



## **SUPPLEMENT to NGO/MA/CA Paper 'Wildlife Licensing in England: Chaos, Crisis and Cure.'**

### **INTRODUCTION**

Further to their paper 'Wildlife Licensing in England: Chaos, Crisis and Cure,' dated 29/5/20, the Countryside Alliance (CA), Moorland Association (MA) and National Gamekeepers' Organisation (NGO) all welcomed Defra's six-month extension of the current General Licences (GL's) announced on 18/6/20.

In particular, the organisations commended the Secretary of State's comment, "*It is vital that we have a robust long-term licensing system which balances the needs of users and our wildlife*". That is very much what the original CA/MA/NGO paper called for and in the interests of making sure it is delivered, a wider grouping of stakeholder organisations now offers this short supplementary paper, bringing the earlier analysis up to date and making suggestions to be considered in the remaining period of the ongoing Defra licensing review.

### **LATEST LICENSING FIGURES**

During a conference call on 17/6/20, three weeks after our original paper was published, we and other stakeholders were given a verbal update by NE on its Individual Licensing (IL) performance in 2020. We were told that in total 1,200 applications had been received. Of these, 500 had been determined, with 430 refused and only 73 out of the 1200 applications granted (6%).

700 applications were still being worked on – this in mid-June, despite nearly all the applications having been made for the conservation of wild birds during their breeding season (April to June), or for the prevention of serious damage to young livestock in spring. We are aware of many applications made in January that had still not been determined by the end of June.

The 73 ILs granted in 2020 compare to thousands issued last year. Even within the 73, not one includes permission for control of rooks and jackdaws and only two allow control of gulls. Last year NE issued IL's to kill over 6,050 adult gulls and to destroy 40,000 gull eggs.

The consequences for vulnerable species of this massive drop in ILs in 2020 have been observed, recorded, photographed and filmed this spring by gamekeepers and farmers, many of them operating in the European protected sites where licensed control is imperative. Evidence of this damage is presented below and in the attached annex and more evidence is on its way.

NE is still making the sorts of serious administrative mistakes that we detailed in our earlier paper. On 25 June, for example, NE had to withdraw an IL it had erroneously issued for the

purpose of preventing serious damage to livestock, to replace it with the wildlife conservation licence for which the applicant had originally asked – back in January. This is just one example of many.

We note what the Secretary of State said, publicly and in his written reply to CA/MA/NGO dated 7 July, about the difficulty of bringing all wildlife licensing back within Defra saying, “*While I recognise your frustration around the individual licence process this year, NE is England’s statutory nature conservation body and has the right specialist expertise and site-based knowledge to make licensing decisions. Defra and Natural England are committed to achieving a licensing regime for wild birds which is both robust and workable for users.*”

We welcome the commitment given in that last sentence, as we have said publicly and above, but the earlier CA/MA/NGO report cast grave doubt on the sufficiency of ‘specialist expertise’ within the current licensing authority. Even if NE does possess it, a lack of accompanying administrative competence and drafting ability has been evident in its recent and continuing wildlife licensing failings.

We therefore reiterate the call for Defra to take back control of all wildlife licensing and we seek this not least so that elected politicians can hold the correct functioning of the system to account – so vital to licence users and to wildlife as the Secretary of State has eloquently pointed out.

## **EVIDENCE AND THE LEGAL FRAMEWORK**

Evidence is crucial to making licensing decisions under the Wildlife and Countryside Act 1981 and also to assessing whether, on a case by case basis, the requirements of Defra’s overarching Wildlife Management Policy of May 2011 (the WMP) are met such that a licence must be issued.

- Evidence comes in to play in assessing the population and conservation status of a species (whether one to be assisted, or one to be controlled) such that licensing decisions can be made in the light of accurate and relevant information.
- Evidence is relevant to determining whether, “*All other reasonable non-lethal solutions have been tried and/or shown to be ineffective,*” (WMP 2011).
- It helps determine, perhaps at a national level, whether a possible non-lethal solution would be ‘satisfactory’ or not, as well as whether it has been applied at a particular location and, if so, with what degree of success.
- Crucially, evidence also bears on whether there is a, “genuine problem/need.”

But what counts as ‘evidence’? For some of the above purposes, NE (and Defra) rightly turn to refereed scientific papers. An example would be establishing a species UK population and its BoCC conservation status. But even here caution is needed in interpretation. In recent assessments made by NE of gull populations, for example, weaknesses in the published research, highlighted by later scientific papers, have been missed or ignored, leading to licensing refusals based on erroneous population underestimates (see below).

In relation to some corvid species currently on the English General Licences (Jackdaw for example), the latest Avian Population Experts’ Panel has confirmed a big increase in numbers over recent decades. But because there is no *species-specific* science demonstrating a significant predatory impact by jackdaws, NE refuses to issue any Individual Licences (necessary where the GL’s don’t apply), implying that local experience of predation

problems and the fact that such species have therefore been controlled for centuries cannot be taken as 'evidence'.

This mindset that truth cannot exist until it has been proven by science is palpably absurd. For numerous other evidential needs, no applicable science *is* available and in such circumstances it is perfectly reasonable – and defensible in law – to rely on evidence based on the practical experience of people such as farmers and gamekeepers, locally or elsewhere.

Nor, in law, is evidence of actual damage required. In relation to preventing serious damage to livestock, Ousely J. concluded in his judgement on the case of McMorn v NE (2015, EWHC 3297, paragraph 14) that Article 9 of the Birds Directive, "*is a preventive provision, and not one which requires serious damage already to have occurred.*" And he made clear in the same paragraph that the same applies to the other purposes for derogation listed in Article 9, including those for public health and the protection of flora and fauna.

Note also what Ousely J. said at paragraph 180 of his judgement: "*The justification for inconsistency [between the licensing approaches to different predatory species] based on want of research is illogical and unreasonable.*" And in the same paragraph he made clear that "*applications have to be judged on their own material.*"

The same surely applies to someone wishing to make use of a General Licence. Defra's current GLs make quite clear that they can only be relied upon where there is genuine problem or need. They do not; nor does the WCA 1981, nor does the Birds Directive, nor does any case law (ECJ or UK), nor even does Defra's Wildlife Management Policy 2011, require that a licence can only be issued or relied upon where there exists refereed scientific evidence to support it. Yet this is the overall approach that NE is now taking for licensing, with disastrous results for wildlife.

Given that such control has always been the norm and was specifically allowed to continue when birds were largely protected in 1954, and to continue under licence when they were all protected in 1981, it is wholly wrong to stop control of common predatory birds now, just because someone has suddenly noticed there is no actual science to support it.

The correct interpretation of the precautionary principle is to allow longstanding activities to continue *as they are* unless and until there is evidence that they need to change. Feedback from the frontline of wildlife conservation is that the consequence of NE's having suddenly stopped predatory bird control taking place in many key areas this spring has been the devastation of amber and red listed species such as curlew and redshank.

Curlew, for example, require an average annual breeding success rate of 0.5 chicks per pair in order to sustain their population. This year gamekeepers have watched entire curlew broods being destroyed in European protected sites because they had no licences to control the corvids and gulls doing the damage.

Gamekeepers on 56 grouse moors in the north of England were surveyed this spring. On every moor surveyed, the gamekeepers witnessed attacks by corvids on breeding birds of conservation concern. 52 of the 56 moors had applied for ILs to control corvids. Only 3 of those 52 reported being granted a licence in time to prevent such damage. (Details of these survey results can be furnished on request).

The Game and Wildlife Conservation Trust is currently carrying out a larger practitioner survey to quantify these impacts further but a similar exercise has already been completed for gulls (see below). Defra and NE must pay heed to such findings, as well as the legal

realities outlined above, when completing the ongoing review of wildlife licensing and deciding its future.

## GULLS

During April and May this year, gamekeepers recorded incidents of predation by gulls across c.80% of moorland managed for driven grouse shooting in the north of England. They did not specifically search for evidence. Instead they recorded carefully by GPS location where they happened in the course of their normal work to witness gulls predated the eggs and chicks of Lapwing, Curlew, Golden Plover and other birds of conservation concern, such as Oystercatcher and Merlin.

In total, they witnessed and recorded 1,355 incidents where eggs and chicks of these vulnerable species were destroyed by gulls, largely Lesser Black-Backed and Herring Gulls. There will have been large numbers of unseen gull attacks too, of course, as well as predation before April. And although not part of the detailed survey, *all* the gamekeepers separately reported witnessing gull attacks on birds of conservation concern during June. Add to this a no doubt similar level of damage on the remaining 20% of un-surveyed managed moorland and the harm done to upland-breeding birds this spring by gulls alone has clearly been catastrophic

40% of moorland estates managed by gamekeepers are designated European Protected Sites (SPA or SAC), many specifically noted in their underpinning SSSI citations for their nationally important breeding populations of these ground-nesting birds. Yet we know of only two estates in England granted a gull licence by NE this year. By contrast, in 2019 licences were issued to cull 6,050 adult gulls and to destroy 40,000 gull eggs.

The staggering damage that gulls have done, undeterred, to some of our rarest and most threatened birds this spring has been laid bare by this survey. The slaughter is entirely the consequence of NE's disastrous policy of capping rural gull control to a maximum of 900 Lesser Black-Backed and 600 Herring Gulls, and then using up virtually all these quotas on 'prioritised' licences for purposes other than conservation.

There has also been, since we produced our initial paper, an opportunity to analyse further the Habitats Regulations Assessment (HRA) written by NE to justify (after the event and therefore probably unlawfully) its decision to introduce the 2020 rural gull cap. It rests heavily on what is thought to be known about the size of gull populations but this is notoriously hard to assess and two recent scientific papers<sup>[1]</sup> have concluded that the UK population data for Lesser Black-Backed and Herring Gulls are unreliable and their population sizes are likely to be underestimates because only gulls nesting in natural coastal sites are adequately monitored.

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<sup>1</sup> (a) Stanbury, A.J., Brown, A.F., Eaton, M.A., Aebischer, N.J., Gillings, S., Hearn, R.D., Noble, D.G., Stroud, D.A. & Gregory, R.D. (2017). The risk of extinction for birds in Great Britain. *British Birds* 110: 502-517.

In this paper, HG and LBBG were two out of only three species classified as "Data Deficient", in other words existing data did not allow these species to be assigned to an IUCN threat category (the third one was Little Auk, a winter visitor from the far north).

(b) Woodward, I.D., Aebischer, N.J., Burnell, D., Eaton, M.A., Frost, T.M., Hall, C., Stroud, D.A. & Noble, D.G. (2020). Population estimates of birds in Great Britain and the United Kingdom. *British Birds* 113: 69-104.

Even working with the flawed data to hand, the (under)estimate of the number of breeding gulls in the UK is 260,000 HGs and 220,000 LBBGs. The HG life table in Coulson (Coulson, J.C. 2019. Gulls. New Naturalist Library, William Collins, London) indicates that immature (non-breeding) gulls represent 37% of the total number of gulls at the start of the breeding season, so breeding adults represent 63%. Hence the minimum total numbers in spring are 414,000 HGs and 349,000 LBBGs.

The inputs (demographic parameters, population sizes) used and the assumptions made in the simulation models leading to the caps in NE's HRA have been withheld, meaning it is impossible to verify the appropriateness of the parameters or the validity of the assumptions that have been made. NE's rural licensing caps of 900 LBBG and 600 HG are questionable because they are based on unspecified numbers of rural gulls in England.

In particular, NE's decision to treat rural and urban gulls as distinct populations and to have differing licensing policies for each is spurious because of the high mobility and dispersal of these species. There is no legislation that distinguishes between urban and rural-nesting birds and there is good scientific evidence of gull dispersal between town and country, not least as described in section C4.3 of the HRA. Given the dispersal capabilities of gulls it is also questionable to restrict the populations used in calculations to England alone, rather than the UK or even the European area of distribution of the subspecies concerned. Even if the "5% of natural mortality" basis for calculating the caps was proven to stand up, the larger numbers of gulls for the UK given above would legitimise the issuing of licences for at least 3,995 adult gulls.

NE issues Class licences for the diversionary feeding of Hen Harriers to assist their conservation and minimise the impact on other ground nesting breeding moorland birds. This approach, making dead food items available to the harriers by placing them on posts in their breeding territories, has been shown scientifically to work but in at least one locations this spring it has been undermined by large numbers of gulls present on the moor (over 100 estimated) taking the diversionary food before the harriers can get to it. They have also helped themselves to the eggs and chicks of ground-nesting birds at the same time. An important conservation tool and a key element in the six-part, Government-backed Hen Harrier conservation strategy has been diminished by NE's refusal to grant applications for rural gull control this year.

In light of the conservation disaster it has caused on moorlands in particular this spring, and the inadequacy of its HRA, NE clearly needs to revisit its figures, methodology and decisions on gull licensing. In time, the 4<sup>th</sup> Breeding Seabird Census, delayed by Covid-19 but likely to come up with more accurate estimates of the size of UK gull populations (urban and rural) by about 2022, will enable greater certainty but vulnerable birds such as Curlew, Lapwing and Golden Plover cannot wait that long. A much more liberal approach to rural gull licensing is essential in 2021 to stop these birds facing catastrophe.

### **THREE KEY POINTS NEEDING DEFRA'S ATTENTION**

1. The Secretary of State asserts that NE has the expertise to run wildlife licensing in England. But NE's *actual performance* in wildlife licensing this year and last has been an absolute disaster for birds of conservation concern, young livestock and the gamekeepers, farmers and others who rely on licences to look after such things. Regardless of its credentials, NE has proved itself unfit to run this crucial aspect of wildlife management.

**Defra should take back control of all wildlife licensing forthwith.**

2. Licences have been denied for Rooks, Jackdaws and Jays this spring with NE pleading declining populations of these predators and/or lack of evidence of genuine problem/need. Lack of science has erroneously been equated with lack of genuine problem/need, with no heed being paid to actual experience on the ground. If those errors and that approach are mirrored by Defra to exclude such species from the revised General Licences planned for January 2021, there will again be uproar in the countryside.

**All corvids currently on the General Licences must remain on them.**

3. NE has issued almost no licences for control of Herring and Lesser Black-Backed Gulls this spring, with catastrophic results for breeding waders on moorland. Its use of gull population data justifying this change is flawed. Red-listed waders are being destroyed whilst much larger gull populations are prioritised.

**Individual Licences for gulls must be readily available in rural areas next spring.**

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National Gamekeepers' Association  
[www.nationalgamekeepers.org.uk](http://www.nationalgamekeepers.org.uk)

Countryside Alliance  
[www.countryside-alliance.org](http://www.countryside-alliance.org)

Moorland Association  
[www.moorlandassociation.org](http://www.moorlandassociation.org)

The British Association for Shooting and Conservation  
[www.basc.org.uk](http://www.basc.org.uk)