

Managing Compliance with the Wildlife Trade Provisions of the *Environment Protection and Biodiversity Conservation Act 1999*

Department of the Environment

Department of Immigration and Border Protection

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Canberra ACT
10 November 2015

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Department of the Environment and the Department of Immigration and Border Protection titled *Managing Compliance with the Wildlife Trade Provisions of the Environment Protection and Biodiversity Conservation Act 1999*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Summary and recommendations

1. The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which is administered by the Department of the Environment (Environment), is the Australian Government's primary legislation to protect Australia's biodiversity and environment. Part 13A of the EPBC Act regulates the international movement of wildlife and wildlife specimens¹, and encompasses Australia's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Part 13A came into effect in January 2002, and was intended to support sustainable wildlife trade activities, promote conservation and address illegal wildlife smuggling.²
2. In Australia and internationally, wildlife is both legally and illegally traded:
 - legal trade encompasses individuals and companies using wildlife for purposes including commerce, education, research, breeding, exhibition, and as household pets or personal items; and
 - illegal trade ranges from single-item local bartering to commercial sized shipments and can include live pets, hunting trophies, fashion accessories, cultural artefacts, ingredients for traditional medicines, and meat for human consumption.
3. The legal trade in wildlife is regulated through a permit system with Environment responsible for assessing applications, and issuing or revoking permits. Environment relies on co-regulator entities, primarily the former Australian Customs and Border Protection Service (ACBPS)³, to enforce wildlife trade arrangements on its behalf at the border. Enforcement responsibilities for both Environment and the ACBPS include inspecting goods, verifying permits, issuing caution notices, seizing suspected illegally traded items, and investigating and prosecuting serious non-compliance.
4. In 2013–14, Environment reported that 1983 permits were approved, and a combined total of 1640 caution notices and seizure notices were issued. Over this period, Environment finalised three investigations, two of which resulted in successful prosecutions, with the ACBPS completing 11 investigations, three of which resulted in successful prosecutions.
5. The audit objective was to assess the effectiveness of the Department of the Environment's and the Australian Customs and Border Protection Service's management of compliance with the wildlife trade regulations under Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999*.

-
- 1 The term 'wildlife' is commonly used to describe non-domesticated animals, plants, or other organisms that grow or live wild in an area without having being introduced by humans. A 'wildlife specimen' can be a whole and living animal or plant, as well as any non-living part or derivation of the whole.
 - 2 Senator A Vanstone, Acting Minister for Environment and Heritage, Media Release K002: *New Measures to Streamline Wildlife Trade Laws*, 11 January 2002.
 - 3 On 1 July 2015, the functions of the former ACBPS and the Department of Immigration and Border Protection (DIBP) were integrated. At this time, the Australian Border Force was established within the DIBP, combining the operational border, investigations, compliance, detention and enforcement functions of the two entities. This audit was largely conducted during 2014–15, and for this reason, the audit refers to the ACBPS, where practical, and reflects the organisational arrangements as at March 2015.

6. To form a conclusion against this audit objective, the ANAO adopted the following high-level audit criteria:

- administrative arrangements for managing compliance are appropriate;
- processes for gathering intelligence and assessing and managing compliance risks have been implemented;
- a risk-based compliance program to communicate regulatory requirements, and monitor compliance has been implemented; and
- there are effective arrangements in place to address non-compliance.

7. During 2014–15, the ACBPS was undergoing significant change in preparation for its integration with the Department of Immigration and Border Protection (DIBP) on 1 July 2015. This audit examined processes in place during 2014–15, and reflects the ACBPS organisational arrangements as at March 2015.

Overall conclusion

8. The effectiveness of the Department of the Environment’s regulation of wildlife trade under Part 13A of the EPBC Act has been undermined by the absence of appropriate and tailored policy and procedural guidance, functional IT support systems and a risk-based approach to monitoring compliance. While the department considers the risks arising from this area of regulatory activity to be low compared to its other regulatory responsibilities, with settings and resources allocated accordingly, this position has not been informed by structured departmental-wide risk assessment focusing on its regulatory activities. As such, the department has limited assurance as to the adequacy of current settings. Further, the absence of an appropriate set of performance measures and reporting arrangements means that the department is not well positioned to report both internally and externally on the extent to which it is achieving its regulatory objectives.

9. The effective delivery of regulatory activities is also reliant on the former ACBPS (now DIBP) given its role as a co-regulator of the trade in wildlife. While, overall, the ACBPS had in place appropriate arrangements to undertake its responsibilities under the co-regulatory model, there is scope for improvements in the quality of regulatory data, the sharing of information and intelligence with Environment, and the greater coordination of compliance and investigation activities.

10. Environment has recognised the need to address shortcomings in its regulatory activities and is establishing a comprehensive regulatory compliance framework through a five year Regulatory Capability Development Program. This is an encouraging development and will assist the department to better understand the risks arising from its regulatory activities and tailor settings and target resources accordingly. Nonetheless, implementation of the program has been slower than expected.

11. The ANAO has made four recommendations designed to assist Environment and DIBP to:

- better assess and manage the risks to compliance with wildlife trade regulations;
- improve voluntary compliance through education and awareness activities;

- improve the data integrity of records; and
- strengthen performance monitoring and reporting.

Supporting findings

Compliance Intelligence and Risk Assessment (Chapter 2)

12. Environment is yet to establish an effective compliance intelligence capability for wildlife trade regulation, 13 years after Part 13A of the EPBC Act came into effect. Prior to March 2015, Environment had not extracted or analysed its wildlife trade information holdings, had not used intelligence analysis to inform its risk assessment of wildlife trade compliance, and was also yet to develop a risk-based strategy to monitor compliance with wildlife trade regulations. The department has commenced work to address these deficiencies, with projects underway to extract data for intelligence analysis and improve compliance information gathering and IT systems support.

13. While both Environment and the ACBPS have shared information relating to specific matters, data collected by both entities on the trade in wildlife has not been combined to deliver a holistic view of the risks posed to the legal trade in wildlife.

Monitoring Compliance (Chapter 3)

14. Environment has not developed a risk-based, compliance monitoring strategy to guide the delivery of compliance monitoring activities.

15. Environment's IT systems, which support permit approval and acquittal, rely on manual data entry (with historic delays in the entry of acquittal data) increasing the risk to data integrity. The systems also provide limited reporting functionality, which has hampered the department's ability to use collected data to inform the establishment of an effective risk-based monitoring process.

16. Environment has acknowledged these functionality and data integrity issues and the need to improve its business support systems for wildlife trade. The department is currently undertaking a project to define wildlife trade business systems requirements to deliver greater functionality. There is also scope for Environment to make greater use of alternative information sources, such as DIBP permit compliance data, to provide a more comprehensive perspective of compliance with wildlife trade regulation.

Responding to Non-compliance (Chapter 4)

17. Environment and the ACBPS have used education and awareness activities to encourage voluntary compliance. There is scope to better coordinate these activities.

18. There would also be benefit in DIBP updating its guidance to Australian Border Force staff to help to ensure that they are aware of their obligations. The ANAO identified inconsistent operational practices that created reputation risks through the incorrect release of wildlife specimens.

19. The quality of wildlife seizure data in Environment's and the ACBPS's IT systems is generally poor, with no automated exchange of data between the two entities or reconciliation

of seizure records. The poor quality of seizure data limits its use for intelligence analysis and risk assessment.

Responding to Non-compliance (Chapter 5)

20. Environment's and the ACBPS's investigations frameworks largely aligned with established requirements although there is scope for Environment to improve policy and procedural documentation at the departmental level. Decision-making and documentation relating to the investigations cases of both entities was generally sound.

21. There were, however, deficiencies in Environment's case selection process, with different case selection models used across areas of the department responsible for conducting investigations. Further, the department has not established a central repository to record allegations, referrals and investigations.

22. There would be merit in clarifying the process of referral between entities of allegations assessed as meeting investigation thresholds, but not able to be undertaken by an entity due to resource constraints. This would also lead to improved intelligence sharing.

Reporting of Wildlife Trade Regulation (Chapter 6)

23. Environment does not have comprehensive key performance indicators against which it can illustrate trends over time and outline the extent to which Australia is meeting its international objectives. Developing more comprehensive key performance indicators would better position Environment and other stakeholders to assess the effectiveness of wildlife trade regulation.

24. The last publicly available data on Australian wildlife seizures was published in 2008. Environment currently provides only limited external reporting on the extent of illegal wildlife trade to and from Australia. As the lead regulator, and the only Commonwealth entity with access to both wildlife trade permit and seizure data, the department is well positioned to make such reporting available to the public.

Recommendations

Recommendation No.1

Para 2.31

To better assess and manage risks to compliance with wildlife trade regulations, the ANAO recommends that the Department of the Environment:

- (a) collect, retain and regularly analyse compliance information from its own and the Department of Immigration and Border Protection's holdings;
- (b) identify and regularly review relevant risk factors for wildlife trade regulation; and
- (c) develop and implement, as part of its compliance strategy, an annual risk-based program of compliance activities.

Environment's response: *Agreed.*

**Recommendation
No.2**

Para 4.7

To improve voluntary compliance with wildlife trade regulation, the ANAO recommends that the Department of the Environment:

- (a) update its website information for travellers and traders;
- (b) develop a communications plan, taking into account the results of intelligence analysis and risk identification; and
- (c) evaluate, in collaboration with the Department of Immigration and Border Protection, publicly available information with a view to maximising its effect on traveller and trader behaviour.

Environment's response: *Agreed.*

**Recommendation
No.3**

Para 4.28

To improve the integrity of wildlife trade data for compliance and regulatory purposes, the ANAO recommends that the Department of the Environment and the Department of Immigration and Border Protection:

- (a) agree on minimum data standards for seizures that incorporate standardised quantity recording and develop strategies for enforcing those data standards; and
- (b) develop strategies for improved data exchange between the two entities, including options for electronic transfer and real-time access.

Environment's response: *Agreed.*

DIBP's response: *Agreed.*

**Recommendation
No.4**

Para 6.8

To improve the monitoring and reporting of wildlife trade regulation, the ANAO recommends that the Department of the Environment develop appropriate key performance indicators and targets, and publicly report the extent to which the objectives for wildlife trade regulation are being achieved.

Environment's response: *Agreed.*

Summary of entities responses

Environment's and DIBP's summary responses to the proposed report are provided below, with the full responses provided at Appendix 1.

Department of the Environment

The Department of the Environment has considered the report and findings of the ANAO's audit on *Managing Compliance with the Wildlife Trade Provisions of the Environment Protection and Biodiversity Conservation Act 1999*.

Environment agrees with the four recommendations contained in the report, as detailed in the responses to the recommendations.

Environment is committed to improving wildlife trade regulation and compliance under the EPBC Act. The report provides a sound foundation for improving the effectiveness of the department's compliance approach to the wildlife trade provisions under Part 13A of the EPBC Act. Environment has commenced actions to increase the regulatory capacity for wildlife trade and is moving to a more risk-based, data driven and intelligence-focussed wildlife trade compliance programme.

Environment's regulatory maturity is improving and the audit reflects the enhanced systems that are now in place for investigations and enforcement functions. The recommendations for wildlife trade outlined by this audit will assist the department to continue to improve its regulatory capacity. Environment is working closely with the Department of Immigration and Border Protection to implement our responses to the recommendations in areas of joint responsibility. Improved data exchange between departments will better inform Environment's risk analyses on wildlife trade compliance and help reduce the threat of illegal wildlife trade to Australia.

Department of Immigration and Border Protection

The Department of Immigration and Border Protection (the Department) supports the Department of the Environment (Environment) to administer the wildlife trade provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Environment is responsible for policy and administration of the EPBC Act, while the Department enforces specific provisions of the EPBC Act on Environment's behalf at the border.

The Department acknowledges that there is scope for improvements in the quality and provision of regulatory data with respect to wildlife trade. The Department supports the ANAO's recommendation to strengthen the integrity of wildlife trade data for compliance and regulatory purposes, and will work collaboratively with Environment to adopt agreed data standards and develop improved information sharing arrangements.

The Department will also cooperate with Environment to support the implementation of other relevant recommendations of mutual interest relating to the collection of compliance data and the evaluation of publically available information to educate traders and travellers.

Audit Findings

1. Background

Introduction

1.1 Australia is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international agreement between 181 countries aimed at ensuring that the international trade in wildlife species does not threaten the species' survival.⁴ The convention provides a framework for enforcement through domestic legislation. Australia's wildlife trade legislation is encompassed in Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Part 13A came into effect in January 2002, and was intended to support sustainable wildlife trade activities, promote conservation and reduce illegal wildlife smuggling.

Legal and illegal trade in wildlife

1.2 In Australia and internationally, wildlife is both legally and illegally traded. The legal trade encompasses individuals and companies using wildlife for various purposes, including for commerce, education, research, breeding, exhibition, and as household pets or personal items. Australian examples include commercial kangaroo meat exporters, and zoos importing live endangered animals for captive breeding programs. Globally, the CITES Secretariat estimates the value of the legal trade in the billions of dollars.

1.3 The illegal trade in wildlife ranges from single-item local bartering to commercial sized shipments, and can include live pets, hunting trophies, fashion accessories, cultural artefacts, ingredients for traditional medicines, and meat for human consumption. Internationally, the illegal trade in wildlife has been estimated by different sources to be worth between US\$7–US\$23 billion annually.⁵ The trade in illegal wildlife products can be lucrative, for example, in January 2015 rhinoceros horn was worth more than the equivalent weight of gold.

1.4 The illegal trade in wildlife is widely acknowledged to: threaten the survival of particular species; involve animal cruelty; endanger the lives of the rangers who protect wildlife; pose a biosecurity risk by potentially introducing pests and diseases into agriculture and aquaculture industries and the environment; and the smuggled species can themselves become introduced environmental pests. Internationally it is now also widely recognised that illegal wildlife trade attracts organised criminal networks, and as such can have national security implications.⁶ Figure 1.1 provides some examples of Australian and non-Australian wildlife specimens seized on import to Australia or prior to export.

4 The secretariat for CITES is hosted by the United Nations Environment Programme.

5 C Nelleman, R Henriksen, P Raxter, N Ash, E Mrema (Eds), *The Environmental Crime Crisis—Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources*, A United Nations Environmental Programme Rapid Response Assessment, GRID-Arendal, Norway, 2014, p. 7.

6 Statements to this effect have been made by Interpol, available from <www.interpol.int/Crime-areas/Environmental-crime/Environmental-crime> [accessed 19 January 2015], the World Customs Organisation (*Illicit Trade Report 2013*, June 2014, p. 41) and the United Nations General Assembly resolution on *Tackling illicit trafficking in wildlife*, adopted on 30 July 2015.

Figure 1.1: Examples of wildlife specimens seized in Australia



Note (a): Waste paper basket made from a rhinoceros foot (Environment).

Note (b): Australian reptiles illegally collected and seized before export (DIBP).

Note (c): Shipment of ivory seized in Perth, while being transhipped to Malaysia (DIBP).

1.5 Australia is not only an end point for international wildlife smuggling, with its biological uniqueness and diversity attracting illegal traders in Australian animals (primarily reptiles, birds, insects and spiders).⁷ The trade in live Australian animals is also among the most lucrative.⁸

Regulation of wildlife trade

International regulation

1.6 CITES, which entered into force on 1 July 1975, subjects the international trade in specimens of selected species to certain controls, including through a licensing system. The species covered by CITES are listed in three Appendices, according to the degree of protection they are determined to require, and approximately 5 600 species of animals and 30 000 species of plants are listed. The purpose of each of these appendices is summarised in Table 1.1.

⁷ E Alacs, A Georges, 'Wildlife across our borders: a review of the illegal trade in Australia', *Australian Journal of Forensic Sciences*, Vol. 40, No. 2, December 2008, p. 147.

⁸ In 2011, species of Australian black cockatoos were worth up to \$30 000, and shingleback lizards up to \$10 000. C Barry, 'Rogue traders', *Australian Geographic*, Issue 102, April–June 2011, p. 124.

Table 1.1: Purpose of CITES Appendices

CITES Appendix	Purpose of Appendix
I	Species threatened with extinction which are or may be threatened by trade. Trade in specimens of these species is permitted only in exceptional circumstances.
II	Species not necessarily threatened with extinction, but which may become threatened unless trade in them is strictly regulated.
III	Species that are protected in at least one country, which has asked other CITES parties for assistance in controlling the trade.

Source: ANAO summary of information in the text of CITES, Article II, 22 June 1979, p. 2.

1.7 Appendix I for example contains (but is not limited to) generally well known endangered species such as the great apes (chimpanzees, gorillas and orangutans), the giant panda, many whales, tigers, and most populations of elephants and rhinoceroses. This appendix also contains species such as: all sea turtles; many birds of prey, cranes, and parrots; and some crocodiles, lizards, frogs, butterflies, mussels, orchids, and cacti.

Australian regulation of wildlife trade

1.8 CITES provides a framework for enforcement of wildlife controls through domestic legislation within those signatory countries. In Australia, Part 13A of the EPBC Act regulates the international movement of a broader range of species and circumstances than those specified under CITES, including the:

- export of Australian native species (unless identified as exempt⁹);
- import of all live plants and animals that could adversely affect native species or their habitats; and
- trade in elephant, cetacean (whales, dolphins and porpoises), rhinoceros and lion specimens is regulated more strictly in Australia than CITES requires as a minimum.¹⁰

1.9 There are a number of objectives of Part 13A, such as ensuring that Australia complies with its obligations under CITES and the Convention on Biological Diversity¹¹, protecting wildlife that may be adversely affected by trade, and ensuring that the precautionary principle¹² is taken into account in making decisions relating to the utilisation of wildlife.

9 The EPBC Act allows for the publication of a list of exempt specimens, that is, specimens of non-CITES listed Australian native species that can be exported.

10 Signatories to CITES are able to decide 'stricter domestic measures' for listed species. All elephants, cetaceans, rhinoceros and lions are treated as if they were on Appendix I of CITES, even though some of them are listed in Appendix II.

11 Australia is one of 150 signatories to the Convention on Biological Diversity. Ratified in 1993, and resulting from a United Nations Environment Programme working group, the Convention on Biological Diversity aims to promote sustainable development.

12 The EPBC Act's precautionary principle requires that the lack of scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Administrative arrangements

1.10 The Department of the Environment (Environment) is responsible for administering the EPBC Act and represents Australia in CITES decision-making forums.¹³ Environment, while the lead regulator, is a co-regulator with the former Australian Customs and Border Protection Service (ACBPS) for wildlife trade matters, with enforcement responsibilities delegated to specified Environment staff and to officers of the ACBPS (now officers of the Australian Border Force).¹⁴

1.11 The legal trade in wildlife is regulated by a permit system that is administered by Environment. ACBPS officers undertook border clearance functions for mail, passengers and cargo, as well as intelligence collection and investigations. The import and export of wildlife specimens may also be regulated by other Australian legislation, depending on the species and the circumstances.¹⁵

1.12 The co-regulation of the wildlife trade by Environment and the ACBPS is governed by a Memorandum of Understanding (MoU). The MoU, which was endorsed by the then Department of Environment and Heritage and the Australian Customs Service in 2002, sets out the administrative arrangements for the handling, storage and disposal of seized specimens, and how the entities will share information. It does not contain any provisions for regular reporting, or key performance indicators to measure the effectiveness of the arrangements. Environment approached the ACBPS in early 2014 to negotiate a new MoU, but negotiations were suspended in late 2014 given likely legislative and procedural changes arising from the integration of the ACBPS into DIBP. The entities agreed that existing arrangements would continue to operate, with negotiations likely to recommence in late 2015 or early 2016.

Stakeholders

1.13 Individual Australian states and territories also have environmental legislation that regulates the collection, trade and keeping of certain specimens, such as live native animals as pets. These regulators, and the Australian Government (through Environment), are represented on the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT). AELERT provides a forum for Australian and New Zealand governments at local, state and national levels to: promote inter-agency cooperation; facilitate the sharing of expertise; and raise professional standards in the administration of environmental law.

1.14 There are also a number of international non-government organisations with Australian branches that have an interest in decreasing the illegal wildlife trade, with the most prominent

13 Of the three departmental sections with responsibilities for wildlife regulation examined by the ANAO, there were 24 full time equivalent staff and a combined budget of around \$3 million in 2014–15. A fourth section, the Investigations Section of the Compliance and Enforcement Branch, becomes involved in investigations, and received a budget for 12 full time equivalent staff and \$1.3 million in 2014–15.

14 As at March 2015, responsibility for wildlife trade regulation within the ACBPS was distributed across policy, border clearance, investigations and intelligence functions in four separate divisions. There was no dedicated budget or staff specifically allocated to wildlife trade regulation in the ACBPS, as this work was one of many responsibilities performed at the border.

15 The *Quarantine Act 1908*, administered by the Department of Agriculture and Water Resources, regulates the movement of animals, plants and their products, including genetic material, people and cargo. Separate permits and conditions may be required for trade, particularly in the case of live animals and plants.

being the: World Wide Fund for Nature; International Fund for Animal Welfare; Humane Society International, and TRAFFIC (a wildlife trade monitoring network).

1.15 The reported increase in the illegal trade in wildlife has also prompted a number of recent international forums, including the International Union for the Conservation of Nature—World Parks Congress held in Sydney in November 2014¹⁶; and the Kasane Conference on Illegal Wildlife Trade held in Botswana in March 2015. This conference built on a declaration made at the February 2014 London Conference on the Illegal Wildlife Trade, by providing an opportunity for countries, including Australia, to report on progress against eradicating markets for illegal wildlife products, and strengthen law enforcement and partnerships.

Previous reviews and audit coverage

1.16 Over recent years, there have been a number of reviews and audits of aspects of the operation of the EPBC Act by independent reviewers, Environment's internal auditors and the ANAO.

Review of the EPBC Act

1.17 In October 2009, the *Report of the Independent Review of the EPBC Act* (the Hawke Review) examined, among other things, the extent to which the objects of the EPBC Act had been achieved and the operation of the EPBC Act generally. The report identified the strong compliance and enforcement focus as a positive feature, but considered there was scope to improve arrangements for performance auditing and compliance. The review also noted broad concerns from stakeholders about the capacity of Environment to deliver the activities necessary to ensure the efficient and effective operation of the EPBC Act. One recommendation was specific to Part 13A, and was designed to:

- remove duplication;
- shift focus from the individual permitting system to assessment and accreditation of management arrangements for whole sectors; and
- streamline the different categories of approved sources for trading wildlife and wildlife products.¹⁷

1.18 The Australian Government agreed to implement this recommendation.¹⁸ However, legislative changes to the EPBC Act to implement this recommendation have yet to be presented to the Parliament.

16 One of Australia's commitments was '...support for the international effort to fight wildlife crime'. G Hunt (Minister for the Environment), *Australia's commitment to the world with the Promise of Sydney*, media release, Parliament House, Canberra, 19 November 2014.

17 Recommendation 42, *Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009, p. 227.

18 *Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, pp. 76–77.

Departmental internal audit coverage

1.19 In September 2013, Environment's internal auditors finalised a review of Compliance and Enforcement Program Management in four divisions of the department. The audit found that each division was using inconsistent approaches for regulatory compliance and that these approaches were generally implemented reactively as a result of conflicting priorities and staff shortages.

1.20 In March 2014, Environment's internal auditors finalised a review of the Wildlife Permits Program within the Wildlife Trade and Biosecurity Branch. The audit found that the framework for managing wildlife permits was adequate, but there were no monitoring processes to identify and manage non-compliance with permit conditions. The audit made five recommendations, including the: development of risk-based permit review criteria; and introduction of a risk-based compliance regime and conduct of regular spot checks of compliance with permit conditions.

ANAO performance audit coverage

1.21 The ANAO's audit of *Managing Compliance with EPBC Act Conditions of Approval* (ANAO Audit Report No.43 2013–14) identified significant issues with Environment's management of proponents' compliance with environmental approvals. The ANAO made five recommendations directed towards: developing a compliance intelligence capability; undertaking periodic risk assessments; implementing risk-based compliance monitoring programs; improving the documentation to support enforcement responses; and performance reporting of the compliance monitoring function.¹⁹ Subsequently, in March 2015, the Joint Committee of Public Accounts and Audit's inquiry into the ANAO's report resulted in an additional two recommendations designed to improve Environment's management of compliance.²⁰

Audit objective, criteria, scope and methodology

1.22 The audit objective was to assess the effectiveness of the Department of the Environment's and the Australian Customs and Border Protection Service's management of compliance with the wildlife trade regulations under Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999*.

1.23 To form a conclusion against this audit objective, the ANAO adopted the following high-level audit criteria:

- administrative arrangements for managing compliance are appropriate;
- processes for gathering intelligence and assessing and managing compliance risks have been implemented;
- a risk-based compliance program to communicate regulatory requirements, and monitor compliance has been implemented; and
- there are effective arrangements in place to address non-compliance.

19 ANAO Audit Report No.43 2013–14, *Managing Compliance with EPBC Act Conditions of Approval*, also gives the details of two preceding ANAO audits of relevance, in 2002–03 and 2006–07.

20 Joint Committee of Public Accounts and Audit, Parliament of the Commonwealth of Australia, *Report 447: EPBC Act, Cyber Security, Mail Screening, ABR and Helicopter Program*, March 2015, Canberra.

Audit methodology

1.24 The audit involved the examination of documentation held by Environment and the ACBPS and data held in entity systems used to support the management of wildlife trade compliance. Interviews were also held with entity staff and a broad range of stakeholders with an interest in wildlife regulation.

1.25 This audit was conducted in accordance with the ANAO Auditing Standards at a cost to the ANAO of \$616 000.

2. Compliance intelligence and risk assessment

Background

Compliance intelligence and robust risk assessment processes underpin an effective regulatory regime. Compliance information received and intelligence analysis conducted on a timely basis can inform the periodic assessment of the risks posed by regulated activities. These risk assessments can then be used to develop compliance strategies that target the greatest compliance risks to wildlife trade.

Conclusion

The maturity of intelligence and risk assessment arrangements varied across Environment and ACBPS, with Environment yet to establish an effective compliance intelligence capability and risk-based compliance program for wildlife trade. The effectiveness of Environment's management of intelligence and assessment of risks was significantly hampered by poor IT systems and fragmented risk assessment processes. There was also an absence of appropriate information and intelligence sharing between the two entities.

Findings

Environment is yet to establish an effective compliance intelligence capability for wildlife trade regulation, 13 years after Part 13A of the EPBC Act came into effect. Prior to March 2015, Environment had not extracted or analysed its wildlife trade information holdings, had not used intelligence analysis to inform its risk assessment of wildlife trade compliance, and was also yet to develop a risk-based strategy to monitor compliance with wildlife trade regulations. The department has commenced work to address these deficiencies, with projects underway to extract data for intelligence analysis and improve compliance information gathering and IT systems support.

While both Environment and the ACBPS have shared information relating to specific matters, data collected by both entities on the trade in wildlife has not been combined to deliver a holistic view of the risks posed to the legal trade in wildlife.

Recommendation

The ANAO made one recommendation designed to strengthen Environment's management of compliance information and assessment of risks to the effective regulation of wildlife trade.

Managing compliance information and intelligence

2.1 Compliance information may, in isolation, be inconclusive and it is the regulator's ability to combine elements of information and analyse linkages that determines the effectiveness of its compliance intelligence capability. In the context of Part 13A of the EPBC Act, compliance intelligence should play an important role in informing Environment about the risks posed to the legal trade in wildlife and better place the department to either mitigate or manage these risks.

2.2 To inform its understanding of wildlife trade risk, Environment and the ACBPS have a number of internal and external information and intelligence sources (outlined in Table 2.1).

Table 2.1: Sources of compliance information and intelligence

Source		Compliance information and Intelligence
Internal	Permit applications and acquittals	Information received from wildlife trade permit applicants and permit holders acquitting against permits.
	Wildlife Trade Operations and Wildlife Trade Management Plans	Information received from the proponents of Wildlife Trade Operations and Wildlife Trade Management Plans, including during the assessment/approval process, and annual reporting (if required).
	Investigations	Investigations can identify other intelligence, such as associates, or other businesses operating in the same manner.
	Caution and seizure notices	Information relating to seizure and caution notices, including details about the items, senders and recipients.
External	Other regulators	Compliance activities undertaken by other Australian and state and territory government entities, and international entities.
	Non-government organisations and researchers	Allegations from the public, or their own research into the illegal trade.
	Members of the public	Allegations of non-compliance received by the entities.
	Open source	Internet sites, CITES trade database.

Source: ANAO analysis of Environment and ACBPS information.

Environment's management of compliance information and intelligence

2.3 Intelligence functions within Environment for Part 13A are allocated across two departmental divisions: the Intelligence Team within Compliance and Enforcement Branch's Investigations Section; and the Wildlife Trade Compliance Section within the Wildlife Trade and Biosecurity Branch.

2.4 In June 2014, the ANAO's report on *Managing Compliance with EPBC Act Conditions of Approval* found that Environment did not have a documented strategy to guide its management of compliance intelligence. As at June 2015, this gap remained. The department's Regulatory Policy (December 2013) and the separate and subordinate EPBC Act Compliance and Enforcement Policy (2013) make limited references to the capture, analysis and use of intelligence.

Collecting compliance information and intelligence

2.5 As outlined earlier, Environment collects compliance information and intelligence from a variety of sources, with:

- information relating to permits, wildlife trade programs and seizures collected through day-to-day work processes;
- allegations of non-compliance with wildlife laws obtained through contact details (telephone, facsimile and email) published on the department's website, with reported information monitored by the Wildlife Trade Compliance Section; and
- investigations conducted by Environment also capturing intelligence.

2.6 However, Environment has not clearly assigned responsibility for collecting compliance intelligence to either the Investigations Section or the Wildlife Trade Compliance Section. There would be benefit in the department clarifying the responsibilities of its compliance teams to support the efficient collection, recording, analysis and sharing of intelligence.

2.7 Further, the receipt, recording and assessment of allegations have not been consistently performed across the two sections. For example, the Investigations Section’s Standard Operating Procedure states that allegations should first be recorded in the Compliance and Enforcement Management System²¹ (CEMS) and then assessed by the relevant line area. In contrast, prior to February 2015, the Wildlife Trade Compliance Section’s guidance material specified the initial recording of allegations as a separate file in the electronic filing system, and only after assessment were ‘valid’ allegations to be recorded in CEMS.²² While assessing the validity of intelligence is important, there are some allegations that may appear to have little or no significance when viewed in isolation. The failure to record all allegations in one system (along with assessments of those allegations) limits the department’s ability to detect important connections and trends.

Storage and use of compliance information and intelligence

2.8 A regulator’s ability to combine elements of information, and analyse linkages, substantially affects the effectiveness of its compliance intelligence capability. Environment’s information and intelligence storage methods and the use of this information is summarised in Table 2.2.

Table 2.2: Storage and use of gathered information and intelligence

Source	Storage	Use
Information and intelligence received through day-to-day work processes		
Permit applications and acquittals	<ul style="list-style-type: none"> Permit Administration Database (PAD)—prior to May 2013 Permit Administration Workflow System (PAWS) 	Non-compliance history checks on individual permit applicants
Wildlife Trade Management Plans and Wildlife Trade Operations	<ul style="list-style-type: none"> Hard copy files for each application Electronic files on former and current filing systems 	Checks on individual proponents, and similar industries
Seizure and caution notices	<ul style="list-style-type: none"> PAD 	Non-compliance history checks on individuals with seizures
Investigations	<ul style="list-style-type: none"> Compliance and Enforcement Management System (CEMS) Hard copy files Electronic files on former and current filing systems 	Non-compliance history considered in relation to current investigations

21 CEMS is the IT system used by Environment to store intelligence data and for investigations case management.

22 Since February 2015, guidance material specifies that all allegations are to be recorded in CEMS.

Source	Storage	Use
Allegations of non-compliance		
Received by Wildlife Trade Compliance Section	<ul style="list-style-type: none"> Electronic files on former and current filing systems After assessment, some allegations are recorded on CEMS 	Non-compliance history considered and intelligence checks requested on individual allegations
Received by Investigations Section	<ul style="list-style-type: none"> CEMS 	Non-compliance history considered and intelligence checks requested on individual allegations

Source: ANAO analysis of Environment information.

2.9 As Table 2.2 illustrates, Environment is yet to establish a centralised repository for compliance information and intelligence on Part 13A matters. Rather, data is stored in multiple IT systems and on electronic and hard copy files. As a consequence, the department is not well positioned to efficiently extract relevant data, undertake analysis or share compliance intelligence. The existence of legacy systems, which hold data that has not been migrated to replacement systems, also limits the department's ability to bring together its compliance data. For example: historic permits are held on the Permit Administration Database (PAD), while the details of more recent permits are held on Permit Administration Workflow System (PAWS) and related information may be held on the former and current electronic filing systems.

2.10 While Environment is yet to develop an intelligence policy for its regulatory functions, as outlined earlier, in 2011 the Intelligence Team developed intelligence priorities according to departmental regulatory risks. In collaboration with the then International Wildlife Trade Section (now the Wildlife Trade Compliance Section), a number of projects to identify existing data sources, review targeted priorities, and evaluate existing intelligence about traditional medicines containing CITES species were agreed. The projects did not ultimately proceed because of difficulties experienced in accessing departmental data.

2.11 Issues relating to data access, in particular limited IT functionality associated with PAD and PAWS, have adversely impacted on Environment's regulatory activities over a number of years.²³ Prior to March 2015, the department had not extracted nor analysed its compliance information or intelligence holdings to inform an assessment of the risks associated with the legal and illegal wildlife trade, and the targeting of future regulatory activities. The department has advised the ANAO that a project has been established to extract data for intelligence analysis, and consequently assist with prioritising wildlife trade compliance activities. The project is expected to be completed in December 2015.

2.12 There is considerable scope to improve the collection and the storage of information and intelligence so that it is easily retrieved, analysed and shared to inform the identification of risk. The department has recognised the shortcomings of its intelligence functions, partly informed by recent internal and external audit coverage, and has recently commenced work to develop a

23 These findings accord with those of the ANAO audit of *Managing Compliance with EPBC Act Conditions of Approval*, which found there is scope for the department to significantly strengthen its collection, retention and analysis of compliance intelligence to direct its regulatory activities, which may require further investment in IT support systems.

department-wide intelligence capability. In April 2015, Environment engaged an external contractor to assess current compliance, enforcement and intelligence capabilities, and to determine potential IT solutions. As part of its Regulatory Capability Development Program (discussed in Chapter 4 at paragraph 4.2), the department also began scoping a project on regulatory intelligence gathering and analysis in May 2015.²⁴

ACBPS' management of compliance information and intelligence

2.13 The ACBPS had three branches responsible for strategic, operational and tactical intelligence, respectively, which were located in its Intelligence Division.²⁵ The work of these three branches was guided by the ACBPS' intelligence policy, which was outlined in five Practice Statements and associated Instruction and Guidelines.²⁶ The Practice Statements outlined the ACBPS' approach to: intelligence collection; recording of intelligence information; liaison with other law enforcement entities; dissemination of information internally and externally; and an internal client engagement model. These documents were released in 2007 and 2009. The ACBPS advised the ANAO that the documents are to be reviewed after the integration of the ACBPS and DIBP has been completed.

Collecting compliance information and intelligence

2.14 The ACBPS had three main sources of compliance information and intelligence: through its own operations; from the public and industry (through a program formerly called Customs Watch²⁷); and from other Commonwealth or state/territory entities. All ACBPS officers had an information collection obligation, with information collected for a variety of purposes—from tracking goods that had been seized to recording intelligence that may have future use.

2.15 The ACBPS also had well established links with other Commonwealth and state/territory national security and law enforcement entities, as well as international entities such as the World Customs Organisation and Interpol. These entities exchanged information of interest, with the ACBPS also requesting information from these entities in relation to specific persons of interest. The ACBPS did not, however, actively task intelligence collection in relation to wildlife trade non-compliance given its broader responsibilities.

2.16 Allegations received by the ACBPS were processed by the Strategic Border Command Centre, which categorised the allegations into one of six categories. Information reports were then to be completed for 'relevant' reports, which were disseminated within the entity.

24 The aim of the project is to determine the current state of its intelligence capability, required improvements, and support needed for staff and for decision makers.

25 Strategic intelligence involves analysing information to understand trends in relevant activities. Operational intelligence focuses on knowledge about specific instances of illegal activity, target development and operational responses. Tactical intelligence gives immediate support to staff in real-time situations.

26 The ACBPS had a nationally consistent policy and procedural framework comprising: Practice Statements that articulated high-level policy; Instruction and Guidelines that contained procedural information; and Associated Documents that included site specific or technical procedures.

27 Customs Watch was renamed Border Watch from 1 July 2015, and suspicious events can be reported using an online form available at <www.border.gov.au>. In the period from 1 July 2011 to 30 November 2014, 12 349 intelligence records were created by ACBPS from Customs Watch information, with 194 of these reports related to wildlife.

Storage and use of compliance information and intelligence

2.17 The National Intelligence System (NIS) was the ACBPS' primary corporate intelligence recording system. NIS was used across a number of different work areas to enter reports that had an intelligence value internally or for partner entities. There was an expectation that officers would complete information reports for all major or significant detections.²⁸

2.18 Compliance data was also held in other ACBPS systems, with all seizures of goods, including wildlife specimens to be recorded in the Detained Goods Management System (DGMS)—discussed further in Chapter 4. Depending on the work area, additional systems may also have had records associated with searches of travellers' baggage or inspections of cargo. Information relating to investigations was recorded in a dedicated electronic case management system used for all referrals, investigation cases and outcomes.

Intelligence assessment

2.19 The ACBPS conducted annual strategic assessments of the threats posed to the Australian border and developed annual organisational intelligence priorities. These enabled the ACBPS to allocate intelligence resources to the highest priority threats and risks. While the illegal trade in wildlife has been acknowledged as a risk to the border in ACBPS threat assessments, in relative terms, the illegal trade in wildlife was not considered a high priority for the ACBPS. The completion of more detailed analysis using the compliance information and intelligence that is gathered in relation to wildlife trade would better position DIBP and Environment to determine the relative risk of the illegal trade in wildlife. Given the relative low priority of illegal wildlife trade in comparison to other border matters handled by DIBP, it may be more appropriate for Environment to undertake this analysis.

Sharing of information and intelligence

2.20 While Environment and the ACBPS respond to individual requests for information about specific matters relating to wildlife trade, neither entity has routinely shared information or intelligence to better inform the overarching assessment of compliance risks.²⁹ The establishment of arrangements for the routine sharing of information and intelligence would better position Environment, as the lead regulator, to develop a more complete picture of the risks posed to the legal trade in wildlife.

Assessing compliance risks

2.21 A structured approach to risk assessment enables a regulator to identify, analyse and monitor regulatory risks, and to prioritise and plan compliance activities to mitigate these risks.

28 In terms of wildlife, a significant detection was classified as: live or deceased-in-transit animal specimens including eggs; and viable CITES-listed plant material.

29 In the period from 1 July 2011 to 30 November 2014, the ACBPS created 573 information reports in NIS relating to wildlife matters, while Environment created 966 information reports in CEMS.

Environment's assessment of compliance risk

2.22 Environment has developed an enterprise level risk assessment that identifies the key risks to the achievement of the department's objectives. This assessment has identified risks arising from some of the department's regulatory responsibilities. The department has not, however, specifically assessed the risks arising from its various regulatory activities and subsequently ranked its risk exposure from these activities. Such an assessment would enable the department to make informed decisions as to the regulatory settings to apply and the resourcing to allocate to its regulatory activities.

2.23 The assessment of compliance risks relating specifically to Part 13A of the EPBC Act is undertaken at the branch and section level. In 2013–14, the Wildlife Trade Compliance Section produced a *Risk Assessment for Part 13A of the EPBC Act 1999* that detailed 12 risks, including: wildlife smuggling by permit and non-permit holders; intentional and organised small-scale smuggling; unintentional trade in personal items carried through international airports; illegal internet trade; and business risks such as loss of skilled staff and leakage of classified information. The risk treatments included: public awareness campaigns; updating internal policy and procedure documents; establishing closer links with wildlife law enforcement partner entities; and successful prosecutions.

2.24 An updated risk assessment was prepared in November 2014, and listed 14 risks, with the following ratings:

- three rated high—failure of internal and external stakeholders to prioritise wildlife trade non-compliance, inadequate IT capability, and increase in unsustainable trade due to Australia's inadequate controls;
- 10 rated medium, including—failure to respond to non-compliance, failure to detect non-compliance, inadequate regulatory processes to facilitate action against non-compliance, and inadequate resourcing; and
- one rated low—lost or stolen forfeited specimens entering trade.

2.25 The other departmental sections with responsibility for wildlife trade matters have not prepared risk assessments, including for example, risks associated with non-compliance with permit conditions.

2.26 As discussed earlier, Environment has not extracted or analysed the compliance information or intelligence that it collects to inform an objective or holistic assessment of the risks associated with the legal and illegal wildlife trade. In the absence of this analysis, Environment cannot reliably determine the compliance risks to Part 13A, or develop a risk-based approach to compliance monitoring. The current fragmented approach to the assessment of risk for wildlife trade also impacts on the effectiveness of regulatory activities.

2.27 The March 2014 internal audit of wildlife permits acknowledged the department's resource constraints and recommended that Environment introduce a risk-based compliance regime to assist in the implementation of a systematic approach to the review of permits with higher risk profiles. The department agreed with the recommendation, but stated that resource constraints made it difficult to prioritise the activity. A business case was to be developed for Executive consideration in the context of the 2014–15 Budget. The business case was

subsequently overtaken by a project to define business requirements for a new Wildlife Trade and Compliance business system. This project is discussed in more detail in Chapter 3 at paragraphs 3.8 and 3.14.

ACBPS' assessment of compliance risk

2.28 The ACBPS' risk management framework incorporated an annual entity-wide risk plan—the *2013–14 Risk Plan*³⁰—which was framed around the following three focus areas: key enterprise risks; border risks; and enabling functions. The border risks component of the plan discussed information sourced from the annual strategic threat assessment and included an assessment of whether current strategies and controls were adequate.

2.29 Border risk was described as the likelihood that people or goods would enter or leave the country without authorisation or without meeting the necessary conditions. While wildlife trade was not specifically mentioned in the border risks, it formed part of one of the 11 border risks—prohibited, restricted and regulated goods. Major threats affecting this risk included increasing trade and traveller volumes, resource constraints, and increasing economic integration and complexity. The assessment indicated that significant changes to border controls were not warranted, with the ACBPS to continue with current strategies. These strategies included continuing to: apply intelligence-led, risk-based targeting to ensure resources were focused on significant detections of higher risk prohibited items; and develop shared responsibility agreements with domestic partner entities.

2.30 The border risks articulated by threat assessments and risk plans cascaded down to inform the priorities set for operational activities performed by officers at the border. Given the relative low priority of illegal wildlife trade in comparison to other border risks, ACBPS officers interviewed by the ANAO advised that they targeted wildlife when intelligence was provided that enabled intervention activity.

Recommendation No.1

2.31 To better assess and manage risks to compliance with wildlife trade regulations, the ANAO recommends that the Department of the Environment:

- (a) collect, retain and regularly analyse compliance information from its own and the Department of Immigration and Border Protection's holdings;
- (b) identify and regularly review relevant risk factors for wildlife trade regulation; and
- (c) develop and implement, as part of its compliance strategy, an annual risk-based program of compliance activities.

Environment's response: *Agreed.*

2.32 *Environment supports risk-based approaches to compliance and is improving the information systems that underpin the regulation of wildlife trade. The improvements will enable the management of risks to wildlife trade compliance to be based on the best available*

30 The ACBPS advised that its risk plan for 2014–15 was not completed due to the entity's impending integration with DIBP.

information, including through collaboration with the Department of Immigration and Border Protection.

2.33 Environment is engaging closely with the Department of Immigration and Border Protection to enable a coordinated approach to responding to the audit recommendations. Environment and the Department of Immigration and Border Protection have established a working group to ensure implementation of the audit response in areas of mutual interest.

- (a) The Environment – Immigration and Border Protection working group will finalise an updated and revised Memorandum of Understanding to facilitate the regular exchange of enforcement and intelligence data on wildlife trade between departments.

2.34 Environment's ability to receive and analyse the Department of Immigration and Border Protection data will be enhanced through investment in information technology. A scoping study was recently completed for a system to replace the current Compliance and Enforcement Management System database that is used for intelligence analysis and compliance case management.

2.35 Data sharing and access to the Department of Immigration and Border Protection's information holdings will need to be in accordance with relevant legislative and security frameworks.

2.36 Environment has begun development of a new database to manage the issuance of wildlife permits and processing of seized wildlife products.

- (b) An enhanced risk assessment for wildlife trade regulation has commenced. A Wildlife Intelligence Strategic Threat Risk Assessment is being developed and will be updated annually to inform the development of the annual risk-based compliance plan.
- (c) Environment will update and better prioritise its annual compliance plans for wildlife trade to respond to the risks identified by Wildlife Intelligence Strategic Threat Risk Assessment.

2.37 From mid-2016, and based on the outcomes of Wildlife Intelligence Strategic Threat Risk Assessment and the priorities identified in the 2016–17 annual compliance plan, Environment will introduce a compliance monitoring program to address the risks of non-compliance with wildlife trade permits.

2.38 Environment has established a relationship with the Department of Immigration and Border Protection National Border Targeting Centre to assist with the implementation of enforcement and intelligence collection priorities identified in the annual compliance plans. Enforcement officers from Environment have access to National Border Targeting Centre and are strengthening the communication and coordination of intelligence and law enforcement between Environment and the Department of Immigration and Border Protection.

3. Monitoring compliance

Background

Proponents are required to obtain a permit from Environment before importing and exporting CITES-listed specimens, exporting regulated Australian native specimens, and importing some live animals and plants. The permits issued by Environment typically have common conditions, with departmental staff responsible for monitoring proponents' compliance with these conditions.

Conclusion

Environment has not established robust processes and practices to gain a sufficient level of assurance that the conditions attached to permits and approvals for wildlife trade are being met nor to determine the extent of any non-compliance.

Findings

Environment has not developed a risk-based, compliance monitoring strategy to guide the delivery of compliance monitoring activities.

Environment's IT systems, which support permit approval and acquittal, rely on manual data entry (with historic delays in the entry of acquittal data) increasing the risk to data integrity. The systems also provide limited reporting functionality, which has hampered the department's ability to use collected data to inform the establishment of an effective risk-based monitoring process.

Environment has acknowledged these functionality and data integrity issues and the need to improve its business support systems for wildlife trade. The department is currently undertaking a project to define wildlife trade business systems requirements to deliver greater functionality. There is also scope for Environment to make greater use of alternative information sources, such as DIBP permit compliance data, to provide a more comprehensive perspective of compliance with wildlife trade regulation.

Permit monitoring

3.1 Permits are required before importing and exporting CITES-listed specimens, exporting regulated Australian native specimens, and importing some live animals and plants. Permits are categorised according to their nature, being commercial or non-commercial, with assessments to be conducted according to the purpose of the export or import. For example:

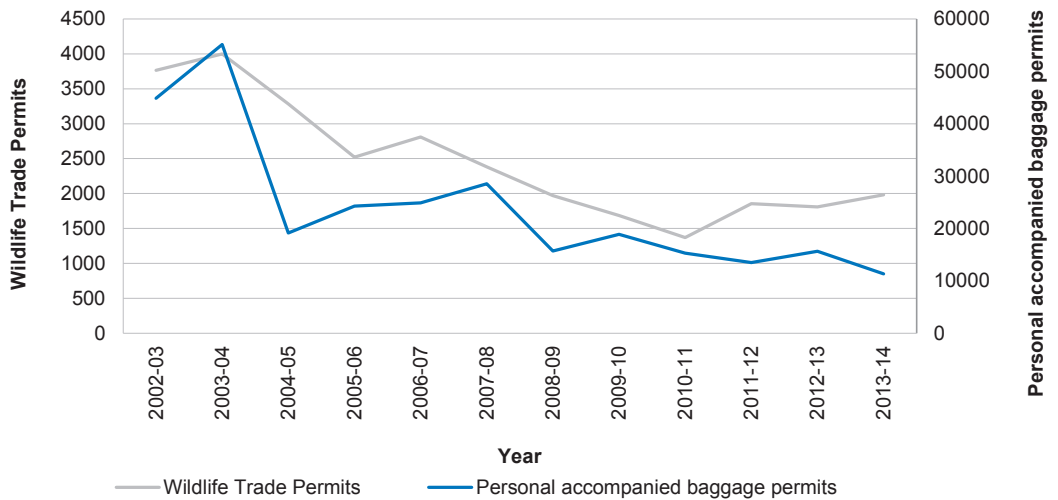
- non-commercial permits can be issued for the purposes of research, education, exhibition, conservation breeding or propagation, household pets, personal items, or traveling exhibition; and
- commercial export permits can be issued if specimens are sourced from an approved captive breeding program, artificial propagation program, cultivation program,

aquaculture program, Wildlife Trade Operation (WTO), or Wildlife Trade Management Plan (WTMP).³¹

3.2 Permits can be issued as either single-use or multi-use and also have an expiry timeframe. Wildlife trade import, export and re-export³² permits state the species, type of specimen (such as leather, meat, or live animal) and the quantity of specimens that the permit covers. Permits issued by Environment typically have common conditions, regardless of the type of permit, such as including a requirement for the permit holder to complete and return a hard copy acquittal form within two weeks of the trade occurring.³³

3.3 In the period from January 2002, when Part 13A of the EPBC Act came into effect, and 30 June 2014, Environment’s annual reports state that the department approved 31 284 wildlife trade permits and 299 372 personal accompanied baggage permits. The number of wildlife trade permits (illustrated in Figure 3.1) has fallen since 2002³⁴, but has remained relatively constant since 2008-09, with an average of 1700 approvals each financial year. The number of personal accompanied baggage permits is continuing to decline.³⁵

Figure 3.1: Permits approved by Environment, January 2002 to June 2014



Source: Environment (and former departments responsible for the environmental legislation) Annual Reports, 2001–02 to 2013–14.

31 Of the approvals associated with commercial permits, only WTOs and WTMPs may also have associated conditions.

32 Re-export permits are issued when specimens imported into Australia are subsequently re-exported to another country. An example is crocodile leather imported to Australia as a watch for sale, and then re-exported from Australia if the stock is needed by an outlet in another country.

33 The ANAO did not examine Environment’s processes for assessing permit applications and granting permits as, in March 2014, the department’s internal auditors finalised a review of these processes.

34 Environment’s 2004–05 Annual Report explains that permit numbers reduced in that year with the introduction of multiple-use permits, allowing multiple shipments up to a specified threshold.

35 Environment advised that the reason for the decline in numbers of personal baggage permits may be due to crocodile product retailers offering fewer of these permits to customers.

3.4 The data on approved permits must be viewed with some caution as, over time, Environment has varied its approach to the reporting of the types of permits that it has issued. For example, of the data on approved permits reported by Environment for 2011–12 to 2013–14, non-commercial research permit numbers were included in reported data for 2011–12 and 2012–13, but this figure was not included in the total number of import and export permits issued for these years (see Table 3.1).

Table 3.1: Permit type by year, 2011–12 to 2013–14

Permit type	2011–12	2012–13	2013–14
CITES specimens	1540	1556	1741
Export of regulated native specimens	289	233	223
Live specimens	26	21	19
Export	617	Not reported	Not reported
Import	1238	Not reported	Not reported
Reported total¹	1855	1810	1983
Personal accompanied baggage	13 529	15 635	11 358
Non-commercial research	140	217	Not reported

Note 1: The reported total is the total reported by Environment. The total does not include non-commercial research permits.

Source: Environment (and former departments responsible for the environmental legislation) Annual Reports, 2011–12 to 2013–14.

3.5 To assess Environment's arrangements for post-approval monitoring of permits, the ANAO examined the department's supporting IT systems and the processes established by Environment and the ACBPS to monitor the permits issued for goods being imported and exported.

Permit IT systems

3.6 Environment's Permit Administration Workflow System (PAWS), which was implemented in May 2013, is a customised system designed and supported by a third party provider. Since its implementation, PAWS has received periodic upgrades, with a smartform application function introduced in November 2013, which has allowed online permit application submission.³⁶ All permit acquittals are to be completed in hard copy by the permit holder, with acquittal data manually entered into PAWS by departmental staff. PAWS produces a number of standard reports for business management and external reporting purposes.

3.7 Prior to May 2013, the Permit Administration Database (PAD) was used by Environment for permit administration. PAD was an in-house developed database and workflow system. Permits were applied for and acquitted using hard copy forms, with staff manually entering this data into the system. While PAD was replaced by PAWS in 2013, it continues to be maintained by

36 PAWS consists of: a smartform that allows online permit applications; a database that stores information about the applicant, the type of permit, and the quantity and type of specimen to be traded; and an interface for Environment staff to access this information. The requirement for online application became mandatory in March 2014.

Environment, primarily because historic permit records were not migrated to the new system. PAD continues to be used for recording wildlife seizures³⁷, as this functionality was not incorporated into PAWS, and for issuing personal baggage permits. Departmental staff are required to use both systems to determine an applicant's permit history.

3.8 In relation to Environment's permit IT systems, the March 2014 internal audit of wildlife permits found that the department was using multiple manual tools and IT systems for issuing permits, including the use of both hard copy and online application forms. The audit highlighted duplication in processes, with risks of inefficiency and inconsistency, and recommended consolidating the issuing of permits into one system, using online application forms only. Of the five recommendations made by the internal audit, two related to improving permit application processes, and one to determining whether migrating seizure data from PAD to PAWS was beneficial taking into consideration the potential cost. The department agreed with the audit's recommendations and planned to complete a cost-benefit assessment of migrating seizure data by May 2014. This assessment was overtaken by a project to define business requirements for a new wildlife trade and compliance permit system. The department advised that system design and development are expected to occur during 2015–16.

3.9 The ANAO examined the integrity of the data held in PAWS, the processes and documentation surrounding its use, and the availability and accuracy of reports generated by the system. This examination identified:

- the absence of up-to-date system documentation describing the system and its data structures;
- errors in available standard reports.³⁸ For example, the ANAO found that the standard 'wildlife permit report' (a report of the number of permits issued over a specified time span) was missing 63 valid permits (almost 2 per cent of 3344 permits) for the time period July 2011 to December 2014; and
- scope to improve the ability of PAWS to support ad-hoc management reporting.

3.10 Environment advised the ANAO that PAWS was designed as a workflow management system, and it has limited functionality for efficient downloading of data in a usable form. This limited functionality adversely affects the ability of line areas to extract and analyse data.³⁹ As such, the department is not well positioned to use the data that it has collected to inform its administration of wildlife permits.

Environment's monitoring of compliance with permits

3.11 Environment has established processes to manage compliance with permits, including permit reviews and acquittals. The department's website states that a key aspect of the

37 The use of PAD to record wildlife seizures is examined in Chapter 4.

38 Standard reports produced by PAWS include the: number of annual CITES exports and imports by species; permit applications on hand and adherence to statutory timeframes; workload per staff member; permit acquittals flagged for review; and all permits issued within a timeframe and their relevant acquittals.

39 In addition, the PAD database is supported by a single contractor, creating the risk of loss of departmental knowledge about this system.

department's compliance approach involves permit reviews.⁴⁰ Permit reviews are intended to determine whether conditions attached to permits have been met, and whether goods being traded internationally have been obtained from an approved legal source. Reviews may be of documentation, conducted through site visits, or both. The department's *2011–12 Annual Report* stated that 14 reviews (0.07 per cent of the 1855 reported permits issued in that year) of wildlife permit holder compliance were conducted.

Permit monitoring approach

3.12 The March 2014 internal audit of wildlife permits found that, due to resource constraints, Environment had not undertaken routine monitoring processes (including permit reviews) to identify and manage non-compliance with permit conditions since July 2012. The internal audit further stated that non-compliance with permit conditions may lead to adverse impacts on animal welfare, border security, and reputational damage to the department as a regulator from adverse public opinions. Of the five recommendations made, two were designed to strengthen the department's permit monitoring practices: developing and applying a risk profile to existing and new permit applicants; and introducing a risk-based compliance regime and conducting regular checks, based on the risk profile, to determine compliance with permit conditions.

3.13 Environment's Audit Committee has previously expressed concerns about the absence of permit monitoring and recommended that a formal risk-based compliance regime, including both health checks and detailed reviews, be implemented. Further, it suggested that the department explore opportunities to engage formally with the ACBPS, particularly in relation to periodic reporting of permit use. The committee developed two action items relating to the administration of wildlife permits, including that the department's executive needed to be made aware that an untreated risk existed so that an interim approach to address this issue could be considered. The audit committee's tracking of action items notes completion of both items.

3.14 Environment advised the ANAO that the Wildlife Trade and Biosecurity Branch had reviewed the internal audit recommendations in April 2014, and noted that problems associated with wildlife permits management processes were one of a number relating to information management processes and systems in the department. These broader issues included incompatibility of multiple data management systems, poor or absent support for the maintenance of existing systems, and limited functionality of existing data management systems. The outcome of the review was the establishment of a project to define business requirements for a new wildlife trade and compliance permit system, discussed earlier in paragraph 3.8.

Permit acquittals

3.15 There are two sections within Wildlife Trade and Biosecurity Branch that are responsible for issuing permits and entering acquittals—Wildlife Trade Regulation and Wildlife Trade Assessments. Internal procedures manuals for these sections provide instructions for entering acquittal information into the permit system. However, while Environment advised that the compliance history of permit applicants is scrutinised, there is no guidance available to staff outlining the actions required for acquittals that are non-compliant with permits and no

40 Environment's 'complying with permit conditions' webpage available from <www.environment.gov.au/biodiversity/wildlife-trade/permits/complying-permit-conditions> [accessed 4 May 2015].

overarching compliance monitoring strategy for permits. In addition, Environment advised the ANAO that, prior to June 2014, the entry of acquittal data had been around two years in arrears due to resource constraints.⁴¹ Consequently, the department did not have up-to-date data to inform its monitoring activities until late 2014.

3.16 In the absence of a current permit monitoring strategy, Environment has established a permit acquittal process that involves system checks for compliance with permit conditions. The original design of PAWS included an online permit acquittal function with associated data validation at lodgement stage. However, the department advised that because of financial constraints this functionality was not implemented, and all acquittal information is manually entered. Further, the department advised that, after data entry, the validity of the acquittal information is automatically checked, with a 'review' workflow for items that require manual intervention.⁴²

3.17 The ANAO's examination of the 26 704 acquittal line items⁴³ associated with 3353 PAWS permits issued between 1 May 2013 and 9 January 2015 found:

- two acquittals where the quantity of specimens exceeded the permitted amount, but the system status was marked as 'compliant';
- 52 acquittals that stated that the goods were shipped after the permit expired;
- 131 acquittals that stated that the goods were shipped before the permit was issued; and
- 1785 acquittals with a blank acquittal date marked as 'compliant' in the PAWS 'standard acquittal report'. This report is used by Environment to monitor the extent to which permit acquittals comply with business requirements and to identify non-compliant records for review.⁴⁴

3.18 The assurance that the department has over the compliance of permit holders with permit conditions is diminished because of poor data integrity and system functionality. The manual entry of permit acquittals data is time-consuming and, in addition to processing delays, increases the risk to data integrity. Some of the instances of apparent non-compliance with permit conditions found by the ANAO may have been the result of data entry errors. These issues relating to data integrity are coupled with system functionality issues that make it difficult for departmental staff to download data for use in analysing compliance risks.

3.19 Environment has recognised these functionality and data integrity issues and had identified the need to improve its business support systems for wildlife trade. The department is currently undertaking a project to define wildlife trade business systems requirements to deliver

41 Environment engaged a contracting firm to process the backlog of acquittals at the end of 2013–14.

42 The internal procedural documentation for PAWS states that an 'acquittal review' flag will be created after entering acquittal data when the following occurs: changes to the importer or exporter information; specimen of a different species is added; quantity larger than specified on permit; or the shipment was made outside the permitted time period.

43 Each permit can have more than one associated acquittal, and each acquittal can have more than one line item specifying different types of goods.

44 Among other things, the standard acquittal report is expected to capture records with acquittal dates before the issue date, or after the expiry date, of a permit and identify these as non-compliant.

greater functionality (discussed earlier in paragraph 3.8). Notwithstanding these recent developments, the absence of a structured program of compliance activities is undermining the effectiveness of the regulatory framework. For example, Environment has not undertaken any permit reviews since July 2012⁴⁵, despite an internal audit and audit committee recommendation to do so in March 2014. It would be prudent for the department to establish interim compliance monitoring arrangements pending the scheduled completion of upgraded wildlife trade systems in 2015–16.

ACBPS monitoring of compliance with permits

3.20 The ACBPS advised the ANAO that, in its role in supporting and enforcing trade and industry policy at the border, it conducted some verification of imports and exports of wildlife specimens and permits. The total number of permits verified was not, however, recorded by the ACBPS.

3.21 The verification of permits occurred to differing degrees, dependent on whether the specimens were exported or imported, and the mode of transport (by mail, personally carried, or air or sea cargo). In relation to incoming mail and inbound travellers' baggage, there was no pre-arrival information available to the ACBPS relevant to wildlife specimens. As such, the ACBPS was reliant on physical intervention, with:

- incoming mail items examined where screening (non-intrusive visual assessment of mail items or using x-ray) identified suspected wildlife specimens. However, only a proportion of mail was screened⁴⁶; and
- incoming traveller's baggage was examined where the traveller had declared a wildlife specimen⁴⁷ or where screening or intelligence identified suspected wildlife specimens.

3.22 Outgoing mail and outbound traveller's baggage were not routinely examined, unless as part of targeted operational activity or in response to intelligence or a declaration.

3.23 The verification of permits associated with air and sea cargo was more structured, with automated checks incorporated into the ACBPS' Integrated Cargo System (ICS).⁴⁸ Export declarations require self-selection of Australian Harmonized Export Commodity Classification⁴⁹ codes, and for specific codes related to wildlife specimens, exporters are prompted to enter a wildlife trade permit number before the cargo can be authorised to leave Australia. Since August 2011, Environment has provided issued permit numbers and associated permit conditions to the

45 Environment's 2011–12 Annual Report stated that 14 (of the 1855 permits issued in that year) reviews of wildlife permit holder compliance were conducted in that period.

46 The ACBPS screened around 43 per cent of non-letter class mail and around 13 per cent of letters. ANAO Audit Report No.42 2013–14, *Screening of International Mail*, p. 37.

47 The Incoming Passenger Card, a legal declaration that must be completed by all passengers arriving in Australia, contains questions relevant to goods such as drugs, currency, firearms, biosecurity risks, human health risks, criminal convictions and wildlife.

48 The ICS is the IT system used to electronically declare goods for import and export to the ACBPS. Goods can be electronically cleared with no physical intervention by the ACBPS.

49 Australian Harmonized Export Commodity Classification codes enable the self-classification of goods when providing export declarations to the ACBPS, as opposed to tariff classification codes, which enable the self-classification of imported goods by importers.

ACBPS for uploading into ICS. There have been 18 978 electronic transactions relating to wildlife export permit numbers since that time.

3.24 All imported goods must be classified by tariff classification codes and declared through an import declaration to the ACBPS. The questions within the electronic declaration are designed to prompt an importer to enter a permit number for wildlife related goods. If an importer does not provide the permit or permit number to the ACBPS for clearance, the goods will be held pending the provision of a permit, or seized on the basis that they were imported without a permit. Unlike the electronic validation process in ICS for export permits, import permits are manually verified as no such validation function exists in ICS for imported goods. The ACBPS advised that it was unable to report on the number of import permits entered into ICS.

3.25 While changes to species that are regulated are infrequent, Environment has not reviewed the ICS system coding that prompts entry of an export permit number against the Australian Harmonized Export Commodity Classification since March 2011. The ACBPS had, however, reviewed the appropriateness of import tariff classifications (in 2012 and 2014), but the effectiveness of these classifications in detecting wildlife-related goods has not been assessed by either entity. There would be merit in Environment periodically reviewing the export codes used in ICS and the tariff classification codes for imports. This would provide Environment with greater assurance that ICS is appropriately identifying wildlife specimens.

Monitoring of approvals for commercial export

3.26 To commercially export Australian native wildlife specimens (unless exempt⁵⁰) and/or CITES-listed specimens, proponents must first apply to Environment for approval as a captive breeding program, artificial propagation program, cultivation program, aquaculture program, Wildlife Trade Operation (WTO) or Wildlife Trade Management Plan (WTMP). Of these programs, the following two have associated conditions of approval:

- WTO—approved for a maximum of three years, examples include individuals that collect insect specimens for overseas trade and companies that conduct small scale harvesting of wallabies for skins and meat; and
- WTMP—approved for a maximum of five years, WTMPs are generally large scale industries that have plans developed by the state or territory government entity responsible for managing the particular species, such as state government regulated kangaroo harvesting, saltwater crocodile farming, or native plant harvesting.

3.27 Once approval is granted, the proponent can seek an export permit from Environment. In approving WTO and WTMP applications, Environment does not become responsible for regulating the operation or industry, but must be satisfied that the proposal will not be detrimental to the conservation status of the species and will not threaten ecosystems or the welfare of the species. Environment can place conditions on the approval, the most common of which is providing an annual report on harvest and trade data to the department.

50 The EPBC Act allows for the publication of a list of exempt specimens, that is, specimens of non-CITES listed Australian native species that can be exported. The exemption does not include live native animals or plants.

3.28 While the Wildlife Trade Assessments Section is responsible for assessing applications for WTOs and WTMPs, responsibility for monitoring compliance has not been assigned. Further, the department has not developed guidance materials to inform the monitoring of proponent's compliance with their approvals conditions (such as requesting overdue annual reports or assessing the annual reports received). In the absence of these materials, the Wildlife Trade Assessments Section does conduct limited compliance monitoring activities.

3.29 The ANAO assessed Environment's compliance monitoring activities associated with WTOs and WTMPs by examining:

- a stratified sample of 10 of the 21 non-commercial fishery⁵¹ WTOs approved between 1 July 2011 and 31 December 2014, selected broadly to compare like-industries within WTOs and WTMPs⁵²; and
- all 14 WTMPs approved within the same period.⁵³

3.30 Where annual reports were required as an approval condition, the ANAO assessed whether reports had been provided, the documentation retained by Environment on assessment of these reports, and follow-up of non-compliance (such as non-provision of annual reports). The results of the ANAO's assessment are summarised in Table 3.2.

Table 3.2: ANAO assessment of WTO and WTMP compliance monitoring activities

Assessment category	WTO	WTMP
Annual reports required (sample size)	8 (of 10)	14 (of 14)
• Annual report not yet due	1	4
• Annual reports provided	5	4
– Evidence of assessment	2	0
• Annual reports overdue	2	6
• Evidence of follow-up	0	2

Source: ANAO assessment of Environment's hard copy and electronic files.

3.31 The ANAO's analysis indicates that there is considerable scope for Environment to improve its practices in relation to the assessment of annual reports. For example, of the nine approvals where an annual report had been provided to the department, documentation to evidence an assessment was retained in two cases. While the four WTMPs with annual reports provided had evidence of an assessment of quota reports⁵⁴, there was no evidence of assessment of the annual reports for these WTMPs. Despite the absence of evidence to demonstrate that an assessment

51 Commercial fishery WTOs were not assessed, as these also incorporate an assessment under Part 10 of the EPBC Act.

52 The 10 WTOs included: two for taxidermy; four for invertebrates; one for fish; two for wallabies; and one for plants.

53 The 14 WTMPs included the following number of plans: four for kangaroos; three for crocodiles; one for possums; four non-specific flora harvests; one for cycads; and one for tree ferns.

54 Quota reports are often a condition of WTMP wild animal harvesting, where proponents have to survey populations, calculate a sustainable harvest quota, and submit this information to Environment for approval.

had been undertaken, the department informed the proponents that their annual reports were compliant.

3.32 Of the eight WTOs and WTMPs where annual reports were overdue, five had multiple annual reports overdue. In one instance of a five year approval, none of the five required annual reports had been provided, with the oldest being five years and nine months overdue. The department had also adopted inconsistent practices between approvals. For example, Environment sent reminder letters to proponents prior to the expiry of three WTOs that requested the provision of overdue annual reports, but in the case of another WTO the proponent was notified after expiry in response to the proponent's submission of a permit application.⁵⁵

3.33 Environment has limited recourse when conditions, such as supplying annual reports, are not met—apart from cancelling an approval or permits issued to the proponent. In the absence of internal instructions, a risk assessment or a compliance monitoring strategy to guide staff in relation to the frequency and type of monitoring, Environment has only limited assurance that its monitoring of WTOs and WTMPs is appropriate and ultimately whether activities are being carried out in a sustainable manner.

3.34 To provide assurance that holders of permits, and WTO approvals and WTMP approvals are complying with approval conditions, Environment should develop an approach to monitoring permit holders' compliance with permit conditions, incorporating relevant permit clearance information from DIBP. Further, the department should incorporate into procedural guidance materials for staff the frequency and type of monitoring required for WTOs and WTMPs, and reinforce to staff the importance of documenting compliance assessments.

3.35 Given that there is limited evidence to indicate that Environment is using annual reports to assess the sustainability of WTO and WTMP programs, it would be prudent for the department to review the merits of this monitoring approach, particularly in light of the Government's deregulation agenda.⁵⁶

55 Environment advised the ANAO that permit applications for the export of specimens are compared with the approved WTO's conditions and list of species before issuing. However, procedures for the permit area (Wildlife Trade Regulation) do not specify that this assessment is a requirement.

56 In 2014, the Government launched *Cutting Red Tape*, a program aimed at reducing the annual cost of complying with Commonwealth regulations. Information available at <<https://cuttingredtape.gov.au/>> [accessed 17 August 2015].

4. Responding to non-compliance

Background

Environment's and the ACBPS' responses to non-compliance, which range from education and awareness through to sanctions, should be applied consistently, appropriately documented and graduated in proportion to the level of risk.

Conclusion

While Environment and the ACBPS have established compliance and enforcement policies that outline a graduated range of responses to non-compliance, neither entity has evaluated its compliance activities to determine whether their impact on wildlife traders is improving compliance and targeting non-compliance.

Findings

Environment and the ACBPS have used education and awareness activities to encourage voluntary compliance. There is scope to better coordinate these activities.

There would also be benefit in DIBP updating its guidance to Australian Border Force staff to help to ensure that they are aware of their obligations. The ANAO identified inconsistent operational practices that created reputation risks through the incorrect release of wildlife specimens.

The quality of wildlife seizure data in Environment's and the ACBPS's IT systems is generally poor, with no automated exchange of data between the two entities or reconciliation of seizure records. The poor quality of seizure data limits its use for intelligence analysis and risk assessment.

Recommendations

The ANAO made two recommendations designed to improve: voluntary compliance with wildlife regulation; and the data integrity of records relating to wildlife specimens to support improved data analysis.

Compliance framework

4.1 Environment's compliance framework consists of a cascading suite of documents updated, and in some cases developed, in response to recommendations made by the 2013 internal audit of Compliance and Enforcement Program Management. Among other things, that audit found that:

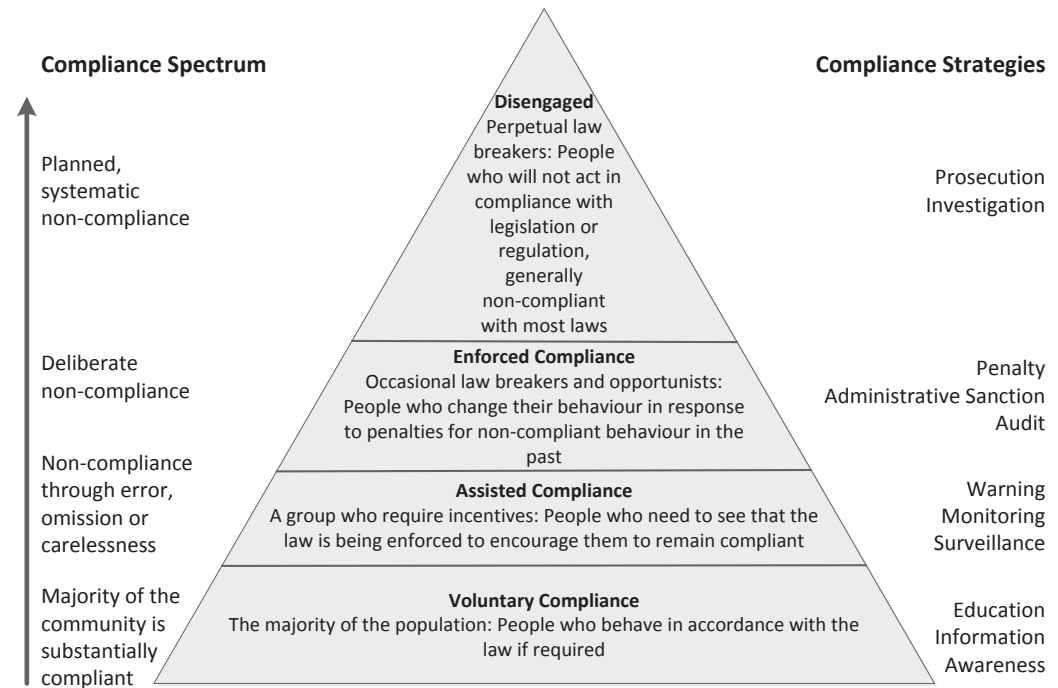
- there were gaps and out-of-date information included in established guidance materials; and
- that compliance framework documentation was considered by staff to be guidance, and not mandatory.

4.2 To address the internal audit recommendations, in May 2014, the department commenced a five year Regulatory Capability Development Program. The core objectives of the program were to establish a comprehensive regulatory compliance framework and to enable an integrated and risk-based approach to regulation across the department. In December 2014, Environment's Executive Board noted delays in the delivery of scheduled components of the

program (updating departmental compliance and enforcement strategy documents and releasing a departmental regulatory compliance instruction). In response, components of the program yet to be completed were redesigned in February 2015.

4.3 In February 2015, the department also finalised its *Wildlife Trade Compliance Management Policy* and three year compliance strategy. The policy sets out the approach to compliance management for Part 13A of the EPBC Act (illustrated in Figure 4.1), and outlines a range of graduated compliance responses, proportionate to the different levels of non-compliance. It also states that the majority of the regulated population is substantially compliant, although this has not been validated by the department.

Figure 4.1: Wildlife trade compliance approach



Source: Environment.

4.4 Similar to Environment’s compliance policy, the ACBPS’ *Compliance Continuum* also described a range of graduated responses dependent on the level of non-compliance detected. Responses ranged from education, intervention, detention and seizure of goods, issuing infringement notices, investigations and prosecutions. The ACBPS aimed to encourage voluntary compliance and reduce the cost of compliance for those who did the right thing, while using enforcement methods to address serious and deliberate non-compliance.

Encouraging compliant behaviour

4.5 While Environment and the ACBPS' compliance and enforcement policies incorporate education as a key strategy to encourage compliant behaviour, neither entity has established a communications strategy or plan to guide these activities.⁵⁷ In addition, as discussed earlier in Chapter 2 (at paragraphs 2.11 and 2.19), neither entity has analysed its intelligence or compliance data holdings to determine whether particular trends in non-compliance could be better targeted with education strategies. In the absence of a communications strategy or plan, the entities have provided information on the wildlife trade through their websites (Table 4.1 provides an outline of information available online), engaged in targeted education activities⁵⁸ and supported capacity building initiatives in the region.⁵⁹

Table 4.1: Types of publicly available wildlife trade information

Topic	Environment	ACBPS
General information about regulated items	Yes	Yes
Printable brochures aimed at travellers that contain wildlife trade content	Yes	Yes
Information on when permits are needed and how to apply	Yes	Yes
Media releases	Yes	Yes
Contact details for other regulators	Yes	Yes

Source: ANAO analysis of information on Environment's and the ACBPS' websites.

4.6 While the provision of information on their respective websites is a key element of each entities education activities, neither Environment nor the ACBPS has evaluated the usefulness, benefit, or the most effective placement of education material (either on Environment's website, the ACBPS', or both) on wildlife regulation. Undertaking a joint evaluation would better inform the development, updating and placement of online information.

57 Environment's draft wildlife trade communications strategy is dated 2011, and the ACBPS' draft Customs Watch communications plan is dated 2013.

58 For example, in 2014, Environment loaned specimens to a cruise ship company operating from Australia to the South Pacific to educate travellers about souvenirs that may be regulated wildlife specimens.

59 Recent activity includes contributing to the delivery of two workshops in 2013 and 2014 to assist Oceania countries in understanding new obligations associated with an Appendix II listing of seven shark and ray species. In June 2014, Environment also provided a \$45 000 grant to the CITES Secretariat to conduct capacity building in Pacific Island countries that are not party to CITES, to encourage their accession to CITES.

Recommendation No.2

4.7 To improve voluntary compliance with wildlife trade regulation, the ANAO recommends that the Department of the Environment:

- (a) update its website information for travellers and traders;
- (b) develop a communications plan, taking into account the results of intelligence analysis and risk identification; and
- (c) evaluate, in collaboration with the Department of Immigration and Border Protection, publicly available information with a view to maximising its effect on traveller and trader behaviour.

Environment's response: *Agreed.*

4.8 *Environment supports the use of communication and education to improve voluntary compliance and increase deterrence, which will increase compliance with wildlife trade regulation.*

4.9 *The Environment – Immigration and Border Protection working group will coordinate the use of education tools to improve compliance with wildlife trade regulation.*

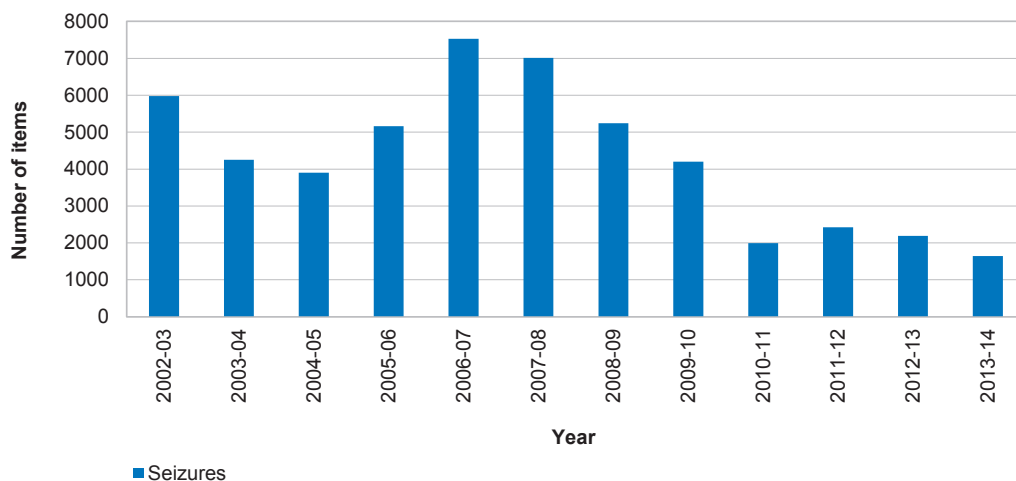
- (a) *The Environment - Immigration and Border Protection working group will coordinate an update of the departments' website pages on wildlife trade information for travellers and traders in 2016.*
- (b) *Environment will develop a communications plan in late 2016 taking into account the results of Wildlife Intelligence Strategic Threat Risk Assessment and the 2016–17 annual compliance plan (see recommendation 1).*
- (c) *The Environment - Immigration and Border Protection working group will coordinate an evaluation of publicly available information on wildlife trade.*

Seizures

4.10 The EPBC Act provides for seizure of specimens suspected of being involved with an offence against Part 13A of that Act.⁶⁰ The Act also outlines the requirement for a written seizure notice to be issued to the owner or custodian of the specimen, timeframes for application by the owner to release the specimen (30 days), and arrangements for release, disposal or forfeiture of the specimen. Information on the number of items seized has generally been included in Environment's annual reports since 2002–03 (see Figure 4.2).⁶¹

60 Seizures are covered in Section 444A of the EPBC Act. The EPBC Act also contains seizure powers for other purposes not related to Part 13A.

61 The ACBPS ceased publicly reporting wildlife seizure figures from 2007–08.

Figure 4.2: Environment's reports of seizures, 2002–03 to 2013–14

Note: Data from 2002–03 to 2011–12 are described as 'seizures' and do not distinguish between seizures under Part 13A of the EPBC Act, and seizures made under other legislative provisions. From 2011–12 the data are described as 'seizures and caution notices', however, earlier data is likely to also contain caution notices. The 2010–11 data was not included in Environment's annual report for that year, and is instead sourced from ACBPS seizure data for that period.

Source: Environment (and former departments responsible for the environment portfolio) annual reports, 2002–03 to 2013–14.

4.11 The reduction in the number of seizures over recent years is not necessarily an indicator of effective delivery of regulatory activities, as there are many factors that can influence the number of seizures. These include: the promotion of voluntary compliance which may reduce the number of arriving wildlife specimens; a change in targeting priorities and intervention levels which may focus attention on goods other than wildlife; different methods of recording seizures; and changes over time in the nature of the specimens arriving. Seizures can be made by the ACBPS (at the border), Environment (generally post-border) and, on some occasions, by the Australian Federal Police.

4.12 The MoU between Environment and the ACBPS states that the ACBPS would conduct examinations (for wildlife specimens) of:

- travellers and their effects where a person declared possession, where intelligence suggested a breach, or where baggage was being examined for other purposes; and
- cargo, on written request from Environment, giving full details of the suspected breach.

Training and instructional material for ACBPS officers

4.13 All ACBPS officers were designated as inspectors under the EPBC Act, and these positions conferred powers including: boarding vessels; access to and searching premises under warrant; searching cargo, people and baggage; inspecting, taking samples from and seizing items; and questioning, use of force, and arrest. Environment provided face-to-face training and written administrative guidelines for ACBPS officers, delivering three hour wildlife trade/CITES sessions for new ACBPS officers and a *Wildlife Protection Resource Folder* containing reference material, such

as a 24 hour phone number for ACBPS queries, decision trees for different import/export scenarios, and lists of regulated species.

4.14 When interviewed by the ANAO, many ACBPS officers recalled that they had received training on wildlife regulation in their trainee year.⁶² However, as Part 13A came into force in 2002, officers serving longer than 13 years may not have received relevant training, relying instead on knowledge of the superseded *Wildlife Protection (Regulation of Imports and Exports) Act 1982*. While Environment has offered 'refresher' training from time-to-time (in response to changes in CITES listings, for example), the ACBPS advised the ANAO that there were no central records of those staff that had received refresher training, as regions previously managed their own training schedules.

4.15 The ACBPS also had internal guidance for staff, consisting of an intranet site containing lists of regulated species and fact sheets; and three specific Instruction and Guidelines—on general policy, detained goods processes, and procedures for detections in air cargo. The ACBPS advised the ANAO that all instructional documentation was undergoing review and consolidation as part of the integration with DIBP. As part of this review process, there would be benefit in DIBP evaluating the appropriateness of existing guidance material on wildlife regulation.

Processes for seizing items

4.16 Before a decision is taken to seize an item, ACBPS officers were to determine whether permits, exemptions for certain live species⁶³, or circumstances such as accompanied personal baggage⁶⁴, scientific exchange⁶⁵ or pre-CITES certification⁶⁶, signified lawful trade. The ACBPS's reference materials (Environment's *Wildlife Protection Resource Folder*) contained information to inform these decisions. ACBPS officers interviewed by the ANAO were able to locate the folder, and those that had contacted Environment reported that departmental officers were helpful.

Caution notices

4.17 In 2005, with the aim of reducing the regulatory workload of the ACBPS, Environment introduced the option of issuing a caution notice to importers of certain wildlife specimens instead of physically seizing and storing items. Caution notices are accountable forms, printed and distributed by Environment to the ACBPS, with the form containing instructions regarding its use. These instructions include a list of specimens for which a caution notice must not be issued⁶⁷, a

62 The ANAO visited ACBPS locations in Sydney and Melbourne, including the international airports, mail gateway facilities, air cargo operations, and detained goods stores.

63 Environment maintains a *List of Specimens Taken to be Suitable for Live Import* (Section 303EB of the EPBC Act) that do not require an EPBC Act permit.

64 Personal baggage exemptions exist for the accompanied importation of some specimens for personal use, provided the specimens meet quantitative limits (such as 125 grams of caviar). There are also some exemptions for importation of unaccompanied personal effects from particular countries. These exemptions do not apply to live regulated specimens, or to certain specimens such as those listed in CITES Appendix I.

65 Scientific organisations can apply to Environment for registration, allowing them to exchange certain CITES-listed and Australian native specimens for non-commercial scientific purposes.

66 Certificates can be issued by CITES Management Authorities for specimens acquired prior to the listing of that species in CITES.

67 Caution notices must not be issued for certain specimens such as those listed in CITES Appendix I.

self-declaration by the owners that they have not had a previous seizure or caution, and that the specimens are for their own personal use.

4.18 While the ACBPS recorded seized goods in the DGMS system, it did not record the total number nor the reference number of the caution notices that it issued. Consequently, the ACBPS was unable to determine whether an owner of a seized specimen had previously been issued with a caution notice. By contrast, Environment recorded the ACBPS' issue of caution notices, after receiving hard copies of these forms and manually entering this data into PAD. The ANAO examined Environment's caution notice data for the period 1 July 2011 to 31 October 2014, which records 1130 caution notices. Of these, 10 caution notices were incorrectly issued to individuals who had at least one previous record of a seizure.

4.19 While ACBPS officers were not to issue caution notices for certain specimens, this requirement had not been followed in all cases. The ANAO's analysis identified approximately 30 notices that involved prohibited species.⁶⁸ An additional 156 caution notices were issued without an item description, and 22 notices for quantities of items greater than 10.⁶⁹ In April 2014, Environment reviewed the use of caution notices and, in November 2014, informed the ACBPS of its proposal to remove the caution notice system. Environment advised the ANAO that the use of caution notices would be phased out by December 2015.

Managing seized items

4.20 After the ACBPS issued a seizure notice to the custodian of the goods, a copy of the notice was mailed to Environment. Wildlife Trade Compliance Section staff are to enter this information into PAD, and consider any applications for release by owners. The ACBPS provided periodic reports to Environment of the contents of its detained goods stores for the purposes of identifying items to destroy, transfer or retain, with departmental staff to authorise any action to be taken. The majority of items (68 per cent) are destroyed, generally by incineration. Some items are retained by Environment to use for training, or to provide on loan to research institutions. The ANAO's analysis of ACBPS data from DGMS, and actions relating to specimens, is outlined in Table 4.2.

68 In particular, examples included caution notices issued for (in separate instances) a Hartmann Mountain Zebra, two Siamese Crocodiles (*Crocodylus siamensis*), two tiger teeth and an unspecified quantity of Hippopotamus teeth, all of which are CITES Appendix I species.

69 For example, 59 shark fins. There is no explicit requirement that ACBPS officers consider the number of items involved before issuing a caution notice, however a larger number of items may be indicative of a more significant offence.

Table 4.2: Outcomes of seizures made by the ACBPS, July 2011 to October 2014

Outcome	Count	Percentage
Destroyed	3635	67.9
Released to Owner	1158	21.6
Transferred ⁽¹⁾	149	2.8
Stored ⁽²⁾	415	7.7

Note 1: Includes transfers to external entities, such as Environment and Agriculture.

Note 2: Includes items stored temporarily pending assessment.

Source: ANAO analysis of ACBPS DGMS data.

4.21 The ANAO also examined Environment's PAD records over the same period and identified data integrity issues across the two systems. For example, there was no record of Environment providing authorisation to the ACBPS for the destruction of 1647 seized items recorded in DGMS (approximately 45 per cent). The ANAO also identified 49 seizures that were identified as released, including seizures containing CITES Appendix I items⁷⁰, with no corresponding record on PAD indicating that Environment authorised the action. These data integrity issues mean that the department is not well placed to demonstrate the basis on which seized items were destroyed.

Recording seizures

Data quality

4.22 When an item is seized by ACBPS or Environment officers, key information, such as quantities, item descriptions, species, and names of individuals involved, are recorded in both PAD and DGMS. The ANAO's analysis of PAD and DGMS identified data quality shortcomings as outlined in Table 4.3.

Table 4.3: DGMS and PAD data quality issues

Issue	Number of records	
	PAD	DGMS ¹
Seizure/caution notice date after record creation date	31	543
Seizure/caution notice date blank	0	170
Seizure/caution notice description blank	1784	0
Seizure/caution notice name not recorded	15	222
Seizure number not recorded	0	477
Seizure number invalid	0	21

Note 1: DGMS data only relates to seizures, as DGMS does not record cautions.

Source: ANAO analysis of Environment and ACBPS data.

4.23 The ANAO also identified duplicated personal information stored in PAD, such as 333 organisation names that were duplicated at least once (not including misspellings or minor

⁷⁰ For example, one of the seizures consisted of a mounted Rhinoceros horn and two Elephant tusks.

variations). There were multiple party records for 225 of these organisations.⁷¹ While DGMS retains minimal personal information regarding the custodian of a seized item (limited to name and address), PAD creates a record of the 'party' from whom the item was seized, which allows individuals and organisations with multiple seizures or identities to be linked.

Alignment between PAD and DGMS

4.24 The ANAO analysed the seizures made under Part 13A recorded in DGMS with those recorded in PAD and found:

- 167 DGMS seizures with no corresponding record in PAD. The ACBPS advised the ANAO that human error in data entry, or the seizure subsequently being identified as non-wildlife and the DGMS record not being updated, could have contributed to the 167 seizures;
- 358 seizures in PAD with no corresponding record in DGMS. Environment advised the ANAO that post-border seizures by Environment, human error in data entry, and ACBPS seizure forms mailed directly to Environment and not entered in DGMS could have contributed to the 358 seizures;
- seizures with different 'owner' surnames (537 seizures), first names (626 seizures) and postcodes (761 seizures) between PAD and DGMS; and
- 1209 seizures in which the total quantities of items seized differed between PAD and DGMS.⁷²

4.25 The absence of some records in both systems, and differences in the methodology used to record seizures reduces the assurance that items have been appropriately stored, accounted for and transferred between entities.

Time lags in data entry

4.26 Time lags between the seizure of an item and its recording in DGMS increase the risk that seized items may be mishandled or lost prior to a record being made in DGMS. The presence or absence of records in DGMS and PAD also affects decisions to caution or seize, release items, or commence investigations. The ANAO's examination of DGMS data found that, on average, approximately six days elapsed between the seizure of an item by the ACBPS and the creation of its record in DGMS.⁷³ Further delays are incurred between the time a seizure is made and when it is record in PAD, with an additional 18 days elapsing (on average). Caution notices were significantly more delayed; on average, 73 days had elapsed between the issuing of a notice and its recording in PAD.

4.27 In light of the significant data shortcomings in the seizure data recorded in PAD and DGMS, neither system is able to provide a reasonable level of assurance in relation to the type and

71 The ANAO excluded records which were duplicated in order to record multiple staff names at the same organisation.

72 In some cases, this could be explained by differences in recording methodology (for example, recording one item weighing 1000 grams as 'one' item, or '1000' grams).

73 ANAO Audit Report No.42 2013–14 *Screening of International Mail* also identified time lags between seizure of an item and its recording in DGMS, with this lag varying by ACBPS facility.

number of items seized under Part 13A. Development of more rigorous processes for identifying and resolving errors (such as validation rules to enforce the types of data that may be entered into database fields) and reducing the manual processes required to exchange information between PAD and DGMS would improve the quality of seizure data.

Recommendation No.3

4.28 To improve the integrity of wildlife trade data for compliance and regulatory purposes, the ANAO recommends that the Department of the Environment and the Department of Immigration and Border Protection:

- (a) agree on minimum data standards for seizures that incorporate standardised quantity recording and develop strategies for enforcing those data standards; and
- (b) develop strategies for improved data exchange between the two entities, including options for electronic transfer and real-time access.

Environment's response: *Agreed.*

4.29 *Environment is improving the information systems for wildlife trade compliance. The improvements will enhance the quality of wildlife trade data and underpin Environment's approach to wildlife trade compliance. Environment will agree on shared data standards and data exchange with the Department of Immigration and Border Protection (noting that the final form will be determined as part of the system development being undertaken by Environment).*

Environment will improve the integrity of wildlife trade data as part of the development of the new wildlife trade database, which commenced in mid-2015.

- (a) *The Environment - Immigration and Border Protection working group will identify and facilitate agreement between the departments on minimum data standards for wildlife trade seizures.*
- (b) *The Environment - Immigration and Border Protection working group will coordinate the improvement of data exchange between departments. The nature of the electronic transfer or access will be determined in part by the outcome of Environment's IT developments for the new wildlife trade database and any replacement for the Compliance and Enforcement Management System (also refer recommendation 1).*

DIBP's response: *Agreed.*

4.30 *The Department supports the recommendation to establish agreed minimum data standards, and strategies for enforcement of those standards to improve the integrity of wildlife trade data for compliance and regulatory purposes.*

4.31 *The Department and the Department of the Environment (Environment) will establish a working group to agree on the minimum data standards for wildlife trade seizures, data sets required to facilitate standardised quantity recording, the requirements for access to these data sets, and to define the method and frequency of electronic data exchange between agencies.*

4.32 *Data sharing between the Department and Environment will comply with relevant legislative and security frameworks.*

5. Investigations

Background

Investigations and prosecutions are to be conducted when serious non-compliance with wildlife trade regulation is suspected due to criminal intent, illegal activity or deliberate actions.

Conclusion

The frameworks established by Environment and ACBPS to guide investigations into incidents of non-compliance with wildlife trade regulations generally complied with relevant Australian Government standards, and the conduct of investigations by both entities was sound. Shortcomings in Environment's investigation practices, including inconsistent approaches to recording allegations and case selection, undermined the effectiveness of the department's investigative approach.

Findings

Environment's and the ACBPS's investigations frameworks largely aligned with established requirements although there is scope for Environment to improve policy and procedural documentation at the departmental level. Decision-making and documentation relating to the investigations cases of both entities was generally sound.

There were, however, deficiencies in Environment's case selection process, with different case selection models used across areas of the department responsible for conducting investigations. Further, the department has not established a central repository to record allegations, referrals and investigations.

There would be merit in clarifying the process of referral between entities of allegations assessed as meeting investigation thresholds, but not able to be undertaken by an entity due to resource constraints. This would also lead to improved intelligence sharing.

Investigation frameworks

5.1 Part 13A investigations are undertaken by the Investigations Section of Environment's Compliance and Enforcement Branch and were undertaken by the Investigations Division of the ACBPS. The ANAO reviewed Environment's and the ACBPS's investigations operating frameworks against key relevant standards.⁷⁴ Table 5.1 provides the summary results of this assessment.

⁷⁴ The *Australian Government Investigation Standards* (AGIS) establish the minimum standards for investigations undertaken by Australian Government entities.

Table 5.1: ANAO assessment of entities' investigative frameworks

Australian Government Investigation Standard	Environment	ACBPS
1.0—Operating Framework		
Entity policy in regard to its investigation function	✓	✓✓
Performance measures to monitor investigations and sanctions	✖	✓
Commonwealth standards are considered in investigation guidance	✓✓	✓✓
Investigators have access to up-to-date laws and directives	✓✓	✓✓
Investigation staff qualifications meet the AGIS	✓✓	✓
Procedures for entity liaison	✓	✓
Procedures for information sharing	✓	✓✓
Procedures for responding to information requests from foreign entities	✓	✓✓
Procedures that govern ethical conduct and complaints handling	✓	✓✓
Procedures for liaison with the media	✓	✓
2.0—Identification of Breaches and Case Selection		
Procedures are documented and include receipt, evaluation, and acceptance, referral to AFP or ACLEI, and intelligence	✓	✓✓
3.0—Investigation Management		
Procedures are documented and include commencement, planning, risk management, implementation, closure and quality assurance	✓	✓✓

Legend: ✓✓ Satisfactory; ✓ Generally satisfactory with scope to improve; ✖ Not satisfactory.

Source: ANAO analysis of Environment and ACBPS Investigations documentation.

5.2 Environment's investigations framework, which has been predominantly developed at an operational level, largely aligns with the requirements established under the Australian Government Investigation Standards (AGIS). There is scope to improve policy and procedural documentation at the departmental level. For example, the department is yet to establish a departmental policy to guide investigations. The absence of a departmental policy is particularly problematic as a number of work areas across the department assess allegations and conduct investigations. In the absence of a departmental level policy, materials have been developed by each work area, which creates the potential for inconsistency in practices across the department. While procedural documents are in place and guidance material is available on the department's intranet, there is scope to provide more detailed guidance on roles and responsibilities, improve the documentation of investigation practices and ensure that guidance material is current. In addition, performance measures are largely quantitative and do not provide balanced insights into the effectiveness of the investigation process.

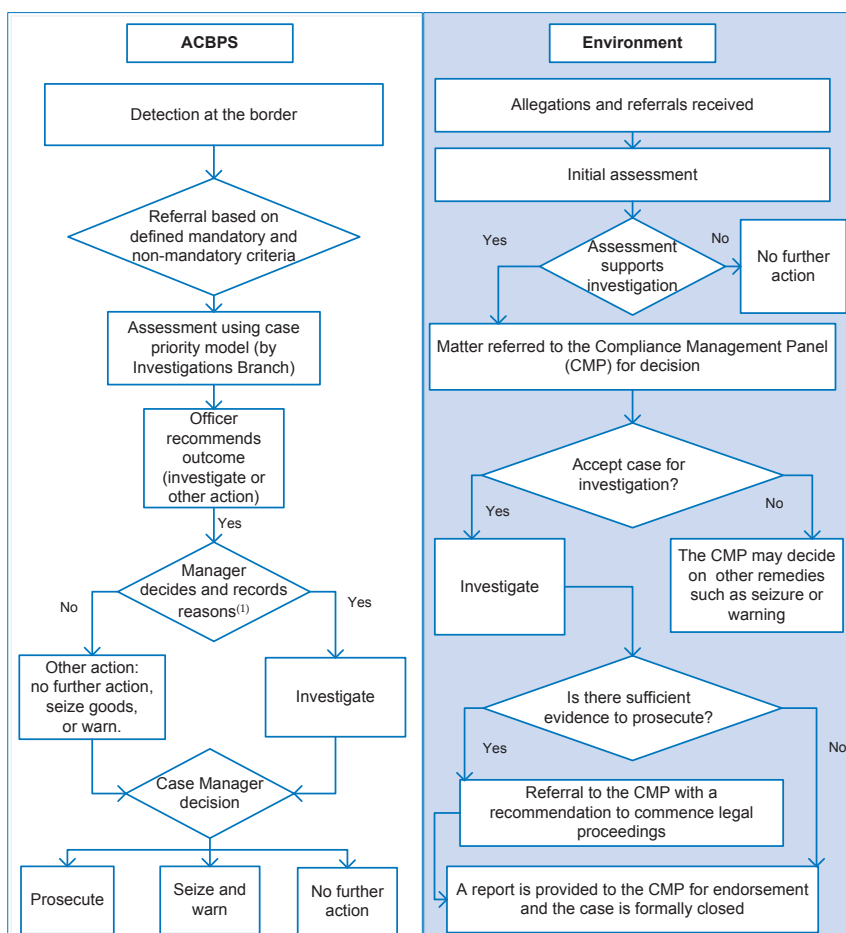
5.3 The ACBPS had clear, documented policies in place to guide its investigative function and supporting procedural documents aligned with the requirements established under AGIS. The ACBPS did, however, advise the ANAO that all instructional documentation, including those related to the conduct of investigations, was undergoing review and consolidation as part of its integration with DIBP. As part of this review, there is scope for DIBP to: incorporate the outcomes of quality assurance reviews in investigation performance measures to provide an assessment of

the quality of cases that did not proceed to prosecution⁷⁵; and update agreements with other entities, including the MoU with Environment.

Case selection, conduct and outcomes of investigations

5.4 Environment and the ACBPS had established processes for selecting cases and conducting investigations, as illustrated in Figure 5.1.

Figure 5.1: ACBPS and Environment investigation process



Note 1: If a recommendation is made to reject a 'priority 1' case, National Manager approval is required.

Source: ANAO analysis of information provided by Environment and the ACBPS.

⁷⁵ Current performance measures include the: number and percentage of referrals accepted for investigation (target 18–25 per cent); percentage of high priority cases accepted for investigation (target 80–90 per cent); and the percentage of prosecution briefs completed that resulted in a conviction (target 85–95 per cent).

5.5 The ANAO reviewed the documentation associated with all finalised Environment and ACBPS Part 13A investigation cases, against the requirements established in internal guidelines and under the AGIS. Between July 2011 and November 2014, Environment finalised nine investigations of potential offences against the EPBC Act and the ACBPS finalised 29 investigations.

Case selection

Environment

5.6 Environment's selection of cases for wildlife trade investigation is shared between the Investigations Section and the Wildlife Trade Compliance Section. Once an allegation of non-compliance has been received, an initial assessment is commenced that may involve review by both work areas. As outlined earlier, in the absence an overarching departmental policy both sections follow their own procedures. As a result, there is an increased risk for delays, overlapping activity and gaps in coverage. The following case study provides an example:

Case study 1. Alleged illegal trade of Australian native reptiles

In February 2011, an investigator received intelligence from a state government agency about an alleged breach of Part 13A of the EPBC Act and opened a 'case' in CEMS so that the matter could be recorded. The Investigations Section contacted Wildlife Trade Compliance Section in February 2011 and March 2011 advising that, due to the seriousness of the allegation, the matter should be referred to the Compliance Management Panel for approval of an investigation. This advice was not acted upon and, as a result, the matter was not escalated for decision. The allegation involved the trade of Australian native reptiles and species of international origin including corn snakes, boa constrictors, ball pythons and geckos.

5.7 The Investigations Section's procedures involve consideration of economic, environmental and external impacts of the event, with a decision to recommend an allegation for investigation following application of a priority rating. Wildlife Trade Compliance Section's guidance, which was completed in February 2015, involves the use of a Priority and Complexity Model to assess risk. Prior to February 2015, the section did not have in place a consistent model to determine priority, nor timeframes associated with referral assessment, and there is no central repository for recording allegations (as discussed in Chapter 2 at paragraph 2.9).⁷⁶ Once an initial assessment is completed and grounds for an investigation are established, the matter is then referred for decision on whether to proceed to an investigation. Prior to March 2015, the Compliance Management Panel was Environment's primary decision-making body for determining the prioritisation and resourcing of serious non-compliance matters for investigation and to determine the enforcement action to be pursued. The decision to accept a case as an investigation was recorded on a minute signed by the Chair. While the panel's decision was recorded, the absence of meeting minutes means that there was no record of the panel's discussion to inform future decisions and to underpin consistent decision making.

76 This finding accords with that of ANAO Audit Report No.43 2013–14 *Managing Compliance with EPBC Act Conditions of Approval*, p. 97. The audit recommended that Environment improve processes for responding to non-compliance by reinforcing the need to record all allegations in a central location, and improve the documentation of the reasons for enforcement decisions.

5.8 In March 2015, Environment replaced the Compliance Management Panel with the Regulatory Management Panel. This panel was created in response to the 2013 internal audit of Compliance and Enforcement Program Management, which recommended Environment assign dedicated oversight for regulatory compliance within the department. The panel is responsible for: periodic reviews of line area's regulatory capability; decisions on commencing investigations, resourcing and critical investigation decisions; providing advice on responses to non-compliance that have future implications; and reviewing periodic reports on the department's regulatory activity.

ACBPS

5.9 The responsibility within the ACBPS for case selection, including the tasks of evaluating referrals and accepting matters for investigation, was assigned to the Investigations Branch. It was mandatory for certain matters to be referred to Investigations Branch, with all cases of live, or deceased in transit, wildlife specimens and viable plant matter being a mandatory referral. All referrals were to be assessed and cases selected in accordance with the case priority model, which involved allocating 'points' to allegations according to: a hierarchy of four referral types ranked in accordance with community and government expectations⁷⁷; a priority determined by the circumstances surrounding the referral⁷⁸; and resourcing considerations.⁷⁹ All assessment information and subsequent investigations management was recorded in a dedicated case management system and hard copy files. Approvals were electronically recorded, with all records retained in one system.

5.10 In relation to the 29 wildlife investigation cases reviewed by the ANAO and finalised by the ACBPS between July 2011 and November 2014, all had been subject to a consistent assessment process and decisions related to the case acceptance were clearly documented. Over the same period, there were 101 wildlife-related referrals assessed against the Case Priority Model, of which 32 were referred internally or to another entity. Twenty two of these referrals were to the former Department of Agriculture (Agriculture), including six that involved live CITES Appendix II listed plants (seized under the EPBC Act). One of the 22 was incorrectly assessed as being non-CITES (a live chameleon), with the referral to Agriculture. The referral of live animals and plants to Agriculture is appropriate to ensure that biosecurity risks can be mitigated. Agriculture also has access to an infringement notice scheme that may be applied to these seizures. The notes made by ACBPS officers in the case management system relating to these referrals did not indicate whether Environment was also informed.

5.11 Another 25 of the 101 referrals were assessed as meeting the ACBPS threshold for an investigation, but were declined due to lack of resources at that time.⁸⁰ Thirteen of these involved live cactus plants (CITES Appendix II), which were seized under the EPBC Act. A further referral

77 Other referral types are aligned with the ACBPS's key border risks.

78 The modifiers are drawn from circumstances surrounding the detection, and from intelligence or government direction. Examples include indications of organised crime or recidivism.

79 Examples include: geographic location; likely outcomes/penalties; likely cost of pursuing a matter; and availability of staff.

80 Of the remaining referrals, 24 were accepted as cases and 20 did not meet the threshold or had insufficient evidence to proceed with an investigation.

involved the illegal importation of two CITES Appendix I listed skulls. The notes recorded in the case management system indicate that the owner was a recidivist for CITES and other items, but the retained documentation did not indicate whether Environment was informed to enable it to determine whether an investigation was warranted.

5.12 The ACBPS did not routinely inform Environment when it decided not to proceed with an investigation. While Environment receives notification of seizures, the department did not receive the ACBPS' assessment of the matter against its case prioritisation model (which may incorporate other intelligence). To effectively prioritise and manage the limited investigatory resources of both entities, there would be benefit in Environment and the DIBP establishing information-sharing arrangement relating to non-compliance, so that informed resourcing and case prioritisation decisions can be made.

Conducting investigations

5.13 The conduct of Part 13A investigations by Environment and the ACBPS was sound, with all critical decisions documented and made by an appropriate officer. Seven of the eight eligible cases investigated by Environment (the ninth case was terminated at referral stage) met case documentation criteria. There was, however, scope for the department to improve the planning of investigations and the identification and documentation of risks to each investigation. While 28 of the 29 cases investigated by the ACBPS met established requirements for case documentation⁸¹, only 19 of the cases met the ACBPS' internal supervisory review requirements and had a record of supervisory review recorded in the case management system.

Outcomes of investigations

5.14 In total, 38 investigation cases were finalised by the two entities, and 14 of those were successfully prosecuted. Of the:

- nine investigation cases finalised by Environment, two cases were successfully prosecuted (22 per cent of cases finalised), five were referred to Wildlife Trade Compliance Section for compliance action (such as a warning letter), one case was referred to another entity, and one case was terminated following confirmation that no breach under Part 13A of EPBC Act had occurred; and
- 29 investigation cases finalised by the ACBPS, criminal proceedings were initiated in 13 instances, leading to 12 successful prosecutions (41 per cent of cases finalised) and one unsuccessful prosecution. Four cases were referred to another entity, two cases resulted in compliance action (seizure of items and warning), and 10 cases were terminated due to insufficient evidence or no breach being identified.

5.15 The EPBC Act is considered to have harsher penalties than many other wildlife protection laws, with penalties for breaches of Part 13A involving fines of up to \$170 000 for an individual or

81 The 29th case had no record of the original referral on the electronic or hard copy file.

\$850 000 for a corporation and up to 10 years imprisonment.⁸² However, in practice, the penalties awarded to the 14 successful prosecutions were significantly lower, ranging from imprisonment of between two and 12 months, and fines of between \$300 and \$4000. At least one of these cases, illustrated in the following case study, was described as ‘the largest seizure of illegal wildlife items in the history of the Federal Department of the Environment’.⁸³

Case study 2. Possession of illegal wildlife products

In April 2013, a man pleaded guilty to possessing illegal wildlife products and was convicted of 24 charges of possessing illegal wildlife specimens. The man was in possession of 78 illegal wildlife products made from 24 threatened species, including 11 orangutan skulls and 25 other skulls of monkeys, lynx, bears and a tiger. Other illegal items included teeth and skins from species such as orangutans, lynx, and otters. The man received a 12 month suspended sentence, and was also required to undertake 384 hours of community service.

82 In comparison, in New Zealand (Trade in Endangered Species Act 1989), the maximum penalty is NZ\$100 000 and five years’ imprisonment for an individual or NZ\$200 000 for a corporation. In the United States of America (Endangered Species Act 1973), the maximum penalty is US\$50 000 and one year imprisonment, or civil penalties of \$25 000 per violation.

83 Environment, Media release, *NSW man sentenced for record illegal wildlife haul*, 2 May 2014.

6. Reporting of wildlife trade regulation

Background

Performance reporting allows entities to assess the impact and outcomes of programs, and to advise key stakeholders, particularly the Parliament, of the extent to which entity objectives have been achieved.

Conclusion

While Environment has established performance indicators regarding its regulation of wildlife trade, these indicators do not, at present, provide sufficient information against which stakeholders can assess the extent to which regulatory objectives are being achieved.

Findings

Environment does not have comprehensive key performance indicators against which it can illustrate trends over time and outline the extent to which Australia is meeting its international objectives. Developing more comprehensive key performance indicators would better position Environment and other stakeholders to assess the effectiveness of wildlife trade regulation.

The last publicly available data on Australian wildlife seizures was published in 2008. Environment currently provides only limited external reporting on the extent of illegal wildlife trade to and from Australia. As the lead regulator, and the only Commonwealth entity with access to both wildlife trade permit and seizure data, the department is well positioned to make such reporting available to the public.

Recommendation

The ANAO made one recommendation designed to improve the monitoring and reporting of wildlife trade regulation.

Performance monitoring and external reporting

Performance monitoring

6.1 Portfolio Budget Statements (PBS) specify each Commonwealth entities' outcome(s), programs, expenses, deliverables and key performance indicators (KPIs). In its 2014–15 and 2015–16 PBS, Environment's activities under Part 13A of the EPBC Act were a component of Programme 1.4: *Conservation of Australia's Heritage and the Environment*. The department has established deliverables and KPIs that specifically address wildlife trade regulation, however, the number of KPIs has reduced over recent years from three to one.

6.2 Environment's 2014–15 and 2015–16 KPIs for wildlife trade also lack sufficient detail to allow for an informed assessment of the department's regulatory performance. The deliverables and KPIs do not specify targets against which performance can be assessed and compared to previous years. Additionally, the measures do not address the department's broader regulatory functions, such as education and awareness, and investigation and enforcement roles.

6.3 Any actions taken to improve Environment's wildlife trade performance information will need to take into account the introduction of the:

- *Public Governance, Performance and Accountability Act 2013*, which incorporates the enhanced Commonwealth Performance Framework in place from June 2015; and
- Regulator Performance Framework, that incorporates six KPIs aimed at encouraging regulators 'to undertake their functions with the minimum impact necessary to achieve regulatory objectives and to effect positive ongoing and lasting cultural change within regulators'.⁸⁴

6.4 The new performance framework requirements will provide Environment with an opportunity to review the manner in which the department measures wildlife trade regulation and the performance data collected and reported.

Performance reporting

6.5 As discussed in Chapter 3 at paragraph 3.4 and Chapter 4 at Figure 4.2, Environment's historic reporting of permits, and caution and seizure notices has been inconsistent. Environment's *2013–14 Annual Report* provided information on its wildlife trade functions, including the number of import and export trade, baggage and non-commercial permits issued, transfer assessments for zoological specimens completed, and seizure and caution notices issued. However, the report did not distinguish between:

- seizures and caution notices;
- those seizures and notices issued by Environment and those issued on its behalf by other entities; and
- seizures and notices relating to wildlife trade and those relating to legislation other than Part 13A of the EPBC Act.

6.6 Further, Environment's *2013–14 Annual Report* did not provide stakeholders with information such as the extent to which compliance incidents were assessed or investigated within timeframes, timeframes for the assessment and issuance of wildlife trade permits, nor of the results of its investigations of non-compliant activity (such as prosecutions and other enforcement actions). While the departments' wildlife trade KPIs made reference to Wildlife Trade Operations and Management Plans meeting statutory requirements, the report does not state the extent to which approved operations and plans comply with these requirements, nor outline the requirements. Overall, the performance information reported by the department over recent years has not provided stakeholders with sufficient information on which to determine the extent to which regulatory objectives are being achieved.

6.7 The ACBPS did not include performance measures relating to the wildlife trade in its PBS and did not report on its contribution to Environment's wildlife trade functions and had not provided data or other performance information relating to these functions in its annual reports since 2007–08. The ACBPS advised the ANAO that on occasion, when requested, it contributed wildlife trade data to publications by organisations such as the World Customs Organisation. While the ACBPS had no externally reported objectives, deliverables or KPIs that related to wildlife

84 Commonwealth of Australia, *Regulator Performance Framework*, p. 4, 2014.

trade, it was not primarily responsible for this regulation or policy. Reporting on the overall performance of wildlife trade activities is the responsibility of Environment.

Recommendation No.4

6.8 To improve the monitoring and reporting of wildlife trade regulation, the ANAO recommends that the Department of the Environment develop appropriate key performance indicators and targets, and publicly report the extent to which the objectives for wildlife trade regulation are being achieved.

Environment's response: *Agreed.*

6.9 *While Environment meets and exceeds its reporting requirements to the Convention on International Trade of Endangered Species, it supports improving the public reporting on performance of wildlife trade regulation.*

6.10 *Environment will improve the monitoring and reporting of wildlife trade regulation, including through the development of additional key performance indicators and targets that will be published in Environment's annual report, starting with the 2016–17 report.*

CITES reporting

6.11 As a signatory to CITES, Environment has reporting obligations to the CITES Secretariat on an annual and biennial basis.⁸⁵ As of July 2015, Environment advised the ANAO that its annual CITES reporting was current, with the 2013 annual report submitted in late 2014, and the 2014 report to be submitted in October 2015. However, the department has not submitted biennial reports to the CITES Secretariat since the 2009–10 report was provided in 2011. While countries may also report national compliance and enforcement efforts, Environment has not reported against these items.

Reporting on the extent of illegal trade

6.12 Environment currently provides only limited external reporting on the extent of illegal wildlife trade to and from Australia. As the lead regulator, and the only Commonwealth entity with access to both wildlife trade permit and seizure data, the department is well positioned to make such reporting available to the public. In contrast, some international organisations provide significantly more data on wildlife trade. The United Kingdom Border Force, for example, publishes a quarterly 'transparency report'⁸⁶ that detail the types of species seized, the category of item, and the quantity (in the form of both number of seizures, and volumes) of items involved. In the absence of such information, there is limited awareness in the community of the magnitude of the illicit wildlife trade and a paucity of information on which to base decisions relating to the resources and supporting infrastructures required to address future challenges in this area.

85 Annual reports are a summary of a country's CITES trade, such as the number and type of permits and pre-CITES certificates used; and the countries with which the trade occurred. Biennial reports include information on legislative, regulatory and administrative measures taken to enforce the Convention.

86 The August 2015 report is available from < <https://www.gov.uk/government/publications/border-force-transparency-data-august-2015> > [accessed 11 September 2015].

6.13 All stakeholders interviewed by the ANAO⁸⁷ agreed that ‘unknowns’, particularly in relation to the outbound trade in wildlife, make an accurate assessment of the extent of the illegal wildlife trade within Australia challenging. Intermittent cases involving illegal wildlife trade do not in isolation provide evidence of an extensive illegal wildlife trade issue within Australia. However, recent examples including: an exotic fish smuggling network⁸⁸; the attempted illegal export of more than 150 reptiles from Western Australia into Europe⁸⁹; and the seizure of 110 kilos of ivory transiting through Perth airport en route to Malaysia⁹⁰, suggest a degree of international coordination.

6.14 These seizures reiterate the importance of producing reliable and accessible data on the extent of the illegal trade in wildlife. The last publicly available data on Australian seizures was published in 2008, which was based on ACBPS seizure and prosecutions data from 1994 to 2007.⁹¹ The ACBPS last conducted detailed intelligence analysis on wildlife trade in 2009, but the results were not made publicly available.



Grant Hehir
Auditor-General

Canberra ACT
10 November 2015

87 The ANAO interviewed 12 stakeholders, including representatives from the Australian Crime Commission and the Australian Institute of Criminology.

88 Environment media release, 9 February 2015. Twenty plastic bags containing a large number of live and dead CITES-listed fish were concealed in a passenger’s luggage, and were seized by the ACBPS after arrival into Adelaide Airport on a flight from Singapore.

89 ACBPS media release, 16 February 2015. Four foreign nationals were arrested by the ACBPS after the discovery of reptiles allegedly hidden in hollowed out books and cigarette packets contained in packages posted from various locations within Western Australia to European destinations.

90 ACBPS and Environment joint media release, 9 April 2015.

91 E Alacs, A Georges, ‘Wildlife across our borders: a review of the illegal trade in Australia’, *Australian Journal of Forensic Sciences*, 40 (2), December 2008, pp. 147–160.

Appendices

Appendix 1 Entities responses



Australian Government
Department of the Environment

Dr Gordon de Brouwer PSM
Secretary

Mr Grant Hehir
Auditor General
Australian National Audit Office
GPO Box 707
Canberra ACT 2600


Dear Mr Hehir

Thank you for your letter of 25 September 2015, providing the Australian National Audit Office proposed audit report on *Managing Compliance with the Wildlife Trade Provisions of the Environment Protection and Biodiversity Conservation Act 1999*. Pursuant to sub-section 19(4) of the *Auditor-General Act 1997*, please find enclosed the Department of the Environment's response to the report.

In summary, the report states that the effectiveness of Environment's compliance activities on wildlife trade can be improved by adopting a more systematic, risk-based approach. A key theme of the report is that data collected by Environment and the Department of Immigration and Border Protection should be better used to assess compliance risks and establish priorities for wildlife trade compliance. The report also highlights the need for improved consistency and use of education activities in responding to compliance risks. Lastly, the report notes the potential to improve performance monitoring and reporting.

I agree with the substance of the report and agree with the recommendations, as detailed in the enclosed response. Environment remains committed to maturing our regulatory and compliance capability. We have systematically enhanced our investigations and enforcement capacity over recent years, as reflected in the findings of this audit. We are moving in a step-wise fashion to build on these improvements in other regulatory areas of the department, including for wildlife trade.

The development of an effective ICT platform is essential to strengthening our wildlife trade compliance system. Environment began developing a new database for wildlife trade earlier this year. The database will include the various wildlife permit functions as well as compliance functions such as the processing of seized wildlife specimens. Environment has also scoped the requirements for a new compliance case management and intelligence system to improve the analytical capability and identification of compliance risks more broadly. I expect that enhanced ICT systems will greatly assist the department's ability to conduct risk-based, proactively targeted compliance activities. I note, however, that the speed of implementation depends on available resourcing.

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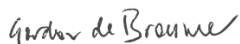
While systems developments will necessarily take time to implement, we are responding to the audit recommendations to the extent that the existing systems allow. Environment and the Department of Immigration and Border Protection have agreed to form a working group to oversee the implementation of our responses in areas of joint responsibility. Finalising a new memorandum of understanding to cover wildlife trade functions is a priority for both departments. Other activities to be covered by the working group are detailed in the enclosed response.

I am confident that Environment is well placed to implement the responses to the recommendations, with the majority to be completed within the next twelve months, subject to available resources.

More generally, I have asked Mr Joe Woodward to review the regulatory practices and maturity of Environment Protection Group in the department, to provide a broad assessment of our regulatory capability and ways to improve our performance in implementing what is complex legislation. This review will consider wildlife trade regulation and compliance under the *Environment Protection and Biodiversity Conservation Act 1999*. Mr Woodward is a former deputy of the NSW Environment Protection Agency and is an experienced and highly regarded environmental regulator. He will report by February 2016.

Thank you for providing Environment the opportunity to provide comment on the findings of the report. Please find enclosed our summary response to the report and an individual response to each of the recommendations.

Yours sincerely



Gordon de Brouwer

22 October 2015

Enc. (2)



Australian Government
Department of Immigration
and Border Protection

ACTING DEPUTY SECRETARY

Mr Mark Simpson
 Acting Group Executive Director
 Performance Audit Services Group
 Australian National Audit Office
 GPO Box 707
 Canberra ACT 2601

Dear Mr Simpson

Proposed ANAO audit report on managing compliance with wildlife trade

Thank you for your letter of 25 September 2015 to Secretary Pezzullo inviting comments on the proposed Australian National Audit Office (ANAO) report on Managing Compliance with the Wildlife Trade Provisions of the *Environment Protection and Biodiversity Conservation Act 1999*.

You have specifically sought our response to Recommendation 3, which is directed at the Department of Immigration and Border Protection (the Department). The Department is supportive of this recommendation, aimed at improving the integrity of wildlife trade data for compliance and regulatory purposes. The Department's response to the recommendation is attached at Appendix 1. A summary of the Department's formal response is attached at Appendix 2.

The Department will also work with the Department of the Environment to support the implementation of Recommendations 1 and 2, which relate to the collection of compliance data and the evaluation of publically available information to educate traders and travellers.

The Department recognises and appreciates the efforts of ANAO staff who conducted the audit. If you have any questions in relation to the Department's response, please contact Andrew Chandler, Assistant Secretary, Trade & Customs Branch, on 02 6264 3046.

Yours sincerely

Linda Geddes
Acting Deputy Secretary
Policy Group

21 October 2015

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Appendix 2 Abbreviations and glossary

ACBPS	Australian Customs and Border Protection Service.
AGIS	Australian Government Investigations Standards.
CEMS	Compliance and Enforcement Management System. Environment's system used for recording intelligence and investigations case management.
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora.
DGMS	Detained Goods Management System. The ACBPS system used to record and track detained goods.
DIBP	Department of Immigration and Border Protection.
Environment	Department of the Environment.
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999.</i>
MoU	Memorandum of Understanding.
PAD	Permits Administration Database. Environment's database used to approve and issue wildlife trade permits (prior to May 2013) and to record the seizure of wildlife specimens.
PAWS	Permit Administration Workflow System. Environment's IT system for issuing permits, after May 2013.
Wildlife	Non-domesticated animals, plants, or other organisms which grow or live wild in an area without having being introduced by humans.
Wildlife specimen	A whole and living animal or plant, as well as any part or derivation of the whole (either living or non-living).