New research has examined three different categories of Ecological Risk Assessment (ERA), each with different goals. The researchers find that overlaps between the three assessments could be combined to create a more comprehensive form of ERA, usable by regulators and environmental decision makers.

Alongside fines, prison sentences are important punishments for environmental crime, but there is uncertainty about how often they are used. This study summarises evidence from several countries, showing that prison is indeed a genuine threat for environmental criminals, but that more needs to be done to improve its credibility.

Sanctions imposed when laws are broken are a crucial element of deterrence. The most common sanctioning instruments are monetary fines and prison sentences. In environmental law, criminal sanctions (such as prison sentences) have traditionally been unusual, but are gradually becoming more common. The EU has reinforced criminal enforcement by introducing the Directive on the Protection of the Environment through Criminal Law. Yet currently, less than 2.5% of environmental-crime court cases in the EU result in prison.

Prison sentences have advantages over financial sanctions, especially in cases where the offender has limited wealth, or where there is the possibility for fines to be passed on to customers or shareholders. Prison sentences also carry additional, social weight due to loss of status and stigma. However, it is unclear how prison sentences for environmental crime are used and whether they imply a real threat to violators. This study explored this question using evidence from a number of countries.

In the EU, fines are generally more popular than prison sentences. In the UK for example, the vast majority of environmental offenses (84%) receive a fine, and less than 1% receive a prison sentence (2002 data). The researchers say this is likely because most prosecuted cases are minor or involve first-time offenders. It may also be because environmental criminal prosecution is relatively new in Europe, and therefore precedent to guide legal decisions is lacking.

As a case study, the authors looked at prosecution for environmental crime in Flanders, Belgium, using data from the resort of the Court of Appeal of Ghent between 2003 and 2007. Within this period, in that area, a total of 1882 defendants were tried in 1156 criminal prosecutions. Eighty percent of defendants were individuals, the remainder being legal entities.

Three quarters of defendants were convicted. Of the type of sanctions imposed by the courts, fining was the most frequently used — applied in over 95% of convictions. Fines for legal entities were on average €12,651, while fines for individuals were lower, on average €5,924.

Approximately 10–15% of convictions combined a prison sentence and a fine — the convictions imposing only a prison sentence were the exception. The average duration of a prison sentence was 5.3 months. Offences damaging to public health such as noise violations or ‘priority offences’ (such as disposal of hazardous waste) were more likely to receive a prison sentence, while offenders who took action to limit the damage caused were less likely to go to prison.

Continued on next page.
The researchers also looked at evidence from the US. Overall, they found that imprisonment is more popular in criminal cases in the US than Europe — over 30% of criminal sentences include a prison sentence, compared to just 0.5–2.5% in the EU. The authors suggest this may be because administrative and civil judicial actions are generally used for environmental offences in the US, and criminal prosecution is only used in serious cases — such as persistent offenders or violations that have caused considerable damage to the environment. This means that only serious environmental crimes make it to the criminal courts. This focus of US criminal prosecutions on more serious crimes naturally leads to more frequent use of prison sentences in criminal cases, the researchers say. In Europe however, the evidence shows that environmental offenders are generally fined rather than imprisoned.

Overall, the results show that prison sentences are used by courts as part of a set of sanctions for environmental crime, including other penalties such as fines or community service. However, fines are still far more frequently imposed. Of the evidence assessed in the study, over 90% of sentenced offenders paid a fine. Prison sentences are also rarely imposed alone, and are often used as a suspended or probationary sanction — which means the offender does not have to serve the sentence if they meet certain conditions or refrain from certain activities.

Finally, the researchers highlight some issues that may prevent imprisonment from being a credible punishment for environmental crime. They discuss the practice in Belgium of issuing — but not implementing — ‘short’ prison sentences (those with a maximum term of six months). They also discuss lack of space in prison facilities, which may influence the failure to execute prison sentences. The authors say that, while prison sentences do not have to occur frequently, they should be implemented occasionally to deter criminals and retain the credibility of the threat. This is important, as the effectiveness of other enforcement practices hinges on the presence of this ‘ultimate threat’.