

Response to Defra consultation on proposed changes to the Control of Trade in Endangered Species Regulations

Wildlife and Countryside Link

The comments in this document have been submitted by Wildlife & Countryside Link (Link). Wildlife and Countryside Link brings together 45 voluntary organisations concerned with the conservation and protection of wildlife, countryside and the marine environment. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over eight million people in the UK and manage over 750,000 hectares of land. More information is available at <http://www.wcl.org.uk/>

This consultation response is supported by the following seven organisations:

- Buglife – The Invertebrate Conservation Trust
- Humane Society International/UK
- International Fund for Animal Welfare
- Royal Society for the Prevention of Cruelty to Animals
- Whale and Dolphin Conservation
- World Animal Protection
- WWF-UK

Question 1: Do you think the proposed amendments and new Provisions A-N above and P below are appropriate and will improve enforcement of CITES requirements in the UK?

We welcome **Provisions A-F**, and consider them necessary and appropriate amendments, which we judge will improve enforcement of CITES requirements in the UK. Regarding **Provision F**, we consider that within the regulations, 8 (2) should reflect 8 (1) in its entirety. Council Regulation 338/1997 Article 8(5) states “*The prohibitions referred to in paragraph 1 (Annex A) shall also apply to specimens of the species listed in Annex B...*”. Therefore we believe that the amendment under Provision F should also include “use for commercial gain”. If something has been illegally imported it should be treated in the same way as unlicensed Annex A specimens.

We particularly welcome **Provision G** which we understand has been brought forward in response to concerns regarding wildlife cybercrime, raised in particular by the International Fund for Animal Welfare (IFAW). It is our view that this measure will provide enforcers with an audit trail to ensure legal trade where Annex A specimens are advertised for sale, and assist in identifying illegal trade.

However, we note paragraph 4.4 which states that calls for ‘pop-up’ warnings, outlining the requirements of CITES and penalties for illegal trading, have been resisted on the grounds that the Government is “not convinced that there is a sufficiently strong case to justify a legislative solution at the current time”. In our opinion the case for action is clear.

IFAW's 'Wanted - Dead or Alive: Exposing Online Wildlife Trade' report found 1,087 online advertisements hosted by UK based online marketplaces over a period of just six weeks (10 March – 20 April 2014), offering a total of 1,603 CITES items for sale including ivory and suspected ivory, turtles, tortoises, owls, exotic birds, monkeys and parts and products from elephants, rhinos, hippos, crocodiles, alligators and big cats.

Where a CITES item advertised is clearly Annex B and it is offered for worldwide sale it requires an export certificate if sold to a third country, namely a country outside of the European Union. 717 of the UK advertisements reviewed in 'Wanted - Dead or Alive' included specifications on possible shipping destinations and yet of those 65% stated that they could dispatch the product overseas, with the majority of these offering items for sale outside of the EU. Of the advertisements offering to send their items worldwide the majority stated they could be shipped within days (usually three) of payment being received. Shipping items within days cannot possibly allow time for an application for an export certificate to be approved; therefore completed transactions are likely to be illegal. It is unlikely that Customs will carry out inspections on items for export. Therefore, potentially hundreds or even thousands of offences are being ignored every year.

Should the Government compel online market places to provide informative 'pop-ups' via legislative or non-legislative means, we judge it would have the effects of;

- Improving consumer awareness by informing those with a lack of knowledge of the law what their legal obligations are. For example, traders may not realise that they need an export permit for pre-1947 antiques despite the antiques derogation.
- Ensuring those intending on breaking the law do so with proof of "guilty knowledge", therefore making later prosecution easier.

We note that Gumtree has already voluntarily introduced 'pop-ups' for live animal sales to improve consumer awareness which demonstrates that this approach is both reasonable and practical.

It is our view that the Government must ensure that the monitoring of internet sales takes place. This would be most appropriately managed by the National Wildlife Crime Unit (NWCU) with the support of the National Cybercrime Unit (NCU) and individual forces as appropriate, but the Government must ensure this takes place.

We note that, in the context of the Government's statement that it is not convinced that a sufficiently strong case exists, Part 4 of the consultation is the only substantive part of the consultation that does not have a consultation question included, through which the case can be made by respondents. Members of Wildlife and Countryside Link wrote to Lord de Mauley ahead of the consultation (on 20th June 2014) to request that an opportunity was given to provide the Government with evidence as to the strong case for action in this area. A positive response was received on 3rd July 2014, saying "the consultation will provide an opportunity for Wildlife and Countryside Link and its supporting organisations, to provide information and evidence relating to wildlife cybercrime for consideration alongside the rest of the consultation responses". It is in this context that we had understood we would be invited to provide evidence on wildlife cybercrime specifically. It is therefore an anomaly that Part 4 does not contain a

consultation question inviting us to do this, and the conclusion drawn in advance is that a sufficiently strong case for action does not exist.

On the weight of evidence contained within the following investigative reports from IFAW, we consider that the case has been made, with supporting evidence, over a number of years.

- Wanted Dead or Alive: Exposing Online Wildlife Trade (2014)¹
- Killing with Keystrokes 2.0: IFAW's Investigation into the European Online Ivory Trade (2011)
- Killing with Keystrokes: An Investigation of the Illegal Wildlife Trade on the World Wide Web (2008)
- Bidding for Extinction (2007)
- Caught in the Web: Wildlife Trade on the Internet (2005)²

We are aware that for a limited period, the NWCU has additional funding to measure the scale and nature of online wildlife trade and that they produced a report, which is referred to as Project Atlas. This report has not been made public, despite the fact that the NWCU have provided Defra with a version that the department agree is suitable for publication. A number of questions have been posed to Ministers on the floor of the House, requesting that this report be published. We anticipate that this report contains clear evidence that wildlife cybercrime is a problem and that this evidence would support the case for action in this area. Without access to this report, or any relevant consultation questions, we regret that meaningful consultation on this point has not taken place as part of this review and we express our deep concern.

Provisions H and I are welcome and we consider them to be necessary and appropriate.

Provision J is also welcome and we consider it to be a common sense approach. However, we assert that it is important that the phrase "*suitably qualified person*" is defined by a "such as" list, in order to mitigate against any legal argument that may, at a later date, seek to exclude such evidence as unreliable.

Provisions K and L are welcome and we consider them to be necessary and appropriate.

Provision M is also, in principle, a sensible measure which we consider appropriate, providing that sufficient safeguards are in place to ensure the welfare of live specimens and to mitigate against loss of evidence after the retention notice has been issued.

The NWCU have stated at a meeting attended by Wildlife and Countryside Link members, enforcers and the Crown Prosecution Service that it is their policy to ensure a vet inspects live animals to ensure that a retention order does not compromise the welfare of the animals. Meanwhile Ian Knox, the former Head of the Metropolitan Police's Wildlife Crime Unit, has outlined to us that, in his experience, the police regularly use the services of the RSPCA while Border Force use their animal reception staff for planned operations where it is known live animals will be involved, in order to assess the welfare of the animals in question.

¹ <http://www.ifaw.org/sites/default/files/IFAW-Wanted-Dead-or-Alive-Exposing-Online-Wildlife-Trade-2014.pdf>

² <http://www.ifaw.org/sites/default/files/Report%202005%20Caught%20in%20the%20web%20UK.pdf>

Any changes as outlined in Provision M must be supported by placing the onus on the agency conducting the investigation to have due regard for the animal's welfare. This obligation could be met by arranging inspection by a "suitably qualified person" at the time the notice is served, and at specified periods thereafter to ensure that welfare needs continue to be met. The regulations should provide a list of acceptable people, such as suitably qualified vets, RSPCA, and the Blue Cross.

We welcome the Government's proposal to extend the powers in COTES to cover the whole of the UK. However, forfeiture of an animal(s) post-conviction is currently automatic under COTES and the Wildlife and Countryside Act 1981, though is an option for the court under the Animal Welfare Act 2006. We think it should remain automatic and not require a separate application to the court.

Provision N is welcome. However, it is our view that such a ban should not exist as a step between or instead of a fine and imprisonment, but should be in addition to a fine or imprisonment and be automatically considered by the court without the need for an application by the Crown Prosecution Service.

We see the real value of this measure in it being used for commercial enterprises who through inadequate controls continue to break the CITES Regulations. For example, companies who trade internationally in CITES-listed skin products, or where companies trading in Traditional Chinese Medicine (TCM) products repeatedly stock items that are made from legally held Chinese stockpiles and are legal to sell in China, but cannot legally be traded in the EU.

We note the Government's view that a ban or suspension from trading is, as stated in the consultation "unlikely to be considered appropriate for first or even second time offenders but could be considered for persistent and repeated offending". Given the serious nature of wildlife crime, in that Annex A species are considered to be in immediate danger of extinction, it is our view that this measure would be appropriately applied following a first offence and, rather than 'considered', should be automatically applied for an offence committed more than once.

Ian Knox, former Head of the Metropolitan Police's Wildlife Crime Unit, has stated that in his experience companies that deal in CITES species deal far more in Annex B than Annex A, regardless of whether they trade in both categories. Therefore there is a greater likelihood of repeat offending involving Annex B species than Annex A as there are far more Annex B species traded. It is therefore our view that this provision should also apply to these species.

Question 2: Do you think the proposed changes to ports of entry and exit, Provision O, to ensure compliance with the requirements of the EU regulation, will continue to enable traders to efficiently import and export to and from countries outside of the EU?

This provision appears to be a move to further facilitate trade, which whilst good for trade will not necessarily improve or even provide robustness in application of border controls.

It will on the face of it increase the number of ports of entry and exit, where ports, already designated under other legislation, are also fit for purpose under the requirements of Article 12 of EU Regulation 338.

However, Article 12(2) also states that all such designated offices “shall be provided with sufficient and adequately trained staff.” Whilst we understand that Customs may well be notified of shipment arrivals at these ports and may have Customs coverage, they may not be staffed at the relevant times with suitably trained staff. Staff must be able to identify and physically check the range of specimens with unique markings against CITES permits and have the facilities and accommodation required to carry out examinations and hold a specimen if problems are discovered (including if the specimen is a dangerous animal and poses a risk to the health and safety of the staff member/s)

To implement this provision the following would need to be in place:

- CITES trained Customs officers with the ability to carry out examinations stationed at each of these ports at the relevant times along with all the other specially trained staff required. The staff stationed at these ports should have undergone animal handling training, and CITES training provided by the CITES Team at Heathrow or the National Wildlife Crime Officer course.
- The ports identified for designation should have the facilities to inspect live animals, particularly those CITES listed, as required by Commission Decision 2001/812/EC
- The Government must encourage UK Border Force (UKBF) to give greater priority to CITES at these ports in view of the increased risk.

We believe that until these conditions can be fully met the number of ports for entry and export should not be expanded. The needs and costs of the importers and exporters must be weighed against the need to properly comply with EU Regulations.

Question 3: Do you think the existing offences contained in COTES are fit for purpose and should remain?

It is our view that the existing offences contained in COTES are fit for purpose and should remain.

As noted above in reference to **Provision F**, we consider 8(2) should reflect 8(1) in its entirety. Council Regulation 338/1997 Article 8(5) states “*The prohibitions referred to in paragraph 1 (Annex A) shall also apply to specimens of the species listed in Annex B...*”. Therefore we believe that the amendment under Provision F should also include “use for commercial gain”.

If someone has illegally imported an item, it is our view that the offence should be regarded in the same way as that committed by someone trading in unlicensed Annex A specimens.

Although Regulation 9(3) and (5) has been reviewed, 9(4) was highlighted as an area of *specific concern* by the Environmental Audit Committee in their report into wildlife crime³. Specifically, members of the Animal and Plant Health Agency (APHA) Wildlife Inspectorate have the power to enter premises to inspect a specimen, but police officers can only do so if they have obtained a search warrant. We consider this to be repetitious, a waste of police time and may result in the crime not being investigated. This is particularly clear to us as we are aware that police already have a power of entry to any land or premises, other than a dwelling, under the Wildlife and Countryside Act 1981.

Question 4: Are you aware of any additional evidence on costs and benefits that would inform the assessment above (part 5), or other costs and benefits on enforcement which have not been identified?

All changes to legislation will require some degree of training input for those charged with enforcing those changes. However, given that there are illegal wildlife trade training programmes already in existence which target the police, UK Border Force and the Wildlife Inspectorate we would anticipate that this could be incorporated in that training and therefore there would be no additional costs associated with the changes. However there would be significant enforcement costs to UKBF under Provision O but this will be addressed under Question 5.

We agree with the assessment that the cost of including a permitting number in an online advertisement as outlined under provision G would be negligible. We note that one online marketplace has already agreed to do this following correspondence with IFAW on their 'Wanted - Dead or Alive' report. There appear to be no cost ramifications associated with this change. The cost of introducing a pop-up to improve consumer awareness of the law, or at the very least making website policies or information about the law more prominent on online marketplaces, would also be negligible.

It would be important to ensure that enforcers have the necessary training and equipment to enforce provision G but as the training programmes already exist (see above) and as forces already have cybercrime experts and facilities, these costs should be insignificant.

Costs associated with Provision M would also be negligible even if a "suitably qualified person", such as a vet or the RSPCA, was required to check the welfare of the animal as it is already the National Wildlife Crime Unit's policy to ensure a vet decides whether a retention order can be issued on welfare grounds, while some police forces already use the RSPCA to help them make the same assessments.

The benefit to businesses or individuals trading in wildlife has been set out clearly in the consultation document.

³ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/-announcement-of-report-publication/>

Question 5: Are you aware of any additional evidence on costs and benefits that would inform the assessment above or other costs and benefits on the ports of entry and exit proposals which have not been identified?

By far the greatest impact in terms of cost/benefit from the proposed changes will be by Provision O.

The provision appears to increase ports of entry for third country live CITES species from 3 to 12, an increase of 300% and, of the 38 ports listed, to restrict designation for export of live species to 23. It is unclear from the document how live exports were arranged previously.

Whilst this may benefit traders, in view of the substantial increase in ports of entry the proposal raises the following points regarding costs;

1. There must be sufficient trained staff with skills and knowledge to check CITES documents, inspect the animals for rings, microchips or other markings, identify the species and ensure the necessary veterinary checks are carried out to avoid the introduction of diseases into the UK. It is important that trained staff are on-site for health and safety reasons, plus they may be required to handle dangerous wild animals.
2. Customs quite rightly will not advertise when and where staff will be deployed, and this is a matter for their consideration based on their risk analysis. Clearly they do not have sufficient staff to deploy at every existing designated port 24 hours each day, and it is distinctly possible the same will be true of veterinary services. Therefore, although not quantifiable it is highly likely that an increase in personnel, training equipment and possibly facilities will be required by the proposal.
3. The ports will need to be aware of their responsibilities under EU Regulations regarding facilities, and ensure that they meet the criteria for holding and examining live animals.

Another factor to be considered is the increased risk in an over extended system from less scrupulous traders attempting to exploit weaknesses and the inherent risk to animal and human health. This may be particularly true for the ports of exit, where Customs and veterinary controls may be less stringently applied.

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