



# Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland  
Nàdair air fad airson Alba air fad

Wildlife Operations Unit  
Scottish Natural Heritage  
Great Glen House  
Leachkin Road  
Inverness  
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## 2014 General Licences – responses received during consultation

**NOTE: only comments received on individual points are copied below. Material in the consultation letter not responded on are not included (so removing repeated material from this document)**

**Some text has been transcribed for clarity (poor legibility issue)**

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**Response 1: Individual (Mr J Allan)**

TO \_\_\_ Sally Blyth  
SNH  
Great Glen House  
Inverness

FROM \_\_\_ Jim Allan

DATE -- 24/10/2013

SUBJECT -- general licence -- GL 01/2014 -- to kill or take certain birds for conservation of wild birds . CONSULTATION --

Hi sally -- a word or two about me -- I am responding to this consultation as an individual. I am employed as a contract seasonal wildlife controller by SNH, Forestry Commission Scotland and some other land owners and carry out crow control on an annually basis. I have considerable experience in the field over many years, I am happy to provide more information if you require it.

Please find my completed Respondent Information Form attached separately.

I assume everyone on the committee for the drafting and approving of the "conditions" for this "General Licence" are aware of the valuable contribution crow control makes to conservation, not just for game bird species but for all other species of birds too.

As you know, nowadays fewer people are involved in crow control and it is extremely important that the "conditions" contained within the General Licence allow those involved in crow control to maximise culls and that they are fully supported and protected from prosecution if they carry out the "conditions" as laid down.

The "conditions," as written at present, do not give the full support nor flexibility the crow controller needs and expects. One of the "conditions" in the General Licence is completely vague; many are open to interpretation; one appears to be virtually impossible to operate in the field from a practical point of view; one is wrongly worded; one is so restrictive that it prevents the authorised person from carrying out a number of effective crow control techniques; and the most important of all the welfare safeguards, a regular objective health and condition assessment, which should be carried out on the call bird, is not even addressed in these "conditions".

You will now be thinking, "SURELY NOT"! --- read on !

From reading the "conditions" it appears that they may have been formulated without knowing the full range of jobs a crow controller has to do, resulting in them being restrictive. I have listed the crow controllers jobs below. This I hope will highlight the fact that it is not just trap and call bird maintenance.

To do effective crow control the trapper must use many skills and spend considerable time ---

- 1 - watching crow movements. That is easiest, and happens with most certainty, at first light in the morning. Locating crow flight lines to establish where crows roost, where they are coming from, where they are moving to in order to get food, where a crow is returning to, e.g. to its nest site, are crucial steps in formulating and implementing the most efficient control method, be it, shooting or trapping. This is a practical

in the field requirement, and a regular ongoing analysis necessary throughout the whole season.

- 2 - decoying and shooting crows at a feeding site. This is most effectively done at first light, which can be from before 5 am extending onwards till 9 or 10 am. it can even extend beyond this time. This is an excellent technique and can mop up a huge amount of non breeding crows which are notoriously difficult to entice into a trap.
- 3 - waiting concealed to ambush and shoot. This technique is necessary when a crow is feeding outside a trap but will not jump in. You can try all sorts of measures to entice it in but it will just not go in. Usually this crow's activities outside the cage are a disincentive for other crows to jump into your trap as well. Eliminating this crow can be the only option to getting further results from that trap.
- 4 - waiting on a female crow to return to its nest. It can often happen that a larsen trap will fail to catch a crow at its nest site. Again, the only option to get the female and young crows is to wait concealed and shoot it prior to disposing of the nest.
- 5 - moving of traps. Which is an on going job.
- 6 - opportunist shooting. Happens without any warning or planning, it is an opportunity to increase the cull which must be implemented immediately. But requires time.
- 7 - laying out and checking of "prominent artificial nests". A useful technique to see if crows are working an area unnoticed or where the trapper cant visit regularly to do observations.
- 8 - looking for nests. Here, there, everywhere.

These are all jobs I regularly do but other trappers may have other jobs they think essential.

Does any member of the "conditions" approving committee consider any of the above jobs to be unnecessary in trying to achieve a maximum crow cull?

In my view the "conditions" in the General Licence should not not exclude any of these crow controllers jobs being carried out to full efficiency.

Many of these jobs can only be done to full advantage first thing in the morning, to put them off is counter productive which is surely not the aim of the General Licence but is in fact happening due to the present "conditions" lack of flexibility.

Yes, I do realise that by delaying the start of trapping that it would then allow time for many of the trappers jobs I listed to be tackled earlier in the season. I do in fact do this. Unfortunately, however, most of the jobs involve tackling recurring issues which cannot be eliminated by one - off action earlier in the season.

Nature does not run according to a rigid 24 hour a day time scale and likewise a crow control programme, dealing with wild birds, cannot be operated effectively when restricted to this 24 hour time scale either.

I am pleased to see you propose to carry out research on trap design and specification as there is currently no British Kite Marked trap standard for manufacturers to follow and sell to the agricultural community. e.g., drinker capacity -- [REDACTED] sell a drinker advertised as " Ideal for Larsen traps " it holds about 300 mm of water -- is this amount an "adequate" water intake for a crow over one day? Similarly, with perches, they often come supplied with plastic pipe perches but do they "cause discomfort to the birds feet" and would a wooden

branch be better ? The crow cant tell you !

An unsuspecting individual could at this moment purchase a trap sold as a Larsen trap all kitted out ready for use and discover that in actual fact it infringed some of the conditions of the General Licence.

Condition 12 -- "Providing adequate protection from the prevailing wind and rain" --

Does this protection require to be, say, a plastic roof secured to the trap and similarly, a plastic sheet secured to the trap side, or, is it sufficient to place the trap in a sheltered spot away from the wind and under a tree for rain shelter?

A trapper would say --- "a call bird will be far easier seen by another passing crow if there is no side wind break" attached Trappers continually think about trap efficiency

The "prevailing wind" is --- the "predominant wind" blowing in an area. In Scotland this is a south westerly wind. From the "conditions" I interpret that I must protect my call bird from that prevailing wind so erect a shelter on the appropriate side of the trap. Is that a correct interpretation?

When trapping near the coast in eastern Scotland the wind direction can quickly change from the prevailing direction, SW, to blowing in from the east. This can be a cold, damp, chilling wind. In these conditions the call bird would not be properly protected, yet, I have fulfilled the requirement of the "conditions" by shielding the bird from the prevailing wind.

Why is this "condition" worded in this way and how can it be justified when it is not always effective at protecting the call bird at all times?

Does this "condition" not really mean -- protection from the "wind prevailing" at a particular time. This would give my call bird the protection from the east wind I referred to earlier, well at least following my once daily check!

In any case, this is far too settle wording to be effective in what it requires the trapper to do. But, is useful to illustrate my point regarding mis leading and mis interpreting of "conditions" which have to be applied effectively in the field.

Condition 12 -- "Adequate food and water" the dictionary defines this as -- "fully sufficient" -- for the crows needs -- this is not -- "food and water provided in excess of the crow's requirement" so would an operator be correct in interpreting that it is not necessary within the scope of the General Licence to have surplus food and water still in the cage when the trapper next does his once daily check?

As I am sure you will appreciate, providing a set volume quantity of food does not necessarily prove that all of a crow's daily nutrient requirements have been met and that in fact a smaller volume of a more nutritious food, which could be consumed much more quickly and completely, could well be supplied to the call bird and fully meet the crows daily nutrient requirements to maintain its good physical condition.

This is a very important aspect with relation to supplying a bird with "adequate food" and an aspect where the public and other officials who visit a trap can easily miss interpret that a call bird has "no food" when in actual fact it has eaten it full nutrient requirement. The public could well feel they have a legitimate concern regarding the bird's welfare and report it to the police who would then on inspection see a snapshot in time of the conditions at the trap and not see the whole picture over a 24 hour period.

It might then, if matters escalated, fall to the judiciary to interpret the situation which is not a simple matter, particularly if you have no experience in the trapping job, nor is it a cheap or happy outcome for the trapper and the estate.

Perhaps, its also worth mentioning that excess food, apart from attracting flies which look bad, can also attract scavengers to the trap and this can cause unnecessary extra stress to the captive bird. That excess food can also deteriorate in hot weather making it potentially unsuitable for the captive bird. I would see both these results of

excess food as being in conflict with my "duty of care" to the call bird.

I could relate occurrences specific to water availability in a trap which can and do result in the water being totally depleted before a trapper arrives to do his daily inspection. This is not a frequent occurrence but does happen and can again lead to the wrong conclusion being formed.

How does a trap operator know if he is supplying adequate food and water?

How can the trapper prevent the public and officials misinterpreting a situation at a trap?

Condition 13 -- "checked, at least once a day at intervals of no more than 24 hours"

This is a totally impractical condition and one I am certain all trappers only pay lip service to.

Think about it —

On day one -- trapper sets out traps for the first time and it takes him from 8 am till 5pm to complete.

Day 2, 3, 4 — no problem -- he can inspect early -- all traps checked by 12 mid day - - so he can do other duties for the rest of the day e.g. searching for nests etc.

Day 5 -- one trap needs moving -- takes 1 hour -- that makes him 1 hour over the 24 hours to inspect the trap he looked yesterday at 12 mid day.

And so on -- time to inspect all the traps slips further past the 24 hours the more traps he moves in a day.

To overcome this problem in theory the only way he can be on time at his last trap is to start earlier -- ok --

The next day he has more traps to move -- so the following day he starts even earlier -- this scenario could continue till he is starting to work at 3 am!

Is that realistic? Obviously, NO, but necessary to fit in with the General Licence conditions of inspection of traps at a maximum of a 24 hour intervals !

I suggest -- altering the "Conditions" wording to -- "traps to be inspected daily during daylight hours and as early as practicable"

Condition 17 -- cage labelling -- I assume this requirement of the General Licence to allow the public to get information or identify any trap which they think is illegal to the police. The police can then identify the operator of the trap. I have no issue with this requirement. However, trap interference is still very much an issue with the public removing call birds and destroying traps. To help prevent this, an additional piece of information should be put on traps to specify the offence a person commits and the maximum fine to be imposed for interference with a legal piece of equipment. This would give the public the "full picture" and not just a partial view of a legal trapping situation which they may not like but should not interfere with themselves.

The issue of interference with traps is serious and could also have implications for the trapper e.g. following someone interfering with a trap, be it perch removal, food removal or whatever, it will make things look as though trapper had not carried out the requirement of the General Licence. This could cause real problems for him. How does he answer questions posed by the police?

Condition 19 -- "any larsen trap - - - must be firmly pegged - - - so that it cannot be moved."

Larsen traps are heavy and I have never had an issue with anything ever moving them other than humans. This condition leaves me totally bewildered!

I think it is important to specify, moved by who or what, so the operator has guidance on the robustness of the anchoring mechanism necessary.

If it is to stop humans moving the trap it will need more than 4 wire pegs in the corners of the trap!

I do peg down my traps but that is to help prevent the call bird from tripping the catch mechanism but I see this as an efficiency aid and not always totally necessary or

possible to implement on all trap sites e.g. hard or rocky ground, concreted areas, land fill sites.

I do wonder about the practicality and the implementing of this "condition" in areas as mentioned above?

Is this "condition" saying, I must move a trap from what I consider to be an ideal spot, say, on rocky ground, to an area of soft ground so it can be anchored? I could see this as counter productive.

Having read my analysis above concerning a number of the "conditions" you can clearly see that they are open to interpretation, are fail to give trappers specific guidance and can be impractical in the field. From a trappers perspective this is very unhelpful and does create problems.

Everyone, and that includes, the trapper, the public, and the authorities, all want every captive bird to be in a healthy good condition whilst it is in captivity .

Looking at this matter objectively, it is of no importance, in-fact, window dressing, to insist on excess food or water being in the cage at all times, to have the cage covered or uncovered, whether it is inspected exactly every 24 hours on the dot, etc etc as long as the captive bird is and remains in a healthy and good condition.

You may say, "That's rubbish".

But I say this because I am of the firm belief, that if a Court of Law was to examine a case objectively it is highly unlikely to convict a trapper of any offence, even if there was evidence of flouting "conditions", ( as they are at present,) providing his call bird is in a healthy and good condition.

BUT, am I correct? What would a "legal opinion" say?

Having said all that, I do think it is wise, necessary and helpful to have a framework of advice to assist and direct trappers in the care of a call bird. Can the committee please consider whether a checklist produced by SNH framed as "advice" could better fulfill this roll as compared to the present system of framing the requirements in "legal terms", ("conditions").

I have shown in my analysis above that the necessity and feasibility of some of these "Conditions" are variable in their application in the field. A good example of this is where the trap operator finds it impossible to security anchor a trap in a rocky location but by failing to do so than technically the trapper is actually committing an offence as this is a requirement of the "condition" in the General Licence.

Am I correct in saying this?

Can the committee please clarify this point.

If it is thought that a crime is being committed, is this not a good reason to be prudent and abolish many of the "conditions" and put the responsibility of care towards the call bird on the trappers' shoulders rather than risk tripping him up with "condition technicalities" unnecessarily?

Trying to abide by and satisfy the "conditions" of the General Licence is vastly more difficult and problematic to a trapper than actually doing the job of maintaining a call bird in healthy and good condition.

These "conditions" also giving the public, police, RSPCA and anti trapping organisations some wording on which they can focus minutely and also due to some of these "conditions" being open to interpretation, allows them to exploit a loop hole through which they can call into question a trapper's actions and concoct theoretical crimes.

This idea of removing some "conditions" may also be worth considering when trying to overcome the question of allowing greater flexibility. It would mean the trapper could be as flexible as he choses to be regarding the precise time of day he checks a trap but he would need to ensure that if he varied his actual inspection time that it did not impact on the call bird's health and good condition in any way or he could and

should be held accountable. ( The "advice" checklist mentioned earlier should hopefully avoid problems )

Framing a new "condition" making the trapper fully responsible for the call bird's health and well being should not be difficult and could easily be framed in such a way to ensure it was not open to interpretation.

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Aspect not covered in the General Licence "conditions" --  
1 -- " assessing the call bird's condition"

Looking at a bird within the trap will not accurately tell you what condition the bird is in. In my experience, a sickly bird does not normally show many signs. Usually the first indication that there is something wrong is when you find the call bird dead in the bottom of the trap. The question is, could it have been suffering for a few days? Any sickly call bird is a potential risk to the trapper with reference to his "duty of care". If a call bird is stressed, which is likely due to it being rendered into captivity, or it is regularly harassed by say another crow or animal out-with the cage it is likely to have a reduced food intake resulting in a loss of condition. A trapper may think he is supplying "adequate" food but in actual fact the bird is eating less and so becomes thinner and thinner. This loss of condition will have implications for the crow's well being and that in turn will have implications for the trapper without him knowing or realising something is wrong.

To safe guard both the bird and the trapper a sensible "condition" of the General Licence should specify "the call bird must be physically removed from the cage to assess its condition once per week ."

If found to be very thin or sickly then this bird must be dispatched which is in keeping with Condition 14 relating to "sickly decoy" birds.

Advantages of this proposal include--

Provides instant and objective feed back to trapper on call bird condition.

Food supplied to the call bird can be accurately increased or its quality improved if found to be deficient in maintaining the birds condition.

A sickly bird is identified before it dies and causes concern to a passing observer.

It also answers the question I posed you earlier -- "How does a trapper know if he is supplying adequate food and water ".

2 -- "record keeping" -- an unpopular necessity of modern life.

Should there be a "Condition" requiring the keeping of records within the General Licence?

If there is a potential problem which could result in a criminal charge being laid the benefit of having records relating to actions carried out at the trap in previous days could be invaluable. I believe all trappers should keep such records as a form of self preservation as the importance of being convicted as someone who does wildlife crime is to dire to contemplate in relation to ongoing employment prospects

From an enforcement standpoint, employers and SNH officials could look at these records as an "on the spot check" to potentially identify non conformists to the General Licence before a prosecution is necessary, thereby staving off trouble and embarrassment for all concerned.

I will continue to keep records myself and I leave it open to discussion by your people to decide on their desirability.

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On a separate issues but relevant to the General Licence-

1 - SNH could do far more to publicise the need for and desirability of crow control and to educate the public in its understanding of this operation which really should have everyones full support from a conservation stand point. I hope the committee

will take up this matter with SNH with a view to improving the perception of crow control.

2 - Education of police and in particular the RSPCA, who appear on occasions to snipe about without having full knowledge of the crow control subject, should be a priority, to ensure they are all fully aware of how the "conditions", within the General Licence should be correctly interpreted. This is an essential requirement and must be accomplished before these agencies decide to lay charges and incur estates or individuals in huge legal expense.

I know of one case, reported anonymously, to police or RSPCA where, despite the trap being correctly labelled, the authorities came and removed the call bird and trap without the trap operator ever being contacted. Surely this is not correct procedure?

I ask the committee to address these issues.

3 - Might I suggest, SNH produces a fact sheet, which could be sent to police, RSPCA, walking and rambling groups, made available at country shows, etc., laying out ----

What happens at a trap; how to interpret what they see; why they should not be concerned; etc., etc. This I feel sure would go a long way to avoiding issues and concerns. Perhaps this official information sheet should be displayed on every trap so it forms part of the roof or sides?

This could answer the other question i posed --

"How can a trapper prevent the public and officials misinterpreting a situation".

Could this instantly available, free information sheet work better than having to phone, particularly in poor phone signal areas which most estates have?

I am not proposing the removal of the phone contact details on traps.

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To summarise the points i would like re address in the General Licence --

- 1 - all the "conditions" in the General Licence to be re examined and clarified so they are not open to interpretation.
- 2 - thought given to scrapping of some of the "conditions".
- 3 - consideration given to placing the full responsibility for call bird health and condition with the trapper thereby simplifying the "conditions".
- 4 - consideration to be given to the production of a check list to guide trappers in call bird care.
- 5 - the rigid requirement for traps to be checked at a maximum interval of every 24 hours to be amended.
- 6 - a requirement for the removal and physical examination of call birds to be introduced.
- 7 - additional wording to be put on traps, re penalties for Interference with traps or call birds.
- 8 - possible introduction of an SNH "Trap Interpretation" sheet to be put on traps
- 9 - the introduction of record keeping -- if thought necessary.
- 10 - Prevailing winds. wrongly worded -- to be addressed.
- 11 - ACTION required OUT WITH the General Licence -- SNH to undertake the "education" of public, police, and RSPCA.

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I always tell trappers the best piece of advice is --

**"ONLY HAVE A HEALTHY BIRD IN GOOD CONDITION IN A TRAP"**

I would say to the committee approving the General Licence conditions --

Remember, trappers are not trained in being lawyers or judges, so keep it simple for



us. Just tell us exactly what you want us to do if you are laying down "conditions", or, leave us to it, we know what we are doing . There are organisations such as BASC who we can telephone for advice if we are having problems.

please feel free to contact me should you think it necessary  
JIM ALLAN

**Response 2: Mr S Boyd (individual)**

**A. General Licences and raptor persecution.** Totally the wrong way to handle illegal raptor persecution. You should be going after and prosecuting those performing the illegal activity, not restricting activities of the law abiding.

**C. Possible withdrawal of /amendment to General Licence 11/2013**  
No comment

Annex 2:

General Licence	Comments
GL01/2014	The term "air weapons" should be changed to "air guns"
GL02/2014	The term "air weapons" should be changed to "air guns"
GL03/2014	The term "air weapons" should be changed to "air guns"
GL04/2014	The term "air weapons" should be changed to "air guns"
GL05/2014	
GL06/2014	
GL07/2014	
GL08/2014	
GL09/2014	
GL10/2014	
GL11/2014	
GL12/2014	
GL13/2014	
GL14/2014	
GL15/2014	

**Response 3: British Bird Council**

We are enclosing a fly sheet by way of introduction, so you can see we represent members nationally in the U.K.

GL.08/2014 Schedule 4 birds, extended time would seem sensible.

GL. 10/2014 condition 5 is a glaring anomaly. It may well be possible to supply some

documentation i.e. registration papers for Schedule 4 birds. However owners of any bird obtained under terms of GL.12/2014 would be unable to produce documentary evidence since quite rightly it is not a requirement under terms of this Licence since it is deemed an unlawful requirement. Suggest this requirement be deleted from GL. 10/2014

Also condition 6, this wording could lead to abuse in regard to closed rings, believe the following wording should be added to this condition - issued by a government recognized body of country of origin.

GL.11/2014 again condition 4, documentary evidence this is a condition not possible to comply with for reasons stated above and require deletion.

GL.12/2014 condition 6, again believe, issued by a government recognized body of country of origin needs to be added to prevent abuse.

GL.14/2014 condition 5, again can it be reasonable to expect documentary evidence to be supplied for all species, a bird purchased under terms of GL.12/2014 will at some stage die, and is possibly required to be sold for say taxidermy, documentary evidence could not be supplied.

We have confined our comments to GL Licences relevant to our side of the hobby. If we can be of further assistance please contact us.

Yours sincerely

pp British Bird Council

#### **Response 4: Individual**

Dear Sally,

I enclose a personal response to the current consultation on the General Licences for 2014. This is based on my personal involvement of crow trapping and the control of various species within a range of farm and public buildings over the course of a number of years. The comments cover both the specific questions asked (A-E) and more general matters. I am content that the submission is made public but is attributable to 'An Individual' only.

Yours sincerely

#### **Question A - General Licences and Raptor Persecution**

Whilst I can appreciate the frustrations resulting from illegal actions being undertaken by individuals and the desire to prevent such illegal actions, having all of the individuals on a whole holding penalised on the legally-unproven suspicion that illegal acts have taken place is unreasonable. It also fails to reflect the reality that courts are responsible for imposing penalties on individuals (and with the vicarious liability provisions of recent legislation, potentially those responsible for their management and supervision) and that such proportionate penalties are only imposed on individuals following conviction.

**Question B - Documentary evidence accompanying the selling of certain captive bred birds on General Licence 08/13**

As I do not have experience of the issues, I offer no comment

**Question C- Possible withdrawal of / amendment of General Licence 11/2013**

As I do not have experience of the issues, I offer no comment.

**Question D - Extending the time limit for registration of captive bred Schedule 4 birds from 15 to 20 days on the General Licence 12/2013**

As I do not have experience of the issues, I offer no comment

**Question E - General Licences 13/2013 and 14/2013**

The species listed on Licence 13 are all species which can be legally shot within a specified open season (along with a range of other species) and therefore no additional conservation benefit accrues from excluding them, or other 'quarry species' from sale in whole or part. With the widespread use of preservation techniques including freezing, there should be no issue with making available for sale, such items at any time of the year. Having a licence reporting requirement is unduly onerous and has undoubtedly been forgotten in the majority of cases. There is a market for feathers from at least some of the listed species for a range of uses and would presume that any failure to provide required reporting has been an inadvertent omission.

**Other Comments**

**Amalgamation of Licences 1, 2 and 3**

Based on my experience of managing a range of practical situations, I would recommend that licences 1, 2 and 3 are amalgamated. This is because the species included have significant overlap, the methods used are effectively the same and at times, it can be difficult to categorically state under which licence a physical action is taking place. Undertaking control of carrion crows in March to June will have a conservation of wild birds benefit (through reduced predation of egg lapwing eggs) and a benefit in terms of reducing damage to livestock (through reduced problems of eye pecking and other attacks on sheep and lambs). Similarly, the control of jackdaws could reduce predation on lapwing eggs whilst also reducing problems of a build-up of droppings and early nesting material in actively used buildings.

**Alternative Solutions**

Many of the licences require the user to 'only use it where they are satisfied that appropriate non-lethal methods of control (eg scaring and bird proofing) are ineffective or impractical'. This clearly places the onus on the individual operating within the licence to assure themselves that such methods are ineffective or impractical. In many situations, what may appear an option initially, becomes wholly impractical when the ongoing use of that area is considered. Such a situation arises with most agricultural buildings. In theory, these could be bird-proofed, but as ventilation and machinery access are essential ongoing features, bird-proofing such buildings is entirely impractical.

It would be helpful if SNH could provide case examples on their website to demonstrate what would be considered reasonable in this respect as opinions do vary.

**Corvid trapping**

I have used Larsen traps (of various designs) and Larsen Mate traps over a number of years and have not experienced any animal welfare problems. Whilst I am aware that there may be individuals who make illegal use of these traps, I consider it entirely unreasonable that my legal use of such traps is being progressively restricted despite my compliance with all legislation.

I have serious concerns about the need for and the degree to which portable traps need to be secured to the ground. The great advantage of traps such as the Larsen and Larsen Mate is their portability. To have such traps staked such that they cannot be moved makes their effective deployment considerably more difficult and time consuming with no actual benefit. As such, I see no reason why the requirement to secure such traps so as to prevent movement cannot be removed.

I am aware that some parties promote the idea of 'no more than 12 hourly inspections' of crow traps, particularly where there may be goshawk present. Having trapped for a number of years and not experienced a problem, I fail to see any requirement for such a limitation. I accept that there may be some individuals who chose to abuse the system, but as earlier, fail to see that imposing further restrictions on all operators will yield any improvement. What will happen however, is that individuals such as myself, will become increasingly de-motivated, with the result that crow trapping will be reduced with consequential reductions in the breeding success of waders and other increasingly uncommon birds.

#### **Phase-in of new trap design restrictions**

I have invested heavily in the purchase of sufficient quantities of good quality crow traps. Whilst these traps obviously have a finite service-life (over 5 years), any further restriction on trap designs should be phased-in over a period of years to prevent such investment being wasted. In addition, I am aware of many situations where traps have been developed by individuals and as such, there is considerable variation in trap design. If it were considered essential to revise trap design (either to improve catch efficiency or if there is a proven specific animal welfare issue), rather than having specific named traps, it would appear more logical to have a series of minimum standards.

#### **Timing of Control**

I restrict my crow trapping activities to the March to July period (due to other commitments) but I am aware that others operate over much or all of the year. I am aware that some organisations and individuals express concerns regarding the duration of crow control activities. Their concerns appear to be based on the presumption that any such activity is intended to target raptors, rather than crows. As an offence is committed if the trap operator does not check traps no less frequently than every 24 hours, releasing any protected species. As in most cases, the enforcement of the present legislation should be the priority, rather than the addition of further wide-ranging legislation - which would need to be enforced (with the same inherent problems).

I undertake control of a range of other species covered by the General Licences throughout the year and see no merit in providing a season with any of the General Licences.

#### **Actual benefit of increased regulation**

With increasing legislation and regulation, it is becoming increasingly difficult to ensure that one remains within the law whilst undertaking action within the General Licences. Much of my work involves control to benefit breeding waders. Prior to my undertaking such work, they were unable to breed locally due to heavy crow predation of nests. Now, they do breed successfully. Increasing regulation will reduce the time I have available to undertake such activities, and will progressively reduce my enthusiasm to do so. The end result, should I cease to undertake crow control, will be that breeding lapwing and curlew on farmland and adjacent SSSI ground will be lost.

Whilst I am aware that certain individuals will abuse any system to benefit their interests, the imposition of additional regulation is most unlikely to make such individuals change their behaviour. The enforcement of the present (already extensive) legislation must be undertaken before any additional legislation or regulation is considered.

### **Response 5: Langholm Moor Demonstration Project**

The Langholm Moor Demonstration Project  
Red grouse and birds of prey  
Estate Office  
Ewesbank  
LANGHOLM  
DG13 OND

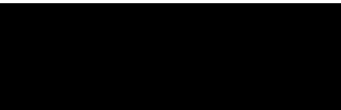
Dear Sally,

Consultation on General Licences for 2014

I enclose a response to the current consultation on the General Licences for 2014 from the Langholm Moor Demonstration Project. The comments cover both the specific questions asked (A-E) and more general matters. The Project is content that its submission is made public provided that any individual names and contact details are redacted.

As ever, if there is any aspect you would like clarified, just phone me.

Yours sincerely



[www.langholmproject.com](http://www.langholmproject.com)

### **Question A - General Licences and Raptor Persecution**

It is likely that any attempts to restrict the entitlement to use the General Licences in situations where wildlife crimes are thought to have taken place but have not been proven, will be difficult to legally impose. The drafting of any proposed 'enabling' paragraph will be difficult and should be widely consulted upon. Project staff can foresee particular problems if all staff on a holding are penalised due to the potential unproven actions of an individual. Even where an individual's actions are proven illegal, imposing restrictions on all staff within that holding could be considered unreasonable.

### **Question B - Documentary evidence accompanying the selling of certain captive bred birds on General Licence 08/13**

No comment as this falls outwith our interests.

**Question C- Possible withdrawal of/amendment of General Licence 11/2013**

No comment as this falls outwith our interests.

**Question D - Extending the time limit for registration of captive bred Schedule 4 birds from 15 to 20 days on the General Licence 12/2013**

No comment as this falls outwith our interests.

**Question E - General Licences 13/2013 and 14/2013**

The species listed on Licence 13 are all species which can be legally shot within a Specified open season (along with a range of other species) and therefore no additional conservation benefit accrues from excluding them, or other 'quarry species' from sale in whole or part Having a licence reporting requirement is unduly onerous and has undoubtedly been forgotten in the majority of cases. We are aware that there is a market for feathers from at least some of the listed species for a range of uses and would presume that any failure to provide required reporting has been an inadvertent omission.

**Other Comments****Amalgamation of Licences 1, 2 and 3**

There would be merit in amalgamating licences 1, 2 and 3 as the species included have significant overlap, the methods used are effectively the same and at times, it can be difficult to categorically state under which licence a physical action is taking place. Undertaking control of carrion crows will have a conservation of wild birds benefit (through reduced predation of eg lapwing eggs) and a benefit in terms of reducing damage to livestock (through reduced problems of eye pecking of sheep and lambs). Similarly, the control of jackdaws could reduce predation on lapwing eggs whilst also reducing problems of a build-up of droppings and early nesting material in old buildings used by visitors.

**Alternative Solutions**

Many of the licences require the user to 'only use it where they are satisfied that appropriate non-lethal methods of control (eg scaring and bird proofing) are ineffective or impractical'. This clearly places the onus on the individual operating within the licence to assure themselves that such methods are ineffective or impractical. It would be helpful if SNH could provide case examples on their website to demonstrate what would be considered reasonable in this respect as opinions do vary We would be content for the Langholm Moor Demonstration Project to be used as such a case example and if required, I could arrange for a number of other practical case studies.

**Corvid trapping**

The Langholm Moor Demonstration Project makes extensive use of multi-catch crow cage traps, Larsen traps (of various designs) and Larsen Mate traps. Since the inception of the Project in 2008, we have not experienced any problems related to bird welfare using these traps. The Project would be only too happy to assist with the previously proposed work on monitoring of effectiveness/humaneness of such trapping and SNH should feel free to forward my contact details to the contractors.

Staff have concerns about the need for and the degree to which portable traps need to be secured to the ground. The great advantage of traps such as the Larsen and Larsen Mate is their portability. To have such traps staked such that they cannot be moved makes their effective deployment considerably more difficult and time

consuming. To date, despite extensive discussions with many practitioners, staff can find no reports of an animal becoming entrapped within such a trap. As such, we recommend that the requirement to stake traps down is removed or at the very least, reworded to reflect the miniscule risk of an animal becoming entangled (eg '*secured in such a way as to prevent to trap being dragged any great distance*')

During the stakeholder meeting in April 2013, some parties promoted the idea of 'no more than 12 hourly inspections' of crow traps, particularly where there may be goshawk present. As Project staff have seen goshawk on the highest of Project ground, if such a restriction were imposed, the Project's ability to control corvids (a recognised predator of grouse and wader eggs) would immediately be reduced by no less than 50%. The difficulties we have experienced with access for management on the moor would be also exacerbated to the expense of the vegetation on management tracks across the moor. Despite our detailed collation of trapping records, we are not aware of any problem of goshawks being caught within these traps on the moor. Having traps checked each day (rather than no less frequently than every 24 hours) would appear completely adequate.

Currently all corvid traps need to be fitted with identification tags showing a number of details including the estate's bird trapping reference number, as issued by the police. A number of parties have suggested that tagging should detail the individual rather than the estate. The Project would not consider this to be a major difficulty BUT the real value of tagging with individual marks would be very limited in practice as it is unlikely that law-breaking trappers would go to the trouble of having their traps individually tagged.

#### **Phase-in of new trap design restrictions**

Like most grouse moors, the LMDP has invested heavily in the purchase of sufficient quantities of good quality crow traps. Whilst these traps obviously have a finite service-life, any further restriction on trap designs should be phased-in over a period of years to prevent such investment being wasted.

We are aware of many situations where traps have been developed by individuals and as such, there is considerable variation in trap design. If it were considered essential to revise trap design, rather than having specific named traps, it would appear more logical to have a series of minimum standards. Again, the LMDP would be happy to provide access to all of our crow traps at convenient times of the year to assist in developing any such standards. We could also provide feedback on any bycatch and any problems encountered.

#### **Timing of Control**

We are aware of concerns regarding the duration of crow control activities. At Langholm, keepers do undertake such work throughout the year (effectively under both the conservation of wild birds licence and prevention of serious agricultural damage licence) with the aim of maintaining much-reduced numbers of crows. This helps ensure that in the build-up to the crucial spring period, the impact of such birds is minimised and optimal effort can be made to remove incoming birds.

#### **Catching of red grouse**

The proposed grouse catching licence (licence 5/2014) omits the period 16th April to 31<sup>st</sup> July. Whilst in most years, this closed period is unlikely to cause problems, there may be occasions where catching within that period may be required. As such,

excluding the closed period may be of benefit in reducing the inconvenience of needing to apply for an individual licence at what is a particularly busy time for grouse moor managers (and probably yourselves)

### **Actual benefit of increased regulation**

The Langholm Moor Demonstration Project abides by all legislation and seeks to manage all of our activities within Best Practice Guidelines. With every single additional rule and regulation however, the actual impact on the ground of our activities, is progressively weakened and diluted. Whilst we are obviously aware that there are individuals who break wildlife laws, the imposition of further regulation is unlikely to make any difference to such individuals. It does however progressively impact on the many law-abiding pest controllers who strive to optimise their impact (eg crow trapping to benefit on increasingly uncommon wading birds) whilst ensuring they remain within the law.



Langholm Moor Demonstration Project

### **Response 6: Individual**

Please accept my apologies for not replying by the pdf designed for the General Licences 2014 Consultation.

#### Annex 1

I fully agree with this important proposal by the Minister and the decision by SNH to insert an enabling clause which would prohibit the use of General Licences to shoot and trap wild birds on land where they have good reason to believe that crimes against wild birds have taken place.

#### General Licence 1

Could it please be made clear in General Licence 1 that spring over traps are not legal.

I understand there is pressure to introduce meat baits into Larsen Mate and Larsen Pod traps rather than only bread or eggs. If meat baits were to be used this would greatly increase the chances of catching raptors and therefore should not be permitted.

Surely it is time for jackdaw, jay, rook and great black-backed gull to be taken off the list of permitted species on GL1. The 3 corvids are extremely important for biodiversity and many farmers now understand that jackdaws and rooks do more good than harm. Jays are important for spreading acorns and a very attractive addition to our avifauna. Great black-backed gulls are an amber listed species so they should be taken off the list. I realise that the species listing is not part of the 2014 consultation but that hopefully this will be considered more fully in the 2015 consultation.

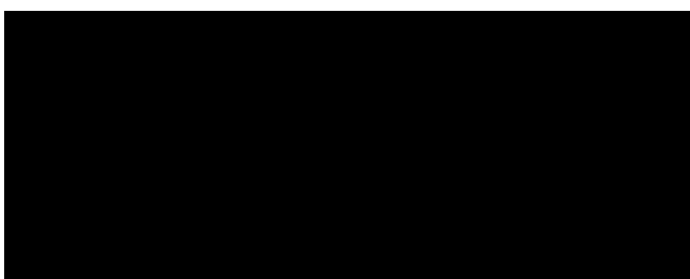
#### General Licence 2

As above, is it really necessary to have jackdaw, jackdaw rook and great black-backed gull on the list of permitted species? Many farmers now understand that jackdaws and rooks do more good than harm. There can be mass slaughter of rooks



and jackdaws from June to August in certain areas and this is more in connection with shooting interests rather than protection of crops, livestock or livestock foodstuffs. I understand that there can be serious problems caused by ravens on livestock but would hope that SNH does consider fully applications for raven control licences. All methods of deterring the birds from doing damage should be quickly put in place first. It should be ascertained if it is breeding birds or immature/non territorial birds which are the problem. It should also be established if there are "legitimate" game management interests in any application.

I am responding as an individual and do not wish my name to be made available when the consultation is published.



**Response 7: National Wildlife Crime Unit**

**A. General Licences and raptor persecution.**

Comments

No concerns. This is a sensible inclusion and hopefully will be used in the context of 'balance of probabilities'

**C. Possible withdrawal of /amendment to General Licence 11/2013.**

Comments

No knowledge of its use. Since mallard are not at any conservation risk this licence does not seem particularly important, however if it is retained paragraph 4 of the licence may need to be clarified in respect of what is a 'wildfowl collection.'

**E. General Licences 13/2013 and 14/2013.**

Comments

Feathers sold for the purpose of making fishing flies may fall under these licences. It seems likely that the law in this regard is not widely known and may need wider publicity within relevant sectors.

General Licence	Comments
GL01/2014	GL 1 – 4 There is no longer any specific mention in GL 1- 4 to exclude the use of a spring-over trap, although the wording at Point 6 would appear to cover this by excluding the use of any method other than those

	<p>listed.</p> <p>Currently, there is no provision within GL 1-4 for the updating of the register of codes held by the Police. Consequently the register will contain details of personnel no longer using traps or who have, indeed, deceased. It would assist if individuals were required to renew their code every 3 years.</p> <p>There has also been confusion between the words “owner” and “operator” used in paragraph 17 as they may not necessarily be the same person. To assist Police, it should be the operator of the trap to whom the tag refers.</p> <p>The code displayed on the trap should also be relevant to the person who is <u>at that time</u> using it (and not an aggregation of codes belonging to everyone who works on that land). Perhaps wording could read as:</p> <p><i>17. Any trap used under this General Licence must only carry a single tag or sign that refers to the operator of the trap at that time, and that gives the number of the local police station or wildlife crime officer for the area. The tag or sign must also carry a unique code that allows the operator (and not “owner”) to be identified by the police. The operator of the trap will contact their local wildlife crime officer to obtain this code in advance of use of traps. This will allow the use of traps for a period of 3 years when the operator is required to renew the unique code with the Police.</i></p> <p>There are administrative implications here but the whole registration process will need to be re-considered in line with the single policing structure and the devolvement of licensing functions to SNH.</p>
GL02/2014	
GL03/2014	
GL04/2014	
GL05/2014	
GL06/2014	
GL07/2014	
GL08/2014	Paragraph 8 refers to “any premises used for the purposes of”; should the word “used” be deleted?
GL09/2014	
GL10/2014	
GL11/2014	
GL12/2014	
GL13/2014	
GL14/2014	Under Terms and Conditions, where the text states OTHER THAN birds in Part 1 of Schedule 2, it would be helpful to explain the reason for this. Most of the birds on this list may be legitimately sold in any case, though the sale of those birds only applies if they are also on Part IIA of Schedule 3.

**Response 8: Scottish Raptor Study Groups****A. General Licences and raptor persecution.**

## Comments

The Scottish Raptor Study Groups feel that it is very important that such a paragraph is included in the relevant licences.

**B. Documentary evidence accompanying the selling of certain captive-bred birds on General Licence 09/13.**

## Comments

N/A for SRSGs

**C. Possible withdrawal of /amendment to General Licence 11/2013.**

## Comments

N/A for SRSGs

**D. Extending the time limit for registration of captive bred Schedule 4 birds from 15 to 20 days on General Licence 12/2013.**

## Comments

N/A for SRSGs

**E. General Licences 13/2013 and 14/2013.**

## Comments

N/A for SRSGs

Thank you for your letter of 4th October inviting the Scottish Raptor Study Groups (hereinafter SRSGs) to contribute to this consultation. SRSGs' responses are as follows, under various headings as underlined:

General Licence 1. SRSGs are aware that at the time of the 2013 General Licences consultation there was a request that buzzard and sparrowhawk should be placed on one or more of those General Licences. SRSGs maintain that there is no justification for putting either of those species (or for that matter any other raptor species or the raven) on General Licences. Although it is a point relating to birds other than raptors, SRSGs consider that the justification for keeping great black-backed gull, jackdaw, jay and rook (and hence by extension jackdaw and rook as decoys in multi-catch traps) on General Licence 1 needs to be assessed in the light of current knowledge on the ecology of these species. SRSGs understand that there may be pressure to allow meat baits to be used with Larsen mate and Larsen pod traps and feel that the restriction allowing only egg or bread baits for use in such traps should be maintained. It appears that spring-over traps cannot be lawfully used but SRSGs

would welcome an assurance from SNH on that point and also confirmation that trap users have been advised accordingly.

General Licence 2. SRSGs make the same points on buzzards, sparrowhawks and other raptors, on meat baits and on spring-over traps, as above in relation to General Licence 1. In line with the comment as to certain species still kept on General Licence 1, SRSGs suggest that the justification for keeping great black-backed gull, jackdaw and (perhaps) magpie (and by extension jackdaw and possibly magpie as decoys in Larsen traps) on General Licence 2 needs to be assessed. While not claiming that there are no cases of serious damage to livestock by ravens for which licensed control of this species can be justified, SRSGs are concerned about (a) the apparent readiness with which licences for this purpose may be being granted in some, perhaps many, instances and (b) the possibility that in some, again perhaps many, cases applications for raven control licences (ostensibly for prevention of serious damage to livestock) may have game management intentions behind them. On that latter point, logically in these circumstances licence applicants should go for General Licence 1, in relation to which however the necessary stated "purpose of conserving wild birds" needs to be established by rigorous scientific research (not by anecdote) so as to ascertain whether or not there is a genuine and serious wild bird conservation problem as a result of raven predation.

General Licence 5. It has been suggested (authoritatively, SRSGs feel) that a separate and additional catching of wild birds permit is needed by anyone who intends to exercise this General Licence. Will SNH be advising those planning to use General Licence 5 accordingly?

Longer term considerations. SRSGs appreciate that SNH is not consulting on the basic principles of issuing General Licences. Indeed SRSGs do not query these basic principles, to the extent of acknowledging that activities permitted through General Licences are justifiable in some cases. What concerns SRSGs however is the liberal way in which, in particular, cage trapping continues to be allowed. That remark applies as much to the proposed 2014 round of General Licences (especially General Licences 1 and 2) as to any future licensing system that may be proposed for the years from 2015 onwards. While maintaining therefore that the 2014 licensing proposals are wanting in certain important respects (from the perspective of true biodiversity conservation and in relation to design, location and seasonal use of traps) SRSGs reserve further and more detailed comment until (1) the outcome of the current General Licences trapping project is known and/or (2) they have sight of what is proposed for the 2015 suite of General Licences.

SRSGs will return completed Annexes 1 and 4 by post, with a copy of this e-mail for reference. SRSGs are strongly in favour of an "enabling" paragraph as stated in section A of Annex 1. Annex 4 requests an answer as to whether a response is submitted on behalf of an individual or on behalf of a group or organisation. The latter is the case for SRSGs.

 Scottish Raptor Study Groups

Supplementary comment also received:

Thank you for the acknowledgement of my consultation response e-mail sent yesterday. Entirely for the avoidance of doubt (although the meaning in yesterday's e-mail should be clear enough) I make one further point. This is that in the first line of the response on General Licence 2 the words "... buzzards, sparrowhawks and other raptors" should read "...buzzards, sparrowhawks and other raptors and the raven." Thus SRSGs contend that there is no justification whatsoever for putting any of such species on General Licence 1 or General Licence 2, whatever arguments to the contrary may be put forward by other parties.

 Scottish Raptor Study Groups

### **Response 9: Individual (Mr J Harvey)**

#### **A. General Licences and raptor persecution.**

##### Comments

Any 'good reason to believe' would have to be already proven in a court of law otherwise it would allow the possibility of poorly substantiated or even false accusations being accepted.

Where any restriction is tied to land the effect on neighbouring land must be considered to ensure safe havens for species listed under General Licences are not created. A better result may be obtained by tying restrictions to named individuals.

### **Response 10: Scottish Gamekeepers Association**

FAO: Robbie Kernahan--- Scottish Natural Heritage  
Subject: General Licences 2014- Consultation.

FROM: The Scottish Gamekeepers Association.

#### Annex 1:

##### A. General Licences and Raptor Persecution.

We have concerns, partly because there are no definitions of what will instigate the removal of general licences from Estates as opposed to the individual convicted of wildlife crime. We understand the latter but are confused about the former.

There appears to be confusion as to whether this is for crime against a raptor only, or for general wildlife crime. Either way, we feel the burden of proof must rest on a conviction only and not 'good reason to believe'.

This whole idea is unfair and simply rests with the 'opinions' of individuals. If this revocation IS to be done out-with a court hearing, it will also encourage those who are anti-shooting to set up or concoct scenarios whereby it looks like crimes are being committed e.g. nest desertions or placing incriminating evidence.

On the subject of nest desertions and land owning interests being blamed, if we are to be subject to enquiry and suspicion that may lead to licence removal, then it is

necessary that those visiting the nests, under a disturbance licence, be accountable for their actions so that their possible involvement in any reported incident can be checked.

Allowing the nests to be visited, at their convenience, without any way of verifying that their accounts of nest visits are accurate, is unacceptable. At the moment they do not have to tell anyone they visited the nest. Therefore they can omit, in their end of year returns or other reporting, half the visits actually made.

As the landowner, through this new threat of licence revocation, is being held responsible for raptor survival, it must follow that those visiting the nests are held equally responsible. Measures must be introduced to have these people undergo mandatory training and accountability must be assured.

In the rush to penalise estates for 'suspected' wildlife crime, care has to be taken not to jump to conclusions too quickly. Finding carcasses poisoned, or otherwise, on a piece of land is not proof of wrongdoing by those employed on that land.

With an estate that has several employees, penalising that estate for the suspected or alleged, actions of one person (by removing their general licence for this suspected crime) will effectively stop every employee from carrying out their duties and risk their future employment. The very possible scenario, then, that the rest have committed no crime yet are being unfairly punished is an infringement of human rights. It will also threaten their future employment.

Without a conviction, not a suspicion, how do you intend to remove these licences without punishing the innocent?

SNH and Govt have an obligation to maintain all birds at sustainable levels. By removing the right over a particular piece of land (which may be many thousands of acres and locally important to wading birds, etc) to use the general licence, this immediately threatens endangered birds which hitherto had enjoyed protection against predators through the estate's use of said licence.

#### Use of Traps under General Licence:

In the case of Larsen mate traps. Gamekeepers need to be able to use meat, otherwise these traps do not work efficiently. There is no criminality with these traps, so there should be no restrictions on the use of meat in these traps.

In the case of all other traps, the SGA expect the status quo be preserved on the use of these traps regarding, baits, decoys, location and year-long use.

Larsen traps, in last year's GL, were to be pinned down. We would like this removed as there is no need for these heavy traps to be pinned down. Nothing going into, or springing, these traps, can move them once inside.

#### Transient Gulls:

We would like to see the return of general licences to remove troublesome transient gulls. Currently, if large gulls appear and start feeding on the local wildlife, eggs and chicks of waders, etc, by the time a licence could be obtained, the damage will have been done. On a general licence it can be dealt with immediately, saving ongoing

destruction. No one is ever going to apply for a licence knowing how long it will take and the strong possibility that it will be refused. It's the prey species that will suffer. Are SNH happy to see this continue?

If no changes are to be made in the gull licences, it should be made clear in the GL that licences will be granted for the lethal removal of gulls if it can be shown they are creating a problem to stock or wild birds.

If SNH are serious about saving bird populations then all the above should be part of the general licences. Many farmland, aquatic and wader bird populations are in serious overall decline and any further failures in management options will be laid at the conservation bodies' doorsteps.

#### Other General Licence Points:

Quota systems for buzzards, ravens, pine marten and badgers need to be seriously considered.

Alternatively, SNH should look seriously at a localised general licence for some of these species, especially ravens, where they are known to be numerous, and already causing problems with sheep. (These licences could be for a limited time during nesting).

Hundreds of licences have been issued to various sectors to remove all manner of bird species including buzzards. Refusing to deliver licences, for the removal of buzzards to protect stock or other wild birds, to land owning interests, when applications are competent, is double standards. Our rights to protect our livestock and livelihoods are being ignored.

Last year you stated that SNH were looking to simplify licences for the protection of wild birds. What progress have you made on simplifying the issuing of licences for wild bird protection from ravens, for example?

#### Eggs for Rescue Conservation:

There is a need to retain the saving of, not only duck eggs, but all game bird and waterfowl eggs, for rescue conservation. Spoilt nests of partridge, black game or various other duck species can be, and are, rescued every year and released back into the wild.

This is not for shooting purposes, although some may end up being shot. However, if 50% survive the winter, then that is 50% more than there would have originally been. If the eggs are viable and, by rescuing them healthy offspring can be reintroduced back into the wild, then this is no different from rescuing an adult bird and, after treatment, releasing it.

### **Response 11: Scottish Association for Country Sports**

#### **A. General Licenses and Raptor Persecution**

At the outset, we wish to make it clear that we do not under any circumstances condone wildlife crime of any kind and will continue to work with PAW partners, the

Scottish Government and its agencies to reduce the incidence of such crime wherever possible.

We are, however, encouraged by the published statistics which show that crimes against raptors have reduced year on year until there are now only a handful of alleged offences recorded each year. We feel, however, that this has been mainly achieved by a combination of education, publicity and engagement between land managers and government, and this process continues.

Clearly the availability and more focused use of legal sanctions against those who commit such offences has had a part to play in this process, but the illegal killing of raptors, which is the focus of this Ministerial initiative, has been an offence for half a century, and we firmly believe that it is largely the new education and engagement process which has resulted in the reduction of raptor crime to the current all-time low.

That said, there is no doubt that some of the more recent substantial financial sanctions, such as withholding Single Farm Payment from landowners involved in such offences, and perhaps the threat of the new vicarious liability provisions being invoked against them, has also had a part to play.

We also note that under the Wildlife & Countryside Act 1981, the issuing authority has very broad powers in terms of what it may do in terms of these general licences, and we are not sure that there is actually a need for any specific enabling paragraph to be inserted at all.

However, we take the view that the GL are enabling licences, to permit the necessary broad management of certain species which would otherwise be prohibited under the Birds Directive, and we think that there has been a tendency for this overarching purpose to be forgotten, particularly in respect of the highly publicised matter of raptor crime.

We would go further and suggest that the overarching enabling purpose of these licences has been to some extent subverted by those focused solely on raptor crime, and a host of trivial technical offences have been created which make it almost impossible for the ordinary man to even understand the licences, far less comply with their terms.

It is already a criminal offence to do almost anything which could adversely affect any raptor – the offences are clear and specific, and enshrined in primary legislation - and in our view that is the correct place for it, not in general licences which are primarily issued to enable species control, not restrict it.

If this ministerial proposal is taken forward in the way which appears to be suggested, there is a danger that it will further distort the GL into a 'raptor protection' document instead of an enabling conservation licence as required.

We would also point out that the proposed appeal process is unlikely to be ECHR compliant, in that it would be likely to affect the life and livelihood of individuals without a right of appeal to an independent court or body, and we think it highly likely that this would lead to legal challenges at the highest level, causing great expense to the public purse and uncertainty among those who need to use the licences.



Since raptor crime is now at such a low and finite level, and since such immense effort and resources have been expended in bringing us to this position, we have a substantial bank of information on this subject – sufficient, perhaps, to answer three simple questions:

1. Who (either as individuals or as a class of person) is still killing raptors?
2. Why are they doing it?
3. What is the most effective and proportionate way of stopping them?

We have no doubt that there will be intelligence available from various sources to answer question 1. If we are to reduce raptor crime to an even lower level, those are the individuals we have to target effectively, while if possible avoiding any unwanted side effects such as penalising innocent individuals or affecting the lawful species control which provides such broad environmental and agricultural benefits throughout Scotland.

On question 2, at the most simplistic level we assume that it is because they believe it is necessary – so much so that they are prepared to risk the wrath of the law. Necessary, we assume, to achieve their objective, whatever that is.

Without the information to answer question 1 (at this stage), we can do no more than make an educated guess, but if we take the species about which there is currently most publicity – the eagles, buzzards, kites and harriers, there is a popular theory that those which are deliberately killed might be killed to prevent them from preying on gamebirds.

If that is the case, ignoring the illegality of what they are doing for the moment, are their actions evidence and/or science based, or simply ignorance and prejudice against raptors?

If their actions were evidence based, it might suggest that the absolute protection of all raptors under all circumstances may need to be looked at again in relation to the broader aspects of conservation and the economic viability of the rural environment.

This would be a matter for government, and in fact the process of investigating more thoroughly and transparently the relationship between all sorts of predators and their prey has already begun, with support from the Scottish Government, which we welcome.

If, on the other hand, their illegal actions were (wrongly) based on ignorance and unjustified prejudice against birds of prey, education of the appropriate individuals and/or groups would be more likely to achieve the desired result. In this case, the research which has been commissioned on the relationship between predators and their prey will perhaps provide the evidence to demonstrate whether the perceived usefulness of or need for what they are doing is supported by the scientific facts or not.

In any event, in the short term, the current draconian penalties for anyone convicted of such offences is clearly proving highly effective.

In either case, we do not think that the exclusion of areas of land from the benefit of General Licences is the correct way forward.

On the assumption that this proposal is likely to involve substantial areas of land – perhaps even large enough to affect the ecological balance at catchment level, the environmental and agricultural damage which could be caused by the unavailability of legal species control under the General Licences, particularly in marginal upland areas, could be significant. We do not think that this is sensible or proportionate.

In addition, landowners may well own more than one holding in Scotland, and by linking the sanction to the land rather than the person, those other areas would not be covered, which to some extent fails to address what we think the Minister is trying to achieve.

Perhaps it would satisfy the Ministerial imperative by adding to the wording of the standard paragraph which appears in every GL (Para. 4 in GL 1) to the effect that anyone who was convicted of a wildlife crime would not be able to ‘authorise’ others to use the GL. That would affect all land holdings s/he has in Scotland where the GL was being used under his authority for his purposes.

That would not preclude, for example, agricultural tenants from protecting their crops, which a land-based restriction would do.

It appears to us that the most likely recipient of sanctions of the type under discussion here would be relatively substantial landowners, who are likely to have available the means and resources to circumvent almost any type of sanction imposed on land. We feel, however, that the imposition of such a personal sanction would be sufficient to make the individual (and their peers) aware that s/he was in the spotlight, as it were, and therefore considerably less likely to offend further.

In all of the above, however, we do not feel that the proposed level of proof is appropriate or legally sound, and we think it likely that it would lead to legal action against SNH or the Scottish Government for a number of reasons, not least potential defamation of character.

We have no difficulty with the concept that a sanction can be applied to someone convicted of a wildlife crime - guilt has been legally established and it is therefore a question of fact, not opinion.

Even in this situation, anyone convicted will have had the appropriate (by definition) penalty imposed by the courts, and by paying that penalty can be seen as having paid his debt to society as would apply in any other form of crime. Is it then reasonable to impose further sanctions in other aspects of that person’s life? We do not think so.

We also think that would be almost impossible to safely ask SNH to make the subjective value judgement inherent in what is currently proposed, using ‘good reason to believe’ as the standard required.

We would recommend, therefore, that if this proposal is taken forward in any form, consideration should be given to imposing any sanction on an individual, rather than an area of land, and that the absolute minimum standard of proof required should be that the individual has been convicted of a wildlife crime offence. To do otherwise is imposing a reverse burden of proof, and would be likely to result in considerable litigation.

In one view, the expense all of this would undoubtedly involve could be much more usefully spent in providing the resources to investigate and prosecute the few individuals who commit the small number of offences which still occur, and on further building on the education and awareness programme which has undoubtedly been responsible for the dramatic reduction in existing offences, and we, and I am sure all organisations involved in land management in Scotland, will be happy to work with the SG and SNH to further this objective.

**B. Documentary evidence accompanying the selling of certain captive-bred birds on General Licence 08/13.**

**Comments**

We agree that this is required, and will comment in detail on the other implications of this in our comments on the individual GL below.

**C. Possible withdrawal of /amendment to General Licence 11/2013.**

**Comments**

We think that GL 11 as it currently exists is unlikely to be in common use. Since the public awareness of the general licences is still very low, even among the people who might be relying on them for their activities and interests, we cannot think of any way in which the actual usage of the licence could be established with any confidence, and the temptation to simply withdraw it as unnecessary can be understood.

On reflection, however, it may be worth considering the basic principle of the licence before taking this step.

We assume that this licence was originally designed for a specific purpose, but that purpose may no longer exist, or it may not have been relevant to Scotland, but the permitted circumstances are very specific, and restricted to mallard eggs.

We believe that it is relatively common, particularly in rural areas, for people, if they find a nest of eggs (or even young birds) where the parent bird has been killed, to try to rescue the situation by taking the eggs and incubating them safely or trying to rear the orphaned young.

This may be mallard, but it could commonly be pheasant, partridge or a number of other species, particularly those ground nesting birds where the young are mobile from hatching, because they can be easily reared under a broody hen or otherwise.

This is of course technically illegal, although done with the best of intentions, and we think that this licence might be usefully amended to legitimise this activity.

We therefore recommend that consideration be given to extending the range of species included to include perhaps such of our native *Anatidae* species and the native *Galliformes* as are likely to benefit from some human assistance if their nest, eggs or young are in clear and immediate danger.

We also recommend that consideration be given to extending the range of circumstances under which eggs and young may be taken into protective custody to include not only inclement weather but physical danger and the loss of the rearing parent.

This could permit the removal to safety of eggs which would be flooded out by rising water, destroyed by otherwise legitimate agricultural operations such as silage and hay cutting or where the incubating female had been killed, and the artificial rearing and release thereafter of birds which are still too young to survive without parental assistance where the rearing parent had been killed after the eggs have hatched.

In the case of danger from predators, it might also permit the safe rearing of rare species where their lives are in clear danger from a protected predator – perhaps the RSPB might have a view on this?

### **C. Extending the time limit for registration of captive bred Schedule 4 birds from 15 to 20 days on General Licence 12/2013.**

#### **Comments**

We welcome this as a sensible and practical improvement to the GL

### **E. General Licences 13/2013 and 14/2013.**

#### **Comments**

As we have said on a number of occasions, the whole concept of general licences suffers from a widespread lack of public awareness, and as a consequence the lack of feedback via reporting procedures is likely to be entirely due to the fact that users are simply not aware of the need to report.

This is different from the position with personal individual licences, where the user will by definition have applied for the licence and can therefore be at least assumed to know of its existence, have read it through and understood its terms at least to some extent.

We do not think it is safe to make any change to a GL in the current circumstances if that change is based solely on the lack of reporting of use, and recommend that until we can be confident that the GL are widely known and understood, there should be no reporting condition on any GL.

We would further suggest that changes which have been made to GL over the past few years, if based only on the fact that there was no reporting of use, should be reconsidered.

In particular we suggest that the removal of the Lesser Blackback Gull from GL 1 has had serious conservation implications for ground nesting birds and it should be returned to the GL until the scientific information which will be forthcoming from the SG plans to investigate the broad predator/prey relationships in Scotland is known.

Specific comments on the individual GL follow:

General Licence	Comments
GL01/2014	<p>Since this is the first GL, many of the comments will apply to some or all of the other licences – we do not repeat them in each case.</p> <p>Firstly, on the concept of GL as a whole:</p> <p>The activities covered by the GL all require derogation from the Wild Birds Directive by the Government or its authorised agency. Such derogations are covered by fairly tightly worded conditions under which the agency may derogate, and it is a basic requirement of the Directive that the issuing agency is ‘satisfied that there is no satisfactory alternative’ to derogation.</p> <p>Having read this carefully, it appears to us that it is the <u>issuing agency</u> which requires to be satisfied that there is no satisfactory alternative, and we cannot find anything in the Directive which would suggest that the individual <u>users</u> of the GL must also be so satisfied.</p> <p>At present, the GL invariably have a condition which imposes this need to be satisfied that there is no reasonable alternative on those who use the licence, and we recommend that this should be removed throughout.</p> <p>The whole purpose of the general licences is enabling, rather than restricting, and it should logically follow that they should make it as easy as possible for the users.</p> <p>We also think that although there has already been a substantial improvement in the GL since SNH became the issuing authority in terms of readability and clarity, much can still be achieved.</p> <p>In simplified terms, GL 1 permits the control by killing and other means, of corvids (and a small number of additional species). That is because <u>SNH</u> is satisfied that there is no reasonable alternative to allowing these species to be controlled at all times of year by anyone who can legally do so by having permission to shoot or trap where the control is to be done.</p> <p>In the opening paragraph, we think that the wording is not conducive to what the licence is trying to achieve, by using terms such as ‘illegal’ and ‘prosecution’, and the tendency to use what could be seen as threatening and warning terms is common throughout the licences – we think this could be improved to make them more user-friendly by changing the tone, subject to any legal</p>

constraints on what must be contained in them.

For example, the first licence might read as follows:

### **Introduction**

SNH, being satisfied that there is no reasonable alternative for the conservation of wild birds in general, hereby issues this General Licence to cover the period from 1<sup>st</sup> January 2014 until 31<sup>st</sup> December 2014.

### **What is a General Licence?**

This General Licence allows authorised persons to control the population of the species shown below at any time. An authorised person can be the owner or occupier of the land on which the control takes place, or any person authorised by them. You do not need to apply personally for this licence as it covers any authorised member of the public.

### **What does this Licence allow?**

It allows any authorised person to kill or take, or attempt to kill or take the species shown below, to take, damage or destroy the nests and eggs of those species, and to keep and use certain wild birds for use as decoys in cage traps.

### **Species which may be killed or taken under this Licence**

<b>Great black-backed gull</b>	<i>Larus marinus</i>
<b>Lesser black-backed gull</b>	<i>Larus fuscus</i>
<b>Carrion crow</b>	<i>Corvus corone</i>
<b>Hooded crow</b>	<i>Corvus cornix</i>
<b>Jackdaw</b>	<i>Corvus monedula</i>
<b>Jay</b>	<i>Garrulus glandarius</i>
<b>Rook</b>	<i>Corvus frugilegus</i>
<b>Ruddy duck</b>	<i>Oxyura jamaicensis</i>
<b>Magpie</b>	<i>Pica pica</i>
<b>Canada goose</b>	<i>ranta canadensis</i>

### **Methods you can use**

- Shooting with any legal firearm
- Use of sound recordings and electronic calls
- Larsen-type traps, Larsen-mate type traps and Larsen pod type traps
- Multi-catch cage traps

- Falconry
- Destruction of the nest or eggs
- Preventing the eggs from hatching by pricking them or oiling with medicinal grade liquid paraffin or domestic cooking oil.
- By hand

### Rules for using this General Licence

1. You may not use this General Licence (**or authorise anyone else to use it on your behalf?**) if you were convicted of a wildlife crime on or after 1<sup>st</sup> January 2008 unless, in respect of that offence, you were either dismissed with an admonition, you are a rehabilitated person (for the purposes of the Rehabilitation of Offenders Act 1974 and your conviction is spent) or a court discharged you absolutely. Any person not able to use the General Licence can still apply to Scottish Natural Heritage for an individual licence.

### 2. Using Cage Traps

All cage traps in use must be checked at least once each day, at intervals of not more than 24 hours except when extreme weather conditions prevent this. When not in use, traps must have their doors securely padlocked in the open position or the door or trap removed from the site.

Any bird of a species not covered by this General Licence must be released unharmed immediately on being found in any trap cage. Target species must be despatched as humanely as possible when caught and any dead or sickly decoy birds must be removed immediately on discovery.

The only species which may be used as decoys in cage traps are:

<b>Carrion crow</b>	<i>Corvus corone</i>
<b>Hooded crow</b>	<i>Corvus cornix</i>
<b>Magpie</b>	<i>Pica pica</i>
<b>Jackdaw</b>	<i>Corvus monedula</i>

**Rook**

*Corvus frugilegus*

**Jay**

*Garrulus glandarius*

3. Welfare of birds

When any bird is under your control, you are responsible for its welfare.

Decoy birds must be provided with food, water, shelter from the prevailing wind and rain and a suitable perch which will not cause discomfort to the bird's feet.

That is over-simplifying, but it contains all of the essential information, in a logical order, and with some simple design work it could almost be fitted on a single A4 sheet, although two might be more likely by the time extra rules are added.

It is not constantly punctuated by threats of imminent prosecution and set out in formal language which the ordinary man will simply not understand. We did a degree of 'market research' on the comprehension of the sample licences which came with the consultation, by showing the first two to a number of people who had an interest.

None of them felt confident that they could understand the content of the licences as they were set out, and I think that is a matter which SNH might easily address by using a more 'plain english' approach where possible.

There is one matter which we have heard discussed recently, and with which we agree. In the Wildlife & Countryside Act 1981, S5 (1) (d) specifically prohibits the use of sound recordings to attract birds, which we understand was intended to prevent large-scale killing of wild geese.

However, since 1981 there have been immense changes in technology, and there are now electronic calls available which are not sound recordings, they are digitally created sounds, and there is some confusion over whether they would be classed as sound recordings or not by a court.

Since we are dealing here with enabling licenses, and in view of the fact that any method of assisting in the control of the target species which does not have adverse welfare implications should be welcomed, we suggest that the appropriate General Licenses have



inserted a clause to the effect that 'for the purpose of this license, the restriction on using sound recordings to attract birds contained in Section 5 of the Wildlife and Countryside Act 1981 shall not apply'.

If SNH is happy with the concept of using plain English in the licenses, it might be simpler to add 'The use of sound recordings or artificial calls' to the list of permitted methods, and we recommend this approach.

Finally, we note that the description of 'authorised persons' will be revised to remove the potentially misleading reference to local authorities, since they will already be authorised persons on land over which they have control. The original wording suggested that a local authority would have the right to authorise users on land which they did not control, which was not the intention of the wording.

#### Comments on GL1

1. We recommend that the Lesser Black-backed Gull be returned to this GL – there is no doubt that the species has a substantial adverse effect on the conservation of ground nesting birds, waterbirds and their young, and it is of little or no conservation concern.

We understand that it was removed after a period during which the public using the general licence were required to report any which were killed under the GL, and since none were reported it was assumed that there was no need to have them on the GL.

We think that the lack of reported killings was entirely due to the lack of knowledge and awareness of the whole GL system rather than the fact that no birds were killed, and we believe that this view is now becoming more widespread as the work of consulting on the GL increases.

2. As discussed earlier in this submission, we recommend that the entire contents of Para 3. should be omitted
3. We recommend that liquid paraffin BP and any food grade cooking oil should be acceptable for oiling eggs, on the assumption that the purpose of the oil is simply to block the pores in the egg shell to prevent the chick developing normally. Neither liquid paraffin nor cooking oil should have any adverse effect on the bird incubating

the egg or the wider environment.

4. In our experience, any corvid can work as a decoy for any other corvid, since we are using the decoy to trigger the aggressive territorial instinct of the target species. We therefore recommend that Jackdaws, Rooks and Jays should be added to the list of permitted decoys for use in any cage traps including Larsen traps.
5. The practice of adding the number of the local police station or WCO to the tag on a trap is no longer appropriate – under the new Scottish Police Service, all non-urgent calls should be made to 101 and the caller will then be routed to whoever is required. In the circumstances, there is now no need to have a phone number on the tag at all.
6. In respect of para 18, we think this is unnecessary and offensive. We cannot think of a single reason why someone would deliberately design a trap to cause injury or unnecessary suffering. The sole purpose of a cage trap is simply to catch, and we feel that if someone uses a cage trap which is likely (or worse, was designed) to cause unnecessary suffering, that is already covered under other legislation.

We also feel strongly that no trap which is not deliberately or recklessly (and we use those terms deliberately) designed to cause such unnecessary suffering should be illegal.

Much is made by raptor groups of the potential for cage traps to catch raptors and other non-target species, which is to some extent relevant – it is possible to catch non-target species in them. This does not cause any problems whatsoever provided that the non-target bird or animal is released on the first inspection of the trap thereafter.

The possible exception to this might be where a raptor caught in such a trap was a hen which was incubating eggs, as the eggs might become chilled and stop developing. This could only happen during a very specific number of days in a year and if there were a known golden eagle nest in the area of a cage trap, for example, it might be safe practice to leave the main door open during the period in which the hen is vital to the process, which would be around 10 weeks

(45 days incubation plus the first few weeks of fledging),

We are not sufficiently well-informed to know the likelihood of an incubating hen eagle entering a cage trap – perhaps there will be raptor experts who could supply this information, but statistically it must be a very unlikely occurrence for an incubating hen eagle and a cage trap to be in close proximity at the crucial time.

With this one exception, the catch and subsequent release of any non-target species in a cage trap is of minor welfare significance. If someone chooses to commit a crime by failing to release a protected species unharmed, that offence is covered by other legislation and we submit that it is disproportionate to place so much emphasis on the possible unlawful actions of someone misusing a legal object in a document designed to make lawful the use of cage traps

7. In respect of para. 19, we suggest that it is certainly not necessary to peg or stake a Larsen trap to the ground, although we can see why it might be applicable to smaller and perhaps lighter traps such as the Larsen-mate and Larsen-pod types.

In many years practical experience of using these traps in all forms, we have not found a single instance where any species has been caught partly in this type of trap – they are either completely in or out by the nature of how the trap operates.

We accept that it is theoretically possible, however, and look forward to the outcome of the scientific study of traps and their use which will be taking place in the near future,

We also recommend that, to avoid inconveniencing trap operators as far as possible, there should be no requirement to tie any of them down if they are set in an enclosure such as a domestic garden or a release pen, where it is just not possible for the trap to be dragged away, even in the unlikely event that

something did manage to become partly caught.

In this respect we would suggest the wording 'any cage trap which is light enough to be dragged by a bird or small animal which is partly caught in it should be either securely pegged to the ground or attached to another object in such a way that it could not be easily dragged, unless it is set in an enclosed area such as a garden or release pen.'

## 8. Definitions

Most of the definitions would perhaps be more appropriately contained in guidance notes, rather than cluttering up a GL, and we recommend that the code of practice for trap operators be revised, updated and widely publicised.

When we examined the definitions of the various types of traps in this section, we noted that they are not only inadequate but misleading in some respects.

The definition of multi-catch trap is inadequate because it does not cover all eventualities – for example it does not cover the smaller portable funnel-entry cage traps which are designed to be accessed by the operator opening a hatch and removing birds manually without going into the trap – such as would be used for the control of feral pigeons in urban situations.

We have concerns about the definition of all of the traps mentioned, and we believe that the wording requires to be improved for the safety of the trap operators.

We initially thought that the wording could be amended to 'A cage trap designed to allow more than one bird to enter the trap and be retained', but we then noted that the definitions of the various types of Larsen traps and their add-ons are also full of difficulties.

In the circumstances, it seems to us that this is such a crucial matter that a full explanation of our views might be helpful in informing the debate.

Firstly, we reiterate – the primary purpose of a GL is enabling, not restricting. The process so enabled is the control of bird species which, due to the influence man has had on the natural environment in Scotland, have become so numerous that they are causing serious

problems – either to other species, to crops or to public health and so on.

This has already been accepted by the SG, or the GL would not be issued. If we then accept that any restrictions put in place should be as few as possible in order not to undo the environmental good being enabled by the licences, we have a clear starting point.

Looking to the reasons which have been put forward as justification for adding restrictions, we found that there were three principal types of objection.

Firstly, there are those who simply disapprove of killing birds, which is a moral view they are perfectly entitled to hold. That view must be balanced by the SG against all of the other factors, and this has been done, with the conclusion that ‘there is no satisfactory alternative’.

Secondly, there are those of us who, for various reasons, are concerned about the welfare implications to the birds involved – both to target species and potentially to non-target species, and of course the welfare of decoy birds must also be taken into account.

We take the view that no right-minded person would deliberately cause unnecessary suffering to any bird – and of course to do so would be an offence under other legislation. However, the concept of ‘unnecessary suffering’ of itself implies the existence of ‘necessary suffering’. We would define this as the minimum degree of suffering which a reasonable person would be prepared to accept as necessary, having made a reasoned judgement on all of the facts and circumstances.

This is likely to include such things as the restriction of freedom involved in keeping a decoy bird in a relatively small compartment, the mental stress of a bird being retained in an unfamiliar trap until it can be killed or released, and of course the ‘humane’ despatch of birds we have decided should be killed.

The third group might be diplomatically described as those who think that raptors are more important than anything else, a view with which we fundamentally disagree. Although we cannot speak for them, it appears to us that their interest in the GL relate entirely to their belief

that all who use traps under the GL are likely to deliberately or accidentally kill raptors.

This is simply not the case, and their efforts to place excessive restrictions on the traps used under the GL on the basis that this will somehow prevent raptor deaths is in our view misplaced. If someone wishes to kill a raptor, for whatever reason, there are many methods which will work and would be far easier than using a cage trap.

All of them would be illegal, as would the misuse of a trap, and we think that it is entirely disproportionate to impose technical and other restrictions on all GL users in an attempt to achieve a separate result which is nothing to do with general licences.

Against that background, we considered the wording of the GL where the permitted methods are set out, and in one view, the whole four lines of the wording on traps could easily be replaced by a single line 'catching in cage traps'.

This simple, unambiguous line encapsulates the permitted principle neatly and clearly so that it can be clearly understood by licence users (if we can ever get them to read the licences!)

If conditions are to be imposed on the type of trap used or how it may be used, we suggest that the logical and correct place for that to appear would be under rules or definitions at the end of the licence.

We then considered the actual definitions shown, and how they could be improved and simplified, and our first conclusion was that if there is to be a distinction between Larsen-related traps and the remainder, the probable distinction should be between those larger traps, most commonly (although not invariably) built in situ, and portable traps.

In fact, in our view the significant difference is not size or portability, it is the distinction between traps where the decoy bird, if used, is housed in the same compartment as the trapped birds will be, as opposed to those where the decoy is confined in a separate compartment.

There is, however, a degree of overlap here as well, since both types may at times be operated using bait rather than a decoy to attract the target species, and in the case of small portable traps may be used alone with bait, in combination with a Larsen-type trap containing a

decoy bird, or even as an adjunct to a large permanent cage trap to catch a particularly trap-shy bird.

Traps in common use include:

1. Large permanent cages with a funnel entry or ladder entry for target species and a door through which the operator enters to feed and water the decoy and kill or release birds which have been caught.
2. As 1. but sectional, so they can be moved around to different locations or removed entirely.
3. Larsen traps. This is possibly the most widely varied group. The original Larsen was a square shape, divided into one half and two quarters. The half housed the decoy bird, and the quarters were the catching compartments. The trap doors were on the top, and the doors were pushed in to set them, flicking up to the closed position when a bird hopped on to the perch.

Since then, countless variations have been developed – in some the square is divided in four to give three catching compartments, some are built with two or more compartments in a row, one of which is used to house the decoy, and the catching doors may be on top or at the side.

4. Add-ons/Other traps. There are a number of other either single or multiple cage traps in common use, which may be spring or gravity operated. Generally they fall into two types, although there may be others. The first type is a single or perhaps even double) compartment box trap with spring or gravity operated doors, which could be on top or at the side. They are commonly used as extra catching compartments in conjunction with another trap which contains a decoy – either to provide extra capacity or to provide a different type of trap to catch target species which have become trap-shy.

They may also be used with some form of bait instead of relying on a decoy, and it is possible to use one of these compartment traps to house a decoy and use others around it as catching compartments, using the Larsen principle of attraction without actually falling within any current definition of

a Larsen trap.

Then there are the traps commonly known as 'clam' traps, where the two halves of a box trap are held apart when set, and come together when sprung to contain the target species. Again these may be used in any permutation with any of the other traps described above or on their own with bait of some kind.

Finally, there are small versions of the multi-catch walk-in trap (about the size of a supermarket trolley cage) which are in use to remove feral pigeons from urban locations where other methods would be perhaps less acceptable – such as balconies in flats, back courts of houses and business premises. In these, caught birds are removed by hand through a small hatch or door, generally on the top of the trap.

In view of this wide range of types and uses, while we accept that it would be possible to find some convoluted form of wording which would encompass them all, we do not think it is possible to achieve this in language which would be easily understood by the public, and we recommend that in the section of the licence which sets out 'permitted methods', the wording should simply be 'cage traps'.

Any qualifications or limitations thought necessary could be inserted in the 'rules for use' section of the GL where it will not cloud the basic purpose of the licence, which is to enable.

We also suggest that the order of the permitted methods be changed and simplified as follows (on the basis that the most common uses appear at the beginning:

- Shooting with any legal firearm
- Use of sound recordings and artificial calls
- Catching in cage traps
- Destruction of nest and eggs
- Falconry (NB. not targeted falconry – the whole purpose of the GL is targeted control, and there are physical limitations to the degree of control which can be exercised by any falconer.)
- Pricking of eggs
- Oiling of eggs with liquid paraffin BP or any edible food oil.



	<ul style="list-style-type: none"> <li>• By hand</li> </ul> <p>We appreciate that the above comments would result in substantial changes to this and other GL, and in practice we suggest that any changes made to the 2014 licences should be limited to those which are not likely to be contentious, and the submissions made to this consultation used as the basis for a further more detailed consultation thereafter.</p> <p>We are conscious that there is an ongoing scientific study on the use of cage traps, and the output from that is liable to take some time to appear and be reviewed, so it is likely that consideration of some aspects of these GL will be needed for several years before the perceived problems are ironed out. We commend SNH for undertaking this consultation and facilitating the stakeholder discussions which are taking place.</p> <p>All of the above should be taken as applying to all of the GL where appropriate.</p>
GL02/2014	<p>We recommend that the Lesser Blackbacked Gull be returned to this licence for the reasons already set out.</p> <p>The inclusion of the Ruddy Duck on this GL does not seem appropriate as it is unlikely to cause serious damage to the specified items.</p>
GL03/2014	<p>For the reasons set out above, we recommend that the reporting requirements for Lesser Blackbacked Gulls and Herring Gulls be removed until we can devise a method of communicating the GL to the wider public.</p> <p>The inclusion of ruddy Duck and Canada Geese on this licence seems inappropriate. Are there any circumstances under which either of those species would have implications for public health, safety or disease control?</p>
GL04/2014	<p>We are not convinced that this should necessarily be a general licence, since there is a relatively small and finite number of airports in Scotland – perhaps a specific licence to each airport would be more appropriate in these circumstances?</p> <p>That would also permit reporting requirements to be effective, which, in view of the range of species listed, may be thought desirable.</p> <p>That said, in our view public safety must come before all other considerations, and we do not wish to see <u>any</u></p>

	<p>restrictions placed on this licence which could have any possible implication for public safety. On this basis, is there any reason for the <u>species</u> list to be limited at all?</p> <p>We note in particular that neither Barnacle geese nor Whitefront geese are currently included on the list, and we do not think that this is correct. Public safety must always be paramount.</p> <p>There is also a curious anomaly in the licence as it exists: Para 6. states that for the purpose of this licence, the listed species may be controlled 'within' or 'outwith' the perimeter of the airport.</p> <p>We appreciate fully that it will be necessary under some circumstances to control species outwith the actual perimeter, for example on the flight paths in and out of the airport, but that wording actually implies that the control can be carried out <u>anywhere</u> in Scotland – is that what was intended, and if not, should the wording be changed to reflect this?</p>
GL05/2014	We welcome the addition of this licence
GL06/2014	<p>Para 2. Is there a reason for the two week limit for SNH doing this?</p> <p>Definitions.</p> <p>We are concerned about the definitions of 'authorised person' contained in this GL for a number of reasons, all relating to the level of skill required to rehabilitate birds of prey.</p> <p>Firstly, since this section is specifically designed to allow absolutely clear legal interpretation of the terms set out, we point out the following 'inconsistencies' which would prevent this legal clarity.</p> <p>These comments should be considered, not only in respect of the lack of legal clarity, but also in the knowledge that neither the RSPB nor the SSPCA now have the full confidence of the wider public.</p> <p>a. What is 'suitably qualified' in relation to an official of the RSPB, and what is 'an official' of the RSPB?</p> <p>We point out that the mere fact of employment (or working in any other capacity such as a volunteer) for the RSPB is not of itself any indicator of competence in anything, far less the highly specialised knowledge required to rehabilitate birds of prey. That is not to say that any <u>individual</u> does <u>not</u> have those skills, merely</p>

that the simple fact of employment does not of itself suddenly confer the degree of experience and skills needed.

Approaching this from a different angle, there is no doubt that the RSPB will have a number of specific individuals who specialise in raptor care, and since this is such a specialised area, RSPB raptor care will be focused in, at most, a small number of specific locations.

This goes beyond the purpose of a GL, and if those individuals were issued with personal licences, having satisfied SNH of their qualifications, there would be no need to have this vague and unsatisfactory category in this GL at all.

We do not think that this would be either disproportionate or onerous to the RSPB and would simply formalise what is likely to happen in practice.

- b. The current wording is completely inappropriate – it does not even include the words 'suitably qualified'. For the same reasons as in a. above, we suggest that personal licences for the small number of SSPCA staff who specialise in this area would be far more appropriate.
  
- c. This is entirely inappropriate – the SSPCA is simply not acceptable as the appropriate body to 'approve' sanctuaries and the like. If such establishments require to be 'approved', a body such as SNH or AHVLA would be the appropriate authority, but as above, such establishments will be small in number, all widely known and could be issued with individual licences.

Permitting any private organisation such as the SSPCA to approve or refuse to approve any commercial undertaking, indeed officially approve anything of any kind for statutory purposes, is likely to prove problematic in terms of commercial legislation in respect of trade restriction, both under UK and EU legislation and

	<p>we counsel strongly against it.</p> <p>d. We have had sight of a draft of the Hawk Board response to this consultation, and we are inclined to agree that anyone who has kept Schedule 4 birds for a minimum of three (or perhaps five) years should be accepted as a suitable person to be authorised by this licence.</p> <p>There will be substantial numbers of them, all will be known since their birds will be registered, and all will have substantial practical experience of managing raptors in captivity, which is the essential qualification for the care and rehabilitation of these birds – and as raptor enthusiasts, they have a deep and genuine interest in the welfare and conservation of these birds.</p> <p>e. We do not think that constables require this authority in term of a GL, as the statutory powers they already have would cover the temporary holding of an injured Schedule 4 bird while a suitable carer could be found.</p> <p>Unless there are circumstances under which the police would choose to hold a bird rather than pass it to a person or organisation specialising in the care of that species to keep for them, we are not sure that this paragraph is actually required.</p>
GL07/2014	<p>We feel that this licence could usefully be combined with GL 6 to produce one GL which permits Schedule 4 birds to be kept for a period without registration if injured and being rehabilitated. The 15 day time scale in GL 6 seems unduly restrictive in terms of the time it would take in practice to achieve safe return to the wild or obtain a certificate that the bird will never be able to be released. In this case, a clause adding qualified veterinary surgeons to the list of 'authorised persons' in GL 6 and the extension of the 15 day period to six weeks would be all that is required to achieve the combination of the GL and simplify matters.</p> <p>In respect of para 4, there is no specification of the length of time a vet must keep the records mentioned and we think this is an omission.</p>

GL08/2014

While we welcome the increase in the time permitted, we are still of the view that it is inadequate to allow confidence that anyone relying on the licence can stay within the law.

After detailed discussions with SNH, we accept that the 35 day period required for eagle species is only likely to apply in a small number of cases, which can be dealt with by personal licences for eagle breeders.

However, from the technical information provided by the Scottish Hawk Board and [REDACTED] 20 days is still not long enough to safely encompass all of the other species if a single time period is to be set.

We understand that our original proposal that 35 days should be permitted for all Schedule 4 species caused concern to wildlife crime enforcers, although the detail of what those concerns were was not discussed in depth. We therefore recommend that the time permitted should be further discussed in detail and openly with stakeholders to establish if it is possible to find even more common ground, and we would ask SNH to facilitate this.

Put simply, a system which only allows most people to comply with the law most of the time is not acceptable – to be reasonable, there must be a system which allows all circumstances to be taken into account to prevent the accidental criminalisation of innocent people.

Para 5 The concept of requiring documentary evidence is flawed and unnecessary. The exemption in this GL should cover from undeveloped embryo to ringing age. It is not realistically possible to uniquely identify an egg and prove its provenance without DNA analysis, which could not be done without damaging the egg and preventing it from hatching.

If criminality is suspected, the chick can be DNA tested after hatching.

In any event, the requirement for documentary evidence requires to be removed from other licences to comply with EU legislation and the same principle would apply here.

We would also point out the error contained in the phrase 'A bird shall not be treated.....when the egg from which it was hatched was laid'.

	<p>It may well be possible, for the purpose of a GL or other statutory document, to insist on the parents having been lawfully in captivity at the relevant time for a bird to comply with the definition '<u>lawfully</u> captive bred' It is <u>not</u> possible to insist on this to determine whether a bird is <i>de facto</i> captive bred – we think that in law the distinction would be whether the <u>egg</u> was <u>hatched</u> in the wild or in captivity, and if it was hatched in captivity, it is captive bred.</p> <p>It may not have been <u>lawfully</u> captive bred, but as a <i>de facto</i> captive bred bird it is <u>not</u> covered by the EU Birds Directive, and this has been confirmed by the EU in fairly recent correspondence with EU agencies.</p>
GL09/2014	<p>Our comments on GL 9 are contained in our response to Proposal C above.</p>
GL10/2014	<p>Para 2. We suggest that for simplicity and clarity for the users, this could simply read 'This licence can be used by anyone' This is different from most of the GL in that there is no need for 'authority' or any kind of qualification or experience.</p> <p>For the same reason, we suggest that Para 3. could be omitted entirely.</p> <p>Para. 4 – again it may not be appropriate to include this paragraph at all – we believe that the purpose of this paragraph in the first batch of GL is to act as a deterrent against raptor crime, and these licences have no connection with that. There is also the practical difficulty that no one would be able to identify at a show who may have been convicted of a wildlife crime, and in effect this creates a potentially unenforceable technical offence which may not be the intention.</p> <p>Para 5. The requirement for documentary evidence should be removed in line with Proposal B. Apart from the legal reason for removing it, it was never actually reasonable to ask for this and impossible to comply with for the licence users for practical reasons.</p> <p>In practice, when birds are taken to a show they are left by their owner in the charge of the show organisers. This period may be overnight from the evening before the show, or limited to the day of the show, but the public and exhibitors are excluded from the venue during the judging</p>

process, which takes some hours.

The birds are in show cages, and there is no physical means of ensuring the any documentary evidence would actually remain with the bird when the exhibitor is not there. There is also no way of establishing the veracity of any such documentation at a show – if criminality were suspected, it would be fully investigated later, irrespective of the presence or otherwise of any paperwork taped or pinned to a cage.

All birds being shown must be close-ringed, and that is and always has been the principle indicator of captive breeding.

We would also refer to our comments on GL 8 in respect of the distinction between 'captive bred', which instantly excludes any bird from Birds Directive matters and 'lawfully captive bred', which is an entirely different matter.

This may be a useful point to set out a further thought on this matter for your consideration, again to try to achieve clarity:

If someone *de facto* breeds a bird in captivity, that bird is captive bred, it is not a wild bird and therefore is not covered by any legislation concerned with the protection or conservation of wild birds.

We suggest that there is no offence in law here, since breeding a bird in captivity is not of itself an offence, and the resultant bird could never be released into the wild – from this aspect, the species of the bird makes no difference – the legal position would be the same whether the bird is a Goldfinch or a Budgerigar – it is not a wild bird and never has been – it is an item, perhaps, of property, in the same way as any other livestock or pet.

If the bird is properly close-rung, that is with a ring which genuinely could not have been added after the bird fledged, that is and must be accepted as compelling evidence of *de facto* captive breeding.

That does not, however, mean that there has been no offence in law. If the egg was laid by birds which were not lawfully in captivity at the time the egg was laid, there would be an offence of unlawfully possessing a true wild bird in respect of those parent birds, or perhaps in taking birds or removing an egg from the wild.

All of those situations are already unlawful, and we feel that there is no need to complicate what should be an enabling licence by referring to matters which, strictly speaking, are not relevant.

On a point which is not specifically covered in the consultation or GL – GL 10 permits the showing of certain birds, and GL 11 permits keeping the same species in small cages (show cages) for up to one hour each day to accustom them to the small show cage size.

We are concerned that GL 10, while permitting showing, may not permit the confinement of birds in show cages for the required duration, which in the case of a large show could be two days plus to and from travelling time – perhaps up to four days in extreme cases?

If SNH is satisfied that this is covered adequately in GL 10 as worded, there is no need to change it, but perhaps it would be worth considering combining GL 10 and GL 11 and specifically making reference to the fact that birds may be housed in small cages for ‘training and showing’.

We do not think that there should be a time limit of one hour per day in any event – again for clarity we would point out that these are captive bred birds, which were bred in confinement and for whom being in a cage of various sizes is perfectly natural. They are not wild birds in any sense – they are captive bred birds ‘of a species commonly found in the wild....’

Finally, the scientific classification of the Lesser Redpoll has now been changed, which causes an anomaly which we think does not directly affect this licence because of the way it is worded (‘all species except Annex 1’) but should perhaps be discussed with the SNH counterparts in the other licensing authorities.

In 1981, when the Wildlife & Countryside Act was formulated, the Lesser Redpoll, which is the common variety which lives and breeds throughout the UK, was classified as *Carduelis flammaea*, and Annex 1 refers simply to a ‘Redpoll’ with that scientific name.

This is of course prior to the EU and the Act only concerned itself with birds naturally occurring in the UK. A separate subspecies, the Mealy Redpoll (or Siberian Redpoll) was an occasional winter visitor in those days.

This classification change means that the



	<p>scientific name in Annex 1, which is the definitive name for legal purposes, now specifically refers only to the Mealy Redpoll, and the Lesser Redpoll, which is now <i>Carduelis cabaret</i>, requires to be somehow brought back into the equation until such times as the Annex can be amended.</p> <p>The creation of the EU and the Birds Directive has meant that all variation of the 'redpoll' are now 'wild birds' for the purposes of this licence, and the full range of sub-species is as follows:</p> <ul style="list-style-type: none"> <li>• <u>Arctic Redpoll</u> (<i>Carduelis hornemanni</i>) <ul style="list-style-type: none"> <li>○ Greenland Arctic Redpoll <i>C. h. hornemanni</i></li> <li>○ Hoary Redpoll <i>C. h. exilipes</i></li> </ul> </li> <li>• <u>Common Redpoll</u> (<i>Carduelis flammea</i>) <ul style="list-style-type: none"> <li>○ Mealy Redpoll <i>C. f. flammea</i></li> <li>○ Icelandic Redpoll <i>C. f. islandica</i></li> <li>○ Greenland Redpoll <i>C. f. rostrata</i></li> </ul> </li> <li>• <u>Lesser Redpoll</u> (<i>Carduelis cabaret</i>)</li> </ul> <p>Potentially any of these subspecies could be 'wild birds' in terms of our legislation, and the matter is further complicated by the fact that the captive bred stock, which is what we are concerned with here, has been frequently interbred.</p> <p>In the other three legal authorities, (and all three have different ways of wording their licence to achieve the same end result) we recommend that the simplest way of encompassing what is required is to have the wording of the equivalent GL amended to what is in the Scottish GL 'Any captive bred wild bird except those on Annex 1....'</p>
GL11/2014	<p>If GL 11 is not combined with GL 10 as suggested, Paras. 2 and 4 should be removed.</p> <p>Alternatively, if that is not possible, the requirement for documentary evidence in Para. 4 is of course not required and should be omitted – in a training cage, the bird would be in its owner's premises and this is simply not appropriate.</p>
GL12/2014	<p>Firstly the licence purpose in perhaps wrongly specified – as currently worded it refers to 'sale'</p>

	<p>only, then later expands this to include hire, barter and exchange. We suggest that, if a 'purpose' statement is needed, it should say 'Transfer of ownership'</p> <p>We further suggest that the contents of the list at 1 (iii) should be fully discussed with stakeholders in the near future– the list does not appear to have the correct species on it and should perhaps be as GL 10 - 'any species other than those listed in Annex 1'</p> <p>We also note the inclusion of the Ruddy Duck, which is an invasive non-native species and contained in earlier GL to permit killing and taking at any time, and that Annex 1 also contains Jackdaw, Jay and Magpie, which are all contained in earlier GL conditioned for killing or taking at any time for other purposes.</p> <p>Again we have concerns about the possible confusion between wild birds and 'captive bred birds of a species occurring in the wild' With the exception of truly endangered species, which will be CITES registered anyway, there should be no need to restrict or even regulate the transfer of ownership of captive bred birds of any species.</p>
GL13/2014	<p>This licence needs careful consideration, and we recommend that a further consultation with stakeholders should take place as soon as is practical.</p> <p>We do not think that the list of species is appropriate, as it should be lawful, with the obvious exception of CITES species, to sell any part of <u>any bird which was obtained lawfully</u> for any reason. We cannot possibly know the full range of reasons why any individual might want to do so, and we suggest that SNH should try to establish the range of circumstances.</p> <p>Immediately obvious reasons would include the sale of feathers for tying fishing flies and bodies for taxidermy, but there will no doubt be others, and the list contains legal quarry species which might currently be sold to game dealers.</p> <p>We suggest that in the meantime the licence be re-issued to avoid criminalising something which currently takes place lawfully under the licence, but subject to the comments made on previous GL on items which should be removed from all or some licences, which in this case means the removal of paras. 2,3,4,5,6,7 8 and 9 entirely.</p>

	<p>Our comments on the usefulness of reporting requirements are particularly valid in respect of this licence.</p>
GL14/2014	<p>As with GL 13, detailed consultation is required on this with stakeholders and the same additional comments apply. There is also no reason to exclude Barnacle and Whitefront geese, which are commonly bred in captivity in waterfowl collections.</p>
GL15/2014	<p>The removal of infertile eggs and old nests from nest boxes is carried out by countless thousands of people all over Scotland, and we think that statistically, by far the largest proportion of this activity will take place in domestic gardens, by people who have never heard of a GL and are unlikely to ever do so.</p> <p>It follows that the wording should be changed to include this activity and range of people to avoid criminalising them for doing something which is actively beneficial to conservation of wild birds, and should be as simple as possible – any authorised person should be able to remove abandoned or unsuccessful eggs from a nest box at <u>any</u> time.</p> <p>If the eggs have failed or been abandoned there is no point in insisting that they should be left in the nest box, preventing further use that year.</p> <p>We cannot think of any reason why anyone would deliberately remove eggs or nests which had not failed other than perhaps egg collections, and by limiting the licence to failed eggs and insisting on their destruction it does not legalise the collecting of eggs for any purpose and does not authorise anything with a negative conservation effect –in fact quite the reverse.</p>

## Response 12: British Association for Shooting and Conservation

### Introduction

This consultation has taken place too late in the year. Moreover, the consultation is for a 6 week period – yet the Scottish Government’s code of practice on consultations clearly states that staff should “*allow consultees at least 12 weeks to respond, except in very exceptional circumstances*”.

The lateness of the consultation means that legal decisions could be taken two weeks before the decision takes effect. In 2012 the Environment Minister and his lead civil servant received a letter from the members of the Shoot Summit, of which BASC is a member. The letter recommended that consultations on changes to general licences take place before the end of June if the intention was to communicate and implement those changes the following January.

BASC Scotland recommends that Scottish Natural Heritage should use this six-week consultation to scope for views that can then be used to allow greater discussion of these proposals. Therefore no decisions should be taken that take effect on 1st January 2014, especially when we have not seen the detailed wording of the enabling paragraph as discussed in section A.

**Our comments on sections A-E in the consultation are below.**

**A. BASC Scotland has serious concerns regarding this proposal.**

1. The measures proposed are not proportionate. Government is under a duty as part of the Human Rights Framework to ensure proportionality and this form of collective punishment is far from proportional.
2. The measures could have serious conservation impacts. The General Licences, particularly No 1 for the conservation of wild birds, are in place for a reason. They are essential for protecting biodiversity and vulnerable species. Should the use of the licences be prohibited on large swathes of ground the Government is potentially exposing wildlife in that area to unnecessary predation. Crops and public safety could also be put at risk in those areas affected and neighbouring areas.
3. The potential impact on businesses and livelihoods without being convicted of a criminal offence is simply unacceptable and open to abuse.

Should these proposals be imposed;

1. BASC Scotland representing its members will consider challenging any unreasonable restrictions on the use of the General Licence over large areas of land where it sees fit.
2. "Certain Circumstances" must be clearly defined and agreed by all stakeholders.
3. There must be a high standard of proof.
4. As with vicarious liability there must be mitigation measures to allow those affected to protect themselves from abuse along with an appeals procedure.

**B. No comment.**

**C. General Licence 11 should remain as it is.** It is a useful conservation tool, especially where a nest is in a potentially risky area. We see no conservation downside to the retention of this licence.

**D. We support this.**

**E. General Licences 13 and 14 should remain as they are while removing the reporting requirement.**

**General Points**

The wording of the general licences still remains inaccessible to many. The information contained within them should be further disseminated and the provisions made clear and obvious. We would also like to see SNH doing more to publicise these licences as our experience through speaking to the general public at game fairs is that very few people are aware that the licences exist and are even less aware that they are reviewed and changed annually.

We would like to take the opportunity to clarify common practices such as the use of electronically generated calls, such as crow calls, that are used in pest control when the Wildlife and Countryside Act prohibits the use of “recordings”. We would suggest that the relevant general licences contained an allowance in section 6 specifically permitting the use of electronically generated calls.

Any changes that are ultimately made with respect to trap use and design must allow sufficient time for these changes to be accommodated.

### **Response13: Scottish Society for the Prevention of Cruelty to Animals**

#### **A. General Licences and raptor persecution**

##### Comments

The Scottish SPCA would welcome such a clause but are unsure how it would be implemented or enforced.

#### **C. Possible withdrawal or /amendment to General Licence 11/2013**

##### Comments

No comment

#### **E. General Licence 113/2013 and 14/2013**

##### Comments

The Scottish SPCA welcomes to provision to extend the holding period from 15 to 20 days

General Licence	Comments
GL01/2014	Comments below relate to all multiple catch crow cages.

### Comments

Registered crow traps do not in legal terms constitute strict liability, a number of traps can be operated under the one registration, which means there can be a number of operators. The Scottish SPCA recommends that the registration should follow the tagging of snares, whereby a registered trap can be linked directly to the individual operator. There should be a limit of the number of decoy birds that can be used in each multiple trap.

Decoys birds should be changed at regular intervals.

Decoy birds to be separated within multi catch traps.

Limit the use of traps above a certain height above sea level where weather conditions can be extreme.

Limit the use of traps in winter when weather can be extreme and trap effectiveness is questionable.

## Response 14: Scottish Countryside Alliance

### Annex 1:

#### A. PROPOSED AND POTENTIAL SUBSTANTIAL CHANGES TO THE GENERAL LICENCE

Although wholly supportive of measures introduced to further mitigate crimes against Scotland's wildlife The Scottish Countryside Alliance feel that it is unreasonable to comment on an "enabling paragraph" without any draft text and seek at this time reassurance that the insertion of any such enabling paragraph, if deemed appropriate, be reserved for insertion in future GL's following a suitable period of consultation.

It is our understanding that under Section 16 of the Wildlife and Countryside Act 1981 (as amended) and under Wildlife and Natural Environment (Scotland) Act 2011 in respect of both the General Licence (GL) and Individual Licences the ACTS already empower the authorised authority (SNH) to limit the application of any licence in a variety of ways including geographical restrictions and therefore question the need for any additional enabling paragraph. However, the idea that a General Licence covering geographical area(s) of Scotland can be disapplied at any point during the period of its application based on "hear say" or as you have framed "probability" without sufficient burden of proof or an appeal process does not sit comfortably and is wholly contrary to the laws of natural justice.

We are greatly concerned at the suggested level of proof required to cause such an action and offer licenced nest disturbance, ringing and other licenced but unmonitored activities by way of an example why a bird(s) may desert a nest site or natal area providing the "probability" required to enact the removal or suspension of the GL in relation to a wildlife manager operating within the same geographical area...

We seek further information at this time in relation to SNH's exact definition of the term "probability" how evidence will be gathered to support "probability" i.e. reports received and thereafter the level of competence and credibility of those who interpret and collate said reports in relation to a proposed restriction or removal of a GL

It should be noted that a person with a conviction for a wildlife offence is already unable to rely on a General Licence and perhaps rather than including an unnecessary enabling power which could see a General Licence covering Scotland suddenly limited in terms of its geographic application a person being investigated by the police for a wildlife crime could be restricted in his/her application for a GL whilst that investigation is ongoing.

#### B. DOCUMENTARY EVIDENCE ACCOMPANYING THE SELLING OF CERTAIN CAPTIVE BRED BIRDS ON GL 08/2014

The Scottish Countryside Alliance is unaware to the nature of the complaint made against the UK regarding issues surrounding the import of captive birds and therefore has no comment on proposed changes to GL 08/2013

#### C. THE POSSIBLE WITHDRAWAL / AMENDMENT TO GL 11/2013

The Scottish Countryside Alliance believes that there is a need to retain the saving of, not only duck eggs, but the eggs of all game bird and waterfowl.

Disturbed, abandoned or weather threatened nests of partridge, black game or various other duck species can be, and are, rescued every year and released back into the wild.

The importance in augmenting wild populations of Mallard has been recognised by the shooting community since the inception of localised shooting clubs. In a bid to mitigate the impact of shooting on wild Mallard populations the Wildfowlers Association of Great Britain and Ireland initiated a release programme in 1958 releasing between one (1) and five (5) Mallard a year through until 1960 Many of the birds survived and dispersed throughout the UK and Europe with many ring recovery details forwarded from Latvia, Poland, Sweden, Denmark, Holland and Belgium.

Provided that the provenance of the eggs can be verified the Scottish Countryside Alliance would seek to retain the ability to recover and incubate Mallard eggs for the purpose of conservation.

#### D. EXTENDING THE TIME LIMIT FOR REGISTRATION OF CAPTIVE BRED SCHEDULE 4 BIRDS.

The Scottish Countryside Alliance welcomes the proposed change to the time limit for registration for captive bred schedule 4 birds.

Our response to the 2013 GL reflected our concerns in relation to the unwarranted and unworkable restrictions from the AHVLA in relation to the completion of

registration applications. The proposed change will aid those involved in the breeding and registration of schedule 4 birds to do so within a workable framework.

#### E. GENERAL LICENCES 13/2013 & 14/2013

Although the organisations representing those who may rely on said changes must also take some responsibility for the dissemination of said changes, it is our understanding that the notification of changes within ACTS and thereafter orders, instruments and other licencing requirements falls to the authorised authority. The Scottish Countryside Alliance therefore suggest that the authorised authority engage with industry stakeholders as a matter of urgency to develop more robust means of communication with those who rely on licences.

#### F. MISCELLANEOUS

##### **Larsen Trap Pegging**

The Scottish Countryside Alliance question the need to restrict the bait used within Larsen Traps or Larsen Mates to “bread and eggs”. The use of dead rabbit or alternative “meat” based bait has proven to be very successful and we question the thought process behind such a restriction. The licence specifies that any bird of a species not covered by the licence be released unharmed immediately on being found.

The Scottish Countryside Alliance agree with the thought process surrounding the pegging of the Larsen Mate/Pod but questions the need for a Larsen Trap to be pegged, staked or otherwise strapped down. The nature and construction of the Larsen trap make it sufficiently heavy that no ordinary resident bird of such a size or strength could enter or engage with the trap in such a manner that the said bird could move the trap.

We therefore recommend that the pegging requirement be removed.

##### **Gulls**

The Scottish Countryside Alliance would question the restrictions placed on the removal of Lesser Black Backed and Herrings Gulls from all but GL 3 . It is our understanding that those who wish to control the Lesser Backed Back or Herring Gull can still apply for a species licence but remind the authorized authority that mobile predator’s such as those mentioned in this text react to fledging chicks at a speed that is far greater than the ability of the authorised authority to react and as such vulnerable bird populations such as Plover *sp* and other waders of conservation concern may be placed at risk. .

#### **Response 15: National Trust for Scotland**

##### **A. General Licences and raptor persecution.**

##### **Comments**

We would strongly support this.

##### **B. Documentary evidence accompanying the selling of certain captive-bred birds on General Licence 08/13.**



### **Comments**

We would question how it is known if the bird has been captive-bred without the paperwork, or do the species involved make this a low priority?

### **C. Possible withdrawal of/amendment to General Licence 11/2013.**

#### **Comments**

As it would appear extremely rare to collect mallard eggs it should be fine to do this under a specific licence rather than a general licence.

### **D. Extending the time limit for registration of captive bred Schedule 4 birds from 15 to 20 days on General Licence 12/2013.**

#### **Comments**

We agree with this extension.

### **E. General Licences 13/2013 and 14/2013.**

#### **Comments**

Per the heading boxes on [GL 13/2013](#) on the SNH website, there is no reporting requirement regarding the selling of feathers and parts of certain wild birds. Regarding GL 14/2013 we wonder how it could be enforced.

### **Specific Licence Feedback**

We note that you are conducting a review of the species listed in each Licence for amendment in 2014 for inclusion from 2015.

#### **General Licence 1/2014**

We would suggest the removal of jackdaw and rook. There is little evidence that these species cause harm to wild birds. Their inclusion here further exacerbates the issue of people being unable to distinguish members of the crow family and encourages recreational shooting of rookeries.

#### **General Licence 2/2014**

Again we would encourage the removal of jackdaw and rook as there is no evidence they cause damage to livestock or crops. We would like clarity on the season for the Canada goose. Do the various licences which include the Canada goose override the defined open season?

#### **General Licence 3/2014**

Again, there is little or no evidence backing the inclusion of jackdaw or rook. We would also encourage the removal of the following species as being of little threat to public health: ruddy duck, Canada goose, woodpigeon and collared dove.

#### **General Licence 4/2014**

We would recommend the removal of the curlew, oystercatcher, lapwing and stock dove.

#### **General Licence 13/2014**


If this Licence is not removed, jay should be included.

#### **General Licence 14/2014**

If this Licence is not removed, woodpigeon should be included as it is already sold in large numbers. We would favour the removal of gadwall, goldeneye, black grouse, pintail, pochard, golden plover, ptarmigan and shoveler.

Please do not hesitate to get in touch should you require clarity on any of the points raised above.



The National Trust for Scotland  
Hermiston Quay  
5 Cultins Road  
Edinburgh  
EH11 4DF  
Direct Dial 

Response 16: Police Scotland

NOT PROTECTIVELY MARKED

18 November 2013

Your Ref:

Our Ref:

Scottish Natural Heritage  
Great Glen House  
Leachkin Road  
Inverness  
IV3 8NW



Motherwell Police Office  
217 Windmillhill Street  
ML1 1RZ

TEL. 101

SCDWildlifecrimeunit@scotland.pnn.police.uk

Dear Mr Kernahan,

GENERAL LICENCES 2014 – CONSULTATION

In response to your letter 4 October 2013 seeking comments on the proposed changes to Scottish Natural Heritage's General Licences for 2014, I canvassed the 14 Police Wildlife Crime Liaison Officers and the Scottish Wildlife Crime Coordinator in order to offer a single reply on behalf of Police Scotland.

As a result of this consultation, I am now in a position through my role as the Police Scotland Wildlife Crime Portfolio Lead, to offer the following comment on your specific proposals for the 2014 General Licences:

**A. General Licences and raptor persecution (insertion of an enabling paragraph)** – Police Scotland welcomes any measure that will allow the opportunity to address wildlife crime. It is understood that a wider consultation will take place prior to the introduction of any specific measures and will examine issues such as enforcement, geographical area and the burden of proof required prior to the use of such measures.

**B. Documentary Evidence accompanying the selling of certain captive bred birds on General Licence 08/13** – It is recognised that this change has been made following a European Commission complaint against the UK.

**C. Possible withdrawal of / amendment to General Licence 11/2013 (mallard eggs taken for incubation)** – No comment

NOT PROTECTIVELY MARKED

**NOT PROTECTIVELY MARKED**

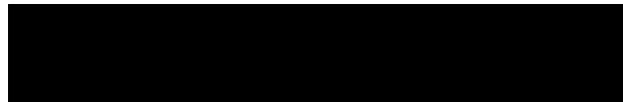
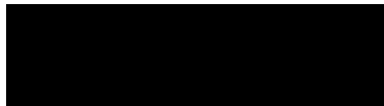
**D. Extending the time limit for registration of captive bred Schedule 4 birds from 15 to 20 days on General Licence 12/2013** – In your document it is highlighted that concerns have previously been raised by AHVLA and the Police and that the introduction of a 20 day time limit goes some way towards recognising these issues.

**E. General Licences 13/2013 and 14/2013 (sale of dead birds/parts/products)** – It is suggested that a general lack of awareness rather than any lack of use of these General Licences may have contributed to the failure to make SNH aware of any such sales.

I note that SNH is only consulting on the proposed changes although the opportunity to offer comment on the wording of the General Licences is provided at the end of Annex 2. In response to this, I therefore wish to suggest that clarification is considered on the use of the words 'owner' and 'operator' so that in fact it is every **operator** of a trap who has an individual identification number similar to that provided to those operating under the recently introduced snaring legislation. Further, it may be that there is some form of period of validity included in the General Licence so that the individual identification number can only be used for a set period of time after which if it is to continue to remain in use the operator associated with that identification number is required to contact the police (or other body overseeing the registry) and provide up to date contact details. Both of these measures would assist greatly in terms of any subsequent enquiry.

I trust the foregoing will be of assistance in producing the final suite of General Licences for 2014. However, should you wish to clarify any issue please do not hesitate to contact me.

Yours sincerely,



**NOT PROTECTIVELY MARKED**

## **Response 17: Scottish Hawk Board**

The Scottish Hawk board (SHB) is the representative body of falconers and bird of prey keepers in Scotland and has amongst its board members representatives from the Scottish Hawking Club, British Falconers Club (Scottish Region) and the Campaign for Falconry.

Since the WCA was enacted in 1981 falconers and bird of prey keepers have pioneered the captive breeding of all native species of birds of prey. Of the nine species on Schedule 4 five of those species are bred in captivity to at least F2 and in some cases many more generations. Most of these species have a self-sustaining breeding population in captivity. DNA profiling has shown, supported by the regular testing from DEFRA, that falconers and bird of prey keepers by producing captive bred specimens for use in falconry and education, this has helped remove the pressures on wild populations and is recognised as a conservation benefit.

Falconry now has been recognised by UNESCO as an Intangible Cultural Heritage.

Falconers have also pioneered the use of birds of prey as an extremely effective, but low impact means of control of prey species, in Air traffic safety; on commercial and military airbases; in the protection of human and animal health with their use on landfill sites and rubbish tips to control pest species and prevent the spread of disease, as well as for the protection of crops, fruit and vegetables. In all of these fields falconry has been shown as an acceptable alternative non-lethal method of control.

Falconry and bird of prey use also does not fit neatly with all its relevant aspects into the framework of current General Licences. Falconry as an authorised method of use should have its own General Licence (like Competitive Showing of certain Captive-bred live birds) encompassing the provisions authorised under General Licences nos. 01,02,03,04 & potentially 06.

Falconers and bird of prey keepers using their birds are in danger of acting outside the strict letter of the General Licences – for example in Licences 01-04, it is not always practical or possible to train their bird of prey to kill or scare the targeted species on ground included within the GL, birds of prey cannot just be turned on or off they have to be trained and kept fit. This has to take place for many weeks before the falconer can be confident of targeting the correct species by continued reinforcement of the prey search image.

General Licence Nos 01-04

A new GL Falconry and Bird of Prey Use should be included.

General Licence No 05

N/A

General Licence No 06

Falconers and bird of prey keepers need to be added to the list of authorised persons.

For animal welfare reasons birds of prey need expert rehabilitation techniques which the majority of falconers or bird of prey keepers are conversant with. The majority of rehabilitation centres are not designed to care for wild disabled birds of prey and do

not have staff equipped to handle birds of prey. There are very few specialist establishments that are capable of dealing with birds of prey. As such falconers and bird of prey keepers are usually the first to be contacted regarding these injured birds, they are then under a moral obligation to care for the bird as best possible.

We are also concerned that you include an official of the RSPB and a police constable as 'authorised persons', neither organisations have facilities to care for injured birds of prey. They would then not be able to abide by the conditions of this licence.

We propose that you remove 'official of the RSPB' and police 'constable' and that an addition to 'authorised person' be added

e. Any person who has been a registered keeper of a Schedule 4 species for at least 3 years.

General Licence No 07

N/A

General Licence No 8

The SHB hopes that the statement they make in the opening of this consultation is reflected in the changes needed in GL no 08 . It is imperative that falconers and bird of prey breeders are not forced to break the law because of prejudice towards this community from law makers or enforcement agencies. SHB has continuously made representations to the Scottish Executive and SNH for this GL to be made competent. Hopefully this consultation will rectify this issue.

General Licence No 08 – To rear chicks from captive-bred Schedule 4 birds

The authorisation to keep Schedule 4 birds without ringing and registration for a maximum of twenty days is woefully inadequate and as such is not competent legislation and so not fit for purpose. It renders virtually every breeder of Schedule 4 birds of prey committing illegalities as almost no raptor can be ringed and registered in twenty days.

AHVLAs own website clearly states:-

### **Targets for processing applications**

Our targets for processing applications are calculated from the date we receive all the information we need. This may not be the date we receive your application, as we may need to ask you for further information. We aim to process

- 10% of complete applications within 5 working days (1 week)
- 90% of complete applications within 15 working days (3 weeks)
- 100% of complete applications within 30 working days (6 weeks)

The SHB has submitted scientific evidence on the timing of ringing and registration in previous consultations, you must base this GL on science not the unscientific advise from other agencies.

Further to this the Law Commission, Wildlife Law Interim Statement is quite clear in its report: 1.25 We also recommend the exclusion of captive bred individual birds from protection under wildlife law, reflecting EU law.7

It is a complex matter to determine a single time frame for all Schedule 4 species, this is included in the attached paper by [REDACTED] Annex A

But at the very least any time frame should be days **prior** to application to register and should also cover a time frame to include all chicks produced from one pair of birds for one breeding season.

The SHB recommends option 3 in the paper included and it is more than willing to discuss this further with SNH.

General Licence Nos 09 – 11  
N/A

General Licence No 12  
No comment

General Licence Nos 13 – 15  
N/A

Annex A

User group non compliance of General Licence to rear chicks from captive-bred Schedule 4 birds.

By [REDACTED]

## **Background**

The current general licences being discussed are in force due to the WCA not having the necessary exemptions written within it to allow the keeping of unringed and unregistered chicks of Schedule 4 species.

Captive breeding of Schedule 4 species has increased significantly since the WCA came into force.

Since 1981 Schedule 4 has had the number of species listed reduced due to the high rise in the population of wild birds of prey in the UK.

Of the nine species on Schedule 4 five are species used by falconers or bird of prey keepers and are bred in captivity

Below are the relevant paragraphs under scrutiny in the 3 licences issued by the devolved governments of England, Wales and Scotland.

England

### **WHAT THE LICENCE PERMITS**

2. For the purpose set out in paragraph 1 above, and subject to the terms and conditions, below, this licence permits the incubation of eggs (that produce live young) and keeping of any resulting hatchlings of captive bred (as defined in Condition 3 below) Schedule 4 bird without satisfying the requirement to register these eggs and chicks with the Department of Environment Food and Rural Affairs, for a maximum of **fifteen (15) days** after hatching.

## Wales

1. The purpose of this licence is to allow the incubation of an egg of a captive-bred (defined in paragraph 3 below) bird listed in Schedule 4 of the Act which produces live young, without the requirement for registration for a period of seven days after hatching

2. Subject to the terms and conditions below this licence permits:-

(a) the keeping of a captive-bred Schedule 4 bird without registration for a maximum of fifteen days after hatching.

## Scotland

Subject to compliance with all other terms and conditions, this General Licence permits the keeping of captive-bred Schedule 4 birds hatched from incubated eggs without ringing and registration for up to 20 days, for the purpose of falconry or aviculture. This time period is to allow the young birds to reach sufficient age to bear a ring.

Below is the current list of Sch 4 species, this list ranges from the smallest being the merlin to the largest being the eagles, with a number of species ranging in size between.

Buzzard, Honey *Pernis apivorus*  
Eagle, Golden *Aquila chrysaetos*  
Eagle, White-tailed *Haliaeetus albicilla*  
Falcon, Peregrine *Falco peregrinus*  
Goshawk *Accipiter gentilis*  
Harrier, Marsh *Circus aeruginosus*  
Harrier, Montagu's *Circus pygargus*  
Merlin *Falco columbarius*  
Osprey *Pandion haliaetus*

The current requirements to ring chicks of Schedule 4 species are:

Birds must be marked in accordance with Article 66 of EC Regulation 865/2006, that is, with a uniquely marked closed leg-ring of a size which cannot be removed from the bird when its leg is fully grown.

### **Statistics of captive breeding**

There is therefore a range of different sized birds of prey on Schedule 4 that grow at different rates and have different foot sizes.

The legislation expects that a Schedule 4 bird be uniquely marked, it is generally recognised that it cannot be registered until the ring it is ringed with cannot be removed from its leg. This gives a time frame of approximately 12 days for a merlin and up to approximately 24 days for a golden eagle, with various dates in between for the other species. These are average ringing dates for these species as bird size and ring diameters vary, but to ensure the ring cannot be removed an extra 2-3 days should be added.

Average clutch size for Schedule 4 species ranges from 2 eggs for the eagles and up to 6 eggs for some of the other species. Time between laying eggs will be 2 – 4 days depending on species. If this is recognised as the case then a merlin laying a clutch of



4 eggs and starting incubation after laying the first egg (this is variable, some birds will incubate after the first egg, sometimes the second or third egg) there will be hatch difference of approximately 6 days between the first and last egg to hatch. With the eagles laying 2 eggs there will be approximately a 4 day difference between first and last egg to hatch. If a clutch of chicks is to be registered this will delay the registration request by those days delayed between first and last chick to hatch.

These licences relate to chicks bred in captivity only, from legally held parent birds. Some breeders of Schedule 4 species will double clutch natural pairings or with imprint birds 'pull' eggs so that both clutches are laid consecutively. A merlin laying 8 eggs which are pulled as they are laid is likely to have a difference of approximately 14 days between first and last egg to hatch. A golden eagle laying 4 eggs will have approximately 12 days between first and last egg to hatch. With natural paired breeding it is normal to allow the female to lay her full clutch of eggs and then leave her to incubate for approximately 7 days, the eggs are then pulled and most of the time the female will recycle and lay a second clutch. This will start approximately one month (28 days) later. In this scenario you can find that with a merlin there will be an approximate difference of 47 days between first and last egg to hatch. A golden eagle will have an approximate 43 days between first and last egg to hatch.

There will be variables in all of this, some eggs may be laid 1-5 days apart, egg clutch size can vary especially in captive situations, with clutches of 1-6 eggs sometimes found. Dates between birds recycling clutches can also vary from 3 – 6 weeks. Not all eggs will hatch or chicks survive.

Animal health clearly advertise on their web site that the time to process registration applications can take up to 30 days, in reality this can extend to longer periods during the busy breeding season. This process time has been reviewed in 2013 to a maximum of 30 working days (6 weeks)

### **Targets for processing applications**

Our targets for processing applications are calculated from the date we receive all the information we need. This may not be the date we receive your application, as we may need to ask you for further information.

We aim to process

- 10% of complete applications within 5 working days (1 week)
- 90% of complete applications within 15 working days (3 weeks)
- 100% of complete applications within 30 working days (6 weeks)

If a single clutch of 4 eggs from a merlin with the first and last chick hatching and surviving, then ringed at 12 days.

If registration has to be obtained a further 30 working days (6 weeks), plus postage time each way of 2 days (4 days total) unless online application is made.

Those merlins will be approximately 58 and 64 days old respectively before they could be legally registered. If the merlin is double clutched then the first and last youngsters will be approximately 58 and 105 days old. An imprint laying 2 clutches consecutively, the youngsters will be approximately 58 and 72 days old.

With a single clutch of 2 eggs from a golden eagle, with both chicks surviving and ringed at 24 days. With registration and postage, they could be approximately 70 and

74 days old. With double clutching the youngsters could be approximately 70 and 113 days old between first and last hatch. An imprint laying 2 clutches consecutively the youngsters could be approximately 70 and 82 days old.

### **Conclusions**

The Wildlife and Countryside Act was clearly written to protect the wildlife in the UK when captive breeding was in its infancy. It is accepted that captive breeding is of a conservation benefit to wild species, those that have spent the time and effort to perfect captive breeding are being penalised for this conservation benefit by having to comply with wildlife legislation as well as legislation pertaining to domestic animals. The object of the Wildlife and Countryside Act is to protect the UK wildlife, it clearly states in a number of paragraphs: **Wildlife** and Countryside Act Protection of **wild** birds Prohibition of certain methods of killing or taking **wild** birds Registration etc. of certain captive **wild** birds.

### **Interpretation**

“**wild** bird” means any bird of a kind which is ordinarily resident in or is a visitor to Great Britain in a **wild** state but does not include poultry or, except in sections 5 and 16, any game bird.

The WCAs use of regulating captive bred specimens of wild species should not be included in these regulations which was written to protect our wild species. The General licences that are under scrutiny here clearly show a lack of understanding of the breeding cycles of birds of prey, be they of wild or captive origin, with unsubstantiated prejudices swaying what scientifically should be done.

Of the 3 General licences England and Wales state up to 15 days of exemption to apply for registration, but the AHVLA application time of up to now 30 working days alone far outstrips this limit. Scotland’s 20 days without registration is still just as unattainable.

It can be seen from the data above that even a single chick from a merlin , the smallest and quickest growing Sch 4 species could not be hatched and legally registered under the current General Licence, unless the applicant was one of the lucky 10%.

Now that the Law Commission review of Wildlife Law Interim Statement has been published, it is quite clear in its report as below:

1.25 We also recommend the exclusion of captive bred individual birds from protection under wildlife law, reflecting EU law.<sup>7</sup>

### **Options**

As has been shown that captive specimens of Schedule 4 species should not be included within the WCA, as they are clearly not wild and as it is recognised by Commission of Migratory Species that captive bred specimens are of conservation benefit. Along with UNESCOs recognition of Falconry being an Intangible Cultural Heritage, falconry and bird of prey keeping should be encouraged. AHVLA are looking to make full cost recovery on all their services, the increased costs are a burden to breeders who are taking pressure off wild populations and aiding in the Protection of **wild** birds by their actions.

How can the licences be written to provide competent legislation.

1 It should include each Schedule 4 species, calculate each laying time, each time between eggs, each clutch size, each clutch recycle times, each ringing times, application times etc.

2 It should allow any Schedule 4 species to be ringed and a registration application made by the time they are 'hard penned' or the feathers are out of the blood. This is a point in time that all birds have to achieve before they are fully fledged. Birds are not usually moved in captivity until after this time, unless chicks are for imprinting. Merlins will be 'penned' at approx 9 –11 weeks with a golden eagle up to 14 – 16 weeks. Consideration of the time AHVLA takes to process an application to register a specimen means that only the wording of an 'application to register' the specimen can be included. This will require applications to be made online which is a new option available from 2013.

3 To exempt all captive bred Schedule 4 chicks from needing registration (this is already done with the peregrine and merlin). Keep the WCA for what it was intended, the protection of the UKs wildlife and its wild specimens. Encourage captive breeding to further take pressure off wildlife. The current devolved General licences are only relevant to birds bred in captivity any chick hatched from wild taken eggs would need a separate licence application.

Option 1 would necessitate each species to be listed separately, the difference in size between different sexed birds would also need to be taken in account. Each time a species is added or removed from Schedule 4 the general licence would need to be reviewed. This would become a very long and complex document.

Option 2 would cover all species adequately; hard penning is specific to each species although time spans are variable with a week or so. The licence will need to be up to registration application as the delay for AHVLA handling and post will take the time span very close to penning. Proof of application will need to be proven which will necessitate making the application online. Application of single clutches are another suggestion but while the cost of this type of registration would not cost more under the WCA most applicants also make a dual application for CITES A10 certificates and these are £31.00 per application, to rise for full recovery, so would increase costs considerably for the users.

Option 3 Would be the most effective one for the user groups and cost effective for departments. There has been no meaningful data provided by any organisation to show any major wildlife crime under the WCA regulations besides warnings of rampant wildlife crime by protectionist and compliance organisations after the last major Schedule 4 species review and if current statistics are reviewed it will be seen that there has been no impact on wild populations. DNA the most effective deterrent to illegal taking of wild birds of prey will still be available. The Issue of a General Licence exempting all closed ringed captive bred Schedule 4 specimens from registration, a precedent already set with the peregrine and merlin. The Law Commission interim statement underpins this option.

### **Relevant information**

With the recent changes in compliance policy within AHVLA we are now finding paperwork offences are being pursued. WCA legislation was put in place to protect

the wildlife of the UK. A majority of these legislative transgressions have no connection to any wildlife crime, but are paperwork offences, that whilst are an offence and are to be condemned, are not connected to any crime against wildlife itself. With this change in policy it is imperative that any General Licences are of competent legislation. Falconers, the main user group that these general licences are relevant to need to know that they are not inadvertently transgressing the law.

## **Response 18: Scottish Land and Estates**

Scottish Land & Estates is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. Scottish Land & Estates has over 2,500 members with interests in a great variety of land uses and welcomes the opportunity to respond to this consultation.

### **Response to consultation questions:**

#### **A. General Licences and raptor persecution**

Scottish Land & Estates share the wish of the Minister and SNH to further reduce all crimes against birds of prey, but believe this proposed measure would not be workable in practice.

Detailed concerns are:

1. It is an anomaly that the General Licence is used by an individual while the proposed restriction would apply to an area of land. This would mean that because of the suspected actions of one person, (who may not even be employed), all General Licences and predator control could be restricted over an unspecified unit of land, perhaps an entire estate. This would have consequences for biodiversity, crops and public safety on a large area of land and we do not believe Government intended that.
2. "A good reason to believe" is a very vague standard of evidence so making decisions on guilt, and over what area of land to apply any restriction, would put SNH in a very difficult position. Withdrawal of a General Licence without very strong evidence could be challenged legally because it is essential to the work of a gamekeeper and wildlife manager. There are issues of human rights and proportionality, and we know from previous case law that removal of General Licences is considered a serious punishment because it prevents someone from continuing their livelihood.
3. There is no mention of a transparent appeal process, which would be important for anyone who is affected by the proposal
4. This measure could encourage malicious reporting of "suspected" wildlife crimes which would not be tested in court. Given the known activity of animal rights organisations seeking to incriminate gamekeepers, this could become more of an issue.
5. The obvious flaws in the proposed measure would make it seem unfair and arbitrary  
– as if the Government did not care about its collateral damage - and it would cause resentment among people doing an important job of wildlife management. Much has

been done particularly via the PAWS partnership to build trust and cooperation and that risks being undone.

6. We are concerned about the justification for effectively by-passing the existing legal system, under which General Licences can already be removed from anyone convicted of a wildlife crime. The number of offences against wild birds is relatively low now by historical standards, some of those that do happen are unconnected with land and predator management, and we believe that each incident could and should be investigated by the police on its own merits, not dealt with by an arbitrary punishment of people who may have committed no crime at all. The 2013 data is not yet complete and is confidential to police and Government so cannot be analysed. We would urge Government to review the 2013 data when it is published in 2014 and discuss issues arising with the industry, to see if there are other ways to tackle any types of bird of prey persecution connected with land/game management that are continuing.

**B. Documentary evidence accompanying the selling of certain captive-bred birds on**

**General Licence 08/13**

Scottish Land & Estates has no views on this.

**C. Possible withdrawal of/ amendment to General Licence 11/2013**

We would argue for the retention of General licence 11, as it can be a useful conservation tool in sensitive areas.

**D. Extending the time limit for registration of captive bred Schedule 4 birds from 15 to 20 days on General Licence 12/2013**

Scottish Land & Estates supports this extension of the time limit.

**E. Miscellaneous – General Licences 13/2013 and 14/2013**

Scottish Land & Estates has no views on this.

**Response 19: Game & Wildlife Conservation Trust**

**Question 1: General License and Raptor persecution**

GWCT have concerns with the proposed 'enabling' paragraph. First of all, there is limited explanation as to what this restriction would look like and how it would be implemented. We strongly suggest that this is examined by SNH and stakeholders, in addition to this consultation, before any decision is taken. GWCT cannot effectively provide an answer to the question asked if we do not know the detail; however we have 4 main concerns:

1. Balance of conservation

As the situation currently stands, if a person is convicted of an offence they are not allowed to operate under a general or other license without applying to SNH. Given that wildlife crime convictions are brought against individuals and land owners under vicarious liability we find it difficult to assert the prohibition of a license with a piece of land. It is a person who commits a crime not the land holding. This proposal could potentially remove large areas of land from management; not just the control of corvids or mustelids under license but the removal of further management such as

sheep grazing or muirburn, due to restrictions placed on the ability to keep an area and maintain an active sporting interest. Effectively land may be abandoned if the restrictions were for a significant length of time or indefinitely, causing serious environmental damage to already vulnerable upland areas. This is a concern in particular for species such as curlew and lapwing, both of which are red listed species of conservation concern and have been shown to benefit (Waders on the Fringe, GWCT Otterburn Study) from licensed activity. SNH may wish to give further thought on how they would deliver the benefits of privately funded predator control in areas which have had licensed activity removed.

A further concern is the impact on tenant farming or farm units that sublet their shooting rights on land. The enabling paragraph when implemented may compromise genuine farming activity in that the ability to protect crops or livestock could be removed across farmland areas based on the suspicion of shooting tenants or the land owner. This impact seems disproportionate and in our view is unlikely to prevent further wildlife crime incidents.

## 2. Burden of Proof

We find the proposal a contradiction in terms given that the Scottish legal system operates an innocent until proven guilty (beyond reasonable doubt) and this clause would be based on 'good reason' and untested allegations, not necessarily examined evidence. We are concerned about the level of evidence needed particularly as no threshold is given in this consultation and it is proposed that this change will take place from the first of January which gives little time to evaluate the types of evidence needed. We are aware that SNH intend to base judgment on robust evidence, which is welcomed by the Trust but clarification with examples would be beneficial to the industry and land managers so that the enabling paragraph is fully comprehended.

GWCT feel very strongly that the absence of a species is not a 'good reason' for restrictions to be imposed on an area. There could be multiple reasons for species productivity or population dynamics and if the absence of a particular species was to contribute to the enabling paragraph being enforced this could be ignoring a species correct conservation context. It should not be assumed that suitable habitat will have an even or similar occupancy particularly for semi-colonial harriers or kites.

GWCT also find it worrying that what is proposed would leave land managers open to malicious tampering of traps and the planting of criminal evidence by small fractions of the community to bring about the restrictions on game keeping activities. We would like to know how this concern would be addressed by SNH?

## 3. Competence in checking practice

GWCT would like clarification on who would be responsible for checking that areas which are prohibited from using a general license are abiding by additional restrictions? GWCT wish to ensure that there is a clear process and designated responsibility for any supplementary limitations introduced through the enabling paragraph. That those carrying out checks are competent and have a sufficient level of background and technical knowledge to do so. We would recommend that this is

left to Wildlife Crime officers or local police forces as they are accountable to the general public and tax payer. We would not recommend that investigative powers are extended to independently run organisations such as SSPCA or RSPB.

### Appeal Process

GWCT are aware that SNH have an internal complaints procedure and that there may not be plans to introduce a new appeals procedure for the enabling paragraph however, we would like reassurance that the current appeal process is fit for purpose and that any challenges to restrictions on the use of licenses are dealt with swiftly and that land managers are aware of the process.

### Final Comments

GWCT would also like to raise that our expectation is for an enabling paragraph to apply to all licenses which involve wild birds and that in principle this should apply to licenses for the protection of crops, conservation and public health (to name a few) but also individual licenses for purposes such as ringing of wild birds.

GWCT recognise that developing an 'enabling' paragraph is a difficult process for SNH and as partner organisations would be happy to discuss or contribute to this process as it develops. We feel that it is for the industry and Government to tackle the fundamental causes of crime rather than to continuously treat the problem.

We would also like to highlight that conservation has traditionally focused on 'protection and preservation'. However the Scottish uplands are no longer wild and we need to integrate conservation more effectively with the businesses of tourism, sporting, farming and renewables. As highlighted by the ITE/REGHAB report (2002); 'rigid protection tends to hinder the application of human resources from hunting to maintain or promote biodiversity' and can 'result in illegal predator management'.

### Question E: Miscellaneous

GWCT await the findings of evidence based species listings and research on trap use, design and specification. We understand that no immediate changes will be made until this research is completed.

## **GWCT Comments on individual Licenses**

### GL1/2014

Section 5: GWCT would like Jackdaw to be added to the species list to be used as a decoy in Larsen traps. We feel this can be justified as Jackdaw are now in good conservation status (BTO, <http://blx1.bto.org/birdfacts/results/bob15600.htm> ) and a known predator of wild bird eggs. As with other species in this guild Larsen traps can be an effective control method. Furthermore Jackdaw can already be used as a decoy under GL/02, applying this to GL/01 would allow for uniformity between licenses and aid the ease of use and understanding by license users.

Section 19: requires that Larsen traps/ pods and mates are fixed to the ground so that they 'cannot be moved'. Practitioners would benefit from understanding from what the trap is being prevented to move from? This would give a clear indication of the level of tethering needed, most Larsen trap users will move their traps frequently and so the effort needed in pegging down of cages is an important issue.

We would suggest that Larsen traps are not included in the requirement to be tethered or staked, in general, by nature of design Larsen traps are heavy, difficult and awkward to move so it would be pertinent that this is only applied to Larsen mate or Larsen pod traps.

GWCT would also propose that the wording gives practitioners a better indication of the distance that a trap can be moved.

GWCT would suggest the following wording:

*Any Larsen mate or Larsen pod trap must be firmly pegged or staked down or tethered to prevent the trap being moved by unintended bycatch, for example badgers. This is intended to prevent injury to said animals or birds. Traps are not permitted to be moved more than the width of their own dimensions.*

#### GL2/2014

Section 19: we reiterate our concerns under GL1/2014 for the need to clarify what traps are being prevented to move from. This would give a clearer indication of the level of tethering needed to practitioners.

Would suggest that perhaps the wording could read:

*Any Larsen mate or Larsen pod trap must be firmly pegged or staked down or tethered to prevent the trap being moved by unintended bycatch, for example badgers. This is intended to prevent injury to said animals or birds. Traps are not permitted to be moved more than the width of their own dimensions.*

#### GL3/2014

Section10: again GWCT would like Jackdaw to be added to the species list to be used as a decoy in Larsen traps. We feel this can be justified as Jackdaw are now in good conservation status (BTO, <http://blx1.bto.org/birdfacts/results/bob15600.htm> ) and a known predator of wild bird eggs. As with other species in this guild Larsen traps can be an effective control method. Furthermore Jackdaw can already be used as a decoy under GL/02, applying this to GL/03 would allow for uniformity between licenses and aid the ease of use and understanding by license users.

Section 19: again GWCT would find it useful for further clarification on what the trap is being prevented to move from? An explanation would support practitioners in understanding exactly what is required of them so that they trap both within the law and safely.



Would suggest that Larsen traps are not included in the requirement to be tethered or staked, in general, by nature of design Larsen traps are heavy, difficult and awkward to move so it would be pertinent that this is only applied to Larsen mate or Larsen pod traps.

GWCT would also suggest that the wording gives practitioners a better indication of the distance that a trap can be moved.

Would propose that the wording could read along the lines of:

*Any Larsen mate or Larsen pod trap must be firmly pegged or staked down or tethered to prevent the trap being moved by unintended bycatch, for example badgers. This is intended to prevent injury to said animals or birds. Traps are not permitted to be moved more than the width of their own dimensions.*

#### GL4/2014

Section 11: again GWCT would like Jackdaw to be added to the species list to be used as a decoy in Larsen traps. We feel this can be justified as Jackdaw are now in good conservation status (BTO, <http://blx1.bto.org/birdfacts/results/bob15600.htm> ) and a known predator of wild bird eggs. As with other species in this guild Larsen traps can be an effective control method. Furthermore Jackdaw can already be used as a decoy under GL/02, applying this to GL/04 would allow for uniformity between licenses and aid the ease of use and understanding by license users.

Section 20: GWCT would find it useful for further clarification on what the trap is being prevented to move from? Further clarification would support practitioners in interpreting exactly what is required of them so that they trap both within the law and safely.

Would suggest that Larsen traps are not included in the requirement to be tethered or staked, in general, by nature of design Larsen traps are heavy, difficult and awkward to move so it would be pertinent that this is only applied to Larsen mate or Larsen pod traps.

GWCT would also suggest that the wording gives practitioners a better indication of the distance that a trap can be moved.

We propose that the following wording could be used:

*Any Larsen mate or Larsen pod trap must be firmly pegged or staked down or tethered to prevent the trap being moved by unintended bycatch, for example badgers. This is intended to prevent injury to said animals or birds. Traps are not permitted to be moved more than the width of their own dimensions.*

#### **Response 20: OneKind**

##### **A. General Licences and raptor persecution**

Without commenting on the legal mechanism proposed, we support the principle of restricting access to General Licences if this will improve protection for raptors and other species. Indeed, we would suggest that the Scottish Government could go further and simply state that the General Licences will not be available to anyone connected with land where there is good reason to believe that wildlife crimes have taken place. From the animal protection point of view this is a simple precautionary approach. We appreciate that there is always a risk of human rights challenges whenever commercial activities are restricted, but the option of a specific licence is always available for law-abiding users. We would hope land managers would see this minor inconvenience as a small price to pay in order to support the fight against wildlife crime.

We suggest that the restriction or prohibition should apply to land where there is good reason to believe that *any* wildlife crime has taken place, not simply a crime against wild birds.

This would be in line with the existing Condition No.4 on General Licences 1 -4 with regard to convictions under the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats &c) Regulations 1994, the Protection of Badgers Act 1992, the Protection of Wild Mammals (Scotland) Act 2002, the Animal Health and Welfare (Scotland) Act 2006 and the Protection of Animals (Scotland) Act 1912, all as amended. We believe that the Wild Mammals (Protection) Act 1996 should be added to this list.

As stated in previous consultation responses, and discussed in correspondence with SNH, we hope that the exception to this condition for persons convicted, but merely admonished, will be removed as soon as possible. We note that it is proposed to examine this exception next year.

Lack of care for other species may well indicate a lack of care with regard to the supposedly humane trapping and killing of birds and it is, of course, notoriously difficult to trace offenders and obtain convictions for these crimes. Therefore, to optimise the effect of any proposed restriction, we hope that it will be applied as broadly as possible.

#### **B. Removal of need for documentary evidence of captive breeding to accompany the selling of certain wild birds on General Licence 8/2013**

Even captive bred wild birds remain essentially wild and we believe that trade in these species should be discouraged, on welfare grounds. We appreciate that there is a difficulty if the European Commission has raised a complaint regarding a trade issue. We wonder however if the requirement for documentary evidence could be retained for sales on the domestic market.

#### **C. Possible withdrawal of/amendment to General Licence 11/2013**

We do not have information about the extent to which mallard eggs are taken for the purpose of conserving wild birds. If usage is so low as to be unknown, the General Licence is not the appropriate mechanism to control it. We would support withdrawal of General Licence 11/2013 on a precautionary basis.

#### **D. Extending the time limit for registration of captive bred Schedule 4 birds from 15 to 20 days on General Licence 12/2013**

In view of the licensing authority's enhanced ability to check registration documentation we would accept this proposal.

#### **E. General Licences 13/2013 and 14/2013**

We support withdrawal of these licences. The use of internet trading, in particular, can create an undesirable market for wild bird feathers and parts, and it would be preferable for such dealings to be simply prohibited, as provided by s.6 of the Wildlife and Countryside Act 1981, rather than attempting to apply General Licence conditions to anonymous vendors.

### **Comments on General Licences**

#### **GL1/2014**

Period valid: On animal welfare grounds, there should be no control other than pricking or oiling of eggs during the nesting season.

Section 1: Either here or in the later conditions it should be clearly stated that the General Licence may only be used to counter a specific identified problem. Wood pigeons, feral pigeons, magpies and crows cannot be assumed always to be causing problems in all circumstances. We accept that these species can cause problems but serious damage must be demonstrable on each and every occasion when there is resort to the Licence. We suggest that there should be an onus on the user to demonstrate necessity.

We are also concerned that, as currently drafted (second bullet), the Licence effectively permits attempts to kill certain wild birds with a certain degree of disregard as to whether the attempt results in injury, and does not make clear that any injured bird must be despatched humanely. This is at odds with the requirement for humane despatch in sections 20 and 21.

We suggest that the second bullet should be re-drafted to read:

- *to attempt to kill certain wild birds, provided that any injured bird is humanely killed as soon as possible after the attempt*

Section 3, third bullet: We suggest that the operator should be able to demonstrate that appropriate non-lethal methods of control are either ineffective or impracticable, rather than simply being satisfied that that is the case.

Section 4: We would like to see the exception regarding a person who has been convicted of a wildlife crime but merely admonished. The condition is extremely important and as far as we know there was no consultation on the addition of this exception when it was added in 2009. It is not mirrored in the equivalent English licences. The exception has undermined the purpose of the original condition and has encouraged defence agents to seek to influence sentencing decisions by claiming that

the convicted person's livelihood would be put at stake if the penalty is greater than an admonishment (even though he can still apply for a specific licence if required, as the General Licence makes clear). We have corresponded with the Wildlife Operations Unit on this issue and were pleased to receive an assurance that the retention of this exception will be considered during 2014. We would however prefer to see it removed immediately.

Section 5: Species covered by General Licence . As an animal welfare charity we are opposed to the culling of the Ruddy Duck. Given that these birds have now almost been eradicated from the UK we cannot see that it is necessary to keep this species on the General Licence. Any further killing considered necessary could be carried out under a specific licence.

Regarding the Canada goose, we understand that negative impacts of this species on its surroundings have only been recorded at a small spatial scale, although it is acknowledged that the birds' effect on biodiversity in Great Britain could increase (Rehfishch et al. 2010. BOU Proceedings – The Impacts of Non-native Species <http://www.bou.org.uk/bouproc-net/non-natives/rehfishch-et-al.pdf> ). We therefore query the appropriateness of including the species on a General Licence for the conservation of wild birds at this stage, and again, if there was justification for control this could be achieved under a specific licence. Again, the need for control must be demonstrated and that is best achieved on a case-by-case basis.

Regarding the inclusion of rook, jackdaw and jay, the RSPB has asked in the past what evidence there was that predation by these corvids of the young of other bird species routinely constituted serious damage and justified a general licence.

Section 8: OneKind believes that Larsen traps should be banned on welfare grounds. We welcome retention of the provision that only eggs and bread may be used as bait in Larsen mate and Larsen pod traps. If it is thought that such traps can successfully operate without using live bait in the form of a decoy bird, we believe that this should be extended to all cage traps, including all Larsen, crow cage traps and multi-catch traps. This would reduce the likelihood of capturing raptors and would avoid the suffering of the decoy bird. Bait (including meat) is already commonly used as an alternative to decoy birds.

Section 9: As long as Larsen traps are permitted, it is not acceptable that the requirements of s.8(1) of the Wildlife and Countryside Act 1981 regarding cage dimensions should be waived. A bird needs to stretch its wings freely. A rook or a carrion crow may have a wingspan of 80-90 centimetres, and a magpie up to 60 centimetres. Some currently available commercial models can accommodate this (just) in the decoy compartment: we cannot therefore see any justification for a blanket exemption allowing less space for either decoys or target birds.

Section 12: We welcomed the clarification in the 2013 General Licences that all birds in a cage trap, and not only the decoy bird, were the responsibility of the trap operator and subject to the protection of the Animal Health and Welfare (Scotland) Act 2006. Captured birds may legally be confined in the trap for up to 24 hours (or longer in bad

weather conditions). We believe that the requirement to provide adequate food, water, shelter, a suitable perch that does not cause discomfort to the birds' feet, and adequate shelter from the prevailing wind and rain must be specifically extended to the captured birds as well.

Section 13: We would prefer to see a recommendation for checking traps twice a day, which is already recommended by BASC. We also recommend adding:

*“As a matter of good practice, cage traps should not be used during severe weather conditions, or when such conditions are reasonably anticipated.”*

This statement is used in the equivalent English licences. Following such a recommendation would not only prevent pressure on the operator to inspect set traps in times of bad weather, but would also provide some measure of protection for captured birds during their period of captivity, given that at present there is no requirement to provide shelter for them.

GL2/2014 Our comments on GL1/2014 apply, with the exception of the comment on the inclusion of the Jay on the list of permitted species.

GL3/2014 Our comments on GL1/2014 apply, with the exception of the comment on the inclusion of the Jay on the list of permitted species.

GL4/2014 Our comments on GL1/2014 apply, with the exception of the comments on permitted species

GL5/2014 No comments

GL6/2014 No comments

GL7/2014 No comments

GL8/2014 We do not support or encourage the sport of falconry but if the extension of the time allowed for registration makes for better record-keeping and greater compliance we can agree that this is desirable.

GL9/2014 We would support withdrawal of this licence particularly as it is not clear who uses it. If eggs need to be taken to replenish wildfowl collections, that is a specialist activity and should be assessed on a case-by-case basis.

GL10/2014 OneKind does not support the competitive showing of wild birds as a recreation or a commercial interest and we believe that there can be detrimental effects on the individual birds involved. The restriction of movement and the inability to associate with, or avoid, other birds are breaches of the fundamental Five Freedoms on which our animal welfare laws are based. For this reason we believe that, at the very least, it is essential to keep the activities subject to General Licence.

Section 4: We welcome the addition of this section providing that a person convicted of a wildlife crime may not access this General Licence. However it would be appropriate to add animal welfare offences to this section as well, particularly as the

birds in question are all captive-bred, albeit of wild species. Other licences refer to the Animal Health and Welfare (Scotland) Act 2006 in the definition of wildlife crime but there does not appear to be a definition in this licence.

GL11/2014 Our comments on GL11/2014 apply. We also think it would be worthwhile reviewing the purpose of this General Licence to find out how commonly it is used, whether the activity in question is necessary or desirable and thus, whether it is appropriate for a Scottish General Licence. We are aware that the competitive showing sector has its own guidelines and would prefer self-regulation. However, these are wild birds, whether bred in captivity or not, and the fact that they have to be "trained" for an hour a day to accustom them to small show cages would suggest that they do not take to them easily.

GL12/2014 No comments

GL13/2014 We support withdrawal of this licence.

GL14/2014 No comments

GL/15/2014 No comments

### **Response 21: Animal Concern Advice Line**

On behalf of Animal Concern Advice Line (ACAL) I wish to make a submission to the Consultation on General Licenses for 2014.

From your list of the 22 organisations directly invited to participate in this consultation I note that 10 represent those who use General Licenses to kill birds, 7 are or should be neutral on the subject and only 5 are likely to be opposed to culling birds.

I note with regret that the consultation does not cover the general principals of the General Licensing system. I believe that the time is long overdue for the whole system to be reviewed. It is simply not acceptable to allow people to kill numerous species of native wild birds without that killing being properly regulated and policed.

At the moment anyone can kill birds simply by reading a general license on-line and then complying with the conditions of that license. Those who choose to kill birds under the present system do not have to show due cause for their actions, do not have to prove themselves to be competent in the humane killing of birds and can kill birds without any restriction on the numbers they kill.

It should also be noted that not everyone has access to the internet and that in many rural areas decent internet connections are simply unavailable. I am sure that many bird cullers have never read a General License and are therefore committing a criminal offence when killing birds. Hard copies of General Licenses should be made freely available in all public libraries and at those police stations that are still open to the public.

No consideration is given to the effect General License culling has on local or national bird populations. I ask that it be made compulsory for anyone killing birds under a

General License to submit an annual report stating the numbers of each species they have killed in the previous 12 months.

It must also be noted that much of the killing carried out under General License involves the killing of native species of wild bird to artificially enhance the number of non-native pheasants available to be shot by sporting guns. This is morally wrong and I am sure would not have the backing of the majority of the public if they were aware this was happening.

I also note that research on trap use, design and specification is to be carried out by the Science and Advice for Scottish Agriculture (SASA) division of the Scottish Government Agriculture, Food and Rural Communities Directorate in partnership with the Game and Wildlife Conservation Trust. I ask that the use of clam style traps be prohibited until that research has been completed and evaluated.

In your covering letter you state that to raise awareness of the General Licensing system you intend to “circulate a short briefing note to industry bodies and others to help raise the profile of the existence of these Licences and their conditions of use.”. One of my biggest concerns is over the number of back garden bird cullers who are killing corvids in the mistaken belief that they are protecting song birds. I suggest that to ensure such people comply with the law SNH should undertake a widespread publicity drive including advertising in local newspapers. The Scottish Government spent £23,000 placing misleading ads about Giant Pandas in circa 144 local newspapers. Spending a similar amount to provide people with accurate information on the General Licensing scheme would be money better spent.

On Annex 1, Consultation details my comments are:

A: General Licences and raptor persecution. If an employee of a landowner has committed any offences under wildlife legislation then that landowner should lose the right to use any of the General Licences.

C: Possible withdrawal of/amendment to General Licence 11. The fact that SNH “are uncertain how widely General Licence 11 is actually used” is very telling and highlights the fact that the current Licensing system cannot be monitored or enforced. SNH intends to withdraw Licence 11 because it does not know if it is being used – instead of withdrawing it you should actively find out if it is being used and to what extent it is being used.

E: General Licences 13 and 14. Again SNH is thinking of withdrawing these licences because no-one is reporting having used them. Once again you should be finding out whether or not people are using them and if they are doing so without meeting their duty to report on what birds or parts of birds they have sold, then they should be reported to the PF for prosecution. Perhaps SNH could investigate retailers of fly tying equipment, milliners and taxidermists to see if they are buying birds or bird parts from traders who should be reporting under Licences 13 or 14.

I would also like to comment on General Licenses 1 and 2 though my comments on these may be applicable to others.

**GL 01/2014.** Would it not be more accurate to amend this and where appropriate other licences to read "To kill or take certain birds for the conservation of native wild birds"? In clause 3 of GL 01 I ask you to consider adding another bullet point reading: "only use it if they can use the equipment competently and can kill any captured birds humanely."

Under Definitions for GL 01 and other Licences you state ""humanely" means taking all reasonable precautions to ensure that any killing of birds under this license is carried out by a single, swift action." I think you will find in law that so long as the first blow renders a bird insentient then, even if further action is required to kill the bird, it would be regarded as having been humanely killed.

**GL 02/2014.** To kill or take certain birds for the prevention of serious damage to livestock, foodstuffs for livestock, crops, vegetables and fruit.

Could this not be altered to; "To kill or take certain birds for the prevention of serious damage to livestock, foodstuffs for livestock and commercial crops, vegetables and fruit."? Inserting the word "commercial" would for instance stop hobby gardeners resorting to shooting or trapping and killing pigeons and doves for pecking at their peas.

GL 02 and other Licences also require that killing only be used if non-lethal alternatives such as bird scaring or crop netting are either ineffective or impracticable. Under the open nature of the General Licence scheme there is no mechanism to ensure that the alternatives are given proper consideration before culling commences. This lack of policing is a major flaw in the system.

I ask you to consider these suggestions for the 2014 General Licences but more importantly I ask that before the 2015 Licences come up for consultation that the Scottish Government open a full debate into the principal of General Licensing and the details of the General Licensing scheme which I believe is not fit for purpose.

Yours faithfully,

 Animal Concern Advice Line

PS Our Respondee form is attached.

## **Response 22: Royal Society for the Protection of Birds**

### **A. General Licences and raptor persecution**

We would strongly support any effective implementation of the Minister's direction, backed up by meaningful subsequent enforcement.

We have consistently pointed out that some of the general licences themselves provide a very convenient means for carrying out wildlife crime - in particular the



trapping and killing of protected birds of prey - passed off as legitimate crow control. We hope SNH appreciates the irony of this situation whilst drafting the changes required by the Minister.

### **C. Possible withdrawal of / amendment to GL 11/2013**

SNH has been consistently unable or unwilling to explain the underlying rationale for this licence but has nevertheless continued to publish it. We can see no reason to retain it (but, without explanation of its intended purpose, this opinion can not be absolute). It appears to be a licence intended to provide an increase in the numbers of mallards available for shooting, which is certainly not a conservation purpose nor a purpose that is permitted by the Birds Directive. For this latter reason, contriving to retain the licence under a different WCA licensable purpose would be unacceptable.

It is noted that SNH is “uncertain how widely General Licence 11 is actually used”. This highlights a profound weakness in the whole GL system in that most of the licences are drafted without requiring any report back of usage. The licensing authority has no means whatever (in most cases) of determining the impact of the licences it issues.

### **D. Extending the time limit for registration of captive bred Schedule 4 birds etc.**

We note that SNH do not wish respondents to offer any view about these changes. Nevertheless we offer the following: -

We understand the rationale behind these proposed changes but urge SNH to be aware of the risk of wild birds being laundered into the registration system whilst seeking to streamline the system for legitimate breeders.

### **E. General Licences 13/2013 and 14/2013**

We support the rationale behind withdrawal of these licences.

#### **General Points**

We are disappointed that SNH does not invite any discussion in this consultation on the composition of the species lists in the licences. This is not a recently emerged issue. We, and others, have drawn attention to anomalies and inconsistencies between the lists of species that may be killed etc. under the licences. We have requested clarification of the rationale for inclusion of certain species in certain licences. We have done this over a number of years, so SNH is well aware of the concerns that are held but chooses to continue to take no action.

To repeat (yet again) two examples we have used: -Why does jackdaw appear as a species that may be trapped/used as a decoy in Larsen traps (but only) in the crop/livestock protection licence? As a social corvid it is not particularly susceptible to trapping by Larsen, a device used to target territorial crows. What conservation threat does great black-backed gull pose that requires its inclusion on a general licence?