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HISTORICALLY UNDER-REPORTED AND UNDER-PROSECUTED: A COMPARATIVE ANALYSIS OF WILDLIFE CRIME IN THE REPUBLIC OF IRELAND

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A INTRODUCTION

Described as the ‘illegal taking, exploiting, possessing, or killing of animals or plants in contravention of national or international laws’,¹ wildlife crime jeopardises the well-being of wildlife and the sustainable development of countless communities.² Whilst varying significantly in nature depending on species and region, wildlife crime is the second largest threat to biodiversity according to the World Wildlife Fund,³ and the depletion of precious biodiversity threatens the ecological stability of the natural environment.⁴ Whether driven by the principally commercial pursuits of transnational wildlife trafficking, poaching for blood sport, and medicinal use,⁵ or by human population growth, cultural traditions, or poverty,⁶ the illegal wildlife trade has an estimated annual worth of \$7-23 billion, and the annual worth of global environmental crime is estimated at \$91–258 billion.⁷

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¹ Justin Kurland and others, ‘Wildlife Crime: a Conceptual Integration, Literature Review and Methodological Critique’ (2017) 6(4) *Crime Sciences* 1, 1.

² Ana Vale and others, ‘Wildlife Crime: Call to Action’ (2016) 6(8) *Veterinary Ireland Journal* 444, 444.

³ World Wildlife Fund, ‘Wildlife Crimes are Wild Crimes Against Life’ (*WWF*) <<https://www.wwf.org.uk/our-offices/ukraine/wildlife-crimes-are-wild-crimes-against-life#:~:text=In%20fact%2C%20unsustainable%20and%20illegal,are%20widely%20considered%20minor%20offences>> accessed 15 April 2023.

⁴ Pedro Cardoso and others, ‘Scientists’ Warning to Humanity on Illegal or Unsustainable Wildlife Trade’ (2021) 263 *Biological Conservation* 1, 3.

⁵ Caroline S Fukushima and others, ‘Challenges and Perspectives on Tackling Illegal or Unsustainable Wildlife Trade’ (2021) 263 *Biological Conservation* 109342; Stephen L Eliason, ‘Poaching, Social Conflict, and the Public Trust: Some Critical Observations on Wildlife Crime’ (2019) 31(2) *Capitalism Nature Socialism* 110; Stephen F Pires and George Olah, ‘Wildlife Crime: Issues and Promising Solutions’ (2022) 12(14) *Animals* 1736.

⁶ Jafari Kideghesho, ‘Reversing the Trend of Wildlife Crime in Tanzania: Challenges and Opportunities’ (2016) 25(3) *Biodiversity Conservation* 427, 428.

⁷ Christian Nellemann and others, ‘The Rise of Environmental Crime – A Growing Threat to Natural Resources Peace, Development And Security’ (United Nations Environment Programme 2016) 7.

Crimes against wildlife are often categorised as ‘victimless crime’, reflecting widespread anthropocentric perspectives that can be found in law, policy, and governance.⁸ Such attitudes fail to recognise that wildlife species are an essential component of healthy and dynamic ecosystems and contribute to a range of invaluable ecosystem services.⁹ The often misguided perception of wildlife as pests and a risk to one’s livelihood may result in people coming into conflict with wildlife and the way in which species are managed.¹⁰ These conflicts can be difficult to solve and often increase in severity as wildlife populations grow.¹¹ In light of the effects and scale of this category of crime, and its connection with other types of criminal activity such as drug and human trafficking, wildlife crime ought not to be perceived as a ‘low-level offence’,¹² and enforcement against such crime should be prioritised at the regional and national levels.

Despite its severity, wildlife crime continues to be under-reported and efforts to address these offences remain under-resourced. According to a 2017 report on environmental prosecutions in Europe, wildlife crimes were reported less frequently in comparison to other environmental crimes.¹³ Furthermore, the resources allocated to tackle wildlife crime often do not correspond to its severity.¹⁴ Effective legislation, enforcement and prosecution mechanisms, and public engagement initiatives are essential to ensure that wildlife offenders are held responsible and wildlife species are protected. This article explores recent wildlife crime developments in Ireland and identifies which steps could be taken to maximise national wildlife protection

⁸ United Nations Office on Drugs and Crime, ‘Guide on Drafting Legislation to Combat Wildlife Crime’ (United Nations 2018) 1.

⁹ Including pollination, food production, and climate regulation. See Rashid Hassan and others (eds), *Ecosystems and Human Well-Being: Current State and Trends, Volume 1* (Island Press 2005).

¹⁰ Jos M Milner and Steve M Redpath, ‘Building an Evidence Base for Managing Species Conflicts in Scotland’ (Scottish Natural Heritage, Commissioned Report No 611 - 2013) 22.

¹¹ *ibid.*

¹² Anita Sundari Akella and Crawford Allan, ‘Dismantling Wildlife Crime: Executive Summary’ (2012) 2 <https://www.traffic.org/site/assets/files/7385/dismantling-wildlife-crime_2.pdf> accessed 15 April 2023.

Wellsmith breaks wildlife crime into three levels: micro-level (subsistence poaching and cruel acts committed against wildlife by individuals), meso-level (domestic trade of vulnerable/endangered species, organised illegal hunting activities), and macro-level (international trade of endangered species): Melanie Wellsmith ‘Wildlife Crime: The Problems of Enforcement’ (2011) 17 *European Journal on Criminal Policy and Research* 125, 128.

¹³ Matthew Hall and Tanya Wyatt, ‘Environmental Prosecution Report: Tackling Environmental Crime in Europe’ (EU Life Programme, March 2017), 38 <https://www.environmentalprosecutors.eu/sites/default/files/document/Cap%20and%20Gap%20report_FINAL_Print.pdf> accessed 15 April 2023.

¹⁴ Wilson-Wilde writes that while the annual costs of wildlife crime are equivalent to ‘approximately 5% of the size

of the international drug trade’, the resources dedicated to addressing wildlife crime do not compare with its severity. Linza Wilson-Wilde, ‘Wildlife Crime: a Global Problem’ (2010) 6 *Forensic Science, Medicine, and Pathology* 211, 211.

efforts. Section B of this article provides the context of wildlife crime in the Republic of Ireland and outlines the evolving role of the National Parks and Wildlife Service (NPWS) in the context of past and ongoing national reforms. Following this, Section C uses the Scottish National Wildlife Crime Unit as a case study, explores the strengths and weaknesses of this Unit, and applies these insights to the Irish jurisdiction. Finally, Section D reflects on potential measures that could be implemented to tackle and reduce wildlife crime in Ireland successfully and systematically, and highlights several examples of wildlife crime enforcement in other jurisdictions.

B WILDLIFE CRIME IN IRELAND

Ireland is currently suffering from devastating nationwide biodiversity loss.¹⁵ This is a significant environmental challenge that impacts the functionality and productivity of our ecological systems, genetic diversity of species, food security, human well-being, and the economy.¹⁶ More than 31,000 species can be found in Ireland and the conservation status of approximately 10% of these biodiversity species has been recorded.¹⁷ As required by the EU Directive on the Conservation of Habitats, Flora, and Fauna, all Member States must carry out surveillance of the conservation status of natural habitats and species.¹⁸ According to *The Status of EU Protected Habitats and Species* report published in 2019, 85% of Ireland's habitats were deemed to be of Unfavourable (Inadequate or Bad) status, with 46% of habitats indicating trends of decline.¹⁹ In the species assessment, the report found that the status of 57% of 60 Habitats Directive-listed species were deemed as Favourable, with 30% listed as

¹⁵ Sylvia Thompson, 'What are the Prospects of Addressing Ireland's Catastrophic Decline in Species and Habitats?' *The Irish Times* (Dublin, 20 October 2022) <<https://www.irishtimes.com/science/2022/10/20/what-are-the-prospects-of-addressing-irelands-catastrophic-decline-in-species-and-habitats/>> accessed 15 April 2023.

¹⁶ Bradley J Cardinale and others, 'Biodiversity Loss and its Impact on Humanity' (2012) 486 *Nature* 59; Dilys Roe, 'Biodiversity Loss — More Than an Environmental Emergency' (2019) 3 *Planetary Health* 287; Boris Worm and others, 'Impacts of Biodiversity Loss on Ocean Ecosystem Services' (2006) 314(5800) *Science* 787; Tom S Doherty, 'Invasive Predators and Global Biodiversity Loss' (2016) 113(4) *Proceedings of the National Academy of Sciences* 11261; T Sunderland, 'Food Security: Why is Biodiversity Important?' (2011) 13(3) *The International Forestry Review* 265.

¹⁷ National Parks and Wildlife Service, 'Actions for Biodiversity 2011-2016: Ireland's National Biodiversity Plan' (2011), 2; Pádraig Hoare, 'Ireland "Embarrassingly Bad" after "30 Years of Inaction" on Biodiversity Crisis' *Irish Examiner* (Cork, 22 June 2022) <<https://www.irishexaminer.com/news/arid-40890959.html>> accessed 15 April 2023.

¹⁸ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7 (EU Habitats Directive), article 11.

¹⁹ Department of Culture, 'Heritage and the Gaeltacht, The Status of EU Protected Habitats and Species in Ireland 2019' (Government of Ireland 2019) 79.

Unfavourable.²⁰ Several factors drive biodiversity loss, including the climate crisis, over-extraction of natural resources, invasive species, and wildlife crime.²¹

Ireland is obligated to protect its biodiversity under domestic, European Union (EU), and international law. In relation to wildlife protection, the 1976 Wildlife Act is Ireland's most significant national legislation.²² The Wildlife Act does not explicitly define what constitutes wildlife crime but encompasses a range of legal offences to ensure the conservation and protection of flora and fauna in Ireland including hunting protected wildlife,²³ hunting with traps and snares,²⁴ and trading restricted flora or fauna.²⁵ This Act has been amended a number of times, most recently in October 2022 when the basking shark was awarded protected wild animal status under Section 23 of the Wildlife Act.²⁶ On an EU level, the Habitats Directive was enacted in 1992 to conserve natural habitats and wild flora and fauna in Europe.²⁷ The Habitats Directive establishes a 'coherent European ecological network of special areas of conservation' and aligns with the pursuit of sustainable development.²⁸ While wild flora and fauna species are dealt with in this instrument, the Birds Directive expressly deals with the conservation of wild birds and their habitats.²⁹ The Bern Convention also enforces conservation duties on Member States through national policy and information dissemination.³⁰ The 2008 Directive on the protection of the environment through criminal law (PECL) is the principal EU instrument that uses criminal penalties to protect biodiversity and the natural environment.³¹ The PECL recognises that insufficient action has been taken to address environmental crimes and the role of common dissuasive criminal penalties in enhancing

²⁰ *ibid* 86.

²¹ R Almond and others, (eds) 'Living Planet Report 2020' (World Wildlife Fund, 2020) <<https://www.zsl.org/sites/default/files/LPR%202020%20Full%20report.pdf>> accessed 15 April 2023; UN General Assembly, 'Resolution adopted by the General Assembly on 16 September 2019' (2019) UN Doc A/RES/73/343.

²² Wildlife Act 1976 (WA 1976).

²³ *ibid* para 28.

²⁴ *ibid* para 34.

²⁵ *ibid* para 45.

²⁶ Wildlife Act 1976 (Protection of Wild Animals) Regulations 2022.

²⁷ EU Habitats Directive (n 18).

²⁸ *ibid* article 3.

²⁹ Council Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [2009] OJ L 20/7.

³⁰ Convention on the Conservation of European Wildlife and Natural Habitats [1982] OJ L 38/3, article 3.

³¹ Lorenzo Colantoni and others, *Fighting Environmental Crime in Europe: An Assessment of Trends, Players and Actions*, (Istituto Affari Internazionali 2022) 33; 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 [2008] OJ L 328/28.

national and transnational wildlife investigations.³² Under the PECL, Member States are expected to implement proportional criminal penalties into domestic legislation but are under no obligation in relation to penalty application or enforcement.³³

On an international scale, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) aims to regulate global trading of species using import and export permits.³⁴ CITES regulates the trading of endangered species, species that would come under threat in the absence of strict regulation, and species identified by respective Parties as requiring regulation to prevent exploitation and harm.³⁵ CITES was implemented across the EU using the EU Wildlife Trade Regulations.³⁶ In an effort to systematically tackle wildlife crime, the International Consortium on Combating Wildlife Crime (ICWC) was established in 2010. This global intergovernmental body is made up of the CITES Secretariat, INTERPOL, United Nations Office on Drugs and Crime (UNODC), the World Bank, and the World Customs Organisation and seeks to help regional and national enforcement agencies respond to and tackle transnational wildlife crimes.³⁷ Despite the presence of these legal frameworks, wildlife crime (ranging in severity from the disturbance of bird nests to cruel and violent acts against wildlife) continues to be a significant problem in Ireland.³⁸ Indeed, according to the Irish Deer Commission, wildlife crime offences are said to be on the rise in recent years.³⁹ It remains unclear why wildlife crime may be increasing in Ireland. This rise could be attributed to greater attention being given to this type of criminal activity as of late, thus resulting in increased public awareness and consequently more violations being detected and reported. Misinformation related to the impacts of wildlife and negative perceptions of certain species is also likely to be an influencing factor. Seals, for example, can be viewed as threats by some

³² Council 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 [2008] OJ L 328/28 (PECL Directive), recitals 3-4.

³³ *ibid* recital 10.

³⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora, (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS. 243 [hereinafter CITES].

³⁵ CITES, Article II.

³⁶ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein [1996] OJ L 61/1; Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein [2006] OJ L 166/1.

³⁷ International Consortium on Combating Wildlife Crime, 'Letter of Understanding: Establishing the International Consortium on Combating Wildlife Crime' (2010) <https://cites.org/sites/default/files/iiccwc/mou_0.pdf> accessed 15 April 2023.

³⁸ Mark Naguib and Séan David Byrne, 'Wildlife Crime in Ireland – Cause and Effect' (2020) 10 *Veterinary Ireland Journal* 622, 622.

³⁹ Anne Lucey, 'Wildlife Crime in Ireland Increasing with Deer at Huge Risk' *Irish Examiner* (Cork, 17 September 2019) <<https://www.irishexaminer.com/news/arid-30951298.html>> accessed 15 April 2023.

individuals working in the fishing industry, cited as the reason for declining fish stocks.⁴⁰ These perceptions can lead to wildlife conflicts and illegal culling practices.⁴¹ Similar relationships can be seen between some individuals in the farming community and birds of prey (raptor) species.⁴² Mainstream attitudes towards wildlife may also be a contributing factor,⁴³ and it has been shown that cultural factors can influence occurrences of wildlife crime.⁴⁴

In assessing the failure of the aforementioned measures to effectively address wildlife crime in Ireland, particular attention ought to be afforded to the NPWS. The five primary functions of the NPWS are to conserve and enhance biodiversity and ecosystems, to assign and advise on protected species and habitats, to facilitate the implementation of national and EU conservation legislation, to oversee and develop State-owned parks, and to raise awareness of conservation and natural heritage issues. The NPWS was established in 2003 to replace Dúchas, the previous government body that was responsible for biodiversity conservation and natural heritage in Ireland.⁴⁵ In the absence of a specialised wildlife crime unit, the NPWS is the main State organisation that works in the area of ecosystem and wildlife conservation.

I The National Parks and Wildlife Service

The NPWS is situated in the Heritage Division of the Department of Housing, Local Government, and Heritage, and currently has four principal officers who oversee their

⁴⁰ Gema Hernández-Milián, 'Trophic Role of Small Cetaceans and Seals in Irish Waters' (Doctoral thesis, University College Cork 2014), 41.

⁴¹ Cormac Cleary, "'Alive with Seals': Seal-Fishery Conflict and the Conservation Conversation in Ireland' (2021) 24(1) *Irish Journal of Anthropology* 73; MA Cronin, 'The Conservation of Seals in Irish Waters: How Research Informs Policy' (2011) 35(6) *Marine Policy* 748.

⁴² There have been numerous recorded incidences of raptor poisoning by farmers out of fear for the well-being of their young lambs in the springtime. See Eileen O'Rourke, 'The Raptor and the Lamb: Reintroduction of Carnivores in Agricultural Landscapes in Ireland' in E Gunilla Almered Olsson and Pernille Gooch (eds) *Natural Resource Conflicts and Sustainable Development* (Routledge 2019).

⁴³ Saba Kassa and others, 'Determinants and Drivers of Wildlife Trafficking: A Qualitative Analysis in Uganda' (2021) 24(3-4) *Journal of International Wildlife Law and Policy* 314, 316; Guillaume Chapron and Adrian Treves, 'Blood Does Not Buy Goodwill: Allowing Culling Increases Poaching of a Large Carnivore' (2016) 283 *Proceedings B* 1.

⁴⁴ Jessica Bell Rizzolo and others, 'Cultural Influences on Attitudes About the Causes and Consequences of Wildlife Poaching' (2017) 67 *Crime, Law and Social Change* 415; Erica von Essen and Angus Nurse, 'Illegal Hunting Special Issue' (2017) 67 *Crime, Law and Social Change* 337.

⁴⁵ Government of Ireland, 'Phase 1 Review of the NPWS – Supplementary Reports 1-5' (2021), 2(1)(1); Anonymous, 'End of Dúchas' *The Irish Times* (Dublin, 28 April 2003) <<https://www.irishtimes.com/opinion/end-of-duchas-1.357150>> accessed 15 April 2023.

respective departments.⁴⁶ In October 2020, the Department of the Taoiseach published the *Programme for Government: Our Shared Future*, which outlined support for national biodiversity conservation efforts and the intention to review the ‘remit, status, and funding’ of the NPWS.⁴⁷ The purpose of this review was to ensure that the organisation was capable of carrying out its wildlife protection activities.⁴⁸ Furthermore, the Minister of State at the Department of Housing, Local Government, and Heritage, Malcolm Noonan, announced his intention to establish a dedicated Wildlife Crime Unit in Ireland.⁴⁹ This announcement was welcomed by conservationists after repeated calls for the establishment of such a unit.⁵⁰

The Department of Housing, Local Government, and Heritage launched a public consultation as part of the Strategic Review of the NPWS in March 2021.⁵¹ This consultation received 65 submissions from groups and organisations, 135 from members of the public, and 2997 online survey responses.⁵² The NPWS has been chronically under-resourced for some time, a fact that was repeatedly highlighted by environmental groups in their consultation submissions. Some of the main themes of submissions from members of the public related to the creation of a well-resourced, ambitious, independent body capable of addressing Ireland’s most pressing wildlife conservation, protection, and restoration challenges. A number of submissions also outlined their support for the creation of the Irish Wildlife Crime Unit. Two overarching themes emerged from the online survey results. Firstly, a lack of awareness of the specific role, activities, and current obligations of the NPWS emerged. Secondly, there was an overriding consensus that the NPWS had not realised its principal objectives. This was accredited not to

⁴⁶ The four departments include: Peatland Issues & Land Designation, Legislation, Licencing & Property Management, Strategy and Regional Operations, and Science & Biodiversity. National Parks and Wildlife Service. ‘National Parks & Wildlife Service - Organisation Chart’ (NPWS) <[https://www.npws.ie/sites/default/files/files/NPWS%20Organisation%20Chart%20for%20About%20NPWS%20on%20www%20npws%20ie\(1\).pdf](https://www.npws.ie/sites/default/files/files/NPWS%20Organisation%20Chart%20for%20About%20NPWS%20on%20www%20npws%20ie(1).pdf)> accessed 15 April 2023.

⁴⁷ Department of the Taoiseach, ‘Programme for Government: Our Shared Future’ (2020) 39.

⁴⁸ *ibid.*

⁴⁹ Alan O’Keeffe, ‘New Wildlife Crime Unit to Tackle Illegal Hunting and Destruction of Habitats’ *The Irish Independent* (Dublin, 18 October 2020)

<<https://www.independent.ie/irish-news/new-wildlife-crime-unit-to-tackle-illegal-hunting-and-destruction-of-habitats-39637118.html>> accessed on 15 April 2023.

⁵⁰ Kevin O’Sullivan, ‘Campaigners Call for Wildlife Crime Unit Over Biodiversity Crisis’ *The Irish Times* (Dublin, May 18 2020) <<https://www.irishtimes.com/news/environment/campaigners-call-for-wildlife-crime-unit-over-biodiversity-crisis-1.4256125>> accessed 15 April 2023; Social Democrats, ‘Need for Wildlife Crime Unit highlighted by Buzzard Deaths’ (*Social Democrats*, 13 May 2020) <<https://www.socialdemocrats.ie/need-for-wildlife-crime-unit-highlighted-by-buzzard-deaths/>> accessed 15 April 2023.

⁵¹ Department of Housing, Local Government and Heritage, ‘Public Consultation strand of the Strategic Review of the National Parks and Wildlife Service’ (*Government of Ireland*, 5 March 2021) <<https://www.gov.ie/en/consultation/504ef-public-consultation-national-parks-and-wildlife-service/>> accessed 15 April 2022.

⁵² *ibid.*

the ability of the NPWS staff, but to a lack of political support, resources, enforcement power, and ineffective structural institutions.⁵³ It was announced in early 2021 that An Garda Síochána would train members of the NPWS to investigate wildlife offences in an effort to reduce wildlife crime trends in Ireland.⁵⁴ In June 2021, the NPWS and An Garda Síochána launched a new Joint Protocol to tackle wildlife crime in Ireland. This protocol established a close strategic relationship between the two bodies and allowed for cooperative operations and the sharing of data and resources.⁵⁵ Furthermore, it outlined that a Wildlife Crime Liaison Inspector would be assigned in each Garda Division and NPWS staff would provide guidance related to the Wildlife Act to Garda personnel.⁵⁶

In June 2021, Stout and Ó Cinnéide published an independent review of the NPWS.⁵⁷ Drawing on the 3197 public consultation submissions, this report aimed to analyse the current NPWS model and identify any existing challenges that need to be addressed to allow the NPWS to effectively carry out its principal objectives. The overwhelming message of the report was that the current form of the NPWS was not fit for purpose and that immediate change was needed, both in the context of reforming the NPWS and addressing biodiversity protection inadequacies on a national level.⁵⁸ The hard-working NPWS staff were commended in the report. However, there is a severe limit to how much progress the NPWS can make if it continues to be under-resourced and under-prioritised. The report outlined that the chronic under-investment of the NPWS has contributed to the ‘failure to properly implement all aspects of the EU Nature Directives’ resulting in compliance proceedings led by the European Commission.⁵⁹ A

⁵³ Department of Housing, Local Government, and Heritage, ‘Category 3 – Online Survey responses’ (Government of Ireland) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/225160/4412da6e-04ea-4998-a599-eee3e352b877.pdf#page=null>> accessed 15 April 2023.

⁵⁴ Mark Hillard, ‘Gardaí to Train Park Rangers in Effort to Tackle Wildlife Crime’ *The Irish Times* (Dublin, 19 January 2021) <<https://www.irishtimes.com/news/environment/garda%C3%AD-to-train-park-rangers-in-effort-to-tackle-wildlife-crime-1.4461554>> accessed 15 April 2021.

⁵⁵ Department of Housing, Local Government, and Heritage, ‘Launch of Joint Protocol Between National Parks & Wildlife Service & An Garda Síochána on Wildlife Crime’ *Government of Ireland* (23 June 2021) <<https://www.gov.ie/en/press-release/57bea-launch-of-joint-protocol-between-national-parks-wildlife-service-an-garda-siochana-on-wildlife-crime/>> accessed 15 April 2023.

⁵⁶ *ibid.*

⁵⁷ Jane C Stout and Micheál Ó Cinnéide ‘Review of the NPWS 2021: Key Findings and Recommendations. Report to the National Parks and Wildlife Service (NPWS)’ (Department of Housing, Local Government and Heritage, Government of Ireland 2021).

⁵⁸ *Ibid* para 1.

⁵⁹ *ibid.* See for example Case C-215/06, *Commission of the European Communities v Ireland. Failure of a Member State to fulfil obligations - No assessment of the environmental effects of projects within the scope of Directive 85/337/EEC - Regularisation after the event* [2008] ECLI 380; Case C-374/11, *European Commission v Ireland Failure of a Member State to fulfil obligations — Directive 75/442/EEC — Domestic waste waters discharged through septic tanks in the countryside — Judgement of the Court finding that a Member State has failed to fulfil obligations — Article 260(2) TFEU — Measures to ensure compliance with a judgement of the Court — Financial*

comprehensive transformation of the NPWS was recommended by the report in the form of a ‘process for ongoing change’ to ensure that the NPWS can maximise its impact, resulting in impactful long-term positive change.⁶⁰

Building upon the findings of this report, Kearney published a review of the NPWS in February 2022 using an ‘organisation, governance and systems lens’.⁶¹ This report sought to provide a framework to strengthen the internal structure of the NPWS and there were a number of key recommendations. On a governance level, the report called for the NPWS to be established as an ‘executive agency’ consisting of five directorates with dedicated functions as well as the development of a new organisational strategy.⁶² Concerning human resources, the report recommended a complete reconstruction of the NPWS human resource practices and the establishment of an expert group to shape the NPWS using internationally recognised best practices.⁶³ On a legislative level, the report recommended revising the ‘statutory underpinnings for our National Parks and the work of the NPWS’ to strengthen, support, and define its operation and conservation functions.⁶⁴ Lastly, the transformation of the internal and external communication and engagement structure of the NPWS was called for to promote a greater understanding of wildlife issues and allow for open collaboration with civil society organisations.⁶⁵

In light of the findings of this strategic review, a new Strategic Action Plan for the NPWS was announced in May 2022. The multi-phase four-year plan aims to ensure that the NPWS is fully resourced with a ‘robust organisational structure to deliver fully on its mandate and play its part in Ireland’s response to the biodiversity emergency, on the national and international stage’.⁶⁶ The publication of this ambitious action plan was a positive development. However,

penalties — Penalty payment — Lump sum) [2012] ECLI 827; Case C-279/11, *European Commission v Ireland Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Incorrect transposition — Annexe II — Point 1(a) to (c) — Judgement of the Court of Justice — Finding of infringement — Article 260 TFEU — Pecuniary penalties — Lump sum payment — Member State’s ability to pay — Economic crisis — Assessment on the basis of current economic data*) [2013] ECLI 820.

⁶⁰ Stout (n 57) para 5(3).

⁶¹ Gerry Kearney, ‘Reflect and Renew – A Review of the National Parks and Wildlife Service’ (2022) 3.

⁶² The five directorates would include 1. Conservation and Protection, 2. Scientific Advice and Research, 3. Parks and Reserves 4. Engagement, Corporate and Specialist Supports Legislation, and 5. Licensing and Regulation; *ibid* 6.

⁶³ *ibid* para 6-7.

⁶⁴ *ibid* para 7.

⁶⁵ *ibid*.

⁶⁶ Department of Housing, Local Government, and Heritage, ‘Strategic Action Plan for the renewal of the National Parks and Wildlife Service (NPWS) 2022-2024’ (Government of Ireland 2022).

the original proposal to establish the desperately needed Irish Wildlife Crime Unit was withdrawn in June 2022. Alternatively, it was decided to increase the number of general wildlife rangers.⁶⁷ Despite this development, there is an opportunity to gain invaluable insights from wildlife crime units and environmental police forces in other jurisdictions. Wildlife crime enforcement challenges can vary between jurisdictions depending on allocated resources, existing legislative frameworks, and socio-cultural contexts. While not all approaches may be suitable or applicable to the Irish experience, there is an opportunity to analyse existing challenges facing wildlife crime bodies, identify examples of good practice, and reflect on how these insights could be applied in Ireland.

C INSIGHTS FROM THE SCOTTISH WILDLIFE CRIME UNIT

Wildlife crime enforcement in Scotland serves as a useful model for in-depth analysis on account of the similarities in climate, wildlife species, and common trends in wildlife crime offences in Ireland and Scotland. For instance, the Scottish wildlife crime priority areas in 2019-2020 included badger persecution, bat persecution, CITES offences, freshwater pearl mussels, poaching (hare, deer, and fish), and raptor persecution.⁶⁸ An Garda Síochána and the NPWS identified illegal hare hunting, badger baiting, unlawful hunting with firearms, and CITES offences as wildlife crime areas of note in Ireland in 2021.⁶⁹ Raptor persecution is a widespread issue in Ireland, and freshwater pearl mussels are endangered and vulnerable to human interference in both countries.⁷⁰ The recognised definition of wildlife crime in Scotland developed by the Partnership for Action Against Wildlife Crime (PAW) in 2010 involves ‘any

⁶⁷ Caroline O’Doherty, ‘Decision to drop Wildlife Crime Unit described as ‘U-turn on clear promise’ *The Irish Independent* (Dublin, 28 June 2022)

<<https://www.independent.ie/news/environment/decision-to-drop-wildlife-crime-unit-described-as-u-turn-on-clear-promise-41796743.html>> accessed 15 April 2023.

⁶⁸ Scottish Government, ‘Wildlife Crime in Scotland: 2020 Annual Report’ (Environment and Forestry Directorate, 2021) 28.

⁶⁹ Department of Housing, Local Government, and Heritage, ‘Joint Protocol between An Garda Síochána Ireland’s National Police Service and the National Parks and Wildlife Service, Department of Housing, Local Government, and Heritage. On Cooperation and Collaboration on Wildlife Crime Issues’, 3-4 <<https://s3.documentcloud.org/documents/20986191/garda-protocol.pdf>> accessed 15 April 2023.

⁷⁰ National Parks and Wildlife Service, ‘RAPTOR Recording and Addressing Persecution and Threats to Our Raptors’ (NPWS 2011); NatureScot, ‘Freshwater Pearl Mussel’ (*Nature Scot*)

<<https://www.nature.scot/plants-animals-and-fungi/invertebrates/freshwater-invertebrates/freshwater-pearl-mussel#:~:text=Threats%20to%20freshwater%20pearl%20mussel,in%20its%20numbers%20and%20range>> accessed 15 April 2023; Marie-Pierre Gosselin, ‘Conservation of the Freshwater Pearl Mussel (*Margaritifera margaritifera*) in the River Rede, UK: Identification of Instream Indicators for Catchment-Scale Issues’ (2015) 50 *Limnologia* 58; A Byrne and others, ‘Ireland Red List No 2 – Non-Marine Molluscs’, (National Parks and Wildlife Service 2009).

unlawful act or omission, which affects any wild creature, plant or habitat'.⁷¹ Whilst not currently embedded in legislation, this definition is used by the Scottish Government in its annual wildlife crime reports. The NWCUC is a specialised police unit that was officially launched in 2006.⁷² The principal role of the NWCUC is to 'assist in the prevention and detection of wildlife crime' and carry out activities such as intelligence gathering and strategic analysis.⁷³ By creating a specialised unit dedicated to tackling crimes against wildlife, wildlife offences can be more easily detected, investigated, and prosecuted. The strengths of the NWCUC as a dedicated wildlife crime unit are examined below.

I Strengths of the NWCUC

(a) Prioritisation of Wildlife Crime

Given the relatively small size and finite resources of the Unit, the NWCUC must prioritise what wildlife crimes to pursue.⁷⁴ The UK Wildlife Crime Tasking and Coordination Group (UKTCG) is a UK-wide body responsible for reviewing the existing wildlife conservation priorities in Scotland and recommending areas that should be included on the priority list.⁷⁵ The UKTCG review is based on the recommendations set out in the NWCUC Strategic Assessment and the UKTCG holds a biennial strategic meeting to set wildlife priorities for the forthcoming two years.⁷⁶ The National Policy Chiefs' Council recently published the Rural and Wildlife Crime Strategy 2022-2025, which outlines the wildlife crime responsibilities of police forces and how cross-cutting wildlife priority challenges can be addressed.⁷⁷

The Wildlife Crime Conservation Advisory Group offers guidance to the NWCUC on areas of conservation importance and uses a scoring matrix to determine the significance of specific wildlife crime activity and what enforcement mechanisms are needed to protect vulnerable wildlife.⁷⁸ The MoRiLE (Management of Risk in Law Enforcement) model is used by the

⁷¹ Scottish Government, 'Wildlife Crime in Scotland: 2019 Annual Report' (Scottish Government 2020) 6.

⁷² Hilary Osborne 'New Agency Targets Wildlife Crime' *The Guardian* (London, 18 October 2006) <<https://www.theguardian.com/environment/2006/oct/18/conservationandendangeredspecies.uknews>> accessed 15 April 2023.

⁷³ National Wildlife Crime Unit, 'About' (NWCUC) <<https://www.nwcuc.police.uk/about/>> accessed 15 April.

⁷⁴ National Wildlife Crime Unit, 'Strategic Assessment 2020 - 2022' (NWCUC 2020), 3. (pdf)

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ National Police Chiefs' Council, Rural and Wildlife Crime Strategy 2022-2025 (NPCC 2022).

⁷⁸ National Wildlife Crime Unit (n 74) 3.

NWCU to decide which non-priority wildlife crime issues to pursue.⁷⁹ Similar to the approach taken by the Irish Environmental Protection Agency (EPA), the NWCU focuses its efforts and resources on the greatest threats to wildlife species to optimise Unit output.⁸⁰ The EPA was established under the 1992 Environmental Protection Agency Act and functions to protect the environment through regulating activities, monitoring the quality of the environment, providing advisory services to public bodies, and promoting environmental research.⁸¹ One of the functions of the EPA is to ‘prosecute those who flout environmental law and damage the environment’ and the Office of Environmental Enforcement is responsible for overseeing these prosecutions.⁸² Unlike the NPWS, the EPA’s environmental protection functions relate to the ‘prevention, limitation, elimination, abatement or reduction of environmental pollution, and (b) the preservation of the quality of the environment’ rather than biodiversity conservation.⁸³ The well-established UK priority strategy could be used as a template to shape wildlife crime priority-setting methods in Ireland. There is strong coordination between conservation groups and government officials to determine what wildlife crime should be prioritised in Scotland. A similar advisory group in Ireland made up of representatives from the NPWS, government officials, and conservation bodies could be formed to allow for the comprehensive assessment of wildlife conservation needs, identification of high-priority wildlife crime areas, and implementation of robust enforcement strategies.

Wildlife crime prioritisation techniques can also be seen in other jurisdictions. In Norway, Økokrim compiles regular threat assessment reports to identify principal responsibilities and risks using probability levels to rank domestic and international threats, which include environmental crime.⁸⁴ Prioritisation practices can also be found on a global level. INTERPOL classifies wildlife crime as an ‘international security priority’ and has an Environmental Security Programme dedicated to dismantling wildlife crime networks.⁸⁵ Furthermore, the 2022 EU Action Plan against Wildlife Trafficking is structured around four principal priority

⁷⁹ This model is based on academic paper analysis and expert opinion. National Wildlife Crime Unit (n 74) 7.

⁸⁰ The UK national wildlife crime priorities for 2022-2025 are: Bat crime, CITES, freshwater pearl mussels, poaching/hare coursing, badger crime and birds of prey crime: National Police Chiefs’ Council (n 77).

⁸¹ Environmental Protection Agency Act 1992, section 52.

⁸² Environmental Protection Agency, ‘Focus on Environmental Enforcement in Ireland: A Report for the Years 2006-2008’ (EPA 2009), Introduction.

⁸³ Environmental Protection Agency Act 1992, section 4(1).

⁸⁴ Økokrim, ‘Threat Assessment 2022’ (Økokrim July 2022).

⁸⁵ INTERPOL, ‘Stepping Up the Global Fight Against Wildlife Crime Through a United Response’ (INTERPOL, 4 October 2022) <<https://www.interpol.int/en/News-and-Events/News/2022/Stepping-up-the-global-fight-against-wildlife-crime-through-a-united-response>> accessed 15 April 2023.

areas which include uncovering the root causes of wildlife crime and enhancing multi-agency global partnerships.⁸⁶ The ongoing NPWS structural reforms will help shape national wildlife crime priorities and may reflect a growing political prioritisation of wildlife crime. A recent public consultation on the new NPWS Strategy Statement included several questions related to wildlife enforcement which will be used to determine the wildlife protection and enforcement priorities of the NPWS.⁸⁷ While An Garda Síochána and the NPWS have recognised several higher-priority wildlife crime areas, no official tactical assessments or enforcement strategies have been developed to the same scale as those in Scotland. The absence of defined prioritisation mechanisms inhibits the implementation of a strategic approach to wildlife crime in Ireland.

(b) Public Engagement

All varieties of wildlife crime create tensions between communities and law enforcement.⁸⁸ Therefore, strong alliances and communication between the NWCU, Police Scotland, and the public are essential to identify and prosecute wildlife offenders. The work of the NWCU is generally valued by the public, and wildlife crime units seek to work closely with local communities, rather than against them to combat wildlife crime. The NWCU performs several public engagement functions. It produces newsletters relating to wildlife crime priority areas to raise awareness and thus prevent breaches of wildlife legislation.⁸⁹ The NWCU also runs specific wildlife crime awareness campaigns. ‘Operation Easter’ was established 25 years ago to ensure the protection of nesting birds and every year police units collect and distribute information related to wildlife crime ‘hotspot’ areas so that effective action can be taken to

⁸⁶ European Commission, ‘Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of the Regions: Revision of the EU Action Plan Against Wildlife Trafficking’ COM (2022) 581 final, 3.

⁸⁷ Department of Housing, Local Government and Heritage, ‘Public Consultation on a new Strategy Statement for the National Parks and Wildlife Service’ (*Government of Ireland*, 14 October 2022) 9 <<https://www.gov.ie/en/consultation/858b3-public-consultation-on-a-new-strategy-statement-for-the-national-parks-and-wildlife-service/>> accessed 15 April 2023: Question 16 - Looking at the headline functions above, what are the biggest challenges that you think will face the NPWS in terms of Wildlife Enforcement and Nature Protection over the next 3 years?; Question 17 - Do you have views on how these challenges can be met?; Question 18 - What 3-5 major objectives do you think the NPWS should set in terms of Wildlife Enforcement and Nature Protection over the next 3 years?

⁸⁸ National Wildlife Crime Unit, ‘Strategic Assessment’ (NWCU 2016) 7.

⁸⁹ Information related to the circulation of a newsletter covering badger persecution National Wildlife Crime Unit, ‘Tactical Assessment’ (NWCU 2017), 8.

reduce occurrences of these crimes.⁹⁰ This duty is of particular importance due to the ‘extensive and fragmented legislation in the field of wildlife crime which encompasses conservation, poaching, and welfare crimes and the range of penalties available’.⁹¹ Communicating clear information to the public related to the severity of these offences and the legislative provisions governing wildlife crime is an invaluable NWCU function.

At times, the media can ‘sensationalise’ wildlife crime rather than educate the public and, therefore, time and attention should be allocated to building good relationships with the media to ensure that credible information is published.⁹² The NWCU tackles issues of misinformation by providing the public with fact-based wildlife crime information on its website in the form of educational content, press releases, and wildlife crime news. The Unit also utilises social media to spread information related to wildlife crime and to inform the public on how to report wildlife offences to the police. Given the pivotal role that social media is playing in raising environmental awareness, a strong NPWS online presence is a key tool that could be used to help achieve local and national targets.⁹³ Public awareness increases the likelihood of wildlife offences being reported and prosecuted, and similar public engagement practices should be implemented in Ireland to reduce the incidence of wildlife crime and increase public support for stronger wildlife crime enforcement. Public engagement activities have also been incorporated into EU wildlife crime actions. Under the first objective of the EU Action Plan Against Wildlife Trafficking, the development of awareness-raising initiatives informed by social science is a key action to reduce demand for illegally traded wildlife species.⁹⁴ This demonstrates the essential role of public awareness in facilitating behaviour change and reducing demand and social acceptance of wildlife trafficking.⁹⁵

As discussed, raising awareness of ecological issues is included as one of the main functions of the NPWS. The NPWS has seven Education and Visitor Centres located in National Parks

⁹⁰ National Wildlife Crime Unit, ‘Operation Easter 2022 - 25 Years of Stopping Egg Thieves and Egg Collectors’ (NWCU) <<https://www.nwcupolice.uk/news/wildlife-crime-press-coverage/operation-easter-2022-25-years-of-stopping-egg-thieves-and-egg-collectors/>> accessed 15 April 2023).

⁹¹ Scottish Government, ‘Wildlife Crime Penalties Review Group Report’ (Scottish Government 2015) 47.

⁹² Milner (n 10), 28.

⁹³ Eliana Andréa Severo and others, ‘The Influence of Social Networks on Environmental Awareness and the Social Responsibility of Generations’ (2019) 16(5) Brazilian Business Review 500.

⁹⁴ European Commission (n 86) 6.

⁹⁵ *ibid.*

and Reserves across Ireland and has developed a number of educational programmes.⁹⁶ These projects can range from primary and secondary school activities that align with national curricula objectives to open days, public walks, and family days.⁹⁷ The NPWS has also established collaborative educational partnerships with other government departments and local authorities.⁹⁸ The NPWS does not have the same level of online activity in comparison to the NWCUC. The Science and Biodiversity Department of the NPWS uses social media to share news and recent developments with the public. However, the NPWS itself lacks a social media presence. The Kearney report recommended that the NPWS should prioritise ‘vigorous and timely engagement’ with social media and other relevant communication channels.⁹⁹ Cultivating an active and reliable online presence will help build public awareness of the NPWS activities and act as a useful channel through which public understanding of wildlife crime and associated legislation can be built.

(c) Partnership with Other Bodies

Given the extensive nature of wildlife crime, the NWCUC could not work in isolation to detect and investigate wildlife offences. Since its establishment, the NWCUC has worked to foster strong relationships with wildlife enforcement bodies and police forces across the UK to better tackle wildlife crime. The NWCUC Investigative Support Officers offer free assistance to law enforcement and wildlife crime partners across the UK.¹⁰⁰ This can include support in casework, the development of strategic enforcement initiatives, and the sharing of intelligence.¹⁰¹ Additionally, all thirteen local divisions of Police Scotland have a Wildlife Crime Liaison Officer who is equipped to investigate breaches of wildlife legislation.¹⁰² The police have a statutory obligation to protect biodiversity and further conservation efforts. The 2004 Nature Conservation Act outlines that ‘it is the duty of every public body and office-

⁹⁶ NPWS Education Centres can be found in Galway, Donegal, Wexford, Wicklow, Kerry, Mayo, and Offaly. National Parks and Wildlife Service, ‘Education Centres’ (NPWS) <<https://www.npws.ie/education/education-centres>> accessed 15 April 2023.

⁹⁷ National Parks and Wildlife Service, ‘Education’ (NPWS) <<https://www.npws.ie/education>> accessed 15 April 2023.

⁹⁸ *ibid.*

⁹⁹ Kearney (n 61) 7.

¹⁰⁰ National Wildlife Crime Unit ‘Structure of the Unit’ (NWCUC) <<https://www.nwcuc.police.uk/about/structure-of-the-unit/>> accessed on 15 April 2023.

¹⁰¹ Scottish Government (n 71) 26.

¹⁰² Nature Scot ‘Wildlife Crime’ (Nature Scot) <<https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species/wildlife-crime>> accessed 15 April 2023.

holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.¹⁰³ In line with this duty, public bodies must also adhere to any biodiversity strategies as outlined in Section 2(1) of the 2004 Act and the Convention on Biological Diversity.¹⁰⁴ Public bodies are also required to publish a compliance report related to this biodiversity duty every three years under the Wildlife and Natural Environment (Scotland) Act 2011.¹⁰⁵ The purpose of these obligations is to conserve biodiversity, increase understanding of the inherent value of biodiversity, and integrate biodiversity considerations into decision-making processes.¹⁰⁶ These reports establish transparency related to what biodiversity protection, mainstreaming, and monitoring initiatives are being carried out by public bodies.¹⁰⁷ A similar statutory obligation could be implemented in the Irish jurisdiction to strengthen wildlife protection efforts.¹⁰⁸ Such an obligation would establish biodiversity protection as a priority across all public bodies. Furthermore, if a biodiversity reporting duty was implemented, this could be used to strategically enhance conservation duties and the accountability of public bodies in alignment with existing national, EU, and international biodiversity obligations. Public authorities have a similar duty to protect and enhance biodiversity and report on compliance in Wales under the Environment (Wales) Act 2016,¹⁰⁹ in England under the Natural Environment and Rural Communities Act 2006,¹¹⁰ and in Northern Ireland under the Wildlife and Natural Environment Act (Northern Ireland) 2011.¹¹¹

The NWCU also works with specialist wildlife prosecutors in the Crown Office and Procurator Fiscal Service.¹¹² Given that expert knowledge of wildlife crime is critical to domestic and EU

¹⁰³ Nature Conservation (Scotland) Act 2004, section 1(1).

¹⁰⁴ *ibid* para 1(2).

¹⁰⁵ Wildlife and Natural Environment (Scotland) Act 2011, section 36.

¹⁰⁶ Nature Scot, 'The Biodiversity Duty Explained' (*Nature Scot* 2020), 1 <<https://www.nature.scot/sites/default/files/2020-09/Guidance%20Note%20-%20Biodiversity%20Duty%20Explained%20final.pdf>> accessed 15 April 2023.

¹⁰⁷ *ibid* para 4. See for example Transport Scotland, 'Biodiversity Duty Report 2018 - 2020' (2020); Risk Management Authority, 'Biodiversity Duty Report 2018 - 2020' (2022); Children's Hearings Scotland, 'Children's Hearings Scotland: Biodiversity Duty Report 2018-20' (2020).

¹⁰⁸ While the function of An Garda Síochána includes the objective of protecting life and preventing crime, which could generally apply to issues of wildlife crime, it fails to mention biodiversity or wildlife specifically in Garda Síochána Act 2005, section 7(1). The Wildlife Act bestows powers upon An Garda Síochána, but again they do not have an explicit legislative duty to further wildlife conservation/protection efforts as public bodies and office-holders do in Scotland.

¹⁰⁹ Environment (Wales) Act 2016, section 6.

¹¹⁰ Natural Environment and Rural Communities Act 2006, section 40.

¹¹¹ Wildlife and Natural Environment Act (Northern Ireland) 2011, section 1.

¹¹² Caroline Millins and others, 'Analysis of Suspected Wildlife Crimes Submitted for Forensic Examinations in Scotland' (2014) 10(3) *Forensic Science Medicine and Pathology* 357, 358.

wildlife law enforcement, the establishment of specialist wildlife crime prosecutors in Ireland would facilitate the effective enforcement of wildlife legislation in the judicial system.¹¹³ The Irish Office of the Director of Public Prosecutions (ODPP) was established under the 1974 Prosecution of Offences Act.¹¹⁴ There are three units within the Prosecution Support Services Division of the ODPP: Victims Liaison Unit, International Unit, and Prosecution Policy and Research Unit.¹¹⁵ Each unit has functional duties and responsibilities related to its dedicated area of law and enforcement. These existing specialised prosecution units could be used as a model to shape the establishment of a specialist wildlife and environmental prosecution unit in Ireland.

Police partnership is an example of the importance and benefits of collaboration between organisations such as the NPWS and other bodies. Partnership with national police services also plays a crucial role in addressing wildlife crime challenges in Ireland. In 2019, the first Joint Training Seminar on Wildlife Crime was held in County Kildare during which the NPWS briefed Gardaí on the most common wildlife crimes and effective investigative techniques.¹¹⁶ Recent reforms have reinforced the relationship between the NPWS and An Garda Síochána, establishing stronger wildlife crime enforcement responsibilities on Gardaí through ‘strategic cooperation’.¹¹⁷ The NPWS-An Garda Síochána Joint Protocol clarifies the role of Gardaí in combating wildlife crime, which may help legitimise the severity of wildlife crime in the public and political sphere. The assignment of a Wildlife Crime Liaison Officer to each Garda division ensures that specialist wildlife crime knowledge can be found in each division and creates a direct and reliable link between law enforcement and the NPWS. The additional training given to the NPWS by Gardaí strengthens the overall position of the NPWS by allowing knowledge gaps to be addressed.

Interagency and intergovernmental cooperation are also central to Uganda’s wildlife crime enforcement. The Ugandan National Wildlife Crime Coordination Task Force (NWCCTF) was established in 2018 to coordinate and address wildlife crime challenges. The NWCCTF

¹¹³ Stephen Pina and others, ‘Wildlife Crime’ (European Parliament 2016) 107-108.

¹¹⁴ Prosecution of Offences Act 1974, section 2.

¹¹⁵ Office of the Director of Public Prosecutions, ‘Prosecution System in Ireland (DPP 2021) 5.

¹¹⁶ Charles O’Donnell, ‘Gardai Hold First Ever Wildlife Crime Training Seminar’ *Agriland* (Dublin, 23 January 2019)

<<https://www.agriland.ie/farming-news/gardai-hold-first-ever-wildlife-crime-training-seminar/>> accessed 15 April 2023.

¹¹⁷ Department of Housing, Local Government, and Heritage (n 55).

comprises thirteen law enforcement agencies which allows for the sharing of technical, technological, and structural knowledge and resources.¹¹⁸ Intergovernmental cooperation is critical to the activities and aims of the NWCCTF. Existing legal instruments also facilitate the systemic pursuit of wildlife crime offenders. Transnational wildlife crime cooperation is facilitated through the 1992 Lusaka Agreement on Illegal Wildlife Trade, which promotes ‘effective detection, reporting, evidence collection, and prosecution of wildlife crimes’.¹¹⁹ Partnerships are also used to enhance international wildlife crime collaboration. The International Consortium on Combating Wildlife Crime (ICCWC) is built on intergovernmental partnerships and works with over 100 Member States to combat wildlife crime.¹²⁰ The ICCWC Wildlife and Forest Crime Analytic Toolkit developed for governments and enforcement agencies includes information related to the role of public-private partnerships in resource development and wildlife conservation activities.¹²¹

The NWCUC engages in several further partnerships which demonstrate the importance of cooperation. PAW, for instance, is a collaborative group made up of representatives from conservation and enforcement bodies that work to reduce wildlife crime through effective regulation, targeted enforcement, and increased public awareness.¹²² PAW also runs a wildlife crime training course for police officers, which includes the work of NWCUC in its content, and aims to educate officers to undertake wildlife crime investigations effectively.¹²³ The collaborative work between enforcement bodies and the NWCUC is critical to tackling wildlife crime. The NPWS also partners with a variety of bodies. The national protocol for the

¹¹⁸ The thirteen agencies are as follows: Ministry of Tourism, Wildlife and Antiquities, Uganda Wildlife Authority, Uganda People’s Defence Force, Uganda Police Force (CID and INTERPOL), Financial Intelligence Authority, Uganda Revenue Authority (Customs Department), Internal Security Organization, External Security Organization, National Forestry Authority, National Environment Management Authority (Environmental Police), Civil Aviation Authority, Office of the Director of Public Prosecutions, and Directorate of Citizenship and Immigration Control. Wildlife Conservation Society, ‘National Wildlife Crime Coordination Task Force (NWCCTF)’ (WCS) <<https://uganda.wcs.org/Portals/141/images/strengthening-anti-poaching-techniques-and-countering-wildlife-trafficking/National-Wildlife-Crime-Coordination-task-Force-Member-Institutions.pdf?ver=2020-03-12-110538-347>> accessed 15 April 2023.

¹¹⁹ Frederick Bamwine, ‘The Efficacy of Prosecuting Wildlife Crimes in Uganda’ (2019) 49(2) Environmental Policy and Law 181, 183.

¹²⁰ International Consortium on Combating Wildlife Crime, Annual Report 2020 (ICCWC 2020) 12.

¹²¹ International Consortium on Combating Wildlife Crime, Wildlife and Forest Crime Analytical Toolkit (ICCWC Second Edition 2022) 94-95.

¹²² UK Government ‘Partnership for Action Against Wildlife Crime’ (UK Government) <<https://www.gov.uk/government/groups/partnership-for-action-against-wildlife-crime#:~:text=The%20Partnership%20for%20Action%20Against%20wildlife%20crime%20and%20regulatory%20issues>> (accessed on 15 April 2023).

¹²³ National Wildlife Crime Unit, ‘Training’ (NWCUC) <<https://www.nwcuc.police.uk/training/>> accessed April 15 2023.

investigation of deaths of birds of prey and other wildlife was developed jointly by the NPWS, the Veterinary Laboratory Service, and the State Laboratory in 2011.¹²⁴ This scheme establishes standards for specimen collection, examination, and the quantification of evidence. The NPWS collaborates with Coillte, Teagasc, Leave No Trace Ireland, and the All-Ireland Pollinator Plan to raise conservation awareness and restore and protect vulnerable ecosystems. NPWS also has a strategic partnership with Fáilte Ireland which seeks to promote sustainable public engagement with Ireland's National Parks and Reserves.¹²⁵ PAW Ireland was set up in 2020 and currently has twelve member organisations.¹²⁶ Its principal aims include increasing awareness of wildlife crime and advising on related issues and regulatory challenges.¹²⁷ NPWS engagement with PAW Ireland could help build a stronger wildlife crime network across Ireland, alongside its existing partnerships.

The NPWS recognises the importance of local engagement to positive conservation outcomes and undertakes a number of community partnerships.¹²⁸ The Curlew Conservation Programme is an example of an effective and well-received community conservation project. Founded in 2017, the programme empowers local people to take part in curlew surveys, nest protection, and habitat enhancement activities.¹²⁹ Members of the Curlew Action Teams work closely with farmers, landowners, and community members to establish a 'locally-led approach' to curlew conservation.¹³⁰ Local engagement is recognised as a 'central tenet' of the programme that provides immense knowledge of the land and wildlife.¹³¹ The 2022 Curlew Conservation Programme report notes the importance of maintaining a positive image and good public relations to maximise the impacts of conservation efforts.¹³² Curlews are a 'much-loved bird' in Ireland, a fact that is beneficial to conservation efforts.¹³³ Local engagement may be more

¹²⁴ National Parks and Wildlife Service, 'RAPTOR Recording and Addressing Persecution and Threats to Our Raptors' (NPWS 2011) appendix 5.

¹²⁵ Fáilte Ireland, 'National Parks and Wildlife Service' (*Fáilte Ireland*) <[https://www.failteireland.ie/Product-development/Activities/Strategic-Partnerships/National-Parks-and-Wildlife-Service-\(NPWS\).aspx](https://www.failteireland.ie/Product-development/Activities/Strategic-Partnerships/National-Parks-and-Wildlife-Service-(NPWS).aspx)> accessed 15 April.

¹²⁶ PAW Ireland, 'PAW Ireland Members' (*Wildlife Crime*) <<https://wildlifecrime.ie/paw/>> accessed 15 April 2023.

¹²⁷ PAW Ireland, 'Partnership for Action Against Wildlife Crime' (*Wildlife crime*) <<https://wildlifecrime.ie/paw/>> accessed 15 April 2023.

¹²⁸ Hubert Servignat and Barry O'Donoghue, 'Curlew Conservation Programme Annual Report 2022' (National Parks and Wildlife Service 2022) 3.

¹²⁹ Barry O'Donoghue, 'Curlew Conservation Programme Annual Report 2017' (National Parks & Wildlife Service 2017) 6, 9-11.

¹³⁰ Servignat (n 131) 3 and 8.

¹³¹ *ibid* para 14-15.

¹³² *ibid* para 14.

¹³³ *ibid*.

difficult when dealing with wildlife species with negative connotations, such as the badger which is often associated with bovine tuberculosis.¹³⁴ Public perception of wildlife species must be understood and incorporated into local engagement projects. Landowner-NPWS partnerships are also incentivised through the use of grant and compensation schemes.¹³⁵ The NPWS has developed important civil society, public sector, and local partnerships despite being under-resourced. The Kearney report identified the need to strategically facilitate greater external collaboration which will strengthen existing collaborations and generate new valuable partnerships.¹³⁶ The NPWS must continue to grow its partnerships to ensure that there is a strong and supportive network of enforcement and conservation bodies in Ireland to allow for a coordinated, systemic approach to wildlife crime.

(d) Intelligence Gathering

The collection, analysis, and dissemination of wildlife crime information is a key function of the NWCUC. The Unit acts as an 'intelligence conduit' between all wildlife crime agencies, both domestic and international, and works with Police Scotland to produce intelligence products.¹³⁷ The NWCUC produces annual Tactical Assessments that provide an overview of the threats facing Scottish wildlife, the current control strategy governing wildlife crime priorities, and identifies present and future conservation threats.¹³⁸ It also produces a biennial Strategic Assessment that evaluates the current threats being faced by UK wildlife, considers what areas should continue to be prioritised, and what new wildlife crime areas should be included.¹³⁹ Strong community relations, which the NWCUC actively builds, are essential for enhancing the

¹³⁴ Stephen Cadogan, 'Cork TB Rates Hit More Than Double the National Average' *Irish Examiner* (Cork, 29 December 2021) <<https://www.irishexaminer.com/farming/arid-40774797.html>> accessed 15 April 2023; Andrew W Byrne and others, 'Risk of Tuberculosis Cattle Herd Breakdowns in Ireland: Effects of Badger Culling Effort, Density and Historic Large-Scale Interventions' (2014) 45 *Veterinary Research* 1.

¹³⁵ Grants are available for participation in the Curlew Conservation Programme and the Corncrake Grant Scheme. Farmers can be compensated for any land designated as Natural Heritage Areas, Special Areas of Conservation, or Special Protection Areas. See National Parks and Wildlife Service, 'Schemes' (NPWS) <<https://www.npws.ie/farmers-and-landowners/schemes>> accessed 15 April 2023.

¹³⁶ Kearney (n 61) 17.

¹³⁷ National Police Chiefs' Council and others, 'A Memorandum of Understanding on the Prevention, Investigation and Enforcement of Wildlife Crime between Natural England, Natural Resources Body for Wales, The Crown Prosecution Service and the National Police Chiefs' Council' (2015) Section 3(6) <https://www.nwcuc.police.uk/wp-content/uploads/2015/11/MoU_Signed_Final_Document.pdf> accessed 15 April 2023.

¹³⁸ National Wildlife Crime Unit, 'Tactical Assessment - UK Wildlife Crime' (NWCUC 2019) 21.

¹³⁹ The Strategic Assessment is a product of the National Intelligence Model. See National Wildlife Crime Unit, 'Strategic Assessment - UK Wildlife Crime 2018' (NWCUC 2018) 10.

flow of intelligence.¹⁴⁰ The collection and dissemination of wildlife crime data is essential not only to raise public awareness of the severity of wildlife crime, but also to allow for the development of fully informed enforcement strategies, and evaluation of current wildlife legislation.¹⁴¹ Intelligence gathering and exchange are also central to global wildlife crime efforts. The INTERPOL Wildlife Enforcement team incorporates intelligence-gathering activities into its projects and uses this information to identify priority targets and areas of strategic action.¹⁴² The UNODC has recognised that intelligence gathering should encompass ‘strategic, tactical, and operational levels’ before being analysed, verified, and disseminated for use.¹⁴³

The NPWS regularly commissions reports in the form of Irish Wildlife Manuals or peer-reviewed publications to gather scientific evidence and document NPWS activities.¹⁴⁴ Published and unpublished NPWS reports such as Marine Reports, Conservation Management Plans, Species Action Plans, and Red Lists can be explored on the NPWS website.¹⁴⁵ Resources and data related to natural heritage and conservation are also publicly available. This includes boundary maps of National Parks, national habitat and species data sets, and Special Areas of Conservation and Special Protection Areas datasheets.¹⁴⁶ Similar to the NWCU, the NPWS regularly publishes news updates on its website and has been doing so since 2012.¹⁴⁷ The NPWS-An Garda Síochána Joint Protocol enhances communication and intelligence sharing between the bodies, which benefits wildlife crime initiatives.¹⁴⁸ This sharing of intelligence would have been strengthened by the previously proposed Irish Wildlife Crime Unit, which would have carried out information, guidance and intelligence activities.¹⁴⁹ The lack of an annual nationwide wildlife crime report which analyses all reported breaches of wildlife

¹⁴⁰ National Police Chiefs’ Council, ‘Wildlife Crime Policing Strategy: Safeguarding our Wildlife’ (NPCC 2018) Section 3(3).

¹⁴¹ Vale (n 2) 446.

¹⁴² INTERPOL, ‘Global Wildlife Enforcement: Strengthening Law Enforcement Cooperation Against Wildlife Crime’ (March 2018) 12.

¹⁴³ United Nations Office on Drugs and Crime, ‘Wildlife and Forest Crime Analytic Toolkit’ (May 2012) 110.

¹⁴⁴ Barry O’Donoghue, ‘Pioneering Precision Livestock Management (Virtual Fencing) in Ireland. A Review of a 3-Year Pilot with Focus on the Environment, the Livestock and the Farmers’ (Irish Wildlife Manuals, No 140 National Parks and Wildlife Service 2022).

¹⁴⁵ National Parks & Wildlife Service, ‘Publications’ (NPWS) <<https://www.npws.ie/publications>> accessed 15 April 2023.

¹⁴⁶ National Parks & Wildlife Service, ‘Maps and Data’ (NPWS) <<https://www.npws.ie/maps-and-data>> accessed 15 April 2023.

¹⁴⁷ National Parks and Wildlife Service, ‘Curlew Hunting Banned’ (National Parks & Wildlife Service, 31 October 2012) <<https://www.npws.ie/news/curlew-hunting-banned>> accessed 15 April 2023.

¹⁴⁸ Department of Housing, Local Government, and Heritage (n 80).

¹⁴⁹ Stout (n 57) section 4(2)(1).

legislation and successful prosecutions creates a significant information gap. This lack of sufficient data must be addressed to increase wildlife protection enforcement, public awareness, and transparency of NPWS pursuits.

(e) Reporting

There is little publicly available data that assess the types and frequency of wildlife crime occurring across Ireland. In comparison, the Scottish Government has been legally required to publish an annual wildlife crime report since 2011.¹⁵⁰ These reports outline trends in wildlife crime as well as the actions being taken to address and reduce the occurrence of wildlife offences by enforcement agencies. No such legislative obligation exists in Ireland. Without regular national wildlife crime reports, it is not possible to deduce the overall prevalence of wildlife crime in Ireland or which species are being most targeted by offenders. Nevertheless, based on existing data it is known that a number of species are vulnerable to wildlife crime, including birds and deer.

Birds, particularly raptor species, are frequently impacted by wildlife crime in Ireland. The NPWS has been producing reports exploring the existing threats to raptors, and the reasons for their persecution since 2011.¹⁵¹ Between 2007 and 2019, 338 confirmed raptor incidents were recorded. Of these 338 recorded incidents, 214 incidents involved poison, 58 involved shooting (one trapping and one mutilation), and 57 were road collision incidents.¹⁵² The majority of these confirmed raptor persecution incidents occurred in the East and South-West of Ireland.¹⁵³ Given that incidents of wildlife crime are severely under-reported, it can be assumed that the reality of raptor crime, and wildlife crime, in general, is much higher than the number of reported cases, allowing many wildlife offenders to go unprosecuted. The Scottish model illustrates the importance and practical benefits of wildlife crime reporting. The launch of the first wildlife crime report in 2012 allowed for the establishment of a baseline of wildlife crime in Scotland, which can be enhanced annually and used to guide decision-making, policy, and resource allocation.¹⁵⁴ The NPWS raptor crime reports represent the reporting practices that

¹⁵⁰ Wildlife and Natural Environment (Scotland) Act 2011, section 20.

¹⁵¹ National Parks and Wildlife Service (n 127).

¹⁵² Barry G O'Donoghue and others, 'Recording and Addressing Persecution and Threats to Our Raptors (RAPTOR): a review of incidents 2007–2019; (NPWS 2019) i.

¹⁵³ *ibid* para 46.

¹⁵⁴ Scottish Government, 'Wildlife Crime in Scotland: 2012 Annual Report' (Scottish Government 2012) 4.

have developed in Ireland in the absence of any legislative reporting obligations. The information generated through these reports, whilst still lacking due to under-reporting, allows the current trends and geographical distribution of raptor crime offences to be established. Furthermore, the raptor species most vulnerable to wildlife crime can be identified and these insights can be used to inform preventative wildlife crime policy and strategy-making.¹⁵⁵

Protected under the Wildlife Act, annual licences are required to hunt deer in Ireland during the designated hunting season.¹⁵⁶ Any hunting of deer without a licence or outside this designated time period is a crime. Illegal hunting has been on the rise for several years, with An Garda Síochána receiving approximately 500 reports of poaching every year.¹⁵⁷ In an attempt to address deer wildlife crime, the Irish Deer Commission launched a campaign with input from the NPWS in 2019 to increase reports of suspected deer poaching by members of the public.¹⁵⁸ Disturbing or interfering with birds' eggs and nests is also deemed illegal under the Wildlife Act.¹⁵⁹ The well-being of birds, their eggs, and habitats can be negatively impacted by human activity, whether it be unintentional or malicious. A 2020 study of the Northern gannets on Great Saltee Island found that disturbances caused by tourists coming into close proximity to the birds of the island to take photographs decreased nesting and breeding success.¹⁶⁰ The destructive impacts of the above-described incidences emphasise the importance of public engagement and awareness of wildlife crime. A greater understanding of the harm associated with these offences will help to facilitate positive behavioural change with the overall aim of reducing wildlife crime. This also highlights the valuable role of the public in relation to wildlife crime reporting to ensure that offenders are identified and prosecuted. While there is a disturbing increase in the occurrence of wildlife crime, the NPWS has stated

¹⁵⁵ O'Donoghue (n 155) 48.

¹⁵⁶ WA 1976, section 23, 26.

¹⁵⁷ Naguib (n 38) 625; Shamim Malekmian, 'Rise in Illegal Killing and Poaching of Wild Deer' *Green News* (2 October 2019) <<https://greennews.ie/rise-deer-killing-ireland/>> accessed 15 April 2023.

¹⁵⁸ Irish Deer Commission 'How to Report Suspected Deer Poaching Incidents - Keep Deer Poaching in Sight!' (*Irish Deer Commission*) <<http://irishdeercommission.ie/latest-news/deer-poaching-reports/>> accessed 15 April 2023.

¹⁵⁹ WA 1976, section 22.

¹⁶⁰ Debs L Allbrook and John L Quinn, 'The Effectiveness of Regulatory Signs in Controlling Human Behaviour and Northern Gannet (*Morus Bassanus*) Disturbance During Breeding: an Experimental Test' (2020) 58 *Journal for Nature Conservation* 1617.

that they are receiving increased communication from members of the public concerned about habitat destruction and wildlife crime, an undoubtedly positive sign.¹⁶¹

D CHALLENGES FACED BY THE NWCUC

While the NWCUC offers several examples of good practice, under-resourcing and insufficient penalties for wildlife crime offenders are two common challenges faced by the NWCUC and the NPWS which hinder their ability to effectively target and reduce wildlife crime.

I Under-Resourcing

Under-resourcing has been highlighted as an issue not just for the NWCUC, but also for its partners.¹⁶² Staff cuts due to funding difficulties¹⁶³ have tangible impacts on the NWCUC's productivity and, consequently, the Unit's ability to effectively address serious wildlife crime issues.¹⁶⁴ Additionally, a lack of access to essential resources such as vehicles hinders the Unit's ability to gather intelligence and acts as an obstacle to accessing critical forensic analysis services.¹⁶⁵ It is difficult for an under-resourced division to systematically tackle a broad range of offences and facilitate the enforcement of wildlife legislation, despite the dedication and hard work of its staff. Low staff salaries combined with a lack of professional recognition of staff achievements also increase the likelihood of corruption and bribe-taking.¹⁶⁶ This would have significant consequences for wildlife crime protection efforts and so the NPWS must be fully resourced.

¹⁶¹ National Parks and Wildlife Service 'Three Month Suspended Jail Sentence for the Possession of Two Dead Buzzards' (NPWS, 21 October 2021) <<https://www.npws.ie/news/three-month-suspended-jail-sentence-possession-two-dead-buzzards>> accessed 15 April 2023.

¹⁶² Other bodies that suffer this same issue include the Scottish Natural Heritage, the Wildlife Environmental Crime Unit in the Crown Office and Procurator Fiscal Service, and the Police Scotland. Antonio Cardesa-Salzmänn and Donald Campbell, 'Literature Review of Sentencing of Environmental and Wildlife Crimes' (Scottish Sentencing Council 2019), 40.

¹⁶³ National Wildlife Crime Unit, 'Annual Report 2009' (NWCUC 2009) 5.

¹⁶⁴ Damian Carrington 'UK's wildlife crime unit wins late reprieve from closure' *The Guardian* (London, 1 March 2016) <<https://www.theguardian.com/environment/2016/mar/01/uks-national-wildlife-unit-wins-late-reprieve-from-closure>> accessed 15 April 2023.

¹⁶⁵ Cardesa-Salzmänn and Campbell (n 165) 40.

¹⁶⁶ Anita Sundari Akella and James B Cannon, 'Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally' (Centre for Conservation and Government at Conservation International 2004) 22.

Greater access to resources would allow the NWCUC to tackle a larger range of wildlife crime offences, rather than having to prioritise certain types of wildlife crime, which possibly leaves some critical areas unaddressed. Consequently, resources, including specialised training, must be sufficient in prosecutorial offices and enforcement bodies to guarantee swift enforcement of wildlife legislation and proportional judicial action. As recognised in the Stout and Ó Cinnéide report, the NPWS and its associated partners in Ireland must be adequately funded and resourced by the Government to maximise their ability to carry out essential wildlife conservation and restoration functions.¹⁶⁷ Insufficient funding of the NPWS limits and delays wildlife investigations. This combined with overworked staff could reduce wildlife crime prosecutions and ultimately decrease the deterrent effect of wildlife protection legislation. The EU Action Plan Against Wildlife Trafficking highlights under-resourcing as a significant issue in EU and non-EU countries.¹⁶⁸ This is not solely limited to domestic contexts. According to Wilson-Wilde, international bodies such as the INTERPOL Wildlife Crime Working Group and TRAFFIC (Wildlife Trade Monitoring Network) are also inadequately funded, depending largely on donations from their respective members and the public.¹⁶⁹

II Penalties and Prosecutions

While changes have been made to wildlife protection legislation to increase enforcement powers, insufficient penalties and disproportionate criminal sentencing for wildlife crime offences have become an issue of growing concern in Scotland in recent years.¹⁷⁰ The NWCUC is not responsible for imposing penalties or carrying out prosecutions, and many government officials and national actors fail to take wildlife crime seriously, which can lead to low numbers of prosecutions and inadequate sentencing of wildlife offenders.¹⁷¹ The Scottish Sentencing Council is in the process of developing wildlife crime sentencing guidelines that will help to improve consistency and transparency in wildlife crime prosecutions.¹⁷² A report by the Wildlife Crime Penalties Review Group found that there was significant variation and fragmentation in the maximum fines imposed on wildlife offenders which directly undermines

¹⁶⁷ Stout (n 57) 32, 34, and 65.

¹⁶⁸ Commission (n 86) 3.

¹⁶⁹ Wilson-Wilde (n 14) 211.

¹⁷⁰ Even when prosecuted, in the past, the sentences have not been satisfactory. A man who was found guilty of clubbing 21 grey seal pups to death was jailed for a mere 80 days. See National Wildlife Crime Unit (n 179) 9.

¹⁷¹ Stoyan Barrett and Rob White 'Disrupting Environmental Crime at the Local Level: an Operational Perspective' (2017) 3 Palgrave Communications 1, 2.

¹⁷² Cardesa-Salzmänn and Campbell (n 165) and Scottish Government (n 92).

their ‘deterrent effect’.¹⁷³ The report called for increased penalties for serious wildlife offences in Scotland alongside a greater range of available wildlife penalties to maximise their effectiveness. The Animals and Wildlife Act was introduced in 2020 to amend the Animal Health and Welfare (Scotland) Act 2006.¹⁷⁴ The 2020 Act allowed for the introduction of fixed penalties for wildlife crime offences, which act when appropriate as an alternative to custodial sentences and allows for more proportional and effective deterrence of offenders.¹⁷⁵ It also introduced an increase in penalties and custodial sentences for certain wildlife offences.¹⁷⁶ These improvements are likely to increase the effectiveness of wildlife legislation and this Act demonstrates the serious regard the Government now has for wildlife crime, which will, overall, increase the ‘respect and protection’ bestowed upon all animal species in Scotland.¹⁷⁷ The Scottish Government has not yet published annual wildlife crime reports pertaining to the financial year 2020-2021 or 2021-2022, and so it remains unclear what impacts these legislative protections have had on wildlife crime trends and enforcement practices.

Ireland faces similar issues regarding low prosecution rates and penalties. Between 2012 and 2020, approximately 164 prosecutions were brought before the Courts by the Department for Housing, Local Government, and Heritage for breaches of the Wildlife Act.¹⁷⁸ However, even when wildlife crime offenders are identified, it seems that penalties and prosecutions can prove inadequate. For instance, in May 2021, a Laois farmer was found guilty of significant destruction of hedgerows and mature woodlands during nesting season and fined €6,000, while a fine of €25,000 could have been imposed under the Wildlife Act.¹⁷⁹ A study that analysed environmental crime prosecutions in Ireland between 2004-2014 found that financial penalties for offenders to be much lower when compared to other nations.¹⁸⁰ The inadequate enforcement of wildlife crime legislation is likely to fail to deter people from carrying out destructive and

¹⁷³ Scottish Government (n 92) 50.

¹⁷⁴ Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.

¹⁷⁵ *ibid* para 2.

¹⁷⁶ *ibid* para 7-12.

¹⁷⁷ Scottish Government, ‘Partial Business and Regulatory Impact Assessment, Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill’ (Scottish Government 2019) 1.

¹⁷⁸ Houses of the Oireachtas, ‘Wildlife Protection - Dáil Éireann Debate, 6 October 2020’ <<https://www.oireachtas.ie/en/debates/question/2020-10-06/77/>> accessed 15 April 2023.

¹⁷⁹ Kevin O’Sullivan, ‘Judge upholds €6,000 fine for destruction of hedgerows, mature trees’ *The Irish Times* (Dublin, 12 May 2022) <<https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/judge-upholds-6-000-fine-for-destruction-of-hedgerows-mature-trees-1.4875942#:~:text=Brian%20O'Reilly%20of%20Clonagh,guilty%20to%20the%20five%20offences>> accessed 15 April 2023.

¹⁸⁰ Michael J Lynch and others, ‘Environmental Crime Prosecutions in Ireland, 2004–2014’ (2019) 43(4) *International Journal of Comparative and Applied Criminal Justice* 277.

cruel wildlife crimes. The maximum fine under the Wildlife Act is €100,000.¹⁸¹ However, such high fines are rarely enforced.¹⁸² The UNODC recognised that the deterrent effect of penalties and prosecutions is reduced by inadequate enforcement.¹⁸³ Furthermore, the inconsistency of penalties imposed by countries complicates ‘multilateral efforts’ to tackle wildlife crime.¹⁸⁴ The Irish Government must implement a broad range of proportional punishments for wildlife crime offences and establish sentencing guidelines on wildlife crime so that crimes are punished adequately and consistently. Financial penalties are not always the best or most appropriate punishment for wildlife offences. Non-financial penalties such as the forfeiture of dogs, firearms, vehicles, and equipment, or requiring offenders to undergo anger management training may be more suitable for certain cases.¹⁸⁵ A simple increase in penalties alone may not deter wildlife offenders and thus all aspects of wildlife crime governance must be strengthened to create long-lasting change.¹⁸⁶

D LOOKING FORWARD

I Establishing an Irish Wildlife Crime Unit

The preliminary work to investigate the possibility of creating a wildlife crime unit in the UK began over 20 years ago.¹⁸⁷ In comparison to our Scottish neighbours, Ireland is lagging behind in terms of wildlife crime enforcement and prosecution. Biodiversity loss has never been so severe or topical, and the decision to withdraw plans for an Irish Wildlife Crime Unit seems like a missed opportunity to take robust and systemic action to tackle wildlife crime. A 2020 report by the EU LIFE-ENPE Working Group on Wildlife Crime recommended that all Member States establish a dedicated wildlife crime unit with ‘specially trained and knowledgeable enforcement officers’ to reduce non-compliance with environmental law and increase prosecution of wildlife crime offenders across Europe.¹⁸⁸ The Working Group also

¹⁸¹ WA 1976, section 74.

¹⁸² It must be noted that maximum fines are usually only applied to very serious wildlife crime offences.

¹⁸³ United Nations Office on Drugs and Crime (n 146) 45.

¹⁸⁴ *ibid.*

¹⁸⁵ Scottish Government (n 92) 17, 34-35.

¹⁸⁶ United Nations Office on Drugs and Crime (n 146) 45.

¹⁸⁷ Report by Martin Roberts and others, ‘Wildlife Crime in the UK: Towards a National Wildlife Crime Unit’ (Department for Environment, Food & Rural Affairs 2001) <<https://webarchive.nationalarchives.gov.uk/ukgwa/20021105054442/http://www.defra.gov.uk:80/paw/publications/natcrime/default.htm>> accessed on 15 April 2023.

¹⁸⁸ Lars Magnusson and others, ‘Wildlife Crime (WG1) Final Report 2016-2020’ (ENPE June 2020) 6.

stressed the need to provide specialised training to judges and prosecutors in order to establish minimum standards of conduct and judicial guidelines.¹⁸⁹ The absence of a specialised wildlife crime unit complicates monitoring and enforcement activities and the lack of expert prosecutors impedes effective judicial decision-making.¹⁹⁰

Whilst the NPWS is in the process of being reformed and has been allocated more wildlife rangers, environmental campaigners continue to stress the need for an Irish Wildlife Crime Unit.¹⁹¹ The UNODC has recognised the UK's wildlife crime enforcement structures and strategies as 'international best practice'.¹⁹² The NWCUC case study demonstrates the value of a specialised wildlife crime unit and its importance in coordinating the detection and prosecution of wildlife crimes. The identified challenges impede the NWCUC's ability to prevent wildlife crime and adversely impact the deterrent nature of wildlife legislation. However, by recognising these challenges, as well as the strengths of the NWCUC, this analysis can allow us to explore how NWCUC good practice could be transplanted to Ireland and what steps can be taken to minimise potential obstacles.

There are also lessons to be learned from other jurisdictions. Most European countries lack a specialised wildlife crime unit. In lieu of this, national police forces often lead wildlife crime enforcement activities.¹⁹³ Spain has a number of specialised wildlife crime bodies. The *Servicio de Protección de la Naturaleza de la Guardia Civil* (SEPRONA) of the Civil Guard is dedicated to environmental protection and CITES enforcement.¹⁹⁴ The *Ertaintxa* of the Basque Country and *Mossos d'Esquadra* of Catalonia also have environmental crime divisions.¹⁹⁵ Exclusive jurisdiction is not bestowed upon any of these divisions meaning that local police or

¹⁸⁹ *ibid* para 12.

¹⁹⁰ Lorenzo Colantoni and others, 'Fighting Environmental Crime in Europe: An Assessment of Trends, Players and Actions' (Istituto Affari Internazionali 2022) 59-60.

¹⁹¹ James Wilson, 'Wildlife Crime Unit Needed to be Set Up to Stop "Total Wildlife Wipe Out"- Irish Wildlife Trust' *Newstalk* (4 January 2023) <<https://www.newstalk.com/news/wildlife-crime-unit-needed-to-stop-total-wildlife-wipe-out-irish-wildlife-trust-1416268>> accessed 15 April 2023; Caroline O'Doherty, 'Call for Government to Press Ahead with Clampdown on Wildlife Crimes' *The Irish Independent* (Dublin, 3 January 2023) <<https://www.independent.ie/news/environment/call-for-government-to-press-ahead-with-clampdown-on-wildlife-crimes-42258391.html>> accessed 15 April 2023.

¹⁹² United Nations Office on Drugs and Crime, 'Wildlife and Forest Crime Analytical Toolkit Report: United Kingdom of Great Britain and Northern Ireland (UNODC August 2021) 12.

¹⁹³ Colantoni (193) 37.

¹⁹⁴ Teresa Fajardo, 'Wildlife Crime in Spain: In-Depth Analysis for the ENVI Committee' (European Parliament 2016) 19.

¹⁹⁵ *ibid*.

forest guards may oversee environmental crime cases.¹⁹⁶ The presence and activities of SEPRONA allows for consistent and strategic action against environmental crime, the benefits of which can be seen through the 5,752 environmental crimes that SEPRONA investigated in 2021.¹⁹⁷ The presence of this dedicated division also ensures that environmental crime investigations are not dependent on ‘cost-benefit decision[s]’.¹⁹⁸ Similar to the NPWS experience, under-resourcing of SEPRONA has been cited as an issue. A 2014 report highlighted the need for greater access to human and financial resources.¹⁹⁹ In addition to these specialised units, Spain also assigns special prosecutors to each judicial area, including environmental crime.²⁰⁰

Environmental crime police forces are often tied with economic crime, reflecting the traditional perception of environmental-related offences as a ‘branch’ of economic crime.²⁰¹ In Norway, Økokrim (National Authority for Investigation and Prosecution of Economic and Environmental Crime) is responsible for investigating and prosecuting environmental and economic crimes.²⁰² Økokrim is broken down into ten ‘multidisciplinary’ divisions, including the environment, investment, and corruption teams.²⁰³ Norway experiences different types of wildlife conflicts than Ireland due to the presence of larger predators. In recent years, harsher punishments have been imposed on wildlife offenders, indicating a growing recognition of the severity of wildlife crime by Norwegian enforcement bodies and the judicial system.²⁰⁴ This has resulted in wildlife crime prosecutions being framed as organised crime, which could act as a deterrent for potential offenders.²⁰⁵

¹⁹⁶ Teresa Fajardo and others, ‘Fighting Environmental Crime in Spain: A Country Report. Study in the Framework of the EFFACE Research Project’ (European Union Action to Fight Environmental Crime 2015) 56.

¹⁹⁷ Tony Kingham, ‘The Spanish Civil Guard has Investigated 5,752 Crimes Against the Environment in 2021, in Latest Released Figures’ (*Border Security Report*, 29 April 2022) <<https://border-security-report.com/the-spanish-civil-guard-has-investigated-5752-crimes-against-the-environment-in-2021-in-latest-released-figures/>> accessed April 15 2023.

¹⁹⁸ Fajardo (n 197) 19.

¹⁹⁹ Vicki Cook, Analysis of EU Member State CITES Biennial Reports 2011-2012 (European Commission 2014) 17.

²⁰⁰ Fajardo (n 197) 20.

²⁰¹ Colantoni (193) 37.

²⁰² Økokrim, ‘Økokrim in English’ (*Økokrim*) <<https://www.okokrim.no/oekokrim-in-english/549343.no.html>> accessed 15 April 2023.

²⁰³ Maria Therese Nybakk Bø, ‘Organisational Climate Differences in the Norwegian Police’ (Masters of Work and Organisational Psychology, University of Oslo 2014) 10.

²⁰⁴ Ragnhild Sollund, ‘Perceptions and Law Enforcement of Illegal and Legal Wolf Killing in Norway: Organised Crime or Folk Crime?’ (2017) 3 Palgrave Communications 1, 7.

²⁰⁵ *ibid.*

II Legislative Reporting Obligations

To combat wildlife crime, a strategic and multifaceted approach is needed. Legislative change is an essential tool to protect wildlife species and deter wildlife offenders. Imposing a legislative obligation on the Irish Government to establish a regular reporting mechanism that comprehensively maps wildlife crime is required. This would allow for a baseline of wildlife crime to be established in Ireland, which could be used to inform effective anti-wildlife crime strategies. Increasing reporting of wildlife offences is critical to tackling omnipresent wildlife crime activity and the recommendations as outlined in the NPWS review reports to reinvent existing NPWS communications strategies would help contribute to the realisation of this goal. The Scottish wildlife crime reporting mechanism and the Northern Ireland CAUSEWAY system were highlighted as effective practices related to wildlife crime data gathering and analysis by the UNODC.²⁰⁶ While not created through a legislative reporting mandate, CAUSEWAY is an ‘interconnected information system’ that allows for the sharing of information related to criminal justice.²⁰⁷ This enables judicial proceedings and forensic records pertaining to wildlife crime to be recorded and, in theory, one could ‘trace wildlife crime cases through the criminal justice system from incident to exit’.²⁰⁸ In reality, it seems that this data is not frequently formulated or ‘made available’.²⁰⁹

The Kearney report also suggested the use of legislative provisions to clarify and strengthen the authority and enforcement powers of the NPWS.²¹⁰ Such legislative change may help create a renewed political will to robustly address wildlife crime challenges and increase public awareness of these issues. Acknowledging the non-anthropocentric value of wildlife could also be a positive step towards shifting perspectives on biodiversity in Ireland. An example of this can be found in Section 3 of the Norwegian Animal Welfare Act 2009 which states that: ‘Animals have an intrinsic value which is irrespective of the usable value they may have for man’.²¹¹ Such legislative provisions would embody a more ecocentric approach to wildlife

²⁰⁶ United Nations Office on Drugs and Crime, ‘Wildlife and Forest Crime Analytical Toolkit Report: United Kingdom of Great Britain and Northern Ireland’ (UNODC August 2021) 19.

²⁰⁷ Department of Justice, ‘Causeway’ *Department of Justice* <<https://www.justice-ni.gov.uk/articles/causeway>> accessed 15 April 2023.

²⁰⁸ United Nations Office on Drugs and Crime, ‘Wildlife and Forest Crime Analytical Toolkit Report: United Kingdom of Great Britain and Northern Ireland’ (UNODC August 2021) 111.

²⁰⁹ *ibid.*

²¹⁰ Kearney (n 61) 7, 33.

²¹¹ Animal Welfare Act 2009 (Norway), section 3.

protection and align with recent recommendations from the Citizens' Assembly on Biodiversity Loss to strengthen biodiversity protections in Irish law.²¹²

III Proportionate and Cohesive Penalties

To ensure proportional penalties are available and enforced in Ireland, the Irish Government could establish an expert advisory body to evaluate current legislation, taking inspiration from the Scottish Wildlife Crime Penalties Review Group. This advisory body could undertake critical research to identify any gaps between existing policy and enforcement practices and how current wildlife crime penalties could be strengthened to maximise their deterrent effect. The recommendations from this body would be submitted to the Irish Government for consideration and implementation. A broad definition of environmental crime, which would encompass wildlife crime, could be incorporated into Irish legislation. At a minimum, an agreed definition of wildlife crime needs to be adopted by the NPWS, An Garda Síochána, and the Government of Ireland to establish consistency of practice and clarity in relation to what constitutes wildlife offences, as is practised in Scotland. Spain does not currently have a dedicated definition of wildlife crime in its Criminal Code but has enshrined a general definition of environmental crime in legislation which includes 'breaking the laws or other provisions of a general nature that protect the environment'.²¹³ The majority of EU Member States lack a definition of environmental crime in national legislation.²¹⁴ The creation and implementation of an agreed definition of environmental crime by EU Member States would enhance transnational coordination and establish 'clearly defined principles' encompassing environmental harm and biodiversity protection.²¹⁵

IV Enhancing Intelligence Gathering & Resources

In combination with legislative change, intelligence gathering, and increased resourcing, one must also go to the root causes of wildlife crime. By understanding the motivations and

²¹² George Lee, 'Call to Protect Biodiversity and Nature in Constitution' *RTE* (Dublin, 27 November 2022) <<https://www.rte.ie/news/ireland/2022/1127/1338574-citizens-assembly/>> accessed 15 April 2023.

²¹³ Ministerio de Justicia, *Criminal Code* (Subdirección General de Documentación y Publicaciones 2016) article 325; Fajardo (n 199) 14.

²¹⁴ Colantoni (n 193) 20.

²¹⁵ *ibid.*

attitudes of those who commit wildlife crimes, targeted wildlife crime initiatives can be devised. One example of such a wildlife crime strategy is the active adaptive management cycle devised by Travers and others.²¹⁶ This cycle is made up of four stages: 1) Investigating existing stakeholder attitudes, 2) Estimating existing behaviours and identifying key drivers of wildlife crime 3) Predicting responses to interventions through scenarios, informer interviews, and experimentation, and 4) Designing or adapting interventions using gathered data to inform decision-making.²¹⁷ This framework was used in villages in close proximity to Uganda's two largest national parks and provided valuable insights into the factors driving wildlife crime. This study also found positive support for an increase in effective law enforcement and community engagement interventions to tackle wildlife crime.²¹⁸ State-led organisations are just one aspect of the multidimensional solution that is needed to address wildlife crime. Working in partnership with local communities, as the NPWS already does, can help to create a sense of responsibility to protect wildlife and consequently increase incidences of wildlife crime reporting.²¹⁹ Increased public engagement activities could also help cultivate a network of informants who can supply reliable information related to local wildlife crime activity.²²⁰ Devising education initiatives that highlight the ecological and cultural value of species can also be effective in tackling negative perceptions of wildlife.²²¹

V Greater Engagement with Technology

Furthermore, there are opportunities to utilise new technologies to tackle wildlife crime in Ireland. It has been shown that members of the public have been 'overwhelmingly willing' to engage with wildlife crime hotline programs to report wildlife crime violations that they had observed.²²² There is potential for a similar programme to be enacted in Ireland. Other

²¹⁶ Henry Travers and others, 'Understanding Complex Drivers of Wildlife Crime to Design Effective Conservation Interventions' (2019) 33(6) *Conservation Biology* 1296, 1299.

²¹⁷ *ibid.*

²¹⁸ *ibid.* 1304.

²¹⁹ Rosie Conney and others, 'From Poachers to Protectors: Engaging Local Communities In Solutions to Illegal Wildlife Trade' (2017) 10(3) *Conservation Letters* 367, 372. See for examples of community engagement strategies in relation to illegal wildlife trading Dilys Roe and Francesca Booker, 'Engaging Local Communities in Tackling Illegal Wildlife Trade: A Synthesis of Approaches and Lessons for Best Practice' (2019) 1(5) *Conservation Science and Practice* 1.

²²⁰ Matthew Linkie and others, 'Safeguarding Sumatran Tigers: Evaluating Effectiveness of Law Enforcement Patrols and Local Informant Networks' (2015) 52(4) *Journal of Applied Ecology* 851.

²²¹ Verónica B Cailly Amulphi and others, 'Education Can Improve the Negative Perception of a Threatened Long-Lived Scavenging Bird, the Andean Condor' (2017) 12(9) *PLoS One* 1, 2.

²²² Kelsie Leavitt and others, 'Citizen Willingness to Report Wildlife Crime' (2021) 42(10) *Deviant Behaviour* 1256, 1265.

jurisdictions utilise smartphone apps for monitoring and reporting purposes.²²³ PAW Ireland has developed a wildlife crime reporting app that allows members of the public to record information related to a suspected wildlife crime, which is generated into an email that can be sent directly to the NPWS.²²⁴ Greater engagement by the NPWS with this existing resource could be invaluable in increasing wildlife crime reporting. The Strategic Review of the NPWS and consequent Strategic Action Plan seem like a step in the right direction, albeit a step that was long overdue. The NPWS successfully closed 21 prosecution cases in 2021 and as of July 2022, 20 more have been closed.²²⁵ Optimistically speaking, this, alongside increased reports of wildlife crime, may indicate a greater awareness amongst enforcement personnel, prosecution bodies, and members of the public of the severity of wildlife crime. However, given the urgency of the biodiversity crisis and the widespread occurrences of wildlife crime in Ireland, this is a trend that needs to accelerate rapidly.

It has been found that social media has contributed to an increase in illegal badger-baiting activities, illustrating the harmful impacts of social media in encouraging and celebrating this type of behaviour.²²⁶ Cyber-enabled wildlife crime is a term used to describe the role of social media in organising and sharing wildlife criminal activity.²²⁷ Social media and the internet generally are also used as communication, promotional, and distribution tools by wildlife traffickers.²²⁸ While the negative impacts of social media on wildlife crime are evident, there is also an opportunity for law enforcement personnel to utilise social media to identify and track illicit wildlife activity and for wildlife protection organisations to harness social media for awareness-raising purposes.²²⁹ In July 2022, a Wicklow farmer was fined a mere €2,000 for poisoning protected birds, an act which was described by Minister Malcolm Noonan as

²²³ Colantoni (n 193) 72.

²²⁴ PAW Ireland 'How App Works' (*PAW Ireland*) <<https://paw-ireland.xapp.org/>> accessed 15 April 2023.

²²⁵ National Parks and Wildlife Service, 'Donegal Landowner Receives Large Fine for Damaging Freshwater Pearl Mussel Habitat' (*NPWS*, 15 July 2020) <<https://www.npws.ie/news/donegal-landowner-receives-large-fine-damaging-freshwater-pearl-mussel-habitat>> accessed 15 April 2023.

²²⁶ Naguib (n 38) 625-626.

²²⁷ Badger Trust, 'Caught in the Net: Cyber-enabled Wildlife Crime' (Brighton, 23 May 2022) <<https://www.badgertrust.org.uk/post/caught-in-the-net-cyber-enabled-wildlife-crime#:~:text=Cyber%2Denabled%20crime%20is%20where,have%20long%20been%20enabled%20online>> accessed 15 April 2023; National Wildlife Crime Unit, 'Cyber Enabled Wildlife Crime' (*NWCU*) <<https://www.nwcu.police.uk/how-do-we-prioritise/priorities/cyber-enabled-wildlife-crime/>> accessed 15 April 2023.

²²⁸ Anita Lavorgna, 'Wildlife Trafficking in the Internet Age' (2014) 3(5) *Crime Science* 1.

²²⁹ Enrico Di Minin and others, 'A Framework for Investigating Illegal Wildlife Trade on Social Media with Machine Learning' (2018) 33(1) *Conservation Biology* 210; Jordanna N Bergman and others, 'Evaluating the Benefits and Risks of Social Media for Wildlife Conservation' (2022) 7 *Facets* 360.

‘particularly heinous and disturbing’.²³⁰ Minister Noonan went on to comment more broadly on wildlife crime in Ireland: ‘I’d like to remind everyone that the NPWS has more rangers than ever, and that it’s never been more focused – or more effective – on wildlife crime’.²³¹ This is a positive development and undoubtedly much more biodiversity loss would be taking place in Ireland without the hard work of the NPWS staff. However, if the NPWS had been prioritised and adequately resourced since its inception in 2003, much more of Ireland’s biodiversity species and habitats could have been conserved.

E CONCLUSION

Conservation issues are complex challenges that are ‘embedded in socio-ecological systems’ with numerous interactive factors which are often non-linear and unpredictable.²³² The common categorisation of wildlife crime as victimless fails to recognise the inherent value of biodiversity species ‘under a non-anthropocentric ethic’.²³³ Wildlife crime leaves biodiversity vulnerable to harm, exploitation, and population depletion. Just recently, a white-tailed eagle, once extinct in Ireland, was found dead in County Cavan after being poisoned by carbofuran, an illegal insecticide.²³⁴ These issues will only continue to worsen without tactical and specialised action. The persistent under-resourcing of the NWCU, NPWS, and other wildlife crime organisations indicates that wildlife crime is a low priority in comparison to traditional criminal activity (gun crime or drug crime for example).²³⁵ While recent developments may indicate a turning point for wildlife crime in Ireland, it is difficult to conclude if this is an issue that is going to get the sustained political attention and resources that it requires and deserves. The Draft National Biodiversity Action Plan which will set the ‘national biodiversity agenda’

²³⁰ National Parks and Wildlife Service, ‘Farmer Convicted and Fined Following the Poisoning of Protected Birds in Wicklow’ (13 July 2022) <<https://www.npws.ie/news/farmer-convicted-and-fined-following-poisoning-protected-birds-wicklow>> accessed 15 April 2023.

²³¹ *ibid.*

²³² Edward T Game and others, ‘Conservation in a Wicked Complex World; Challenges and Solutions’ (2013) 7(3) Conservation Letters 271, 271.

²³³ Mei-Ling Shao and others, ‘Understanding Wildlife Crime in China: Socio-demographic Profiling and Motivation of Offenders’ (2021) 16(1) PLoS ONE 1, 2.

²³⁴ Conor Lally, ‘White-Tailed Eagle Released in Wild “Poisoned with Illegal Pesticide”’ *The Irish Times* (Dublin, 22 January 2023) <<https://www.irishtimes.com/ireland/2023/01/22/white-tail-eagle-released-in-wild-poisoned-with-illegal-pesticide/>> accessed 15 April 2023.

²³⁵ Wellsmith (n 12) 137.

for 2023-2027 did not contain any mention of wildlife crime, despite its extensive impacts on biodiversity and ecosystems as a whole.²³⁶

The proposed transformation of the NPWS is a positive sign. However, all wildlife protection agencies, enforcement agencies, and prosecution bodies need to be suitably resourced to ensure that wildlife crime can be systemically tackled in Ireland. Overall, the findings from the NPWS review indicate a significant appetite for change amongst the public, and the subsequent 2022-2024 NPWS Strategic Action Plan reflects political recognition of the importance of the NPWS and its role in tackling wildlife crime. This ambitious agenda to transform the NPWS could be a game-changer for detecting and reducing wildlife crime in Ireland if accompanied by increased public awareness and sustained political support. For the sake of our wildlife and the countless invaluable ecosystem services that these species provide, the NPWS Strategic Action Plan must be successful.

²³⁶ Department of Housing, Local Government and Heritage, 'Ireland's 4th National Biodiversity Action Plan Draft for Public Consultation' (Government of Ireland 2022).