



Deterrence and Commensurability: Penalties for Wildlife Crimes in Scotland

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Professor Mark Poustie, Thousand Talents Scholar, Shanghai University of Finance & Economics Law School; University of Strathclyde Centre for Environmental Law & Governance



Aim

- To consider in the context of work of the Scottish Government's Wildlife Crime Penalties Review Group (2013-2015), how to approach the question of deterrence and commensurability of criminal penalties in environmental law



Aims and Types of Criminal Sanctions



- Changing behaviour
- Deterrence
- Securing compliance with applicable standards
- Maintaining credibility of regulatory system
- Fines
- Imprisonment
- Forfeiture
- Proceeds of crime
- Community payback
- Restoration



Background to Wildlife Crime Penalties Review



- Scottish Government commissioned review
- Continuing wildlife crime
- Perception that Scotland's image being tarnished
- Perception that low sentences being imposed which are not acting as deterrent



Wildlife Crime Penalties Review

Group Remit



- "To examine and report on how wildlife crime in Scotland is dealt with by the criminal courts, with particular reference to the range of penalties available and whether these are sufficient for the purposes of deterrence and whether they are commensurate with the damage to ecosystems that may be caused by wildlife crime.
- To make recommendations on possible alternative ways of dealing with wildlife crime in the courts."





Approach

- Review group with various key stakeholders
- Literature review
- Wider stakeholder engagement
- Both quantitative and qualitative elements





Range of wildlife legislation - 1

- Conservation – species
 - Wildlife and Countryside Act 1981
 - Conservation (Natural Habitats &c.) Regulations 1994
 - Salmon & Freshwater Fisheries (Consolidation) (Scotland) Act 2003
 - Marine (Scotland) Act 2010
- Conservation – habitats
 - Conservation (Natural Habitats &c.) Regulations 1994
 - Nature Conservation (Scotland) Act 2004
 - Marine (Scotland) Act 2010





Range of wildlife legislation - 2

- Poaching
 - Wildlife and Countryside Act 1981
 - Deer (Scotland) Act 1996
 - Salmon & Freshwater Fisheries (Consolidation) (Scotland) Act 2003
- Welfare legislation
 - Protection of Badgers Act 1992
 - Wild Mammals (Protection) Act 1996
 - Protection of Wild Mammals (Scotland) Act 2002
 - Animal Health and Welfare (Scotland) Act 2006



Range of wildlife legislation - 3

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



Maximum penalties in wildlife legislation - 1



Conservation – species

- *Summary conviction* only
 - £5,000 and/or up to 6 months imprisonment

Conservation – habitats

- *Summary conviction*
 - £10,000 (Euro Protected Site), £40,000 (SSSI) or £50,000 (Marine Protection Area)
- *Conviction on indictment*
 - Unlimited fine



Maximum penalties in wildlife legislation - 2



Poaching

- *Summary conviction*
 - £2,500 and/or 3 months imprisonment or if organised £10,000
- *Conviction on indictment*
 - organised poaching – unlimited fine and/or up to 2 years imprisonment

Animal Welfare

- *Summary conviction* only except badgers offences
 - £5,000 and/or 6 months imprisonment up to £20,000 and/or 12 months imprisonment

Maximum penalties in wildlife legislation - 3



Badgers

- *Summary conviction*
 - £10,000 and/or up to 12 months imprisonment
- *Conviction on indictment*
 - Unlimited fine and/or up to 3 years imprisonment



Maximum penalties in wildlife legislation - 4



Trade in endangered species

- *Summary conviction*
 - £5,000 and/or up to 3 months
- *Conviction on indictment*
 - Unlimited fine and/or up to 2 years imprisonment
- Reserved matter



Alternative penalties in wildlife legislation - 1



Forfeiture powers

- Generally forfeiture powers are available
- Normal pattern is that the creature etc or parts of it are forfeit and discretionary power to seize equipment etc used in commission of offence
- Differences in scope of discretionary seizure – some do include vehicles, others do not, Deer (Scotland) Act 1996 also enables court to cancel firearms certificates

Disqualification from keeping animals

- Disqualification from keeping animals available in some legislation e.g. Badgers but not all

Alternative penalties in wildlife legislation - 2



Proceeds of Crime

- Proceeds of Crime Act 2002

Community Payback Orders

- Criminal Justice (Scotland) Act 1995 (as amended)

Restoration Orders

- Also restoration orders available in habitats legislation
- May be achieved through sentence deferral

Loss of Rights or Benefits under other Legislation as Result of Conviction

- Withdrawal of General Licences under Wildlife & Countryside Act 1981
- Withdrawal of Firearms Certificates
- Cross Compliance with Single Farm Payments



Maximum penalties available in other environmental legislation



- Water Environment (Controlled Activities) (Scotland) Regulations 2011
 - *Summary Conviction*
 - £40,000 and/or up to 12 months imprisonment
 - *Conviction on Indictment*
 - Unlimited fine and/or up to 5 years imprisonment
- Pollution Prevention and Control (Scotland) Regulations 2012
 - *Summary Conviction*
 - £40,000 and/or up to 12 months imprisonment
 - *Conviction on Indictment*
 - Unlimited fine and/or up to 5 years imprisonment



Findings - 1

- Much greater fragmentation of wildlife law than other areas of environmental law which is itself fragmented!
- Key penalty in 1981 Act not updated for over 30 years (£5,000 fine; 6 months imprisonment on *summary conviction*) – impact of inflation since 1981-2015 meant that £5,000 fine now £17,100
- Also, inconsistencies – e.g. higher penalties for badger offences
- At same time maximum principal pollution control fine levels on *summary conviction* increased **20** fold from £2,000 and/or 3 months imprisonment 30 years ago to a consistent £40,000 and/or 12 months imprisonment (higher penalties available on *conviction on indictment*)

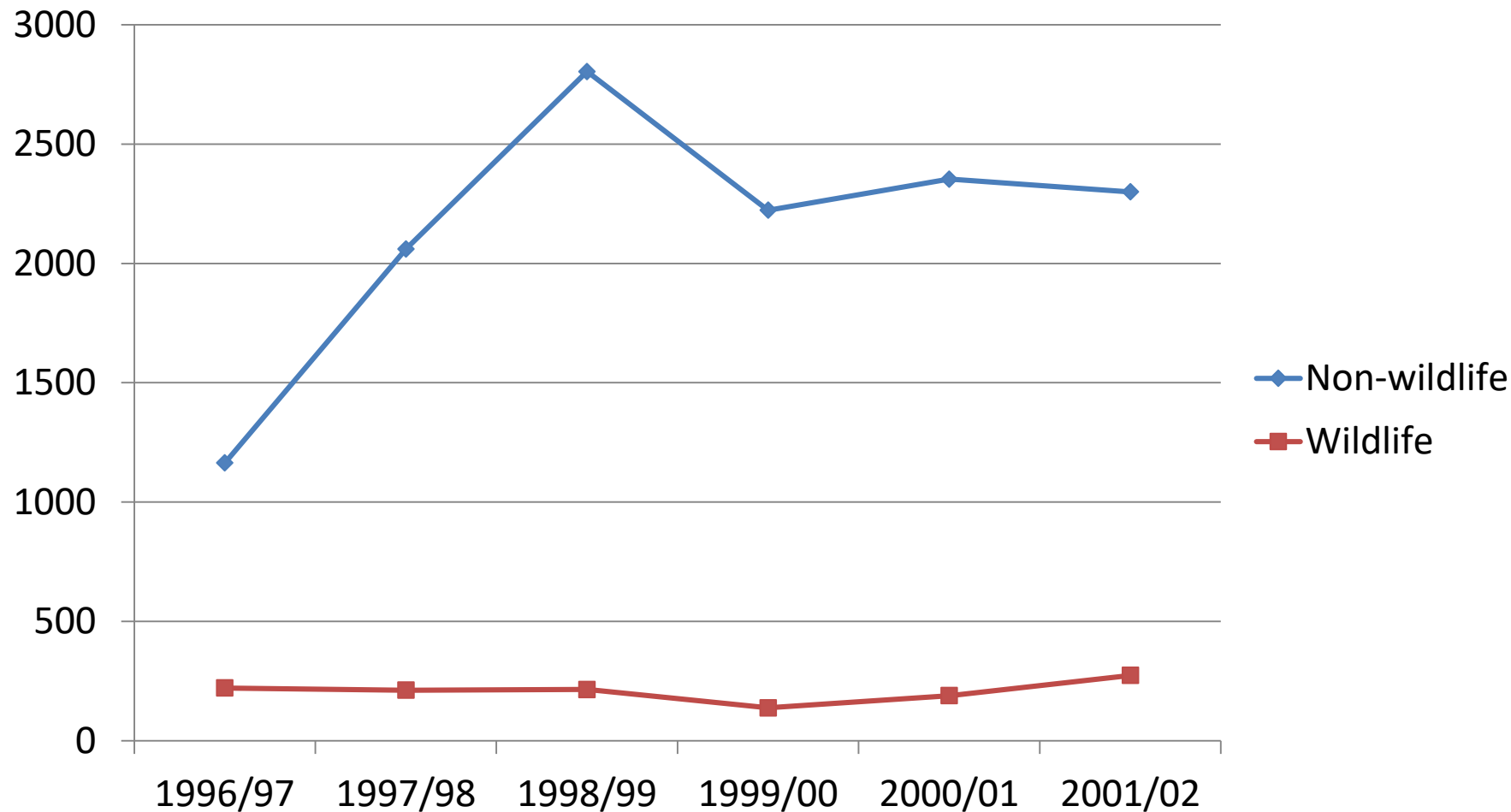


Findings - 2

- Widespread perceptions of inadequate penalties being available and against that background even less adequate penalties being imposed
- Inconsistent provision of alternative sanctions (eg forfeiture, disqualification from keeping animals etc)
- Range of offences and offenders from commercial to individual
- Not clear that appropriate penalties which actually do change behaviour and have deterrent effect being imposed
- Impact statements used but not systematically
- Lack of public awareness about factors influencing sentencing

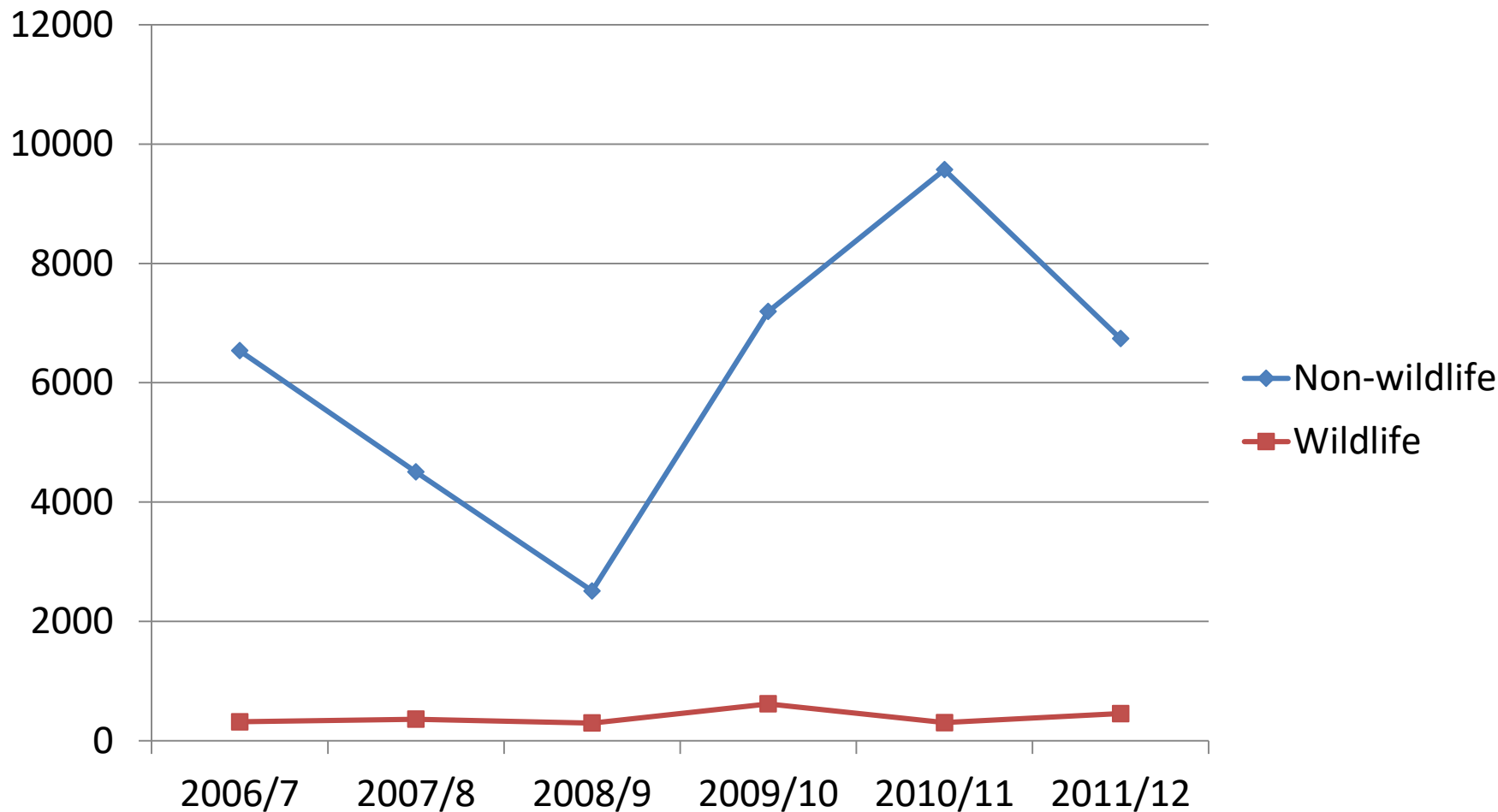


Average Scottish Environmental Law Fines 1996/97- 2001/2





Average Scottish Environmental Law Fines 2006/07-2011/2





Recommendations

- Increase maximum penalties available to reflect different types of criminals and seriousness across legislation reflecting levels applicable in other areas of environmental law
- Develop consistent forfeiture provisions across legislation
- Make use of available alternatives where appropriate
- Introduction of administrative and ultimately legal framework for impact statements
- Develop sentencing guidelines for wildlife and environmental crimes through Scottish Sentencing Council to enhance transparency and consistency of sentencing
- Longer term aim of consolidation and integration to address fragmentation and inconsistency



Follow-up

- Scottish Government (SG) largely accepted Report's recommendations (24 February 2016), see: <http://www.gov.scot/Resource/0049/00494565.pdf>.
- Scottish Sentencing Council has included sentencing guideline recommendation in its work programme for 2015-2018, see: *Business Plan 2015-2018*, Sept. 2016, p. 27 <https://www.scottishsentencingcouncil.org.uk/publications/>.
- See also European Parliament, Directorate General for Internal Policies Policy Dept A Economic and Scientific Policy, *Wildlife Crime*, Study for the ENVI Committee, 2016, http://www.europarl.europa.eu/RegData/etudes/STUD/2016/570008/IPOL_STU%282016%29570008_EN.pdf



Lessons

- In considering deterrence and commensurability important to consider
 - Nature of offences and types of offender
 - Penalties available in law
 - What courts actually do
 - Coherence and consistency across environmental law
 - Full range of stakeholder views
- For holistic approach also necessary to consider wider aspects – prevention; other parts of criminal justice process e.g. prosecution
- Also more complex and qualified linkage between penalties, compliance and environmental quality to be explored



Professor Mark Poustie
mark.poustie@strath.ac.uk

Wildlife Penalties Review Group Report:
<http://www.gov.scot/Publications/2015/1/1/2196>