



## General and Class Licence Consultation – February 2014

### Annex B: Consultation Response Form

#### How to complete this form

1. Before completing this form, please read the relevant sections of the consultation document for a full explanation and rationale behind each consultation question. The consultation paper and supporting documents are available online at [www.naturalengland.org.uk/consultations](http://www.naturalengland.org.uk/consultations) and [www.gov.uk](http://www.gov.uk).
2. You may choose to respond to selected questions only. You do not need to complete every question.
3. For each question you respond to, please also provide your assessment of the regulatory impact of any change, i.e. the impact any described changes would have on businesses both in terms of time and financial cost. Details of our initial assessment can be found in Annex C. It should be noted that our assessment is an estimate, and we hope that the consultation responses will provide more detailed information to help us better understand the impacts. Where possible, please quantify any change in costs (positive or negative) that proposed / possible changes may have. If extra cost is likely to be involved, introduction of the change may still be unavoidable, but we will make clear the level of additional cost and why this is required.
4. Please submit your response by 5.00pm 19 May 2014. Any responses received after this may not be considered.
5. Please send responses to: [wildlife.consultation@naturalengland.org.uk](mailto:wildlife.consultation@naturalengland.org.uk). We would prefer responses to be submitted electronically but if you wish to respond in writing please submit your response to: Natural England General Licence Consultation, c/o Wildlife Licensing, Natural England, Temple Quay House, 2 The Square, Bristol BS1 6EB. Please note that there is no need to post a hard copy of responses submitted by e-mail, and that posted responses will not be acknowledged unless an acknowledgement is specifically requested.
6. In line with Natural England's Access to Information Statement ([http://www.naturalengland.org.uk/Images/NEAccessstoInformationStatement\\_tm6-4934.pdf](http://www.naturalengland.org.uk/Images/NEAccessstoInformationStatement_tm6-4934.pdf)) we may publish at the end of the consultation period all information contained in your response, however this is received, for others to

see. If you want the information that you provide to be treated as confidential, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on Natural England.

7. We will respect personal privacy, whilst complying with access to information requests to the extent necessary to enable Natural England to comply with its statutory obligations under the Environmental Information Regulations 2004, and the Freedom of Information Act 2000.
8. If you have any comments or complaints about the consultation process, as opposed to the content in the consultation paper, please e-mail Kay Shuard, Regulatory Improvement and Specialist Services Manager, Natural England ([kay.shuard@naturalengland.org.uk](mailto:kay.shuard@naturalengland.org.uk)).

## Response to General and Class Licence Consultation – February 2014

### Your contact details

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### **Preamble**

The RSPB welcomes this opportunity to comment on proposed changes to the general and class licences issued by Natural England under the Wildlife and Countryside Act 1981 (as amended). We have responded to specific proposals, but ask that Natural England consider these preliminary comments as part of the RSPB's submission.

### **1. Licence principles**

We would like to take this opportunity to reiterate the legal framework surrounding licences. Licences issued under the Wildlife and Countryside Act 1981 (as amended) are bound by the requirements of **EU Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version)**. Member states are required to establish (Article 5) a general system of protection for all birds referred to in Article 1 of the Directive, including the prohibition of deliberate killing or capture. They are also required to prohibit (Article 8/Annex IV(a)) all means of non-selective capture or killing including, explicitly, 'traps'. Member states may, however, derogate (Article 9) from the provisions of Articles 5 and 8 *inter alia* in the interests of public health and safety, to prevent serious damage to crops, livestock, forests, fisheries and water, and for the protection of fauna and flora. This may be done only in the absence of other satisfactory solutions and if clearly defined terms and conditions are met. It follows that general and class licences issued in England must comply fully with Article 9 requirements to be considered lawful within the terms of the Birds Directive. The RSPB accepts the principle of general and class licences but only if they comply with Article 9 requirements. We believe:

- That wild birds should only be killed or taken as a last resort. Lethal control can only be justified when a) a genuine and serious problem exists, b) non-lethal measures are demonstrably impracticable or ineffective, c) it will be successful in resolving the problem, and d) it will not adversely affect or damage the conservation of the species concerned. We acknowledge that this final criterion will not apply when invasive non-native species are concerned.

- That these criteria need to be spelt out in print. Although point 7 of the introduction to the Consultation lists five criteria which need to be met prior to the use of a licence, only the first two are currently spelt out on the general and class licences. It would be particularly beneficial for point c (action taken will be successful in solving the problem) to be in print, as this would make challenging inappropriate use much easier.
- That some of the licences are too broad in their coverage, providing opportunity for inappropriate use. A good example is licence WML-GL04. The licence is granted to “prevent serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters” and “prevent the spread of disease”. The species covered by this licence are crow, jackdaw, jay, magpie, rook, collared dove, feral pigeon, wood pigeon, lesser black-backed gull, Canada goose, monk parakeet, and ring-necked parakeet. No species of gull is a threat to fruit, nor are jay or ring-necked parakeet a threat to fisheries or inland waters, or collared dove damaging to livestock or growing timber. This ambiguity needs to be reduced by specifying which species are appropriate for which problem, or at the very least, specifying in the licence conditions that the action must significantly contribute to resolving the problem (see above).
- That species should only be included on the kill/take general licences when a) there is demonstrable evidence of a serious problem, b) the problem is so widespread that granting individual licences would be impractical, and c) the conservation status of the species will not be compromised by virtue of it being included on a general licence.
- That should these criteria not be met, killing or taking should only be permitted under individual licences, requiring Natural England to scrutinise each application.
- That the UK is not meeting fully its obligation to make an annual report to the Commission on implementation of Article 9 because there is currently no requirement to report action taken under the majority of general licences. We therefore support the suggestions made in section 29 of the consultation paper for a trial reporting scheme, but strongly favour a mandatory system (see our response to question 29(a-e) for further detail).
- That decisions about licensing the lethal control of species should be set in the context of favourable conservation status (FCS) (including Birds Directive Art 2 requirements which the European Commission has equated to FCS under the Habitats Directive) of those species (and in the case of control for conservation purposes, also of the species being impacted) at UK level. In our view, the failure to define FCS/Art 2 requirements at the UK level is deeply problematic.

## 2. Recommendations

The RSPB’s principal recommendations for the future development of the general and class licensing system in England are as follows (the supporting rationale for these recommendations is supplied below and, where relevant, in responses to specific proposals):

- **We welcome that Natural England regularly reviews the species listed on the general and class licences, and recommend that species are only included where there is demonstrable evidence of a serious and widespread problem, and that the conservation of the species listed will not be compromised.**
- **That Natural England develops a mandatory means of monitoring the levels and methods by which wild birds are killed or taken under general or class licences, to inform the UK’s annual report to the Commission on implementation of Article 9.**

- That Natural England undertakes a full review of the terms, conditions and guidance notes included on the general and class licences, to help prevent illegal or misinformed activity.
- That Natural England undertakes a review of cage traps, including an examination of their legality under the Birds Directive, and the terms and conditions pertaining to their use under general – as distinct from any specific – licences, to help prevent illegal or misinformed activity.

### **2.1 Review of species listed on the general licences**

The RSPB welcomes Natural England's proposal to remove lesser black-backed gull from certain general licences, and the fact that the continued inclusion of jackdaw and jay on the conservation and agricultural damage general licences is being questioned, as a precursor to a full review of the species listed. This review should consider the following:

- That species should only be included on the kill/take general and class licences where there is demonstrable evidence of a serious problem and where the problem is so widespread that granting individual licences would be impractical. For example:
  - There is no evidence to suggest that any of the species listed on WML-GL06 (conserving flora & fauna) has caused the decline of a bird species in England. Where the killing or taking of wild birds is required for conservation purposes, we believe that this can only be justified on a site-by-site basis and therefore favour individual licensing.
  - We question what evidence there is to show that any native corvid species has been shown to pose a threat to public health or safety (WML-GL05 – preserving public health or safety).
  - The review should therefore assess, for each species, (a) the evidence for serious damage occurring, (b) the scale and frequency of that damage, (c) the effectiveness of non-lethal techniques, including habitat and environmental solutions and (d) the effectiveness of lethal techniques in addressing the problem and preventing serious damage.
- The conservation status of the species. We urge Natural England to make this a key consideration for all species listed or being considered for listing on general and class licences.

### **2.2 Monitoring and reporting**

We believe that in order for the UK to meet its reporting obligations under Article 9 of the Birds Directive, Natural England must as a matter of urgency devise a mandatory means of monitoring the levels and methods of kill/take activity undertaken under all general licences.

### 2.3 Review of licence terms and conditions and guidance notes

We believe that each general licence should state that persons relying on it must be able to **demonstrate** that a serious problem exists, that there is no satisfactory alternative to lethal control <sup>1</sup>, and that lethal control will be effective in solving the problem.

### 2.4 Cage traps

Several of the general licences permit the use of cage traps. We remain concerned that the use of various designs of cage trap, and the threat these pose to non-target species, may be contrary to Article 5 of the Birds Directive (prohibits the deliberate killing or capture of birds covered by Article 1) and Article 8 (prohibits non-selective capture of the same). We are concerned that this consultation considers permitting the use of Larsen-Mate traps, and recommend that these issues be fully reviewed.

As an interim measure, we would like to see improvements made to the conditions which apply to the use of cage traps. These include:

- The tightening of the condition guiding the state of cage traps when they are not in use, to ensure that they cannot easily be reset, e.g. by removing the access door to fixed cage traps, or by storing portable cage traps. This is to prevent the incidence of birds entering unused traps and starving to death, which has been reported in a variety of species, including sparrowhawk, goshawk, kestrel, merlin, blackbird, fieldfare and mistle thrush .
- The definition of “physically inspected” should ensure a requirement that cage traps are inspected from a sufficiently near distance so that smaller birds caught in a trap may be detected (see our response to Question 7b).
- The addition of a condition, on all licences where the use of cage traps is permitted, requiring users of the licences to maintain records of all birds caught in the traps for submission to Natural England. In view of the widespread concerns regarding non-target capture, misuse and abuse of cage traps, these records would inform future decisions on regulation.
- The addition of a condition to ensure that the trap user’s contact details are fixed to the trap, to allow the authorities to locate users during enquiries (see our response to question 9a).

All the above now apply in Scotland, except the requirement to keep records of birds caught (although there is some limited provision for this in some licences). This supports the case for their rapid introduction in England. See our response to question 7(b) for further detail on cage trap terms & conditions.

### Annex E: Natural England’s evidence papers on species covered by General Licences – large gulls

With regard to Natural England’s large gull evidence summary: *the conservation status and licensed control of large gulls in England*, we question whether the most up-to-date population trend information for the gull species in question is being used. The latest seabird monitoring programme trend information is available online at JNCC (<http://jncc.defra.gov.uk/page-3201>) and provides information on population changes

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<sup>1</sup> Section 16 1A to the Wildlife & Countryside Act 1981 (as amended) states that the licensing authority (as opposed to the licensee) must be satisfied that there is no other satisfactory solution. We question how, under the current system for operating kill/take general licences (i.e. in the absence of any registration or reporting requirement), Natural England can be confident in each instance that no other satisfactory solution existed and the legal tests were met.

from 2000-2012. We suspect that the figures provided in the evidence summary are from an older report . Whereas the Natural England report states that the British herring gull population has declined by 43% over ten years since 2000, the JNCC information available online quotes a 36% decline between 2000-2012. Furthermore, the Natural England report states that the British lesser black-backed gull population has declined by an estimated 31% in Britain since 2000, whereas the current JNCC online information mentions a **51% decline** between 2000-2012. This is a significant difference and reflects the fact that most of the major colonies in England are in precipitous decline.

Tables 1, 2 and 3 of the large gull evidence summary use the phrase “*only a minor part of the breeding seabird assemblage*” with respect to population trends since 1998-2002 for all three species of gull. This is a qualitative statement to do with actual numbers that has nothing to do with the column it is placed in. Therefore we recommend that it should be removed in entirety from wherever it occurs as it is not a comment relating to the population trend.

Table 3 (*SPAs for lesser black-backed gulls in England*) includes the statement that at the Alde-Ore Estuary there is no more recent data than 2000, which must be incorrect. The RSPB has carried out surveys of the National Trust Orfordness colony in the last few years, which were sent to Natural England previously, as the research was funded by the Action for Birds in England fund (managed by Natural England). Furthermore, the RSPB carries out year-on-year counts of Apparently Occupied Nests for the Havergate Island breeding colony, the data from which is uploaded to the JNCC SMP database annually.

#### **Annex D: Draft of possible Class Licence to cover control of herring gulls and lesser black-backed gulls**

With regard to European designated sites (points iii. & iv. under ‘Important’ and point c(iii) under ‘Advice’ on the draft licence) our comments are similar to those for question 30 (a-c). I.e. a licence should not authorise any action where there is a risk of a likely significant effect on features of a European site, regardless of whether or not the target species are qualifying features, and of whether the activity is to take place inside or outside of the site (at present the proposed text only refers to species which are qualifying features and impacts within a site). Furthermore, when the site in question is a SSSI, rather than users applying first for the licence and then for consent for its use, it would make sense to require individual licences.

We support licence condition 2 of the draft licence, requiring that “anyone acting under this licence must be competent in, and legally able to, undertake the proposed action (e.g. shooting). This includes being able to accurately identify the target species”. This is an essential requirement, which should be clearly stated in every general and class licence.

Proposal 11(a) in the consultation paper requires that wounded birds are pursued and humanely despatched. Should the two proposed class licences for herring and lesser black-backed gull come into force, this recommendation should be included in both.

*Question 0(a): How often do you read the General or Class licence(s) that you use?*

Response:

Staff who use general licences have confirmed that they tend to refer to the licence whenever it begins to look likely that they may need to take action covered by it.

*Question 0(b): How do you find out if any changes are made to a licence that affect whether you can use it?*

Response:

The principal sources of information regarding changes to licences used by RSPB staff are the licensing pages of the Natural England website (several staff also commented that they receive this information via RSPB wide communications on the matter).

*Question 0(c): Do you find it easy to understand the General / Class Licence(s) you use?*

Response:

All feedback was positive that the licences are easy to understand (although can be long-winded).

*Question 0(d): Do you have any suggestions for how these licences could be made easier to understand?*

Response:

Natural England needs to ensure that the information on their website regarding the use of general and class licences is updated regularly, and consider alternative ways of ensuring that this information reaches licence users who do not use or have access to the internet. Information (for example, FAQs) on situations in which people have misused licences (mistakenly or deliberately) would also be helpful in order to clearly demonstrate in which situations licensed action is permissible.

## **1. General Licences for the purposes of preventing serious agricultural damage or disease, and conserving flora and fauna**

*Question 1(a): Are you aware of any reasons why the change outlined in Proposal 1(a) should not be made?*

Response:

Yes. We object to the addition of greylag goose because the licence does not distinguish between the resident and migratory populations, and because of the potential for confusion with white-fronted geese.

Assessment of Regulatory Impact:

According to the assessment provided by NE the regulatory impact of moving greylag goose from individual to General Licence will be small.

*Question 1(b): Are you aware of any reasons why the change outlined in Proposal 1(b) should not be made?*

Response:

No. There is good evidence that sacred ibis can cause a severe impact on other bird species, particularly colonial aquatic birds (e.g. terns).

We have similar views on house crow. The species can have impacts on native bird populations, and also on certain crops and human health.

For both species it is our view is that all individuals of this species that arrive to the UK should be removed before they become established.

Assessment of Regulatory Impact:

*Question 1(c): What is your view on the continued inclusion of the following species on General Licence WML-GL04 (preventing serious agricultural damage or disease):*

- *Collared dove (Streptopelia decaocto)*
- *Jackdaw (Corvus monedula)*
- *Jay (Garrulus glandarius)*

*Please provide reasons and any available evidence to support of your view.*

Response:

Unless Natural England can produce clear evidence that these species are routinely causing widespread agricultural damage they should be removed from the General Licence.

We are not aware of compelling evidence that the jay is routinely causing serious agricultural damage, and believe that the species should be removed from WML-GL04, as supported by the AHVLA study referenced in the Consultation. Furthermore, we believe that jay should be removed as a potential decoy bird for use in cage traps in WML-GL04. This is the situation that pertains under general licence conditions in Scotland.

We also support removal of jackdaw from WML-GL04. As above, we question the evidence indicating that the species is a routine

agricultural pest and therefore justifies being on the general licence. As with jay, we also believe that jackdaw should be removed as a potential decoy bird for use in cage traps in WML-GL04. In Scotland jackdaw are only permitted to be used as a decoy specifically in multi-catch cage traps. As a social corvid it is not particularly susceptible to trapping by Larsen traps, a device used to target territorial crows. In addition, we believe that both jay and jackdaw may be used illegally as decoys to attract raptors into cage traps, and for this reason we think that both species should be omitted from the permitted decoy list.

Assessment of Regulatory Impact:

*Question 1(d): What is your view on the continued inclusion of the following species on General Licence WML-GL06 (conserving flora and fauna):*

- *Jackdaw (Corvus monedula)*
- *Jay (Garrulus glandarius)*

*Please provide reasons and any available evidence to support of your view.*

- Response:

We question what evidence there is of conflict between either jackdaw or jay, with other species of any taxa (to the extent that it causes population impacts), in order to justify inclusion on this general licence. As such we cannot see why either species is on WML-GL06. If there is evidence that an individual or a group of birds have chosen to specialise in predation that has a conservation impact, a specific licence for the incident would be appropriate.

We also believe that both jackdaw and jay should be removed as potential decoy birds for use in cage traps in WML-GL06. This is the situation that pertains under general licence conditions in Scotland with regard to the jay. In Scotland jackdaw are only permitted to be used as a decoy specifically in multi-catch cage traps. As a social corvid it is not particularly susceptible to trapping by Larsen traps, a device used to target territorial crows. In addition, we believe that both jay and jackdaw may be used illegally as decoys to attract raptors into cage traps, and for this reason we think that both species should be omitted from the permitted decoy list.

Assessment of Regulatory Impact:

## **2. General Licence for the purpose of preserving public health and safety**

*Question 2(a): Are you aware of any reasons why the change outlined in Proposal 2(a) should not be made?*

Response:

We do not support this proposal. The reasoning behind this proposal, and the nature of the perceived health hazard that these species are causing, are not clear. The issuing of 12 licences for greylag goose and seven for mallard in one year does not suggest that these species are causing widespread problems that justify a switch to a general licence.

Assessment of Regulatory Impact:

According to the assessment provided by NE, the regulatory impact of adding greylag goose and mallard as proposed would be small.

*Question 2(b): What is your view on pied wagtail, robin and/or starling being added to paragraph 2(ii) of General Licence WML-GL05 permitting taking, damaging and destroying of nests, and taking and destroying of eggs, for the purpose of preserving public health and safety?*

Response:

Public health and safety is extremely important, and therefore we need a system that is responsive enough to deal with such issues as and when they arise. However, in view of the very small number of licences issued here, the case for adding pied wagtail, robin or starling to the general licence is, in our view, very weak and we would not support such a change. Individual licences should be sufficient to cover the limited need.

The starling was removed from all general licences in 2005 because of its red list status - it was not considered appropriate to have unregulated lethal control of a red listed seriously declining species, and the amount of “damage” of any kind it was causing did not warrant inclusion on a general licence. The reason it was removed from the licences has not gone away, and as such, it does not make sense to add them to any licences now. Furthermore, there is a risk that such a general licence could be misused i.e. any householder with a starling nesting in the roof could claim that the birds were causing a health hazard.

Assessment of Regulatory Impact:

According to the assessment provided by NE, the regulatory impact of adding pied wagtail, robin and starling to paragraph 2(ii) of this licence would be small (with a saving of approximately £1400 per annum), considering the risk that this change would bring to inappropriate use of the general licence we do not feel this proposal is justified.

### **3. Large gulls**

*Question 3(a): What is your view on removing lesser black-backed gulls from the **conservation** General Licence (WML-GL06) and introducing a Class Licence to permit control of herring gulls and lesser black-backed gulls for the purpose of conserving flora and fauna?*

Response:

Given that both herring gull and lesser black-backed gull are the subject of serious declines - 43% and 31% respectively since 2000 according to Natural England's large gull evidence paper (annex E) (although see our comments on the evidence paper above regarding the most recent JNCC figures for both species) - the removal of herring gull from general licence, and the change to individual licences in 2010 was clearly appropriate. On the basis of the evidence, the decision to retain great black-backed gull on individual licences also seems appropriate, and the move of lesser black-backed gull from general to class licence is a step in the right direction.

However, we suggest that the move of herring gull from individual to class licences, and the decision to move lesser black-backed gull from general to class (rather than individual) licences are a cause for concern in the context of 1) the declining populations of both species; 2) the lack of any definition of Favourable Conservation Status for these species to provide a framework for assessing the implications of that decision and 3) the fact that the evidence presented in 3.3 of the gull evidence paper (annex E) - i.e. far fewer herring gull and great black-backed gull were killed once on individual rather than general licences - suggests that the individual licence requirements significantly reduce the numbers of birds killed. If it is important to 'harmonise' the licensing status of these two species, as described in the consultation, we would suggest that this should be achieved by bringing the level of protection in line with the more protected species rather than the lesser one. As a nature conservation organisation that sometimes needs to control limited numbers of gulls for nature conservation purposes we favour being subject to the tighter regulation of individual licences for both species.

If the proposed class licence for the purpose of conserving flora and fauna were to happen, it would need to very clearly specify the kind of people or organisations that could apply for the licence, in a comparable way that the air safety licence is limited to operators of certain airfields only. Also, the admissible criteria for exercising the licence would have to be spelt out very clearly so that only genuine conservation reasons would qualify. Annex E refers to concerns that are sometimes raised over large gulls impacting on gamebird populations through predation - the protection of a shootable surplus of gamebirds should not be a recognised condition for a licence issued for nature conservation purposes.

A more transparent system of licensing is required, which requires hard evidence for justification, and rigorous monitoring of effects and reporting of outcomes. The positive side of the class licence proposed is the reporting requirement, enabling assessment of the scale of lethal control and consequently monitoring of its impact, neither of which is possible with general licence use. However, we still have concerns over extending lethal control to adult gulls which would, in effect, be relaxation of the current rules under the general licence. Reporting should extend further, to details of non-lethal measures taken to resolve the problem. If there is no such requirement it is difficult to know how necessary lethal control is. The draft licence states that "reasonable and appropriate steps" should have been taken to resolve the problem before moving to licensed control but this information does not need to be supplied in the returns - it should be.

Finally, we note that the large gulls evidence paper (Annex E) states that in 2012, 58 licences were issued to control herring gulls for the purposes of conserving flora and fauna. The consultation document itself, however, claims that "in 2012, 109 individual licences were issued to take action against herring gull for the purpose of conservation", and we question which figure is correct.

Assessment of Regulatory Impact:

The regulatory assessment of requiring individual licences for both species has not been assessed but we believe that such regulation would be commensurate with the conservation status of these two species.

*Question 3(b): What is your view on removing lesser black-backed gulls from the **public health and safety** General Licence (WML-GL05) and introducing a Class Licence to permit control of herring gulls and lesser black-backed gulls for the purpose of preserving public health and safety?*

Response:

As mentioned above (question 3(a)), the limitations placed on herring gull control for public health reasons and the complete removal of the species from some other licences was carried out because it was considered inappropriate to have such general lethal control of a red-listed seriously declining species. The reasons for the removal and restriction of lethal control are still there. The proposed class licences would bring in a reporting requirement so that licensed activity can be quantified, and the indiscriminate destruction of nests by individuals can be limited, which we believe are positive and proportionate regulation (see comments on reporting requirements for 3(a)). However, the class licence proposal for herring gull would allow the lethal control of adult gulls, which would go contrary to the reasons previously given for limiting lethal control of the species. In the past few years, there has been no new information on gull populations, and so we believe that it is premature to change the law with regard to lethal control of adult herring gull until new population estimates are available. In addition, Natural England should have carried out adequate research to establish the gull population dynamics sufficiently to allow this kind of control to be targeted to the correct individuals and colonies. Without this, Natural England would go against their own principles of licensing activities.

According to the large gulls evidence paper (Annex E), in 2012 only 5 licences in the whole of England were issued to kill herring gull for public health reasons, involving 299 birds (however, we note that the consultation document itself claims that "In 2012, 34 individual licences were issued to take action against herring gulls for the purpose of preserving public health and safety", and question which figure is correct). This paper does not give supporting evidence to the claimed scale of public health problems caused by the species. As mentioned in our response to question 3(a), it is encouraging to see that when the licensing was tightened up and reporting was required, the number of birds killed declined significantly. This indicates that there was previously a large amount of lethal control that could not have been justified once reporting was necessary. Therefore the reporting requirements attached to all licensing should significantly cut down on unnecessary and unjustifiable lethal control.

Therefore, we recommend that individual licences for adult herring gull should be retained and we agree with Natural England's proposal to require a class licence for control of herring gull eggs and nests.

We believe that a distinction could also be made between nest/egg control and killing adult lesser back-backed gulls. As with herring gull,

we agree with Natural England's proposal to require a class licence for nest and egg control. However, in light of the species' current conservation status and declining population, we are of the opinion that a move to individual licences would be more appropriate for adults. As above, if the proposed class licence for the purpose of preserving public health and safety were to happen, it would need to specify very clearly the kind of people or organisations that could apply for the licence. This should help to ensure work is carried out by individuals or organisations with sufficient training and experience to provide advice on other satisfactory solutions to nest destruction and help provide long term solutions for property owners. Encouraging sustainable solutions in this way could also lead to future savings for individuals and regulators.

As mentioned above 'harmonisation' of licensing arrangements for the two species should bring protection to the higher level for the two species. We also note that according to Table 4 in the Large Gulls paper 21 licences for Herring Gulls were declined in 2012. The purpose of these unsuccessful licence applications was not stated but if any of these were for preservation or public health/safety purposes this suggests that the proposed new arrangements would potentially allow control of herring gulls under a class licence that would have been rejected under individual licences.

Assessment of Regulatory Impact:

A regulatory assessment of our recommendations has not been assessed. We believe that any assessment should take into account the improved regulation that individual licensing of gull control brings over general licences (as evidenced in 3.3 of the Large Gulls annex paper) and the potential for better provision of advice on alternative satisfactory solutions that individual licences would bring.

*Question 3(c): What is your view on the removal of lesser black-backed gulls from the General Licence for the purpose of **preventing serious agricultural damage and disease** (WML-GL04)? If you consider there is a need for this species to remain on this General Licence, please provide evidence of this need.*

Response:

We cannot see the need for lesser black-backed gull to be on this general licence. The small number of cases of agricultural damage and disease that may arise due to either lesser black-backed or herring gull are by far best dealt with by individual licences.

Assessment of Regulatory Impact:

As mentioned in the 'Explanation and Rationale', where the activity takes place on an SSSI it would be the responsibility of the landowner to separately seek consent from Natural England in addition to applying for the class licence. As in our response to question 30(b), we would suggest that it would make sense to require an individual licence in these circumstances. Otherwise there is a risk that a licence holder may have a licence but then have to apply for consent/assent, which they may or may not get. This would make it a simpler and clearer process for licence users, who would find out what they have permission for with just one application.

#### **4. Crow species**

*Question 4(a): Are you aware of any reasons why the change outlined in Proposal 4(a) should not be made?*

Response:

No - we fully agree with this proposal.

Assessment of Regulatory Impact:

#### **5. Air safety Class Licence**

*Question 5(a): Are you aware of any reasons why the change outlined in Proposal 5(a) should not be made?*

Response:

No - we agree with this proposal. It seems sensible to bring WML-CL12 in line with other class licences and will ensure that airports comply with the terms of the licence and provide the returns that the licence requires.

Assessment of Regulatory Impact:

*Question 5(b): Are you aware of any reasons why the change outlined in Proposal 5(b) should not be made?*

Response: No - we agree with this proposal. It is absolutely vital to have proper reporting and the only way of knowing whether users have exercised the licence is if they file a return, regardless of whether they have actioned the licence or not. However we require some clarity on how this will be enforced, considering that the requirement to report activity already exists but, as it says in the text, it is not widely followed

Assessment of Regulatory Impact:

*Question 5(c): Are you aware of any reasons why the change outlined in Proposal 5(c) should not be made?*

Response:

We oppose the addition of curlew given the species' adverse conservation status (i.e. classified as globally Near Threatened on the IUCN red list). Any lethal control of such a threatened species should be handled by individual licences.

With respect to greylag goose, given that Canada goose is already on the list, and with the two species often found around the same sites, this makes sense. However there will need to be safeguards in place to ensure that white-fronted geese are not mistakenly shot.

Similarly, with respect to stock dove, given that woodpigeon is already on the list and the two species are so similar in appearance, it is more than likely that the species is often misidentified and mistakenly shot. With the reporting requirement of this class licence, the two species will be listed separately. We hope that there will be a clause that requires the licence holder to positively identify the birds shot, giving an idea on numbers of each involved.

We do not object to the addition of Egyptian goose in cases where there is enough evidence of the species causing problems of this nature to justify its inclusion. As explained in our response to Question 1(a), the species is non-native, therefore it is not a necessary requirement to apply the usual principle described in point 7(e) of the introduction to the Consultation, namely that licensed action does not have an adverse effect on the conservation status of the species. However, the remaining licensing principles (described in points 7(a-d) of the introduction to the Consultation) still apply.

Assessment of Regulatory Impact:

According to the assessment provided by NE the regulatory impact of adding curlew to this class licence will be small.

## **6. Food premises Class Licence**

*Question 6(a): Are you aware of any reasons why the change outlined in Proposal 6(a) should not be made?*

Response:

No, we support this proposal.

Assessment of Regulatory Impact:

## **7. Trapping Code of Practice**

*Question 7(a): What is your view on the use of a Code of Practice to replace some licence conditions and showing best practice?*

Response:

We are not convinced that the use of a Code of Practice as a separate document appended to the licence is a good idea and may require further thought. It is not clear to us how this will be an advantage over the current regime and how the proposed Code will aid enforcement. Whilst we agree that additional advice is always useful there must be a clear distinction between what is being offered as 'advice' i.e. good practice, and 'terms and conditions' i.e. the statutory requirements that make the use of the traps lawful. Codes of practice are so often taken as not being legally binding that we have doubts that people would take a code of practice as seriously as they would something described as licence conditions. Our view is that the statutory requirements are best placed in the body of the licence whilst any good practice advice can be included in an appended code.

Assessment of Regulatory Impact:

The use of a separate Code of Practice document, as opposed to having everything on one document, will add additional complexity for both users and enforcers.

*Question 7(b): What are your views on the draft Code of Practice at Annex F?*

Response:

Assuming that the points in the 'What you must do' column are the statutory requirements that make the use of the trap lawful, **points 1 and 2** seem rather vague and would in effect be difficult to enforce. For example, at what distance from a public right of way is it acceptable to set a trap? What constitutes a 'reasonable effort' taken to avoid trapping non-target species?

**Point 4: Dispatch of trapped animals.** The instructions about the killing of trapped non-target species are confusing. Why would a trap operator dispatch a non-target species anyway? That would be illegal under Section 1 of the WCA 1981. If the non-targets are 'unfit for release', the trap operator should not have responsibility for deciding whether to kill them or not. That responsibility should lie with a trained veterinarian and it should be the responsibility of the operator to seek that veterinary advice. Otherwise, this clause will be a charter for unscrupulous trap operators to kill birds of prey that they later claim to have been 'unfit for release'.

There is also a contradiction between the instructions for dealing with trapped target birds and decoy birds. In the current code at Point 4, instructions regarding trapped target birds state:

*Trapped target birds must be dispatched immediately upon discovery in a humane manner. Birds must not be dispatched in view of either the decoy bird or other trapped birds. Where decoy birds are used trapped non-target species are not to be dispatched unless they are unfit for release or their release is prohibited.*

However, in the definition of 'Decoy bird' it is stated:

*Any caught bird or other animal that remains in a trap in excess of 24 hours (the maximum trap checking interval) is considered to be a decoy bird in respect to its treatment (see section 6 of the Code) and continued containment (Note: except where permitted by licence the use of live decoys is unlawful).*

Consequently, one section says trapped birds have to be dispatched immediately, whereas within the decoy definition it indicates if trapped beyond 24 hours it is considered to be a decoy bird in regards how it should be treated (food, water, shelter & perch).

We have previously raised concerns about how a decoy bird can be distinguished from a trapped bird in a single compartment trap. We believe it is acceptable to allow trapped birds to become decoys and therefore negate the need to remove them immediately – however, Point 4 of the code needs to reflect this. The traps should have food, water, shelter & perch from the moment they are set. We also believe there should be a limit on the number of decoy birds employed in any trap.

With respect to the advice to avoid the killing of trapped birds being witnessed by the public or others, we are inclined to ask why NE are advising on such secrecy and who are the 'others'?

**Point 5: Traps not in use.** The instructions here are not precise enough and any ambiguity may lead to non-target species becoming trapped. The current wording simply allows a trap operator to claim he was not running a cage trap and that somebody else must have made the trap 'active'. For example, during a case in North Yorkshire a goshawk was found dead in cage trap. Veterinary examination confirmed it had starved to death over a period of several days. The trap operator claimed the trap had been left unset and incapable of catching birds with the access door wedged open but that somebody else must have come along and closed the door.

It is essential to remove any ambiguity in the wording that might lead to non-target species deaths. Operators of multi-catch traps should either remove the door or padlock it open. Similarly with Larsen traps, they should be removed from the site or the trapping doors should be padlocked in the closed position. There should be no doubt it has been deliberately disabled by the trap operator.

We suggest the precise wording used in the analogous Scottish licence should be used, namely:

*When any trap is not in use it must be immobilised and rendered incapable of use. When any multi-catch cage trap is not in use you must*

*either remove access doors from the site or securely padlock the access doors open so that no bird can be confined. Any other traps, when not in use, must be rendered incapable of catching any birds or animals by either removing from site or securing shut with a padlock.*

### **Definition of 'Physically inspected'**

Currently the Code of Practice wording states:

*'Physically inspected' means being close enough to be able to handle the trap to check that it is not damaged, that there is sufficient clean water, that the food does not need to be replenished, and that the health of any decoy birds is satisfactory. It is not sufficient to simply view the trap from a distance, even if you are using a pair of binoculars or similar.*

We believe it should also be pointed out that one of the reasons a person needs to be effectively within touching distance of the trap is that it is necessary to be this close to see injured or unwell birds, both target and non-target, which may be lying on the floor or inside a shelter.

Assessment of Regulatory Impact:

## **8. Keeping trapped birds as decoys**

*Question 8(a): In your view, should there be a maximum time for which decoy birds can be continuously kept within a trap? If yes, what time limit would you consider to be appropriate, and how soon could the bird be returned to a trap?*

Response:

Yes, there should be a defined limit in the licence. We believe that Natural England should seek appropriate veterinary and welfare advice in relation to what the maximum time is.

Assessment of Regulatory Impact:

*Question 8(b): In your view, should there be a maximum time period for which birds can be retained as decoys? If yes, what should this time period be?*

Response: Yes. Most trapping under the guise of general and class licences is seasonal, and as such it would make sense that the decoy bird could be kept at most the length of time of the trapping season appropriate for acting on the general licence. Keeping the bird between the seasons would not follow the terms and conditions of the licence, and as such the licence should make it a condition that the bird is not to be kept as a pet. Again, we believe that appropriate veterinary and welfare advice should be sought with respect to the keeping and use of decoys.

Assessment of Regulatory Impact:

*Question 8(c): In your view, should the options for birds caught under General or Class Licence be restricted to dispatch, release or keeping as a decoy?*

Response:

We are not aware of any alternative, appropriate options. Trapping a bird to make it a pet does not conform with the terms and conditions of the licence, and as such the licence should make it a condition that the bird is not to be kept as a pet. Where decoys are permitted, the licences should adopt the conditions in the analogous Scottish licences, namely:

*“Any dead or sickly decoy bird must be removed immediately from a trap”.*

Assessment of Regulatory Impact:

## **9. Referenced tagging system for traps**

*Question 9(a): In your view, is there merit in the use of a referenced tagging system for traps set under General or Class Licence? If yes, how do you suggest that such a system would be organised? What do you consider the costs and benefits to be?*

Response:

Yes, there is.

In Scotland, the analogous licences state:

*Any trap used under this General Licence must carry a tag or sign 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 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.*

We believe that similar wording should be used in England as we support increased accountability for cage trap use. There have in the past been problems establishing who is responsible for individual cage traps operated on land with multiple potential operators. A system

is required which can identify trap operators where potential offences are under investigation by the police. We propose that traps should have a unique code to identify the trap owner. However, we think the Scottish system of registering at a local police station with a WCO will not be practical in England. This is because in England there are many more police forces and some estates may straddle several force boundaries making registration complicated. In addition, WCO contact details change frequently or they may not be on duty when they need to be contacted. We propose a simple system run by NE where a trap operator registers online and provides details about the proposed trapping operation in return for which he/she is given a code number. The code number can then be attached to all the traps that operator uses. This online register could include a declaration to the effect that the operator has considered all other options and that control by cage traps is considered necessary. This provides a centralised system where police can easily check who the trap owner is for a particular code.

We also feel that consideration should be given to imposing a duty on the trap owner to identify trap operators to the police where reasonably practicable. This would be an equivalent to Section 172 Road Traffic Act 1988 which imposes a duty on vehicle owners to identify users in certain circumstances.

On the general issue of the use of cage traps, we note that Article 8 of the Birds Directive states: *In respect of the hunting, capture or killing of birds under this Directive, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV, point (a).*

The RSPB has increasing concerns about the capture of non-target species and the fact that such birds are being illegally killed rather than released. We are aware that cage traps are highly effective at catching raptors and think cage traps need to be designed to be more selective to properly comply with the Birds Directive. We think trap design of multi-catch cage traps should be properly researched to minimise by-catch – for example by having a maximum size of access point into the trap.

A proper assessment needs to be made to justify the use of these traps all year round. We believe there is merit, depending on activity being undertaken, in assessing whether a trapping season is appropriate.

An example of the problems with the capture of non-target species is provided by the four English case studies below. On each occasion there was a failure to comply with Licence conditions.

1. A buzzard was reported in a cage trap. Following surveillance by the RSPB two gamekeepers arrived and the bird was immediately beaten to death with stick. Both gamekeepers were convicted.
2. A trap containing a buzzard was not checked during three days of RSPB observation (supplementary food was provided during this period). The buzzard was ultimately removed and released by RSPB. The remains of two other buzzards found near the trap were suspected to have died in the cage trap from neglect or were deliberately killed. The trap operator was interviewed and accepted

his failure to check the trap every 24 hours.

3. Two buzzards reported in cage trap baited with fresh rabbit. The trap was monitored by the RSPB and a third buzzard recorded entering trap. All the birds were released unharmed by the RSPB. During a 14 day surveillance period there was no visit by the trap operator. The operator was cautioned by police for trap misuse.
4. Three buzzards reported in a cage trap. The RSPB attended and found one bird in poor condition which was released. During RSPB monitoring of the trap, a gamekeeper arrived and immediately beat both birds to death with club. The remains of 10 other buzzards were found in the vicinity of the cage trap. The gamekeeper later pleaded guilty to killing two buzzards and to a further charge of killing five other buzzards.

We are aware of at least two further cases in Scotland where cage traps were monitored by the RSPB. In both cases raptors were simply killed rather than being released; in one case, over 10 buzzards had been killed over a protracted period. Whilst this is a small sample size, it is of considerable concern that in all 6 cases where RSPB have monitored cage traps, none of the raptors were released in accordance with the Licence.

We have also received considerable anecdotal information from people within the shooting industry that cage traps, which for all intents and purposes appear to be used lawfully to control corvids, are regularly used for illegal control of raptors. We are therefore concerned that the illegal killing of raptors is potentially commonplace, thus more robust enforcement from statutory agencies is required. We believe trap design and the operating period need to be properly researched to minimise such problems. There needs to be increased accountability for trap operators by having a marking system to give the statutory agencies the best opportunity to properly investigate evidence of offences.

Assessment of Regulatory Impact:

#### **10. Use of Larsen-Mate Traps ('Clam' or 'Butterfly Traps')**

*Question 10(a): In your view, should Larsen-Mate traps be specifically permitted for use under relevant General and Class Licences? If yes, what restrictions would be appropriate regarding use of this type of trap? If possible, please estimate what cost (in time and/or financial) these restrictions would have.*

Response:

The use of standard Larsen traps relies on the animal being caught uninjured. However, Larsen-mates close when a spring is triggered, risking injury to both the bird or other animal that triggered the trap, and possibly other animals alongside it. The use of Larsen-mates should be the subject of a rigorous scientific study to assess their suitability for use and whether they are likely to injure target or non-target species. The RSPB has recently obtained film of a Larsen-Mate catching a corvid. The bird was caught as it took off from the split perch which resulted in it being caught by the neck in the top edges of the trap where it remained suspended by the neck for at least 18 hours. This emphasises that these traps need to be rigorously tested to ensure they are fit for purpose. If the traps are considered suitable, in view of the limited size of the cage, then the Scottish approach of only allowing eggs or bread as permitted baits should be adopted. Meat bait is likely to attract birds of prey, most of which are routine scavengers of carcasses.

Assessment of Regulatory Impact:

*Question 10(b): If the use of Larsen-Mate traps were not permitted under General and Class Licences, do you consider that there are situations where their use could be justified under individual licence? Please give details of these situations.*

Response:

No, the same arguments made above regarding general and class licensed use of Larsen-Mate traps, also apply to individually licensed use. But if a case is made then the comments above about rigorous testing apply.

Assessment of Regulatory Impact:

## **11. Humane dispatch**

*Question 11(a): Are you aware of any reasons why the change outlined in Proposal 11(a) should not be made?*

Response:

No comment. This is a welfare rather than a conservation concern, and is best responded to by organisations with expertise in welfare issues.

Assessment of Regulatory Impact:

## **12. Live bird sales**

*Question 12(a): Are you aware of any reasons why the change outlined in Proposal 12(a) should not be made?*

Response:

Yes. Considering that Canada goose, barnacle goose, mandarin duck, Carolina duck and ruddy shelduck are all listed on Schedule 9, we consider this kind of unrestricted breeding and selling of these species incompatible with other parts of Wildlife & Countryside Act 1981. It would be more sensible to either add these species to Appendix 1 alongside Egyptian goose, and to consider licences individually.

It is not appropriate for common scoter, currently listed on Appendix 2 of this general licence, to be either exempt from ringing or permitted to be sold under this general licence at all, as it is a red-listed species of conservation concern.

Furthermore we recommend the addition of Indian house crow (*Corvus splendens*) to those excluded from sale in order to prevent establishment/spread; this species has proved to be highly invasive in countries where it has been introduced and has been identified as a species of concern by the GB Non-native Species Secretariat. Black swan (*Cygnus atratus*) has also been identified as a threat to native species and would also be a pertinent exclusion, and we would also welcome this approach for eagle owl (*Bubo bubo*). Natural England should be regulating the sales of certain non-native species more closely, as informed by the GB Non-Native Species Strategy and species-specific risk assessments.

For information, blue-winged teal is already listed in Appendix 2, and as such is superfluous in this question.

Assessment of Regulatory Impact:

According to the assessment provided by NE, the regulatory impact of adding the species listed will be small.

*Question 12(b): Are you aware of any reasons why the change outlined in Proposal 12(b) should not be made?*

Response:

No - we support this proposal. Anything that helps with licence clarity and specificity is a good thing.

Assessment of Regulatory Impact:

*Question 12(c): Are you aware of any other commonly kept and sold species of waterfowl that should be added to Appendix 2 of General Licence WML-GL18?*

Response: No comment.

Assessment of Regulatory Impact:

### **13. Dead bird sales – defining ‘small numbers’**

*Question 13(a): Are you aware of any reasons why the change outlined in Proposal 13(a) should not be made?*

Response:

We have concerns over this licence since the number of species which may be sold is potentially unlimited, and it thereby represents a departure from the principles of the Birds Directive and the original intentions of the Wildlife & Countryside Act 1981, which explicitly restrict such trade. There is no specific derogation for taxidermy within the Birds Directive.

Our preferred solution is that a Registered Sellers of Dead Birds scheme should be developed for taxidermists to replace the taxidermy element of the sale of dead birds licence. We would envisage a scheme on similar lines to that originally operated by DEFRA's predecessors but which was suspended in the interest of deregulation rather than effective nature conservation. We acknowledge that every effort should be made to reduce the regulatory burden and cost of such a scheme, consistent with it being an effective tool for nature conservation. However, widespread trade in wild birds and derivatives can only be consistent with the Birds Directive (if at all) if it is fully and properly regulated. It is our view that a General Licence is not able to fulfil this requirement.

If NE proceed with the proposal to amend this licence, it would be useful to know if the numbers chosen to represent 'small numbers' were chosen arbitrarily or are based on some kind of analysis of numbers of each type of species sold. Presumably this information is available to NE under the terms of the recording and reporting requirements of the licence.

Notwithstanding the comments above, since there is no definition of 'small numbers' given in the current General Licence, it seems reasonable to try to limit the numbers of specimens sold. However, whilst limiting the number of General Licence species to 25 specimens per year would seem unlikely to have any negative conservation impact, the proposal for 5 non-General Licence species is a 'one glove fits all' approach to a group of species which range from the very common e.g. house sparrow (UK pop c. 3 million pairs) to the very rare e.g. red-backed shrike (UK pop 2-4 pairs). We suggest that sales of all species listed on Schedule 1 of the Wildlife & Countryside Act 1981, which includes our rarer and more vulnerable breeding birds, should require an individual licence to be applied for.

Assessment of Regulatory Impact:

### **14. Species exempt from sale of dead birds General Licence**

*Question 14(a): Are you aware of any reasons why the change outlined in Proposal 14(a) should not be made?*

Response:

No comment

Assessment of Regulatory Impact:

### **15. Sale of dead mute swans**

*Question 15(a): Are you aware of any reasons why the change outlined in Proposal 15(a) should not be made?*

Response:

We do not have comments on this proposal. We would be interested to have more details of the issue that the Her Majesty's Swan Marker is seeking to address.

Assessment of Regulatory Impact:

### **16. Sale of black-headed gull eggs (taken under separate individual licence)**

*Question 16(a): Are you aware of any reasons why the change outlined in Proposal 16(a) should not be made?*

Response:

No, we have no objection to this change in principle, other than seeking reassurance that extending the season for sale under the General Licence will not lead to a corresponding increase in the number of eggs taken from the wild under individual licence. By extending the legal selling period to end of June, this covers the vast majority of the egg-laying period (which runs from late April to early July). Since there is no way of knowing when the eggs were collected, there is a serious risk that anyone with a licence will continue to collect eggs right up to the deadline of being able to sell them.

Assessment of Regulatory Impact:

### **17. Bird exhibition**

*Question 17(a): Are you aware of any reason to treat the species listed on Annex 1 (rare visitors) differently?*

Response:

No, allowing these species to be exhibited without the fitting of numbered metal close rings seems illogical - bringing all species involved under the same ringing requirements makes sense.

Assessment of Regulatory Impact:

*Question 17(b): Are you aware of any reasons why any of the changes outlined in the above Proposals (17(a) – 17(c)) should not be made?*

Response:

No – we support these proposals.

Assessment of Regulatory Impact:

### **18. Keeping of birds in show cages for training purposes**

*Question 18(a): In your view, which of the following licence conditions would provide the most appropriate restriction on the length of time a bird can be confined under General Licence WML-GL16?*

- (i) No bird shall be kept or confined in such a cage for longer than one hour in any period of twenty four hours.*
- (ii) No bird shall be kept or confined in such a cage for longer than three hours in any period of twenty four hours.*
- (iii) No bird shall be kept or confined in such a cage for longer than six hours in any period of twenty four hours.*

Response:

No comment. This is a welfare rather than a conservation issue, and is best responded to by someone with expertise in cage bird welfare i.e. the RSPCA

Assessment of Regulatory Impact:

### **19. Sale of amphibians**

*Question 19(a): Are you aware of any reasons why the change outlined in Proposal 19(a) should not be made? If you use this licence, please indicate the approximate number of specimens sold under this licence each year, and the likely time and financial cost resulting from revoking this licence.*

Response:

No - we support this proposal. Anything that can be done to reduce the spread of disease in amphibians is a positive move.

Assessment of Regulatory Impact:

### **20. Taxidermy**

*Question 20(a): Are you aware of any reasons why the change outlined in Proposal 20(a) should not be made?*

Response:

Yes. As stated in Section 27 below, enforcement relating to General Licences is the responsibility of the Police, who would decide upon the action taken in any given case. Breaches of Class Licence conditions are enforced by Natural England, who would decide upon the appropriate enforcement action according to their Compliance and Enforcement Position. Prosecution would only be pursued in the event of serious breaches of conditions.

This means that General Licence GL17, which permits the sale of 'small numbers' of dead birds by persons who are not professional taxidermists will be enforced by the police. Conversely, GL02, which will become a Class Licence and will be used by professional taxidermists and people who sell larger numbers of dead birds, will be enforced by Natural England. We believe that this approach is not

consistent with the potential seriousness of the crimes involved and the identity of those responsible. Those who are professional taxidermists and who sell larger numbers of birds should be at risk of prosecution by the police and not subject to assessment by Natural England which may or may not result in prosecution. This will result in uneven application of justice.

Assessment of Regulatory Impact:

*Question 20(b): Are you aware of any reasons why the change outlined in Proposal 20(b) should not be made?*

Response:

See our answer to 20(a) above.

Assessment of Regulatory Impact:

*Question 20(c): In your view what other activities, relevant to taxidermy and already covered under other General and Class Licences, should be included under this Class Licence?*

Response:

We refer to our response to Proposal 13 (above). Our preferred solution is that a Registered Sellers of Dead Birds scheme should be developed for taxidermists to replace the taxidermy element of the sale of dead birds licence.

Assessment of Regulatory Impact:

*Question 20(d): In your view, should the Class Licence be restricted to members of the Guild of Taxidermists, or should it be available to anyone with a professional involvement in taxidermy?*

Response:

If the Class Licence is to remain restricted to the current proposals, then we believe that it should be restricted to members of the Guild of Taxidermists. However, if it is expanded to include all sales of dead wild birds this would be impractical.

Assessment of Regulatory Impact:

## **21. Rearing and keeping of Schedule 4 birds**

*Question 21(a): Are you aware of any reasons why the change outlined in Proposal 21(a) should not be made?*

Response:

Yes, we are aware that individuals who would fall under the definition of 'authorised persons' in this licence have, in the past, been convicted of offences in relation to captive birds of prey. Consequently, we believe that there needs to be an accurate audit trail to account for possession of wild Schedule 4 birds taken into captivity and that this should include the need for the two conditions above to remain on the licence. However, this could be achieved by submitting the records online thereby reducing paperwork.

Assessment of Regulatory Impact: According to the assessment provided by NE the regulatory impact of the proposed changes would be small.

*Question 21(b): Are you aware of any reasons why the change outlined in Proposal 21(b) should not be made?*

Response:

Yes. Notwithstanding the identity of the organisations or persons acting on their behalf we believe that there should be an audit trail of possession for all Schedule 4 birds held in captivity until such time as they are disposed of as evidence by the court. Consequently we would prefer that the licence conditions above should remain in the event that this licence is retained. However, this requirement could be simplified by requiring the information to be submitted online.

Assessment of Regulatory Impact: According to the assessment provided by NE the regulatory impact of the proposed changes would be small.

*Question 21(c): Are you aware of any reasons why the change outlined in Proposal 21(c) should not be made?*

Response:

Yes. The regulatory impact assessment for these proposals claims that the likely main effect of these changes will be to increase compliance, as the information required by these licence conditions is not usually provided. In other words, most of the licence users are apparently acting illegally. Natural England's response to this is not to enforce the law but instead to remove the licence conditions thus making previously illegal actions legal. The theoretical saving that is quoted, besides being a small amount, is irrelevant since the information required by the licence is apparently not submitted anyway.

We believe that there should be a comprehensive audit trail of possession for all Schedule 4 birds held in captivity. Consequently, we believe this licence condition should remain. However, this requirement could be simplified by requiring the information to be submitted online.

Assessment of Regulatory Impact: As stated above, the theoretical saving that is quoted, besides being a small amount, is irrelevant since the information required by the licence is apparently not submitted anyway.

*Question 21(d): What is your view on extending the period that chicks of **golden eagle** (*Aquila chrysaetos*) and **white-tailed eagle** (*Haliaeetus albicilla*) can be kept under WML-GL11 before registration from 15 days after hatching to 30 days after hatching? Do you agree that this period should remain at 15 days after hatching for all other Schedule 4 species?*

Response:

We understand that the proposal to extend the period for ringing eagle chicks to 30 days is due to claims from some bird keepers that the rings fall off birds at 15 days. Whilst we do not understand why it has taken over 30 years for this claim to be made, we have no strong views on this proposal. The 15 day period for other Schedule 4 species should remain unchanged.

Assessment of Regulatory Impact:

## **22. Investigation of offences – keeping Schedule 4 birds**

*Question 22(a): In your view, is there any reason to retain General Licence WML-GL09? If so, for what purpose?*

Response:

We have no strong views on this. If Schedule 4 birds are seized during an investigation that the RSPB is assisting with, the birds are always seized as police property and may then be passed over to RSPB Officers to transport to a suitable establishment for housing whilst legal proceedings are pending. Consequently, we would be content for this outcome to be catered for by the RSPB's organisational licence.

Assessment of Regulatory Impact:

## **23. Investigation of offences – possession of tissue samples**

*Question 23(a): Are you aware of any reasons why the change outlined in Proposal 23(a) should not be made?*

Response:

No – we support this proposal.

Assessment of Regulatory Impact:

**24. Disposal of carcasses of cetaceans washed up on beaches**

*Question 24(a): In your view, would a General Licence permitting the disposal of cetacean carcasses be useful? If so, please give any indication you can of how often such a licence is likely to be used.*

Response:

No comment

Assessment of Regulatory Impact:

**25. Pond dipping**

*Question 25(a): Are you aware of any reasons why the change outlined in Proposal 25(a) should not be made?*

Response:

We fail to understand why any school or educational facility should have the desire or need to temporarily possess a great crested newt for as long as this proposal permits. We have no objection to the capture of great crested newt during pond dipping activities, but suggest that the newts should not be removed from the vicinity of the pond. Following capture and careful observation, the newts should be returned to the pond (given the problem of disease in amphibians, this licence would need to include a requirement that any newts are always released back into the site from which they were taken). Pond dipping activities do not usually involve the removal of species captured, or

possession of said species for longer than the duration of the pond-dipping activity, and it seems unnecessary to treat newts any differently.

We support the proposal to allow great crested newts to be captured during pond dipping activities without the need to apply for an individual licence. The low-level of disturbance caused by possessing a newt for a short period of time during a pond dipping activity before returning it to the pond, is very different from the disturbance caused during surveys and other activities requiring a licence. As such, the requirement of a licence for pond dipping seems unnecessary.

Assessment of Regulatory Impact:

## **26. Introduction of a 'Read and understand' licence condition**

*Question 26(a): Are you aware of any reasons why the change outlined in Proposal 26(a) should not be made?*

Response:

No. This is a basic and important requirement that responsible licence users should comply with. We have concerns that offences are sometimes committed against species on general or class licences with the offenders retrospectively relying on the licence for their defence, without first having properly considered alternative actions.

Assessment of Regulatory Impact:

## **27. Breaching licence conditions**

*Question 27(a): Are you aware of any reasons why the change outlined in Proposal 27(a) should not be made?*

Response:

No. This is a sensible clarification and is in line with the wording on Scottish licences. We would like to see it made very clear that breach of licence conditions effectively means that an offence has been committed and that the person is liable for prosecution. If the

consequences of breaches are spelt out strongly enough, it will encourage greater compliance.

Assessment of Regulatory Impact:

## **28. Sanction for breaches of General Licences**

*Question 28(a): Are you aware of any reasons why the change outlined in Proposal 28(a) should not be made?*

Response:

As a general principle, we think that this would be a reasonable amendment to make to licences and could be beneficial where, for example, the police decide to caution an offender rather than prosecute, or on areas of land where there has been a history of non-target species being caught in cage traps. However, we are concerned by the idea that Natural England would assess the severity of the breach as technical, minor, medium or significant. Our view is that the courts should be the arbiters of how serious the breach of any particular aspect of a licence is, based on the evidence presented to them. We think that it would be much simpler if Natural England adopted the approach of Scottish Natural Heritage by substituting the words: '*Natural England reserves the right to exclude the use of this General Licence by certain persons and/or on certain areas of land where we have reason to believe that wild birds have been taken or killed by such persons and/or on such land other than in accordance with this General Licence.*'

Assessment of Regulatory Impact:

*Question 28(b): Are you aware of any reasons why the change outlined in Proposal 28(b) should not be made?*

Response:

No reasons that we are aware of.

Assessment of Regulatory Impact:

## **29. Monitoring and reporting**

*Question 29(a): Do you support our aspiration to collect more information on the level of wild bird control carried out under General Licences? Please indicate the reason(s) for your answer.*

Response:

Yes, both for better assessment of the impacts of culling, and the ability to comply with Birds Directive reporting requirements.

There is currently no way of knowing how much lethal control under general licences is impacting on bird populations. Information on this would be especially useful for species of high conservation concern such as some gull species, and to assess the level of lethal control of those species whose populations are currently of no conservation concern. A reporting requirement would help to rectify this. However, it will be important to bear in mind that because there is no register of licence holders to match with usage returns, the reports may not reflect the full scale of use of general licences or compliance with them.

There is currently a danger that general licences are open to misuse. A reporting requirement will establish how widespread this dubious practice is, and encourage the user to think twice before exercising the licence, which in turn will help to increase compliance with the licence conditions.

Assessment of Regulatory Impact:

*Question 29(b): If your answer to 29(a) is 'yes', do you favour a voluntary or a mandatory system for gathering this information? Please indicate the reason(s) for your answer.*

Response:

Mandatory. This will be the best way of achieving more complete and accurate information on the scale and impact of activities. Considering that the number of reports received annually for the air safety class licence is low, and that has had to be made mandatory, we suspect that any voluntary reporting on the general licences would not work.

Assessment of Regulatory Impact:

*Question 29(c): Do you support the idea of carrying out a trial of a voluntary reporting?*

Response:

Our preference is for mandatory. If voluntary reporting is trialled then we would expect to see a mandatory system subsequently

introduced, unless high levels of compliance were demonstrated throughout the trial.

Assessment of Regulatory Impact:

*Question 29(d): Do you have any information or views on the additional effort that it would take for licence users to collect information on their use of General Licences?*

Response:

Providing data would be no problem for RSPB staff who are used to collecting data to satisfy RSPB scientific integrity (we already collect data on trapping effort, locations, number of birds killed etc). With regard to other licence users, if designed correctly with the ability to submit returns online via a simple format, the additional effort would be minimal.

Assessment of Regulatory Impact:

*Question 29(e): Even if we do not proceed with plans to gather information on General Licence use, do you think that there is a special case for collecting this information in respect to action taken on designated sites (i.e. SSSI, SPA, SAC)?*

Response:

Yes – we consider this essential to inform understanding of the level of impact on these sites and their features, to inform subsequent consenting/Habitats Regulations Assessments (HRA) decisions in respect of licensing, and to inform HRA in combination assessments of all plans, projects and activities which could act in combination with the impacts of licensed activities

Assessment of Regulatory Impact:

### **30. Action taken on European designated sites (SPAs and SACs)**

*Question 30(a): Are you aware of any reasons why the change outlined in Proposal 30(a) should not be made?*

Response:

Regarding questions 30 (a–c), a licence should not authorise any action where there is a risk of a likely significant effect on features of a European site, regardless of whether or not the target species are qualifying features, and of whether the activity is to take place inside or outside of the site. In order to comply with duties to avoid damage or disturbance under Art 6(2) Habitats Directive (which also applies to SPAs) and regulations 9 and 21 Conservation of Habitats and Species Regulations 2010 (as amended), a “likely significant effect” should

be the trigger for requiring a Habitats Regulations Assessment and individual licences. At present the proposed text only refers to species which are qualifying features and impacts within a site.

Assessment of Regulatory Impact:

*Question 30(b): Are you aware of any reasons why the change outlined in Proposal 30(b) should not be made?*

Response:

As above. We would also suggest that it would make sense to require an individual licence in these circumstances. Otherwise there is a risk that a licence holder may have a licence but then have to apply for consent/assent, which they may or may not get. (We understand that this is an existing issue with planning permission and EPS licenses).

Assessment of Regulatory Impact:

Our recommended changes in respect of 30(b) and 30(c) would provide greater clarity and reduce uncertainty for potential license users.

*Question 30(c): Are you aware of any reasons why the change outlined in Proposal 30(c) should not be made?*

Response:

'Likely significant effect' (and not potential adverse impacts as currently stated) must be the trigger need for advice, and in order to fulfil the relevant legal requirements this caveat should be given the same status as 30a) and 30b) (i.e. the license must not authorise any activity which could have a 'likely significant effect')

Assessment of Regulatory Impact:

As above.

### **31. No Satisfactory Alternative**

*Question 31(a): Are you aware of any reasons why the change outlined in Proposal 31(a) should not be made?*

Response:

No - anything that stresses the importance that non-lethal methods are tried before lethal control can be considered is a good and positive step. It might also be recommended that anyone taking action under a general licence should make a record of the "reasonable and appropriate steps" taken to resolve the problem before resorting to lethal control, for use should the legality of their general licence action

be challenged.

We would add to the proposed new wording the following amendment:

*“In respect to the species listed at paragraph 2(i)(a) above, this licence can only be relied on in circumstances where the authorised person has taken reasonable and appropriate steps to resolve the problem **by non-lethal methods**, such as scaring and proofing”.*

Assessment of Regulatory Impact:

### **32. Removal of abandoned eggs from nest boxes**

*Question 32(a): Are you aware of any reasons why the change outlined in Proposal 32(a) should not be made?*

Response:

No – we support this proposal.

Assessment of Regulatory Impact:

### **33. Temporary moving of eggs and chicks within nests for recording purposes**

*Question 33(a): In your view, is there a need to permit the movement of eggs and chicks within a nest to facilitate accurate data collection under the Nest Recording Scheme?*

Response:

We suggest it might be simpler to include this in the permits that BTO would issue to these surveyors/ringers in the first place.

Assessment of Regulatory Impact:

### **34. Falconry**

*Question 34(a): Are you aware of any reasons why the change outlined in Proposal 34(a) should not be made?*

Response:

The proposal does not specify a value for the “small numbers” of each species that can be taken. For species of conservation concern, a threshold of individuals allowed to be killed in any one year under the proposed new Class Licence needs to be set, beyond which falconers would need an individual licence. As in our response to Q3(a), the reporting requirements should include details of the non-lethal methods tried to resolve the problem, before resorting to lethal control. Finally, we question whether the species listed are all relevant to landfill sites -for example jay and monk parakeet.

Assessment of Regulatory Impact:

### **35. Disturbance of Schedule 1 birds for pre-development surveys**

*Question 35(a): Are you aware of any reasons why the change outlined in Proposal 35(a) should not be made?*

Response:

Yes. We strongly disagree with the inclusion of peregrine on this proposed licence. The 2002 national peregrine survey showed that breeding peregrines had declined in several parts of the UK. Recently published science shows that the species is suffering significant persecution in upland areas in northern England and the RSPB receives numerous reports of casual disturbance and deliberate killing throughout the UK annually. Given the small number of licences issued in 2012, the necessity to apply for an individual licence should remain.

Assessment of Regulatory Impact:

According to the assessment provided by NE, the regulatory impact of including peregrines on this licence will be small.

*Question 35(b): What are your views on the likely demand for such a licence?*

Response:

No comment

Assessment of Regulatory Impact:

Thank you for your response.

All consultation responses will be considered in reaching our final decision on the proposals.

The adoption of any of the proposals detailed in this consultation will be communicated in a suitable period of time prior to changes being implemented.