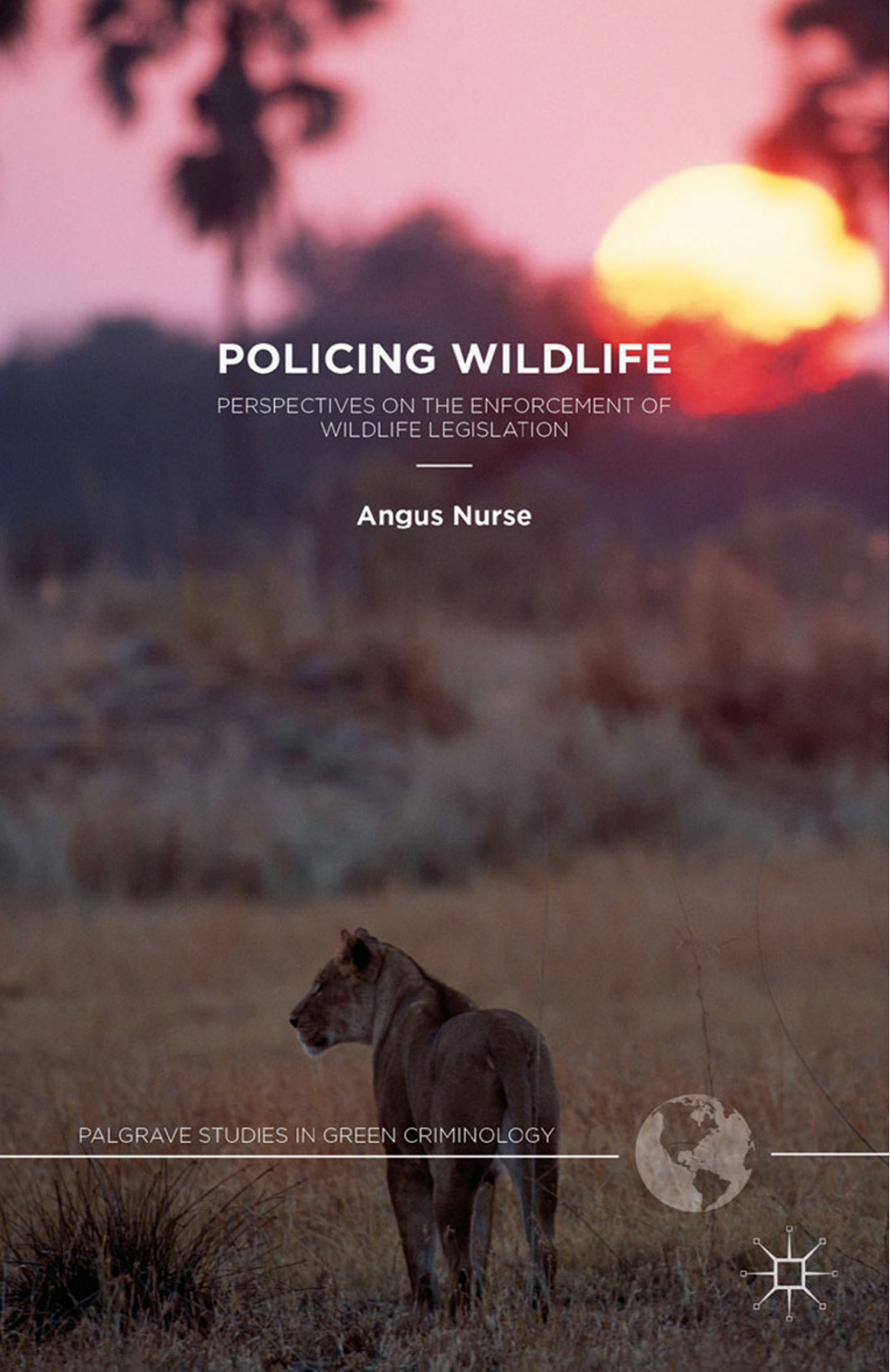
POLICING WILDLIFE
PERSPECTIVES ON THE ENFORCEMENT OF WILDLIFE LEGISLATION
Angus Nurse
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Policing Wildlife

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Policing Wildlife

Perspectives on the Enforcement of Wildlife Legislation

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Preface

This book is developed from more than ten years' research into the enforcement of wildlife legislation. While the work originated in the UK and draws heavily on a European perspective, it examines the nature and extent of wildlife crime, the role of non-governmental organisations (NGOs) in helping to shape the legislative (public policy) and policing response to wildlife crime, and the current state and effectiveness of wildlife law enforcement in an international context. Rather than being a wildlife law book, the text is primarily about the policing of wildlife crime and the investigation and prosecution of wildlife offences mainly within criminal law systems. However, part of the book's contention is that criminal justice processes are often inadequate to deal with wildlife crime issues, particularly those of a transnational nature.

From the outset it should be made clear that wildlife crime as considered by this book is separate from the issue of animal rights. This is not to dismiss the importance of animal rights discourse in influencing animal protection law and, for the sake of transparency, I should say I agree with many of the arguments in favour of providing animals with legal rights and do advocate for effective animal protection through the law. However, the focus of this work is not on whether animals should be protected through the law or should have specific legal rights but instead is on how contemporary wildlife law is enforced. In particular, the book is concerned with problems that currently exist in enforcement regimes many of which continue to view wildlife law as outside of the mainstream of criminal justice. Indeed, the practical protection of animals and the enforcement of animal law (in Europe at least) often has little to do with animal rights discourse or indeed conceptions of legal rights for animals. Instead, wildlife law is primarily conservation law which, while often reinforcing property rights over wildlife and upholding human interests, does not generally operate from an animal rights or even animal welfare perspective. Many of the NGOs involved in and integral to wildlife law enforcement (a subject discussed in some detail in this book) are not animal welfare organisations and instead are concerned with the effectiveness of legislation and ensuring that it is upheld in part to achieve conservation priorities and maintain biodiversity. Indeed some NGOs involved in wildlife law enforcement advocate the killing of certain species to protect others deemed to be of greater

conservation significance. They do not therefore advocate for animal protection as a pure animal rights issue but consider wildlife law as having a different purpose linked to preservation of the natural environment, protection of ecosystems and protection of rare and threatened species and those species considered to have national or international conservation significance. Thus while the legislative and enforcement approach of wildlife law routinely engages with animal protection discourse, wildlife law in this book is examined within its conservation law, environmental justice and criminological context.

Selection of topics

The topics in this book have been selected with a view to discussing key issues in the policing of wildlife crime from a green criminological perspective. Green criminology considers that justice systems should provide for effective criminal justice for both human and non-human animals and this book's starting point is that legislative and enforcement systems already exist to achieve this aim, albeit their effectiveness requires scrutiny. Thus the nature of wildlife law enforcement as an area of criminal justice policy, as a topic within policing discourse and as an area of NGO activity are all discussed. In part this book's aim is to theorise wildlife crime as socially constructed but this is only part of its focus; the other is to critically evaluate issues in wildlife law enforcement drawing on the author's research into practical enforcement problems. For example, the book not only discusses theoretical perspectives on wildlife law enforcement policies but also conducts practical analysis of these drawn from discussion with NGOs, policymakers and the author's own experience.

The book's focus is contemporary rather than historical wildlife law enforcement thus it is limited in its discussion of the history of wildlife law which is already covered in some excellent books which explore different aspects of animals' legal protection. Radford's (2001) *Animal Welfare Law in Britain: Regulation and Responsibility* provides an extensive overview of both the structure and purpose of animal welfare laws and the development of Britain's robust animal welfare law regime. Schaffner's (2011) *An Introduction to Animals and the Law* provides for a comprehensive analysis of the social construction of animal laws, their purpose and meaning and explores the nature of anti-cruelty, animal welfare and animal control and management laws. Radford and Schaffner provide for excellent historical and theoretical analysis of the development of animal welfare and protection laws which this book

need not repeat. Instead the contemporary reality that most countries have a variety of animal and wildlife protection legislation on their statute books serves as the starting point for this book's analysis of why crimes such as egg collecting, bird of prey persecution, wildlife trafficking and the illegal killing and trapping of animals for sport, food or use in medicinal products continue and both global and country specific efforts to reduce wildlife crime have met with little success. Indeed there is evidence that organised crime has turned to wildlife crime and that in some areas it is increasing in prevalence despite the existence of laws that provide for sanctions for those committing crimes against wildlife. This is due to the generally lower penalties involved for wildlife offences in comparison to other crimes of similar economic value, the relative weakness of wildlife law enforcement regimes and a more lenient attitude to wildlife crimes by the courts and the opportunities for adapting existing trafficking routes to the illegal wildlife trade.

The reality of wildlife law enforcement is that it often falls outside the mainstream of criminal justice policy, despite being part of the criminal law where it provides for criminal sanctions. As this book discusses, responsibility for wildlife law enforcement is often vested in state environment departments rather than criminal justice ones with the consequence that wildlife law enforcement is not an integral part of policing or crime control policy. This is not to suggest that there is no state response to wildlife crime problems. The European Union, for example, has applied considerable resources to developing an enforcement response to wildlife trade and in addressing the illegal trade in hardwoods (e.g. from Indonesia into Europe). It has also led on developing specialist wildlife policy in certain countries and is where many NGOs are active investigators of wildlife crime, explicitly considering it as a transnational and cross-border issue. Other countries also have dedicated wildlife policing units (e.g. the US Fish and Wildlife Service) with a remit to investigate and prosecute wildlife crimes through criminal justice systems. In addition, a number of international initiatives have been developed to deal with wildlife crime problems, although these have met with varying levels of success.

This book examines both policy and practice thus adopting a socio-legal approach which draws on empirical evidence and practice based discussion to analyse enforcement difficulties in their real-world context. In some places the text makes use of case studies and inevitably the selection of cases is biased towards the author's research focus on the European Union's legal environment. However, the book's aim is to consider wildlife law enforcement within an international context and

so the approach taken is predominantly to discuss cases of international significance and/or those where the principles examined are common to a number of jurisdictions.

The term 'wildlife' is used throughout this book rather than the, perhaps more accurate, term 'non-human animal' because this term frequently occurs in the legislation under discussion and in definitions of the crimes or prohibited activities as defined by legislation. There is also a distinction to be made between the protection afforded to wildlife and the protection afforded to 'companion animals'. The latter shares homes with and is often dependent on humans for food and care, while the former largely remains in their natural habitats (or at least some version of these) and one task of legislation is to manage and protect wild populations which are often under threat from human encroachment and other activities such as hunting. While broad in scope this book is not intended to be comprehensive as this would require a much longer book; thus there are undoubtedly some wildlife crime activities and wildlife law examples that should perhaps be discussed but which have not been included, either for reasons of space or because they are the subject of current research incomplete at the time of writing. Any errors or omissions are my own and reflect the current state of the research into wildlife policing which is a fast moving area in both theoretical and practical terms.

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I owe a debt of thanks to a number of people whose support, assistance and expertise made this book possible. My colleagues in the ESRC Green Criminology Research Seminar series, Tanya Wyatt, Gary Potter, Matthew Hall, Nigel South and Jennifer Maher have been invaluable in creating an enthusiastic and supportive environment in which some of the ideas contained in the book have been debated and refined. Matthew Cremin and David Wilson, colleagues at Birmingham City University together with Nic Groombridge from St Mary's University commented on some of the original research from which this book has developed and provided constructive criticism which helped refine several parts of the material into its final form. I am also indebted to Melanie Wellsmith of Huddersfield University whose ideas on situational crime prevention as applied to wildlife crime are an exciting contribution to critical discourse on wildlife law enforcement.

Thanks are also due to the third-year students of Birmingham City University who during the academic year 2012–2013 studied with me on the Environmental Justice and Green Criminology module I developed at that institution. I say 'studied with' because I learned as much from their enthusiasm and critical questioning as I hope they discovered about the topics of environmental and wildlife crime.

I am also indebted to my regular research collaborators Katerina Gachevska (Leeds Beckett University) and Diane Ryland (University of Lincoln) with whom I examine environmental politics and security, and animal law/welfare, respectively. Sharing ideas with both of these excellent scholars coming from their respective fields of international security and law has undoubtedly exposed me to a broad range of critical and analytical perspectives. Both have influenced me positively during our work on these other topics and helped me view wildlife crime issues within a broader perspective than my primary criminological focus.

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List of Acronyms

ASPCA	American Society for the Prevention of Cruelty to Animals
CCTV	Closed Circuit Television
CITES	The Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on Migratory Species
CPS	Crown Prosecution Service
DEFRA	Department of Environment Food and Rural Affairs
EIA	Environmental Investigations Agency
EPA	Environmental Protection Agency
ESRC	Economic and Social Research Council
ETIS	Elephant Trade Information System
EU	European Union
GATT	General Agreement on Tariffs and Trade
HSUS	Humane Society of the United States
ICCWC	International Consortium on Combating Wildlife Crime
ICJ	International Court of Justice
IFAW	International Fund for Animal Welfare
IUCN	International Union for the Conservation of Nature
IWC	International Whaling Commission
LACS	The League against Cruel Sports
NCIS	National Criminal Intelligence Service
NGO	Non-Governmental Organisation
RSPB	Royal Society for the Protection of Birds
RSPCA	Royal Society for the Prevention of Cruelty to Animals
SAR	South Asia Region
SSPCA	Scottish Society for the Prevention of Cruelty to Animals
TCM	Traditional Chinese Medicine

TRAFFIC	The wildlife trade monitoring network (CITES trade monitors)
UDAW	Universal Declaration on Animal Welfare
USFWS	United States Fish and Wildlife Service
UN	United Nations
UNEP	United Nations' Environment Programme
UNODC	United Nations' Office on Drugs and Crime
USSC	Unites States Sentencing Commission
WCO	Wildlife Crime Officer
WEN	Wildlife Enforcement Network
WPA	World Animal Protection
WTO	World Trade Organization
WWF	World Wide Fund for Nature

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Introduction

While this is not a law book, in the context of being black letter law discourse, it is undoubtedly a book *about* the law and, in particular, the practical enforcement and implementation of contemporary wildlife law. Applying a green criminological perspective (Lynch and Stretesky, 2003, 2014), this book explores current practice on wildlife law enforcement and examines how justice systems' handling of wildlife crimes might be improved.

This introductory chapter provides an overview of the book's focus and of the importance of wildlife crime to criminological study both green and traditional. Wildlife crime is often transnational crime and White identifies that 'a concern with environmental crime inevitably leads the analytical gaze to acknowledge the fusion of the local and the global' (2012: 15). Green (eco-global) criminology is concerned with crimes of global significance, those that transcend the traditional boundaries of criminal justice and its concerns with interpersonal and property crimes. Instead green criminology primarily considers transnational crimes; those which potentially have impact on a global scale affecting both human and non-human victims (Ellefsen et al., 2012).

Green criminology and environmental harm discourse

White and Heckenberg identify that 'in response to growing discontent about the state of the environment a distinctive, critical "green criminology" has emerged in recent years' (2014: 1). Beginning in the 1990s when the term first emerged as a means of encapsulating 'a critical and sustained approach to the study of environmental crime' (White and Heckenberg, 2014) green scholars had focussed on issues relating to the environment and social harm. In doing so, they have

exposed environmental and ecological injustice in addition to identifying areas where mainstream criminal justice will benefit from a green perspective while 'general' criminal justice techniques can be applied to green crimes. Within this unique area of scholarly activity, researchers also examine the links between green crimes and other forms of crime, including organised crime's movement into the illegal trade in wildlife or the links between domestic animal abuse, domestic violence and more 'serious' forms of offending such as serial killing. In essence, green criminology allows for the study of environmental and criminal laws, environmental criminality and the abuse and exploitation of non-human animals. Green criminology also provides a mechanism for rethinking the study of criminal laws, ethics, crime and criminal behaviour (Situ and Emmons, 2000; Lynch and Stretesky, 2003).

Potter (2010: 10) argues that the link between environmental issues and criminology takes place on three levels.

- First, we can identify a range of crime and criminal justice activity relating directly to environmental issues.
- Second, we can see the study of environmental harm in general as an extension of the well-established (and indeed fundamental) tradition within both sociology and criminology of critically questioning the very definition of crime and the core subject matter of criminology.
- Finally, it is possible to identify a number of areas where environmentalists can benefit from the experience of sociologists and criminologists working within more traditional notions of crime.

Lynch and Stretesky identify that green criminology moves away from traditional criminology's focus on 'crimes as harms caused by humans primarily against humans that are defined in law as criminal harms' (2014: 6) to incorporate an environmental frame of reference. As White and Heckenberg state that 'the key focus of green criminology is environmental harm but green criminologists also study environmentally harmful activities not currently defined as crimes' (2014: 8). At its best, green criminology attempts to both challenge and indeed overturn many common-sense notions of crime to reveal and challenge the reality of harms with wider social impact and negative consequences for the environment and human relations (Nurse, 2013a). As Potter's (2010) conception suggests, green criminology is concerned not just with distinctly environmental crimes but also with how studying green crimes can help to improve criminology.

Within green criminology, considerable attention has been paid to the topics of animal abuse and cruelty and the study of animal abusers (Beirne, 2007; Sollund, 2012; Nurse, 2013a). A number of scholars have also explored wildlife trafficking as a growing area of transnational crime; prominent within the hierarchy of global crimes (Zimmerman, 2003; Schneider, 2008; Wyatt, 2009, 2013; South and Wyatt, 2011). Green criminology applies a broad 'green' perspective to environmental harms, ecological justice and the study of environmental laws and criminality which includes crimes affecting wildlife (however defined). The ecological justice and species justice perspectives of green criminology (Benton, 1998; Beirne, 2007; White, 2008) contend that justice systems need to do more than just consider anthropocentric notions of criminal justice; they should also consider how justice systems can provide protection and redress for other species (Benton, 1998; White, 2008). Green criminological scholarship has, thus, already paid attention to theoretical questions of whether and how justice systems deal with crimes against animals and has begun to conceptualise policy perspectives that can provide contemporary species justice alongside mainstream criminal justice. Links have also been made between wildlife crime and drugs (South and Wyatt, 2011; Wyatt, 2013) and between animal abuse and human violence (Ascione, 1993; Linzey, 2009a; Petersen and Farrington, 2009; Nurse, 2013a). Such links provide compelling arguments for animal harm (Nurse, 2013a) to be considered within justice systems as a core focus of law enforcement practice. In particular, this is the case in respect of considering deviant or criminal behaviour directed at animals as being part of a continuum of offending behaviour; both as possible indicator of future offending (Hutton, 1998; Lockwood and Ascione, 1998; Nurse, 2013a) and a means of better understanding criminality's complexity.

This book broadly falls under green criminology's ecological justice and species justice perspectives (Benton, 1998; Beirne, 2007; White, 2008), examining the enforcement of wildlife legislation and the ideological and policy perspectives that determine enforcement practices. While generally there is no binding international treaty on animal protection (Nurse, 2013a), wildlife laws exist at both international and national levels and wildlife crime is recognised as an area of importance for international enforcement efforts by policing agencies (Akella and Allan, 2012; Interpol, 2014). However, one contention of this book is that wildlife crime is not generally considered within the sphere of mainstream criminal justice; the effect of which is that policies developed to address problems of wildlife crime often lack sufficient criminological focus and may not be effective. This book explores whether (and

the degree to which) wildlife crime 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. It also explores whether the reactive response predominantly favoured by governments 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 wildlife and conservation crime policy. Central questions considered in this book are: how should wildlife laws be enforced; and how effective are current enforcement approaches? Accordingly, this book examines different perceptions and perspectives on wildlife crime analysing public policy responses to wildlife and conservation criminal justice in light of general theories and experience of crime and punishment. The book is intended not just for academics studying green criminology or environmental law but also for a practitioner, 'activist' or policymaker audience (including legislators) interested in understanding the scope of wildlife law enforcement and the practical difficulties encountered in providing an effective system of wildlife protection.

The importance of studying wildlife crime

White (2013a) identifies that the study of environmental harms, laws and regulations has historically been left to other disciplines. The consequence of this has been that of 'little room for critical examination of individuals that kill, injure and assault other life forms (human, animal or plant) by poisoning the earth' (White, 2013a: 25). Wildlife crime's importance as an area of criminological study 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 the actual number of wildlife crime incidents may 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 holds great significance in studying crime and criminal activity for a variety of reasons:

- Its ecological significance in respect of negative impact on biodiversity far outweighs the effect on individual wildlife. Wildlife crime has the potential to make entire species extinct or impact on population spreads with long-term impacts for biodiversity.
- It is an area of criminal justice where NGOs exert considerable influence on policy and also carry out operational law enforcement

activities. Public–private partnerships reflect the need for specialised knowledge in environmental crime investigation (White and Heckenberg, 2014). Particularly in wildlife crime, NGOs with specialist conservation monitoring and investigative experience are an integral aspect of enforcement regimes providing an opportunity for criminological study of state-NGO co-dependence.

- Clear evidence exists of organised crime's involvement in wildlife crime, viewed as a 'soft option' by various organised crime groups able to utilise traditional operations and transit routes with reduced risk of enforcement activity (Lowther et al., 2002). Links have also been made between wildlife crime and terror groups and militias in conflict zones (Nelleman et al., 2014).
- It provides an opportunity to study a distinct area of criminal behaviour and what the abuse of animals in the wild and wildlife exploitation might tell us about offenders (Linzey, 2009a; Nurse, 2011; Wyatt, 2013).
- 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 (Beirne, 2009).
- 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 for both traditional and green criminology. While the number of global wildlife crime incidents may be comparatively small their consequences for some of the world's rarest and most threatened species of birds, mammals, plants, reptiles and trees are significant. One wildlife crime incident could, for example, involve a number of different birds or animals, while deforestation incidents have considerable impact on forest survival and dependent animals. Schneider (2008) and others have identified that wildlife trafficking has pushed some species to the brink of extinction. Nelleman et al. (2014) estimate that between 20,000 and 25,000 African elephants are killed each year by poachers; such numbers are unsustainable. In the United Kingdom, illegal persecution of wildlife through poisoning (birds of prey) and poaching (large mammals) and other means have helped some domestic 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 Royal Society for the Protection of Birds (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 and Etheridge, 1993; Etheridge et al., 1997; Sim et al., 2001) have also indicated that the hen harrier, a bird which is heavily persecuted on UK 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. In other settings as a result of illegal hunting, wolves, lynx and other large carnivores are absent from areas of their range where they should occur (Essen et al., 2014). Wildlife crime's effects can, therefore, adversely affect wildlife populations by limiting range or reducing populations.

Wildlife crime is also an interesting study of criminality and its causes. A variety of different offence types fall within the broad area of wildlife crime and not all offenders are motivated by money or even gain from their criminal activity (Nurse, 2011, 2013a). Yet criminological research has largely neglected wildlife criminality or critical evaluation of the different policies needed to address the different types of wildlife and other animal crime (Lynch and Stretesky, 2014). 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 offence types or 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 wildlife-related criminal behaviour constitutes 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. Given the varied nature of wildlife offending (Nurse, 2011), law and law enforcement policy need to understand the motivations and behaviours of wildlife offenders; the extent to which it does so has been discussed later in this book.

NGOs are not usually involved in practical law enforcement, but in wildlife crime; also, they assist the police and prosecutors and actively detect and investigate crime. Environmental NGOs have also 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 in England and Wales) 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, the Public Prosecutor in England and Wales). 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 statutory policing agencies 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. This book discusses, for example, how 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 and between jurisdictions. 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. Offenders may also have considerable expertise in wildlife issues compared to the relative lack of expertise of the police and other enforcers.

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; Regan, 1983; Singer, 1975), the need for legal rights for animals (Regan, 1983, 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 that of environmental 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. Such debates also examine:

the relationship between man and non-human animals; 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; Ascione, 2008). Yet the environmental conservation, socio-legal and animal welfare literature often fail 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 is directly considered in this book.

Wildlife crime is often 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 states adopt and enforce global Conventions and regional laws and agreements (such as EU Directives). It is also of value as a study of how states enact and enforce their own domestic legislation to protect native wildlife and the environment and deal with crimes that might threaten that wildlife.

Wildlife crime is thus, important as 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.

Key themes and organisation of this book

This book examines both theoretical and practical considerations on wildlife law enforcement. As outlined earlier, its central concern is the manner in which justice systems deal with issues of wildlife crime and the practical reality of wildlife law enforcement. The book explores wildlife crime's perception and importance within criminal justice systems. Generally, wildlife law and wildlife crime are viewed as environmental issues rather than criminal justice ones and this book contends that this impacts on the effectiveness of wildlife law enforcement especially where there is a failure to apply mainstream law and order techniques to wildlife crime (Wellsmith, 2011; Nurse, 2012) or to effectively integrate existing criminological knowledge into wildlife law enforcement policy. This book also examines the involvement of environmental and animal protection NGOs as an integral part of

wildlife law policing in both a narrow (state police) and wide (enforcement and monitoring) sense (Joyce, 2010). The involvement of NGOs in wildlife law policy development and law enforcement is considerable, meaning that wildlife law is frequently developed from an environmental or conservation standpoint rather than a pure criminal justice one (Nurse, 2003, 2012). This book also explores the dominant 'law enforcement' policy perspective employed against wildlife crime (Wilson, 1985; Bright, 1993) which relies heavily on detection, apprehension and punishment. While this approach arguably makes logical sense in relation to mainstream crime, one contention of this book is that wildlife, a finite 'resource' is not best served by this paradigm, albeit there may be short-term benefits to a policing approach which disrupts illegal operations. The resourcing of wildlife policing is a key issue and several commentators (Nurse, 2003, 2012; Schneider, 2008; Wellsmith, 2011) have observed that despite significant improvements in recent years, wildlife law enforcement is still under-resourced and conducted on a largely voluntary basis in many countries. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) enforcement network, for example, lacks resources in some areas and relies on state authorities for practical enforcement. This represents a problem in many poorer and developing world countries where corruption is a significant factor impacting on the effectiveness of enforcement action. The underlying contention of this book is that international wildlife law is, in principle, broadly adequate but significant problems exist in both the international and state enforcement regimes, not least the lack of any coherent link between wildlife crime and other offending which seems to be a factor across jurisdictions. The book deals with these issues across its various chapters as follows.

Chapter 2 explores wildlife law from a green criminological perspective and as the basis of definitions of wildlife crime identifying such crimes as an international and transnational problem subject to varied definitions. Popular discourse on wildlife crime is predominantly concerned with wildlife trade; that is the exploitation of wildlife for profit via the market in live specimens and their derivatives. But, as this book explores, wildlife crime encompasses a range of different activities and cannot be seen solely as profit-driven crime and so its enforcement response needs to consider the varied nature of crimes committed across various jurisdictions.

Chapter 3 provides an overview of the key international enforcement regimes and international wildlife protection legislation. It notes that

in contrast to animal welfare where international law is relatively sparse (Nurse, 2013b) a wide range of international wildlife law exists providing a global framework for wildlife protection through international mechanisms such as CITES and regional mechanisms such as the EU Trade regulations that implement CITES and specify the measures which all 28 Member States of the EU must implement in order to address the trade in wildlife.

Chapter 4 examines perspectives on national wildlife legislation and considers different legislative models that implement wildlife law variously as conservation law, criminal law or animal welfare law. Chapter 5 explores theoretical perspectives on wildlife law enforcement and wildlife crime and situates wildlife law enforcement primarily within green criminology's ecological justice perspective that incorporates the notion of a justice system which considers animals alongside humans (Benton, 1998; Wise, 2000; White, 2008; Nurse, 2013b). Chapter 6 discusses the nature of wildlife offending assessing theories on the individual and on crime and society to show how wildlife law is subject to both individualistic and cultural interpretation. Chapter 7 discusses contemporary issues in policing wildlife crime, examining the development of wildlife law and problems in wildlife law enforcement. This chapter also considers the role of NGOs in wildlife law enforcement noting that they can adopt a variety of roles based on jurisdiction, ideological perspective (Nurse, 2013a) and the particular aspect of wildlife crime under discussion. Chapter 8 looks specifically at preventative wildlife law enforcement mechanisms and the need for the same. It argues that crime prevention by wildlife law enforcement bodies is minimal and there is scope to increase it further (Wellsmith, 2010, 2011). It also considers future offending and mechanisms employed in wildlife law to prevent recidivism.

Chapter 9 deals with prosecutorial and sentencing problems, discussing practical issues that have a negative impact on effective enforcement of wildlife laws and the imposition of sanctions. Chapter 10 assesses current public policy approaches to wildlife law enforcement internationally and within different jurisdictions, while Chapter 11 concludes and summarises the book's discussion identifying that wildlife law is subject to a range of enforcement regimes both internationally and nationally and is primarily dealt with outside of mainstream criminal justice with significant consequences for its practical implementation. In Chapter 11, some recommendations are also made for future wildlife crime policy, drawing on recent developments which define some forms of wildlife crime as 'serious crime'.

In summary, this book evaluates the effectiveness of existing policies and how the enforcement of wildlife legislation could be improved. It puts forward the following questions:

- What are the policies of particular wildlife organisations and 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?

2
What Is Wildlife Crime?

Wildlife crime involves transnational actors, the threat of extinction to certain species and limitations in the range of others and crimes committed by both legal and illegal actors and even crimes committed by states. Given the diverse nature of wildlife crimes and their impacts, wildlife law is required to serve many purposes such as protection of wildlife, regulation of wildlife use and prevention of behaviour towards wildlife which society finds unacceptable, albeit not all wildlife 'offences' fall within the remit of the criminal law. In practice, most jurisdictions have laws protecting both companion animals and wildlife while falling short of providing either group with actual legal rights or legal personhood (Wise, 2000; Nurse and Ryland, 2012). Instead 'the law in most all countries characterizes animals as "things" who are owned as personal property' (Schaffner, 2011: 19). Companion and farm animals have a recognisable 'owner' or 'responsible person', whereas 'wild animals reside within the common and belong to no one as long as the animal remains wild, unconfined, and undomesticated' (Schaffner, 2011: 19). Wildlife law's protective role differs considerably from that of domestic animal protection given the reduced reliance wild animals have on humans for food and the greater potential for conflict between wildlife and human interests, particularly in developing world settings.

Historically wildlife law has been 'associated with socio-economic structures' largely dominated by wildlife's value as either economic or social resource' (Law Commission, 2012). Wildlife protection law operates in part as conservation or wildlife management legislation, according to wildlife's property or economic value, rather than purely as species protection or criminal law. The extent to which one or other of these perspectives dominates wildlife law and its enforcement depends on a range of cultural, social and economic issues particular

to the jurisdiction under consideration, notwithstanding international law which, in theory at least, provides wildlife protection from transnational threats (see Chapter 3). One contention of this book is that wildlife protection is socially constructed to the extent that western notions of wildlife as majestic, aesthetically pleasing and having intrinsic value as part of the natural world are not universally shared. In some settings, wildlife is viewed solely as a resource or as competition for scarce resources and land (Damania et al., 2008). As a result, conflicting ideas of wildlife protection exist irrespective of the seeming global consensus on wildlife protection exhibited in the existence of various international law mechanisms for wildlife.

Official classifications of wildlife crime vary from jurisdiction to jurisdiction with some (such as the US) focussing predominantly on wildlife trade and environmental crimes such as pollution or habitat destruction. In part jurisdiction-specific definitions of wildlife crime reflect the types of crimes that occur within the country, influencing both the nature and content of legislation enacted to deal with wildlife crime, and the policies developed to deal with specific wildlife crime problems. This book's focus is primarily on the enforcement of wildlife law conceptualised within criminal law discourse. However, while wildlife crime encompasses various criminal behaviours and offences defined by legislation, the reality of wildlife crime is that complexity exists in both definition and practical interpretation. Wildlife crime is more than just actions caught by strictly legal definitions of crime (Situ and Emmons, 2000; Lynch and Stretesky, 2003) but is also defined according to the *intent* of law and public policy to provide sanctions for actions that harm wildlife. Green criminology frequently argues for a more expansive definition of crime to include moral wrongs and actions that are sufficiently harmful that they should be incorporated into crime definitions (Benton, 1998). Wildlife crime's scope, which includes actions by individuals, organisations and even states, requires consideration of a wide range of legislative and regulatory breaches (Nurse, 2013a,b). As this chapter will discuss, the severity of harms (White and Heckenberg, 2014) and severity and intent of sanctions (Öberg, 2013) are important factors in defining wildlife crime, irrespective of the enforcement mechanism used to investigate and enforce relevant wildlife laws.

This chapter explains the nature and definitions, which are used in wildlife crime discourse, of wildlife crime, analysing the different types of wildlife crime and criminality that occur nationally and internationally. This chapter argues for a global definition of wildlife crime as

defined by breaches of wildlife law, which includes animal abuse and cruelty in the wild, killing and injury to protected wildlife, wildlife trafficking, illegal hunting and trapping and other trade and exploitation of wildlife and its derivatives.

Wildlife law as environmental law

Defining environmental law is problematic, wildlife law more so because conceptions on what constitutes the 'environment' or 'wildlife' are socially constructed according to a range of social, political, ethical and even religious factors (Linzey, 2009b; Nurse, 2013a). Some jurisdictions include game species in their definition of 'wildlife' subsequently defining poaching as wildlife crime, whereas others do not. Wildlife law might also be classified variously into environmental law, natural resources law, conservation law and (often erroneously) animal welfare law. This book discusses wildlife law both as environmental law, that is, an integral part of the law concerned with preventing and addressing harms to biodiversity, and as criminal law, that is, laws intended both to communicate disincentives for individuals who carry out criminal behaviour and to also punish those who engage in such activities (Öberg, 2013; White, 2013a). However, civil justice and regulatory laws also provide wildlife protection mechanisms, particularly in respect of business' direct and indirect impact on wildlife (Vincent, 2014; Hall, 2014). A starting point for this book's discussion is the context in which wildlife is protected as part of environmental law and actions harmful to wildlife may attract sanction.

Stallworthy provides a definition of environmental harm taken from the UK's Environmental Protection Act 1990 as being: harm caused 'to the health of living organisms or other interference with the ecological systems of which they form part' (2008: 2). This broad notion of environmental harm identifies wildlife as part of the environment and deserving of protection from harm and negative human impacts (discussed further in Chapter 3). White identifies environmental problems as a social construction; thus environmental 'problem' definitions are a product not just of the severity of the issue but also of how it is *assembled*, *presented* and *contested* (2008: 35–36). These processes combine scientific evidence alongside employment of the mass media and mobilising support for whatever claims are being made. Thus growing awareness of the threats to wildlife and the environment and public campaigns for better wildlife laws situated within media discourse on contemporary environmental awareness are integral to the increased

protection given to wildlife through legal systems. Stallworthy argues that the fundamental role of law 'lies in its capacity to contribute in just and meaningful ways to society's balancing of interests and resolution of conflicts' (2008: 5). Wildlife law thus provides a means:

1. for clarifying the rights and duties that humans have towards wildlife and the habitats on which they depend
2. of identifying remedial and enforcement frameworks for breaches of duties owed to wildlife
3. of regulating human relationships with and use of wildlife and for specifying those activities harmful to wildlife which society deems are unacceptable
4. through which existing legal doctrines can be applied to human interactions with animals
5. of punishing transgressions against animals and for reviewing legal protection for wildlife in light of our evolving understanding of the consequences of human actions which harm the environment

All of the above are already codified in environmental law, albeit often within the context of wider environmental protection principles incorporating wildlife protection. For example, the 1972 Declaration of the United Nations Conference on the Environment states:

> Principle 1
> Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.
>
> Principle 2
> The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.
>
> Principle 3
> The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.
>
> Principle 4
> Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled

> by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

Taken together, these principles identify a need not just to consider actions that harm the wider environment but also to consider how to remediate human activity which impacts negatively on wildlife. Thus human actions which cause harm to wildlife, whether through neglect, cruelty, excessive exploitation or as a consequence of economic development, should be avoided. By inference, active, criminal wildlife harm should be discouraged, prevented and punished. Achieving this may require imposition of positive obligations towards wildlife such that excessively harmful action attracts sanctions. It may also require legislative mechanisms which seek to mediate where conflict exists between human economic interests and perceived wildlife interests and to provide redress for wildlife harm. Attention to environmental problems has thus become an issue for international law much of which is in the form of 'hard' law, binding agreements between states usually in the form of treaties or conventions (Skjærseth, 2010). However, Stallworthy argues that 'environmental treaties tend to be thin on commitments, and especially as to control and enforcement' (2008: 10). Instead, enforcement is largely a matter of national law (see Chapters 3 and 4) which is often dependent on a range of social and political considerations that dictate the effectiveness of such laws and the extent to which environmental law becomes either a regulatory or criminal justice issue. White identifies that different philosophical conceptions can be at play in environmental law as follows:

> The anthropocentric perspective emphasizes the biological, mental and moral superiority of *humans* over other living and non-living entities. Biocentricism views humans as simply 'another species' to be attributed the same moral worth as such organisms as, for example, whales, wolves and birds. Ecocentrism, refuses to place humanity either above or below the rest of nature.
>
> (2008: 11)

As White observes, each of these philosophies considers the relationship between humans and nature in a different way and this is reflected in different approaches to wildlife law and wildlife crime. Some policy and enforcement approaches prioritise human interests (anthropocentric), others seek to adopt a conservationist or sustainable approach

(biocentric), while some others seek to balance conflicting human and wildlife interests (ecocentric). Despite the fact that the criminological focus of much wildlife law enforcement and social policy is on the detection, apprehension and punishment of wildlife offenders (Knepper, 2007), the intent and content of the law may be that of sustainable (continued) exploitation of wildlife, natural resources conservation or regulation or conflict management allied to criminalisation. Thus while criminal sanctions may be the default position for serious wildlife harm that are unlawful, requiring the highest social sanction, it is only part of the wildlife protection toolkit. The lack of a uniform approach to wildlife law across different jurisdictions is also a factor in its implementation (discussed later in this book). State sovereignty allows for the focus of wildlife law to be interpreted within a national context culturally determined by the primacy of anthropocentric, biocentric or ecocentric views as policymaking drivers. Accordingly, national wildlife law applies its own standards and perspectives such that wildlife is protected in different ways, and at different times in different states.

Wildlife law: a green criminological perspective

White (2013b: 25) identifies differences within green criminology on the distinction between 'harm' and 'crime', partly linked to debates around legal/illegal. But there are also divides around conflicting perspectives on victimisation and 'varying conceptions of justice'. Green criminology incorporates scientific and academic study concerned not solely with mainstream 'cops and robbers' crimes of interpersonal violence and individuality but also wider concerns about harms to a global nature and which have long-lasting consequences for human and non-human animals and the biosphere. White identifies green (eco-global) criminology as a discipline requiring transnational and comparative research to identify differences and commonalities between nation-states 'whether related to pollution wildlife or other issues' (2012: 25). Wildlife crime is a legitimate field of study for green criminology in part not only because of the widespread nature of criminal activities that victimize animals but also because of growing evidence of the links between animal crimes and crimes directed at humans (Linzey, 2009a). Green criminology's analysis of animal crimes allows for study of man's relationship with nature (Benton, 1998) and of how varied conceptions of power operate in human–animal relationships (Walters et al., 2013). Particularly in the case of wild animals, removed from human dependence but significantly affected by human activity, green criminology

provides a means through which the notion of *universal* justice can be explored.

White identifies green criminology as encompassing a need for criminology to take environmental crimes seriously but also to 'incorporate wider conceptions of crime than that provided in strictly legal definitions' (2013b: 19). This extends beyond criminal prosecution as a default response to offences and includes the use of civil sanctions and alternatives to criminal justice as applied to wildlife (Vincent, 2014). In this context White's (2008, 2013a) analysis of different justice conceptions is worth outlining:

> *Environmental Justice* – is concerned with providing for environmental rights and equitable access to natural resources. Environmental justice is also concerned with the impacts of social practices on environments and in some conceptions specifically considers how communities of colour and vulnerable groups are disproportionately affected by environmental harms (Schlosberg, 2009). Environmental justice is concerned with equity for both present and future generations and the use of environmental rights linked to human or social rights as a means of enhancing the quality of human life.
>
> *Ecological Justice* – is concerned with human beings as part of complex ecosystems and argues that ecosystems should be preserved in their own right, requiring a conception of justice that considers nature as deserving of rights. Ecological justice is concerned with notions of environmental harm and the intrinsic value of nature and can be applied to the role of justice systems in addressing environmental harms.
>
> *Species Justice* – is concerned with the well-being of species, but also with that of individual animals which should be protected from harm. Species justice is often linked with animal rights and the notion of speciesism (discrimination against non-human animals such as wildlife on the grounds that they are inferior) but also provides a framework through which criminal justice policy and practices can be applied to non-human animals and wildlife protection can be implemented through justice systems.
>
> (2008: 15–21)

These conceptions require the deployment of both broad and narrow conceptions of 'policing' wildlife which this book seeks to develop.

Wildlife law is clearly concerned with species justice and the development of legal mechanisms to provide protection and punish harm and is also linked to environmental justice given that wildlife is, in some circumstances, a natural resource of some importance. Law is also a social construction adapting to its social contexts, and an overlap exists between legal and moral standards such that law might be described as 'the legal enforcement of morality' (Bix, 2009: 165). Wildlife law, and specifically its use as criminal law to enforce societal standards which embody positive attitudes towards wildlife, reflects a need for legal systems to adapt to increased threats to biodiversity and harms caused to *all* species. John Stuart Mill's original conception of *coercive* power exercised through law was that 'the only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others' (Mill, 1993: 12). Constitutional scholar A. V. Dicey argued that (in England) 'no man can be made to suffer punishment or to pay damages for any conduct not definitely forbidden by law' (1982: *lv*). Dicey's conception, originally published in 1885, situated law within a notion of the accepted rules of society, arguing that public law as enforced by the state largely reflected a consensus on those human behaviours that should be regulated and criminalised. Mill's conception reflects the same approach but his notion of 'harm to others' is anthropocentric, primarily aimed at human 'others'; exhibiting a narrow conception of harm. Bix (2009) identifies that the notion of legal enforcement of morality has changed as societal conceptions of morality have changed. Thus, while historically this concept of social morality may have been primarily directed at issues such as homosexuality, surrogate motherhood, pornography and sadomasochism (Bix, 2009: 167), it can now apply to ideas of animal cruelty, animal welfare, illegal poaching, killing of wildlife for horn, skins and internal organs, reflecting a contemporary notion that 'it is the task of the Government to establish a framework in which animals are treated humanely' (Banner cited in Radford, 2001: 4). Beyond considerations of animal welfare which normally accompany discussions of animal law policies and species justice discourse, the framework of animal law also needs to consider the policing of such law. This is consistent with green criminology's conception of a justice system applying to both humans and animals and for that system to evolve commensurate with the threats to other species and changes in criminality (Linzey, 2009a; Nurse, 2011). Thus contemporary wildlife policing requirements differ from those of ten, twenty or thirty years ago and, as Chapters 3 and 4 identify, one problematic conception is that much wildlife law is historic

(e.g. CITES and the US Endangered Species Act date from the 1970s while the International Whaling Convention dates back to the 1940s). Laws that were set up, for example, to deal with small-scale illegal trading in wildlife in the 1970s may not have created the required law enforcement framework to deal with such things as a global illegal trade in wildlife linked with organised criminal groups (Lowther et al., 2002; Wyler and Sheikh, 2013) or the emergence of militarized poaching (Vira and Ewing, 2014).

Wyatt et al. identify conceptions of power, justice and harm as integral to green criminological discourse, although they note that 'power is not a discrete category of exploration within green criminology' (2013: 3). Instead, power is closely linked with notions of justice, harm and injustice, and the manner in which society constructs notions of who should receive or is seen to be deserving of justice, who can be perceived to be a victim and which acts or omissions are deemed sufficiently harmful within society to warrant definition as crimes. Benton argues that our conception of human well-being 'has to be expanded to include the environmental, as well as the social and cultural 'embedding' of each person' (1998: 164). This includes a notion of accepting accountability for human actions which impact on other species while also accepting that non-human species, unable to protect themselves from the negative impacts of human behaviour, rely on humans to provide that protection. Where conflicts exist between human and wildlife interests, often only through law, and a combination of wildlife and other criminal laws can harmful human impacts be addressed. Thus, coercive power in the form of 'hard' law, statutes specifying unacceptable practices against animals, becomes necessary and reflects a green criminological notion of species justice (Benton, 1998; Beirne and South, 2007; White, 2008). However, Wyatt et al. also identify that 'justice is not confined to situations where the law is properly adhered to or administered: justice is achieved when the rights of the people the environment and … the rights of other species have been upheld' (2013: 4). In this context 'soft laws', such as the Stockholm Declaration referred to earlier, are important aspects of what Wyatt et al. term 'ambassadorial power' (2013: 3) the process of persuasion and co-operation which provides for a consensus on developing new forms of justice and normative legal values which include recognition for wildlife protection within justice systems. Green criminology also considers the moral dimension of harms against animals that are legal but which should be made illegal. Within this aspect of species justice discourse debates about animal rights and legal protection for animals often dominate

(Singer, 1975; Wolch, 1998; Wise, 2000; Cavalieri, 2001), but wildlife protection discourse also considers human–animal power relationships and how the activities of animal activists and NGOs have become the subject of criminological enquiry.

Undoubtedly, wildlife crime is a green criminological issue reflecting not only failures in law but also debates concerning how laws can best be enforced and the varied nature of criminality impacting negatively on wildlife (Nurse, 2011). While research and analysis of wildlife trafficking dominates green criminology's discussion of wildlife crimes, other issues are explored in this book's discussion of wildlife crime as a green criminological issue. Hagstedt and Korsell, for example, have discussed how supporters of biodiversity and endangered species conservationists may be in conflict with the social, cultural and economic interests of hunters (2012: 210), indicating that a significant number of large carnivores are killed each year by unlawful hunting. Illegal killing of wildlife is not a new phenomenon, but is one often ignored by mainstream criminal justice agencies and killing for non-trafficking purposes is a widespread issue of concern in a number of countries (Essen et al., 2014). In practice, while the need for improved standards of animal protection legislation has generally been adopted at least by western legislators, criminal justice systems often fail to afford priority to effective enforcement of wildlife legislation. Instead this becomes the responsibility of NGOs or civil justice agencies, or at least a secondary concern of policing agencies, thus the level of enforcement is heavily dependent on NGOs ideological concerns and availability of resources (Nurse, 2013a). Dybing (2012) identifies the need for arousing public consciousness about harmful environmental activities because even where the state has a range of environmental enforcement tools available, public engagement is a vital tool in changing attitudes towards compliance. Without public engagement, the social destruction caused by environmental harm will continue, especially where corporate profit motives encourage this and weak regulation allows corporate environmental criminality to continue.

Defining wildlife crime

According to a strict legal definition, a wildlife crime is an offence that involves 'wildlife' (wild flora and fauna) and constitutes a breach of legislation (national or international). Wildlife crime also involves an act subject to a sanction intended to attract moral-social stigma and punish the offending behaviour (Mann, 1992). Interpol defines wildlife crime

as 'the illegal exploitation of the world's wild flora and fauna' (2014), although this definition is primarily based around wildlife crime conceptualised as wildlife trafficking, illegal exploitation and trade. While the Interpol definition is useful in defining wildlife as both flora *and* fauna, it is important to consider wildlife crime as extending beyond trafficking and the conception of economic trade in wildlife to conceptualise wildlife crime as incorporating other activities. Wildlife (including plants and trees) is harmed and exploited in a variety of ways which include disturbance, harm, killing, removal from the wild, possession, sale or exploitation (Nurse, 2012, 2013a and 2013c) and deforestation and other destruction of habitat (Lynch and Stretesky, 2014). Neither all activities are carried out for economic purposes (Nurse, 2011) nor all actions have a victim recognised by the law, noting that at present, animals generally do not have legal personhood that would confer crime 'victim' status (Kean 1998; Wise, 2000; Regan, 2004; Hall, 2014).

According to the strict legalist perspective, crime is defined as an act (or failure to act) that is proscribed by statute or by the common law as a public wrong (i.e. something injurious to the welfare of society) and so is punishable by the state (Situ and Emmons, 2000: 2). Criminals are those who offend against the public sensibility; thus intent is a central factor in defining crime and its criminal justice system response (Padfield, 2008). Radford 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, sentencers 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,* that is, 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 reus 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 reus* and *mens rea* must exist together (Padfield, 2008; Ryan, 1998). *Mens rea* (effectively 'guilty mind') is often indicated in legislation by terms such as 'intentionally' or 'recklessly', common terms in wildlife law, unless it is a crime of strict liability where the offender's intent may not be an issue.

(Many environmental offences are, in fact, strict liability offences.) 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 difficulties exist in proving *mens rea* in wildlife crime cases, particularly in respect of offences committed in remote areas where the presence of wildlife may not be obvious. 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 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 UK's Wildlife and Countryside Act 1981, for example, historically an offence existed 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.[1]

It should be noted, however, that some wildlife crimes are offences of strict liability that do not require the condition of *mens rea*. The US Migratory Bird Treaty Act (16 U.S.C. 703–712), a criminal statute enacted in 1918 (subsequently amended) makes it a crime to 'take' protected birds as identified by the Act. 'Take' is at best loosely defined if not undefined by the Act, but in its implementation rules it includes similar provisions to the UK's Wildlife and Countryside Act 1981, defining 'take' as conduct in which an individual 'pursues, hunts, wounds, kills, traps, captures of collects' protected birds. The law has been consistently interpreted to view violations as strict liability crimes. For example, in *United States v Apollo Energies Inc.*, 611 F3d 679 (CA 10, 2010), the court, reviewing the conviction of two Kansas oil companies in whose oil field equipment protected migratory birds had been trapped, noted the MBTA as a strict liability statute, accordingly the Government was

not obliged to establish criminal intent in order to prove the offence. Similar provisions exist in the UK's Wildlife and Countryside Act 1981 where possession of a wild bird's egg is a strict liability offence. In practice this means a person possessing wild birds' eggs (the taking of which has been unlawful since the introduction of the Protection of Birds Act 1954) commits an offence invoking a reverse burden of proof where they must disprove the commission of the crime (see *Kirkland v Robinson, (1987) 151 JP 377* the word 'intentionally' is omitted from the offence and a specific defence is provided within the law). The prosecution's onus is largely to prove the act (possession) took place rather than to prove intent to commit a crime or the actual taking of the eggs (an offence under Section 1(1)(c) of the Wildlife and Countryside Act 1981). Such laws usually provide for defences; in *Apollo Energies*, for example, a question before the court was whether the notice of the bird's presence impacted on liability. One defendant had received (government) notice that birds were being found in their equipment but failed to act to prevent this. The other defendant had not been notified and this lack of notice invalidated his conviction under the MBTA. Wildlife crime is, therefore, a combination of wildlife, relevant wildlife law and the actions of the offender who commits the offence, although further brief exploration of these terms is required.

Definition of wildlife

Wyatt (2013: 2) defines wildlife as 'taken to comprise all non-human animals and plants that are not companion or domesticated animals', including all plants and trees but also zoo animals and those that are being farmed but which are not yet domesticated. This useful definition accords with green criminology's species justice perspective (Benton, 1998; White, 2008) but illustrates some of the difficulty inherent in definitional discourse. Legislation often defines 'wildlife' differently, sometimes explicitly excluding animals reduced into captivity which then become property irrespective of whether they are not fully domesticated. The UK's Wildlife and Countryside Act 1981, for example, defines wildlife as: any wild bird of a species which is ordinarily resident in or is a visitor to the European territory of an EU member state, and any wild animal as an animal of a kind which was 'living wild' (Section 27 of the Act). The definition specifically excludes poultry, and game birds, and wild plants are separately defined as 'any plant which is or (before it was picked, uprooted or destroyed) was growing wild and is of a kind which ordinarily grows in Great Britain in a wild state'. Conceptually, the definition of wildlife constructed by UK legislation

is of wild birds, animals and plants naturally occurring or visiting the wild and not propagated by humans, contrasting slightly with Wyatt's definition. However, other conceptions include game species in wildlife definitions, such as the US Lacey Act (16 U.S.C. 3371–3378) which contains a more expansive definition of wildlife incorporating 'any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusc, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof' (Section 3371). This arguably encompasses game species living in the wild (Eliason, 2003, 2004), animals which might be classed as livestock and other animals of a non-domesticated species and semi-wild animals not caught within the UK's definition. Wildlife is, therefore, a socially constructed term, although this book's primary focus in discussing wildlife crime is on animals living in a wild state.

Wildlife law

The strict legalist perspective discussed earlier requires a wildlife crime to be actively prohibited by law (discussed further in Chapters 3 and 4) which focuses on protecting animals living in a 'wild state'. This reflects Donaldson and Kymlicka's (2011) conception of 'truly' wild animals meaning 'those animals who avoid humans and human settlement, maintaining a separate and independent existence (insofar as they are able to) in their own shrinking habitats or territories' (2011: 156). In this context wildlife law is primarily about the protection or conservation of wildlife and establishes offences in respect of activities which harm wildlife. Wildlife law need not be specifically named as such, but can be incorporated within environmental harm statutes or regulations which seek to protect wildlife and wildlife habitats. Poaching or game offences are generally not included in wildlife law as these generally constitute property or regulatory offences and sometimes relate to animals or birds specifically reared to be hunted and which are not living in Donaldson and Kymlicka's 'truly wild' state (2013: 156), albeit exceptions exist, for example, the Lacey Act mentioned earlier.

Wildlife offender

A wildlife offender can be an individual who profits or benefits in some way from the wildlife crime, a corporation or organisation that profits from the crime in some way or even a state in breach of its wildlife

protection obligations. 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' (Nurse, 2011, 2013a). Crimes for which there is no offender, such as the incidental and accidental destruction of wild birds' nests during the building of a bypass, would not be considered a crime within this book's discussion of wildlife crime. However, the destruction of such nests by a constructor aware of the birds and who took no action to mitigate the possible destruction, as was the case for one of the *Apollo Energies Inc.* defendants, would constitute wildlife crime.

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

- be something that is proscribed by legislation
- be an act committed against or involving wildlife, that is, wild birds, animals, reptiles, fish, mammals, plants or trees which form part of a country's natural environment or which are visitors in a wild state
- involve an offender (individual, corporate or state) who commits the unlawful act or is otherwise in breach of obligations towards wildlife.

This definition of wildlife crime incorporates unauthorised acts or omissions that violate wildlife law and are subject to official sanction. For the most part, sanctions are defined via the criminal law, but this is not always the case. Hall identifies that 'criminal justice processes tend to be designed to fit the problem of individual (non-corporate) offenders and singular/small groups of their human victims' (2014: 100). However, while much wildlife crime is individualistic, corporations and organised crime are significant actors in wildlife crime and breaches of wildlife law by states also occur. Much environmental regulation aimed at addressing the actions of corporate actors adopts a regulatory approach using civil or administrative sanctions (discussed further in later chapters) For the purposes of discussing wildlife law enforcement, wildlife crimes should also consider regulatory offences; breaches of the law which may not attract a punitive criminal sanction but which nevertheless attract some sanction or enforcement activity.

Wildlife crime as defined by legislation

Goodey et al. 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 environment-based legislation as 'environmental' or 'natural resource' 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). Such legislation is characterised by measures designed to protect individual species of wildlife and to prevent their unauthorised killing and taking from the wild, notwithstanding that much animal killing is lawful when state sanctioned (Nurse, 2013a). This is also reflected in Governmental responsibility for wildlife legislation which frequently falls within the remit of environment or natural resources/conservation departments rather than being a core responsibility of justice or policing branches of Government. Wildlife law is, however, often fragmentary, so that a comprehensive understanding of the nature of wildlife crime within a particular jurisdiction may require considerable legislative research. For example, on the launch of its new Wildlife Crime Intelligence Unit (now the National Wildlife Crime 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* (EUWTR), which deal with imports and exports of wildlife and wildlife trade products to and from the EU, as well as trade within the EU and both between and within individual Member States. In addition, 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 across jurisdictions, wildlife crime is not covered by compartmentalised wildlife legislation but instead is covered by multiple legislative measures, some purely domestic and others intended to implement international law. Some legislation is species specific (e.g. the UK has specific badgers, deer and bird legislation, the US has specific legislation relating to sharks and bald and golden eagles etc.), while other pieces of legislation seek to offer a range of protection for different animals listed within the legislation (e.g. the US Endangered Species Act 1973 and Marine Mammal Protection Act (MMPA), the UK's Wildlife and Countryside Act 1981). Wildlife crime might also be caught by customs law and laws covering organised crime. The picture that emerges of wildlife legislation is, therefore, often that of a patchwork of disparate legislation, which can be confusing for both members of the public, legislators and practitioners involved in legislative enforcement. Penalties are also not uniform across legislation with different (usually higher) levels of protection provided for endangered or threatened species and inconsistency of penalties in respect of others. Diversity in available penalties also 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 in the following text and indicate the varied nature of wildlife criminality.

Wildlife offences

Following on from definitions of 'wildlife', 'wildlife law' and 'offender', consideration of the nature of wildlife offences is integral to defining wildlife crime. Wildlife crime discourse is dominated by discussions of wildlife trafficking (Holden, 1998; Roberts et al., 2001; South and Wyatt, 2011; Wyatt, 2013) to the extent that some definitions of wildlife crime suggest wildlife trafficking and trade in endangered species as being the only wildlife crimes. Undoubtedly wildlife trafficking is significant in the context of eco-global crimes which transcend national borders and represent a significant threat to the integrity of global wildlife populations (White, 2012; Nurse, 2013a). However beyond trafficking, wildlife crime encompasses a range of different offences involving

a diverse range of species including badgers, birds, seals, small and large mammals, fish, plants and trees. Wildlife crime also incorporates considerable diversity in criminal behaviour and types of criminal act (Nurse, 2011; Wyatt, 2013) analogous to mainstream crimes. Analysis of the behaviours involved in animal crimes (Nurse, 2013a) categorises wildlife crime as one of 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 of 'stolen' goods
- Deception
- Fraud and forgery
- Criminal damage (of protected sites)
- Firearms related offences

A number of these offence types would normally be included in justice department statistics when they are committed against human subjects. For example, the killing or wounding a person would be recorded by police and justice departments as *Violence against the Person* or equivalent umbrella term used for a wide range of violent activity. In an UK context 'violence spans minor assaults, such as pushing and shoving that result in no physical harm through to serious assault and murder' (Office for National Statistics, 2013: 1). However, the killing or wounding of a wild bird, animal or mammal, though violent and prohibited by law, would not be considered within the advent of the official crime statistics as 'violence' given the lack of a human victim. Sollund (2008) identifies such discrepancy as *speciesism*, reflecting the construction of animals as 'others' and which emphasises the difference between humans and animals. The lack of statutory recording of wildlife crimes according to human crime classifications reflects both anthropocentric notions of what constitutes crime and ideological conceptions on the realities and importance of wildlife crime. Where wildlife crimes are recorded the process of lumping animal crimes together as a homogenous category, rather than reflecting the diversity of wildlife offences, limits understanding of the true nature of animal crimes and masks the reality of crime levels and characteristics within society. Wildlife crimes,

many of which contain violent elements, include a range of activities falling within the following broad categories:

- Damage or destruction (to include deforestation)
- Killing, taking or possessing a wild bird
- Killing taking or possessing a wild animal or mammal
- Trade in wildlife (alive or dead) including plants and trees
- Trade in endangered species
- Taking or possession of wild birds' eggs

The specific nature or wildlife offences are usually contained within legislation, frequently within the form of wording which outlines prohibited activities. Bird protection legislation, for example, generally makes it an offence to kill, take or injure a protected wild bird. The UK's Wildlife and Countryside Act 1981, for example, provides basic protection for all wild birds (according to the definition of wildlife discussed earlier in this chapter). Accordingly it is an offence to kill, injure or take a wild bird or to damage its nest or eggs or to disturb a wild bird during the breeding season. Similar provisions exist across the 28 EU Member States as a result of the EC Birds Directive 1979 which aims to protect wild birds across the EU. Such protectionist provisions are replicated across a range of jurisdictions. The US Migratory Birds Treaty Act, for example, makes it an offence to 'take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird'. The prohibition on 'taking' can be construed to include killing, illustrating that the law need not expressly specify this as a prohibited activity but may encompass killing within broader conceptions on wild bird protection. Species-specific wild bird protection legislation is sometimes enacted such as the (US) Bald and Golden Eagle Protection Act (16 U.S.C. 668a) which prohibits any form of possession or taking of both bald and golden eagles and imposes criminal and civil sanctions as well as an enhanced penalty provision for subsequent offenses.

Wild animal or mammal protection, including large carnivores such as wolves and lynx is also embedded in wildlife laws again with the general presumption that wild animals are protected and should not be killed or taken except in circumstances where they are in conflict with humans or are classed as game species (Essen et al., 2014). Illegal hunting and the unlawful taking of wildlife or wildlife resources (Eliason, 2003; McSkimming and Berg, 2008) constitute a form of theft which may incorporate cruelty as well as disturbance and unlawful killing. For

game species, wildlife laws usually specify permissible methods of killing (e.g. shooting, trapping) and may be constructed so as to exempt legitimate sport shooting or hunting activities while outlawing 'casual' killing and methods of taking or killing considered cruel. Thus, in the UK, the shooting of foxes classed as 'pests' would be lawful, whereas the Hunting Act 2004 makes it unlawful to chase foxes with dogs, specifically aiming to outlaw and activity considered to be cruel and socially unacceptable (Brymer, 1991; Burns et al., 2000; Cooper, 2009). In the US, wolves are generally protected under the aegis of the Endangered Species Act 1973, yet wolf killing is allowed in some areas such as the Western Great Lakes where grey wolves have been removed from the protection of the Endangered Species Act and are susceptible to killing by humans (Anderson, 2004; Cohn, 2011). Wild animal predation by humans and unlawful killing is, however, a significant area of wildlife crime. The UK's Badger Trust, an NGO concerned with badger protection, identifies that thousands of badgers are killed illegally each year in the UK via badger baiting, snaring, lamping, shooting, poisoning and badger digging and baiting (Nurse, 2013a). An estimate of 9,000 badgers killed each year from digging and baiting is provided by the Badger Trust (2014) despite protection for badgers and their setts being provided by the Protection of Badgers Act 1992. Marine mammals, usually protected from over-exploitation by wildlife laws are also the subject of wildlife crime. The US MMPA protects marine mammal species and their habitats and contains prohibitions on taking marine mammals, providing civil and criminal penalties for marine mammal offences. Similar provisions exist in UK legislation where problems were experienced in respect of measures protecting seals under the Conservation of Seals Act 1970, legislation which theoretically protected both common species of seal native to UK waters but which in practice contained exemptions which allowed 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 poor monitoring of the Act's provisions, conservation bodies outlined difficulties in distinguishing between legal and illegal killing; the perception being that much killing is illegal, albeit proving culpability in offences is problematic. Environmental Concern Orkney, in a letter to *The Orcadian* newspaper (24 October 2002) highlighted the type of incident that was 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)

The Conservation of Seals Act 1970 was replaced in Scotland by the Marine (Scotland) Act 2010 which increased protection for seals by making it an offence to kill or take any seal at any time, except under specific licence or for reasons of animal welfare. However, as the above indicates, licences to kill seals are granted to fisheries by the Scottish Office. Figures as of 31 January 2014 show that a total of 56 applications for seal licences were requested between 2011 and 2014 and 53 licences were granted, this translates into a maximum number of 765 grey and 240 common seals which can be shot (Marine Scotland, 2014). As this discussion outlines, some wildlife 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 direct financial benefit is not 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 arguably cockfighting, 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 (Saunders, 2001; Eliason, 2003). 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 (South and Wyatt, 2011; Nurse, 2013a).

Finally wildlife trafficking makes up a significant category of wildlife crime (in both volume and economic value) and is a specific offense type incorporating a range of offences including taking, illegal transport, possession, fraud, illegal sale and cruelty. Wildlife trade is the subject of international law (discussed further in Chapter 3); CITES prohibits the trade in endangered species of wildlife with further protection or regulation offered by the International Whaling Convention and the Convention on the Conservation of Migratory Species of Wild Animals (1979). Wildlife trafficking is also a national wildlife crime issue occurring at state level and prohibited by domestic legislation which prevents the taking and sale of wildlife. However, a legal trade in animals exists for the pet and collector market making it difficult to easily distinguish between legal and illegal activity. In some jurisdictions the onus rests on an individual selling a live bird or animal to show that the sale is lawful, often by demonstrating that the bird or animal was captive-bred or was otherwise in accordance with the law. Trade in animals is often regulated either via pet licensing schemes or in the case of zoos, circuses, falconry centres and wildlife or safari parks, by means of import-export controls and permit schemes specifying the number and source of animals in trade and conditions under which they can be transported. The exact extent of the illegal trade in both domestic species and endangered species is difficult to quantify as problems naturally exist in defining the precise scale of any illegal activity which occurs outside of monitoring mechanisms. In respect of wildlife, much offending activity occurs in remote areas divorced from official scrutiny; thus estimates of wildlife crime generally acknowledge a 'dark figure' of unknown crime (Skogan, 1977) and what little data exists on wildlife crime levels likely represents only a partial understanding of the true levels of crime.

The extent of wildlife crime

As noted earlier in this chapter, the extent of wildlife crime is difficult to establish both globally and nationally. Problems of definition and in varied recording practices are factors; many wildlife offences are excluded from official crime statistics produced by justice departments. In the UK, for example, police forces have historically not been required to record wildlife crime leading to some inconsistency and reliability issues. Where wildlife crime figures were produced they were included within 'other indictable offences' making direct analysis of wildlife crime levels problematic (Conway, 1999; Roberts et al., 2001; Nurse, 2003). Recordable wildlife crime may variously be categorised

as 'poaching', 'natural resource crime', 'environmental crime', 'animal crime' or within more mainstream crime categories, for example, indictable offences, customs and revenue offences. The unreliability of official figures is partially negated by wildlife crime figures produced individually by those environmental NGOs that are directly involved in monitoring wildlife crime. At a global level, TRAFFIC International and the World Wide Fund for Nature (WWF) produce figures relating to the value of the wildlife trade (both legal and illegal) which vary in size and scale between US$10 billion and US$20 billion, although the figure of US$10 billion has gained common currency even then some clarification of the figure is required (Aldred, 2013; Wyatt, 2013; Davies, 2014). Myburg (2011) suggested that the illegal (unreported and unregulated) fisheries trade alone was valued at between US$4.2 billion and US$9.5 billion per year, the illegal timber trade was worth as much as US$7 billion per year, and other illicit wildlife trafficking (excluding fisheries and timber) was worth between US$7.8 billion and US$10 billion per year. Estimates of the illegal trade in wildlife are usually based on figures from the CITES Secretariat on numbers of wildlife in trade (e.g. permits issued) and estimates of the illegal trade based on seizures (Wyatt, 2013: 7). These figures represent *known* levels of activity and, as with any other illegal activity should be considered to be estimates only. At a national level, bodies such as the Royal Society for the Protection of Birds (RSPB) produce annual figures on bird crime in the UK with National Audobon (US) and other country equivalents producing their own estimates. Animal welfare bodies such as the Royal Society for the Prevention of Cruelty to Animals (RSPCA, both UK and Australian) and their country equivalents produce data on animal welfare offences which can include wildlife crimes. Other bodies such as World Animal Protection (formerly the World Society for the Protection of Animals), the League Against Cruel Sports (UK) and Defenders of Wildlife (US) will monitor and produce statistics on illegal animal killing and certain other crimes which involve harm to protected wildlife. Conservation bodies monitoring threats to protected species will also produce figures on unlawful animal killing such as illegal hunting and killing of monitored species (Essen et al., 2014).

The range of organisations involved in compiling various wildlife crime figures means that producing a comprehensive analysis of the extent and nature of wildlife crime is beyond the scope of this book and would represent a significant project in its own right. However, it is not possible to produce complete figures on wildlife crime by simply combining all of the figures produced by NGOs and monitoring bodies.

The exact position regarding the recording of wildlife crime is complex and the impression given of wildlife crime can be distorted by a number of factors which this section dicusses. Lea and Young in their classic text *What Should be Done about Law Order* (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:

> [D]oes 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; Padfield notes that 'the public's reporting of crime varies by offence' (2008: 2). In some jurisdictions much reporting of wildlife crime by the public is direct to NGOs perceived as involved in enforcement and monitoring and not to policing agencies. Factors influencing reporting include the high profile of some organisations in the 'fight' against wildlife crime, for example, the high visibility of the RSPCA's uniformed inspectorate, ASPCA officers and other NGOs who have achieved high visibility due to extensive media coverage (see, for example, programmes such as Animal Hospital, the documentary RSPCA Animal Rescue, Whale Wars which chronicles the work of the Sea Shepherd Conservation Society and other specialist 'animal cops' programmes). A second factor is public perception of wildlife crime and the role of the police in its

involvement. Media interest in policing and criminal justice predominantly focuses on public order issues such as anti-social behaviour, riots and policing of public protests and 'serious crime' priorities such as murder, rape, and even terrorism (Newburn, 2004; Joyce, 2010). 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 and Young, 1993: 89). This continues to be the case with public perception of wildlife crime possibly being something which falls outside their expectations of mainstream policing. In developing countries, corruption issues may also mean that NGOs are trusted by the public and will receive information on wildlife crime, whereas state policing and conservation agencies are treated with mistrust (Garnett et al., 2011; Gore et al., 2013) accordingly public reporting of wildlife crime often bypasses state agencies, leading to under-representation of wildlife crime in official figures.

By contrast, NGOs like the ASPCA, RSPB, RSPCA, Defenders of Wildlife, Humane Society, League against Cruel Sports, and World Wildlife Fund have expended much effort on publicity to ensure that the public is aware that animal crime and specific aspects of wildlife crime are major priorities. 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's involvement in preventing 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 and others to report crimes 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 wildlife crime investigation and their policy development. Such reporting, however, distorts the picture of wildlife crime somewhat as NGO publication of wildlife crime figures is naturally tailored to suit ideological, campaigning and policy needs. Thus reporting may reflect a species-specific conservationist message (e.g. number of wolves, birds, etc. illegally killed), a broad campaigning message (worsening levels of crime or inadequacies of legislation) or an ideological position (moral wrong of animal harm, demonisation of hunters or other deviant grouos) commensurate with the NGOs ideological stance as campaigning, policing or lobbying organisation (Nurse, 2013b). Arguably it is generally in the interests of individual NGOs to produce figures that show a worsening picture of wildlife crime given that many NGOs are also charitable organisations reliant on voluntary

public donations in order to achieve wildlife protection priorities. While this is not to suggest any impropriety in reporting of figures, a charity painting too optimistic a picture of wildlife crime is likely to deprive itself of much needed funds and risk presenting a public message of wildlife crime as under control, discouraging further reporting or support for policy initiatives. Thus charity statistics are sometimes presented in a manner which maximises the level of wildlife crime, for example, reported rather than actual crimes, number of defendants or individual charges rather than number of crimes (Nurse, 2012).

However, evidence from across the wildlife crime spectrum consistently shows wildlife crime as being under-reported. Conway (1999) discussing wildlife crime in Scotland concluded that police differentiation between incidents reported to them and those they actually accept as crimes meant that police discretion in rural areas and the distinction in the way that wildlife crimes were classified meant that wildlife crime was not being reported accurately. Further complicating the distinction in wildlife crime is the manner in which wildlife crimes may be counted with other crimes. The UKs RSPCA, for example, releases annual figures on animal cruelty which show that in 2013 the charity investigated 153,770 cruelty complaints and secured 3,961 convictions for cruelty offences in England and Wales, while the charity received over a million and a quarter (1,327,849) phone calls about cruelty issues (RSPCA, 2014). Similar figures on numbers of calls received and levels of animal crime are produced by equivalent animal welfare bodies such as the RSPCA Australia, ASPCA (US) and Humane Society. Some of these incidents will fit within the definition of wildlife crime as cruelty towards wildlife and some convictions will be for wildlife-specific offences (e.g. badger baiting, badger digging) rather than domestic animal abuses. But detailed analysis of these figures, subject to differences in recording practices and offence definitions is problematic, making collating precise wildlife crime figures from the available animal crime data difficult.

Wildlife trade figures are likely the most reliable wildlife crime figures given the monitoring systems in place by TRAFFIC and the CITES Secretariat, albeit even these likely reflect only a partial assessment of both legal and illegal trade. Wyatt notes that illegal transactions found as part of wildlife trade monitoring are reported to CITES; providing a picture of illegal trade (2013: 9). Seizures of illegal wildlife in trade within monitoring programmes aimed at protecting endangered species give some indication of the levels of illegal activity. Wyler and Sheikh (2013) report that the CITES-sponsored project Monitoring the Illegal Killing of Elephants (MIKE) has observed an increase in elephant poaching since

2006. MIKE concluded that 'an estimated 17,000 elephants (range: 7,800 to 26,000) may have been illegally killed in 2011 at Mike reporting sites in Africa – suggesting that the continental total of illegal killed elephants in 2011 was higher' (Wyler and Skeikh, 2013: 6). Ivory seizure data collected by the Elephant Trade Information System (ETIS) indicates an increase in illegally traded ivory as a result of poaching with TRAFFIC reports suggesting that levels of ivory seized in 2011 represented 2,500 elephants (TRAFFIC, 2011). Figures reported by the United Nations Office on Drugs and Crime (UNODC) put the trade in illegal timber from South-East Asia to the European Union and Asia as worth an estimated $3.5 billion in 2010 and UNODC estimates around $100 million of illicit ivory entering the market each year (UNODC, 2010).

Summary and preliminary conclusions on wildlife crime

This chapter concludes that wildlife crime is a real and ongoing phenomenon which incorporates a range of activities harmful to wildlife. Some harms against wildlife are officially designated as crimes and form part of the criminal law, while others reflect prohibited or regulated activity which nevertheless attract sanctions where breaches of the law occur. The discussion contained within this chapter highlights the difficulties in quantifying level of wildlife crime both nationally and internationally. Wildlife crime is recorded differently across countries (and even between municipalities within countries) and is subject to varied definitions. 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 according to ideological and organisational needs. The intent of some recording is often not to produce criminological detail on levels of wildlife crime as a criminal justice tool but instead serves media and campaigning purposes to elicit further public and financial support for the organisation or to drive calls for legislative changes (Nurse, 2013b). These are legitimate purposes for recording crime levels, as is recording used to assess the conservation status of a species and perceived threats to a species' likely breeding success or survival (Izzo, 2010). For this reason emphasis may be on numbers of birds or animals killed rather than on the number of offences or precise definitions of offences involved. 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 wildlife both domestically and internationally.

This discussion also confirms that wildlife crime remains a problem in relation to its policing. Despite the protection afforded to wildlife by national and international 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 (Eliason, 2004, 2003). The precise level of wildlife crime remains difficult to quantify but evidence exists to substantiate the claims of several NGOs that the numbers of wildlife removed from wild populations each year through unlawful means are significant (Nurse, 2012). From a green criminological perspective, estimated levels of wildlife crime also indicate that species justice concerns have not yet been integrated into justice systems in a manner which provides effective justice for wildlife (Beirne, 2009). Within these preliminary discussions of wildlife crime a disparate picture of wildlife legislation emerges such that a range of different statutes, penalties and enforcement mechanisms seem to exist in respect of wildlife. This raises questions concerning the nature of wildlife law and its effectiveness in providing for wildlife protection both internationally and within domestic legislation. The following two chapters discuss these issues in more detail.

3
International and Regional Wildlife Legislation

Although Chapter 1 notes that this book is not intended as a 'pure' black-letter law text, some discussion of the nature and content of law is necessary in order to understand the legal framework in which wildlife crimes exist and offences are created (Stallworthy, 2008; Hall, 2014). A wide range of international and domestic law protects wildlife or regulates its use, making certain activities harmful to wildlife unlawful. This chapter provides an overview of the key international enforcement regimes and international wildlife protection legislation relevant to wildlife crime. It discusses the ethical and policy perspectives that determine much wildlife legislation and provides an overview of the key international treaties which protect wildlife. The focus of this chapter is on wildlife legislation aimed at preventing wildlife crime and which creates wildlife offences and sanctions for failures in wildlife protection, rather than on broad conservation or habitat treaties. However, as this chapter illustrates, at times this is an artificial distinction much like the definition of 'crime' itself (see Chapter 2).

In discussing animal welfare and general legal protection for animals, Nurse observes that 'there is no binding international treaty for the protection of animals and thus no clear legal standard on animal protection' (2013a: 7). This in part reflects the reality that national legislation (discussed in Chapter 4) remains the primary wildlife protection and wildlife law mechanism and incorporates cultural (and jurisdictional) differences in how animals are viewed by legislators. Thus, animals' status as property still dominates their legal protection such that animal protection and anti-cruelty laws 'take the people who own or use animals as primary objects of moral concern, rather than the animals themselves' (Rollin, 2006: 155–156). Animal laws, whether anti-cruelty, welfare or wildlife law thus provide protection for animals

largely commensurate with human interests (Wise, 2000; Schaffner, 2011; Nurse, 2013a) and are socially constructed to achieve varied ends, which arguably result in only partial protection of wildlife (Nurse, 2011). Humans generally interact less with wildlife than they do with companion animals; however Donaldson and Kymlicka suggest that while 'wild animals avoid humans and are not dependent on us for their daily needs, they are nonetheless vulnerable to human activity' (2011: 156). In practice, companion animals often receive a higher level of protection than wild animals with some legislation imposing a duty of care towards companions animals that is largely absent in respect of wild animals (Nurse and Ryland, 2013). Notwithstanding general recognition that wildlife is significantly impacted upon by human activity and illegal wildlife trafficking is a significant area of criminal activity (Schneider, 2012; Nurse, 2013a; Wyatt, 2013) international wildlife law lags behind other areas of international environmental law.

Yet while general animal protection law is absent from international law discourse, a range of international wildlife law exists, operating as conservation, criminal and trade law where states have agreed a need for international law measures to provide for sustainable use of wildlife. This chapter covers, for example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on the Conservation of Migratory Species, the Convention on the Conservation of European Wildlife and Natural Habitats, the General Agreement on Tariffs and Trade (GATT)/ World Trade Organisation (WTO) wildlife Trade Agreements and the International Convention on Whaling (and the role of the International Whaling Commission (IWC)). Primarily, these are protective measures, which nevertheless allow continued use of wildlife as a resource subject to certain restrictions and regulatory concerns. The purpose of this chapter is to set out the framework of global and regional legislative wildlife protection and to provide the context in which national laws and law enforcement priorities operate.

International wildlife law

International law is broadly a product of cooperation and collective agreement between states and sets out the obligations on states in respect of legal standards. Schaffner (2011) identifies that the primary international law mechanisms are treaties and conventions, signed agreements which, in one sense, reflects areas considered to be of such importance that only a consensus between states can deal with the

subject matter (Skjærseth, 2010). However, in practice international law is a combination of 'hard' law in the form of such written agreements or principles which are directly enforceable by national or international bodies, and 'soft' law which incorporates a range of different measures including codes of conduct, resolutions, agreements commitments and joint statements. There is no 'world court' able to enforce international law (albeit some court mechanisms exist) and it largely remains for states to choose whether or not to agree with the relevant provisions of international law as the International Court of Justice (ICJ) states:

> In international law there are no rules, other than such rules as may be accepted by the State concerned, by treaty or otherwise.
>
> (Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v United States of America*) ICJ Rep 1986, 269) (the Nicaragua Case)

As a result it can be argued that states will comply with international law only to the extent to which doing so serves national interests, accordingly flexibility exists in how states approach their international law obligations. This is especially true of 'soft' international law which is not directly enforceable but which sets out shared standards or aspirations for states, albeit these may be subject to varied interpretations commensurate with state interests. International wildlife law broadly falls within international environmental law, much of which is concerned with 'managing' rather than entirely preventing negative human impact on the environment. For example, White and Heckenberg (2014) identify that in relation to wildlife trade the function of law is to define legal notions of harm and criminality and not to provide for the health and well-being of animals. In this regard, the logic of international wildlife law 'is not simply to protect endangered species because they are endangered; it is to manage these "natural resources" for human use in the most equitable and least damaging manner' (White and Heckenberg, 2014: 133). The principle of 'sustainable use' permeates wildlife law even at the international level thus international wildlife law's aim is often to regulate wildlife use rather than criminalise it. Ruhl (1997) suggests that environmental law discourse is dominated by six principles:

- libertarianism (freedom of contract and markets)
- limited acceptance of regulatory restraint
- a regulatory approach which balances (market) interests with minimising environmental harm

- substantive environmental law through the use of sustainability and precautionary principles
- environmental justice and the sharing of costs and benefits among citizens
- a deep green perspective prioritising ecological over human interests

Ruhl's principles indicate the conflict between market interests (i.e. economically based wildlife exploitation) and conservation and protectionist principles. As this and later chapters illustrate this framework dictates that while the ideal species justice perspective may be a 'deep green' protectionist approach (Shantz, 2012; Ruggiero and South, 2013) which makes *all* wildlife exploitation unlawful, the reality is that wildlife law primarily operates from a sustainable use perspective with a light touch regulatory approach (Felbab-Brown, 2013). The key international law mechanisms protecting wildlife are outlined in the following pages but one criticism of wildlife law which might legitimately be raised is that wildlife protection on paper is more limited in practice.

The Whaling Convention

The text of the 1946 *International Convention for the Regulation of Whaling* (the Whaling Convention) makes it clear that it was intended to 'provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry'.[1] The Whaling Convention thus has trade and exploitation of whale stocks as its basis rather than being purely an international conservation or animal protection measure (Nurse, 2011). In this context the Whaling Convention provides for an economic value to be placed on wildlife and for its regulation as a resource. Species protection concerns relating to the extinction of various species as a result of human interference (White, 2007) and the need to conserve animals that will otherwise be driven to extinction are also partially reflected in the Whaling Convention's provisions. The Convention creates the IWC an international body which reviews measures regulating the conduct of whaling globally. The IWC's activities include providing for the protection of species, setting numbers and size of whale catches and designating specific geographical areas as whale sanctuaries. D'Amato and Chopra (1991) argue that within international law discourse conservation measures undertaken for the protection of the whale industry have now given way to protective measures for whales which arguably reflect a more contemporary conception on the survival rather than exploitation of

whales as a sentient species. The IWC's consideration of the potential conflict between sustainable use of whales and commercial exploitation by the whaling industry led it to impose a moratorium on whaling in 1986. However, the Convention arguably lacks an effective enforcement mechanism given the underlying principle of state sovereignty in international law matters. Thus several states have taken action which arguably negates the moratorium, as discussed in the case study later in this chapter.

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

The primary international law mechanism protecting wildlife from illicit trafficking is the *Convention on International Trade in Endangered Species of wild fauna and flora* (CITES); an important international factor in the implementation of domestic wildlife legislation aimed at protecting endangered species. The international *Convention* regulates the trade in endangered species of wildlife, prohibiting trade harmful to rare or threatened species. The Convention:

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

CITES is required to be implemented by being written into the national legislation of member countries and is implemented across Europe by European Regulations (*European Council Regulation 338/97*) to control trade and movement of CITES listed specimens across the EU. Although CITES is not part of UK wildlife legislation, UK Regulations implement CITES making its provisions applicable to UK law. The European Union (EU), 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 EU as the Panda and the Elephant are given in a global setting. However, CITES does not provide absolute protection for endangered species; Sollund argues that 'CITES can be criticized for legitimating trade and trafficking in animals and for prolonging and encouraging abuse and species decline by regarding non-human species as exploitable resources' (2013: 73).

Convention on the Conservation of Migratory Species of Wild Animals (1979)

The Convention (also known as the Bonn Convention or CMS) is an environmental treaty operating under the United Nations Environment Programme (UNEP). It conserves avian, marine, and terrestrial migratory species throughout their range and protects migratory species, their habitats and their migratory routes. The Convention was originally signed in 1979 and came into force in 1983, bringing together the States through which migratory animals pass, the Range States, and lays the legal foundation for internationally coordinated conservation measures throughout a migratory range. Migratory species threatened with extinction are listed on Appendix I of the Convention, requiring CMS Parties (states) to provide strict protection for these animals, conserving or restoring the places where they live, mitigating obstacles to migration and controlling other factors that might endanger them. Migratory species that need or would significantly benefit from international co-operation are listed in Appendix II of the Convention which provides a framework through which states can enter into regional agreements either through legally binding treaties (called Agreements) or via less formal instruments, such as Memoranda of Understanding. The Convention thus facilitates regional law which provides protection for migratory species facing region-specific threats.

States which are parties to the Convention are required to protect endangered species as follows:

- to provide *immediate* [my emphasis] protection for migratory species included in Appendix I; and
- to conclude Agreements covering the conservation and management of migratory species listed in Appendix II;
- to conserve or restore the habitats of endangered species;
- to prevent, remove, compensate for or minimise the adverse effects of activities or obstacles that impede the migration of the species; and
- to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species.

The basis of regional Agreements is that they should seek to restore or maintain the migratory species concerned via action which covers the whole range of the species concerned. This requires that Agreements should be accessible by all states in a species' range, not just Parties to the Convention. Agreements are also required to include a mechanism

for resolving disputes, although disputes which cannot be resolved by negotiation are subject to arbitration, by the Permanent Court of Arbitration at The Hague, whose decision will be binding on the parties. Agreements should also have a monitoring mechanism and, like other international wildlife protection mechanisms, the Convention is not static and species can be added to or removed from the Appendices to the Convention.

The requirement to 'conserve' migratory species means that states are under an obligation which could result in a state committing wildlife crime (see Chapter 2 for wildlife crime definition) by failure to adequately protect wildlife and/or refraining from its exploitation. Matz argues that the 'rigorous restriction on the taking of endangered species is unusual and the technique to rely on further (regional) agreements for specific species is unprecedented' (2005: 200). Reports that in 2014 Australia was in breach of the Convention (Milman, 2014; Trouwborst, 2014) by allowing the Western Australia shark cull illustrate the restrictive nature of state obligations. The cull, allowed by the Australian Government in order to protect swimmers and surfers would, in theory, be permissible as an 'extraordinary circumstance' under Article III of the Convention, providing an exemption from prohibitions on taking sharks. However, Trouwborst (2014) argues that Australia's shark conservation obligations under the Convention, which are directly aimed at preventing shark killing by humans and which provide a strong presumption against killing protected species for human 'convenience' would seem to nullify arguments that sharks can be killed in these circumstances. In this context, by allowing sharks to be killed via a state sponsored programme, Australia is arguably in breach of its obligations under international law.

The World Charter for Nature

In 1982, the UN General Assembly adopted the World Charter for Nature which contains the following five principles of conservation:

1. Nature shall be respected and its essential processes should be unimpaired.
2. Population levels of wild and domesticated species should be at least sufficient for their survival and habitats should be safeguarded to ensure this.
3. Special protection should be given to the habitats of rare and endangered species and the five principles of conservation should apply to all areas of land and sea.

4. Man's utilisation of land and marine resources should be sustainable and should not endanger the integrity or survival of other species.
5. Nature shall be secured against degradation caused by warfare or other hostile activities.

In principle, the UN Charter provides a mechanism for protecting animals from harm by providing a conservation framework that would prevent wildlife crime through species protection measures. In practice implementation of the Charter relies on national animal protection legislation, although Sections 21–24 of the Charter provide authority for individuals to enforce international conservation laws that could provide animal protection and has been used by NGOs as a basis on which to conduct direct action to prevent animal harm (Roeschke, 2009).

Convention on Biological Diversity (1992)

The Convention on Biological Diversity (the Rio Declaration) was signed by 150 world leaders at the 1992 Rio Earth Summit (at time of writing more than 187 countries have ratified the Convention). The Convention is an international agreement aimed at promoting sustainable use of biological diversity and protecting ecosystems. The Convention has three main goals:

- The conservation of biodiversity,
- Sustainable use of the components of biodiversity, and
- Sharing the benefits arising from the commercial and other utilisation of genetic resources in a fair and equitable way

The Convention as part of international environmental law provides official recognition of biological diversity as 'a common concern of humankind' requiring protection through international law. The agreement between countries enshrined in the Convention covers all ecosystems, species and genetic resources. Legal instruments such as treaties are rarely sufficient on their own (Pirjatanniemi, 2009) and international law instruments often require implementation through national legislation before they become effective. The Convention sets principles for the sharing of benefits arising from genetic resources and links conservation efforts with sustainable use of biological resources; it is legally binding on countries that join it. However, the principle of state sovereignty means that countries may take their own view on what amounts to sustainable use of 'their' national resources commensurate with the Convention's underlying ethos that ecosystems, species and genes must be used for the

benefit of humans. The Convention, as international law that protects ecosystems, identifies that use of resources (including wildlife) should not be done in any manner that leads to the long term decline of biological diversity. It does this on the basis of the precautionary principle, that is, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimise such a threat. Cameron and Abouchar (1991: 2) describe the precautionary principle as a guiding principle which aims 'to encourage-perhaps even oblige-decision makers to consider the likely harmful effects of their activities on the environment before they pursue those activities'. While man's harmful impact on the environment may be inevitable, the precautionary principle within international environmental law aims to manage that harm in a way that brings environmental, economic and social benefits. Principle 7 of the Rio Declaration on Environment and Development 1992 specifies:

> States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have Common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

In requiring governmental action to protect biodiversity, the Convention's provisions include:

- Measures and incentives for the conservation and sustainable use of biological diversity.
- Regulated access to genetic resources.
- Access to and transfer of technology, including biotechnology.
- Technical and scientific cooperation.
- Impact assessment.
- Education and public awareness.
- Provision of financial resources.
- National reporting on efforts to implement treaty commitments.

(Convention on Biological Diversity, 2014)

Stallworthy notes that the Convention retains an emphasis on national sovereignty arguing that 'many aspects regarding conservation are

premised upon what amounts to encouragement of appropriate protection measures' (2008: 11). National Biodiversity Strategies and Action Plans (NBSAPs) are the principal instruments for implementing the Convention at the national level (Article 6). The Convention requires countries to prepare a national biodiversity strategy (or equivalent instrument) and to ensure that this strategy is properly integrated into the planning and activities of agencies whose activities can have an impact (positive and negative) on biodiversity (see case study later in this chapter). This means state bodies should be aware of and should monitor and report on actions carried out in respect of a state's biodiversity obligations, including conservation of species and positive action needed to prevent the illegal taking of wildlife. Article 26 of the Convention states that the objective of national reporting is to provide information on measures taken for the implementation of the Convention and the effectiveness of these measures and state reporting takes place against the background of a (regularly updated) strategic plan agreed on by states at regular meetings known as the Conference of the Parties (COP). The tenth COP meeting for the Biodiversity Convention produced a strategic plan for the period 2011–2020 which requires countries to:

- At least halve and, where feasible, bring close to zero the rate of loss of natural habitats, including forests
- Establish a conservation target of 17% of terrestrial and inland water areas and 10% of marine and coastal areas
- Restore at least 15% of degraded areas through conservation and restoration activities
- Make special efforts to reduce the pressures faced by coral reefs

(Convention on Biological Diversity, 2014)

The nature of the Convention arguably makes a state's failure to protect wildlife a form of state wildlife crime (see Chapter 2 and case study later in this chapter), albeit it must be recognised that breach of the Convention is not enforceable as an international crime (which has a strict definition according to the Rome Statute for the International Criminal Court (ICC) and relevant case law). However, White and Heckenberg (citing Michalowski and Kramer, 2006) provide a definition of state-corporate crime which includes 'illegal or socially injurious actions' resulting from mutually beneficial and reinforcing actions between policies and/or practices of government (and government institutions), and/or policies and practices of economic institutions

(2014: 112). Failure to fully implement Convention obligations may, therefore, be influenced by economic and political considerations which the principle of state sovereignty facilitates.

Regional wildlife law

Wildlife protection is also facilitated through regional wildlife law (both hard and soft) breaches of which constitute wildlife crime. As mentioned earlier, the Bonn Convention provides a mechanism for regional wildlife protection agreements and for understandings between states as to how to protect and conserve wildlife (Matz, 2005). At time of writing seven such regional agreements exist as follows:

- ACAP – the Agreement on the Conservation of Albatrosses and Petrels, a multilateral agreement conserving albatrosses and petrels by coordinating international activity to mitigate known threats to their populations.
- ACCOBAMS – the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area.
- AEWA – the Agreement on the Conservation of African-Eurasian Migratory Waterbirds and their habitats across Africa, Europe, the Middle East, Central Asia, Greenland and the Canadian Archipelago.
- ASCOBANS – the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas.
- EUROBATS – the Agreement on the Conservation of Populations of European Bats
- The Gorilla Agreement – which conserves gorillas and their habitats across all ten range states and provides a legally-binding framework to maintain and restore gorilla populations and habitats.
- Wadden Sea Seals – the Seal Agreement aims to achieve and maintain a favourable conservation status for the harbour seal population in the Wadden Sea.

(UNEP/CMS, 2014)

In addition there are 19 Memoranda of Understanding between states which provide for conservation of various species including Atlantic turtles, birds of prey (raptors) sharks, the Siberian crane and West African elephants. CMS agreements reflect concerns about particular species or the need for conservation efforts in a particular region. The

principle of states needing to coordinate wildlife protection efforts to deal with transnational wildlife threats is also reflected in EU efforts to create a coherent regional wildlife protection regime.

Stallworthy notes that the main driver for environmental protection across the 28 Member States of the EU has been development of policy at a European Community (EC) level which seeks to harmonise environmental protection across all Member States (2008: 85). EC legislation is either directly applicable across all 28 Member States or requires Member States to implement their own legislation in order to give effect to EC legislation (Stallworthy, 2008|). Barnet identifies that 'in addition to creating mutual obligations between Mutual States, EU law also involved the transfer of sovereign rights to the institutions of that system and the creation of rights and duties which are enforceable in their local courts' (2011: 148): This makes the EU a unique constitutional entity with far-reaching powers which, in the areas of environmental protection and criminal action provide a regional framework through which law is developed and enforced. This also includes a means through which action can be taken against states for failure in implementing EU environmental legislation.

As a regional measure, the Treaty on the Functioning of the European Union (TFEU) provides a framework for environmental protection across the EU. Minimum rules exist on penalties for environmental offences in accordance with Article 175 of the Treaty establishing the EC. Member States have to ensure that any act committed intentionally or out of serious negligence which breaches Community rules on protecting the environment is treated as a criminal offence. EU legislation includes provisions prohibiting the following:

- the unauthorised discharge of hydrocarbons, waste oils or sewage sludge into water and the emission of a certain quantity of dangerous substances into the air, soil or water;
- the treatment, transport, storage and elimination of hazardous waste;
- the discharge of waste on or into land or into water, including the improper operation of a landfill site;
- the possession and taking of, or trading in protected wild fauna and flora species;
- the deterioration of a protected habitat;
- trade in ozone-depleting substances.

The EU requires criminal penalties to be effective, proportionate and dissuasive and to apply both to persons convicted of breaching

Community law as well as persons involved in such offences or inciting others to commit them. Serious cases are punishable by imprisonment but EU law also requires Member States make provision for a range of penalties which includes: fines, disqualification from public benefits or aid, temporary or permanent disqualification from exercising business activities, or winding up orders. Specific measures relating to offences of killing, destruction, possession or taking of specimens of protected wild fauna or flora species are contained in Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law. Thus the EU expressly views wildlife crime as a criminal matter to be enforced through the criminal law across its 28 Member States.

The 1979 Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) requires all countries that have signed the Bern Convention to:

- promote national policies for the conservation of wild flora and fauna, and their natural habitats;
- have regard to the conservation of wild flora and fauna in their planning and development policies, and in their measures against pollution;
- promote education and disseminate general information on the need to conserve species of wild flora and fauna and their habitats;
- encourage and co-ordinate research related to the purposes of this Convention.

States must also co-operate to enhance the effectiveness of these measures through:

- co-ordination of efforts to protect migratory species;
- and the exchange of information and the sharing of experience and expertise.

The Convention aims to ensure conservation of wild flora and fauna species and their habitats. Special attention is given to endangered and vulnerable species, including endangered and vulnerable migratory species specified in appendices.

EC wildlife trade regulations

The EU 'constitutes one of the largest and most diverse markets for wildlife and wildlife products in the world' (Ó Críodáin, 2007: 4). Trade

within and across the 28 Member States, thus has the potential to significantly impact on the conservation of threatened species and represents a significant level of unlawful activity. Regulation of wildlife trade at an EU level is a significant feature of EU nature conservation policy which seeks to adopt a harmonised approach to wildlife trade (and its associated wildlife crime) across all EU Member States given the existence of the European Single Market and the absence of systematic border controls within the EU. The EU has attempted this via regional legislation in the form of *Council Regulation (EC) No 338/97* and *Commission Regulation (EC) No 865/2006* (as amended by *Commission Regulation* (EC) No 100/2008), *Commission* Regulation (EU) No 791/2012 and *Commission Implementing Regulation* (EU) No 792/2012) *laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97* (the *Implementing Regulation*), and *Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating the trade therein and amending Regulation (EC) No 865/2006* (the *Permit Regulation*). For convenience sake these will be collectively referred to as the EC (Wildlife Trade) Regulations from this point onwards. Their function is to implement CITES across the EU and they deal with 'imports and exports of wildlife and wildlife products to and from the EU as well as trade within the EU both between and within individual Member States' (Holden, 1998: 5).

The basic Regulation (*Council Regulation (EC) No 338/97*) regulates the trade in wildlife by specifying the provisions on import, export and re-export and also specifies the regulatory regime for EU control of wildlife trade. It contains four Annexes as follows:

Annex A:

- All CITES Appendix I species, except where EU Member States have entered a reservation
- Some CITES Appendices II and III species, for which the EU has adopted stricter domestic measures
- Some non-CITES species

Annex B:

- All other CITES Appendix II species, except where EU Member States have entered a reservation
- Some CITES Appendix III species
- Some non-CITES species

Annex C:

- All other CITES Appendix III species, except where EU Member States have entered a reservation

Annex D:

- Some CITES Appendix III species for which the EU holds a reservation
- Some non-CITES species in order to be consistent with other EU regulations on the protection of native species, such as the Habitats Directive and the Birds Directive

(European Commission and (*Council Regulation (EC) No 338/97*)

The EU Regulations are directly applicable in all Member States and so should be considered as law which automatically applies across the European Union. However, the enforcement provisions require implementation through national law (Article 16 of *Regulation (EC) No 338/97*) and require states to take 'appropriate measures' to ensure the imposition of sanctions for infringements of the Regulation, containing a minimum list of infringements to be sanctioned. Article 16 also requires that sanctions shall be 'appropriate to the nature and gravity of infringements and must include provisions on seizure and, where appropriate, confiscation'. In addition, the European Commission has produced Commission Recommendation No 2007/425/EC, often referred to as the EU wildlife trade enforcement plan, which suggests Member States should take action which includes 'adopting national action plans for enforcement, imposing sufficiently high penalties for wildlife trade offences and using risk and intelligence assessments to detect illegal and smuggled wildlife products' (TRAFFIC, 2013: 126).

It is also worth briefly mentioning the WTO and GATT agreements which cover goods, services and intellectual property these are worth mentioning as they can apply to wildlife in trade. The agreements outline principles of liberalisation (i.e. the general principle that free trade is to be permitted) and also specify permitted exceptions to trade rules and include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. WTO/GATT trade agreements set procedures for settling disputes; special treatment measures for developing countries and require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted. WTO/GATT's framework permits

trade in wildlife as a liberalised measure, although the agreements do allow for restrictions on trade to be put in place where necessary to conserve threatened species.

Enforcement of international wildlife law

One of the central difficulties of international wildlife law is that due to the lack of a pure international environmental criminal law its enforcement largely remains in the hands of state agencies and is subject to state sovereignty (Megret, 2011). Mitchell (1996) identifies compliance as predicated on: primary rules; information structures and data monitoring; and non-compliance response mechanisms which can result in either formal or informal sanctions. Given the retention and primacy of state sovereignty, breaches of international wildlife protection obligations at a state level require international action to resolve. Stallworthy describes this as 'adjudicative international dispute settlement' (2008: 13) which at best provides for a formal sanction but more frequently can be seen as advisory. There are bodies such as the ICJ, the UN's primary court which can adjudicate on international wildlife law matters and there are also some international arbitration panels which may deal with environmental law. However, one difficulty with such measures is the need for states to voluntarily submit to their jurisdiction and to co-operate in the enforcement of judgements. Such co-operation can be withheld thus in practice effective implementation of international wildlife law often relies on national legislation (discussed in more detail in the following chapter) and its enforcement. Sollund (2013: 73) indicates that culture, speciesism and anthropocentrism are endemic to normative neo-liberal conceptions which perpetuate wildlife exploitation and dictate that market concerns perpetuate a conflict between protectionism and economic concerns in international law (Stallworthy, 2008: 34). This being the case, the enforcement of wildlife law at an international level may need to strike a balance between conserving resources, respecting state sovereignty and allowing for cultural differences in the treatment of and respect for animals as having intrinsic value. The principle is that states are best placed to 'value' their wildlife and should retain autonomy in deciding what constitutes appropriate sustainable use within state management of its resources (discussed further in Chapter 4). However, Wood offers this damning indictment of state environmental enforcement:

> The modern environmental administrative state is geared almost entirely to the legalization of natural resource damage. In nearly every

> statutory scheme, the implementing agency has the authority – or discretion – to permit the very pollution or land destruction that the statutes were designed to prevent. Rather than using their delegated authority to protect crucial resources, nearly all agencies use their statutes as tools to affirmatively sanction destruction of resources by private interests.
>
> (2009: 55)

While this picture may seem bleak, Wood's central point, that natural resource management can be characterised as an 'ongoing' experiment, is a sound one. Wood identifies as a central problem of natural resource law its implementation as management rather than protective law and that it is often characterised by an overly complex layered system which is based on permitting natural resource exploitation in a manner which Wood describes as being 'a colossal failure, despite the good intentions and the hard work of many citizens, lawyers, and government officials' (2009: 43). While Wood's analysis is largely based on analysis of national law (discussed further in the next Chapter) and from a US perspective, its conclusions hold true for international wildlife law. As White and Heckenberg state 'CITES does not prevent trade in species; it regulates it' (2014: 133) similarly, as mentioned earlier, the International Whaling Convention expressly provides for use of whale stocks, thus enforcement of breaches of the Convention is primarily a regulatory breach (e.g. exceeding quotas, not complying with regulatory requirements) rather than being about species protection. From a green criminological perspective this reflects the manner in which wildlife crime is often marginalised within criminal justice (Nurse, 2012, 2013b,d) and its importance as an area of transnational crime is often ignored. From a policing perspective, environmental crime is a significant work area for Interpol and its Environmental Crime Program, created in 2009, which provides a means through which international law enforcement is facilitated and national law enforcement agencies are provided with necessary resource support.

However, mechanisms do exist to deal with state wildlife crime falling within the remit of international wildlife law. The International Whaling Convention authorises Member States to impose trade sanctions on parties to the Convention which violate its provisions. In addition states may take action against other states through international courts, such as the ICJ, where harm has crossed state borders such that a country has cause to take action against a violating state. While in practice countries have to consent to the court's jurisdiction thus

preserving their sovereignty, the ICJ provides one means through which international wildlife law can be enforced where there has been a failure at a state level and domestic legislation proves inadequate to resolve the issue. The following case study illustrates this:

Case Study – *Australia v Japan* – The Japanese Whaling Case

The ICJ's recent decision concerning Whaling in the Antarctic has been hailed in some quarters as signalling an end to Japanese Whaling.[2] The case, originally lodged by Australia in 2010 (with New Zealand joining Australia's action in November 2012), is a landmark ruling in international wildlife law by clarifying the nature of Japanese Whaling; the legality of which has been contested by animal protection activists and conservationists for many years. Yet while the Court's decision can be welcomed as identifying that Japanese Whaling in the Southern Ocean should not be permitted under the current arrangements, it does not entirely outlaw Japanese Whaling. However, this preliminary reading of the judgement identifies much of interest to animal law scholars in its discussion of the necessity of using lethal methods of killing animals for scientific research and the requirements on reviewing such methods.[3]

The Whaling Moratorium

Using provisions contained within the Whaling Convention, a Moratorium was imposed in 1986 which effectively banned commercial whaling. However, Article VIII of the Whaling Convention allows the taking of whales under the 'scientific exemption' which allows individual states to issue permits to 'kill, take, or treat whales for purposes of scientific research subject to such other conditions as the Contracting Government thinks fit.' This provision effectively exempts state authorised scientific whaling from the convention and in practice allows each state to decide the size and scope of any scientific whaling program and to self-regulate by issuing its own permits. While in principle a state needs to justify its special permit whaling programme to the IWC, the extent to which there is scrutiny of a scientific programme sufficiently robust to overturn state sovereignty without recourse to an international court is questionable. Japanese Whaling recommenced in 1987 under the JARPA Research Plan and then continued from the 2005–2006 season

under the JARPA II programme by issuing permits to the Institute of Cetacean Research described in the ICJs judgement as a foundation established under Japan's Civil Code and historically subsidized by Japan. JARPA II's activities include modelling competition among whale species and improving the management procedure for Antarctic minke whale stocks. The methodology includes lethal sampling of three whale species: Antarctic minke whales, fin whales and humpback whales and the program's extensive use of lethal methods has long been viewed by its opponents as evidence of commercial whaling (WWF, 2007). Yet despite the persistent voicing of concerns by NGOs and other commentators, Japan's programme has continued largely uninterrupted since 2005–2006. Arguably the lack of an effective enforcement mechanism within the IWC necessitated legal action under the Whaling Convention via an international court.

Australia v. Japan

In 2010, Australia lodged a complaint with the ICJ asking the Court to find that the killing, taking and treating of whales under special permits granted by Japan are not 'for the purposes of scientific research' within the meaning of Article VIII of the Whaling Convention. In bringing the case, Australia sought to determine that Japan's JARPA II whaling was commercial and not scientific whaling and so went against the spirit of the Whaling Convention as well as being unnecessary animal exploitation; facilitated by exploiting a potential loophole in the Whaling Convention. Australia also argued that Japan was in breach of its obligations under CITES and the Convention on Biodiversity. Conservationists and activists have long maintained that Japan's activities were commercial whaling and that JARPA II allowed for unlawful commercial exploitation of whales under the guise of scientific research. As part of the remedy for its alleged breaches of the Whaling Convention, Australia was also asking the ICJ to declare that Japan should: cease to issue any further permits for scientific whaling; should revoke any permits or authorization for the JARPA II programme; and should also cease the JARPA II programme.

Scientific or commercial?

While it was not the Court's role to determine the scientific merits of Japan's whaling programme, it did consider whether the specifics

of the whaling programme were such that it could be determined as taking whales 'for the purpose of scientific research'. This included reviewing the use of lethal methods. Japan argued that lethal sampling was 'indispensable' to JARPA II's objectives of ecosystem monitoring and multi-species competition modelling. Japan argued that it did not use lethal methods any more than was necessary, while Australia argued that Japan has an 'unbending commitment to lethal take' and that 'JARPA II is premised on the killing of whales'. The Court accepted that the activities carried out by Japan under the JARPA II programme could be broadly characterized as scientific research. However, since the Moratorium was announced Japan has continued scientific whaling almost continuously initially through JARPA (commenced within a year of the Moratorium) and subsequently via JARPA II. Australia maintained that Japan had essentially used lethal methods as a significant part of the programme despite advances in technology that arguably made such methods outdated for some of the programme's objectives. The lack of any significant break in operations to review the data, methodology and future requirements was noted by the Court as giving weight to Australia's theory that Japan's priority was simply to maintain whaling operations 'without any pause' and that sample sizes are not driven by purely scientific considerations.

The Court considered the open ended and seemingly indefinite nature of JARPA II, concluding that a time frame with intermediate targets would have been more appropriate but also commenting on JARPA IIs scientific outputs. Since completion of the first research phase of JARPA II (2005–2006 through to 2010–2011) Japan could only point to two peer-reviewed papers emerged from the programme. While Japan also pointed to symposia presentations and other programme documents, the Court concluded that 'in light of the fact that JARPA II has been going on since 2005 and has involved the killing of about 3,600 minke whales, the scientific output to date appears limited.' The Court also noted discrepancies between the target and actual take sizes and the fact that Japan had taken few humpback or fin whales, despite these seemingly being an integral part of the programme. It concluded that target sample sizes are larger than reasonable in relation to achieving JARPA II's objectives and that the actual take of fin and humpback whales was largely, if not entirely, a function of political and logistical considerations. The ICJs view was that there was evidence to suggest that the programme

could have been adjusted to achieve a far smaller sample size and that Japan had failed to explain why this was not done. The Court was critical of the fact that Japan had neither revised JARPA IIs objectives nor methods to take account of the actual number of whales taken. It concluded that the evidence did not establish that the programme's design and implementation were reasonable in relation to achieving its stated objectives and concluded that the special permits granted by Japan for the killing, taking and treating of whales under the JARPA II programme are not for purposes of scientific research as required by Article VIII of the Whaling Convention.

The judgement

The Court, ordered Japan to revoke any extant authorization, permit or licence to kill, take or treat whales under JARPA II and to refrain from granting any further permits under the programme effectively halting JAPRA II. The implication of the ICJ's conclusions is that Japanese Antarctic whaling is commercial whaling and thus in breach of the Whaling Convention's Moratorium. Japan has confirmed that it will abide by the ruling but its whaling in other areas such as the North Pacific will continue (Agence France-Presse, 2014).

Separate from breaches of wildlife obligations by states, transnational wildlife offences (those that breach international law and infringe on the jurisdiction of more than one country) are committed by individuals and corporations. Wyatt identifies that the transnational nature of wildlife trafficking requires a coordinated approach across borders (2013: 143). Accordingly, several agencies may be involved in enforcement including customs, border and immigration agencies, police, environmental protection agencies and conservation monitoring agencies. The international law mechanisms discussed earlier are usually not applicable to individual and corporate wildlife crimes and so this form of wildlife offending becomes an international crime problem, predominantly dealt with via co-operation between countries. This raises jurisdictional problems related to which law applies to the offence (and the difficulty of determining where the offence was committed and precisely defining it for purposes of charging), compatibility between legal systems and police cooperation. These issues are discussed in more detail in later chapters.

Conclusions

The ICJ's decision (discussed earlier in this chapter) highlights an important issue relating to state sovereignty, wildlife protection and international wildlife law. Japan's actions in continuing whaling arguably flouted the will of the international community given the general consensus amongst nations that the moratorium was necessary.[4] Roeschke comments that 'each year, despite the IWC's rejection of the Japanese whale research program in Antarctica, Japan continues to issue itself scientific permits to kill endangered whales' (2009: 99). Thus arguably the lack of an effective enforcement mechanism within the IWC necessitated legal action under the Whaling Convention via an international court (Nurse, 2014a).

This represents the central dilemma in international wildlife law enforcement; considerable difficulties exist in taking action against states in non-compliance with wildlife laws. The Australian action against Japan took nearly four years to resolve, although measured against the almost ten years it took for the ICC to deliver its first judgement this represents speedy justice. But the judgement, while welcome is limited in scope and offers potential for Japan to resume its whaling operation if able to address issues raised in the ICJ's decision. Indeed, Japan is already reported to be considering revising its whaling programme for a smaller catch (Reuters, 2014) which in theory could address the issues raised in the ICJ's judgement allowing Japan to legitimately establish a revised programme which meets the 'scientific purposes' criteria. However, for now, Japanese Whaling in the Antarctic would seem to have ended as a result of scrutiny under international law and through the international justice system.

4
National Wildlife Legislation and Law Enforcement Policies

This chapter examines aspects of national wildlife legislation from within a green criminological perspective, explaining how different models of wildlife legislation and enforcement exist. It includes discussion of national wildlife law's basis as criminal law or civil law, and the nature of wildlife law sanctions. In considering the purpose of wildlife law this chapter also considers federal wildlife law enforcement, for example, the US and Canadian Fish and Wildlife Service approach of a specialist state wildlife enforcement agency, the NGO-led approach of the UK and the UK's Wildlife Crime Officer network, and the role of CITES and other enforcement authorities. It also briefly discusses wildlife law enforcement through conservation legislation, national parks and wildlife services and conservation bodies, themes expanded upon in later chapters.

This chapter's discussion of different legal regimes and enforcement models explains how wildlife crime is sometimes the subject of a crime prevention model (albeit rarely), more frequently a law enforcement deterrence model based on reactive detection and punishment and sometimes a model based primarily on a sustainable conservation approach which allows exploitation of wildlife subject to restrictions, licensing and generating funds for conservation. The different models are not mutually exclusive and a state's wildlife law can serve multiple purposes, incorporating several different pieces of legislation and be subject to varied forms of enforcement.

The purpose of wildlife legislation

Radford identifies that broadly animal law has a number of aims, as follows:

- preventing cruelty and reducing suffering
- improving animal health (and as a consequence, human health)

- protection and conservation of wildlife
- promoting animal welfare and specifying what constitutes acceptable minimum welfare standards
- securing public safety
- safeguarding commercial interests encouraging responsible animal ownership and
- reflecting a moral consensus

(Radford, 2001: 122)

One difficulty with wildlife legislation is its intended use as conservation or wildlife management legislation rather than as species protection and/or criminal justice legislation. National wildlife law, while implementing international and domestic perspectives on wildlife protection routinely allows the continued exploitation of wildlife (Nurse, 2012: 11). For several years, academics, investigators, NGOs and wildlife protection advocates have voiced concerns about the perceived inadequacy of wildlife enforcement regimes, particularly in the United Kingdom and the United States, (Nurse, 2003; Wilson et al., 2007; Defenders of Wildlife, 2011). NGOs have highlighted inadequacies in individual legislation such that legislation intended to protect wildlife often fails to do so and ambiguous or inadequate wording actually allows animal killing or fails to provide adequate protection for effective animal welfare (Parsons et al., 2010). Such confusion also causes problems in the investigation of wildlife crime with investigators and prosecutors needing to understand a complex range of legislation, powers of arrest and sanctions (Nurse, 2003).

Wildlife legislation is primarily intended as natural resource or conservation legislation whose goal is effective management of wildlife as a resource. Thus, while wildlife law frequently specifies offences and punishments in relation to misuse of wildlife, it is often predicated on a presumption of allowing continued exploitation of wildlife and expressly allowing this within the confines of the law. CITES (discussed in Chapter 3) does not provide for an *absolute* ban on trading in wildlife; instead it facilitates continued *sustainable* trade in wildlife, that is trade which can continue as long as the species subject to trade are not driven to extinction. Other wildlife protection laws include measures intended to facilitate wildlife control, provisions to manage populations of wildlife at levels considered to be sustainable and commensurate with human interests (i.e. ensuring populations do not become too large or too small) but also to deal with 'pest' or 'nuisance' wildlife particularly animals deemed as problematic in urban settings. Schaffner

(2011) identifies that policies towards 'nuisance' wildlife illustrate the low regard in which they are held by policymakers and the reality that not all wildlife law is about protection. Her analysis identifies that 'wildlife damage control operators make a profit from killing these animals and are now commonplace in large U.S. urban settings with little government oversight' (Schaffner, 2011: 141). While several US states regulate wildlife control operators, this has yet to become a universal requirement and control of species such as squirrels, raccoons and bats which 'typically run into the tens of thousands in states where they have tracked the numbers' is not predicated on proving actual damage to property or threat to human safety (Schaffner, 2011: 141). Similarly in the UK, a series of open general licences allow any landowner or occupier to kill a range of designated 'pest' species without first having to apply for a permit as long as they are doing so in order to prevent damage or disease, preserve public health or public safety or conserve flora or fauna. Wildlife law thus contains a duality; protection and control meaning that in national wildlife laws, animals can occupy varied status as endangered species, natural resource, game species and pest with levels of protection dependent on the classification applied.

The public good and wildlife trust doctrines

One conception of wildlife law as natural resources law relates to the need to conserve wildlife in the public interest. Animal rights discourse is often concerned with animals' status as property (Wise, 2000), whereas historically wild animals were seen as a *res nullius* public property, or the property of 'no one' (Epstein, 1997). However, as Schaffner identifies, as law has developed in most countries 'wild animals fell into the common class, meaning they belonged in common to all citizens' (2011: 19) sometimes referred to as *res communis*. The distinction is an important one as Weston and Bollier (2013: 127) identify that according to Locke's (1988[1690]) notion of *res nullius*, 'such resources belong to no one and are therefore free for the taking'. By such logic wildlife, while theoretically protected by law, might become subject to people exerting property rights over wildlife on or neighbouring their land or might simply be deemed a public resource capable of being exploited by anyone in the absence of any law to the contrary. However, national wildlife laws incorporate the notion of wildlife as something that should be preserved for the public good and held in trust for future generations. Blackstone's commentaries, for example, identify that the rights of man to take wildlife 'may be restrained for reasons of state or for the supposed

benefit of the community' (410). The US Supreme Court recognised this principle in *Geer v Connecticut*, 161 U.S. (1896), a case concerning a Connecticut statute regulating game bird hunting where the appellant argued that the state lacked the power to make such a regulation. The Supreme Court, however, ruled that states had the power to control and regulate game 'as a trust for the benefit of the people' and specifically noted wildlife as being in 'common ownership' by the citizens of the state. The Court thus established the 'wildlife trust' doctrine which subsequent court decisions have upheld by allowing states to conserve and protect wildlife see, for example, *Hughes v Oklahoma* 441 U.S. (1979) which while overruling *Geer* on the question of whether a state could actually 'own' wildlife, expressly confirmed that US states could implement in law their legitimate concerns over the need to conserve and protect wild animals within their borders. The decision in *Geer* reflects the fact that most US states had enacted some form of wildlife protection legislation commensurate with the position in England where the common law enforced the rights of the King and Parliament to determine rights which others might have to take wildlife. Such laws became part of the common law of the colonies and have subsequently developed to reflect the changing needs of wildlife protection and the public interest in seeing wildlife protected. Thus, when the US enacted the Endangered Species Act 1973, it did so recognising that various species of wildlife had been rendered extinct and others needed protection. Weston and Bollier state that the law formally recognised the value of fish, wildlife and plant species to the US and its people and that subsequently 'the U.S. government has also pledged through various international agreements, to conserve endangered species' (2013: 141). This position is broadly replicated across the 180 countries (at time of writing) that are signatories to CITES and who consider that endangered wildlife should be protected by national and international law.

Wildlife protection is thus, now accepted as an issue on which Governments legislate in the public interest and implement the notion of wildlife trust as integral to animal protection. National wildlife law develops and is often interpreted in the context of the prevailing social conditions and the manner in which society socially constructs the public interest and wildlife trust doctrines. Thus these doctrines may expand to cover a wider range of wildlife protection concerns as wildlife populations are affected or threatened by both natural and human threats. In *Barrett v. State* 116 NE. (N.Y. 1917) a US court considered a claim against a statute on the grounds that it protected a destructive animal (the beaver) that was causing timber damage, that the prohibition on molesting

beavers prevented people from protecting their property and so was an unreasonable exercise of state police powers, and that the state as owner or possessor of the beavers was liable for the damage they caused. The court concluded that the state was entitled to exercise its police powers wherever the public interest demanded it, and by upholding the state legislature's authority to enact the statute which also specified that no person could molest or disturb a wild beaver or its 'dams, houses, homes or abiding places', also confirmed that wildlife legislation could protect not only the animal itself but also animal habitats. Similar provisions exist in other wildlife legislation such as the UK's Wildlife and Countryside Act 1981 which creates offences in relation to 'disturbing' wild birds at or near their nests and to actual nest destruction while in use or being built. These reflect the reality of wildlife habitat destruction by economic development and increased human encroachment on wild areas. The importance given to wildlife protection also develops as social concerns turn towards environmental issues and animal protection. For example, since at least the early 20th century and *Re Wedgwood, Allen v Wedgewood* [1915] 1 CH 113, in which the UK courts accepted the benefit to society from animal welfare, a social context has existed in which animal protection has been enhanced rather than diminished through the development of animal welfare law and the growth of the animal welfare and environmentalist movements.

Wildlife law incorporates green criminology's species justice perspective (Benton, 1998; White, 2008) of providing a legal means through which animal protection can be achieved and harms against animals addressed through legal systems. In particular, where conflict exists between human and animal interests, wildlife law provides a means through which arguments that animals should be protected can be pursued through the courts. Wildlife law is primarily a matter of public law, that law which 'relates to the inter-relationship of the State and the general population, in which the State itself is a participant' (Slapper and Kelly, 2012: 7). However, provisions exist in various legislation across different jurisdictions which allow environmentalists (both NGO and individual activists) to pursue wildlife protection cases.

Case Study – *Tennessee Valley Authority v Hill* (1978) – The Snail Darter Case

During the construction of the Tellico Dam on the Little Tennessee River in August 1973, a University of Tennessee biologist discovered

a small fish, the snail darter, previously unknown to the river. The dam's construction would alter the fish's habitat with the effect of driving it to extinction. As a result, the building of the dam violated the Endangered Species Act and campaigners sought to prevent its construction, even though the Tennessee Valley Authority had already spent considerable sums on the design and construction of the dam which was half completed.

Opponents of the dam used the snail darter's status under the Endangered Species Act in an attempt to halt construction of the dam. Arguments hinged on the wording of Section 7 of the Act which states that programmes authorised, funded or carried out by the Government should not jeopardise the continued existence of endangered and threatened species or result in the destruction or modification of habitat of endangered species. Section 11(g) of the Endangered Species Act states that *any person* can bring enforcement action 60 days after written notice of a violation to the secretary, the federal secretary and any alleged violator, providing a means through which citizens and environmental NGOs can pursue action in respect of Endangered Species Act violations

The Tennessee Valley Authority argued that (1) since the Act was passed after the project began (December 1973) it did not apply and (2) after Congress passed the Endangered Species Act it continued to appropriate funds to Tellico; therefore, Congress did not intend for the ESA to apply to Tellico.

In speaking for the majority in the Supreme Court's ruling in *Tennessee Valley Authority v Hill* (1978) Chief Justice Warren Burger announced the court's decision to rule in favour of the snail darter, halting construction on the Tellico Dam by affirming an injunction preventing the Tennessee Valley Authority from completing the Dam because it would eliminate the snail darter's only known habitat. The Supreme Court was careful not to suggest that Congress broke the law by funding the Dam but its ruling made clear that there are no exceptions from the Endangered Species Act for projects like the Tellico Dam that were well under way when Congress passed the Act, and that Congress' intent was to slow, stop and reverse the trend towards species extinction.

Following the Supreme Court's ruling, Tennessee legislators supportive of the Tellico Dam launched an appeal which included sponsoring an amendment to the Endangered Species Act that would result in an investigative committee being formed to address

any potential controversies over future species listings. However, this committee considered the Tellico Dam project 'dangerous' to the snail darter and 'economically not beneficial'. Tennessee legislators appealed again and the bill was eventually signed by President Jimmy Carter in 1979 so that the Dam went ahead. The snail darter was partially saved by the Tennessee Valley Authority relocating the snail darter to a new location but also by several other populations of the fish being found elsewhere in the country, accordingly the species was delisted from Endangered Species status in the late 1980s.

The snail darter and Tellico Dam highlights the conflict between the public and wildlife trust doctrines and private (often commercial) interests. Plater (2000) argues that the water quality in the area served by the dam is such that the fish are now unsafe to eat while some of the planned economic development linked to the dam project has not happened. The project illustrates the conflict between conservation biologists and economic interest groups, and also shows the political nature of environmental decisions which often involve politicians and decision makers in combining political expediency with economic decisions in a manner which highlights the fragility of wildlife law. Plater argues that the Tennessee Valley Authority 'was able to roll along, riding our society's powerful infrastructures of resistance against imposition of public controls and societal accounting. They successfully resisted all the structural mechanisms that our society has instituted in seeking to achieve rational governance' (2000: 83).

National wildlife law as criminal law

Criminal laws are generally intended to deter conduct deemed as immoral, harmful and which subvert the accepted rules of society. For the most part, regulation of environmental issues remains a civil matter, although the use of criminal penalties to punish major environmental violators is a factor in most western jurisdictions, albeit there are debates about the extent to which these are used in practice (Nurse, 2012, 2013a, d). However, criminal law has become the default mechanism through which wildlife protection and punishment for violations is achieved in the majority of jurisdictions not least because of CITES

implementation requirements. Situ and Emmons (2000) identify two types of criminal law, *substantive* and *procedural*. Substantive criminal law is typically contained within a State's criminal code which 'defines the "wrongful" behaviour of citizens and stipulates corresponding punishment' (Situ and Emmons, 2000: 19). In part, the goal of criminal law is social control; encouraging behavioural conformity by punishing behaviour considered to constitute a public wrong. In this context, criminal law is also socially constructed such that the precise content of criminal codes varies from jurisdiction to jurisdiction reflecting each society's notion of acceptable behaviour, albeit some offences such as murder and theft against the person are universal crimes. Thus the nature of criminal offences and punishments in respect of wildlife varies commensurate with each society's notion of wildlife's 'value', the need for its protection, and a consensus on how wildlife offenders should be punished. White argues that what is determined as environmentally harmful is 'shaped by what gets publicly acknowledged to be an issue or problem warranting social attention' (2008: 32). Thus the extent to which wildlife law forms part of or is subject to a jurisdiction's criminal code varies, as does the list of prohibited acts which when committed against wildlife constitute offences. White identifies 'ambiguities of definition' to be a significant factor in defining environmental harm (2008: 37). Thus, while some policymakers might consider poaching to be serious wildlife crime deserving of punishment through the criminal law, others might consider this to be property crime which can either be dealt with by the aggrieved 'owner' through the civil law, or which constitutes a 'lesser' regulatory offence worthy only of a fine. Integral to such judgements are policy attitudes towards wildlife offenders and recognition within the criminal justice and natural resources protection systems of wildlife criminality and the appropriate mechanism for dealing with wildlife crime.

Schaffner identifies that 'since the criminal law is designed to punish and deter immoral conduct, and the sanction is extreme, the intent of the individual violating the law is a primary element of the crime' (2011: 15). Wildlife law is replete with criminal law phrases such as 'intentionally' 'knowingly' or 'recklessly' reflecting the prevalence of deliberate actions which affect wildlife and a recognition of intent as a factor in wildlife criminality. The wording of 'mainstream' criminal offences is also often used in relation to wildlife crimes, for example, Essen et al. (2014) identify that illegal hunting which 'refers to the illegal taking of wildlife and wildlife resources' is sometimes 'stigmatized as theft' (2014: 632). Situ and Emmons identify that 'the stigma of criminal conviction

and punishment is one of the attractions of applying criminal law to environmental misconduct' (2000: 22). Criminal prosecution is a manifestation of the State, on behalf of society and societal values exercising power over citizens whose non-conformity with societal rules is deemed problematic. Offences against public laws, generally prosecuted by the State and inclusive of criminal offences which breach the duty owed to the public as a whole are subject to state sanction in respect of their 'social harm' or violation of the collective interest which the conduct of the breach exhibits, even though harm may not be felt by all in society (Mann, 1992). Wildlife law, which reflects contemporary societal values that animals are deserving of protection, usually contains sanctions which exhibit society's disapproval of animal harm. However, sanction levels are variable with some wildlife offences attracting only fines, and fines at relatively low levels (Nurse, 2003) and where the option for prison sentences exists these also tend to be at the lower end of the scale except where multiple offences have been committed or in respect of endangered or threatened species where penalties tend to be higher.

Despite the perceived inadequacies in wildlife law sanctions (Wilson et al. 2007; Nurse, 2012), examination of wildlife law's basic enforcement framework and the intent of sanctions makes clear that wildlife law functions as criminal law in respect of those activities proscribed as offences in legislation. Ashworth explains that,

> There are many offences for which criminal liability is merely imposed by Parliament as a practical means of regulating an activity, without implying the element of social condemnation which is characteristic of major or traditional crimes. There is thus no general dividing line between criminal and non-criminal conduct, or between seriously wrongful or other conduct.
>
> (2009: 2)

Crime, according to Ashworth and other scholars, is something of concern to the state rather than just the victims of crime. In the context of wildlife crime, victims are unable to speak for or represent their own interests requiring public action to address victims needs (Hall, 2013) The state, with an interest in minimising harm to its natural resources, protects wildlife by enacting wildlife protection legislation and creating a punitive and deterrent mechanism for wildlife harm. Many crimes are also civil wrongs, where the injured party would normally be expected to take action for damages or other redress, although private individuals can sometimes initiate prosecution for criminal

offences (Slapper and Kelly, 2012: 15) as is the case with NGO prosecutions for wildlife crimes (Nurse, 2012). However, crime, according to Ashworth's conception, is an act in which there is state (public) interest in ensuring that the prohibited conduct does not happen and there is a clear punishment mechanism when it does. Öberg argues that whether or not a sanction is a criminal one is determined in light of its punitive and deterrent character. He suggests that criminal sanctions 'must involve both a preventive function and a deontological dimension' (2013: 283). Thus a criminal sanction must communicate disincentives to commit the criminal act by identifying the distinction between acceptable and unacceptable behaviours; a distinction integral to wildlife law. Consider, for example, the Lacey Act's section 3372 title – *Prohibited Acts* and its text which states that:

> It is unlawful for any person –
>
> (1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;
>
> (2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce –
>
> (A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law;
>
> (B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; or
>
> (C) any prohibited wildlife species (subject to subsection (e) of this section);
>
> (3) within the special maritime and territorial jurisdiction of the United States…

This wording contains explicit deterrent characteristics; that is, that such activities are undesirable, prohibited acts in violation of the law and, by implication, socially constructed notions of acceptable behaviour include compliance with the law and respect for wildlife. The punitive dimension is clarified by section 3373 which sets out civil penalties ranging from US$250 to US$10,000 which arguably would not meet Öberg's criteria that private sanctions (e.g. fines) should not be considered as criminal sanctions. The ideal is that a criminal sanction must also have 'a social dimension in how it is understood by society and involves a moral appeal that cannot be reduced to a mere disincentive'

(2013: 284). Thus at Section 3373(d) the Lacey Act includes criminal penalty provisions as follows:

> d) Criminal penalties
>
> (1) Any person who –
>
> (A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title), or
>
> (B) violates any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of $350,
>
> knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than $20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

Criminal penalties should have sufficiently serious consequences for the offender that they constitute pain or other unpleasant consequences which characterise the penalty as being of a 'criminal' nature (Wilson, 2002). Öberg identifies that not all 'unpleasant consequences or pains inflicted on individuals by the state should, however, be classified as criminal sanctions' (2013: 284). Yet, denial of liberty, in most states the ultimate punitive sanction, is sufficiently serious to warrant classification as a criminal penalty (Harel, 2008). The United Nations Office on Drugs and Crime denotes 'serious crime' as that which carries a prison sentence of over four years (as defined by Section 2 of the United Nations Convention against Transnational Organized Crime). Such penalties represent the state actively interfering in the lives of citizens and clear denunciation of the offending act. With the exception of those states that still employ the death penalty, incarceration represents 'the strongest formal social condemnation that society can impose on one of its citizens' (Öberg, 2013: 285). As the Lacey Act

example demonstrates, prison sentences are integrated into wildlife law at various levels from relatively short six month sentences to sentences of several years. Accordingly legislators adjudge certain wildlife crimes to be of an explicitly criminal nature and of such severity that incarceration is required to convey formal social condemnation. Provisions where an offence may be punishable by either a fine or imprisonment (or both), such as those illustrated by the Lacey Act example, are relatively common in wildlife laws. Provisions regarding forfeiture of wildlife and seizure of items used to commit an offence are also common to national wildlife laws and Lebovitz et al. (2014) note that a range of ancillary legislation is also available to assist in the prosecution of wildlife crimes such as laws on 'money laundering, use of weapons, racketeering, corruption and customs violations' (2014: 2). These reflect the reality that severity of the crime determines the level of sentence and nature of charging. Criminal punishments should be proportionate to the crime (Kant, 1952; Bentham, 1962) and thus reflect the social construction of wildlife crimes. Thus, as again the Lacey Act illustrates, each violation of the law can constitute a separate offence and might be charged accordingly, such that an individual committing violations in respect of several birds or animals or in respect of animals and their habitats might be charged with multiple wildlife crimes. In such circumstances, the cumulative nature of the offences and the intent of the individual may dictate the necessity of a prison sentence as the appropriate response to specific wildlife criminality and perceived severity of the crime. Goitom (2014) identifies that Kenya's Wildlife Conservation and Management Act of 2013, which repealed the previous Wildlife (Conservation and Management) Act 1976, has dramatically increased penalties for wildlife-related offences. Under the new Kenyan law, the maximum penalty for offences involving endangered species is life imprisonment and/or a fine in the amount of at least KES20 million (about US$230,540). This represents not only a severe penalty but also the ecocentric view that Kenyan wildlife is a valued resource integral to a functioning economy (Udoto, 2012) and that political will exists to deal with wildlife crime both as a national problem and as serious crime deserving of stiff penalties (Kahumba and Halliday, 2014).

The second of Situ and Emmons' criminal law types, *procedural* criminal law, 'provides a host of legal protections for the accused and sets forth the rules of conduct that government officials must follow in enforcement, adjudication and corrections' (Situ and Emmons, 2000: 19). While wildlife law is sometimes intended primarily as conservation law, its function as criminal law is not only to create offences in respect of harm

caused to wildlife but also to develop an enforcement regime and specify appropriate punishments for wildlife crime. Canada's Wildlife Act 1985, for example, contains provisions which allow the relevant minister to take such measures as are 'deemed necessary' for the protection of any species of wildlife in danger of extinction (Section 8). Further provisions in the Act provide for the appointment of wildlife officers and designate that 'wildlife officers have all the powers of a peace officer' (Section 11(4)) albeit such powers can be limited by Government. Given the requirements of CITES (discussed in Chapter 3) that parties to the Convention provide sanctions for CITES offences within national law, similar provisions which create monitoring, enforcement and punishment mechanisms exist in legislation across the 180 CITES member countries. Criminal justice represents a considerable exercise of state power in crime investigation and is administered in a particular way in recognition of the inequality of power between the two parties and the potential gravity of a criminal sanction. In particular, criminal procedure has developed to ensure that the innocent are not punished and that individuals are protected against abuses of the State's power. Accordingly, the criminal trial is accusatorial: the prosecutor must make out a case, generally beyond reasonable doubt, and the accused may remain silent or bring evidence to contest the prosecutor's case. Wildlife crime represents an area of the criminal law which 'ordinary' state prosecutors, such as the UK's Crown Prosecution Service (CPS), may be unfamiliar with and considerable expertise regarding animal behaviour, conservation status and habitats may be required. As in mainstream crime, use of forensic techniques is also frequently necessary in order to prove the state's case concerning animal origins and alleged harm. Procedural rules dictate the permissibility of evidence and rules concerning its handling and presentation at court which may vary between jurisdictions. However, not all wildlife crime prosecutions are initiated by the state with NGOs often involved in enforcement and even prosecutions activity (Nurse, 2011, 2012). The prosecution of wildlife crime is discussed further in Chapter 9.

In addition to enacting the provisions of CITES in respect of species in trade (mostly endangered species) national wildlife legislation provides for protection of indigenous wildlife by specifying what constitutes wildlife crime within that State. While there are obviously variations between jurisdictions, wildlife laws when functioning as criminal laws generally provide for:

1. definitions of protected wildlife (and specification of protection levels)

2. definitions of prohibited activity in respect of wildlife (which may include identifying prohibited methods of taking wildlife which may otherwise be taken)
3. definitions of offences in relation to wildlife and their habitats
4. exemptions to the definition of acts considered wildlife offences (e.g. permissible hunting, fishing or trapping activity)
5. designation of pest species and provisions in respect of 'nuisance' wildlife
6. powers to investigate wildlife crime
7. powers of entry, search and seizure which can include power to enter private property
8. powers to require production and inspection of documents relating to wildlife
9. powers of arrest in respect of wildlife offences specified within the relevant wildlife act
10. penalties in respect of offences defined within the legislation
11. additional sanctions and future prohibitions in respect of those convicted of wildlife offences

National wildlife law enforcement regimes

In 1998, Holden identified that 'the majority of cases of illegal wildlife trade never reach court. Most crimes remain undetected and those which are detected often are not pursued by the police' (1998: 29). This statement, although intended as a commentary on the UK position, remains true today and applies to a wider range of wildlife crime. Schaffner identifies that 'criminal laws are enforced by the police and prosecutors' (2011: 15) but a function of procedural wildlife criminal law is to specify the enforcement agencies responsible for wildlife crime, the limits on their authority and procedural requirements such as time limits for investigating and prosecuting wildlife crime cases. White (2008) identifies that in many jurisdictions the primary agency with responsibility for environmental crime is the Environmental Protection Agency (EPA) or its equivalent environmental/conservation body which generally:

- regulates environmental crime by administering environmental protection legislation
- provides an education function in respect of environmental matters
- monitors environmental quality

- reports on the state of the environment to Government and other state bodies

(White, 2008: 184)

Within this framework, wildlife law enforcement is not a mainstream police priority (discussed further later in this book) but operates within the broad remit of the environmental justice regime which relies on agencies other than police to operate effectively. Thus, in the US, the US Fish and Wildlife Service is a primary enforcement agency (although the EPA also plays an enforcement role), whereas in Canada, the Canadian Wildlife Service is a primary enforcer. The US and Fish and Wildlife Service operates under the auspices of the Department of the Interior, while Canada's Wildlife Service is a directorate within the Department of the Environment. In the UK, wildlife crime is the responsibility of the Department of Environment Food and Rural Affairs (DEFRA), although organised crime's involvement in wildlife trafficking falls within the remit of the National Crime Squad (formerly the Serious and Organised Crime Agency). This positioning of wildlife crime within the jurisdiction of a State's environment department reflects wildlife law's dual function as criminal and natural resource law but arguably lessens its importance within the broader remit of criminal justice (Nurse, 2003, 2012). Broadly, four enforcement models exist for wildlife crime as follows:

1. Enforcement by mainstream statutory police agency (including customs authority)
2. Enforcement by specialist environmental regulatory agency (EPA, Fish & Wildlife Service)
3. Enforcement by conservation, natural resource, parks agency
4. Enforcement by NGO

These models (discussed later in this book) are not mutually exclusive and in practice enforcement may involve a combination of these approaches, for example, police supported by NGO's, albeit one agency may be designated the lead for wildlife monitoring and enforcement, particularly to satisfy the demands of CITES implementation. Schaffner identifies that 'unfortunately, in virtually all jurisdictions the [animal] laws are inadequately enforced for a number of reasons. The primary reasons are a lack of resources' when compared to those provided to mainstream law enforcement bodies together with a range of conflicting priorities (Schaffner, 2011: 69; Nurse, 2013c). Radnofsky et al. (2011)

identify that while federal law enforcement agencies may be the front line in enforcement of wildlife laws and combating crime, some occupy a dual position of not just enforcing wildlife laws but also of writing the regulations which implement and govern federal laws. This position is in marked contrast to the separation between legislators and enforcers in mainstream crime and risks marking wildlife crime out as a regulatory issue rather than a purely criminal one albeit the intention in providing criminal sanctions is to adopt a criminal justice approach to wildlife crime.

The politicisation of wildlife laws

Organ et al. (2012) identify that the increasing politicisation of wildlife management threatens the existence of the North American Wildlife Management model which argues that wildlife should only be killed for a legitimate purpose, that science is the proper tool to discharge wildlife policy, that allocation of wildlife is the responsibility of law and that wildlife should be considered an international resource. Species justice discourse would broadly agree with these principles and it is not too dissimilar from the model adopted in the UK (although it should be noted that some animal rights discourse promotes an absolute prohibition on animal use and killing).

However, current wildlife law policy in the UK and US (and some other jurisdictions) indicates that wildlife law is less about achieving effective species justice and more about perpetuating the use of wildlife and its regulation within an environmental rather than criminal justice context. The UK is currently in the process of reviewing its wildlife law with a view to abolition of the majority of existing law and introduction of a single wildlife management act rather than the current confusing regime of different legislation for different species with different levels of wildlife protection (Vincent, 2014). In the US, NGOs have recently fought against efforts by anti-bison ranchers to remove the last genetically pure bison from the lands of Montana and also fought against the US Fish and Wildlife Service's decision to remove federal protection from grey wolves by making amendments to species listings under the Endangered Species Act 1973.

These law reform initiatives highlight the political nature of wildlife law and the difficulties of achieving affective species justice. In the UK, wildlife and environmental regulation is seen by Government as imposing an excessive regulatory regime on business (The Cabinet Office, 2011). Thus UK wildlife law reform proposals take an approach

consistent with the UK Coalition Government's view that regulation and criminalisation should be a last resort when dealing with business offending. It is also notable that the Hunting Act 2004, which prohibits hunting wild animals with dogs, is excluded from current wildlife law reforms in part because of political sensibilities around the issue. In the US, the conflict between ranching and farming, and environmental protection interests is a factor in some endangered species listings and decisions to allow wolf killing. Thus problem species or at least those perceived as causing an economic problem to countryside interests, risk having their protection removed or at least temporarily reduced.

However, these approaches to wildlife law reform risk ignoring the individualistic nature of much wildlife offending (Nurse, 2011) that requires an effective criminal justice approach to resolve. The approach adopted in the UK is one of amending the existing regime on the grounds that a suitable one already exists (Law Commission, 2012), hence there is no need for a new regime. Similarly, review of wildlife protection in the US is primarily based around amendments to existing law and a belief in the existing system as broadly controlling wildlife crime problems. Despite the existence of federal enforcement in the shape of the US Fish and Wildlife Service, NGOs, such as Earthjustice and Defenders of Wildlife, have raised concerns about the continued illegal persecution of species such as wolves, bears and bison and about decisions to remove legal protection from certain species via Endangered Species Act 1973 listings. In 2011, Defenders of Wildlife identified that the (then) US Congress had 'introduced more than a dozen bills or legislative proposals to undermine the Endangered Species Act' (2011: 3) arguing that such legislative moves either chipped away at the foundation of the Act or singled out species no longer deemed worthy of protection. The basis of such legislative movement was often economic considerations. Wildlife protection and compliance with wildlife legislation could potentially be a costly issue for business, and Government, keen to reduce the regulatory burden on business, has sought to streamline or reduce wildlife protection.

Case Study – Wolf Protection

The grey wolf (*Canis lupus*) was originally listed as an endangered species in the US under the Endangered Species Act 1973 which defines an 'endangered species' as 'any species which is in danger of extinction throughout all or a significant portion of its

range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man'. However, following reintroduction efforts, notably the Yellowstone National Park Wolf Recovery Plan of 1987, wolves have successfully bred and expanded their range in many parts of the US. Given the success of these recovery efforts, in February 2013 the US Fish and Wildlife Service proposed to remove the grey wolf from the Endangered Species Act's list of threatened and endangered. The proposal followed an earlier (2011) delisting of the grey wolf in the western Great Lakes states and Northern Rockies following a decision that the species had recovered sufficiently in these areas as to no longer be classed as endangered. As a result federal protection has been removed in these states and Idaho, Wyoming and Montana now have their own wolf management plans.

Protection for wolves raises strong emotions with ranchers and farmers arguing that 'grey wolves are predatory nuisances' (Anderson, 2013: 134). This antipathy towards wolves is common not just in the US, but in parts of their European range where they are seen as being in conflict with farmers and a tangible threat to livestock but are also considered a threat to other legitimate hunting pursuits. For example, Strain (2011) identifies that 'scientists have estimated that poaching accounts for half the deaths of Scandinavian wolves' with hunters suspected of killing wolves that maul or kill hunting dogs. Monbiot (2012) identified that Norway planned to kill wolves as they were deemed to be responsible for the killing of an estimated 1,500 sheep (maximum estimate) and that while farmers were compensated for sheep losses, demand for wolf killing became a contentious political issue. Stronen et al. (2013) identified that 'despite legal protection in most European countries, illegal killing and accidental mortality remain widespread threats to wolf survival' with evidence in most countries where wolves occur in conflict with farming and hunting interests that they are illegally killed.

Defenders of Wildlife has been critical of the US delisting of wolves stating that 'with only about 500–600 wolves left in Idaho, state officials are pushing to further drop the population to 150, with the majority of state legislators sponsoring Gov. Butch Otter's legislation that proposes to spend $2 million of Idaho taxpayers'

money to kill wolves – as much as $4,500 per wolf' (Defenders of Wildlife, 2014). Gibson argues that the delisting was carried out for political reasons and that 'from the far-right, wolf demonization spread to the mainstream Republican parties in Idaho, Montana, and Wyoming, and as the movement gained momentum Democratic leaders capitulated and began to advocate removing wolves from federal protection' (2013)

Delisting allows legal killing of wolves, effectively descriminalising an activity that NGOs argue continues regardless. Gibson argues that 'in the spring of 2011 at least 1,000 adult wolves lived in Idaho. The state's first hunt in 2011–2012 saw hunters shoot 255 and trap 124' (2011). Similarly in Montana 'more than 170 wolves have been trapped and shot in the state's still ongoing 2012–2013 season; that figure is roughly equal to the number shot in the 2011–2012 season (Gibson, 2013). Where wolves are concerned, wildlife law explicitly recognises the value of conserving and protecting species while arguably simultaneously prioritising private interests over public wildlife trusts ones in farming and hunting areas.

Conclusions

While it is beyond the scope of this book to offer a comprehensive analysis of all wildlife law, this chapter identifies that wildlife law generally serves a conservation purpose that allows continued sustainable exploitation of wildlife while at the same time creating offences relating to wildlife misuse. Thus wildlife law creates offences in respect of wildlife and brings wildlife within the remit of the criminal law by specifying prohibited activity in respect of wildlife and in doing so defining the acceptable limits of wildlife use. Wildlife law primarily operates according to a law enforcement deterrence model based on detection and punishment, and which imposes criminal sanctions, including use of imprisonment as a means of addressing both group and individual deviance.

As this chapter illustrates, wildlife crime is socially constructed in national laws which, beyond implementing the requirements of international law, construes wildlife crime according to national priorities and conceptions on natural resource management and unacceptable criminal behaviour. Thus the nature of wildlife crime and effectiveness

of legislative efforts to deal with it are very much country specific. Lebovitz et al. (2014) analysed legislation implementing CITES in ten countries and concluded that the state of principal legislation was at best mixed. Much wildlife law is historic whereas threats to wildlife are increasing all the time requiring both rigorous up to date legislation and effective enforcement mechanisms.

5
Theoretical Perspectives on Wildlife Law Enforcement

This chapter examines theoretical perspectives on wildlife law enforcement and wildlife crime, situating wildlife law enforcement primarily within green criminology's environmental justice and ecological justice perspectives (White, 2008: 15). These two perspectives respectively argue that: environmental rights should be perceived as an extension of human or social rights and environmental justice enhances the quality of human life (which includes access to natural resources such as wildlife) and that the quality of the environment and the rights of nonhuman species should be considered within justice systems. Accordingly, the quality of law enforcement that protects the environment, including wildlife resident in and dependent on it, should be a core concern of criminal justice, although green scholars have highlighted that this is not always the case (Wellsmith, 2010, 2011; Nurse, 2012).

As Chapters 2 and 4 illustrate, 'official' classifications of wildlife crime vary and the concept of wildlife crime is socially constructed, specific to time, place and culture. White (2013a) observes that 'when criminalisation does occur, it often reflects human-centred (or anthropocentric) notions of what is best … in ways that treat "nature" and wildlife simply and mainly as resources for human exploitation' (2013a: 21). Consistent throughout this book is the notion that wildlife legislation, while creating offences in respect of wildlife harm, only goes so far in achieving protection while allowing continued wildlife exploitation. Building on the outlines of international and national wildlife laws in the preceding chapters, this chapter explains the theoretical underpinnings of wildlife law enforcement by discussing its policy background and considering the causes of crime and application of criminological perspectives to wildlife crime problems. This chapter discusses relative deprivation, anomie, differential association and rational choice

as causes of wildlife crime and individualistic and group offending. It also discusses police, policing and policy culture as factors in determining the public policy priorities in wildlife law enforcement, including principles of legal theory that influence wildlife protection laws. For example, theories of punishment and situational and social crime prevention as applied to wildlife crime are relevant to theorising wildlife crime's social construction, albeit wildlife crime prevention is covered in more detail in Chapter 8.

Wildlife crime and legal theory

Social contract theory suggests that society exists on the basis of mutual consent and the exercise of a normative power to bind oneself to shared values and notions of government (Hume, 1963; Lesnoff, 1986; Freeman, 2007). Individuals 'come together and contract to form a society' (Vold and Bernard, 1986: 19), believing that the benefits of living together far outweigh the disadvantages. In doing so, individuals agree to be bound by a set of rules for the benefit of all. However, some individuals are unable to fully comply with the rules of society, and individual theories of crime seek to understand the reasons why some individuals fail to conform to societal norms. Individual theories of crime seek to understand the behaviour of individual offenders and, in particular, identify what it is about the particular individual that makes him or her commit crime. In particular, rational choice theory (Clarke and Felson, 1993; Ariely, 2008) is widely accepted and invoked by politicians wishing to portray those who commit crime as choosing to do so with a blatant disregard for the impact of their actions on others. Much wildlife crime, particularly wildlife trafficking, is economically driven; wildlife is a resource from which individuals gain profit and demand for wildlife or wildlife products (including parts or derivatives) ensures that such markets continue to exist. Economic incentives for wildlife exploitation operate at individual, group (e.g. corporate or organisation) and state level where income derived from wildlife can provide individual benefit in the form of direct profit (Nurse, 2011, 2012; South and Wyatt, 2011) or contribute significantly to a state's economy, for example, through wildlife tourism or sanctioned hunting (Brockington et al., 2008). Accordingly wildlife crime can theoretically be reduced where offenders are persuaded to desist from offending by intensifying their fear of punishment and increasing their costs. Thus punishment can be limited to actions considered necessary to prevent offenders

from 'choosing' to commit wildlife crime (Clarke and Cornish, 2001; Picquero and Tibbetts, 2002). Stallworthy (2008: 23) argues that 'traditional market based perspectives are broadly accepting of legal regulation as a constraint on wealth generating activities, where restricted to the correction of market imperfections'. Wyatt (2013: 1) identifies that laws to curb destruction of wildlife have been in existence for hundreds of years, and laws explicitly regulating the trade in wildlife have been developed fairly consistently throughout the 20th century. Yet the effectiveness and development of wildlife laws and their associated enforcement has undergone significant change from the late 20th century onwards as greater knowledge of threats to wildlife and the expansion of globalised markets have required increased wildlife protection (Ehrenfeld, 2003). White and Heckenberg suggest that green criminology provides a mechanism to consider both illegal activity, environmental harms currently defined as unlawful, and legal harms those actions defined as lawful but which nevertheless cause environmental damage and harms (2014: 13). One contention of this book is that legal trade in wildlife facilitates the illegal trade (Nurse, 2012, 2013a; Wyatt, 2013) and it should also be noted that some wildlife crime occurs as a result of externalities, the unintended consequences of a market and 'those costs avoided by an economic actor only to be imposed on others' (Stallworthy, 2008: 23). The principle of wildlife as a resource available for human use and exploitation means that the lines between legal and illegal use of wildlife are often blurred (Nurse, 2013a) and legal protection of wildlife while robust in some respects is lacking in others (Wise, 2000; Donaldson and Kymlicka, 2011). Green criminologists are thus concerned with the pace of man's impact on other species and the cumulative impact of man's activities. This requires consideration of the context in which justice systems deal with a wide range of wildlife harms and the different types of wildlife crime and criminality that occur in various activities negatively impacting on wildlife.

As Chapter 4 indicates, two broad approaches are taken to wildlife law enforcement: criminalisation and regulation (Wyatt, 2013; Nurse, 2012). From a theoretical legal perspective one purpose of criminalisation is to provide for punishment (Nurse, 2011; Schaffner, 2011; Öberg, 2013) But potentially two conflicting approaches to punishment exist: those 'which see punishment as something of value in itself versus those that see punishment as a means to an end' (Bix, 2009: 123). The question 'why punish?' is integral to wildlife law enforcement policy. In mainstream criminology, punishment serves various purposes with

the following four key principles serving as policy rationalisations and ideological justifications:

- The *reductivist* approach which suggests that punishment reduces crime by deterring offenders, particularly in the use of prison which, in most jurisdictions, is the ultimate deterrent. Reductivism's logic is that knowledge of punishment and the use of prison and other sanctions achieves both general and individual deterrence. Offenders who commit crime and are sentenced are so fearful of receiving another prison term that they will become law-abiding. Reductivism also incorporates the use of incarceration as a temporary crime control measure, removing offenders from temptation and offending opportunities.
- The *retributionist* approach to prison works on the basis of punishing the criminal act with a suitable penalty as a means of seeking retribution for the harm done to victims (in this case wildlife) and wider society. It is based on the idea that the punishment should fit the crime, so penalties should increase in severity commensurate with the severity of the crime. More serious wildlife crimes would, therefore, attract prison sentences and the greater the crime the longer the sentence
- The *restoration* or *reparation* approach to punishment is based primarily on the need for offenders to be punished, so that the victim and society at large receives some form of compensation. Measures which require offenders to restore wildlife habitats or mitigate the effects of wildlife removal would fall into this category.
- The *rehabilitative* or *re-integration* model suggests that punishment can be a positive tool that helps offenders to 'correct' their offending behaviour and be reintegrated back into the community.

These approaches are not mutually exclusive, although the extent to which they are used depends on a range of factors, not least political ideologies and their influence on criminal justice and wildlife crime policy. However, criminology and criminal justice policy has been slow to address harms caused by humans to wildlife, despite the fact that animal harm, killing and illegal trade has long been the subject of the criminal law (Schaffner, 2011; Nurse, 2013a) and socially constructed notions of 'acceptable' animal use have influenced animal welfare legislation and attempts to regulate human use of animals (Kean, 1998; Radford, 2001; Sunstein, 2006). Species justice discourse (Benton, 1998; White, 2008; White and Heckenberg, 2014) would argue that punishment serves

reductivist, retributionist and restorative purposes. Punishment is necessary to communicate that harms to animals are socially unacceptable and should be viewed in the same way as other crimes. But action is also necessary to represent the interests of animal victims who lack sufficient legal standing to be classed as victims of crime and take their own action (Wise, 2000) and to repair environmental degradation arising from species' removal from habitats and habitat destruction. Hall (2013) argues that whereas a legalistic approach to environmental victimisation is often employed in criminological discourse a broader approach to environmental victims is warranted. Hall proposes a notion of environmental victimisation which incorporates 'those harmed by the adverse effects of environmental degradation perpetrated or brought about by individuals, corporations and states' (2013: 221). Within this conception punishment becomes justified for those who harm wildlife, a form of environmental degradation given that wildlife is integral to biodiversity and its removal or killing forms part of environmental harm.

Wildlife law, policy and deviance

The preceding sections identify deviance, departure from societal norms or ideals in order to act in an abnormal manner, as a central cause of wildlife crime. Muncie and Fitzgerald (1994) explain that the deviant is one to whom the label 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).

A central difficulty in criminal justice policy is the focus on criminals and punishment or a concentration on individual causes of crime rather than any integrated approach which incorporates social and individual causes. 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 western criminal justice systems and is the dominant policy response to wildlife crime with its 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 after offences have been committed but fails to achieve any of the other objectives (Nurse, 2012, 2013a).

Despite its flaws the law enforcement perspective remains one of the dominant policy perspectives for dealing with crime, primarily focused on the role of the individual offender, albeit wildlife crime is increasingly seen as crime where organised and even state crimes are significant factors (South and Wyatt, 2011; Nurse, 2013a). 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. Wildlife crime policies give primacy to employing deterrence principles (Cavadino and Dignan, 1994: 33) attempting individual deterrence with seizure of assets, wildlife profits and the imposition of fines and prison sentences intended to cause sufficient 'pain' that an individual is unwilling to repeat the experience and determines to lead a law-abiding life from that point onwards. Group or general deterrence is achieved through the considerable publicity given to wildlife punishments and seizures as a means of educating the general public as to the existence and likelihood of receiving punishment for wildlife crime (Lowther et al., 2002; MacKenzie, 2002; Wellsmith, 2011).

However, recidivism has proved to be an issue in 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. English 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 greater use should be made of prison sentences (provided for in much wildlife law). Arguments also persist that prison regimes should be made sufficiently tough 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 in Chapter 9's discussion of wildlife crime's prosecution, but arguments about greater use of prison and increased austerity fail to convince that more severe punishment lessens crime. The 'short sharp shock' detention centres of the 1980s UK (modelled on US-style boot camps) 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 available for wildlife crimes indicates that a strict punishment regime has not reduced the level of wildlife crime, although the extent to which such sentences are actually applied is questionable and is discussed in Chapter 9.

Arguments for general deterrence are also unconvincing given that considerable publicity is already given to wildlife crimes and the sentencing of offenders, emphasising the deviant nature of such offending in a contemporary environmentalist-influenced society (Nurse, 2012; Bernick and Larkin, 2014). '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 reporting of prison sentences for wildlife trafficking and publicity for particular enforcement campaigns such as *Operation Easter*, the UK-wide operation against egg collectors co-ordinated by Tayside Police, *Operation Lepus*, the UK's major 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 which also highlighted increased police and NGO investigation of wildlife crime. Websites such as www.operationcharm.org also allow for the reporting of incidents online and similar online reporting mechanisms are used by NGOs such as WWF, Defenders of Wildlife and the ASPCA for public reporting of animal crimes. Casework successes and statistics on wildlife crime are regularly published by NGOs and justice departments with publicity for wildlife seizures a regular occurrence.[1] Yet while deterrence theory assumes that offenders are rational and

responsible individuals who calculate the risks associated with crime before deciding whether to commit an offence, this conclusion is questionable given that many offences will not achieve full publicity or may do so only through the specialist environmental press without gaining wide public acknowledgment. The varied nature of wildlife offending (Nurse, 2011; South and Wyatt, 2011) makes it unlikely that all offenders conduct a full assessment of their offending behaviour before committing crime. Wasik argues 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). Wildlife crime exacerbates this problem where a 'rational offender' with the knowledge of reduced availability of investigative resources for wildlife crime and the knowledge that a significant proportion of enforcement activity is not conducted by mainstream policing agencies, could well conclude that his chances of being caught and receiving the punishment are minimal.

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 provides a temporary respite from an individual offender's activity and can have disruptive effects on crime. This does not, however, address the problems of what should be done with offenders while in prison, especially given Sutherland's theory (1973) of prison as an environment where individuals learn new and more sophisticated criminal techniques.

The causes of wildlife crime: theoretical concerns

Considerable literature exists on the causes of crime, yet a single explanation for what causes crime has yet to be established, albeit 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 societal changes and the evolution of legal classification of crimes. Given the continued legality of wildlife exploitation and sustainable use, a sector of society engaged in lawful activity that then becomes prohibited suddenly finds itself labelled as criminal when their actions and attitudes may not have changed (Burns et al., 2000; Nurse, 2011). 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. In some settings, wildlife crime thus becomes formalised protest against environmental legislation and is constructed as political protest against the exercise of state power, particularly in rural communities and historical cultural and normative values cherished by those communities (Woods, 2007, 2008).

Merton (1968) used the term anomie to describe a process whereby the previously accepted rules of society no longer control the individual. In particular, he applied the term to American society's overemphasis on the accumulation of wealth. Merton argued that placing undue emphasis on either the goals or the means of a society placed an unnecessary burden (or strain) on the individual. This would force him or her to act in ways outside the norm, such as committing crime, if legitimate means to achieve success were blocked. In Merton's anomie theory, society fails to reward its individuals for their attempts to achieve its accepted goals. The methods used to attain those goals, such as traditional employment and paying taxes, therefore become meaningless. Merton argued that American society would value a person who had acquired great wealth, irrespective of the methods through which the wealth was acquired. In this way, the norms of society (hard work, compassion, etc.) are devalued, and the end may be said to justify the means. Merton's theory particularly explains corporate environmental crime, where a company's success measured by its profits will have little attention paid to, for example, its compliance with environmental legislation and any harmful effects to the environment from its profitable activities until something untoward is discovered or suggested (Doyon, 2014; Nurse, 2014b). However, the theory also explains the criminal behaviour of entrepreneurs engaged at the margins of legal activity, such as legitimate wildlife traders who also engage in illegitimate trade (South and Wyatt, 2011), as well as those who develop successful businesses based entirely on unlawful activities. Lea and Young have further

developed this idea of strain into their concept of *relative deprivation* which 'in certain conditions [is] the major cause of crime: that is, when people experience a level of unfairness in their allocation of resources and turn to individualistic means to attempt to right this condition' (1993: 108). Poor rural communities for whom wildlife is a resource may, therefore, be disposed to wildlife crime, particularly where such behaviour is learned according to Sutherland's *differential association* theory (1957) which dictates that:

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, and b) the specific direction of the motives, drives, rationalisations, 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 those 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 non-criminal behaviour is an expression of the same needs and values.

What Sutherland and other (Chicago) criminologists identified is the manner in which criminal behaviour develops through associations in intimate personal groups (Vold and Bernard, 1986; Eliason, 2003, 2004). 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. Green Criminologists have identified that organised crime and subcultural groupings are factors in wildlife crime where offending behaviour is learned and endorsed within communities with 'deviant' normative values (Forsyth and Evans, 1998; Cooper, 2009; South and Wyatt, 2011; Nurse, 2013a). Thus challenges to the legitimacy of

hunting and angling regulations are common in the US, UK and several other jurisdictions where subcultures based on hunting as a cultural value or dominant ideology exist (Eliason, 2003; Nurse, 2009). Studies have found that rural hunting communities consider hunting and killing of wildlife to be their right irrespective of legislation (Bristow, 1982; Pash, 1986), and enjoy the challenge of outwitting enforcement agencies who they not only see as outsiders seeking to impose controls on their way of life, but actively engage with as the enemy (Forsyth and Marckese, 1993). For example, an area where game shooting takes place may publicly appear to be intolerant of wildlife crime, but reliance on the estate for employment or housing, and the influx of urban income into the local economy, can mean that residents turn a blind eye to illegal activity occurring on an estate in order to continue enjoying the economic and social benefits of a successful shooting operation. Thus policing in rural areas and particularly in relation to wildlife crime can represent a model of policing imposed on a community who have historically engaged in 'traditional' forms of sport or recreation where killing of animals is acceptable and specific 'rural' notions of crime may exist (Meagher, 1985; Marshall and Johnson, 2005). This contrasts with the environmental radicalism of town dwellers and enforcers who increasingly engage with the countryside yet find many of its practices problematic.

Thus rural communities and those with anthropocentric views of wildlife as a resource to be exploited may contest the legitimacy and necessity of wildlife laws and the classification of wildlife killing as crime (Nurse, 2011). Offenders in such communities make judgments, considering some actions defined as crimes to be perfectly acceptable or a necessary part of survival (Eliason, 2003). As the nature of the criminal act in part determines how it is defined, such communities may also perpetuate activities such as illegal hunting, egg collecting etc. through shared learned behaviour based on the normative values of their community which others would view as deviant or delinquent. Wilson (1985: 45) explained that delinquency is largely an expression of toughness, masculinity, smartness, and the love of excitement by lower-class youth. In wildlife crime this is reflected in the dominance of masculinities as a significant cause of wildlife crime and the dangerous nature of some offences which represent a battle against nature (Nurse, 2013a). At the other end of the scale, organised wildlife trafficking which employs sophisticated techniques transnational trade routes and techniques of violence rooted in economic capitalist-driven exploitation of wildlife resources represent a more developed and co-ordinated form of

criminality which challenges traditional notions of environmental protection. Such offending itself reflects speciesism (Sollund, 2008) arguably requiring a criminal justice and effective policing response rather than a natural resource protection or conservation one.

Wildlife crime and policing perspectives

In theorising wildlife crime, 'policing' needs to be considered in both its wide and narrow conceptions. The narrow conception of policing as being solely that carried out by the uniformed police is inadequate when considering wildlife crime because much policing of wildlife crime is carried out by environmental and conservation agencies and NGOs outwith traditional police agencies. Instead it may be useful to consider White's broader notion of policing as follows:

- The socio-legal approach which emphasises the use of the criminal law and attempts to improve the quality of law enforcement
- The regulatory approach which emphasises social regulation and reform of systems of production and consumption.
- The social Action approach which emphasises fundamental social change and which seeks to engage in social transformation by supporting deliberative democracy, citizen participation and social movements

(White, 2008: 182)

As this chapter identifies, the socio-legal approach and a reliance on law enforcement perspectives of investigation, apprehension and prosecution dominate wildlife crime enforcement. However, White's three approaches warrant further examination, as each are employed at different times and for different purposes within wildlife crime enforcement.

The socio-legal approach

Wildlife crime, while generally well served by wildlife laws (see Chapters 3 and 4) suffers in its enforcement (Wellsmith, 2011; Nurse, 2012). Police perspectives generally view rural and environmental crime as less serious than urban, in terms of both intensity and type of crime, predicated on perceptions that rural areas require less intensive policing (Muhammad, 2002) and a more informal community oriented approach to policing. Wildlife crime has the added disadvantage of sometimes being perceived as a victimless crime, where an anthropocentric view of crime as being human-centred dominates policy and policing discourse (Sapontzis,

1987; Weitzenfeld and Joy, 2014). Although wildlife and environmental crimes continually attract media attention due to the efforts of NGOs, they are often not core policing priorities. Reiner (2000) identifies that the police classify crime according to both its merits and its cohesion with accepted notions of policing, 'cop culture' defines some crimes as 'rubbish' and not worthy of police time while other crimes are classified as having value; that is, the sort of thing that both police managers and operational officers consider they should be doing. 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; Reiner, 1992/2000) 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 worthwhile, challenging and rewarding involving 'good-class villains' (Reiner, 1992: 118) and crimes that are considered to be solely the responsibility of the police. Rural crime classifications that include such activities as theft/damage to farm equipment, rural drug use and poaching with the association of 'good-class' or 'mainstream' villains that the police are there to apprehend are likely to be accepted, while 'lesser' offences such as fly-tipping and wild animal theft are not. Thus the social action approach has inherent problems in gaining maximum use of existing criminal law structures, particularly in integrating wildlife crime into policing priorities. Wildlife officers and rural crime officers partially divorced from mainstream police activity generally work with comparatively fewer resources and lower budgets than their urban counterparts Muhammad (2002), taking into account crime volumes and perceived seriousness of offences (Nurse, 2008, 2012; Wellsmith, 2011), with wildlife/rural policing often considered a 'soft' option requiring a more community-driven social support service by police managers (Weisheit et al., 2006) unencumbered by media-driven violent crime images of city policing (Young, 2010). Domestic wildlife policing, particularly minor animal theft, also lacks the perception of being dangerous or 'challenging' police work, representative of the peace officer's order maintenance or restoration role (Joyce, 2010). In part this is because it lacks victims able to speak of their harm, but also because it takes place in a contemporary culture where some animal killing is permissible thus certain wildlife crime is seen as technical regulatory breach unworthy of police attention (Nurse, 2012).

The Socio-legal approach however benefits from the use of existing enforcement structures such that prosecuting and investigative bodies

already exist and wildlife protection has been a consistent feature of the criminal law from at least the late 19th century. However, 'environmental regulation and enforcement frequently only finds effective purchase within particular jurisdictions and national contexts' (White and Heckenberg, 2014: 223). Thus the focus on the specifics of a nation's criminal law and the need for consistency with that law as culturally defined may frustrate attempts to develop notions of the criminal and what should constitute crime according to a green criminological definition of crime which extends beyond the strictly legal (Lynch and Stretesky, 2003). Thus Mediterranean countries with a cultural tendency towards sports shooting of birds may resist efforts to fully incorporate international law such as the Convention on the Conservation of Migratory Species of Animals while countries with a history of incorporating endangered species into medicine or cuisine may similarly have difficulty in criminalising such activities.

The regulatory approach

The regulatory approach is primarily concerned with moving away from criminal sanctions and instead applying regulatory strategies. White (2012) applies contemporary regulation theory to environmental crime, recognising the poor level of resources, meagre budgets and low staffing levels that exist in environmental law enforcement given the size and scale of environmental problems. Such statutory enforcement failures add to the marginalisation of animal crime and leave a vacuum that has increasingly been filled by NGOs adopting policy development and practical enforcement roles (White, 2012; Nurse, 2013b), with a number of NGOs actively investigating and prosecuting animal abuse and wildlife crimes. While NGO approaches often emphasise the importance of the criminal law and frequently include calls for tougher sentences and more punitive measures for wildlife crime (Nurse, 2011, 2012) they also employ a regulatory approach to compliance.

Nurse (2013b) identifies that the principles of 'risk-based regulation' and 'smart regulation (Gunningham and Grabosky, 1998) are sometimes employed to address environmental problems. These reflect the broad tendency of neo-liberalism towards deregulation and for business self-regulation reflecting a differentiation between individual offenders and corporate offenders. The UK's Law Commission, for example, in its consultation on wildlife law reform identifies that historically UK wildlife law has been 'associated with socio-economic structures' largely dominated by wildlife's value as either economic or social resource (Law Commission, 2012; Nurse, 2013b). The Commission's proposals

on wildlife law reform adopt a perspective that excessive regulation is a burden on business, commensurate with government perceptions on cutting red tape and generally providing a self-regulatory system which adopts a softer approach to corporate wrongdoing in order to allow business to thrive (Snider, 2002; Slapper, 2011). Risk-based regulation (Hampton, 2005) generally contends that regulation should only be resorted to where 'satisfactory outcomes cannot be achieved by alternative, self-regulatory, or non-regulatory approaches' (Law Commission, 2012: 55). Ayres and Braithwaite's (1992) notion of enforced 'self-regulation' explains a system where corporate norms and the natural drive of corporations to behave ethically will *automatically* provide for self-regulation and an emphasis on persuasion using fines and administrative sanctions is considered to be more effective than the use of criminal prosecution. The risk-based approach also argues that inspections and other regulatory activity should take place only when necessary and that sanctions for business should be proportionate and meaningful. Accordingly, criminal prosecution should be a last resort to deal with offending and the use of settlements and providing opportunities for corporations to amend their behaviour are favoured approaches to effective regulation. A regulatory approach to wildlife law enforcement might favour, for example, the use of voluntary codes of practice making the prohibited wildlife-related action a regulated activity rather than an expressly criminalised one. Thus, for example, hunting without the required permit is an offence which arguably can be dealt with by way of sanction such as being banned from the regulated activity for a specified length of time. Voluntary codes rely on the goodwill and compliance intent of those involved in the regulated activity, but persistent offenders rarely comply with regulations and such codes (Ogus, 1995). While in principle the Hampton and Macrory principles and approach to risk-based regulation are appropriate models to deal with regulatory crime, in practice the implementation of these principles is problematic in the face of the persistent law-breaking that characterises much wildlife crime (Nurse, 2011; Wyatt, 2013). Thus while civil sanctions may be attractive politically as a way of reducing the regulatory burden and decriminalising legitimate business activity they are often ineffective in dealing with environmental/wildlife criminality. The Law Commission's consultation and proposals suggests that the current UK regime is too reliant on criminalisation and could make better use of civil and administrative sanctions (Vincent, 2014).

A different view emerges from research evidence suggesting instead that a 'weak' enforcement regime allows a wider range of criminality

and transfer of criminality from mainstream crime into wildlife crime (Wellsmith, 2010; Nurse, 2011). The principle of deregulation and reduced use of criminal sanctions and enforcement activity is intended to reflect the following ideological perspectives:

- Sanctions for business should be proportionate and meaningful
- 'Settlements' and allowing corporations to amend their behaviour are favoured approaches to effective regulation
- Criminal Prosecution should be a *last resort*

It should be noted that this approach distinguishes between regulatory breaches committed by legitimate business and criminal activity carried out by corrupt corporations and organised crime groups. Radical criminological theories are critical of such an approach identifying capitalist economies and liberal democratic governments as being founded on expansionist practices and policies which favour 'wealth creators' over individual citizens. Thus, a 'deep green' perspective argues that criminology 'must draw attention to and oppose the integral relationships between capitalist exploitation, business practices, and the destruction of the planet's various ecosystems' (Shantz, 2012: 3). Rather than the pure distinction between legal and illegal actors which often emerges in the business literature (Baumol, 1990) there is a need to consider the characteristics of offending irrespective of whether the offender is an individual or corporation (Nurse, 2011). Radical criminology argues for the abolition of statist criminal justice systems and redundant notions of legal and illegal, reflecting the fact that corporate offending often operates within the safeguards of neo-liberal markets where regulatory responses take priority over criminal justice ones. However, in theorising wildlife and environmental crime, the link between the legal and the illegal gains prominence (Nurse, 2011; South and Wyatt, 2011; Doyon, 2014) reinforcing the need to consider whether non-compliance and criminality are merely different points on a continuum.

The social action approach

This approach argues that social transformation is the key to resolving crimes. Rather than a criminal law or regulatory approach, the social action approach suggests that crimes such as wildlife crime can be resolved by social transformation which results in institutional change and the transformation of existing power relationships. Arguably such transformation has already occurred in some areas as attitudes towards animals have changed and environmentalist perspectives have achieved

legitimacy within policy and criminological discourse. Benton (2007: 5) employs the term *ecotopia* to conceptualise a green society in which humans live in ways that minimally disrupt the rest of nature and the purpose of individual and collective life takes priority over materialism and neo-liberal market-driven economies. In this context, social change linked to a notion of social justice which incorporates respect for wildlife manifests itself in changed decision-making processes which fully incorporate the impact of human decisions and action on wildlife. The social action approach is, arguably, already being employed by those NGOs and environmentalists involved in changing societal attitudes towards animals such that wildlife protection takes increased priority within policy and legislative discourse. Radford (2001) argues that the traditional anthropocentric attitude towards animals has been challenged not just in respect of laws preventing cruelty, but also in increased recognition that animals are deserving of legal protection in their own right.

Donaldson and Kymlicka argue that while animal rights theory, to date, has specified a limited number of *negative* rights, principally, the right *not* to be owned, killed, confined, tortured or separated, social transformation can be achieved by ascribing positive rights towards animals (2011). They propose a new theory of animal citizenship which aims to achieve 'a broader understanding of the "polis" as political community, and a broader set of ways in which animals relate to that community' (Donaldson and Kymlicka, 2011: vi). Moving beyond the anthropocentric notion of animal rights as corresponding to human interests which can be easily incorporated into human-centric policy (Kean, 1998; Radford, 2001) they propose a notion of animal citizenship which integrates animal interests into human society via political institutions and practices, varied according to the needs of companion animals and wildlife (Nurse and Ryland, 2013). Donaldson and Kymlicka's central argument is that animals should not just have legal rights but also *political* rights as part of a cohesive animal-human society which (a) recognises their integration into human society by virtue of having been domesticated and forcibly made dependent on humans (albeit over a long period of socialisation) and (b) argues that 'wild animals' (and their environments) should be recognised as a sovereign nation capable of regulating its own affairs free from human interference (Nurse and Ryland, 2013). *Zoopolis's* notion of citizenship argues for 'extending rights of sovereignty to wild animals' this contrasts with the existing 'stewardship' model where land is set aside for animals, instead 'recognizing another community's sovereign territory

involves recognizing that we have no right to govern that territory, let alone to make unilateral decisions by stewards on behalf of wards' (Donaldson and Kymlicka, 2011: 169–170). Giddens (2009) argues that social change is dependent on alterations to underlying structures and modification to basic institutions. Peelo and Southill cite Harris (2003) in noting that 'many aspects of human behaviour once viewed as deviant are now largely acceptable aspects of life' (Peelo and Soothill, 2005: 142). Their discussion of social change identifies how understanding of crime requires an understanding of its context and explicitly notes that in a contemporary post-Fordist society an evolving social context means transformation in understanding of crime and its context. In relation to wildlife law, social transformation has thus far achieved acceptance that animal protection is a legitimate objective of governments and the exercise of their policing powers to provide for wildlife protection. Yet, wildlife crime still largely remains outside of the remit of mainstream criminal justice (Wellsmith, 2011; Nurse, 2012) and scholars and policymakers remain divided on the extent to which legal protection is predicated on notions of legal personhood, citizenship or protection of animals as having intrinsic value and as sentient being deserving of protection.

Summary and conclusions

Wildlife crime remains an international problem requiring an international response, albeit precise definitions of wildlife crime and enforcement approaches common across jurisdictions are difficult to conceptualise. Debates over criminalisation versus regulation are endemic to wildlife law discourse, the presumption being that legitimate actors (particularly corporations) will comply with wildlife laws and require help and encouragement to do so rather than punishment and disincentive through application of the criminal law. A duality thus exists where non-compliance and criminality by those perceived as legitimate actors with power within the neo-liberal market economy is generally not *immediately* subject to the criminal law (Stallworthy, 2008; Walters et al., 2013; Lynch and Stretesky, 2014). Yet non-compliance and failure to confirm by those at the lower end of the socio-economic scale and arguably marginalised within neo-liberal economic structures (mostly individual actors) is actively punished. Thus, a conception of criminal justice emerges which demonstrates that it is not evenly applied which risks causing difficulties in respect of attempts to secure effective policing of wildlife crime.

6
Wildlife Offenders

As previous chapters have discussed, a wildlife crime, broadly speaking, is an unauthorised act or omission that violates wildlife or environmental law, is subject to enforcement or prosecution and sanctions (often criminal) and may involve harm or killing of wildlife, including its removal from the wild, possession, sale or exploitation. The task of wildlife policing or enforcement activity is formal social control which encourages compliance with the law by controlling and deterring illicit acts and omissions (Situ and Emmons, 2000: 20). Thus, one purpose of wildlife law and wildlife policing is to explicitly deal with criminality and the illegal behaviour of human actors whose activities are considered harmful to wildlife, albeit 'there are different approaches and different theories as to how harmful activities can be curtailed' (Wyatt, 2013: 105).

However, the dominant enforcement paradigm in relation to wildlife crime 'is an approach that labels the phenomenon as a crime or deviance to be rationalized on the part of the individual offender' (Essen et al., 2014: 633). At best, such an approach risks misunderstanding the complexity of wildlife offending, resulting in ineffectual legislation and enforcement policy. Such a reductionist approach also risks ignoring the realities of wildlife offending such that 'wildlife crime policy predominantly treats all offenders as rational profit-driven actors, while public policy statements often fail to identify wildlife crime's causes, or clarify the intended impact of policy on potential offenders beyond basic ideas of detection or apprehension' (Nurse, 2011: 40). Thus while the primary intentions of wildlife law enforcement may be to achieve deterrence, prevention and punishment (Situ and Emmons, 2000; Schaffner, 2011; Nurse, 2012), in reality enforcement policy which is targeted at only a fraction of wildlife crime's offenders is unlikely to be successful. The

reality is that 'rather than all wildlife offenders being rational thinking profit-driven individuals, wildlife crime is a complex varied phenomenon involving a range of offenders with different motivations and offending characteristics' (Nurse, 2013a: 6). Thus legislative and policing policy needs to be shaped with the complexity of criminality in mind and one contention of this book is that wildlife law and wildlife law enforcement policy often fail to recognise the varied criminality involved in wildlife offending.

This chapter briefly discusses the nature of wildlife offending, assessing theories on the individual and crime and on crime and society to show how wildlife law is subject to both individualistic and cultural interpretation. The chapter discusses, for example, traditional countryside activities such as hunting with dogs in the UK, hunting of game in the US and hunting of large mammals in continental Europe as resistance, and defiance of the power of neoliberal governments imposing dominant norms and values on others. The chapter explains the cultural relevance of such activities as fox, mink, stag and moose hunting and how illegality related to these practices is frequently an assertion of a particular form of social identity. As a result, despite legislation which regulates such activities in different parts of the world, there remains resistance to law enforcement efforts rooted in cultural and traditional explanations for these activities. The chapter also discusses the involvement of organised and corporate offenders in wildlife crime (South and Wyatt, 2011), explicitly identifying that while the attention of criminal justice systems is often individualistic and focussed on the marginalised and powerless (Lynch and Stretesky, 2014), a significant amount of wildlife crime is committed by groups and criminal networks who employ sophisticated techniques and command considerable resources in their pursuit of wildlife crime. Such offenders require a different policing approach than the individual opportunistic offender, and one challenge for wildlife crime enforcement is the allocation of appropriate resources to deal with such offending.

Wildlife law and the principles of deterrence

Attitudes towards regulation are an important factor in identifying the nature of wildlife offending. Eliason's (2003) 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; he 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 book due to the species involved (usually 'game'), it may be an issue in poaching offences where game birds and animals that might be considered food may be taken. However, it illustrates a cultural issue. In those communities where wildlife use represents normative behaviour, criminalisation of such activity may be actively resisted and may have the effect of actually increasing deviance.

Subsequent research (Nurse, 2011; Wyatt, 2013) has identified that wildlife offenders employ a range of neutralisation techniques, determined by their offence type and the criminal justice response to their offending. The involvement of NGOs and conservation monitoring bodies, 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 neutralisations employed by wildlife offenders (as with some other offenders) can be outlined as follows:

1. The denial of responsibility
2. The denial of injury or the existence of a recognised 'victim'

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 the existence of distinct types of wildlife offender. Nurse (2011) analysed wildlife offenders and identified four basic types with motivations as follows (Table 6.1):

Table 6.1 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
Traditional criminal	No	No	Yes*	No	Yes	Yes	No
Economic criminal	No	Yes*	Yes	No	No	Yes	Yes
Masculinity criminal	No	No	No	Yes*	Yes	Yes	Yes
Hobby criminal	No	No	No	No	Yes	Yes	Yes*

*Indicates the primary motivator.
Source: Nurse, 2011: 48. Reproduced with permission of the British Society of Criminology

Wildlife offending as resistance

In some contexts, wildlife offending represents socially organised and patterned deviance linked to a specific subculture which challenges the norms of society (Foresyth and Marckese, 1993; Eliason, 2003; Woods et al., 2012; Nurse, 2013a,c; Essen et al. 2014). Matza (1964) identified that delinquents often accept a moral obligation to be bound by the law but can drift in and out of delinquency, fluctuating between total freedom and total restraint, drifting from one behavioural extreme to another, accepting the norms of society but developing a special set of justifications for behaviour that violates social norms. These techniques

of neutralisation (Sykes and Matza, 1957; Eliason, 2003) allow offenders not only to express guilt over their illegal acts but also to rationalise between those whom they can victimise and those they cannot. While offenders are not immune to the demands of conformity, they find a way to rationalise when and where they should conform and when it may be acceptable to break the law, an issue which explicitly emerges in green criminological literature on wildlife criminality (Beirne, 2009; Nurse, 2011; South and Wyatt, 2011; Wyatt et al., 2013). Many fox hunting enthusiasts, for example, strongly opposed the UK's Hunting Act 2004 as being an illegitimate and unnecessary interference with a traditional activity expressing this view via formal legal challenges to the legitimacy of the Act in *R v Jackson* [2005] UKHL 56 and the Countryside Alliance cases [2007] and in the European Court of Human Rights (*Friend v the United Kingdom* application no 16072/06). Thus their continued hunting with dogs is seen as legitimate protest against an unjust law and is denied as being criminal (Skidelsky, 2003; Prado and Prato, 2005). This form of resistance is bolstered by indications from the Conservatives (the majority party in the UK's current Coalition Government) that they may repeal the Hunting Act 2004 should they win a majority in the UK's 2015 General Election. Winter (2014) identifies that a free vote on repeal of the Hunting Act 2004 is part of the Coalition Agreement through which the Conservatives and the Liberal party went into Government in 2010. Essen et al. identify that 'according to the normative perspective, an individual complies with game regulations to the degree that the law is perceived as appropriate in a general sense' (2014: 636). In the UK, criminalisation of traditional countryside activities has resulted in political activity, similarly in the US, ranchers farmers and the gun lobby have mobilised against perceived legislative threats to traditional countryside ways of life as have hunters in Europe (Essen et al., 2014: 636). Woods et al. identify that 'apparent rural discontent has found expression in major demonstrations such as the Liberty and Livelihood March, smaller regional rallies, pickets and blockades by farmers, symbolic challenges and direct action, and a plethora of local campaigns and demonstrations (2008: 1).

Woods suggests that the range of protests, campaigns and demonstrations against the fox hunting ban can be collectively identified as an emergent rural movement (2003: 309). Arguably this constitutes formal resistance against the legislation and provides an explanation for continued and emergent criminality. In this context, wildlife crime and criminality can be conceptualised as social protest which may not be recognised by the 'offender' as a criminal act.

Case Study – Corporate Wildlife Crime: The Heythrop Hunt

The UKs Hunting Act 2004 generally makes it unlawful to hunt a wild mammal with a dog (subject to some exemptions). Hunting remains a contentious issue with anti-hunt advocates of the opinion that the Act is an effective piece of legislation by banning hunting with dogs and providing for wildlife protection and pro-hunting advocates questioning whether the Act is enforceable, legitimate, rational and proportionate. The Act has been subject to various legal challenges, including some which invoke human rights, claiming that the Act represents excessive state interference in traditional activities which constitute a way of life and private activity (Nurse, 2013b: 127–131). Central to efforts to have the Act repealed are claims that it is unenforceable and that the police decline to pursue cases under the Act. However, the RSPCA state that 'since the Act came into force, there have been 417 prosecutions for offences under the Hunting Act, of whom 288 defendants were found guilty (an overall success rate of 69%)' which the society indicates is favourable when compared to other wildlife crimes (Robinson et al., 2013: 1).

Prosecutions under the Act have primarily been individualistic in nature with charges brought against named individuals committing offences. However, the Act has recently been used to bring a prosecution against a corporate entity involved in hunting, demonstrating that wildlife offenders are both individual and corporate actors as is the case in other environmental crimes (Nurse, 2011).

During the 2011–2012 hunting season the hunt was filmed on several occasions in Gloucestershire and Oxfordshire encouraging hounds to chase foxes, an activity banned under the Hunting Act 2004. The evidence was passed to the RSPCA who mounted a prosecution alleging prolonged and sustained hunting contrary to the Act. The footage was shown to the Court in an action against members of the hunt and the Heythrop Hunt Ltd of Chipping Norton which admitted a charge of hunting a wild mammal, namely a fox, with dogs contrary to Sections 1 and 10 of the Hunting Act 2004. Hunt Master Richard Sumner and Huntsman Julian Barnfield of the Heythrop Hunt also pleaded guilty at Oxford Magistrates' Court. Barnfield was fined £1,000 and ordered to pay £2,000 in costs. Sumner was fined £1,800 and ordered to pay £2,500 costs and the Heythrop Hunt was fined £4,000 and ordered to pay £15,000 costs. All three were ordered to pay a £15 victim surcharge.

The case is the first time that a fox hunt had been convicted as a corporate body, establishing that both individuals and organised hunts (incorporated as a legal entity) can be subject to prosecution for such wildlife offences. However, the RSPCA was criticised for pursuing a 'politically motivated' prosecution and for claims of excessive spending when it was revealed that the prosecution cost £326,000 claimed to be nearly 10 times the cost of the defence's £35,000 legal bill (Hope, 2013; Ricketts, 2013). Criticisms were also made that the Heythrop Hunt was targeted by the NGO because it operated within the constituency of David Cameron, the Prime Minister who had previously ridden with the hunt (Davies, 2012). The case resulted in something of a backlash against the RSPCA as a private prosecutor raising questions in the British Press concerning how the NGO used in funds to enforce wildlife laws. However, the Charity Commission, the UK's Charity Regulator, is reported to have concluded that since undertaking prosecutions is in furtherance of the RSPCA's charitable objects the charity was entitled to bring the action and that provided the charity operated in line with appropriate prosecution policies and procedures it would not have broken any charity rules.

Woods et al. identified that a new wave of rural protest had emerged 'in the context of the ongoing social and economic restructuring of rural localities' (2008: 1). While their work primarily related to changes in the UK's rural landscape and socio-economic changes which directly impact on rural economies and lifestyles. Woods et al. concluded that countryside protests in the UK,

> [H]ave engaged a new cohort of grassroots activists with little previous experience of political campaigning. Only 10% of the Countryside Alliance members surveyed had participated in a political demonstration or rally before 1997, yet three-quarters had taken part in the Liberty and Livelihood March and significant numbers had participated in other protest events organised by the Countryside Alliance and other groups, including direct actions such as blockades and pickets at ports and supermarkets.
>
> (2008: 3)

Thus criminality which involves active defiance against a perceived unjust law (the Hunting Act 2004) takes place in the context of

organised resistance against threats. Similarly in the US bodies such as Big Game Forever, a Utah-based non-profit which describes as its mission to protect the future of hunting fishing conservation and rural communities, and has campaigned to remove the grey wolf from the Endangered Species Act provides a coordinated framework through which organised resistance might take place.

Organised wildlife crime

White and Heckenberg identify that 'in recent years greater attention has been given internationally to the role of organized crime networks in regard to environmental crime' (2014: 286). Traditional criminological discussions of organised crime focus on major criminal organisations like the Italian and Russian Mafias, Japanese Yakuza, or Chinese Triads (Badniera, 2002; Wright, 2006; Woodiwiss and Hobbs, 2009), but criminological analysis of organised crime reveals that organised crime structures exist at local, national, international, and global levels and across a range of criminal activities, from illegal gambling through to wildlife crime (South and Wyatt 2011; Nurse, 2013a). At the international and global levels, wildlife crime crosses borders and international criminal organisations operate in much the same way as global corporations with hierarchical structures: they have modes of operating which take advantage of international commercial flows and trade routes, and which sometimes combine both legal and illegal operations. The existence of organised crime's involvement in the illegal wildlife trade has become accepted fact in criminological circles. Beginning with Cook et al.'s observation of organised crime adapting existing trade routes to the most lucrative part of the illegal wildlife trade and being prepared to use intimidation and violence (2002: 4) through to Nelleman et al.'s conclusion that 'wildlife and forest crime has a serious role in threat finance to organised crime, and non-state armed groups including terrorist groups' (2014: 8) and that armed conflict groups in the Democratic Republic of Congo (DRC) and Central African Republic (CAR) traffic in ivory as a means of generating funds. White and Heckenberg also identify that 'wildlife crimes have also been linked to the fund-raising activities of terrorist groups and warlords in Africa and Asia' (2014: 286).

The contemporary conception of organised groups involved in wildlife crime thus extends beyond the notion of the (often ethnically motivated) organised crime group with its origins in racketeering (Ruggiero, 2002) to incorporate a new conception of the organised wildlife criminal or crime group. South and Wyatt's (2011) comparative analysis of

criminal actors in the illegal drug trade and the wildlife trade, identified several key actors involved resulting in a typology which variously described these actors as trading charities, mutual societies, business sideliners, criminal diversifiers and opportunistic irregulars (South and Wyatt, 2011: 552–555). The primary motivators varied for each organised group ranging from ideological attachment to the product/activity (trading charities), friendship networks and associations (mutual societies), increasing profits for legitimate business (business sideliners) increasing profits for illegitimate business (criminal diversifiers) and opportunistic crime (opportunistic irregulars). However, the contemporary analysis by UNEP and Interpol which identifies terror groups and armed militia's involved in wildlife crime as a means to fund other more violent causes extends the conception of wildlife as a resource to be used for human exploitation (Stallworthy, 2008) to one of wildlife as being disposable in the service of extreme ends. Thus in the pursuit of funds for terror or conflict purposes, levels of cruelty and mortality involved in the harvesting of wild animals is likely to be higher, as is the use of violence to other humans during involvement in the illegal charcoal trade and exploitation of forest products (Nelleman et al., 2014: 8). For 'traditional' organised crime groups 'parallel trafficking of drugs and wildlife along shared smuggling routes [takes place] with the latter as a subsidiary trade', but techniques also include 'the use of ostensibly legal shipments of wildlife to conceal drugs' (Cook et al., 2002: 5) while illegal shipments of wildlife are often also disguised as legal ones (Nurse, 2011, 2013b). For militia's and terror groups use of violence in illicit wildlife trafficking, already prevalent in the drugs trade, is a necessary operational technique which clearly brings their wildlife crime activity within the remit of mainstream criminal justice and legitimises wildlife crime as an area of study linked to conflict and violence.

Ayling (2013) identifies resilience and adaptation as being key aspects of organised crime groups' success in wildlife trafficking. Synergy exists between wildlife trade's similarity with classical positivist notions of crime (Vold and Bernard, 1986) and offenders clearly motivated by profit (particularly with respect to trade in endangered species which can sell for thousands of pounds) and involved in other forms of crime (Hutton, 1981; Linzey, 2009a). Schneider (2008) and Lowther et al. (2002) found that organised crime recognises wildlife crime as a 'soft option' where its traditional operations and transit routes can be utilised with a lesser risk of enforcement activity. South and Wyatt's analysis identifies the complexity of organised crime involved in the illegal wildlife trade consistent with the findings of other researchers who

have identified adaptation of organised crime groups to wildlife trafficking (Elliott, 2009; Nurse, 2012, 2013a). However, for terror groups and militias, recognising the ready availability of protected fauna and flora as a revenue stream and adapting operating practices to exploit this is not unusual. Ayling discusses the resilience of such groups such that the rigid hierarchical structures of other organised crime groups need not apply (Glenny, 2008) and 'opposition from authorities and changes in the economic and social conditions in which they operate' can be adapted to (2013: 69). Accordingly illicit wildlife trafficking becomes a persistent and ongoing activity and not only will trafficking methods adapt to accommodate new enforcement efforts but personnel will also adapt or be replaced as required to secure the longevity of the business. Accordingly new approaches to dealing with contemporary organised crime involvement in transnational wildlife crime and illicit wildlife trafficking will need to be developed.

Conclusions on dealing with offenders

Criminological research identifies a diversity of wildlife offender types, criminal behaviour and motivations for offending (Eliason, 2003; South and Wyatt, 2011; Nurse 2011, 2013a). This being the case, homogenous categorisation of wildlife crime risks the development of law and public policy inadequate to the task of reducing wildlife crime and new forms of wildlife criminality as discussed earlier in this chapter. The traditional approach to offending, which inevitably resorts to a detection apprehension and punishment approach, is unsuited to the complexity of the criminal behaviour involved and may be ineffective as wildlife crime evolves and new forms and categorisations of offender develop. The reality of current policy across jurisdictions is that it broadly treats all wildlife offenders as rational (financially motivated) criminals subject to deterrence principles via a suitably punitive regime. There is some recognition that at least wildlife trade continues 'due to complex socioeconomic and political conditions that are often beyond the scope of targeted international programs and agreements' (Wyler and Sheikh, 2013: 13). Yet, the primary motivators identified for different offender types outlined earlier in this chapter and elsewhere (Wyatt, 2013; Nurse, 2011) indicates that different elements drive each offender type making a uniform approach to offending and enforcement ineffectual. The wildlife crime enforcement regime thus requires modification, allowing for action appropriate to the circumstances of the offender and specific nature of the offence to be taken and which distinguishes between

violent wildlife crime and other offending, and between transnational wildlife crime and illicit wildlife trafficking and other wildlife crime. Current sanctions policy (discussed further in Chapter 9) is primarily based around a more punitive approach and sanctions aimed at negating any benefit offenders derive from their activity. But an argument can 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, particularly in respect of those offenders such as terror groups and militias for whom such punitive sanctions and the threat of incarceration are likely accepted and even tolerated risks. This is not to suggest lack of confidence in the criminal justice system as a tool for dealing with wildlife crime, but indicates a need to consider the specific nature of offending and to incorporate preventative and harm reduction measures which consider the realities of wildlife crime and criminality. Rather than solely apprehending offenders after offences have been committed and biodiversity loss achieved, 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. These issues are discussed further in the following chapters.

7
Issues in Policing Wildlife Crime

This chapter discusses current issues in wildlife law enforcement and the policing of wildlife crime. It includes discussion of different policing models, the nature and practices of green NGOs and their role in the investigation of wildlife crime and the development of wildlife law. In doing so, it considers contrasting notions of activism in the policing of wildlife crime from the 'hard' activist approach of prosecuting NGOs like Earthjustice and the Sierra Club with the 'soft' or campaigning activism of organisations like the Environmental Investigations Agency (EIA) and the advisory role of other NGOs like the UK's Royal Society for the Protection of Birds (RSPB) which while maintaining a full-time investigations section primarily works to support the police service as the main investigator of wildlife crime in the UK and the statutory prosecutor, the Crown Prosecution Service (CPS) in England and Wales.

This chapter raises the question of who is best placed to enforce wildlife law and provides a critical evaluation of different models of wildlife policing contrasting the statutory and federal law enforcement approaches of countries like the US and Canada with Europe's largely voluntary and NGO led approach. The role of wildlife law policy networks and their role in influencing wildlife crime and wildlife law enforcement policy are also discussed.

Problems of wildlife law enforcement

Considerable research evidence indicates that existing wildlife law regimes do not work in their implementation rather than in their basic legislative provisions. Practical enforcement problems are endemic to the UK's wildlife law system as identified by Nurse (2003, 2009, 2011,

2012) and Wellsmith (2010, 2011). Their respective analyses of the UK's wildlife law enforcement regime identified a system consisting of legislation inadequate to the task of wildlife protection, subject to an equally inconsistent enforcement regime (albeit one where individual police officers and NGOs contribute significant amounts of time and effort within their own area) and one that fails to address the specific nature of wildlife offending. Similar problems have been reported in the US context (President's Advisory Council on Wildlife Trafficking, 2014) albeit in the form of the US Fish and Wildlife Service, the US has the statutory (federal) enforcement agency that has previously been identified as desirable in the UK (Cook et al., 2002). White (2012) identifies that third parties such as NGOs often play a significant role in investigating and exposing environmental harm and offending and have become a necessity for effective environmental law enforcement. In most jurisdictions, wildlife law is effectively a fringe area of policing whose public policy response is significantly influenced by NGOs (Nurse, 2012) and which continues to rely on NGOs as an integral part of the enforcement regime. NGOs are an essential part not only of practical wildlife enforcement regimes, but also the development of effective 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 (mainly western) organisations, prosecutors (Nurse, 2013) playing a significant practical role in policy development and law enforcement.

Across jurisdictions, a range of problems have been identified within wildlife law enforcement as follows:

1. Lack of resources
2. Inconsistency of legislation
3. Inconsistency in sentencing
4. Lack of police priority and inconsistency in policing approaches

Three of these issues are briefly discussed below (inconsistency in sentencing is dealt with in Chapter 9) while the bulk of this chapter is concerned with policing issues and models of policing which can have significant impact on wildlife law enforcement.

Lack of resources

While the need for effective animal protection has generally been adopted at least by western legislators, criminal justice systems often fail to

afford priority to effective wildlife law enforcement. Lack of resources for effective wildlife law enforcement is cited by several authors as causation for ineffective enforcement. While domestic and international law implements animal protection principles and creates wildlife crimes, the extent to which such laws are actively enforced by criminal justice agencies is highly dependent on both political and practical considerations. Wyler and Sheikh comment that 'some governments suffer from capability gaps, including insufficient personnel, expertise, training, funding and equipment' (2013: 12). Damania et al. (2008) identify considerable deficiencies in policing and conservation resources on the ground where poaching of endangered wildlife such as tigers and elephants is most prevalent. They point out that 'many reserves lack the funds needed for the very basic tools of wildlife management – personnel, vehicles, communications and other equipment' and that resources for effective patrols and enforcement initiatives are also lacking (2008: 10). Whyler and Sheikh endorse this theme, commenting on anecdotal reports which suggest that poachers possess greater resources and firepower than the park rangers who protect wildlife. Nurse (2003, 2011, 2012) interviewed wildlife crime NGOs and enforcers in the UK who told the same story, reporting anecdotally that forensic and scientific resources were not always available to investigators where they would be for other crimes.

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 (Conway, 1999; Roberts et al., 2001). Much domestic (i.e. non-endangered species) 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 (Nurse, 2012). UK-based NGO Naturewatch (2005) surveyed Wildlife Crime Officers within all of Great Britain's Police Forces and identified that the levels of staffing were a major concern with some forces having officers working on wildlife crime on a purely voluntary basis. Naturewatch reported that 'overall, 82% felt that there were "too few" or "far too few" involved in combating wildlife crime' (2005: 1). The issue of policing and policing models is discussed in more detail later in this chapter but it is worth mentioning the potential negative impact of austerity measures on wildlife policing, where forces may naturally prioritise human interests over wildlife ones, particularly when allocating scarce resources.

Inconsistency in legislation

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 et al., 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 (Nurse, 2012). This is discussed further in Chapter 9, in relation to prosecutions, but the picture that emerges of wildlife crime through the available literature of different jurisdictions is that of a lack of internationally agreed standards for wildlife protection (CITES and other wildlife conventions notwithstanding). This allows states to implement their own standards as required, thus national wildlife law is developed in a piecemeal fashion as and when required in a manner which creates inconsistency. The UK's Law Commission recognised as much in its consultation on the reform of UK wildlife legislation (2012). Vincent (2014) identified that, 'there is no homogenous purpose or theme to the laws which currently apply; instead, a variety of aims and roles, some of which are conflicting, make application of laws problematic' (2014: 70). Vincent notes, for example, that UK law is replete with obsolete and conflicting laws, anomalies and unnecessary provisions, duplication and, in places, breached EU law. Problems of inconsistency also exist in other jurisdictions such that different and inconsistent penalties and power of arrest exist between species, law protects some species and not others, possession of some species is criminalised, others attract only regulatory or administrative sanctions, and so on. Certainty in wildlife law is a prerequisite for effective enforcement, 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 full legislative reforms were undertaken (discussed further in Chapter 9).

Police priorities and issues in policing approaches

Nellemann et al. (2014) identify that in the field of illicit trafficking in wildlife international collaborations exist such as the International Consortium on Combating Wildlife Crime (ICCWC), which includes CITES, UNODC, INTERPOL, the World Bank and WCO. Such networks, together with increased collaboration amongst agencies, such as with UNEP, and with individual countries provides a means through which at international level structured support can be given to countries in the fields of policing, customs, prosecution and the judiciary. Yet wildlife law enforcement remains predominantly a national issue making use of national police, customs or conservation agencies for enforcement. Chapter 4 identified that four basic enforcement models for wildlife crime policing exist as follows:

1. Enforcement by mainstream statutory police agency (including customs authority)
2. Enforcement by specialist environmental regulatory agency (EPA, Fish & Wildlife Service)
3. Enforcement by conservation, natural resource, parks agency
4. Enforcement by NGO

While these are not mutually exclusive and there is often overlap between agencies given the varied and often offence-specific nature of legislation these models represent the broad approach to wildlife policing which is predicated on Bright's (1993) law enforcement model of detection apprehension and punishment and a belief in the police as the primary enforcement agency. Giving evidence to the (UK) House of Commons Select Committee on Wildlife Crime the Association of Chief Police Officer's former lead on wildlife crime suggested that 'it would be probably unrealistic – well, undoubtedly unrealistic – to expect every police officer in the country to have the sort of knowledge of wildlife crime procedure, legislation and so on that the specialists have' (House of Commons, 2012: 29). This reflected the notion that policing of wildlife crime in the UK is an area in which police officers are not routinely trained and which is still carried out in a largely voluntary manner. As in many other jurisdictions, UK police forces are semi-autonomous with the importance attached to various non-mainstream issues being dictated at a local level by police managers. The House of Commons Select Committee acknowledged this stating that 'Most police forces deploy specialist wildlife crime officers, who handle cases involving wildlife

crime and advise other officers. In some forces, the wildlife crime officer role has evolved to encompass environmental crime, such as fly-tipping, which appears to make operational sense in rural areas' (2012: 29). Thus, wildlife crime enforcement risks not being seen as a specialism but part of a generic wider environmental or rural role, further marginalising its importance in policing discourse. The recruitment and retention of Police Wildlife Crime Officers in UK Police forces predominantly still works along the lines of the model developed by Kirkwood in 1994 in her study of the (then) 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 Wildlife Crime Officer (WCO) existed, summarised as follows:

Model 1

The Police force appoints one WCO with responsibility for wildlife liaison across the entire Force area. Kirkwood reports that in this model 'the W.L.O [WCO] 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 WLO [WCO] 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 WCO being of middle management rank, mostly inspector or chief inspector. Field WCOs are, mostly volunteers, usually operational police constables.

Model 3

In Model 3 a full-time WCO is appointed. Research carried out at Birmingham City University in 2013 suggests that around a third of UK police force have full time WCOs with the remainder carrying out wildlife crime work in addition to other duties and a small number fulfilling the role on a voluntary basis (Harding, 2013).

Kirkwood's analysis of the various types of WCO 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 WCO 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 WCO is to be welcomed as it provides a single (and dedicated) point of contact for the public and NGOs on wildlife crime issues. Despite its historical origins, Kirkwood's models hold contemporary resonance and demonstrate 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 police areas. While different models of WCO are in operation throughout the UK, essentially Kirkwood's models (in various forms) remain the dominant form of police approach to wildlife crime within UK police forces today.

However, the UK now also has a National Wildlife Crime Unit, described as a strategic unit whose functions are 'to co-ordinate enforcement activity in relation to cross border and organised crime both nationally and internationally, to collate intelligence and to produce analytical assessments' (House of Commons, 2012: 30). The Association of Chief Police Officers in its evidence to the House of Commons Select Committee concluded that the National Wildlife Crime Unit had led

to better coordination of enforcement activity, particularly in relation to cross-border activity and organised crime issues. However, historic issues at force level may still hamper enforcement of domestic wildlife crimes. In his 1993 study of policing, Ankers explained that many WCO's 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 WCOs 'have had to confront ridicule and contempt from colleagues and senior officers' (Kirkwood, 1994: 74). While the position has changed in some respects given wildlife crime's contemporary links with organised crime (South and Wyatt, 2011; Nellemann et al., 2014), such attitudes will persist in some areas, particularly with regard to 'lesser' wildlife crime. Although not written with wildlife crime in mind, Reiner's (1992/2004) work on the existence of a distinct 'cop culture' is of relevance. 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. This description is often most closely identified with the police response to domestic violence (see.; Edwards, 1989; Bourlet, 1990; Morley and Mullender, 1994) but equally applies to wildlife crime where an anthropocentric view of crime is employed seeing its importance in terms of human victims only. The evidence of NGOs is that in some areas problems are experienced with individual officers unwilling to pursue wildlife cases because they are not seen as a priority within their particular jurisdiction (Nurse, 2003, 2012).

Specialist environmental agencies such as the US Fish and Wildlife, the Environmental Protection Agency (US) and English Nature and (UK) can provide both regulatory and criminal enforcement options. However limitations are often placed on these agencies by virtue of their enacting legislation and tightly defined jurisdiction (Stallworthy, 2008). The same is true of enforcement by parks and conservation bodies who operate within the confines of a jurisdictional brief which usually limits their activities to their environmental or conservation remit. However, Patten et al. (2014) identify that game wardens, for example, are subject to both environmental and human caused dangers in the line of

duty. Conservation and game wardens are employed in high conflict areas (Eliason, 2006) where personal threats are an integral part of their duties, particularly in game areas where militarised poaching has become an emergent threat. The reality is that the pace, level of sophistication and globalised nature of wildlife and forest crime is beyond the capacity of many countries and individual organisations to address. Transnational crime's involvement in illegal trafficking of wildlife is now recognised as fact (Nelleman et al., 2014) yet the resources provided to game wardens and conservation agents to deal with organised offending are lacking. While Nelleman et al. identify that over 1,000 Tanzanian rangers have recently received specialised training covering 'tracking of poachers, tactics and wildlife crime scene management' (2014: 9) such resources and training are not consistently supplied by all jurisdictions. This risks the possibility of displacement as poachers and traffickers identify those areas vulnerable to poaching or where enforcement is carried out by ill-equipped conservation workers in lieu of professional police. However, Patten et al. (2014) identify that, at least in the United States, game wardens are also required to deal with 'mainstream' crimes of violence and regularly encounter a clientele armed with handguns, knives, shotguns and rifles thus training in a range of law enforcement and aggression diffusion techniques is required. Traditional avenues of support for peace officers may also be unavailable or some distance away due to the remote nature of game reserves, national parks and other countryside areas. In addition, Ayling identifies that wildlife poaching 'can be at least tacitly supported by poor communities because the financial benefits to the community outweigh those available from legitimate employment or state welfare services' (2013: 72).

NGO policing perspectives

NGOs are not usually involved in practical law enforcement, but in wildlife crime (broadly defined) various NGOs assist the police and prosecutors actively detecting, investigating (and sometimes prosecuting) crime. NGOs have traditionally collated information on the amount of wildlife crime that exists while the statutory enforcement authorities often record wildlife crime data in an inconsistent or ad hoc way (Conway, 1999; Nurse, 2012) exercising considerable influence over the wildlife law enforcement agenda. Indeed in the UK, NGO World Animal Protection part funds the Metropolitan Police's wildlife crime unit, albeit they have no say in operational policing matters. As earlier chapters indicate, domestic NGOs take the lead on investigating

wildlife crimes in some jurisdictions. Internationally NGOs like the International Fund for Animal Welfare (IFAW) and the Environmental Investigations Agency (EIA) are also active in practical investigation and wildlife policing work. Thus whereas in some areas, such as street crime, police functions are being privatised with the introduction of private security patrols, police community support officers (PCSOs) and street wardens (Fielding and Innes 2006), wildlife crime is an area where in some jurisdictions the policing function has traditionally been carried out by NGOs where it involves non-standard offences, and it is only recently that the police have become active in operational law enforcement of wildlife and environmental offences, remaining under pressure from NGOs to become more involved. Given the lack of centralised expertise in wildlife crime, especially that involving wildlife, police and prosecutors in a range of jurisdictions still rely heavily on NGOs. Thus US citizens have come to understand and expect that NGOs like the Sierra Club, Defenders of Wildlife and Earthjustice will take action where federal government agencies fail to do so or where their action is perceived to be inadequate. This picture is replicated in other countries.

However, the role of NGOs as enforcers or campaigners varies according to the types of crime involved, with different policy perspectives pursued in respect of game offences and poaching, habitat destruction and pollution of rural environments, or offences involving domestic/farm animals and animal welfare and cruelty offences. The relationship between NGOs and policymakers also varies so that, for example, game offences are considered to be effectively policed within the UK's strong game and anti-poaching legislation, with good cooperation between police and game rearing staff over poaching, but the same is not true of wildlife offences. Game rearing staff regularly report poaching offences (which directly affect their livelihoods and the rural economy) to statutory agencies but may be reluctant to have the same involvement in wildlife offences such as bird of prey prosecution where game rearing staff are often suspects. Thus, they may be in conflict with the police and conservationists over the appropriateness and legitimacy of enforcement action and rural crime policy.

NGOs are an important component of some enforcement activity (e.g. as expert advisers) yet continued NGO enforcement of rural (including wildlife and other environmental) crimes is undesirable where NGOs adopt the role of lead enforcer. While in principle NGO involvement is necessary when public enforcement falls down, in practice NGOs often lack the resources and practical experience of the full range of policing techniques to fully investigate and prosecute crimes; thus NGO

enforcement becomes primarily based on apprehension and punishment rather than incorporating required crime prevention techniques (Wellsmith, 2011; Nurse, 2013a). However NGOs also adopt a broader policing role by challenging the legitimacy and merits of policy often using court action to clarify matters of law. This broader conception on NGO policing is integral to the rule of law concept that governments are not above the law and should be subject to proper scrutiny (Dicey, 1982; Barnett, 2011). While frequently NGO challenges to ineffective policing and policy are undertaken via campaigning and publicity, legal challenges are not uncommon. Yet, NGOs do not have universal jurisdiction to make such challenges and may be perceived as lacking standing (sufficient interest) to intervene in or pursue a case as the provisions of US and UK explained in the following case study illustrate:

Case Study – *Lujan v Defenders of Wildlife* and NGOs standing in environmental cases

Lujan v Defenders of Wildlife 504 U.S. 555, 112 S. Ct. 2130; 119 L. Ed. 2d 351 (1992) concerned a lawsuit brought in federal district court by US NGO Defenders of Wildlife. The action concerned section 7(a)(2) of the Endangered Species Act of 1973 which requires each federal agency to consult with the appropriate Secretary of State to ensure that any action funded by the agency is not likely to jeopardise the continued existence or habitat of any endangered or threatened species. The Secretary of the Interior (Manuel Lujan, D) and the Secretary of Commerce initially agreed a joint regulation extending the section's coverage to include actions taken in foreign nations; however, a subsequent joint rule limited the section's scope to the United States and the high seas. Defenders of Wildlife and other NGOs sought a judgement that the new regulation was in error concerning the geographic scope of the section 7(a)(2) and also sought an injunction requiring Lujan to restore his earlier interpretation and apply the Act to actions taken abroad. The District court dismissed the suit on grounds of lack of standing, but the Court of Appeals reversed this decision and the case was subsequently heard by the Supreme Court.

Lujan raises the question of what an NGO needs to do in order to show it has sufficient standing to pursue an environmental case as well as the extent to which NGOs can act in public law matters concerning protection of wildlife. Justice Scalia ruled that in order to

establish standing, a party invoking federal jurisdiction has to establish, among other things, that they have suffered an injury in fact; i.e., a concrete and particularized, actual or imminent invasion of a legally protected interest. The Supreme Court considered however, that Defenders of Wildlife did not demonstrate that this applied to them because even if they had established that funded activities abroad threaten certain species, Defenders failed to show that one or more of their members would be *directly* affected from the members' special interest in the subject. The Supreme Court also concluded that the Court of Appeals erred in holding that Defenders of Wildlife had standing on the ground that the statute's 'citizen suit' provision confers on all persons the right to challenge the defendant's failure to follow the proper procedure, notwithstanding the plaintiff's inability to allege any concrete injury arising from that failure.

The US focus in standing is on causation and the redress of injury arising from the decision. However UK law provides NGOs with broader standing to pursue judicial review of Government decisions affecting wildlife and the environment. In *R v Inspectorate of Pollution ex parte Greenpeace* [1994] 4 All ER 329 Greenpeace sought judicial review of the decision of the Inspectorate of Pollution (a Government agency) to authorise the discharge of radioactive waste from the Thorp nuclear plant in Cumbria. Greenpeace had 2500 members or supporters living in the area likely to be affected by the decision. The issue in UK law is that a person must have 'sufficient interest' in the matter to seek judicial review. While cases are predominantly brought by individuals who are *directly* affected by a public authority decision or other measure, thus having 'sufficient interest' on that basis, cases having implications for the wider public beyond the narrow confines of injury and redressable injustice suggested by *Lujan* can be pursued by an NGO in the UK. Such cases (particularly environmental and wildlife ones) are subject to scrutiny by representative or public interest groups and UK law recognises these as having standing. The Divisional Court in *Greenpeace* concluded that the court should take into account the nature of the applicant (Greenpeace), its interests in the issues raised, the remedy it sought to achieve and the nature of the relief sought. It concluded that Greenpeace was a responsible organisation with an established reputation for its interest in environmental matters and that some of its members, who would have had standing in their own right, lived in the area affected. Thus a

principle was established that certain NGOs had standing by virtue of their special interest and reputation as a legitimate campaigning organisation.

UK courts have for many years been open to such applications and they have interpreted the requirement of 'sufficient interest' liberally when hearing cases brought by, among others, Greenpeace, Friends of the Earth, the World Development Movement, the Child Poverty Action Group, and the Joint Council for the Welfare of Immigrants. The corresponding justification for accepting such applications has centred upon the need to control public decision-makers notwithstanding that no individual may have been affected by a particular decision. Although the courts' willingness to hear such cases has sometimes proven controversial (it has been argued that NGOs use court proceedings as a publicity tool) the courts have continued to underline the imperative of upholding the rule of law and allow NGOs to challenge decisions on citizens' behalf.

While it remains an important case in respect of US NGOs, *Lujan* predates the Greenpeace case which has been supplemented by other UK cases which have endorsed the right of NGOs to push for more effective wildlife policy by challenging government decisions through the courts. In *Re D's Application* [2003] NICA 14 , the Northern Ireland Court of Appeal listed four general principles about standing that clustered around the need to ensure that possible government illegality does not escape scrutiny. These were:

1. that standing is a relative concept, to be deployed according to the potency of the public interest content of the case;
2. that the greater the amount of public importance that is involved in the issue before the court, the more ready the court should be to hold that the applicant has the necessary standing;
3. that the focus of the courts is more upon the existence of a default or abuse on the part of a public authority than the involvement of a personal right or interest on the part of the applicant; and
4. that the absence of another responsible challenger is frequently a significant factor, so that a matter of public interest or concern is not left unexamined.

It is perhaps also worth highlighting a European conception of environmental justice based around providing distinct access to information about the environment and mechanisms to challenge public decisions that have negative environmental consequences. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) entered into force in 2001. Aarhus provides that effective environmental justice involves ensuring sufficient public access to environmental decisions and rights to both question and participate in environmental decision-making. The Convention explicitly recognises every person's right to live in a healthy environment, something lacking in other areas of environmental law. The Convention also recognises the role of NGOs as having a role in allowing the public to access environmental justice and by ensuring that the public has recourse to the law also requires that there must be some form of remedy mechanism available to those affected by decisions and projects that could adversely affect the environment. Judicial Review is frequently the mechanism through which NGOs will fulfill this role; the UK, for example, has chosen its judicial review procedure as its mechanism for providing the public with the scrutiny and redress tools required by Aarhus.

Given limited resources and the fact that law enforcement and legal challenges are rarely priorities for NGO resources (Nurse, 2013c) decisions must also be made on which enforcement priorities should be pursued by NGOs. This risks enforcement becoming subject to the private interests and campaigning objectives of an NGO and implemented selectively, rather than being conducted in the public interest and in accordance with public policy priorities. White (2012) also notes that some NGOs justify using illegal means to achieve particular aims, particularly where enforcement is allied to an ideological position on law enforcement or rural crime e.g. a fundamental opposition to the lawfulness of game shooting or field sports. This can make effective collaboration between NGOs and official law enforcement agencies problematic (White, 2012) and risk undermining the legitimacy of enforcement action. NGOs operate their enforcement activities from a particular perspective (Nurse, 2013a) so that some enforcement action may be intended to achieve a campaigning objective, some might be approached from a moral perspective seeking to punish activities that the organisation disapproves of, and some might be pursued in order to highlight inadequacies in current law (Nurse, 2013a: 311–313). Thus wildlife crime policing and policy might be pursued from an ideological

rather than a 'pure' public protection perspective. (The role of NGOs in prosecutions is discussed further in Chapter 9.)

Some conclusions on policing issues

Wildlife crime is primarily enforced reactively, which in the UK means relying on charities to do the bulk of the investigative work into wildlife crime and to receive the majority of crime notifications. In other jurisdictions, such as the US, the reality is that agencies such as Fish and Wildlife will predominantly be involved in detection and apprehension of offenders in possession of illegally taken wildlife. Thus policing actions disrupt wildlife crime operations rather than actively prevent them, notwithstanding the fact that intervention is designed to have future deterrent effects. While the UK has an excellent network of Police Wildlife Crime Officers, many of these officers carry out their duties in addition to their 'main' duties (Kirkwood, 1994; Roberts et al., 2001) and both public and seemingly Governmental perception is that charity support is an integral part of the enforcement system. White and Heckenberg summarise the problems of environmental policing as including:

- the local and global nature of the crime,
- difficulties in detection,
- issues with jurisdiction and police inter-agency collaboration,
- the nature of investigative techniques and approaches,
- the need for specialist knowledge,
- the need for greater investment in enforcement policy, capacity and management
- involvement of a range of criminal actors

(2014: 222–223)

Wildlife crime shares all of these issues and is compounded by a general lack of resources and other issues relating to a fragmented approach which currently sees illicit wildlife trafficking as serious which falls within the remit of policing agencies and 'other' wildlife crime as of lesser importance. This issue of 'othering' is problematic given that in some cases lesser wildlife crimes are linked to more serious ones, and a general approach to wildlife crime that views only some crimes as important perpetuates the myth of wildlife crime as being outside the required remit of criminal justice and existing mainly as an environmental issue. The risk in some areas is that wildlife crime becomes an

issue predominantly 'policed' by NGOs, and is characterised by policing agencies as being mainly about illicit wildlife trafficking.

The obvious solution to these problems would seem to be a dedicated, professional wildlife policing agency. But while in the form of the Fish and Wildlife Service, the US has the federal and dedicated enforcement body that many UK NGOs desire, US NGOs have expressed dissatisfaction with their system ranging from issues with poor wildlife management through to bad legislation (including delisting of endangered species). Concerns have also been raised about cuts to the Fish and Wildlife Service's budget and its possible affect on wildlife law enforcement. In addition, wildlife law enforcement is primarily based upon a socio-legal model which relies on use of existing law and an investigation, detection and punishment model rather than the use of target-hardening or other forms of preventative action (Wellsmith, 2010). Thus the policy approach adopted in wildlife law and its enforcement is primarily one of dealing with wildlife crime reactively, albeit through an under-resourced regime which often fails to recognise the varied criminality that exists in wildlife crime (Nurse, 2011) or which does not adequately reflect the nature and impact of this area of crime in its sentencing and remediation provisions (Lowther et al., 2002). The lack of expert knowledge among policing agencies referred to in this chapter also risks wildlife crime policy being reliant on and dictated by animal NGOs whom Lowe and Ginsberg (2002) described as having a disproportionately well-educated membership reflecting what Parkin (1968) called 'middle class radicalism'. Certainly the major UK wildlife crime NGOs, while not all pursuing policies from an animal rights perspective, represent a professional movement comprising large professional organisations (comparable with medium to large businesses) rather than being a grass roots or 'activists' movement. Figures for certain major wildlife or animal protection NGOs show annual running costs typically in excess of £50 million per organisation (see for example RSPCA, 2006; RSPB, 2010). The considerable public support wielded by these NGOs (the RSPB has over a million members), together with the resources available for campaigning and political lobbying, allow the main western environmental NGOs to take the lead in promoting specific aspects of wildlife crime as issues of importance and policing priority. It also places the organisations in a position to employ expertise, for example, specialist investigators and political lobbyists, promoting their policy objectives and adopting a dominant policy or scientific position, while their socio-economic position allows them to exploit that perceived expertise and dominate the policy debate on wildlife crime

(Nurse, 2013). While this is not a negative conception *per se*, Lynch and Stretesky (2014) identify that criminal law contains bias, with criminological priorities being socially constructed by those in positions of power and influence dictating criminological concerns about 'crime' and 'harm'. Thus policy approaches which stress the importance of endangered species and illicit trafficking may translate into actual policies that promote these as wildlife crime's sole focus without corresponding attention being paid to 'lesser' crimes. To a certain extent this is the position that currently exists, where a reactive approach to policing wildlife crime has been adopted, albeit a severely under-resourced one (Akella and Allan, 2012; Nurse, 2012) and little attention has been paid to crime prevention or other mechanisms to address wildlife crime. These are discussed in the following chapter.

8
Preventing Wildlife Crime

As earlier chapters of this book have outlined, a central difficulty of wildlife law is that its practical policing and law enforcement approach is largely divorced from mainstream criminal justice activity (Nurse, 2003, 2012). Thus, not only is wildlife crime frequently enforced by specialist non-mainstream (mainly environmental) policing agencies, it frequently fails to make use of the full range of criminal justice approaches to dealing with crime (Nurse, 2003, 2012; Wellsmith, 2010, 2011), particularly in respect of crime prevention techniques.

Economic considerations drive much wildlife crime; particularly profit-driven crimes fuelled by demand for wildlife products or where wildlife has negative economic impact on producers such that its destruction or removal and destruction of habitats becomes desirable to achieve or maintain economic benefit (White, 2008). Timber markets, for example, demonstrate the relatively simple mechanics of supply and demand. Where demand for such products is high and lawful supply is limited, illegal logging is likely to occur particularly to fuel the demand of an international market where end consumers and participants in the trade may be 'flexible' concerning the source of products and where historically weak trade rules have allowed the trade to continue (Smith et al., 2003). Rhodes et al. (2006) identify problems of illegal logging as primarily being based in economic concerns where loggers with uninhibited access to source woods are able to supply the market irrespective of the wider costs of any illegal activity they conduct. Similarly Jahrl (2013) in discussing the illegal trade in caviar noted its high economic value as one of the most sought after commodities globally, but that despite trade bans on Romanian and Bulgarian wild sturgeon (the source of caviar) illegal fishing remained a significant threat to wild populations and the prohibited caviar continued to be traded. Such

examples highlight the difficulty facing enforcers and criminal justice systems; laws are often in place to prevent wildlife crimes such as the illegal caviar trade and illegal logging, yet pressures external to the legal system dictate that illegal activities continue. Thus criminal justice which primarily focuses 'on criminals and punishment rather than any integrated approach to crime prevention or the social causes of crime prior to offences being committed' is inadequate to dealing with causes of crime and circumstances which dictate that it will continue even where offenders are apprehended (Nurse, 2012: 11). Effective wildlife law enforcement needs to do more than just catch or incarcerate offenders after they have committed offences and the harm to wildlife has been achieved; it also needs to reduce or prevent crime. However in mainstream criminal justice a lack of consensus already exists among criminologists and policymakers in terms of what constitutes effective crime prevention and which methods should be employed to reduce or prevent crime. The wildlife law arena faces more complex problems in part due to: ideological differences about continued sustainable use of wildlife; different conceptions on the purpose of wildlife law (see earlier chapters); and cultural differences between organisations (NGOs and statutory agencies) on how best to shape the legislative (public policy) and policing response to wildlife crime. The effectiveness of international wildlife law enforcement is also a factor.

White and Heckenberg identify that 'especially for environmental harm, foresight and prudence is needed in order to modify present activities in the light of future potential harms' (2014: 276). Arguably wildlife crime systems based on the actions of offenders from the point of offending onwards fail to significantly reduce wildlife crime; thus consideration to other approaches aimed at wildlife crime prevention is required (Sears et al., 2001; Karsenty, 2003). This chapter looks at such approaches, specifically considering preventative wildlife law enforcement mechanisms and the need for these. In contrast to traditional victims of criminal activity, wildlife victims are finite and, in the case of rarer or more threatened species and forest resources, wildlife crime often causes or at least hastens their extinction. Consequentially, crime prevention becomes more important in wildlife law enforcement but is not routinely employed; scope exists to significantly increase the use and acceptance of preventative techniques as a core facet of wildlife policing (Wellsmith, 2010). Market conditions under which wildlife crime is allowed to flourish and demand for wildlife products in consumer countries remains, also requires attention (Schneider, 2008). Wyler and Sheikh (2013) argue that lax law enforcement and security measures

for wildlife are a factor in levels of wildlife crime and that 'even where heightened security measures to protect wildlife are implemented, they have not consistently had a deterrent effect' (2013: 1). Indeed there is evidence that, particularly in respect of wildlife trafficking, offenders employ increasingly sophisticated and elaborate mechanisms which law enforcement fails to keep pace with (Nelleman et al., 2014). This chapter discusses and applies crime prevention theories such as situational crime prevention and target hardening and also assesses the use of NGO and conservation agency crime prevention initiatives such as the use of CCTV, game wardens, ranger services and wildlife monitoring and tagging. It also considers the use of exclusion zones and banning orders (also discussed in Chapter 9) as tools to prevent future offending.

As Chapter 5 indicates, traditional criminology considers the criminal justice system itself as a crime prevention tool aimed at reducing crime and preventing its reoccurrence by detecting crime, punishing offenders and publicising the outcomes of the punishment (Bright, 1993). The media thus has a significant crime prevention role in publicising detection and punishment while sentencing itself theoretically ensures that offenders receiving punishment turn away from crime and those offenders who are still active are incarcerated or rehabilitated. However, in addition to the criminal justice system's general crime prevention effects, specific crime prevention initiatives are needed to deal with wildlife crimes often driven by economic concerns such as consumer demand combined with poor quality law enforcement which has limited overall effect on offending (Situ and Emmons, 2000). Gill's (1998) conception of policing as crime prevention argued that policing's role was to engage: community involvement; volunteer policing; structured community policing; and formalised state policing. Thus crime prevention through policing engages the community to either accept ad hoc responsibility for policing and crime prevention, engage in structured policing activity including informal surveillance or to engage directly with formal state policing initiatives to reduce crime. However, the loose nature of rural communities where wildlife and forest crime occurs means both that different conceptions on policing may occur such that communities are disinclined to engage with formal policing, or that communities have interest in the illegal activity taking place and marginal interest in policing wildlife crimes (Marshall and Johnson, 2005; Weisheit et al., 2006).

The crime prevention policing model employed is determined, in part, by the precise problems facing a community and the nature of its wildlife crime. White and Heckenberg argue that 'theoretically, good

environmental crime prevention ought to be as inclusive of human, environment and animal interests as possible' (2014: 277). Crime prevention models focus not only on reducing the opportunities for individuals to commit crime, but also increasing the risks to them of doing so thereby reducing the rewards. Beyond Gill's models of policing and crime prevention (1994), crime prevention can also be defined as primary, secondary and tertiary, defined as follows:

- **Primary prevention** – Action taken to directly protect the intended 'target' of crime, either by making it physically harder for an offender to commit the crime or by putting in place measures designed to apprehend the offender while the crime is taking place (such as observation and arrest). Primary prevention measures can also be intended to have a pure deterrent effect by reminding offenders of the risks of committing an offence.
- **Secondary crime prevention** – Action targeted at actual or potential offenders which includes measures aimed at addressing the social conditions which cause crime. For example, providing local communities with income derived from wildlife and forests such that these directly benefit the community and provide them with an economic interest in healthy sustainable wildlife populations and forests. This can reflect White's social action approach (2008) as communities with a stake in sustainable wildlife populations are less likely to engage in wildlife crime.
- **Tertiary prevention** – Reflecting White's socio-legal approach (2008) tertiary prevention is achieved primarily through court action and engagement with sanctions and the penal system to deal with offenders both directly and through wider deterrence. Arrest, prosecution, punishment and rehabilitation all fall within this category, although arrest prosecution and punishment through incarceration are also all forms of primary crime prevention.

Lab (2010) used a medical analogy to describe primary crime prevention as being akin to vaccinating against known disease while secondary crime prevention can be compared to screening against possible diseases. Environmental law seeks to make use of the 'precautionary principle' (Turner, 1992) and to prevent environmental harms before they occur, albeit this requires action beyond focus on offenders as both the cause of crime and focus of criminal justice responses. Much primary crime prevention fails to deal with the causes of crime and risks becoming a self-perpetuating cycle of new crime initiatives which inevitably

lapses into detection and apprehension paradigms. However, primary crime prevention by way of *situational crime prevention* does offer hope of reducing or limiting the frequency of crime and can be seen as a solution to current crime problems, allowing time for secondary measures to take effect (Wellsmith, 2010).

Situational wildlife 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 when situations arise in which crime is made possible. Thus 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. Situational wildlife crime prevention needs to consider action aimed at both reducing opportunities to commit wildlife crime and increasing the perceived effort and risks of doing so (Cerutti and Tacconi, 2006; Goncalves et al., 2012). Target hardening can address some of the vulnerable areas (wild bird nests, game bird release pens, forests, etc.), although it is used only selectively and is primarily targeted either at high-risk areas (e.g. vulnerable species) or widespread in those areas where residents cooperate with game wardens and others.

Clarke and Eck (2005) broadly identify the key elements of situational crime prevention as being action to

1. increase the effort of crime
2. increase the risks of crime
3. reduce the rewards
4. reduce provocations to commit crime
5. remove excuses for committing crime

In respect of wildlife crime, which often occurs in remote areas, the challenges of situational crime prevention are compounded by the lack of reliable data on the level and nature of wildlife crime (Nurse, 2012).

This makes it difficult to identify high crime areas and the specifics of offenders and offending behaviour and to adequately deploy resources to areas which may suffer disproportionately from crime and for crime prevention campaigns to be directed to areas most at risk. However, for endangered species, the establishment of conservation protection areas (Damania et al., 2008; Nelleman et al., 2014) provides a means through which situational crime prevention can be attempted. In essence, game preservation areas, national parks and wildlife reserves with security fences, monitoring of animals and sometimes armed rangers are intended to provide a significant situational disadvantage to commit crime. White and Heckenberg discuss specific examples including:

- use of pilotless drones, closure of logging roads and DNA coding of ivory to prevent elephant poaching;
- protecting nests during the breeding season, use of CCTV surveillance road blocks and market interventions to prevent the illegal trade in parrots; and
- increased use of rangers and ground patrols to prevent rhinoceros poaching.

(2014: 281–286)

Yet the size and scale of wildlife habitats often negates effective situational crime prevention such that resources are insufficient to effectively monitor wildlife across the large areas involved. Situational crime prevention's theoretical basis contextualises crime as a product of practical attractive opportunities to commit crime; the availability of wildlife and relative lack of effective enforcement being factors in wilderness areas where some effort will need to be expended to commit crime. Thus while 'true' situational crime prevention, i.e. making wildlife inaccessible, may be impractical, certain measures can be taken effectively. Akella and Allan argue that 'anti-poaching patrols and other frontline deterrence efforts are critical to preventing wildlife crime' (2012: 7). The combination of walls and fences (increased effort) armed guards and other security counter measures (increased risk) the moving of wildlife to increased remote areas (reduced provocation) and concerted action to address wildlife markets and provide alternative sources of revenue for local communities (removal of excuses) are all possible in wildlife crime. Particularly so in respect of militarised poaching of wildlife; armed guards are needed to address the increased threat provided by armed poachers prepared to use violence against game wardens (Gettleman, 2011; Challender and Macmillan, 2014). Separate efforts in respect of

product marking, tagging or implanting trackers in wildlife such that their 'value' to offenders is reduced may also bring effects. Thus mainstream crime's principles of better locks, alarms and additional security measures can be applied to wildlife crime albeit the costs of increased patrols and target hardening in wilderness and wide geographical areas as preventative policing (e.g. ranger and game warden patrols) can be prohibitive. Such measures also do not address the social causes of crime for offenders on the ground (unemployment, poor housing, family circumstances, etc.) or market causes which dictate that demand for wildlife products continues unabated or indeed worsens with the increased rarity of certain wildlife (Jahrl, 2013; Wyatt, 2013). Humphreys and Smith (2014) in discussing South African rhino poaching contend that the 'hard power' approach to poaching, which relies on force rather than dialogue, risks ignoring the underlying economic causes of poaching in those areas where a marginalised underclass turns to poaching through economic necessity. However for some wildlife crimes an emphasis on target hardening is appropriate and can also be combined with wider activities, such as crime awareness campaigns and environmental measures which effectively design out crime. It may also support physical interventions intended to physically prevent crime. 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 without ranger patrols or where conservation officers only pass infrequently). Instead what situational crime prevention often achieves is to focus on areas of special vulnerability and where target hardening or greater enforcement activity might have some effect. Thus Damania et al. (2008) identify that patrols and conservation management might be targeted at known vulnerable big cat populations, and data on where illegal poaching takes place, on which birds nests are robbed of their eggs etc. is available in some jurisdictions allowing for situational crime prevention to be tried. In the UK, for example, the Royal Society for the Protection of Birds (RSPB) has used CCTV at certain wild bird sites known to be subject to predation with some success (Nurse, 2012) although arguably the situational perspective results in an escalating programme of CCTV installations, local crime prevention initiatives, increased police patrols, and so on, with area after area being subject to more aggressive crime prevention policies.

An additional situational approach is that of reducing the value of crime to thieves by impacting on the value of the target. For example, the widespread use of credit cards has made cheque book theft less

attractive given the subsequent reduction in the use of cheques (indeed, in the UK at least, some retailers now no longer accept cheques). In addition, credit cards have continued to evolve so that their value to thieves who do not have the corresponding chip-and-pin number has been greatly reduced. Micro-chipping of wildlife to aid in their detection, together with direct action that reduces the value of wildlife to offenders are potential solutions. Thus rhinos have been dehorned in Africa as a direct attempt to reduce poacher revenues (Milner-Gulland, 1999) a technique considered safe as the horn is composed of keratin and re-grows when cut (Biggs et al., 2013). However, such crime prevention action risks other negative consequences such as behavioural changes in the animal and while a relatively inexpensive operation to carry out, the long-term viability of continually monitoring rhino populations in this manner is questionable. In general, however, situational crime prevention lends itself to wildlife and forest crime as a means of proactively dealing with wildlife crime which, when combined with other activities such as social crime prevention, particularly that directed at the consumer end of the market, offers hope for reducing overall wildlife crime levels.

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) argues '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, a variety of different forces influence the commission of wildlife crime and create the circumstances where wildlife crime is likely to occur.

Lynch and Stretesky (2014) identify green crime as being more prevalent among the poor, the lower working class and certain ethnic minorities who are marginalised from the rewards of society and for whom neoliberal markets offer little opportunity to benefit from legitimate activities. Crime prevention policies thus need to address the inequalities that make these marginalised sectors of society more likely to commit crime. Especially in developing world countries where wildlife is perceived as being more numerous and an infinite resource for exploitation by local people and other opportunities are lacking, causing strain

(Merton, 1968), wildlife and forest crime represents a viable proposition and a way out of economic marginalisation.

While the police and other statutory agencies should have primary responsibility for enforcing legislation, for those communities where wildlife crime is given either covert or overt approval (Essen et al., 2014) 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 and consumers are aware of the impact of their actions. Thus disadvantaged areas become the subject of regeneration schemes aimed at improving the community and increasing opportunities so that citizens feel less marginalised and disadvantaged, and communities receive benefit from wildlife resources in their area without the need to resort to illegal means of doing so. The reality of wildlife crime is that it will continue as long as there is demand. Kishor and Lescuyer (2012) in their discussion of illegal logging argued that 'little has been done so far to specifically fight illegal logging in the domestic markets of the tropical countries' (2012: 8), less has been done in consumer countries albeit consumer-based social crime prevention is emerging as a potential solution to illegal timber trafficking and endangered species trade.

The demand and wealth of (urban) consumers of wildlife and forest products can be a strong driver of illegal wildlife and forest activities. Thus Schneider (2008) suggests a market reduction approach to wildlife crime. Besides users on the supply side, such as local subsistence users, commercial hunters and forest concessionaires, a diverse group of users exists on the demand side. These include consumptive end-users in markets and restaurants, and non-consumptive users, such as tourists. Schneider's market reduction approach consists of identifying 'hot' products and market-based analysis of these products to identify who is involved in their criminal exploitation and subsequent analysis of the reasons for their involvement. Schneider identifies ivory, rhino horns, and animal skins and parts as status symbols prized by wealthy customers around the world who are not traditionally the subject of law enforcement attention (2008). CITES has also recognized demand reduction as a key element in addressing poaching, specifically that of illegal rhino horn, adopting at its 62nd Standing Committee meeting, a strategy for developing ideas for demand reduction for rhino horn which includes the following objectives:

- influencing consumer behaviour to eliminate consumption of illegal rhino horn products through effective demand reduction strategies

- identifying specific messaging approaches and methods for dealing with consumption by specific target audiences
- strengthening legal and enforcement deterrent effectiveness by raising awareness of legal protection and penalties for sale and consumption of rhino products
- raising awareness of the negative consequences and impact on populations of poaching and consumption of rhino products.

(CITES, 2013)

Thus market-based approaches address the demand for and supply of wildlife products targeting prices and markets for wildlife products and substitutes such as sustainable harvested resources. Common market-based strategies to prevent illegal trade in wildlife products include the following tactics:

- Imposing taxes or other levies to raise consumer prices or reduce producer profitability;
- Lowering tax rates on (sustainable) substitute products; and
- Increasing the profitability of sustainable-harvested production through subsidies, value adding, certification and labelling.

(UNODC, 2012: 346)

However, market-based instruments rely on clearly established property rights, a contested issue in many source countries for wildlife products and the cooperation of governments to apply financial and economic instruments to the wildlife trade. Thus, certification measures and trade regulations (both international and domestic) provide a means through which social crime prevention might be attempted by addressing consumer and retailer behaviour. The EU seeks to achieve this via its timber trade regulation (Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010) which lays down the obligations of operators who place timber and timber products on the market. The measure, also known as the (Illegal) Timber Regulation, counters the trade in illegally harvested timber and timber products through three key obligations:

1. It prohibits the placing on the EU market for the first time of illegally harvested timber and products derived from such timber;
2. It requires EU traders who place timber products on the EU market for the first time to exercise 'due diligence';

Once on the market, the timber and timber products may be sold on and/or transformed before they reach the final consumer. To facilitate

the traceability of timber products economic operators in this part of the supply chain (referred to as traders in the regulation) have an obligation to:

3. Keep records of their suppliers and customers.

Akella and Allan argue that 'the fact that demand for protected wildlife products continues to thrive, and grow, indicates that although there are some good examples of impactful demand reduction strategies to date, these efforts have failed overall (2012: 11). Pires and Moreto (2011) identify that current approaches to the illegal wildlife trade include implementing trade bans or regulatory schemes at the national and international level, yet their effectiveness in reducing the trade is unknown. Instead effective wildlife crime prevention is arguably best achieved via a combination of making illegal activity on the ground harder to achieve and addressing consumer and producer behaviour.

Perspectives on crime prevention in wildlife crime

Pease (1994) argues that all crime theories are crime prevention theories as criminology and criminal justice policy has always aimed to prevent crime, albeit disagreements persist on how this might be achieved. The basic approach to crime prevention has predominantly been with the motivated offender, on the basis that crime can be prevented by motivating the offender to commit less crime. However, in practice, crime prevention initiatives can be intended to work at the level of known individuals and groups or the wider public, or in relation to victims and neighbourhoods in general.

Pease distinguishes between primary prevention, which focuses on explaining the distribution of crime events, and secondary and tertiary prevention, which concentrate on changing the criminality of existing offenders (1994: 665). However, Newburn (1995) argues that there has consistently been confusion about what crime prevention is, so it has not been accurately reflected in effective criminal justice policy. Newburn argues that despite the importance attached to crime prevention, the reality is that it has historically lied (and currently lies) with the police rather than communities or policy perspectives. Limitations on the effectiveness of crime prevention persist, particularly given the limited resources allocated to community-style preventative measures and the persistent reliance on operational policing as the main crime prevention tool. The use of CCTV and other surveillance and

monitoring measures in wildlife law enforcement together with the use of target hardening approaches are potentially a step forward. However, such measures are still predominantly considered as part of the law enforcement model, and are supported by the use of conventional policing to respond to the threats and apprehend offenders so that they can be brought before the courts.

This is also true of market-based approaches although it is perhaps too soon to tell whether measures such as the (Illegal) Timber Regulation or CITES' market reduction initiative for rhino horn will be successful in addressing consumer demand in a manner that negates the need for policing agencies to continue with search and seizure processes at the consumer end. One difficulty with wildlife crime prevention is that mixed messages can exist such that on the one hand the importance of crime prevention initiatives, programmes aimed at producers and arguments that wildlife crime is an important area of crime are stressed, while simultaneously police numbers are cut and the principles and virtues of free trade are extolled. Thus the community policing and crime prevention functions of policing remain marginalised while other functions take priority and situational crime prevention is predominantly left in the hands of local authorities, the local community and NGOs while social crime prevention continues to be under-utilised due to resource issues and a lack of ownership within policy discourse and criminal justice systems. The reality therefore remains that it is unclear who has responsibility for wildlife crime prevention, and a lack of consensus remains over which methods should be employed.

9
Prosecuting Wildlife Crime

The effective implementation of sanctions and processing of offenders through justice systems are key to successful wildlife law enforcement. Akella and Allan argue that 'investments in patrols, intelligence-led enforcement and multi-agency enforcement task forces will be ineffective in deterring wildlife crime, and essentially wasted if cases are not successfully prosecuted' (2012: 11). As earlier chapters have indicated, effective enforcement of wildlife laws is intended to prevent and reduce wildlife crime. However, the reality is that much enforcement is reactive, taking place after offences have been committed, and is intended to deter future offending primarily by apprehending and punishing offenders. However, the perception remains that many countries' sanctions for wildlife crimes are 'insufficient to act as a deterrent, and do not reflect the seriousness of offences' (St John et al., 2012: 1). The manner in which sentences are applied and offenders punished is integral to effective wildlife law enforcement yet the implementation of wildlife sanctions can be inconsistent even where cases make it to the courts. This chapter discusses the prosecution of wildlife crimes and sentencing policy using examples from several jurisdictions to discuss key concepts in prosecutorial approach. It considers global regulations such as CITES (see also Chapter 2) and considers the prosecution of offences in different countries by way of discussing different perspectives on prosecution and sentencing. In doing so it examines sentencing goals and philosophies in wildlife law. Some jurisdictions take a restorative approach to wildlife crime with sentencing intent on repairing harm caused to wildlife, albeit much wildlife prosecution is purely punitive. This chapter also considers how social and cultural perspectives can impact on prosecution and sentencing. For example in traditional hunting and shooting areas, anecdotal evidence exists that lenient sentences may be

given for killing protected predator wildlife while stiffer sentences are handed out to poachers (Nurse, 2011).

Remedying wildlife crime

As earlier chapters have indicated, prosecution of wildlife crimes through the criminal law reflects the criminal justice system's primary focus on offenders and offending behaviour. Thus, whether retributionist, reductivist or reparative approaches are employed, criminal prosecution primarily adopts an individualistic response to wildlife crime. The appropriateness of this approach might be questioned given that wildlife is a finite resource and once wildlife has been harmed, killed or taken in ways which permanently remove it from the natural environment, punishment of the offender, while satisfying for society does little to address the harm of lost wildlife. As Chapter 3 indicates, some wildlife laws contain the options for civil penalties commensurate with the idea of law as being a mechanism through which disputes might be resolved. Environmental regulatory regimes sometimes provide a means through which restoration can be achieved and environmental harm addressed where a regulated activity has caused harm, particularly in the case of pollution incidents which might cause harm to or kill wildlife (Stallworthy, 2008). The *European Directive on Environmental Liability,*[1] for example, provides potential for restorative justice techniques to be applied to remedying the harm caused in environmental damage cases. Environmental damage has a specific meaning within the Directive and is intended to cover the most serious cases including:

- Damage to protected species and natural habitats, which includes adverse effects on the integrity of a Site of Special Scientific Interest (SSSI) or on the conservation status of EU species and habitats outside SSSIs
- Adverse effects on surface water or groundwater consistent with a deterioration in the water's status
- Contamination of land that results in a significant risk of adverse effects on human health

Damage to protected species, falling within this book's definition of a wildlife crime, is thus something for which regulatory justice provides a remedy separate from criminal prosecution. Stallworthy argues that 'statutory regulation opens possibilities for proactive environmental

protection, especially in targeting behaviour so as to pre-empt or limit harmful consequences' (2008: 76). It also provides a means for restorative techniques to be used as, in this case, the Directive establishes an environmental liability framework intended to prevent and remedy environmental damage and based on the 'polluter pays' and prevention principles (Turner, 1992; Mazurkiewicz, 2002). It incorporates principles also found in US legislation regarding the prevention and restoration of natural-resource damage and provides a means for corporations to pay compensation for such damage (Hinteregger, 2008). The regime makes operators liable for significant environmental damage, defined as 'a measurable adverse change in water, land and biodiversity quality.' However the Directive does not apply to diffuse pollution, such as air pollution, or to 'traditional damage' such as personal injury and damage to goods and property. Where environmental damage creates harm to members of the public or affects their goods and property, national civil liability laws would be invoked across Member States. Thus the Directive's regulatory measures are specifically focussed at environmental (including wildlife harm) harm.

The use of restorative measures in such a way is rare in pure criminal prosecution where punishments handed out to offenders are primarily intended to convey social disapproval. However as Vincent (2014) identifies, human–wildlife interaction incorporates a range of deviation from legal and regulatory rules, thus criminal justice punishment which fails to address the harm caused by offending is not the only solution to dealing with wildlife crime problems where these are broadly defined to include deviance which harms wildlife. Thus in the UK, the Law Commission's proposals for reviewing wildlife law include modifying the regime to make use of civil sanctions as an alternative to prosecuting the underlying criminal offence, based on the regime contained in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (Vincent, 2014: 74). This Act contains measures which include the opportunity for enforcers to apply enforceable undertakings measures whose aims are intended to achieve 'cessation of the conduct, redress for parties adversely affected, implementation of compliance measures to prevent further breaches' thus hopefully securing a change in offender behaviour by securing a means through which commitments are made in respect of future offending (Peysner and Nurse, 2008: 204). The wide range of discretion allowed to enforcers to apply appropriate conditions on enforceable undertakings means that they can be used to implement restorative principles, i.e. requiring offenders to repair the harm they have caused in a manner determined

by enforcers. Such powers (available in other jurisdictions and used, for example, in Australian competition law enforcement) provide an enforceable means through which harmful activity can be addressed thus representing an alternative to pursue criminalisation albeit Peysner and Nurse (2008) found some inconsistency in enforcers use of such measures and recommended that they should be subject to criminal rather than civil enforcement as a means of ensuring they were used effectively and were truly enforceable. Where used alongside criminal justice powers regulatory action provides a possible means of remedying wildlife harm albeit they are not universally incorporated into wildlife enforcement regimes and may not be immune from the problems which infect other wildlife sanctioning and prosecution regimes.

Perceived problems in wildlife prosecution

Akella and Allan (2012) suggest that while wildlife crime has historically been seen and treated as a low-level offence its increased sophistication involving organised crime and transnational operations has not been met with corresponding developments in effective enforcement. They cite Interpol as defining effective enforcement as securing convictions 'that act as a deterrent to environmental criminals, with meaningful sentences, fines and the recovery of assets and proceeds of crime' (Akella and Allan, 2012: 2). However the ability of existing enforcement activity to secure convictions is questionable (Schneider, 2012; Nurse, 2012) and weak enforcement regimes are endemic in some source countries whereas evidence exists that effective enforcement in the form of intelligence and enforcement agency collaboration is not always supported by successful prosecutions or application of appropriate sanctions (Interpol, 2014). Instead, 'low conviction rates are endemic in wildlife crime cases' (Akella and Allan, 2012: 11) and inconsistency in sanctions and the failure to utilise asset recovery mechanisms are also perceived as problems (ibid.). Such problems are not confined to developing world countries and previous research suggests they are an integral feature of wildlife law enforcement (Zimmerman, 2003; Nurse, 2012; Wyatt, 2013). As example of the difficulties, among its June 2014 recommendations the (US) President's Advisory Council on Wildlife Trafficking concluded that:

1. The Presidential Task force on Combatting Wildlife Trafficking (Task Force) should take steps to increase the number of significant

wildlife trafficking prosecutions in the U.S. and seek more serious punishment for such crimes
2. The Department of Justice Should Review and the U.S. Sentencing Commission Should Modify, the U.S. Sentencing Guidelines Applicable to Wildlife Trafficking Offenses
3. U.S. Laws should be revised to improve wildlife trafficking enforcement. (The proposals suggested that wildlife trafficking violations should be included as predicates under the racketeering and money laundering statutes and the federal wiretapping statute.)

(The President's Advisory Council on Wildlife Trafficking, 2014)

While intended to be specific to the US position on wildlife trafficking rather than directly applicable to wider wildlife crime problems[2] the recommendations identify some of the core problems that exist in prosecuting wildlife crimes. Prosecution of wildlife offences falls outside normative criminal justice system activity, thus mainstream criminal justice agencies (including the courts) may only encounter wildlife crime infrequently and lack expertise in dealing with such crimes when faced with them (Nurse, 2003, 2012). Accordingly, scholars have commented on the fact that problems exist in the prosecutorial and judicial knowledge base and in the complexity and perceived adequacy of wildlife legislation as a tool for dealing with criminal behaviour. White and Heckenberg (2014) express concerns about how environmental cases are dealt with by the courts including:

- whether cases are heard in magistrates or superior courts
- whether cases are heard in general or specialist courts
- the types of penalty applied (fines, prison or action orders)
- what remedies are invoked for the harm caused

(White and Heckenberg, 2014: 256)

The concern of green criminologists, environmental activists and even investigators is that wildlife crime is not taken seriously by the courts and that traditional court mechanism are inadequate to deal with such crimes. In addition, green criminologists have identified that much wildlife crime is dealt with by the lower courts, where poor prosecutorial and judicial knowledge hampers effective species justice and inadequate sentencing practices fail to provide the required deterrents (Nurse, 2012; Wyatt, 2013). In addition, the use of action mechanisms (such as banning orders or disqualification from keeping animals) is inconsistent and when applied are poorly monitored. Accordingly, irrespective

of any concerns about the efficacy of wildlife laws, problems exist both with bringing cases to court and in the handling of cases which make it as far as the courtroom.

Prosecution issues

A number of practical and procedural difficulties also exist with wildlife crime prosecutions as follows:

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 wildlife and conservation investigators who, particularly in developing countries, 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. 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 policing agencies deal with wildlife crime given that wildlife crimes are not generally dictated as mainstream criminal justice priorities (Nurse, 2012). Resources allocated to wildlife crime enforcement are generally lower and policing models (see Chapters 7 and 8) demonstrate the variety in implementation of wildlife crime enforcement within policing agencies. The lack of full-time wildlife law knowledgeable officers at middle management level within some agencies and across jurisdictions means that wildlife crimes can sometimes be regarded as low priority compared with other prosecutorial priorities. In practice this means that however vigorously NGOs pursue wildlife crimes and encourage policing and conservation agencies to investigate cases, there is always a danger that in some areas wildlife crime will be seen as a minor issue lacking prosecutorial priority.

The practical enforcement work of NGOs has identified a number of loopholes in wildlife legislation (Nurse, 2012, 2013a,d). Some aspects of wildlife legislation allow for defences against specific charges contained within legislation while court cases have also determined the impracticality of enforcing some offences due, in part, 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 in the UK) could argue that they were digging for foxes (a lawful activity). The onus would be on the prosecutor to disprove this defence. The problem identified by NGOs is not confined to a lack of conservation knowledge but extends to insufficient knowledge of the specific legislation (Nurse, 2012). There is also sometimes the potential for conflict between investigators and prosecutors. Investigators who may in some cases have invested several years in obtaining evidence for a prosecution, taking witness statements carrying out interviews and securing crime scene photos and other forensic evidence, will naturally be dismayed if these cases fail through what they see as prosecutorial misconduct or incompetence. The UK's 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 (Nurse, 2011, 2012) 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 in some jurisdictions (e.g. the UK and US) sentencing and prosecutorial guidelines have established the basis on which wildlife cases are pursued including criteria on which a prosecution is justified. UK guidance, for example, published by the Crown Prosecution Service (CPS), requires that criminal cases should have a better than 51 per cent chance of success and should be in the 'public interest' to prosecute. Past research with NGOs (Nurse, 2003, 2012) identifies the perception that wildlife cases frequently 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. Particularly in the case of domestic species considered numerous and involving lesser offences or minimal wildlife death, there are perceptions of conflict between the public interest in pursuing a case and the public interest in wise use of public funds (Ashworth, 1987: 606; Hoyano et al., 1997). 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.

The CPS guidance states that 'wherever appropriate' courts should be reminded of their powers of forfeiture. In UK law, this includes powers to order the forfeiture of any vehicle, animal, weapon or other thing used to commit the offence found in the offender's possession (similar seizure and forfeiture provisions are found in other jurisdictions). CPS guidance reminds prosecutors that 'forfeiture of a vehicle is often likely to be an effective means of deterring repeat offences relating, for example, to rare birds and eggs as well as of incapacitating an offender's future ability to conduct such activities' (CPS, 2014). However, the CPS reminder indicates that forfeiture and confiscation orders are not routinely asked for by prosecutors, a factor sometimes linked to failings in case preparation and in the judgement of individual prosecutors. Peysner and Nurse (2008: 74) in their assessment of consumer law identified that the burden rests on the prosecution to apply for compensation orders but, according to research conducted by the Home Office (Flood-Page and Mackie, 1998) courts often failed to make compensation orders in the absence of prosecutorial action suggesting this was a necessity. The failure of prosecutors to produce evidence of the harm caused to victims was also perceived as a factor in whether courts exercised their available powers to produce a remedy. The CPS guidance suggests the same issue may exist in wildlife cases and further suggests that 'following conviction for other wildlife offences a court should be invited to consider forfeiture of such items under the provisions of section 143 of the Powers of Criminal Courts (Sentencing) Act 2000' (CPS, 2014). Prosecutorial action, therefore, needs to go beyond securing 'basic' punishment of the offender and consider future offending and the potential impact and outcomes of recidivist behaviour. Whether sentencing philosophies adequately consider such issues when applied to wildlife crime is debatable.

Sentencing philosophies

Criminal law is concerned with assessing the seriousness of criminal wrongdoing including 'physical impact of the conduct on victims,

psychological trauma, the monetary value of property crimes and so forth' (White and Heckenberg, 2014: 259). Bundy et al. (1999) argued that prosecutions activity plays a vital role in environmental protection by achieving the following functions:

1. Punish egregious violators, and assure local communities that the government is protecting the health of citizens and protecting natural resources;
2. Deter future violators, especially individuals; and
3. Inform the regulated community that Federal enforcement sets a uniform standard for compliance; that no matter where a business operates in the United States, it must comply with federal environmental laws. This provides a level playing field for businesses that invest the time and money to comply with the law.

(Bundy et al., 1999: 1–2)

An April 2013 Resolution of the UN Commission on Crime, Prevention and Criminal Justice (endorsed by the UN Economic and Social Council in July 2013) encourages UN Member States to 'make illicit trafficking in wild fauna and flora a serious crime when organised criminal groups are involved', effectively placing it on the same level as human trafficking and drug trafficking. Wildlife trafficking should, therefore, now be placed in most jurisdictions definition of serious crime and be prosecuted and sentenced accordingly. However, the reality of wildlife crime enforcement is that inconsistency and a lack of proper training and prosecutorial and sentencing guidance hampers the efficiency of court proceedings in some jurisdictions. Some NGOs have argued that existing sentencing options could be better used as 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 and prison sentences used ineffectively or not at all in the case of corporate offenders (Akella and Allan, 2012; Nurse, 2012). Lowther, Cook and Roberts (2002) writing on the wildlife trade for WWF and TRAFFIC argued that the imposition of low penalties was a feature 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 et al. (2002) 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. (WWF Online)

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). 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)

While legislative and policy developments in the last 10 years have doubtless addressed some of these concerns, contemporary data from the US and others suggests that where existing legislation allows for heavy fines or the use of prison sentences, these options are still rarely used, a factor which lessens the perceived deterrent effect. The President's Advisory Council on Wildlife Trafficking indicates that 'statistics for the financial year 2012 show only slightly more than 100 misdemeanour or felony wildlife prosecutions that were sentenced. The Council further commented that 'the average sentence for Environmental/Wildlife

Offenses was 2 months imprisonment and the median sentence was zero months which, as noted above, are the lowest numbers for all of the 32 so called "primary offense" categories tracked by the Sentencing Commission' (2014: 2). The implication is that low sentences represent the normative reality of wildlife crimes with sentences at the upper end the exception. NGOs consider that where they are available stiffer penalties should be used (Wilson et al., 2007; Akella and Allan, 2012). 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 (Nurse, 2012).

The House of Commons Environmental Audit Committee on Wildlife Crime in assessing sentencing in the UK concluded 'it is currently impossible definitively to answer the question whether the available penalties for wildlife crime offences are fit for purpose because of inconsistent sentencing by judges and magistrates' (2012: 29). The Committee concluded that the lack of sentencing guidelines for the judiciary and of specific training for magistrates made it unlikely that wildlife crime sentencing was consistent with guidelines for other offences. WWF (2014a) claimed that 'wildlife crime cases are often dismissed because of lack of awareness or understanding among prosecutors and the judiciary of such crime and its impact' (2014b: 2). The implication of such action is that police and customs who expend considerable effort to investigate and prepare cases only to have them abandoned will perceive that wildlife crime is not taken seriously by the courts and prosecution agencies.

Underlying sentencing philosophy dictates that the more serious an offence is, the more serious the penalty. Webb (2013: 11) identifies that within the Lacey Act, specific offence characteristics enhance a crime's seriousness and determine an increase in penalty. Wildlife Crimes attract a 'base' level 6 penalty but current (2013) USSC sentencing guidelines state that increases should be applied as follows:

(1) If the offence (A) was committed for pecuniary gain or otherwise involved a commercial purpose; or (B) involved a pattern of similar violations increase by 2 levels.
(2) If the offence (A) involved fish, wildlife or plants that were not quarantined as required by law; or (B) otherwise created a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife or plants, increase by 2 levels.
(3) (If more than one applies, use the greater):
    (A) If the market value of the fish, wildlife, or plants (i) exceeded $2,000 but did not exceed $5,000, increase by 1 level; or

(ii) exceeded $5,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount; or

(B) If the offence involved (i) marine mammals that are listed as depleted under the Marine Mammal Protection Act (as set forth in 50 C.F.R.§ 216.15); (ii) fish, wildlife, or plants that are listed as endangered or threatened by the Endangered Species Act (as set forth in 50 C.F.R. Part 17); or (iii) fish, wildlife, or plants that are listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna or Flora (as set forth in 50 C.F.R. Part 23), increase by 4levels (United States Sentencing Commission, 2013: 299)

The conception above notes that crimes committed for financial or commercial gain should attract a higher penalty reflecting the need for severe moral sanction of acts demonstrating intent and personal benefit (Nurse, 2013d; Öberg, 2013). Endangered species crime will also attract stiffer penalties in part due to their generally higher level of protection under international law such as CITES, and the perception that such species are at greater risk from human interference and less able to withstand criminal activity. A retributive element is also at play in seeing commercial activity and predation of endangered species as more serious crimes. Such crimes are internationally recognised as 'serious crimes' by policing agencies (Interpol, 2014) and within judicial conceptions of crime with an aggravating element. The UK's Magistrates Association, for example, provides a comprehensive list of factors aggravating the seriousness of wildlife offences which includes:

- The offence being a deliberate or reckless breach of the law rather than the result of carelessness
- The species involved being endangered and CITES listed or there were conservation implications of the case in terms of the effect on global or local population of the species
- High financial value and a large number of specimens involved
- High financial benefit to the defendant and/or evasion of taxes and revenue
- Evidence of prolonged activity and/or professionalism in wildlife crime
- Cruelty was employed in handling animals (Magistrates Association, 2002: 4–5)

While not statutory guidance applying across the UK judiciary, the above list (the full list contains 17 aggravating factors) reflects an

ecocentric view which views the harm caused to wildlife and negative impact on biodiversity as aggravating factors, allied to the behaviour and attitude of the offender. White and Heckenberg question whether environmental harms are valued sufficiently by the law (2014: 259) although sentencing regimes arguably merely reflect prevailing social attitudes replicated within the criminal justice system. While the criminal justice system does not yet as a whole treat wildlife crime with the seriousness it requires, sentencing philosophies such as the above USSC and Magistrates Association guidelines reflect a recognition of the varied nature of wildlife offending (Nurse, 2011; South and Wyatt, 2011) and varied seriousness of wildlife crime. Such provisions also reflect the distinction between 'crime' and 'harm' (White, 2012) such that within sentencing philosophy, scope exists for higher levels of harm to be explicitly seen as aggravating factors and attracting a more punitive approach.

Charging options and prosecutorial discretion

Situ and Emmons (2000) and Rackstraw (2003) identify that prosecutorial discretion is a significant factor in environmental and animal law cases. Rackshaw suggests that lack of empathy on the part of prosecutors, misplaced understanding of the seriousness of animal crimes and lack of resources are all factors determining that animal crimes are sometimes not prosecuted (2003). Situ and Emmons concluded that in environmental cases prosecutorial discretion can have the effect of reducing a criminal offence to a civil one where the prosecutor's decision on how to charge and prosecute has the effect of downgrading an offence; instead dealing with it by administrative means (2000: 16). The construction of the law aids in this perception such that analysis of animal law reveals that:

- some wildlife law offences carry a power of arrest, some do not;
- the level of fines differs between wildlife within and across jurisdictions such that some wildlife offences provide for serious criminal penalties (e.g. Kenya's life sentence for endangered species trafficking offences) while many do not (e.g. UK egg collecting still minor crime in criminological terms). The logic behind the differences is not always clear but is largely socially constructed;
- the option for prison sentences exists for some animal harm offences (in particular the more serious wildlife crime offences) but not others;

- some species that are protected under wildlife law may still be killed or taken under certain exemptions. The nature of the exemptions varies according to the legislation and the jurisdiction; and
- 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 and continued interaction with animals, whereas other legislation does not. The nature of bans for regulatory breaches is often temporary or time restricted.

Moore (2005) argues that to achieve consistency, animals should be recognised as crime victims and the recipients of socially unacceptable criminal behaviour that constitutes an offence against the state. Thus animal legislation should be reviewed to ensure that police powers and sentencing options are applied in a uniform manner, at least across the various pieces of legislation within a state, so that animals are protected as crime victims within a state's criminal justice system. This being the case, it makes sense that there should be a power of arrest for all animal offences commensurate with the power of arrest provided to other crime victims and sentencing powers for animal crimes should also be consistent with those for other offences such that the criminal justice system recognises criminality in respect of its effect on all crime victims whether human or non-human animal.

A variety of research suggests an inconsistency in the way that animal crime harm offences are dealt with, albeit sentencing guidelines such as the Lacey Act guidance referred to earlier should ensure consistency at the conviction stage albeit not all wildlife crimes progress to this stage. Rackshaw's analysis of prosecutorial discretion in the United States identified wide discrepancy in the way that animal (cruelty) crimes were dealt with by different states and that generally a low percentage of reported cases were prosecuted (Lord and Wittum, 1996; Arluke and Luke, 1997). Alexander (2014) notes, for example, that the Lacey Act contains both civil and criminal penalties as well as forfeiture provisions in respect of the protected item. Prosecutorial discretion is a factor as 'some conduct can be subject to either civil or criminal charges. The choice is left to the prosecutors and the Department of Justice' (Alexander, 2014: 9). Guidance issued by the UK Magistrates Association in 2002 advises magistrates when considering wildlife trade and conservation cases that 'one of the first questions to ask when dealing with an either way offence, is whether the seriousness of the offence is such that the sentencing powers of the magistrates are inadequate' (Magistrates Association, 2002: 4). The distinction on whether to charge and pursue

a civil or criminal case is a factor but so too is the competence and willingness of the court to consider the matter (ibid.). Naturally, procedural rules differ across jurisdictions and so the discretion provided to courts will vary albeit courts will generally have some discretion in respect of cases triable either way, usually defined as minor offences which can be tried in lower or higher courts (Slapper and Kelly, 2012); or those offences which attract civil and/or criminal penalties. One potential risk with the use of civil sanctions and the 'light touch' regulatory approach instead of criminal enforcement is 'the possibility that offenders could engage in repeat offending before any use of criminal sanctions is considered or begins to bite' (Nurse, 2013a: 8).

Specialist wildlife prosecutors

Wildlife crime is an often complex and challenging area of law. Guidance from the CPS, covering England and Wales, describes wildlife offences as 'an area in which an element of specialised knowledge is an advantage' and in which 'there are a variety of statutes, not commonly encountered elsewhere in the criminal law' (CPS, 2014). The CPS guidance highlights the reality that mainstream criminal lawyers will not routinely encounter wildlife law which is not generally a compulsory subject in qualifying law degrees endorsed by regulatory legal bodies such as the UK's Law Society and Bar Council or the American Bar Association. Thus notwithstanding the likelihood of facing defendants whose counsel have considerable expertise in the legal subject, especially so when dealing with organised and corporate crime, prosecutors may lack knowledge and experience of the wildlife elements integral to determining certain aspects of wildlife crime. Evidence submitted by TRAFFIC to the House of Commons Environmental Audit Committee on Wildlife Crime stated that 'the CPS was ineffective at prosecuting wildlife crime in England and Wales, because its prosecutors lacked specialist knowledge and training on conservation law' (House of Commons, 2012: 28). TRAFFIC further argued that a lack of specialist skills not only undermined enforcement but was inefficient, because relays of CPS prosecutors 'ended up replicating the same basic learning, which imposed delays and potentially allowed experienced defence lawyers to exploit prosecutors' lack of specialist knowledge' (ibid.). By contrast with the position in England and Wales, the Crown Office and Procurator Fiscal Service in Scotland appointed 18 specialist wildlife crime prosecutors in 2011 (Crown Office and Procurator Fiscal Service, 2011) and subsequently added a specialist Crown Counsel to provide

support and legal advice to specialist Procurators Fiscal, and deal with any criminal appeals, recognising the need for specialism.

NGOs as prosecutors

Martens (2005) identifies that NGOs can have considerable impact as change agents in environmental law beyond the classical role of NGOs as watchdogs over governmental operations, by becoming active participants in the implementation of environmental law. While criminal laws are primarily enforced by public bodies (police, customs, environmental agencies) Slapper and Kelly identify that NGOs, representing private interests, can be active in criminal enforcement in various jurisdictions (2012: 15). Some NGOs take a hands-on approach to prosecution and challenging government enforcement inadequacies, while others view themselves as primarily having an advisory or scientific role. As discussed in earlier chapters, some NGOs pursue active engagement in wildlife law enforcement by employing professional investigators; consistent with ideological beliefs that wildlife laws are inconsistently or inadequately enforced by statutory agencies and require dedicated resources (Nurse, 2013b). However NGOs, unbound by restrictions on state prosecutors, are able to pursue cases of international significance and which establish specific points of law or principle in wildlife and environmental protection. The following case example illustrates.

Case study: *Milieudefensie (Friends of the Earth the Netherlands) v Shell PC and Shell Nigeria*

Milieudefensie (Friends of the Earth the Netherlands) and four Nigerian farmers brought charges against both Shell Nigeria (Shell Petroleum Development Company of Nigeria (SPDC) a subsidiary of Shell) and the Dutch parent company/multinational (Shell PC) due to oil pollution. The case is considered unique as the first time that a Dutch multinational has been brought before the court in its own country for environmental damage caused abroad.

Baumüller et al. noted that 'negative impacts of the oil industry are a major concern in sub-Saharan Africa (SSA), threatening not only the health of local communities, but also the livelihoods they depend on' (2008: 1). Decades of oil exploration in the Niger Delta have resulted in pollution of much of the region's vegetation, fishponds and drinking water, undermining farming and fishing livelihoods.

The case focuses on three oil leaks in the villages of Goi, Aruma and Ikot Ada Udo. Milieudefensie and the four victims argued that:

- Shell must repair the damage in the three villages by properly cleaning up the oil;
- Shell must prevent new leaks from occurring in the future, by properly maintaining its material and protecting it from sabotage;
- Shell must compensate the four victims for the damages suffered.

The case also sought to determine that Shell Headquarters in The Hague is responsible for damages caused by its subsidiary SPDC in Nigeria, establishing liability on the part of corporations for the behaviour of their subsidiaries. The cases were heard in the Dutch court, because the claims were not only directed at Shell Nigeria, but also target the parent company. Despite objections from Shell the district court ruled that it was justified to adjudicate on the lawsuits against all Shell entities in The Netherlands, because the lawsuits were closely connected and EU law provides a means through which EU and overseas cases can be heard together in the interests of justice.

The Hague District Court found that four out of five oil spills which were the subject of the action were not the result of poor maintenance by Shell, but were caused by sabotage by third parties. The court applied the relevant Nigerian law which specifies that an oil company is in principle not liable for any oil spills resulting from sabotage; the basis being that this is not an action of the oil company but results from damage or environmental harm caused by a third party. Applying this principal, the court dismissed four out of the five cases and, in respect of four lawsuits regarding an oil spill near the village of Goi in 2004 and an oil spill near the village of Oruma in 2005, the District Court concluded that Shell Nigeria took sufficient measures to prevent sabotage of its submerged oil pipelines.

However, in the fifth claim relating to two oil spills in 2006 and 2007 from an abandoned wellhead near the village of Ikot Ada Udo, the District Court concluded that Shell Nigeria has had violated its 'duty of care' under applicable Nigerian law and had committed the 'tort of negligence'. The District Court acknowledged that the 2006 and 2007 spills were also the result of an act of sabotage but noted that this was committed in a very simple way near that village by

using a wrench to remove above-ground heads of an oil well abandoned by Shell Nigeria. The Court ruled that Shell Nigeria could and should have easily prevented the sabotage by installing a concrete plug prior to 2006, whereas it only did so in 2010 while the lawsuit was pending.

The Court therefore concluded that Shell could be held *partly* responsible for pollution in the Niger Delta. The judgement while falling some way short of declaring Shell responsible for all of the pollution incidents identified that Shell should have prevented sabotage at one of its facilities in Nigeria which caused a spill damaging the environment and local wildlife resources.

The Shell case illustrates the difficulty of achieving effective environmental justice where the domestic judicial system and legislature is perceived as inadequate to deal with environmental abuses committed by MNCs. However the Shell case in the Netherlands is unique in being the first time the Dutch multinational has been brought before the court in its own country for environmental damage caused abroad. It's also the first time Shell has been ordered to pay compensation for damage caused in Nigeria.

The impact of the Shell case is difficult to quantify. Initial responses to the case saw both sides claiming victory with Shell declaring itself satisfied with the verdict and commenting that it would not change the way it conducts its business in Nigeria.[3] Shell also successfully defended claims against its parent company for the actions of its Nigerian subsidiary. However, Friends of the Earth and the Nigerian Plaintiffs also claimed victory because despite the dismissal of four claims Shell was found liable in a Dutch court for failings in Africa. Given that the plaintiff, the Nigerian defendant and the environmental claims at the heart of the case all took place outside of the EU, the ruling can be seen as a significant step forward in allowing court action to be taken for corporate environmental crimes and arguably legitimises such action being taken by NGOs.

Specialist courts

Problems identified in the presentation of cases such as lack of expertise are recognised in other areas of criminal justice. Ward (2014) identifies specialist problem-solving courts as a growing phenomenon; providing a 'therapeutic jurisprudence approach' that makes offenders

accountable for their actions and facilitates rehabilitation' (2014: 2). The 'therapeutic jurisprudence' concept incorporates focus on the therapeutic and anti-therapeutic benefits of consequences of the court process; the perception that court processes can go beyond pure punishment to incorporate reform and rehabilitation (Hoyle, 2012). The notion of specialist green courts reflects perceived benefits of specialism versus generalism (Woolf, 1992; Stempel, 1995). Lord Woolf's contention was that without specialist knowledge of environmental matters, judicial scrutiny through criminal law processes risked being inadequate. Similarly White (2013c: 269) identifies that empirical evidence shows that when specialist courts are in place or when judicial officers with specialist environmental knowledge are placed within generalist systems, there is greater likelihood of both offender prosecution and use of appropriate sanctions. Accordingly Lord Woolf's conclusion that a case exists for a special environmental tribunal with general responsibility for overseeing and enforcing environmental law which would be a 'multi-faceted, multi-skilled body which would combine the services provided by existing courts, tribunals and inspectors in the environmental field' has merit (1992: 14). Part of Lord Woolf's analysis related to the distinctive aspects of environmental crimes such as 'the possibility of a single pollution incident giving rise to many different types of legal actions in different forums – a coroner's inquest if deaths are involved; criminal prosecution, civil actions, and judicial review if public authorities are involved' (Macrory, 2010: 64). Similarly within wildlife crime some incidents involve multiple offences such as the poisoning of birds of prey on (UK) shooting estates which can involve criminal offences relating to killing of wildlife, health and safety and prohibited substance offences in relation to handling and use of pesticides, civil actions where non-target species (e.g. pets) are harmed. The implication of Lord Woolf's analysis was that a single specialised environmental forum with expertise to deal with all matters relating to the environmental incident would be better than the current system.

Since Lord Woolf's (1992) analysis, environmental courts have become a reality with Pring and Pring (2009) identifying over 80 Environmental Courts and Tribunals in 35 different countries. Environmental Courts are primarily concerned with 'mainstream' environmental issues, land use, planning law, pollution and regulatory environmental offences. Walters and Westerhuis (2013: 283) for example, describe the jurisdiction of the New South Wales Land and Environment Court (LEC) as being to compel compliance with environmental law through both civil and criminal enforcement. They describe the court's cases as including a range of

matters; 'environmental planning and protection appeals, tree disputes, valuation, compensation and Aboriginal land claims, civil enforcement and judicial reviews' (ibid.) the nature of the case determining whether they are dealt with as criminal or civil matters.

Macrory and Woods (2003) identified a number of features which justified a separate environmental tribunal including:

- evidential and judgmental issues involving complex technical/scientific questions, usually of a quite different sort to those found in [ordinary environmental law] decisions
- a challenging legislative and policy base, which is rapidly developing
- the overlapping of remedies (civil and criminal) as well as interests (public and private). Environmental regulatory issues are also critically connected with the subsequent enforcement of environmental standards under criminal law.
- a powerful and increasing body of EC legislation and a growing number of interpretative judgments of the European Court of Justice, notably in areas such as IPPC, waste management, water pollution, genetically modified organisms and habitats protection. (Decisions of the European Court of Human Rights on the right to a healthy environment and biodiversity could also be added to this criteria.)
- a substantial body of international environmental treaties and law covering issues such as trade in endangered species, pollution of marine waters, transnational shipments of hazardous waste and climate change.
- the development of certain fundamental environmental principles such as the precautionary approach, polluter-pays, prevention at source, and procedural transparency
- the emergence of principles concerning third party access to environmental justice, and the requirement under the Aarhus Convention for review procedures that are timely and not prohibitively expensive.
- the emergence of the overarching principle of sustainable development which underpins contemporary policy approach (Macrory and Woods, 2003: 20)

Macrory and Woods' analysis is consistent with those of other scholars that the case for dedicated green courts incorporates a need for specialist expertise not just in judicial consideration of cases but also as regards 'valuation of the harm degree of seriousness, extent and nature of victimization and remedies' (White and Heckenberg, 2014: 262). White (2013c: 270) identifies consistency in sentencing as being a special

concern of the New South Wales LEC which has also established a data base which provides sentencing information including judgements, recent law and other publications. Other environmental courts such as Vermont's Environmental Division also provide an online database of opinions. Specialist courts thus offer the benefit of evolving procedural norms suited to their jurisdiction and secure more effective jurisprudence through development of judicial and prosecutorial expertise given that judges will have greater exposure to a homogenous legal policy regime and consistent consideration of specialist evidence and legal argument. Thus, in theory, specialist environmental courts will bring uniformity, consistency and predictability in developing the appropriate evidentiary base and robust decision-making. White (2013c) also comments that specialist environmental courts offer the hope of lower costs for enforcement agencies as well as the use of an array of alternative dispute resolution procedures including mediation. Arguably there are two conceptions on the specialist green court; one is the regulatory or dispute resolution environmental tribunal indicated by Macrory (2010) and which exists in several jurisdictions to deal with appeals and regulatory breaches and appeals against planning or land use decisions as a problem-solving court. The second is a specialist environmental court which arguably acts as a specialist criminal court considering a range of civil and criminal environmental offences. The former is more common within the environmental court model although Macrory and Woods' (2003) conception makes specific reference to trade in endangered species, the overlapping of civil and criminal remedies and sustainable development questions to which the latter model might be suited.

Summarising prosecution issues

This discussion of wildlife crime prosecution illustrates a range of enduring problems that hamper the effective application of justice to wildlife crime. Arguments concerning the inconsistency of legislation, lack of expertise and failure to provide appropriate sentences are well rehearsed and are an enduring part of green criminological discourse. However, what emerges from analysis of sentencing regimes and practices is that much of the inadequacy identified in criminological discourse is not inherent fault in criminal justice legislative or sentencing provisions, but rather are problems of application. That is to say that sentencing provisions providing for long prison sentences and stiff fines already exist, as do a range of potential civil remedies which can include the option for imposing restorative measures. But for a variety

of reasons, the full range of options and punishments at the upper end of the scale are seldom used. Similarly, sentencing guidelines which recognise aggravating factors relating to the conservation significance or endangered nature of wildlife also exist (albeit not universally) but inherent difficulties in bringing cases to court and the lack of prosecutorial expertise when doing so may negatively impact on the success of bringing such cases. Thus, the use of specialist prosecutors as part of an overall increase in the level of expertise available in wildlife crimes has some merit. Given the developing use of specialist environmental courts, there may also be some merit to expanding their use and bring wildlife crime within their remit, where appropriate, particularly in respect of regulatory wildlife crime. There is also scope to consider wildlife crime as part of criminal justice in a wider context than just application of purely criminal sanctions. Vincent's (2014) analysis of the use of civil sanctions combined with research into their application in other enforcement settings (Peysner and Nurse, 2008) identifies that these have value as a means of integrating creativity in dealing with offenders, for example by applying restorative principles that require offenders to repair their environmental harm. However, such options should be incorporated into the criminal justice system approach rather than being an alternative to it. Thus, the option for criminal prosecution should remain where civil penalties are implemented, particularly as a means of ensuring they do not become a 'soft option', and such penalties should also be subject to criminal enforcement such that failure to comply with a measure such as an enforceable undertaking is itself a criminal offence attracting its own sanction. Further recommendations for developing wildlife crime enforcement are contained in Chapter 11.

10
Wildlife Crime and Criminal Justice Policy

Despite the lack of priority generally afforded to animals in criminal justice systems wildlife crime, now recognised as one of the more significant areas of global crime (Wyatt, 2013; Davies, 2014), has become integrated into criminal law. As Chapter 9 illustrates, wildlife crime is seen as 'serious crime' recognised as such by Interpol (2014) and attracting punitive sanctions at the upper end of the scale in both western and developing world jurisdictions. Yet given the varied nature of wildlife crime activity, the numerous species and trade routes involved and the different types of criminality and offender involved in wildlife crime (Nurse, 2011), legal and justice systems continue to face challenges and are seen as inadequate to the task of dealing with wildlife crime (Akella and Allan, 2012). Notwithstanding the inconsistencies that exist in wildlife laws over such matters as levels of protection between species and investigatory powers and sentencing provisions, the analysis of previous pages suggests that, in principle, wildlife legislation is broadly adequate to the task of wildlife protection given the scope of its punitive sanctions and protective measures. Schaffner (2011) identifies that legislative policy is dependent on the drafting entity and its function as well as the manner in which legal rules are interpreted or implemented by regulatory authorities. Thus the importance given to wildlife crime within legal systems and its place within criminal justice priorities are significant factors in the effectiveness of wildlife crime policing. Beyond the basic text of any legislation and the broad sweep of policy ideals, the scope and jurisdiction of regulatory and policing bodies responsible for practical wildlife crime prevention, detection and apprehension are significant factors. The level of resources afforded to wildlife law enforcement is crucial, reflecting the social construction of wildlife crime and its place within public policy

discourse and priorities. While current prevailing attitudes suggest wildlife crime is an area of public importance, attitudes change over time so that wildlife crime may become an issue of core importance in public policy when the public demands that it should be, or is considered to be a fringe policing issue at other times.

This chapter assesses current public policy approaches to wildlife law enforcement internationally and within selected jurisdictions. Whereas previous chapters have examined policing strategy and policy detail, the chapter examines wildlife crime's position within criminal justice policy and its importance within contemporary criminal justice discourse. It argues that the current public policy approach of detection and punishment rather than early intervention, crime prevention and integration with mainstream criminal justice fails to take into account the link between wildlife crimes and other offences. The chapter considers these, explicitly discussing the links between wildlife crime and other offences (such as violence towards humans, illegal gambling) and the involvement of organised crime in wildlife crime due to the generally weaker enforcement regime and lower penalties when compared to other enforcement areas e.g. human trafficking/drugs. While recognising that both regulatory and criminal justice approaches are legitimate approaches to wildlife crime and should be employed as appropriate to the specifics of wildlife crime activity, this chapter examines the case for integrating wildlife crime within contemporary criminal justice policy discourse.

Wildlife crime within contemporary criminal justice

While still predominantly seen as an environmental issue within policy discourse, wildlife crime's case for being considered as 'serious crime' has already been made and accepted in respect of wildlife trafficking (Wyatt, 2013; Interpol, 2014). Central to further integration of wildlife crime as a mainstream criminal justice issues is understanding of its links with other areas of criminality and criminal justice policy (Nurse, 2003, 2012). Lynch and Stretesky argue that 'traditional criminology has been growing more irrelevant in a world that is increasingly being destroyed by green crimes' (2014: 7), where the scope and impact of environmental crime greatly exceeds that of the majority of street and property crime. Thus criminology needs to redefine its notion of harms beyond the 'local' and strictly legalist definition of crimes and examine wider, global notions of harm (White, 2008; Ellefsen et al., 2012). To borrow from Beirne on animal cruelty (1999) wildlife crime should be

drawn into the realm of criminological inquiry as it has importance on multiple levels as follows:

1. wildlife crime may signify other actual or potential interpersonal violence;
2. wildlife harm is, in many forms, prohibited by criminal law and even in the case of regulatory breaches frequently involves behaviour consistent with definitions of criminal activity;
3. violence against wildlife (including their taking, killing and exploitation) is part of the utilitarian calculus on the minimisation of pain and suffering (the public good);
4. wildlife crime is a violation of rights; and
5. wildlife exploitation is one among several forms of oppression that contribute, as a whole, to a violent society and reduces.

Beirne's arguments (1999) reflect the emergence over the last 30 years or so of the view by many law enforcement and social welfare professionals in the United States (and increasingly in other countries) that there is a link between animal abuse and violence to humans or other antisocial behaviour. Similarly, green criminologists examining wildlife crime have explored the links between wildlife crime and other offences (Nurse, 2011, 2013; South and Wyatt, 2011) and identified that wildlife crime has implications for mainstream criminal justice and policing discourse.

Green criminology's concern with the study of crimes against the environment and animals, accepts that it is often difficult to disentangle environmental harms from the abuse of non-human animals. Beirne and South argue that 'animals live in environments, and their own well-being – physical, emotional, psychological – is absolutely and intimately linked to the health and good standing of their environments' (2007: xiii–xiv). In addition, wildlife crimes are linked to a range of policing, political and policy perspectives reflecting socially constructed notions of how crime should be dealt with and which crimes are important. Much of this book contends that wildlife crime is a criminal justice issue. Contemporary wildlife crime policy reflect this by incorporating criminal sanctions within wildlife law and making at least wildlife trafficking and endangered species trade subject to a criminal enforcement regime albeit Zimmerman (2003) notes that there is no power within CITES to force states to implement unified legislation. Thus penalties vary from country to country (see Chapters 3, 4 and 9) with the risk that this encourages organised crime groups to operate

from countries with inadequate CITES regulations or weak enforcement regimes (Zimmerman, 2003; Izzo, 2010). Similar to the 'pollution haven' problem which exists in corporate environmental crime (Doyon, 2014; Nurse, 2014b) contemporary criminal justice has failed to address wildlife crime as a transnational criminal justice problem linked to wider criminal harm problems. Lynch and Stretesky identify that criminal law, both by design and application 'draws attention to those who are less economically advantaged, including those who are poor, uneducated, marginalized from the work force, or who comprise the blue-collar classes' (2014: 5). These are both the offenders who commit much actual wildlife crime and are also the victims of wildlife crime's effects. Trappers working for low pay to supply wildlife for traders are largely being exploited in doing so, as are those gamekeepers encouraged to kill protected birds of prey and other predators in order to secure healthy game populations for shooting enterprises (Nurse, 2011, 2013; Wyatt, 2013). While their offending activity is often the target of the criminal justice system, which adopts an individualised approach to much wildlife crime, little is done to address the inequality of power relations which causes their offending (Nurse, 2011). In the case of wildlife crime committed in developing countries, the market power of western consumers demanding wildlife products in a neoliberal market (Stallworthy, 2008) is also unfairly brought to bear (Izzo, 2014). Contemporary criminal justice policy does little to address these imbalances, but instead is primarily reactive, dealing with wildlife crime after it has occurred and in effect further marginalising those involved at the 'lower end' of wildlife crime rather than those with power in globalised markets. Western criminal justice policy predominantly treats wildlife crime reactively, with an emphasis on detection, apprehension and punishment, and on search and seizure as primarily tools to deal with wildlife crime, particularly illicit wildlife trafficking. Policy is, therefore, routed in reactive policing techniques and a belief in deterrence as a tool rather than the more preventative measures employed in developing world countries where much endangered wildlife is sourced. Damania et al. (2008) for example identify that proactive enforcement is employed to protect tigers on the ground where a strong conservation network exists. However, 'the penalties for poaching are often harsh, but the likelihood of apprehension remains low and that of a conviction even lower' (Damania et al., 2008: 6). Similar results are reported by other developing world jurisdictions thus the proactive approach is no more likely to succeed where lack of resources remains a problem and conservation enforcement and criminal justice enforcement are

insufficiently integrated. Effective wildlife crime policies thus provide for both tangible and intangible public benefits through the improvement of the environment and integration of policy initiatives that could protect the public.

In the United States, the existence of a federal enforcement agency for wildlife crime provides a means through which both social-democratic and conservative policies can be incorporated within the law enforcement perspective. This allows for the use of a dedicated enforcement agency to target action at the individual offender and implement detection and prevention as the core focus of policy. But the remit of the US Fish and Wildlife Service and the EPA also allow for some educational work aimed at the causes of wildlife and environmental crime within a law enforcement perspective. While the evidence is that wildlife crime is caused by a range of factors and involves offenders with different motivations (Nurse, 2011, 2012) the public policy approach to wildlife crime primarily based around deterrence through detection and punishment does little to address the causes of wildlife crime. Contemporary criminal justice, therefore, continues to penalize suppliers and producers rather than the consumers who create the demand for wildlife products and exercise considerable economic and other power over perpetuate of wildlife exploitation (Stallworthy, 2008; Walters, Westerhuis and Wyatt, 2012). Contemporary criminal justice approaches therefore offer only a partial solution to wildlife crime problems focused on one aspect of the crime problem. At this point it is worth returning to White's three perspectives on approaching environmental crime mentioned earlier in this book as follows:

1. the socio-legal approach;
2. the regulatory approach;
3. the social action approach.

The socio-legal approach remains the preferred option in contemporary wildlife criminal justice, improvements to existing criminal laws, stiffer sentences and more punitive measures are generally the preferred option for criminal justice policymakers. While the February 2014 Wildlife Crime Summit in London resulted in a declaration by approximately 50 world leaders that they would 'strengthen law enforcement, reduce demand and support alternative livelihoods of communities affected by poaching and the trafficking' (Foreign and Commonwealth Office, 2014) much enforcement activity remains as is with the underlying problems in criminal justice systems remaining in place. This is

not to suggest that the Summit was a failure and its recognition that consuming products from endangered species should be banned by Governments is to be welcomed. Yet the socio-legal (law enforcement) approach remains as the main public policy response to wildlife crime and is a potentially flawed perspective where the quality of investigation and prosecution is undermined by, for example, cuts in policing budgets and the general under resourcing of domestic wildlife crime issues.

The links between wildlife crime and other offences

Criminology and criminal justice is predominantly about human harms (Lynch and Stretesky, 2014: 4) but green criminologists argue that there is a need for a criminology that goes beyond focusing on crimes of the powerless and purely human concerns, to consider a wider definition of crime as encompassing a wide range of victims and behaviours (Beirne, 1999; Reiman, 2006; Hall, 2014). Animal crime discourse has extended to consider a wide range of criminological areas where the abuse and illegal exploitation of animals intersects with other criminological concerns (Linzey, 2009; Schaffner 2011; Donaldson and Kymlicka, 2012). Thus, animal crime is not just about animals. Wildlife crime has benefits to broader notions of policing and crime control given its link with other offences (Nurse, 2012). A number of (mainly US) studies have linked animal cruelty to further offending (Flynn, 2002; Henry, 2004; Sunstein and Nussbaum, 2006) such that the link between animal harm and human violence has now become accepted within criminological and criminal justice policy discourse. Animal abuse and interpersonal violence towards humans have a number of common characteristics; both types of victim are living creatures, can experience pain and distress, can display physical signs of their pain and distress (with which humans can empathise) and may die as a result of the injuries inflicted in cruelty such as torture (Nurse, 2013). For law enforcement professionals, therefore, violent tendencies and the propensity towards inflicting pain on others by those inclined towards inflicting pain suffering on animals is an important factor in predicting future violent offending, consistent with MacDonald's (1963) indicators of sociopathic behaviour. Increasingly law enforcement professionals and psychologists are researching how the tendency towards violence against animals may be used as 'practice' for offenders who then escalate towards interpersonal violence towards humans. However, wildlife crime is also linked with other forms of criminal activity beyond its obvious links with

interpersonal violence and given the wide-ranging scope of wildlife crime and associated crime and criminality there is an argument for it to be considered alongside mainstream criminal justice policy.

Previous research has linked wildlife crime to organised crime, noting that organised crime groups with existing trade routes and criminal infrastructure have diversified into wildlife (Wyatt, 2013; Nurse, 2013). South and Wyatt (2011) note that various organised crime types operate in the area of wildlife crime (discussed earlier in this book) and that the illicit trade in wildlife is also linked to drugs. The United Nations Office on Drugs and Crime's (UNODC) Global Programme for Combating Wildlife and Forest Crime formally recognised the links in June 2014 commenting that 'law enforcement alone, essential as it is, will not deliver lasting results in combating wildlife crime, unless complemented by effective demand reduction activities, including education, as well as community-based sustainable development' (UNODC, 2014). Lynch and Stretesky (2014) reiterate that green crime should not be seen in isolation and the global effects of wildlife crime have wide-ranging ecological consequences (White, 2012). However, formal recognition of wildlife crime's linked human consequences is important to developing its importance within criminal justice systems and movement away from its perception as an environmental issue. Organised crime's use of violence, intimidation, bribery of officials and resultant facilitation of transnational corruption has wide-ranging negative consequences including harm caused to human victims (Schendal and Abraham, 2005; Wright, 2006; Muncie et al., 2010). Thus wildlife crime's importance within an overall continuum of offending (Nurse, 2013a) becomes important to law enforcement seeking to address the full nature of organised crime's effects. Thus rather than wildlife crime and other crime representing competing interests in criminal justice (Wyatt et al., 2013) wildlife crime is complementary to criminal justice's interest in dealing with organised crime, providing another means through which organised crime activities can be addressed. Evidence also exists of a link between wildlife trafficking and terrorism with UNEP and Interpol identifying that 'aside from the well-documented ivory trade of up to around $400m a year that trickles to some militias in East, Central and West Africa, the annual trade of up to $100bn in illegal logging is helping line the pockets of mafia, Islamist extremists and rebel movements' (McNeish, 2014; Nelleman et al., 2014). Thus wildlife crime's global impact on humans and animals clearly integrates it with recognised international crimes and the requirements of transnational policing. From a green criminological perspective, a wider conception

on the victims of wildlife crime is thus required to include the human victims of environmental harm caused by environmental degradation (Hall, 2014; Lynch and Stretesky, 2014) as well as those who suffer indirectly as a result of wildlife crime funded terrorism.

Changes to the criminal justice system approach

As Chapter 9 outlines, the UN has encouraged its Member States to treat illicit wildlife trafficking as serious crime whenever organised crime is involved. The adoption of this resolution, as endorsed by the UN Economic and Social Council, provides UNODC with a broader role in combating wildlife crime (Biron, 2013). It also provides scope for UN Member States to harmonise their view of wildlife crime as serious crime by reviewing existing legislation in line with the UN resolution. The prioritising of wildlife trafficking within serious and transnational crime discourse arguably requires UN Member States to incorporate such crime within definitions of serious crime which attract penalties of four years or more. It also widens criminal justice system engagement with wildlife requiring jurisdictions to consider the levels of expertise needed to investigate and prosecute wildlife crime. However, while increased priority for illicit wildlife trafficking is to be welcomed, the lack of resources and practical problems in dealing with wildlife crime, as outlined in the preceding pages, remains. Simply adding illicit trafficking to the statute books as serious crime does not address these problems. Arguably it risks exaggerating the current two tier-system which exists in many jurisdictions of endangered species crime attracting criminal justice attention and being viewed as serious, while 'ordinary' or domestic wildlife crime affecting more common native species is either ignored or fails to attract criminal justice priority. As Chapter 9 argues, these problems require attention such that wildlife crime is not seen outwith the rest of criminal justice and the myth of wildlife crime as only being about illicit wildlife trafficking is not perpetuated.

Self-evidently, wildlife legislation generally makes a distinction between specially protected wildlife (CITES listed species and others considered to be endangered and/or at risk within a state and receiving the attention of international law) and those species that receive 'ordinary' protection. Enforcement priorities should be developed along these lines so that while the primary enforcement activity is directed towards the more threatened species all wildlife crime is considered within mainstream criminal justice policy (Nurse, 2012, 2003). A disproportionate amount of attention is directed at illicit wildlife trafficking at the international

level to the detriment of 'minor offences' such as illegal hunting (frequently viewed as a regulatory offence) or egg collecting and possession of native wildlife. While 'lesser' criminal activities affecting 'ordinary' species are prohibited by law and are arguably crimes for which the impact on the species is negligible (with the exception of certain activities like the collection of endangered species) and which could be dealt with through other means they should nevertheless be viewed within a shifting criminal justice discourse as mainstream crime. While it is perhaps unrealistic to expect all wildlife crimes to be given the same level of attention by the statutory agencies, a system of prioritising enforcement action on wildlife crimes should provide for extra resources to be given to endangered species rather than what currently appears to be a situation where resources are not expended on 'minor' wildlife crimes or those for which there is no immediate conservation threat to the target species. Models exist elsewhere in criminal justice where lesser offences are still routinely enforced and recorded but administrative penalties are used with the potential to escalate to criminal activity fines. For example several jurisdictions use on the spot fines and fix penalty notices for road traffic offences where 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 CITES species sold) or minor trade offences, which could be a solution to resource issues where appropriately allied to inspection regimes and with the option for escalation to criminal penalties. Vincent (2014) in explaining the rationale behind wildlife law reform proposals currently being pursued in England and Wales identifies that existing law has been criticised for a number of reasons 'including the criminalising of offenders who are successfully prosecuted for what might be a relatively minor breach of one of multiple project consent conditions' (2014: 68). Criminalisation for minor technical breaches is obviously undesirable, however, offences which involve the taking or killing of animals should be integrated into criminal justice as serious crimes irrespective of whether the species is classed as endangered and sanctions codified accordingly.

Some preliminary conclusions

The current position in criminal justice is that while much wildlife crime is caught by the criminal law, wildlife crime as a whole is treated outside of the criminal justice mainstream and non-endangered species

crime is treated inconsistently. This chapter argues however that far from being solely an environmental issue, wildlife crime is of importance to criminal justice because of its links to other areas of criminal justice policy and in light of contemporary thinking about crime, punishment and the application of a green perspective to criminological issues (Lynch and Stretesky, 2014). Evidence on the behaviour of wildlife criminals and the motivation behind their actions identifies that wildlife offenders do not commit their crimes in isolation but overlap with other areas of offending (Linzey, 2009; Nurse, 2013; Wyatt, 2013). Criminological theory and past experience of implementing criminal justice policies shows that there is no single cause of crime and wildlife offenders are subject to multiple conceptions on offending (Nurse, 2011) and organisational structures (South and Wyatt, 2011) which dictate that offenders are not all profit-driven or individualistic, but overlap with organised crime and other types of offending. Wildlife crime is also a source of revenue which facilitates other, more serious crime as discussed in this chapter.

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 and politicians concerning wildlife crime are based on theories of deterrence and punishment and are centred on the role of the offender. Current criminal justice rhetoric around greater use of prison sentences both to act as a deterrent and to incapacitate offenders is good in theory but the experience of mainstream criminal justice, however, suggests that such policies are unlikely to be effective as the primary solution to wildlife crime's problems. 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. Reconviction 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. While options for prison sentences exist in some wildlife legislation; a potential effect of the UK Law Commission's proposals (Vincent, 2014) and of the US Fish and Wildlife Service's delisting approach to certain species is to allow for an increased ability to exploit wildlife through a relaxation of the regulatory regime and reduced scrutiny of 'authorised' animal killing. Wildlife laws are often broadly adequate to their purpose as conservation or species management legislation but are inadequate to fulfil their role as effective criminal justice legislation due to their reliance on a reactive enforcement regime that in practice is often ineffective and lacking resources.

The future protection of wildlife requires not only robust legislation that actually protects wildlife but also an effective enforcement regime that contains mechanisms for dealing with wildlife criminality and reduces repeat wildlife crimes.

11
Conclusions and Recommendations

Wildlife crime as a high value, high volume area of global crime (Schneider, 2008; Wyatt, 2013) with lasting impact on ecosystems is undoubtedly an area worthy of criminological attention. Central to this book's analysis of the policing of wildlife laws has been consideration of wildlife crime from a green criminological perspective. As a fast developing discipline, green criminology offers scope for a critical exploration of real world problems relating to environmental crime and criminality including environmental security, species justice, transnational crime and corporate wrongdoing (Nurse, 2014b). At its best, green criminology provides not only scope to consider such topics as ecological justice and illegal trading in wildlife from a theoretical perspective, it also provides a means through which mainstream criminal justice policy and practice can be scrutinised and improved.

Halsey (2004) was critical of green criminology's failure to clearly define itself, the nature of environmental harm and the types of regulatory structures needed to address environmental problems. Green criminology has developed considerably since this criticism with green criminological scholarship on animal crime, and wildlife trafficking in particular, demonstrating how green scholars make sense of a wider range of social harms than criminology has traditionally concerned itself with. Green criminological scholarship on wildlife crime has moved beyond purely historical theoretical and philosophical considerations of animals' rights, legal personhood and species justice as abstract concepts. Contemporary wildlife crime scholarship embraces practical considerations on: wildlife crime criminality (Nurse, 2011, 2012, 2013a; South and Wyatt, 2011; Wyatt, 2013); policing and crime prevention (Schneider, 2008; Wellsmith, 2010, 2011; Nurse, 2013c); victimhood (Hall, 2013), preventative measures and legal and regulatory theory and

legislative and criminal justice system efficiency (Wilson et al., 2007; White, 2008; Walters and Westerhuis, 2013; Nurse, 2013c). In examining a range of criminological issues, green scholars consider not just activities defined as crimes by the criminal law and a strict legalist perspective (Situ and Emmons, 2000) but also activities (such as the legal trade in wildlife and game shooting) that raise concerns about the harmful effects of ostensibly legal activities and practices and the implementation of regulatory or civil justice regimes (Nurse, 2011, 2012). All of these issues, discussed within this book's analysis of wildlife crime illustrate the breadth of green criminology's reach concerned, as it is, with the interface between socially constructed notions of the legal and illegal, with individualistic and corporate notions of crime and deviance (Lynch and Stretesky, 2010), and with the links between aspects of environmental law enforcement and mainstream law enforcement.

This final chapter concludes that wildlife law is subject to a range of enforcement regimes both internationally and nationally but is dealt with predominantly outside of mainstream criminal justice. Accordingly there is a case for wildlife law reform across jurisdictions to better integrate wildlife crime within mainstream criminal justice while addressing some of the inherent problems which impact negatively on wildlife law enforcement. Wildlife crime has a range of causes and consists of several different types of criminality which need to be specifically considered in the public policy, legislative and law enforcement response. However, political considerations which mean that a deregulated approach to regulatory wildlife offences is being employed in a number of jurisdictions have negative consequences for effective wildlife protection. This chapter makes recommendations for an integrated approach to wildlife law enforcement, greater use of crime prevention techniques and of the full range of available sanctions for wildlife crime while arguing for consideration of wildlife law as part of mainstream criminal justice policy.

Wildlife crime: environmental and species justice perspectives

Green criminology routinely goes beyond the personal to consider the wider context and impact of its conception of crime. Rob White's (2009) notion of fusing the global and the local is exhibited by wildlife law's integration of international perspectives into national wildlife law explicit in legislation which implements CITES and the Convention on the Conservation of Migratory Species and other international and

transnational crime legislation. Such legislative measures consider not just protection of national wildlife resources but also the need to protect migratory species, their habitats and their migratory routes, reflecting a global conception on species justice (Benton, 1998; White, 2008). Beyond concerns about animal abuse and animal rights which risk being niche concerns within criminology, wildlife and animal law has developed to a stage where animal protection through integration of legal enforceable behavioural norms (not just welfare standards) is now firmly enshrined in environmental policy and legislative systems (Schaffner, 2011; Nurse, 2013a). The incorporation of international law mechanisms such as CITES into national legislation also means that, at least in principle, wildlife is protected from *certain* illegal activity of an international dimension (e.g. the illegal trade in wildlife) by making such practices subject to criminal sanctions. Yet the extent to which such mechanisms are enforced is as much a political decision as a moral one based on acceptance that humans owe a duty towards other inhabitants of the planet (Benton, 1998; Wise, 2000). Where human and non-human or ecological interests are in conflict governments have historically calculated that animal/ecological interests should be seen as secondary, resulting in animal law that primarily reflects animals' status as property and prioritises anthropocentric market-driven human interests over environmental concerns (Wise, 2000; Stallworthy, 2008). However, as this book observes, while enforcement of wildlife law is very much a mixed bag, improvements in wildlife protection from the latter half of the 21st century onwards have resulted in contemporary wildlife law discourse which accepts wildlife crime as a legitimate target of legislators and criminal justice attention notwithstanding some persistent problems in the consistency and quality of enforcement regimes.

White (2007) identifies a main concern of species justice as being 'the rights of other species (particularly animals) to live free from torture, abuse and destruction of habitat' (2007: 38). These are concerns integral to wildlife law and its enforcement, particularly in respect of uneven access to environmental justice by poor and developing world communities which rely on wildlife as an economic or subsistence resource (Schlosberg, 2009) and wildlife itself subject to flawed conceptions of justice routed in speciesism (Beirne, 2009; Sollund, 2012). Despite considerable developments in animal protection through the law (Radford, 2001; Schaffner, 2011) wildlife crime continues at levels that make it one of the most prevalent forms of crime and criminality globally (Nurse, 2012, 2013a; Wyatt, 2013). This results in numerous calls by

NGOs and commentators for a more punitive criminal justice approach to wildlife crime (Nurse, 2011, 2012) and the enduring perception that criminal justice systems do not take wildlife crime seriously. Given the inherent difficulties in wildlife law enforcement and policy implementation in dealing with wildlife crime discussed throughout this book and replete in wildlife crime scholarship there is some merit to these calls. Yet analysis of wildlife crime problems in the preceding pages and as demonstrated by other research (Schneider, 2008; Wellsmith, 2011; Nurse, 2011, 2012, 2013b; Wyatt, 2013) suggests that rather than existing legislative regimes being inherently weak, considerable problems exist in the practical implementation of wildlife legislation and in operational enforcement practices, 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 investigations, prosecutorial and policy professionals, wildlife laws are still enforced in an ad hoc manner in many jurisdictions 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 criminal justice systems, being primarily seen as an environmental issue rather than a mainstream criminal justice one. Thus problems of practical enforcement exist in almost all areas of wildlife crime meaning that even where sufficient legislation, policy and guidance exists, it is poorly and inconsistently enforced and these deficiencies require attention.

The legal and the illegal: enforcement priorities

Particularly in the area of exploitation of resources (including animals) green criminology critically examines the link between the legal and the illegal (Lynch and Stretesky, 2013; Doyon, 2014; Wyatt, 2014). Given the human element in wildlife crimes (often profit-driven exploitation of wildlife as an economic resource) environmental policy needs to consider human behaviour both collectively and individually as a major source of environmental harm and illegal wildlife exploitation. However, much wildlife exploitation is legal given governments' acceptance, enshrined in legislation like CITES and the Whaling Convention, that wildlife is a resource that may be used for human benefit and is subject to market principles of use and sustainable use (Stallworthy, 2008). However, while humans generally have interest in maintaining a healthy environment and sustainable populations of wildlife, the full consequences of human behaviour and exploitation of animals are not always taken into account (Sollund, 2013; Wyatt, 2014). Thus, evidence

exists that the legal trade in wildlife facilitates or even encourages the illegal trade by sustaining a market for wildlife products and providing a means through which illegal activity is difficult to detect (Schneider, 2008; Wyatt, 2013; Nurse, 2013a). The lack of effective global enforcement and little or no integrated national enforcement activity in respect of transnational crimes and wildlife crimes subject to multiple regulatory structures is also a significant issue. Jurisdictions with weak enforcement regimes exist in precisely those areas, developing countries, where crucial threatened populations of wildlife exist. Thus one global priority for wildlife enforcement reform is for developing-world countries to review their wildlife laws to reflect the contemporary reality of wildlife crime (as Chapter 3 notes Kenya and others have done). Robust enforcement mechanisms and enforcement priorities should also be in place to deal with the weak links in the wildlife law enforcement chain. As the President's Advisory Council on Wildlife Trafficking and other commentators have observed, this may require significant investment by influential western governments both to support global wildlife enforcement initiatives which break up organised criminal networks involved in wildlife crime on a transnational basis (Akella and Allan, 2012) and to address consumer demand for wildlife products which drives illegal activity (Schneider, 2008; Wyler and Sheikh, 2013).

Wildlife crime: some recommendations

Green criminology's strength is its ability to apply ideas about mainstream crime to green issues (Lynch and Stretesky, 2014) whilst also applying green perspectives to mainstream criminological concerns. In doing so it develops criminological discourse. As this book explains, techniques of neutralisation (Sykes and Matza, 1957) are an integral factor in wildlife offending, allowing offenders to minimise their harm (both to themselves and others) while also justifying their activities as outside the remit of criminal justice and normative conceptions of criminality (Nurse, 2011). Research into wildlife crime criminality (discussed in Chapter 4) demonstrates that offenders deny responsibility for their actions, view their crimes as victimless, contest the legitimacy of enforcement action and condemn their condemners while justifying their crimes as victimless (Nurse, 2011; Wyatt, 2013). Enforcement of environmental crimes can be problematic where criminal justice systems prove inadequate to the task of dealing with particular offence types. The enforcement conception is an important one; lack of effective integrated enforcement has often aided the emergence of new

forms of criminality such as the move of organised crime into the illegal wildlife trade (South and Wyatt, 2011; Nurse, 2011, 2013a; Wyatt, 2013). The ability to use existing trade routes means that wildlife, simply another commodity to be traded, becomes attractive to criminal groups given the generally lower level of penalties and weakened enforcement regimes prevalent in wildlife enforcement (Wellsmith, 2010, 2011). Thus wildlife law enforcement needs to adapt to new challenges while addressing implementation issues within existing enforcement regimes. The following recommendations are suggested for a reformed contemporary wildlife policing regime:

Recommendation 1 – Statutory recording of wildlife crime
Wildlife crime should be made recorded crime and included in crime statistics produced by justice departments wherever possible. The lack of any coordinated recording of wildlife crime makes it difficult to assess the extent of the crime problem or level of resources required to address it. 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, while estimated levels of illegal activity related to CITES are not easily compatible with other national crime data.

Despite figures of reported crimes issued each year by certain NGOs it is difficult to determine the actual level of offences annually or to fully assess species impacts. 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 data to determine wildlife crime's scale and required resource allocation. Much has been written on wildlife trafficking and illegal CITES trade (Zimmerman, 2003; Schneider, 2008; Wyatt, 2013) but the evidence of country-specific NGOs is that other forms of crime are prevalent in certain jurisdictions. However, the lack of available data makes it difficult to assess wildlife crime globally or by jurisdiction; making it difficult to determine enforcement or resource priorities within the sphere of wildlife crime.

It is also difficult to say conclusively what effect wildlife crimes are having on individual bird, animal or mammal populations. Statutory recording of wildlife crime by each jurisdiction would allow the extent of the problem to be established both nationally and international and for resources to be allocated and enforcement priorities determined. It is therefore recommended that wildlife crime be made recordable across jurisdictions and for national audits of wildlife crime to be conducted.

Recommendation 2 – Wildlife crime integrated into the responsibility of justice departments rather than environmental departments

In many jurisdictions, wildlife crime falls within the remit of the environment department and not justice departments. In part, this means that wildlife crime is given a status outside that of 'ordinary' crime.

While environment departments often provide much useful input on policy matters relating to wildlife crime, publicity for wildlife law enforcement and are effective in wildlife regulatory matters and policy implementation there are sometimes limits to environment department's effectiveness in terms of practical criminal justice work, particularly in developing course where they are under-resourced for such a task. The status of wildlife crime as outside the remit of mainstream criminal justice has the negative impact of reducing its perceived importance within policing discourse and law enforcement practice. For wildlife crime to be considered separate from the research and policy environment of mainstream criminal justice departments carries with it the risk that wildlife crime policy might be developed in a manner that is at odds with mainstream criminal justice. The links between wildlife crime and other crime, such as organised crime are also marginalised where wildlife crime exists as an area of environmental policy divorced from policing and criminal justice discourse. Accordingly this book recommends that wildlife crime should become a core policing/justice issue integrated into the responsibility of justice departments while making use of the conservation and natural resource expertise of environment departments.

Recommendation 3 – Wildlife legislation should be reviewed to ensure consistency of police powers, protection and sentencing options

As has been mentioned during the course of this book, wildlife crime carries with it a range of differing sentences, police powers and offences both across and within jurisdictions. The available research evidence demonstrates that rather than widespread problems in legislative regimes it is more accurate to say that enforcement and implementation of legislation is inconsistent. However, it is also true to say that in places legislation itself is inconsistent and does not adequately protect wildlife species as intended.

The problems identified in analysis of available legislation and prior research are that:

- Some wildlife offences carry a power of arrest, some do not
- The level of fines differs between wildlife legislation sometimes reflecting differing values places on wildlife.

- The option for prison sentences exists for some wildlife offences but not others with available prison sentences varying within and across jurisdictions.
- 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 a wildlife offence are subsequently banned from keeping or controlling animals or from carrying out activities related to the offence whereas other legislation does not.

While it is unrealistic to expect a global homogenous approach to wildlife legislation, one recommendation is that wildlife legislation should be reviewed within jurisdictions to ensure that police powers and sentencing options are applied in a uniform manner across various wildlife legislation. Commensurate with the idea of wildlife crimes as serious crimes, wildlife laws should provide for investigation of wildlife offenders for related offences (such as money-laundering) and should consistently allow for seizure of items used to commit offences, forfeiture orders for unlawful possession of protected wildlife and appropriate banning orders preventing individuals from further possession of wildlife or engagement in wildlife-related activities on conviction. This book also recommends that wildlife crimes (as defined within this book) should carry powers of arrest for non-state crimes to facilitate investigation and evidence gathering where criminal prosecution is envisaged. Wildlife laws should also be reviewed to ensure consistency in sentencing options such as prison tariffs.

Recommendation 4 – Wildlife legislation should be amended to close loopholes in existing legislation

This book's analysis does not support the view that wildlife legislation is generally inadequate, albeit there is evidence to suggest that loopholes in existing wildlife legislation occur across jurisdictions. Wildlife legislation has the general aim of protecting wildlife and frequently sets out some prohibited means of taking or killing wildlife, even where such activities are otherwise permissible for example for pest control purposes. For example, the UK's 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.

Legislation intended to protect wildlife frequently contains ambiguous wording which allows wildlife to be killed or taken or makes

defences available for doing so. While it is beyond the scope of this book to conduct forensic examination of all wildlife law to identify specific loopholes, some examples are discussed within the text identifying the nature of 'loophole' or 'ambiguous wording' problems and their impact on investigations and prosecutions.

A recommendation is, therefore, made that each jurisdiction should conduct a comprehensive review of wildlife legislation to identify and close all loopholes.

Recommendation 5 – A UN Special Representative on wildlife crime

The transnational nature of wildlife crime and its commission by states when failing to observe the requirements of international law requires a mechanism to ensure monitoring of international wildlife crime and full implementation of international wildlife law. WWF proposes the establishment of a UN Special Representative on international wildlife trafficking to be a global independent advocate reporting to the Secretary General and advocating a high-level response to international crime (2014a: 4). The WWF proposal has considerable merits albeit wildlife trafficking is not the only international wildlife crime and state failure to comply with wildlife legislation (as arguably exhibited by the Japanese whaling case discussed in Chapter 2) is a factor. This book endorses the WWF proposal that there should be a UN Special Representative on wildlife crime with a remit to 'push for compliance with and implementation of international commitments' (WWF, 2014a: 4). But in addition to considering CITES and the narrow definition of wildlife crime, the role should incorporate a broader notion of wildlife crime which includes, for example, breach of international wildlife protection commitments which result in harm or killing of wildlife by a state which might be dealt with by way of UN sanction or action in the UN's International Court of Justice.

Recommendation 6 – Introduction of specialist wildlife prosecutors

Chapter 9 discusses the need for specialism in dealing with wildlife crime given that wildlife legislation is something of a rarity for prosecutors and jurists and a lack of expertise is perceived as creating difficulties in wildlife law enforcement and prosecution.

In contrast to prosecutors' lack of expertise, the defence can often employ specialist counsel to argue cases, especially in the case of corporate or organised crime offenders with significant resources to defend a

case. Particularly in corporate cases, adverse publicity can impact negatively on a brand or reputation (Harris, 2011) thus 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. Deployment of specialist prosecutors is recommended to address this problem.

Specialist prosecutors would also be able to build up expertise in wildlife law to ensure consistency and efficiency. Specialist prosecutors might also advise policing agencies of case weaknesses or possible defences applicable to investigations. This would have the benefit of overcoming any perception by policing agencies that prosecutors are unwilling to pursue cases and also address any prosecutor perceptions that enforcers have unrealistic expectation of success in cases that are considered to be weak on legal grounds.

Specialist prosecutors are therefore recommended to ensure expertise in wildlife crime prosecutions consistent with the Marrakech Declaration suggestion that the judiciary sector should be strengthened to ensure that prosecutions for wildlife trade are conducted effectively and that the full range of wildlife penalties is considered in charging and sentencing.

Recommendation 7 – Treatment of wildlife offenders

Analysis of wildlife offending contests the notion that wildlife crime is solely carried out by profit-motivation rationally driven offenders (Nurse, 2011). Wildlife crime extends beyond wildlife trafficking to incorporate a range of behaviours and offender types including organised crime (South and Wyatt, 2011), states and even violent individuals whose offending is linked to other crimes such as domestic violence (Linzey, 2009a). Wildlife law enforcement 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 violent 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 recommendation contends that the recording of wildlife crimes and animal abuse should take place as an indicator of possible future offending and be linked to an overall criminal profile (Clawson, 2009; Schaffner, 2009) Policy should not solely consist of punitive or criminal deterrent measures but should also consider measures to divert individuals from wildlife crime and to rehabilitate or treat offenders where possible, 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 – Specialist Wildlife Crime Units
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 in the UK, for example, often_carry out their wildlife law enforcement duties in an ad hoc manner (albeit the recent creation of the National Wildlife Crime Unit is a positive development). Parks and conservation officers are often ill-equipped for enforcement activity, particularly in the face of organised crime or militarised poaching of endangered wildlife.

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). 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*).

The Marakesh Declaration on wildlife crime (see Appendix) proposed the establishment of specialised CITES Units within customs units to provide expertise which would assist customs in wildlife search and seizure. It also recommended promotion of a National Environment Task Force (NEST) or other multi-agency cooperative to deal with wildlife crime. These recommendations provide appropriate means of developing specialist units in countries where no such unit exists.

Undoubtedly budgetary and political considerations impact on the extent to which these recommendations might be implemented. As Lynch and Stretesky (2014) identify, environmental problems have defined the circumstances of our world for the last 150 years or so. Thus a wide variety of human actions causing environmental harm have not been adequately addressed or remedied, nor have they been sufficiently examined as criminological issues (2014: 10–11). However green criminologists have a role to play in shifting the focus of crime and criminal discourse away from purely human-centred notions of crime towards one that incorporates an environmental or eco-global perspective (Lynch and Stretesky, 2014; White and Heckenberg, 2014). Green criminologists have begun to achieve this and in addressing the problems identified in this book and the recommendations for action can act not

only as experts within their own academic discipline but also as policy advisors, evaluators and creators and advocates for criminal justice policy discourse that addresses wildlife crime.

Wildlife crime: a conclusion

This book began by questioning how wildlife laws can best be enforced and whether the current regime was effective. The reality is that wildlife law enforcement varies between jurisdictions and anthropocentric, socially constructed, notions of animals dictate that they cannot be considered as victims of crime in law (Beloof, 1999; Moore, 2005) and are thus marginalised in criminal justice systems. Lack of knowledge on the part of prosecutors and the judiciary means that wildlife crime is often not seen as a criminal justice priority and thus practical difficulties may emerge in the prosecution and sentencing of wildlife crimes with the available penalties rarely used to the full (Nurse, 2012; The President's Advisory Council on Wildlife Trafficking, 2014). Accordingly while there are undoubtedly some inconsistencies and inadequacies in wildlife laws in some jurisdictions, the reality of wildlife crime is that poor or inconsistent law enforcement implementation is prevalent across jurisdictions. White (2008) identifies that contemporary police studies identify that a problem-solving rather than policy-prescribed model of intervention is required to address environmental and species justice issues. In the case of wildlife crime, an approach to animal offending incorporating harm-based, place-based and criminality-based specific policies is required. Rather than treating all wildlife offenders as profit-driven rationality-based offenders (Nurse, 2013a) wildlife crime enforcement needs to be properly resourced such that investigators, prosecutors and jurists have sufficient resources and expertise in wildlife crime to develop an effective justice system commensurate with the social, economic and species justice impacts of wildlife crime. Accordingly this book proposes that effective wildlife policing requires a combined social-legal and social-action approach (White, 2008). Wildlife crime should be better integrated into justice systems (both civil and criminal) so that wildlife crime is conceptualised as part of mainstream criminality and criminal justice (Nurse, 2013a, 2013b), the links between wildlife crime and other offending are recognised (Linzey, 2009a). By examining mainstream criminal justice through a green lens and integration of mainstream criminological ideas into analysis of wildlife crime this book argues for a green criminological approach to wildlife crime which offers hope for a new, broader and more inclusive notion of justice incorporating notions of social and species justice as well as criminal harm.

Notes

2 What Is Wildlife Crime?

1. The Act's provisions were amended to include the phrase intentionally or recklessly', albeit issues still remain with this wording.

3 International and Regional Wildlife Legislation

1. International Convention for the Regulation of Whaling, preamble to the Convention.
2. Whaling in the Antarctic (*Australia v Japan*: New Zealand intervening) – Judgement of 31 March 2014.
3. It is accepted that the Court's judgement is specific to the requirements of the International Convention for the Regulation of Whaling but the judgement contains some wider discussion on the expectations of scientific research involving animals.
4. It should be noted that Norway continues to take North Atlantic common minke whales within its Exclusive Economic Zone, and Iceland takes North Atlantic common minke whales and also North Atlantic fin whales, within its own Exclusive Economic Zone (Nurse, 2014a).

5 Theoretical Perspectives on Wildlife Law Enforcement

1. See, for example, the US Department of Justice's webpage on prosecuting federal wildlife crimes at http://www.justice.gov/enrd/5470.htm

9 Prosecuting Wildlife Crime

1. EC Directive 2004/35/EC on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage.
2. It should, however, be noted that the full recommendations (19 in total) contain measures to improve US action abroad and to improve foreign enforcement capacity, cooperation and partnerships. Recommendations are also made in relation to the involvement of the private sector in dealing with wildlife crime.
3. UPI Shell OK with Nigerian Spill Verdict (2013) at http://www.upi.com/Business_News/Energy-Resources/2013/01/30/Shell-OK-with-Nigerian-oil-spill-verdict/UPI-13501359553335/ (accessed 10 June 2013).

Glossary

ACPO – the Association of Chief Police Officers, representative body for senior police officers in England and Wales.

Biodiversity – the shortened and commonly used form of 'biological diversity' which refers to the community formed by living organisms and the relations between them. The phrase reflects the diversity of species and diversity of genes within species.

Common Law – a system of law that has developed through judicial decisions and precedents to arrive at a common understanding of law. Common law incorporates the system of case law where judges use the precedent from previously decided cases to decide how the law should be applied in current cases.

Criminal Epidemiology – the incidence and social, temporal and geographical distribution of crime, criminal acts and criminal behaviours.

Criminal Aetiology – the analysis of the causes of crime and the nature of criminals.

Deforestation – in its negative sense the phrase has come to mean destruction of forests, although its correct technical usage is the permanent removal of forest cover which is not then replaced either by replanting or natural regeneration of trees.

Ecosystem – used to describe the interdependent community of plants, animals and other organisms and their interaction with the natural world and habitats on which they depend.

Egg Collecting – form of wildlife crime in which the eggs of wild birds are collected from nests. Egg collectors drill a small hole in one end and either blow out the contents using a tube or dissolve the contents using embryo solvent or some other caustic substance without harming the shell. The egg minus its contents is then retained for inclusion in a personal collection.

Endemic Species – species native to the geographical area.

EU – The European Union, collection of 28 Member States which have formed a common market within Europe. The EU is distinguished from the wider Council of Europe area.

Exotic Species – species not native to the geographical area.

Non-Governmental Organisations (NGOs) – are usually created by individuals or companies with no participation or representation of government. The term is increasingly used to refer to think-tanks and voluntary sector areas who carry out functions beyond pure fundraising and charitable concerns to include some aspects of a policy development or law enforcement role. NGOs vary in their

methods. Some act primarily as lobbyists, while others conduct programmes and activities primarily to raise public awareness of an issue and actively carry out functions that the statutory sector are perceived as failing to carry out effectively (e.g. species protection or wildlife law enforcement).

Private Law – the law and legal system which governs relationships for the good of society and deals with resolving disputes between individuals (or individuals and companies). Private law can be further divided into contract law, family law and tort law (civil wrong).

Public Law – the law and legal system governing the relationship between citizens and the state. Public law is divided into administrative law, constitutional law and criminal law. Public law is usually introduced by the government and applies to all citizens, whereas private law only applies to certain individuals and circumstances.

United Nations Office on Drugs and Crime (UNODC) – United Nations body mandated to assist Member States in their struggle against illicit drugs, crime and terrorism.

Wildlife Trafficking (Illegal Wildlife Trade) – the phrase used to describe the illegal trade in wildlife which can include illegal trade, smuggling, poaching, capture or collection of endangered species or protected wildlife or derivatives. The terms wildlife trafficking or illegal wildlife trade are used interchangeably within green criminology and criminal justice discourse to refer to trading in animals whether alive or dead, primarily in contravention of CITES regulations and/or any national legislation which implements CITES.

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Further Reading

As this book identifies, wildlife crime incorporates a range of different activities which have been the subject of academic and mainstream media writing, especially on the subject of wildlife trafficking and links between wildlife trafficking and organised crime. There are many excellent books on the subject of wildlife crime and wildlife law, several of which are discussed throughout this book. In addition, interest in wildlife crime as an area of criminological enquiry and the subject of NGO campaigning means that articles on wildlife crime appear with relative frequency in the pages of mainstream criminology journals and in the popular press. Recent years have also seen a growth in online law, criminology and human–animal studies journals which cover issues relating to wildlife crime and provide a forum for academics, activists and students to discuss wildlife crime topics. In addition to the sources listed below, special green editions have been published of journals such as Sage's *Theoretical Criminology*, Springer's *Crime, Law and Social Change*, *Criminal Justice Matters*, Waterside Press's *Crimsoc: The Journal of Social Criminology* and the *International Journal for Crime, Justice and Social Democracy* (Online). A selection of the key established journals and news services relevant to wildlife crime follows.

Animals

http://www.mdpi.com/journal/animals
International open access journal with a wide remit across the field of animal studies including zoology, ethnozoology, animal science, animal ethics and animal welfare. Published online quarterly by MDPI of Switzerland.

Animal Law Review

http://law.lclark.edu/law_reviews/animal_law_review/
A student-run law review based at Lewis & Clark Law School in Portland, Oregon, and published bi-annually. Each volume includes two issues: a fall/winter issue and a spring/summer issue.

Animal Legal and Historic Centre

http://animallaw.info/
Substantial online repository of animal law cases and legal articles housed at Michigan State University College of Law. The site contains both US and UK case law and over 1,400 US statutes.

Animal Studies Journal

http://ro.uow.edu.au/asj/
Online inter-disciplinary scholarly journal of the Australian Animal Studies Group, providing a forum for current research in human-animal studies. The journal is fully refereed and is published twice yearly (double-blind peer reviewed) publishing international cross-disciplinary content with an emphasis on Australian, New Zealand and Asia-Pacific scholarship.

Anthrozoology

www.anthrozoology.org
Online resource of research into human–animal interaction encompassing several different fields of research, including: psychology, psychiatry, political science, the social sciences, medical science, allied health sciences, behavioural science and veterinary science and veterinary medicine.

British and Irish Legal Information Institute

http://www.bailii.org/
Free online searchable database of British and Irish case law and legislation, European Union case law, Law Commission reports, and other law-related British and Irish material.

Environmental News Network (ENN)

www.enn.com
An online resource for environmental news stories, contains a dedicated wildlife section, a peer news sharing network and an email newsletter that delivers environmental news stories from around the globe free to its subscribers.

Environmental Protection Agency (US)

www.epa.gov
United States governmental agency with a remit to ensure that the US federal laws protecting human health and the environment are enforced fairly and effectively. Details of US legislation and enforcement activities are published on the site.

Global Animal Law Project

https://www.globalanimallaw.org/
Online project which aims to create a framework for global discussion on animals in the law, the website also contains a database of animal laws (welfare and anti-cruelty) searchable by country and a matrix of proposals for new animal laws

Global Journal of Animal Law

http://www.gjal.abo.fi/
The journal is a semi-annual online journal offered as a public service by Åbo Akademi University Department of Law, Finland. The journal brings together academics and other experts to define legal approaches to animals in different legal jurisdictions and to analyse the legal status of animals and the effectiveness of animal law. Articles from the journal are available for free download.

Green Criminology

http://www.greencriminology.org
Website of the International Green Criminology Working Group (IGCWG) providing information for academics, students and practitioners on green criminological subjects. The website hosts a blog, academic resources and member forums as well as articles published by Members through *The Monthly*, the IGCWG's online journal.

International Journal for Crime, Justice and Social Democracy

https://www.crimejusticejournal.com/
An open access, blind peer reviewed journal that seeks to publish critical research about challenges confronting criminal justice systems around the world. The journal's focus is on: Penal Policy and Punishment in the Global Era; Policing, Security and Democratic Freedoms; Sex, Gender and Justice; Eco-Justice, Corporate Crime and Corruption; Crime, Courts & Justice Institutions; Counter Colonial Criminologies & Indigenous Perspectives. Volume 3, No. 2 (2014) is a special green issue.

Journal of Animal Welfare Law

http://alaw.org.uk/publications/
The journal of the UK's Association of Lawyers for Animal Welfare (ALAW); two main editions are currently published each year. Back issues of the journal from May 2005 (Issue 1) can be downloaded free of charge from this site.

Journal for Critical Animal Studies

http://www.criticalanimalstudies.org/journal-for-critical-animal-studies/
The journal of the Institute for Critical Animal Studies is a peer-reviewed interdisciplinary academic (yet readable) journal published online by the Institute. The journal promotes academic study of critical animal issues in contemporary society.

Journal of International Wildlife Law and Policy

http://www.tandfonline.com/loi/uwlp20
Quarterly journal on wildlife law and policy issues published by Taylor & Francis. The journal has published special issues on large mammal conservation (2012), new research ideas for human–animal interactions (2010), the 40th anniversary of the Ramsar Convention on Wetlands (2011) and human–wildlife conflict and peace-building strategies (2009). Selected articles from the journal can be downloaded free of charge from the journal website at Taylor & Francis' online journal platform.

Mid-Atlantic Journal on Law and Policy

http://midatlanticjournal.blogspot.co.uk/
Online journal on animal law and policy issues published annually.

Society and Animals Forum

www.societyandanimalsforum.org
The forum provides a number of resources relating to the field of human–animal studies, including a calendar of events for the Animals and Society Institute, links to *Society and Animals*, the Institute's journal, its book series and the *Journal of Applied Animal Welfare Science*.

Stanford Journal of Animal Law and Policy

http://sjalp.stanford.edu/
Online animal law journal covering a range of animal law and policy topics, articles and scholarship from around the world. The website includes access to past volumes.

William and Mary Environmental Law Review

http://scholarship.law.wm.edu/wmelpr/
Online environmental law journal covering a wide range of environmental law and policy topics. The website includes access to past volumes.

Vermont Journal of Environmental Law

http://vjel.vermontlaw.edu/
Online environmental law journal covering a wide range of environmental law and policy topics. The website includes access to past volumes.

Summary of the Marrakech Declaration on Wildlife Crime

In May 2013 the African Development Bank (AfDB) and WWF launched a joint global call for action and commitment from governments and other institutions to combat illicit wildlife trafficking.

Key points of the Marrakech Declaration are summarised below the full text can be found online:

Building collaboration to combat illicit wildlife trafficking

Wildlife is a precious global resource that needs protection and preservation and the common and irreplaceable value of threatened species requires countries and their citizens to act urgently to fight illicit wildlife trafficking in Africa and across the globe.

To help build an effective collaboration on wildlife protection in Africa we need to:

Action 1 – Initiate or join bilateral, regional and/or international cooperation agreements to combat illicit wildlife trafficking, particularly between countries which share wildlife trafficking trade routes.

Action 2 – Deepen and operationalise collaboration with international institutions dealing with illicit wildlife trafficking, such as the United Nations Office on Drugs and Crime, Interpol, the World Customs Organisation, the World Bank, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Action 3 – Promote the notion within and beyond our countries that illicit wildlife trafficking is a serious crime, with significant implications beyond species conservation for national security, rule of law and other forms of serious organised crime.

Strengthening law enforcement

Trafficking relies on porous borders, the complicity of officials and strong networks of organised crime, all of which undermine our mutual security. The threat posed by illicit wildlife trafficking to sovereign nations and to the well-being of populations is significant. This crime will be treated equally and in coordination with efforts to halt other forms of illicit trafficking, corruption and money laundering. To help combat wildlife trafficking in Africa we need to:

Action 4 – Increase financial and human resources for and the effectiveness of wildlife law enforcement, trade controls and monitoring to address this problem at the local, national, regional and international levels.

Action 5 – Establish specialised CITES Units within customs to provide expertise and resources, particularly for specimen identification, and bolster the ability of customs to detect and seize illicit wildlife products by increasing the amount of training, resourcing, and the individual time allocation that each customs official has for detection of illicit wildlife products.

Action 6 – Promote the establishment of and actively participate in a National Environmental Security Task Force (NEST) or similar multi-agency cooperative as recommended by Interpol. Such a task force would include police, customs, environmental agencies, other specialised agencies, prosecutors, non-governmental organisations and intergovernmental partners.

Penalising wildlife crime to the full extent of the law

To help curb illicit wildlife trafficking wildlife criminals should be penalised to the full extent of the law, providing an effective deterrent to ongoing criminal involvement. Achieving this requires:

Action 7 – Strengthen the judiciary sector with better awareness, capacity and resources to ensure that prosecutions for illicit wildlife trafficking are conducted effectively, to the full extent of the law and using the strongest penalties available.

Action 8 – When necessary, change or update legislation to ensure that illicit wildlife trafficking of protected species is a criminal offence punishable by at least four years of prison, as recommended by the United Nations Office on Drugs and Crime, so that the UN Convention on Transnational Organised Crime can be used as a basis for international cooperation and mutual legal assistance.

Action 9 – Ensure that suspects apprehended for wildlife trafficking are treated as serious criminals, including investigation of the suspect with respect to other non-wildlife related offences, and potential seizure of assets of arrested suspects.

Action 10 – Publicise illicit wildlife trafficking as a serious crime under national law, notably showcasing successful prosecutions that resulted in significant penalties.

Reducing demand for illicit wildlife products

In the long term, illicit wildlife trafficking can only be effectively tackled if demand for illicit wildlife products is reduced. Government-led, well-researched campaigns aimed at reducing demand, using targeted strategies to influence consumer behaviour are urgently needed.

Useful Organisations

A number of organisations are actively involved in advocacy, campaigning or litigation aimed at reducing or eliminating wildlife crime. The precise nature of the organisation's activity is defined by whether its focus is on particular animals or types of wildlife crime, or on general animals and species justice concerns. A list of some of the key players involved in addressing wildlife crime follows. By necessity this list is not exhaustive nor is it intended to be. Instead its focus is on those organisations that are either firmly established within the field or which derive from the efforts of established academics or previously existing organisations within the field of wildlife crime and human–animal studies.

Animal Defenders International (ADI)

Millbank Tower
Millbank
London
SW1P 4QP
United Kingdom
Website: www.ad-international.org
ADI is a campaigning and investigative group of organisations working for animal protection. ADI campaigns for long-term protection and appropriate standards of animal welfare for farm animals, animals in entertainment, an end to animal experimentation and to end animal suffering at fur farms and in the entertainment industry. ADI has offices in London, Los Angeles, Bogota and also representatives and partner organisations in a number of other countries.

Animal Legal Defense Fund

170 East Cotati Avenue
Cotati
CA 94931
United States
Website: www.aldf.org
The Animal Legal Defense Fund (ALDF) campaigns within the US legal system to end animal suffering. A number of resources are available on its website including details of US animal abuse case law bulletin boards and current news.

Association of Lawyers for Animal Welfare (ALAW)

PO Box 67933
London
NW1W 8RB

United Kingdom
Website: www.alaw.org.uk
ALAW is a UK based organisation of lawyers and legal academics with interest and experience in animal protection law. ALAW members provide advisory services and research on effective implementation of animal protection law and developing a better legal framework for the protection of animals. ALAW also campaigns for better animal protection law and publishes the *Journal of Animal Welfare Law*, a legal journal dedicated to animal welfare topics while also carrying wildlife crime articles.

Centre for Animals and Social Justice (CASJ)

PO Box 4823
Sheffield
S36 0BE
United Kingdom
Website: www.casj.org.uk
The CASJ is a UK registered charity and independent think-tank who's core strategic aim is to embed animal protection as a core policy goal of the UK Government, international governments and intergovernmental organisations, using and developing applied research as a primary tool to achieve this. The CASJ seeks to develop academic capacity in the field of applied animal protection to ensure that high quality research informs policymaking. It engages with specific issues directly affecting the well-being of animals, and seeks to foster the political reorientation that is required to embed animal protection as a core value of social justice.

Centre for the Expansion of Fundamental Rights (CEFR)

5195 NW 112th Terrace
Coral Springs
FL 33076
United States
Website: www.nonhumanrights.org
UK-based organisation founded in 2007 by attorney and former President of the Animal Legal Defense Fund Steven M. Wise in order to campaign and lobby for legal rights for animals. The organisation's primary focus is to change the US legal system to establish legal personhood for non-human animals.

Centre for Public Integrity

910 17th Street, NW, Suite 700
Washington
DC 20006
United States
Website: www.iwatchnews.org
US-based non-profit organisation to investigate, analyse and disseminate information on national issues of importance to policymakers, academics and news organizations. The Centre investigates environmental issues and was co-author/publisher of Alan Green's investigation into the black market for rare and exotic species.

Coalition Against Wildlife Trafficking (CAWT)

Website: www.cawtglobal.org/
International coalition of government partners and NGOs working together to eliminate wildlife trafficking and ensure the effective implementation and enforcement of CITES. UK-based organisation NGO partners include IFAW, IUCN, Save the Tiger Fund, the Smithsonian Institution, WCS, the Wildlife Alliance and WWF (among others).

Convention on International Trade in wild fauna and flora Secretariat (CITES)

CITES Secretariat
International Environment House
11 Chemin des Anémones
CH-1219
Châtelaine
Geneva
Switzerland
Website: http://www.cites.org
The CITES Secretariat plays a coordinating, advisory and servicing role in the working of the Convention by assisting with communication and monitoring the implementation of the Convention to ensure that its provisions are respected and by arranging meetings of the Conference of the Parties and of the permanent Committees at regular intervals and servicing those meetings. The CITES Secretariat also hosts the CITES Trade database and makes public a range of documents relating to the working of CITES.

David Shepherd Conservation Foundation

Saba House
7 Kings Road
Shalford
Guildford
Surrey
GU4 8JU
United Kingdom
Website: http://www.davidshepherd.org/
UK-based The David Shepherd Wildlife Foundation (DSWF) is an adaptable and flexible, non-bureaucratic organisation responding promptly to conservation threats by supporting trusted, reputable individuals and organisations operating in the field. The DSWF supports a range of innovative, vital and far-reaching projects throughout Africa and Asia, achieving real results for wildlife survival by:

- sending undercover agents into the field to investigate illegal wildlife crime, training and supplying anti-poaching patrols
- establishing nature reserves and other protected areas
- working with governments to establish conservation laws and regulations

- educating wildlife consumers about the plight of the animals they 'use'
- teaching young people about endangered wildlife through art and school projects

Defenders of Wildlife

1130 17th Street NW
Washington
DC 20036
United States
Website: www.defenders.org
US-based not-for-profit organisation founded in 1947 with a remit to protect and restore America's native wildlife and safeguard wildlife habitats. Defenders' main focus is restoring wolves to their surviving former habitats in the lower 48 states of the United States and to challenge efforts to reduce the protection afforded to wolves under US law. It also works to prevent the extinction of other North American wildlife and to prevent cruelty to wildlife. Defenders of Wildlife have offices in nine US states and Mexico, in addition to its Washington, DC headquarters.

Department for the Environment Food and Rural Affairs (DEFRA)

Nobel House
17 Smith Square
London
SW1P 3JR
United Kingdom
Website: www.defra.gov.uk
The UK government department with responsibility for environmental issues, including: climate change, wildlife crime, sustainable development and rural communities. DEFRA's website contains a wildlife crime section covering aspects of UK wildlife crime and links to the website for its Partnership for Action on Wildlife Crime (PAW), the body that coordinates UK wildlife crime policy via a partnership between government and NGOs.

Earthjustice

50 California Street, Suite 500
San Francisco
CA 94111
United States
Website: http://earthjustice.org/
Earthjustice is a not-for-profit public interest law firm originally founded in 1981 as the Sierra Club Legal Defense fund. Earthjustice lawyers litigate on behalf of US citizens in environmental cases, in particular litigating in cases involving the Endangered Species Act, Clean Air Act, Clean Water Act and Natural

Environment Policy Act. In addition, Earthjustice campaigning work highlights current environmental threats and provides details of campaign work required to improve environmental protection. In addition to its San Francisco headquarters, Earthjustice has regional offices across the United States in Anchorage, Bozeman, California, Denver, Florida, Honolulu, New York, Seattle and Washington.

The Environmental Investigations Agency (EIA)

62–63 Upper Street
London
N1 0NY
United Kingdom
Website: www.eia-global.org
EIA is an international campaigning organisation which investigates and exposes environmental crime primarily through the use of undercover investigations using the evidence gained in investigations in advocacy and lobbying campaigns. EIA has published investigative reports and policy documents on various wildlife and environmental crime issues and has also produced documentaries on various aspects of wildlife crime. In addition to its London office EIA has a US office in Washington.

Environmental Justice Foundation (EJF)

1 Amwell Street
London
EC1R 1UL
United Kingdom
Website: www.ejfoundation.org
The EJF is a registered charity that works on the protection of the natural environment and combating environmental abuses. EJF provides film and advocacy training to individuals and grassroots organisations (primarily in the global south) and campaigns internationally to raise awareness of environmental issues facing its grassroots partners and vulnerable communities. EJF publishes a range of environmental research reports and campaign materials and in addition to its team of campaigners and film-makers based at its headquarters in London also works with partners in Brazil, Vietnam, Mali, Sierra Leone, Uzbekistan, Mauritius and Indonesia.

Environmental Protection Agency US (EPA)

Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington
DC 20460
United States
Website: www.epa.gov
The EPA is a US governmental agency with a remit to protect human health and the environment. The EPA is responsible for enforcing federal environmental

laws, developing and enforcing these laws by writing regulations that states and tribes enforce through their own regulations. The EPA also publishes information on environmental crimes and its regulatory activities. The EPA has ten regional offices across the United States, each of which is responsible for several states and territories.

European Commission Environment Directorate

European Commission
Environment DG
B - 1049 Brussels
Belgium
Website: http://ec.europa.eu/dgs/environment/index_en.htm
The Environment Directorate of the EU publishes information on European wildlife trade regulations, threats to wildlife and wildlife trade issues in the EU.

Foundation for Endangered Species

"Millstream Fork"
20 The Alders
Alder Road
Willowbank
New Denham
Buckinghamshire
UB9 4AY
Website: http://www.ffes.org.uk/
The Foundation for Endangered Species is a UK charity committed to stopping the mass extinction of wildlife. The Foundation is engaged in campaigning and educational projects as well as practical conservation activity.

Humane Society of the United States (HSUS)

The Humane Society of the United States
2100 L St., NW
Washington
DC 20037
United States
Website: www.humanesociety.org
American animal protection organisation with approximately 10 million members and a network of regional offices across the United States.

Institute for Critical Animal Studies (ICAS)

PO Box 4293
Ithaca
NY 14852
United States
Website: www.criticalanimalstudies.org

The Institute for Critical Animal Studies (ICAS) is an interdisciplinary scholarly non-profit animal protection centre which provides education policy, research and analysis. The ICAS was originally formed in 2001 as the Center on Animal Liberation affairs and changed its name to the ICAS in 2007. In addition to publishing the *Journal for Critical Animal Studies*, the ICAS organises annual critical animal studies conferences in the United States and Europe.

International Fund for Animal Welfare (IFAW)

290 Summer Street
Yarmouth Port
MA 02675
United States
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 and animal cruelty issues. IFAW works to prevent the elephant ivory trade and the extinction of whales. In addition to its US international office there is a UK office based in London.

International Union for the Conservation of Nature (IUCN)

IUCN Conservation Centre
Rue Mauverney 28
1196, Gland
Switzerland
Website: www.iucn.org
The IUCN is a global environmental network and democratic membership union with more than 1,000 government and NGO member organisations, and some 10,000 volunteer scientists in more than 160 countries. Its priority work areas are biodiversity, climate change, sustainable energy, the development of a green economy and helping governments to understand the link between nature conservation and human well-being.

Oxford Centre for Animal Ethics

The Ferrater Mora Oxford Centre for Animal Ethics
91 Iffley Road
Oxford
OX4 1EG
United Kingdom
Website: http://www.oxfordanimalethics.com/
The Oxford Centre for Animal Ethics is an academic research centre based at the University of Oxford and specialising in ethical treatment of animals. The Oxford Centre for Animal Ethics are the publishers of the *Journal of Animal Ethics* in partnership with the University of Illinois Press, and also publishes the Palgrave Macmillan *Animal Ethics* book series. The Centre has previously organised an international conference on the links between animal abuse and human

violence. Papers from that conference were subsequently developed into a book published by Sussex Academic Press in July 2009.

Partnership for Action against Wildlife Crime (PAW)

PAW Secretariat
Zone 1/14
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6EB
United Kingdom
Website: www.defra.gov.uk/paw
PAW is a UK based multi-agency body comprising representatives of statutory agencies and NGOs involved in UK wildlife law enforcement. Its secretariat is hosted by DEFRA (see above) and maintains the PAW website, the distribution of PAW's email bulletins and publicises PAW's activities.

People for the Ethical Treatment of Animals (PETA)

501 Front St.
Norfolk
VA 23510
United States
Website: www.peta.org
PETA is one of the largest animal rights organisations in the world with a global support base in excess of three million (members and supporters). PETA predominantly campaigns against animal cruelty on factory farms, in the clothing trade, in laboratories, and in the entertainment industry. Its work includes high-profile campaigning, advocacy, public education, cruelty investigations, animal rescue and legislative work aimed at changing animal protection laws.

The Royal Society for the Prevention of Cruelty to Animals (RSPCA)

Wilberforce Way
Southwater
Horsham
West Sussex
RH13 9RS
United Kingdom
Website: www.rspca.org.uk
A UK-based charity that works to prevent cruelty to, the causing of unnecessary suffering to and the neglect of animals in England and Wales. A uniformed Inspectorate investigates cruelty offences, while a plain-clothes and undercover unit called the Special Operations Unit (SOU) deals with more serious offences

and 'low-level' organised animal crime like dog-fighting and badger-baiting. The RSPCA has a network of branch offices across England and Wales.

The Royal Society for the Protection of Birds (RSPB)

The Lodge
Sandy
Bedfordshire
SG19 2DL
United Kingdom
Website: www.rspb.org.uk
The RSPB is a conservation charity that campaigns for the protection of wild birds and their environment. An in-house investigations section carries out investigations into wild bird crime and advises the police and others as well as publishes annual reports on bird crime in the UK and a quarterly investigations newsletter on bird crime problems, sometimes with an EU slant. The charity is UK based but has international offices and is part of Birdlife International, a global network of bird conservation organisations.

The Scottish Society for the Prevention of Cruelty to Animals (SSPCA)

The SSPCA is the Scottish counterpart to the RSPCA. The SSPCA works to prevent cruelty to, the causing of unnecessary suffering to and the neglect of animals in Scotland.
Website – www.scottishspca.org

Sierra Club

National Headquarters
85 Second Street, 2nd Floor
San Francisco
CA 94105
United States
Website: www.sierraclub.org
The Sierra Club is a US-based grassroots environmental organisation with a remit to protect communities and wild places and to restore the quality of the natural environment. In addition to its national headquarters in San Francisco the Sierra Club has a legislative office in Washington, DC and regional offices across the United States. In addition to campaigning and publishing research and policy documents on wildlife and environmental issues the Sierra Club has also employed strategic legal action and regulatory advocacy to protect US wildlife and the environment.

TRACE Wildlife Forensics Network

Royal Zoological Society of Scotland
Edinburgh

EH12 6TS
United Kingdom
Website: http://www.tracenetwork.org/
TRACE is an international NGO that aims to promote the use of forensic science in biodiversity conservation and the investigation of wildlife crime. The TRACE network brings together forensic scientists and enforcement agencies in order to exchange information on the latest challenges facing wildlife law enforcement and modern techniques for tackling them.

TRAFFIC

TRAFFIC International
219a Huntingdon Rd
Cambridge
CB3 ODL
United Kingdom
Website: www.traffic.org
TRAFFIC is the wildlife trade monitoring arm of the World Wide Fund for Nature (WWF) and the International Union for the Conservation of Nature (IUCN). It mainly investigates compliance with CITES and related trade in endangered species, TRAFFIC has regional offices in Africa, Asia, the Americas, Europe and Oceania supported by a Central Secretariat based in the UK.

The Whale and Dolphin Conservation Society (WDCS)

Brookfield House
38 St Paul Street
Chippenham
Wiltshire
SN15 1LJ
United Kingdom
Website: www.wdcs.org
WDCS is a global charity dedicated to the conservation and welfare of all cetaceans (whales, dolphins and porpoises). It has regional offices in the UK, Latin America, Germany, North America and Australasia. In addition to its campaigning work WDCS conducts investigations work to expose abuses of wildlife regulations and advises governments and regulatory bodies on the working of conventions and other mechanisms needed and intended to protect cetaceans.

Wildfowl and Wetlands Trust

Slimbridge
Gloucestershire
GL2 7BT
United Kingdom
Website: http://www.wwt.org.uk/conservation/

Wildfowl and Wetlands Trust is a Conservation Charity that saves wetlands; its aim is to help people live sustainably alongside wetlands and to benefit from the water, food, materials, shelter, livelihoods and enjoyment a well-managed wetland can provide.

Wildlife Alliance

909 Third Avenue, Fifth Floor
New York
NY 10022
United States
Website: www.wildlifealliance.org
Wildlife Alliance began life in 1994 as the Global Survival Network. The organisation works with governments and other partners to implement direct protection programmes for forests and wildlife, particularly to stop the illegal trade in wildlife by directly protecting wildlife in its habitats and reducing consumer demand for wildlife.

World Animal Protection (WPA)

5th Floor
222 Grays Inn Road,
London
WC1X 8HB
United Kingdom
Website: http://www.worldanimalprotection.org/
World Animal Protection (formerly the World Society for the Prevention of Cruelty to Animals) is an animal welfare and anti-cruelty charity with a global remit. WPA 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. It has regional offices in the United States (Boston), Australia (Sydney), Asia (Thailand), Brazil (Rio de Janeiro), Canada (Toronto), Sweden, South America (Colombia), New Zealand (Auckland), the Netherlands, India (New Delhi), Germany (Berlin) and China (Beijing).

The World Wide Fund for Nature (WWF)

WWF International Gland (Secretariat)
Av. du Mont-Blanc 1196 Gland
Switzerland
+41 22 364 91 11
+41 22 364 88 36
Website: www.wwf.org
The World Wide Fund for Nature is an 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. Its main regional offices are in the United States (Washington), Australia (Sydney), China (Beijing), Brazil (Brasilia), Canada (Toronto), France (Paris), Germany (Frankfurt), India (New Delhi), Japan (Tokyo), Sweden (Solna), South America (Colombia), New Zealand (Wellington), the Netherlands (Zeist), Pakistan (Lahore), Spain (Madrid), Switzerland (Zurich) and the United Kingdom (Godalming).

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