

# **Policing Wildlife:**

**Perspectives on Criminality and Criminal Justice Policy in Wildlife Crime in  
the UK.**

**By**

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<b>Contents</b>	<b>Page</b>	
<b>Abstract</b>	4	
<b>Chapter One</b>	<b>Introduction</b>	<b>5</b>
	Assessing the Policy Perspectives The Importance of studying wildlife crime The Research Aims and Objectives	
<b>Chapter Two</b>	<b>What is Wildlife Crime?</b>	<b>19</b>
	Defining Wildlife Crime Laws Protecting Wildlife in the UK Wildlife offences in the UK The Extent of Wildlife Crime in the UK	
<b>Chapter Three</b>	<b>Criminal Justice Theory and Practice</b>	<b>54</b>
	Definitions of Crime The Causes of Crime Policy Approaches to Crime	
<b>Chapter Four</b>	<b>Issues in Policing Wildlife Crime</b>	<b>84</b>
	Perspectives on 'Green' NGOs & Environmental Justice Policy Networks The Development of Wildlife Crime Policy and Wildlife Policing	
<b>Chapter Five</b>	<b>The Research Methodology</b>	<b>111</b>
	The Research Design Confidentiality and Ethical Issues Interview Selection	
<b>Chapter Six</b>	<b>Research Findings: NGO Policies</b>	<b>130</b>
	NGO Policies on Wildlife Crime	
<b>Chapter Seven</b>	<b>Research Findings: Interviews</b>	<b>147</b>
	Analysis of Interview Data Summary of Research Data	

<b>Contents</b>		<b>Page</b>
<b>Chapter Eight</b>	<b>Case Studies</b> Bird of Prey Persecution Badger Persecution	172
<b>Chapter Nine</b>	<b>Offender Models</b> Perspectives on Criminality in Wildlife Crime Developing Offender Models Summary	190
<b>Chapter Ten</b>	<b>Conclusions and Recommendations</b> Analysis of the Research Data Conclusions Further Research	232
<b>Bibliography</b>		254
<b>APPENDIX 1</b>	<b>THE EXTENT OF WILDLIFE CRIME FOR THE YEARS 2000 – 2004</b>	272
<b>APPENDIX 2</b>	<b>Proposals for Legislative Change</b>	276
<b>APPENDIX 3</b>	<b>Conference Report</b> The Relationship between Animal Abuse and Human Violence	280
<b>APPENDIX 4</b>	<b>List of UK Wildlife Legislation</b>	287
<b>APPENDIX 5</b>	<b>Glossary</b>	293

## Abstract

This research considers the enforcement of wildlife legislation in the UK. It examines the extent of wildlife crime, the role of Non Governmental Organisations (NGOs) in helping to shape the public policy and police response to wildlife crime and the current position of UK wildlife legislation. A variety of animal and wildlife protection legislation is on the statute books but crimes such as egg collecting, bird of prey persecution, the illegal trade in wildlife and the illegal killing and trapping of animals such as badgers for sport continue.

NGOs through their campaign and policy documents argue that the enforcement regime should be strengthened and tougher sentences handed out to wildlife offenders. The research assesses these policy perspectives and the rationale behind them to determine how effective existing policies on wildlife crime are, given what is known about crime, punishment and justice in mainstream criminology.

The research questions are addressed through document research and semi-structured interviews. Use is made of published figures and policy perspectives on wildlife crime as well as previous research on wildlife and environmental law enforcement. However, previous research considers either problems affecting individual species (e.g. badgers, or birds) or specific types of offence such as the illegal trade in wildlife or bird of prey persecution. This research considers UK wildlife in its entirety across all different types of offence.

The research concludes that while the perception might be that wildlife laws are inadequate and a more punitive regime is required, it is in the enforcement of the legislation that problems occur rather than in any inherent weakness in the legislative regime. The research concludes that changes to legislation and a more punitive regime are unlikely to have a substantial effect on wildlife crime levels unless attention is also paid problems with the existing enforcement regime. The research makes recommendations for future criminal justice policy on wildlife crime.

## Chapter One - Introduction

This research analyses different perceptions and perspectives on wildlife crime in the UK. It analyses public policy responses to wildlife and conservation criminal justice in light of general theories and experience of crime and punishment. It considers as its primary focus: whether current policy approaches on wildlife crime are likely to be effective in achieving their aim of reducing wildlife crime in the UK.

Therefore, the research will evaluate current wildlife legislation and its enforcement in the context of attempts to reduce the incidence of wildlife crime in the UK. The research proposes the theory that wildlife and conservation crime is not considered within the sphere of mainstream criminal justice. The effect of this is that policies developed to address problems of wildlife crime may not be effective. The research will investigate whether (and the degree to which) wildlife policies are formed within an institutional and ideational isolation which fails to address the gap between what is legislated and what is implemented in terms of the enforcement of wildlife crime. The research will also consider whether the preventative response sometimes favoured by Government in mainstream criminal justice and alternatives to the use of prison sometimes (and currently) pursued in mainstream criminal justice policies are considered in the development of policies on wildlife and conservation crime. This research will consider if the focus of wildlife law enforcement is on apprehension and punishment of offenders with little attention being paid to prevention of wildlife crimes as a means of diverting potential offenders away from wildlife crime or for the rehabilitation of those offenders who are apprehended.

A central issue of this research is the nature of offending in wildlife crime and the extent to which it can be established that there are different types of wildlife offender rather than one type of offender operating across different offence types. It will also consider the manner in which policy treats wildlife offenders and whether wildlife crime policies treat all offenders as if they had the same motivations or recognise any differences between offenders. This research will investigate the extent to which the approach to offenders and focus on a particular model of

dealing with wildlife crime reduces the effectiveness of such policies in combating this specific area of crime.

This research will also consider whether Non Governmental Organisations (NGOs) which promote policies on wildlife and conservation crime also ignore fundamental issues of criminal justice, as well as current issues in criminology. For example, some wildlife NGOs have called for stiffer sentences for wildlife offenders and a move to a more punitive regime. If, however, their intention is to prevent wildlife crimes from being committed in the future, their policies should consider to what, if any extent, custodial sentences (such as prison) actually work in preventing repeat offending. The evidence from mainstream criminology does not support the view that 'prison works' and alternatives to prison (e.g. electronic tagging, community sentences and restorative justice) have been considered in relation to other forms of crime. Wildlife crime policies should also be considered in the context of existing criminal justice policy and should consider whether the policies currently being promoted by Government represent a move towards a more punitive or a more rehabilitative regime. For example current (Spring 2008) policies suggest a move towards a decreased use of prison for all but the most serious offences, due to the lack of available prison places and the increased use of alternative dispute resolution (ADR) and restorative justice for administrative offences and civil disputes. In January 2007 the (then) Home Secretary John Reid, Lord Chancellor Lord Falconer and Attorney General Lord Goldsmith asked judges to consider alternatives to prison (the Howard League, 2007). In March 2008 Justice Secretary Jack Straw addressed overcrowding in prisons by urging judges to hand out fewer short sentences because they clogged up the system (BBC News, 2008). In addition, The *Regulatory Enforcement and Sanctions Bill* (currently progressing through Parliament) proposes a range of regulatory sanctions such as fixed penalty notices and restorative notices as a means of reducing the number of cases which proceed to court action. Some wildlife offences (including offences under the *Wildlife and Countryside Act 1981* and *Protection of Badgers Act 1992*) are covered by the legislation. This research will therefore consider wildlife crime policies within this policy climate which suggests a reduction in the use of prison and a move away from a more punitive regime towards increased use of alternatives to prison for all but the most serious of offences.

## Assessing the Policy Perspectives

This research focuses on wildlife crime in the UK. The historical background to which, is one of wildlife crime being a fringe area of policing whose public policy response was driven almost entirely by NGOs. From the outset a distinction should be made between crimes involving wildlife and impacting on animals in the wild and animal welfare and cruelty offences that mainly involve domesticated or farmed animals. Wildlife crimes should also be distinguished from poaching offences involving species of game birds or animals specially bred for game shooting. The focus of the crimes in this research and the NGOs involved are those concerning wild animals, a distinct type of crime which differs considerably from abuse of domestic or farmed animals (where ownership of the animals is often a significant factor in a way that it is not with wildlife), is subject to different legislation (although the legislation sometimes overlaps) and which often involves different types of offender. Definitions clarifying the crimes involved in this research are outlined in Chapter Two.

NGOs are especially important in the shaping of this area of public policy because the NGOs that have accepted (moral) responsibility for dealing with wildlife crime operate mainly from an environmental or animal welfare standpoint rather than a criminal justice or policing one. While this does not in any way impugn their effectiveness as campaigners or policy professionals it does raise questions about the integration of wildlife crime policy with mainstream criminal justice policy. Wildlife crime is an area in which NGOs, mostly from the voluntary sector, play a significant role in the enforcement of legislation and the development of policy. NGOs act as policy advisors, researchers, field investigators, expert witnesses at court, scientific advisors, casework managers, and, in the case of a small number of organisations, prosecutors. Acting together, NGOs also contribute greatly to the public debate on wildlife crime, generating considerable publicity for the issue and co-ordinating (and undertaking or funding) much of the research. They can also develop public support for a range of policies and in the past have taken a lead on the enforcement of legislation (a role that some NGOs retain). For these reasons, the research focuses on an analysis of the policies of those voluntary sector organisations involved in wildlife crime, and the public policies that they advocate.

The importance of the NGO role is endorsed by the fact that policy in wildlife crime is the responsibility of the UK Government's Department for Environment, Food and Rural Affairs (DEFRA) rather than the Home Office who, otherwise, have responsibility for crime and criminal justice policy or the Ministry of Justice who have responsibility for prisons and sentencing policy. DEFRA's remit is farming, the environment and the rural economy rather than crime and policing yet they are the designated government department dealing with this area of crime as an environmental issue rather than it being a criminal justice one integrated into the work of the justice departments.

In summary, this research evaluates the effectiveness of existing policies and how the enforcement of wildlife legislation could be improved. The research asks the questions:

- what are the policies of particular wildlife organisations & policy makers as regards the apprehension and punishment of wildlife offenders?
- what is the underlying thinking that informs the development of these policies?
- how effective are existing policies on wildlife crime, given what is known about crime, punishment and justice in mainstream criminology?

The research also makes recommendations for future criminal justice policy on wildlife and conservation crime.

### **The Importance of Studying Wildlife Crime**

The question of the importance of studying wildlife crime is not indicated merely by detailing the number of incidents and the number of birds, animals or mammals killed in each year. This is because, although when compared with other areas of criminal activity, the actual number of incidents of wildlife crime taking place each year appears to be relatively small, wildlife crime provides a case study of policing, criminal behaviour, NGO activity and environmental law enforcement. As a distinct area of 'green' criminology wildlife crime is an area of great significance in studying crime and criminal activity for a variety of reasons:

- While the number of incidents might be relatively small, the potential impact on certain species, in terms of number of birds and animals killed and the effect on the spread of populations is considerable.
- It is an area of criminal justice where NGOs exert considerable influence on policy and also carry out operational law enforcement activities. The statutory authorities continue to rely on the support of voluntary organisations and so wildlife crime offers an opportunity to study the co-dependence between NGOs and statutory agencies in protecting wildlife.
- There is evidence that organised crime has begun to recognise that wildlife crime is a ‘soft option’ where its traditional operations and transit routes can be utilised with a lesser risk of enforcement activity (see Lowther, Cook and Roberts 2002).
- It provides an opportunity to study a distinct area of criminal behaviour and what the abuse of animals in the wild and the exploitation of wildlife might tell us about offenders.
- It provides an almost unique opportunity to study a fringe/voluntary area of policing.
- It provides an opportunity to study the application of environmentalism, animal rights, green criminology and perspectives on environmental justice to a specific area of crime.
- It is an emerging and expanding area of law with links to both criminal and international law.

In all of the above areas, wildlife crime is an important area of study and each area is discussed in more detail below.

While the number of incidents of wildlife crime in the UK is relatively small when compared to other areas of crime it is of importance to consider the effect that

illegal activities can have on the populations of some of the UK's rarest and most threatened birds, mammals and animals. One wildlife crime incident could, for example, involve a number of different birds or animals. For one bird, the red-backed shrike, the Royal Society for the Protection of Birds (RSPB) has said that egg collecting (discussed later in this thesis) was partly responsible for the species becoming extinct as a breeding bird in the UK. In the past, illegal persecution of birds of prey through poisoning and other means has helped other species to become extinct. The red kite, for example, a native species in England has been the subject of a reintroduction programme following its extinction as a breeding bird through persecution, but the reintroduced birds continue to suffer from illegal persecution. The RSPB considers that illegal persecution continues to affect the populations of wild birds of prey although it is difficult to produce conclusive trends.

The Society states that:

“Whatever the true pattern the proven levels of continuing persecution are still very much a cause for concern and in respect of species such as red kite and hen harrier the situation remains critical to the extent that these species are actually endangered. Persecution also has detrimental effects on species such as golden eagle which is missing or occurs in reduced densities in some eastern parts of its range in Scotland.”

(RSPB 1998:11)

Published studies (Bibby & Etheridge 1993, Etheridge, Summers & Green 1997 and Sim, Gibbons, Bainbridge and Mattingley 2001) have also indicated that the hen harrier, a bird which is heavily persecuted on grouse moors, is absent as a breeding species from areas of suitable habitat as a result of persecution and the range of the buzzard in Scotland has also been restricted. Wildlife crime can, therefore, have a significant effect on populations of wildlife limiting the range of species to areas where persecution does not exist and reducing the population of species in areas where it should be healthy.

Wildlife crime is also an interesting study of criminal behaviour itself. There are a variety of different types of offence within the broad area of wildlife crime and not

all offenders are motivated by money or even gain from their criminal activity. Yet there has been little research into the behaviour of wildlife offenders or evaluation of the different policies needed to address the different types of wildlife crime. Instead, wildlife offenders are often treated as a homogenous group and policies aimed at dealing with wildlife crime do not appear to differentiate between the different types of offence and offender.

While some offenders may be motivated by economic concerns, either in the form of direct personal financial gain or the protection of commercial interests, there may also be some offenders for whom the motivation is either a desire for power or control over a bird or animal, or a need to fulfil some behavioural trait in themselves. As in mainstream criminal justice some wildlife offenders justify their activities by stating that wildlife crime is a victimless crime and that their activities should not really be considered to be criminal activities. In this way, wildlife crime can be compared to the controversy over some other forms of deviance or criminality such as illicit drugs consumption or sex crime. The comparison is further advanced by the fact that, in some aspects of wildlife crime, offenders are otherwise law-abiding individuals, whose criminal behaviour in respect of wildlife crime is an aberration in an otherwise law-abiding lifestyle. Of course, this does not hold true for all wildlife offenders and there are, inevitably, those for whom wildlife crime is just another form of criminal activity. This research examines the motivations and behaviours of wildlife offenders using information provided by NGOs on the actions of wildlife offenders and the existing literature on the behaviour of offenders to produce new models of the distinct categories of offender to be used as a tool in future law enforcement or policy development.

NGOs are not usually involved in practical law enforcement, but in wildlife crime, there are NGOs that both assist the police and prosecutors and NGOs that actively detect and investigate crime. It is also an area where NGOs have traditionally collated information on the amount of crime that exists while the statutory enforcement authorities (police, Customs etc.) have only recorded crime data on an ad-hoc basis. One consequence of this is that NGOs have, traditionally, been in a better position than the statutory authorities to say how much wildlife crime

exists, and what the key problems are. This has given the NGOs a position of considerable influence in directing the law enforcement agenda to areas where they have a specific interest and where they have acquired considerable expertise. In effect, wildlife crime allows for the study of 'private policing' in an area of criminal justice policy where a considerable amount of law enforcement activity is still carried out on a voluntary basis by private bodies such as the RSPCAs uniformed Inspectorate (in respect of animal welfare crimes) or the RSPB's Investigations Section which takes the lead on the investigation of some cases before they are taken over by the Crown Prosecution Service (CPS). Whereas in some areas, such as street crime, police functions are being privatised with the introduction of private security patrols, community support officers and street wardens, wildlife crime is an area where the policing function has traditionally been carried out by NGOs and it is only recently that the police have become active in operational wildlife law enforcement and are under pressure from NGOs to become more involved.

Wildlife crime is also of interest as a study of a fringe area of policing. As this research will show, wildlife law enforcement in the UK is still carried out on a largely voluntary basis with the police and prosecutors relying heavily on the work of NGOs and volunteers to detect and prosecute wildlife crime. It is also true that many of those police officers who are involved in dealing with wildlife crime do so, on a voluntary basis. Despite the publicity that cases often attract it is not a mainstream policing priority and so also offers a useful study of police classification of and attitudes towards crime, as the resources devoted to wildlife crime and the importance attached to it varies from (police) area to area. Yet some aspects of wildlife crime can be compared to white collar crime which Percy (2002) describes as "the corrupt practices of individuals in powerful positions". In particular, those offences relating to the game rearing industry (where protected wildlife is killed illegally to ensure economic benefit for the commercial operation sometimes alongside legitimate predator control) demonstrate the institutional motivation for committing offences together with the expertise that offenders may have compared to the relative lack of expertise that the police and other enforcers may have. Very little co-ordinated police effort is directed at the fight against white-collar crime, instead it is directed by organisations like the Serious Fraud

Office (SFO) or, for environmental crimes, the Environment Agency in the UK and the United States Environmental Protection Agency. Both organisations can only act as an industry watchdogs and take action after environmental abuse is discovered rather than having a positive crime prevention and law enforcement role.

Wildlife crime also provides an opportunity to consider the differences between rural crimes and urban concerns about criminal justice. It is of interest as an aspect of 'green criminology' that is often ignored and provides an opportunity to study the application of environmentalism, animal rights and perspectives on environmental justice to a specific area of crime. Various arguments are raised in environmentalism concerning why animals should be protected and why environmental offenders should be punished. Beyond the simple moral wrong of causing harm to animals and the need to safeguard nature for future generations, environmentalists and conservationists consider that the environment should be valued in economic terms and that man's impact on the environment and wildlife should be limited. There are also species protection concerns relating to the extinction of various species as a result of human interference and the need to conserve animals that will otherwise be driven to extinction. Arguments raised in defence of animals concern the moral wrong of inflicting harm on other sentient beings (Bentham 1789, Singer 1975, Regan 1983), the need for legal rights for animals (Regan 1983 and 2001, Wise 2000) and for increased standards of animal welfare. But the focus of green criminology is often issues relating to the environment and social harm and issues of environmental injustice and ecological injustice.

There have been debates in theology, criminology and the study of animal law concerning the rights of animals and the moral wrong of inflicting harm on other sentient beings, the relationship between man and non-human animals and the need for legal rights for animals and issues of animal abuse and the need for increased standards of animal welfare (see Wise 2000, Scruton 2006, Sunstein and Nussbaum 2006 and Ascione 2008). Yet the environmental conservation, socio-legal and animal welfare literature often fails to consider the reasons why people commit crimes against wild animals and the measures needed to prevent

offences and offending behaviour. Wildlife crime, however, provides an opportunity to consider criminal behaviour in relation to wildlife and to develop a theoretical basis for why individuals commit crimes involving (wild) animals and what mechanisms might be employed to address or reduce the incidence of these crimes and the criminal behaviour involved. This is an issue often overlooked in green criminology and which will be directly considered in this research.

Wildlife crime in the UK is subject to both national and international law, and, as such, is also of interest as an area of study in respect of the manner in which the UK adopts and enforces global Conventions and EU Directives. It is also of value as a study of how the UK enacts and enforces its own domestic legislation to protect native wildlife and the environment and deal with crimes that might threaten that wildlife.

The importance of wildlife crime is thus, that it provides a unique area of study in the fields of; law, NGO and pressure group policy making and practice, policing and the interplay between statutory and voluntary/private policing as well as criminology and criminal behaviour.

### **The Research Aims**

The main aim of the research is to provide an analysis of the public policy (including law enforcement) response to the problem of wildlife crime in the UK. It examines the relationship between wildlife crime and the criminal justice system in the UK, with particular regard to the policies advocated by those involved in the enforcement of wildlife legislation and the investigation and prosecution of wildlife offences.

The secondary aims of this research are as follows:

#### **Research Aim 1**

*To examine what are the policies of particular wildlife organisations and policy makers as regards the apprehension and punishment of wildlife offenders.*

It is not immediately clear from NGOs campaign and policy documentation what long-term actions NGOs believe should be taken against wildlife offenders and this is explored in this research. The short-term aim of punishment for offenders emerges clearly from campaign literature, policy documents and briefing material. However, any policy on the punishment of offenders needs to consider not just the treatment of the offender in the short-term, but also the long-term approach to dealing with offenders to prevent re-offending. For example, while a policy of imprisonment may achieve short term effectiveness by taking offenders off the streets, it would be of limited effectiveness if those offenders simply resumed their criminal careers once released from prison.

### **Research Aim 2**

*To analyse the underlying thinking that informs the development of policies being advocated by NGOs in their attempts to reduce wildlife crime.*

In examining the work of NGOs this research considers the theoretical and practical basis for NGOs policies on wildlife crime. For some NGOs the motivation behind policy is to punish offenders for acts that are considered to be morally reprehensible and unacceptable in current society and to increase the number of acts that are considered to be unacceptable through changes to legislation and policy. For others, the broad aim of policy is to take action that it is hoped will lead to a reduction in wildlife crime. In mainstream criminal justice, the Home Office has for many years conducted research into what does and does not work, in reducing crime. This research and other mainstream criminological research inform our knowledge of the likely success of any policies on crime reduction and allows for a comparison to be made between wildlife crime policies and other criminal justice policies.

### **Research Aim 3**

*To analyse the motives of wildlife offenders and the extent to which wildlife offenders share common traits and the factors that determine their offending behaviour and types of offence that they commit.*

NGOs involved in wildlife crime and the criminal justice agencies that respond to wildlife crime discuss wildlife offences as if they are all committed by rational

actors who might be deterred through appropriate sentencing and punishment regimes. However, the evidence that this is the case is often not presented and criminological theory suggests that offenders have different motivations for their crimes meaning that not all individuals will turn to crime even where conditions dictate that this might be the expected response to social and other circumstances. The views of NGOs on the factors involved in wildlife offences and the reasons why wildlife crimes take place and previous research on the characteristics of offenders are considered in this research to determine if it is possible to identify different types of wildlife offender and the policies needed to address each type of offender. This aspect of the research is intended to assess the evidence for there being different types of offender that might respond differently to existing or proposed policy and sentencing approaches. Egg collectors, for example, who often spend thousands of pounds in pursuing their activities, might not be deterred by increased fines, simply seeing this as an increased cost of pursuing their hobby. Those employed by the game rearing industry might not be deterred by the threat of a prison sentence if the alternative is loss of a job and home. No assessment of the different types of offender currently exists or is considered in policy development and so this research proposes to conduct this analysis and to develop new models (or classifications) for wildlife offenders in the UK.

#### **Research Aim 4**

*To determine how effective existing policies on wildlife crime are, given what is known about crime, punishment and justice in mainstream criminology and to test criminological theories from the perspective of wildlife crime.*

Although wildlife crime has some unique features, it also has similarities with many other types of crime. The experience of criminal justice policy in respect of other forms of crime can be of relevance to wildlife crime. Sentencing practice and effectiveness has been studied by Home Office research staff as have different methods of dealing with offenders (for example Utting 1996 and Flood-Page and Mackie 1998). These research findings and the views of NGOs on sentencing practice in wildlife crime are considered in this research. The likely effectiveness of policy is also assessed in light of the research findings on the motivations of

offenders (referred to in Research Aim 3) and an assessment of any differences in their offending behaviour.

### **Research Aim 5**

*To make recommendations for future criminal justice policy on wildlife and conservation crime.*

NGOs have in the past commented on perceived inadequacies in wildlife legislation and in the enforcement of that legislation. This research seeks to identify exactly what problems are perceived by NGOs in existing legislation as well as any problems that exist in the enforcement of legislation. The research identifies the practical steps that might be needed to address those problems and makes recommendations for the future.

The research questions are addressed through document research and semi-structured interviews. Use is made of published figures and policy perspectives on wildlife crime as well as previous research in the area of wildlife and environmental law enforcement. The research methodology is explained in more detail in Chapter Five.

Therefore this thesis will be organised as follows.

Chapter Two explains the nature of wildlife crime and the definitions that are used in this research. It explains the history of wildlife legislation in the UK and the nature of wildlife offences.

Chapter Three discusses the theoretical basis of the research. It shows how criminological theory has fostered different approaches to dealing with offenders, detecting crimes and dealing with the causes of crime. It shows how criminal justice policy has shifted from a focus on the role of the offender through to crime prevention (through such things as target hardening) and rehabilitation of the offender. The different paradigms that inform different criminal justice policies are also briefly discussed in relation to wildlife crime.

The documentary analysis in Chapter Four provides background data to the subject of wildlife crime policy in the UK and analyses some previous research on the subject in the context of the policies of NGOs on wildlife crime. It also assesses the behaviour of NGOs and examines the theoretical and political basis for the behaviour and policies of NGOs and voluntary organisations involved in wildlife crime.

Chapter Five provides a detailed rationale for the research methodology employed in this research. Because of the nature of this research there is a focus on documentary and qualitative research to try and ascertain the views of those NGOs involved in wildlife crime. The research employed semi-structured interviews of relevant individuals and a review of current and historical policy documents as well as research and campaign literature produced by the NGOs and Government. It also discusses the issues facing the research design and the pitfalls of the researcher operating in an arena where he may be closely identified with one particular aspect of wildlife crime, namely wild bird crime.

Chapters Six and Seven contain the research findings and summarise NGO policies on wildlife crime and issues arising from the interviews and the document research. Chapter Eight contains two case studies that demonstrate how wildlife crime enforcement operates in practice.

Chapter Nine details the different types of offender 'active' in wildlife crime presenting new models for wildlife offenders drawn from the evidence considered in the research. As a result of analysis of the activities of wildlife offenders, evidence obtained from NGOs and analysis of the available views of wildlife offenders and animal abusers (some of whom fit the definition of wildlife offender used in this research) it identifies different types of wildlife offender informing the argument that a uniform approach that treats all offenders as having the same motivations and behaviours is unlikely to be effective.

Chapter Ten contains the conclusions and recommendations of this research. The appendices contain a summary of the extent of wildlife crime in the UK, proposals for legislative change arising from the research and a conference report on an issue of animal crime of interest to this research.

## Chapter Two – What is Wildlife Crime?

Official classifications of wildlife crime vary from jurisdiction to jurisdiction with some (such as the US) centring predominantly on wildlife trade and environmental crimes such as pollution or habitat destruction. In part the definitions of wildlife crime used in each jurisdiction reflect the types of crimes that occur within the country and this determines both the legislation which is enacted and the policies developed to deal with specific wildlife crime problems. This chapter explains the nature of wildlife crime and definitions of wildlife crime used in the research and the different types of wildlife crime and criminality that occur in the UK and which are the subject of this research.

This chapter also explains the current legislative position concerning wildlife crime in the UK and summarises the development of wildlife legislation in the UK, much of which has been driven by those NGOs that still play a significant role in developing public policy on wildlife crime. Different policy perspectives are pursued in respect of game offences and poaching, habitat destruction and pollution, offences involving domestic animals and animal welfare and cruelty offences. The role of NGOs also differs according to the types of crime as does the relationship between NGOs and policymakers. For example, game offences are considered to be effectively policed because the UK has strong game and anti-poaching legislation and there is good co-operation between the police and game rearing staff over poaching. Game rearing staff provide an effective monitoring force for poaching offences and regularly reports these crimes (which directly affect their livelihoods) but the same is not true of wildlife offences such as bird of prey persecution where game rearing staff are often suspects and may be in conflict with the police and conservationists over how they should be dealt with. Before discussing the detail of wildlife crime and the public policy response to those crimes, a clear definition of wildlife crime is therefore needed for this research.

### ***Defining Wildlife Crime***

For this research, a wildlife crime is an offence that involves UK wildlife and

involves a breach of UK legislation. A wildlife crime may involve harm to wildlife, removal from the wild, or the possession, sale or exploitation of wildlife.

Central to the idea of wildlife crime is an explanation of what is a crime. A crime may be an act (or failure to act) that is proscribed by statute or by the common law as a public wrong and so is punishable by the state. Radford (2001) explains that “in respect of a great many criminal offences it is not enough for the prosecution to prove that the defendant committed the proscribed act; it must also demonstrate that they were culpable by reference to their state of mind at the time of the offence” (2001:222). As a general rule, for an individual to be convicted of a crime the jury (or magistrate) must be convinced of three elements, these are:

1. *actus reus*, that the act took place, can be verified and that a condition of illegality existed;
2. *mens rea* i.e., that the state of mind of the offender was such that a condition of moral blameworthiness or culpable intentionality existed;
3. the absence of a defence.

*Actus rea* requires that the conduct of the individual can be shown to have resulted in the commission of an offence. A further issue to consider is the requirement that for a crime to exist *actus rea* and *mens rea* must exist together (Ryan 1998).

*Mens rea* (effectively ‘guilty mind’) is often indicated in legislation by terms such as ‘intentionally’ or ‘recklessly’ unless it is a crime of strict liability where the offender’s intent may not be an issue. But generally the prosecution must demonstrate beyond reasonable doubt not only that the offender committed the offence but also “that he knew what he was doing and was aware, or should have been aware of the likely outcome of his act or omission” (Radford 2001: 222). Some crimes are serious wrongs of a moral nature (e.g. murder or rape) while others may interfere with the smooth running of society (such as parking offences or litter) but are of a less serious nature

For the purposes of this research wildlife crime involves those acts which are a clear breach of UK law and requires that the condition of illegality (referred to above) exists rather than those acts which are a perceived moral wrong not yet

subject to legislation. Some forms of predator or pest control, for example are currently lawful in England and Wales and so despite current campaigns for them to be made unlawful, would not be covered by this research as current wildlife crimes (although predator control activities may be subject to censure by NGOs.)

There are some difficulties in proving *mens rea* in wildlife crime cases. For the purposes of the criminal law, the general state of mind of the offender must fit into one of the following categories:

1. Intention
2. Recklessness
3. Negligence

The wording of some offences, discussed elsewhere in this research, makes it difficult to prove intent to commit a crime and the fact that many wildlife crimes may not be witnessed also makes it difficult for prosecutors to demonstrate recklessness. In the *Wildlife and Countryside Act 1981* for example, there is an offence of ‘intentionally’ disturbing the nest of a wild bird while it is in use or being built. While it might be relatively easy to prove that a person committed (the offence of) disturbance or was reckless as to the risks that his actions might cause to wild birds at the nest, it would be difficult to prove that the actual ‘intent’ of the individual’s actions was to cause disturbance to the wild bird. In such a case the very wording of the *Act* would make it difficult to establish that the crime had been committed.

It should also be noted, however, that some wildlife crimes are offences of strict liability that do not require the condition of *mens rea*. The *Wildlife and Countryside Act 1981* makes possession of the eggs of a wild bird an offence whether or not *mens rea* can be established. Although there is a defence if the accused can prove that the eggs were taken other than in contravention of the legislation (i.e. prior to September 1982). In practice this means that a person commits an offence simply by possessing the eggs and the onus is on the accused to prove that they possess the eggs lawfully rather than the prosecution being required to prove (beyond reasonable doubt) that they possess them unlawfully.

The definition of wildlife crime can be further clarified by considering the individual elements of: wildlife, UK wildlife law and the actions of the offender who commits the offence.

### **Definition of wildlife**

The definition of 'wildlife' used in this research is an extension of the definition of 'wild bird' found in the *Wildlife and Countryside Act 1981* and is concerned primarily with naturally occurring wildlife. The definition of 'wildlife', therefore, includes any, bird, animal, mammal or reptile which is resident in or a visitor to Great Britain, in a wild state or is a non-native bird, animal mammal or reptile which is subject to UK legislation by virtue of its conservation status. It does not, therefore, include offences such as the possession of dead non-native endangered species, as this, by itself, may not be subject to UK legislation. It does however, include the possession or sale of those native species that are recognised as visitors to the UK and are classed as endangered species by the European Union and are subject to control by UK legislation such as the *Control of Trade in Endangered Species Regulations* (COTES).

### **UK wildlife law**

For an act to be considered a crime by this research it must in some way contravene existing UK legislation. An act such as the taking of a wild bird, for example, is prohibited by the *Wildlife and Countryside Act 1981* and thus to take a bird from the wild is a crime as defined by UK statute. The taking of a bird such as a European Eagle Owl, however, is not an offence proscribed by UK wildlife law. The European Eagle Owl is not a native wild bird and thus is not covered by the definition of a 'wild bird' contained in the *Wildlife and Countryside Act 1981*. The taking of a European Eagle Owl, normally only occurring as a captive bird, would, thus, be an offence of (property) theft rather than a wildlife crime (and as such may even be taken more seriously than some forms of wildlife crime). As the crime does not meet the definition of wildlife crime it would not be considered in this research. Poaching or game offences would also not be included, involving as they do birds and animals reared for the game industry or considered to be legitimate game animals that can be killed or taken, rather than wildlife, the taking of which is prohibited. A further discussion of UK wildlife law follows later in this chapter.

**Wildlife offender**

A wildlife offender can be either an individual who profits or benefits in some way from the wildlife crime, or a corporation or organisation that profits from the crime in some way. The ‘profit’ or ‘benefit’ to the offender is not necessarily a financial one. Collectors of wild birds’ eggs, for example, are not known to sell their eggs to profit from their activity. Indeed, in some cases, egg collectors spend considerable sums of money in pursuing their activities, including purchasing special equipment to pursue their ‘hobby’. Crimes for which there is no offender, such as the accidental destruction of wild birds’ nests during the building of a bypass would not be considered a crime by this research.

For an act to be considered to be a wildlife crime, therefore, the act must:

- be something that is proscribed by legislation
- be an act committed against or involving a wild bird, animal, reptile or mammal native to the UK or a visitor in a wild state
- involve an offender who commits the unlawful act.

What constitutes a wildlife crime can therefore be further clarified by creating and applying the following definition to this research:

A wildlife crime is an unauthorised act or omission that violates UK wildlife or environmental law and is subject to criminal prosecution and criminal sanctions, including cautioning by the police. A wildlife crime may involve harm or killing of wildlife, removal from the wild, possession, sale or the exploitation of wildlife.

As mentioned above, some NGOs also include a definition of wildlife crime based on moral values which can be seen in campaigns to have activities like hunting with dogs (recently made unlawful), shooting of game species or the use of snares made unlawful. While these activities are not caught by the above definition used in this research, the calls for changes to legislation to criminalise these activities are relevant in showing the views of NGOs towards existing wildlife legislation and wildlife crimes.

## Laws Protecting Wildlife in the UK

Laws protecting wildlife in the United Kingdom are complex and fragmented. Rather than there being one piece of legislation protecting native wildlife, there is a vast range of statutes and subordinate legislation that protects UK wildlife.

On the launch of its new Wildlife Crime Intelligence Unit, the National Criminal Intelligence Service (NCIS) gave the following explanation of wildlife crime legislation in the UK.

Wildlife crime encompasses a wide range of offences. Much of UK law in relation to wildlife crime is shaped by international regulations. The 1973 *Convention on International Trade in Endangered Species of Wild Flora and Fauna* (CITES) regulates international trade in endangered species. It prohibits trade of around 800 species, and controls the trade of around a further 23,000 species. CITES is implemented in the European Union (EU) by the *European Union Wildlife Trade Regulations* (EUVTR), which deal with imports and exports of wildlife and wildlife trade products to and from the EU, as well as trade within the EU and both between and within individual member states. In addition, there are offences and penalties established in UK law by the *Customs and Excise Management Act 1979* (CEMA) and the *Control of Trade in Endangered Species (Enforcement) regulations 1997* (COTES). The *Wildlife and Countryside Act 1981* (WCA) was recently amended by the *Countryside and Rights of Way Act 2000* in England and Wales (CRoW), although the offences remain similar. Birds and other scheduled animal species are protected from prescribed killing methods, there is a prohibition on the taking or possessing of certain species, or parts or derivatives of them (such as birds' eggs), a prohibition on the uprooting of scheduled plant species and a general offence of introducing non-native plant or animal species.

(NCIS 2002:3)

The NCIS definition highlights the fact that there is no single piece of wildlife legislation protecting wildlife in the United Kingdom but instead several different statutes exist. Legislation has been enacted at species level with such pieces of legislation as the *Protection of Badgers Act 1992* and the *Deer Act 1991*. There

has also been general legislation protecting a wide range of wild animals and mammals, such as the *Wildlife & Countryside Act 1981* and the *Wild Mammals (Protection) Act 1996*. Legislation has also been enacted to implement international and European legislation on the protection of wildlife. For example, the wild bird provisions of the *Wildlife and Countryside Act 1981* were intended to implement the 1979 *EC Directive on Wild Birds* and give protection to all forms of native wild birds (with certain exceptions for pest control and agricultural purposes). In addition to this, wildlife offences can also be caught by other forms of legislation aimed at regulating commercial activities or creating offences in relation to other activities (e.g. the *Customs and Excise Management Act 1979* which regulates the import and export of prohibited items, including wildlife.)

An explanation of the types of wildlife crime committed within the UK (and meeting the definition of wildlife crime contained within this research) is included later in this Chapter as is a discussion of the extent of wildlife crime. The following is a summary of the main pieces of relevant legislation (and its development) and the types of wildlife offences created by UK wildlife legislation. A full list of the relevant wildlife legislation is contained at Appendix 2 to this research.

### **The History of Wildlife Legislation in the UK**

Wildlife legislation is not a new phenomenon in the UK but has developed from a historical basis where animals were viewed as property (for example all wild deer were said to belong to the King in the Middle Ages and swans have been historically viewed as the property of Crown) to the creation of legislation giving animals some legal protection. Radford explains that:

over the course of almost two centuries the law in Britain has been developed to provide greater protection for individual animals because society at large and public policy makers have recognized that the way in which each is treated matters...The body of law which has built up over almost two centuries is, however, complicated and unwieldy, its form, substance, application, and effect can all be difficult to understand.

(Radford 2001:viii)

Much wildlife legislation has been developed as a result of the efforts of NGOs from a moral rather than criminal justice perspective. This is an important factor in identifying the importance (or lack of) attached to wildlife legislation by successive governments and has perhaps led to wildlife legislation being seen less as a criminal justice issue and more as an environmental or animal rights one, an impression that still exists today.

The focus of early legislative efforts to protect animals was cruelty. On 3 April 1800, Scottish MP, Sir William Pulteney, attempted to ban bull-baiting by introducing a Bill into the House of Commons. The Bill was met with hostility in the House and did not succeed. At the time of its introduction animal baiting was widespread, perfectly legal and had previously been a sport enjoyed by the aristocracy (although at the time of Pulteney's attempt at legislation it was considered to be a lower-class sport). A second Bill was introduced in 1802 and this too, was defeated.

It was seven years before another attempt was made to protect animals in the form of Thomas Erskine's animal cruelty Bill presented to the House of Lords in 1809. Radford (2001) explains that the importance of Erskine's Bill was that it did not seek to ban a specific activity but instead aimed to provide general protection for animals. The Bill "sought to make it a misdemeanour for any person, including the owner, maliciously to wound or with wanton cruelty to beat or otherwise abuse any horse, mare, ass, ox, sheep or swine" (Radford 2001:37). Erskine's Bill failed and he withdrew his attempt to pursue it the following year when he was met with overwhelming hostility in Parliament.

The first successful attempt to introduce animal protection legislation came 10 years later when Richard Martin, MP for Galway, introduced a Bill to prevent cruelty to Cattle. The Bill passed through both Houses and received the Royal Assent on 21 June 1822. Radford explains that:

It became an offence for any person or persons (therefore including the owner) wantonly and cruelly to beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, cow, heifer, steer, sheep, or other cattle. A

prosecution was to be initiated by making a complaint on oath to a magistrate and, upon conviction, the magistrates were required to impose a fine of at least ten shillings, up to a maximum of five pounds.

(Radford 2001:39)

Following his success Martin tried to bring in a Bill to prohibit bull-baiting and dog-fighting and in 1824 tried to extend his 1822 Act to dogs, cats, monkeys and other animals. He was unsuccessful but his persistent campaigning on animal protection and his success in achieving the 1822 Act were to lead to further animal protection legislation. In 1835 Joseph Pease MP was successful in having extensive animal protection legislation passed. Pease's Act repealed and re-enacted Martin's Act, adding torture to the list of prohibited activities and extending protection to bulls, dogs and other domestic animals. Pease's Act was subsequently repealed by the *Prevention of Cruelty to Animals Act 1849*.

These initial attempts to prevent cruelty to animals mostly dealt with domestic animals or animals that were in some way under human control. Since these early efforts many pieces of legislation have been enacted that give protection to wild animals and which allowed for enforcement action to be taken against those that commit offences against wildlife. The main pieces of legislation and those regularly used by NGOs and statutory agencies are as follows:

### **Protection of Animals Act 1911**

*The Protection of Animals Act 1911* provides protection for domestic animals or wild animals kept in captivity. This legislation is often used by the Royal Society for the Prevention of Cruelty to Animals (RSPCA) to prosecute animal welfare offences as it creates the general offence of causing unnecessary suffering to an animal. As an example, an individual who left his cat to starve would be guilty of the offence of causing unnecessary suffering by neglect. Offences under this Act would only be of relevance to this research if the offence related to a wild animal kept in captivity.

### **Conservation of Seals Act 1970**

*The Conservation of Seals Act 1970* makes it an offence to take, injure or kill any seal during the annual close season for its species. It is also an offence to wilfully, kill, injure or take a seal in contravention of a conservation order made by the Secretary of State. The *Conservation of Seals Act 1970* also contains proscribed methods of killing or taking a seal. It is therefore not an offence to kill a seal outside the species close season or outside the location of a conservation order, provided an appropriate firearm and ammunition are used. Seal killing is not considered to be a major form of wildlife crime, although offences under this legislation are not routinely monitored by the main UK NGOs making it difficult to estimate the number of seals unlawfully killed each year.

### **Convention on International Trade in Endangered Species of wild fauna and flora (CITES)(1974)**

Although not primary UK legislation, the *Convention on International Trade in Endangered Species of wild fauna and flora* (CITES) is an important international factor in the implementation of wildlife legislation within the UK. The international *Convention* regulates the trade in endangered species of wildlife.

#### *The Convention:*

- Prohibits international commercial trade in species listed in Appendix 1 of CITES
- Allows commercial trade in Appendix II specimens subject to export permits or re-export permits
- Allows commercial trade in Appendix III specimens subject to export permits, re-export permits or certificates of origin.

CITES is implemented by European Regulations (*European Council Regulation 338/97*) to control trade and movement of CITES listed specimens. Although CITES is not part of UK wildlife legislation, UK Regulations implement CITES making some of its provisions applicable to UK law. The European Union, for example, considers most of its birds of prey to be 'endangered species' under CITES. This means that on paper, species such as the Golden Eagle and the

Osprey (native UK species) are given the same protection by the European Union as the Panda and the Elephant are given in a global setting.

### **Wildlife and Countryside Act 1981**

*The Wildlife & Countryside Act 1981* is the main piece of legislation protecting wild birds, plants and animals in the UK. The *Act* came into force in September 1982. Part 1 of the *Act* makes it an offence to kill, injure or take any wild bird or any animal listed on Schedule 5 of the *Act*. These provisions give general protection to wildlife and prevent the killing or injuring of protected wildlife or its removal from the wild.

The *Act* makes it an offence to intentionally kill, injure or take any British wild bird or its eggs or to attempt to do so. It is an offence to possess any live wild bird or its egg, or to damage or destroy the nest of a wild bird while it is in use or being built. Rarer breeding birds are listed on Schedule 1 of the *Act* and receive special protection with increased penalties. The *Act* also prohibits certain methods being used to kill, injure or take wild birds or animals. The use of self-locking snares, gas and poisonous substances, and the use of certain types of traps are prohibited by the *Wildlife and Countryside Act 1981* as methods used to take and kill wild birds and animals.

*The Wildlife and Countryside Act 1981* also controls the sale of wild birds and eggs by making these activities offences. It is also an offence to be in possession of any item capable of being used to commit an offence under the *Act*.

### **Protection of Badgers Act 1992**

*The Protection of Badgers Act 1992* consolidates all previous badgers' legislation. It was notable in finally affording protection to the badger sett. The *Act* made it an offence to kill, injure or take a badger or to attempt to do so. It also made it an offence to cruelly ill-treat a badger, to interfere with a badger sett or to sell or offer for sale a live badger.

Badger digging is still considered to be a problem. The RSPB reported that it was “a phenomenon particularly associated with mining areas such as Yorkshire and South Wales. In Glamorgan and West Wales digging is still a regular occurrence” (RSPB Legal Eagle Conference issue 1995). In 1998 Hertfordshire Police published a booklet on wildlife crime which gave the following explanation of badger crime.

Every badger and every sett is protected by law but badgers are still vulnerable to illegal snaring, gassing and badger baiting.

Badgers are dug out from their setts and taken away for fights with dogs. This extremely cruel activity causes serious injuries to dogs as well as the deaths of many badgers. It has been illegal since 1835 but appears to be on the increase and in some parts of the country the badger has been wiped out.

(Hertfordshire Constabulary 1998:2)

Licences to interfere with a badger sett can be granted for certain purposes such as to prevent serious damage to crops, livestock or property.

#### **Wild Mammals (Protection) Act 1996**

The *Wild Mammals (Protection) Act 1996* makes it an offence for any person to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering. The definition of ‘wild mammal’ in the *Act* means “any mammal which is not a domestic or captive animal within the meaning of the *Protection of Animals Act 1911* or the *Protection of Animals (Scotland) Act 1912*”.

The *Wild Mammals (Protection) Act 1996* became law on 30 April 1996. Although offences under the *Wild Mammals (Protection) Act 1996* are primarily animal welfare offences, they meet the definition of wildlife crime under which this research has been conducted.

**Control of Trade in Endangered Species (Enforcement) Regulations 1997**

The *Control of Trade in Endangered Species (Enforcement) Regulations 1997* (COTES) are the UK regulations that implement *European Council Regulation 338/97* and effectively implement CITES in domestic legislation. COTES introduced a number of penalties for breaking the EU Wildlife Trade Regulations. Offences include: the purchase, sale and other commercial trade in Annex A specimens without sales certificates, the purchase, sale and other commercial trade in Annex B specimens which have been illegally imported into the UK, and using false information to illegally obtain a permit or certificate. Holden (1998) gives the following explanation of the provisions of COTES:

COTES establishes a series of offences and penalties for infringements of the EU Wildlife Trade regulations, the most important being for the trade in Annex A and Annex B specimens (reg.8). A person is guilty of an offence if they trade (including purchase and offer to purchase, as well as sale, display and transport for sale) an Annex A specimen without an exemption certificate authorising that individual transaction. The prosecution does not need to prove knowledge or intention or that the wildlife was illegally imported. It is up to the individual to prove that they come within one of the other general derogations to this rule, such as that the specimens were worked specimens acquired more than 50 years ago, or were artificially propagated plants. The same rules apply to trade in Annex B specimens. However, the prosecution must also prove the specimens were illegally imported into the UK.

(Holden 1998:6)

COTES creates a number of new offences, it is also of interest that the offences in relation to Annex A species are offences of *strict liability*. This is a mechanism more often used in the criminal law in which liability for a crime is imposed without the necessity of proving *mens rea* (guilty mind). In effect, the mere commission of the offence itself imposes absolute liability for the offence and the onus rests on the defendant to prove innocence. The maximum penalty that can be given for a COTES offence is 2 years imprisonment and an unlimited fine. It applies throughout the UK.

### **Countryside and Rights of Way Act 2000**

The *Countryside and Rights of Way Act 2000* (CRoW) is one of the most significant pieces of wildlife and conservation legislation of recent years. The Act became law on 30 January 2001. It amends the *Wildlife and Countryside Act 1981* (see below) provides new powers for the police in relation to wildlife crime and creates new offences in relation to wildlife crime.

CRoW creates a new offence of 'reckless disturbance' of specified wildlife, amending and replacing the old offence of 'intentional' disturbance that was contained within the *Wildlife & Countryside Act 1981*. The new offence was used to successfully prosecute a development company for intentionally or recklessly damaging a bat roost in Leicestershire in September 2001. CRoW also amends Section 24 of the *Police and Criminal Evidence Act 1984* (PACE) effectively making several *Wildlife and Countryside Act 1981* offences arrestable. Under the new Act police officers now have a power of arrest for any person for killing, taking, disturbing, possessing or selling a wild bird listed on Schedule 1 of the *Wildlife and Countryside Act 1981* (WCA), or taking, possessing or selling animals or plants listed on Schedules 5 and 8. This is considered to be a significant change as there has long been a perception that the lack of a power of arrest has allowed offenders to destroy or remove evidence of wildlife crimes before the police could obtain a search warrant. The Act's new powers of arrest also allow police officers to search premises following arrest under PACE. Inspector Phil Cannings of Bedfordshire Police also explained that

The CRoW Act allows the police to require DNA samples from specimens when they believe an offence may have been committed, and from other specimens where the constable has 'reasonable cause' that the sample will identify or establish the ancestry of a given specimen, 'specimen' meaning any bird, other animal or plant or any part of, anything derived from a bird, other animal or plant. CROW Act schedule 12 paragraph 8.

(RSPB 2001:7)

Penalties for the majority of Part 1 offences are increased up to £5000 or six months imprisonment in the Magistrates' Court, or an unlimited fine or up to two

years in the Crown Court for releasing Schedule 9 or non-native species. The CRoW Act therefore strengthens the enforcement provisions of existing wildlife law (the *Wildlife & Countryside Act 1981*), including bringing in prison sentences for some offences.

### **Wild Mammals (Scotland) Act 2002**

The *Wild Mammals (Scotland) Act 2002* received Royal Assent on 15 March 2002 and became law in August 2002. The *Act* creates three specific offences with regard to the hunting of wild mammals with dogs in Scotland. The *Act* makes it an offence to deliberately hunt a wild mammal with a dog, the *Act* also makes it an offence for an owner or occupier of land knowingly to permit another person to enter land or use it to commit the offence of hunting a wild mammal with a dog. The third offence created by the legislation is to make it an offence for an owner of, or person having responsibility for a dog, knowingly to permit another person to use it to commit an offence of hunting a wild mammal with a dog.

The *Act* effectively makes fox hunting unlawful in Scotland, there are exceptions in the *Act* that allow the use of dogs to stalk deer and in hunting for falconry purposes. Separate legislation has been introduced to make fox hunting unlawful in England and Wales.

### **Hunting Act 2004**

The *Hunting Act 2004* received Royal Assent on 18 November 2004 and became law on 18 February 2005. The *Act* creates three specific offences with regard to the hunting of wild mammals with dogs in England and Wales. The *Act* makes it an offence to deliberately hunt a wild mammal with a dog, the *Act* also makes it an offence for an owner or occupier of land knowingly to permit another person to enter land or use it to commit the offence of hunting a wild mammal with a dog. The *Act* also has the effect of making hare coursing illegal by making it an offence to attend a hare coursing event or to permit land to be used for the purposes of hare coursing.

The Act has the effect of making fox hunting unlawful although there are some forms of exempt hunting, including stalking and flushing out wild mammals with the intention of preventing damage to livestock, game birds crops or growing timber.

### **The Control of Trade in Endangered Species (Enforcement)(Amendment) Regulations 2005**

Revised COTES Regulations came into force in July 2005. COTES 2005 creates a number of offences relating to commercial activities, mainly the selling and purchasing of specimens listed in Annex A of *European Council Regulation 338/97* and Annex B species which have been imported or acquired unlawfully. The new Regulations increase the maximum penalties to five years on indictment and six months on summary conviction using section 307 of the *Criminal Justice Act 2003* to do so.

In addition to raising the penalties for selling Annex A species, COTES 2005 creates offences of purchasing, offering for purchasing, acquiring for commercial purposes or displaying to the public for commercial gain Annex A or Annex B species (which have been imported or acquired unlawfully.)

### **Summary of Wildlife Crime Legislation**

Goodey, Howells and Zambellas (2008) define criminal law as laws created "for the protection of society as a whole and providing punishment for those who break those laws" (2008:24). For the most part, wildlife crime does not fall within the precise definition of the criminal law but instead is dealt with by a range of environmental-based legislation as 'environmental' crime as it is concerned less with the protection of society and more with the maintenance and protection of the natural environment (see also Situ and Emmons 2000). Viewing this legislation, it is characterised by measures that are designed to protect individual species of wildlife and to prevent their killing and taking from the wild. This is also reflected in Governmental responsibility for the legislation as wildlife legislation falls within the remit of DEFRA, rather than the Home Office or Ministry of Justice the Government Departments with responsibility for crime, policing, prisons and law and order issues.

Wildlife crime is not covered by a single piece of legislation but instead is covered by a number of different pieces of legislation including some that incorporate European measures to protect wildlife into UK law. Some legislation is species specific (e.g. badgers, deer) while other pieces of legislation seek to offer a range of protection for different animals listed within the legislation. The picture that emerges of UK wildlife legislation is, therefore, that of a patchwork of disparate legislation, which can be confusing for both members of the public, legislators and practitioners involved in dealing with the legislation. Penalties are not uniform across the legislation and inconsistency of the available penalties means that some offences are treated more harshly than others even though the species involved might not be any more endangered or subject to greater pressures from unlawful activity.

Wildlife crime legislation also encompasses a range of different offence types. These are discussed in more detail below and indicate the different nature of criminal behaviour that might be involved in wildlife crime.

### **Wildlife Offences in the UK**

Following on from definitions of wildlife crime and a summary of the main legislation protecting wildlife, it is important to discuss the nature of wildlife offences committed in the UK. Discussions of wildlife crime often centre on a particular type of offence, usually that of wildlife trade and the trade in endangered species (see Holden 1998 and Roberts, Cook, Jones and Lowther 2002). Beyond the trade issue, wildlife crime encompasses a range of different offences involving a diverse range of species including; badgers, birds, seals and small and large mammals.

Wildlife crime also encompasses a range of different criminal behaviour and different types of criminal act. In addition to the commercial and smuggling activities associated with wildlife trade, wildlife offences include the following types of criminal activity:

- Unlawful killing or wounding
- Robbery (Taking from the wild of a protected species)
- Disturbance of a protected species
- Cruelty and animal welfare offences
- Unlicensed (and unlawful) gambling
- Damage to property
- Illegal poisoning and unlawful storage and/or use of pesticides
- Theft and handling 'stolen' goods
- Deception
- Fraud and forgery
- Criminal damage (of protected sites)
- Firearms related offences

A number of these offence types are offences of a 'type' that would normally be included in the Home Office *Criminal Statistics for England and Wales*, published annually. Their inclusion here is for illustrative purposes only and to establish that within the remit of wildlife crime, a range of criminal activities are committed with consequences for the wildlife that are subject to these activities. Some are officially recorded some are not and so how they are treated differs in official statistics. The killing or wounding of a person would be recorded by the police (and subsequently the Home Office) as *Violence Against the Person*, (an umbrella term that includes a wide range of offences including: homicide, threat or conspiracy to murder and wounding, and common assault) and as such is included in the Home Office statistics. However, the killing or wounding of a wild bird, animal or mammal, though violent and even where prohibited by law, would not be considered within the advent of the official crime statistics and would not be recorded. The extent of wildlife crime is discussed later in this chapter.

Beyond the full range of individual offences that might be committed, wildlife offences fall into the following broad categories:

- Killing, taking or possessing a wild bird
- Killing taking or possessing a wild animal or mammal
- Trade in wildlife (alive or dead)

- Trade in endangered species
- Taking or possession of wild birds' eggs

These offences are individually discussed in more detail below.

### **Killing, Taking or Possessing a Wild Bird**

The killing, taking or possession of wild birds is an offence contrary to the *Wildlife & Countryside Act 1981* (as amended by CRoW). The *Act* gives basic protection to all native UK wild birds and prohibits their killing; except for those species that are legally classed as pest species. Birds such as magpies and crows, for example, may be killed or taken for certain specified pest control purposes, and at specified times, such as for the protection of other birds or to prevent damage to crops or other agriculture (*Wildlife & Countryside Act 1981*). Canada geese and pigeons are often killed in public parks and open spaces to prevent perceived threats to public health arising from their droppings. The *Act* defines open and closed seasons for the killing or taking of these pest species and birds may not be taken during the closed seasons.

The offences involved in the killing or taking of birds also include the commercial exploitation of birds and the killing of birds to preserve commercial interests. Birds of prey, for example, are often killed on grouse moors or near pheasant release pens, and a number of gamekeepers have been convicted of offences relating to bird of prey persecution. Some of these offences involve the use of prohibited means of taking birds such as poison or the use of pole, spring or cage traps. The persecution of protected birds of prey is considered by the conservation NGOs to be deliberate criminal activity perpetrated by those who know their actions are prohibited by law (see for example Etheridge, Summers and Green 1997 and RSPB 2002).

For example, in October 2002 the RSPB, commenting on the fate of birds involved in the project to reintroduce red kites into the UK observed that:

A recent study of the release scheme in northern Scotland looked at the fate of 248 red kites fitted with wing tags between 1989 and 1998. From

post-mortems on 24 recovered dead birds, 13 were confirmed as being poisoned. From the total number of missing wing-tagged birds it is estimated that as many as 93 birds, a staggering 37% of the total may have been illegally poisoned. Similar work for the release scheme in southern England has suggested around 10% of the red kites are falling victim to illegal poison.

(RSPB 2002:5)

Birds of prey are considered to be a threat to the populations of game birds such as grouse and pheasants and evidence exists to support the NGOs belief that gamekeepers continue to kill the birds despite the fact that they now enjoy legal protection in the UK (Etheridge et al, 1997). Birds of prey are also taken from the wild to supply the trade in birds of prey for falconry where they can fetch large sums of money. There is also some anecdotal evidence to suggest that birds are taken for the taxidermy trade. In addition to birds of prey some smaller birds, mainly finches, are taken to supply the trade in caged birds. This is discussed in more detail below.

The possession of a wild bird, alive or dead, is an offence under UK wildlife legislation. There are some exemptions that allow the possession of injured wild birds for the purpose of rehabilitation but, in general, the onus rests on an individual in possession of a wild bird to show that it has come into his possession by lawful means. Barn owls, for example are common road casualties and figures released to coincide with the 1998 wildlife and roads symposium suggested that 3,000 barn owls are killed on the roads each year (WWF, 1998). Research for the Post Office (2008) reinforced this suggesting that an estimated 20,000 urban foxes, and as many as 10 million birds (including 3 million pheasants and 3,000 barn owls) are killed on the UK's roads each year (Which 2008).

### **Killing, Taking or Possessing a Wild Animal or Mammal**

In addition to the above offences relating to wild birds, similar offences relate to wild animals and mammals. This is perhaps the broadest range of offences, incorporating offences against badgers, seals, and other animals or mammals.

### **Badger Crime**

The National Federation of Badger Groups (NFBG, now called the Badger Trust) says that thousands of badgers are killed illegally in Britain each year. A range of different offences fall within the broad remit of badger crime, badger baiting, snaring, lamping and shooting and poisoning all account for badger deaths. NFBG figures listed on the Federation's website state that "an estimated 10,000 badgers are killed every year by badger baiting and digging" (NFBG 2000) and WWF has reported 47,000 badgers killed on the roads each year (WWF, 1998). In June 2002 the NFBG also published a report that stated that "a large number of badgers are snared in Britain, despite this being illegal. In addition, an analysis of snaring incidents dealt with by the RSPCA showed that of 246 animals found caught in snares, 103 were badgers" (NFBG 2002:2).

Although often spoken of together, badger digging and badger baiting are two separate and distinct types of offence (although it is often the case that badger baiting follows on from badger digging). Badger digging involves the 'digging out' and removal of a badger from its sett, often for its later use in badger baiting. Badger baiting is a separate type of offence in which fighting dogs are set upon a badger. Baiting of captive animals such as bears, bulls and badgers became illegal in 1835 but badger baiting and digging have never been totally eradicated and remain popular underground activities in the UK. For adherents the protracted battle between badgers, which can withstand considerable punishment and dogs, can be an exciting and bloody spectacle. The League Against Cruel Sports (LACS) provides the following description of badger digging:

These days, baiting is carried out in two ways. Firstly, at the sett from which the badgers have been dug. Badger diggers send specially trained terriers to attack badgers in their underground setts, and then dig through the tunnel roof to expose the fight – ending when the badger is bludgeoned to death with a spade. The badger is then usually buried in the sett – sometimes together with the body of the dog fatally injured in the battle. Alternatively, the animal is captured and removed from its sett

and forced to fight for its life against a pack of snapping and snarling terriers.

(LACS 2000)

Anecdotal evidence suggests that one of the primary reasons for badger baiting, and similar ‘fighting sports’ like hare coursing, cock fighting and dog fighting is the gambling that accompanies the event (Naturewatch, 2007). In relation to badger baiting, LACS has commented that the bravery and ‘gameness’ of the dogs is what the adherents of the ‘sport’ find attractive.

### **Dog Fighting and Cock Fighting**

Although made illegal in Britain in 1893 (1895 in Scotland), dog fighting and cock fighting continue in secrecy today. Both activities, considered to be sports by adherents, are highly organised events with their own subculture attached to them. Fights are specially organised and bets placed on the outcome of the events by supporters and spectators. Anecdotal and primary evidence obtained both in the UK and the US suggests that large sums of money are placed in bets and that the illegal gambling that takes place is an integral part of the activity and the culture that surrounds it. Cockfighting and dog fighting do not involve wild animals and so, in general, would not fall within the remit of wildlife crime used in this research. However, there is some small overlap between those involved in the badger crime mentioned above and in illegal dog fighting, and it illustrates the highly organised nature of some forms of wildlife and animal crime. Dogs undergo brutal training regimes to develop a taste for blood and flesh and training regimes involving treadmills are sometimes used to develop muscle strength. Staffordshire Bull Terriers and American Pit Bull terriers are popular fighting dogs and are prized for their violent nature by their owners, often violent individuals themselves. LACS provides the following overview of dog fighting in the UK.

Dog fights are illicitly organised (often by hardened criminals) usually at night time in outbuildings, barns, lock-ups and derelict premises away from or hidden from public view. The fighting ‘pit’ itself is a makeshift ring usually around fourteen feet and marked in two halves across the middle

with a 'scratch line'. It may be carpeted for grip and enclosed by low boards. Each of the two owners set their dogs into the pit (often accompanied by themselves) and encourage the dogs to attack each other with shouts of 'seize him/shake him' etc. Fights are gruelling and may be of a long duration (often over an hour) usually resulting in serious injuries being suffered by one or both dogs. The loser may be killed outright. If one of the dogs turns away from the other, the 'referee' will call the fight off for twenty-five seconds. The dog will then be given 15 seconds to cross the scratchline and "mouth"(bite) the other dog. If the dog fails to do this, or surrenders to its opponent by rolling over and offering its throat or belly, it will have lost the fight.

(LACS website policy documents)

Good fighting dogs can change hands for sums in excess of £1,000 and 'champion' dogs for several thousands of pounds, with large sums of money often being placed in bets on the outcome of each fight. The nature of badger baiting, cockfighting and dog fighting is such that it is very difficult to estimate how much of the activities regularly goes on. Whereas some other forms of blood sport, such as hare coursing could (until recently) be carried out lawfully and in the open, badger baiting, cockfighting and dog fighting remain socially unacceptable underground activities and are carried out in secret and in specific locations. LACS (2000) state that "the undercover world of cockfighting is most prevalent in the Midlands, East Anglia and the West Country and is very hard to penetrate thus making it difficult to prosecute those involved."

### **Seal Killing**

Although legal under certain conditions (namely to protect fisheries) the illegal killing of seals has been identified as a problem linked to inadequacies in the *Conservation of Seals Act 1970*. This piece of legislation protects both of the common species of seal native to UK waters. Exemptions in the legislation were intended to allow fisheries and fishermen to kill 'rogue' seals that might cause a problem at a particular fishery or in the vicinity of fishing nets. However due to inadequacies in the legislation and the poor monitoring of this provision of the *Act*,

conservation bodies say that it is difficult to distinguish between legal and illegal killing. The perception is that much of the killing is illegal but responsibility for the shooting is difficult to prove. Environmental Concern Orkney, in a letter to *The Orcadian* newspaper (24 October 2002) highlighted the type of incident that is regularly reported to the organisation.

It came as a terrible blow, but unfortunately not a terrible surprise, to read in the *Orcadian* (17 October) that 20 dead adult grey seals had washed ashore in South Ronaldsay after having been shot, and also to learn that a further 6 shot seals had washed ashore on the same beach a few days later. As readers are no doubt aware this is not a one-off occurrence. Such incidents have taken place previously, most notably the horrific slaughter of 25 new-born grey seal pups in South Ronaldsay in 1995.

...If the killings were carried out by a misguided fisherman, which looks the most likely explanation, then they have let the fishing fraternity down. It is now generally agreed that low fisheries stocks are the result of over fishing and mismanagement of marine resources over many decades. Studies have also shown that the "less seals, more fish" mantra is simply a myth, due in part to the complex food web that exists in the marine ecosystem.

(Ferguson in *The Orcadian* 24 October 2002)

While seals are afforded some protection in the UK they can be legally killed and taken in some other countries. The Canadian seal cull is carried out mostly by land based 'sealers' granted licences to kill the animals by the Federal Government. IFAW reports that "in 2002, sealers killed more than 307,000 seals" (IFAW, 2003:1) and the trade in seal products from Canada includes furs and skins used in the fashion industry despite bans on the import of such products imposed by some European countries. The perception of the majority of seal killing in the UK, however, is that it is carried out by fishermen using the belief in the 'rogue seal' damaging fish stocks, to justify the shooting. The NGOs, however, consider that much of the shooting is illegal killing of seals carried out without strict

adherence to the provisions of the *Act*, but exploiting a loophole in the legislation to avoid apprehension and prosecution.

As outlined above, some of the crimes involving the killing, taking or possession of animals and mammals involve firearms, violence and some elements of semi-organised crime or loose networks of criminal gangs. For those involved in these crimes there is no direct financial benefit derived from the criminal activity although fishermen might argue that the killing of seals is necessary in order to safeguard their livelihoods. One important facet of some of the violent types of crimes, such as badger digging, badger baiting and dogfighting, is that they are considered to be an activity carried out by those involved in other, more mainstream, types of serious crime and are associated with the violent criminal. There is evidence to suggest that some other forms of wildlife crime, such as the trade in wildlife are also attracting the involvement of the 'serious' or 'hardened' criminal, and, in some cases, have become an activity of choice for organised crime.

### **Trade in Wildlife (Alive or Dead)**

The trade in wildlife, alive or dead, is prohibited by legislation with certain exceptions. The *Wildlife & Countryside Act 1981*, for example, prohibits the sale of wild birds or animals alive or dead. In the case of wild birds, the onus rests on the individual wishing to sell a dead or live bird to show that the bird was sold other than in contravention of the legislation. For example that the bird either died of natural causes or was not killed in contravention of the *Act*. Barn owls, as already mentioned, are common road casualties and are often sold as taxidermy specimens because they can be obtained lawfully as road casualties. Illegal taxidermy continues as a problem in the UK, however, although it is thought to be in decline. A small number of incidents are reported to the RSPB each year.

In the case of live birds, it is generally necessary to show that the bird was captive-bred. Birds such as finches can be legally sold only if they are fitted with Government approved close-rings and bred from parents lawfully in captivity. The RSPB (2002) reports that "there is a ready market in the UK for trapped wild finches with many species fetching £40 or more on the black market. It has also been shown that some of the finches trapped in the UK are exported to other

European countries such as Malta" (RSPB 2002:22). The trade in wildlife is not considered to be a significant problem except in respect of the trade in endangered species (see below). Evidence exists to suggest that an illegal trade in birds such as finches exists alongside the legal trade in these species. Because of the large amounts of money that can be generated from rarer species of wildlife, the trade in endangered species is considered to be a much larger problem.

### **Trade in Endangered Species**

When discussing wildlife crime in the media, discussion often centres on the illegal trade in wildlife and most notably the trade in endangered species. Much of this trade falls outside the remit of this research as it involves non-native species of wildlife. However, some native UK wildlife is considered to be endangered, and so does fall within the remit of wildlife crime and is considered by this research. For example, a number of birds of prey are classed as endangered by the European Union and are given protection by the European Union Regulations that implement CITES. Many of these species are traded in the UK (subject to the Regulations) and offences of unlawful trade have long been the target of organisations like TRAFFIC, the RSPB, Worldwide Fund for Nature (WWF) and HM Customs & Excise. The exact extent of the trade in endangered species is difficult to quantify as it is not routinely monitored, although the sale of all native species of birds of prey and owls is controlled by the EU CITES Regulation and COTES. The RSPB explains that of the 46 reported incidents in 2004 involving the taking, sale and possession of live or dead wild birds "16 related to the possession, sale or taking of live birds of prey" (RSPB 2005:7). However, with the rarer species, it is not the absolute number of incidents that is the main area of concern. The small number of birds that make up some populations means that any wildlife trade can sometimes be detrimental to the species' survival. Wildlife and Countryside Link, reinforce this point as follows:

The illegal trade in wildlife presents a serious threat to the survival or conservation of many endangered species. The value of a particular specimen is usually related to its scarcity, so a vicious circle operates through this illegal trade: as a species becomes more endangered, so its price increases, as do the financial rewards for smugglers. High rewards,

and the low risks of detection and punishment, have made the illegal wildlife trade attractive to criminals.

Although some offenders are either linked directly or indirectly with legitimate trade networks, there is increasing evidence that more organised crime elements are becoming engaged in the most lucrative areas of the illegal wildlife trade. Existing smuggling routes used by serious organised crime groups for their trade in other illegal commodities (such as small arms, drugs and humans) can be readily used for additional profitable products- such as wildlife.

(Wildlife and Countryside Link 2002:2)

### **Taking or Possession of Wild Birds' Eggs**

The taking or possession of wild birds' eggs is prohibited under UK law but still continues. Egg collectors appear at nest sites and simply take the eggs of wild birds for their own private collections. Where an egg is viable, the collector will drill a small hole in the egg and flush out the contents to leave the hollow shell of the egg intact. This can then be displayed in a glass case or cabinet alongside other eggs. Possession of eggs is an offence of strict liability and the onus of proof rests on anybody in possession of eggs to show, on the balance of probabilities, that their possession is lawful.

In 2006 (the most recent year for which figures are available) the RSPB recorded 72 reported incidents' of egg collecting. The Society report 15 confirmed and five 'probable' thefts from Schedule 1 (specially protected) species in 2006 including "four avocet nests, a barn owl, a chough, two golden eagles, two osprey a red-throated diver and a Slavonian grebe" (RSPB 2007:8). Egg collecting is an activity where offenders remain persistent and a number of egg collectors have several convictions for the offence. There are thought to be as many as 300 active egg collectors in the UK.

### **Summary of Wildlife Offences in the UK**

Wildlife crime in the UK encompasses a range of different offences, a range of different types of criminal act, and a range of different target species. The

offences involved in wildlife crime include crimes involving violence towards wildlife and the removal of wildlife from the wild. Some offences involve the commercial exploitation of wildlife for profit but for other offences, such as egg collecting, the offender does not appear to profit directly from the commission of the crime. In some cases, wildlife crime may have some effect on the species involved. The extent of wildlife crime in the UK is discussed below.

### **The Extent of Wildlife Crime in the UK**

As noted earlier, the extent of wildlife crime in the UK is difficult to establish. Many wildlife offences are summary only offences and, as such, do not appear in the Crime Statistics produced by the Home Office. Instead wildlife crime figures are often produced individually by those environmental NGOs that are directly involved in monitoring wildlife crime. The RSPB produce annual figures on bird crime and the RSPCA produce annual figures on the work of their Inspectorate on animal welfare offences. TRAFFIC International produce figures on the trade in wildlife, although these figures include both the legal and illegal trade, and LACS regularly produce figures on crime relating to ‘bloodsports’ in their annual reports and in their quarterly magazine *Wildlife Guardian*. However, it is not possible to produce complete figures on wildlife crime by simply combining all of the figures produced by the NGOs. The exact position regarding the recording of wildlife crime in the UK is complex and the impression given of wildlife crime can be distorted by a number of factors.

Lea and Young (1993:14) explain that before a crime is officially recorded it must go through a number of stages. The process is as follows

- 1) Acts known to the public
- 2) Crimes known to the public
- 3) Crimes reported to the police
- 4) Crimes registered by the police
- 5) Crimes deemed so by the courts
- 6) The ‘official’ statistics

Lea and Young argue that at any of these stages it is possible for interpretation of the illegal act to halt the process of its 'official' recording. They explain that a number of interpretations may be relevant

...does the member of the public think it worth reporting to the police (that is, is it a real crime and even if it is, will the police do anything about it?)

Do the police think it is a real crime worthy of committing resources? And does the court concur? At each stage there is a subjective interpretation, very often involving conflict (for instance the police may think the crime not worth bothering about but the member of the public will) and often a reclassification (for instance, the crime begins as suspected murder and ends up as manslaughter).

(1993:15)

These arguments take on increased validity in the case of wildlife crime. Much reporting of wildlife crime by the public is direct to the NGOs involved and not to the police. There are many reasons for this. One factor is the high profile of some organisations in the 'fight' against wildlife crime (the RSPCA's uniformed Inspectorate have achieved increased high visibility in recent years with the assistance of such television programmes as Animal Hospital and the documentary RSPCA Animal Rescue). A second factor is public perception of wildlife crime and the role of the police in its involvement. Current media interest in the work of the police focuses very much on public order issues such as anti-terrorism, dealing with football hooligans and work on 'serious' crime such as murder, rape, and other sensational crimes. In 1993 Lea and Young argued that "the focus of official police statistics is street crime, burglary, inter-personal violence - the crimes of the lower working class." (Lea & Young 1993:89). This continues to be the case and the public might be encouraged to believe that the police are not that interested in wildlife crime.

By contrast, organisations like the RSPB and RSPCA have expended much effort on publicity to ensure that the public is aware that wildlife crime is a major priority for them. Glossy reports, press releases, direct mail campaigns, newspaper, television and radio advertisements and newspaper feature stories all contribute to

the public's knowledge of NGO involvement in wildlife crime. It is perhaps not surprising then, that those members of the public wishing to report wildlife offences routinely telephone the RSPB, RSPCA, LACS *et al* to report the crimes that they have witnessed or heard about. This reflects both the perception that members of the public have that these are crimes that the police may not investigate and the success of the NGOs in promoting their involvement in the investigation of these crimes and their specialised knowledge of wildlife crime issues.

Such reporting, however, distorts the picture of wildlife crime somewhat as the NGO accepting the report may put its own interpretation on it. Arguably it is in the interests of the individual NGOs to produce figures that show a worsening picture of wildlife crime in the UK. Many of these NGOs are also charities that rely on voluntary contributions from the public to achieve their goals. A charity that paints too optimistic a picture of wildlife crime is likely, therefore, to be depriving itself of much needed funds if the public conclude that increased funding is not required to reduce or eliminate wildlife crime. However, there is also a danger of under reporting since the attention of the authorities is elsewhere and with issues of street crime, violence and terrorism being law and order priorities over issues like wildlife crime. The manner in which the figures are presented may also have an impact on the perception that the public has of wildlife crime.

The Scottish Office recently conducted research into the recording of wildlife crime in Scotland. Its report concluded that wildlife crime was under recorded in Scotland and gave a variety of reasons for this. In Scotland the police record crimes in two tiers. The 'first tier' is the recording of all information on incidents that the police receive, irrespective of whether they are crimes or not. The 'second tier' is the recording of information using Scottish Office crime codes, where there is sufficient evidence that a crime has actually taken place. The police, thus, differentiate clearly between those incidents that are reported to them and those incidents that they accept as being crimes, a distinction not always made by NGOs. The Scottish Office research "suggests that wildlife crime cannot be accurately recorded in the first and second 'tiers' of crime data, and in addition, the emphasis on discretion in policing rural areas impacts on the number of incidents officially recorded by the police" (Conway 1999:ii). The Scottish Office research

suggests that a more reliable measure of the extent of wildlife crime in Scotland is a 'third tier' of information; records of wildlife crime incidents maintained informally by police officers involved in the investigation of wildlife crime. One problem with this information is the lack of standardisation, making it difficult to assess trends.

The main figures available on the extent of wildlife crime in the UK are discussed below.

### **Animal Crime Figures**

Figures produced by the RSPCA in their annual report show that the Society investigated 122,454 cruelty complaints in 2006 (an increase over the 110,841 complaints investigated in 2005). The Society's figures explain that there were 1,647 convictions, involving 898 defendants. The figures also show that there were a total of 89 prison and suspended sentences imposed on conviction in 2006, with a total of 681 banning orders imposed. RSPCA figures are not separated into individual categories specifying the nature of the offence or the species involved and so it is not possible to determine how the wildlife crimes recorded by the RSPCA are made up. Some offences, for example, may be strictly animal welfare offences, such as neglect, while others involve the more serious level of criminal intent such as badger digging or cock fighting. In 2006 the RSPCA increased the number of field inspectors it had to 346. In addition the Society's Special Operations Unit (SOU) carried out investigations work into badger related crime, dog-fighting, wild bird trapping and illegal hunting (RSPCA 2007:08). There is some overlap between the work of the RSPCA and the work of LACS. LACS also works on issues like badger-digging, dog and cock-fighting and produce some figures relating to these in their press releases, magazines and on their website. The LACS website explains that "despite the gradually growing admiration of badgers by the public, badger baiting and badger digging have never been totally eradicated...Diggers now kill as many as 10,000 of our badgers every year" (LACS 2000). LACS also provide descriptions of dog and cock fighting, but no figures are provided.

### **The Extent of Endangered Species and Wildlife Trade Crime**

As mentioned earlier in this chapter, there are a number of endangered species that are part of wildlife in the UK. It is, however, difficult to determine the extent of endangered species crime in the UK. Offences under the *Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES)* are notifiable, but are not recorded as a distinct category in the recorded crime figures produced by the Home Office each year. The Home Office report that in the financial year ending 31 March 1999 there were 2,537 notifiable offences under the classification "Other Indictable and Triable Either Way Offences". The Home Office report that "it is impossible for the wildlife element to be separated from the other offences in this group" (Home Office letter, 19 June 2000) and confirmed this again in 2006. It is not thought that there have been many wildlife prosecutions under *COTES* but it remains a valid enforcement tool.

The TRAFFIC Network monitors trade in wildlife worldwide, the UK Section is TRAFFIC International. In their 1997-98 annual report, the TRAFFIC network explained that "the trade in wildlife is big business. It's estimated to be worth billions of dollars and involve hundreds of millions of plants, animals and their parts and derivatives every year" (TRAFFIC 1999:1). These figures include both the legal and illegal trade. TRAFFIC now has 20 offices with more than 70 full-time staff, including staff in offices across Europe (Germany, France, Italy, the UK and Russia) and in North America, Southern Africa, East Asia, Australia and Southeast Asia.

The illegal trade in wildlife is a global enterprise where individual species can sell for several thousands of pounds. It is, however, difficult to identify how much illegal trade in wildlife takes place in the UK each year as the illegal and legal wildlife trades seem to co-exist side by side. On 14 April 2000, parrot dealer Harry Sissen was convicted of smuggling three Lear's macaws and six blue-headed macaws into the UK during 1997 and 1998 (RSPB *Legal Eagle* no. 25). The Lear's macaw, is listed on Appendix 1 of CITES and is considered to be one of the most critically endangered birds in the world. Sissen received a 2 and a half-year prison sentence and was ordered to pay £5000 costs. The case made media headlines when Sissen's constituency MP, the Rt. Hon William Hague, was called

to give evidence. Mr Hague originally gave evidence for the prosecution when he reported what Sissen's had said when he consulted the MP about his case but later backed Sissen's claim for Judicial Review of a confiscation order that required him to forfeit about 144 of his birds. Sissen's prison sentence was cut on appeal but the confiscation order also required him to pay £150,000. Sissen's jail sentence was increased when he failed to pay the confiscation order.

Cases of endangered species trade are rare but often make media headlines when they occur. The cases are useful for organisations like the RSPB and WWF in highlighting the plight of the world's endangered wildlife. Although the cases are small in number, the significance in terms of wildlife conservation can be quite significant and it is often for this reason that NGOs report wildlife crime as being 'serious' or 'on the increase' when, in fact, the number of offences remains relatively small. This does not, however, lessen its importance as an area of study, given the potential impact on wildlife populations from these incidents.

### **Wild Bird Crime Figures**

The RSPB produces an annual report on offences against wild bird legislation. The figures included in the report include figures for both reported and actual offences (i.e. those incidents where it can be proved a crime has occurred), although it is often the reported figures that appear in newspapers.

The most recent figures reported by the RSPB show that there were 62 prosecutions in 2006 (RSPB 2007) as the RSPB concentrates on offences involving wild birds its figures will include offences committed under a variety of UK legislation. Offences involving the poisoning of wild birds may include offences against pesticides and environmental health legislation as well as offences against wildlife legislation. Offences involving possession of wild birds may involve endangered species legislation, trade legislation, and even the theft act. It is thus difficult to categorise RSPB figures neatly into the different aspects of wildlife crime.

The nature of RSPB figures is of interest. In the 2007 report *Birdcrime 2006*, the Society produced a summary of wildlife crime in the UK. The summary explained

that there had been 185 reports of shooting and destruction of birds of prey, 182 reports of poisoning incidents, 72 egg-collecting incidents including confirmed robberies from 16 nests of Schedule 1 (specially protected) species, and 39 reports of illegal taking, possession or sale of birds of prey (RSPB 2007:2). The RSPB has, in the past reported the belief that "these figures represent only a small proportion of the incidents that took place, as many will remain undetected and unreported, particularly those that occur in remote areas" (1999:1). The RSPB report indicates that the total of 1,109 reported incidents is the highest number of reports received by the organisation's investigations section, although it is difficult to identify the reasons for the increase. Greater awareness of wildlife issues and a higher profile for wildlife crime is thought to be one reason for the increase.

RSPB figures concentrate on the number of reported incidents rather than the number of actual or confirmed incidents where it can be shown that a crime has been committed. The emphasis on reported crimes is therefore somewhat misleading when attempting to establish the actual number of offences. No mention is made, for example, of the number of reported offences that are not subsequently confirmed as wild bird crimes. Some reports will inevitably be false, either as a result of misidentification of the species, or by a misunderstanding on the part of the member of the public reporting the offence. An individual reporting the shooting of a European Eagle Owl, for example, may not be aware that the bird is not a native British bird, and as such the offence would be one of criminal damage. There have also been incidents in the past where individuals have reported the shooting of buzzards or red kites, only for investigators to discover that the birds were in fact, pheasants, a legitimate game species and one that could be shot in season.

It is also true that some reports of wild bird crime turn out not to have been crimes at all. The Ministry of Agriculture, Fisheries and Food (MAFF) produce annual figures relating to pesticide poisoning of wildlife. These figures demonstrate that a number of birds and animals believed to have been poisoned each year, turn out to have died from other causes. In a number of other cases analysis by MAFF fails to determine conclusively that the bird or animal died as a result of pesticide poisoning. In these cases, no crime will be recorded by the statutory agencies

although the bird or animal death might still be recorded in the crime figures. It is also important to differentiate between the number of incidents and the number of victims. For example, one incident in 1997 involved the killing of 40 birds. It may, therefore, be more accurate to state that there is a relatively small amount of wildlife crime taking place each year but that its effect upon wildlife can be considerable for some species.

### **Summary of extent of wildlife crime in the UK**

The level of wildlife crime in the UK is difficult to quantify. The main NGOs involved in the investigation of wildlife crime and the development of wildlife crime policy all produce various figures relating to wildlife crime. However, the intent of these figures is often not to produce detail on the level of wildlife crime. The figures are often used as a media tool and to elicit further support for the organisation from members of the public. Figures may also be used to assess the conservation status of a species. For this reason, the emphasis is often on numbers of birds or animals killed rather than on the number of offences. However, what is certain from the available data is that a number of wildlife crimes continue to take place each year, resulting in the illegal killing, taking, possession and commercial exploitation of significant numbers of UK wildlife.

### **Summary and Conclusions**

Wildlife crime remains a problem within the UK. Despite the protection afforded by UK wildlife legislation, wildlife continues to be killed, taken from the wild, sold and exploited for commercial purposes and used unlawfully in underground and illegal sporting activities. The precise level of wildlife crime in the UK remains difficult to quantify but evidence exists to substantiate the claims of the NGOs that the numbers of wildlife removed from the wild populations each year through unlawful means are significant. A disparate picture of wildlife legislation also emerges and there is no single piece of wildlife legislation that exists to protect UK wildlife legislation. Instead, a range of different statutes exists and different penalties, as well as different powers for the enforcement bodies, are contained within the different pieces of legislation.

## Chapter Three – Criminal Justice Theory and Practice

This chapter explains the basis of criminal justice policies by explaining the background to these policies and the prevention and detection of crime. Policy perspectives aimed at reducing any area of crime have to operate alongside approaches to crime and punishment that are implemented throughout the criminal justice system. Any policy on wildlife crime, for example, needs to operate alongside existing policies on prevention and detection of crime, prosecution of offences and within existing sentencing guidelines. It also needs to take into account the current political climate which may consider an issue like wildlife crime to be an area of low priority compared to other criminal justice priorities. A push for a more punitive regime and increased use of prison sentences, for example, would be unlikely to succeed if the existing mainstream criminal justice policy environment is one in which the use of prison is being considerably reduced and alternatives to prison and a more rehabilitative regime are actively being pursued. It might also fail if the political climate was one in which moves to have all but the most serious offences dealt with by the courts (for example by employing restorative practices as an alternative to punishment of offenders) was being promoted.

This chapter therefore discusses the policy background to dealing with wildlife crime. It examines the basis of criminal justice policy, the criminological theories on which policy is based and how these theoretical perspectives might inform wildlife crime policy. It also applies criminal justice theory to wildlife crimes to provide background to the later discussion of specific crimes and policies.

### Definitions of Crime

While this research has produced a definition of ‘wildlife crime’ (Chapter Two) the basic question of ‘what is crime’ is one that has a complex answer. In *Environmental Crime*, Situ and Emmons (2000) explain that

The strict legalist perspective emphasizes that crime is whatever the criminal code says it is. Many works in criminology define crime as

behaviour that is prohibited by the criminal code and criminals as persons who have behaved in some way prohibited by the law.

(Situ and Emmons 2000:2)

In short, the strict legalist view is that crime is whatever the criminal law defines it as being by specifying those actions prohibited under the law. For example the shooting of wild peregrine falcons (a protected species) would be a crime in the UK while the shooting of red grouse (during the 'open' season) would not be as it is legitimate game shooting activity. There is also a social legal perspective which argues that some acts, especially by corporations "may not violate the criminal law yet are so violent in their expression or harmful in their effects to merit definition as crimes" (Situ and Emmons 2000:3). Situ and Emmons (2000:3) explain that:

The social legalist approach focuses on the construction of crime definitions by various segments of society and the political process by which some gain ascendancy, becoming embodied in the law. The strict legalist approach, without denying this dynamic emphasizes these final legal definitions of crime as the starting point of any analysis because they bind the justice system in its work.

The criminal justice system therefore focuses solely on those acts that are prohibited by the criminal law, but definitions of crime also need to consider how criminal acts manifest themselves and to consider those acts not yet defined as crimes but which go against the norms of society. Lynch and Stretsky (2003) for example explain that from an environmental justice perspective a green crime is an act that "(1) may or may not violate existing rules and environmental regulations; (2) has identifiable environmental damage outcomes; and (3) originated in human action" (Lynch and Stretsky 2003:227). They explain that while some green crimes may not contravene any existing law where they result in or possess the potential to result in environmental and human harm, they should be considered to be crimes. This is an important issue in wildlife crime because much campaigning activity is aimed at extending the remit of the criminal law to encompass activities that are currently legal but which NGOs and their supporters consider should be made unlawful and defined as crimes within the criminal law.

At time of writing, NGOs in the UK continue to campaign for the use of snares to be made unlawful because of the potential for non-target species to be trapped in the snares and the difficulties of effectively policing the use of snares and some types of traps. Game shooting, while currently legal has also been the subject of calls from some NGOs for it to be legislated against on moral grounds. The definition of crime, therefore, includes not just legal but moral, gender and cultural elements as well as a range of different criminal types. In the case of wildlife crime, many activities that are classified as crimes today (such bear baiting, wild bird trapping, egg collecting and hunting with dogs) were previously lawful and it is mainly through pursuing campaigns on moral rather than legal grounds that animal protection groups have been able to persuade legislators to prohibit these activities (Klein 1998, Radford 2001).

One theoretical explanation for crime is that of deviance, the idea that the individual involved in crime breaks away from the norm or ideal to act in an abnormal manner (i.e. the commission of a crime). Muncie and Fitzgerald (1994) explain that the deviant is one to whom the label of deviant is applied according to the rules of the society. Deviance is not, therefore, defined by the quality of the act the person commits but is a consequence of the application of the rules and sanctions to an offender (Becker 1963).

Theoretically, then, for crime to exist there must be not just deviance but also a social reaction. In the classification of crimes, there are many acts of deviance that will not be classified as crimes or may be classified as low level crimes not requiring official sanction. These classifications change over time and vary across cultures. Certainly egg collecting (defined as wildlife crime by this research) was a popular schoolboy pursuit during much of the twentieth century but today is considered to be crime, attracting the attention of law enforcement professionals and action in the courts. White (2007) explains that “when it comes to environmental harm, what actually gets criminalised by and large reflects an anthropocentric perspective on the nature of the harm in question” (White in Beirne and South 2007:41). The way in which environmental ‘rights’ are framed in law is determined by a range of strategic interests (political, cultural and even the interests of industry) and depends on which of a series of conflicting rights

achieves prominence. School children are now taught the value of wildlife and principles of environmentalism and conservationism and egg collecting is no longer a socially condoned activity. Until recently hunting with dogs (and in particular fox hunting) was legal, demonstrating that while it may have been the subject of deeply polarised debate between enthusiasts and opponents what was considered to be deviant behaviour by one group of people was viewed as perfectly normal by another group. Whether or not a person is considered to be deviant can, therefore, depend on the legal and cultural conditions of a society.

Some deviant acts are also officially sanctioned. The killing of badgers, for example, would be an offence under the *Protection of Badgers Act* (see Chapter Two) but a trial cull of 11,000 badgers to prevent bovine tuberculosis was carried out by DEFRA between 1998 and 2006 (DEFRA and RSPCA websites). NGOs (RSPCA and NFBG) were opposed to the cull and might consider it to be a wildlife crime but as an officially sanctioned action it would not attract any law enforcement activity.

The social reaction to deviant behaviour also differs from group to group, not least among the criminals themselves. While it might be expected that those who commit criminal behaviours would think of themselves as criminal and have a criminal self-image, many do not. Gamekeepers caught poisoning or trapping wildlife are frequently unwilling to admit that they are criminals although they can easily admit and identify criminality in others such as poachers. They may deny that their actions are a crime, explaining them away as legitimate predator control or a necessary part of their employment or may accept that they have committed an 'error of judgment' but not a criminal act. Matza (1964) developed drift theory to explain how delinquents often accept a moral obligation to be bound by the law but can drift in and out of delinquency. He suggested that people live their lives fluctuating between total freedom and total restraint, drifting from one extreme of behaviour to another. While they may accept the norms of society they develop a special set of justifications for their behaviour which allows them to justify behaviour that violates social norms. These techniques of neutralisation (Sykes and Matza 1957, Eliason 2003) allow delinquents to express guilt over their illegal acts but also to rationalise between those whom they can victimise and those they

cannot. This means that offenders are not immune to the demands of conformity but can find a way to rationalise when and where they should conform and when it may be acceptable to break the law. As an example, for those offenders whose activities have only recently been the subject of legislation, the legitimacy of the law itself may be questioned allowing for unlawful activities to be justified. Many fox hunting enthusiasts, for example, strongly opposed the *Hunting Bill* as being an unjust and unnecessary interference with their existing activity and so their continued hunting with dogs is seen as legitimate protest against an unjust law and is denied as being criminal (see Chapter Nine for a further discussion of offender rationalisations).

In addition, some crimes are based in the perception by the offender of their actions being a necessary part of their culture, environment and status within the community. Gang membership in America, for example is seen as being a necessary part of survival for many youths in the poor inner cities. Membership of a gang provides status, a sense of belonging and a necessary protection mechanism and social network for poor marginalised youths. Crime is both an essential part of the lifestyle as well as a status symbol amongst the peer group. In 1999, the US comedian Chris Rock commenting on the lack of role models for young black men in the inner cities commented “you get more respect coming out of prison than you do coming out of college.” (Rock 1999) For many marginalised youths and gang members successfully completing a prison term provides status within their peer group while high educational achievement does not.

Edwin Lemert (1951) further argued that there are two types of deviance, *primary* and *secondary*. Primary deviance occurs when offenders do not recognise themselves as deviant, rationalise their behaviour or see it as part of a socially acceptable role. By contrast secondary deviance becomes a means of defence or attack against societal reaction. Lemert explained that:

When a person begins to employ his deviant behaviour or a role based upon it as a means of defense, attack, or adjustment to the overt and covert problems created by the consequent societal reaction to him, his deviation is secondary. Objective evidence of this change will be found in

the symbolic appurtenances of the new role, in clothes, speech, posture, and mannerisms, which in some cases heighten social visibility, and which in some cases serve as symbolic cues to professionalization.

(Lemert, 1951:76)

Lemert argued that as a result of societal reactions the original causes of the deviation receded and gave way to the importance of the disapproving, degradational, and isolating reactions of society. In this way criminal careers (discussed later in this chapter) are created.

The nature of the criminal act, in part determines how it is defined. At one end of the scale there may be the simple crimes of disaffected and 'deviant' youth. Litter, vandalism and petty theft carried out by bored or aggressive youngsters with too much time on their hands and a limited amount of life chances. Wilson (1985:45) explained that delinquency was largely an expression of toughness, masculinity, smartness and the love of excitement by lower-class youth. At this lower end of the criminal scale street-corner gangs and youths comprising mainly lower-class boys (and some girls) are in conflict with the laws of the middle class. Crime then becomes a matter of the haves versus the 'have-nots' with the latter reacting to assert their values against a society that imposed middle-class values upon them and to which they secretly aspire. In wildlife crime this is demonstrated by the actions of those offenders from predominantly working-class backgrounds and the lower-end of the scale that Wilson describes. This lower-end of the scale relates not just to the concept of low class or low level crime (i.e. relatively minor crime) but also to the social class of offenders. Certainly offenders employed in the game rearing industry come predominantly from the working-class. They are mainly the gamekeepers, beaters and under-keepers rather than the estate owners or managers. Badger baiters and badger diggers are also predominantly from the lower-class (Campaign for the Abolition of Terrier Work 2006 and evidence from case files) and even within hunting with dogs, terrier-men and those responsible for the kennels are disproportionately represented in offences whereas Masters of Foxhounds and those of higher social status might be the expected offenders as the 'leaders' of the hunts.

At the other end of the scale are the offences of rape, murder or crimes against the person, property or the state that are considered to be serious crime. These are crimes that cannot easily be explained as the actions of one or two deviant individuals or the minor criminal behaviour of a disaffected youth. One debate in criminological theory concerns how much of crime is committed by rational actors (Clarke and Cornish 2001, Eliason 2003). Does the offender actively choose to commit his crimes? Arguably some aspects of criminal offending (planning by serial killers, the laying of poisoned baits to kill birds of prey, for example) are subject to rationality but the ends are not. Criminological theory explains that some offenders are 'conditioned' towards being criminal while others are not and differing perceptions within societies may influence the nature of criminality. Eliason's (2003) research supported the application of neutralisation theory, concluding that those who engaged in wildlife law violations (in Kentucky) fitted Sykes and Matza's (1957) model. But the full extent of a wildlife offender's decision making and the extent to which rational choice played a part was outside the scope of his study.

The effect of societal perceptions of deviance is that the treatment of serious crime and the criminals involved in it is likely to be one of punishment rather than treatment, reflecting the outrage and sense of injustice felt by society against those who are unwilling to follow the rules adopted by society. Serious crimes will result in stiffer sentencing and have resources targeted at them while minor offences may be dealt with by way of treatment or rehabilitation. One implication for wildlife crime of the different perceptions outlined above is that in some areas it will not be seen as serious crime but instead as 'minor' or technical crime with action focussing on fines or minor sanctions. What this fails to do is to address the causes of crime, something which is discussed in more detail in the next section.

### **The Causes of Crime**

Considerable literature exists on the causes of crime, yet a single explanation for what causes crime has yet to be established. One cause of crime is that an activity becomes defined as such. There are numerous examples of acts (e.g. egg collecting, cock fighting, slavery and more recently hunting with dogs)

previously considered to be acceptable or at least tolerated behaviour that become crimes as a result of changes in society and in the legal classification of crimes. Especially in the area of traditional country sports a sector of society engaged in an activity that becomes labelled as crime suddenly finds itself labelled as criminal when their actions and attitudes may not have changed. One consequence of this is that the group and individuals contained within that group respond to the labelling in an increasingly deviant manner (Sykes and Matza 1957, Muth and Bowe 1998). For example in the UK, the response of many countryside people to the introduction of the *Hunting Act 2004* was not just that they would continue to hunt with dogs in defiance of the legislation but that they would also become involved in mass civil disobedience and actions designed to waste police time and frustrate any attempts to enforce the legislation. There is also evidence that landowners have denied the police access to fields and woodland in order to protect hunts from prosecution (Bowcott 2005, Taylor 2007) and that hunts have continued to operate in defiance of the ban.

Writing in the *Oxford Handbook of Criminology*, Jock Young explained that “two images of the criminal recur through the past hundred years: the moral actor, freely choosing crime; and the automaton, the person who has lost control and is beset by forces within or external to him or her.” (Young in Maguire et al 1994:69) Explanations for what causes crime can, therefore, be broken down into two main perspectives, agency and structure, the offender shaping his own actions or controlled by external forces.

In *Thinking About Crime*, James Q. Wilson provided an explanation of the conditions in which crime occur. He explained that:

If in 1960 one had been asked what steps society might take to prevent a sharp increase in the crime rate, one might well have answered that crime could best be curtailed by reducing poverty, increasing educational attainment, eliminating dilapidated housing, encouraging community organization, and providing troubled or delinquent youth with counselling services.

(Wilson 1985:13)

Wilson's description provides a useful summary of the perceived wisdom at the time. Conventional wisdom was that crime was caused by poverty, poor social conditions, lack of education and by the actions of delinquent youth who chose to act in a socially unacceptable way. Wilson explains that there was evidence to support this view, "after all crime was more common in slum neighbourhoods than in middle-class suburbs, and the latter could be distinguished from the former by the income, schooling, housing and communal bonds of their residents." (Wilson 1985:13) Policy professionals found, however, that programs targeted at doing precisely what Wilson suggested failed to have the desired effect; the causes of crime being many and varied.

Whatever the causes of crime, at the centre of criminal activity lies the criminal who commits the offence, providing a useful starting point for the discussion of the causes of crime. Young explains that the debate in criminology has mainly centred on the two different types of offender. He explains that on the one hand "there has been an idealism which granted the human actor free will, rationality, and unfettered moral choice" (1993:69). A person committed crime because they chose to, freely as part of a rational decision making process and in the full knowledge that their actions might not conform to what might be expected of them in 'normal' society. The other side of the criminological debate saw offenders as obeying "a vulgar materialism which portrayed the criminal as fully determined and non-rational" (1993:69). Offenders acted because defects in society had conditioned them to act in a certain way, irrespective of any moral imperatives.

Criminologists working in the area of green criminology have generally neglected the issue of what makes an individual turn to crime. Although there have been attempts to develop theories of why offences such as pollution, animal abuse and non-compliance with environmental regulation occur (Halsey, 1997, Beirne 1999 White 2005) and to identify the environmental offender green criminology has generally failed to provide a coherent theory to explain the wildlife offender. But attempts have been made to assess the conditions that might cause crime although two American theories that moved away from individualist theories to develop explanations of crime that held that the causes were social continue to

dominate. The Chicago School of criminology argued that the city contained criminogenic forces while Robert K. Merton's (1938) strain theory argued that a major cause of crime was "the broader cultural and structural arrangements that constitute America's social fabric" (Lilly et al 1995:38).

Chicago researchers Shaw and McKay "used the term social disorganization to describe neighbourhoods in which controls had weakened and rivalled conventional institutions" (Lilly et al 1995:46). Sutherland, another researcher used the term *differential association* to explain that criminal behaviour was learned. The key points of Sutherland's theory are:

1. Criminal behaviour is learned and is specifically learned through interaction with other persons in a process of communication
2. The main learning process for criminal behaviour occurs within intimate personal groups and includes a) techniques of committing crimes, b) the specific direction of the motives, drives, rationalizations and attitudes
3. How legal rules are viewed is a factor. In some cases an individual is surrounded by persons who define legal rules as needing to be observed, in others he is surrounded by persons who favour violation of the legal codes
4. A person becomes delinquent because he associates with more people who favour violating legal rules than who favour obeying the legal rules
5. Differential associations vary in frequency, duration, priority and intensity
6. The process of learning criminal behaviour by association with criminal and anti-criminal patterns involves the same mechanisms as involved in any other learning
7. While criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values since noncriminal behaviour is an expression of the same needs and values.

What Sutherland and the other Chicago criminologists identified is the manner in which criminal behaviour is learned and occurs through associations in intimate personal groups (Vold and Bernard 1986). Where the associations lead to the individual accepting that the rules of society either need not or should not be

obeyed, then crime would be the result. As was mentioned earlier in this chapter, definitions of what constitutes crime vary from one group to another. Offenders also make these judgments considering some actions defined as crimes to be perfectly acceptable or a necessary part of survival (Eliason 2003). Following on from this, American Sociologist Robert Merton (1968) examined the sociological conditions that placed strains on an individual pushing them towards crime.

Merton used the term ‘anomie’ to describe a process whereby the previously accepted rules of a society no longer controlled the individual. Merton felt that in a capitalist society like America the goals of society were more important than the means. In other words’ individuals continue to feel pressure to acquire money and consumer goods even where the legitimate means to do so are blocked. Merton argued that this caused pressure to commit crime “when people experience a level of unfairness in their allocation of resources and turn to individualistic means to attempt to right this condition” (Young in Maguire et al 1994:108).

Links have been made between poverty and crime and the Chicago School’s theories examined how the roots of crime were embedded predominantly in poor areas, particularly city slums where people learned deviant cultural values. While Merton never rejected this idea his explanation for crime was that poor people are not taught to be satisfied with their lot but rather are instructed to pursue the “American dream” even if doing so involves committing crime. What this creates is a particular social problem where individuals such as members of the lower class are prevented by their social class from achieving success. Limited legitimate opportunities for success combined with a cultural drive towards success means that large sections of the population (the poor, ethnic minorities, the unemployed) are in the strain-inducing position of desiring a goal that cannot be reached by conventional means (Merton, 1968, Lilly et al. 1995, Young 1999).

Merton concluded that the situation is not without important social consequences and that as a result of the strains placed upon individuals there would be intense pressures to commit crime. While most people might not commit crime for many others the strain of their situation would prove intolerable. Merton concluded that much criminal behaviour could be classed as innovation because people adapt to

their circumstances and continue to embrace pecuniary success as a worthy end even if it means doing so by illegal means. So both white-collar criminals who subvert rules and scientists who report discoveries based on dubious or fraudulent research are actually examples of how desire for success produces innovation. In *Social Theory and Social Structure* (1968) Merton observed however that the poor and disadvantaged were especially vulnerable to the promise of power and high income from crime.

Merton's theory provides a strong explanation for why poverty may be seen as a major cause of crime with the promise of power and high income a particular motivator for those from poor backgrounds. A 'common sense' argument could be made that the unemployed and those from low income backgrounds would be likely to turn to crime either as a means of survival or as a means to seek an improvement in their lives. But while it is true that "a large amount of crime is related to unemployment" (Lea and Young 1993:89) the existence of unemployed groups with very low crime rates contradicts the notion that poverty and unemployment automatically leads to crime (Young 1999, 2001). A large amount of crime is committed by corporate executives, the middle class and the respectable working class (Lea and Young 1993) and in the case of wildlife crime in the UK, significant amounts of crime takes place on shooting estates by those in employment.

Poverty may, therefore, provide an explanation for some crime but is not a comprehensive explanation for all crime. Lea and Young (1993) use the term 'relative deprivation' to explain that one of the major causes of crime is "is the excess of expectations over opportunities" (Lea and Young 1993:218) and that where relative deprivation exists in conjunction with other factors criminal behaviour is likely to occur. The reference to 'other factors' is an important one, recognising that relative deprivation by itself may not lead to crime. A person may experience relative deprivation yet be in a situation where other factors prevent him from turning to crime. On the other hand, it has been argued that crime may be inevitable in certain communities. The Chicago School researchers suggested that crime would occur in certain environments where the community failed to properly supervise its inhabitants. The studies of Shaw and McKay showed how

criminal behaviour might become the dominant youth culture in a situation where the community imposes inadequate informal controls on its citizens. Lilly, Cullen and Ball (1995:75) extended this to adult criminality and maintained that "crime and delinquency are going to occur unless people conform to all the social demands placed on them". Giddens (1991) identified how the level of raised expectations and the market in lifestyles brought about by the consumer society (Giddens 1991, Young 1999) creates a situation where social change and market forces have increased and transformed relative deprivation so that the frustration it causes combined with the break-up of communities and loss of security in employment, culture and identity (Giddens 1991) have an effect resulting in a society which is severely criminogenic.

Other causes of crime include poor parenting and tradition. Following on from Sutherland's theory of differential association it can be argued that a person in a poor parenting environment will fail to learn the appropriate social controls that are necessary to lead a law abiding life. Poor parenting prevents the individual from learning the appropriate moral and societal rules. Stenson & Cowell explain that "crime is seen as resulting from the breakdown of civic socialization of young people, a 'failure of community' and by family disorganization" (1991:141). This is partly explained by control theory which suggests that rather than conformity and law-abiding being the norm "nonconformity such as crime and deviance is to be expected when social controls are less than completely effective" (Lilly, Cullen and Ball 1995:75). Vold and Bernard explain that control theories "start with the assumption that the motivation for criminal behaviour is a part of human nature and that all individuals would naturally commit crimes if left to their own devices" (1986:231). In control theory, what prevents people from committing crime is the social controls in place within various communities, where these controls break down crime is likely to occur. But other scholars (Curcione 1992, Forsyth 1993, Green 1990) have found Sutherland's theory compelling as there is evidence that those who illegally hunt wildlife learn to do so from close friends and family members.

Lilly, Cullen and Ball explain that "being arrested and processed through the justice system means that citizens not only define the offenders' lawbreaking conduct as

bad but also assume that the offenders as people are criminal and, as a consequence, are the ‘type’ that soon again would be in trouble” (Lilly et al 1995:118.) Labelling people as criminal also has consequences in that, convicted offenders might start to see themselves as criminal and develop a self-image that involves breaking the law and association with other lawbreakers. One challenge in dealing with offenders then becomes one of how the system should prevent those labelled as offenders from developing a criminal subculture that endorses continued criminal activity.

Ethnic minorities suffer disproportionately from crime and are over-represented in the prison populations indicating that race is a factor in crime. Lea and Young explaining this in relation to the black community in the UK explain that a vicious circle exists due to the following elements:

1. First “a real rise in the types of crimes in which young black people are disproportionately involved due to rising unemployment and its over-representation among young blacks due to racial discrimination” (Lea and Young 1993:143).
2. A high level of racial prejudice in British Society as a result of which “the police come to employ stereotypes of criminality among the black community as a whole and to employ saturation policing in such areas” (Lea and Young 1993:143)
3. Deterioration in relationships between the police and black community which results in a marked decline in the supply of information from the community to the police.
4. Crime detection becomes harder as a result of the lack of information leading to an incentive and justification for more aggressive forms of policing like the use of ‘stop and search’ powers.

What this does is to provide a circle where the already marginalised ethnic minorities are further marginalised through being the target of police activity and where families and communities are affected because disproportionately high numbers of ethnic minority males enter into the prison system. With the economic

and social problems that this can cause (i.e. reduction in household income, lack of positive role models) a vicious circle of crime may be created.

Criminal careers can thus be inherited from criminal parents and the environment that an individual grows up in, creating a cycle of deprivation as the child grows up to suffer further poor education, low employment opportunities and passes these values and poor choices on to the next generation. Certainly there is evidence that egg collectors pass their behaviour on to their sons (egg collectors are almost exclusively male) and gamekeepers who inherit their jobs from their fathers may continue to use outdated predator control practices (such as the use of poisons to kill birds of prey). In a corporate setting a reliance on ignoring regulations as a way of doing business can promote and perpetuate a culture of law-breaking (Situ & Emmons 2000).

The previous section identifies that a range of social and cultural factors can cause crime and a range of theories exist to explain it. But if a major cause of crime is the combination of feeling deprived economically and a lack of social and political recognition (which could cause disaffection) what policies are employed to deal with crime caused by this? The following section discusses the policy approaches to crime.

### **Policy Approaches to Crime**

As the causes of crime vary, policies needed to deal with their causes may also vary and need to change over time. The political ideology promoted by the Government of the day determines the nature of the criminal justice policies that are pursued and also determines criminal justice priorities. The two main political ideologies are; Conservative perspectives which are generally tough authoritarian approaches which emphasise discipline, deterrence and punishment and Social Democratic (or radical) approaches which tend to accept that economic, social and cultural deprivation are the causes of crime. While these are generalised descriptions of the two main political ideologies policy documents issued by the Conservatives and Labour demonstrate how these policies are implemented in practice. The Conservatives (2007) announced that the focus of their criminal justice policy is the criminal, suggesting a belief in radical choice theory. The

Conservatives' policy document *It's Time to fight back* proposes a more punitive law enforcement regime based on increased discipline in schools, the end of the early release scheme for prisoners, an increased prison building scheme, more police officers and an extension of stop and search powers, Introducing the report David Cameron asserted family values and the need for discipline by saying that "widespread minor crime is the direct product of a broken society, including the failure or inability of the police to assert control of the streets" (Conservatives, 2007).

Social Democratic approaches attempt to address the conditions that cause crime. Labour Party policies are based on creating "strong vibrant communities" (Labour, 2008) using neighbourhood policing and looking at the causes of crime and developing a culture of respect. Both approaches, however, tend to rely heavily on the use of imprisonment as a primary means of addressing the crime problem. Bright (1993) explains that

In the UK, it is generally believed that the criminal justice agencies have a significant crime prevention effect, that if the police detect crime, the courts sentence offenders and the prisons and probation service discharge those sentences, crime will be prevented.

(Bright in Stenson and Cowell 1993:63)

However, Bright argues that the evidence does not substantiate this view and that substantial increases in expenditure have been 'rewarded' by increases in crime rates and by high rates of re-offending by those given custodial sentences. Home Office figures regularly show re-offending rates in excess of 50% (Cuppleditch and Evans 2005). The think-tank Reform states that "the latest figures (2003), show that 61 per cent of offenders were reconvicted within two years; and 73 per cent of young offenders aged 18-21. The reoffending rate for male adolescents (aged 15-18) was 82 per cent" ([www.reform.co.uk](http://www.reform.co.uk)). While there may be some fluctuation in the reconviction rates, the reliance on custody may be misplaced if at least half of those offenders incarcerated as a result of their entry into the criminal justice system simply re-offend.

A central difficulty in criminal justice policy is the focus on criminals and punishment or a concentration on the social causes of crime rather than any integrated approach. Bright (1993) outlined three main perspectives in the crime prevention debate:

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

(Bright in Stenson and Cowell 1993:62)

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

Given that crime can have many different causes, policies intended to reduce crime and prevent further offending will need to address each of the different causes. Policies aimed at good housing, education and low unemployment, diverting people from crime by increasing their life chances and providing a healthy society where there are alternatives to crime and by also reducing opportunities for committing crime would need to be pursued. There is, however, evidence of failure in employing this ‘common sense’ approach to crime. James Q. Wilson (1985), a former presidential crime adviser, explains that in the 1960s United States the Kennedy and Johnson administrations embarked on aggressive

programs aimed at addressing the social causes of crime and that the US entered its greatest and longest sustained period of prosperity that, at time of Wilson's writing in 1985, it had ever seen. The expected result was a radical decline in crime levels but as Wilson explains, the reality was somewhat different and in fact, "crime soared. It did not increase a little; it rose at a faster rate and to higher levels than at any time since the 1930s and, in some categories than any experienced in this century." (Wilson 1985) Young called this the aetiological crisis explaining that the conventional wisdom on how to address crime failed and that the dominant paradigm of social democratic positivism which believed that crime could be addressed by political intervention needed to be reconsidered. Young (1999) argued that the challenge for criminology was to find an integrated approach that involved intervention at all levels, the social cause of crime, social control exercised by the community and the formal agencies and on the victim, but is, the three policy perspectives outlined by Bright remain at the core of public policy on crime prevention (Grimshaw 2004) and the perceived wisdom that bad behaviour by individuals can be theoretically controlled remains the basis of most policy decisions concerning crime. Whether that behaviour is controlled via direct action aimed at the motivation of the offender, action aimed at making it harder or less desirable for the offender to commit crime or wider social measures aimed at making it unnecessary for the offender to commit crime varies from time to time and with the political persuasion of the policy makers (Grimshaw 2004). Each of the main policy perspectives is discussed in more detail below.

### **The Law Enforcement Perspective**

Despite its flaws the law enforcement perspective remains one of the dominant policy perspectives for dealing with crime. In part the focus is one based on the role of the offender. The conservative perspective argues that by making the potential outcome of the decision to commit a crime one that is unacceptable to the individual he will be less likely to commit a crime. If the punishment is severe enough and the likelihood of apprehension and receiving that punishment is known (e.g. by providing and publicising detection rates and severe mandatory sentences for offences) the rational offender will choose not to commit crime. The basis of this policy approach is one of deterrence.

Deterrence is the simple idea that incidence of crime is reduced because people believe or fear that they will be caught and punished if they offend (Cavadino and Dignan 1994:33). Deterrence may be split into *individual* or *general* deterrence. Individual deterrence happens when an individual commits a crime, is caught and punished and finds the punishment so unpleasant that they are unwilling to repeat it and determine to lead law-abiding lives from that point onwards. This has proved to be an issue within wildlife crime where investigators regularly encounter the same offender over and over again and evidence exists that even those offenders who are repeatedly caught convicted and fined are not deterred. Egg collector Colin Watson for example was caught and convicted six times; had paid fines of thousands of pounds and had his collection of eggs confiscated. Despite the fact that he was known to police and staff involved in protecting rare birds' nests he was suspected of still being involved in an egg collecting expedition when he fell to his death in May 2006 (Wainwright 2006). It can, of course, be argued that fines (such as those imposed on Watson) are inadequate and that prison regimes need to be made tough and austere in order to make the punishment sufficiently unpleasant that an offender would not wish to repeat it. The argument that greater use should be made of prison is explored elsewhere in this research but arguments about the austerity of prison regimes fail to convince that more severe punishment lessens crime. The 'short sharp shock' detention centres of the 1980s comprising a harsher regime "were no more successful than detention centres with unmodified regimes in terms of reconviction rates of their ex-inmates" (Cavadino and Dignan 1994:34) and evidence from the USA, where incarceration and high fines are commonplace in convictions for wildlife crimes indicates that a strict punishment regime has not reduced the level of wildlife crime.

General deterrence occurs when the general public is stopped from committing crime because they are aware of the possibility of punishment and have knowledge of particular individuals who have been punished. Publicity given to sentencing is essential in establishing general deterrence, as the public must be encouraged to believe that punishment automatically follows the commission of a crime. General deterrence is extremely difficult to evaluate because it is impossible to measure and identify those potential offenders who do not commit

crime for fear of punishment. But common-sense logic dictates that punishment will have general deterrent effects and the publicity given to wildlife crimes is a core function of this deterrence function. Exemplary sentences are used to highlight particular offences, such as the use of severe sentences against drink drivers at Christmas, with the intention of deterring other drink drivers. Publicity for particular enforcement campaigns such as *Operation Easter*, the nationwide operation against egg collectors co-ordinated by Tayside Police, *Operation Lepus*, the police operation against illegal hare and deer coursing, *Operation Charm*, the Metropolitan Police operation against the trade in endangered species in London and *Operation Artemis* a national police investigation and campaign into the illegal killing of hen harriers also highlighted increased police and NGO investigation of wildlife crime. Websites such as [www.operationcharm.org](http://www.operationcharm.org) also allow for the reporting of incidents online and casework successes and statistics on wildlife crime are regularly published by the RSPB and RSPCA and disseminated to local and national newspapers.

One of the main problems with deterrence theory is that it assumes that offenders are rational and responsible individuals who calculate the risks associated with crime before deciding whether to commit an offence. This is a questionable conclusion to come to as many offences will not achieve full publicity throughout the UK and it is unlikely that offenders conduct a full assessment of their offending behaviour before the commission of an offence. Martin Wasik explains that “a burglar sufficiently well-informed to have read the sentencing reports will also have read the criminological literature which tells him that the police detection and clear-up rate for burglary is less than 15 per cent” (Wasik in Stockdale and Casale 1992:123). The deterrent effect is therefore limited if a rational offender concludes that his chances of being caught and receiving the punishment are minimal. This is especially so in wildlife crime where, for example, an average of 500 incidents are reported each year but on average only 36 prosecutions take place each year (see Appendix 1 for prosecution and incident statistics) and a well-informed offender would certainly know that a significant proportion of the law enforcement activity in wildlife crime is carried out by NGOs with limited resources or police officers acting in a part-time capacity (discussed further in Chapter Four).

One clear advantage of the law enforcement approach is that it does provide for the incarceration of the offender at the end of the process. Despite the problems of reoffending and the limited effectiveness of prison regimes in addressing this, incarceration of offenders at least prevents them from committing offences for a set period of time (i.e. whilst in prison). This does not, however, address the problems of what should be done with them whilst they are in prison and Sutherland's theory (1957) provides a compelling explanation for how prisons may simply become universities of crime where individuals learn new and more sophisticated techniques for committing crime.

The law enforcement perspective can, however, have an effect in disrupting crime. James Wilson's work is influential in arguing that action should be taken to increase the costs of offending so that the benefits of leading a law-abiding lifestyle are more obvious to the potential offender. Wilson argues that the role of the police is not just detection and prevention of crime but is also one of order maintenance. Young writing and describing Wilson's position in the *Oxford Handbook of Criminology* (1994) explains that the police role is:

to jump-start the informal control system back into action in those areas where it has broken down and which are, of course, ipso facto, high crime areas. Effective police work per se, in the traditional mode of detection, should be directed to the high-risk repeat offenders. Similarly, the courts and prisons should give high sentences to this small group of offenders in order to incapacitate them.

(Young in Maguire et al 1994:101)

However, the nature of policing is a factor in determining how individual crimes are dealt with. Police officers are generally accepted as having a specific view of the social world and their role in it and to have a specific cultural ethos – cop culture – that informs the way in which they behave. Reiner (1992) explains that

there are differences of outlook within police forces, according to such individual variables as personality, generation or career trajectory, and structured variations according to rank, assignment and specialisation.

(Reiner 1992:109)

It is also true that the organisational styles and cultures of police forces vary between different places and periods much of which is dictated by individual police managers and which reflects their attitudes towards particular crimes. Informal rules, embedded in specific practices and nuances might dictate, for example, that in some areas of England (such as London) most wildlife crime (except possibly trade in endangered species) is seen as being a low priority for police investigation whereas in Scotland (where rarer birds such as the Golden Eagle and the Osprey are seen as part of Scotland's heritage) considerable police resources may be directed at English egg collectors or overseas falconers who seek to exploit Scotland's wildlife resources. Reiner further explains that "cop culture has developed as a patterned set of understandings which help to cope with and adjust to the pressures and tensions which confront the police" (1992:109). Each new generation of police officers is socialised into 'cop culture' but not in any structured way so that the interactional processes of each encounter reinforce what is expected of officers. As a result, 'cop culture' survives because it is a suitable fit with the psychological physical and social demands of rank and file policing.

One central factor of cop culture is the manner in which police officers classify the types of work that they do. Skolnick's (1966) account of the policeman's working personality is a primary work in discussing police culture. Successive writers (Holdaway 1977, Shearing 1981, Graef 1989 and Reiner 1992) have commented on the machismo inherent in policing and considerable literature exists on the manner in which some aspects of crime are considered to be legitimate police work while others are not. For example, murder and other forms of serious violent crime are seen as being worth while, challenging and rewarding involving "good-class villains" (Reiner 1992:118) and crimes that are considered to be solely the responsibility of the police. Domestic violence, however, is often seen as not being something that the police should be involved in and in some areas officers may feel the same towards wildlife crime considering that it is not a priority for them.

Morley and Mullender's 1994 Police Research Group study *Preventing Domestic Violence: to Women* commented that in domestic violence cases:

women were sometimes advised to take out a private prosecution or a civil injunction, to contact a welfare agency, or given no advice at all. Frequently police 'mediated' or conciliated the 'dispute', often by suggesting that the victim modify her behaviour in exchange for the assailant's promise not to commit further violence, leaving her without protection and at risk of escalating violence.

(Morley and Mullender 1994:13)

Morley and Mullender's research highlighted what Reiner (1992) called the 'rubbish' phenomenon, essentially people who make calls on the police who are seen as being unworthy of attention, or victims of crimes which are the complainant's own fault. Studies undertaken during the 1970s and 1980s showed that in domestic violence cases during this period rarely did the police arrest the assailant, even where the victim requested it and the violence was severe. In a small number of cases the police failed even to arrive at the scene (Morley and Mullender 1994:13). But the classification of 'rubbish' and 'worthwhile' crime does not necessarily mean that only the more traditional 'serious' crimes are enforced by the Police. As discussed above, those who exploit certain aspects of Scottish wildlife may find themselves the subject of disproportionately high police attention.

Although there have been considerable advances in police responses to domestic violence there is still a wide variety of possible responses to wildlife crime. Crimes seen as being victimless or of low priority are unlikely to be seen as candidates for police resources whereas those crimes seen as local (i.e. force) political or high profile crimes will be allocated resources. For efficient crime prevention and crime control the allocation of those resources is crucial and for those crimes considered to be fringe areas of policing or low priority, this is unlikely to happen.

What the law enforcement perspective can do is to promote order within communities and Wilson in particular advocates early police intervention to maintain order and deter crimes. This sometimes results in 'zero tolerance'

policing campaigns with the aim of enforcing even low level crimes to prevent higher level crimes being committed.

### **Situational Crime Prevention**

Situational Crime Prevention policies accept that there may be limited rationality on the part of offenders and hold that much crime is opportunistic, being committed where situations arise that makes crime possible. Crime is seen as a combination of opportunism and some rationality on the part of offenders but does not necessarily have its roots in social conditions or family influences. Nor are offenders necessarily 'conditioned' towards being criminal. Because crime is opportunistic, Young explains that "it can be deterred by structural barriers, for example steering locks in cars, better locks and bolts on houses, greater surveillance from, for example, Neighbourhood Watch schemes or ticket inspectors" (Young in Maguire et al 1994:93). This also has the effect of reducing opportunities for crime and will prevent offences by those offenders who react to opportunities to commit crime. What situational crime prevention policies can do is to reduce the incidence of crime by simply making it harder to commit crime.

Target hardening can address some of the vulnerable areas outlined above (cars, domestic windows etc.) although it is used only selectively in wildlife crime. In addition, local authorities are now required to carry out crime audits which identify the high crime areas within their area. This, combined with data collected by the police on the types of crime committed within particular areas allows for resources to be directed towards areas that may suffer disproportionately from crime and crime prevention campaigns to be directed to areas most at risk.

There have, however, been some attempts to apply situational crime prevention to wildlife crimes and the public has a major role to play in policing and the detection of this type of crime. Clear-up of crimes is dependent more on the public witnessing crimes and providing evidence that crime has taken place than on police detection of crimes. This is especially so in wildlife crime where much crime takes place in remote areas that fall outside police patrol areas and where observation of birds of prey by raptor study group members, of badgers by badger survey workers and of illegal hunting activities by LACS Hunt Monitors is essential in identifying that crimes have taken place. Public co-operation in police crime

prevention initiatives (Neighborhood Watch etc.) is vital, and the public can also protect themselves more effectively if they wish to see crime reduced through employing measures such as window locks, burglar alarms and additional security measures on cars. This does not, however, address any of the social causes of crime (unemployment, poor housing, family circumstances etc.) instead it favours informal methods of control and situational crime prevention with an emphasis on target hardening.

One problem with situational crime prevention is that it does little to address the problem of displacement i.e. the possibility that crime prevented in one area might simply move to another area where opportunities are easier to realise (such as areas where no Neighbourhood Watch scheme exists). What situational crime prevention does is to focus on those areas that are considered to be vulnerable and where target hardening or greater enforcement activity might have some effect. Arguably, the perspective results in an escalating programme of CCTV installations, local crime prevention initiatives, and increased police patrols and so on with area after area being subject to more aggressive crime prevention policies. A limited amount of situational crime prevention has been employed to protect wildlife with cameras placed at rare bird breeding sites (the ospreys at Loch Garten, the peregrine falcons at Simmonds Yat and hen harriers in Northumbria) and at deer or animal sanctuaries owned by LACS, where hunts are now permitted. But little other crime prevention is employed, although this is largely due to the nature of the offences and the fact that much of the countryside in which wildlife crimes take place is not 'owned' in a way that would allow the police or individual landowners to take responsibility for initiating target hardening measures. Where this has been done it is often on RSPB or Wildlife Trust owned nature reserves where the charity also has the resources to monitor the cameras and pursue any incidents with the Police.

### **Social Crime Prevention**

The law enforcement and situational crime prevention perspectives aim to; catch offenders prevent further crime, and make it difficult for offenders to commit crime. Social crime prevention, however aims to prevent crime from taking place by addressing the factors that lead to crime and criminal behaviour. Young (1994)

makes the observation that "it is difficult to prevent crime if one does not know the underlying force behind the commitment of crime by the actors involved" (Young in Maguire et al 1994:96). In the case of wildlife crime, encompassing as it does a variety of different types of crime, there may be a variety of different forces that lead individuals towards crime or provide circumstances where crime is likely to occur.

If the push towards crime is greater among the poor, the lower working class and certain ethnic minorities who are marginalised from the rewards of society (Lea and Young 1993, Young 1999), crime prevention policies need to address the inequalities that make certain parts of society more likely to commit crime. Lea and Young argue that; good jobs, good housing, community facilities and a reduction in inequalities and uneven distribution of wealth "all create a society which is more cohesive and less criminogenic" (1993:116). However, in wildlife crime some offences are committed as a direct result of employment, particularly offences involving the killing of protected wildlife to ensure higher levels of game for shooting. It is, of course, arguable whether those involved in the game rearing industry are employed in 'good jobs' and 'good housing'. Certainly there is an uneven distribution of wealth here as the bulk of the economic power in the game rearing industry rests with the estate owners and the consumers that pay thousands of pounds for a day's shooting. Egg collectors, badger diggers and badger baiters and some of those involved in hunting with dogs (perhaps with the exception of the senior huntsmen) may also suffer from inequalities that create the circumstances that might cause crime and which dictate that even in an era of strong environmental and animal welfare awareness, wildlife crimes continue to be committed.

But while the police and other statutory agencies should have primary responsibility for enforcing legislation, for those communities where crime is given either covert or overt approval, action should also be taken to ensure that the community considers crime to be unacceptable. Social crime prevention includes not just criminal justice policy but also education programmes and community action so that offenders are unable to operate with the consent of their community. Disadvantaged areas become the subject of regeneration schemes aimed at

improving the community and increasing opportunities so that citizens feel less marginalised and disadvantaged. In areas where it is known that wildlife crime is being or is likely to be committed (for example game rearing and fishing areas) measures that involve the community in providing informal social controls by making sure that offenders know that wildlife crime is unacceptable may be required.

Government run crime prevention initiatives aimed at combining situational and social crime prevention initiatives have been attempted (for example the Home Office *Safer Cities* initiative of the 1980s and 1990s and the *Respect* policy initiative on stronger communities run by the Labour Government). In November 2005 the Labour Government published its *National Community Safety Plan 2006-2009*. Like the *Safer Cities* initiative the plan intends to address some of the social causes of crime by creating stronger communities and improving social conditions while also providing targeted crime prevention activities which would tackle domestic violence, women's safety, racial harassment, car crime and would attempt to divert young people away from crime. In its summary the plan explains that:

the NCSP signals the beginning of a new way of working on community safety, with much closer collaboration between central government and local agencies in the setting of priorities and the development of new policies and initiatives. Many of these agencies work together on local partnerships on a range of matters such as health, children's issues, employment, and environmental issues as well as policing, drugs prevention, crime, and anti-social behaviour. This enables them to bring holistic approaches to local problems and deliver what is important to local people.

(Home Office 2005:3)

Rather than being solely a Home Office policy dealing with crime and criminal justice issues the *National Community Safety Plan* includes contributions from the Department of Health, Department for Culture Media and Sport, Department for Work and Pensions (DWP) and others. However, these initiatives are mainly

urban measures and while some wildlife crime (for example trade in endangered species and dead wildlife) takes place in urban areas, the majority of wildlife crime takes place in rural areas. While the role of the urban offender (and particularly the travelling offender) should be considered, social crime prevention in wildlife crime would need to be tailored to the demands of the rural environment. For example in game rearing areas education of game employees to ensure understanding of wildlife legislation and conservation priorities might be pursued. This was attempted by the RSPB by speaking at gamekeeper training courses during the 1990s and conservation organisations currently produce some educational material on wildlife crime aimed at the wider community. Measures that also enhance the value of wildlife to an area so that it becomes a resource valued by all in the community (such as in the green tourism programmes employed in African and Asian countries) might also be attempted, with an emphasis on putting in place social protection of wildlife and awareness of the value of wildlife. This might create for conditions in which offenders do not continue to see wildlife crime as a soft option or victimless crime and are encouraged both personally and by their community to value wildlife as a benefit. This might be combined with more traditional programmes that aim to turn offenders away from committing any type of crime.

## **Summary**

A wide range of past and current criminological research has been conducted into various aspects of crime leading to the development of criminological theory in the following areas:

1. Criminal epidemiology – the incidence and social, temporal and geographical distribution of crime, criminal acts and criminal behaviour
2. Criminal aetiology – the analysis of the causes of crime, and the nature of criminals
3. Victimology – the study of victims of crime
4. Police Studies – the scientific analysis of policing
5. Criminalistics – methods of identifying crimes and detecting offenders

6. Penology – the study of Court Practice, sentencing, methods of punishment and /or treating offenders, effectiveness of rehabilitation and alternatives to prison and methods of crime control.

This research and the past experience of dealing with crime provide a basis for assessing the likely effectiveness of criminal justice policy. Crime has no single definition or simple cause. The actions of the individual are a factor but social conditions when combined with the role of the individual also need to be considered as an explanation for crime. There is, however, no single type of offender and crimes are committed by the poor and lower working classes as well as the comfortable middle classes and even the rich and powerful. Criminal justice policy, therefore, needs to consider these different types of offender and the different circumstances that cause them to commit crime if it is to be effective.

Although the general aim of criminal justice policies may be to reduce crime and make society a safer place, individual policies can have specific goals. Separate from the goal of punishing offenders for behaviour that society considers to be unacceptable, criminal justice policies employed in both mainstream criminal justice and in wildlife crime may have as a secondary aim any of the following motives:

1. Repressing deviation from the accepted norms in society
2. Protecting society from wrongdoers
3. Providing restitution for the wronged (including the environment)
4. Rehabilitating offenders to protect society by preventing future offences
5. Retribution, revenge and 'just desserts'
6. General (as opposed to individual) deterrence to keep the bulk of Society law-abiding

An effective criminal justice policy may have to combine several of these intentions to effectively address crime problems in society and prevent offending and reoffending. Wildlife crime policies therefore need to range from those that target the offender to those that deal with minimising the opportunities for offences to be committed and attack the conditions that cause wildlife crime.

As a result, there is no simple policy that will address wildlife crime but in the menu of options employed in mainstream criminal justice policies aimed at reducing poverty, racism (other discrimination or disadvantage), unemployment and improving education need to be implemented. Unfortunately, while some policies that address these issues have been considered and implemented, the focus of criminal justice policy in wildlife crime is still predominantly the law enforcement perspective that relies on action by the police and the courts to address crime. The use of sentencing remains largely punitive rather than rehabilitative which fails to address problems of repeat offending, instead relying on temporary incarceration as a means of addressing the crime problem. This means that little attention is paid to crime prevention and that policy is over-reliant on the effectiveness of detection, apprehension and subsequent punishment.

Wildlife crime policies should take account of what is known and what has been tried in dealing with crime and should apply the appropriate policies to the specific crime (and individual offender) under consideration. The background to NGO policies is explained in more detail in the following chapter and NGO policies are assessed in Chapter Six.

## Chapter Four – Issues in Policing Wildlife Crime

This chapter sets out the background to the main policy perspectives on wildlife crime and aims to explain why NGOs promote the policies that they do. It explains the basis for NGOs policies which comes from; their nature as green or environmental groups, the particular policy network of which they form a part, the existing context of wildlife (law) practice and policy implementation within which wildlife NGOs make their proposals and the criminal justice (policy) environment in which they operate.

The influence of strands of criminological thinking, no matter how ill-appreciated or poorly understood within wildlife crime policy development is also a factor.

Throughout the history of wildlife crime policy development (also discussed in this chapter) NGOs have sought to achieve a higher level of importance attached to wildlife crime by criminal justice policymakers and by statutory enforcement bodies like the police. As strands of criminological thinking have historically influenced Home Office policy on crime and justice within the UK they can have an effect on the success of these efforts and the importance attached to non-mainstream areas of policing like wildlife crime.

### Perspectives on ‘Green’ NGOs and Environmental Justice

Conceptions of animal rights and environmental justice are a core part of ‘green criminology’. Beirne and South (2007) suggest that ‘green criminology’ refers to the study of harms against humanity, the environment and against non-human animals, mostly committed by powerful institutions but occasionally by ordinary people. Within the discourse, debates about the nature of environmental justice and social justice combine with perspectives on environmental responsibility and the operation of the ‘green movement’. However, the behaviour of NGOs within the environmental field and within the sphere of wildlife crime differs according to; the nature of the organisation, the policies they intend to pursue and the focus of their campaigning or fundraising activity. Far from there being one coherent ‘green movement’, environmental NGOs within the UK occupy a range of different disciplines and policy perspectives and seek to achieve a range of different objectives. While some organisations may pursue wildlife and environmental

issues from a moral or theological perspective, others approach wildlife crime from a conservation or law enforcement perspective and the underlying motivation of specific organisations dictates both the policies employed and the manner in which the NGO might pursue those policies.

Before any assessment of the policy perspectives relevant to policing wildlife crime and the manner in which they have been adopted can be achieved, consideration should be given to the basis on which NGOs in the UK operate. Pressure groups and campaigning organisations operate within a specific institutional framework with interests of their own that shape their activities and policies. Particularly for those NGOs that have a single species focus (e.g. the RSPB is concerned mainly with birds and the Badger Trust is concerned solely with badgers) their policies are designed to achieve greater legal protection for the species that the organisation was created to protect and to ensure that any current threats to that species are addressed and, where possible reduced. Such policies may, therefore, not address wider conservation issues and might conflict with the policies of other NGOs.

The UK is considered to be a nation of animal lovers but complex attitudes to animals persist in the UK resulting in a situation where animals are generally protected but are still reared specifically for shooting and where resistance to legislation to control field sports continues. The campaign against the *Hunting Act 2004* was often characterised as ‘town versus country’ and discussions of traditional fieldsports and hunting activities that become subject to legislation often contain debates concerning perceptions that affluent sections of society seek to impose their will on poorer rural members of society. Lowe and Ginsberg (2002) concluded that the animal rights movement (in the US) has a disproportionately well-educated membership reflecting what Parkin (1968) called ‘middle class radicalism’. Certainly the NGOs involved in wildlife crime in the UK while not all pursuing policies from an animal rights perspective represent a professional movement comprising large professional organisations (comparable with medium to large businesses) rather than being a grass roots or ‘activists’ movement. For example the RSPB’s accounts for 2006-2007 show expenditure of £82 million and with total charitable expenditure of £67 million. The RSPCA’s accounts for 2006

show running costs of £82 million with over 1,500 staff employed (18 per cent part-time). The public support that these organisations have (the RSPB has over a million members) together with the resources available for campaigning (including political lobbying discussed below) allows these two organisations to take the lead in promoting wildlife crime as an issue of importance. It also places the organisations in a position to employ expertise, for example, specialist investigators and political lobbyists, to promote their policy objectives. The organisations adopt a position of being expert in their chosen field and their socio-economic position allows them to exploit that perceived expertise. Kean (1998) assessed attitudes towards animal rights in the context of political and social change in Britain since 1800. She explains how following the introduction of Martin's 1822 animal protection legislation the Society for the Prevention of Cruelty to Animals (which became the RSPCA in 1840) was set up. She explained that "the Society did not come into being to campaign for new legislation as such, but rather to ensure that the law which had been passed would be implemented" (Kean 1998:35). NGOs primarily achieve their objectives through public campaigning to raise awareness of an issue commonly commissioning or carrying out their own research to prove the case for a particular issue and using this research to lobby for legislative change or to convince the public of the need for a particular policy, change to the law or the need for Government intervention.

The objective of ensuring that legislation is effectively enforced, however, is pursued by some organisations by way of taking on practical law enforcement of legislation as a means of ensuring that legislation is used effectively and prosecutions taken where the statutory agencies might not do this. Jasper (1997) in discussing 'postmaterial' social movements explained that these are comprised mainly of people already integrated into their society's political, economic and educational systems and who by virtue of their affluence did not need to campaign for basic rights for themselves but could pursue protections and benefits for others. His arguments could certainly be applied to the animal rights and animal protection movements in the UK which from their activist roots have certainly grown to embrace animal protection and conservation corporations with considerable economic and political power. These organisations are often placed at the upper end of the NGO scale both in terms of their income and their position

within the UK NGO establishment. The RSPB and RSPCA, for example are both incorporated under Royal Charter giving them considerable legitimacy within the policy environment and providing them with a middle class social position as indicated by Jasper (1997) for many successful campaigning organisations. In addition the economic power of these organisations and others like LACS, the Wildlife Trusts and the Badger Trust (which have smaller support groups throughout England and Wales) and WWF and Greenpeace allows for campaigning on a national scale ensuring widespread saturation of the campaigning message through mass market mailing, advertisements and editorials in national magazines and newspapers and the provision of campaigning materials to television news programmes and documentary film makers.

An examination of the different NGOs involved in wildlife crime carried out for this research identified that the following different types of NGO are involved:

1. Campaigning NGOS
2. Law Enforcement NGOs
3. Political Lobbying NGOS

It is possible for an NGO to operate in more than one of these areas but in relation to their activities concerning wildlife crime, NGOs generally adopt one of these functions as a primary role (e.g. law enforcement) which dictates how the issue of wildlife crime is pursued, even though a secondary objective (e.g. political lobbying) may be pursued alongside this. A theoretical model can be produced that places each NGO in one of the categories as follows:

Campaigning NGOs are those organisations whose primary concern in relation to wildlife and conservation crimes is one of raising public awareness. As a result, the organisation's primary activity is public campaigning which may involve generating news stories on a particular campaign (e.g. the Badger Trust raising the profile of badger culling through the news media), raising support for a particular campaign (e.g. the Whale and Dolphin Conservation Society's petition to protect dolphins on the Moray Firth) or to raise funds on an issue (e.g. Friends of the Earth pursuing fundraising for specific activities.) Campaigning organisations

may also undertake some direct action (for example the WSPCA has worked with governments and member societies to build bear sanctuaries as a practical way of protecting bears) but the primary aim of the organisation is to raise public awareness on an issue and subsequently to convert that public awareness into public support for changes in policy or the adoption of protective measures for wildlife. WWF (2007), for example, have campaigned to change the behaviour of British travellers in a bid to reduce the illegal imports of endangered wildlife and their derivatives into the UK and have also run direct action programmes which encourage members of the public to 'adopt an animal' by themselves giving funds that can be directly used for the conservation of various species. NGOs fitting into this category include, WWF, Friends of the Earth, the International Fund for Animal Welfare, the Whale and Dolphin Conservation Society and the World Society for the Protection of Animals (WSPA).

Law Enforcement NGOs are those organisations whose primary function in relation to wildlife crime is a law enforcement one. In effect the NGO is concerned with ensuring that wildlife laws are properly and rigorously enforced and in the absence of effective statutory enforcement activity it has adopted the responsibility for carrying out this function itself. This means that the NGO carries out practical casework to investigate wildlife crimes itself and to assist the police in the investigation of wildlife crimes (or to encourage them to do so) employing specialist investigative staff able to gather evidence, give evidence at court and to prosecute cases where necessary. The prime examples would be the RSPCA and SSPCA both of whom retain a uniformed inspectorate and undercover or plain-clothes officers for investigations work. The RSPB also maintains a full-time investigations section although in contrast to the RSPCA it does not routinely prosecute cases, instead preferring to work with the CPS to ensure that cases are dealt with by Crown prosecutors. However, this does not alter the fact that the RSPB's focus in wildlife crime cases is to ensure efficient investigations and prosecution of cases which are routinely reported to its officers by members of the public. Indeed, members of the public are more likely to report wild bird crime and animal cruelty offences to the RSPB and RSPCA respectively reflecting the high profile that both organisations have achieved for this aspect of their practical law/policy enforcement work.

While publicity about wildlife crime and increasing the importance of the issue in the political agenda are secondary objectives pursued by the RSPB, the continued existence of its investigations section despite a significant decrease in the number of prosecutions taken by the society over the years indicates that the law enforcement function remains an important one. Similarly despite having achieved success in its long-running campaign to ban hunting with dogs LACS continues to monitor the activities of hunts and takes prosecutions for breaches of the *Hunting Act 2004*. Its monitoring and prosecutions functions are, however, secondary to its political activities (discussed below).

NGOs falling into the law enforcement category include the RSPCA, SSPCA, RSPB, Environmental Investigations Agency and the Bat Conservation Trust.

Political Lobbying NGOs are those organisations whose primary function is to influence parliament and the political agenda to ensure that the issue of concern to the NGO is raised up the political agenda and is seen as a priority for Government. Wildlife Link, for example, as an umbrella organisation for various wildlife and conservation NGOs; does not carry out any of its own law enforcement activities or carry out public campaigning in the way that say the NSPCC does in relation to child abuse. Instead the focus of its work is on policy research and development and using this policy expertise to actively pursue legislative change or changes to policy. In this regard, Wildlife Link can be thought of as an environmental ‘think tank’ or policy institute drawing on the expertise of its members to conduct policy analysis and research and to pursue environmental advocacy and political strategy in the area of wildlife crime. Individual members of the public cannot become members of Wildlife Link but membership is open to national and international voluntary and non-profit organisations within the UK involved in the protection of wildlife and the countryside. What Wildlife Link does, is to provide a coalition through which policy initiatives and changes to wildlife and conservation legislation can be pursued and best practice and critical thinking on wildlife issues can be disseminated. Link also provides for a co-ordinated response to Government and other consultations on the environment and legislative change or policy initiatives that might affect the environment.

NGOs operating from a political lobbying perspective see the enforcement of wildlife crime and conservation legislation as being primarily a matter of public policy and the responsibility of parliament rather than being an issue for action by individual NGOs. The purpose of political lobbying activity is to influence policy ensuring that conservation issues, wildlife crime and environmental law enforcement are accepted as mainstream policy whether by the Government's environment department or its criminal justice agencies (or both). NGOs fitting into this category include Wildlife Link, Greenpeace, the Campaign to Protect Rural England (CPRE), the UK Environmental Law Association; LACS and the Badger Trust. As mentioned above, LACS does carry out an enforcement role but this is in support of its research and lobbying activities designed to ensure that wildlife crime is seen as an issue of policy importance. For example, in September 2007 it sponsored an interdisciplinary conference on the links between animal abuse and human violence at Keble College Oxford as a means of establishing this issue in the policy debate within the UK. In addition to academics and members of NGOs, delegates included representatives from the Ministry of Justice and the Police (see Appendix 3 for conference report) and covered issues such as the links between domestic violence and wildlife crime, the responsibilities of veterinary professionals in identifying animal abuse and the extent to which animal abuse can be taken as an indicator of a propensity to violence and future offending.

Having considered the types of environmental organisation involved in wildlife crime a further classification for the ideological basis on which their policies are produced can be developed. In his analysis of the animal rights movement Beirne (2007) argues that the animal protection movement and environmental movements are two distinct entities that "often think and act at best in parallel and, at worst, in vehement opposition to each other" (Beirne 2007:72-73). However, NGOs involved in wildlife crime in the UK include both animal protection and environmental organisations and the movement is not exclusively a pro-animal one as the literature often suggests. Some largely conservation organisations such as the RSPB, for example, rigorously pursue wildlife crime policies not solely from an animal rights or animal welfare perspective but from a conservation one,

considering that crimes against birds or animals are indicative of wider environmental harms such as habitat destruction. There is also a distinction to be made between animal welfare and cruelty prevention policies which seek to prevent offences against animals and policies intended to manipulate the law enforcement agenda by influencing the extent to which wildlife crime is considered to be a policing priority and legislative change to achieve greater protection for animals is enacted. Detail of the specific wildlife crime policies adopted by NGOs is contained within Chapter Six and this explains the policies being pursued but analysis of the available literature on NGO policies and discussion with NGOs (considered later in this research) reveals that NGOs operating in the field of wildlife crime develop their policies from the ideological positions of:

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

There is inevitably some overlap in these policy objectives but discussion of each provides some background to understanding how NGOs develop their policies.

Moral culpability policies are employed where NGOs consider that an activity is morally wrong and should not be allowed to continue. There is some overlap here with the animal rights perspective (discussed below) in which the issue of human action in relation to other sentient beings (animals) is questioned. In particular there are questions concerning whether it is morally right to inflict pain and suffering on animals including the killing or taking of animals for sport. For example, the LACS long-running campaign to ban hunting with dogs discussed issues of whether it was right to chase and terrify the animals if the intention of foxhunting was fox control.

In its evidence to the Burns Enquiry (2000) the Animal Welfare Information Service (AWIS) observed “foxhunting is a game that should not be confused with fox control.” Having carried out observation on a number of hunts Mike Huskisson of AWIS concluded that “where farmers perceive a need to control foxes they do so using a variety of means other than hunting with dogs. The majority of these methods involve considerably less cruelty” (DEFRA 2000.) A central feature of the campaign to end fox hunting and other forms of hunting with dogs was, therefore, a moral objection to a form of animal control that was unnecessary and which could not be justified in terms of its apparent objective. (Although some doubt was cast on whether the alleged aim of animal control was genuine or solely a justification put forward to provide legitimacy for hunting.) Indeed in some submissions on the draft Bill advocates of a ban on hunting with dogs accepted that if foxes, mink or deer needed to be controlled this should be done. But it should be done via a humane method of control and not by first chasing the animal.

Political priorities dictate that a primary objective for some NGOs (pursued by way of their policies) is to raise wildlife issues up the political agenda. For some NGOs the lack of importance paid to wildlife and conservation crimes by governments and policymakers is the central issue to be addressed. In particular, NGOs engage in political lobbying to seek changes to legislation and to ensure that wildlife issues are considered as a priority in Government policies. For the NGO this means taking action and pursuing policies designed to ensure that wildlife crime is a policing priority, that there is consistency in wildlife legislation and that new legislation is enacted where inadequacies are identified. From this ideological position law enforcement policies might be pursued where NGOs consider that an issue is worthy of enforcement activity by the statutory agencies and should be an enforcement priority. Although NGOs will sometimes undertake law enforcement activities themselves as a means of ensuring that enforcement action is taken (see above) policy objectives aimed at placing wildlife crime at the centre of the law enforcement agenda and as a policing priority are also promoted. The intent of such policies is to ensure that enforcement of legislation is carried out by statutory authorities and that it is effective. This requires that the Police and other statutory authorities regularly investigate and prosecute crimes and that sufficient pressure

and encouragement is in place to ensure that they do so. NGOs will, therefore, comment on the manifestos of the main political parties and publish their own manifestos and policies for legislative and policy change and will actively engage with MPs, Government committees and departments to pursue particular agendas.

Animal Rights in the context of wildlife crime in the UK is less concerned with ensuring or obtaining legal rights for animals and more concerned with animal protection and the prevention of the abuse of animals. Even within the RSPCA there is a distinction between cruelty (animal welfare) offences which are generally investigated by the uniformed Inspectorate (e.g. cruelty and harm to domestic and wild animals and neglect of animals such as horses) and the 'organised' crimes dealt with by the undercover unit SOU (badger baiting, badger digging etc.) which are dealt with more in terms of the conduct of criminal gangs exploiting animals than as offences that impact on the rights of animals and which demonstrate the need for legislation such as the *Animal Welfare Act 2006* to protect the rights of animals.

The basis of many policies on animal rights is utilitarianism and questions of whether animals can suffer (see Bentham 1789 and Singer 1975) encompassed in the belief that suffering in animals often causes humans to suffer. The principle argument is that it is immoral to allow animals to suffer or to cause harm to animals even if the animal itself is not provided with any legal rights or moral status. Animal rights exponents may also argue that animals as sentient beings can feel pain and this serves as part of the basis on which it is argued that harm should not be caused to animals and that animals, as sentient beings, should be given legal rights. However UK legislation (outlined in Chapter Two and summarised in Appendix 4) already provides basic protection for animals generally making it an offence to kill, injure or take wild animals (with some exceptions). To a certain extent, therefore, animals already have some legal rights given that legislation provides that once in captivity animals are protected from; cruelty such as 'unnecessary suffering', from being kept in cages that are too small and are protected from being removed from their wild habitat (with some exceptions.) Policies aimed at protecting animals and enforcing animal protection legislation are, therefore, not aimed at increasing animal rights or establishing new rights for

animals but aim to uphold existing legislation and to extend the established principle that causing suffering to animals is contrary to UK law to all species. Animal protection polices also aim to directly address animal welfare issues to the extent that they are intended to prevent human interference with animals or violence towards animals.

Having discussed the basis of policies adopted by NGOs in wildlife crime in the UK, discussion of the manner in which NGOs work together and the policy environment in which they work provides an overview of how wildlife policy is pursued in the contemporary UK.

### **Policy Networks**

As mentioned above wildlife crime represents an area of both practical law enforcement and policy development by NGOs. Public policy campaigning is an area where policy networks might often be found. These are loose or structured collections of individuals or groups that work together to influence an area of public policy. Marsh and Rhodes (1992) explain that “the existence of a policy network both has an influence on, although it clearly does not determine, policy outcomes *and* reflects the relative status, or even power, of the particular interests in a broad policy area.” (Marsh and Rhodes 1992: 2) In wildlife crime, however, NGOs have gone further by determining policy outcomes and have had a significant role in developing and driving public policy. For example, practical investigative casework by the RSPB highlighted the difficulties of prosecuting offenders for disturbance of protected wild birds at the nest. Having identified the problem through a number of failed cases the RSPB successfully campaigned for a change in the wording of the legislation through an amendment to the *Wildlife and Countryside Act 1981* which the charity initially ‘sponsored’ by way of encouraging an MP to pursue a private member’s bill.

In most campaigning areas a formal or structured policy network might be seen to operate with the aim of influencing a change in policy. In wildlife crime, however, the majority of law enforcement policies are drawn up by NGOs with either a single issue or a single species perspective (e.g. preventing cruelty, protecting wild birds or the elimination of cruel sports). For many years the RSPB and RSPCA took

their own prosecutions (the RSPCA continues to do so) which allowed them to dictate prosecutions policy in their respective areas of wildlife crime and to ensure that prosecutions were routinely taken for wild bird offences when they might not be taken by the police and/or CPS. However, there is no single NGO examining the entire remit of wildlife crime in the UK meaning that no such co-ordinated prosecutions activity is undertaken by NGOs.

However, as mentioned above, a number of organisations campaign together for new wildlife legislation under the umbrella of the organisation Wildlife Link. This means that a single campaign, backed by a number of different organisations could be co-ordinated and providing for a wildlife law policy network. NGOs are also involved in PAW, the Partnership for Action against Wildlife Crime, DEFRA's wildlife crime forum. Although PAW has an enforcement agenda that is renewed and updated every three years, it does not have any statutory responsibility for wildlife crime policy. Nor are any of the criminal justice NGOs (such as the Howard League or Crime Concern, for example) actively involved in the issue of wildlife crime or listed as members of PAW.

Given their interest and expertise in crime and criminal justice policy the absence of specialist criminal justice NGOs as members of PAW or policy advisers within the field of wildlife crime is perhaps surprising. Criminal justice NGOs have considerable expertise in prisons and policing policy as well as in crime prevention and programmes aimed at diverting young offenders from crime and preventing re-offending. This expertise allows criminal justice NGOs to contribute to the criminal justice policy debate on crime prevention, sentencing and treatment of offenders but their evidence and policy proposals are not integrated into wildlife crime policies. Instead NGOs develop their own policies based on the specific species or conservation priorities that each organisation is pursuing or considers to be a priority. As a result, the policies that are promoted by each organisation often relate simply to one aspect of wildlife crime and may not be effective in any integrated approach to dealing with wildlife offenders. The absence of the criminal justice NGOs means that the wildlife crime policy network is less a criminal justice one and more of an environmental justice one with the emphasis being on developing policies aimed at addressing persecution of birds and animals and

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

To be truly effective the wildlife policy network would need to incorporate mainstream criminal justice professionals or criminological expertise. But although there has been some success in engaging individual police forces in wildlife crime enforcement and species protection initiatives the network has yet to expand sufficiently to incorporate the main statutory criminal justice policy departments in central government. A discussion of the development of wildlife crime policy and wildlife policing in the UK follows and helps to explain the reasons for this.

### **The Development of Wildlife Crime Policy and Wildlife Policing**

The available literature on wildlife crime in the UK focuses on the work of the police, perceived problems with enforcing wildlife legislation and perceived inadequacies in wildlife legislation and particular policy initiatives promoted and supported by the NGOs. It reflects the dominant position that NGOs have held in relation to wildlife crime enforcement and policy development in the UK and their reliance on considering wildlife crime from an environmentalist and animal protection viewpoint rather than a criminal justice one.

Unlike many other areas of crime, there is very little documentation published from 'official' sources and very little by way of academic literature on the subject of wildlife crime in the contemporary UK. However what the available literature does show is that while there have been considerable developments in wildlife crime enforcement in the UK it is still carried out in a largely ad-hoc or informal manner that relies on the input of NGOs. These NGOs may document wildlife crime issues purely from their own institutional standpoint and not in any co-ordinated manner designed to provide a national overview or that would identify national trends or areas requiring policy attention (except where the informal policy network mentioned above may decide to pursue an issue). By contrast, however, considerable documentation exists on the international position (particularly international trade in endangered species) and the situation in countries with dedicated wildlife law enforcement agencies where information is routinely published by the statutory conservation agencies (for example Leader-Williams and Milner-Guilland on enforcement policies in Zambia, and McDowell on wildlife crime policy in Australia.) In African, Australasian and North American jurisdictions the statutory bodies (such as the US and the Canadian Fish and Wildlife Service and the state(s) Parks and Wildlife Service(s) in Australia and New Zealand) publish annual reports on the effectiveness and implementation of their conservation policies and enforcement activities. There is no equivalent wildlife law enforcement body in the UK with statutory responsibility for reporting on wildlife law enforcement; instead, much of the available literature published on wildlife crime in the UK has been published by NGOs, much of it to support particular NGO campaigns. For this reason, the literature often concentrates on only one aspect of wildlife crime with wildlife trade disproportionately represented in the literature on wildlife crime (see Hemley 1994, Hutton and Dickson 2000 and Oldfield 2003). This is an inevitable consequence of the amount of resources required in African, American and other countries to address problems of the illegal poaching of and trade in endangered species and the global trade in endangered species. But it also reflects the absence of offences such as egg collecting in other countries and the regulatory regime which means that CITES (which deals exclusively with wildlife trade) provides one of the few legislative models for dealing with wildlife crime that has been widely ratified into domestic legislation around the world.

The RSPB has been a lead organisation in promoting the development of wildlife law enforcement in the UK. Throughout the 1970s and 1980s the organisation carried out its own investigations into wild bird crime and routinely pursued cases via its own private prosecutions as a means of raising publicity for wildlife crime, deterring would-be offenders and ensuring that legislation like the *Protection of Birds Act 1954* would be enforced at a time when it was not a policing priority and there was little statutory enforcement action. In April 1990, the Society published its submission on the Government's white paper on *Crime, Justice and Protecting the Public*. The RSPB commented on the removal of custodial sentence options from the *Wildlife and Countryside Act 1981*, arguing that this seriously weakened the legislation. The Society argued that:

Despite the Act's potential for high fines, offences are frequent. A small number of offenders are seriously persistent but many are manifestly obsessive in pursuing their ends. In the RSPB's view, penalties available to the courts are incapable of addressing the sentencing needs presented by this type of offender. The courts are debarred from the alternative sentences thought capable of offering some hope of readjustment.

(RSPB 1990:3)

### **Policing Wildlife Crime**

From this starting point, an overview of the enforcement of wildlife legislation as being largely ineffectual emerges early in the UK literature. The RSPB also pointed out in its submission to the Home Office that it was a false assumption to consider that all wildlife offenders were motivated by profit and so custodial sentence options were not appropriate in every case. Instead, enforcement of wildlife legislation should consider that different types of sentencing options would be appropriate to provide for effective prevention of wildlife crime and to address problems of persistent re-offending by wildlife offenders. Although there was an acknowledgement that not all offenders were motivated by profit (perhaps reflecting the disproportionate amount of time spent dealing with egg collectors) the proposals demonstrate the belief in offenders as being largely rational individuals who might be deterred through effective sentencing regimes.

Between 1989 and 1996 the RSPB organised an annual conference for the Wildlife Liaison Officer (WLO) network and published the proceedings of the conferences (RSPB 1990 to 1997). This represented the first concerted attempt to make wildlife crime a priority for the police and other statutory enforcement agencies and it is significant that the initiative came from the NGO sector rather than from the police or Home Office. The development of the WLO conference was initiated by the RSPB and the Royal Society for Nature Conservation (RSNC), the organisation that later became the Wildlife Trusts. In an article published in 1995, Andy Jones (former Head of the RSPB's Investigations Section) and Terry Rands (the former Assistant Chief Constable of Essex Police) commented on the development of the conferences stating that:

The success of any organisation in part depends on the ability and opportunity to share common experience and identify best practice.

WLOs were anxious to meet with their colleagues in other forces. The RSPB and RSNC recognise that, given the locally based structure of the police service in the UK, a means of facilitating the arrangement of a national conference was necessary. The two organisations undertook to carry out this task jointly.

(Jones and Rands in Cadbury, RSPB Conservation Review 1995:82)

Jones and Rands' comments demonstrate the difficulties inherent in making wildlife crime a mainstream criminal justice priority. First; the police forces are semi-autonomous with the importance attached to various non-mainstream issues being dictated at a local level by police managers. Secondly, in 1995 it would be difficult for any one force to take on the responsibility of co-ordinating national activity or information sharing on wildlife crime and to allocate the resources necessary to doing so. Thirdly in the absence of any co-ordinated national information on wildlife crime being held by the police (in part due to their locally based intelligence systems) there was no evidence of the extent of the wildlife crime problem in the UK and so it required the input of the NGOs which held this information to make the case for such information gathering and sharing. Indeed the conference proceedings (published by the RSPB) represented the first formal

exchange of information between wildlife law enforcers and the first real attempt to make information on wildlife crime widely available among practitioners.

The first WLO conference was held at the Police Training Centre at Ryton-on-Dunsmore in Warwickshire in 1989 and there were many advantages of holding such a conference at a police-training establishment even though the conference was co-ordinated by NGOs. The official standing of the venue gave credibility to the conference as being designed for police officers, lessened the administrative burden on the organisers, and allowed for more police officers to attend due to the lower costs involved (the event being heavily subsided when compared to holding it at a commercial training or conference centre). However, the conference was not solely attended by the police; representatives from voluntary and Governmental agencies involved in wildlife law enforcement, also attended and this allowed the NGOs to direct attention and debate to areas of conservation concern and to place issues of interest to them on the agenda.

In June 1991, Peter Robinson, also a former Head of the RSPB's Investigation Section published a report on *Falconry in Britain* for LACS. Robinson's report considered the effectiveness of legislative control over falconry and made 13 recommendations. Robinson's report concluded that there were inadequacies in the legislation governing keeping birds of prey in captivity and that the registration scheme for birds of prey had failed to prevent illegally taken wild birds of prey from being laundered through the DOE's registration scheme. Robinson also highlighted problems with the recording of falconry offences, questioned how many prosecutions had failed in the Courts due to incorrect advice given by the (then) DoE, and also questioned the legality of the Government's decision to allow falconry and the captive possession of live birds of prey to continue. (The argument being, that to do so was a contravention of the *EC Directive on the Conservation of Wild Birds*). By publishing the report, LACS was able to indicate that its interest in fieldsports extended beyond its high profile campaign to ban hunting with dogs, demonstrating also that the RSPB was not the only organisation concerned about illegal falconry and birds of prey. Yet although LACS had employed a former senior RSPB official to write the report and Robinson made some use of RSPB material in writing the report it was not a joint LACS and RSPB

publication, demonstrating that NGOs when pursuing a policy issue do not always collaborate with all interested parties, including other NGOs.

The initial WLO conferences and activity by the RSPB to publicise wildlife crime through publication of the conference proceedings helped to raise the profile of wildlife crime amongst the police and policymakers. In 1993, an overview of the role of the police service in wildlife crime was published by the Metropolitan Police in its *Metropolitan Journal*. Andy Fisher, the Force's Wildlife Liaison Officer, summarised the work of the Metropolitan Police on wildlife crime and commented that:

There is a good deal of evidence to suggest that those people involved in wildlife crime are also involved in other areas of crime. Not long ago, within the MPD, a member of the public walking in the country was confronted by two men who threatened him with sawn-off shotguns. He had inadvertently disturbed them while they were digging for badgers.

(Fisher 1993: 22)

In the same year an analysis of the influence of increased public concern for the environment upon the police service was conducted by police officer Nick Ankers for his BA (Hons) studies at the University of Manchester. The work of WLOs and their position within the police force provides for a small case study of how environmental issues are dealt with by the police and like domestic violence and other issues considered to be less urgent policing priorities can also demonstrate how 'cop culture' (Reiner 1992) works. Ankers conducted research into the growth of 'environmentalism' within society and considered how changing public and political attitudes to environmental issues had resulted in a greater expectation on the part of the public and policy makers that the police would play a greater role in enforcing environmental legislation. However Ankers concluded that:

It was identified that environmental protection in the United Kingdom involved a complexity of legislation and enforcement agencies which combined with the lack of national environmental protection policy, resulted in confusion, overlap and duplication. This situation made it

extremely difficult to discover what responsibility the Police service had for environmental protection.

(Ankers 1994:94-96)

Ankers argued that there was a need for national police environmental policy to standardise the quality of service that would be provided in each force area and to eliminate the problem of one area treating wildlife crime as a high priority while a neighbouring force might consider it to be unimportant. Yet, while Ankers' work identified the difficulties being experienced by individual police officers, the public who wished to report wildlife crime and the NGOs who wished to see it investigated it also reinforced that at the time there was no clear mandate for wildlife crime to become a policing priority.

Ankers work was complemented by Genevieve Kirkwood's 1994 study of the nature of the Police Wildlife Liaison Officers' Network. Kirkwood's study, conducted at De Montfort University, analysed the role and organisation of Police Wildlife Liaison Officers and identified that three different models of WLO existed. These may be summarised as follows:

#### **Model 1**

The Police force appoints one WLO with responsibility for wildlife liaison across the entire Force area. Kirkwood reports that in this model "the W.L.O role is attached to a particular department post, frequently at Headquarters and the officer simply takes it on, more often than not, regardless of expertise and interest" (Kirkwood 1994:65)

#### **Model 2**

Kirkwood describes Model 2 as "one or more officers are nominated as the Force W.L.O. with a countywide remit, supported by a variable number of Field WLOs based within the Force area command or divisional units. All assume the role as an add-on to their other duties." (Kirkwood 1994:65). A number of police forces still retain this option with the main WLO being of middle management rank, mostly inspector or chief inspector. Field WLOs are, mostly volunteers, usually operational police constables.

### **Model 3**

In Model 3 a full-time WLO is appointed. At time of writing a number of UK Police forces have chosen this option, including Northumbria Police, Grampian Police, Lincolnshire, Cheshire Constabulary, Hampshire Constabulary, and West Yorkshire Police). The Metropolitan Police also has a Civilian Co-ordinator for its Wildlife Liaison Officer.

Kirkwood's analysis of the various types of WLO indicated that the best case scenario was one that combined Models 2 and 3, with Model 1 being out of date and an "unsatisfactory structure for effective wildlife policing" (Kirkwood 1994:71). The difficulties inherent in Model 1 is that allocating wildlife crime to an officer that might have no interest in or aptitude for the work can result in the problems historically experienced in enforcing domestic violence; the officer considers that it is not an important area for police action and so it is given little attention, allocated scant resources and cases are not rigorously pursued and the appropriate expertise (often external) required to deal with wildlife crime cases is not drawn upon. The interest and knowledge of the individual officer can also be a vital element in dealing with wildlife crime and Kirkwood observed that the task requires a genuine interest and commitment to environmental issues as it is a post that often flows into off duty time (Kirkwood 1994:69).

While Model 2 is an improvement by combining a designated officer supporting field investigations officer it still retains some of the problems of making wildlife crime an add-on to other duties. This can mean that wildlife crime is competing for attention and resources with other duties and so is still not seen as a policing priority within the force. Model 3 (the full-time officer) provides the most desirable option as it allows for officers to gain some familiarity with wildlife crime, some expertise in the subject and to develop a network of experts that can assist the officer in the development of the force response to wildlife crime issues and the investigation of cases. However, even within Model 3 there are variations between forces and where the WLO is a civilian post this provides some indication that the force may still not see this as a mainstream role requiring a full-time officer. But even where this is the case, the existence of a full-time WLO is to be welcomed as

it provides a single (and dedicated) point of contact for the public and NGOs on wildlife crime issues.

Kirkwood's analysis demonstrates one of the central problems of wildlife crime law enforcement, its voluntary and inconsistent nature which allows for different approaches to be taken in different areas of the UK. While different models of WLO (now called Wildlife Crime Officer) are in operation throughout the UK essentially Kirkwood's models (in various forms) remain the form of wildlife officer in place today.

Following the 1994 WLO Conference in Belfast, a working party was established to review the role of WLOs within the police service. Then Grampian Police Inspector John Sellar explained that the working party examined the post of Wildlife Liaison Officer its evolution and its then position in the UK. The Working Party also examined the demands upon the Police in the area of wildlife crime and took into account the future needs of wildlife policing (RSPB 1996:32). The analysis carried out by Kirkwood in 1994 and the analysis by the Working Party indicated the concerns that existed at the time about the extent to which the police service was involved in wildlife crime, the likely future needs for the police service to address wildlife crime and the demands raised by NGOs for more police resources and a higher priority to be paid to wildlife crime.

A summary of the findings of the Working Party are contained in the proceedings of the 1995 WLO conference, published by the RSPB in 1996. One general comment made by the Working Party was that "both the general public and statutory and voluntary agencies see wildlife law enforcement as worthy of greater attention than it receives at present" (RSPB 1996:32). The Working Party made a number of recommendations in a report submitted to the Association of Chief Police Officers (ACPO) and the Association of Chief Police Officers in Scotland (ACPOS). In relation to the nature of the WLO post illustrated by Kirkwood's models the group made three specific recommendations.

The Working Party suggested that "ACPO recognise that enforcement of this field of legislation is a Police matter and that resources require to be devoted to it"

(RSPB 1996:32). It was also noted that the judiciary and the public have a high regard for enforcement activity in relation to wildlife crime. Reference was also made to the “considerable crime prevention and police/public relations benefits” of WLO work (RSPB 1996:32). The Working Party also suggested that each Force have a central point that can be easily identified as the Force WLO, something that NGOs had been pushing for as a means of ensuring that wildlife crime was taken ‘seriously’ by police forces. The Working Party suggested that Force WLOs should apply for the post rather than having it assigned to them and should be an officer with specialist knowledge of this particular area of law enforcement. In addition to this, recommendations were also made that WLO work should be regarded as part of operational policing rather than as an off-duty exercise and that “more forces consider issuing a job description for the post of WLO” (RSPB 1996:33).

Commenting on the development of the WLO network in 1995; Jones and Rands suggested that “there is now a strong case for forces to consider appointing more full-time WLOs. This would not only bring about benefits to wildlife, but would also be consistent with the traditional, community-based, caring approach to policing” (Cadbury 1995:83). Despite these recommendations, the development of the full-time WLO network has been minimal and it must be recognised that given limited resources and many demands placed upon the modern police service, such a move will not take place that easily. In his 1993 study Ankers explained that “many WLOs reported resistance to their role from senior police officers who thought that the Police Service had no responsibility for dealing with environmental offences” (Ankers 1993:84). Similarly, Kirkwood reported that many WLOs “have had to confront ridicule and contempt from colleagues and senior officers” (Kirkwood 1994:74).

Although not written with wildlife crime in mind, Reiner’s (1992) work on police culture (mentioned in Chapter Three) and the existence of a distinct ‘cop culture’ is also of relevance here. Reiner suggests that it is almost inevitable that police officers will start to make value judgements about the work that they do and will start to classify crime and criminal behaviour accordingly. In adopting working practices it is almost inevitable that police officers and other investigators will

characterise the investigation of certain offences and offenders as “worth while, challenging and rewarding, indeed the *raison d'être* of the policeman's life” (Reiner 1992:118). At the other end of the scale there may be areas of work that are considered to be unworthy of police or law enforcement time. As mentioned in Chapter Three this description is often most closely identified with the police response to domestic violence (see Home Office 1994, Montgomery and Bell N.D., Edwards 1989, Bourlet 1990) but equally applies to wildlife crime in some areas. The evidence of NGOs is that in some areas, NGOs still experience problems with individual police officers unwilling to pursue wildlife cases because they are not seen as a priority within their particular force. The response to wildlife crime reports (including the investigative resources allocated and whether expert support from NGOs and others is sought) can depend upon how the force has implemented its wildlife liaison officer role. Civilian WLOs, for example, have a lower standing within the force, being seen mainly as administrative staff and may have some difficulty in obtaining resources to pursue cases. By contrast, during part of the 1990s at least two police forces had WLOs at Superintendent level demonstrating that the force considered wildlife crime to be an important issue deserving of senior officer time and ensuring that when the WLO requested that a case be investigated junior officers would be allocated to do so.

Throughout the 1990s the RSPB and other NGOs were pursuing a policy that was intended to see wildlife crime adopted as a major policing priority and to see full-time WLOS in every police force in the UK. In October 2001, the University of Wolverhampton conducting research on behalf of DEFRA published a report on the case for a National Wildlife Crime Unit. The research supported the proposal for a National Wildlife Crime Unit and also suggested that DEFRA should consider whether additional resourcing of the Partnership for Action against Wildlife Crime (PAW) Secretariat was necessary. The research report also proposed that all agencies involved in recording wildlife crime incidents should streamline recording systems so that wildlife crime incidents could be consistently and unambiguously identified. Subsequently a wildlife crime intelligence unit was set up at NCIS in 2002.

In May 2002 the University of Wolverhampton published a report on *Crime and Punishment in the Wildlife Trade*. The report concluded that:

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

(Lowther, Cook and Roberts 2002:5)

Although the Wolverhampton report focuses solely on the issue of wildlife trade, its conclusions on the inadequacies of legislation and inconsistency in the way that legislation is enforced are echoed by NGOs in looking at other aspects of wildlife crime. This is discussed elsewhere in this research, but the picture that emerges of wildlife crime through the available literature is that of inconsistent and inadequate legislation, subject to an equally inconsistent enforcement regime (albeit one where individual police officers contribute significant amounts of time and effort within their own area). While there is no doubt that there is an inconsistency in wildlife legislation (for example different penalties and different police powers exist in different pieces of legislation), this is often reflected in NGO policies as demonstrating that wildlife legislation is inadequate and needs wholesale reform. However, the ad-hoc development of wildlife policing creates with it a risk that no matter what the legislative regime, the enforcement of wildlife legislation may itself be inconsistent and inadequate even if NGOs were fully satisfied with the legislation and any sentencing provisions. This issue is also explored elsewhere in this research but it is worth noting the influence that NGOs have had in determining how priorities have been developed in wildlife crime policy. As mentioned above, the RSPB initially set the agenda for WLO conferences and other NGOs have also directed the priorities for the wildlife crime policy research agenda.

A further University of Wolverhampton report published in June 2002 considered the role of organised crime in the trade in wildlife crime. The report by Cook, Roberts and Lowther was produced for the WWF and TRAFFIC and analysed the

evidence of organised crime involvement in one form of wildlife crime, the illegal trade in wildlife. The report concluded that:

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

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

(Cook, Roberts and Lowther 2002:4-5)

Linking wildlife crime to organised crime and, in particular, the trade in drugs is an important step in bringing wildlife crime (albeit only this one aspect) within the remit of mainstream criminal justice and establishing it as an area of study within green criminology. All statutory law enforcement bodies recognise the influence of drug related crime on other forms of criminal activity and society as a whole. The statutory authorities also recognise the importance of taking action to control the activities of organised crime and to prevent money laundering by organised crime. In addition, wildlife trade is a relatively easy area of wildlife crime for traditional law enforcement agencies and policymakers to understand because of its similarity with classical positivist notions of crime. It involves offenders who are clearly motivated by profit (particularly with respect to trade in endangered species which can sell for thousands of pounds) and, as Cook Roberts and Lowther argued, involves criminal actors involved in other forms of crime.

The UK is still far short of having wildlife crime accepted as part of mainstream criminal justice. Yet, from its small scale beginnings in 1989 the WLO network has grown. The role of the WLO has now been recognised by the establishment of the

post of Wildlife Crime Officer (WCO), the new name for WLOs which has been adopted by most UK Police forces. In written evidence to the Parliamentary Select Committee on Environmental Audit in March 2004, Richard Brunstrum, Chief Constable of North Wales Police (for ACPO) stated

A number of forces (17) have full-time wildlife crime officers, of those 11 utilise police officers, 3 utilise support staff and 3 utilise police officers who have other duties although they spend a substantial part of their duties addressing wildlife crime. Recent years has seen an increase in the number of forces utilising full time wildlife crime officers.

(House of Commons, Environmental Audit Committee 2004)

This demonstrates the development of the network from its initial few officers to become an established network of officers throughout the UK police service. Mr Brunstrum's evidence also confirmed, however, that the appointments of WCOs can depend on the views of chief police officers and that while there has recently been the creation of full time WCO posts in some areas (South Wales, Lothian and Borders Police), other areas have lost these posts (e.g. Thames Valley and Lancashire Police).

In October 2006 the wildlife intelligence function of the NCIS unit was developed when the National Wildlife Crime Unit (NWCU) was launched by DEFRA. The NWCU is hosted by Lothian and Borders Police and gathers intelligence on national wildlife crime to provide analytical and investigative support to the individual police forces and customs officers in the UK. The role of the NCWU is mainly a support and co-ordination role and enforcement of individual responses remains the responsibility of individual forces.

### **Summary**

What the available literature on wildlife crime policing in the UK identifies is that although the enforcement of wildlife crime has developed from its ad-hoc and voluntary beginnings to being carried out in a more structured (albeit still largely voluntary) way, there are still problems to be addressed. Over the years NGOs in their policy documents have highlighted inadequacies in the current legislative and

practical enforcement regime for wildlife crime and have also made the case for a stricter enforcement regime. This case is further developed and set out in the current policies promoted by individual NGOs and in those policies promoted by NGOs working together. NGOs policy perspectives are analysed later in this research.

## Chapter Five - Research Methodology

This research examines the relationship between wildlife crime and the theories of criminal justice and the formation of wildlife legislation and policies designed to enforce that legislation. In particular it examines how effective existing policies on wildlife crime are, given what is known about crime, punishment and justice in mainstream criminology. Assessing this requires examination of the views of those involved in wildlife policy and law creation, implementation and enforcement, to examine any perceived flaws in current legislation and to identify problems with the implementation of wildlife legislation. Examination of the views of those involved in wildlife crime also allows for an examination of the perspectives and ideologies that inform their policy initiatives allowing for identification of any similarities to the ideologies present in mainstream criminal justice and areas where wildlife crime policy may depart from policies employed in mainstream criminal justice policy.

Before discussion of the research methodology, it is worth a brief reminder of the aims of this research:

### **Research Aim 1**

*Examine what are the policies of particular wildlife organisations and policy makers as regards the apprehension and punishment of wildlife offenders.*

### **Research Aim 2**

*Analyse what is the underlying thinking that informs the development of policies being advocated by NGOs in their attempts to reduce wildlife crime.*

### **Research Aim 3**

*To analyse the motives of wildlife offenders and the extent to which wildlife offenders share common traits and the factors that determine their offending behaviour and types of offence that they commit.*

### **Research Aim 4**

*To determine how effective existing policies on wildlife crime are, given what is known about crime, punishment and justice in mainstream criminology and to test criminological theories from the perspective of wildlife crime.*

**Research Aim 5**

*To make recommendations for future criminal justice policy on wildlife and conservation crime.*

There is a range of research methodologies available to anybody conducting research into crime and justice issues. Surveys, questionnaires, participant observations, life histories, case studies, self-report studies and official statistics are all used in mainstream criminological research. But wildlife crime in the UK represents a problem for the researcher wishing to use many of these 'established' methods of criminological research. The simple truth is that the body of data available to the mainstream criminological researcher simply does not exist in the case of wildlife crime and there are a relatively small number of organisations actively involved in the enforcement of wildlife legislation mostly in a voluntary capacity. The majority of these are environmental, animal welfare or conservation organisations that do not record information or retain case data in the same way that criminal justice organisations do.

There are also issues with the inconsistent manner in which much wildlife crime information is recorded (discussed in Chapter Two and also later in this research) and in the manner in which policies are developed in part to suit the interests of individual organisations and not as part of any overall crime prevention or law enforcement agenda. Wildlife crimes are not recorded centrally in any standardised way (Conway 1999, Roberts et al. 2001) and so the availability of official statistics on which to base any research conclusions is also limited. While of course some data are available and information on wildlife crime and how policies to address it are developed can be obtained from individual organisations, much of the official information, crime statistics, casework records and offender data that would be available to the researcher in mainstream criminal justice either does not exist in wildlife crime, exists in a manner that makes comparisons difficult (and in some cases impossible) or is in the hands of private organisations. Those NGOs that do hold information either do not routinely reveal the full details of the information that they hold, retain and release it for specific purposes such as campaigning and in a format suited to that purpose or because of their private (i.e.

non-statutory) status, do not retain information for the same time periods as bodies such as the police.

There are also a relatively small number of offenders involved in wildlife crime in the UK and, unlike the situation with drug crime and burglary, there is no established prison population of wildlife criminals from which a viable interview base could be taken. (In part, this is because of the nature of the legislation, which has only recently seen prison sentences introduced for certain wildlife crime). However, this does not mean that information on the views of offenders is not available and so should be ignored. Evidence of offenders' views is considered in this research as much secondary data exists in the form of research carried out into specific types of offender. For example Hawley's (1993) research on cockfighters, Forsythe and Evans' (1998) research and observation of the 'dogmen', Saunders' (2001) infiltration of badger digging groups, and the submissions of those who hunt with dogs to the 2000 Burns *Inquiry into hunting with dogs* reveal much about the attitudes of those who are engaged in different aspects of wildlife crime and their rationalisations and justifications for doing so. Yet, because previous research has only considered different individual aspects of wildlife crime and not the subject of wildlife crime as a whole data and information on wildlife offenders as defined by this research has not previously been collated available data on the specific issues addressed by this research is scarce. For these reasons, wildlife crime research requires an approach that differs somewhat from mainstream criminological research owing to the severe limitations of the available data and the need to carefully consider and interpret secondary sources.

The first question considered in choosing the research methodology for this research was whether to use primary or secondary research. The advantage of primary data is that is collected at first hand for the specific purpose of addressing the criminological issues in question (Jupp 1995). This allows the research design to be directly influenced by the specific issues being explored by the research (Jupp 1995, King and Wincup 2000).

Secondary data are those observations collected by other people or other agencies with other purposes in mind. While potentially this creates a problem

because the ways in which such observations are collected, categorized and presented are in the hands of others and may be influenced by theoretical ideas other than those in which the researcher is interested, secondary data can be valuable in identifying and investigating issues related to the research and in examining linked areas that might inform the research but for which primary data may be difficult to come by. Secondary qualitative data can be found in a range of documents which individuals and organizations produce for a whole host of reasons, including diaries, letters, biographies, autobiographies, newspapers, memoranda, police crime reports, probation case notes, to mention but a few. In America, for example, social workers in some states are required to report suspected cases of animal abuse occurring in houses where domestic violence or child abuse is suspected (Hawkesworth and Balen 2007). This is because some state legislation requires social services to become involved in the activities of animal abusers reflecting the acceptance of some US authorities and jurisdictions of the existence of a link between violence to animals and violence to humans. This means that a relatively large population of offenders and potential offenders exists (when compared to the UK) and the nature of some state legislation means that information on offenders is collated and can be obtained by researchers. Such information, which simply does not exist in the UK, provides useful background to how offenders may operate and view their interactions with others and with animals and so is relevant to this research and of use as secondary data.

Bottoms (in King and Wincup 2000) identified the importance of the theory/research relationship and the importance in criminological research of both a theory to be tested by the research and the theory that emerges from the research data. In this research, the examination of the relationship between wildlife crime and criminal justice policy required both primary and secondary data to reach the research conclusions. The research conducts a specific yet broad analysis of wildlife crime and while no previous data exists on the exact scope of this research, data are available for individual species of wildlife and for specific types of wildlife offence and offender. For this reason, primary data which covers the specific issues of the research is essential. As part of the research is into the views of NGOs the methodology chosen as most likely to yield meaningful results

is:

- (1) a study of documentation,
- (2) direct discussion of the research issues through interview; and
- (3) case study material

Where available, secondary research data has also been used, but, as mentioned above, much of the secondary data has been collected and organized for purposes that may not be influenced by the theoretical ideas in which this researcher is interested. Wildlife crime data collected by NGOs, for example, has been collected for the purposes of: campaigning, publicity and fund raising, political lobbying, raising public awareness and law enforcement. It is unlikely that its subsequent academic analysis and comparison with mainstream criminal justice data was a purpose considered (or intended) by the NGO collecting that data, but it is useful for such a purpose. In addition, material collected either in the US to fulfil statutory requirements or for use in other disciplines, such as information on the views of offenders intended for psychological analysis/predictions, may have been collected in a manner that presumes that it will be analysed in a particular way by the organisation that mandated its collection. The manner in which it has been organised is, therefore, a consideration as it is unlikely that data have been organised in a format that relates directly to the research questions. As an example, during this research a direct question was (twice) asked of the Home Office, concerning the extent and nature of the available wildlife crime data. The response (each time) was that such data were not easily distinguishable from other crime data.

The research design and structure and ethical issues in the research are discussed in more detail below.

### ***The Research Design***

The research was designed to obtain factual data on policy perspectives and qualitative data on the perceptions of criminality and the effectiveness of wildlife law enforcement. Secondary and primary sources were used, including:

Document Research – published figures & research on wildlife and conservation crime from Government departments and NGO's together with information on the arguments made by NGOs for changes in criminal justice policy or to policing priorities. Mayhew (2000) identifies the importance of victim surveys as producing a measure of crime separate from police or official records, but in the absence of wildlife victims who might be surveyed, NGO data on the incidents reported to them is valuable. Literature on police culture, penal policy and legislative developments has also been used, mostly from mainstream criminological literature, but where possible (and appropriate) green criminology sources and the literature on abuse of animals (e.g. Beirne 1999, Conboy-Hill 2000, Ascione 2008) has been considered alongside primary and mainstream criminal justice sources. Information on penal policy and criminal justice initiatives is available from official sources (including the Home Office, Scottish Office, Lord Chancellor's Department (now the Ministry of Justice), Probation Board and Youth Justice Board). Documentary evidence (e.g. policy documents and case study information) can be readily obtained from the major environmental protection organisations, both in electronic and hard copy formats. For example LACS publish regular information bulletins on its parliamentary lobbying and campaigning activities and the author receives these. The RSPB publishes its annual statistics on wild bird crime in both electronic and hard copy and also publishes campaign material and policy documents on the Internet and a quarterly investigations newsletter which the author receives (and used to edit). This newsletter contains detailed information on wild bird cases and news on legislative changes in the conservation field. WWF and the RSPCA also publish campaign and policy information and PAW publish edited case reports, a bulletin on wildlife crime enforcement and an enforcement strategy document that is updated every three years. In addition, wildlife crime cases are routinely featured in newspapers and online news reports providing up to date information on cases that are brought before the courts. Evidence on animal abuse and wildlife crime from animal protection agencies, federal law enforcement agencies and justice agencies in the United States has also been considered in this research. Organisations such as the Animal Legal Defense Fund (ALDF), Defenders of Wildlife and the Humane Society of the United States (HSUS) regularly publish research, policy and casework information relating to animal abuse and research into the links between animal abuse and

other crimes is published by the Washington-based society & Animals Forum Inc. While the difference in legal jurisdictions and law enforcement regimes need to be taken into account, some of this information has been considered as part of this research.

Semi-structured Interviews with wildlife crime practitioners, policy makers and researchers have also been conducted as part of this research. The interviews include representatives of: the RSPCA, the Scottish Society for the Prevention of Cruelty to Animals (SSPCA), LACS, the Bat Conservation Trust, Scottish Badgers, the Seal Conservation Society and the Guild of Taxidermists. Written information was also submitted by two former police WLOs who now act as environmental consultants. It was accepted that gaining access to the spokespersons for the main land-owning or gamekeeping organisations would be problematic although they might have views that could contribute to any assessment of how wildlife laws are and should be implemented. As a result although some interviews were requested early on there was a lack of success in gaining these from gamekeeping organisations and from some other organisations that did not wish to be interviewed or, due to the limited availability of staff remained unable to supply people for interview. To address these problems analysis of published policy perspectives and media releases and interviews (from their published literature, press releases and material that could be obtained from searching newspaper archives) was carried out. Those interviews that were conducted for this research were tape recorded and transcribed for later analysis (subject to gaining the consent of the interviewee). The interviews are intended to provide a balance of the wide range of views and expertise available on wildlife crime issues and the differing policy perspectives held by individuals and organisations and represent a form of interpretive interactionism (Denzin 2001). The intent of these interviews is to make the closed world of wildlife crime and environmentalism inhabited by NGOs, enforcers and offenders understandable to the reader.

In addition to this, the research made use of previous research in the field of wildlife and environmental crime, including the author's own previous research on wild bird crime and participant observation both in his experience of wildlife crime casework from within an investigations office and experience of the culture of an

environmental organisation. The research material collected also made use of previous literature on wildlife crime. The research methodology used was as follows:

The combination of document research, and qualitative data was designed to provide the most comprehensive picture possible of wildlife law enforcement in the UK. Much of the available documentary evidence addressed particular issues or was related to particular species rather than providing an overview or detail of the problems of wildlife crime across the UK. It was only through comparison of the views and differing perspectives of the NGOs involved in wildlife crime that a fuller picture of the state of wildlife crime enforcement in the UK emerged. The qualitative data supplied in the interviews was also essential in filling in some of the gaps in the law enforcement policies being promoted and in identifying issues relating to offenders that was often missing from NGO literature. For example, while some organisations had advocated policies on stiffer sentencing for wildlife crime, or for more importance to be attached to wildlife crime by the courts, the full reasons behind these policies and the intended outcomes were not always clear from the public policy statements or documentation alone. Public policy statements often also failed to identify what the causes of wildlife crime were considered to be, or what the intended effect on potential offenders from policies was. These issues were dealt with via direct questions in the interviews and, as mentioned above, interpretive interactionism (Denzin 2001) allowed for a full picture of the world inhabited by NGOs and offenders to emerge.

### **Structure of the Interviews**

Semi-structured interviews were conducted, the purpose of which was to collect qualitative data on the views of those involved in developing wildlife crime policy and the enforcement of wildlife legislation.

The interviews were structured with questions covering the following areas:

1. The main areas of crime dealt with by the interviewee
2. Whether offences were considered to be accidental or deliberate
3. How many offences take place each year

4. The main problems experienced in investigating the wildlife crimes dealt with by the interviewee
5. Any problems experienced in bringing cases to court
6. Any perceived problems with legislation
7. Any proposed changes to legislation
8. Perspectives on the current level of sentencing for wildlife crimes
9. Suggestions for how wildlife crime might be reduced (including any perspectives on current enforcement activity and the criminal justice system)

Open ended questions were used to allow respondents to provide full information and to discuss issues further rather than using a quantitative research method that required respondents to choose from a range of pre-defined options. It was accepted that while theorists might consider the NGOs approached in this research to fit within a particular definition of environmental or animal rights organisations (Beirne 2007, Connelly and Smith 1999) there is considerable diversity in the culture, organisational structure and political sensibilities of the organisations. Allowing NGOs to answer open ended questions allowed them to expand on the reasons for their views, the moral or theoretical underpinnings of their views and the political imperatives that might dictate policy. Extensive use of quotes (see Chapters Seven and Nine) allows for the NGO views to be presented.

Views were sought on a range of subjects including:

1. Why people commit wildlife crime
2. What should be done with wildlife offenders
3. The effectiveness of sentencing in wildlife crime cases
4. The case for changes to wildlife legislation
5. How to reduce wildlife crime

Representatives of those organisations interviewed in this research were asked questions concerning the role that their organisation plays in wildlife crime as well as information about the policies that the organisation pursued in relation to wildlife crime. In some cases it was necessary to interview more than one individual within an organisation to develop a true picture of the policies pursued by the

organisation. Within the RSPCA, for example, three departments deal with wildlife crime issues. The organisation's uniformed Inspectorate carry out field investigations into animal welfare and wildlife crime cases, while SOU, the organisation's undercover department, investigate the more serious and complex wildlife crime cases. Finally, the organisation has a prosecutions department that is responsible for the final stages of casework and pursuing cases through the courts. While there is some co-operation and internal communication between the departments (for example, cases dealt with by the uniformed inspectorate or SOU may be passed through to the prosecutions department for consideration of court action) each of these departments may well have a different view on wildlife crime and the effectiveness of the legislation. The views of the different departments are likely to differ by virtue of their role in the organisation's enforcement strategy and their respective experiences in dealing with wildlife crime. It is also worth noting that a fourth department, the Parliamentary Unit, has responsibility for lobbying for legislative change. This part of the organisation will inevitably have a role to play in shaping any lobbying activities for legislative change.

It was not expected that the interviews by themselves would provide the entire answers required and so interview responses were considered alongside the separate evidence of published policy perspectives and published data from wildlife crime cases. The information was also considered alongside criminological literature to determine the theoretical basis for some of the policy perspectives being advocated e.g. deterrence (whether individual or general). It was also accepted that the interviewees might not be able to fully explain the reasons behind all policies being promoted or some of the specifics of wildlife crime and law enforcement. Many NGOs have a small number of staff or employ specialist policy staff separate from those involved in investigative or law enforcement roles. As a result of this, staff involved in developing and promoting policy initiatives may not have practical experience of law enforcement and criminal justice issues and are unlikely to have experience or awareness of criminological theory. It is also the case that staff involved in investigative activities may have little or no involvement in the overall development of policy or the use of policy for fundraising purposes. This was taken into account during analysis of the interview responses.

### **Case Studies**

This research makes use of two case studies on specific wildlife crime problems and documentary evidence relating to wildlife crime investigations. Specific prosecution cases taken by the police and NGOs highlight some of the problems of wildlife law enforcement including the difficulties in obtaining evidence, investigating and prosecuting cased and in securing convictions. They also identify the importance of wildlife crime, despite the relatively small number of cases taken each year. Analysis of the number of birds or animals involved in cases also allows for some assessment to be carried out of the effect on those species of wildlife that may at risk and to determine where wildlife crime might threaten the very survival of some species.

The research results in a classification of offenders based on perspectives of criminality in wildlife crime. Evidence collated for the case studies and compared with what is known about the behaviour of offenders (e.g. Hawley 1993, Henry 2004 and Saunders 2001) allowed for an analysis of the nature of offending, the circumstances of the offender, the role of the NGO and criminal justice agencies in enforcing wildlife legislation and the treatment of wildlife crime by the courts and judiciary. The two case studies describing the problems of enforcing wildlife legislation and investigating and prosecuting particular wildlife crimes are included in Chapter Eight. Evidence for the case studies and offender models is taken from reports published by NGOs and DEFRA (through PAW) as well as from publicly available material from the courts and media.

### **Confidentiality and Ethical Issues**

Any research involving crime and justice carries with it a number of ethical and confidentiality issues related to the research (King and Wincup 2000). In relation to this research the voluntary nature of many of the organisations involved also raises confidentiality and ethical issues. Some NGOs have a relatively small number of staff in relation to the functions that they carry out. When talking about a subject as specific as wildlife crime, it may be easy to identify specific individuals within an organisation as they would be the only individuals with this subject specific knowledge. Confidentiality in the interviews was, therefore, a problem as

some interviewee respondents might be reluctant about expressing views that might be contradictory to their organisation's policy. The involvement of the research author also raised ethical issues.

The research author was Investigations Co-ordinator for the Royal Society for the Protection of Birds (RSPB) between January 1990 and October 1997 and worked for the Society for a further two years. He was an RSPB employee for a total of almost 11 years. In his capacity as Investigations Co-ordinator he was a point of contact for police forces and others involved in the investigation and prosecution of wild bird crime, authored a number of reports on wild bird crime and co-edited a newsletter on wild bird crime. Interview respondents within the NGO field, may well have considered that the author was sympathetic to their views and the problems of enforcing wildlife legislation. For those not sympathetic to the NGO view of wildlife law enforcement and the importance of wildlife crime the research author may have been considered to be hostile to their point of view and it was considered that this could impact on the interviews. Sensitivities in research subjects can be an issue (Mayhew in King and Wincup 2000) and to combat these perceptions and any possible ethical concerns all potential interviewees received their formal interview requests by letter using the (then) University of Central England (UCE), Faculty of Law and Social Sciences as a mailing address. Letters were sent on University headed paper with a UCE email address supplied for contact. The research author's home address and email were also included. Each letter also contained a paragraph confirming that the research author had been an RSPB employee but had left the Society's employ in February 2000. As many of the potential interviewees were known to the author it was important to establish that this was not a piece of RSPB research but was being carried out as independent study, albeit under the auspices of the (then) UCE. By the time that follow up information was requested from some interviewees and the latter stage of interviews was conducted (2006/2007) the research author had been out of the RSPB's employment for several years but those sent interview requests were still informed that the author had been an RSPB employee and had worked in the RSPB's Investigations Section for more than seven years.

In conducting this research care was taken to ensure that individual interviewees

were not placed in a position where they felt they must either defend or carry the can for the policy of their NGO. Anonymity in responses was agreed upon to assist in this process, where requested. In particular, during the interviews care was taken to treat all interviewees with sensitivity to ensure that they felt able to answer freely without feeling that the role of their particular organisation in investigating wildlife crime or developing policy was under attack. Respondents are thus referred to anonymously in this research wherever possible, although their organisational details are included.

### ***Interview Selection***

Interviewees were carefully selected on the basis of a known involvement in wildlife crime in the UK, either from within a campaigning, law enforcement or political advocacy role.

Wildlife crime is of interest as a study of the role of voluntary sector organisations in the development of legislation and public policy in an area that is considered to be on the fringes of criminal justice policy. The literature on the work of voluntary organisations was considered as part of this research (see Chapters Four).

However, while a considerable amount of literature exists on environmentalism, animal welfare and animal rights issues, little or no attention has been paid by previous researchers into the work of NGOs in practical law enforcement within the UK. Numbers of wildlife crime are small in comparison to most other forms of crime, yet organisations involved in combating wildlife crime are able to exert considerable influence on policy makers and practitioners in wildlife crime.

Voluntary sector organisations involved in wildlife crime have been able to exert considerable influence on Government through parliamentary lobbying and direct action campaigns. During the passage through Parliament of the *Countryside and Rights of Way Act 2000*, for example, a number of environmental organisations were able to influence the final form of the legislation through the use of amendments. NGOs have also sponsored private members' Bills as a way of seeking amendments to legislation (e.g. John McFall's failed *Wild Mammals Protection Bill* 1995).

Voluntary sector organisations operating in the field of wildlife crime as law enforcers or policy professionals have also been successful in obtaining considerable media coverage for wildlife crime stories. Greenpeace, Friends of the Earth and the RSPB are regularly in the national news with stories relating to wildlife crime, although the focus of the work of Greenpeace and Friends of the Earth is more on habitat destruction and international issues such as global warming rather than on local issues like wildlife crime. However, all three organisations are heavily involved in the production of reports and campaign briefings on wildlife crime and enjoy considerable public support for their activities. The RSPB, for example, has a million members who support its work. Given the nature of their public support, the influence that they have on policy makers and their involvement in direct action and the investigation and prosecution of wildlife crime, the views and policies of those voluntary sector organisations involved in wildlife crime is of some importance in this research. Most of the organisations approached for interviews are members or Partners of PAW, DEFRA's Wildlife Crime Secretariat. This includes those organisations who may not have an active role in the enforcement of wildlife legislation but who retain interest in wildlife and countryside crime issues.

The RSPB and RSPCA, for example, both have full-time investigations sections and are active in wildlife crime casework. Both organisations are also active as members of Wildlife and Countryside Link, the liaison service for all the major non-governmental organisations in the UK concerned with the protection of wildlife and the countryside.

While the organisations that have been interviewed have often published documentation on wildlife crime and related issues this information is mostly published from the perspective of detailing the threats to wildlife from wildlife crime or highlighting the role that the public has to play in reducing or eliminating wildlife crime. One of the purposes of the interviews conducted for this research is to uncover the basis for these policies and to obtain more information about how each NGO feels that offending in wildlife crime can be reduced.

However, this research experienced problems in interview access. An initial list of 24 organisations was produced to commence interviews but significant problems were encountered with gaining access to conduct the interviews. The small number of staff within some NGOs means that individuals who might provide evidence for this research might be involved in several jobs. As an example, at time of interview one individual interviewed for this research, held posts in two organisations, working in offices some 40 miles apart. Several months elapsed before an interview date could be agreed upon. In addition to this, some NGO staff who initially agreed to be interviewed were later unable to confirm an interview date or were unable to make the necessary time for an interview due to work commitments.

To overcome some of these problems, telephone interviews were offered to some individuals and, for the smaller organisations, letter enquiries were made so that written answers to the main interview questions could be provided with follow-up enquiries made where appropriate. The author also attended an international conference on the links between animal abuse and human violence in September 2007 and the opportunity was taken at this conference to obtain follow-up information, details of further research and to check whether there had been changes in the policy position of those main NGOs that attended. (A conference report is contained at Appendix 3)

### **The Role of the Interviewer**

Interviews were conducted either face to face, or by telephone. Additional information was also collected direct by email or letter request by the research author. There is a slight concern that personal acquaintance by the author may have had some effect on the data collected and so, wherever possible, information obtained in interviews has been cross-checked by other means, for example against policy documents and media statements.

As mentioned above, the research author's prior association with the subject of wild bird crime may have affected some interview respondents. A number of those interviewed responded in a manner that made it clear that they considered the interviewer to have prior knowledge of some of the problems that they faced and it

was necessary at times to pursue further questions to ensure that a complete response was obtained. It was also necessary to encourage respondents to discuss issues other than wild bird crime as examples of problems within wildlife crime enforcement. The interviewer's background within wild bird prosecutions also made making contact with offenders problematic and potentially dangerous. Several NGOs raised concerns about the strong potential for personal risk attached to any attempt by the author to interview offenders and LACS documented this concern in a letter advising that the author should not have any direct contact with offenders. The RSPCA's SOU also expressed concern that the interviewer's ethnicity (Black British) would be a factor with badger diggers and badgers who are perceived by the RSPCA as being predominantly racist. While this contributed to consideration of the (interesting) issue that wildlife offenders are predominantly white males, it also contributed to the concern that the author's direct involvement might have an impact on any interviews that might be carried out by him. There was also the possibility that offenders might feel the need to justify their activities to a researcher known to have been involved in prosecutions work with the lead NGO in wildlife crime investigations (the RSPB). Potential contamination of any interview data by altering the results together with difficulties in obtaining reliable and sufficient data on the views of offenders was a concern that informed the decision not to interview offenders but instead to use documentary and quasi-documentary resources and secondary data on offenders and their interaction with NGOs and statutory agencies in wildlife crime. The author's first-hand knowledge of the views of offenders from past casework (participant observation) also allowed for some primary qualitative data (albeit evidence not originally collected for this research) to be used.

It could also be argued that the researcher may not be impartial where the subject of wildlife crime is concerned. The appearance of any bias, whether real or not, could have an influence on responses obtained in interviews and so it was important to regularly reflect on the researcher's role and influence within the interview process. Further checking of interview responses against published policy perspectives and the detail of legislation was an important part of the analysis of this research.

## **Difficulties with the Research**

The majority of wildlife and environmental crime research is commissioned to complement the policies of voluntary organisations. Beyond that material published by the PAW there is very little publicly available material on wildlife crime in a UK wide context. The author published reports on wild bird crime during his seven plus years as RSPB Investigations Co-ordinator and use has been made of these reports in this research. However, there has not been any overall publication of wildlife crime data within the UK. This scarcity of available documentary evidence caused some problems in the initial stages of the research. In addition to this, problems were encountered with gaining access to interviewees due to additional pressure and changed priorities for NGO staff during the 2001 and 2005 General Election and the 2001 Foot & Mouth outbreak. The research problems are discussed in more detail below.

## **Problems with Documentary Evidence**

Many of the NGOs involved in wildlife crime do not collate figures on wildlife crime; historically, the picture of wildlife crime in the UK has been shaped by the reporting practices of the large organisations, the RSPB and RSPCA, who are able to devote resources to the recording of wildlife crime data. Researchers at the University of Wolverhampton (2001) commented upon the fact that a perception existed that wild bird crime was the most prevalent form of wildlife crime in the UK. The evidence in support of this contention is vague at best. Indeed respondents to this research have indicated that badger crime is a much more prevalent form of crime, albeit one that is not closely monitored.

Documentary evidence is also limited in providing analytical overview of wildlife crime trends in the UK and much of the available evidence is species specific, discussing issues of badger crime, bird crime, bat crime or mammal crime. Policy documents published by NGOs are also non-specific or promote a particular policy perspective without explaining fully the rationale behind a policy or the evidence to substantiate it. PAW's enforcement plan called for the power of arrest for wildlife offences (a measure that was eventually introduced in limited form in the *Countryside & Rights of Way Act 2000*.) The rationale for this policy was the belief of police officers and NGOs that the lack of such a power of arrest meant that

evidence was being destroyed before police could effect searches of premises under the terms of a warrant. While this belief is widely held, no evidence has been advanced to demonstrate that the destruction of evidence is or was widespread.

The documentary evidence is thus limited in its ability to provide a comprehensive picture of wildlife crime in the UK, and its scarcity limited progress on the research.

### **Analysis**

Documentary evidence was analysed for direct evidence of policy perspectives. Where these were identified they were noted as evidence of particular policies pursued by one or more NGOs.

Interviews were digitally recorded for later transcription and analysis. Telephone interviews were transcribed directly as the interview took place. Analysis of the interviews was conducted by hand with a view to further identifying particular policy perspectives.

The outcome of the interviews and a full discussion of the data considered in this research are included in a later chapter on dealing with wildlife offenders.

### **Summary and Conclusions**

Wildlife crime research requires an approach that differs from mainstream criminal justice research. There is currently a lack of official statistics on wildlife crime, in part because they are not recorded as a distinct class of data in the official crime statistics recorded by the Home Office. Wildlife offenders are also not sufficient in number within the prison population for them to represent a viable base among which to conduct interviews. This is, in part due to the nature of the legislation. Wildlife offences do not uniformly attract prison sentences and the short-term nature of those prison sentences imposed (often only three to six months) means that accessing wildlife offenders in prison is problematic.

This research uses primary and secondary data to examine the relationship between wildlife crime and the criminal justice system in the UK, with particular

regard to the policies advocated by those involved in the enforcement of wildlife legislation and the investigation and prosecution of wildlife offences. A secondary, but equally important, issue to this research is the . The research also considers the effectiveness of policies on wildlife crime and how the enforcement of wildlife legislation could be improved.

The research methodology used is designed to obtain the views of those NGOs with a direct input into the public policy response on wildlife crime, including those NGOs that are involved in practical wildlife crime enforcement activities. By examining these views against published public policy perspectives, the rationale behind the policy perspectives is also considered as well as the likely success of the policies being promoted.

## Chapter Six – Research Findings: NGO Policies

This Chapter covers the documentary evidence of NGO policies obtained during the field research for this PhD. The evidence obtained directly from NGOs and from researching documentary evidence has clarified the policies pursued by the main UK environmental bodies involved in wildlife crime in the UK and highlights the problems of enforcement of legislation that drive some of these policies.

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

Specific policies being supported fall into the following categories:

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

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

Although some NGOs have suggested that education may also play a part in dealing with wildlife crime, there are no formal education programmes aimed at reducing wildlife crime currently being pursued in the UK. Instead the goal of educating the public about wildlife crime is being pursued by NGOs through publicity of court cases on wildlife crime, promoting the idea that wildlife crimes are rigorously enforced. This combines the idea of education and deterrence into one approach.

## **NGO Policies on Wildlife Crime**

The policy perspectives being advocated to deal with wildlife crime are not presented by NGOs in any particularly co-ordinated or clear-cut way (although calls for legislative change have been developed through Wildlife and Countryside Link and PAW's Legislative sub-group.) This is an almost inevitable consequence of the individual (and species specific) nature of wildlife law policy development in the UK. NGOs often have a single issue focus and so the policy perspectives are promoted via a number of different organisations dealing with a number of different offence (and species) types.

The various policy perspectives are discussed in more detail below but are in part driven by an overall agenda dictated by DEFRA's co-ordinating body, PAW.

Paw's Enforcement Plan for 2000–2003 was launched on 16 February 2000 by (then) Environment Minister Michael Meacher. The plan includes the following proposals

- The setting up of an experimental National Wildlife Crime Unit, using funds of £150,000 from the Department of the Environment, Transport and the Regions (DETR) (now DEFRA).
- Sponsorship and funding of enforcement-related activities to assist wildlife investigations
- Raising awareness of wildlife crime amongst the judiciary
- Promoting increased changes to wildlife law

PAW's objective, therefore, is to effect a more rigorous and professional enforcement regime for wildlife crime in the UK. This is something that the NGOs believe is a necessity (although there may be some argument about how this can be best achieved.)

While the general aim of NGO policies is to reduce the incidence of wildlife crime and to prevent its occurrence or recurrence, NGO policies also have secondary objectives of, punishing offenders with the aim of reducing or preventing re-offending and deterring would-be offenders. The objective is also to publicise wildlife crime and the continuing threat to wildlife populations from wildlife crime (to

promote wider understanding of environmental issues), generate support for those NGOs involved in the fight against wildlife crime (and for the wider work of the NGOs), improve legislation aimed at protecting wildlife and ensure and improve the enforcement of existing wildlife laws

The approach of education and deterrence is carried through into policies on dealing with wildlife offenders. While the broad policy perspective is to produce a more punitive regime that treats wildlife crime as a law enforcement priority, a number of specific individual policies are pursued to achieve this aim each of which is discussed in more detail below:

### **Statutory Recording for Wildlife Crime**

Wildlife crime is not currently recorded centrally in the UK. Instead, individual NGOs keep their own records of wildlife crime specific to their own priority species and organisational objectives. NGOs believe that the importance of wildlife crime is such that it should be recorded consistently within Police forces and should form part of the official statistics on crime. Instead, it is currently something of a fringe area of policing with the recording of offences being carried out on an ad-hoc basis.

Roberts *et al* reported that “wildlife crime recording is patchy with some examples of robust good practice, but there is a clear need for consistent national recording mechanisms which in turn will enable effective crime analysis to inform the work of all relevant agencies” (Roberts *et al* 2001:3).

In 1999, the Scottish Office Central Research Unit published research by Ed Conway of the University of Aberdeen on the recording of wildlife crime in Scotland. Conway’s research concluded that wildlife crime was seriously under-recorded in Scotland and that recording of wildlife crime incidents was also inconsistent between Scottish police forces.

This problem is not unique to Scotland as wildlife crime is not centrally recorded and does not form part of the ‘official’ crime statistics produced by the Home Office

for England and Wales. NGOs argue that this has the effect of downplaying the extent of wildlife crime which prevents the statutory bodies from allocating sufficient resources to tackling the problem. In response to a direct request for wildlife crime data for the years 1997 to 1999, as part of this research, the Home Office replied as follows:

I refer to your letter of 11 June [2000] requesting recorded crime data on wildlife and environmental crime. I can inform you that offences under the *Control of Trade in Endangered Species (Enforcement Regulations) 1997* are notifiable and as such are recorded in recorded crime. In the financial year ending 31 March 1999 there were 2,537 notifiable offences under the classification "Other Indictable and Triable Either Way Offences", but it is impossible for the wildlife element to be separated from the other offences in this group.

Offences contravening the "*Protection of Badgers Act 1992*" and the "*Wild Mammals (Protection) Act 1996*" are not notifiable and therefore not included in recorded crime.

(Letter from Home Office Research Development & Statistics, 19 June 2000)

In 2006 the Home Office again confirmed that the wildlife element cannot be separated from other offences and so the exact scale and extent of wildlife crime in the UK remains unknown. This causes a number of difficulties for those involved in enforcing wildlife legislation. In its Enforcement Plan for 2000 to 2003 PAW commented that "there is no central record of reports of wildlife offences, nor any comprehensive information about how many of those reports lead to action by the enforcement authorities and subsequent prosecution. This makes it difficult to make an assessment of the extent to which the activities of the enforcement agencies and the Partnership are making an impact on wildlife crime." (PAW 2000:2). As part of its enforcement plan PAW stated its aim to "continue to press for wildlife offences to be 'notifiable'".

PAW's Enforcement Plan for 2004 to 2007 also contains reference to the recording of wildlife offences but in a somewhat watered down manner. The Plan

identifies that having no central record of reports of wildlife offences makes it difficult to identify trends and can affect the deployment of resources. Its policy objectives in this area are listed as follows:

**Paw Will:**

- Consider the scope for a UK wide informal wildlife incident recording system
- Continue to pursue the possibility of certain wildlife offences being made notifiable (as is currently possible for the triable either way offences specified in section 14 of the WCA 1981 and the COTES regulations).

(PAW 2004:2)

This policy falls short of the statutory recording of wildlife crime that most NGOs believe should be undertaken as a priority. In its May 2004 evidence to the Parliamentary Select Committee on Environmental Audit the National Federation of Badgers Groups (NFBG) said “the NFBG believes that the Home Office, to enable quantification of the problem should record all crime against wildlife”. This was echoed in the written evidence presented by the Wildlife Trusts (April 2004)

**Increased resources for the Statutory Agencies**

There is a perception that wildlife crime is an under-resourced area of policing. NGOs involved in wildlife crime have argued for a) increased resources to be allocated by statutory enforcement agencies; and b) increased powers for statutory agencies (mostly the police) to investigate wildlife crime

The two issues go hand in hand and, thus are dealt with as such in this section. While the issue of increased powers for the police will sometimes require a change to wildlife legislation (which is discussed later in this chapter) it will sometimes require a change to the *Police and Criminal Evidence Act 1984* (PACE).

NGOs involved in the enforcement of wildlife legislation have identified the voluntary nature of much wildlife policing as a negative factor in the investigation and detection of offences. Most police Wildlife Crime Officers (WCOs, formerly WLOs) are volunteer officers who carry out their wildlife law enforcement duties either in their own time or in addition to other duties with only a small proportion of UK Police forces employing full-time WCOs.

In addition to the difficulties encountered by the very nature of volunteer officers, there are also a number of practical resource considerations that have been identified by NGOs as being factors in the investigation of wildlife crime. It is also recognised that the importance attached to wildlife crime varies between police forces.

In 1995 a Working Group of Police WLO's chaired by the (then) Deputy Assistant Commissioner of the Metropolitan Police, published a report on the role of the police in the enforcement of wildlife and environmental legislation. The report made 11 recommendations on the work of WLOs. Recommendations one and four dealt with the issue of resources and were as follows:

1. That the Associations of Chief Police Officers recognise that enforcement of this field of legislation is a Police matter and that resources require to be devoted to it. That such enforcement has real value and is regarded as worthy by the judiciary and the general public. That the work of the Police Wildlife Liaison Officer can have considerable crime prevention and police/public relations benefits.
  
4. That the basic work of the WLO should be regarded as an on-duty activity and that holders of such a post should not be expected to undertake such duties outwith duty periods (except where an individual indicates otherwise).

(WLO Working Party 1995:17)

There is therefore a distinct policy perspective calling for better resources for the statutory agencies to combat wildlife crime. This includes: the introduction of full-

time wildlife officers (WCOs) in each UK police force, better resources for the investigation and detection of wildlife crime, resources to be allocated to the prosecution of wildlife offences and for better and earlier involvement of the statutory prosecution agencies in wildlife crime.

The issue of resources for the statutory enforcement agencies is one that is linked to the perception of the importance of wildlife crime. The Association of Chief Police Officers in Scotland (ACPOS) recently (2004/5) considered whether civilian staff could become wildlife officers in a bid to free up 250 police officers over the next three years. The RSPB (2005b) raised concerns over this proposal commenting that:

The RSPB believes that experienced, fully trained WCOs are more important than ever, as it is becoming increasingly difficult to secure convictions for wildlife offences. WCOs should not only be involved in liaison and training but, increasingly, in front line enforcement. This will require all the current resources and more.

(RSPB, *Legal Eagle* 43:7)

Part of the concern is that wildlife crime is not seen as being a part of mainstream policing and that the civilianisation of these posts in Scotland would reflect a reduction in the enforcement regime for wildlife crime.

In its response to DEFRA's pre-consultation paper on its Review of Statutory Instrument 1997 No 1372, *The Control of Trade in Endangered Species Enforcement Regulations 1997* (COTES) Wildlife and Countryside Link argued for substantially increased powers for the Police. Wildlife Link supported the main proposals being put forward by DEFRA and also argued that all offences under COTES should be made arrestable offences or that police officers should be provided with a power to enter any land other than a dwelling house providing the opportunity to search outhouses, aviaries etc.

In addition, Wildlife Link proposed that: the conditions contained within Section 9(2) of COTES relating to the granting of search warrants should be deleted,

making it easier for the police to obtain a search warrant, and that the police should be granted a power to stop and search a person, vehicle and anything in or on a vehicle for Annex A and B specimens or anything related to regulation 8.

The impression given by Wildlife Link is that the police lacked adequate powers or resources to enforce COTES and that this was affecting the detection and prosecution of offences.

### **Changes to Wildlife legislation**

Individual NGOs have campaigned for changes to wildlife legislation. The focus of this aspect of policy has two strands:

1. Reform and clarification of existing legislation to close perceived loopholes or inadequacies
2. Changes to legislation to create new offences

The practical enforcement work of NGOs has identified a number of loopholes in wildlife legislation. Some aspects of wildlife legislation allow for defences against specific charges in the legislation while court cases have also determined that some charges in different pieces of legislation are impractical to enforce. This is in part due to the specific wording of legislation that makes it difficult to meet certain evidentiary burdens. Prosecutors may be required to prove not just the intent of the individual but also to disprove defences allowed in different parts (and pieces) of legislation. For example, a person arrested for digging out badgers (an illegal activity) could argue that they were digging for foxes (a lawful activity). The onus would be on the prosecutor to disprove this defence.

Changes to wildlife legislation aimed at addressing perceived inadequacies in legislation have been called for in relation to Badgers, Bats, Birds and Cetaceans (whales, dolphins and porpoises).

NGOs policy in each of these areas is discussed in more detail below.

The NFBG argues that there are significant problems with the *Protection of Badgers Act 1992*. Its published policies argue for changes to the law to prohibit certain methods from being used to capture or take badgers, changes to the law to close the loopholes that make it difficult to secure convictions, and a strict code of conduct for the use of hunting with dogs under the *Hunting Act 2004* to prevent the abuse of badgers.

The NFBG suggests that the law should be changed to completely abolish the manufacture, sale, possession and use of snares and argues that this is the preferred option of the NFBG, Scottish Badgers, RSPCA and SSPCA. In particular, the NFBG argues that snares should be completely banned because they are cruel and indiscriminate and that there is a legal obligation on the government to do so. The NFBG argues that

The UK Government has a responsibility to comply with the Bern Convention on the Conservation of European Wildlife and Natural Habitat, to which it is a signatory. Article 8 of the Bern Convention requires contracting Parties to prohibit the use of “*all indiscriminate means of capture and killing*” (Council of Europe 1979.)

(NFBG 2002:13)

The NFBG argues that it would be possible to use Section 11(4) of the *Wildlife and Countryside Act 1981* to make the use of snares prohibited under the *Act* and that this should be considered as a priority.

The NFBG also points to problems with existing legislation that allows certain snares to be used. This places the onus on investigators (e.g. the police) to be able to identify the type of snare in use and whether it is a legal or illegal one. The NFBG explains.

Tightening up the law on snares might well lead to a reduction in the suffering caused by snares, if all those who used snares were to comply with the revised law. However, it is clear from the cases and figures quoted within this report that many users of snares do not even comply

with the law as it stands now. Given that most snares are used on private land and away from public scrutiny, those offences that we know about must be the tip of a very large iceberg. We find it difficult to accept that those who abuse the current legislation would heed additional restrictions.

In concluding, we must come back to our primary concern about snares – that in all their forms, and however they are used, they are indiscriminate and inherently cruel. The torture of badgers and other animals that become trapped in snares must be stopped. It is the considered opinion of the NFBG that the only way to achieve this is to legislate for a complete ban on the use of all snares.

(NFBG 2002:14)

The NFBG also points to difficulties in the *Protection of Badgers Act 1992* that make it difficult to secure convictions. The NFBG states that “it is lawful to dig for foxes, but not to dig into a badger sett for foxes. However, badger setts are frequently damaged when terrier men working for fox hunts dig into setts after a fox – either in disregard of the legislation, or because they do not believe the sett to be in current use by badgers” (NFBG 1992:6). Proving such cases can be difficult and the NFBG also argues that a further loophole in the *Act* makes it difficult to establish when deliberate disturbance to badger setts has occurred.

Section 8(7) of the *Protection of Badgers Act 1992* states that a person is not guilty of damaging or obstructing a sett, or guilty of disturbing badgers, by reason of his hounds marking at a badger sett ‘provided they are withdrawn as soon as reasonably practicable’. The interpretation of ‘reasonably practicable’ varies and in some instances hounds cause considerable damage to badger setts , in pursuit of a fox which may have gone to ground.

Proving disturbance to badgers is clearly difficult, although various kinds of disturbance to badgers caused by hunting with dogs, have been found

to result in desertion of setts and a visible reduction in badger activity in an area.

(NFBG 2002:6/7)

The NFBG (2002) reports that because of the various loopholes in the legislation relatively few cases come to court and even fewer result in convictions. The NFBG believes that “weaknesses in the *Protection of Badgers Act 1992* can result in the legislation being unworkable and unenforceable” (NFBG 2002:7). Even though hunting with dogs is controlled by the *Hunting Act 2004*, the NFBG remains concerned that badger crime may continue. In its January 2005 consultation response to DEFRA on the British Association for Shooting and Conservation’s (BASC) code of conduct for using dogs below ground, the NFBG pointed out that the provisions in the *Hunting Act 2004* and the code of conduct would still allow badger crimes to continue. The NFBG commented that: the code needed to make explicit reference to the *Protection of Badgers Act 1992* and the legal requirement to avoid any hole with signs of badger activity. The NFBG recommended that the code should include detail on how to identify a sett that was in use and needed to make it clear that entry of a dog into a badger sett is an offence unless carried out under licence and that the code should reinforce the view that if in doubt a dog should not be put into a sett or hole.

The NFBG also suggested that there should be a register of authorised gamekeepers which should record the land on which individuals are permitted to carry out terrier work. The register should have evidential status to ensure that the police and prosecuting authorities could access it during the investigation of offences. The code should also clarify what constitutes a ‘competent person’ who can carry out fox control and in addition to fines for breaches of the code there should be a ban on any person breaching the code from using terriers in the future. The NFBG also recommended that the code should include strict rules for rescuing dogs, should make it clear that if the den in which a terrier is trapped is a badger sett then the dog can only be dug out under licence from DEFRA (NAWAD in Wales); and also that the code should make it clear that terriers that will fight with a fox are illegal under the code.

The NFBG concluded that “in its current form the code will allow the continued and widespread abuse of badgers. It is therefore vital that DEFRA ensures that the code of conduct is not seen as a ‘badger digger’s charter’, in allowing people to use it as a cover for illegal actions against badgers and their setts.” (NFBG 2005:1)

A report on bat crime published by the Bat Conservation Trust in 2001 also identified problems in the enforcement of bat legislation. In its April 2004 written evidence to the Parliamentary Select Committee on Environmental Audit, the Bat Conservation Trust outlined the following changes to legislation that it considered necessary to improve protection for bats:

1. Bat offences should become recordable crimes
2. Legislation in Scotland and Northern Ireland should be strengthened along the lines of the *CRoW* Act and consideration should be given as to how the *CRoW* amendments could be included within the *UK Habitats Regulations*
3. Planning and listed building applications and applications for works with trees subject to tree preservation orders should require applicants to check for the presence or absence of European Protected Species
4. Habitats Regulations Derogations must be accurately and consistently applied across the UK
5. Where actions would affect a protected species the advice sought as a legal requirement from a Senior Nature Conservation Officer (SNCO) must be followed
6. There should be formal training for all those involved in implementing wildlife legislation.

The Bat Conservation Trust concluded that UK legislation is an effective tool but that there are problems with the legislation and its enforcement.

Since 1990 the RSPB has produced annual reports on offences against wild birds. The reports contain an analysis of known incidents of wild bird crime for each year in question, and also analyse prosecutions for wildlife crime in each year. The RSPB reports provide a picture of trends in wild bird crime over the years and also

focus on particular issues in wildlife law enforcement. Some points identified by the RSPB reports include: the continuing illegal persecution of birds of prey in game rearing areas and the continued use of pole traps, despite the fact that this kind of predator control has been unlawful for many years. The RSPB has also commented on the continued lack of resources for wildlife policing, despite some general initiatives aimed at reducing this kind of wildlife crime and the need for wildlife legislation to be reviewed and updated to close perceived loopholes in the legislation that prevent offences from being investigated fully. (For example, the difficulty in prosecuting ‘disturbance’ offences at wild birds’ nests which even after the amendment to include the word ‘recklessly’ still hinges on the intentions or behaviour of the alleged offender rather than solely proving whether the birds were disturbed as a result of the offender’s actions.)

The Whale and Dolphin Conservation Society (WDCS) argues that evidence exists to show that harassment of whales, dolphins and porpoises is a growing problem and that existing legislation is inadequate to address the problem (WDCS 2000). In its report *Chasing Dolphins* WDCS commented on the failure of UK legislation to protect whales and dolphins and recommended that there should be “the creation of a new offence: the intentional or reckless disturbance of cetaceans anywhere in UK waters” (WDCS 2000:i). WDCS also called for an extension of enforcement powers to marine agencies such as the coastguard as well as the police. The intent is to introduce a more extensive enforcement regime that would allow for enforcement by a greater range of agencies.

### **Better Use of Existing Sentencing Options**

Some NGOs have argued that existing sentencing options could be better used. Wildlife crime offences rarely attract penalties at the upper end of the available scale with fines tending to be at the lower or middle end. Lowther, Cook and Roberts (2002) writing on the wildlife trade for WWF and TRAFFIC explained that the imposition of low penalties occurred in the majority of prosecuted cases. They explained that:

This relative ineffectiveness does not derive from lack of effort on the part of the enforcing authorities, but rather by laws which, in theory and in

practice, do not provide an appropriate deterrent to offenders. There is an apparent lack of seriousness attached to wildlife trade offences. This is surprising, given the potentially high rewards at stake for very little risk of detection and penalty, and because of the seriousness of their impact on species sustainability. Issues of seriousness and tolerance need to be examined, so that public and judicial attitudes towards such offences can be re-shaped.

Lowther, Cook and Roberts demonstrate that the perception that exists among NGOs is that the courts may not treat wildlife crime seriously. For example, WWF argues that

Judges and magistrates currently have no sentencing guidelines relating to wildlife trade crime. This means that they can rely only on past case law, which is littered with weak sentences and modest fines. We want the Home Office to ask for new guidelines setting out appropriate penalties for wildlife trade crime.

<http://www.wwf-uk.org/wildlifetrade/done.asp>

Following a conference in Budapest in June 2004, TRAFFIC International commented that "Illegal wildlife trade is still seen as a petty crime in the EU and smugglers often only receive minor warnings". ([www.traffic.org](http://www.traffic.org)) Prosecutors and wildlife trade experts met at the conference which concluded that

Violations against CITES and the EU Wildlife Trade Regulations are often deemed insignificant and therefore the appropriate application of the law is only rarely used by judges. There are only a handful of cases in the EU Member States that have ended with significant fines or penalties. Hungary and Slovenia are currently the only countries among the new Members where imprisonment – although suspended – has ever been applied. Similar problems also exist among the original Member States and in some countries illegal wildlife trade is not even considered a criminal offence and is treated under administrative law.

([www.traffic.org](http://www.traffic.org))

NGOs argue that where existing legislation allows for heavy fines or the use of prison sentences, these options are rarely used, a factor which lessens the perceived deterrent effect. NGOs consider that where they are available stiffer penalties should be used. However, there is also a strong and consistent argument made by NGOs that in many pieces of legislation, the existing penalties are inadequate and stiffer penalties should be made available.

### **Increased Sentencing Options**

The argument for increased sentencing options usually manifests itself as a call for stiffer penalties for wildlife crime offences. In a number of cases NGOs perceive that existing penalties are inadequate and that increased sentencing options should be available to sentencers.

Wildlife Link (2002) argued for an increase in the maximum prison sentence under *COTES* from two to five years and for making *COTES* offences arrestable. Wildlife Link argued that there was anecdotal evidence to support NGOs contention that the lack of a power of arrest had allowed some defendants to destroy or hide evidence of offences. Wildlife Link stated that:

The penalties available in the UK under *COTES* also fail to deter wildlife offenders. They are regarded by many as derisory and, in addition, the maximum penalty of two years imprisonment has never been applied for a single offence. The *Customs and Excise Management Act 1979* (*CEMA*) however, provides enforcers with powers of arrest and has a seven year maximum sentence.

(Wildlife Link 2002:11)

Wildlife Link argued that the higher penalties available under *CEMA* should be adopted for *COTES* offences as this would send a more consistent message about the seriousness of the illegal wildlife trade, whatever statute was used and whatever agency was involved. Wildlife Link argued that

One of the arguments given in the pre-consultation paper against increasing the maximum prison sentence under COTES is that there is no evidence that the courts consider that the current penalties are too low. However, this is perhaps due to their lack of awareness of the serious nature of these crimes. At present, no specialised guidance or awareness training is given to judges or magistrates, many of whom will rarely come across wildlife trade offences because prosecutions are so infrequent. By making offences under COTES arrestable and by increasing the maximum penalties available these crimes would attain a level of seriousness in the eyes of the courts that was previously lacking.

For the sake of clarity and ease of understanding by enforcement officers, Link would like to see this penalty and hence the powers of arrest extended to all offences created by *COTES*. This would seem particularly relevant for repeat offenders. However realising that this may be difficult to achieve the minimum that should be requested is a maximum five year penalty for all offences involving Annex A species.

(Wildlife Link 2002:12)

Wildlife Link's policy demonstrates the NGO view that use of prison sentences and a more punitive regime acts as a deterrent to wildlife offenders.

WDCS in commenting on the failure of UK legislation in respect of cetaceans also argued that there should be "more realistic fines for offenders" (WDCS 2000:i)

### **Summary**

The general policy perspective put forward by NGOs is one of a call for a more punitive regime for wildlife offences, usually manifested in calls for stiffer penalties for wildlife crime offences and changes to wildlife legislation. Perceived inadequacies in existing legislation drive these calls. However, detailed examination of documents reveals that beyond the primary call for increased sentencing, a number of secondary policies are advocated. These are summarised in Table 1 together with details of the NGOs that promote them.

**Table 1: Summary of NGO Policies (as at September 2007)**

Type of Policy	Organisations promoting policy
<b>Better use of existing sentencing options</b>	RSPB, WWF, TRAFFIC,
<b>Changes to Wildlife legislation</b>	NFBG, RSPB, WWF, Wildlife Link, the Mammal Society, RSPCA, SSPCA, Scottish Badgers, LACS, Bat Conservation Trust, Whale & Dolphin Society, Orkney Seal Rescue, Advocates for Animals, Environmental Concern Orkney, Seal Conservation Society
<b>Increased resources for statutory agencies</b>	RSPB, Scottish Badgers, Wildlife Link, LACS, WWF, Seal Conservation Society, TRAFFIC
<b>Increased Sentencing options</b>	RSPB, Wildlife Link, WDCS, WWF, TRAFFIC, Bat Conservation Trust, WDCS
<b>Statutory Recording of Wildlife Crime</b>	RSPB, NFBG, PAW, WWF, Scottish Badgers

NGOs involved in wildlife crime are often reliant on public support in the form of charitable donations, legacies and membership fees. It is unlikely, therefore, that these NGOs documents would be able to promote policies such as rehabilitation and community sentences as it is unlikely that their supporters would endorse such policies. So, as things stand, the policy perspective on wildlife offences as published in documents represents a move towards a more punitive regime with changes to legislation to provide for increased sentencing options.

Having examined the published policy perspectives on wildlife crime, this research considers the information provided by NGOs in interview.

## Chapter Seven – The Research Findings: Interviews

### Analysis of Interview Data

Interviews for this research explored the issues of wildlife law enforcement in more detail. Chapter Five (methodologies) outlines the main questions asked in interviews which covered the following main areas:

1. Why people commit wildlife crime
2. What should be done with wildlife offenders?
3. The effectiveness of sentencing in wildlife crime cases
4. Whether there is a case for changes to wildlife legislation (and what concerns the individual NGO has about the legislation that it deals with.)
5. How to reduce wildlife crime

Interviewees were invited to provide evidence or expand on their experiences in their answers to questions and this provided for discussion of specific wildlife cases and their experiences of dealing with offenders. In discussing the details of policies, the interviews revealed some differences between the published policies of NGOs and the position of NGOs in practice.

### Statutory Recording of Wildlife Crime

The published policy perspectives of NGOs state that wildlife crime should be recorded centrally. Some NGOs expanded upon this in interview, pointing out that the failure to record wildlife crime makes it difficult to establish how much wildlife crime exists in the UK and how much (and where) resources should be allocated to enforcing wildlife crime. The representative of Scottish Badgers commented in interview that:

One of the biggest problems we have is actually the lack of information on it, lack of historical evidence...Actually the recording aspect of it, is not necessarily done so there's quite often crimes that are looked at, perhaps some investigation is done but nothing's ever committed to paper and so there's not any historical database of it. So probably up here in Scotland there's no way of knowing what the level of badger crime is.

This theme is echoed by a number of different organisations. The Bat Conservation Trust's Investigations Officer commented that it's difficult to know how much bat crime takes place because "there's not that much reporting takes place." This provides the impression that there are only a small number of offences and that wildlife crime is a minor issue. In the case of bat crime, because crimes are not recorded, crimes are sometimes dealt with by way of letter rather than being formally investigated as a crime. The Bat Conservation Trust's representative explained that:

The first problem is hearing about it. There's a lot of licensed bat workers on the ground but they mostly report offences to English Nature or the local Wildlife Trust. Those bodies will sometimes investigate and sometimes the Senior Nature Conservation Officer's will reach a decision on a complaint. Often it's a compromise position and the police will hear about the offence far too late to investigate. Often the police hear about it after the SNCO's have written to the offender with a warning letter. Because this action has been taken it stops the police from doing anything.

That these offences are dealt with on an informal basis means that they are not recorded as crimes, making it difficult to establish the extent of illegal activity taking place. The lack of an effective recording mechanism adds to the marginalisation of wildlife crime within the criminal justice system. NGOS believe that this position should be reversed and wildlife crime should be given a higher status. Parliamentary lobbying on wildlife crime issues is, in part, intended to achieve this objective, and the RSPB has had as a long term aim the ideal that the police/statutory authorities should take over the maintenance of its wildlife crime database, or that there should be a new statutory database of wildlife crime.

**Increased resources for the Statutory Agencies to Combat Wildlife Crime**  
Interviews for this research identified the lack of resources for the statutory agencies as being a specific problem in the enforcement of wildlife law. The

particular issues identified included:

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

Much wildlife crime is still reported directly to NGOs by members of the public, meaning that NGOs are often in the position of 'lobbying' the statutory agencies to have wildlife crimes investigated. This means that investigation of wildlife crimes varies across police forces and can be subject to the available resources in the specific force. At the outset there are difficulties in enforcement due to the general lack of knowledge that most ordinary operational police officers have of wildlife law. This is not because of any particular lack of interest on the part of police officers in general, more that wildlife law and wildlife crime does not form a core part of police training (although in some areas courses are provided).

The representative from Scottish Badgers highlighted two specific problems during interview: the availability of officers and the availability of support resources. In addition to the difficulty of having officers allocated to investigate wildlife crime, Scottish Badgers identified that police officers might have difficulties in being allocated resources to carry out scientific analysis of dead birds. Scottish Badgers explained that in shooting cases unless a clear suspect is in sight then the police would not even bother doing an x-ray. This initial step would be important in establishing how a bird or animal had died and that a crime had taken place. The presence of lead shot in protected species would usually indicate that illegal shooting had taken place. Anecdotal evidence provided during the interviews also suggests that a lack of resources leads to some cases not being investigated for purely financial reasons within a police force. In particular, it has been suggested during this research that investigations that require additional forensic or scientific expertise to bring a case to court not being investigated. Police officers able to obtain the services of scenes of crimes officers for fingerprint dusting and forensic examination of a burglary scene might experience some resistance if attempting to secure DNA testing of blood samples from birds of prey.

Scottish Badgers explained that:

Analysing corpses can be quite difficult because people won't commit resources to doing that small thing. I believe the Tayside Police now put their dead animals and birds through the luggage scanner at Dundee Airport...because it's cheaper than getting the vet to do it.

Derbyshire Police's (then) WLO confirmed this in relation to the Force's prosecution using DNA evidence in a badger digging case (the first one of its kind), explaining that "the RSPCA ended up running it, if they hadn't done I don't know if we'd have been able to take the case because the dog kennel bills ended up in the thousands of pounds." While the force would investigate a wildlife complaint the same as it would any other crime, the WLO explained that when a case "gets to the stage of spending money, then it has to be discussed at more senior level." The WLO made a comparison to a burglary case where a blood stain might be found on glass:

If not much was taken we might not run to a full DNA analysis. If it was a serious case, then we might have problems if we were running into thousands of pounds on the evidence and there was a likelihood of not getting the costs back. If for example you had somebody as a suspect who was unemployed and the DNA evidence was going to run into thousands of pounds. It's on a case by case basis and if its low profile and not really in the public interest then they're going to say no.

The difficulties of obtaining resources can be linked both to the status of wildlife crime within UK policing priorities and the relative (lack of) importance attached to wildlife crime within individual police forces. Animal Concern suggests that the problem could, in part be addressed by giving "Wildlife Liaison Officers official ranking, better equipment and proper budgets to cover the work they do." The perception is that WLOs (and now WCOs) lacked proper equipment have a perceived low status within the police force and do not have full official backing for what they do.

There is also a contrast to be made between wildlife crime and other forms of crime. NGOs operating on a voluntary basis provide much information and evidence relating to wildlife crime but there is a question over how this and other information is being used. Scottish Badgers commented on the fact that known wildlife offenders appear every year but that it is often only through the work of NGOs that they are apprehended and prosecuted. In the case of egg collectors, for example, there are those repeat offenders that will visit the same areas and nest sites year on year without attracting attention from the statutory agencies. Scottish Badgers suggest that "if there was a guy from Birmingham coming up here every weekend to buy drugs, there would be a team on him from the minute he walked out of his front door." The same thing does not occur in wildlife crime cases lending credence to the idea that it is a low priority area. The representative from SNH also commented on how drugs were the subject of a crackdown in Glasgow with the dedicated allocation of resources, time and effort. He suggested that:

There should be a dedicated crime unit in Scotland, not just for wildlife crime but also for...poaching. Along those lines maybe a two-man unit supported by one full-time WLO in each force perhaps to start to make headway into it. Because otherwise we're just candles in the wind, and all the stuff we're doing at the moment is just token. We're not stopping anybody, we're not preventing anybody, we're just fire fighting, and it needs to go beyond, you know, just to meet it head on.

SNH commented that the part-time nature of wildlife policing is an issue because it prevents the effective enforcement of the legislation. SNH explained that in reality "the truth of the matter is that WLOs are doing this on their days off. You can't enforce [wildlife] crime or any sort of legislation on your half-day." Interview respondents related cases of search warrants having to be carried out to suit the availability of officers and, in one case, of a search of land being discontinued as the officer's shift was nearing an end. Because in some areas there may be only a few officers allocated to wildlife crime duties (alongside their other duties) there are potential difficulties of police response times with the investigation of cases being dependent on officer availability.

Another point brought out in interview is the inadequate resources allocated to the prosecution of cases. The situations in England and Wales and Scotland are different because of the different legal systems, however, the perceived problems of cases being handed to non-expert prosecutors are shared. Scottish Badgers highlighted one example of a case that the NGO did not feel was given the attention it deserved. They explain that “you produce a court case, which is viable for a conviction, then surely to goodness they should take the time to get through it. I mean that case that was thrown out of court...there were 49 productions and the lawyer doesn’t look at it until 10 minutes before the case starts. I mean, what was he hoping for?”

Comments from other NGOs suggest that this is a problem that persists across the UK and that it is difficult for investigators to develop a relationship with prosecutors that ensures that sufficient knowledge of the issues in a case is achieved. The Bat Conservation Trust’s representative commented that:

What I normally try and do now is to get into court in advance and speak to the CPS. I had a problem with one case and the fines were just £200. I’d been talking to one person at the CPS but when I turned up at court it had just been passed over to another prosecutor who hadn’t seen the file in advance and didn’t understand the importance. Without me hammering home the message that bats are important, the CPS may have some problems in dealing with it, and the importance of the crime doesn’t get across to the court.

The problem identified by NGOs is not confined to a lack of conservation knowledge but extends to insufficient knowledge of the specific legislation. Derbyshire Police’s WLO commented that “because of a lack of knowledge by the CPS, they’re losing cases”. Citing a badger digging case in Lincolnshire where the wrong charge was given, concern was expressed that prosecutors inexperienced in wildlife law might not be handling cases in an efficient manner. While this was not a specific criticism of the CPS, there remains a perception amongst NGOs that cases are sometimes not taken because the CPS don’t appreciate the seriousness

of the case. There is sometimes the potential for there to be conflict between investigators and prosecutors. Investigators who may in some cases have invested up to two years in obtaining evidence for a prosecution, have taken witness statements and carried out numerous interviews will naturally be dismayed if these cases fail through what they see as prosecutorial misconduct or incompetence. The National Audit Office (NAO) (2006) identified poor administration by prosecutors including; lack of preparation leading to delays in court, poor case tracking leading to case files being mislaid, inadequate prioritisation of cases and incomplete evidence on file leading to prosecution delays. The NAO recommended that more lawyer time needed to be spent on case preparation, prioritisation, and joint working with other criminal justice agencies and it would seem that the issues identified by NGOs in wildlife cases were identified by the NAO as issues in other criminal justice cases and reflect some possible systemic failures particularly in respect of case prioritisation and preparation. It should be noted, however, that the CPS have established (and published) guidelines for the basis on which all cases are prosecuted and wildlife cases are considered in accordance with that guidance. Part of the guidance is that cases should have a better than 51 percent chance of success and should be in the 'public interest' to prosecute. A number of NGOs commented that cases fail on this latter test either because the conservation importance of the species (and the effect of the crime on that species) is not appreciated, or because the crime is seen as being low priority either in terms of the 'value' of the crime or in terms of current criminal justice priorities. However, where cases are failing because of insufficient legal knowledge this demonstrates an issue of the lack of resources (i.e. expert legal knowledge) allocated to wildlife crime issues.

### **Changes to Wildlife Legislation**

A number of NGOs involved in this research have identified problems with existing wildlife legislation as well as gaps in legislation that may require fresh legislation to be introduced. The problems include:

1. Some existing legislation is confusing and should be repealed and re-written from scratch

2. That there are too many loopholes in existing legislation so that it does not fulfil its intention
3. That additional laws are needed

The published position of some NGOs is that wildlife legislation is generally inadequate and should be replaced with ‘tougher’ legislation, predominantly legislation that allows for custodial sentences and high fines to be imposed. Some legislation has been virtually unchanged since its enactment, despite perceived problems with its implementation. For example, the *Conservation of Seals Act 1970* is considered to be out of date and almost unworkable in respect of some of its provisions. Practitioners consider that the *Act* fails to conserve or protect seals. Discussing the *Act* the Seal Conservation Society explained that: “there’s so much wrong with the present *Act*, we’ve moved on considerably since it was brought in, in 1970.” The legislation is also difficult to enforce as the Seal Conservation Society explained:

There are many loopholes in the present law. Both species of seal in the UK have a closed season and that covers the breeding season. During the closed season it is not permitted to shoot either species. But you can shoot it outside the closed season. However, shooting the wrong seal outside the season is only an offence if it is done intentionally. So there is a defence if you can argue that you didn’t intend it and proving intent is incredibly difficult. It makes it very difficult to bring a prosecution.

Amending the legislation is a consideration but the Seal Conservation Society consider that a better option might be wholesale repeal of the legislation and the introduction of new legislation. During interview for this research the Society’s officer explained “I would scrap it and start again because there’s too much wrong with it. Rather than try and revise all the things that are wrong and patch up the individual loopholes I’d completely scrap it and start again.”

The problems of the *Conservation of Seals Act 1970* were expanded upon by the SSPCA’s Investigations Officer, who described the *Act* as “nothing short of farcical” and amounting to “nothing but a license to kill”. The wording of the *Act*

allows seals to be killed in the vicinity of fishing nets or tackle. The SSPCA explains that, in practice, this amounts to a loophole that means that fishermen can kill any seal within the vicinity of their fishing equipment without a licence and they cannot be prosecuted. The SSPCA explained that “we had this one guy up north last year, who sailed seventy and a half miles out into the North Sea and shot sixty [seals]”. That the individual had his fishing equipment with him meant that the shooting had taken place ‘in the vicinity’ of nets or tackle and so, technically, no offence had been committed.

The question of ‘in the vicinity’ is one that the SSPCA has considered time and time again. The Society’s Investigations Officer explained that the *Natural Habitats Directive* states quite clearly that you cannot shoot seals from a moving vehicle. “So if you get them trying to shoot the seal from a moving motor boat, it’s our opinion that they’re breaking the law.” The SSPCA points out, however, that given the size of the coastline in Scotland it would be difficult to properly gather sufficient evidence to prosecute such a case. Given the apparent loophole in the law it might also be difficult to bring such a case to court.

SNH suggested that similar problems existed with the *Wildlife & Countryside Act 1981*, a piece of legislation that has been amended several times. The SNH representative suggested that he:

would get the *Wildlife & Countryside Act 1981* and I would throw it in the bin and start again. Basically because this piece of legislation was drafted in a time which was a different era, we’ve got a completely different ball game now. It was based on a completely different way of working it was not designed for wildlife crime. I think we’re just building on sinking sands...if you’re really serious about protecting wildlife and prosecuting crime, you’ve got to have a piece of legislation that’s designed to do that.

The *Wildlife and Countryside Act 1981* is considered to be inadequate for a climate in which many of those involved in game rearing might be encouraged or required to kill protected wildlife in the course of their employment. Although some

NGOs consider that amendments to the *Act* and new enforcement provisions contained in the *Countryside and Rights of Way Act 2000* have improved the position, killing of protected wildlife remains a persistent problem with birds and animals being shot, killed, trapped and snared almost routinely in game rearing areas.

In the case of snaring, loopholes in the legislation were also a matter of concern for NGOs. The SSPCA's Investigations Officer commented that snares were without a doubt the biggest area of work for him. He explained that because of its large rural nature, Scotland is difficult to cover in terms of adequately investigating all wildlife crime. In the two years prior to the interviews for this research the SSPCA had uncovered hot spots of snaring and illegal snaring. The SSPCA explained that the two problems are self-locking snares (a form of illegal snare) and also the use of snares to target species that cannot lawfully be snared. The SSPCA's Investigation Officer explained:

to give you an example, we've come across an area where there were 1500 snares set for mountain hares. Now first of all we couldn't prove that they weren't being checked adequately and secondly we couldn't prove that it was illegal to snare them in the first place under the *Wild Mammals (Habitats) Directive*, you know the wildlife & countryside habitat provisions – that was one issue.

This latter comment relates to confusion over the legal status of mountain hares. Under the *1992 Habitats Directive* landowners are allowed to kill mountain hares under certain conditions, for example to protect red grouse stocks for shooting. The difficulty for investigators is in determining whether any snaring or killing that has taken place has taken place through illegal activity or legitimate pest control.

The SSPCA explained that in a different part of Scotland altogether there are large areas of grouse moor and forest areas that go on for miles and miles. Gamekeepers working in the area had discovered that these areas were perfect places to put fox snares. As a practical enforcement problem, the SSPCA pointed out that you would literally have to walk for miles to inspect the entire area. The

SSPCA explained that “last year we found over 300 self-locking snares on these lines.” The SSPCA explained that the problem was that these are areas where:

the public are maybe not going to walk there and if they do walk there, chances are they’ll either miss them or they’ll not know what they’re looking at. Because of the number that they’re using, because of the vast expanse of ground there’s no way, even if they were legal snares that they could check them. Invariably what we’re finding is that they’re illegal snares. They’re legal to start with until you get a few miles in to the hill or moor, or the forestry line, and as you, the further you get in, the more dense the illegal ones become. And we’ve been told quite clearly [by the gamekeepers] that it’s better to use them because they’ll kill them if we can’t get up there for a week or two, you know? So that’s the biggest problem that I have had. It’s the one thing that we’ve been working on for the last two years. There are snares all over the place.

The issue of snares highlights the practical problems of enforcing wildlife legislation. Snares can be used quite lawfully to take certain species, although self-locking snares are illegal. However, it would be difficult for inexperienced enforcement officers or members of the public (who report most wildlife crime) to be able to distinguish between a legal and an illegal snare. Snares are meant to be checked once a day but practically, there is at present no way of enforcing this and the evidence from the SSPCA (above) suggests that gamekeepers know this and are leaving illegal self-locking snares set for days on end to kill wildlife.

There has also been some dispute about exactly what ‘once a day’ means in practice. The SSPCA explained that “what the legislation says is once every day which could be, in effect, the way we’ve worked it out, almost every two days. If you check it one minute after midnight on the first day and you check it at one minute to midnight on the second day, its almost 48 hours.” The SSPCA explain that in addition to this, there are problems with getting onto the land to enforce the legislation and gather evidence of illegal snaring. The SSPCA explained that:

You've got some estates where the keepering fraternity are setting them but you've got other large areas where nobody knows who's setting them and the whole concept is probably illegal. And they're setting them for deer, for badgers, they're setting them for anything, they're setting them for cats even. We've had deer caught in them, badgers caught in them, dog. We've had two dogs this year caught on an estate that we were already in the process of prosecuting. But we couldn't prove that they had left these snares out, or we couldn't prove that they had been set...There's lots and lots of incidents but not too many prosecutions.

The SSPCA explained that the primary reason for setting snares was for fox control, "predominantly on grouse moors or pheasant shoots". The SSPCA is of the opinion that illegal snaring "is normal working practice. Kill the foxes and kill the vermin in any manner possible that's going to do the job to the best degree that they can do it, irrespective of whether its illegal, legal or not".

NGOs involved in this research have also identified that changes to legislation are required to create a number of new offences. The driver behind this is that there are considered to be a number of areas where legislation does not provide adequate protection for wildlife. In addition 'loopholes' are considered to exist that either allow acts that should be unlawful to take place or where inadequacies in legislation make the detection and prosecution of offences difficult. Derbyshire Police explained the inconsistency in the powers available to police officers by stating that:

We've got powers of arrest for things like Schedule 1 species, Schedule 5 and even uprooting of some of the plants. But we've got a major offence and a common offence, badger baiting, and there's no power of arrest. Also deer poaching, which is often done commercially, and there's no power of arrest.

Although changes to legislation have provided some new powers, there is still an issue of consistency across the legislation. Powers of arrest are seen as being too limited and should be extended across all wildlife legislation.

The Seal Conservation Society has suggested that there should be a new offence of shooting seals to address the failure of the *Conservation of Seals Act 1970* to make killing of seals unlawful. The organisation stated that:

Revised legislation would help as it helps to influence public opinion as to what's right and wrong. If the law is condoning the killing of seals, as it does at the moment, what kind of message does that send out? The law says its OK with a licensed gun to kill seals. The only thing that's wrong is if the local seal population is depleted and the law says you can't do it. Otherwise its OK. If the law says that but you try to say to fishermen that they shouldn't do it, then its easy for them to say that it's not illegal and ignore you. If you change the law, a different attitude pervades.

This view was endorsed by Animal Concern who considered that inadequacies in legislation make it difficult to prosecute cases when offences are committed.

Animal Concern explained that "there should be an overhaul of much existing legislation. For instance: despite thousands of seals being shot in Scotland every year there has only ever been one successful prosecution under the *Conservation of Seals Act 1970*." This case was instigated by Animal Concern in 1988 and the organisation reports that it was won on a technicality. There is also no offence of disturbing a seal as there is of disturbing a protected wild bird and during interview with the Seal Conservation Trust there was some discussion of the creation of a new offence of disturbance of a seal at a haul out site or specifically disturbance of a seal during the breeding season. These new offences would require changes to legislation (either amendments to the *Conservation of Seals Act 1970* or new legislation that repeals the Act and replaces it with a more modern equivalent).

Animal Concern suggested that there should be new provisions to make landowners legally liable for any wildlife offences committed by their gamekeepers. In a written interview response, the organisation stated that there was a need to "introduce new laws (for instance banning airguns and making landowners legally responsible for the actions of their keepers) and toughen existing legislation." Animal Concern also called for "additional powers where judges could say ban a

badger baiter or deer hunter from owning dogs, or someone who shoots a bird of prey from owning any gun.” This would require changes in legislation to either provide the power for banning orders to be at the discretion of judges or for an automatic ban to be imposed if a person is convicted of a specified offence. Similar provisions already exist in the *Wildlife & Countryside Act 1981* where a person convicted of an offence relating to Schedule 4 birds is prevented from registering any other Schedule 4 bird for a number of years. There are, however problems with such legislation as the banning power would not, at present, prevent another member of the household from owning and registering birds. Scottish Badgers explained that the banning provisions do not, at present, prevent a person from carrying on in employment as a gamekeeper and suggested that “the only real bar would be if you lost your shotgun certificates” as a result of being convicted of a wildlife offence. Scottish Badgers also suggested that this proposal could be extended so that “if you’re convicted of a wildlife offence then you cannot be employed. You’re banned from being employed in an environmental frame. That might perhaps help.” An alternative to this would be to require the licensing of employees in the game rearing industry.

LACS suggested that new legislation should be enacted to make the hunting of wild mammals with dogs unlawful. This legislation has in part been enacted with the introduction of the *Hunting Act 2004* which came into force on 18 February 2005, however the full scope of what LACS suggested is not contained within the legislation. LACS also suggested that taking, injuring or killing the Irish Hare should become an offence and that legislation concerning hare coursing should be changed. (This concern was partially addressed by the *Hunting Act 2004* which makes hare coursing in England and Wales unlawful).

### **Increased/Stiffer Sentencing Wildlife Offences**

A policy perspective promoted by the majority of NGOs is a review of the sentencing options available for wildlife offences. A number of those NGOs involved in wildlife crime have called for custodial sentences to be introduced for wildlife offences. During the course of this research, some legislation has been changed and custodial sentences exist for some wildlife offences but not others.

NGOs felt that this inconsistency should be addressed and that custodial sentences should be available for all wildlife offences (although there were differing views as to how they should be applied). As part of this research, Animal Concern explained its justification for stiffer penalties and the introduction of custodial sentences.

Some maximum sentences are too low and many judges hand out minimum sentences anyway. Increase the tariff and there would be a better chance of offenders receiving heavier sentences...Wildlife crime (especially killing of seals, birds of prey and egg/bird theft)is often carried out by people who are being paid by someone else or making good profits out of what they do. Their paymasters can simply compensate them for any fines – a prison sentence they would have to serve themselves.

The perception supported by many NGOs is that the perceived softness of the available penalties makes wildlife crime an attractive option for those involved in other criminal activities. SNH explained that “the level of fines...doesn’t deter people, because you see they come back time and time again.” This supports the view that when compared to other offences, the penalties available for wildlife crime can be tolerated by offenders and there is considerable evidence of repeat offenders consistently being fined for wildlife offences. The position is summed up by Lowther, Cook and Roberts when discussing the international trade in wildlife.

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

(Lowther, Cook and Roberts 2002:5)

From the point of view of the offender, there is a perception among NGOs supported by evidence from casework that fines are considered to simply be the cost of doing business and are accommodated as an operating cost. NGOs

believe that while fines remain at a fairly low level they do not provide an effective deterrent for those involved in committing wildlife crime. In interview for this research, the SSPCA's Investigations Officer commented:

I keep coming back to this guy who was fined 140 pounds but he got fined 140 pounds for having 300 illegal self-locking snares and a dead badger and a dead deer and foxes, blah, blah, blah. He got fined that. All his other colleagues are going to say 'ach well, if I get caught, I'll just get fined 140 quid. Why worry? It's worth the risk!' If you're going to get fined a few thousand or sent down a month even, just a month. One: you're going to lose your firearms, and two you're going to go to jail and you'll probably lose your job anyway. I think that would have an impact on the perpetrator of wildlife crime.

The Bat Conservation Trust's representative also commented on how fines can sometimes be absorbed by those involved in an otherwise legitimate business explaining that fines range from £200 to £2500 but in one case where an individual was fined £500 "this was less than it would have cost him to have taken account of the bats in the development. So the fines simply weren't high enough." Where a company or individual may have a range of costs in carrying out work, the possibility of receiving a relatively small fine is seen by NGOs as lacking any real deterrent value. The Bat Conservation Trust explained that "we need better sentences and definitely some prison sentences need to be imposed. In particular we need higher fines so it's not worth developers going ahead with the destruction of roosts."

There is also some evidence that both organised crime and low level petty offenders are attracted to some aspects of wildlife crime because of the relatively low level of fines involved and the ease with which established criminal networks can be adapted to wildlife, particularly in the area of wildlife trade and/or smuggling. NCIS commented on this from a policing point of view, explaining that:

It was possible that an organised criminal group will deal with anything that will make a profit and there were profits to be made from the trade in

rare and endangered wildlife. What NCIS does is to look at where organised gangs may operate and to assess the intelligence that might prove their involvement. One particular area of interest is to determine where an organised gang might have established routes for the trade in various commodities. Where this is the case, it is possible for a gang to switch from one item, such as drugs, to another like wildlife. While the commodity may change the criminal activity doesn't.

Wildlife and Countryside Link ran a long running campaign promoting the case for increased sentences for wildlife crime. It continues to lobby for custodial sentences to be introduced for wildlife offences.

When proposals for the *Countryside and Rights of Way Bill*, including the option for custodial sentences for wildlife species offences, were made in the Queens speech of 17 November 1999 these were welcomed by most wildlife NGOs, including the RSPB. In its Investigations newsletter, *Legal Eagle*, it welcomed the proposals saying "we hope that finally there will be a real deterrent to wild bird criminals" (RSPB 2000:6). In discussing offences under the *Wildlife and Countryside Act 1981* the RSPB has commented that "inconsistent punishment levels and reliance on financial penalties blunt the teeth of the Act. The RSPB is seeking an urgent revision of the legislation to ensure that its primary aim of wild bird conservation is fulfilled." (RSPB 2000:8)

The case for stiffer sentencing options put forward during this research included some specific proposals:

The Seal Conservation Society suggested that where cases involve cruelty, prison sentences should be introduced into the *Conservation of Seals Act 1970*. Seal Conservation distinguished between different types of offences and explained that "if, for example, we were to include things like disturbance, that might be a less serious crime than to batter things to death using sticks and in that case I think the courts should view it as serious and a prison sentence is appropriate." LACS also commented on the cruelty element as an important factor in developing legislation

and the appropriate penalties. The LACS representative commented on the case for banning all hunting of mammals with dogs explaining that:

In our view it's cruel to chase an animal before you kill it because if you're going to kill it, why not just kill it. You don't have to play with it first. So we begin to segment the behaviour and say it is unreasonable to set about a chase for entertainment, irrespective of whether or not you can prove that the animal has suffered. In our view, this is unreasonable behaviour for people. The animal may or may not have suffered, but in our view it would still be a crime, even if the animal got off scott free and had a good day out it would still be inappropriate. So when you start looking at the law in relation to that whole judgement then it's all about people going equipped, defining intent. All those things are absolutely key to the law and when you actually start looking back to the problems of enforceability and so on, it's because those issues have been taken out of the law.

LACS considered that the law should include an element of intent and that legislation should consider this as a factor in sentencing and where stiffer penalties are applied. The LACS representative explained:

When you get down to your sentencing I really don't see the logic if the argument is based on moral grounds between let's say the hunting bill, and it's a Schedule 5 offence without a term of imprisonment. So they're saying a fine of up to £5,000 but no term of imprisonment. But with all the other cruelty legislation where there's a schedule 5 offence then its £5,000 and term of up to six months in prison.

LACS explained that it was "inconsistent having applied Schedule 5 as it normally is to all the other legislation which applies to the protection of animals and so on." LACS consider therefore, that there is an argument for prison sentences to be applied consistently across wildlife and animal protection legislation.

Animal Concern suggested that as part of changing legislation and imposing stiffer sentences "it would be good to see additional powers where judges could say ban a badger baiter or deer hunter from owning dogs, or someone who shoots a bird of prey from owning any sort of gun". The intent of this would add to the sentencing options and prevent further offences from being committed.

In addition to this, the RSPB has on several occasions written about the need for stiffer sentences. As an example, the BBC reported the case of two egg collectors from Manchester who had taken the eggs of protected species including the red kite, osprey and peregrine falcon. The pair was found guilty of offences under the *Wildlife and Countryside Act 1981* but the BBC reported RSPB disappointment at the level of the sentence imposed. The BBC report stated that "the RSPB says the fines were not stiff enough and have called for a prison sentence and a government register of egg thieves similar to that for sex offenders" (*BBC Online News*, 5 May 1999.)

### **Better Use of Existing Sentencing Options**

The final area highlighted as an area of concern by wildlife NGOs is the lack of consistency in the use of existing sentencing options. The perception of interview respondents in this research has been that sentencing of wildlife crime is not subject to any uniform approach. Respondents have suggested that the seriousness of the offence is often ignored in determining the level of sentence. It has also been suggested that in some parts of the UK low sentences will be handed out for fairly serious offences while minor offences might attract relatively high sentences.

Criticisms on the use of existing sentencing options include; concerns that there is an inconsistency in sentencing from area to area, that the available penalties are not being used to their full extent and that the conservation importance of species and cruelty aspects of a crime are not adequately reflected in sentencing and so the sentence does not reflect the nature of the crime.

The level of available penalties in wildlife legislation was considered to be adequate by some interview respondents. However the likelihood of sentences at

the upper end of the scale being handed out was considered to be small. Commenting from a police perspective on sentencing, Derbyshire Police's WLO commented that "in general terms they're too low. The options are maybe there, the maximum fines are there but they're not being used." This perception that sentences seem mostly to be at the lower end of the scale was held by a number of NGOs.

In interview, the RSPB's [then] Head of Investigations commented on the adequacy of sentencing options stated that:

I think that for wild birds they are now probably adequate. The problem is getting the court to use them. Unfortunately we're unlikely to get a custodial sentence for bird of prey persecution offences unless it's a repeat offence. They're a priority for us but it's difficult to bring cases to court. Financial penalties are no real deterrent in these cases. I think that if you slapped custodial sentences on gamekeepers that would have a deterrent effect on them. That would make it clear to them that these are serious and unacceptable offences and they'd be too scared of going to prison hopefully. We need a few prison sentences for gamekeepers, to get the message across.

This was, in part, echoed by SNH who commented that "the difficulty is actually persuading the Judiciary to actually apply them properly. I think prison is probably the ultimate final sentence and I think it should be for exceptions, where people are shown to be repeat offenders and commit the most horrendous crimes. But to put people in jail for snaring a badger is a bit over the top, but where people have shown total disregard for wildlife and are shown to be cruel consistently, then perhaps it should be considered." Comments from a number of NGOs suggest that sentencers routinely hand out sentences at the lower end of the scale and the belief voiced by a number of NGOs is that this has an adverse effect on the likely deterrent effect of sentencing. Animal Concern described sentencing as 'haphazard' explaining that "like all sentencing it depends on the sheriff/judge, many of whom do not take wildlife crime seriously." NGOs have also commented

that the level of sentencing varies dependent on where the case is being heard and that “judges hand out minimum sentences anyway” (Animal Concern).

The question of inconsistency in sentencing was raised by a number of interview respondents. Derbyshire Police’s WLO commented that “there’s a variation in penalties, according to where the court is located. You can go to a rural court where they’ve got rural magistrates and they jump on people. But you can go to an urban court and its just a slap on the wrist. There needs to be more consistent sentencing taking into account the seriousness of the offence.” SNH also commented that “lack of consistency is another point, you know, dependent on who’s on the bench and what their background is will sometimes be reflected in the sentences handed down.” Evidence from a number of respondents suggests that the knowledge/standing of the individual magistrates or sheriff can have an effect on sentencing. Particularly in Scotland where some sheriffs may themselves be involved in hunting and fishing interests there is a perception that lower sentences are handed out to defendants in those areas where the sheriff has empathy or sympathy with the offender.

The Guild of Taxidermists also pointed to sentences often being too lenient. The Guild’s representative explained that “with the CRoW Bill the custodial sentence option is there. But often, magistrates are just looking upon it as minor crime, three months or a couple of hundred quid is the likely sentence.” The Guild explains that traders (as distinct from Guild Member taxidermists) should know the regulations, be aware of the law and know that what they are doing contravenes legislation. With this in mind, a lenient sentence sends the message to that trader that what they are doing is not serious and will not be dealt with as serious crime.

Concern has also been voiced by NGOs that the sentencing currently being handed out does not reflect the serious nature of wildlife crime offences, some of which could hasten a species’ decline.

Scottish Badgers’ explained that for many of those who kill wildlife as part of their business (i.e. those involved in game rearing) the lack of any real threat of a penalty reduces the likelihood that those involved in wildlife crime will be deterred

from committing offences. One consequence of this is that it lessens the deterrent effect and potentially means that the relatively low level of fines can be absorbed as the cost of doing business. Commenting on one case where a gamekeeper was charged with killing wildlife Scottish Badgers commented:

He'll have been told all the way through right up to the trial, 'It's OK you're going to get fined, the worst that can happen is that you'll get fined.' And if you go along with that attitude and you're thinking that kind of thing, then you're never going to get beyond it. You're just going to do it, take the risks, take the chances and in a remote place what's the chances that somebody's going to walk across it? And then what's the chances that they're actually going to get you to the court on the evidence that's available. So let's make it a thought in their head 'I could go to prison for a year' and that might help because they'll only do six months anyway.

SNH also discussed the possibility of using a full range of penalties such as effective community sentences to deter offenders. SNH explained "most of these people anyway, are not able to pay their fine and their car is worthless anyway, so let's get something good out of it and I think community service is one option that should be considered. But the probation thing is a good idea as well because again, you've always got that hanging over you. It's a good way to keep tabs on certain people." LACS partially endorsed this idea commenting that separate from punishing offenders, there should be some mechanism for providing reparation as a means of addressing the impact of wildlife crime. Community service would provide for such a mechanism by making the service appropriate to the crime. For example, by requiring those involved in badger crime carry out conservation work to protect and enhance badger habitats, or by requiring gamekeepers involved in wild bird persecution to carry out bird of prey nest protection activities. There should also be a means of preventing an offender from committing further offences, possibly by ensuring that offenders did not have access to the countryside during those periods of the year when offences might usually be committed. For example making it a condition of probation that an egg collector cannot come within 100 metres of the nests of wild birds during the breeding season might address some issues of repeat offending.

## **Summary Analysis of Research Data**

The general position of the NGO's as seen in their documents and other publications is that:

1. wildlife law enforcement is under-resourced, poorly understood and is given low or inconsistent priority by the statutory enforcement agencies.  
(Although it is accepted that individual officers and individual police forces can and do make a significant contribution to reducing wildlife crime.)
2. wildlife crime can be prevented through mechanisms of deterrence and incapacitation (essentially a Right Realist approach to crime focussing on the role of the individual.)
3. there are also significant difficulties in bringing cases to court and, in some cases, obtaining sufficient evidence for a prosecution.

What NGOs believe is that wildlife crime should be given a higher priority, should be treated as serious crime and should be the recipient of more and dedicated resources to combat the persistent problems of wildlife crime. In the practical enforcement of wildlife legislation NGOs consider that there are: inconsistencies in sentencing on wildlife crime cases as well as inconsistencies between penalties and enforcement powers between legislation. NGOs also consider that there is a lack of knowledge of wildlife legislation on the part of the CPS and magistrates and insufficient penalties to deal with wildlife offenders and a lack of willingness by the courts to use the available penalties to their fullest extent.

Although the documentary research has identified a number of problems with the existing legislative and criminal justice regime, the common thread running through the policies of the main NGOs involved in wildlife crime is the support for a more punitive wildlife law regime.

The interviews supported some of the preconceptions of the documents but also provided additional evidence that had not previously been identified from the documentary analysis. While most interviews provide some evidence that wildlife law enforcement professionals support a more punitive approach to wildlife crime

and wildlife offenders, closer examination of the reasons for this view revealed differences in published policy positions and in what were perceived to be the problems on the ground. They also revealed different opinions among members of NGOs as to how and why stiffer penalties and a more punitive regime should be applied.

For example, the interviews and other responses (such as email and letters) provided much evidence of a common belief in the power of stiffer sentencing, including prison, for deterrent purposes (both individual and general deterrence), although this was not always linked to a belief that legislation should be changed to increase sentencing options or to introduce tougher legislation on wildlife crime. In the interviews, a distinction was also made between different types of offence (and offender) and in the circumstances in which custodial sentences should be used. While there is a general belief that custodial sentences should be available for all wildlife crime, a stronger argument was made for stiffer sentences for offences that have a deliberate, wilful or reckless element and which involve deliberate cruelty to animals.

With only a few exceptions, interview respondents felt that the available penalties and sentencing options under current legislation were either adequate or more than acceptable to deal with wildlife crime, while lamenting that they were not being used effectively. This differs from the publicly promoted policies for stiffer sentences and the possibility of using prison sentences for wildlife crime.

This, however, points to a problem of enforcement. This may be in part due to a general belief in the deterrence principle of imprisonment, bans on keeping birds and animals and large fines. It may, however, also be in part due to the desire to punish wildlife offenders for what is seen by many NGOs as a repugnant activity. Where limited (maximum six months) prison sentences are available within the legislation they are not routinely being used. It may be, therefore, that the NGOs documented call for increased sentences is based on a belief that an increase in the available tariff might lead to the greater use of prison sentences within the available options. The published policy perspectives suggest that wildlife crime is the subject of weak and inadequate legislation, poor sentencing options and

inadequate resources for enforcing wildlife crime. On this basis, calls for a more punitive regime and changes to legislation can be supported. Under the current system, the imposition of a prison sentence might be considered by magistrates to be extreme, where such a sentence represents the maximum possible punishment available under the law. By increasing the tariff to two or four years, any reluctance on the part of magistrates to impose smaller prison sentences (three to six months) could be overcome. This is not an unreasonable view as there is historical evidence to suggest that sentencers will not use the maximum available sentence except in extreme cases (see Blom-Cooper, 1988).

In practice, however, the immediate problems are those of practical enforcement, which was brought out more fully in the interviews. A major problem raised was due to the part-time nature of much wildlife policing, dedicated wildlife policing did not take place and so much enforcement activity was reactive and relied heavily on the involvement of volunteers and NGOs. Rather than a change in legislation, the problems highlighted by the interviews are those that require a more coherent regime to address. Increasing the tariffs available to judges under wildlife legislation will count for little if the problems of lack of resources, gathering evidence, investigating cases and having experienced prosecutors bring expertise to bear at court are not also addressed. The issue is not solely whether a case can attract a five year prison sentence (for example) but whether that case will be detected, investigated and brought to court in a manner that makes it likely that a potential offender believes that a five year prison sentence is a real likelihood. That the detection, investigation and prosecution of wildlife offences differs throughout the UK is also an issue that needs to be addressed so that offenders are not left believing that there are soft spots within the UK where no matter what the level of fines, there is little real prospect of a stiff penalty being applied. This was revealed more fully in the interviews than in the documents.

## Chapter Eight – Case Studies

### Case Study One: Bird of Prey Persecution

Practical casework highlights some of the difficulties in enforcing wildlife legislation. The problems of resources, difficulties in applying legislation and practical difficulties in bringing cases before the courts can be demonstrated by looking in more detail at areas of wildlife crime that are currently subject to enforcement activity but where difficulties exist. I will examine two cases in detail, first a case of bird of prey persecution and then one of badger crime.

#### Bird of Prey Persecution

Although fully protected by law since 1954 (except for the sparrowhawk which received protection in 1961), birds of prey continue to suffer from illegal persecution in the UK. Research by NGOs (the RSPB, the British Trust for Ornithology [BTO] and individual Raptor Study Groups) has shown that birds of prey are absent from many areas where they should occur. Illegal persecution is considered to have halted the spread of birds of prey to many areas where the habitat is suitable to sustain healthy populations, and, in some areas, has driven birds to the brink of extinction.

#### The Persecution Problem

Birds of prey suffer from illegal persecution in many areas of their range in the UK. The hen harrier for example, has an average of only 10 pairs breeding successfully in England and survey work has shown that many nests and birds are destroyed each year throughout the UK. As a result of illegal persecution, hen harriers have an uncertain future on the UK's moorlands.

Scotland experiences a disproportionate amount of the known illegal killing of birds of prey in the UK. Studies have shown a strong link between the killing of birds of prey and management of land for game bird shooting, especially in the uplands. In 2005, LACS published the report *The Killing Game* describing the extent to which predator control can be linked to the unlawful killing of wildlife.

The LACS report highlights that persecution can take many forms, from birds (and their nests or eggs) being deliberately destroyed, through to birds being taken from the wild in order to stop them from breeding. The RSPB also produces annual reports showing that bird of prey persecution continues, often linking it to grouse and pheasant rearing areas where the birds are considered to be competitors for game birds. It is estimated that tens of millions of gamebirds are released onto shooting estates each year, some of which are intensively-reared to ensure a plentiful supply of birds for shooting days.

Birds of prey compete with game birds for some food sources but are also considered to be a threat to young grouse and pheasant chicks. Birds of prey are also perceived to be a threat in sheep rearing areas, so much so that in the early nineteen nineties, the Welsh Agricultural Office produced a leaflet entitled *What Killed my Lamb?* as a means of educating sheep farmers that red kites, frequent victims in illegal persecution incidents, were not the obvious culprits in cases of lamb mortality. The perception of NGOs and conservationists is that a considerable number of those involved in legitimate game rearing activities are also involved in the illegal killing of birds of prey, and some evidence exists to support this view.

Analysis of RSPB data on wildlife prosecutions shows that between 1985 and 2003, of all the prosecutions for bird of prey related offences in England, Wales and Scotland, 85% were committed by people "with game rearing interests" (LACS 2005:21). This suggests that illegal persecution by shooting estate employees is widespread and continues despite legal protection for birds of prey and enforcement activities aimed at this type of crime. Those involved in game rearing are likely to have knowledge of countryside law and be aware that the killing of birds of prey is illegal. It is difficult to believe, for example, that countryside professionals living and working in the countryside on a daily basis are unaware that such rare birds as the golden eagle and osprey are protected by law.

While it is difficult to fully evaluate the extent of illegal bird of prey persecution, LACS has alleged that there are:

Millions of mammals and birds slaughtered on shooting estates in order to minimise predation on gamebirds and maximise profits for the live shooting industry. According to extrapolations from the Game

Conservancy Trust's own figures, every year 4.5 million animals (and possibly twice as many) are killed by employees of shooting estates, That's a minimum average of 12,300 mammals and birds shot, poisoned, snared, trapped or clubbed to death every day. This largely reported and out of control predator control regime is an animal welfare scandal of staggering proportions.

(Lacs, 2005:3)

In the late 80s/early 90s, a Scottish gamekeeper alleged that more than 400 shooting estates in Scotland were actively involved in the illegal killing of birds of prey. While these allegations remain unsubstantiated, practical casework each year demonstrates that illegal killing of birds of prey remains a persistent problem on game rearing estates.

### **The Law**

Birds of prey are protected by a range of existing legislation. The *Wildlife and Countryside Act 1981* protects all wild birds, their nests and eggs and makes it an offence to:

- Kill, injure or take any wild bird
- Take, damage or destroy the nest of any wild bird whilst it is in use or being built
- Take or destroy the egg of any wild bird or have in possession or control any wild bird, alive or dead or any part or derivative of a wild bird which has been taken in contravention of the *Act* or the *Protection of Birds Act 1954*
- Possess the egg of any wild bird unless it was taken other than in contravention of the *Act* e.g. before September 1982 (the date that this provision of the *Wildlife & Countryside Act 1981* came into force).
- Intentionally disturb a Schedule 1 bird while at the nest (a number of UK birds of prey are listed on Schedule 1 of the *Wildlife & Countryside Act 1981*.)

The effect of these provisions is to give wild birds protection from being killed or removed from the wild or from having their eggs taken. This should, in theory, prevent breeding birds from suffering harassment or persecution while at or near the nest, meaning that wild birds of prey should be able to rear young without interference. In addition to this, the *Wildlife and Countryside Act 1981* contains some additional prohibitions on certain methods of taking wild birds or attempting to take wild birds.

These mainly relate to methods of taking birds that are considered to be cruel and to cause unnecessary suffering. The *Wildlife & Countryside Act 1981* therefore makes it an offence to use:

- A cage trap containing a decoy bird
- A self-locking snare
- Bird lime (a sticky substance used to trap birds)
- Any pole or gin trap

A person using these prohibited methods will, in some circumstances, commit an offence even if his actions do not result in the actual death of a bird. In addition to this, the *Control of Trade in Endangered Species Regulations* makes it an offence to trade in birds of prey controlled by the *Regulations* unless certain conditions are met.

Offences under other legislation may also fall within the broad definition of bird of prey persecution. For example, pesticide poisoning affecting birds of prey can fall under the *Food and Environment Protection Act 1985*, the *Control of Pesticides Regulations 1986* (as amended) or even the *Health & Safety at Work Act 1974*.

The *Nature Conservation (Scotland) Act 2004* amends the *Wildlife & Countryside Act 1981* making it an offence to be in possession of a pesticide containing one or more of a list of ‘prescribed’ active ingredients. The RSPB explains that the change “follows repeated abuse of these products to kill wildlife” (*Legal Eagle* 45:6).

### **Bird of Prey Persecution Offences**

Illegal persecution of birds of prey takes many forms. The RSPB (2005) explains that bird of prey persecution falls into two broad categories; use of poisons and direct persecution through shooting and trapping of birds. Poisoning involves the actual poisoning of birds of prey and the laying of poisoned baits. Birds of prey are carrion eaters and so one method of killing the birds is to place poison on a carcass and leave it out in the open where birds may be attracted to it as a food source. The bird eats the poisoned bait and dies, although not always immediately. Any poisoned bait used in the

open within habitat used by birds of prey has the potential to kill the birds (RSPB, 2005:4). The RSPB explains that:

Poisoning may be considered the greatest actual or potential threat of all forms of persecution. In contrast to shooting and much trapping activity, which require a sustained effort by the criminal concerned to produce a limited return, poisoning can produce a substantial effect with only minimal effort. Poison baits continue to be lethal over a matter of days or weeks and can kill multiple victims without further effort by the poisoner.

(RSPB 2005a:4)

Some birds of prey are particularly susceptible to poisoning. For example, LACS reported that "of the Scottish red kites found dead for which a cause of death can be identified, 70% were deliberately poisoned" (LACS 2005:22). Buzzards also suffer significantly from poisoning. LACS explain that:

The Scottish Agricultural Science Agency reports that, of the 40 incidents of buzzard persecution in 2003, it was possible to confirm the cause of death in 25 cases. Half of these were carbofuran or alphachloralose poisonings. These two poisons were also identified as the cause of a third of the eagle deaths, two thirds of the peregrine falcon deaths and both of the recorded sparrow hawk deaths. A single incident of alphachloralose abuse killed three kites and two buzzards.

(LACS 2005:23)

Carbofuran and alphachloralose are the poisons most widely used in bird of prey poisoning incidents. Carbofuran was banned by the EU at the end of 2001 and alphachloralose was banned in Scotland in March 2005. Seventy Six percent of the confirmed cases of bird of prey poisoning in 2003 involved alphachloralose or carbofuran and the two poisons continued to dominate in 2004 (RSPB 2005). It is hoped that the withdrawal of approval for these poisons will eventually see a reduction in the availability of the poisons for illegal use. However, relatively small quantities are needed to prepare poison baits and so the "remaining illegal stocks may be sufficient for widespread abuse for several years" (RSPB 2005a:4).

Shooting and trapping of birds of prey is also widespread. Gamekeepers and other fieldsports staff with access to land that is not always in the public eye are at liberty to shoot birds of prey at or near the nest. There are also reported incidents of protected birds of prey being shot during game bird shoots if they are unfortunate enough to be in the vicinity of guns.

Trapping of birds of prey consists both of legal forms of trapping modified for illegal use and the use of forms of trapping that have been outlawed for many years. Although the legislation generally prohibits the use of any cage trap or to use a decoy bird for the purpose of taking other birds, one form of cage trap is lawful for predator control purposes. The Larsen trap, a form of cage trap used for controlling crows and other pests, can be used under the terms of an Open General License to take pest species such as crows. The requirements of the license are that no bird other than the target species (crow, jackdaw, jay, magpie and rook) can be used as a decoy bird or held within the trap.

If a bird other than these species becomes confined in the trap it must be released immediately and the decoy bird must be kept adequately fed and watered. Each Larsen trap which contains a live decoy bird, must be inspected on at least one occasion in any 24-hour period. Where a Larsen cage-trap is left in the open but is not in use, it must be rendered incapable of holding or catching birds other than the target species.

Despite this, incidents of Larsen traps being modified to trap birds of prey are known. Traps with poisoned baits designed to attract and kill carrion eating birds of prey have been set in the open. In some cases, the funnels of traps have also been modified to allow larger birds (such as buzzards and even golden eagles) to enter. Pole traps despite being illegal since 1904 continue to be widely in use. The RSPB (1995) explained that pole-traps are “normally a steel spring-trap set on top of a post or sawn-off tree trunk, either in or adjacent to a pheasant release pen containing young pheasant poult. Birds of prey and owls, which habitually use such posts as vantage or plucking places, are the main targets and victims of pole-traps.” (RSPB 1995:4)

In 1995 the RSPB suggested that pole traps “are in widespread use where bird of prey persecution occurs” (*Legal Eagle* no 6). An operation to establish whether this was the case surveyed a number of pheasant pens and confirmed that the use of pole traps was common. The RSPB explains that:

In 1995 there were 13 confirmed incidents of set pole-traps. In addition there were 11 confirmed incidents where unset pole-traps were found. A dead pole-trapped buzzard was found in one of these incidents, and a live merlin was found caught by its legs in the jaws of a pole-trap.

(RSPB 1995:4)

The RSPB operation also caught a gamekeeper on film setting pole traps in Dorset. Despite the considerable publicity that this case attracted, pole-trapping is thought to continue.

### **Preventing Bird of Prey Persecution**

The focus of law enforcement activity in bird of prey persecution is mainly the detection and apprehension of offenders rather than crime prevention aimed at preventing persecution. However, some prevention activity is currently undertaken by NGOs, mostly in the form of nest watches carried out by NGO staff and volunteers. At some sites considered to be vulnerable, CCTV or time lapse photography cameras have been installed both as a means of preventing possible illegal activity and as a means of detecting those responsible for illegal bird of prey persecution. It is, however, sparingly used and so does not represent a significant crime prevention initiative.

### **Enforcement Activity**

In relation to birds of prey in the wild, enforcement activity is carried out in two ways; prevention and detection of problems at nests by NGOs and apprehension of offenders and prosecution by the statutory agencies. In February 2004 (*RSPB Legal Eagle* no 40) PAW identified national wildlife crime enforcement priorities for enforcement authorities across the whole UK. The new priorities for enforcement were identified as being offences involving hen harriers, bats, species on Annex A of CITES and Sites of Special Scientific Interest (SSSIs). The enforcement priorities were identified by the

Government's Joint Nature Conservation Committee in conjunction with the statutory nature conservation organisations – English Nature, the Countryside Council for Wales and Scottish Natural Heritage.

In response to these priorities the UK police launched 'Operation Artemis'. The initiative, specifically aimed at bird of prey persecution and hen harriers in particular, focuses on publicity, liaison and apprehension of offenders. However in practical terms enforcement of bird of prey persecution offences continues to consist of routinely pursuing those cases that are brought to the attention of NGOs or the police.

### **Practical Enforcement Problems**

By its very nature, much bird of prey persecution takes place in remote areas where it would not be encountered by police officers involved in their ordinary duties. Detection of bird of prey offences therefore relies on either the actions of volunteer bird protection 'activists' from NGOs or ornithological organisations or from members of the public who happen to be out in the countryside, and are fortunate enough to witness a persecution incident while it is actually taking place, recognise that what they have witnessed is an offence and then report it to an NGO or a police officer who takes action on it.

Because of the lack of reliable reporting, the true extent of bird of prey persecution remains unknown although annual figures from the RSPB and the annual analysis of pesticide poisoning of animals from the agriculture agencies give some indication of the number of birds killed through reported bird of prey persecution. The lack of reliable information on the number of wildlife offences taking place each year and in what areas, makes it difficult to determine how much resources are required for enforcing wildlife legislation and in which areas the resources should be placed. NGOs and raptor study groups are able to identify some vulnerable bird of prey sites requiring monitoring in future years, although monitoring continues to be carried out on a voluntary basis. However, even where resources used in the investigation of other crimes are available they are not currently being used effectively.

Enforcement of wildlife legislation is still carried out by police officers working on a largely voluntary basis. This research has identified that there are sometimes difficulties

in obtaining officers for search warrants as well as difficulties in obtaining evidence. Because only certain officers are allocated to wildlife crime, search warrants need to be arranged according to the availability of these officers. During interview, NGOs provided evidence of officers not being available for several days (dependent on shift patterns) and of at least one instance of an officer not being able to complete a search of a site as he was about to go off duty and would have been completing the search in his own time. Scenes of crime facilities that would be available in the investigation of other forms of crime are also not routinely available in the investigation of bird of prey offences. In interviews for this research (see previous chapter) the lack of resources for carrying out examination of dead birds has been identified, with suspected shot birds of prey having to be x-rayed through airport machines to determine whether further investigation is warranted. Evidence (from the author's previous work in wild bird law enforcement) also reveals that cases that required the use of DNA evidence, to establish the parenthood of birds of prey, were often not taken on grounds of the cost involved in using this scientific evidence. While evidence gathering and forensic examination techniques are available, the evidence suggests that the low priority afforded to wildlife crimes means that they are not being used where senior officers are not yet convinced that wildlife crime is a priority.

### **Prosecuting persecution cases**

There are also problems with prosecuting bird of prey persecution cases. In England and Wales cases are taken by the CPS while in Scotland cases are taken by the Procurator Fiscal. One problem of taking cases is the lack of specialist knowledge by prosecutors. Evidence from NGOs provides details of prosecutors receiving files on the day of a trial and having little knowledge of the often complex details of a case (e.g. which birds of prey are 'specially protected' under the *Wildlife & Countryside Act 1981*) and of prosecutors with no knowledge of wildlife being unable to counter defence tactics. In Scotland, and to a lesser extent in England, shooting estates that choose to defend their gamekeepers in bird of prey persecution cases are in a position to provide expert legal representation, sometimes employing specialist QCs with several years experience of wild bird law and specialist bird of prey knowledge. This provides for an expert defence that can contest inadequacies in a case prepared by an inexpert prosecutor and exploit any loopholes in legislation or evidence.

Evidence suggests that when cases are brought before the courts the level of sentencing remains fairly low and is inconsistent. Evidence from NGOs provided during the interviews and in their documents suggests that a number of sheriffs hearing bird of prey persecution cases are involved in shooting and fishing leading to fines being at the lower or middle level of the scale. Where prison sentences are imposed, these also tend to be at the lower end of the scale. Comments from the RSPB and SSPCA suggest that evidence exists that employers are paying the fines of gamekeepers prosecuted for bird of prey offences and despite public pronouncements by the game rearing community that any gamekeeper convicted of wildlife offences would have his employment terminated there is little evidence that this is the case. With shooting days costing several hundred pounds per person and many shoots guaranteeing a number of birds in a day's shooting, the fines that might be applied to a bird of prey persecution incident could easily be absorbed by some estates as the cost of doing business.

One case example highlights the perceived low level of fines when wildlife cases are brought before the courts. Gamekeeper Stephen Muir, who worked for a shooting estate near Peebles in Scotland was charged with poisoning protected birds of prey during his activities as a gamekeeper for the estate. Police were alerted to Muir's crimes when they received a call from a conservationist. *The Times* reported that:

A search of the Barns Estate, Kirkton Manor, near Peebles, discovered 12 pheasant and rabbit carcasses slit open and laced with blue poison pellets. Officers also found a dead crow and 16 buzzard carcasses nearby, all of which had been poisoned.

Muir admitted that he had laced the animals with poison and put them out to attract buzzards, which he claimed were attacking pheasants and partridges on the estate.

(*The Times Online*, August 26, 2004)

Muir had worked on the Barns Estate for 17 years and was initially charged in connection with the deaths of 25 birds but some were too badly decomposed for the cause of their deaths to be determined. As a gamekeeper with almost exclusive access

to the land, Muir was at liberty to carry out illegal predator control away from the gaze of the public and at the time of the case newspapers speculated that his activities were a routine part of predator control. Solicitor Mark Harrower quoted on BBC News said "He felt he was doing his job, but in no way was he asked by the estate to do this."

Muir admitted killing 20 birds of prey by laying poisoned baits and was fined a total of £5,500 for what was described as Scotland's worst wildlife crimes. *The Scotsman* (August 2004) reported that Muir could have been jailed for six months or fined a total of £85,000 but "didn't even lose his job". The RSPB commented on the fact that Muir did not lose his job despite the estate condemning his actions and suspending him to hold its own internal enquiry. The RSPB whilst welcoming the level of the fine also commented on the failure to impose the available prison sentence. Investigator Dave Dick was quoted in *the Times*:

What is going to happen here is someone going to jail, because they are not stopping doing it," Mr Dick said.

This is not an unusual case, the only thing that's unusual about it is the amount of birds killed. There have been serious poisoning incidents in Perthshire and Northern Scotland. I see this every single year.

(Harris, 2004)

As a gamekeeper with 17 years experience, Muir would almost certainly have been aware that poisoning of wildlife was illegal. His employers, the estate denied any knowledge of his actions but failed to sack him. *The Scotsman* editorial commented that "this was an opportunity for the courts to send out a message to Scotland's landowners and gamekeepers, among some of whom a culture still exists that because raptors take birds for shooting they must be shot."

## **Case Study Two: Badger Persecution**

A second case study highlights the difficulties of enforcing an area where the nature of the offending behaviour is likely to be unaffected by a more punitive regime.

### ***Badger Persecution***

Although badgers have been protected by a variety of different pieces of legislation some going back as far as 1835, persecution of badgers is known to be widespread in the UK. In its 2005 fact sheet *Badgers and the Law*, the National Federation of Badger Groups (now called the Badger Trust) comments that “it is a sad fact that many thousands of badgers are still killed each year, and the incidents appear to be increasing. Also due to the nature of the crimes, there are relatively few successful prosecutions”. While exact figures are difficult to produce, estimates of 9,000 – 10,000 badgers killed annually are regularly produced by NGOs involved in badger protection.

#### **The Badger Persecution Problem**

Badger baiting takes place throughout the UK, wherever badgers occur. Although the *Protection of Badgers Act 1992* offers protection for the badger, persecution of badgers through digging and baiting is widespread. Badger digging and badger baiting often result in the death of badgers. Indeed, arguably this is the intent of the ‘sports’. Badger baiting often follows on from badger digging and the nature of these forms of persecution is that badger setts are located and badgers are removed from their setts and ultimately killed.

By their very nature, badger baiting and badger digging are offences that take place in remote areas and are difficult to detect and prosecute. Naturewatch explains that the detection and investigation of badger persecution:

is a notoriously difficult and very time-consuming operation, often without success for numerous reasons. Equally difficult is achieving a successful prosecution. Police presence is needed to make an arrest, so good-co-ordination is vital. Badger diggers are professional and in contrast the Badger Groups have an inherent weakness; they are unable to follow the case right through without the close co-operation of the police and RSPCA. Unfortunately many police forces do not view badger cruelty as important which means a lack of co-operation exists in many areas.

Naturewatch highlight the fact that badger baiters and badger diggers are highly organised, professional and often work in groups or organised gangs. Badger digging and badger baiting are seen as ‘sports’ which are pursued enthusiastically by their followers. The unlawful nature of the activity means that precautions are taken against detection and while badger groups monitor badger activity at badger setts, it still remains the case that many incidents will go undetected.

### **The Law**

The main legislation protecting badgers in England and Wales is the *Protection of Badgers Act 1992*. This Act consolidates all previous legislation including the *Badgers Act 1973* (as amended) and the *Badgers (Further Protection) Act 1991*. The *Protection of Badgers Act 1992* protects badgers in the wild and makes it an offence to wilfully kill, injure, take or attempt to kill, injure or take a badger; possess a dead badger or any part of a badger or cruelly ill-treat a badger. The Act also contains prohibited methods of taking a badger and makes it an offence to use badger tongs in the course of killing, taking or attempting to kill a badger or to dig for a badger. It is also an offence to sell or offer for sale or control any live badger; mark, tag or ring a badger; or interfere with a badger sett by; damaging a sett, destroying a sett, obstructing access to a sett; causing a dog to enter a sett; or disturb a badger while occupying a sett

The potential maximum fine for badger offences is £5,000 per offence (i.e. the amount of the fine may be multiplied by the number of badgers) and/or six month’s imprisonment. Under the *Protection of Badgers Act 1992* the courts may also, order forfeiture of any badger or skin relating to the offence or of any weapon or article used; order destruction or disposal of dogs; or disqualify an offender from having custody of a dog.

Badgers are also protected in Scotland by the *Protection of Badgers Act 1992* as amended by the *Nature Conservation (Scotland) Act 2004*. Badgers are listed on Schedule 6 of the *Wildlife and Countryside Act 1981* which means that they are also protected from some of the prohibited methods of taking or killing a wild animal contained within the Act, including illuminating devices and some snares. Some of the provisions of the *Protection of Animals Act 1911* and the *Abandonment of Animals Act*

1960 also apply to badgers. Offences under these pieces of legislation include; causing unnecessary suffering, abandoning an animal in circumstances likely to result in unnecessary suffering, and fighting or baiting involving badgers

The effect of the various pieces of legislation is to give protection to badgers and their setts in the wild and to make it an offence to kill or interfere with badgers in the wild. Where badgers are reduced into a captive state they are also protected from cruelty by legislation.

### **Badger Persecution Offences**

Despite this legal protection, badgers continue to suffer from illegal persecution.

Although badger baiting and badger digging are often talked of together they are two distinctly different offences. Badger digging is the process of digging a badger out of its sett. Naturewatch provides the following description:

A small terrier, such as a Jack Russell or Patterdale, is sent down into a badger sett to locate a badger and hold it at bay. The diggers then dig their way down into their quarry. Many diggers attach a radio transmitter to the dog's collar before sending it below ground then all they have to do is to use a radio receiver/locator to determine the exact location of the dog.

The badger might be shot – if it's lucky, but usually they will set their snarling terriers on the badger and watch it suffer a long and agonising death. At times, the dogs and the badgers may die when the sett collapses and suffocates them.

([www.naturewatch.org](http://www.naturewatch.org))

Badger baiting is the process of digging a badger out of its sett. The practice was, in fact a form of public entertainment in the early 19<sup>th</sup> century but dates back to medieval times. Naturewatch explains that:

Nowadays the badger is placed into a makeshift arena, a ring or pit from which it cannot escape. Dogs are then set upon it. The badger is often ‘nobbled’ by having its jaw broken, back legs tied together or even broken to allow the dog a better chance of survival.

([www.naturewatch.org](http://www.naturewatch.org))

Even if the badger is lucky enough to get the better of one dog, the owner may hit or otherwise injure the badger in order to ‘protect his pet’. The reality of badger baiting is that the outcome for the badger is never in doubt and ultimately, no matter how well it tries to defend itself, the badger, through injury and exhaustion, will reach a state when it will not be able to fight any longer. The baiters will then kill the badger usually by clubbing or shooting it. NGOs and the police are in agreement that money regularly changes hands in badger baiting incidents. The Metropolitan Police explain that badger baiting “is a highly organised contest, usually held away from the sett, sometimes in towns and cities like London. At a baiting event spectators bet on the performance of the dogs against the badger” (Metropolitan Police Website.)

### **Enforcement Activity**

In relation to badger digging and badger baiting, enforcement activity is carried out in two ways; prevention and detection of problems at setts by badger group members and apprehension of offenders and prosecution by the statutory agencies. While the focus of wildlife law enforcement is mainly the detection and apprehension of offenders rather than the prevention of wildlife crime, badger baiting is one area where some dedicated crime prevention takes place, although this is carried out by NGOs. Volunteers from badger groups carry out monitoring activity on badger setts and this volunteer activity can reveal criminal activity. Badger groups actively report incidents to the police for investigation but there is no co-ordinated police action aimed at detecting and preventing badger crime.

### **Practical Enforcement Problems**

By its very nature, much badger persecution takes place in remote areas where it would not be encountered either by police officers involved in their normal duties or by members of the public. Badgers are mainly nocturnal animals with a widespread

distribution in the UK and so the likelihood of members of the public viewing persecution incidents taking place is slight. NGO Scottish Badgers explain that:

Contraventions of the *Protection of Badgers Act 1992*, like so many other wildlife offences, are difficult to prosecute. The very nature of the locus, often in remote areas, means that there are rarely any witnesses. Often the crime is not noticed until some time after it is committed by which time any evidence left at the scene by the perpetrator has been destroyed by the elements. It is an onerous task for the Police Wildlife Liaison Officer to investigate an offence and to gather sufficient evidence for a prosecution to proceed. It is the duty of the police and not private individuals or badger groups to investigate offences.

(Hutchison 2000:1)

It remains the case, however, that the detection of badger persecution relies heavily on the work of volunteer monitors (the Badger Groups) to identify offences. Badger diggers and badger baiters operate in gangs and while the RSPCA has had some success in undercover operations aimed at gaining intelligence on these gangs or on infiltrating gangs (see Saunders 2001) the part-time nature of much wildlife policing and the lack of resources to investigate badger crime in any co-ordinated way means that many cases are not being proceeded with and are not being taken. Where cases are being taken they are relatively few in number and mainly rely on the work of the RSPCA in England and Wales.

One case highlights the difficulties involved in bringing cases to Court. In February 2002, six men were acquitted of charges relating to digging for badgers and causing cruelty to a dog at Dolgellau Magistrates Court, North Wales.

The six defendants, four from Wales and two from Lancashire were charged with interfering with a badger sett by causing a dog to enter a sett, damaging a part of a badger sett and disturbing a badger while occupying a sett. The events took place at a badger sett in Llanfrothen, Gwynedd, North Wales on 22 July 2001. One defendant was additionally charged with causing unnecessary suffering to an animal by allowing a dog to go to ground and receive injuries. The men were found allegedly digging a badgers'

sett in a wood near Llanfrothen, they were accompanied by a dozen dogs and the court heard that two dogs were seen trying to get into a tunnel at the bottom of the hole and a squealing noise could be heard. When one of the dogs, a terrier called Wilf, was pulled out of the tunnel it was heavily bloodstained and had badger hairs in its mouth. The activities of the men were typical of badger digging yet the men told police that they were digging for a fox which had gone to ground, a lawful activity at the time of the offences.

All six men told the court that they were hunting for foxes and denied that they had visited the site to dig for badgers. The prosecution argued that this was not the case, that there was evidence of badger digging and that the men would have been aware that the site was a badger sett. The prosecution also alleged that the injuries to the dog were consistent with badger digging activities. However, a witness for the defence, veterinary surgeon Madalene Forsyth of Helmsley, York, disagreed and said that Wilf's Injuries were "absolutely typical" of a fox bite (*Liverpool Daily Post*, 27 February 2002).

The six men were acquitted after deliberations by magistrates. The Chairman of the Bench said that the prosecution had failed to prove that the site was an active badger sett and magistrates agreed that the defendants were fox hunting on the day. The lack of resources to clearly establish the presence of badgers hampered the prosecutions attempt to establish the exact nature of the alleged offenders' activities and to prove that a badger crime was being attempted.

## **Summary**

Even with changes to legislation and a more punitive regime for wildlife offences, problems would still exist with bird of prey and badger persecution. From the outset there are difficulties with detecting offences due to their location in remote areas and the reliance on members of the public and volunteers to identify and report such offences. The voluntary nature of wildlife policing also means that such offences are not always fully investigated and, even where investigated, evidence may not always be collected as thoroughly as it would be in other, more commonplace types of crime. Scientific evidence that would often prove such offences is not always used and so cases may also fail because of insufficient evidence to proceed. In addition to this, cases may fail

at the court stage due to inexperience on the part of prosecutors, the sporting interests of the sheriff hearing the case (in bird of prey cases in Scotland) or failure to charge and prosecute for the full available range of offences that might secure a conviction. Even at the sentencing stage, the full range of sentencing options might not be used and little is done to prevent the offender from reoffending.

While changes to legislation and a change to a more punitive regime might provide for more options in the prosecution of offences, there is no evidence that the increased range of available options would be used. In many cases, at present, the available penalties are sufficient but for them to be an effective deterrent, potential offenders need to fear not just the penalty but that there is a real risk of detection, apprehension, prosecution and punishment to the full extent of the law. The evidence of NGOs is that this is not the case and there is no evidence that these existing problems would immediately be eradicated with any change in the enforcement regime. Gangs involved in badger digging and badger baiting would not suddenly choose to abandon their 'sport'. The close-knit nature of the communities in which the gangs operate also mean that new offenders continually emerge to take over from the old. Nor is there evidence that landowners, keen to see a profit from their legitimate shooting activities would suddenly remove all forms of pressure (whether tangible or implied) from gamekeepers and other staff to kill birds of prey that are perceived as having an adverse effect on game bird stocks. It is also unlikely that those gamekeepers and other staff who act solely on their own initiative would suddenly choose to comply with a new enforcement regime and voluntarily refrain from illegal killing of birds of prey.

## Chapter Nine – Offender Models

NGOs involved in wildlife crime investigation and law enforcement share a number of problems, from difficulties in identifying where and when offences are taking place through to difficulties in bringing cases to court. However this research has highlighted the fact that while many of these problems are linked to general inefficiencies in the enforcement of existing legislation there are also specific problems that arise when dealing with offenders within each area of wildlife crime. A central aim of this research is to examine the nature of criminal behaviour in wildlife crime and the policy perspectives that might be needed to address these behaviours. Research Aim 3 of this research is:

*To analyse the motives of wildlife offenders and the extent to which wildlife offenders share common traits and the factors that determine their offending behaviour and types of offence that they commit.*

In order to do so this research has examined what is known about the way wildlife offenders behave and the motivations for their crimes. Statements made by offenders themselves either during investigation of wildlife crime cases, during court proceedings or at the conclusion of cases reveal much about their attitudes. In addition, previous and ongoing research and undercover investigation into the way that offenders operate provides some information on the motivations of offenders and why they might commit certain wildlife crimes. This chapter, therefore, examines the different types of offender involved in wildlife crime. In particular, it considers whether offenders have different motivations and may be subject to different pressures.

### Perspectives on Criminality in Wildlife Crime

Understanding the psychology of offenders, the economic pressures that affect them and the sociological and cultural issues that could impact on their behaviour greatly aids our understanding of what needs to be done to address behaviours

that lead to crime and the conditions which dictate that individuals will commit wildlife crime. Roberts, Cook, Jones and Lowther recognised this in their 2001 report for DEFRA which acknowledged that:

The offenders who commit wildlife crime are driven by a range of motivations, some of which are associated with the nature of the market for the products of the crimes – whether those products be the animals or plants themselves, by-products (such as shahtoosh), or events and gambling opportunities such as badger-baitings.

(Roberts, Cook, Jones and Lowther 2001:27)

Analysis of the different types of offences that are committed by wildlife offenders demonstrates clearly that individuals involved in wildlife crime have different motivations and different objectives. Some offences are motivated by purely financial considerations, some by economic or employment constraints and others by forms of predisposition towards some elements of the activity such as collecting or abusing and exercising power over animals. Wildlife crime contains a range of different offences although as mentioned previously, despite the numerous types of individual offences possible, offences fall into the following broad categories.

- Killing or taking a wild bird
- Killing or taking a wild animal or mammal
- Trade in wildlife (alive or dead)
- Trade in endangered species
- Taking or possession of a wild bird's egg

As discussed in Chapter Two, the offences involve different elements, some incorporating the taking and exploitation of wildlife for profit (wildlife trade, trade in endangered species) others involving the killing or taking or trapping of wildlife either in connection with employment (bird of prey persecution) or for purposes linked to fieldsports (hunting with dogs). For some offences, Merton's anomie theory can explain how strain and a sense of relative deprivation might explain the drive to commit crime in order to achieve some personal (financial) gain. For other offences, Sutherland's (1939) theory of differential association might explain how

an offender learns his behaviour through association with other like-minded individuals.

There is a distinction to be made between the motivations of offenders and the justifications or neutralisation techniques that they use. While Sykes and Matza's neutralisation theory (see Chapter Three) is a useful model for identifying the justifications used by offenders that gives them the freedom to act (and a post-act rationalisation for doing so) other theories help to explain why wildlife offenders might be motivated to commit crimes and the literature on specific types of offence is helpful in identifying whether there are specific types of wildlife offender.

While the focus of much literature on wildlife crime is on wildlife trade, the evidence of NGOs in this research is that it is a relatively small part of wildlife crime in the contemporary UK. But for those offenders involved in the killing or taking of wildlife (for trade), the basis of their behaviour is the potential profit from killing or taking wildlife and the direct financial gain they derive from doing so. In this regard wildlife offenders involved in trade might best be described in terms of Merton's anomie and the relative deprivation theory of Lea and Young (1993).

Wildlife offenders exist within communities although there may not be a community about where the crimes take place and so there are not always neighbours to gossip about who it is has committed the crime (for example in burglary) neighbours might speculate about who has burgled a house) which might put pressure on offenders and result in community action that identifies offenders. Because of this, they may not be subject to essential controls within the communities where the offences take place that can assist in preventing individuals from committing crimes but may also live within a community or subculture of their own which accepts their offences. As many offences often carry only fines or lower level prison terms this reinforces the view that they are 'minor' offences that may not be worthy of official activity. In addition, Sutherland's (1939) differential association theory (see Chapter Three) helps to explain the situation that occurs when potential wildlife offenders learn their activities from others in their community or social group (Sutherland 1973 edited by Schuessler.) For example, egg collecting, often mentioned during this research, is an area

where mature egg collectors may quite reasonably argue that there is no harm in continuing an activity that they commenced legitimately as schoolboys. But examination of case files and newspaper reports on egg collecting indicate that new collectors continue to be attracted to the sport and learn its ways through interaction with more established egg collectors. Similarly, junior gamekeepers on shooting estates learn techniques of poisoning and trapping from established gamekeepers and Head keepers as a means of ensuring healthy populations of game birds for shooting. Awareness of the illegal nature of their actions leads to the justifications outlined by Sykes and Matza (1957, discussed again later in this Chapter) but the association with other offenders, the economic (and employment related) pressures to commit offences and the personal consequences for them should they fail are strong motivations to commit offences.

The role of the community can also be a factor in traditional 'animal abuse' activities that are now either considered to be morally repugnant or which have been made illegal. Again Sutherland's theory is relevant here as he identifies that the main learning process for criminal behaviour occurs within intimate groups and association with others. In fox-hunting for example, youngsters are encouraged to hunt by their parents or other adults who are members of the hunt and at the conclusion of a successful hunt may be 'blooded' (smeared with the blood of the fox) as a sign of acceptance into the fox hunting fraternity. This, in part, ensures that the traditional sport of fox-hunting will continue as new enthusiasts are taught the ways of the sport from a relatively early age, but also reinforces the idea of the activity as being a sport enjoyed by supporters of all ages.

Some offences are also the so-called crimes of masculinities involving cruelty to or power over animals, in some cases linked to sporting or 'hobby' pursuits. Chapter Three explains how some crimes are based on perceptions by the offender of their actions being part of their culture where toughness, masculinity and smartness (Wilson 1985) combine with a love of excitement. In the case of badger-baiting, badger-digging and hare coursing, for example, gambling and the association with other like-minded males can be a factor and provide a strong incentive for new members to join already established networks of offenders.

The previous sections provide an overview of the type of criminality inherent in wildlife crime. The following sections explore these in more detail before an attempt is made at producing new models of wildlife offenders based on the information considered in this research.

### **Identifying the Wildlife Offender**

Any attempt to identify what it is that makes a wildlife offender must give consideration to the role of gender and perceptions of masculinity. In the past, academic debate on crime has generally accepted that crime and criminality are predominantly male concerns. This perhaps reflects the role of gender and predominance of male offenders in serious and violent crime and concerns over youth crime; in particular both the propensity towards violence of young males and the extent to which young males might become victims of crime (Norland et al 1981, Campbell 1993, Flood-Page et-al 2000, Harland, Beattie and McReady 2005).

Considerations of why men commit the majority of crime, and certainly more crime than women, have taken into account biological explanations of crime and whether there are physiological reasons for men committing crime (Lombroso and Ferrero, 1895, Worrall 2001). They have also considered whether the socialisation of young men and the extent to which routes to manhood leave young men confused or anxious about what it means to be a man and whether this might cause young men to turn to crime (Kimmell, Hearn and Connell, 2005, Harland et al, 2005).

Restrictive notions of masculinity dictate that many men are forced into roles as defenders and protectors of their communities (Harland et al 2005) and are also encouraged to comply with the image of the 'fearless male' (Goodey 1997) and to achieve the ideal of hegemonic masculinity (Connell 1995, Harland et al 2005).

Men are encouraged to reject any behaviour construed as being feminine or un-masculine or which does not conform to traditional masculine stereotypes and engage in behaviour (such as the 'policing' of other men) which reinforces hegemonic masculinity (Beattie 2004). Appropriate behaviours for males and personal characteristics such as aggression, thrill-seeking or having an adventurous nature, recklessness and assertiveness may be conducive to committing crime and explain criminal behaviour. Certainly many wildlife crimes

involve sometimes difficult and dangerous outdoor conditions, a requirement to negotiate wildlife (both in terms of dangerous species and adult birds and animals attempting to protect their young) and both the attentions of ordinary law-enforcement and NGOs. Committing such crimes may appeal to the thrill-seeking and danger loving side of the male personality as does the challenge of outwitting the efforts of wildlife enthusiasts and NGOs. In addition, the outlet for aggression allowed by such crimes as badger-baiting and badger digging, and hare coursing, and the opportunities for gambling related to these offences (and others such as dog fighting and cock fighting) are likely on to appeal to young men seeking to establish their identity and assert their masculinity and power over others. Such crimes by their very nature provide opportunities for men to engage in and observe violence and to train animals (fighting cocks, dogs) that may represent an extension of themselves and reinforce elements of male pride, strength, endurance and the ability to endure pain, all masculine traits.

Wildlife offenders are predominantly male, and many of the predator control jobs in the game rearing industry in the UK, in which significant illegal killing of wildlife takes place, are held by men. As Huntsman Julian Barnfield observed in his submission to the Burns Inquiry on Hunting with Dogs "along with my job I get a rent free house to live in, which is home also for my wife and two young children who have both been born and bred in the countryside. Without my job we would not be able to continue to live in the countryside" (Barnfield, written evidence to the Burns Inquiry, May 2000). With a tied house being an element of some countryside employment, gamekeepers and huntsmen are placed firmly in the role of providing for their families and any lack of success in predator control and by inference a failure to perform adequately in the job (discussed later in this chapter) potentially leads to loss of the family home and the result feelings of inadequacy and damage to male pride and self-esteem. While masculinities may not be the cause of all wildlife crime, it is certainly a factor to be taken into account in some wildlife crimes.

There is also growing evidence that animal abuse is an indicator of a tendency towards violence and that many animal abusers go on to commit further violence. As mentioned earlier in this research a conference concerning this issue was held

in Oxford in September 2007 (see Appendix 3 for conference report) and discussions between the research author and academics from a variety of disciplines at this conference identified some of the behavioural traits and motivations that are present in animal offenders. The research author has also considered some of the (mostly US) research carried out by other academics into animal abuse and what causes individuals to kill and harm animals and in analysing this evidence has considered how it might relate to wildlife crime in the UK.

Research into the links between animal abuse and human violence is in its infancy in the UK but is well-established in the US. Conboy-Hill (2000) defines animal abuse as “the deliberate or neglectful harm of animals and can include beating, starvation, slashing with knives, sodomy, setting on fire, decapitation, skinning alive amongst other actions” (Conboy-Hill 2000:1). There are some similarities between this definition and the scope of wildlife crime considered by this research and, in particular, the prohibited methods of killing animals contained in the *Wild Mammals (Protection) Act 1996*. Although the majority of US research into animal abuse concerns domestic animals While Conboy-Hill’s definition does not solely relate to domestic or wild animals and the research literature fails to produce a consistent definition of animal abuse and animal cruelty, the majority of US research concerns abuse of domestic animals. However, Ascione (1993) provides another definition of animal abuse and cruelty as being “socially unacceptable behavior that intentionally causes unnecessary pain, suffering, or distress to and/or death of an animal” (Ascione 1993:228). As mentioned above this would include the stabbing, burning and crushing offences contained within the *Wild Mammals (Protection) Act 1996* and the poisoning, trapping and shooting offences involving wild animals contained within the *Wildlife and Countryside Act 1981*. Undoubtedly such acts as illegal hare coursing and badger baiting and badger digging would also be caught by this definition. While the objective of much US research is to identify the relationship between histories of animal abuse and later violent offending, the research covers such issues as the behaviour of offenders, their motivations and how they see themselves (mostly from self-reports of animal cruelty offences.) Although the different nature of the US jurisdiction (different legislation and law enforcement mechanisms) must be taken into account, US

research into why people turn to harming, killing or taking animals or why males in particular turn to animal abuse helps to explain the nature of this criminal behaviour. While it may be directly applicable to only some UK offences it provides insights into an existing offender population and the wildlife and animal abuse crimes they have committed.

The increasing evidence of research in the US is that childhood abuse of animals is linked to later interpersonal violence (Felthouse and Kellert 1987, Ascione 1993) and law enforcement, child protection and social welfare agencies in the US have begun to consider animal abuse as an indicator of future violent behaviour, sometimes of a serious nature. A number of serial killers, including Berkovitz, Hubert and De Salvo, are known to have a history of animal abuse (Lockwood and Hodge 1986) and the suspicion of law enforcement agencies is that animal abuse is a form of 'rehearsal' for future offending (Felthous and Kellert 1987, Brantley 2007 and Clawson 2007). Indeed Clawson (2007) reports that in the Seattle Metropolitan area the criminal justice system now co-ordinates a legal response to animal abuse in order to ensure that "juvenile animal abusers in Seattle receive rehabilitation aimed at preventing today's animal abusers from becoming tomorrow's murderers" (Clawson 2007:1). While not all wildlife crime involves violence or violent abuse, where it does occur it indicates that offenders may have or may develop a tendency towards violence that manifests itself first in animal abuse but which could escalate from these early efforts into adult abuse directed not just at wildlife but later towards people.

Ascione (2007) identified that child maltreatment and interpersonal violence are significant factors in creating a wildlife offender. The evidence of the research is that individuals who come from homes where there is domestic violence and abuse of animals are likely to go on to become violent themselves. However, not all such individuals will necessarily go on to harm animals or become involved in the more violent types of wildlife crime (hare coursing, poisoning, badger baiting etc.) and Beetz (2007) suggests that abuse which affects empathy may be a primary factor in determining what type of offender an individual becomes. In particular close relationships with animals are thought to enhance empathy while violent attitudes towards animals can indicate a lack of empathy. Cohn's (2007) analysis of pigeon

shoots in Pennsylvania, where schools are closed on the first day of hunting so that children can hunt, indicates that where children are taught from a relatively early age to kill animals, this can become a part of their development that leads to a propensity towards violence and can escalate into other forms of violence. So too, a violent family environment, where children, spouses or animals are abused, might damage the development of social and emotional abilities which is said to be a common weakness in animal abusers (Beetz 2007, Brantley, 2007).

Research has also shown that if an animal has been harmed in a household there is an increased risk of another form of family violence occurring (Bell 2001) with the possibility that the abuse of animals constitutes a displacement of aggression from humans to animals that occurs through the child's identification with their abuser. Harm to a family pet is a means through which some abusers keep control of their spouse and children (Hutton 1981, Bell 2001, Gullone 2007, Hawksworth and Balen 2007) and illustrates a means of exercising power over others demonstrating the influence of masculinities but also demonstrating the potentially violent nature of offenders and an anti-social personality disorder. Hutton's 1981 study, for example, found that 83% of 23 families who were investigated by the RSPCA (in the UK) for animal cruelty were known to social services for having 'children at risk'. Arkow (1995) found a correlation between cruelty to animals in the homes of 11% of 1175 women seeking restraining orders or counselling because of domestic violence and Ascione (1996) discovered that 71% of women in a refuge who had pets at home had observed male partners threatening or actually harming and killing pets. Sociological research (Walker 1979, Ascione 1993 and Flynn 2007) indicates that it is likely because of their close relationship that women and animals are victimised, with abusers using threats of violence and actual violence as a means of exerting dominance over spouses and children. Vachss (1993) even noted an instance of a molester killing a kitten and then indicating that the same thing could happen to a child, as a means of controlling that child and securing compliance with the molester's demands. For some animal abuse offenders therefore, masculinities, referred to above, are a significant factor in committing animal abuse crimes, exercising power over others (both human and animal) and indicating a propensity towards violence and other types of crime such as spousal abuse and cruelty to children.

This is also true of (some of) the wildlife crimes that are the focus of this research.

Henry (2004) researched the relationship between animal cruelty and involvement in other forms of anti-social behaviour using a college sample of self-reports of animal cruelty behaviour and delinquent behaviour. He concluded that those who reported or engaged in or who reported observing animal cruelty were also more likely to report greater involvement in a variety of delinquent behaviours both within the year prior to the study and over the course of their lives. While it must be noted that the study was into college students (and in the US, a culture of gun ownership) who may yet to have grown out of any delinquent behaviour, the research went some way to indicating a link between animal cruelty and other forms of criminal behaviour suggesting that young animal abusers are also likely to be involved in other delinquent activity.

While the focus of this research is not animal welfare or cruelty offences where they involve domestic animals, the evidence of abuse of animals and what it shows about the inclination towards violence on the part of some offenders is relevant. In particular, the evidence shows that offenders who are engaged in activities for which there is a strong element of thrill-seeking or 'sport' that involves the exploitation of animals are frequently motivated by the power that they gain over animals and justify their activities by denial of the pain caused to animals. For those in favour of field-sports such as fox-hunting, fishing, deer-hunting or hare coursing, a common argument is that the animal or mammal does not anticipate death and enjoys the chase (see, for example BBC, *Inside Out- South* 2005.) Evidence submitted to the Burns Inquiry on Hunting with Dogs (2000) included arguments that "the fox exists to pursue and be pursued" (the Morpeth Hunt) and that hunting with hounds not only destroys the weaker foxes it disperses the stronger ones" (the Curre Hunt) and so is a vital part of countryside life. The importance of controlling foxes as vermin is also emphasised as was the recreational and social aspects of hunting. Prior to the ban on Hunting with dogs enacted by the *Hunting Act 2004*, the contention of hunting opponents was that hunting with dogs was morally wrong, but submissions to the Burns Inquiry from huntsmen, fox hunts, beagle associations and others emphasised the natural element of their activities and that they should not be subject to regulation.

Suggestions that; opponents knew nothing about what was involved, that there would be a detrimental affect on the countryside economy leading to a need to destroy many packs of hounds and that there would be an increase in populations of vermin such as foxes which could not be dealt with by more humane ways of pest control were commonplace among the submissions to the Burns Inquiry from hunt enthusiasts. In addition, a belief in the widespread support for the activity, and a questioning of the legitimacy of those who wished to see it outlawed (one of the neutralisations identified by Sykes and Matza) was also exhibited by many of those who wished to continue to hunt with dogs. As just one example, the Ashford Hunt in its submission commented “to criminalise an activity – such as foxhunting – in response to a campaign which itself is largely criminal sets a precedent which threatens all law abiding citizens whether they love foxhunting or loathe it.” The argument that the campaign against hunting was ‘largely criminal’ goes to the actions of Hunt Saboteurs and organisations like the Animal Liberation Front, while at the same time ignoring the political legitimacy of organisations like LACS, Animal Aid and WWF.

Challenges to the legitimacy of scientific evidence used by opponents of fieldsports or wildlife crimes are also commonplace and indicate the feeling of some wildlife abusers that they have a right to carry out their activities irrespective of any moral objections or legislation attention. Animal rights organisations and some conservation organisations have campaigned for sport fishing to be abolished on the grounds that it is cruel to the fish. However, supporters of fishing have argued that fish do not feel pain and this idea is endorsed by Dr James Rose of the University of Wyoming. In 2003 Rose published a study in the journal *Reviews of Fisheries Science* which concluded that animals need specific regions of the cerebral cortex in order to feel pain and fish do not have them (Rose 2003). However, researchers from the University of Edinburgh published contrary research following observation of rainbow trout which suggested that fish were capable of feeling pain (Randerson 2003). This denial of injury is a common neutralization technique raised by fishermen and others but demonstrates their belief that fishing is not cruel but is a natural sporting activity. They maintain that fishing does not harm the fish or cause them any long-lasting damage and so it is a victimless crime (while mostly stating clearly that it is not and never should be a

crime). In sport fishing, the quarry are released after they have been caught (hence the term ‘catch and release’) and so enthusiasts say there is no impact on wild populations of fish. As a causation of wildlife crime, the denial of injury is an important factor indicating not only that individuals do not see any harm in their activity but also confirming the view of animals as a commodity rather than a sentient being that might suffer as a result of the individual’s actions. Wise (2000) argues that the concept of inequality between humans and non-humans is central not just to the legal status of animals but also to how individuals treat animals and the perception that certain animals do not feel pain may allow offenders to commit their offences without considering the impact of their actions or feeling any guilt over them. Comparing this to areas of mainstream criminology, there is evidence that burglars and other offenders when confronted by their victims in restorative justice conferencing often express surprise that their victims have strong feelings about the crime and the actions of the offender. Many offenders claim not to have been aware of this possibility or the impact of their crimes on their victims until entering into the restorative process (Sherman and Strang 2007, Shapland et al. 2007) and did not readily see themselves either as criminals or as the kind of person who could have caused the harm claimed by victims.

Attitudes towards regulation are also an important factor in identifying the nature of wildlife offending. Eliason’s (2001) assessment of poachers in Kentucky consisted of a mail survey to individuals cited and convicted for wildlife violations in Kentucky during 1999 with a follow-up survey to conservation officers in Kentucky during 2001. The second phase of his research consisted of in-depth interviews with offenders and conservation officers. While the focus of Eliason’s work was poaching, his definition is broader than that normally used in the UK and defined “poaching as the illegal taking of wildlife resources (Eliason, 2003) rather than the taking of purely game species as poaching is normally referred to in the UK. Eliason’s poaching research would, therefore, incorporate some activities that would be classed as wildlife crime in the UK.

Eliason’s work identified that neutralisation techniques were often employed by those convicted of poaching offences. These techniques included; denial of responsibility, claim of entitlement, denial of the necessity of the law, defence of

necessity and recreation and excitement, again reflecting the research of Sykes and Matza, 1957) which identified that individuals involved in crime use these techniques both before and after engaging in illegal activity. Significant numbers of those interviewed were aware that they were contravening regulations but considered that their breaches were minor or technical infringements and that they should not have been the subject of law enforcement attention. They often also denied the right of law enforcement officers to take action against them or contended that there were better uses of officers' time and that enforcement action should be directed towards the 'real' criminals. In addition, some offenders argued that it was necessary for them to kill wildlife in order to feed themselves or their families. Although this latter excuse is not an issue in the wildlife crimes covered by this research due to the species involved, it may be an issue in poaching offences where game birds and animals that might be considered food may be taken.

In relation to wildlife crime, the involvement of NGOs without which offenders might not be apprehended provides an additional motivation for some individuals to commit crime. For example, in a Channel Four Documentary entitled *The Egg Detectives* (1991); egg collector Colin Watson blamed the RSPB for his continued offending citing the destruction of his egg collection by the RSPB as a primary cause. A complete list of possible neutralizations employed by wildlife offenders (as with some other offenders) can be outlined as follows:

1. The denial of responsibility
2. The denial of injury
3. The condemnation of the condemners
4. The appeal to higher loyalties
5. the defence of necessity
6. the denial of the necessity of the law
7. the claim of entitlement

Different offenders may use different neutralisations and, may also be subject to different motivations. By considering the different motivations and behaviours of

offenders it is possible to determine if there are distinct types of wildlife offender. This is discussed in more detail in the next section.

## **Developing Offender Models**

Based on their experience and views of wildlife crime, the perception of NGOs was that a range of motivations could cause wildlife crime and that different motivations might apply to different offences. This was also explored in interviews for this research where NGOs were asked specific questions concerning problems experienced in investigating cases and in the legislation (see Chapter Seven) and for the reasons why they thought offenders committed wildlife crime. Responses to these and other questions, analysis of casework, policy documents, media reporting of wildlife crime issues and related research (secondary sources) on animal abuse and specific aspects of wildlife crime revealed much information about the perceived reasons why people commit wildlife crime and the problems of dealing with them when they do. Examination of the justifications given by offenders for their behaviour (revealed during this research and in other research) also provides much information about why offenders say they commit certain crimes and what they consider to be the flaws in the public policy and law enforcement approach to their offences.

Analysis of the information provided by NGOs during this research, case records and secondary sources on animal abusers and related wildlife crimes indicates that offenders operating in the field of wildlife crime commit their crimes for the following general reasons:

1. Profit or commercial gain
2. Thrill or sport
3. Necessity of obtaining food
4. Antipathy towards governmental and law enforcement bodies
5. Tradition and cultural reasons

While these are the primary motivations, ignorance of the law is also sometimes a factor although not strictly a motivating factor, but more a justification or neutralization technique (Matza and Sykes). Table 2 shows a summary of

research carried out for DEFRA on the motivation for wildlife crime. Roberts *et al* (2001:27) surveyed 87 organisations about their perceptions to identify what NGOs considered to be the motivation for wildlife crime.

**Table 2: Assessment of Motivating Factors (Percentage of respondents indicating the factor is always or usually present).**

Description of crime	Ignorance of the Law	Going along with Others	Financial gain	A feeling of power	Excitement thrills or Enjoyment*	A desire to cause trouble	Keeping traditions alive
Cruelty to Animals	14	7	11	53	66	7	19
Smuggling endangered species or derivatives	8	0	98	12	3	0	8
Killing, harming or taking wild birds	10	9	43	16	32	0	13
Taking or destroying wild birds eggs	3	3	26	16	40	0	26
Killing, harming or taking wild animals	3	3	17	41	39	0	16

\* (The original research explained that killing or harming certain animals can result from a desire for excitement).

The research indicates that (when asked) NGOs accept that there may be different factors involved in motivating individuals to commit wildlife crimes, even though this is not always reflected in their policy perspectives. There are also different influences at play and, as discussed earlier in this research, the criminal behaviour identified in wildlife crime can be explained by different criminological theories.

Analysis of the data collected during this research and an examination of the motivations of the offender in wildlife crimes (as outlined in Table 2) and the analysis above suggest that wildlife offenders fall into four (relatively) distinct types which were developed as part of this research. Combining information from the interviews, documentary sources and criminological theory, a new classification of offenders can be produced as follows:

1. **Traditional Criminals** - who derive direct (and sometimes personal financial) benefit from their crimes
2. **Economic Criminals** - who commit wildlife crimes as a direct result of particular economic pressures (including pressure from their employer or pressure to commit crime in order to obtain a profit in their chosen profession). This category also includes what would be classed as the 'white collar' criminal and is distinguished from the previous category because of the specific mostly legitimate employment-related nature of their motivation to commit crime.
3. **Masculinities Criminals** - who commit offences involving harm to animals and which involve exercising a stereotypical masculine nature both in terms of the exercise of power over animals and the links to sport and gambling. There is some link between these offences and low level organised crime.
4. **Hobby Criminals** - who commit those high status<sup>1</sup>, low level crimes for which there is no direct benefit or pressing need for the crime and for which the criminal justice reaction is often out of proportion with the crime. These are distinguished from the previous category by the absence of harm/cruelty as a factor in the offences. The 'hobby' element is the primary motivator.

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<sup>1</sup> 'High Status' in terms of the importance attached by enforcement bodies and the public to these crimes.

### ***Model A - The Traditional Criminal***

Model A is that of the traditional criminal who derives direct financial gain from his offending behaviour and perhaps has most in common with the offender found in mainstream criminology. The object of the offence is to obtain a direct personal financial benefit; the wildlife involved is simply a commodity through which this may be achieved and might conceivably be substituted for any other type of activity such as stealing from cars or burglary from which the offender might derive similar benefit. The primary motivation for the offender, therefore, is one of profit, rather than one in which the offender has an interest in wildlife through which he is fortunate enough to obtain some financial gain. Lea and Young argue that:

It is true that crime is antisocial – indeed the majority of working-class crime, far from being a prefigurative revolt, is directed against other members of the working class. But it is not antisocial because of lack of conventional values but precisely because of it. For the values of most working-class criminals are overwhelmingly conventional. They involve individualism, competition, desire for material goods and, often, machismo.

(Lea and Young 1993:96)

This type of crime reflects the fact that some offenders are sufficiently motivated to commit a particular form of crime in the absence of more acceptable means of wealth acquisition. Offenders that fit within Model A include: those who take wild bird chicks for breeding and subsequent sale as birds for falconry, those who deal in illegally killed wild birds or animals and traders and dealers in rare or endangered species. It is specifically those offenders who are involved in these illegal activities not as any indirect consequence of (otherwise law-abiding) employment but who engage in particular activities as a direct means of achieving personal gain. In Model A, the criminal ‘chooses’ his offending behaviour as a direct means to obtain income. With profit being the primary motive, the offender will most likely be unaware of the full extent of the legislation involved, but will be aware that their actions contravene the legislation in some way.

### **The Causes of this type of Crime**

Opportunity (Clarke 1992) and an easy source of direct financial gain is one of the causes of crime in the traditional model. Wildlife crime presents a low-risk, high-return option for the offender, with the potential to make thousands of pounds in a single transaction while the risks of detection, apprehension and punishment are slight in comparison to other offences. In addition the relatively low stigma attached to some wildlife crimes (i.e. they are not widely seen as being serious crimes) means that offenders are able to rationalise their offending behaviour as harmless, technical or victimless offences.

Wildlife is a resource that is not closely monitored by the criminal justice agencies. Nor has it been the subject of intensive crime prevention or target hardening initiatives in the way that other objects of criminal activity have been. An offender who decides to steal cars, for example, has to contend with such things as alarms, immobilisers, theft registers, and the likelihood that the owner will immediately inform the police and insurance companies of the theft. Added to this, the facts that cars have been increasingly designed to prevent theft and each individual car can be identified through number plates, chassis numbers and other markings such as window etchings; car theft carries with it some element of risk both in the act of taking the car and in the subsequent sale or disposal of the vehicle. By contrast, the nests of wild birds are not routinely monitored and only certain birds are required to be registered with the DEFRA under current legislation. With the exception of those rare species whose nests are monitored, thefts of wild birds are not likely to be noticed immediately and the police are not likely to be notified of the theft unless a member of the public or nest warden spots it or the nest is one that is monitored by NGOs. The police response to such a theft and any subsequent sale of a wild bird is likely to be minimal. Such a crime, therefore, represents a soft option for the offender wishing to make a quick and easy profit.

In terms of profit, the likely benefits are also high. The last dedicated survey of prices in the UK (Robinson 1991) indicated that birds of prey can sell for between several hundred and several thousands of pounds and the rarer the bird the greater the potential profit. Even on apprehension, the risk to the offender is small with maximum prison sentences of two years and maximum fines of £5,000. Evidence from the RSPB and German bird protection society NABU suggests that

some falcon dealers have factored the cost of fines into their operating costs. Birds are routinely 'laundered' through Germany as legitimate captive bred birds before ending up in Middle Eastern countries as falconry birds (see RSPB 1995, 21). In 2007 the Union for the Conservation of Raptors (UCR), an American bird of prey conservation organisation, estimated the trade in smuggling falcons to the Middle East to be worth over US \$100,000,000 per year (see [www.savethefalcons.org](http://www.savethefalcons.org)).

Although the link between wildlife crime and organised crime is one that is discussed in more detail below, with particular emphasis on criminal gangs, there is also limited evidence that gangs involved in other forms of crime have turned to wildlife crime.

*The Times* newspaper, for example, has reported that gangs involved in drug smuggling have turned to wildlife crime. It said that:

Traffickers are using the same routes and methods that they deploy for heroin and cannabis to bring in banned material from protected animals...The traffickers know that the penalties if they are caught, for example, with a £3 million cargo may involve nothing more than a fine. Trafficking in Class A drugs worth the same amount carries at least eight to ten years in prison.

(Tendler, *The Times*, 2001).

In summary, crimes committed by the 'traditional' wildlife criminal are caused as a result of the offender seeing the crime as a soft option for profit and direct personal financial gain. The offender obtains funds through his activities and is aware that the risks of detection and apprehension are low. He is also likely to be aware that enforcement of wildlife legislation is carried out predominantly by the voluntary sector and that the penalties for wildlife crime are small in comparison to other forms of crime.

### **The Role of the Community**

Lea and Young (1993) have argued that incidence of crime is likely in any community where community controls are insufficient to inhibit the behaviour of citizens. Although the focus of their comments was street crimes such as vandalism, their argument can be extended to 'traditional' wildlife crime.

Wildlife crime, although serious in terms of the species concerned, is not considered to be serious crime by either the legislature or the criminal justice agencies. As has been noted previously, wildlife crimes are mainly summary offences and as such, only a minority of wildlife crimes, carry an option for prison sentences to be imposed. Responding to a query as part of this research, the Home Office in a letter dated 19 June 2000 commented that offences involving endangered species are recorded under "Other Indictable and Triable Either Way Offences." The Home Office commented further that it is "impossible for the wildlife element to be separated from the other offences in this group".

Society in general does not stigmatise wildlife crime in the same way that the more serious offences such as drugs and violence are characterized. While it is not suggested that society considers wildlife crime to be acceptable, it is certainly true that an individual involved in the low level forms of wildlife crime of the like committed by the traditional criminal will not be classified by society as a dangerous or serious criminal, although there are some groups vocal about the subject of wildlife crime such as NGOs and animal rights organisations who contend that they should be viewed as such.

### **The Rationalization of the Offender**

Traditional wildlife criminals have fairly straightforward rationalisations for their activities. The wildlife is a resource to be used and if they did not use it other people would. It has also often been argued that the crimes are victimless crimes and nobody suffers as a result of the offences that are committed. Traditional wildlife criminals see their offences as, at best, minor crimes or crimes of a technical nature. They do not accept their offences as being serious crime that requires the attention of the criminal justice agencies.

### **The Public Policy Response**

Traditional wildlife criminals are treated much the same way as other criminals that fit within the classical model. The public policy response treats the offender as being a rational actor who chooses his course of action. The offender is considered to be sufficiently aware of the criminal nature of his actions that a deterrent approach might be effective. By raising the offender's level of awareness of the likely punishment, the criminal justice agencies hope to effect a change in his behaviour. Publicity for convictions and the likely level of punishment is, therefore, an important part of the public policy response. In addition, as offenders are considered to be persistent offenders motivated entirely by profit and personal gain, moves towards a more punitive sentencing regime are advocated for the traditional wildlife offender.

### ***Model B - The Economic Criminal***

The second type of offender can be termed 'Economic Criminals'. These offenders are motivated to commit their offences by a range of economic and social pressures but the primary object is not direct (personal) financial benefit. This category includes those who commit wildlife crimes during the course of their employment, as a result of direct and indirect pressure from their employers and others involved with their employment and livelihood. Examples of this include gamekeepers and others involved in (mostly legitimate) countryside sports, game rearing or commercial fisheries, who may be driven to their offending behaviour through interaction with their employers. This category also includes offences committed by a company or business in the conduct of an otherwise lawful business, often for commercial reasons. For example roofing companies that may kill bats as part of their business, this distinguishes the Model B offender who may commit an offence as part of an otherwise lawful operation from the Model A offender who if engaged in business does so in a mostly unlawful manner as a specific way of deriving personal gain.

In Model B the offender's motivation comes in part from external pressures (e.g. an employer or a perception of market pressures) and in part from association with

others within his sphere of employment or social circle who have also committed offences (Sutherland). In the case of those involved in game rearing, the encouragement to commit crime may come from a variety of sources. For example, in the game rearing/shooting industry, evidence from investigations carried out by the RSPB suggests that gamekeepers are encouraged to kill otherwise protected birds'; animals and mammals by their employers. The object of doing so is to ensure that large numbers of game are available for clients who visit the estate on shooting days. A well-stocked estate is essential to ensure successful shooting days and repeat customers and gamekeepers are encouraged not to discriminate between those predators that are legal target species such as foxes (that can legally be shot) and birds of prey (protected at all times). Gamekeepers may otherwise be law-abiding individuals and will frequently co-operate with the police over other crimes such as poaching. Timber treatment companies and building and roofing contractors also feature amongst the offenders. In interview, the Bat Conservation Trust commented that "the onus is on developers to survey for bats before doing any work on a building. However, because of the costs involved some people will just go ahead and do the work anyway. Some developers will get a survey done and will just try to wriggle out of it. They think 'what's the fine going to be and what's the cost to me?' Often they will, just go ahead and do the work and take a chance anyway."

The offender is most likely aware that his acts amount to offences under wildlife legislation but because of pressures brought to bear he may continue to commit the offences. Pole trapping, for example, is the practice of placing a steel spring trap on a pole to catch predators. It has been illegal since 1904 but the RSPB said in 1995 that it "has long suspected that such traps are in widespread use where bird of prey persecution occurs" (*RSPB Legal Eagle No 6*) and set out to prove this contention. The traps are particularly effective at pheasant release pens where birds of prey, particularly owls, will attempt to feed from a vantage point. By laying out a bird carcass or some other form of bait near the pole, gamekeepers can encourage the bird of prey to feed from the pole. As the bird lands on the pole to begin feeding the jaws of the steel-trap snap shut on their legs. The bird will then either die from the shock or remain in the trap until they die from starvation or other causes.

Proving that pole traps were in widespread use in 1995 the RSPB said that "specific enquiries into the illegal use of pole traps in England and Wales brought to light 15 live pole traps at pheasant release pens in various parts of the country". The use of the traps at pheasant release pens was an indication that those involved in rearing game birds (and who would be responsible for checking the pens on a daily basis) were actively involved in killing protected birds. One gamekeeper was caught on film setting the traps and was fined £200 after being convicted of setting traps on a shooting estate.

Pressure to set the traps can come from employers seeking to ensure the economic viability of their operation. As such, the rationalisations used by offenders differ from those of the traditional criminal. Offenders argue that they are encouraged to commit the crimes for sound economic reasons. Moreover, they also argue that they should be allowed to control a wider range of wildlife than that permitted by current legislation in the interests of their business, denying the wisdom of the legislation under which they must operate.

These offenders can be likened to white-collar criminals whom Nelken (1994) describes as being typified by a situation where "successful business or professional people are apparently caught out in serious offences, quite often for behaviour which they did not expect to be treated as criminal, and for which it is quite difficult to secure a conviction" (Nelken in Maguire et al 1994: 355) Nelken suggests that white collar criminals are responsible people and that the crimes that they commit raise questions that are not posed by other types of criminal behaviour. Questions arise such as why do they do it when they have so much to lose? how likely are they to be caught? and what is the true level of crime in their area? These questions are all directly relevant to the crimes of those lawfully engaged in countryside activities, for example gamekeepers on grouse moors, who are employed to carry out lawful pest control, and who, in theory at least, stand to lose their jobs and homes if convicted (see below).

The nature of the offender as an otherwise law-abiding individual allows similarities to be drawn between the white-collar criminal and the 'economic' wildlife offender.

In the traditional criminological literature, white-collar crimes "involve evasions of regulations and violations of laws carried on as part of an occupation or business in order to secure greater profit and without concern for the injury inflicted on the public" (Vold and Bernard 1986:331). This is true of those gamekeepers and fisherman who continue to act unlawfully in killing predators to protect game birds and fish stocks but who will continue to co-operate with the police over such incidents as poaching.

### **The Causes of this type of Crime**

The causes of crime for the economic criminal are directly related to outside pressures and a lack of controls on their activities. Crime is likely in any situation where an individual is encouraged to commit a crime for fear of losing his employment if he does not do so and this provides a powerful motive for some wildlife crimes.

Gamekeepers are often on modest salaries but live in accommodation provided for by the estate as part of their employment. A vehicle is also often provided as part of the employment package. An unsuccessful gamekeeper, therefore, stands to lose his job and his home as well as reduced future employment opportunities.

The pressure to kill protected wildlife may, therefore, be either direct or indirect. The employer may inform the gamekeeper directly that birds of prey and other predators are to be controlled, or may simply turn a blind eye to the activities of a gamekeeper who is regularly producing high levels of game for the estate.

Evidence from case files also identifies that some new gamekeepers learn illegal techniques of predator control from other more senior staff. Recognition of the role of the employer in encouraging offences was reflected in the RSPB's 1991 attempt to introduce an amendment into the *Wildlife and Countryside Act 1981* to make it an offence for any person to 'cause or permit' another person to commit an offence. This was intended to make landowners liable for the activities of their staff and reduce the pressure from landowners to commit crime.

Gamekeeper, George Rodenhurst, provided anecdotal evidence of past levels of employer pressure, in 1988. Convicted of poisoning offences, Rodenhurst was dismissed by his employer following his conviction. He took his employer to a

tribunal for unfair dismissal, claiming that the Factor<sup>2</sup> of the estate was aware of his activities and had instructed him to commit the offences. Although he lost his case at the Tribunal, Rodenhurst claimed during his evidence that nearly 400 shooting estates in the UK were carrying out illegal control of protected species.

While it may be unlikely that the current position is anything like that described by Rodenhurst in 1988, mostly due to staffing and ownership changes since that time and the greater attention of NGOs and the Police, the evidence exists that gamekeepers trained in countryside law continue to kill protected birds and animals while in the course of their employment. In July 2001 the RSPB reported that gamekeeper John Ross was fined £2000 after he was "*filmed shooting one hen harrier and witnessed shooting a second*" (RSPB 2001a:1). Pressure from employers whether implied or actual promotes the attitude that predators such as birds of prey are obstacles to the smooth running of an estate and should be eliminated by whatever means to ensure the continued economic viability of the estate's shooting operation.

In the case of companies, Situ and Emmons (2000) commented that: "performance pressure, the estimated certainty and severity of punishment, and the crime facilitative culture at the level of the individual firm contribute to the probability of criminal participation" (Situ and Emmons 2000:60). Their assessment of environmental crime highlighted that the potential costs of complying with environmental legislation and the relatively small amount of fines that offences can attract made crime viable for many companies in the US as it may be for game rearing interests in the UK. Situ and Emmons suggest that much corporate environmental crime occurs when companies pursue unlawful means to achieve a legitimate business goal and where the pressure to do so (i.e. the pressure to achieve profits from a factory, fishery or shooting estate) outweighs the pressure or need to comply with the legislation. Figures supplied by the Bat Conservation Trust (2002) support this, revealing that the majority of those convicted of bat related offences were companies involved in otherwise lawful

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<sup>2</sup> An Estate Manager who manages the farm and game and fishing rights to ensure the estate runs at a profit.

activities, where strict adherence to bat conservation/protection legislation would impact on the company's activities.

### **The Role of the Community**

During interview for this research a representative of one of the Scottish conservation organisations commented that killing of protected wildlife was an accepted practice on many shooting estates. He explained that pest control is a matter of pride among countryside professionals and that any attempt to enforce the legislation must also battle against tradition. He explained that:

There are certain [shooting] estates where there's a certain amount of pride taken that its pest free. When they're talking about killing pests they're not just talking about your common rat but killing anything right up to anything with a hooked beak. It's their tradition in some respects, there are some enlightened people coming into the fold now, but again that's tempered to some degree...As far as they're concerned, two hen harriers is OK but more than two is a nuisance and is unacceptable. One badger sett is fine, more than one badger sett, no, they don't want it.

While environmental issues as a whole might be important within the business community, wildlife offences might not be considered to be an issue of high corporate responsibility.

### **The Rationalization of the Offender**

Economic offenders rationalise their activities in a variety of ways. Offences are characterized as not being the offender's fault but instead are the responsibility of others, including the employer who places pressure on the offender. Offenders also argue that; they have to commit their offences in order to earn a living and provide for their family and so their offences are a necessary part of their employment, that their crimes are victimless and of a technical or minor nature, and that the resources of the criminal justice agencies should be targeted towards 'real' and serious criminals.

In part these rationalizations are a defence mechanism against the perception (and campaigning) by NGOs that wildlife crime should be regarded as serious crime and attract the attention of the criminal justice agencies and demonstrate Sykes' and Matza's (1957) neutralizations at work. The fact that the enforcement of wildlife crime is largely the responsibility of NGOs may also be a factor. Offenders are aware that the likelihood of getting caught and the likely fines if convicted potentially work in their favour. It has been said many times in criminological literature that it is not fear of punishment that deters offenders, but fear of apprehension. In the case of economic offenders, awareness of the likely punishment and small size of fines may well be the over-riding factor, as the commercial interests that dictate a company's behaviour means that the potential punishment is obviated by the significant returns that can be achieved by ignoring, rather than complying with wildlife laws.

During an interview for this research, an investigator for the Bat Conservation Trust explained the historical problem with the amount of fines available to magistrates in bat crime:

Well fines range from £200 to £2500 but perhaps one of the main problems is the one I've already mentioned. For example, one guy went to Court and was fined £500. This was less than it would have cost him to have taken account of the bats in the development. So the fines simply weren't high enough. I've had the question asked of me several times by developers and when they hear what the fines are they say they'll take the chance. Whereas if we could send them to prison as we can now under CRoW, it could make a difference.

Commercial expediency then, provides a rationalization for the offences as to fully comply with the legislation might cost money, delay projects and put the company's profits at risk while leaving the company at risk of competition from a company with a more 'flexible' attitude to wildlife legislation.

### **The Public Policy Response**

The public policy response to economic criminals is variable. Publicly game rearing estates have said that any gamekeeper convicted of a wildlife offence would be dismissed. NGOs argue that this is not the case and that an offender can continue to commit offences without fear of any further sanctions being applied after conviction. One NGO representative interviewed as part of this research used the example of a gamekeeper snaring badgers.

I mean over the border, is it the hawker, or Hacker Estate? The guy got three months. I mean that was horrendous, one live badger in a snare, there are the remains of 10 or 11 other badgers lying about the place. There's 18 self-locking snares on the estate and he gets three months only. He's probably out now and that lad will go back into his trade. That's one thing where they should really change the legislation. If you're done for cruelty to a dog or a cat, you can get banned from keeping animals, but if you get done for doing something like a wildlife offence, you're not banned from becoming a gamekeeper.

Although offences continue to be brought before the courts it is largely as a result of the efforts of the NGOs rather than as a result of any concerted effort by any criminal justice agencies.

### ***Model C - The Masculinities Criminal***

Model C involves those offenders where the involvement of wildlife is incidental to their offending behaviour, offences mimic the model of organised crime and are seldom committed by lone individuals. The importance of masculinities as a general issue in crime and criminal behaviour is discussed earlier in this chapter and is of relevance here. In some of these crimes, the main motivation is the exercise of power allied to sport or entertainment; a link might also be made with organised crime and gambling. This includes crimes that might be classed as crimes of masculinities and which also include elements of cruelty or animal abuse of the kind which is attracting the attention of law enforcement agencies in the US (Clawson 2007). Examples include badger digging and badger baiting, cockfighting and dogfighting, as well as some crimes that involve the sporting

killing or taking of wildlife. (This is to be distinguished from the killing of badgers as a means of predator control or to prevent the spread of tuberculosis on shooting estates and in cattle rearing areas.) Evidence from the RSPCA, SSPCA and LACS suggests that in these crimes, the offender is likely to derive some pleasure from his offence and this is a primary motivator. Offenders in this category are almost always male and a link has been made between some of these crimes and other crimes of masculinities.

### **The Causes of this type of Crime**

Badger baiting, badger digging, cockfighting and dog fighting are considered by some to be sports. LACS would describe such activities (together with activities like hare coursing and hunting with dogs) as bloodsports. One key element in these offences is that some form of injury to the animals involved is inevitable. The perception of those NGOs involved in dealing with this type of crime is that it attracts a particular type of offender and that the harm to animals is a significant factor in causing the crime.

Former fox worker and badger digger Mervyn Brice also added to the idea that excitement and entertainment are key factors. Following his 1997 conviction for causing injury to his dog when he sent it down a badger sett, Brice was interviewed on a news programme and described the motivation for his behaviour. LACS reported Brice's interview in the Spring 1997 edition of its newspaper *Wildlife Guardian* and reported the following comments:

It's a rush. Because it's illegal you don't know whether you're going to be caught, but at the same time it's terrifying. You can hear all the howling of the dogs, the thumping of the ground where they're fighting, people shouting...it's an adrenaline rush that you just can't get off nothing else.'

Brice also added that 'they [baiters] come from all over the place, Kent, London. It's word of mouth really. Arranging digs, I can make anything up to £500 to £600.

(LACS 1997:10)

In America, a considerable amount of research has been conducted on crimes of the masculine, some of which involves wildlife. Fred Hawley from Louisiana State University has researched cockfighting and cockfighting gangs in America. He explains that: "cockfighting can be said to have a mythos centered on the purported behaviour and character of the gamecock itself. Cocks are seen as emblems of bravery and resistance in the face of insurmountable odds" (Hawley 1993:2). Hawley argues that the fighting involved is "an affirmation of masculine identity in an increasingly complex and diverse era" (1993:1). The fighting spirit of the birds involved has great symbolic significance to those that Hawley studied. This is also true of dogfighting in which the fighting spirit of the dog and even its ability to take punishment are prized by those involved.

Discussion of masculinities as a factor in crime and criminal behaviour are relevant to any analysis of wildlife crime. Consideration of the different aspects of masculinities show how masculine stereotypes can be reinforced and developed through offending behaviour (Goodey 1997) and are important factors in addressing offending behaviour which may sometimes be overlooked (Groombridge 1998). Wildlife offenders in the UK are almost exclusively male and their crimes are of a distinctly masculine type. Certainly in the case of the more violent forms of wildlife offender, the literature in the UK and public policy response is some way behind that of the US in identifying a group of mostly young males involved in crimes of violence (albeit towards animals) that could turn to more serious forms of crime or expand their violent activities beyond animals and towards humans (Ascione 1993, Flynn 2002 and Clawson 2007). Dog fighting, cockfighting and badger digging all involve betting and wagers being placed on individual animals, the outcome of a fight and other factors (including the power or strength of an animal). For some, the betting element may be almost as important as the issues of power. A significant amount of money may be placed on fights in wagers. For this reason, some of the wildlife crimes involved attract the attention of organised crime. One NGO commented during this research:

There must be an involvement of organised crime, they must be coming in...I can't see a criminal society allowing Joe Soap the commoner, and his mates to be having badger baiting and betting on them, without

wanting a cut... Badger crime is all about money, I'm quite sure it is.... I think money, tradition, the figure in the flat cap and with the whippet and the terriers is still around. Badger pits, they're the fighting pits, have been found in Dundee recently.

The involvement of organised crime was also cited by Mervyn Brice as a factor in his taking up badger crime. Following his trial, LACS said that Brice's expertise in fox control "led to him being used by people in South London to help attack a badger sett. He had owed them money and was concerned about his safety" (LACS 1997:10). At his trial, Brice's solicitor claimed that this was something that he did under duress and that Brice was intimidated into badger crime because "the kind of people involved are known to be extremely violent" (LACS 1997).

### **The Role of the Community**

While the general public might consider such violent activities as badger crime to be individual anti-social activities, the RSPCA's description suggests that badger digging is an activity carried out by groups rather than by lone offenders. The evidence from case reports supports this. The relationship between the members of the groups may be relevant to the commission of offences. The RSPCA's information suggests that such networks may be informal criminal networks. The concept of criminal groups was explored by Maguire (2000), who suggested that some loose criminal networks were

rather like an 'old boy network' of ex-public school pupils, individuals would be able to call upon others for collaboration, help or services when they needed them, and would be able to verify their 'bona fides' to those they did not know by means of a verbal 'reference' from mutual acquaintances.

(Maguire in King and Wincup 2000:131)

Separate from the organised crime element of the crimes, there is also a 'secret society' element to these crimes and here the community can actually encourage crime. The male-bonding element identified by Hawley is significant as is the banding together of men from the margins of society and for whom issues of

belonging and male pride and achievement are important. In discussing cock fighting in America, Hawley (2001) explained that:

Young men are taken under the wing of an older male relative or father, and taught all aspects of chicken care and lore pertaining to the sport.

Females are generally not significant players in this macho milieu, though a liberated daughter or paramour may take part in a 'powder puff' derby, a competition in which only women pit and handle the birds. This is male activity that takes place in "male space," perhaps like the ancient Greek gymnasia, but without the homoerotic elements. In any event, discipline, if not character, is certainly instilled by the constant care that domestic fowl demand.

(Hawley 2001:5)

Forsyth and Evans (2001) made similar findings in researching dog fighting in the United States. They concluded that an appeal to higher loyalties and an attachment to smaller groups took precedence over attachment to society for the dogmen with dogfighting having great cultural significance for the dogmen. For those involved in masculinity crimes, the activity itself, has wider social importance.

As has been mentioned above, criminal groups are involved in the types of wildlife crime carried out by the masculinities offender and the pressure imposed by these groups may be a factor in the offender's activities.

### **The Rationalization of the Offender**

Offenders involved in these types of crime often cite arguments based on historical precedent or tradition. Hawley (2001) observed that:

Cockfighters often resort to arguments based on pseudo-psychological notions: the birds feel no pain. Some allow that perhaps the birds might feel pain but if they do it is of a qualitatively different order than that perceived by higher forms of animals. 'They (chickens) have completely different nerves [nervous systems] than people do,' several informants vouchsafed. Cockfighters remain unmoved by contrary scholarship and

are bemused and increasingly angered by the negative image that their pastime has in the popular imagination. They are especially incensed by the activities of People for the Ethical Treatment of Animals and other advocacy groups whom they view as effete intellectuals and kooks, of whom the best that can be said is that 'they just don't understand' what the activity entails to the enthusiast.

(Hawley 2001:5)

Similar arguments occur in the UK concerning hunting with dogs and, as mentioned earlier, fishing. The conflicting arguments of the pro-ban and pro-hunt lobbies have been characterised as 'town versus country'. Resistance to legislation to ban hunting with dogs employed arguments that emphasise the traditional nature of hunting and that legislation to ban hunting with dogs was simply interference from Whitehall in the ways of the countryside. Opponents of a ban also argued that hunted animals feel no pain and it is a perfectly natural activity and that hunting is a necessary and effective method of predator control that people from 'the towns' simply don't understand.

Hunting with dogs in the UK has until recently been lawful in the UK. Even after legislation to ban it was introduced its proponents continue to argue that the legislation was unjust (and unlawful) interference in what they considered to be legitimate sport and indeed an attempt was made to have the legislation overturned on the grounds that it was incompatible with the European Convention on Human Rights (*R (Countryside Alliance and Others) v Attorney-General and Another Regina (Derwin and Others) v Same*, 2007.) The arguments put forward by those involved are similar to the arguments put forward by cockfighters, badger baiters and badger diggers. While this is not to suggest that the activities are the same in any legal sense, the rationalizations given are those of denial, unwarranted intervention by legislators and a lack of understanding on the part of those that seek to ban the activity.

### **The Public Policy Response**

The public policy response to masculinities crimes is similar to that employed in relation to organised crimes. Techniques employed by NGOs and the police

include infiltration of the gangs, surveillance activities and undercover operations. Offenders involved in the masculinities offences are considered to be somewhat more dangerous than other wildlife criminals and are treated accordingly.

### ***Model D - The 'Hobby' Criminal***

The Model D offender includes those offenders who are involved in technical offences for which the offender will often deny the criminal nature of his acts. These offences also attract a high level of attention from the criminal justice agencies and NGOs involved in wildlife crime, despite the relatively low level of threat caused by the offence. One example of the Model D offender is the egg collector who gains little direct benefit from his offence and for whom the criminal nature of his offence is denied. It would also include those involved in large scale taxidermy (as collectors) but who do not operate mainly as traders or dealers in dead wildlife specimens.

The offender referred to here, does not commit his offence as part of his business or occupation. Instead his activities can be more readily likened to a hobby or obsession, and the collection or acquisition of items is a primary motivator. In the case of egg collecting, for example, offences are rarely committed by those directly employed within the countryside. Instead, the offences are often committed by those employed (or unemployed) elsewhere and who may travel specifically to commit their offences. This element of *mens rea* on the part of the offender might account for the seriousness with which these offences are considered by NGOs and the criminal justice agencies.

During interviews for this research, one NGO representative recalled a case in Scotland that highlights the seriousness attached to egg collecting by a Scottish Court. Egg collectors Jamie McLaren and Lee McLaren, had been fined £90,000 by a Court in Orkney when they were caught collecting eggs of rare birds. The NGO representative felt that this fine was excessive and demonstrated the Court's view of the offenders. He explained that:

Yes. The Sheriff, he was out of frustration he was saying 'I want to jail you people but I can't'. So what he was trying to do was to circumvent

the law, which is wrong. So he put out a huge fine, which they couldn't pay and so they'd have to go to jail. Well the appeal court, correctly in my view, overturned that. That was totally disproportionate to their actual crimes. But the level of fines, you could probably say, doesn't deter people, because they come back time and time again.

Hobby criminals such as egg collectors are obsessive and the pursuit of their hobby can cost them thousands of pounds each year. Egg collectors have been known to travel all over Europe in pursuit of eggs and some individuals involved in (illegal) taxidermy have been found in possession of species from all over the world. There is some similarity with other forms of offender who obsessively collect banned rare or expensive items such as rare books, pornography and stolen paintings (Burke 2001, Taylor and Quayle 2003 and discussed below) and the desire not just to obtain items but also to catalogue and categorise them is a factor in the offending behaviour. Examination of case records and prosecution evidence as well as the research author's past knowledge of casework indicates that egg collectors are exclusively male as no records could be found of any female egg collectors in the UK.<sup>3</sup> Hobby criminals would seem to be an example of specific male activity and while issues of masculinities should be considered in examining hobby crimes these crimes are not of the distinctly masculine type identified in Model C and there are other causes for these crimes as discussed below.

### **The Causes of this type of Crime**

It is difficult to provide a full explanation for hobby crime such as egg collecting and the collecting of specimens of dead birds and animals although some evidence of the reasons why such crimes take place can be found in case files. Although illegal there are thought to be around 300 known active egg collectors in the UK with one or two new names identified each year (RSPB 1999 and Wainwright 2006). The RSPB offers the following explanation of egg collectors and their offences:

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<sup>3</sup> Analysis of RSPB statistics, annual reports, case reports and newspaper reports on egg collecting cases

For the majority of egg collectors no financial gain is made from collecting eggs. It is purely an obsessive and selfish activity resulting in nothing more than displaying the egg in a purpose built cabinet to gaze at until the start of the next breeding season, when additions to the collection can be made.

(RSPB 1999:20)

Egg collecting has been likened to a form of kleptomania. Offenders cannot help but commit the offence as they are driven to commit their crimes and the adventure involved in doing so. Rather like a collector of stolen paintings, some of whom pay large sums of money for stolen works, egg collectors may in part be driven by the acquisition of an item that cannot be obtained legitimately. Some stolen works of art, many of which are recognisable cannot be traded on the open market but are acquired for private collectors to appreciate. Burke (2001) suggested that the trade in ancient manuscripts and historic books in the UK was worth millions of pounds with criminal gangs turning to trafficking for private collectors and with thefts of works by Copernicus and Ptolemy being commissioned by private collectors. Although there is evidence of some stolen works being traded (Burke 2001) the drive to obtain items for personal use and which cannot be publicly exhibited is a primary factor of the obsessive collector. Taylor and Quayle (2003) explain that "the emotional intensity that is part of collecting behaviour" (2003:48) is a significant factor with the collector interacting with others who share his interests and often being driven to have a bigger, better and more comprehensive collection than others. The competitive drive and the obsessive need to acquire items can turn a hobby interest in certain items into a passionate desire to collect (Belk 1995, Taylor and Quayle 2003).

Wild birds eggs, possession of which is an offence, cannot be traded sold or even exhibited publicly. The obsessive nature of the offence is confirmed by egg collectors themselves. Egg collector Derek Lee confirmed this to *The Guardian* stating that many egg collectors simply cannot stop and that their habit consumes them. He explains that:

There are quite a few who are obsessed with it. Every single spring and summer they can't wait to get out. If you put a child in a chocolate factory their eyes light up with excitement. It's like that. When spring and summer come, the eggers are on edge. They're like big kids.

(Barkham, 2006)

The obsessive-compulsive nature of offending is a factor, and the meticulous notes retained by collectors is, in fact used by investigators as evidence of their offences (Barkham 2006, Wood, 2008.) While the obsession of offenders gives some clue to their behaviour, egg collecting is a peculiar activity that defies ready explanation. In these times of environmental awareness it seems odd that a form of crime from which the offender derives no financial benefit should continue.

### **The Role of the Community**

There is some evidence that egg collectors and other 'hobby' offenders exist within specific communities. Analysis of court cases involving egg collectors demonstrates that there are clusters of egg collectors in certain parts of the UK, mostly in working class parts of England.

Evidence from the RSPB suggests that egg collecting is learned from others within the community and that new egg collectors learn from established ones rather than turning to it independently as a form of crime. However there is also evidence that others within the community do not approve of the activity. A number of offenders have been identified when their spouse's and other members of the public have contacted enforcement bodies such as the RSPB to provide evidence concerning their activities.

### **The Rationalization of the Offender**

Like any other form of offender, the hobby wildlife offender has a distinct set of rationalizations (see Sykes and Matza) for his activities and any attention paid to them by the criminal justice agencies. In terms of rationalization, hobby criminals do not readily accept that their activities amount to criminal behaviour and use techniques of avoidance, denial, displacement of blame and challenges to the

legitimacy of enforcers to explain away their actions. Much like those who are caught speeding by traffic enforcement cameras challenge the legitimacy of the cameras, the fines imposed or argue that cameras are simply a revenue raising device, hobby wildlife offenders dispute that their activities fall within the remit of the criminal law. In the case of the hobby wildlife offender, the fact that wildlife legislation does not fall within the remit of the criminal law is a factor that allows offenders to classify their activities as minor crime. In the case of egg collecting, for example, it is only with the introduction of the *Countryside and Rights of Way Act 2000* that offences have carried a limited option for prison sentences. However, the taking of wild birds' eggs has been unlawful since the 1950s under the *Protection of Birds Act 1954* (and subsequent legislation.)

One important rationalization provided by the hobby criminal is that of their offences being victimless crimes and thus, their activities should not be the target of law enforcement activity. An example can be found in the case of egg collector Richard Pearson, jailed in 2008 for possessing more than 7,000 eggs (Wood, 2008) whose defence solicitor argued at court that:

It is of some significance that this defendant is not a dangerous man to the public. He is simply a working man who had an overwhelming fascination for eggs. In reality what he has been experiencing over the last months and years is an unlawful habit.

(Wood, 2008)

Egg collecting is one specific example of wildlife crime where denial of criminality and avoidance of responsibility for the offence is an integral part of the offender's rationalization. Egg collecting was once a schoolboy hobby in Britain and the study of eggs has even been given its own scientific name, oology. As has previously been mentioned there is even a specific society, the Jourdain Society, set up to promote the study of eggs. The RSPB has, however described the Jourdain Society as "a secretive organisation whose members include convicted egg collectors" (RSPB 1999:2). In July 1994, the RSPB and Wiltshire Police mounted Operation Avocet, a surveillance operation that "resulted in the seizure of

eggs, nests and photographic material being displayed at a meeting of the Jourdain Society" (RSPB 1999:2).

Evidence from cases brought by the RSPB and newspaper stories on egg collecting brought to the attention of the author shows that egg collectors use the following rationalizations to explain their activities:

1. it's not harming anybody the eggs are not fertile so why shouldn't they be collected
2. everybody did it when I was a boy its ridiculous that its considered to be criminal
3. the RSPB needs to make the problem appear to be serious to keep raising money
4. it's not a job for the police they should be out catching real criminals
5. we're not criminals we're bird enthusiasts

The techniques of denial, avoidance and attacks on the legitimacy of the enforcement agency (in this case considered to be the RSPB) are all present. In addition, the Jourdain Society has in the past made claims for the legitimacy of oology as a valuable form of scientific study and has argued that egg collecting has served a purpose. The Society formerly kept a national egg collection at Bristol Museum and has highlighted the fact that the study of eggs and eggshell thinning in the 50s highlighted the harm being caused to wildlife by pesticides such as DDT.

### **The Public Policy Response**

Hobby wildlife offences attract a punitive response that is arguably excessive in comparison to the nature of the offences. For example, there have been a number of joint police/NGO operations into egg collecting as well as a number of high profile convictions for egg collecting where large fines have been imposed. Crime prevention techniques have been employed in some areas and the nests of rare birds like the osprey, the golden eagle and the peregrine falcon are routinely watched by volunteer wardens during the breeding season. Osprey nests in Scotland, and red kite nests in Wales, has also been watched by the army in the

past as part of training exercises and to gain publicity for wildlife crimes.

The Guild of Taxidermists also argues that the police response on technical offences involving taxidermy has been excessive. In one example a taxidermist was the subject of a police enquiry and subject to a search warrant. The Guild suggested that the number of officers involved in the search warrant (described as “19 assorted police officers, RSPB and the press”) was excessive.

Despite all this attention it should be noted that for most species, egg collecting and taxidermy has no effect on the species’ population. In the case of the rarer species, the RSPB has said that egg collecting has the potential to slow the species growth by about 1% per year. Egg collecting is, however, the main form of wildlife crime that the public identifies with, perhaps because of the easy publicity that this type of crime attracts and the ease with which egg collectors can be demonised. It is, after all, an activity that is clearly at odds with the modern ethos of species protection and preserving endangered species and easily conjures images of an offender deliberately preventing life from taking place by removing eggs that could turn into healthy chicks. Similarly taxidermy cases often involving dozens of dead birds or animals attract easy publicity. Egg collecting cases are routinely prosecuted, perhaps because of the relative ease of bringing charges for this offence. Possession of eggs is an offence of strict liability under the *Wildlife and Countryside Act 1981* and so all the prosecution had to prove is that a person was in possession of the eggs of British wild birds. If the defendant is unable to show, on the balance of probabilities, that the eggs were taken other than in contravention of the legislation, he is likely to be found guilty of the offence. For the media, egg collecting and taxidermy cases, although reasonably commonplace can easily be placed in news items as quirky, peculiarly English, out of place with modern times and involving offenders who often spend thousands of pounds in pursuing their ‘hobby’. Press releases for these types of offences issued by the RSPB and Police, regularly find their way into news reports.

## **Summary**

An examination of the motivations for different types of wildlife crime and of the offending behaviour shows that rather than there being one type of wildlife

offender who commits crimes solely for profit there are, in fact several different types of offender. Table 3 summarises the different types of offender and their motivations:

**Table 3: Motivating Factors and Offending type**

Type of Criminal	Ignorance of the Law	Pressure from Employer or commercial Environment	Financial gain	A feeling of power	Excitement thrills or Enjoyment	Low risk crime	Keeping tradition or hobby alive
<b>Traditional Criminal</b>	No	No	Yes*	No	Yes	Yes	No
<b>Economic Criminal</b>	No	Yes*	Yes	No	No	Yes	Yes
<b>Masculinity Criminal</b>	No	No	No	Yes*	Yes	Yes	Yes
<b>Hobby Criminal</b>	No	No	No	No	Yes	Yes	Yes*

(\* indicates the primary motivator).

While the nature of the offences may be different, there is inevitably some overlap in the behaviours of offenders, although the weight attached to these factors varies among offenders. Egg collectors, badger diggers and gamekeepers are all, for example, keeping a traditional activity alive but in different ways and for different reasons. The egg collector is pursuing his 'traditional' hobby, whereas the gamekeeper is perpetuating a learned traditional behaviour in the form of a type of predator control that has been handed down from gamekeeper to gamekeeper irrespective of changes in the law. The masculinities criminal may derive some financial gain in the form of betting from his sport but it is not a primary motivating factor whereas for the traditional criminal, money is the primary motivating factor. What all offender types share in common is the likely knowledge that their activities may be illegal (although there may be denial as to whether this should be

the case) and that the likelihood of detection, apprehension and prosecution remains low.

In a sense all wildlife offenders are treated as if they were traditional criminals (i.e. rational actors motivated by personal gain) and in general terms the public policy response for the traditional criminal is advocated by NGOs for all offenders, despite the different motivations and rationalisations shown by other groups. However, the different primary motivating factors indicate that different elements drive offenders and so should be considered in the policies developed to prevent or reduce their crimes. The required policies are discussed in more detail in the following chapter.

## Chapter Ten – Conclusions and Recommendations

The main aim of this research is to provide an analysis of the public policy (including law enforcement) response to the problem of wildlife crime in the UK. The research has examined existing policies on wildlife crime in light of some of the thinking about crime, punishment and justice in mainstream criminology. It has also examined evidence on the behaviour of animal abusers and wildlife criminals and the motivations behind their actions to develop a new classification of wildlife offenders. Criminological theory provides some basis for understanding the reasons why people commit crime and the practical policies that can be developed to reduce the number of offences, apprehend offenders and to prevent further offending. Criminological theories mainly focus either on the role of the offender or on the conditions under which crime is likely to flourish. By assessing the role of the offender, policies can be developed that directly deter the individual from committing crime or prevent other offenders from committing similar crimes. By assessing the conditions under which crime might flourish, policies can be developed that prevent crime.

Criminological theory and past experience of implementing criminal justice policies shows that there is no single cause of crime (Chapter Three.) Some crimes have a basis in individual or group criminal activity and behaviour, while a range of social conditions such as poverty, relative deprivation, poor parenting and tradition can also cause some crime. The role of masculinities is also a factor, especially given that the majority of wildlife offenders are male and so should be considered in line with the motivations that affect men who turn to crime. However no one aspect can be put forward as a definitive explanation for all crime and so criminal justice policy needs to consider the different causes of crime in order to determine where resources should be concentrated, and the precise policies needed to prevent or reduce crime. There are several different approaches to law and order and how to deal with crime (see Chapter Three) and specific policies such as ‘target hardening’, the ‘short, sharp, shock’ and use of non-custodial and community sentences or restorative justice go in and out of fashion. However, western criminal justice policy is mainly centred around a law enforcement perspective that is based on ideas of deterrence and punishment. While initiatives

to address the social causes of crime have been, and continue to be tried, mainstream criminal justice policy continues to rely heavily on enforcement action by the police, sentencing in the courts and the use of custodial sentences.

In general, policies put forward by NGOs concerning wildlife crime are based on theories of deterrence and punishment and are centred on the role of the offender. NGO policies are thus firmly rooted in the law enforcement perspective (outlined in Chapter 3 of this research) and analysis of these policy perspectives shows that they mainly call for a more punitive regime and for stiffer sentences to be imposed against wildlife offenders. This includes a greater use of prison sentences both to act as a deterrent and to incapacitate offenders.

The experience of mainstream criminal justice, however, suggests that such a policy is unlikely to be effective as a sole solution to the problem of wildlife crime. The evidence of mainstream criminal justice is that while imprisonment might work as a short-term solution, in terms of temporarily incapacitating offenders, it is ultimately ineffective. Recoviction rates amongst offenders are high and suggest that a significant number of those offenders that are incarcerated simply resume their criminal careers once they are released. In addition, mainstream criminal justice policies do little to reduce the emergence of new offenders each year and this is an issue in wildlife crime where despite considerable publicity being gained for court successes and those prison sentences that are available, new offenders continue to enter the population of active wildlife offenders. The evidence that a more punitive regime is effective in achieving deterrence is also lacking.

### **Analysis of the Research Data**

Policies promoted by NGOs through policy documents and campaign material argue that sentencing of wildlife offenders is lenient and that there are significant flaws in wildlife legislation. In line with this perception, it has been concluded by NGOs that wildlife crimes are not taken seriously and that a stricter enforcement regime comprising of stiffer sentences and a more punitive approach to offenders is needed to provide an effective deterrent. While NGO policy documents and

campaign materials may identify inadequacies in legislation and a weak sentencing as the primary problems in wildlife crime, what was actually revealed in interviews and by a more detailed analysis of case materials is a regime containing significant problems in the practical enforcement of legislation and the detection, investigation and prosecution of offences. The evidence uncovered in this research suggests, therefore, that rather than the existing legislative regime being inherently weak, considerable problems exist in the practical implementation of wildlife legislation and in operational enforcement of legislation, and it is here that attention is needed if efforts to reduce wildlife crime are to be successful. Despite the considerable efforts of a number of dedicated officers, wildlife laws are still enforced in a part-time manner in the UK and the resources allocated to this area of crime are inadequate to the task. This is in part due to the relatively low priority that wildlife crime has within the criminal justice system, being primarily seen as an environmental issue rather than a mainstream criminal justice one. What the evidence considered by this research shows is that problems of practical enforcement exist in almost all areas of wildlife crime meaning that even where sufficient legislation exists it is poorly and inconsistently enforced. The interviews identified:

1. Areas where there are difficulties in getting the statutory agencies to investigate crimes and where insufficient resources are provided to them to do so, for example a lack of available scientific or technical support in gathering evidence.
2. Difficulties in investigating cases due to the lack of specialist wildlife and legislative knowledge on the part of police investigators who are mostly part-time.
3. Perceived loopholes in legislation meaning that some illegal activities are similar to legal ones. The practical difficulty for investigators, therefore, is to determine whether or not a crime has actually been committed.
4. Difficulties in bringing cases to court due to a lack of expertise on the part of prosecutors and the low priority afforded to these cases in some areas.

5. That the current use of the available sentencing options is often at the lower end of the scale meaning that for some offenders, fines can simply be absorbed as the cost of doing business.

There are also some problems in the way that the police deal with wildlife crime despite the considerable efforts of a number of dedicated WCOs. In practice, the resources allocated to wildlife crime enforcement are largely at the discretion of the individual Chief Constable as a 'local' issue. Wildlife crimes are not dictated by the Home Office as being a policing priority and so the resource allocation varies from force to force as does the level at which it is considered within the force. The Wildlife Crime Officer models put forward by Kirkwood (Chapter Four) demonstrate the variety in implementation of wildlife crime enforcement within police forces and although Kirkwood produced these models in 1994 they remain in use today. The lack of full-time officers at middle management level within a number of forces means that wildlife crimes can sometimes be regarded as low priority compared with other priorities within the force. The interviews identified difficulties experienced by NGOs in ensuring that the police investigate and gather sufficient evidence to ensure that wildlife crimes are routinely charged and prosecuted consistently across the UK. In practice this means that however vigorously NGOs pursue wildlife crimes and encourage the police to investigate cases there is always a danger that in some areas wildlife crime will be seen as a minor issue.

This being the case, a more punitive regime, incorporating stiffer sentences and changes to wildlife legislation is unlikely to be successful in reducing wildlife crime. This is not to deny that there are problems with wildlife legislation. This research argues that wildlife legislation is inconsistent, has differing penalties and police powers, and, in some cases, is out of date and contains significant loopholes that allow the killing of wildlife to continue. In addition, NGO's (through their policy documents and in interview with officers) responses have identified a number of activities that would justify being the subject of changes to legislation to provide greater protection for wildlife. The problem of poor enforcement of existing legislation remains, however, and even if significant legislative changes were made, action would also need to be taken to ensure that the problems are not simply carried over into new legislation.

The following specific recommendations are made to address problems with wildlife legislation enforcement identified during this research:

1. Wildlife crime should be made recorded crime and included in the Home Office Criminal Justice Statistics (and the Scottish Office Statistics)
2. Wildlife crime should be the responsibility of the Ministry of Justice<sup>4</sup> and not the Government's Environment Department
3. Wildlife Legislation should be reviewed to ensure consistency in penalties and police/investigative powers
4. Wildlife Legislation should be amended to close the loopholes identified in this research including: changes to the *Conservation of Seals Act 1970* to prevent 'lawful' seal killing and seal disturbance, making the use of snares as a method of predator control unlawful, making all hare coursing unlawful.
5. The network of Wildlife Crime Officers (WCOs, formerly Wildlife Liaison Officers) should be extended to ensure at least one full-time WCO in post in each police force
6. Specialist Wildlife Prosecutors to be in place in each CPS Area and throughout Scotland.
7. The sentencing and treatment of wildlife offenders should reflect the fact that wildlife crimes are often an indicator of further violence and so should be considered as violent crime.
8. Increased resources are required for wildlife law enforcement with consideration to be given to the creation of a specialist wildlife law enforcement agency. Such an agency to operate along the lines of the US Fish and Wildlife Service, a Federal US agency with powers to investigate

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<sup>4</sup> The Ministry of Justice now has responsibility for policy on the scope and content of criminal offences while the Home Office states that it has responsibility for cutting crime.

wildlife crime through field investigations, wildlife inspectors who monitor compliance with the law, forensic investigation to establish evidence of criminal activities and with a role to promote public awareness of wildlife crime and wildlife law enforcement issues. The increase in resources should address the problem of wildlife law enforcement being carried out on a largely voluntary basis.

Prior to making detailed recommendations to address these issues three specific issues need to be considered:

1. What should be done about offenders?
2. What changes need to be made to the criminal justice system in respect of wildlife crime?
3. What are the priorities for wildlife law enforcement?

## **Dealing with Offenders**

The research identifies different types of offenders involved in wildlife crime and concludes that offenders do not all share the same motivations or operate within similar communities or control mechanisms. Chapter Nine develops models that show the different types of offender, discussing four different types and the motivations of each based on what NGOs have said in this research, case records and the research into animal abuse that has been considered as part of this research. This being the case there is little point in treating all offenders as if they were the same and one conclusion that can be drawn from this research is that a blanket approach to dealing with wildlife crime and offenders is unlikely to be successful. The enforcement regime therefore needs to be adapted to provide for appropriate action that fits the circumstances of the offender and allows the specific nature of the offence to be taken into account. For traditional criminals financial penalties may work as a means of negating any benefit they derive from their activity but the same approach is unlikely to work with economic criminals. An argument can also be made that increased sentencing and use of prison has

been unsuccessful in mainstream criminal justice (Wilson 1985) and so the evidence that it will be effective in reducing or prevent wildlife crime is lacking. For traditional criminals, greater efforts should be made to attempt situational crime prevention, making the physical cost of committing the crime prohibitive as well as the actual cost and removing the perception that wildlife crime may be seen as a soft option.

For economic criminals, the source of their offending behaviour is their employment and so any approach to these offenders must include pressure on and penalties for the employer as well as action which dictates that the risk of losing that employment as a direct consequence of committing wildlife crime is a real possibility. The current legislative regime does not provide for culpability of landowners/employers for the actions of their staff and countryside and game industry employees do not suffer the stigma of other offenders on conviction. As a practical means of dealing with these offenders this position should be altered so that conviction of a wildlife crime carries with it the threat of lost employment in the countryside and in the game rearing or fieldsports industries as well as significant penalties for the employer.

For the masculinities offender, the effectiveness of prison or high fines is also questionable. Much like gang members in the inner-city US, those involved in organised crime, or youths who see ASBOs as a badge of honour (Youth Justice Board and BBC News, November 2006), masculinities offenders may come to see prison as simply an occupational hazard as well as being a reinforcement of their male identity and confirmation of society's lack of understanding of their needs and culture (see Chapter Nine). For these types of offender situational crime prevention should be attempted and a real effort at the rehabilitation of these offenders should also be attempted alongside the traditional law enforcement approach of detection and prosecution. Consideration may also need to be given to the circumstances in which groups of young men turn to crime with a violent element and whether the type of social work intervention combined with law enforcement activity that now takes place in parts of the US with animal abusers (Brantley, 2007, Clawson 2007) could be applied in the UK.

Hobby offenders as a group may be the most difficult offenders to deal with. The drive to collect and the obsessive behaviour of such offenders (Chapter Nine) cannot easily be overcome by fines and prison sentences and could even strengthen the desire to commit offences by the drive to replace lost items such as a confiscated egg collection. While prevention and detection of crimes should continue to be employed for these offenders, treatment to address the issues of collecting as well as education in the effects of wildlife crimes should be considered. Again, a strong situational crime prevention element could be attempted and in the case of hobby offenders this could be linked to sentencing to ensure that any sentencing provisions contain measures to prevent future offending as well as measures that attempt to address the causes of these crimes.

### **Changes to the Criminal Justice System Approach**

The research has identified that much wildlife crime law enforcement activity takes place on a voluntary basis and that many of the problems that exist are due to the lack of dedicated resources for wildlife crime. Central to this problem is the perception among policy makers and government that wildlife crime is an environmental issue rather than a criminal justice one. While the work of the PAW Secretariat is helpful in addressing some wildlife crime problems a fundamental problem exists in that wildlife crime is not seen as a national policing or criminal justice priority and this impacts on the resources available for law enforcement, educational or crime prevention measures. The location of wildlife crime within the remit of DEFRA rather than the Ministry of Justice or Home Office is a factor and from this it can be concluded that Chief Constables are not directed to allocate resources to wildlife crime and will only do so where the individual Chief Constable considers it necessary to do so or where it is considered to be politically expedient to do so for that force.

Separate from the resource issue is the specialist knowledge required to carry out wildlife law enforcement. The conclusion of this research is that this knowledge is unevenly distributed across police forces in the UK. With the exception of the National Wildlife Crime Unit at NCIS, there is a lack of centralised expertise in

wildlife crime (although WCOs who remain in post for long enough will inevitably develop some expertise) meaning that statutory enforcement agencies continue to rely on the expertise of NGOs and others. There is, therefore, a need for a centralised resource to be made available for statutory agencies in the fields of wildlife identification, scientific and forensic analysis, wildlife habitats, populations and behaviours and threats to wildlife legislation and conservation priorities in the same way that specialists in blood analysis and scenes of crime analysis are made available for mainstream crimes.

## **Enforcement Priorities**

As mentioned above the voluntary nature of wildlife crime means that resources to detect, investigate and prosecute offences are scarce and vary between areas. Given this fact it is unrealistic to expect all crimes to be given the same level of attention by the statutory agencies. This research concludes that in any case it is not desirable that they should do. There should be a system for prioritising enforcement action on wildlife crimes so that scarce resources are not expended on minor crimes or those for which there is no immediate conservation threat to the target species. A model exists for this in road traffic legislation where the use of on the spot fines/fixed penalty notices and the use of speed cameras has reduced the need for lengthy detection, investigation and sentencing procedures. Such a model could be adapted for certain wildlife offences, for example fixed penalty notices for registration offences (such as a failure to complete required returns of the number of captive-bred birds or COTES species sold) or minor trade offences, and should be considered as a solution to the resource issues.

Wildlife legislation generally makes a distinction between specially protected wildlife (CITES listed species and others considered to be endangered and/or at risk within the UK) and those species that receive 'ordinary' protection. Enforcement priorities should be developed along these lines so that the primary enforcement activity is directed towards the more threatened species. A disproportionate amount of attention is directed at 'minor offences' such as egg collecting/possession and the possession, trapping and trade in small birds such as finches. While these activities should remain prohibited by law they are

arguably crimes for which the impact on the species is negligible (with the exception of the collection of the eggs of endangered species) and which could be dealt with through other means. Precedent exists for this in mainstream criminology with regard to the classification of drugs. In January 2004 cannabis was reclassified from a Class B to a Class C drug and on 19 January 2006 the (then) Home Secretary made a statement to the House of Commons that he did not intend to reverse the decision (Home Office 2006). The changes in the law introduced in 2004 increased the penalties for production and supply of the drug but reduced the maximum penalty for possession from five to two years. In confirming that the 'decriminalisation' of cannabis would not be reversed, the Home Secretary confirmed that alternate methods of dealing with the drug such as public education campaigns and publicity would be used in conjunction with enforcement activity. The principle has, therefore, been established in Home Office thinking that reduction in the penalties is appropriate where a crime is seen to be of a lesser nature and where enforcement alone is seen to be ineffective. Although it should be noted that the current Ministry of Justice and Home Secretary appear to hold a different view on cannabis and in 2008 the Home Secretary recommended that it should be reclassified to a Class B drug (Home Office press release, May 2008). Notwithstanding this apparent change in policy, similar logic on the reduction in penalties for lesser offences should be applied to wildlife crimes.

Following on from these conclusions and the models of offenders developed as part of this research, individual recommendations are made in each area discussed above. It should be noted that these recommendations mainly apply if recommendation 8 (which calls for a specialist wildlife enforcement agency) is not implemented. If recommendation 8 is implemented this would have an impact on practical implementation of some of the other recommendations. The recommendations are as follows:

### **Recommendation 1 – Statutory Recording of Wildlife Crime**

This research recommends that wildlife crime should be made recorded crime and included in the crime statistics produced by the Home Office (and Scottish Office).

The lack of any co-ordinated recording of wildlife crime makes it difficult to assess the extent of the problem or the resources required to tackle that problem. NGOs have an impression of the size of the problem that remains just that, a perception that is not easily supported by any substantiated facts.

Despite figures of reported crimes issued each year by certain NGOs it is difficult to determine how many actual offences take place each year. While all NGOs agree that the known level of wildlife crime is likely to be the tip of the iceberg, the lack of reliable data prevents any meaningful comparison being made with mainstream crime to determine the extent of the problem and the amount of resources necessary to address that problem. Much has been written on endangered species (trade) crime and on wild bird crime, but if the anecdotal evidence of NGOs is to be believed these forms of crime despite attracting the majority of the attention are not the most prevalent forms of wildlife crime. For example, a greater number of badgers than birds are alleged to die from illegal activities each year. However, the lack of available data makes it difficult to say conclusively which forms of wildlife crime are prevalent in the UK. This makes it difficult to determine enforcement priorities within the sphere of wildlife crime or to determine where policing and monitoring resources are most needed.

It is also difficult to say conclusively what effect wildlife crimes are having on bird, animal or mammal populations. While data collected over the years demonstrates that birds of prey continue to suffer from illegal persecution and are not present in many areas where they should be, similar data does not exist for other species. For example, a figure of 10,000 badger deaths attributable each year to illegal activity has been suggested by more than one organisation but this cannot easily be substantiated. Badgers are often road casualties and clear evidence does not exist to substantiate the claims of deaths through illegal activity, although there is no reason to doubt that badgers die from unlawful means in large numbers.

Statutory recording of wildlife crime would allow the extent of the problem to be established, resources to be allocated and priorities for enforcement to be determined. It is therefore recommended that wildlife crime be made recordable. In practice this would mean either that police forces be required by the Home

Office to collate wildlife crime statistics as part of the crime audits carried out in each Police Force area or that legislation be amended to make wildlife crimes recordable. Although the new National Wildlife Crime Unit provides intelligence information across UK police forces and provides an important step towards seeing wildlife crime as a national problem, it does not have responsibility for recording wildlife crime. As part of any review of legislation (discussed later in this chapter) it is therefore recommended that individual pieces of legislation should be amended to make all wildlife crimes notifiable which would require them to be recorded as official crimes.

### **Recommendation 2 – Wildlife Crime should be the responsibility of the Ministry of Justice and the Home Office**

Wildlife crime currently falls within the remit of the environment department and not the Ministry of Justice or Home Office, the government departments normally responsible for crime and justice matters. In part, this means that wildlife crime is given a status outside that of ‘ordinary’ crime.

While the environment department provides much useful input on policy matters relating to wildlife crime, and publicity for wildlife law enforcement, there are limits to its effectiveness in terms of practical criminal justice work. The Home Office dictates policing priorities in a manner that the environment department has no jurisdiction to do and the Ministry of Justice directs sentencing policy and has oversight of the criminal law. The status of wildlife crime as outside the remit of mainstream criminal justice is part of the reason why it is not considered to be a policing priority.

The Home Office also conducts much research on what works in terms of crime prevention, rehabilitation of offenders and the effectiveness of sentencing and different treatment regimes on offenders. Criminal justice policy is developed in light of this research and policing priorities developed accordingly. For wildlife crime to be considered separate from this research and policy environment carries with it the risk that wildlife crime policy might be developed in a manner that is at odds with mainstream criminal justice. The Home Office has, for example, carried

out studies into reducing criminality (Utting 1996), sentencing practices (Flood-Page and Mackie, 1998) and alternatives to custody (e.g. Sarno, Hearnden, Hedderman, Hough, Nee and Herrington, 2000). These and other Home Office studies have informed policy and practice in various areas of crime by examining what does and does not work. The Home Office also has responsibility for dealing with anti-social behaviour in partnership with other government departments and agencies. A similar approach could be employed with wildlife crime taking advantage of existing Home Office and Ministry of Justice expertise in the area of crime and law enforcement as well as the carrying out of further research on what might work with wildlife offenders. This might also reflect the fact that with the links between animal abuse and violence to humans becoming accepted by policy professionals (at least overseas) some wildlife offenders may be or are becoming more conventional offenders (see recommendation 7 below).

### **Recommendation 3 – Wildlife legislation should be reviewed to ensure consistency of police powers and sentencing options**

As has been mentioned previously in this research, wildlife crime carries with it a range of differing sentences, police powers and offences. Although the research evidence demonstrates that the enforcement of legislation is inconsistent, it is also true to say that the legislation itself is inconsistent and does not adequately protect those species that it intends to protect.

The problems identified in interviews and in analysis of the legislation are:

- Some wildlife offences carry a power of arrest, some do not
- The level of fines differs between wildlife legislation for no apparent reason. Some wildlife crimes carry fines at the level of £5,000 per offence, some are lower.
- The option for prison sentences exists for some wildlife offences but not others.
- Some species that are protected under wildlife legislation may still be killed or taken under certain exemptions. The nature of the exemptions varies according to the legislation

- Some legislation provides that individuals convicted of an offence are subsequently banned from keeping or controlling animals or from carrying out activities related to the offence whereas other legislation does not

To achieve consistency wildlife legislation should be reviewed to ensure that police powers and sentencing options are applied in a uniform manner across the various pieces of legislation. There should be a power of arrest for all offences meeting the definition of wildlife crime contained within this research and sentencing powers for wildlife crimes should be consistent with the level of fines and the option for prison sentences to be standardised across all legislation that incorporates wildlife crimes that are the subject of this research.

The provisions to ban any person convicted of certain wildlife offences (e.g. unlawfully keeping Schedule 4 birds) should be extended to all other wildlife legislation so that a person convicted of a wildlife offence automatically receives a five year ban on keeping those birds or animals.

#### **Recommendation 4 – Wildlife legislation should be amended to close loopholes in existing legislation.**

While the research evidence does not support the view that wildlife legislation is generally inadequate, there is evidence to suggest that there are a number of loopholes in existing wildlife legislation. Wildlife legislation has the general aim of protecting wildlife. It also sets out some prohibited means of taking or killing wildlife, even where the species could be killed or taken for pest control purposes. For example, the *Wildlife and Countryside Act 1981* makes it an offence for any person to take any bird or animal using a self-locking snare. Snaring itself however is not outlawed which places the onus on investigators to determine the exact nature of any snare used in the taking of wildlife.

The *Conservation of Seals Act 1970* is intended to protect seals. However, a loophole in the Act allows for the killing of seals ‘at or near fishing gear’. This is not defined in the legislation but is known as the ‘fisheries defence’ which allows the owners of fisheries to kill rogue seals that might have an effect on their fish

stocks. However, the failure to specify what amounts to 'fishing gear' or to require there be some evidence that seals are causing damage to fisheries provides any person wishing to kill seals with a legal defence without demonstrating any need for the killing. The evidence of the NGOs is that this takes place frequently and so in at least one respect, the Act fails in its aim to protect seals in the wild.

To address the problem of defences being available for 'pest control' or other activities in relation to game rearing, fisheries and countryside sports there should be a general offence of 'cause and permit' for any person who encourages an employee or other person to commit a wildlife offence. This would provide for employers who encourage staff to commit wildlife crimes to be prosecuted as if they had committed the offence themselves. In addition, all those convicted of wildlife offences should be banned from working in a game rearing or countryside sports capacity or in working with birds or animals for a minimum period of five years and should be disqualified from holding a firearms certificate or game license for a similar period.

A comprehensive review of wildlife legislation should be undertaken to identify and close all loopholes.

#### **Recommendation 5 – The Wildlife Crime Officers Network should be extended.**

The current position concerning Wildlife Crime Officers (formerly Wildlife Liaison Officers) is somewhat ad-hoc. Kirkwood (1994) explains how different models exist for the type of Wildlife Liaison Officer that might be employed by police forces. Although a few full-time officers are in post, for the most part Wildlife Crime Officers are part-time and carry out their duties as WCOs in addition to their normal duties. This results in a piecemeal approach to WCO work with the importance given to wildlife law enforcement varying between police forces.

This research has highlighted some problems relating to the part-time nature of wildlife policing in the UK. NGOs have raised concerns about the amount of training in wildlife legislation and practical wildlife law enforcement provided to officers who are part-time in this specialist area. NGOs have also raised concerns

about the lack of resources available to officers involved in wildlife law enforcement, including limited resources for search warrants and for forensic examination of evidence and investigation of cases.

To overcome these difficulties it is recommended that there should be a full-time WCO in each UK Police force. Making the WCO a full-time post would ensure some level of consistency in the approach to wildlife crime that is employed by each police force rather than the wildly different levels of importance attached to wildlife crime at present. Some forces currently use civilian WCOs which may result in the post (and the types of crimes being dealt with) not attracting priority within the police force concerned. The WCO post should also be of a sufficient grade to ensure that wildlife offences reported to the force will be investigated and so should be at Inspector level or above.

### **Recommendation 6 – Specialist Wildlife Prosecutors.**

NGOs have complained about some difficulties in bringing wildlife crime cases to trial. Wildlife legislation is something of a rarity for CPS prosecutors in England and Wales and NGOs have complained about case files being handed to prosecutors with no wildlife experience, sometimes on the very day of a trial.

By contrast, the defence can often employ specialist solicitors or barristers to argue their case, especially in the case of shooting estates where a conviction might have an effect on the reputation of the estate. The adverse publicity could have an effect on the estate's ability to sell shooting days and so it is in the interest of the estate to ensure a strong defence. Employing a good defence makes sound economic sense with the result that inexperienced prosecutors are often faced with an expert defence fully conversant with wildlife law.

Specialist prosecutors would also be able to build up expertise in wildlife law and to advise the police on any weaknesses in a case or possible defences that might be put forward. This would have the benefit of overcoming any perception by the police that the CPS is unwilling to prosecute cases or the CPS's perception that

officers might have an unrealistic expectation of success in cases that are considered to be weak on legal grounds.

It is therefore recommended that at least one specialist wildlife prosecutor be appointed in each CPS and Procurator Fiscal area. Some moves have been made towards this in Scotland with the announcement by Scotland's solicitor general (RSPB 2005:12) that this was planned in Scotland.

### **Recommendation 7 – Treatment of Wildlife Offenders.**

This research has considered the evidence of the link between animals and abuse and other forms of interpersonal violence. While it cannot be said that all wildlife offenders are violent (egg collectors for example do not generally have a violent nature despite the obsessive element to their crimes) the evidence is that some forms of wildlife crime contain a violent element. Wildlife crime and sentencing policy should reflect this taking into account the need to protect vulnerable individuals, domestic animals and spouses who may come into contact with such offenders. In the US, such offences are often seen as an indicator of future violent behaviour and evidence of past animal abuse can be a factor in sentencing decisions. Combined with *Recommendation 1* on the recording of wildlife offences, this research recommends that the recording of wildlife crimes and animal abuse should take place as an indicator of possible future offending and that policy should also consider measures to divert individuals from wildlife crime and to rehabilitate particularly those offenders involved in the more violent forms of wildlife crime so that they do not escalate their behaviour towards human violence.

### **Recommendation 8 – A Specialist Wildlife Crime Unit.**

Underpinning many of the problems concerning the enforcement of wildlife legislation is a lack of resources for those involved in the enforcement of wildlife legislation. Police officers carry out their wildlife law enforcement duties in an ad-hoc manner and while the recent creation of the National Wildlife Crime Unit is to be welcomed its remit is more of an intelligence and co-ordination one.

Research shows that policing is more effective when it is carried out by specialist units, properly equipped for the task (Holdaway 1977 and Home Office).

Perceived inadequacies in the way that police forces detect and investigate crime have led to recent (2005) proposals for police forces to be amalgamated into regional forces by Her Majesty's Inspectorate of Constabulary (Savage 2007).

Officers involved in the detection and investigation of wildlife crime should, therefore, have at their disposal; appropriate resources for the investigation of wildlife crimes, senior officer support for the investigation of wildlife crime, appropriate scientific and technical support (for example, forensic support) and expert witnesses and scientific advisers and expert legal advice to enable the effective prosecution of wildlife cases (see also recommendation 6).

To address these problems it is recommended that a specialist Wildlife Crime Unit be established to investigate wildlife crime and prepare cases for prosecution by the CPS and Procurators Fiscal in Scotland. The Unit should have, as its focus the following objectives:

1. To enforce UK wildlife legislation including the: *Conservation of Seals Act 1970*, *Deer Act 1991*, *Wildlife and Countryside Act 1981*, the *Protection of Badgers Act 1992*, the *Countryside and Rights of Way Act 2000*, the *Protection of Wild Mammals (Protection) Act 1996*, *Wild Mammals (Scotland) Act 2002*, the *Control of Trade in Endangered Species (Enforcement) Regulations 1997*.
2. To uncover commercial activity involving illegal trade of protected wildlife and products derived from native wildlife
3. To protect domestic and foreign wildlife species that enters into UK and international commerce that are protected by treaties ratified by the United Kingdom or otherwise under UK and European legislation
4. To inform citizens of UK and European laws and regulations relating to the protection of fish wildlife and plants and to promote observance of these laws in liaison with other agencies.

The Unit should have jurisdiction across the UK (i.e. should have regional equivalents in Scotland and Wales to provide for jurisdiction in the areas covered by devolved legislation) and should have access to sufficient resources (forensic, operational) to fully investigate wildlife crime and prepare cases for prosecution. The Unit should be part of the criminal justice system rather than be an administrative agency outside it.

## Conclusions

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

In practice, however, the evidence does not support the view that a more punitive regime would lead to a reduction in wildlife crime. While the perception might be that wildlife laws are inadequate and a more punitive regime is required, the evidence of this research is that it is in enforcement of the legislation that problems occur. The evidence is that even where the available penalties are considered to be sufficient, they are inconsistently applied, penalties are often at the lower end of the available scale and enforcement is carried out on an ad-hoc, largely voluntary basis across the UK. The chances of wildlife crimes being detected and an offender being apprehended prosecuted and receiving a

sentence that has either a deterrent effect or contains sufficient rehabilitative elements to prevent further offending is slight. This being the case, a more punitive regime or wholesale change to wildlife legislation is unlikely to be effective unless the enforcement problems are also addressed.

## Further Research

The focus of this research has been the relationship between wildlife crime and the criminal justice system in the UK with particular regard to the policies advocated by those involved in the enforcement of wildlife legislation and the investigation and prosecution of offences. While the research has identified differences in offender types and has made some proposals for changes to the criminal justice approach to wildlife crime, further research and work to raise the profile of wildlife crime within criminology (and in particular in green criminology) is needed in the following areas:

**Comparative research between the US and UK** – This research makes a recommendation that (if not accepted as a matter that should be dealt with by the Ministry of Justice and Home Office) wildlife crime should be handled by a statutory agency with specific responsibility for doing so. The proposal is for a specialist Wildlife Crime Unit but consideration should also be given to creating an entirely separate agency with national responsibility for wildlife crime. Agencies exist within the UK such as the Serious Fraud Office (SFO) that has responsibility for investigating and prosecuting serious crime. Within the United States and Canada there exist statutory agencies with responsibility for investigating wildlife and environmental crime, the Fish and Wildlife Service. The US Fish and Wildlife Service combines conservation functions with federal law enforcement responsibility and actively investigates and prosecutes wildlife crimes across the USA.

Yet despite this, in the USA, a number of NGOs are still actively involved in political lobbying and law enforcement casework. Organisations such as Defenders of Wildlife and Earthjustice (whose strapline is *Earthjustice: because the earth needs a good lawyer*) are actively involved in environmental litigation and pursuing changes to wildlife law. The situation in the US, federal law enforcement of wildlife crimes is one that many NGOs in the UK would welcome yet there are still problems of wildlife crime in the US and NGOs in the US are vocal in their opposition to many of the Bush government's policies and in claiming that there is inadequate protection for wildlife in the US (e.g. 'Feds to start removing wolf

protections', *Environmental News Network* report 20 December 2006). Further research on the differences between the federal system in the US and the voluntary one in the UK as well as the effectiveness of the US Fish & Wildlife Service would help to determine whether the US model could be adapted for use in the UK and what changes to the organisational model might be needed to allow it to work within the British legal system.

**Offenders** – This research did not include any interviews with offenders, for the reasons outlined in Chapter Five, although criminological research will often make use of such interviews. This research creates new models which identify the different types of offenders and also assesses the causes of crime and the role of the community for each type of offender. Further research is needed to obtain the views of offenders and some life history data to determine what might be effective in 'treating' offenders involved in wildlife crime and in diverting individuals from wildlife crime. One issue identified in this research is that treating all wildlife offenders the same is unlikely to be effective in reducing or preventing wildlife crime and so a practical trial of alternate forms of sentencing would also be useful in determining what might work. Much like the offender 'tagging' trials carried out by the Home Office (1998), trials of enhanced community service (i.e. with a wildlife reparation element) or probation orders that specifically prevent offenders from being in the vicinity of wildlife sites could be trialled to determine their effectiveness in preventing offending and re-offending. Further research is also needed to determine the links between wildlife crime and other criminal activity. In the assessment of wildlife trade crimes it has been suggested by NCIS and others that organised crime has become involved in the illegal wildlife trade. Further research is also needed to determine the extent to which wildlife offenders may be involved in other types of criminal activity and whether involvement in wildlife offences can provide an indicator of other criminal behaviour or activity.

**Police** – the views of ACPO and ACPO(S) have been presented in response to some reviews of wildlife crime issues and they are represented on PAW. However, the Wildlife Crime Officers and other specialist officers (such as Scenes of Crime officers) should be the subject of further research on proposals for

legislative or policy change where these may impact on operational policing issues.

**Policy Makers** – the views of criminal justice policy makers and those NGOs involved in crime, prisons and the rehabilitation or treatment of offenders should be sought on proposals for legislative and policy change. Such organisations (NACRO, Crime Concern, The Howard League for Penal Reform, The Prison Reform Trust etc.) have considerable expertise in issues of crime, justice, sentencing and the use of prison yet their views are not included in any proposals for legislative or policy change on wildlife crime. Further research into the views of these bodies may identify further policy issues and/or areas where past experience or research has highlighted inadequacies in existing criminal justice policy.

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## **Appendix I – The Extent of Wildlife Crime for the Years 2000 – 2004**

While the lack of official statistics makes it difficult to provide a definitive account of the extent of wildlife crime in the UK or to compare different types of crime, some figures are available on the number of reported offences for individual species and convictions for specific wildlife offences. Table 4 shows known wild bird offences taken from figures produced by the RSPB for the years 2000 - 2004.

**Table 4 : Known Bird related offences 2000-2004**

<b>Year</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Total</b>
<b>Number of Reported Wild Bird Crime Incidents</b>	839	550	625	591	481	3086
<b>Number of Bird Related Prosecutions</b>	n/a	52	32	31	32	147
<b>Number of cases resulting in Convictions</b>	n/a	49	31	30	31	141

(Source, RSPB)

Figures for the number of reported offences may differ from the number of actual offences as some suspected incidents may turn out on closer examination not to have involved an actual offence and in some cases, for example suspected poisoning cases, it may not be possible to determine that the cause of death was an illegal act.

### **Known Badger Offences 2000 - 2004**

The NFB) reports that “an estimated 10,000 badgers are killed every year by badger baiting and digging”. Annual figures for badger persecution are not released by the

NFBG although Scottish Badgers have begun to collate figures for reported badger persecution in Scotland. Scottish Badgers report that in 2004 "a total of 24 incidents were reported of which two were reported to the Procurator Fiscal, neither case was successful and was dropped prior to the start of trial." (Hutchison 2005:1)

### Bat Offences 2000 - 2004

The Bat Conservation Trust ran a two year project (April 2001 to March 2003) to assess the extent of bat crime in the UK. It concluded that 144 offences were reported and that some that had taken place prior to that were revealed bringing the overall number of recorded bat offences to 209.

### Home Office Figures 2000 - 2004

In a letter dated 11 January 2006 the Home Office confirmed the ongoing difficulties in providing statistics for the number of wildlife offences. The Home office stated:

"Triable-either-way offences under the *Control of Trade in Endangered Species (Enforcement) Regulations* are included in the recorded crime series but only as an 'other' offence and their numbers cannot be separately identified. Similarly, some offences under the *Wildlife and Countryside Act 1981* are included in 'other' offences but, again, cannot be separately identified.

Offences under the *Protection of Badgers Act 1992* and the *Wild Mammals (Protection) Act 1996* are summary offences and, as such are not included in the recorded crime series."

The Home Office was, however, able to provide statistics for the number of defendants proceeded against for wildlife offences. Table 5, shows these figures taken from Court returns where a specific piece of wildlife legislation was used to bring charges. This allows for identification of the offence and the legislation under which charges were brought. (Updated figures for the years 2005-2007 have been requested from the Home Office but have not yet been supplied.)

**Table 5 : Number of defendants proceeded against at all courts for offences under wildlife legislation 2000 - 2004**

Year	2000	2001	2002	2003	2004	Total
Cruelty to badgers and offences involving special protection to badger setts	21	4	18	10	12	65
Protection of wild birds	23	22	19	29	57	150
Protection of nests and eggs of wild birds	10	31	10	17	18	86

(Source, Home Office)

In addition there were offences under the *Dangerous Dogs Act 1991* and the *Protection of Badgers Act 1992* that related to the failure to give up a dog for destruction or having custody of a dog while disqualified. However, it was not possible to identify whether these offences would relate to wildlife crime as defined by this research or whether the offence in question would solely be one relating to the possession of the dog. Table 6 details Home Office figures for the number of defendants convicted of wildlife offences during the period 2000-2004:

**Table 6: Number of defendants found guilty at all courts for offences under wildlife legislation 2000 -2004**

Year	2000	2001	2002	2003	2004	Total
Cruelty to badgers and offences involving special protection to badger setts	4	5	5	4	4	22
Protection of wild birds	15	17	11	20	52	115
Protection of nests and eggs of wild birds	6	18	7	7	8	46

(Source, Home Office)

It is important to note that the Home Office figures relate solely to England and Wales, separate statistics would be required from the Scottish Office and these are not readily available.

## Appendix 2 – Proposals for legislative Change

Wildlife crime carries with it a range of differing sentences, police powers and offences. Although the research evidence demonstrates that the enforcement of legislation is inconsistent, it is also true to say that the legislation itself is inconsistent and does not adequately protect those species that it intends to protect.

NGOs through their documentary evidence and published reports and in interview responses have identified some inadequacies in existing wildlife legislation. The inadequacies identified relate to; outdated legislation, loopholes in existing legislation and some areas where legislative change would be required to introduce new offences or to provide for changes that NGOs have called for such as the statutory recording of wildlife crimes.

This section of the research makes specific recommendations for legislative change to address those issues outlined during the research. It makes the following recommended changes to specific pieces of legislation:

### ***The Conservation of Seals Act 1970***

The *Act* should be repealed and replaced with new legislation that provides for effective protection of seals. The new legislation should contain an absolute prohibition on the killing of seals during the breeding season and should make it a specific offence to disturb seals at or near haul out sites during the breeding season.

The new legislation should also close the loophole in the existing *Act* that allows for the killing of seals ‘at or near fishing gear’. Fisheries owners wishing to carry out control of seals to prevent damage to fisheries should be required to apply for a license to kill seals and the licensing regime should require them to provide evidence of the damage being suffered and to submit returns of the number of seals killed to DEFRA on an annual basis. There should also be a requirement that non-lethal methods of deterrent or control be tried before killing of seals under

license can be authorised. The *Act* should contain a power of arrest for offences relating to the killing, disturbance or harassment of seals (except where a license has been issued) and any person convicted of an offence of unlawful killing of seals should be banned from holding a firearms certificate or for keeping animals for a period of five years.

### ***The Hunting Act 2004***

*The Hunting Act 2004* should be amended to make the Code of Conduct for the use of dogs a statutory code enforceable through legislation. The Code should make clear the provisions of the *Protection of Badgers Act 1992* and stress the legal requirement to avoid any hole with signs of badger activity even if a fox is believed to be using it.

The *Act* permits the use of terriers to prevent or reduce serious damage to game birds or wild birds which a person is keeping or preserving for the purposes of being shot e.g. pheasants. The Code or the *Hunting Act 2004* (as appropriate) should be amended either to provide a legal definition of 'serious damage' or requiring those wishing to rely on this provision to apply for a license to carry out terrier work under this provision and requiring them to submit returns detailing the work that has been carried out and the number and type of species controlled under the license.

A breach of the Code should also be made a specific offence punishable by a fine and an automatic ban of five years from using terriers in the future.

### ***The Nature Conservation (Scotland) Act 2004***

In November 2006 the Scottish Executive commenced a consultation on the regulation of snares in Scotland. The consultation sought to regulate the use of snares but allowing the continued use of certain types of snares.

The *Act* should be amended to provide for a total ban on the use of snares to take wildlife and a new offence of possession of a snare capable of being used to take wildlife should be introduced.

### ***The Protection of Badgers Act 1992***

The *Act* should be amended to make badger offences notifiable crimes that are recorded as part of the official crime statistics. Disturbance of a badger at or near a sett should be a specific offence and the wording of the legislation should be sufficient that a person commits an offence if badgers are disturbed irrespective of whether this was the intent of the individual.

The *Act* should also be amended so that any person convicted of an offence relating to cruelty to badgers or interference with badger setts is automatically banned from keeping or owning animals (particularly dogs) for a period of five years.

### ***The Wildlife & Countryside Act 1981***

**Snaring** - The *Wildlife and Countryside Act 1981* makes it an offence for any person to take any bird or animal using a self-locking snare. Snaring itself however is not outlawed and this places the onus on investigators to determine the exact nature of any snare used in the taking of wildlife. The *Act* should be amended to make all snaring unlawful and to specifically make snaring a prohibited means of taking any wild bird or animal. Possession of a self-locking snare, even if it is not used should be an offence.

**Birds** - The bird of prey registration scheme under Section 7 of the *Wildlife and Countryside Act 1981* should be strengthened placing a requirement on any person wishing to keep any bird of prey (meeting the definition of UK wildlife) in captivity to register it and produce captive breeding returns as well as to notify any sale or transfer of the birds. Any Registered keeper who commits an offence under the *Act* should be banned from keeping, owning or having in his possession any bird or animal (not just Schedule 4 birds) for a period of five years.

**Cetaceans** - There should be additional provisions in the *Wildlife and Countryside Act 1981* to provide for the protection of whales and dolphins. Section 9 of the *Act* should be amended to remove the difficult wording of 'intentionally' and replace it

with new wording that makes it an offence to 'intentionally or recklessly damage or destroy or obstruct access to any place which any wild cetacean or basking shark uses for feeding or breeding'.

### **Appendix 3 : Conference Report – The Relationship between Animal abuse and Human Violence**

On 18 September 2007 a conference on the relationship between animal abuse and human violence took place at Keble College, University of Oxford. Organised by the Oxford Centre for Animal Ethics, part of the Department of Theology at Oxford University, the conference represented the first truly multi-disciplinary attempt to address the issues of animal crime and violence in an academic setting within the UK. Speakers were chosen from academics that had submitted abstracts of 300 words on the topic and were drawn from a range of disciplines from around the world. I attended as one of four speakers addressing the subject of Criminal Profiling, Offenders and the Law.

The conference program included sessions on; Violence, Children and Animals, Animal Abuse, Violence to Women, Domestic Violence and Criminal Aggression, Historical, Ethical and Philosophical Perspectives, Prevention and Professional Obligations and How Animal Abuse Harms Us. In addition, keynote speakers addressed Animal Abuse and Interpersonal Violence, The Use of Animal Cruelty Evidence in Dangerous Assessments by Law Enforcement and the question of whether Human Rights is Speciesist? Speakers were drawn from a range of disciplines including social work, psychology, sociology, medicine, criminology and criminal justice, theology, philosophy, ethics and different disciplines within law. The speakers also included former FBI agents and specialists in behavioural analysis who provided an overview of past research (mostly American) on the extent to which the abuse of animals can be used as an indicator of a propensity towards violence and the likelihood of future offending behaviour. The conference also discussed the practical application of animal cruelty evidence as a means of assessing the dangerousness of an offender.

In his introduction to the conference, Professor Andrew Linzey explained that “the purpose of the conference is to enable people to better understand the nature of animal abuse, the motivation that leads to cruel acts, and the implications for human as well as animal welfare.’ The starting point for the conference was the presumption, accepted by many law enforcement and animal welfare

professionals in the United States that there is a link between animal abuse and violence to humans or anti-social behaviour. The evidence for this has accumulated over the last 30 years (see for example Ressler and Schachtman 1993, Arluke and Levin 1996, Ascione and Arkow 1999, and Arluke 2006) including an FBI study into the childhood of serial killers which identified a history of juvenile animal abuse in most cases suggesting that serial killers such as Ted Bundy and Jeffrey Dahmer started by killing animals and then graduated to people. As a result a history of cruelty to animals is a trait looked for by the FBI and law enforcement professionals when investigating serial killers and has become a diagnostic trait used in the treatment of psychiatric and emotional conduct disorders (Goleman, New York Times 1991).

Accepted by conference delegates as an indicator of a propensity to violence some conference delegates commented that animal abuse should, therefore, be a mainstream policing priority and in conversation more than one delegate indicated that it ranked as a priority alongside terrorism and deserved equal resources (indeed one delegate suggested that it required higher resources because it provided a means of identifying some of the most violent individuals within society). But in addition to the criminal justice issues related to animal abuse, which formed only a small part of the conference program, a range of issues falling within the broad themes of animal rights, animal welfare, domestic abuse, the psychology of animal abuse and law enforcement and crime prevention were discussed.

The issue of **animal rights** underpinned much of the discussion of the conference. While conference delegates held different views as to whether animals should be afforded legal rights dependent on their discipline or affiliation, most delegates held the view that the abuse of animals should be given a higher priority within society from both a philosophical and moral viewpoint. The harming of animals was considered by most delegates to be something that society should consider to morally wrong and unacceptable and this led to calls for most field sports and forms of hunting to be outlawed. Professor Priscilla Cohn in discussing deer hunting and pigeon shooting in Pennsylvania, described the activities as 'socially condoned cruelty' and noted that schools are closed on the first day of

hunting in states like Pennsylvania so that children can hunt. A concern for conference delegates was that from an early age this allowed children to view violence as something that was in some way natural, a particular concern for law enforcement professionals in the United States where youth gang culture has gripped many inner cities. Elizabeth Clawson discussing the policies employed against juvenile offenders in Seattle (see below) noted that the policy devalues animals in some way, asking the question “why is violence against non-human animals considered less important than the same violence against humans?” For many conference delegates this was a subject of intense discussion as the view was held that violence against animals should be given the same ‘value’ in law enforcement and political terms as violence against humans and should, in some cases, attract the same penalties.

Issues of **animal welfare** were frequently discussed during the conference. While it was accepted by many conference delegates that shooting and hunting were legal in many countries a number of delegates felt that from both a philosophical and moral standpoint this should not be the case and so there should be radical changes in legislation to make most forms of hunting and shooting unlawful. Professor Andrew Linzey discussed the view that humans benefit from abusing animals (e.g. by eating animals for food) and this added to our acceptance of some forms of violence. Professor Linzey examined the cases of child abuse and animal abuse and queried the rational grounds for opposing child abuse in principle, but not also animal abuse. This theme was also explored by Dr Jeffrey Moussaieff Masson whose paper exploring the “institutionalised violence” of intensive farming discussed the ways in which denial is employed when it comes to the way in which farm animals are treated, particularly in factory farms. Dr Moussaieff Masson also compared issues of child abuse and animal abuse but in terms of animal welfare and suggested that those involved in the consuming of farm animals are themselves (sometimes unwittingly) involved in forms of violence that should be addressed. He explained that

“those who participate from a distance, as it were, in factory farming (by consuming these animals) or who turn away from recognising that sentient beings are treated as things by justifying these factory

farms, are similar to the long history of professionals in the Western world who either minimised or could not believe that children were beaten, sexually abused, or emotionally neglected in spite of the evidence coming directly from those same children."

Dr Moussaieff Masson discussed with delegates the extent to which the underlying mechanisms of denial needed to be tackled to address the violence that exists in society.

In discussing the link between animal abuse and human violence the conference also considered the extent to which animal abuse is a factor in **domestic violence**. Professor Eleonora Gullone explained that Tapia (1971) reported that among boys with a history of cruelty to animals, parental abuse was the most common explaining factor. Animal abuse was considered to be a displacement of aggression from humans to animals that occurs through the child's identification with their abuser. By identifying with their abuser, children's sense of powerlessness can be transformed into a sense of control or empowerment. Gullone also commented that more than half of all abused women have companion animals and that many of these companion animals are abused by the perpetrators of the family violence as a means of hurting and/or controlling the women or their children. Gullone explained that concerns for the safety of their companion animals keep many women (and their children) from staying separated from their abusers. Professor Clifton P. Flynn had also identified this in research commenting that it is likely that because of their close relationship that animals and violence are victimised. Professor Flynn suggested that "animals must be brought to the centre of family violence research and policy by including their perspective and by seeing them as partners in intimate relationships." Delegates discussed the importance of animal abuse in domestic violence and suggested that it should be a priority for law enforcement and social services professionals. Often the domestic violence aspects are pursued but the animal abuse aspects are not and in cases where domestic violence cases are not pursued because the victim is either unwilling to give evidence or defends their attacker, conference delegates argued that the animal abuse offences should be pursued with equal rigour.

Animal abuse was also discussed in the context of disruptive behaviour disorders (especially Conduct Disorder) in children and adolescents and Antisocial Behaviour and Psychopathy in adults. Research into the **psychology of animal abuse** has also demonstrated that individuals who are abusive towards others, including animals are characterised by low empathy and low impulse control. Research by Arluke, Levin, Luke and Ascione (1999) carried out research comparing convicted animal abusers with other offenders. Gullone explained that they found that “the animal abusers were significantly more likely than the comparison group participants to be involved in some form of criminal behaviour, including violent offences.” Montoya and Miller explained that because of the perceived link, at least four states in the US (California, Colorado, Ohio and Maine) dictate that veterinarians and other animal welfare workers must report suspected child abuse and neglect as part of the requirement to identify potentially abusive situations. Conference delegates considered that this should be a statutory requirement in the UK where the issues are mostly dealt with by separate agencies with the police dealing with domestic violence, child abuse being a joint police and social services issue and animal abuse often being the responsibility of the RSPCA and other charities like the PDSA and Blue Cross.

John Cooper (barrister and chairman of the League Against Cruel Sports) argued that those who hunt with dogs are part of a violent and self-serving culture and that this is a priority for **law enforcement and crime prevention** professionals. In his presentation (and abstract) Cooper argued that changes should be made to the law enforcement model so that “in the same way that social services reports and police profiling fix on other types of offending, so hunting with dogs should be examined at the level of clinical psychology.” Cooper argued that evidence of this criminality should be admitted by the courts and should be a factor in sentencing. In his keynote address Professor Frank Ascione also discussed the need for animal abuse to be considered as a sign of developmental psychopathology that could be used as a preventative law enforcement tool by identifying the conditions under which animal abuse is a clear precursor to other forms of violence. Allan C Brantley (a former FBI officer and the owner of a behavioural science oriented forensic consulting firm) also discussed the role of animal cruelty evidence in

assessing whether or not an individual is likely to engage in interpersonal violence. Clawson explained that this has already been taken up in Seattle where “juvenile animal abusers in Seattle receive rehabilitation aimed at preventing today’s animal abusers from becoming tomorrow’s murderers.”

The conference demonstrated that wildlife crime and animal abuse is an issue considered not just by criminologists and law enforcement professionals or academics but is also considered by animal welfare professionals, theologians, psychologists and others. Rather than there being simply one environmental or green movement, a range of different perspectives combine to consider animal crime and the implications of animal abuse as an indicator of future offending.

It was a fact accepted almost universally by conference delegates that there is a link between animal abuse or violence towards animals and human violence. However, the link was considered to be much wider than the established literature published by the FBI and other law enforcement bodies that suggest that violent offenders develop from animal abuse into other forms of violence. Instead theologians and philosophers, for example, consider that our treatment of animals in the food rearing industries and our denial of animal rights contribute to an increasingly violent society where the violence that society inflicts on animals is condoned and itself leads to a society that is becoming more violent. For those involved in social work and the investigation and prosecution of domestic abuse, the evidence is that animal abuse is not only a factor in the control exercised over a spouse or children but will also further traumatisise children into believing that abuse of animals is natural and a means of empowerment, leading them to grow up to become abusers themselves. For the law enforcement professionals, animal abuse is an indicator of a propensity towards violence and anti-social and psychopathic behaviour and so could be used as a law enforcement tool to identify potentially violent offenders and those in need of dedicated diversionary or rehabilitative efforts before they become serious offenders.

One theme emerging clearly from the conference is the need to view all forms of animal abuse as a social and law enforcement priority on a par with issues like terrorism. Delegates argued that treatment and punishment of animal abusers

should be a major priority worldwide if any effective effort is to be made to reduce human violence. In addition, the abuse of animals should be seen as a clear indicator of future violence and anti-social behaviour and should attract both dedicated law enforcement activity and integration into mainstream law enforcement to combat the increase in violent crime.

## Appendix 4 – List of UK Wildlife Legislation

### **Protection of Animals Act 1911**

The Act became law in January 1912. The Act provides protection for domestic animals and wild animals kept in captivity. The maximum penalty is a fine of £5,000 or six months imprisonment, or both.

### **Conservation of Seals Act 1970**

The *Act* became law in August 1970 and provides protection for seals during the close season for each species. It is also an offence to wilfully kill, injure or take a seal in contravention of a conservation order made by the Secretary of State. The Act also contains proscribed methods of killing or taking a seal.

### **Convention on International Trade in Endangered Species of wild fauna and flora (CITES) (1974)**

International Convention which aims to protect certain plants and animals by regulating and monitoring their international trade to prevent it from reaching unsustainable levels. The *Convention* was ratified by the UK in 1976 and is implemented in UK legislation by the COTES Regulations (see below).

### **The Salmon and Freshwater Fisheries Act 1975**

Became law in 1975 and prohibits particular methods of taking or destroying fish and sets out the seasons outside which it is unlawful to catch certain fish.

### **The Customs and Excise Management Act 1979 (CEMA)**

The Act is not primarily wildlife legislation but regulates the import and export of goods to and from the UK. It came into force in December 1979. CEMA makes it an offence to import wildlife and wildlife products into the UK contrary to the EU Wildlife Trade Regulations. In addition to this the Act makes it an offence to export wildlife and wildlife products from the UK contrary to the EU Wildlife Trade Regulations and to possess or deal in illegally imported wildlife or wildlife products or to evade charges or pay duty on wildlife products.

The maximum penalty under CEMA is seven years in prison or an unlimited fine.

### **Wildlife and Countryside Act 1981**

The *Act* became law in September 1982 and provides general protection to wild birds and animals in the UK and prevents them from being killed or taken from the wild. The *Act* prohibits certain methods from being used to take wildlife although it also contains provisions allowing for the control of certain species for pest control purposes. The *Act* has been amended by the *Countryside and Rights of Way Act 2000* (see below) to create new offences and new police powers.

### **The Salmon Act 1986**

The *Act* became law in January 1987, except Section 21 which came into force on 1 January 1993. Section 32 of the *Salmon Act 1986* makes it an offence to handle salmon in suspicious circumstances.

### **Deer Act 1991**

The *Deer Act 1991* provides legal protection to deer in England and Wales (Scotland has separate legislation). The *Act* makes it an offence for any person to enter any land in search or pursuit of any deer with intent to take, kill or injure it. It is also an offence for any person to take, kill or injure any deer or attempt to do so, or to search or pursue any deer with intent to remove the carcass of any deer. There is a defence against both of these offences if a person believed the owner or occupier would consent to his actions; or he believed he had lawful authority. This would cover a case where a person accidentally strayed onto land where he does not have consent to shoot but where he believes he has such consent. The defence could also apply where an injured deer runs onto neighbouring land and the person follows it believing that the owner would have consented to him doing so. Certain deer can also be legally killed under game legislation, although the *Deer Act 1991* makes it an offence to intentionally take or kill any red, fallow, roe or sika deer (the game species) during the close season. The *Act* became law in

October 1991 and the maximum penalty is a £2,500 fine or a three months prison sentence, or both.

### **Protection of Badgers Act 1992**

The *Act* became law in October 1992 and consolidates previous badger legislation. It makes it an offence to kill, injure or take or to attempt to kill, injure or take a badger. It also made it an offence to cruelly ill-treat a badger, to interfere with a badger sett or to sell or offer for sale a live badger. The maximum penalty is a £5000 fine or a six months prison sentence, or both. However, there are lower levels of sentencing for certain offences and the *Nature Conservation (Scotland) Act 2004* increases some of the penalties in Scotland only.

### **Wild Mammals (Protection) Act 1996**

The *Act* became law in April 1996 making it an offence to cause unnecessary suffering to a wild mammal. The *Act* specifies what constitutes causing unnecessary suffering and states that a person commits an offence if he mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering. The Maximum penalty is a £5,000 fine or a six months prison sentence, or both.

### **Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES)**

COTES are the UK regulations that effectively implement CITES in domestic legislation and came into force in June 1997. COTES introduced a number of penalties for breaking the EU Wildlife Trade Regulations. Offences include: the purchase, sale and other commercial trade in Annex A specimens without sales certificates, the purchase, sale and other commercial trade in Annex B specimens which have been illegally imported into the UK, and using false information to illegally obtain a permit or certificate.

The maximum penalty for offences under COTES is 2 years imprisonment and an unlimited fine although some COTES penalties have been amended by COTES 2005 (see below).

### **Countryside and Rights of Way Act 2000 (CRoW)**

The Act became law in January 2001 and amends the *Wildlife and Countryside Act 1981* the general legislation protecting wildlife in the UK, providing new powers for the police and creating new offences in relation to wildlife crime.

CRoW creates a new offence of 'reckless disturbance' of specified wildlife, amending and replacing the old offence of 'intentional' disturbance that was contained within the *Wildlife & Countryside Act 1981*. CRoW also amends Section 24 of the *Police and Criminal Evidence Act 1984 (PACE)* effectively making several *Wildlife and Countryside Act 1981* offences arrestable. The Act gives police officers a power of arrest for any person killing, taking, disturbing, possessing or selling a wild bird listed on Schedule 1 of the *Wildlife and Countryside Act 1981*, or taking, possessing or selling animals or plants listed on Schedules 5 and 8. The Act also provides a power for police officers to search premises following arrest under *PACE* allowing DNA samples to be taken from birds, animals or plants that will help determine if they have been captive bred or if they are wild.

The maximum penalties for the majority of Part 1 offences are increased to £5000 or six months imprisonment in the Magistrates' Court, or an unlimited fine or up to two years in the Crown Court for releasing Schedule 9 or non-native species. The CRoW Act therefore strengthens the enforcement provisions of existing wildlife law (the *Wildlife & Countryside Act 1981*), including bringing in prison sentences for some offences.

### **Protection of Wild Mammals (Scotland) Act 2002**

The Act became law in August 2002 and creates three specific offences with regard to the hunting of wild mammals with dogs in Scotland. The Act makes it an offence to deliberately hunt a wild mammal with a dog, the Act also makes it an offence for an owner or occupier of land knowingly to permit another person to enter land or use it to commit the offence of hunting a wild mammal with a dog. The third offence created by the legislation is to make it an offence for an owner of, or person having responsibility for a dog, knowingly to permit another person to

use it to commit an offence of hunting a wild mammal with a dog. The Act effectively makes fox hunting unlawful in Scotland.

The Maximum penalty is a £5,000 fine or a six months prison sentence, or both.

### **Hunting Act 2004**

The Act became law in February 2005 and makes it an offence to hunt a wild mammal with a dog (subject to certain exceptions). The Act has the effect of making most forms of fox hunting and hare coursing illegal in England and Wales.

The Act also makes it an offence for an owner or occupier of land knowingly to permit another person to enter land or use it to commit the offence of hunting a wild mammal with a dog.

Section 9 of the Act contains forfeiture provisions. The following can be forfeited when a person is convicted of any offence under the Act:

- any dog (but note, *not*, horses) that was used in the commission of an offence under Part 1 of the Act or in the possession of the defendant when arrested;
- any hunting article that was used in the commission of the offence or in the possession of the defendant when arrested. (A ‘hunting article’ is defined in section 9(3) as any article designed or adapted for use in connection with hunting a wild mammal); **and**
- any vehicle used in the commission of the offence – e.g. the van or trailer (does not have to be a *motor* vehicle) used to bring the dogs to the start of the hunt.

The maximum financial penalty on conviction in a magistrates’ court is £5,000.

### **The Nature Conservation (Scotland) Act 2004**

The Act inserts a new Section (15A) into the *Wildlife and Countryside Act 1981* in Scotland. This makes it an offence to be in possession of certain pesticides, some

of which have been repeatedly used to kill protected wildlife. The Act also extends (in Part 3) the law in relation to the protection of birds, animals and plants by making significant amendments to the current provisions of Part I of the *Wildlife and Countryside Act 1981* and by requiring production of a new code of guidance covering whale and dolphin watching and similar activities.

Also in Part 3, the *Act* extends the provisions of the existing *Protection of Badgers Act 1992* in order to increase penalties for offences such as badger baiting, badger digging and other forms of cruelty. The *Act* increases the maximum penalties to three years on indictment and six months on summary conviction for these badger offences committed in Scotland.

**The Control of Trade in Endangered Species (Enforcement)(Amendment) Regulations 2005**

Revised *COTES* Regulations came into force in July 2005. *COTES 2005* amends the penalties contained in Regulation 8 of the original *COTES* and creates a number of offences relating to commercial activities, mainly the selling and purchasing of specimens listed in Annex A of *European Council Regulation 338/97* and Annex B species which have been imported or acquired unlawfully. The new Regulations increase the maximum penalties to five years on indictment and six months on summary conviction using section 307 of the *Criminal Justice Act 2003* to do so.

## Appendix 5 – Glossary

<b>Abbreviation or Acronym</b>	<b>Full format of abbreviation or acronym</b>	<b>Description</b>
ACPO	Association of Chief Police Officers	Private Limited company providing strategic representation of the views of Chief Police Officers (Chief Constable, Deputy Chief Constable and Assistant Chief Constable) in England, Wales and Northern Ireland.
ACPOS	Association of Chief Police Officers in Scotland	Private Limited company (and Scottish charity) providing strategic representation of the views of Chief Police Officers (Chief Constable, Deputy Chief Constable and Assistant Chief Constable) in Scotland.
ALDF	Animal Legal Defense Fund	American legal NGO which works with law enforcers and prosecutors to achieve maximum sentences for animal abusers. ALDF employs staff attorneys to take cases but also employs and commissions research
BCT	Bat Conservation Trust	Charity and umbrella organisation for local bat groups working for the conservation of bats and their habitats in the UK
CPRE	Campaign for the protection of Rural England	Campaigning and research organisation dedicated to protecting the English countryside. CPRE campaigns on landscaping, planning and development and food issues that affect the natural countryside.
CPS	Crown Prosecution Service	Public prosecutor for England and Wales
DEFRA	The Department for Environment, Food and Rural Affairs	Government Department with responsibility for environmental issues including climate change, wildlife crime, sustainable development and rural communities. (Formerly the DOE)
EIA	Environmental Investigations Agency	International campaigning organisation which investigates and exposes environmental crimes.

FOE	Friends of the Earth	Environmental campaigning group primarily working on global environmental issues such as global trade, biodiversity, climate change and renewable energy
HMIC	Her Majesty's Inspectorate of Constabulary	Inspectorate appointed by the Crown to examine the work and functions of police organisations in England, Wales and Northern Ireland and to promote the efficiency and effectiveness of policing.
HSUS	Human Society of the United States	American animal protection organisation with approximately 10 million members.
IFAW	International Fund for Animal Welfare	Animal Advocacy group based in the UK, originally formed to protest against the culling of seals in Canada but now working globally on animal welfare issues.
IUCN	International Union for the Conservation of Nature	Global environmental network and democratic membership union with more than 1,000 government and NGO member organizations, and some 10,000 volunteer scientists in more than 160 countries.
LACS	The League Against Cruel Sports Ltd	NGO (but actually a company rather than charity) which works to end cruelty to animals arising from sporting practices. Primary campaigner against hunting with dogs.
NGO	Non-Governmental Organisation	Non- Governmental Organisations are usually created by individuals or companies with no participation or representation of government. NGOs vary in their methods. Some act primarily as lobbyists, while others conduct programs and activities primarily to raise public awareness of an issue.
NFBG	National Federation of Badger Groups (now the Badger Trust)	Charity which promotes the conservation and welfare of badgers and the protection of their setts and habitats in the UK. Campaigns against badger baiting and badger digging, the culling of badgers to prevent the spread of Tuberculosis and the use of illegal snares in which many badgers get caught.

PAW	The Partnership for Action against Wildlife Crime	Part of DEFRA, a Secretariat that deals with wildlife crime issues on behalf of DEFRA with input from some NGOs.
RSPB	The Royal Society for the Protection of Birds	Conservation charity that campaigns for the protection of birds and their environment. An in-house investigations section carries out investigations into wild bird crime
RSPCA	The Royal Society for the Prevention of Cruelty to Animals	Charity that works to prevent cruelty to, the causing of unnecessary suffering to and the neglect of animals. Uniformed Inspectorate investigates cruelty offences.
SFO	Serious Fraud Office	Government department responsible for investigating and prosecuting serious fraud in England, Wales and Northern Ireland.
SOU	Special Operations Unit	Undercover unit of the RSPCA, investigates organised wildlife crime and the conduct of gangs involved in animal welfare and cruelty offences.
SSPCA	The Scottish Society for the Prevention of Cruelty to Animals.	Scottish charity working to prevent cruelty to, the causing of unnecessary suffering to and the neglect of animals. Uniformed Inspectorate investigates cruelty offences.
TRAFFIC	TRAFFIC International	Wildlife Trade monitoring arm of the World-Wide Fund for Nature (WWF) and the International Union for the Conservation of Nature (IUCN). Mainly investigates compliance with CITES and related trade in endangered species.
WCO	Wildlife Crime Officer(s), formerly called Wildlife Liaison Officers (WLOs)	Police staff appointed to deal with wildlife crime issues within their police force. Can be police officers or civilian staff. Some hold the post part-time and in addition to their other duties, a few are full time.
WDCS	The Whale and Dolphin Conservation Society	Charity dedicated to the conservation and welfare of all cetaceans (whales, dolphins and porpoises).
Wildlife Link	Wildlife &	Umbrella organisation for wildlife organisations

	Countryside Link	in the UK.
WLO	Wildlife Liaison Officer(s), now called Wildlife Crime Officers (WCOs)	Police staff appointed to deal with wildlife crime issues within their police force. Can be police officers or civilian staff. Some hold the post part-time and in addition to their other duties, a few are full time.
WSPA	World Society for the Prevention of Cruelty to animals	Animal welfare and anti cruelty charity with a global remit. Campaigns for the protection of companion animals, against commercial exploitation of wildlife and against intensive farming, long distance transport and slaughter of animals for food.
WWF	World Wide Fund for nature	Independent conservation network working in more than 90 countries. A registered charity in the UK with campaigning interests in wildlife trade, threats to endangered species and their habitats.