

Comments on Scottish Government Wildlife Crime Report 2015-16 and subsequent evidence given to the Scottish Parliament Environment, Climate Change and Land Reform Committee

Summary:

Scottish Environment LINK welcomes the publication of the Scottish Government's Wildlife Crime report for 2015-16, and notes the continued improvement in explanation and detail. We commend the efforts made by Police Scotland and COPFS, often with the expert assistance of PAWS partners, in securing the convictions of a number of wildlife criminals during the course of the year, given the frequent difficulties in both obtaining sufficient admissible evidence and identifying a suspect in such cases.

We are, however, concerned that nowhere in the report does it acknowledge or explain the low likelihood of detection of a suspect, or indeed that the figures therein can only represent a sample of the unknown number of such crimes that are actually taking place. We also remain concerned at the apparent omission of some crime data, and discrepancies in the numbers and dates of incidents recorded between the police and specialist partner agencies. We are also concerned by the decline in the proportion of cases prosecuted by COPFS.

INTRODUCTION

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Scottish Environment LINK members note the evidence given to the Scottish Parliament Environment, Climate Change Committee by Police Scotland and the Crown Office Procurator Fiscal Service on 16th January 2017, and comment briefly on this.

SCOTTISH GOVERNMENT WILDLIFE CRIME REPORT 2015-16

1) Foreword/Introduction

Disappointingly, there is no mention of the widely-accepted caveat that most wildlife crime happens in remote areas, without witnesses, where it is easy for the perpetrators to dispose of evidence – thus **the figures of confirmed wildlife crime incidents, at least for some categories of crime, represent an unknown proportion of actual incidents.** It should be clearly stated that this report only summarises the confirmed crimes that were uncovered.

Given the above caveat, meaning that an unknown proportion of criminality is actually discovered, and that this proportion will likely vary from year to year, suggesting trends, at least for some wildlife

LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee (SC250899). LINK is core funded by Membership Subscriptions and by grants from Scottish Natural Heritage, Scottish Government and Charitable Trusts.

Registered office: 13 Marshall Place, Perth PH2 8AH, T. 01738 630804, information@scotlink.org
Advocacy office: Dolphin House, Hunter Square, Edinburgh, EH1 1QW, T. 0131 225 4345, advocacy@scotlink.org

crimes, is misleading. In her comments about the golden eagle satellite tagging review, the Cabinet Secretary for the Environment, Climate Change and Land Reform recognises that these suspiciously disappeared birds do not feature in the report. Hence, we have an acknowledgement that the report contains a fraction of incidents. To then report trends is potentially misleading.

The new sections on “health of species” are very welcome, and add some context about the impact of criminality, though the statements lack information on particular sectors, or groups within sectors who may be responsible for these crimes (e.g. there is no mention in these sections of the link between driven grouse moor management and persecution).

2) Headline trends

As mentioned previously, identifying trends in criminality with regard to wildlife crimes can only be done with extreme caution. Many offences are uncovered purely by chance, with an entirely *ad hoc* and inconsistent search effort. A more appropriate measure of levels of wildlife crime is by assessing populations of species where there is a proven significant impact of criminality – notably on birds of prey. As said previously the later inclusion of content to this effect is welcome.

All of the LINK respondents mentioned the difficulties still occurring with the Call Centres, to even have a possible wildlife crime recorded and given an Incident Number. Many experienced volunteers help members of the public to access Call Centres. It is not clear that all Call Centre staff use a common Standard Operating Procedure (SOP). It is also noted that Marine crime, involving harm to cetaceans, is not apparently recorded yet.

The issue of fish poaching is important, but it also must be seen in its own context – landowners look after their own property with both their own paid staff and help from the Police. These additional resources mean that detection of crime is easier than for other types of wildlife crime, hence the higher number of incidents recorded. It should not be taken to signal that fish poaching is more of a major crime than other areas of wildlife crime. Lessons from this partnership approach which may be more applicable to other wildlife crime situations merit consideration.

Regarding the criminal proceedings statistics, it is of note that there were 23 prosecutions, in comparison to 261 recorded wildlife crime cases. Previous figures, published by LINK in 2015,¹ showed a “prosecution rate” of 14.6%. Interestingly, the government report shows that of 90 reports received by COPFS, only 23 resulted in a prosecution – this is the lowest level of prosecution for the years where data is published. (61/126 in 2012-13; 65/125 in 2013-14; and 40/98 in 2014/15). **An explanation from COPFS as to why the prosecution rate, compared to the number of reports received by them, seems to be falling would be helpful in pinpointing future actions and/or resource deployment.**

The levels of financial penalties imposed upon conviction, on average amount to a level significantly below the levels which the courts have available to them impose. It is suggested that these penalties pose little in the way of deterrence to potential offenders, whose chance of detection and/or prosecution are already slim. **LINK suggests that this reiterates that the recommendations made by**

¹ Tingay, R.E. (2015). Natural Injustice – Paper I: A review of the enforcement of wildlife protection legislation in Scotland. Scottish Environment LINK, Perth, Scotland

the Scottish Government's review of wildlife crime penalties need to be implemented as soon as possible.

3) Additional Data Sources

SNH - While the detail about current general licence restrictions is helpful, we are unclear why, although the data is perhaps of interest, a wildlife crime report would then list SNH species licences, particularly when this section is incomplete. Firstly, **it does not include any detail on specific licences issued to cull ravens or birds of prey** – perhaps these are included in the “Other” category, but it would be useful to see this broken down more specifically.

Secondly, and arguably more significantly, in LINK's opinion, the largest impact on native wildlife is made by the use of general licences – these allow authorised individuals to kill particular species for particular specific purposes. It is telling that **levels of use of general licences is never quantified. Neither SNH nor the Scottish Government have information on level of uptake, the locations or type of purpose for which these licences are used, nor the number of animals killed under the auspices of these licences. The robustness of evidence which is used to assess that the conservation status of these species is stable can be variable and more robust assessment processes should be introduced. SNH could also be clearer about general licence restriction cases it has considered but not progressed and the reasons why those cases were not progressed. Also, we note that the removal of general licence is not a substitute for prosecution**

Scottish SPCA – LINK suggests that consideration is given to amalgamating SSPCA and Police Scotland data to give the reader a clearer overall impression of the overall number of confirmed incidents/offences, rather than having to flit between tables.

4) Wildlife Crime Priority Areas

Some clarification in the report about what is meant by “disaggregated” Police Scotland data would be helpful. **With regard to Table 16 – trapping statistics – we are unclear as to why some of these incidents are not included in the raptor persecution statistics, given that these species are usually the target of such illegal traps?** (E.g. recent well-publicised cases in Aberdeenshire and Angus).

As mentioned earlier, it is surprising that the sections on health of species fails to specifically mention persecution on grouse moors as being a significant population constraint for golden eagle, despite this being the clear conclusion of the comprehensive SNH-commissioned framework document (and an overwhelming weight of other peer-reviewed science).

As in previous years, LINK members are concerned that the wider offences data published in the report is erroneous, with a number of confirmed cases omitted from the report, or cases have been attributed to arbitrary months that do not reflect the original discovery of the offences in question. For example, a hen harrier shooting listed as being in South Lanarkshire in August 2015, relates to a Natural England satellite-tagged bird “Annie”, which is known to have been killed in March 2015.

There are also some inconsistencies between tables.

Scottish Badgers Comment:

With specific regard to badger crime, which often happens at night in remote areas, the crime of the digging of badger setts is quite often discovered, and reported, but does not appear in any official statistics. There also appears to be an inconsistency between treatment of badger offences between Police Scotland and COPFS at times. This has been discussed between us recently, and requires further discussion and analysis.

We would further make the points that partnership working could work successfully in other areas, e.g. pesticide incidents or dog fighting cases. It is suggested that dog fighting crimes are still very underreported due to fear by members of the public, and these are the most worrying in relation to badger offences.

Different Police Scotland Divisions appear to operate quite differently in relation to WCO operations, and this distorts the reporting of offences.

The assurances given by the Assistant Chief Constable to the corresponding session of the ECCLR Committee in January 2017, of better lines of communication back to those reporting wildlife offences have not yet been fulfilled. Scottish Badgers has many incidents in the past year, whose eventual disposal is not known. It is completely understood that many disturbances to badger setts remain with no action possible due to a lack of perpetrator, but the sheer number of incidents does point to an incidence of unlawful acts.

Given that the figures contained in this report are widely quoted, **LINK recommends that, in pulling together annual data, that there is a greatly improved level of communication between Police Scotland and partner agencies to ensure that all parties are in agreement that the figures listed in the report represent an accurate record of confirmed wildlife crime incidents.**

COMMENTS ON EVIDENCE GIVEN TO THE ECCLR COMMITTEE BY POLICE SCOTLAND AND COPFS, 16TH JANUARY 2018

It was interesting to note, particularly with regard to raptor persecution crime, that much of the evidence session was given over to discussion about the admissibility, or otherwise, of video evidence in wildlife crime prosecution. Much of this interest stems from the well-publicised decisions made by COPFS officials, in April 2017, to discontinue two prosecutions, for the alleged shooting of a hen harrier and the alleged setting of illegal traps.

RSPB Scotland comments:

While our meeting with Crown Officials to discuss our concerns over these decisions was welcome, and was alluded to in the evidence session, we remain deeply concerned that in looking to assess a perceived irregularity in obtaining evidence, and in deciding whether that irregularity “can be excused”, the balance point seems to be so skewed as to give more weight to a wildlife conservation charity’s perceived “wrong” in the deployment of a camera monitoring a bird’s nest on a remote moor, than to a

flagrant, deliberate criminal act. It is all the more perplexing that in similar previous cases, where a court was allowed to make this decision, the balance has fallen firmly in the opposite direction.

Overall, LINK members feel that the Wildlife Crime Report continues to improve, but would benefit from increased partnership contribution prior to its publication, to ensure that the figures contained therein are robust and accurate. We consider that the evidence session was constructive, with interesting and thought-provoking contributions from the Police Scotland and COPFS panel members, particularly around the area of admissibility of evidence. We do, however, conclude that this issue is far from resolved.

We commend the members of the ECCLR committee for their continued interest and commitment to scrutiny of the issues surrounding wildlife crime.

This LINK Briefing is supported by the following member organizations members of the Scottish Environment LINK Wildlife Crime Subgroup:

- **Bat Conservation Trust**
- **Buglife**
- **Froglife**
- **RSPB Scotland**
- **Scottish Badgers**
- **Scottish Raptor Study group**
- **Scottish Wild Land Group**
- **Scottish Wildlife Trust**
- **Whale and Dolphin Trust**

For more information contact:

Eddie Palmer, Leader of the LINK Wildlife Crime Subgroup
chairmanscottishbadgers@gmail.com

or

Daphne Vlastari, LINK Advocacy Manager
daphne@scotlink.org | 0131 225 4345

www.scotlink.org

www.savescottishseas.org

www.scotlink.org/local