

<b>Institution:</b> University of Huddersfield		
<b>Unit of Assessment:</b> UoA 18 - Law		
<b>Title of case study:</b> Responding to Wildlife Crime: Improving Sentencing and Enforcement Responses		
<b>Period when the underpinning research was undertaken:</b> 2011 - 2017		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Dr Melanie Flynn (Wellsmith)	Senior Lecturer	2007 - present
<b>Period when the claimed impact occurred:</b> 2015-2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<p><b>1. Summary of the impact</b></p> <p>Sentencing for wildlife crime offences around the world is considered too lenient by many researchers and legal professionals. It fails to reflect the seriousness of the crimes being committed and does not serve as a deterrent for those seeking to profit from the illegal wildlife trade.</p> <p>Dr Melanie Flynn's research in the field has resulted in a number of recommendations around how to improve sentencing guidelines in a bid to address these issues. The Worldwide Fund for Nature (WWF) in the UK commissioned her to carry out research on the topic, which has formed the basis of their advocacy work in the area, informing public and political debate. Additionally, the judiciary of Sabah, Malaysia has been led by Flynn's work to develop and implement a set of sentencing guidelines in the region to tackle the considerable wildlife crime that is committed in one of the world's most biodiverse regions.</p>		
<p><b>2. Underpinning research</b></p> <p>Wildlife crime in England and Wales (E&amp;W) includes a broad range of offences covered by numerous statutes, statutory instruments, and regulations. Such offences include badger baiting, bird crime (such as wild egg collecting and raptor persecution), hunting with dogs, disturbance of bat roosts and illegal trade in protected species. All wildlife crime clearly causes harm to those animals subjected to it, but in many cases, it is also accompanied by other offences. There are frequently links to the exploitation of and violence against humans, the commission of other crimes (such as weapons, fraud and vehicle offences). In relation to the illegal wildlife trade, there are frequently connections to serious organised crime and other trafficking offences in the UK and around the world.</p> <p>Flynn's 2011 research (3.1) found that sentencing for animal-related crime is generally considered to be too lenient, lacking in deterrent effect and not commensurate with the extent, range and seriousness of the harms being caused. Comparatively few resources in enforcement agencies and the criminal justice system are allocated to fighting and prosecuting wildlife crime, and the specialist expertise needed to investigate and prosecute the crimes is often missing. This leads to a situation where much wildlife crime goes undetected, and offenders who are apprehended may not face sentences that serve as a deterrent to others involved in similar criminal enterprises.</p> <p>In this context, the WWF commissioned Flynn to carry out research and produce a report that detailed the current state of sentencing for wildlife crime (specifically the Illegal Wildlife Trade (IWT)) in England and Wales (E&amp;W), and make recommendations for how it might be improved in the future (3.2). Through mixed-methods analysis of sentencing data and comparisons between</p>		

cases, an experts' workshop, interviews with Crown Prosecution Service prosecutors, as well as reviews of current guidelines and an exploration of the existing literature, Flynn's work for the WWF revealed that although taken seriously by the individuals tasked with its enforcement, prosecution and sentencing of such offences remains patchy and inconsistent. The research uncovered that in E&W 74% of cases of IWT result in a non-custodial sentence, and 58% include a fine. These fines are low: 88% are below £2,500, and (of cases where information was available) 70% of those were fines that were less than the wildlife product value (3.2).

In response to these problems, the Animal Welfare (Sentencing) Bill 2019-21 is currently being considered by parliament. This seeks to increase the maximum sentence for animal cruelty offences from six months to five years imprisonment. However, even where similar maximum sentences exist for some wildlife offences, the powers are rarely used. Flynn's research explored the enforcement and sentencing problems faced in relation to wildlife crime, in particular for offences of Illegal Wildlife Trade (IWT).

Wildlife offences are not viewed (by many within the Criminal Justice System) as serious compared to more traditional forms of crime (3.1, 3.2, 3.3), and to effectively investigate, prosecute and sentence wildlife offenders requires specialist knowledge and experienced personnel (3.2). Despite this need, enforcement for wildlife crime in E&W, as in most other countries, attracts comparatively limited resources, hindering agencies' abilities to investigate and prosecute offences (3.2). This is further compounded by the large dark-figure of unreported and undetected wildlife crime (3.1), that results from the lack of recognition of offences, and them not being viewed seriously, therefore having few resources allocated to their investigation and prosecution. Additionally, Flynn's 2017 research (3.3) points to the anthropocentric nature of the legal system and the constructions of nonhuman animals as property rather than victims, as a factor in determining the seriousness with which the crimes are viewed. Together, these features reduce the effectiveness of enforcement, and result in only a small number of offenders being prosecuted and convicted. Combined with the lenient and inconsistent sentences described above, there is currently little deterrent capability in the sentencing handed down to offenders (3.1, 3.2, 3.3).

These problems are compounded in the case of IWT (offences are committed under the Control of Trade in Endangered Species Regulations (COTES) and/or the Customs and Excise Management Act (CEMA) 1979). There are no relevant sentencing guidelines in E&W (or many other countries), and as a result there is little precedent from which to garner information about effective sentencing. Additionally, IWT cases are often complex, involving criminal actors from around the world, and activities that cross borders, making them more difficult to detect and prosecute (3.1, 3.2). The lack of expertise in the criminal justice systems in E&W and other countries means that the harm of IWT may not be fully understood, not only in terms of the animal victims themselves but also in the context of the people exploited and harmed by the trade, and the damage to biodiversity in the countries in which the crimes originate (3.2, 3.3).

These problems are compounded for IWT as there are no relevant sentencing guidelines in E&W (or many other countries) despite their clear benefit. The judiciary often has limited experience of such cases (3.2), there being little precedent, and such cases are often complex and fundamentally different to other profit-related offences (3.2). Indeed, Flynn's research (3.2) found that experts believed IWT should be considered commensurate with trafficking Class A drugs, for which sentencing guidelines exist, and for which the maximum sentence is life imprisonment (s3 Misuse of Drugs Act 1971 and s170(2) CEMA 1979).

Globally, the enforcement and sentencing responses to wildlife crime, particularly IWT, are also perceived to be problematic and ineffective, even where custodial sentences are given, because sentencing rarely reflects the extent of the harm that is caused by those offences (3.2). There are also concerns around corruption, international organised crime, and lack of effective governance in regions with high biodiversity and therefore high IWT risk (3.1, 3.2).

Flynn's research makes a number of recommendations (3.2) for improvement to sentencing that would serve to properly hold to account those involved with wildlife crime, and serve as a more

effective deterrent to those currently involved in, or looking to commit these types of crime. Her 2016 research (3.2) recommends introducing sentencing guidelines that may be used by those making judgements on these crimes to support increasing consistency, and making full use of the range of those guidelines to ensure that those who perpetrate wildlife crime can expect to face appropriately severe punishment if they are apprehended. These recommendations include advice on what such guidelines should look like (in the E&W context) and suggest relevant aggravating and mitigating factors that could be taken into account.

### 3. References to the research

The underpinning research cited is published in peer reviewed academic journals judged to be of 2\* quality or above. One is a report on research commissioned by an international Non-Governmental Organisation (NGO).

3.1 Wellsmith, M. (2011). Wildlife crime: the problems of enforcement. *European Journal on Criminal Policy and Research*, 17(2), pp.125-148. DOI: [10.1007/s10610-011-9140-4](https://doi.org/10.1007/s10610-011-9140-4)

3.2 Flynn, M. (2016). *Sentencing Wildlife Trade Offences in England and Wales: Consistency, Appropriateness and the Role of Sentencing Guidelines*. WWF. Available at: <http://www.wwf.org.uk/sites/default/files/2017-01/WWF-UK%20Report%20-Sentencing%20wildlife%20trade%20offences%20in%20England%20and%20Wales.pdf>

3.3 Flynn, M. and Hall, M. (2017). The case for a victimology of nonhuman animal harms. *Contemporary justice review*, 20(3), pp.299-318. DOI: [10.1080/10282580.2017.1348898](https://doi.org/10.1080/10282580.2017.1348898)

### 4. Details of the impact

Flynn's research is responding to the need for improvements in sentencing guidelines for wildlife crime offences. In England and Wales (E&W), and around the world, sentencing for wildlife crime is considered to be inadequate for reflecting the severity of these crimes and serving as a deterrent. It rarely accounts for the harms caused to animals themselves, the human actors who may be harmed or exploited through the offences, or the harm to the biodiversity of the areas in which the crimes are committed. In this context, Flynn's research has served as a starting point and call to action for changes to advocacy and sentencing for wildlife crimes both domestically and internationally.

#### Supporting calls for policy change

Flynn's report for WWF-UK (3.2) has received a substantial amount of public attention. An article for The Conversation (5.1) was read 13,641 times, and was shared 562 times on Facebook. The article was also republished by The Independent Online and The Metro Online, available to their wide combined readership. Analysis of sentencing patterns contained within the WWF report has been widely cited by NGOs, charities and campaigners, and has also appeared in Chris Packham's 'People's Manifesto for Wildlife' (5.2), informing its position on sentencing for crimes against wildlife. These impacts raise public awareness of the issues surrounding the lenient sentencing of wildlife crime, shining a light on a topic which may only rarely be considered by many. WWF-UK made the report the basis for legal advocacy work attempting to influence sentencing policy in E&W.

The research has also informed WWF-UK's approach to sentencing policy, and formed the basis of their advocacy with the Sentencing Council for England and Wales, pushing for changes to sentencing practice through the introduction of sentencing guidelines for wildlife crime offences. WWF-UK's Director of Policy and Advocacy said "the report played its part in the mosaic of political briefings submitted to government to influence their support for greater action on this issue", and that "the report also enabled WWF to discuss the important issue of traffic in wildlife trade with the UK government" (5.3). This advocacy work is ongoing, and the Animal Welfare (Sentencing Bill (2019-21) represents a major step forward in the fight to introduce more robust sentencing in England and Wales. Flynn's research also led to "further involvement between WWF and the

Metropolitan Police and the CPS on how to raise greater awareness of the links between the traffic of wildlife crime and organised crime” (5.3). For now, while the Sentencing Council continues to prioritise other types of offence, they have introduced General Guidelines to be applied in cases where there are not specific alternatives and cited calls for the introduction of guidelines for wildlife crime as one of the reasons these General Guidelines were needed.

### **Informing sentencing policy around the world**

Flynn’s research is having a considerable impact outside of the UK. The judiciary of Sabah and Sarawak in Malaysian Borneo became aware of Flynn’s work through WWF Malaysia, who invited her to visit to present her research and “share her knowledge on similar guidelines” (5.4). The region represents one of the most biodiverse areas on the planet, and the potential for wildlife crime is enormous, especially in terms of the trade of rare and endangered animals such as pangolins, which are one of the world’s most trafficked animals. In her presentation, she “outlined what sentencing guidelines might look like and how these could be used” (5.5). Flynn went on to facilitate a workshop with attendees, providing space for discussion on the potential format and application of such guidelines, as well as providing guidance and advice about the best way to proceed. The Chief Judge announced at the event that he “agreed guidelines should be introduced, and that a taskforce would be set up to work on this” (5.5). Flynn “provided feedback and highlighted key strengths/ideas to carry forward”. As a result of the event Flynn attended, the Chief Judge undertook to introduce sentencing guidelines for wildlife crimes across Sabah and Sarawak, which would be the first of their kind in the region (5.4).

The WWF Malaysia Policy Analyst who led this project said after the presentation and workshop session, “as a result of this session, and subsequent work by attendees, sentencing guidelines were drafted and formally adopted in June 2019. These are the first sentencing guidelines ever to be used in Malaysia and they have received many positive responses from the environmental court judges and prosecutors” (5.5). The guidelines will apply to all cases of wildlife crime heard in the Sabah environmental (criminal) court, and will enable judges to hand down sentences for these types of crime which better reflect their seriousness, and will help to act as a deterrent to those involved in committing wildlife crimes. The foreword of the guidelines document cites their significance for the country: “The Wildlife Conservation Enactment 1997 is the only legislation which deals with the management of wildlife in Sabah.” (5.4). The guidelines are therefore an enormously important step in increasing wildlife protection in the region.

The WWF Malaysia Policy Analyst remarked, “I have no doubt that Melanie’s research and input encouraged the adoption of sentencing guidelines by the Sabah environmental courts, and that the content of those guidelines was strongly influenced by the recommendations resulting from her research on sentencing practice in England & Wales” (5.5). Wording from her 2016 publication (3.2) has been used as part of the introduction to the guidelines and she is explicitly named in the foreword in terms of her contribution to both the meetings for devising the guidelines and for providing the evidence base on which much of the eventual guidelines were based (5.4). Additionally, her work is being used as the basis of continuing work, “Since the development of the sentencing guideline for wildlife crime in Sabah, our team was able to develop our own methodology and formula and then replicating the same formula in developing Sentencing guideline [for] other environmental issues such as Forest Crime. We look forward for the progress of Melanie’s post research and share the use of our own sentencing guideline for knowledge sharing” (5.5). This means that the reach of the impact from Flynn’s research will ultimately go beyond her initial contribution, and serve to underpin developments to further safeguard the natural world in one of the planet’s most biodiverse regions.

## **5. Sources to corroborate the impact**

5.1 Article for The Conversation: Illegal Wildlife Trade is one of the biggest threats to endangered species – and the UK is a key player. Available at: <https://theconversation.com/illegal-wildlife-trade-is-one-of-the-biggest-threats-to-endangered-species-and-the-uk-is-a-key-player-85477>

**Impact case study (REF3)**

5.2 Chris Packham et al. A People's Manifesto for Wildlife.

This document references Flynn's 2016 research for WWF-UK.

5.3 Testimonial from Deborah Tripley, Director of Policy & Advocacy, WWF UK.

Details on Flynn's contribution to WWF-UK's advocacy work around illegal wildlife trade in England and Wales.

5.4 Sabah Courts Sentencing Guideline for Wildlife Crime.

Findings of Flynn's research, as well as her attendance, presentation and workshop lead for the judiciary in Sabah, Malaysian Borneo. Flynn's involvement directly influenced the development of the guidelines, and she is explicitly mentioned therein.

5.5 Testimonial from Sheelasheena Damian, Policy Analyst at WWF Malaysia

Details of Flynn's contribution to and influence on the development of sentencing guidelines for wildlife crime in Sabah, Malaysia.