community order was passed as an additional

sentence to imprisonment (the custodial sentences ranged from 5 months to 24 months and all but one of these (24 months) was suspended). All but one of these related to unpaid work (120 to 250 hours), the other was a ten week curfew order. In addition, a further curfew order, costs and forfeiture were also ordered. These cases involved rhino horn, ivory, skull and taxidermied specimens, tortoises, and birds of prey.

There were no obvious patterns relating to specimen type, legislation, value, and so forth, though the sample size is limited and information was not always available. It would be interesting to explore the use of alternative or additional sentences to custody and fines as these may be capable of deterring offenders but also of offering alternative reductive benefits. This is picked up again in the discussion and later in the report.

### ***Specific cases***

Finally, there were 24 cases that explicitly mentioned rhino horn, elephant ivory and or tiger parts. As these may be considered some of the most iconic and well known (and threatened) of endangered species, we may expect that these were more likely to result in the harshest sentences. However, it was found that only 6 of these attracted an immediate custodial sentence, 2 resulted in a suspended sentence and the remaining 16 defendants, therefore, were given non-custodial sentences. Of these, 12 cases resulted in a fine, ranging from £50 (nine pieces of ivory, no commercial value recorded; case heard in 1992) to £10,000 (ivory shaving brush with commercial value estimated at £25,000; case heard in 2006). The mean fine amount was £2,098 (5% trimmed mean = £1,772; median = £875).<sup>29</sup> Of the remaining four cases, one resulted in a conditional discharge, one in an absolute discharge and two in community orders (both being an unpaid work requirement for 80 hours (ivory) and 240 hours (black rhino horn); these cases also attracted curfew orders of 10 weeks and 15 weeks (tagged) respectively). The custodial sentences ranged from 6 months to 24 months (with data missing in one case). It should also be noted that two of the custodial cases included a community order penalty (120 hours community service order in one case and a 150 hour community service order, plus a day curfew, in the other) and four included an 'other' requirement (in all cases this was forfeiture).

It is even more interesting to consider the rhino horn cases in a little more detail, as data on directly comparable targets was provided in the TRAFFIC data set:

1. In 1998, Wilfred Bull was sentenced to a total of 24 months immediate custody, plus 120 hours of unpaid work, forfeiture and costs. He had been found guilty of an offence under COTES, involving 127 rhino horns.

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<sup>29</sup> Only three of these cases had an estimated commercial value, therefore the difference between fine amount and value could not be analysed. In all three cases the estimated value was, however, greater.

2. In 2001, 2 defendants (Admon and Yacobi) were sentenced to 6 months imprisonment and subject to forfeiture, after a COTES offences relating to 2 rhino horns.
3. In 2010, Donald Allison attempted to smuggle white rhino horn from the UK to China. He was found guilty of an offence under CEMA and sentenced to 12 months immediate custody.
4. In 2012, Ji Ming Shi made false statements to obtain an export permit for rhino horn, resulting in a prosecution under COTES. Upon a finding of guilt, the horn was forfeited. Shi had to pay costs, but received an absolute discharge.
5. In 2013, Ciford Bardelli was found guilty under COTES of attempting to sell black rhino horn. For this offence he received a community order involving 240 hours of unpaid work, a night-time tagged curfew and order to pay costs and a £15 victim surcharge.

The dataset provided also included three cases relating to theft or attempted theft of rhino horn, which can provide a comparison to the above (they have been excluded from the reported analysis). All three cases were brought under the Theft Act 1968. Given that the maximum sentence available (this information is listed in the data set) is 7 years imprisonment on indictment, these appear to be s1 theft offences. The cases involve four defendants and seem to relate to two different incidents (though this is not entirely clear, the target appears to be the same in two cases).

1. In 2012, Nihad Mahmud was found guilty of attempting to steal rhino horn from Norwich Museum. He was sentenced to 30 months
2. In a possibly related case that was heard later in 2012, Patrick Kiely was sentenced to 18 months, also for an attempted theft of rhino horn from Norwich museum
3. Also in 2012, two defendants were found guilty of stealing a rhinoceros head from Haslemere Educational Museum. Jamie Channon was sentenced to 7 years imprisonment and Tony Moore to 5 years.

As stated previously, sentencing will in most cases be affected by the detailed circumstances of the case and the plea, character, background and previous convictions of the defendants. However, it would appear that those charged with more 'traditional' offences (theft) have tended to receive more severe sentences than those charged with wildlife or customs-related offences. When the aim, motivation and market in these cases are the same, this discrepancy seems curious and is considered further, below.

### **Comparison with other offences**

Offences of illegal wildlife trade could potentially be compared with many others in an attempt to assess the appropriateness of the sentences passed. It is not possible to

easily compare all cases of different types as exhaustive data are difficult to obtain, therefore a small purposive, indicative selection of example sentences from [www.lawpages.com](http://www.lawpages.com) is presented in this section though it is acknowledged that these may not represent 'usual' or average sentences. There is also brief consideration of the sentence ranges of possibly comparable cases in current sentencing guidelines.

### **Case comparison**

- Offences relating to illegal export of prohibited goods (relating to trade restrictions) can be compared.
  - In 2009, Andrew Jackson was sentenced to 2 years 8 months (32 months) immediate custody for selling former military personnel carriers to Sudan (knowingly contravening a trade prohibition under Trade in Controlled Goods (Embargoed Destinations) Order 2004).
  - Also in 2009, Mohsen Akhavan Nik was found guilty of conspiring to export goods (aircraft components and equipment) to Iran with intent to evade prohibition on exportation and of conspiring to transfer, acquire or dispose of controlled goods, the charges being brought under CEMA 1979 and The Trade in Goods (Control) Order 2003. He was sentenced to 5 years (60 months) immediate custody for the CEMA offences and 3 years (36 months) for the other offences, to be served concurrently.
  - A 2010 offence involving the sale of body armour to the Iraqi government and companies operating in Iraq (under The Trade in Goods (Control) Order 2003) resulted in Glynn Jones receiving a sentence of 350 days imprisonment, although this was suspended for two years.
- Importation and conspiracy to import firearms offences (charged under CEMA), have attracted example sentences of 41 months (Dyce, 2013); 78 months (Marshalleck, 2013); and 60 months (Wright, 2013).
- Transferring and unregistered selling, manufacture, repair, etc. of firearms have attracted sentences of 36 months (Keatley, 2013); 60 months (Burdon, 2013 – sold a firearm and possessed ammunition); and 18 years (Hidderley, 2011 – played a role in gang of four who converted and sold firearms).
- Trafficking people for labour (not sexual exploitation) offences tend to attract high custodial sentences (examples range from 5 to 12 years).
- Offences of evading payment of customs duty on relevant goods other than wildlife (CEMA) can also attract immediate custodial sentences, for example:
  - Riozzi (2014) received 39 months having been found with five million cigarettes, 180kg of counterfeit tobacco and £55,000 cash.
  - Allen (2013) was sentenced to 8 months immediate custody in relation to an offence involving 380,000 illegal cigarettes (avoiding excise duty of more than £85,000).



- A case in 2013 involving a criminal operation to smuggle more than 15 million cigarettes (evading almost £3 million in duty) resulted in total sentences of 36 months (Coombs), 27 months (Walsh and McCormack – charged with 1 count each) and 18 months (Pugh-Roberts – 1 count).

The above offences were selected as they may be considered to involve similar behaviour to wildlife trafficking (albeit different commodities). As can be seen, these other offences of trafficking, customs evasion and importing/exporting prohibited items tend to result in higher sentences than those for wildlife trade offences, even those brought under the same legislation. Although it is acknowledged that the sample presented is purposive, even compared with the more serious wildlife trade cases, some of which were also reported in this database, there appears to be a greater use of (immediate) custody and sentences tend to be longer.

### ***Offence comparison***

Sentencing guidelines for three different offence categories (focusing on certain offences within these) were compared with the actual sentences analysed in the first part of this chapter. As has been noted in the literature review, these documents provide guidance as to the sentencing range and an appropriate starting point based on the seriousness of the offence, as well as aggravating and mitigating factors that should be applied to either move the sentence up or down within this range. Offence seriousness is determined by the harm caused and offender culpability. These guidelines apply to first time offenders aged 18 or over. Previous convictions are taken into account when considering aggravating factors, whilst reductions for guilty pleas are applied at 'stage 4', after aggravation and mitigation have been considered. Thus previous convictions, assisting the prosecution and guilty pleas are not taken into consideration in the below discussion. Aggravating and mitigating factors are not considered here either, but those that may be relevant to guidelines for wildlife trade offences are discussed in chapter five.

### **1) Drug offences (Sentencing Council, 2012)**

Rather than consider all drug offences, 'smuggling' was felt to be the most similar to wildlife trade offences. It was also noted in the literature review that illegal wildlife trade was viewed by many as most similar to (Class A) drug smuggling due to the behaviours involved and the serious international (organised) nature of such crimes; thus this is the point of comparison. Sentencing guidance is provided for offences of fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug, covering offences under the Misuse of Drugs Act 1971 s3 and CEMA 1979 s170(2). Sentencing for Class A drugs has a statutory maximum sentence of life imprisonment (cf. 5 years and 7 years for wildlife trade under COTES and CEMA respectively), the offence being triable either way with the exception of cases which could result in a

statutory minimum sentence.<sup>30</sup> For Class B and Class C drugs the maximum is 14 years custody (and/or unlimited fine), again much higher than for similar wildlife offences.

Culpability is determined according to the role played by the offender: Leading role (e.g. directing or organising business on a commercial scale, expectation of substantial financial gain, and so on); Significant role (e.g. operational or management function, involves others, and so on); Lesser role (e.g. solely for own use, little or no influence on others involved, engaged because of exploitation, intimidation, pressure and so on) (p4). Category of harm is determined by the type and quantity of drugs involved and may be one of four, though the guidelines allow for a higher sentence if the quantities of drugs are significantly higher than listed in category one.<sup>31</sup>

The offence range for Class A drugs is 3 years 6 months' to 16 years' custody. The range of immediate custodial sentences in the TRAFFIC dataset was 2 months to 78 months (6 years 6 months), the mean being 1 year 2 months and the 5% trimmed mean being 1 year. Therefore it can be seen that the average sentence length for wildlife trade offences is significantly lower than the bottom end of the range for trafficking Class A drugs. We have to consider the less serious offence of smuggling Class B drugs (range 12 weeks' (approximately 3 months) to 10 years' custody) to find a more similar sentence range. It should be noted that even smuggling Class C drugs, which has a lower-end sentence of a community order, has a higher upper-end (8 years) than the maximum sentence allowable for wildlife trafficking.

The starting point sentences for these drug trafficking offences are set out in a table of role (culpability) versus quantity category (harm). Considering Class A offences, the most serious (Category one vs. leading role) have a starting point of 14 years' custody, whilst the less serious offences (category three vs. lesser role) have a starting point of 4 years' 6 months' custody.<sup>32</sup> Again, these starting points are not only significantly higher than the average sentence dispensed for wildlife trade offences, but even the lowest is higher than nearly every sentence recorded in the TRAFFIC dataset. To find starting points around the average wildlife trade sentence length we must look to offenders playing a lesser role smuggling category two or three quantities of Class B drugs (2 years' and 1 year's custody respectively).

## **2) Environmental offences (Sentencing Council, 2014a)**

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<sup>30</sup> This offence is classed as a 'drug trafficking offence' for the purpose of s110 Powers of Criminal Courts (Sentencing) Act 2000, which requires a minimum sentence of seven years' imprisonment for a third trafficking offence. It should be noted there are no statutory minima for wildlife trafficking offences.

<sup>31</sup> For heroin and cocaine (Class A) for example, category one lists around 5kg; category two would be around 1kg; category three around 150g; and category four around 5g. For cannabis (currently Class B), these amounts are 200kg, 40kg, 6kg and 100g.

<sup>32</sup> Category four quantities do not have specific starting points. Instead sentencers are instructed to use the starting points for possession or supply (depending upon intent) if the quantities involved are less, or to use the category three starting points if the quantities are significantly more than listed.

As stated in the literature review, guidance for environmental offences is separated according to whether the offender is an organisation or an individual. The same could be true for wildlife offences, but for brevity this analysis will focus on individuals.

The main offences covered relate to pollution: unauthorised or harmful deposit, treatment or disposal etc. of waste; and illegal discharges to air, land and water.<sup>33</sup> It is also noted that, with relevant adjustments these guidelines may be applied to other offences, such as unregistered transportation of controlled waste, breach of abatement notice, and so forth (see p23).

The offences covered are, like COTES and CEMA wildlife offences, triable either way (though cases must be committed to the Crown Court if a Confiscation Order is to be considered). The maximum sentence is an unlimited fine and/or five years' custody (on indictment) or £50,000 and/or six months' custody (when tried summarily). Therefore the maximum sentence is similar to wildlife trade offences under COTES, and less than for CEMA offences. However, the maximum fine amount is higher than the usual Magistrates Court maximum (£5,000), though as noted in the literature review, the cap has very recently been removed for offences attracting level 5 and higher fines.

The guidance first requires sentencers to consider making a compensation order, followed by a decision regarding confiscation (if heard in the Crown Court). Seriousness (i.e. offence category) is then determined as usual through a consideration of offender culpability and harm. Factors which should be considered under these two headings are set out. For culpability this may be deliberate, reckless, negligent, low or none. Harm is separated into four categories, and includes such things as the degree of adverse effect to air, water, amenity value or property (e.g. category one involves major adverse effects), the effects to humans and animals and how long these may last, costs of clean-up and restoration of the environment (and rehabilitation of affected animals), and so on (p17).

Sentencers are then reminded to consider their obligations regarding ensuring the threshold has been passed before giving a custodial or community sentence. For the former, they must also consider whether imprisonment can be suspended. In addition, in bold we are told that "even where the community order threshold has been passed, a fine will normally be the most appropriate disposal." (p19). One assumes this is because the main aim is to remove any gain, which is likely to be financial.

The offence range for these environmental crimes is broad. Though the upper end is only 3 years' custody, the lower end is a conditional discharge, meaning that a number of different types of sentence must be considered. The highest starting point (for

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<sup>33</sup> Under s33 Environmental Protection Act 1990 and Environmental Permitting (England and Wales) Regulations 2010 (regulations 12 and 38(1), (2) and (3)).

category one harm and deliberate illegal behaviour) is 18 months' custody, which is higher than the average sentence for wildlife trade offences in the TRAFFIC dataset, but not significantly so. For category two harm this drops to 1 years' custody; very similar to the average in the dataset. Both these levels of harm and culpability also attract only custodial sentences, with a range of 1 to 3 years and 26 weeks to 18 months respectively. The starting point for category three and four harm drops into fines (which will be discussed shortly). For recklessness on the part of the offender, category-one harm has a starting point of 26 weeks' custody (similar to the most common periods of imprisonment in the TRAFFIC dataset). All other configurations of harm and culpability involve fines for the starting point, though custody is still available in some cases (recklessness + category one or two harm; negligence + category one harm).

Considering fine amounts, the majority of starting points are Band F or E fines, though these do drop down to Band D and C as harm decreases and low culpability offences attract from Band A to Band D fines. These fine bands equate to a proportion of the offenders' weekly income, therefore it is not possible to compare them to the actual fines in the TRAFFIC dataset, though as noted the maximum possible in the Magistrates' Court for wildlife offences was £5,000 whereas for environmental offences it was £50,000: ten times more. Therefore it seems that custodial sentences may be passed within similar ranges for individual environmental (pollution) offences and wildlife trade offences, but that fine amounts for environmental offences may be guided towards higher amounts.

### **3) Animal cruelty (Sentencing Guidelines Council, 2008)**

The guidelines cover offences under the Animal Welfare Act 2006 ss4, 8 and 9.<sup>34</sup> All of these are triable only summarily and the maximum sentences are 6 months' custody and/or a level 5 fine (s9) or a £20,000 fine (ss4 and 8). Thus wildlife trade offences have higher maxima as they can be tried in the Crown Court, but in the Magistrates' Court ss4 and 8 offences can be given a higher maximum fine.

Being in the older format of guidelines, the categories of offence (based on culpability and seriousness) are less informative. There are three categories with examples of the nature of activities involved based on the persistency of the behaviour and the harm caused to the animal(s) (e.g. the middle category includes several incidents of ill-treatment or frightening, whereas the highest (3<sup>rd</sup>) category includes (attempts at) killing or torturing and fighting or baiting). Given the nature of smuggling endangered species and the impact this has, it is proposed that the most similar behaviour here is the highest level of severity. This has a starting point sentence of 18 weeks' custody and a range of 12 to 26 weeks (so half the available maximum up to the maximum). In the TRAFFIC dataset, custodial sentences tended to fall within this range, other than some significant outliers. However, custodial sentences were only passed in a minority of cases, whereas the sentencing range for the worst animal cruelty cases suggests most sentences would result in imprisonment. It is suggested that given the degree of harm caused by wildlife trade to the species and ecosystem, not just individual animals, and the higher available maximum sentences if tried in the Crown Court, we should expect to see generally higher and longer sentences than for cruelty cases, but this does not seem to be the case.

#### **Summary and discussion**

This part of the research sought to address Aim 1 of the project by establishing the current state of sentencing in England and Wales for offences of illegal trade in wildlife, considering the severity and consistency of penalties imposed and whether these are commensurate with the harm caused by offending and the profits gained. This was primarily achieved through a quantitative analysis of wildlife trade conviction data provided by TRAFFIC. In addition, sentences for a purposive sample of comparable cases and sentencing ranges and starting points for selected comparable offences were compared with those in the TRAFFIC dataset. It was noted that assessing the harm caused in the offences analysed was not possible, but the severity of wildlife trade offences generally could be equated to other types of crime in an attempt to address this aim.

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<sup>34</sup> These offences are unnecessary suffering (s4), fighting, etc. (s8) and breach of duty of person responsible for animal to ensure welfare (s9).

It is recognised that determining the appropriateness and consistency of sentences in individual cases is not possible because enough information about the circumstances is not available. Therefore, except in selected cases (notably those involving rhino horn), it is *patterns* of sentencing that have been analysed.

It was found that the majority of cases of illegal wildlife trade resulted in non-custodial sentences and just over half included a fine. There is some evidence of the use of other sentence types (as the sole sentence or in addition to fines/custody), notably Community Orders (usually with an unpaid work requirement) and conditional discharges; though these alternatives were relatively rare. When custodial sentences were passed, these tended to be under ten months in length. Fine amounts also tended to be low. Although there are cases that attracted high fines, 88% of cases resulting in a fine were for amounts of £2,500 or less and nearly three quarters of fine cases were penalties of £1,500 or less (excluding costs, etc.). These are not significant sentences and it is argued that this provides evidence that sentencing for wildlife trade offences is, in many cases, lenient as claimed in the literature.

There are issues with drawing conclusions from comparisons of fine amount and commercial value, notably because the fine amounts do not take into account all additional financial burdens incurred by the offender (or the impact of forfeiture, which is discussed in chapter 4) and because commercial value estimates were not recorded for all cases, therefore those included may not be representative. That said, this comparison is the best available way of determining if penalties are commensurate with the potential gains of offending (which to have a retributive and deterrent effect they need to be). The analysis showed that in most cases fines were less (sometimes significantly so) than the value of the specimens included in the charge(s). This may be an over-estimate because of the noted flaws, but on the other hand it does not account for any illegal trade an individual has been involved in, but not successfully prosecuted for.

Therefore the analysis has shown that custodial sentences are not used in the majority of cases and when they are, the length of imprisonment is relatively short given the available maxima (and often suspended). Fines are used more often, but the amounts tend to be low and are thus unlikely to have a deterrent effect. These findings are consistent with those of other researchers (e.g. Lowther, Cook and Roberts, 2002; St. John, 2012) and with the criticisms of sentencing found throughout the literature.

There was no real difference in the length of custodial sentences passed over the period studied. There was some suggestion that sentences had become less dispersed more recently, but also that they may have become more lenient. Indeed, it seems that when the maximum sentence for COTES offences was increased, the average custodial sentence passed actually decreased. The reasons for this are unclear.

There was no statistically significant association between specimen type and custodial sentence. Bird cases seemed to be less likely to result in custodial penalties, however when they did, sentences tended to be longer (but also more dispersed); though this was not statistically significant. There was no association found between specimen type and the passing of a fine and no difference in fine amount by specimen except for 'mixed' cases, which resulted in statistically significantly higher fine amounts. As these cases had to involve multiple specimens this finding is not surprising (and is consistent with St. John, 2012).

There was some evidence of gradation of sentencing when protection status was considered. Again, consistent with the findings of St. John (2012) cases involving species of higher protection status (Appendix I vs Appendix II) were statistically significantly more likely to result in a custodial sentence, though well over half of these cases (67.5%) were not penalised by either immediate or suspended imprisonment. Appendix I cases also tended to result in longer periods of imprisonment, though this finding was not statistically significant. There was a significant association between protection status and the awarding of a fine (Appendix II cases were more likely to receive such a sentence) and a tendency for Appendix I cases to receive higher fines (not significant), but fines remained modest for both.

Cases brought under multiple legislation and CEMA cases were more likely to result in custodial sentences than those brought under COTES, yet the length of sentence passed for COTES and mixed offences was similar. CEMA offences resulted in statistically significantly longer periods of custody. In some ways, this may be expected given that the maximum sentence under CEMA is 7 years' custody, compared to COTES when it is 5 years (previously 2). However, this does not explain why offences brought under multiple legislation also received shorter sentences. Further, nearly all the sentences were well below the maxima available (except for the one CEMA outlier, which we know was reduced on appeal); and the means were significantly less, therefore the pattern is unlikely to be due to a capping effect (albeit, the pattern *is* in the direction we would expect when comparing CEMA and COTES). It is also possible that CEMA offences tend to be punished more severely because the courts are more used to offences being brought under this legislation (albeit not in relation to illicit wildlife). When considering fines, there was no association between this sentence being passed and the legislation under which the case was brought. CEMA fines tended to be a little higher, but this was not statistically significant.

There is evidence that fine amounts tended to be higher in more serious (higher value) cases and there was a strong statistically significant correlation between commercial value and length of custodial sentence, further suggesting some degree of gradation of sentencing.

Tiger, rhino horn and ivory cases were selected for further analysis, being considered some of the more well-known, iconic and serious crimes. However, sentences were relatively low, with a minority receiving custodial sentences (of between six and 24 months) and a mean fine of only £2,098. Rhino horn cases were also compared with thefts of rhino horn recorded in the database. All the theft cases (4 defendants) resulted in custodial sentences and these were much higher sentences than all but one of the COTES or CEMA offences.

Other cases and other offences were also considered and compared with the average sentences recorded in the TRAFFIC dataset. There was some evidence that comparable cases (such as other trafficking or smuggling offences) resulted in higher sentences than wildlife trade offences, in some cases sentences were much higher even though it could be argued, given the literature, that trafficking in endangered species is at least as harmful (thus serious) as trafficking in drugs or people. It has certainly been shown that such offences are linked to organized crime and that the same groups may be involved in smuggling various different commodities. Therefore, it remains curious that wildlife offences should be seemingly treated as much less serious.

Finally, the starting point and sentencing ranges taken from the guidelines for drug smuggling, environmental offences and animal cruelty were compared with the sentences recorded in the TRAFFIC dataset. Guideline sentences for animal cruelty offences were most similar to those seen in practice for wildlife trade offences, despite the harm caused by trafficking in endangered species being potentially much greater. Smuggling Class A drugs was likely to result in significantly higher sentences than smuggling wildlife, which was more commensurate with smuggling Class B or C drugs (though the top-end of these sentencing ranges still surpassed the statutory maxima for wildlife trade offences). Finally, environmental offences were compared and it was seen that fines were the favoured sentence. Information was not available to compare with the TRAFFIC recorded cases, but the maximum sentence available in the Magistrates' Court was noted to be ten times higher than for illegal wildlife trading (though this changed in March 2015 when the level 5 fine cap was removed). What was particularly noteworthy in this comparison was the call within the guidelines for fines to be commensurate with the potential gains of offending so that they would act as a deterrent: the very thing that has been recommended – and rejected – in relation to wildlife trade offences.

There is a considerable spread of sentences used for offences of illegal wildlife trade, however, there was only one case where close to the maximum custodial sentence was used, and this was a notable outlier. Whilst custodial sentences may not always be appropriate, and the individual circumstances of the cases are not known, it is difficult to see how the sentences exemplified here represent the seriousness of the crimes



involved. There is little evidence that fines are proportionate (though without more information on confiscation and cost charges, this conclusion must be tentative) and custodial sentences remain rare. There was also little use of community or restorative sentences, which could be creatively applied in an attempt to repair some of the damage caused by such offending (a point that will be returned to later, in chapters five and six).

The apparent mismatch in sentencing CITES-related offences is no more clear than when looking at offences relating to rhino horn, elephant ivory and tiger parts, and is particularly apparent when rhino horn offences brought under COTES or CEMA are compared to those brought under the Theft Act. This comparison suggests that more 'traditional' offences (such as theft and burglary) to obtain endangered species parts attract harsher sentences than COTES or CEMA offences involving the same type of item. The reason for this is not known, but it is speculated that it may be because sentencers have more experience dealing with this type of crime and are therefore better able to assess the seriousness of it (thus passing a more appropriate sentence). Alternatively, it may be that theft offences are viewed differently to CEMA and COTES offences; which may be seen as more administrative breaches relating to import/export regulations. Given the degree of harm caused to endangered species populations by the illegal trade, the latter explanation is worrying. Indeed, it should be noted that although both types of offence may reinforce demand for illegal wildlife products, thefts of existing specimens will have less direct impact on populations than offences involving taking or killing endangered species from the wild. As such, CEMA and COTES offences should actually be viewed as *more* harmful (thus more serious) than theft of samples from museums and the like. Therefore, other features being similar, they should attract higher sentences.

Further, whilst the other comparator cases outlined may all be considered serious offences, and some clearly involve behaviours that may put people's lives in danger, offences of illegal wildlife trade threaten the existence of whole species of animal. Indeed, sentences for CEMA and COTES offences relating to wildlife seem to result in sentences that are either lesser or commensurate with those that involve avoidance of duty payments (i.e. can be considered as predominantly harmful to the UK economy).

It is acknowledged that the data analysed is somewhat limited, both in terms of the sample size (which reduces the power of and confidence in any statistical tests performed) and the degree of case information included. The latter is particularly problematic as without more detailed information on the circumstances of each case it is very difficult to determine whether sentences are appropriate or consistent. Therefore, the conclusions of this chapter have to be considered as tentative. That said, using the specimen value estimates and information regarding the protection status

and types of specimen recorded it is possible to suggest that there is no real evidence of a consistent approach, but some evidence of a general graduation in sentencing, that is not without inconsistencies. Where there is evidence of greater similarity (less dispersion) in sentencing, this tends to be at the lower ends of the scale (fines are much more likely than custodial sentences, low fines and short periods of imprisonment are more likely than harsher penalties of this type). It is also fair to state that, considering the maximum sentences available and those dispensed for other types of potentially comparable crime, sentencing for wildlife trade offences tends to be lenient and does not really reflect the extent of harms caused. It may also be concluded that the penalties imposed are not commensurate with the potential profits available to offenders. Thus current sentencing for wildlife trade offences appears to be too lenient and unlikely to achieve individual or general deterrence.

## **CHAPTER 3: PROSECUTOR EXPERIENCE AND KNOWLEDGE (WITH ASHLEY CARTWRIGHT AND CHARLOTTE SANSON)**

### **Introduction**

One of the recommendations of the Environmental Audit Committee (2012a) was for the CPS to review its performance in the field of wildlife crime and to consider introducing specialist prosecutors or specialist training for general prosecutors, as it was felt that there was not sufficient knowledge or training to deal with complex wildlife crime cases. The Government response to this was that the CPS is effective in such prosecutions, already has area wildlife co-ordinators and works with other agencies to deliver training (Environmental Audit Committee, 2013). It has also been noted in the literature review, that if there is little knowledge about how to sentence wildlife trade offences (through formal guidelines, precedent or judicial experience), then there is a greater onus on prosecutors to provide the court with relevant and accessible information.

This section focuses upon Aim 2 of the research project. The research presented sought to establish the state of CPS knowledge and expertise with regards to prosecuting wildlife crime (focusing on illegal trade) in England and Wales, through a series of structured telephone interviews with CPS area wildlife crime and heritage prosecutors (hereinafter 'specialist prosecutors'). In addressing the overall project, it also sought to consider specialist prosecutors' views on the current state of sentencing for such offences.

### **Methodology**

#### **Approach and data gathering**

It was determined that in order to gather the necessary information to ascertain CPS prosecutors' knowledge, experience and opinions about wildlife trade offences, a qualitative approach should be taken. Whilst some information could have been gathered through the use of a survey, this would not have allowed prosecutors to expand on the issues being explored, or to deviate from set questions or categorical answers. It was also determined that most prosecutors would have little experience of such offences, therefore it was important to identify respondents that would have the most to contribute; this being the Area Wildlife and Heritage Crime Co-ordinators. It was hoped to speak to a co-ordinator from each CPS area (of which there are thirteen, though some have more than one co-ordinator). Therefore, the sample size would also be too small for quantitative research.

The qualitative approach chosen was individual interviews. Focus groups may also have been useful, but as respondents were spread across a large geographic area this was

not appropriate. Further, an experts' workshop was also planned for later in the project; so a methodology similar to the focus group was already being utilised in the wider project.

In order to keep research costs low, and to minimise disruption to busy prosecutors, it was decided to administer the interviews by telephone. The interview schedule was structured to ensure all respondents were asked the same questions and so that the interviews could be administered by multiple researchers in order to reduce the time taken for data gathering, whilst limiting interviewer bias (for example, because of differently worded or ordered questions). In practice, although the schedule was followed as closely as possible, some respondents had little experience in dealing specifically with trade offences, therefore they had to answer questions hypothetically, or from their own frame of reference (referring, for example, to poaching or hare coursing). In these instances the researchers were advised to discretionally re-word or exclude questions that were not appropriate. A copy of the interview schedule can be found in Appendix D.

All interviews with co-ordinators were carried out over the phone as described and recorded using a voice recorder. The recordings were then uploaded and transcribed by an experienced transcriber. The resulting data were analysed by the Principle Investigator (PI).

### **Sampling and access**

As stated, the intention was to interview a wildlife crime co-ordinator from each CPS area (13). In order to access these respondents permission was sought from the CPS Strategy Research and Governance Unit. Once the interview documentation (see Appendices A to C) and the project proposal had been approved, and the relevant undertakings signed by the PI, the CPS forwarded a list of wildlife and heritage co-ordinators and wrote to each area confirming the research had been approved. As this process took place over the summer, the interview stage of the research was delayed and did not commence until early September 2014.

The list of co-ordinators covered all 13 areas and the Specialist Fraud Division. In total, 19 names and contact details (email addresses and telephone numbers) were provided, as some areas had more than one co-ordinator listed (covering different locations for that area). The PI contacted all 19 by email to invite them to participate. They were also provided with an information sheet about the research (see Appendix B) and a consent form (see Appendix C). The names were split amongst the research assistants who were tasked with dealing with responses, carrying out the telephone interviews and making follow-up contact if responses were not received. Where there was no response, up to two follow-up contacts were made (at least one by phone).

Five co-ordinators agreed to participate in the research, each from a different area. Of the remaining 14 co-ordinators, four declined to participate and ten did not ultimately respond (or expressed initial interest, but did not then reply to follow-up contact to arrange interviews). Of these ten, one was on annual leave and six were recorded alongside an incorrect telephone number (though email contact was also made). Those co-ordinators who declined did so because they no longer held the role or were not involved as a prosecutor (n=3) or were too new to the role to be able to assist (n=1). From this contact, a new co-ordinator was identified, but he was unreachable (email delivery failed). That the telephone numbers provided for six of the 19 co-ordinators were not correct and that three co-ordinators listed were no longer covering this role may in itself raise issues about communication and information sharing in this area. This is further supported by the fact that the PI, whilst awaiting the list of contacts, had called each CPS area to obtain the details for the relevant wildlife co-ordinator, and in all but two cases had not been able to speak to anyone that knew who the co-ordinator was (and in some cases, that such a role existed; though it should be noted that contact could not be made with four of the areas and this was not followed up as a list was instead provided).

As a result of this relatively low response rate, a further interview was carried out by the PI, with an enforcement representative who had previous experience of prosecutions and had been involved in investigations through to court on wildlife trade offences. This interview was carried out face-to-face, but the same interview schedule was adhered to, in order to improve consistency. Because of the somewhat different experience of this respondent, his contribution raised some different issues to the others, but there was also significant overlap. Therefore the data were included alongside the other transcripts and dealt with the same throughout the analysis.

### **Ethical considerations**

Before any research could be commenced, the project was subject to ethical approval by the School Research and Ethics Panel (Human and Health Sciences) at the University of Huddersfield. In particular, attention was paid to the interview stage as this involved directly collecting data from human participants. In order to gain ethical approval, which the project did, a number of considerations were made.

Firstly, it was confirmed that permission would be sought from the CPS for the research to be carried out and the potential participants contacted. Once ethical approval had been granted this was carried out as detailed above.

Secondly, confidentiality and anonymity were assured by keeping all data on password protected university accounts/shared data storage or the password protected personal computer of the PI. Hard-copies of data were kept in locked drawers at the university, or at the PI's home. Participant names were recorded on consent forms and at the

beginning of the interview recordings, but in order to ensure anonymity, respondent numbers have been used throughout the analysis and in this report. Further, because of the small number of participants, the areas that they represent are not referred to in any of the research reports.

All data are held in accordance with the Data Protection Act and will be deleted a reasonable time after the completion of the research project (subject to that necessary to be kept to demonstrate the veracity of the findings and up to a maximum of five years). Data relating to individuals will be available prior to deletion and upon their request under the Freedom of Information Act except where to do so would compromise the anonymity of other participants.

Given that the interviews did not ask about any personal or sensitive issues, it was determined that the participants would not require any psychological support, or a formal debrief after the interviews. The PI's contact details were provided to all participants and they were invited to make contact if they had any further questions or wished to withdraw from the research.

As with all research of this kind, informed consent was sought from the participants by providing an invitation letter and information sheet that summarised the project, confirmed CPS permission had been granted, provided contact details for both the PI and the funding body, explained the ethical considerations that had been made, that their participation was voluntary and that they had the right to withdraw. This was accompanied by a consent form that each respondent signed (or confirmed by email). Copies of these three documents can be found in appendices A to C.

Finally, researcher health and safety was assessed, dissemination of the research findings was considered and it was determined there were no conflicts of interest. The interview schedule (appendix D), invitation letter, information sheet and consent form were also all submitted for approval. As it was anticipated that some interviews may need to be carried out with non-CPS prosecutors, a slightly revised version of each of these was also submitted and approved (not included in the appendices due to only minor differences).

Ethical approval was granted, based on the information provided, on 2<sup>nd</sup> July 2014.

### **Analysis approach**

As stated, all interviews were transcribed verbatim by an experienced research transcriber. The transcriptions were printed out and read through in full by the PI. A thematic analysis was then carried out. Thematic analysis is an iterative approach that seeks to draw out key themes (or patterns) that are repeated across the responses. The coding process can be driven by research questions (where themes are sought out and identified) or may be driven by the data (where patterns or repeated concepts are

drawn out and become the themes). In this case, the latter approach was taken, although it should be recognised that because structured interviews were carried out, the issues discussed were in many ways determined by the researchers, from the research aims. Had unstructured interviews been used, different themes and issues of importance may have been identified.

Key themes were determined through a second read-through of the interviews. Once these had been deemed appropriate and manageable the transcripts were coded accordingly. Finally, for some of the key or broadest themes (*Experience* and *Sentencing*), sub-themes were also developed and the transcripts were coded for these as well.

Once coding was complete, issues falling within each theme were drawn out from the interview data, focusing on similar and contrasting opinions. It was found that many respondents were in agreement across these issues. Where this was not the case, it was usually because the respondent had less experience, thus had not raised the issue or had not been able to comment when it was raised by the researcher.

Thematic analysis of interview data is often also used in order to identify commonalities or differences and relate these back to respondents in some way (for example, gender, age, and so forth). That was not the aim of this research project, nor was it possible given the sample size and the need to ensure confidentiality. However, it was occasionally noted that the non-CPS respondent raised different issues or had differing opinions to the others, and that those with more experience were, as would be expected, able to provide fuller and more critical responses.

The findings of the thematic analysis are set out in the next section, by theme. Following this, the key issues are briefly summarised and then discussed.

## **Findings**

### **Themes**

As described above, analysis of the interview data led to the identification of a number of themes/sub-themes. These are set out in table 3.1 below.

**Table 3.1: Themes, sub-themes and key issues covered**

Theme	Sub-theme (if applicable)	Coverage
(E) Experience	E1: Prosecutors	Experience of prosecutors wrt wildlife crime, wrt wildlife trade specifically, knowledge and training, specialisms, available resources, contacts, support
	E2: Magistrates	Familiarity/experience in dealing with such cases, sentencing experience
	E3: Others	Including investigators
(A) Attitudes		How is wildlife crime/trade viewed? Seriousness, comparability with other crimes, willingness to get involved
(L) Links to other crimes		Links to other types of crime, including organised crime
(I) Investigation		Issues with how crimes are investigated or the role played by investigators
(O) Other agencies and experts		Advice, resources available, use as witnesses, evidence, involvement of CPS
(R) Resources		Information, technology, resources (including for investigation)
(T) Trial		Pre-trial issues and preparation, triable either way offences, evidence, procedures, time
(M) Motivation		Opinions on reasons why people offend
(S) Sentencing	S1: Guidelines	Issues relating to sentencing guidelines
	S2: Precedent and knowledge	Reference to other cases, sentencing precedents, information sources on sentencing
	S3: Sentence examples	Case outcomes
	S4: Problems	Any problematic issues raised that centred on sentencing
	S5: Aims	Generally and with respect to wildlife crime/trade
	S6: Decision-making approaches and tools	How this was/should be done, including aggravating and mitigating factors
	S7: Appropriateness	Opinions on appropriateness of sentences passed, their likely effectiveness and impact
(P) Specific prosecution problems		Some overlap with other themes, but covers additional issues raised in relation to prosecution that did not fit elsewhere
(W) Ways forward		Again, an overlapping theme, but draws out issues specifically identified by respondents as ways to improve investigation/ prosecution/ trial and sentencing



## **Thematic analysis**

### ***(E) Experience***

#### *1. Prosecutors*

All the prosecutors spoken to had many years of general experience and all had experience of wildlife crime (as would expect given their role). Fewer had experience of trade-related offences, and those who did had been involved in only a few cases. With the exception of the investigator and the odd case for others, or knowledge of other cases, this was nearly always domestic trade, i.e. sales in the UK (though some items may have been originally imported). There was very little experience (except for the investigator) of import/export cases. As such, the majority of the cases dealt with by the respondents were covered by the Wildlife and Countryside Act (or similar); though Article 10 cases were referred to, and some respondents mentioned awareness of CITES offences, though less mentioned COTES or CEMA specifically.

There was some indication from some respondents that import/export cases (predominantly referring to CEMA ones) would not be dealt with by them/the CPS, though this may in part reflect their areas of operation, as the investigator stated that cases would go to the CPS as the prosecuting authority as agencies such as his no longer had rights of audience. This probably reflects the rarity of such cases, but also raises questions regarding knowledge of offences and jurisdiction.

All respondents felt that they had a working knowledge with respect to the type of cases they dealt with. The extent and suitability/sufficiency of this knowledge varied, however. Those with most case experience naturally felt they had the most or were more likely to feel they had sufficient knowledge and understanding, or that they knew where to go to obtain this. Some of the respondents, however, felt less confident about this. This was particularly the case for trade offences, which were considered the most rare for prosecutors. All respondents had 'learned on the job', picking things up as they went along, and from dealing with cases and speaking to experts. Some had attended police wildlife crime officer (WCO) training course and annual conferences, though it was suggested that training courses were no longer available (due to budget constraints within the CPS and/or police). It appeared that anyone taking on this role now may struggle to develop the necessary, specific skills and knowledge beyond that set out in the legal guidance. One respondent in particular commented on the fact that there was little useful information he could access on the topic, in terms of resources, reading/literature, etc. which limited his ability to develop knowledge in this area.

Much of the work carried out was in addition to full-time case loads. The work was progressed (and skills and knowledge were developed) because the individuals were well meaning, enthusiastic and had a personal interest in the field. Thus there is a

reliance on individuals and personalities, as opposed to structures and formal networks.

Although wildlife crime was generally considered quite rare (in terms of cases going through the courts), at the same time, some locations had high levels of offending (usually poaching, coursing and trapping) which meant individual area wildlife prosecutors would not even be aware of all the prosecutions taking place in their area and were certainly not in a position to take on all such cases (indeed one respondent explicitly stated he had been told not to). This means some, or even many, of these prosecutions would be taken forward by much less experienced, non-specialist prosecutors. The same is likely to be the case with respect to investigations. It was perceived that some generalist prosecutors may have a reluctance to become involved in cases. This may be related to a general lack of experience amongst non-specialists as this could make prosecutors (or investigators) feel out of their comfort zone. It was felt that having a small number of individuals who had knowledge of such offences to take prosecutions forward would be more beneficial than leaving it to 'general practitioners', but the number of such specialists would need to be increased and further training, resources and awareness raising would need to be addressed.

## *2. Magistrates*

It was generally felt that most Magistrates would have little experience of wildlife cases, particularly trade offences (of which there were very few each year). Some respondents did comment that some Magistrates/Courts in particular areas were gaining experience as particular types of case were more regularly being prosecuted (e.g. poaching cases), but the general consensus was that Magistrates would have little on-the-job experience, thus knowledge, of wildlife-related offences. This made bringing and presenting a case to the court more difficult as it was not a 'standard' offence, that is to say one where everyone would know the law, impact and appropriate sentencing (this is raised again, below). It was also felt that Magistrates would have very little access to relevant information or training, which would put them at a disadvantage when being faced with such a case or having to decide on an appropriate sentence.

Those respondents with experience of Crown Court cases felt the judiciary were also lacking in experience and knowledge, and again had few cases and little precedent (raised again, below) to refer to. As such, the onus fell on prosecutors (and in this case prosecuting barristers) to bring the necessary information, evidence and case examples to them, but this was not often done, unless the investigator/case manager or CPS prosecutor instructing the barrister were themselves experienced.

## *3. Others*

As with prosecutors, it was felt that investigations (thus the information available to build a case) was dependent upon whose hands they fell into. Respondents noted there were again a number of enthusiastic individual, working part-time on wildlife crime, who had developed a good knowledge base and could put together good cases, collect appropriate evidence and liaise well with the CPS. However, they may not pick up such a case, or have the capacity to deal with them all, thus inexperienced investigators had to be encouraged, cajoled and guided as their knowledge in the field could be very poor. It was felt that in some cases, there was also seen to be little incentive amongst investigators to work on cases that may be seen as less serious or perceived as requiring more resources and more evidence than for 'traditional' crimes (or at least requiring evidence that was harder to obtain). Such attitudes may also prevail amongst their managers.

Some respondents sought to get involved in cases as early as possible so that they could advise on the type of evidence that would need to be collected. This seemed to work well in terms of outcomes, but could only happen if the case was brought to their attention, either by the investigating officers themselves making contact, or by being referred, for example via CPS Direct (CPSD). However, it was noted by one respondent that CPSD did not necessarily have the experience or knowledge of wildlife crime offences to advise and may not appropriately direct such cases to the specialist prosecutors.

Some respondents felt that defence lawyers could be problematic, though this was for two different reasons. Firstly, they may have little expertise in the area, which meant they did not understand the evidence, did not make relevant arguments and inappropriately challenged expert witnesses, and so forth. On the other hand they could be specialists in this field, with greater resources and experience than the prosecutors and courts.

### **(A) Attitudes**

All of the respondents said they thought that wildlife crime and illegal wildlife trade were serious offences. They also all felt the public thought such offences were serious, particularly when related to trade, the 'Big Five', or cruelty; though this may be less so for other types of wildlife crime. Indeed, some respondents felt public interest (particularly with respect to trade offences) was currently quite high. One respondent [R3] felt this could be capitalised upon to raise the profile of such offences and use successful prosecutions as examples of 'good news' stories, which would help raise awareness of such offences, but would also cast the agencies involved in a good light.

All of the respondents also felt there were others in their organisation, investigating authorities and the magistracy and judiciary who did not view such crimes as serious.

Comments were made that it was an uphill struggle to persuade those who controlled spending to view such offences as serious (thus to spend the necessary money on them) and that wildlife offences were often seen as merely breaches of regulations. It was also felt that the harm caused to species and ecosystems was not understood (or seen as serious or 'real crime'), that wildlife crimes were victimless and that such offences were not as important as robbery, murder, etc. One respondent went so far as to say that others 'didn't have a clue' [R5] about how serious a problem wildlife crime was, and that some people thought it was a waste of time or a bit of a joke focusing on such offences (particularly with respect to widening investigations). Some respondents did not think wildlife crime was viewed seriously at all, or as 'proper crime' committed by 'proper criminals'. Two respondents also commented that offences involving plant species (or the destruction of habitats) were probably even less known about and viewed less seriously than offences involving endangered fauna. All that said, there was some indication that this view might be changing slightly, at least with respect to the more serious trade offences involving key species, such as rhino, elephant and tiger (because of the recent publicity around this problem). It was also stated by R5 that the onus fell on prosecutors to get across to the magistracy how serious such crimes were, otherwise they would be dealt with as fairly minor matters.

One respondent explicitly stated that there may be something of a 'fear' amongst those asked to deal with wildlife crime offences (investigation, prosecution and sentencing) as it was so unusual and in some way 'different' from other crimes, but that the reality of it was that although there may be additional types of evidence and impacts to consider, the concept of the offence: a criminal law that has been broken and the need to pass sentence to achieve one or more aims, was not in any way different [R1]. Most respondents said they thought wildlife crime should be considered as serious as traditional crime and should be viewed (if not necessarily investigated) in the same way. One respondent, however, felt that it should not be viewed like other crime, because the harm caused was unique and significant, i.e. it was, in some ways, actually more serious.

### ***(L) Links to other crimes***

Respondents were asked if they thought that those involved in wildlife crime/trade offences were also likely to be involved in other crimes. The general consensus was that this wouldn't be so for every case (some would be one-offs, tourist-related crime, etc.) but there were generally links to other criminality.

Those that felt able to comment more specifically thought that wildlife offenders, particularly those involved in poaching, coursing and trapping activities, may also engage in other forms of crime associated with their offending, e.g. vehicle/traffic-related offences, vehicle thefts and, notably, intimidation, harassment and threats. One

respondent mentioned 'The Link' – that those involved in crimes against animals would go on to commit harms against people. There was also a general perception (backed up by some with reference to reports, etc.) that more serious offences, mainly involving international trade, were linked to organised crime. Some respondents also thought it may be linked to other international offences, such as drug smuggling, possibly people trafficking and one respondent [R4] referred to alleged funding of terrorist groups. This was also seen as something that should cause such offences to be viewed as more serious.

### ***(I) Investigation***

It was noted by some respondents, that certain investigators would have a good working knowledge of wildlife offences, but that many would not - for example police who were not wildlife crime officers and most border agents, as they would likely not have come across (many) such cases and would certainly not have had any training.

A few respondents commented that it was important for investigators to know what the essential points of an offence were, in order to know how to progress the investigation and what evidence to collect. This would not always be the case, especially for more unusual cases or if they were picked up by an investigator with less experience. Some respondents felt that cases would progress more smoothly, and the appropriate evidence would be collected, if they were involved (to provide advice) from an early stage, but this was dependent upon all parties knowing each other existed and who to contact. One respondent pointed out that wildlife crime was not included on either list regarding whether pre-trial advice was required to be sought or not prior to charge [R4].

Finally, respondents recognised that investigations were hampered by availability of resources and some thought that when trade was international this would make investigation (thus prosecution) harder, more time consuming and more resource intensive.

### ***(O) Other agencies and use of experts***

All respondents felt that they were reliant on other agencies in taking wildlife cases to trial. Whilst this may not be considered unusual, the extent to which 'experts' were required to assist investigations and provide evidence was much greater than for traditional crimes. In some cases expert evidence could take the form of a generic statement (covering such things as general features or behaviours of an offence) but in others more specific, bespoke evidence would be required.

Experts were used to do the following (not all were mentioned by all respondents, or relevant in all cases):

- Advise investigators (e.g. whether, and to what extent, a species is endangered; how the crime might have been carried out; what evidence might be available, etc.);
- Give testimony of the identity of a specimen;
- Confirm a species is endangered (or otherwise protected);
- Explain (to the court) why the species is protected
  - For example to give scientific testimony as to the rarity of the species and its importance (in the context of wider ecosystem, etc.);
- Advise on the market 'value' of an item (which may require trade expertise, not scientific expertise);
- Produce an impact statement, with respect to the harm caused to the animal, species and ecosystem;
- Draw inferences from scientific evidence as to what has occurred or the circumstances of the offence (e.g. marks on feathers used to determine how long a bird was in a trap), which goes beyond the personal knowledge of a witness; and
- Help determine provenance and/or source (e.g. was the specimen captive bred).

Though respondents recognised that experts were invaluable, some pointed out that depending upon who was used, some proved to be better than others and there could be perceived issues of bias if the same expert regularly gave evidence for either the prosecution or defence. Most respondents knew how to identify a suitable expert, or felt they had contacts that could help with this, although some were less confident, or felt finding experts for rarer cases (such as endangered species trade) may be difficult.

Most respondents said both the prosecution and defence would use experts, though some said it was rare for the defence to use them (which was contradicted by others who said if one 'side' had them, the other would also). Some respondents said defence experts could cause problems, but it was generally found that they were unable to undermine prosecution experts/evidence. From a prosecution perspective it seemed scientific experts were more highly valued than 'hobbyists'.

One respondent said it could be necessary to 'translate' expert evidence into lay-person's terms. He valued experts and widely used them, but he felt he needed to then explain in simple terms (to prosecuting barristers or the court) what the evidence they were presenting/inferences they were making meant, as it could sometimes be too technical, or the importance could be missed [R3]. On the other hand, some respondents commented on the usefulness of expert witnesses (or their submitted evidence) in explaining the relevant issues to lay people. However, for the more serious cases there was little respondents could say regarding the use of expert testimony as often these cases resulted in guilty pleas so witnesses were not tested in court.

Respondents noted that the use of experts (which varied by type, organisation, etc.) could carry significant costs, so there could be issues regarding not gathering as much expert testimony as was necessary or using 'lesser' experts because they were cheaper.

Beyond the use for expert witnesses, other organisations, notably charities/NGOs were seen as valuable sources of information. TRAFFIC, the Bat Trust and the RSPB were all specifically mentioned. Indeed, one respondent commented on the thoroughness of investigations the RSPB were involved in. TRAFFIC and the RSPB also had information on other cases and sentencing, which proved useful (though there was no central repository and those who mentioned it thought other prosecutors may not be aware of these sources).

### ***(R) Resources***

As mentioned elsewhere, respondents opined that securing expert testimony can be expensive, but is often crucial to such cases. Often it would be the police (or other investigatory body) that would need to make this decision and find this money. If expert witnesses were actually called upon to testify, this would also be expensive and require even greater public expenditure. One respondent noted that investigations involving the RSPB tended to suffer from resource issues less as they were "fairly resource rich" and had dedicated officers and budgets for this type of investigation [R1].

The respondent with experience of CEMA cases noted that a lot of time was often required to be put in to such cases, and that this often had to be fitted around 'the day job' (an issue also raised by other respondents). This also meant there were resource and management implications. Lack of resources could also limit the extent of investigations, including investigating wider criminality, criminal networks and associated traders who may also be involved in illegal activity.

### ***(T) Trial***

Some respondents had no or very little experience of either way offences. For these, and for respondents predominantly dealing with WCA offences, there was generally a consensus that it was appropriate for the cases to be heard by Magistrates. One respondent did suggest that WCA offences should become triable either way, as it was felt the maximum sentences available were not sufficient for the most serious offences/offenders. That said, it was also pointed out that the Magistrates were rarely using the maximum sentences available, so their sentencing powers were generally sufficient.

Those respondents that had some experience with trade offences felt that their cases tended to be handled in the appropriate courts; the investigator who dealt with importation cases had seen all his go to the Crown Court, whilst others had tended to

deal with more minor, domestic cases that tended to be heard at the Magistrates (and attract fines, or occasionally community sentences). It was noted that the trade offences were more likely to be passed up to the Crown Court because they seemed complicated and were outside of Magistrates' comfort zone [R3].

Those respondents who had enough experience to comment generally thought that many cases could be relatively straight forward, but they required the gathering of broader and different evidence (see experts above) and although they could be straight forward to investigate, this did not always mean the implications of offending were straight forward to understand, or dealt with appropriately (e.g. in terms of sentencing).

In contrast, there were also more complex cases, or the possibility of cases becoming more complex if appropriate enquiries were carried out and investigations expanded (e.g. to other offences being committed by the defendant, a wider network of offending or associated offences committed overseas). There was often a reluctance or inability to go beyond the case in hand due to time and resource constraints (or because the offences were not viewed as serious enough, or the process was too difficult). However, doing so could result in evidence that might ultimately lead to harsher (more appropriate) sentences and the detection of further offences and offenders (who may be key players).

Some respondents pointed out that the basic evidence relating to a case would be similar to other offences (e.g. witness statements, police evidence) but, as noted, additional evidence was also generally required, compared to traditional crimes.<sup>35</sup> This has been detailed elsewhere, but includes the evidence necessary to show that something is a crime, why it is a crime, infer what had occurred and explain the seriousness and impact. This was not the case when dealing with, say, a shoplifting (everyone knew what this was and what had to be proved) or an assault (people could empathise with the harm experienced by a victim).

Issues with non-expert witnesses were also raised, with some of the respondents concerned about witnesses of fact straying into opinion. Opinion evidence can only be given to the Court by recognised expert witnesses. Further, some respondents had experienced difficulties in securing civilian witnesses, who would fear explicit reprisals (e.g. threats, harassment, intimidation) or would be reluctant to give evidence against members of the community with significant standing (e.g. huntsmen). These issues are

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<sup>35</sup> As an example, R3 explained that for trade/importation cases statements would need to be obtained from the management authority (e.g. Defra) and scientific authority (e.g. JNCC) confirming that no permit had been granted (or that the Article 10 certificate was not travelling with the item) and that at the time of the offence the species was such that it was listed, thus trade was restricted.



perhaps less relevant in relation to trade offences (and more to hunting, poaching, and so forth), but may be so for the more serious, organised activities.

Finally, one respondent [R3] felt that, where applicable, multiple charges ought to be brought, either by bringing charges under CEMA and COTES (and possibly other relevant legislation) or charging defendants with multiple importation/trade offences, not just one (if there is sufficient evidence). His experience told him that others were often reluctant to do so.

### ***(M) Motivation/reasons for offending***

Respondents generally thought that most offences were committed for profit, particularly trade offences and bat roost disturbance/destruction (often in the course of developments). Some respondents also noted that offences could sometimes be committed out of naivety or ignorance. There were also a few examples given of offences committed for 'a laugh' or 'a buzz' (cruelty/bird offences). Finally, some respondents considered the collector/demand side of the equation, stating that the motivation was to 'have something rare', 'something desirable'.

Several respondents also commented that it was low risk offending (including trade offences); some pointing out it was definitely lower risk (particularly in terms of likely sentences) than smuggling other commodities, such as drugs (with similar or greater rewards).

### ***(S) Sentencing***

As the key issue for the research, this was separated into a number of different (sometimes overlapping) themes, which are discussed below. Overall, it was apparent that the key issues with sentencing were: lack of knowledge, lack of guidance and precedent, leniency (in some cases) and consistency. It was also felt public awareness (of sentences and possible repercussions) could be improved.

#### ***1. Guidelines***

All the respondents felt sentencing guidelines should be introduced or improved. One respondent was aware of the Costing the Earth document (though it was not referred to by name) but did not feel this really covered the cases that Magistrates were having to deal with, or considered such cases appropriately; a further respondent (who was quite inexperienced) assumed there were guidelines already, but could not find them whilst being interviewed.

The respondents felt that guidelines were required to ensure that sentences were appropriate in terms of:

- Severity – sentences should reflect the harm caused (impact on the individual animal, the species and ecosystem more broadly), the profit made and the motivation of the individual (e.g. ignorance, intent to make profit, lack of concern regarding pain and suffering caused, level of organisation, previous involvement, etc.).
- Consistency – given the lack of precedent and experience of sentencers (and prosecutors) in this field, there was an even greater need for guidelines to ensure there was a parity of sentencing across England & Wales.

One respondent commented that as more guidelines were introduced/used, it meant that the magistracy became more used to using them, thus the impact of not having them for some offences could be greater. Another respondent specifically commented that it was all well and good having maximum sentences, but without guidelines this did not help magistrates know where to pitch the sentence in a particular case, or even what issues they should take into account [R4].

## *2. Precedent/other cases/knowledge*

A number of respondents pointed out that part of the role of the prosecutor was to assist the court in sentencing appropriately and, to do so, other cases and precedents would be referred to. In the case of wildlife crime (and trade) there were very few such cases that could be brought to the court's attention. This was compounded by (1) the rarity of trade cases (and the time over which they were spread) and (2) the generally 'minor' nature of other wildlife crime cases (including some domestic trade cases, e.g. sale of bird eggs). This meant that few, if any, made it to the higher courts/reports, thus there was little precedent and few examples to refer to in assisting sentencing decision-making.

Two respondents noted that the RSPB (and one mentioned the Bat Trust) was a very useful resource for information on other cases (and sentences), but only because the RSPB database had been brought to their attention. Another respondent used TRAFFIC reports for a similar purpose.

## *3. Sentence examples/case outcomes*

Some examples were given of sentences passed in cases that prosecutors had been involved in or were otherwise aware of. These tended to be fines (and in some cases confiscations), though there were also limited examples of suspended sentences and one custodial (for trade/import offences). All of the respondents reported high success rates in terms of guilty pleas/verdicts. A few respondents attributed this to the quality of the cases put together, in terms of gathering correct and sufficient evidence on points of law, fact and impact.

#### *4. Problems*

Key problems with respect to sentencing are covered by the other themes: lack of knowledge and experience was a particular issue, lack of precedent and other cases to refer to, associated lack of consistency, attitudes towards such offences (e.g. being seen as merely regulatory infringements, e.g. lack of Article 10 certificate), not being sentenced commensurate to other offences, the need for far more evidence (including use of experts) in order to establish the important issues in a case as well as the impact and sentences not being severe enough to reflect this impact and the harm caused (and a lack of understanding that it is not just about the profit made).

With respect to impact/harm – this was seen by the respondents as an important issue with regards to sentencing. It was felt that even if profit made was the driving factor in sentencing decision-making, the fine (or other punishment) was not always commensurate with the potential gain of offending. Further, respondents thought that sentencing for such offences needed to go beyond just seeing it as commercial crime, with an associated fiduciary loss. The cruelty and impact to the individual animal involved should also be taken into consideration (requiring expert testimony with regards to this). Perhaps even more importantly (and causing even greater difficulty) was ensuring sentencing was also commensurate with the harm/impact caused to the species more generally and the eco-sphere from which it was taken. Two examples were given by one respondent; the impact caused by a coral trade case, with coral taking up 1% of the earth's landmass but supporting 25% of its biodiversity; and an iguana case, involving just 13 animals but this was of only 100 left in the wild [R3]. It was very unusual in other types of case for such information to be needed, explained and taken into consideration, so it was alien to those involved in sentencing and required knowledge and effort (and the skill to explain the impact) on behalf of prosecutors and expert witnesses. However they also stated that even when this was provided it was very difficult to get sentencing 'bumped up' to reflect such impact. It was also felt that greater recognition of the links to other crimes and the organised nature of some offences was not always recognised or taken into account.

A few respondents suggested more innovative sentencing could be considered. This did seem to happen in some locations, e.g. confiscation of tools of offending, such as hunting dogs, vehicles, and so forth, but approaches such as Proceeds of Crime Act orders could be difficult and time consuming to follow through. Further, where hounds, etc. were seized, there were additional costs incurred by investigators, such as kennelling fees. It was felt these costs also needed to be reflected in the sentence/costs to the offender.

Other suggested forms of innovative sentencing that could be considered were again possibly outside the realms of the experience/comfort of sentencers as they were more

unique to such cases. For example, incorporating into sentencing the costs of looking after seized species, costs of repatriation or of restoration (of the environment, for example). The resources needed to look after seizures were limited, even more so for repatriation. As such costs were not included in punishments, it was difficult to fully investigate cases and to try to limit the impact of offending. Respondents also raised the idea of compensatory contributions, or payment of part of the fine, to relevant organisations.

Available maximum sentences<sup>36</sup> were thought not to be high enough to reflect some of the more serious cases; though it was recognised that for many of the more usual cases, maximum sentencing powers were sufficient. Respondents thought that the sentences passed were not always harsh enough and they noted it was rare to see custodial (even suspended) sentences, despite maxima of five and seven years for COTES and CEMA offences respectively. A few respondents commented on the fact that the sentences passed in the cases they were involved in were reasonable, but in comparison to other types of offence (and how serious they viewed such offences to be) they should be higher, because they were not always achieve the sentencing aims (see below).

A few respondents also commented that sentencing problems may be compounded (a) by wildlife crime/trade being seen as 'victimless' and/or (b) by trade offences not being seen as 'relevant' to England and Wales because 'we don't have elephants roaming the Peak District'. Rather it is thought of as something that happens 'over there' [R3].

### *5. Aims*

Most respondents mentioned the aims of sentencing as punishment and deterrence. Some also mentioned retribution and rehabilitation. When asked how these applied to wildlife crime (trade) they felt punishment/retribution and deterrence (individual and general) to be the most relevant. They felt sentencing should punish the individual for the harm caused and be sufficient to deter him from offending again. It should also be public and be sufficient to deter others from committing similar offences.

In order to achieve deterrence, some respondents felt harsher sentences were required (either in terms of moving up the scale, e.g. custodial, or fines that were more commensurate with profits, actual costs and/or harms), some felt sentencing should be made more public and others felt that ancillary orders, such as confiscations and forfeitures would be more effective (though this could arguably be considered more incapacitative than deterrent, but this term was not actually used). Upon specific

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<sup>36</sup> Most respondents were referring here to the WCA as this was more their area of experience, though some did also refer to CITES-related offences (which would fall under COTES or CEMA).

questioning in one interview, restorative sentencing was also considered to be appropriate given the nature of the harm caused [R3].

#### *6. Decision-making, approaches & tools*

Most respondents felt that sentencing decision-making was difficult because of the lack of experience of the magistracy in this field; though this was not the case in all locations for all wildlife offences (not trade). Respondents said that decision-making should be based on experience, knowledge, precedent and guidelines – applied to the facts of the case – but much of this was missing from the process. Indeed, a few respondents made analogies such as ‘wetting a finger and holding it up’ with regards to the sentencing approach taken.

Most respondents thought the following should be taken into consideration for determining sentence (some of these issues are also aggravating/mitigating factors):

- Guidelines and past cases;
- The severity of the act, with respect to impact and harm (on individual animal, species and ecosystems);
- The rarity of the species involved;
- ‘Grading’ of the species involved
  - This already exists in CITES/COTES so should effect sentencing in the same way that drug classification does under the Misuse of Drugs Act, i.e. offences involving Appendix I species should attract higher sentences than those involving Appendix II, all other things being equal;
- The motivation/intention of the defendant (e.g. ignorance, misunderstanding, deliberate, act of cruelty, to make money);
- The commercial ‘value’ of the item/s (on the (illegal) market);
- The profit/reward/commercial gain of committing the offence;
- The sophistication involved in the offence/illegal operation and scale of operation;
- The role of the defendant in any wider criminality (e.g. courier, organiser, etc.);
- Previous (similar) convictions;
- Nature of the offence/links to other crime (e.g. international, organised);
- Co-operation of the defendant; and
- Ancillary costs of investigation/offending (e.g. caring for seized species, repatriation, etc.).

In terms of assisting with sentencing decisions, impact statements (usually produced by experts) were considered particularly valuable. For some offences (or parts of offences) a generic statement could be used, but this would need to be added to for specific cases/situations.

Respondents felt the 'usual' mitigating factors should apply to wildlife trade offences, such as no previous convictions, early guilty plea, co-operating with investigation (particularly with regards to others involved). They also suggested factors that may be more specific to this type of offending, such as lack of cruelty/harm, naivety/genuine ignorance, small scale/one-off offence (e.g. tourist 'importer'), and playing a minor role in a network. One respondent said there were not really any typical mitigating factors.

In terms of aggravating factors, respondents again felt the usual features applied, such as similar previous convictions and being obstructive to the investigation. Issues more specific to wildlife trade offences were deliberate cruelty, causing suffering, involvement in organised crime or international crime, links to other crime (such as drug smuggling), playing a significant role in a criminal network, offending involving the most endangered species, offending that has significant impact to the wider ecosystem and offending involving a large profit. Again one respondent said it was difficult to give general aggravating features as these varied by offence type.

#### *7. Appropriateness/effectiveness/impact*

As noted under *problems*, most respondents thought that some sentences passed were appropriate, whilst others were not. In the main, sentencing was seen as not achieving the aims the prosecutors had identified. Notably, it was felt that in most (though not all) cases, there was not sufficient deterrence (either individual or general). For example, outside the trade sphere, developers were being fined relatively small amounts for disturbing/destroying bat roosts, compared to the large profits they were making by doing so, thus it was in their financial interests to continue to break the law. With respect to trade, respondents felt that punishments were not commensurate with the high values of endangered species. For example, it was proposed that rhino horn was worth more than Class A drugs or gold but sentences for offences involving such commodities tended to be much higher than for those involving endangered species. Some respondents specifically pointed out that the gains to be made were very large and the risks very small, so there was no deterrence against offending (particularly for trade offences). One respondent pointed out (in reference to a particular case) that if the offence had been pursued in the USA then it would have been taken very seriously and the sentence passed would have been heavier [R4].

However, it was not just the severity of sentencing that was a problem. One respondent explicitly stated that sentencing for wildlife trade offences could not be effective because so few cases were detected and prosecuted, resulting in little general deterrence effect. He still felt sentencing should seek to achieve this and needed to be more severe and consistent to do so, but that this would always be compounded by the scarcity of cases brought to the courts.

Some respondents acknowledged cases that had resulted in more appropriate sentencing (e.g. heavy fines) that may have been sufficient to achieve a deterrent effect. One respondent stated that he felt there were some cases where sentences had been significant enough to deter an individual (or confiscation orders might have done so) and that within a particular location, word could get around that it wasn't 'worth' offending there. Some respondents also noted that sentencing was inappropriate because of a lack of consistency.

When asked, some respondents felt able to comment on what type of crime trade offences should be seen as commensurate with, usually noting drug or other smuggling offences. For example, as already noted, it was pointed out that the maximum sentence and the likely sentence for smuggling Class A drugs would be much higher than for smuggling the same (commercial) value of rhino horn – but that these should be viewed on a par [R3; R4]. One respondent, in giving this example, said the value of the goods (endangered species) might not even be taken into account by the court whereas for drugs it would be [R3]. The same respondent recognised that drug-related offences were seen as serious because of the social impact, but pointed out that the environmental impact of smuggling endangered species should also be viewed as serious, albeit different in nature. To his mind, the criminal behaviour was really the same (from a CEMA point of view) and it was still likely to involve international, organised crime; but this was not always recognised by prosecutors or the courts, who instead tended to view it just as one person attempting to take one prohibited item out of the country [R3].

### ***(P) Specific prosecution problems***

Most issues that the respondents raised are covered by other themes, but there were a few additional points specific to prosecution problems. Often lawyers would be given cases a short time before the case was due to be heard, or a barrister would be instructed even the day before. This was a typical problem throughout the justice system, that was significantly worse when the case in question was unusual, required the obtaining of particular evidence or the understanding and interpretation of particular evidence [R1; R3]. As this relates to most wildlife offences, and the use of expert evidence, this situation simply made things much worse; prosecutors (and where relevant counsel) needed to be involved in cases from as early a point as possible.

Some respondents also felt there were not enough sufficiently qualified/knowledgeable specialist prosecutors dealing with wildlife cases. One respondent specifically stated they also thought there was a lack of consistency with respect to the approach within the CPS, dependent upon the number and type of cases that individuals dealt with (affecting the ability for specialism to be built up [R2]). Indeed, there was a sense of it being the luck of the draw in terms of both investigations and prosecutions as to whose

hands a case fell in and whether it would be successfully taken forward to conviction. Those respondents that mentioned this felt this should not be the way wildlife crime was managed. Further, if investigations were not picked up by people who knew the 'right' prosecutor to go to, then cases could 'slip through the net' and be dealt with by inexperienced investigators without advice and/or by inexperienced prosecutors.

Finally, some respondents specifically mentioned the difficulty in explaining to investigators, other prosecutors and most notably Magistrates/Judges the severity of such offences (though they did note there were some who were very good at taking this on board, or being aware of the issues).

### ***(W) Ways forward***

Throughout the interviews, respondents referred to ways that wildlife crime investigations, prosecutions and sentencing could be improved. Many of these are caught up in the themes already considered. However, in order to specifically highlight these, key suggestions are reiterated here, alongside those issues not already covered.

It was felt that better networking amongst those with responsibility for wildlife crime cases would be an improvement. This would facilitate discussion of issues, support for one another, sharing of examples and experiences, as well as better utilisation of resources. It was also felt that the specialist prosecutors needed to be more readily identifiable (and possibly accessible) to investigators.

Some respondents suggested a dedicated unit or staff, dealing only with wildlife crime cases and with specialist training, skills and a means of sharing information (i.e. a national wildlife prosecution unit [R1; R3]). It was noted that with modern technology, this need not be geographically based. Ideally such a unit would be involved from pre-charge to presentation of the case in the Magistrates' Court or instruction of barrister in the Crown Court [R4]; thus there would be expertise and continuity.

It was also felt that more time needed to be given to those working on such cases and/or there needed to be enough (more) staff dedicated to wildlife prosecutions, with a specific remit, rather than relying on good will, individual enthusiasm and 'doing the job on one's own time'.

A significant issue raised was improving information and knowledge sharing for prosecutors, possibly through a repository of contacts, cases, experts and literature. It was felt there should also be (easy) access to relevant courses, structured learning, and so forth. Information on other cases and precedents (e.g. TRAFFIC reports, RSPB Bird Crime data) should also be made readily accessible to prosecutors, so it can be brought to court to provide examples of similar cases and sentences.



Further, the knowledge of all those involved, but most notably the magistracy and judiciary, needed to be improved, through better provision of information, training and other recommendations (below). Some respondents noted that the issue of prosecuting and sentencing wildlife offenders should be discussed by magistrates and judges so that it was taken more seriously, there was better understanding of offences, training and information were made available and efforts were made to improve consistency of sentencing.

It was felt that the rarity of such prosecutions did not mean sentencing guidelines were not needed, dealing with each case on its merits, but that guidelines were needed *more* because of the lack of precedent and experience so that there was some assistance for magistrates in knowing where to pitch sentences and what to take into consideration. Guidelines, it was thought, would address the appropriateness of sentencing (severity), basing this on impact, profit and intention and increase consistency. The main aim of sentencing should be deterrence, but also to be retributive by reflecting the harm caused. Sentencers might also consider relevant restorative or compensatory disposals.

As already noted, respondents felt that prosecutors (and/or case managers) should be involved with cases as early as possible and wildlife crimes should be included on the list of those requiring prosecution advice prior to charge (as long as suitable expert prosecutors were available to be contacted and this information was readily available). One respondent also explicitly stated that more cases should be pushed through to prosecution, particularly import/export cases, which may currently result in just confiscations and/or fixed penalties rather than criminal prosecution [R4], a view that appeared to be echoed by others though not specifically in relation to these circumstances (but rather with regards to needing to increase the number of successful prosecutions to improve general deterrence).

In terms of reducing offending, as well as improving deterrent sentencing, respondents felt there was a need to increase awareness of cases, sentences and the possible repercussions of offending, particularly for tourists and other 'inadvertent' offenders. Better use should be made of the media, highlighting 'good news' stories of successful investigations and prosecutions.

Some respondents called for the use of 'proper' structured impact statements. Finally, it was felt that WCA offences should be made triable either way (thus increasing the maximum sentences available). Wildlife crimes should also be made notifiable offences (as recommended by Nurse, 2015), as this would increase available data and knowledge about such offending, but also may alter perceptions so that they were viewed as 'worthy of counting', thus more serious.

## **Summary and discussion**

This part of the research sought to address the second aim of the project: to establish the state of CPS knowledge and expertise with regards to prosecuting wildlife crime (focusing on illegal trade) through the thematic analysis of telephone interviews with CPS wildlife and heritage crime co-ordinators. It was found that respondents were dedicated to their role, but had varying degrees of knowledge and experience regarding wildlife trade offences (as opposed to more common wildlife crime). Trying to contact potential interviewees was not always an easy task. Some contact information was incorrect or out-of-date and it seemed that not everyone was even aware that the role existed. This particularly raises questions about the likelihood of cases being appropriately routed to these more specialist prosecutors. There seemed to currently be little access to training and no evidence of formal information sharing or support. Respondents also lacked the capacity to deal with all wildlife crimes in their geographical region. Generally it was felt that dedicated prosecutors with improved training and resources and/or a dedicated prosecution unit would be more beneficial, which reflects some of the recommendations highlighted in the literature review (such as Garstecki, 2006). Knowledgeable prosecutors should also be involved in cases as early as possible and should certainly provide pre-charge advice.

Respondents felt that the magistracy and judiciary had little experience, little information and little precedent on which to draw when deciding on sentence. Cases dealt with by non-specialist investigators were also more problematic. Overall, specialisation in all roles was seen as desirable, whilst there also needed to be better provision of informative resources. Again these views are consistent with issues raised in the literature.

Issues specific to wildlife trade offences included them being viewed as merely 'regulatory' infringements and/or 'victimless' crimes and the need to gather more evidence and use expert testimony more in order to establish that an offence has occurred and to explain to the court the impact of this. This could be expensive, required not just expert knowledge but also the ability to clearly explain the issues to non-experts and even then often did not result in harsher sentences being passed to reflect this impact. There was also felt to be a heavy onus on prosecutors to get across to the court how serious wildlife trade offences are, otherwise they would be dealt with as minor matters. In part as response to this, some prosecutors thought that offences under the WCA should be made triable either way and that wildlife crimes should be made notifiable. Respondents were aware of the possible links to organised and other serious crime and thought that these were rarely taken into account by the courts as well.

With regards to sentencing, prosecutors had the same opinions as widely held in the literature; that there was a lack of knowledge amongst sentencers, a lack of guidance and precedent, a lack of consistency and, in some cases, problems of leniency. Wildlife crime, and trade offences in particular, were viewed by all the respondents as serious and they felt the public viewed such behaviour in the same way. However, they thought many others in their organisation, investigators and the courts did not hold the same views, which was reflected in the lack of resources dedicated to wildlife crime and the sentences passed. Although sentences were thought appropriate in some cases, they were viewed as lenient when compared with other offences, such as (Class A) drug smuggling and when the harm caused and profits available were taken into account. Sentencing was recognised to have multiple aims, but punishment and deterrence were deemed most relevant. In order to have a greater deterrent effect sentences need to be harsher and/or more public. Ancillary orders were thought to be another way to increase the deterrent impact of sentencing. There also appeared to be room for some more innovative approaches to sentencing, such as confiscations and claiming of wider costs (such as for housing seized animals during the investigation).

All the respondents felt that sentencing guidelines would improve sentencing for wildlife trade offences (and wildlife crime more generally). This would help ensure sentences were at the appropriate level to reflect the harm caused and, given the lack of experience, precedent and the rarity with which such cases were heard, to improve consistency. Respondents described harm as being that caused to individual animals, the species, and the broader ecosystem as well as the (potential) profit made and the motivation of the offender. A number of issues that should be taken into account when determining an appropriate sentence were suggested, as were some offence-specific aggravating and mitigating factors. Impact statements were thought to be a good way to present all the relevant information to the court to support sentencers' decision-making. It was also suggested that the increasing use of sentencing guidelines for other offences might result in a magistracy that became yet more reliant on these, thus less able to sentence appropriately without them.

In conclusion, area wildlife and heritage crime co-ordinators have a greater knowledge of wildlife trade offences than do generalist prosecutors, but the extent of this knowledge varies by individual, there is little training and few dedicated resources to support them and they are not in a position to be involved with all wildlife cases. Even these specialists had little experience of prosecuting cases of illegal wildlife trade and they felt the courts were even less well prepared. Sentencing was recognised as lenient when comparable cases were considered and all respondents supported the introduction of sentencing guidelines for such offences to improve the consistency and appropriateness of sentencing.

## CHAPTER 4: EXPERTS' VIEWS

### Introduction

This chapter considers Aim 3 of the project, thus it explores experts' opinions on the most appropriate penalties for offences of illegal trade in wildlife and the benefits of having sentencing guidelines.

Chapters two and three have set out the findings from the empirical research carried out for this project. From this, it was clearly identified that there were issues to be addressed regarding approaches to sentencing (and the factors to be taken into account), the appropriateness of sentencing and the consistency of sentencing for wildlife trade offences. The aims of the workshop, therefore, were to seek the views of experts in the field on these issues, to discuss ways to improve sentencing (and associated endeavours, including prosecutions and investigations) and to consider the usefulness of sentencing guidelines for this type of offence.

### Methodology

The experts' workshop was not run as a formal research gathering exercise, although it can be seen as containing elements of participant observation and focus group. Rather, the idea was to gather information that would help inform the researcher in putting together suitable and defensible proposals to address the issues and problems that had been raised during the empirical stages of the research, with a focus on sentencing and sentencing guidelines.

### Invites and attendees

In discussion with the WWF-UK, a number of experts were identified as suitable attendees for the event. They represented a range of organisations that play different roles in tackling the illegal wildlife trade (and in many cases the wider category of wildlife crime). Invites were sent to 29 different organisations (in some cases, inviting more than one individual). A copy of the invite is included in Appendix E. These organisations represented wildlife charities and NGOs, government departments/bodies, law enforcement (both geographical and border enforcement), scientific and licensing authorities, monitoring agencies, prosecution authorities, the court system, sentencing and sentencers and the legal profession. In most cases it was possible to identify one or more named individuals to invite, but in a few cases an open invitation had to be sent to the organisation.

In total 19 organisations responded and 13 were represented at the event. These were charities and NGOs, law enforcement, sentencers, prosecutors, monitoring and scientific authorities. This equated to 14 individuals (excluding the Principle Investigator and WWF-UK representatives). It should be noted that there were no attendees

representing the private legal profession, sentencing authorities or government departments.

### **Format for the day**

The workshop ran over a half day and started with an introduction from the WWF-UK representative as host. The Principle Investigator then briefly presented on the project, the findings to date and the aims and format for the workshop. This was followed by a brief presentation from the CPS representative regarding relevant changes that were being made within the organisation as a result of an internal review relating to this type of offence.

This was followed by a short open floor session to give attendees the chance to respond to the presentations and raise key issues for further discussion (notes were taken). After this, there were two break-out sessions, for which attendees were split into two groups to allow for easier discussion. It was intended that the first session would focus on their views about improving sentencing and sentencing approaches and the second would mainly be about views on sentencing guidelines and tools. The ensuing discussions were rich and robust, however, so a somewhat more flexible approach was taken and the sessions were run into one. Each group contained a facilitator to keep the conversation on track and to take notes of the key issues raised.

The notes were compiled by the Principle Investigator and the discussion points were summarised under the headings Key Issues, Ways Forward and Sentencing Guidelines. This summary was circulated to all attendees to ensure they felt it was an accurate reflection of the workshop and that they were happy with the wording and presentation. They were provided with a deadline by which to respond. Three attendees did so and minor adjustments were made as a result of this. The summary is set out in the findings below.

### **Ethical considerations**

Although the workshop event was not run as a formal research exercise, it was still necessary to ensure attendees were aware of what the event was for and what would be reported from it. In order to achieve informed consent, the invite briefly outlined the project, the purpose of the event and the agenda for the day. Further, the first session involved a presentation by the Principle Investigator that summarised the research findings to date, the purpose of the workshop and how issues raised would be taken forward. By attending and contributing, the attendees therefore gave their informed consent.

The event was held under Chatham House Rules. For this reason, no specific individuals have been identified as attending and no comments or opinions have been attributed to individuals or organisations, except in relation to the CPS Action Plan. In this way

confidentiality could be maintained, which allowed for a freer and more open discussion. Attendees were also given the option to approve the summary, make alterations and withdraw (or add) points after the workshop had concluded, as detailed below.

When the notes were circulated to attendees, they were told that this was meant to summarise the views expressed by the participants. It was explained that this was not meant to reflect a consensus (so the findings do not necessarily represent the views of each expert), but rather the opinions expressed and issues raised on the day. In other words, they were asked to confirm that it was a fair reflection of the discussions held on the day and to contact me, by a set deadline, if they did not feel this was the case. Experts were also invited to contact me by the same date if they had any further comments they wished to make (none did).

It was also explained that an edited version of the summary and the issues covered was to be included in the final research report, which may be published in part or its entirety. It was explained that this would indicate the type of organisations represented at the experts' workshop, but to ensure confidentiality it would not name individuals or attribute any of the points made to specific organisations (other than with reference to the proposed changes by the specifically presented by the CPS representative). Attendees were asked to contact me by the deadline if they were not happy with this (again, none did).

### **Findings**

As stated, the issues relevant to the project that were raised in either the open floor discussion or one of the breakout sessions were summarised under the headings Key Issues, Ways Forward and Sentencing Guidelines. The latter has been given its own category as it is of key interest to the project and was something about which experts' opinions were explicitly sought.

### **Key Issues**

In terms of the importance of the topic, it was recognised that wildlife trade offences attract public interest, that England and Wales are party to international agreements to prevent such crime and that there is an overlap with serious and organised crime; therefore there are strong reasons to push forward on getting prosecutions and sentencing 'right', including raising awareness of the seriousness of such offences and the need for appropriate and commensurate sentencing. It was also noted that the UK Government is taking the lead on addressing illegal wildlife trade at the international level (as demonstrated by the London conference and the increased funding given to this issue). Therefore, they should also (be seen to) meet their commitments at the *national* level through implementing effective national laws, supporting investigations

and successful prosecutions and ensuring appropriate sentencing for wildlife crime offences committed in the UK.

The participants noted that there was no indication that the courts took account of the increase in maximum sentences for COTES offences (that is to say there did not seem to have been a commensurate increase in sentences being passed since this change). This was reflected in the findings reported in chapter two.

Some participants felt that a significant problem was a lack of continuity of cases through to court, and that prosecutors did not take the time to speak to investigators. Further, there are problems with the way prosecutors present cases because of a lack of knowledge/understanding. This is compounded when prosecutors (and even more so barristers) are given cases at the last minute. In response to these concerns it was felt that, where possible, cases should go to the CPS pre-charge. As part of extensive proposals for change presented by the CPS, it was pointed out that a knowledge hub would be developed. This would be available to CPS Direct, so it is hoped this will mean they are able to advise investigators, at least in the first instance, which some participants felt was not happening now.<sup>37</sup> As magistrates would turn to the Clerk of the Court for legal advice, it was also felt to be important to include consideration of how to disseminate information, guidance, resources and possibly training opportunities to clerks as well as prosecutors, investigators and magistrates.

Participants also questioned how we gather and disseminate information on these issues; how connections and networks are formed and also how institutional memory is maintained (some of this, it was hoped, would be addressed by the proposed CPS changes).

In terms of sentencing decision-making, precedent is important, particularly with regards to supporting appropriate and consistent sentencing, but as cases of wildlife crime, particularly wildlife trade (the focus of discussion) are rare, there is little precedent. Some information is available on sentencing, for example that compiled by TRAFFIC (and analysed for this project). However, because of the rarity and inconsistency of sentencing, just as prosecutors can point to cases when higher sentences were passed, the defence can identify those with lower sentences. The prosecutor therefore needs to seek to distinguish appropriate cases – but this is not always possible if there is little pattern to the passing of sentences; again because of a lack of consistency and/or appropriateness in previous sentencing decisions.

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<sup>37</sup> It was also noted that ‘Transforming Summary Justice’ should mean the CPS generally get cases earlier in the process, which may alleviate some of these issues; though only if the cases are dealt with by those with sufficient understanding and knowledge of such offences.

The format, role and use of impact statements was also discussed. It was felt that a general/generic impact statement by species would be useful (some do exist), but that there were too many listed species for this to be a real possibility. There was some discussion around having a generic section and then using a template for completion by species/case (again templates do exist). There was also discussion about how to make sure this information was both accessible/understandable to prosecutors and the courts and how to ensure it was actually looked at and used in the sentencing decision-making process. It was noted that the MG5 form was very important and that it needed to be well written. There was also some discussion of what information it should contain and that it should/could refer to the impact statement. More broadly, when information is presented in court, particularly in relation to harm/impact, the information needs to be clear and straightforward (backed up by evidence and expert testimony/statement), so that magistrates/judges and prosecutors can understand and feel comfortable with it.

The role of, and relationship with, probation (and the use of pre-sentence reports (PSRs)) was considered. It was felt that there could be some scope for considering harm and seriousness of offending at this stage (as PSRs are familiar to, and relied upon by, sentencers), but a note of caution was also sounded. Probation Officers (POs) themselves would be unfamiliar and inexperienced dealing with this type of crime, POs do not routinely consult with investigators or specialists, they would be unlikely to incorporate the impact statement and PSRs tend to focus on personal issues and may consider such offences to be merely regulatory. It was felt, therefore, that this was probably not an avenue that was worth exploring further.

The benefits of general deterrence and the moralising effect of harsher sentences were raised, in terms of reducing the demand that may drive such offences. Specifically, it was felt that the importance of deterrent sentencing for wildlife trade offences needs to be impressed upon magistrates and judges (by prosecutors and perhaps through the impact statement). The 'real' impact of the offending is also extremely important and this may be difficult to quantify and to express (when considering impact in relation to species and biodiversity loss, rather than just, for example, economic gain). The sentencer needs to have put in their mind (1) impact (2) need for deterrence and (3) criminal intention (i.e. negating claims that it is merely a regulatory offence or one of mistake and demonstrating the extent of financial gain and of harm).

As well as lacking in deterrent effect, it was noted that sentencing did not tend to include any remediation. The legislation does make forfeiture of specimens mandatory and sometimes confiscation orders were also granted, but these could be used more and could have a greater deterrent effect than simple fines. Leading on from this, the possible benefits of ancillary orders (such as trade bans), recovery of investigation costs



(as is the case for the RSPCA in cruelty cases) and greater use of confiscation were also discussed. It was felt ancillary orders could be a powerful addition to sentencing and that recovery of costs would also be extremely helpful to enforcers (and add to the deterrent effect of sentences) but that both would require changes to legislation.

Experts were also specifically asked about their opinions on the usefulness and possible format of sentencing guidelines. All of the participants supported the introduction of sentencing guidelines for wildlife trade offences (and indeed for wildlife crime more generally). They pointed out that sentencing guidelines have been passed for environmental offences, but wildlife crimes have not been included in the definition/scope by the Sentencing Council. This is different to the EU who do include wildlife-related offences in their definition of environmental crimes. Further, when penalties for environmental crimes are considered, these tend to be much higher than for wildlife offences (participants noted the increased maximum sentences allowable in Magistrates' Courts for environmental offences). It was also felt that sentences tended to be more appropriate in cases where prosecutors had more knowledge and experience. It was mentioned that there are some examples of relatively high sentences for 'habitat cases'. It was felt this might be because in these instances they were viewed as 'environmental', as opposed to 'wildlife', crimes.

There was also some discussion regarding what things the courts should take into consideration when passing (deterrent) sentences for wildlife trade offences. In general terms it was felt there should be consideration given to the potential profits that could be made, the impact on (harm caused to) the individual animals and, most importantly, the species as a whole and the environment it inhabits. The individual culpability of the offender should also be considered, for example his/her role in any criminal network. It was felt that determining and presenting information on the potential commercial value of specimens was relatively simple, but this needed to be presented to the court who may not otherwise know how much worth rhino horn or the like may have. Determining and presenting accessible information on species and ecosystem impact was much harder. Expert evidence would usually be available regarding this, so it could be included on the impact statement, but there were resource implications for gathering this information. Even more problematic was ensuring that (a) the information would be accessed and used by the sentencer and (b) the information was comprehensive yet easily understandable. In other words, there needed to be a way to ensure that sentencers fully realised the implications of such offending. It was felt that if they did, more appropriate (harsher) sentences would be much more likely. Sentencing guidelines could also highlight the need to take this type of information into account, and help inexperienced sentencers determine how to use this to select an appropriate type and level of sentence.

Despite the general consensus that sentencing guidelines would help improve the appropriateness and consistency of sentencing, it was felt that the Sentencing Council would be unlikely to produce guidelines for wildlife crime/trade as:

- Their focus was more on 'general' crime
- There were other outstanding guidelines that may be considered more important/useful
- Wildlife trade/crime was seen as too rare to warrant guidelines.

Finally, it was also noted that many other wildlife crimes face the same types of problem that trade offences do. Further, there is greater focus on fauna-related offences (and these are perhaps viewed more seriously); thus the profile of offences involving flora needs to be raised to an even greater extent.

## Ways forward

As part of the expert discussions, a number of possible responses or ways forward were identified. These are summarised below. Issues specifically relating to sentencing guidelines are listed separately.

- Impact statements are already used in most cases and templates exist. It was felt there was scope, however, to look at how they are produced, formulated, used and presented.
- It was felt that there should be an exploration of ways to express the severity of wildlife trade offences, considering such things as impact (on individual specimens, the species and the biosphere more broadly), the current public interest in such offences and the monetary and non-monetary costs. The links to organised crime were also discussed as a way of highlighting the serious nature of these offences.
- It was considered important to publicise cases and outcomes in terms of general deterrence, moralising effects, 'good news' stories and garnering public support.
- The changes proposed by the CPS were well-supported, especially if they lead to increased knowledge 'trickling down' to non-specialist prosecutors.
- There were calls to consider how to lobby/advocate for legislation change, to allow for ancillary orders and cost recovery. As an aside, it was also felt there should be a push for offences under the Wildlife and Countryside Act to be made triable either way.
- Many participants thought it would be beneficial for the Magistrates' Association to update or produce a more specific and detailed document akin to Costing the Earth. There were a number of offers from participants to contribute to this.
- It was felt worth exploring the idea of a specialist court, or at least a named court in London (e.g. Westminster) to which cases could be referred, so that expertise could be built up (as opposed to the already small number of cases being spread across numerous courts and sentencers who would then rarely deal with offences). It was also felt something similar could be done in relation to identifying experienced barristers to instruct (where relevant).
- Although CPSD would have access to the knowledge hub and be able to offer more appropriate initial advice, it was still felt that a CPS specialist prosecutor (or at least a prosecutor who had received training from a specialist) should consider all cases pre-charge.
- Further education is also needed for enforcement authorities, highlighting the importance of tackling such crimes (to all, so that not just a handful of dedicated individuals are left to pursue these cases).
- It was generally felt that the profile of wildlife crime, for our purposes illegal trade, needed to be raised within the CPS and amongst the magistracy and judiciary more generally.

## Sentencing Guidelines

- It was felt that the ideal outcome would be for sentencing guidelines to be produced (alongside some of the other changes and improvements mentioned above).
- Guidelines would help to achieve deterrent sentencing and raise the profile of such offences (which in itself would also increase the deterrent effect).
- Sentencing guidelines would improve consistency and appropriateness of sentencing, but participants were generally pessimistic about the likelihood of the Sentencing Council agreeing to produce these.
  - Despite this, most participants felt that action should still be taken to try to persuade them to do so.
- Possible approaches for advocating for sentencing guidelines could be:
  - Highlighting the serious and organised crime perspective.
  - Equating wildlife trade (smuggling) to drug offences, and calling for similar guidelines.
  - Calling for 'environmental crime' to be more broadly defined, in line with the EU, thus incorporating wildlife offences into existing sentencing guidelines.
  - Highlighting the need to meet other EU commitments and international obligations to ensure sentencing has a deterrent effect.
  - Noting that the rarity of such offences is the very reason why consistency and appropriateness are harder to achieve, thus the reason why guidelines are needed.
  - Noting that other relatively rare offences are subject to guidelines (thus it cannot be rarity alone that precludes wildlife trade offences).
  - Noting that other crimes viewed as 'minor' (e.g. TV licensing, animal welfare) were subject to guidelines (thus it cannot be that wildlife trade offences are considered not serious enough to warrant guidelines).
- The support of the Magistrates' Association would be helpful.
- To consider the lack of guidelines from a positive perspective, this does mean that magistrates and judges are unfettered and have greater flexibility. However, this means that there is a greater onus on prosecutors (and investigators) to gather and present appropriate information (including building up sentencing information to improve consistency and effectively presenting information on impact to improve appropriateness) as well as on sentencers to take this information on board and recognise the serious nature of illegal wildlife trade.
- As well as advocating for guidelines, other approaches should also be considered that would help raise the profile of such offences, the seriousness with which they are viewed, thus the commitment to their reduction by investigators,

prosecutors and sentencers (using some of the methods raised in the 'Ways Forward' section) and the agencies they work for.

### **Summary and discussion**

Although the points set out above are a reflection of the range of opinions of the experts present at the workshop, it was clear that on nearly all points there was a consensus. Wildlife crime, particularly illegal trade in endangered species, was considered by the experts to be a serious crime, regardless of the animal or plant involved. It was not thought, however, that others working in the criminal justice system also saw it this way. Those present at the workshop were very knowledgeable of the issues, as would be expected. They were well aware of the links between illegal wildlife trade, other offences and organised crime groups, as identified in the literature review. The severity with which wildlife trade offences were viewed was a result of both these links and the significant impact to endangered species and the ecosystem. Resources for investigating this type of crime were limited and enforcement and prosecution were dependent on a small number of individuals with an interest in this area. This meant the majority of police officers and border agents would not have dealt with wildlife crimes; even less would have come across a trade case. The same could be said for prosecutors, the magistracy and judiciary all of whom would have little knowledge and experience as they would rarely deal with such cases. It was noted, however, that the rarity of wildlife trade offences did not necessarily reflect the frequency with which they occurred, rather that such offences were difficult to detect, especially with limited resources. This again reflected the findings of the literature review; particularly the problem of limited resources and crime not being taken seriously enough across agencies of the criminal justice and penal systems.

The experts generally felt that sentencing should be aiming to achieve deterrence, though there could be room for restorative and reparative penalties as well (which in themselves could also have a deterrent effect). However, this aim was not currently being met as many sentences were considered too lenient and it was felt that there was little consistency. Much of this was likely to be down to the aforementioned lack of experience and knowledge, therefore it was important to take steps to tackle this, through the provision of relevant information regarding the impact of offending, the harm caused and the potential profits involved. Such information needed to be provided in an accessible format that would help the courts choose appropriate sentences. Again, it was noted in the review of the literature that the EU and UN identified illegal wildlife trade (related to organised crime) as serious crime, and also called for sentencing to have a deterrent effect and take into account the impact of such offending.

As noted from the literature, sentencing guidelines are predominantly used to achieve consistency in sentencing, but also to provide guidance with regards to appropriate levels of sentencing and the issues that should be taken into account when deciding this. It was felt by the experts that sentencing guidelines would significantly help to achieve more appropriate sentencing for cases of illegally traded wildlife and that the infrequency with which such cases appeared before the courts was not a suitable reason for excluding such offences (or other types of wildlife crime). Indeed, it was felt that this was the very reason why they were needed.

In addition, the experts felt there was a need for changes to existing legislation, notably with regards to the Wildlife and Countryside Act. They also thought that investigations and prosecutions needed to be improved, predominantly through the provision of more dedicated resources and personnel with appropriate training and access to experts and timely information, as well as such crimes being taken more seriously by their managers and the wider organisation. There were a number of other issues that were touched upon with regards to better tackling wildlife crime, but they were outside the focus of this project.

Therefore, it can be seen that the experts' opinions closely reflected the findings of the literature review, as well as the findings of this research project (as will be discussed in the next chapter). Taking all of this into account, the report now summarises the key issues that can be drawn out of the research and critically considers the role of sentencing guidelines.

## CHAPTER 5: DISCUSSION

This and the following chapter draw together the findings of the three pieces of research and the information presented in the literature review in order to address Aim 4, the main aim of the project, which is to recommend ways to improve the sentencing of wildlife trade offences in England and Wales.

There is a large legal international wildlife trade, but in order to protect species from being over-used this trade is controlled by international convention and domestic legislation enacting members' obligations. Trade in at-risk species is either subject to quotas or is banned completely (with limited exceptions), yet there is still a black market for wildlife, thus it is taken, processed, transported and sold illegally, with potentially devastating consequences to endangered species and the ecosystems they inhabit. Various commentators and international organisations have recognised the severity of such crimes and action has been taken globally to address this pressing concern.

Illegal wildlife trade is also related to other crimes, either to facilitate trading activities or because offenders are rarely homogenous in their criminality. It is also now accepted that such offences are linked to organised crime. There is also the possibility that they may fund other activities that destabilise governance and threaten security. The extent of illegal wildlife trade is not known, but it may well be worth tens of billions of dollars a year. The value of individual commodities varies significantly, but it is clear from the available data the profits that can be made are extremely high and may be commensurate with other illicit markets, such as drugs. Conversely, the risks to offenders are very small as the proportion of offences believed to be detected is low and the penalties received by those few who are successfully prosecuted tend to be viewed as far too lenient to be commensurate with the potential profits and the harm caused.

The impacts of such offences include harms to individual trafficked animals, depletion of wild species populations and associated damage to the ecosystems they inhabit. There may also be associated harm caused to human populations, legal trade and sustainable business, governments and the rule of law and security.

Wildlife is traded to serve many purposes, therefore demand results from a variety of motivations. Supply, on the other hand, tends to be motivated by profit, thus responses seeking to tackle supply need to focus on (situational) crime prevention, improved enforcement and deterrent sentencing. Given the impacts of such offences, there may also be scope for reparative disposals. However, as noted, most commentators view sentencing for wildlife crime (including in England and Wales) as unsuitable for deterrence, retribution or restoration. Therefore, sentencing needs to become more

appropriate by being more commensurate with the harms caused and profits made and wildlife trade offences need to be viewed as more serious than they currently are.

A number of suggestions have been made in the literature with regards to how to improve enforcement, prosecution and sentencing. These have included the introduction of sentencing guidelines (which many other offences in England and Wales are subject to), which are thought to improve consistency and appropriateness of sentencing by providing sentencing ranges and starting points, as well as highlighting relevant issues that should be taken into account when determining these and any aggravation and mitigation. The official response has been that sentencing does not need to be made harsher as there is little evidence that more severe sentences result in greater deterrence and that guidelines are not needed because wildlife trade offences are too rare to warrant this and can be dealt with on a case-by-case basis. It was recognised that deterrence is more likely to be achieved through greater certainty of detection and punishment (i.e. through improving enforcement), but that whilst individuals continue to offend and be prosecuted, deterrence is the most appropriate aim of sentencing and this will not be achieved whilst the profits remain so much greater than the penalties. Indeed, the need for financially deterrent sentences is explicitly recognised by the Sentencing Council themselves in the Environmental Offences sentencing guidelines. Further, it has been pointed out that the UK government needs to meet its commitments to the EU<sup>38</sup> (which has stated sentencing ought to have a deterrent effect) as well as its international obligations to send a message to the world that the UK takes illegal trade in endangered species seriously. The arguments against introducing sentencing guidelines have also been challenged given that guidelines exist for other similar offences, for other relatively infrequent offences and for many minor offences. Indeed, it has been concluded that the lack of experience and knowledge amongst the magistracy and judiciary in dealing with these relatively rare cases (as well as the lack of judicial precedent) is the very reason why they need guidance in deciding upon appropriate sentences.

Thus this project sought to explore the current state of sentencing for wildlife trade offences, to see if penalties are indeed inappropriate, to assess the experience and knowledge of wildlife trade offences amongst CPS prosecutors and to gather the opinions of experts in the field regarding sentencing and the use of guidelines. The final aim was to use these findings to make recommendations regarding the introduction and nature of sentencing guidelines. This is discussed further in this chapter and the next.

A mixed methodology was used to address the different aims, comprising quantitative analysis of TRAFFIC data on wildlife trade offences, a comparison with other types of

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<sup>38</sup> For such time as the UK remains a member



offences and the sentences they (can) attract, interviews with specialist CPS prosecutors and an experts' workshop. It is to discussion of the key findings of this research that this report now turns.

The quantitative analysis showed that there appeared to be some degree of gradation in sentencing, with more serious cases tending to attract higher sentences, but this was not always the case and sentences also tended to be relatively dispersed. This may reflect the variation in circumstances (which could not be assessed as such information was not available) or it may be a result of inconsistent sentencing due to lack of experience, precedent and guidance. The analysis also showed that average sentences tended to be relatively lenient, custody was only used in a minority of cases and fines were generally low. There was no evidence that the fines passed were commensurate with the estimated commercial value of specimens involved, though this conclusion remains tentative in light of the lack of data on costs and forfeiture also incurred. It also appeared, though the sample was very small, that sentences involving specimens obtained through more traditional methods (theft) would be much higher than for COTES or CEMA offences, despite the latter being potentially much more harmful.

Consideration of a purposive sample of similar types of offence also supported this conclusion, with wildlife trafficking seemingly sentenced as akin to duty avoidance. Sentences in the TRAFFIC dataset were not dissimilar to the guideline sentence ranges for animal cruelty offences, but illegal wildlife trade may be viewed as much more harmful. This suggests little recognition of the serious and wide-ranging impacts of such offending. Instead, it is suggested that illegal import/export of endangered species should be viewed as on a par with smuggling Class A drugs, due to the high social (and conservation) impact. However, the sentencing guidelines for this offence clearly demonstrate that sentences for drug trafficking are much higher, inevitably involving significant custodial sentences.

Specialist prosecutors and experts were of the opinion that wildlife trade offences specifically (and in many cases wildlife crime more generally) are serious crimes, which are in many cases linked to other offences (including serious organised crime) and that investigation, prosecution and sentencing could be significantly improved. The experts also tended to feel that sentencing should have a deterrent effect and to achieve this it needed to be more consistent and more severe to reflect the significant harm caused by such crimes, again this was the general opinion of the specialist prosecutors as well. The quantitative research carried out also suggested that sentencing may not always be consistent and is rarely commensurate with the harm caused and profits gained through offending. Many expert participants thought that this was at least in part because prosecutors and sentencers were not as informed about the nature and impact

of wildlife trade offences as they needed to be in order to appropriately deal with such cases in the courts.

It was felt that the quantification and communication of the impact of such offences was of paramount importance, and ways to do this needed to be discussed and developed. There was strong support for more specialism and formal knowledge-sharing within the CPS, and possibly in the court system as well (for example developing resources and a knowledge-base and making these available throughout the CPS and to the judiciary, magistracy and clerks of the court as well). This reflected a number of negative views held by experts about how the CPS dealt with wildlife offences; though many of these had already been recognised and are to be addressed by the CPS action plan. Probably the biggest weakness identified by experts in relation to prosecution was the lack of expert knowledge in this area amongst prosecutors – the very people who need to be able to effectively communicate to the court the severity of the offence and the impact it has had. This reflects the findings reported in chapter three. Those CPS specialist prosecutors spoken to had varying degrees of experience and knowledge, but few had dealt with trade offences and generalist prosecutors have even less experience in this field.

In relation to sentencing, all the experts agreed that sentencing guidelines for wildlife trade offences would be beneficial. They would increase consistency of sentencing and improve its appropriateness as they would establish a suitable sentencing range, as well as presenting the issues that should be taken into account when deciding on severity, culpability and aggravating and mitigating factors. Again, this also reflected the views of CPS specialist prosecutors. For the experts, appropriate sentencing would generally be more severe than it currently is (though it was mentioned that there were examples of suitable sentences having been passed). This was because they felt that current sentencing did not reflect the very serious harm caused by illegally taking endangered species from the wild, nor did it reflect the involvement of serious and organised crime groups. Finally current sentencing was considered generally too lenient to have a deterrent effect – which should be a key aim in relation to this type of profit-motivated offending. Sentencing guidelines could also be a way to ensure that the relevant issues included in any impact statement provided to the court would be taken into account. These findings are consistent with the criticisms identified in the literature and they reflect some of the key recommendations that have been made by others.

Despite seeing the introduction of sentencing guidelines as the best possible response, most experts were sceptical about the chances of the Sentencing Council agreeing with this. As such, they also discussed a number of other responses and methods that might help improve sentencing for wildlife trade offences, notably the greater emphasis on impact statements, methods for improving knowledge and understanding amongst

those involved in dealing with such cases and awareness raising regarding the serious nature of such offending, ways of communicating the harm caused and working with organisations such as the Magistrates' Association to disseminate information and helpful resources, such as updating the publication 'Costing the Earth'. The idea being that this would increase awareness and understanding, as well as provide some voluntary guidance regarding how to approach the sentencing of such offences in the absence of formal guidelines.

There was also mention of the introduction of an environmental court to deal with such offences, or for them to be referred to a particular court to allow for the build-up of expertise. An alternative to this could be the use of specialist wildlife or environmental crime judges, as is seen in Indonesia. Both the experts and the prosecutors also felt that a dedicated wildlife crime prosecution unit would be a significant improvement, or at least that specialist prosecutors be dedicated to pursuing such offences. This would be coupled with increased training, knowledge sharing and better communication and awareness raising. Again, these suggestions reflect many of those already present in the literature and it is satisfying to see that experts in investigation, conservation and prosecution agree. On the other hand, the fact that such recommendations have been repeatedly made to no avail does raise concerns about the commitment of policy-makers to tackling the problem of illegal wildlife trade both in the UK and abroad.

Harsher sentencing does not necessarily have to mean a significant increase in the use of custodial sentences. In the most serious cases, lengthy custodial sentences may be necessary to reflect the harm caused and to deter the individual from reoffending, but in others the custodial threshold may not be reached. Instead higher fines that are more commensurate with the harm and profits resulting from the offence and/or community sentences should be used. When asked, both specialist prosecutors and experts were amenable to the idea of reparative or restorative sentencing. It is therefore suggested that ways of incorporating reparative compensation and costs be explored (for example for housing and repatriation of seized endangered species and restoration of damaged ecosystems). In addition, unpaid work requirements tailored to conservation activities should be considered as conditions for community orders.

Finally, it is noted from the literature review that international co-operation, information sharing and knowledge transfer could also be important methods for facilitating good practice in both enforcement and prosecution as well as approaches to sentencing.

In summary, it can be seen that illegal wildlife trade has many dimensions and covers many species serving different purposes. Thus the nature of this trade is diverse. That said, for most supply-side offenders the key motivating factor is likely to be some sort of gain, usually financial. It is proposed, therefore, that sentencing for such offences should aim to deter individual offenders from future criminal involvement and deter

the general public from engaging in such offending by demonstrating that illegal wildlife trade 'does not pay'. Sentencing should also, if possible, seek to reduce the damage (harm) caused. In order to do this, sentencing needs to be *consistent* so that like cases result in like sentences, *graduated* so that more serious cases (where the offender is more culpable and/or the harm caused is greater) result in harsher sentences and *severe* enough that the pains of offending outweigh the pleasures (profits) that could be made. Given the impact of illegal wildlife trade on endangered species and the ecosystems they inhabit, it is suggested that some form of reparation also be considered. Finally, in order to satisfy these features, it is proposed that sentencing guidelines should be produced for wildlife trade offences (and, more broadly but outside the scope of this project, for wildlife crime generally). This is justified by arguments in the literature that guidelines generally result in more consistent (and appropriate) sentencing and that arguments for their exclusion are unconvincing given some of the other offences that do benefit from guidelines. It is particularly noted that the relative rarity with which such cases come before the courts, and the associated lack of knowledge, experience and precedent relating to sentencing in cases of illegal wildlife trade, is the very reason why this guidance is needed.

### **Sentencing guidelines**

Sentencing guidelines, especially those with low departure rates, are more likely to result in consistent and appropriate sentencing as they limit the scope of judicial discretion, whilst acting as a *guide* regarding a suitable starting point, an acceptable sentence range (based on given circumstances) and the sorts of issues that sentencers should be taking into consideration when deciding on what is an appropriate sentence to pass.

In the absence of sentencing guidelines, courts must turn to precedent and their own experience. Where offences are rare or have been inconsistently sentenced, then neither of these sources of information exist or are helpful. Indeed, it has already been discussed that 'institutional knowledge' can result in relatively consistent sentencing across different individuals, but that this is based on personal experience and inter-sentencer communication. Therefore, it is far less likely to be achieved in large jurisdictions or for rarer or more complex offences (particularly those that may have very broad sentencing ranges, given the diversity of circumstances that could apply).

It is recognised that there is an argument for focusing resources on those offences that are most commonly dealt with, but it is also noted that a relatively comprehensive set of guidelines have been established for such common offences by the Sentencing Council and its predecessors. Indeed, it is stated in the 2008 foreword to the Magistrates' Court Sentencing Guidelines (Sentencing Guidelines Council, 2008) that it "covers most of the offences regularly coming before a magistrates' court" (foreword, no page number). Of

course, these have also now been updated with further guidelines produced by the Sentencing Council such as for environmental offences. The question is therefore asked: is it not now time to consider other offences that, albeit less common, would significantly benefit from the provision of guidelines that would support sentencers in making appropriate and consistent decisions, in circumstances where they are faced with relatively rare, but often serious offences that have resulted in significant harm?

The lack of guidelines has also been criticised through a consideration of certain offences for which guidelines *do* exist, notably those that are low in severity and have low maximum sentences (when it was argued guidance was least needed, as the available penalty range was small); those involving animals and the wider environment (within which category wildlife trade offences could easily be included); and those involving similar types of behaviour (notably other trafficking or smuggling offences).

Thus it is proposed that sentencing guidelines would improve the current state of sentencing for wildlife trade offences and that the arguments against their introduction have been negated.

### **What would guidelines look like?**

When deciding upon a suitable penalty, the courts need to consider the harm caused, the culpability of the offender and any aggravating or mitigating factors. As already noted, there will be general features that apply to all or most offence types (e.g. previous convictions for similar offences, entering a guilty plea and so forth) and features specific to that type of offence. The sort of issues that need to be taken into account for illegal wildlife trade cases include the role and knowledge of the offender, the (potential) profit of offending and the harms caused to traded animals, the harm trade has done to the species as a whole and the potential impact on the wider ecosystem. Of course, it is acknowledged that assessing such impacts may be difficult, therefore impact statements based on expert evidence are likely to be essential. It might also be worth considering the approach taken in Finland, to see if an adaptation of this (including market value) would be feasible in England and Wales.

Existing sentencing guidelines contain features that are relevant, or could be readily adapted, to determining offender culpability, harm, aggravation and mitigation for wildlife trade offences, notably drug importation/exportation (Sentencing Council, 2012), environmental offences (Sentencing Council 2014a) and animal cruelty and dangerous dog offences (Sentencing Guidelines Council, 2008). There are also relevant issues highlighted in the Magistrates' Association (2002) Sentencing for Wildlife Trade and Conservation Offences insert. To complete this chapter, suggestions as to relevant features to include in sentencing guidelines for wildlife trade offences are presented below (based on existing guidelines and the current research findings).

### ***Offender culpability***

Culpability would be determined by considering:

- Whether the offender acted in a deliberate, reckless or negligent manner with regards to the legality of trading in such commodities.
- Whether the offender played a leading, significant or lesser role in the organisation/chain, or if (s)he is a sole operator.
- Whether offending was motivated by (substantial) financial gain.
- Whether legal trade was used as a cover.

### ***Harm***

Determining the nature, extent and degree of harm caused by offending is complex. There is a significant degree of variability, depending upon the species involved, the number and *proportion* of specimens taken from the wild, the way in which they were taken and transported, the threat (thus protection) status of the species, the ecosystem services it provides and the impact of its reduction or loss on biodiversity, as well as the impacts on human populations. Therefore, it is suggested that harm be primarily assessed by experts and presented to the court through the impact statement. This should be specifically referred to in the sentencing guidelines and should follow a template so that sentencers become familiar with their use. Issues that could be included for determining the level of harm are:

- Market value (and possibly quantity of specimens and protection status) categorised in a similar way to how this is done for drug smuggling sentencing guidance.
- Number of specimens involved.
- Threat status and/or size of wild population and/or proportion of wild population involved in the current case.
- Degree of effect on ecosystem.
- Degree of organisation involved.
- Extent of effects on human populations.
- Costs of site restoration or animal repatriation/reintroduction/rehabilitation.
- Degree of fear or injury caused to animals being smuggled; animal death in transit.
- Injury or death caused to animals in obtaining commodity.

### ***Aggravating factors***

There are a number of possibly aggravating factors that may be included. These may overlap with some of the features used to determine harm, so it is important that guidelines clearly set out which should be considered in each category to avoid 'double counting' effects:

- Endangered or critically endangered species.
- Specimens taken from particularly sensitive stock/areas.
- Human, animal or flora health adversely affected (e.g. animals injured or killed during shipment, flora destroyed, etc.).
- Evidence of cruelty, deliberate cruelty.
- Evidence of wider conservation impact.
- Evidence of wider human impact.
- High financial value.
- Evasion of tax or duties.
- Conspiracy to defraud buyers (by them unwittingly purchasing illegal goods).
- Defendant shown to have knowledge of specific risks involved i.e. knows the species is endangered.
- Introduction of potentially invasive species.
- Deliberate and/or sophisticated attempts to conceal illegal activity.
- Sophisticated and/or large-scale operation.
- Offending in course of business/defendant is professional dealer.
- Previous non-compliance or regulatory offences.
- Evidence of prolonged activity.
- Evidence of links to other crime.
- Evidence of involvement of organised criminality.
- Evidence of funds used to support other criminal groups.
- Offending carried out on international scale.
- Conduct after detection has led to concealment of specimens or increased harm (to individual animals or to the species/population).
- Offence resulted in high ancillary costs of investigation.
- Previous convictions for like offences (statutory factor).
- Offence committed on bail (statutory factor).

### ***Mitigating factors***

In addition to general and personal mitigation (such as being a sole carer, evidence of previous good character, mental disorders, and so forth) the following may be relevant:

- Genuine lack of awareness of protection status.
- Genuine mistake as to protection status.
- Evidence of care taken to protect health and welfare of animals involved.
- Minimal conservation impact.
- Minor role with little personal responsibility.
- One-off event that was not commercially motivated.
- Little financial gain.
- Specimen obtained for personal use.
- Lack of sophistication of concealment.

- Genuine administrative error.
- Co-operation with authorities.
- Self-reported offence.
- Compensation paid voluntarily, or other restorative efforts made.
- Vulnerable individual that has been exploited by others.



## CHAPTER 6: RECOMMENDATIONS AND POINTS FOR ACTION

### Sentencing

1. Sentencing for wildlife trade offences should be more consistent for like cases and more explicitly draw on a graduated approach. Those offences causing the least harm and/or involving less culpable offenders should receive lesser sentences than those causing greater harm and/or involving more culpability.
2. Sentencing for wildlife trade offences needs to be appropriate, by being commensurate with the harm caused and the culpability of the offender.
3. The full range of available sentences should be used up to the maximum in the most serious cases.
4. Sentencing should aim to have a deterrent effect.
5. In determining the severity of offences for sentencing, consideration should be given to:
  - a. The impact of the offending, in other words the harm(s) caused. Where appropriate this should include any harm or potential harm to: the individual animal(s) involved; the species population; biodiversity and the local ecosystem; human populations (in the UK and range states, including local populations relying on wildlife and rangers protecting it); flora and fauna in the UK; and any wider social harm that may be caused by those involved in or profiting from such offending (e.g. organised crime groups). When the UK is a transit state, potential harm to humans, flora and fauna in the intended destination state should also be considered, though it is recognised that in many cases this may not be possible.
  - b. The potential 'profit' to be gained (based on the estimated commercial value and any financial benefits gained through offending).
6. In order to determine the impact of offending, appropriate information needs to be presented to the court in an accessible manner. The most appropriate way to do this would be through the impact statement, which needs to cover all the issues in recommendation five, be clear and be supported by expert evidence.
7. In determining the culpability of the offender consideration should be given, amongst other things, to the degree of involvement, the level of intention, the degree of commercial activity, the degree of organisation and the involvement of organised crime.
8. For sentencing to be appropriate it should make use of higher levels of fine, and/or greater use of community penalties, and/or more frequent and longer periods of custody depending upon the circumstances in the case.
9. There should also be an exploration of the use of more reparative sentences (as well or instead of deterrent approaches). These should, if possible, be tailored to

repairing conservation harm, either (a) directly through compensating for the costs of repatriation and repair or by undertaking unpaid conservation work or (b) indirectly through financial contributions to, or work with, relevant organisations.

10. Changes should be made to existing legislation to allow for ancillary orders for wildlife trade offences (for example trading bans).

### **Sentencing Guidelines**

1. Sentencing guidelines for wildlife trade offences should be produced by the Sentencing Council.
2. WWF-UK and other relevant organisations should advocate for the introduction of sentencing guidelines on the grounds that illegal wildlife trade is a serious offence and current sentencing is inappropriate. Sentencing guidelines would help address this problem and the arguments for not introducing them cannot be sustained, given that sentencers clearly need support when making sentencing decisions in (rare) cases of which they have little or no experience.
3. To produce sentencing guidelines the Sentencing Council should, as is their practice, consult with interested and expert parties. They may also be informed by the suggestions made in this report regarding features of offender culpability, harm caused and aggravating and mitigating factors.

### **Other recommended actions**

1. The CPS should continue to implement its action plan in relation to wildlife crime and its development of COTES/CITES guidance for prosecutors.
2. The Magistrates' Association should consider updating 'Costing the Earth' or producing a similar document specifically focusing on wildlife crime/illegal wildlife trade. There are various organisations that are in a position to help with this (and have already offered to do so).
3. Consideration should be given to establishing a wildlife crime prosecution unit or at least to dedicating specialist prosecutors to this task. Further training, knowledge-sharing and resources should be made available to support this.
4. Consideration should also be given to expanding the scope of the current Environmental Tribunal to that of a court capable of hearing wildlife and environmental crime cases. If this is not possible, the feasibility of referring cases to a limited number of existing courts (in order to build up judicial expertise) should be explored.
5. All police forces should be made aware that wildlife trade offences under COTES and CEMA are notifiable in order to increase their perceived seriousness as well as to improve data collection.

## **Conclusion**

Illegal wildlife trade can be a serious crime and is currently receiving much public interest. The profits that can be made from such offences are high and the risks of detection and successful prosecution are low. Those offenders who are convicted tend to receive lenient sentences that are not commensurate with these profits or the significant impacts such crimes can have.

Despite concerns over the effectiveness of deterrent sentencing, this is the most appropriate aim for those who continue to offend. This requires harsher, more appropriate sentencing in order to send a message to offenders and the general public that illegal wildlife trading is morally unacceptable, is a serious crime and that it does not pay. There is also room for reparative sentencing that requires offenders to engage (financially or practically) with conservation efforts.

In order to improve current sentencing for wildlife trade offences, there need to be more dedicated resources, the development of specialism and expertise amongst prosecutors (and possibly the judiciary) and the provision of accessible information that supports sentencing decision-making. It is recommended that sentencing could be significantly improved through the provision of sentencing guidelines, from which many other (similar) offences already benefit.

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## APPENDICES

### Appendix A: Invitation to participate

Melanie Wellsmith

Department of Behavioural and Social Sciences  
University of Huddersfield  
Queensgate  
Huddersfield  
HD1 3DH

[m.wellsmith@hud.ac.uk](mailto:m.wellsmith@hud.ac.uk)

01484 473068

18<sup>th</sup> August 2014

Dear

#### **Re: WWF-UK commissioned research A Review of Sentencing Powers for the Trade in Illegal Wildlife Crime**

I have recently been commissioned to carry out research into prosecution and sentencing of wildlife crimes, particularly those involving illegal trade offences. The research aims to determine the current state of CPS knowledge and expertise with regards to prosecuting illegal wildlife trade and the state of sentencing in England & Wales for such offences, including the severity of penalties imposed, the consistency of penalties imposed and whether penalties are commensurate with the harm caused and/or the rewards gained through such offending. The project also seeks to develop, with relevant experts, a draft set of sentencing guidelines for trade in illegal wildlife offences.

Part of this research aims to carry out telephone interviews with CPS Prosecutors, in order to establish the state of knowledge and expertise in prosecuting offences of illegal wildlife trade, and to gather data about their experiences of seeing cases through the courts. It also seeks information on specific case examples and Prosecutors' opinions on sentencing for this type of offence.

In order to gain valid data, I am seeking to carry out interviews with prosecutors across all 13 areas (regions) of the CPS. The research has been approved by my School Research Ethics Panel and I have been granted permission to approach you by the CPS Strategy, Research and Governance Unit.

Interviews will, as stated, take place over the phone at a mutually convenient time (though face-to-face interviews may be possible, subject to resources, if this is

preferred). They are likely to take approximately 45 minutes, though this may be longer or shorter depending upon the amount of experience you have in this field.

I appreciate that you are very busy and that such cases may be relatively rare, but the research is extremely dependent upon gaining access to such expertise and experience and so I hope you will agree to participate in the research. An information sheet is attached for your reference, explaining the process and ethical compliance of this project. Unfortunately, we are also working to a very tight timescale and need to carry the interviews out in the next three to four weeks, therefore a prompt response would be very much appreciated.

To find out more about the project, or to agree or decline to take part, please contact me directly as above. If I do not hear from you within a week of sending this letter, I will contact you to follow up and answer any questions you may have.

My contact at WWF-UK, should you wish to discuss the project with them is Sarah Goddard, Species Policy Officer who can be contacted on [sgoddard@wwf.org.uk](mailto:sgoddard@wwf.org.uk) or 01483 412524.

Thanking you in anticipation

Melanie Wellsmith LLB (Hons) PG Cert PG Dip (HE) MSc FHEA  
Senior Lecturer and Course Leader BSc (Hons) Criminology  
Deputy Director Crime and Policing Research Group

## **Appendix B: Information Sheet**

### **REVIEW OF UK SENTENCING POWERS FOR THE TRADE IN ILLEGAL WILDLIFE CRIME**

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#### **INFORMATION SHEET**

You are being invited to take part in this study: A Review of UK Sentencing Powers for the Trade in Illegal Wildlife Crime. The study is made up of a number of parts, including an assessment of the experiences and state of knowledge of Crown Prosecutors in dealing with cases of illegal trade in wildlife. Before you decide to take part it is important that you understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with me if you wish. Please do not hesitate to ask if there is anything that is not clear or if you would like more information.

#### **What is the study about?**

The purpose of the wider study is to ascertain the state of sentencing for the trade in illegal wildlife crime and to draft a sentencing guidelines template. The study has been commissioned by WWF-UK. The purpose of the part of the study which you have been invited to participate in is to assess the current state of knowledge and expertise, as well as to gather information about the experiences and case examples, of Crown Prosecutors in relation to this type of offence.

#### **Why I have been approached?**

You have been asked to participate because you work for the Crown Prosecution Service and have experience in prosecuting, or advising on the investigation and/or prosecution of, this type of offence. Prosecutors have been approached across all geographical areas of the CPS.

#### **Do I have to take part?**

It is your decision whether or not you take part. If you decide to take part you will be asked to sign a consent form, and you will be free to withdraw your raw data (interview transcripts) at any time and without giving a reason. A decision to withdraw at any time, or a decision not to take part, will not affect you and your anonymity in choosing not to take part will be protected.

#### **What will I need to do?**

If you agree to take part in the research you will be contacted by one of the researchers on the project (by email or telephone) to arrange a mutually convenient time to engage in a telephone interview. Once arranged, one of the researchers will call you at the

appointed time and interview you. The interview will likely take around 45 minutes and it will be recorded. If you would prefer a face-to-face interview, this may be possible to arrange instead. Prior to the interview, you will be sent a consent form to sign (or confirm consent by email). You will again be asked to consent at the beginning of the interview. At the end of the interview you will be given the opportunity to add anything else you wish to, to have anything you have said struck from the record and you will be given contact details should you wish to add anything further, clarify anything or have all (or part) of your data removed from the study (these details are also recorded below). You may also be asked if you would be interested in participating in a follow-up, face-to-face interview with the Principle Investigator.

### **Will my identity be disclosed?**

All information disclosed within the interview will be kept confidential, except where legal obligations would necessitate disclosure by the researchers to appropriate personnel.

### **What will happen to the information?**

All information collected from you during this research will be kept secure and any identifying material, such as names will be removed in order to ensure anonymity. The research will result in a number of outputs (publications, presentations) by the researchers and by WWF-UK. It is also anticipated that the research may, at some point, be published in academic journals/books. However, should this happen, your anonymity will be ensured, although it may be necessary to use your words in the presentation of the findings and your permission for this is included in the consent form.

### **Who can I contact for further information?**

If you require any further information about the research, please contact me on:

Name: Melanie Wellsmith (Principle Investigator)

E-mail: [m.wellsmith@hud.ac.uk](mailto:m.wellsmith@hud.ac.uk)

Telephone: 01484 473068

## Appendix C: Consent form



### CONSENT FORM

#### **Title of Research Project: REVIEW OF UK SENTENCING POWERS FOR THE TRADE IN ILLEGAL WILDLIFE CRIME**

It is important that you read, understand and sign the consent form. Your contribution to this research is entirely voluntary and you are not obliged in any way to participate, if you require any further details please contact your researcher.

- I have been fully informed of the nature and aims of this research
- I consent to taking part in it
- I understand that I have the right to withdraw from the research at any time   
without giving any reason, until the submission of reports to the funding provider.
- I may ask for any raw data collected from me to be deleted after this time, but not  
analysis already completed using my data (including quoted material)
- I give permission for my words to be quoted (by use of pseudonym)
- I understand that the information collected will be kept in secure conditions   
for a period of up to five years at the University of Huddersfield
- I understand that no person other than the researcher/s and facilitator/s will   
have access to the raw data (interview transcripts) provided.
- I understand that my identity will be protected by the use of pseudonym in the



report and that no written information that could lead to my being identified will be included in any report; except reference to the organisation I work for.

If you are satisfied that you understand the information and are happy to take part in this project please put a tick in the box aligned to each sentence and print and sign below or return with confirmation of your consent by email.

Signature of Participant: _____ Print: _____ Date: _____	Signature of Researcher: _____ Print: _____ Date: _____
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(one copy to be retained by Participant / one copy to be retained by Researcher)

## Appendix D: Structured interview schedule

### Interview Schedule: Structured telephone interview with CPS

#### REVIEW OF UK SENTENCING POWERS FOR THE TRADE IN ILLEGAL WILDLIFE CRIME

[Researcher introduces him/herself]

[Confirm identity of respondent]

<Start recording>

[Confirm consent to participate]

[Confirm consent to record]

Interviewer: What is your current role within the CPS?

Respondent:

I: How long have you been in this role?

R:

I: Have you held any other roles in the CPS or relating to prosecution of offences?

<Prompt: what are these? How long?>

R:

I: Have you got experience *in your current role* of prosecuting and/or advising on the investigation or prosecution of offences related to wildlife crime?

<Clarify wildlife crime if required>

<Clarify if experience of prosecuting and/or advising on prosecution and/or advising on investigating>

<If not in current role, ascertain if have experience in previous roles>

R:

I: This research project is particularly focused on offences relating to the illegal trade in wildlife. Do you have specific experience relating to such offences?

<Clarify illegal wildlife trade offences if required>

R:

I: Have you been directly involved in prosecuting an offence/offences relating to illegal trade in wildlife?

<Prompt: If so ask them to briefly tell you about the case/cases, including the offences

involved, the verdict and, where appropriate, the sentence – as best as they can remember>

R:

I: [If not involved in directly prosecuting] Have you worked on cases involving such offences? Or are aware of cases that others have worked on?

<Prompt: If so ask them to briefly tell you about the case/cases, as above>

R:

I: [If not involved in either of the above] Do you have experience of other types of cases involving wildlife crime?

<Prompt: If so ask them to briefly summarise what types of cases>

R:

I: [If none of the above] Do you have responsibility, or are you likely to have responsibility, for prosecuting offences of illegal trade in wildlife if they happened in the area you cover?

R:

[This establishes their baseline experience in this field. In the unlikely event they are not aware of any cases involving any wildlife crimes and/or would not be involved in prosecuting such offences please move to section 'no wildlife crime' below ]

*I: I would now like to move on to discuss prosecution and sentencing of this type of case, and your experiences, in a bit more detail. When answering the following questions, please give as much detail as you can remember and feel free refer to as many examples as you wish – be they your own cases, cases of others you are aware of or illustrative examples.*

I: What specific offences are you aware of relating to illegal wildlife trade?

<Prompt: have they prosecuted any of these, if not already said>

<Prompt: do they know what specific legislation covers such offences?>

R:

*I: I am now going to ask you about cases prior to prosecution.*

I: Do you think there are any issues particular to this type of crime when applying the evidential test?

<Prompt: to discuss in more detail, to give examples>

R:

I: Do you think there are any issues particular to this type of crime when applying the public interest test?

<Prompt: to discuss in more detail, to give examples>

R:

I: In your experience [or in theory] what *types* of evidence are/might be gathered in this type of case?

R:

I: In your opinion (and reflecting on your own experiences where relevant), what issues do you think might be faced when investigating and constructing a case related to this type of offence?

<Prompt: for further details as necessary>

R:

*I: I am now going to ask you about prosecuting such offences and sentencing*

I: In your opinion (and reflecting on your own experiences where relevant), what issues do you think might be faced when bringing a case related to this type of offence to Court?

<Prompt: E.g. issues of knowledge and understanding, nature of evidence, attitudes of judiciary, etc.>

R:

I: Are expert witnesses likely to be used by the prosecution? By the defence?

R:

I: [If yes] How might they be used/what might they be used for?

R:

I: Are there any problems or difficulties when using expert witnesses?

R:

I: In your experience, are cases based on such offences likely to result in a guilty verdict?

R:

I: What types and lengths of sentence are available for this type of offence?

<Prompt: If necessary with specific offence types and/or specific sentences>

<Prompt: If necessary with discussion of what the maximum sentences available are>

R:

I: In your experience, what types and length of sentence are actually passed for such offences?

<Prompt: If necessary to reflect on these with respect to (max) sentences available>

R:

I: Offences under COTES (Control of Trade in Endangered Species Regulations) and CEMA (Customs and Exercise Management Act) are triable either way. Are cases usually tried in the Magistrates' Court? Why do you think this is?

R:

I: Do you think more cases ought to be sent for trial or sentencing in the Crown Court? Why?

R:

I: Considering the sentencing process, what things do you think the judiciary ought to take into account when deciding on sentencing (type and length)?

<Prompt: E.g. nature of harm, severity of harm to species or individual animal, financial gain>

R:

I: What, if any, mitigating factors tend to be presented/considered?

R:

I: Do you think these are appropriate? If not, what do you think should be considered in mitigation?

R:

I: What, if any, aggravating factors tend to be presented/considered?

R:

I: Do you think these are appropriate? If not, what do you think should be considered as aggravation?

R:

I: Do you think the sentencing powers/options for this type of offence (as they currently stand) are *sufficient*?

R:

I: Do you think the sentencing powers/options for this type of offence (as they currently stand) are *used appropriately*?

R:

I: How do you think sentencing for this type of offence could be improved?

R:

I: Thinking back to the things we have just discussed, and your own experiences, what particular problems do you think are faced by the CPS in relation to offences of illegal trade in wildlife:

- (a) Practically?
- (b) With respect to police/enforcement bodies?
- (c) With respect to the defendants themselves?
- (d) With respect to the judiciary?

R (a):

R (b):

R (c):

R (d):

I: Do you think the often international/cross-border nature of such offences creates further, particular difficulties?

<Prompt: To expand>

R:

*I am now going to ask you some questions about attitudes towards illegal trade in wildlife offences, though please provide examples from your own experiences in answering if you wish to do so*

I: Do you perceive illegal trade in wildlife to be a 'serious' crime?

<Prompt: Clarify if they think the same/differently for international and domestic offences>

R:

I: Do you think others perceive it to be a 'serious' crime?

- (a) Other prosecutors
- (b) Judiciary
- (c) Police and other enforcement bodies
- (d) The public

R (a):

R (b):

R (c):

R (d):

I: What purpose/s do you think sentencing has, generally

<Prompt: Ensure they are clear that you mean for all types of offence, not just wildlife crime>

R:

I: Do you think this purpose/these purposes also apply to offences of illegal trade in wildlife?

<Prompt: If so, why? More importantly, if not why?>

R:

I: Do you think current sentencing of illegal wildlife trade offenders is effective?

<Prompt: Is it reductive – does it deter, does it incapacitate, does it compensate/restore?>

R:

I: Do you think wildlife crime, particularly the illegal trade in wildlife, is viewed differently to other more types of crime?

<Prompt: if yes, why do they perceive that people view it differently and why do they think people view it differently?>

<Prompt: if necessary with respect to (a) other prosecutors; (b) judiciary; (c) police and other enforcement bodies; (d) the public>

R:

I: *Should* wildlife crime, particularly illegal trade offences, be viewed differently [to other types of crime]? Should it be sentenced differently?

R:

I: Do you think people who commit wildlife crime offences, particularly involving illegal trade, also commit other types of crime?

R:

I: Do you think those involved in the illegal trade in wildlife are connected to organised crime?

<Prompt: Clarify who and what type of offences might be connected to organised crime and what types of organised crime groups/offending, e.g. drug smuggling>

R:

I: *I would now like to ask you some final questions to pull all these issues together and reflect upon your experiences and what we have discussed.*

I: Do you feel there are any particular issues or difficulties with (investigating and) prosecuting offences of illegal wildlife trade [that you have not already raised]?

R:

I: Do you feel, as a prosecutor, that you know enough about:

(a) This type of offence?

(b) Technicalities and scientific issues (e.g. methods of identification of species, sources, etc.)

(c) Where to access information, support and (if appropriate) expert advice/testimony

(d) The impact/harm caused by such offences?

(e) How to assess the impact/harm caused by such offences?

(f) Relevant aggravating and mitigating factors?

<Prompt: Why do they think this? If they do know enough, how have they gained this knowledge? If they do not, do they think it happens their ability to bring a successful prosecution and secure an appropriate sentence?>

R (a):

R (b):

R (c):

R (d):

R (e):

R (f):

I: What things could be done to help (increase) successful prosecutions of such offences?

R:

I: And what things could be done to seek to ensure appropriate sentences are passed?

R:

I: Thank you very much for your time. Is there anything else you would like to add about any of the issues we have talked about today?

R:

I: Thanks. The principle investigator is speaking to a number of experts to gather information regarding the sentencing of offenders involved in the illegal wildlife trade



and may wish to contact you to clarify some of the issues you have raised or to request a further follow-up interview to discuss some of these in more detail. This would likely be face-to-face, but could be over the phone if that was more convenient. Would you be willing for her to contact you (you can always change your mind about being further involved if you wish)?

R:

I: Thank you once again. Please remember if you wish to withdraw your data from the study, there are instructions about doing so on the information and consent sheets, including the contact details of the principle investigator. I will just give you these again now: Melanie Wellsmith, email [m.wellsmith@hud.ac.uk](mailto:m.wellsmith@hud.ac.uk) or telephone 01484 473068

<End recording>

<Interview ends>

\*\*\*\*\*

#### NO WILDLIFE CRIME

[If the respondent has no experience of wildlife crime offences and/or would not be involved in prosecuting such offences, continue from here]

I: Can you recommend anyone else in the CPS, in the area you work, that might have some experience of this type of offence and be willing to be interviewed?

<If yes, get details>

I: [However answers] We would still value your opinion on the more general questions we have on prosecuting and sentencing illegal wildlife trade offences. Would you like to continue with the interview? If there is anything you think you cannot answer, please just let me know.

[If yes, continue with standard schedule, adapting language if necessary to their lack of experience. If they are struggling to answer the questions, revert to the following]

I: Do you think there are particular problems that might be faced when prosecuting offences of illegal trade in wildlife?

I: Do you think that appropriate sentences are likely to be passed?

<Prompt: How are they interpreting appropriate?>

I: Do you feel you know enough about such offences that if you were given a case to prosecute, you would be able to do so? Or know who to speak to for advice and support?

<Prompt: Why? Who?>

I: Is there anything else about this type of offence, its investigation, prosecution and sentencing that you would like to raise?

<Prompt: as appropriate>

## Appendix E: Workshop Invite Letter



**WWF-UK**

*Registered office*

The Living Planet Centre  
Rufford House, Brewery Road  
Woking, Surrey GU21 4LL

Tel: +44 (0)1483 426444

Invitee details

**Expert workshop on sentencing for illegal wildlife trade offences.**

Date

Wednesday 26<sup>th</sup> November 2014, Westminster  
9.15am-12.30pm

Dear

You are cordially invited to attend and contribute to an experts' workshop to discuss the state of sentencing for illegal wildlife trade offences and the consideration of sentencing guidelines. This experts' workshop is part of a wider research project, commissioned by the WWF-UK and delivered by the University of Huddersfield, on sentencing of illegal wildlife trade offences in England and Wales. The project seeks to determine the current state of sentencing for such offences, to ascertain CPS prosecutors' (and other practitioners') experience and expertise in relation to such offences and the appropriateness of current sentencing practice in relation to illegal wildlife trade. We consider your participation at this event will be invaluable and very much hope you can attend.

Through this workshop session we aim to critically consider the role of sentencing guidelines and to develop a proposed sentencing guidelines template to assist in more appropriate, commensurate and consistent sentencing for such offences. We aim to keep you informed and engaged in the findings and next steps. Therefore you will also be invited to comment on the draft proposal for sentencing guidelines, circulated electronically after the workshop.

Please RSVP by 12<sup>th</sup> November to: [sgoddard@wwf.org.uk](mailto:sgoddard@wwf.org.uk)

Yours sincerely

S. Goddard

Sarah Goddard

Species Policy Officer, WWF-UK

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**Agenda** (held under Chatham House rule)

- 09:15-09:30 Arrival and coffee
- 09:30-10:00 Welcome and scene setting (Sarah Goddard, Species Policy Officer, WWF) Illegal Wildlife Trade Sentencing Project and aims of the session (Melanie Flynn, Senior lecturer, Criminology, University of Huddersfield)
- 10:00-10:15 Presentation: The CPS action plan ( Sue Hemming, Head of Special Crime and Counter Terrorism Division, Crown Prosecution Service)
- 10:15-10:45 Open floor discussion
- 10:45-11:00 Coffee
- 11:00-11:45 Breakout session (1)
- 11:45-12:15 Breakout session (2)
- 12:15-12:30 Closing summary and comments

### Location

The Princess Victoria Room, Mary Sumner House

24 Tufton Street, Westminster, London, SW1P 3RB

For further location information see: <http://muenterprises.org/conference/location/>

