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Defra
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5 April 2005

Dear Jane

**The Control of Trade in Endangered Species (Enforcement) Regulations 2005:
Response to the Defra Consultation Paper from Wildlife and Countryside Link**

Wildlife and Countryside Link (Link) brings together voluntary organisations concerned with the conservation and protection of wildlife, the countryside and the marine environment. Taken together, our members have the support of over 7 million people in the UK.

In April 2003 Link responded to the consultation on the Review of Statutory Instrument 1997 No. 1372 The Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES). Link members also responded to proposed changes to Regulation 1808/2001, and lobbied for the amendment of the Criminal Justice Bill in 2003 in order to allow tougher penalties for wildlife offences to be introduced. We look forward to the swift implementation of the revised Statutory Instrument, providing improved police powers to tackle wildlife crime, more arrestable offences under COTES and tougher penalties to send a strong message to those engaged or considering engaging in criminal activity related to wildlife. We have some specific comments on the draft Statutory Instrument and Defra's consultation paper, supplied below.

Comments on the consultation paper

Para 15

Link supports the proposal to clarify the powers of Wildlife Inspectors. We further believe that **the offence of impersonating a Wildlife Inspector should become arrestable**. This is a fraudulent act that is pre-meditated and is carried out for the purpose of committing further offences. The **maximum penalty should be increased to five years**.





Link supports the proposal to retain the concept of Authorised Persons and we think that the term should be included **in Section 2 of the Regulations**.

We believe that authorised persons should be authorised by the Wildlife Inspector rather than the Secretary of State. This would be a simpler procedure, similar to that used by Defra Wildlife Management Advisors, and would mean that an expert needed by the Wildlife Advisor could be authorised quickly when required.

Para 22

Link **strongly supports** the increased penalties on indictment for offence against **Regulation 8(1) and 8(2)**. We believe offences against **Regulations 3(2)(b), 4(1)(b) and 4(2)(b)** are equally serious and that these offences should also become arrestable, and the maximum penalties for these offences increased to 5 years.

Para 23

Link fully supports the removal of the existing conditions precedent relating to applications for search warrants under the COTES 1997 Regulations.

We support the new proposals detailed in paragraphs 25-29.

Para 30

Link is disappointed that the original proposal for police officers to have access to premises, without warrant, to check compliance with the Regulations, has not been pursued. A specific power for a police officer to enter premises, without a warrant, would allow police to exercise discretion in dealing with this. This power is vital to investigate potential offences and will aid police officers, who without it could be asked to leave the premises by the owner. Link strongly recommends that these new powers for police officers be added to the regulations.

Para 34

Link believes that a convicted person should be banned from trading in Annex A specimens and an amendment should be made to include this in the new regulations. Provision to ban is acceptable in driving offences and should be applied to offences involving the world's most endangered animals. The consultation paper states that there are practical enforcement issues and human rights considerations which prevent this. This seems very odd when the same human rights do not apply to driving cars.

Comments on the draft Statutory Instrument

Regulation 7 Movement of live specimens

The draft Regulation 7(2)(b) provides for a maximum prison sentence of two years where a person is convicted on indictment of an offence under 7(1). We think that these offences are very serious and amount to attempts to pervert the course of



justice. **Link strongly suggests that offences under 7(1) should attract a maximum sentence of five years imprisonment.**

Regulation 8 Purchase and sale etc.

Section 8(5)(a) of the draft Statutory Instrument provides a defence if a person proves “that at the time when the specimen came into his/her possession they made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported or acquired unlawfully.”

Link believes that the inclusion of the words “**if any**” in this context effectively negate the need for any enquiries to be made at all - we strongly suggest that these words be removed.

Regulation 9

The draft regulation 9(1)(b) states that a person found guilty on indictment of tampering with, or removing a marker attached to a specimen for the purpose of preserving evidence, should attract a maximum prison sentence of two years. In our view this is a serious offence which amounts to attempting to pervert the course of justice. It would also represent an attempt to commit an offence that attracts a maximum sentence of five years. **Link strongly believes that the maximum sentence of 5 years should be applied to Regulation 9.**

Please do not hesitate to contact Link should you require any further information.

Yours sincerely,



Jenny Hawley
Chair, Wildlife and Trade Working Group

On behalf of the following organisations

Environmental Investigation Agency
IFAW – International Fund for Animal Welfare
The Herpetological Conservation Trust
Royal Society for the Prevention of Cruelty to Animals
Royal Society for the Protection of Birds
Whale and Dolphin Conservation Society
Wildfowl and Wetlands Trust
The Wildlife Trusts
World Society for the Protection of Animals
WWF



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"Bringing voluntary organisations in the UK together to protect and enhance wildlife and landscape, and to further the quiet enjoyment and appreciation of the countryside"

Chair: Hilary Allison, Director: Alexia Wellbelove

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