



4. Illegal fishing (II)



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Introduction

Sturgeons are one of the world’s most ancient living species. Some of the most important populations live in the Danube River basin. **Sturgeons are also the most critically endangered group of species worldwide.** Their unfertilized roe, more commonly known as caviar, is a high-priced delicacy, reaching retail prices up to 6000 euros per kilogram, 20.000 euros in case of Almas Caviar.

Sturgeons are **long distance migratory species and require an intact river continuum**, migrating to vital spawning, nursery, feeding and wintering habitats to fulfil their life-cycle. This behaviour makes sturgeon species even more vulnerable to anthropogenic influences. Sturgeons' populations are therefore indicators of good water and habitat quality. In addition, they are indicators from a socio-economic perspective about healthy and properly managed stocks sustaining the livelihood of residents.

Sturgeons, once present in large, viable populations in the Danube River Basin and contributing greatly to the stocks of the adjacent Black Sea, have declined dramatically during the last century. Overexploitation of sturgeons, disruption of navigation pathways, flood protection, hydropower development and pollution have added to the dramatic decline of stocks of sturgeon species in the Danube.



Introduction

Until recently, **Bulgaria and Romania were among the world’s top 10 caviar exporting countries**. After the construction of the **Iron Gate I dam** at the border of Romania and Serbia in 1972, sturgeon populations plummeted in numbers. The geographical position of the countries further makes Romania and Bulgaria important gateways for illegal trade of caviar originating from the Caspian Sea. Ukraine is also a major exporter.

All species, parts and products of sturgeon and paddlefish (including meat and roe) **are protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since 1998**.

The *European Sturgeon* and *Shortnose Sturgeon* are listed under CITES Appendix I, which translates into a total trade ban on caviar obtained from wild-caught specimen (there is a legal commercial trade in caviar from farmed *Shortnose sturgeon*), while all other species are listed under Appendix II, which allows for a managed legal trade – subject to CITES-determined quotas for caviar and met of wild-caught specimen from shared stocks.



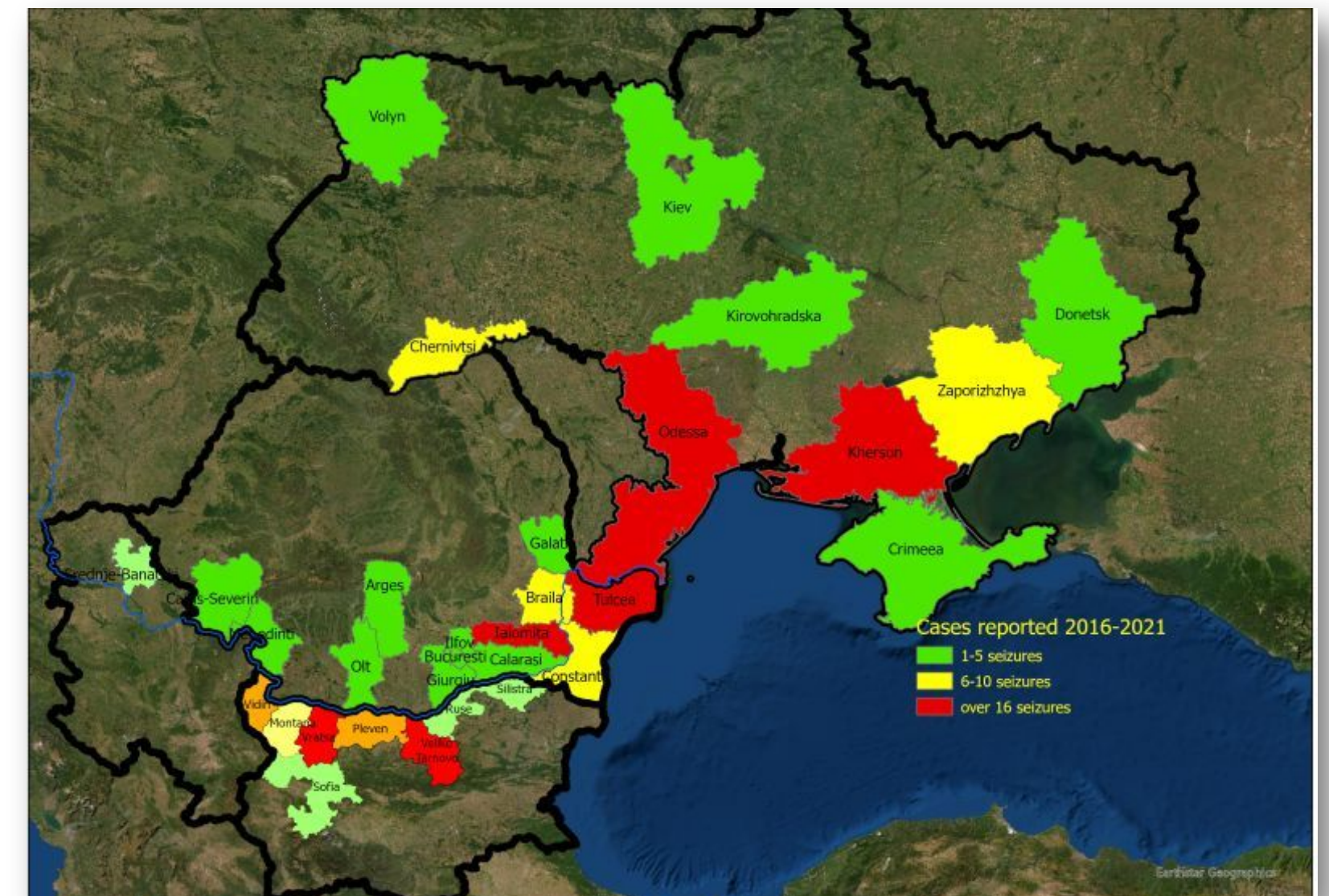
Introduction

EU member states such as France, Germany, Italy and Spain are the world's largest importers of caviar. Nowadays nearly all legal trade in caviar stems from sturgeons bred in captivity in aquaculture farms.

As well reported by the Bulgarian national report, during the last years, **positive results have been achieved through the prioritization of controls and enforcement's improvement**. Thanks to more frequent and targeted inspections by the EAFA and the Border Police, separately, as well as their joint actions, more than 23 km of illegal hook lines have been removed from the Danube.



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Facts

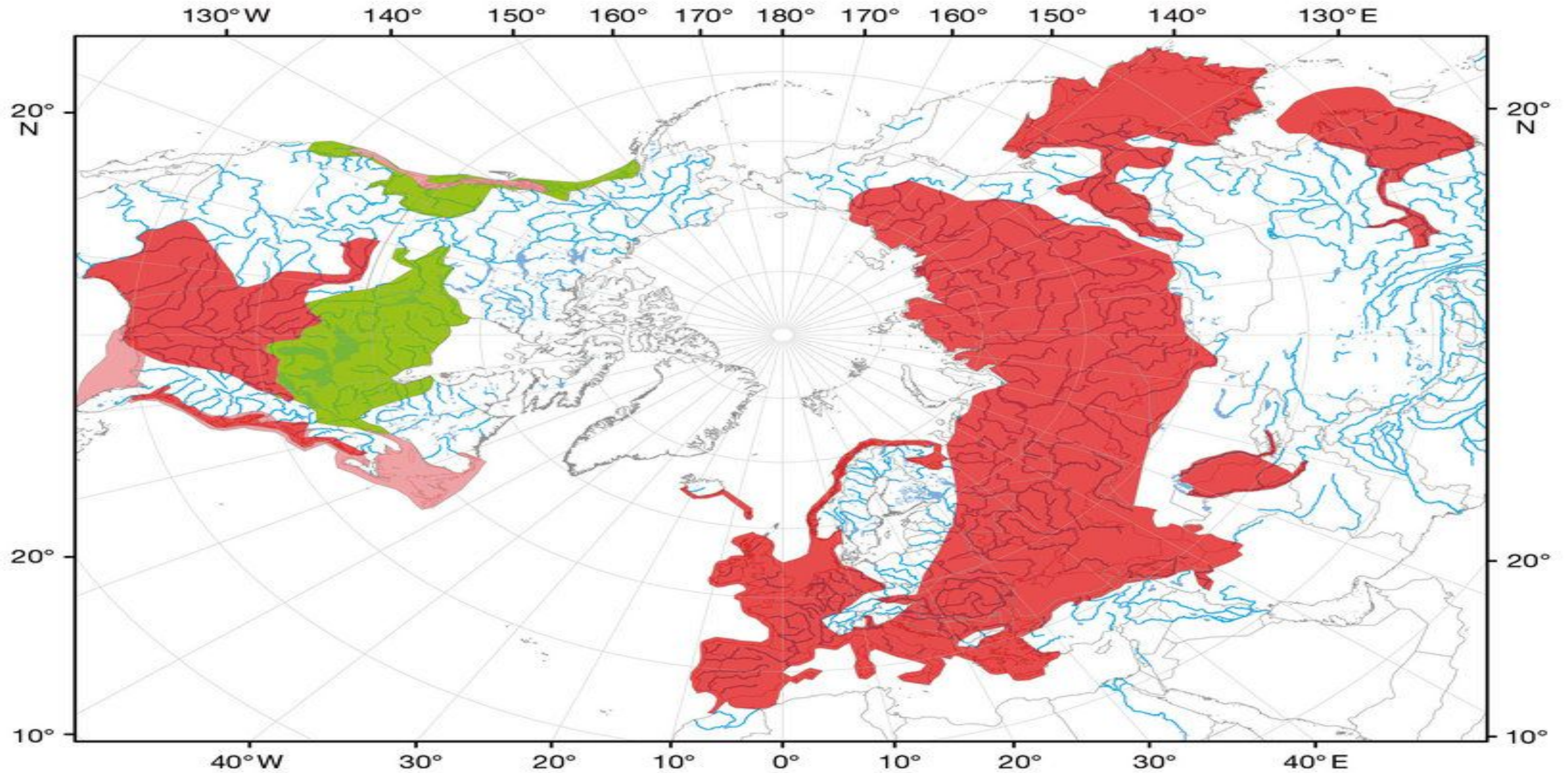
On 19 February 2019, near the town of Silistra, Bulgaria, an Executive Agency of Fisheries and Aquaculture (EAFA) inspector observed **a fisherman catching a massive female Beluga Sturgeon**, measuring 2m in length and weighing 200kg ca, pulling it out of the river, in his boat, and loading it into the trunk of the car. The inspector immediately called for assistance at the regional Mol office, and they agreed to have the vehicle stopped for inspection in the same area. This is the way how they caught the fisherman and at the same time found the live fish in the boot of the car.

The WWF-Bulgaria’s Chief Freshwater Expert, Stoyan Mihov, received a call from the EAFA inspector regarding the Beluga Sturgeon, to be informed about the injuries the animal suffered during the hunt. It was found that the fish was carrying caviar. Together with the expert ichthyologist Borislava Margaritova, and the ecologist from the nature park “Persina” Veselin Koev, they team immediately moved from Belene to the village of Aydemir, municipality of Silistra, to bring the first aid to the injured animal.

After carefully treating the wounds and fitting the animal with a tracking chip, the rescue team released the Beluga Sturgeon back into the river. What happened next remained unclear since no further signal from the attached tracking device has been detected.



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IUCN's Red List status of the 27 sturgeon and paddlefish species globally. Status is indicated by colour red: Critically Endangered or Endangered; peach: Near Threatened or Vulnerable; green: Least Concern. (2018)

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Issues

In May 2006, the EU followed a CITES recommendation to adopt a universal labelling system to enable law enforcement agencies to track the origin and legality of caviar shipments (Commission Regulation (EC) No. 865/2006, amended by **Regulation (EC) No. 100/2008**). Producers label the caviar themselves after having obtained a license from the relevant CITES Management Authorities. There is no unified format except for the necessary information. The labels do not require a watermark or any other anti-counterfeit measures.

The **Danube River Protection Convention**, on which the work of the International Commission for the Protection of the Danube River (ICPDR) is based, was signed on 29 June 1994 in Sofia (Bulgaria) and entered into force in 1998, forms the overall legal instrument for co-operation on transboundary water management in the Danube River Basin. The Convention contracting Parties consist of the 14 Danube riparian states and the EU.

ICPDR aims to ensure that surface waters and groundwater within the Danube River Basin are managed and used sustainably and equitably.



Issues

With the support of the environmental pillar of EU Strategy for the Danube Region (EUSDR), scientists, governmental and non-governmental organizations, **the Danube Sturgeon Task Force (DSTF) was established in January 2012** to support the achievement of the EUSDR target ‘to ensure viable populations of sturgeon and other indigenous fish species by 2020.

The aim of the DSTF is to foster synergies of the existing organizations and support the conservation of highly endangered native sturgeon species in the Danube River Basin and Black Sea by promoting the implementation of the Program “Sturgeon 2020”. The program described the respective measures required to achieve a successful implementation of the conservation and revival of sturgeon populations in the Danube River Basin and the adjacent Black Sea region.

Each topic specifies goals/objectives, measures and recommendations, relevant actors and links to other EUSDR Priority Areas. In addition, the DSTF has well assisted in coordinating the SAP.



Holdings

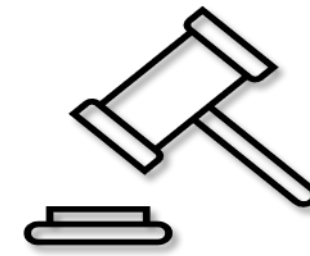
Pre-litigation proceedings were initiated for the crime regulated by the Article 238 of the Bulgarian Criminal Code, within the framework of which the Water Programme Manager, Stoyan Mihov, prepared a forensic ichthyological and pricing expert report for the Police Department of the Ministry of Interior-Silistra.

The price assessment is based on the market prices of legally sold caviar produced in the Bulgarian aquaculture facilities, as well as on an expert assessment of the price of the meat and fish caviar on the black market. Such an approach could be developed as a methodology for assessing the value of endangered wildlife products so that prosecutors, investigators and the courts have a clearer picture of the economic, as well as the environmental, consequences of an offence.

The supervising prosecutor considered that the fisherman’s actions did not constitute a crime, but that a violation of Art. 124, par. 1 of the BDA, has been committed. *“By Decree of 20.05.2019, the criminal proceedings were terminated, and the materials sent to the head of EAFA – Ruse which is the competent authority pursuant to Art. 130 para. 1 of the Biological Diversity Act”.*



Holdings



Two fines of a total amount of BGN 2,500 have been imposed by Penal Decree No. 19-13/13.06.2019. The convicted appealed against the fines imposed in the Silistra Regional Court, which confirmed the amounts by reclassifying one of the administrative offence committed from Art. 33, para. 3 of the FAA to the violation of Art.33, par. 1 of the FAA. The Decision of the Regional Court was also appealed, but the Administrative Court of Silistra upheld it.

If the supervising prosecutor had decided that the act constituted a crime and the Court had found the defendant guilty, the possible penalty would have been imprisonment of up to 6 months, probation and a fine of 5,000 to 10,000 BGN.

Within the EU **the only river with naturally reproducing sturgeon populations remains the Danube.** Crucial but no longer reproductive stocks are left in the Po River in Italy and the Gironde in France. Restocking activities take place in Bulgaria, Hungary, Romania, France, Germany, Poland, Austria and the Netherlands.



4. Illegal fishing (II)





Rationale

The actual amount of illegal trade in sturgeon meat and caviar is likely to be higher than figures provided by EU-TWIX data and other sources. This is due to the fact that there is limited information available, in particular regarding import reports, remains limited. A large proportion of illegal trade therefore remains undetected and unpunished.

The Bulgarian case clearly demonstrated how the **finest imposed can not be compared with the seriousness of the committed crime**. Stronger penalties should be applied for such law offences, from gradual increase of fines to suspending licenses in case of repeated abuses and **prison sentences**.

Fishing communities require support to stop illegal fishing of sturgeon; compensatory measures should be put in place for fishermen, providing incentives and alternative income sources. Fishermen should be trained by sturgeon experts to **become sturgeon advocates**. They can be employed in sturgeon monitoring and conservation projects as well demonstrated by the LIFE project “*Sustainable Protection of Lower Danube Sturgeons by Preventing and Counteracting Poaching and Illegal Wildlife Trade*”.



Rationale

Agencies responsible for trade across borders, such as Customs or Border Police, should ensure that caviar from poached sturgeons cannot enter international markets and be exported to consumer countries. Therefore, an **enhanced cooperation** between CITES, INTERPOL/EUROPOL and **national prosecutors** is required.

The Bulgarian case highlighted the importance of relying on highly specialised experts and constant and the continuous monitoring of fishing activities. In this case, cooperation is fundamental. Since CITES is not up to the task of being a law enforcement agency and there are no requirements for the parties to have an enforcement authority, **the role played by prosecutors and judicial institutions became of crucial importance.**

Furthermore, leaving local communities and fisheries out of decision-making damages people’s livelihoods as well as having a negative impact on the strategies trying to protect wildlife.

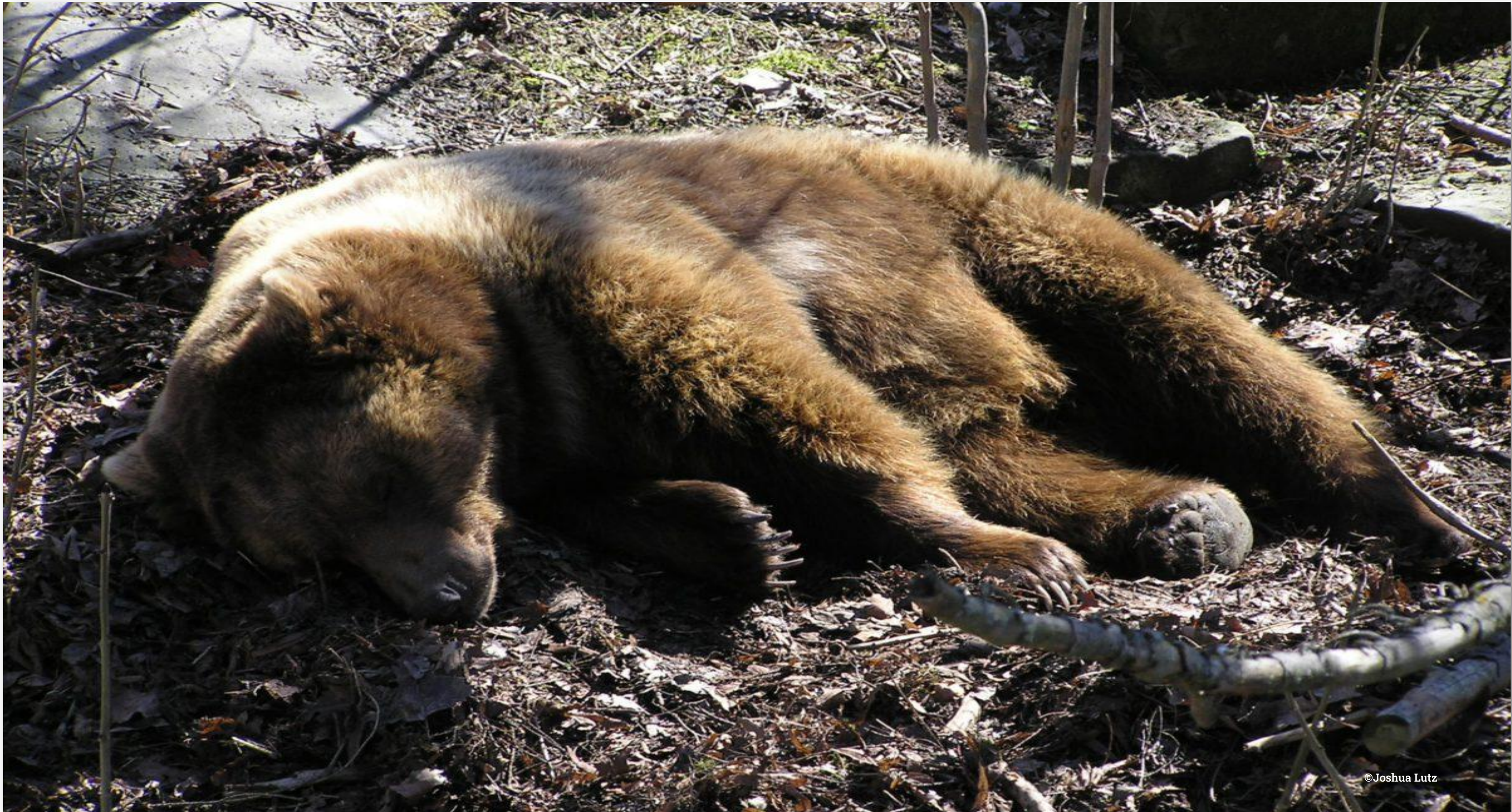
The sentence provided by the Bulgarian judges is a clue of how much far is the awareness of the judicial system about wildlife crimes. This is not an isolated case, but a constant common to all the countries involved in the project.



Rationale

Ways to improve compliance:

- ❑ **Stronger penalties should be applied** for law offences, from gradual increase of fines to suspending licenses in case of repeated abuses and prison sentences. Domestic markets and restaurants should be controlled better to stop purchasing of illegal caviar;
- ❑ Trainings and awareness raising for law enforcement officials as well as for prosecutors and judges is needed to enhance investigations and enable prosecutors to **more effectively pursue cases and make sufficient arguments in court** as well as enable judges to impose higher fines, and in serious cases even prison sentences;
- ❑ **Social studies about local fishermen** and other residents may elucidate their behaviour, e.g., regarding low or high risk of being prosecuted;
- ❑ **Enhanced cooperation between CITES, INTERPOL/EUROPOL is required.** It is recommended to include statistics about illegal caviar trade in the annual reports and to advertise labelling of CITES controlled caviar, informing customers about the endangered status of sturgeons and influencing their choice towards aquaculture caviar.



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Introduction

Unlike hunting, poaching is the illegal trafficking and killing of wildlife.

Sometimes animal or plant parts are sold as trophies or “folk medicines” and sometimes they are sold as pets or houseplants. Activities that are considered poaching include:

- Killing an animal out of season, without a license, with a prohibited weapon, or in a prohibited manner such as jacklighting.
- Killing a protected species, exceeding one's bag limit, or killing an animal while trespassing is also considered poaching.
- The desire for rare animal products such as ivory and furs, or for the income coming from their selling.
- Any animal can be poached if it is killed unlawfully.



Introduction

The legal paperwork of strictly protected species is a complex situation. Situations differ even per country in Europe.

There are European rules that each country must follow, yet there are exemptions that allow killing of strictly protected species, nevertheless. Most of these exemptions focus on so-called “problem individuals”. If an individual causes dangerous situations for humans, authorities can always kill this individual.

Several countries have law that allow annual killing of wolves, for example. The killing, also called **culling**, is often justified to maintain a favorable population status, but it often increases poaching.

Large carnivore poaching is a serious threat for local wildlife populations in several SWiPE countries. The **inadequate management** of game species generally has led to a decrease in the main prey of large carnivores, primarily the wild ungulates. The usual alternative prey is domestic animals; this escalates the **clash between the large carnivores and the local community**, increasing poaching intensity and/or hunting pressure



People who poach do so for a variety of reasons, including:

- Law and broken regulation systems: wildlife protection regulations can be circumvented;
- Highly-priced and valued animal parts, products, and pets: there are cartels and top government as well as wildlife regulation officials that benefit from the illegal trade;
- Religious, aphrodisiac, and medical values;
- Food and exotic dishes for the elite;
- Logging, and expansion of human settlement areas;
- Poverty or disregard for hunting regulations;



5. Poaching





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The impoverished rural populations are not against poaching; there is a weak implementation of the laws; there is an absence or ineffectiveness of trans-boundary cooperation; there is low awareness among judiciaries; and the large carnivore habitats are decreasing due to human infrastructure expansion.

Countries like Slovakia, Czech Republic and Romania have qualified wildlife crime as a criminal offence punishable by effective, often proportionate and dissuasive criminal penalties. In these countries, all three species of large carnivores are strictly protected according to the law.

The main reported reason for the current state of large carnivore poaching in SWiPE countries are **carnivores-human conflicts** and the **poverty of rural populations**, who can gain additional money from selling trophies (skin + skeleton), meat, fat and other parts of the body.

National experts agree that the factors playing an important role in the current dissemination of poaching are the **absence/ineffectiveness of anti-poaching squads, distrust in police forces**, difficulties of gaining and using updated investigative techniques and the low awareness among people and judiciary



Poaching introduces several **threats to both human and animal populations**, and these are not limited to rare, endangered, or large animals:

- Population decimation, can lead to extinction
- Suffering of animals
- Dead of rangers
- Compounds criminal network activities and increase the global health risk
- Creates unbalance in ecosystems
- Decreases tourist action
- Affects many “common animals”, not only endangered / protected



Issues

Police have been notified of possible hunting poaching.

Based on the notification, the judicial police and the hunting guard went on the hunting ground, where they found that a car was moving in the area.

The car stopped on the bed of the stream in the area, its trunk was opened and, immediately after, a muffled noise was heard from inside the car identical to the noise made by a large object hurriedly thrown.

Police officers signaled with the flashlights the driver of that car to stop, but he did not comply with the signal of the police officers and continued to drive, without being found afterwards.

The judicial police continued the investigation in presence of the driver and checked the interior of the car.

When they sampled from the LPG cylinder in the trunk of the car and from the lid of the petrol tank reddish brown spots that appeared to be blood, which were packed and sealed with the Ministry of Internal Affairs seal.

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Following the expertise performed by the specialists of the National Museum of Natural History "Grigore Antipa" - Molecular Biology Department, these stains turned out to be blood from a wild boar, although the defendant, in his statements, said that he never carried himself, wild, live or shot animals with his vehicle.

In addition, according to the **technical-scientific ballistics report**, the weapon belonging to the defendant is in working order, and the barrels of the weapon have residues inside.

Given:

- The concrete **social danger of the crime**,
- The **circumstances** in which it was committed,

it was considered that the **interception and recording of telephone calls made by defendant is indispensable for documenting the criminal activity** and the administration of the evidence necessary to hold him criminally liable.

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By the criminal sentence, the defendant was acquitted for committing the crime of hunting poaching.

In order to rule on this solution, the Court of First Instance held, in essence, that, it was necessary for the criminal investigation bodies to determine whether the crime of poaching was committed with the purpose of killing the animal in question

The court of first instance found that:

- It did not appear whether or not the traces of blood were fresh traces,
- Even more so as the body of the poached animal was not found on the spot,
- No traces of the projectiles used to establish the firearm were found in the vicinity.
- Regarding this last aspect, it does not result from the onsite research report that the respective area was verified in this respect.
- The traces taken from that place are identical to those taken from inside the car belonging to the defendant,



- Even more so as the defendant has a hunting certificate and a gun license and
- He transported with this car the meat resulting from the hunting games in which he participated.

Residues were found on the barrel of the weapon held by the defendant according to the technical-scientific ballistics report

☐ BUT it does not automatically lead to the establishment of his guilt

There was an ambiguity as to the fact that a poaching offense had taken place on that date, even if traces of blood were found on the spot,

☐ There was no evidence in that case that they came from an action taken on that date and not on an earlier date, or if the boar had been killed or just wounded.

This **circumstance needed to be proved beyond doubt** and only on the basis of this situation could it be questioned whether or not the defendant was the perpetrator.



Against the sentence pronounced in the first instance, the Prosecutor's Office exercised the appeal, essentially requesting the admission of the appeal, the annulment of the appealed criminal sentence and the pronouncing of a solution to convict the respondent for committing the offenses of hunting poaching.

The Court, examining the judgement under appeal, finds that:

- For the arrest of a poaching offense, consisting in the shooting at night and without authorization of a wild boar, **it is necessary for the judicial authorities to determine whether such action took place on that date and with such a consequence.**

The Court notes the factual situation presented in the indictment, and as a matter of certainty, the Court will note that, immediately after witness G heard the two gunshots and notified the police, the car driven by the respondent defendant was seen in the area where the two shots were fired, but the defendant refused to stop at the summons of witness D.

Also, as certain elements of evidence, the court of judicial control will also note that both in that area and in the defendant's car, bloodstains from a wild boar were identified.





Holdings

In view of these considerations, the Court will admit the appeal made by the Prosecutor's Office, it will annul in full the appealed criminal sentence and will sentence the respondent C to the following punishments:

- **2 (two) years imprisonment for committing the crime of instigation to perjury.**
- **3 (three) years imprisonment for the crime of poaching.**

It will order the merging of the two main sentences applied, the respondent defendant will serve the heaviest sentence, respectively the sentence of 3 years imprisonment and will order the suspension of the execution of the sentence under supervision, for a probation period of 5 years.

Considering that the defendant was sentenced to 3 years in prison for the crime of poaching, the right to possess a hunting weapon is revoked.



Rationale

The inadequate management of game species and expanding human infrastructure are increasing the pressure on large carnivore populations. Interviewed experts considered poaching an issue of national concern, enabled by a weak implementation of laws, poor economic situations, strong hunting organisations and pressures, absence or ineffectiveness of transboundary cooperation and low awareness among judiciaries.

The establishment of a common and reliable monitoring system, improved cross border cooperation and **information exchange are needed to combat poaching and increase the protection of large carnivores in the SWiPE program area.**

Poachers take advantage of the lack of transparency of the controlling authorities, the poor governance structure, and the **difficulties of monitoring huge wilderness areas.**

Hunters may play an important role in fighting poaching. This is debated by experts. On one hand, some hunters may be poachers themselves. On the other hand, national experts report that the majority of hunters are willing to cooperate with local authorities and NGOs to fight this problem.



Rationale

Ways to improve compliance:

- The main factor influencing the specialisation of judges in wildlife crimes prosecution seems to be related to personal circumstances of individual judges and the national case allocation system;
- Anti-poaching squads need to be organized, and border control should be improved, enhancing the work with neighboring countries;
- Geographic Information System (GIS) technology could be used to help the authorities in detecting where the poachers operate, but it is not currently used;
- Countries should guarantee proper law enforcement, aiming at a decrease in bureaucracy, improving transparency and promoting capacity building among authorities.