

POLICING WILDLIFE

PERSPECTIVES ON THE ENFORCEMENT OF
WILDLIFE LEGISLATION

Angus Nurse

PALGRAVE STUDIES IN GREEN CRIMINOLOGY



Policing Wildlife

Perspectives on the Enforcement of Wildlife Legislation

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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.

Acknowledgements

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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.

Thanks are also due to Julia Willan at Palgrave Macmillan whose enthusiasm for green criminology is both heartening and infectious and which helped me to complete this book in a timely manner. Finally, Rob White (University of Tasmania) and Melissa Jarrell (Texas A & M

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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	United 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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1

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