



Scotland

THE ILLEGAL
KILLING OF
BIRDS OF PREY
IN SCOTLAND
2015-17

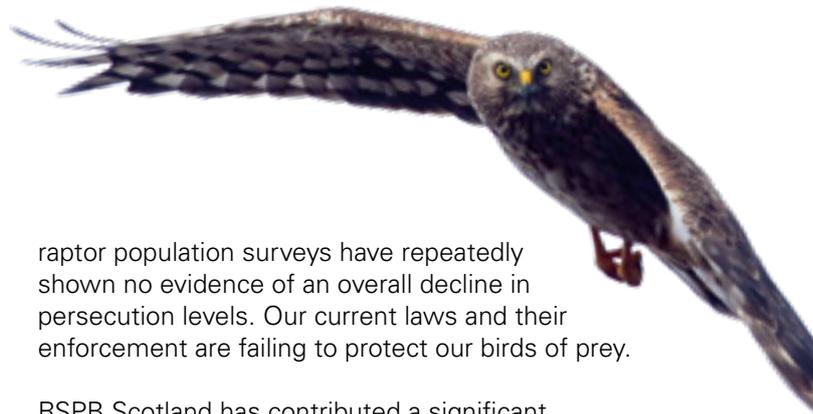


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Foreword



Scotland's birds of prey are an integral part of our natural heritage. Our country holds a significant proportion of the UK and European populations of several species, and they attract thousands of visitors to our countryside, bringing millions of pounds of tourist spend into the rural economy in places like Skye, Mull and Dumfries and Galloway.

A survey found that between 2004 and 2015, the Galloway Red Kite trail attracted over 100,000 visitors to the area and that £8.2m of spending was directly attributable to people who came to see the kites. The trail also supported the equivalent of 19 full-time jobs each year.

However, despite these birds having had full legal protection for nearly 70 years, there are still those who wish to do them harm. In this report, we describe the evidence – from police investigations, from scientific research and from eye-witness accounts – that links the majority of raptor persecution incidents to management practices carried out for intensive gamebird shooting, particularly on driven grouse moors.

We also highlight the peer-reviewed science showing that these crimes continue to constrain the populations and ranges of several bird of prey species, but demonstrate why published numbers of the victims of persecution fail to reflect the extent of the problem.

Crimes against our birds of prey have persisted because those responsible are very difficult to detect. On the rare occasions that prosecutions do occur, the penalties imposed by our judicial system have failed to reflect the conservation impact of the offences. While the introduction of new legislation, such as vicarious liability, have been welcome and have undoubtedly contributed to a reduction in the use of illegal poisons,

raptor population surveys have repeatedly shown no evidence of an overall decline in persecution levels. Our current laws and their enforcement are failing to protect our birds of prey.

RSPB Scotland has contributed a significant amount of evidence to the ongoing review of grouse moor management being undertaken by an independent panel commissioned in 2017 by the Scottish Government. In this, and elsewhere, we have been clear that decades of self-regulation, partnership initiatives, codes of good practice and promises from the grouse shooting sector have singularly failed to address the systemic criminality associated with parts of the industry.

Indeed, despite many public warnings from our politicians that criminal activity must stop, those involved continue to find ever more underhand ways to break wildlife protection laws.

This is why, in our view, driven grouse shooting must now be made more publicly accountable and effectively regulated through a licensing scheme, with sanctions to remove licences where wildlife laws are not respected.

Something needs to change.



Anne McCall
Director Scotland

Recommendations

Driven grouse shooting estates should be licenced, with the right to shoot dependent on legal, sustainable management practices. Recognised best practice should be linked to an effective system subject to periodic updating to take account of the findings of new research. Public as well as private interests should be properly reflected in any such system.

The Scottish Government should fund a structured programme of satellite tagging of birds of prey, notably golden and white-tailed eagles, hen harriers and red kites. Satellite tagging of birds of prey provides significant evidence as to where raptor persecution is occurring regularly, but is also a deterrent to those wishing to use illegal poisons in the countryside. Suspicious disappearances of satellite-tagged birds of prey should be included in government wildlife crime reports, and included as evidence during consideration of general licence restrictions.

The exchange of information between statutory agencies, for assessment in cases considered

for general licence restrictions, should be streamlined and sped up significantly. Provision of evidence by third parties to assist in this process should be considered on a case by case basis.

The Scottish Government should bring in legislation to ensure that an individual's presence on land for the purpose of obtaining evidence of crime should not be excluded from access rights.

The admissibility of video footage of alleged wildlife crime incidents should be determined by a court. However, video evidence of an alleged wildlife crime, obtained where there was no compromise of an individual's European Convention on Human Rights Article 8 right to privacy should be admissible by default.

Confirmed wildlife crime incidents should be publicised as soon as suspects for the crime are likely to be aware an investigation is underway. This is particularly important when there is a threat to public health and safety.



Introduction

In December 2015, RSPB Scotland published *The Illegal Killing of Birds of Prey in Scotland: a review 1994-2014*.¹ This comprehensive report documented over 1,000 raptor persecution incidents and summarised their context through their impact on the conservation status of various species.

It examined the challenges faced by investigators and prosecutors in bringing the perpetrators of these wildlife crimes to justice, and concluded by stating that we would not see any improvement in the conservation status of birds like hen harriers and golden eagles until all land management in our uplands is carried out wholly within the law and until the public interest in the way these areas are managed is asserted.

We also gave the firm commitment that RSPB Scotland would continue to document and highlight incidents of raptor persecution; that we would assist the statutory agencies in trying to ensure that the perpetrators faced justice; that we would continue to be proactive and evidence-based in targeting areas for monitoring; that we would continue to present the evidence we and others have obtained as the basis for recommending further improvements to legislation.

This new report, covering 2015-17, brings the story up to date and illustrates how we have worked to uphold this commitment. It:

- summarises confirmed raptor persecution incidents that occurred in Scotland in 2015-17
- discusses the investigations and prosecutions that arose from some of these cases
- discusses if the legislation and sanctions available to our statutory agencies are fit for purpose
- outlines the results of the latest scientific research and survey data
- discusses recent political developments, and
- attempts to find a way forward to ensure that Scotland's birds of prey are indeed protected.

There have been many developments over the intervening three years, including:

- the publication of the results of several national raptor population surveys
- comprehensive political scrutiny of issues surrounding bird of prey persecution
- a pesticide disposal scheme
- successful prosecutions of some of the perpetrators of raptor persecution crimes while other cases were discontinued

- parliamentary petitions
- general licence restrictions, and
- government-commissioned reviews.

However, there has been a constant throughout – the illegal killing of Scotland's birds of prey has continued.

The techniques may have changed, with the use of illegal poisons now at a much lower level than that of just a few years ago. But, there is increasing evidence – from eye-witness testimony, video footage, satellite transmitters and, intelligence received from individuals working in the gamekeeping community – that significant efforts continue to be made, including the use of sophisticated thermal imaging or night vision technology, to ensure that birds of prey continue to be “removed” from intensively-managed grouse moors, with birds such as golden eagles or hen harriers routinely targeted at roosts.

Of those incidents uncovered in 2015–17,

- 15 birds of prey were confirmed as the victims of illegal poisoning (as well as four hooded crows and two ravens)
- three poison baits were found
- four bird of prey nests were shot out or burnt and destroyed
- three birds of prey (and a common gull) were caught in illegally-set spring traps
- other such illegal traps, set to catch birds of prey, were found on four occasions, and
- eight birds of prey (and a short-eared owl) were found shot.

Apart from one of the poisoning incidents, all of these occurred on or adjacent to land managed for gamebird shooting.

In addition to the confirmed incidents above, five satellite-tagged hen harriers and eight satellite-tagged golden eagles “disappeared” during the period. Eleven of these 13 incidents (84%) occurred on land managed for driven grouse shooting.

Of course, only a tiny proportion of our birds of prey are fitted with satellite transmitters. Given the number of these alone that are illegally killed or disappear suddenly and suspiciously on Scotland's grouse moors, never to be seen or heard of again, the actual death toll being exerted on our raptors – our golden eagles, hen harriers, peregrines, goshawks, white-tailed eagles, red kites – must be enormous.

¹ http://www2.rspb.org.uk/Images/illegal-killing_tcm9-411686.pdf
(Accessed 15 November 2018)

3. Raptor persecution in Scotland

It has long been RSPB Scotland's contention that when discussing raptor persecution, giving any great emphasis to the "annual body count" of victims of raptor persecution crimes, or to the number of illegal traps, destroyed nests or poison baits that just happen to be discovered in the vastness of our uplands in any given year, is misplaced. As ever, such numbers only represent those victims, traps and/or baits that were discovered and tested.

It is impossible for anyone to say what the number of actual incidents is, and what proportion of these were found and documented. Clearly those criminals undertaking the illegal killing of birds of prey do not wish to be caught; hence such activities are carried out in remote areas where they are likely to remain undetected, in areas rarely accessed by the public and where evidence can easily be concealed or destroyed by the perpetrators. Thus, given that public access in many rural areas is concentrated on or close to paths and tracks, any criminal activity away from such areas is likely to remain undiscovered.

Secondly, the search effort that comes across evidence of crime related to raptor persecution is entirely *ad hoc*. Most victims are discovered purely by chance, by hill walkers, birdwatchers or others enjoying the countryside. Some victims have been found because they have been fitted with radio transmitters or satellite tags. Others have been discovered during organised searches, led by the police, in investigating previous incidents.

In other words, with a highly variable search effort, interpreting changes in numbers of reported incidents from year-to-year is extremely difficult. What is readily apparent however, is that the illegal killing or targeting of raptors continues and is widespread. This is supported by an ever-increasing body of peer-reviewed scientific studies including a number of new papers published in 2015–17.

During this period, PAW Scotland published "hotspot" maps showing the locations of confirmed raptor persecution incidents in 2014, 2015 and 2016. Similarly, the 2014 Wildlife Crime in Scotland Annual Report² (covering 1 April 2013–31 March 2014) was published by Scottish Government in September 2015, the 2015 report in November 2016³ and the 2016 report⁴ in December 2017. The reports summarise a range of wildlife crime offences, including crimes against raptors, occurring during each respective year.

² <https://www2.gov.scot/Resource/0048/00486449.pdf>
(Accessed 15 November 2018)

³ <https://www.gov.scot/publications/wildlife-crime-scotland-2015-annual-report/>
(Accessed 15 November 2018)

⁴ <https://www.gov.scot/publications/wildlife-crime-scotland-2016-annual-report/>
(Accessed 15 November 2018)



3. Raptor persecution in Scotland *continued*

Given the caveats we mention above, these can never be a complete record, and they do not claim to be so. But, while RSPB Scotland has welcomed the publication of both the hotspot maps and the annual reports, in that they play an important role in raising public awareness of both the broad locations where these crimes are taking place, and perhaps the extent to which criminality can impact on our wildlife, we remain concerned that the data included in these publications is often incomplete or inaccurate, with the statement included that in some cases details “have been withheld for police operational reasons”. In January 2017, members of the Scottish Parliament’s Environment, Climate Change and Land Reform (ECCLR) Committee raised these concerns while taking evidence from both the police and RSPB Scotland, among others, on the report.

Police Scotland have argued that publishing details of “specialist information” about an incident may undermine a case. We accept this principal. However, there have been significant inconsistencies across the various police divisions about the decision whether to publicise, and the timing of that publicity. Ironically, in some cases publicity has been premature, for example

before a post mortem or toxicology analysis has confirmed that a crime has occurred, or in some cases publicising details of a crime before an on-the-ground investigation takes place; clearly this could alert a potential suspect and allow the disposal of evidence.

It remains our belief, supported by considerable experience and close involvement with innumerable wildlife crime investigations through assisting the statutory agencies, that if evidence is not secured and a suspect (or suspects) identified within the first few days of a wildlife crime investigation, further information or evidence sufficient to enable a prosecution will not be forthcoming thereafter. The 2014 case, involving the mass poisoning of birds of prey on the Black Isle, attracted considerable media attention and elicited numerous appeals – and a reward of £26,000 – but the perpetrator was never identified. We also believe that publicity of these cases is very much in the public interest, not least because if illegal traps or poisons have been used, these pose a significant risk to the health and safety to the public and/or their companion animals as well as protected birds of prey and other wildlife.



4. Incidents in 2015-17

We are aware of confirmed raptor persecution crimes from 2017 that remain under active investigation by the police and/or are being considered for prosecution by the Crown Office Procurator Fiscal Service. We have made the decision not to publish details of these incidents until such investigations are complete. With this in mind, and with the caveats we outline earlier, this report does not attempt to provide an exhaustive list of every raptor that was illegally killed in Scotland during the three-year period covered by it. Below, however, we do highlight some of the incidents uncovered.

The period began with a peregrine found poisoned, with the banned pesticide carbofuran, in a forest beside a grouse moor in the Touch Hills of Stirlingshire on 2 January 2015, while a poisoned red kite was found a few miles south-west of Aberfeldy, Perthshire, later the same month.

Two poisoned buzzards at Edradynate in Perthshire in March 2015 were on an estate with an appalling history of poisoning incidents. A subsequent police-led follow-up in June 2015 found another poisoned buzzard here, while two further buzzards were poisoned in the same location in late 2017.

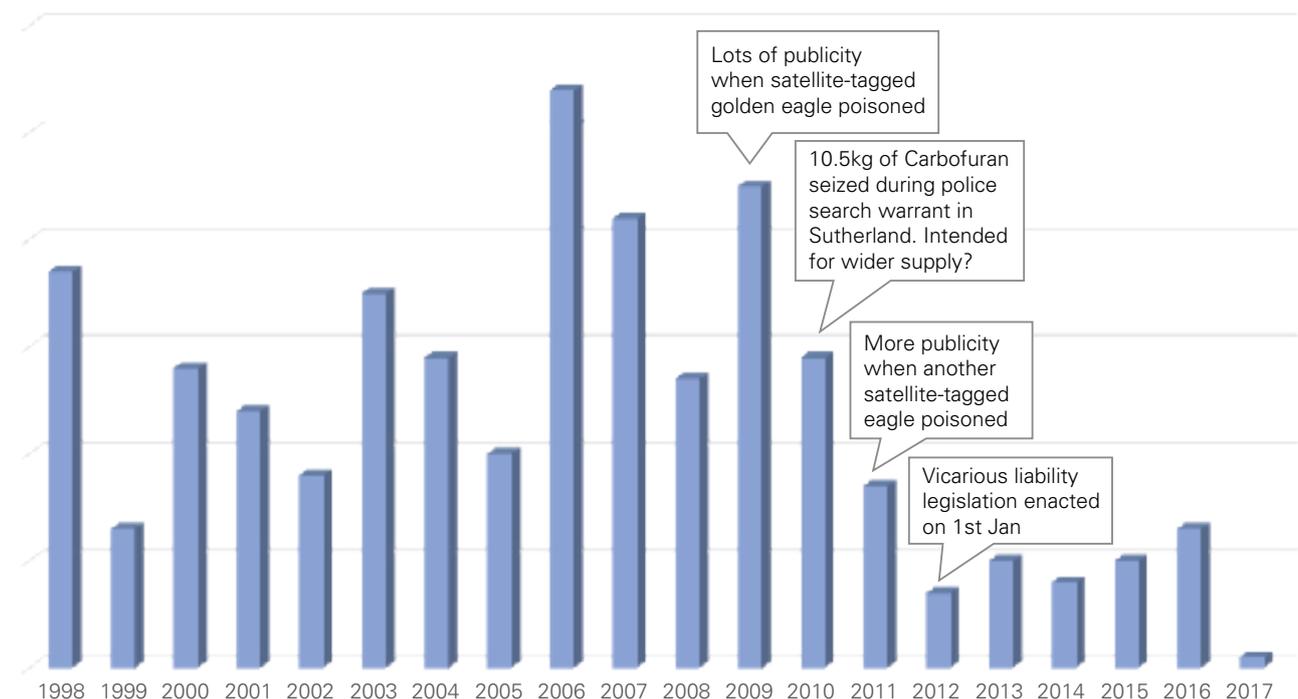
In another area with a significant number of previous persecution cases, several poisoned buzzards were found on the Raeshaw Estate in the Scottish Borders in September and October 2015 – these are discussed in more detail later in this report. A red kite from the north Scotland population was found poisoned in October 2015, in Glenferness, Nairnshire.

In 2016, a buzzard was the victim of strychnine on farmland near Patna in Ayrshire in April, while another buzzard found next to a pheasant release pen near Kirkcudbright, Dumfries & Galloway, in September was poisoned with carbofuran. A buzzard, four hooded crows and a raven were the victims of an illegal poisoning incident on Lewis the same month.

Although there are inherent problems in trying to identify any trends or patterns of behaviour with regard to raptor persecution, with only the one poisoning incident reported in 2017, it does appear that the use of these chemicals has declined markedly in comparison with just a few years previously, when there were regularly 20, 30, or even 40 incidents in a year, as shown in **Figure 1** below.

Since proposed vicarious liability legislation was trailed in Scottish Parliamentary Committee discussions,

Figure 1 Confirmed poisoning incidents in Scotland 1998–2017



4. Incidents in 2015-17 continued

and subsequently enacted at the beginning of 2012, there have been fewer detected incidents involving illegal poisons. We believe this is no coincidence – the contemporaneous and well-publicised increase in the use of satellite transmitters to track birds of prey increased the possibility of a poisoner being caught, or at least increased the chances of such crimes being detected. This obviously now had potential consequences for an employer under the new legislation.

Whatever the cause of this decline, however, it is very welcome, given the indiscriminate impact that poison baits can have, whatever the intentions of the perpetrator. However, we remain concerned there still appear to be stockpiles of illegal and very toxic chemicals being retained on some estates, as those cases uncovered during the period considered in this report only confirm.

Getting rid of illegal pesticides

A pesticide disposal scheme, launched by the Scottish Government in February 2015, and strongly supported by the Partnership for Action Against Wildlife Crime Scotland (PAWS), ran for three months and saw a substantial quantity of illegal pesticides removed from circulation – this included over 100kg of carbofuran,⁵ the most regularly recorded pesticide in raptor poisoning cases. In commending the work of the Scottish Government, and the stakeholders involved in implementing the scheme, and welcoming the news that such an amount of illegal and dangerous pesticide has been removed from circulation, RSPB Scotland noted that from the number and distribution of incidents where protected wildlife had been recently poisoned, it was clear that a number of individuals had held on to their stockpiles of these chemicals. Subsequent incidents, including those in previous poisoning “hotspots” have confirmed this to be the case. We hope that, given that there have been several opportunities to legally dispose of these pesticides, anyone convicted of being in possession of or using such chemicals will face the strongest penalties available to the courts.

⁵ <https://news.gov.scot/news/pesticides-disposal-scheme>
(Accessed 1/10/2018)

Regarding other forms of persecution – shooting, trapping or destruction of nests – there is, however, no evidence to suggest that these are decreasing. Unlike the use of illegal poisons, where victims could be found some distance away from where a bait has been used, in many of these other cases it is easy for the perpetrator to hide evidence of their crimes. Most shooting victims will fall close to the gun and trap victims will be held *in situ*, allowing the criminal involved to easily dispose of the victim. There have been numerous occasions where the remains of illegally-killed raptors have been found hidden down rabbit holes, have been stuffed into holes in walls or otherwise buried or burnt.

It is safe to assume, given that those killing birds of prey have no desire to be detected, that the small proportion of victims discovered, will be the result of sheer luck, shot birds being wounded and managing to fly a short escape, or the result of complacency or carelessness on the part of the criminals.

A good example of this was the finding of a shot short-eared owl which had been hidden under heather in a shallow gully on the Leadhills Estate in South Lanarkshire in June 2017. A merlin nest was found shot out in the Pentland Hills, Lothian and Borders, the same month, while five shot buzzards were found in a variety of locations during the period considered here.

A red kite was found shot near Tomatin, Inverness-shire, in August 2015. Goshawk and buzzard nests were destroyed in the nearby Moy Forest in 2016, while camera footage obtained by the Forestry Commission at the same site in 2017 captured footage of masked, armed men under a goshawk nest.

A goshawk was shot at Strathdon, Aberdeenshire, in April 2016, continuing a series of incidents targeting this species in upper Donside going back several years.

In April 2015, an entire steep rocky slope on a grouse moor near Crieff in Perthshire, where golden eagles had nested successfully the previous year, was found to have been burnt out, in a clear attempt to deter the birds from nesting there again.

4. Incidents in 2015-17 continued

The illegal use of spring traps

In May 2015, a red kite was found caught in a spring trap that had been illegally set beside a dead grouse bait on Burnfoot Estate, Stirlingshire. The bird had to be euthanised due to its injuries.

In July 2015, RSPB Scotland staff, walking on the Brewlands Estate in Glen Isla, Angus, discovered an illegally-set spring trap placed on top of a pheasant carcass that had, in turn, been placed on a post just a few metres inside a pheasant pen. The trap was in effect a baited "pole trap", which has been illegal since 1904, and is designed to snap shut and break the legs of a bird of prey, holding the victim until it can be dispatched by the trap operator.

The trap was made safe to ensure no birds would be caught. We then deployed a video camera focused on the area, with a view to securing the evidence until the police could attend and recover the trap.

A few days later, RSPB Scotland staff accompanied a police wildlife crime officer to the scene, where it was found that the trap had been reset. The police seized the trap as evidence, and the camera was recovered.

Review of the footage filmed by the camera showed the trap being reset on three occasions in the days after which it had been found. On the two occasions it was set, it was seen to later fall off the pheasant bait and trigger itself.

The footage was passed to the police, who subsequently identified an individual setting the trap, and who later charged him with four alleged offences, contrary to the Wildlife and Countryside Act, 1981. The case was then reported to the Procurator Fiscal.

A similar set-up, with a spring trap illegally set on a post beside a pheasant pen, was found near Lanark, South Lanarkshire in September 2015. Elsewhere, buzzards found caught in illegally-set spring traps included one on a pheasant shoot near Logiealmond, Perthshire, in May 2016, and one on a Monadhliaths grouse moor in June 2017.

Case study

In June 2016, two members of the public walking across a grouse moor near Ballater in Aberdeenshire saw a common gull floundering on the ground. As they approached the distressed bird, they saw that it had been caught by the legs in two illegally-set spring traps. The traps had been hidden under a thin layer of moss, beside a dead rabbit that had been used as bait. The walkers contacted the RSPB Scotland Investigations team, and the incident was immediately reported to the Scottish SPCA and Police Scotland.

A Scottish SPCA inspector quickly attended the scene, and having carefully released the gull, found that it had two broken legs. These injuries were so extensive that the bird had to be euthanised.

A follow-up search of the area a few days later, carried out by Wildlife Crime Officers from Police Scotland, assisted by investigations staff from the Scottish SPCA and RSPB Scotland, found no further victims of these traps. However, clear evidence was found that eight similar traps had been deployed, attached to stakes and baited with dead rabbits, in a line stretching 200 metres across the moor. It was also evident that these traps had been removed very recently. Nearby, three dead common gull chicks, close to fledging age, were found. It is likely that these common gull chicks were dependent on the adult found in the trap, and that they had subsequently starved to death.

Enquiries made by the police with the Invercauld Estate, where the incident took place, yielded no further information.

4. Incidents in 2015-17 *continued*

“Disappearing” eagles and hen harriers

In recent years, it has become increasingly clear that, after the uncovering of numerous poisoning incidents, and consequent publicity highlighting the clear link between such crimes and the intensive management of driven grouse moors, those wishing to continue their illegal targeting of birds of prey, would need to be considerably more careful. In essence, birds would need to just vanish without a trace.

This is indeed what appeared to be happening. In August 2016, RSPB Scotland issued an appeal for information following the disappearance, the previous month, of a satellite-tagged golden eagle in the northern Monadhliath mountains, south east of Inverness. The young female eagle, named Brodie, had hatched two years previously and was fitted with a satellite transmitter shortly before she fledged from her nest.

This incident was not a one-off, however. Between November 2011 and July 2016, eight golden eagles, all less than three years old, and all fitted with satellite transmitters, disappeared in the same area. The birds were being monitored by various organisations – RSPB Scotland, the Highland Foundation for Wildlife, Natural Research Ltd and Forestry Commission Scotland. One of the birds that disappeared in the area in May 2016 was a young female that had fledged from a nest in Galloway in 2015 – one of only two fledged young from the tiny population of this species in the south of Scotland that year.

Despite comprehensive searches, after consultation with the Police, of the areas around the last recorded positions of all eight eagles, none of the birds or transmitters were recovered, and no further data was received from any of them.

Responding to the disappearance of these birds, Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, said: “The latest reports of satellite-tagged golden eagles disappearing on or near grouse moors are very disturbing and disappointing. That is why I have instructed officials to analyse the evidence from around 90 surviving and missing satellite-tagged eagles, to discover if there is a pattern of suspicious activity.”

The results of this review, analysing the data from tagged golden eagles up to the end January 2017, was published in May 2017, and are discussed later in this report.

The fact that the review was being undertaken did not prevent further birds from disappearing. In March 2017, another satellite-tagged golden eagle disappeared, in Glenbuchat, in Aberdeenshire. Like the northern Monadhliath, this area too has history: in 2011, a satellite-tagged golden eagle was found illegally poisoned on the same estate, with a shot short-eared owl and poisoned buzzard also discovered. Another satellite-tagged golden eagle disappeared here in September 2011, with further such tagged birds also vanishing in the same area in February 2012 and May 2013. In April 2014, the first young white-tailed eagle to fledge from a nest in the east of Scotland in 100 years also disappeared here.

As the technology has developed, it has been possible to manufacture smaller and smaller transmitters, allowing a greater range of species to be tagged. Hen harriers have been fitted with satellite tags for several years, at first mainly in the north of England, but subsequently in southern Scotland by Natural England, through their role as a partner in the Langholm Moor Demonstration Project. More recently, the RSPB has fitted a significant number of hen harrier tags as part of their EU-funded Hen Harrier LIFE Project.

While the use of these tags is providing some fascinating information about the movements of hen harriers, including one bird twice spending the winter in France, sadly, there has been a very similar pattern of disappearances for hen harriers, with satellite-tagged birds being illegally killed or with tags suddenly ceasing transmitting.

In April 2015, a Langholm-tagged bird, “Annie” was found shot on a grouse moor near Daer Reservoir on the South Lanarkshire/Dumfries and Galloway boundary. Presumably, her wounds were not enough for her to die immediately and in front of the shooter, but she succumbed afterwards. Similarly, in September 2015, tagged harrier “Lad” was found dead on a grouse moor near Newtonmore, Inverness-shire, with the post mortem revealing that he had suffered injuries “consistent with shooting”. In August 2016, “Elwood” inexplicably disappeared on a grouse moor in the northern Monadhliath, while a year later, “Calluna” vanished on a Deeside grouse moor.

As with golden eagles, satellite-tagged birds do die naturally, or tags become detached and fall to the ground. There have been several such cases in recent years and almost without fail, the tags and/or the

4. Incidents in 2015-17 continued

bodies of the birds have been recovered. While the number of Scottish-tagged hen harriers was too small to provide a robust sample for analysis as part of the government's review, this is increasing year on year, and clearer patterns are emerging: when satellite-tagged hen harriers disappear completely, it is almost exclusively on land managed for driven grouse shooting.

Of 18 satellite-tagged hen harriers that died, or had their transmitters fail, in Scotland in 2015-17:

- ***We recovered the remains of 10 birds and/or their tags.***
- ***Of these, post mortems established that seven had died naturally – this included a bird that went down in the Irish Sea, but was later washed up on the shoreline near Kirkcudbright, where its tag resumed transmissions.***
- ***In the other three cases, two were found on grouse moors and one on a pheasant shoot – post mortem reports stated that one was confirmed as having been shot, the other two had injuries “consistent with being shot”.***
- ***Of eight birds/tags that we did not recover, in three cases the tag data confirmed that the bird had died, with starvation or predation the likely cause of death, but the tags continued to transmit for a period thereafter. None of these were on grouse moors.***
- ***In the other five cases, the tags were functioning perfectly, giving good location information and with good battery voltage, before they abruptly stopped with no sign of technical malfunction, and with no further data received. All of these were on or close to grouse moors. It is likely that these birds were killed and their transmitters were destroyed.***
- ***Therefore, it is likely that 8 of 18 (44.4%) of these tagged harriers were victims of criminals.***

Of course, the vast majority of birds of prey are untagged, and in most cases their deaths, natural or otherwise, will go undiscovered. Just occasionally, however, there is a witness, and in May 2017, a male hen harrier was seen shot on Leadhills Estate, South Lanarkshire. Its body was never found. But, just a few days later, a short-eared owl was to die in similar fashion on the same grouse moor. The perpetrator tried to conceal its body, to cover up the crime. But, on this occasion he failed.



Shot short-eared owl, hidden in heather on the Leadhills Estate, South Lanarkshire in June 2017.

4. Incidents in 2015-17 *continued*



Annie – a satellite-tagged hen harrier, found shot, on a grouse moor in South Lanarkshire, April 2015

5. Investigation and prosecution

On 12 January 2015, following an earlier trial at Aberdeen Sheriff Court and a subsequent guilty verdict, Aberdeenshire gamekeeper George Mutch was sentenced to four months imprisonment for killing a goshawk, illegally taking a second goshawk and a buzzard, and the illegal use of traps. This landmark sentence was the first time an individual had received a custodial penalty in a UK court for raptor persecution offences, with the conviction secured on the basis of video footage captured by RSPB covert filming.

Five further individuals were convicted for offences related to raptor persecution during the period considered by this report.

- 20 May 2015 - James O'Reilly, a gamekeeper working on the Cardross Estate in Stirlingshire, was sentenced for four wildlife crime offences, including the use of a gin trap to catch a buzzard. He was ordered to carry out 240 hours of unpaid community work.
- 2 August 2015 – conviction of West Linton farmer Michael Harrison at Edinburgh Sheriff Court for shooting a buzzard in November 2014. He was subsequently fined £600.
- 4 August 2015 – conviction of gamekeeper William Dick at Dumfries Sheriff Court for killing a buzzard on the Newlands Estate in April 2014. He was subsequently fined £2,000. The conviction was later appealed, but this was dismissed in July 2016.
- 1 December 2015 – shooting tenant Graham Christie was convicted and sentenced at Stirling Sheriff Court for being vicariously liable for the wildlife crimes committed by a gamekeeper in his employment at the Cardross Estate. He was fined £3,200.
- 12 December 2017 – conviction of oil executive Keith Riddoch at Inverness Sheriff Court for shooting a buzzard during a pheasant shoot on the Ralia Estate in November 2016. He was fined £500.

In February 2015, Scottish Environment LINK, of which RSPB Scotland is a member, published reports entitled *Natural Injustice*,⁶ reviewing the enforcement of wildlife protection legislation in Scotland in 2008-13. The reports concluded that: delays due to police under-resourcing; inexperienced officers; poorly-directed searches; exclusion of experienced partner agencies; and poor communication were causing follow-up investigations to be inadequate.

We previously stated (in our 1994–2014 review) that since 2013, there had been substantive and welcome efforts made to address these issues by Police Scotland. It is our opinion that these improvements have continued, and we are increasingly seeing very good examples of partnership-working with Wildlife Crime Officers, the wider Police Scotland staff and with the National Wildlife Crime Unit. While we are not afraid of either giving or receiving criticism about specific investigations, this dialogue is constructive and a positive source of learning for future cases.

In contrast, along with other LINK members, we have long been concerned about a lack of communication and engagement with environmental NGOs by the Crown Office Procurator Fiscal Service. This was highlighted in the *Natural Injustice* reports, and also in verbal evidence given by RSPB Scotland, on behalf of LINK, to the Scottish Parliament's Justice Committee inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS), following an earlier written submission – "A significant issue of concern is, on occasion, a complete lack of transparency and clarity by the Crown Office regarding the decision-making process in the consideration of cases. There have been a number of cases where organisations have invested a considerable amount of time and resource into investigations, only for decisions to be made with no subsequent rationale provided. While in no way wishing to influence the independence of the Crown Office in making such decisions, a failure to communicate this and thus facilitate partnership-working, creates a damaging legacy from which partner agencies are unable to learn and understand."

⁶ Tingay, R.E. (2015). *Natural Injustice – Paper I: A review of the enforcement of wildlife protection legislation in Scotland*. Scottish Environment LINK, Perth, Scotland.
<http://www.scotlink.org/wp/files/documents/Natural-injustice-paper1-FINAL.pdf>

5. Investigation and prosecution *continued*

In its report,⁷ published in April 2017, the Justice Committee acknowledged our welcoming of the establishment of the full-time Wildlife and Environmental Crime Unit within COPFS, but also concluded: “While there is much to be pleased about in terms of our new specialised approach to this area of offending, I am satisfied that we should now renew our efforts to build stronger relationships with those interest groups.”

Dropped cases

In April 2017, we were informed by the Crown Office (by a brief email), that two prosecutions, involving RSPB Investigations’ covertly-obtained video footage, were being discontinued a few weeks before both cases (involving the shooting of a hen harrier on the Cabrach Estate, Moray, in 2013 and the setting of a pole trap on the Brewlands Estate, Angus, in 2015) were due to go to trial. At the time, the only explanation received was that the prosecution “could not rely on the RSPB video evidence” and hence the cases were being discontinued.

⁷ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/104512.aspx>

We took legal advice, and subsequently published the (pixellated) video footage featured in the cases on 5 and 12 May respectively. Prior to publishing the films, we wrote to the Lord Advocate expressing our concern about the decisions and lack of explanations given. Our press releases attracted considerable media, social media and political attention, with the issue even being raised at First Minister’s Questions at Holyrood.

The Lord Advocate replied to us with a somewhat fuller rationale than had initially been provided by COPFS. His letter to us stated that:

“On the basis of the material available to them Crown Counsel concluded that the placing of covert surveillance cameras was for the purpose of detecting crime. That activity was not authorised and the irregularity whereby evidence was thereby obtained was not capable of being excused in terms of the case of Lawrie v Muir 1950 JC 19. It followed that the evidence was inadmissible.”

As means of explanation, the Lawrie v Muir case in 1950 created a guiding principle in Scots Law which states that an irregularity in the method by which



A spring trap, illegally set on a post, baited with a dead pheasant, Brewlands Estate, Angus, in July 2015.

5. Investigation and prosecution *continued*

evidence has been obtained, if done so in good faith, does not necessarily make that evidence inadmissible in a criminal prosecution. In other words, firstly the court should make an assessment to establish if a piece of evidence has been obtained irregularly. Then, if that evidence is deemed to have been irregularly obtained, that needs to be balanced versus the rights of the accused to a fair trial.

With this in mind, it is our opinion that, with regard to the alleged shooting of the hen harrier, it appears that considerably greater emphasis has been placed by the Crown Office on a *perceived* irregularity in RSPB Scotland's methodology in being on land and obtaining evidence of a wildlife crime, rather than the criminal offence of illegally killing a rare and declining protected bird. By that rationale, in the words of the Lord Advocate, this irregularity was not capable of being excused.

In our opinion, it is bewildering that the balance seems to be so skewed as to give more weight to a wildlife conservation charity's perceived "wrong" in the deployment of a camera monitoring a bird's nest on a remote moor, than to a flagrant, deliberate criminal act.

It was very disappointing that these significant wildlife crime cases were not considered by a court, all the more so because in similar previous cases, where a court was allowed to make the decisions, the balance has fallen firmly in the opposite direction.

We also became aware, in spring 2017, that a vicarious liability prosecution, following the earlier conviction of a gamekeeper for killing a buzzard, was being dropped after 14 previous court hearings as Crown Counsel considered "it was not in the public interest to continue the case to trial."⁸ Similarly, the Crown Office decided not to prosecute anyone in relation to the poisoning of three buzzards and other offences uncovered on the Edradynate Estate in Perthshire⁹ in spring 2015, despite significant evidence linking an individual to a numerous offences.

While we may have very good wildlife protection laws in theory, it seems that getting them enforced is another matter.

⁸ <https://theferret.scot/wildlife-crime-vicarious-landowner-scotland/>

⁹ <https://theferret.scot/birds-of-prey-wildlife-crime-prompt-pressure-action/>



This goshawk was illegally taken, and the gamekeeper responsible subsequently received a prison sentence.

6. General licence restrictions – an effective deterrent to criminals?

In June 2015, Raeshaw Estate in the Scottish Borders was notified by Scottish Natural Heritage of the intention to restrict the estate's use of general licences – this was the first such notification since these measures were introduced in 2014. SNH's published guidance says they "can prohibit the use of General Licences 01, 02 and 03 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 the general licence." This announcement was welcomed warmly by RSPB Scotland.

Back in May 2014, RSPB Scotland staff had assisted in a police-led multi-agency search of land on the Raeshaw and Corsehope Estates as a follow-up to the earlier discovery of a poisoned buzzard. During the search, a crow trap, bearing a tag number registered to Raeshaw Estate, and containing two illegal live pigeon decoys was discovered, with the decomposed remains of at least four buzzards found hidden under a tree nearby. X-rays of the remains indicated that at least one of these birds had been shot.

About 50 metres away, in the same woodland clump, a small circular cage containing a live pigeon was found. Attached to this cage, and hidden under the moss surrounding it, were four set spring traps, clearly intended to trap any birds of prey or other wildlife unfortunate enough to investigate the pigeon lure. A search of estate buildings on the same beat of the estate subsequently found, piled up ready to deploy, several similar cages, of identical design to the one found containing the pigeon.



A cage containing a pigeon decoy, with set spring traps hidden in the surrounding moss, Raeshaw Estate, May 2014.

The licence restriction arose from the finding of this evidence.

On 24 July 2015, a few weeks after SNH's notification was sent to the estate, a member of the public found an injured buzzard at the side of a road adjacent to the Raeshaw Estate. The bird was reported to and recovered by the Scottish SPCA, but the severity of its injuries meant it had to be euthanised. Examination of the bird showed that it had been shot.

Local appeals for information led to the subsequent discovery of two dead buzzards, later confirmed as poisoned with carbofuran, in the same area, on 1 and 26 September. As a follow-up, another police-led search of land on the Raeshaw Estate was made on 13 October 2015. During the search was found another shot buzzard, and two further poisoned buzzards, also later confirmed as poisoned with carbofuran. In a small quarry on the estate was found the remains of a fire pit – identified remains recovered from it included three rabbits which subsequently tested positive for carbofuran at concentrations consistent with them being poison baits, and the burnt remains of at least two further buzzards.

On 4 November, SNH published a restriction notice for general licence use on the Raeshaw Estate, but the restriction was suspended two weeks later when an appeal was lodged. The restriction was reinstated in February 2016, following SNH's decision to dismiss that appeal.

In April 2016, the restriction was again suspended, until 10 June, during the High Court's consideration of a judicial review application, taken out by the estate against SNH, contesting the decision-making process that led to the restriction. The judicial review itself was heard in January 2017, and the result published in March – the court decided that SNH had indeed acted fairly and with due regard to the stated rationale for imposing a General Licence restriction, as laid out in SNH's published framework for implementing restrictions.

RSPB Scotland was surprised to learn, however, that despite the appalling incidents uncovered the previous autumn, in 2016 SNH had issued an individual licence to allow estate staff "to carry out some activities otherwise permitted under General Licence". In our opinion, this completely undermined the general licence restriction, particularly given the catalogue of offences that took place *after* the original notification of intention to restrict the licence was issued.

6. General licence restrictions – an effective deterrent to criminals? *continued*

It came as little surprise, given the long history of criminality in the area, that a subsequent compliance monitoring visit to the estate by SNH staff in early 2017 found “multiple instances of breaches of conditions of an individual licence that had been granted to cover essential management activities on the estate.” The individual licence was revoked.

While we welcomed the revocation of this licence, as said above, we were surprised it was issued in the first place, during an ongoing criminal investigation, and despite the sanctions previously imposed by SNH. The incidents uncovered on this estate in 2015 echo a pattern of repeat offending that occurs in a significant number of areas of Scotland where intensive grouse moor management is the main land use. **Figure 2** very clearly shows areas where these crimes repeatedly occur.

The number of victims found in 2015, on a driven grouse moor with a long history of previous confirmed cases, along with clear attempts to dispose of evidence in a fire, was also no surprise. But, RSPB Scotland is concerned that three years on from these appalling offences, only now is this information being made public. It was clear, from very soon after the uncovering of these offences, that there would not be a sufficiency of evidence allowing the individual(s) responsible to face prosecution. On this basis, we feel it is unacceptable that this information has been withheld from the public for this length of time, particularly given the health and safety concerns associated with the illegal use of very toxic pesticides.

Since 2014, only three other general licence restrictions have been imposed by SNH. In July 2015, Burnfoot Estate in Stirlingshire was notified of the

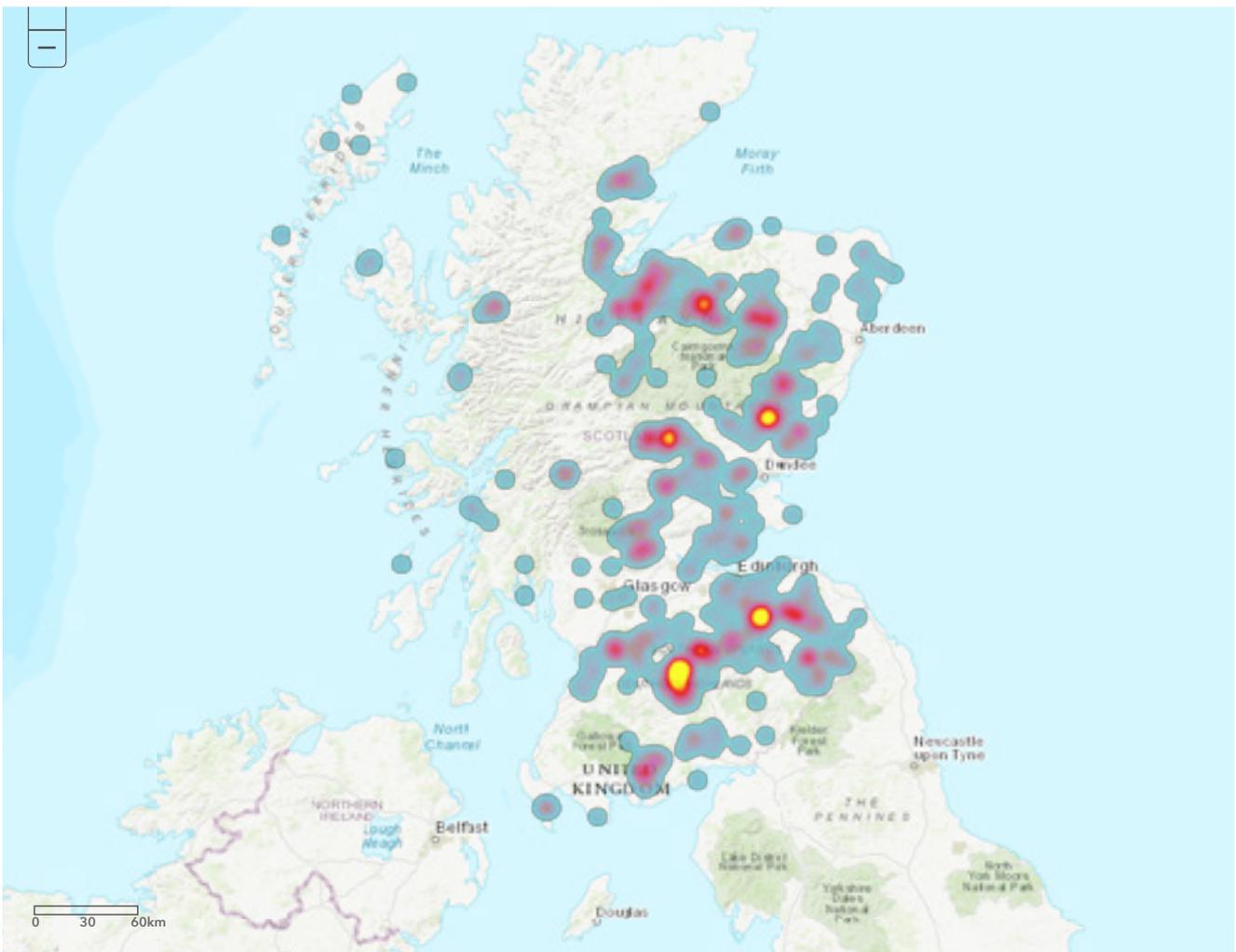


Figure 2: Confirmed persecution in Scotland, 2003–2017 – a hotspot map

6. General licence restrictions – an effective deterrent to criminals? *continued*

intention to restrict their use of the general licence following multiple offences over the previous year. The restriction was imposed on 4 November, but as in the case of Raeshaw, was suspended until early 2016 while an appeal was considered. This was subsequently rejected, and the restriction was reimposed on 3 February.

In September 2017, SNH announced two further general licence restrictions. One was for Edradynate Estate in Perthshire, following multiple offences in 2015, listed earlier in this report. The other restriction, for an un-named individual, was imposed after RSPB investigations staff passed to police, video footage captured in 2014, of a gamekeeper allegedly setting illegal traps, baited with a dead woodpigeon, very close to a goshawk nest on the Tillypronie Estate¹⁰ in north-east Scotland.

While we have welcomed the imposition of general licence restrictions as another tool available to the statutory agencies to sanction estates or individuals where there is evidence they are involved in criminality, we are concerned that in the latter two cases, no prosecutions arose. We are also concerned over the length of time taken to impose these restrictions – over three and half years in one case.

¹⁰ <https://www.theguardian.com/uk-news/2018/apr/02/scottish-gamekeeper-banned-over-alleged-goshawk-persecution>

It is also clear, given the number of confirmed cases, documented earlier in this report, and including multiple offences on some landholdings, that the process for imposing these restrictions needs significant improvement. There are several clear-cut outstanding cases, with unequivocal evidence linking estate management to wildlife crime offences, where no sanction has been imposed.

It is readily apparent that current legislation and the available penalties are no deterrent to the continued criminal targeting of protected wildlife. The time has come for a robust and efficient regulatory regime, including the licensing of gamebird shoots, where wildlife crimes with a proven link to estate management could lead to a loss of shooting rights. Current systems are not working.



Poisoned buzzard, Raeshaw Estate, Scottish Borders, October 2015.



One of several poisoned buzzards found at the Raeshaw Estate Scottish Borders October 2015. The incidents detected on this estate in the autumn of 2015 have not been public (002).

7. Science and publications

A number of significant peer-reviewed scientific papers, concerning management of the uplands, or studies and surveys of birds of prey in Scotland have been published over the last few years.

In a paper published in November 2015, Douglas *et al*¹¹ highlighted the overlap of intensive moorland burning management with environmental concerns such as loss of soil carbon and damage to protected areas. Their study showed that the annual number of burns is increasing markedly, with a third of burned 1-km squares in England and Scotland overlying deep peat deposits. The study noted that while burning may be beneficial in some circumstances, a wide range of negative environmental impacts of burning, have become increasingly well-documented.

¹¹ Douglas, D.J.T., Buchanan, G.M., Thompson, P.S., Amar, A., Fielding, D.A., Redpath, S.M. & Wilson, J.D. 2015. Vegetation burning for game management in the UK uplands is increasing and overlaps spatially with soil carbon and protected areas. *Biol. Conserv.* 191: 243–250.

Examples of this were summarised by Thompson *et al* (2016)¹² who assessed some of the wider environmental impacts of driven grouse management. This high-input, high-output management is practised in a regulatory environment in which landowners set their own bag limits and establish the management to deliver these, with the state only regulating quarry species, hunting season and permitted hunting methods. There is no statutory requirement for hunters to report their bags, although some records are collected by a non-profit organisation, the Game & Wildlife Conservation Trust (GWCT).

Annual monitoring of post-breeding red grouse densities by the GWCT on a sample of moors has shown a 74% increase from 81 to 141 per square kilometre from 1990–94 to 2010–2014, with the rapid increase attributed to higher strengths of medicated grit to combat strongyle worm infections in grouse (Game & Wildlife Conservation Trust 2015).¹³

¹² Thompson, P.S., Douglas, D.J.T., Hoccom, D.G., Knott, J., Roos, S. and Wilson, J.D. (2016). Environmental impacts of high-output driven shooting of Red Grouse. *Ibis* 158: 446-452.

¹³ Game & Wildlife Conservation Trust 2015. *Review of 2014*. GWCT, Fordingbridge.



7. Science and publications continued

Thompson *et al* also noted that burning rotations are becoming shorter, the number of annual burns is increasing, and moorlands overlying deep peat soils that often support blanket bog and wet heath are routinely burned. They also recognised that current moorland management does have some environmental benefits, notably for maintenance of heather moorland and for some ground-nesting birds, especially wading birds.

However, there is growing evidence of negative environmental impacts and societal costs associated with increasingly intensive management practices, such as culls of mountain hares, burning damage to sensitive deep peat deposits with the consequent release of carbon and water discoloration, the impact of veterinary medication entering the food chain, use of lead shot and the illegal killing of birds of prey.

The relationship between grouse moor management and bird of prey populations was explored by the North-east Scotland Raptor Study Group (NESRSG) (2015),¹⁴ who documented a continuous decline in breeding peregrines in that region, evident since 1991, with low occupancy of nest sites in areas associated with intensive management for driven grouse shooting. It also highlighted the dwindling breeding population in the eastern part of the Cairngorms National Park. By 2014, this area held less than a quarter of the number of breeding peregrines that bred in 1991.

More widely, results of the 2014 national peregrine survey showed an 11% decline in the species in Scotland since 2002. Wilson *et al* (2018) commented that illegal persecution was continuing to restrict numbers and productivity of breeding peregrines in some regions “particularly where pigeon racing is practiced and where there is intensive management for red grouse shooting.”¹⁵

¹⁴ North East Scotland Raptor Study Group (2015). Peregrines in North-East Scotland in 2014 – further decline in the uplands. *Scottish Birds* 35(3): 202-206.

¹⁵ M. W. Wilson, D. E. Balmer, K. Jones, V. A. King, D. Raw, C. J. Rollie, E. Rooney, M. Ruddock, G. D. Smith, A. Stevenson, P. K. Stirling-Aird, C. V. Wernham, J. M. Weston & D. G. Noble (2018) The breeding population of Peregrine Falcon *Falco peregrinus* in the United Kingdom, Isle of Man and Channel Islands in 2014, *Bird Study*, 65:1, 1-19

A further paper by members of the NESRSG, published in early 2016, focused on the fortunes of hen harriers in north-east Scotland. Rebecca *et al* 2016 described a peak population of breeding harriers in the area in the early 1990s that declined to only one pair by 2014.¹⁶ The paper highlights the fact that two birds were witnessed being shot at breeding sites in 2013 – including the aforementioned case on the Cabrach Estate – and links the lack of harriers in the area to grouse moor management, not just direct persecution, but also the burning of previous nest sites in deep heather.

Back in 2011, the Joint Nature Conservation Committee published “A conservation framework for hen harriers.”¹⁷ The conclusions of that piece of work were that the *potential* hen harrier population of Scotland was estimated to be within the range of 1,467–1,790 pairs, but that there was strong evidence that, in the uplands of eastern and southern Scotland, illegal persecution was causing the failure of the majority of breeding attempts, leading to fewer breeding birds and/or fewer successful nests. This 2016 paper puts those findings into stark local context.

Similarly, Sansom *et al* (2016) updated previous work examining the north Scotland red kite population by studying the cumulative impacts of wildlife crime and mortality caused by collision with wind turbines.¹⁸ Significantly, the paper concluded that illegal killing was still the major factor limiting population growth of red kites in North Scotland, and that there was no evidence that the rate of illegal killing has changed between the time periods 1989–2006 (ie the years used in the original paper by Smart *et al* 2010) and 2007–2014.

¹⁶ Rebecca, G., Cosnette, B., Craib, J., Duncan, A., Etheridge, B., Francis, I., Hardey, J., Pout, A., and Steele, L. (2016) The past, current and potential status of breeding Hen Harriers in North-east Scotland. *British Birds* 109: 77– 95

¹⁷ Fielding, A., Haworth, P., Whitfield, P., McLeod, D. & Riley, H. (2011) A Conservation Framework for Hen Harriers in the United Kingdom. JNCC Report 441. Joint Nature Conservation Committee, Peterborough.

¹⁸ Sansom, A., Etheridge, B., Smart, J. & Roos, S. 2016. Population modelling of North Scotland red kites in relation to the cumulative impacts of wildlife crime and wind farm mortality. Scottish Natural Heritage Commissioned Report No. 904 <https://www.nature.scot/snh-commissioned-report-904-population-modelling-north-scotland-red-kites-re-lation-cumulative>

7. Science and publications *continued*

As well as that of the 2014 peregrine survey, outlined earlier, the results of two further national raptor population surveys were published during the period. The 2016 hen harrier survey results showed a 9% decline in Scotland since 2010, to an estimated 460 pairs.¹⁹ Added to the previous decline in 2004–2010, this means that Scotland lost almost a quarter of its breeding hen harrier population in just 12 years. Of particular concern is the 57% decline of the population occurring on grouse moors since 2010 – undoubtedly a key driver of this decline.

The results of the 2015 national golden eagle survey were, on the face of it, more encouraging, with 508 territorial pairs recorded, an increase of 14.9% from the 442 pairs recorded in 2003.²⁰ The population now meets the targets identified by Whitfield *et al* (2008)²¹ to define favourable conservation status in Scotland.

¹⁹ Simon R. Wotton, Stephen Bladwell, Wendy Mattingley, Neil G. Morris, David Raw, Marc Ruddock, Andrew Stevenson & Mark A. Eaton (2018) Status of the Hen Harrier *Circus cyaneus* in the UK and Isle of Man in 2016, *Bird Study*, 65:2, 145-160.

²⁰ Hayhow, D.B., Benn, S., Stevenson, A., Stirling-Aird, P.K. & Eaton, M.A. 2017. Status of Golden Eagle *Aquila chrysaetos* in Britain in 2015. *Bird Study* **64**: 281–294.

²¹ Whitfield, D P, Fielding, A H, McLeod, D R A and Haworth, P F (2008). A conservation framework for golden eagles: implications for their conservation and management in Scotland. Scottish Natural Heritage Commissioned Report No.193 (ROAME No. F05AC306).

However, although overall home range occupancy has increased there is regional variation, with some regions falling below the target levels. Eagles (including non-breeding birds) were seen in at least 80% of home ranges in all regions, except for the east Highlands (52%). Indeed only 40% of ranges in that area were occupied and concerns remain over both this area's low level of home range occupancy, and also the proportion of sub-adult pairs holding territory in that region (and in the south-central Highlands) – this is a clear indicator of a population still impacted by persecution (Whitfield *et al* 2004).²²

Hayhow *et al* acknowledge that grazing, afforestation and native woodland expansion, wind farms and recreational disturbance may have local or even regional effects, but there is little evidence to suggest that any of them have acted to determine golden eagle population size nationally compared to the impacts of persecution. For example, there have been no recorded golden eagle fatalities at Scottish wind farms, although local displacement has been reported. It is also of interest that there were increases in golden eagle numbers in regions such as the Hebridean Islands where there has also been a rapid increase in white-tailed eagles; this suggests that, at least at current population levels, there has been no major impact of the latter on the former.

²² Whitfield, D.P., Fielding, A.H., McLeod, D.R.A. & Haworth, P.F. 2004. The effects of persecution on age of breeding and territory occupation in Golden Eagles in Scotland. *Biol. Cons.* 118: 249–259.



A poisoned red kite, near Cawdor, Nairnshire, 2014.

8. Scottish Government satellite-tagging review

As mentioned earlier, in response to increasing concern about the suspicious disappearance of satellite-tagged golden eagles in Inverness-shire, in August 2016 the Scottish Government commissioned a review of the fates of these and other tagged eagles, with a view to addressing the question “Is there a pattern of suspicious activity surrounding the ‘disappearance’ of many satellite tagged golden eagles?”

The report, published on 31 May 2017,²³ contained a comprehensive analysis of the movements and fate of 131 golden eagles, tagged in the nest and subsequently tracked. The analysis therein identified six broad geographical clusters where birds were disappearing, with four particular concentrations of suspicious final fixes of tags in the central and eastern Highlands. Nothing, other than human interference, could account for these clusters.

In confirming that the pattern of disappearance of these birds was indeed suspicious, the research also showed that:

- the rate of suspicious “stopped, no malfunction” tags was 25 times greater in Scotland than in comparable eagle tagging projects in the USA, although the identified technical failure rate (2%) was identical
- there was no evidence that satellite tagging of golden eagles in Scotland caused any harm to tagged birds
- there was no evidence that wind farms were responsible for losses of tagged eagles, or the sudden malfunction of tags
- the final known locations of many of the tags which suddenly stopped, and where tagged birds disappeared, were associated with grouse moor management

- the evidence pointed to the primary cause of the “stopped no malfunction” tag fate being due to human intervention
- the final fixes of the many “stopped no malfunction” tags were significantly associated with previous persecution records.

The findings of these analyses were unequivocal, and damning. In conclusion, the report said that: “It was apparent that satellite tagging of young golden eagles revealed that many young birds have probably been illegally killed in some parts of Scotland between 2004 and 2016, largely in the central and eastern Highlands. Such illegal killing potentially has consequences for the future golden eagle population’s trajectory within mainland Scotland. This is especially so in those regions where such killing continues to occur; many decades after such acts became illegal”.

Reacting to the publication, the Cabinet Secretary said: “The findings of this research are deeply concerning and will give rise to legitimate concerns that high numbers of golden eagles, and other birds of prey, continue to be killed in Scotland each year. There is every reason to believe that similar levels of persecution affect untagged golden eagles, as well as those we are able to track via satellite tags.”

The Director of RSPB Scotland, Anne McCall, said: “We commend the authors of this report for producing a comprehensive, robust and forensic examination of the issues regarding the disappearance of satellite-tagged golden eagles in Scotland. By commissioning such a review, the Cabinet Secretary and the Scottish Government have shown decisive leadership, and provided a clear, factual, if very worrying picture, of the scale of illegal persecution in Scotland.”

The conclusions reached by the review absolutely validate what RSPB Scotland has been expressing for many years: that Scotland’s protected birds of prey continue to be illegally and systematically killed, in significant numbers, primarily in areas where intensive grouse moor management dominates the landscape, and that the numbers “officially” recorded are only the tip of a very large iceberg.

²³ Whitfield, D.P. & Fielding, A.H. 2017. Analyses of the fates of satellite tracked golden eagles in Scotland. Scottish Natural Heritage Commissioned Report No. 982. <https://www.nature.scot/sites/default/files/2018-10/Publication%202017%20%20SNH%20Commissioned%20Report%20982%20%20Analyses%20of%20the%20fates%20of%20satellite%20tracked%20golden%20eagles%20in%20Scotland.pdf>

8. Scottish Government satellite-tagging review *continued*



Poisoned satellite-tagged golden eagle, Glen Lethnot, Angus, November 2013.



This satellite tagged hen harrier was found dead on a grouse moor with injuries consistent with shooting in Inverness-shire in September 2015.

9. Political developments

In 2013, the Scottish Government set up a Wildlife Crime Penalties Review Group as part of a package of “new measures to combat wildlife crime” announced by then Scottish Government Minister for Environment and Climate Change, Paul Wheelhouse MSP, in 2013. The group’s remit was “to examine and report on how wildlife crime in Scotland is dealt with by the criminal courts, with particular reference to the range of penalties available and whether these are sufficient for the purposes of deterrence and whether they are commensurate with the damage to ecosystems that may be caused by wildlife crime” and “to make recommendations on possible alternative ways of dealing with wildlife crime in the courts”

The review group’s report was published in November 2015.²⁴ The report recommended that “there was a case for increasing the maximum penalties for wildlife offences, for developing a more systematic approach to the use of impact statements, for more consistent forfeiture provisions across wildlife legislation, for clearer links to be articulated between conviction for wildlife offences and the loss of benefits such as firearms and shotgun certificates and that the Crown should continue to use proceeds of crime legislation to the maximum extent possible in appropriate wildlife cases. Moreover, we concluded that there would be merit in developing sentencing guidelines to enhance consistency and transparency of wildlife crime sentencing following the establishment of the Scottish Sentencing Council. Finally, we concluded that the fragmentation and inconsistency in the law could be addressed by legislative consolidation in the medium term.”

RSPB Scotland welcomed the report, in that for many years we have held that penalties imposed by the courts upon a conviction being secured were inconsistent for similar offences and that they largely failed to reflect the actual or potential conservation impact of the offences, or to recognise if the offending was carried out in the course of employment or with the aim of financial gain.

We wholeheartedly supported the recommendations made by the panel and await their complete implementation by the Scottish Government.

²⁴ <https://www.gov.scot/binaries/content/documents/gov-scot/publications/report/2015/11/wildlife-crime-penalties-review-group-report/documents/00489228-pdf/00489228-pdf/govscot%3Adocument>

Review of Game Bird Law and Licensing

In May 2014, Mr Wheelhouse also committed the Scottish Government to commission a comparative review of licensing and game bird legislation in other European countries. The commitment to this report was another Scottish Government initiative to tackle wildlife crime and, particularly, the illegal killing of raptors.

Subsequently, in February 2017, SNH published *A Review of Game Bird Law and Licensing in Selected European Countries*,²⁵ focusing specifically on the legal controls on gamebird hunting, including licensing and permitting arrangements, as well as on the requirements for monitoring, protection and management of gamebirds.

In announcing publication of the report, Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, said: I welcome the publication of this report. It shows that there is more regulation of gamebird hunting in many other countries than we have in Scotland. We will be looking very carefully at these different management approaches to see whether they offer the means to address issues such as raptor persecution.” SNH Chairman Ian Ross commented “This review provides an in-depth look at how other countries in Europe control game bird hunting to make sure it’s safe and sustainable. It can also inform our thinking on tackling wildlife crime.”

“In Scotland, game birds can be shot during their open season, which vary according to the species. Other than the firearms legislation, which provides the necessary control for access to firearms, there is actually very little regulation associated with hunting gamebirds.”

RSPB Scotland welcomed the publication of this report and the contribution it would make to current discussions about potential options for licensing of intensive gamebird management practices in Scotland. We have been consistently clear that the failure by grouse moor owners over decades to self-regulate and put a stop to the illegal killing of raptors and the carrying out of other unsustainable land management practices has led us to this point.

²⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/report/2015/11/wildlife-crime-penalties-review-group-report/documents/00489228-pdf/00489228-pdf/govscot%3Adocument>

9. Political developments continued

We support the licensing of “driven” grouse shooting, with clear sanctions to remove such licences on individual landholdings if there is evidence of illegal practice. As the SNH report suggests, such regulation is commonplace in other European countries and those landowners who operate legally and comply with the terms and conditions of the licence should have nothing to fear from such a system.

Scottish Raptor Study Group Petition

Earlier, in July 2016, the Scottish Raptor Study Group launched a Scottish Parliamentary petition, *“Calling on the Scottish Parliament to urge the Scottish Government to implement urgent action to introduce a state regulated system of licensing of gamebird hunting, that addresses the potentially adverse environmental impact of gamebird hunting, provides for the revocation or amendment of licences where a licence-holder fails to comply with their terms and conditions, and to implement the recommendations of the Review of Wildlife Crime Penalties in Scotland.”* The petition was strongly endorsed by RSPB Scotland. In the six weeks during which the petition was active, it gathered a total of 7,652 signatures.

The petition was initially considered by the Scottish Parliament’s Petitions Committee, who took evidence from the SRSG, RSPB Scotland, British Association for Shooting & Conservation and Scottish Land and Estates. The Petitions Committee then referred the petition to the Environment, Climate Change and Land Reform (ECCLR) Committee who also then took verbal evidence from SRSG, RSPB Scotland and representatives of the land management sector.

Following subsequent deliberation, the ECCLR committee subsequently wrote to the Cabinet Secretary, Roseanna Cunningham MSP, on 23 May 2017, recommending that that the Government needed to explore the issue of licensing, particularly with reference to land that is intensively managed for driven grouse shooting.

Next steps

On 31 May 2017, following the publication of the satellite-tagging review, discussed earlier in this report, and in response to the 23 May letter from the ECCLR committee, the Cabinet Secretary made a significant series of announcements on the floor at Holyrood, committing the Scottish Government to:

- set up an independently-led group to look at the environmental impact of grouse moor management practices such as muirburn, the use of medicated grit and mountain hare culls, and to recommend options for regulation including licensing and other measures which could be put in place without new primary legislation
- immediately review all available legal measures which could be used to target geographical areas of concern
- increase resources for the detection and investigation of wildlife crime and work with Police Scotland to pilot the use of special constables in the Cairngorms National Park
- rule out giving the Scottish SPCA more investigative powers, in light of legal advice
- examine how best to protect the valuable role of gamekeepers in rural Scotland
- commission research into the costs and benefits of large shooting estates to Scotland’s economy and biodiversity.

While RSPB Scotland was disappointed at the decision not to extend the investigatory powers of Scottish SPCA Inspectors, this was an overwhelmingly positive announcement. We particularly welcomed the announcement of the establishment of an independent panel to consider grouse moor management and explore options for regulation, including licensing.

The remit of the panel includes consideration as to how grouse moors can be managed sustainably and within the law. There are significant public concerns about how grouse moors are currently being managed in Scotland, including clear evidence gathered over decades of the illegal killing of birds of prey.

In recent years these concerns have broadened to encompass wider grouse moor management practices, with, in some areas and increasing emphasis on producing very large and unsustainable grouse numbers for sport shooting. These practices include damaging muirburn, the culling of mountain hares and the medication of “wild” red grouse, both designed to prevent grouse diseases and artificially boost grouse bags.

9. Political developments *continued*

A petition in June 2017, by animal welfare charity Onekind, called upon the Scottish Parliament to urge the Scottish Government to introduce greater protection for mountain hares on both animal welfare and conservation grounds – this was subsequently referred to the Environment, Climate Change and Land Reform Committee for consideration as part of its work on biodiversity in relation to Grouse Moor Management. However, in response to growing public disquiet, in October 2017, a parliamentary motion²⁶ was lodged by Alison Johnstone MSP, acknowledging the concerns of a coalition of 10 conservation and outdoor organisations, including RSPB Scotland, who appealed to the Scottish Government for a temporary ban on all mountain hare culling on grouse moors until measures are put in place to ensure their numbers can remain at acceptable, sustainable levels. Despite previous calls for voluntary restraint there were multiple reports and published photographs of culls being carried out on moors across the country, suggesting those calls have been ignored.

Similarly, in December 2017, the SNP National Council, in noting “with concern that wildlife crime, particularly raptor persecution, continues to damage Scotland’s reputation, natural heritage and tourism industry”;

²⁶ Parliamentary Motion S5M-08225: Alison Johnstone, Scottish Green Party, Date lodged: 12/10/2017.

welcomed the setting up of the grouse moor review, and voted to support “the establishment of a licensing system for driven grouse estates, in order to help to prevent wildlife crimes.”

The membership of the grouse moor review group was announced in November 2017 – it includes scientists, moorland managers, regulatory experts and advisers from SNH, Scottish Wildlife Trust, the Game and Wildlife Conservation Trust and the Scottish Environmental Protection Agency, and is chaired by Professor Alan Werritty, who previously chaired a Scottish Natural Heritage review into sustainable moorland management.

The panel is due to report back to the Cabinet Secretary in spring 2019. We look forward to the publication of the panel’s recommendations in due course.

In the meantime, it is clear to us, and others, that statutory regulation of driven grouse shooting is long overdue. RSPB Scotland has long advocated the introduction of an effective licensing system for driven grouse shooting, with sanctions including the removal of such licences where illegal practices are confirmed.



10. Conclusions

The Scottish Government-commissioned satellite tagging review completely bankrupted the myth that raptor persecution is in long-term decline, and demonstrated the astonishing scale of systematic, organised criminality targeting our protected wildlife. And yet, it is likely that none of this would have come to light had these birds not been fitted with satellite tags.

One can only question the motives of those representatives of the grouse shooting industry who continue to attack satellite tagging and the credentials of those who fit them, while at the same time claiming that crimes against birds of prey are on the wane. At the same time, there has been a concerted campaign of personal abuse of individuals or the smearing of organisations just for campaigning against wildlife crime.

The stark reality is that following publication of that review in May 2017, tagged golden and white-tailed eagles are continuing to “disappear” in areas dominated by driven grouse shooting management, with similar patterns of disappearance becoming apparent for harriers tagged by the RSPB’s EU-funded Hen Harrier LIFE project.

This will not change under the current legislative framework.

If a bird of prey is found shot, the police are likely to get a series of “no comment” interviews from any identified suspects or their associates; any appeal for information will almost certainly go unanswered; and video footage identifying a shooter, from a covert camera installed to monitor a nest, may well be deemed as inadmissible as evidence. One has to wonder exactly how we protect our raptors?

Despite all the perceived improvements in legislation, we have had only two vicarious liability convictions in six years; only four general licence restrictions have been imposed since the beginning of 2014; and, no gamekeepers have been successfully prosecuted for raptor persecution crimes since August 2015.

A lack of regulation, lack of accountability and difficulty in anyone securing sufficient admissible evidence to allow a prosecution has led to a culture where grouse moor managers feel (and act) as if they are untouchable. Estates and their gamekeepers have essentially been given a green light to kill whatever they like in whatever quantities they like – whether it is

mountain hares, grouse, “pests” under general licence, or however many pheasants or red-legged partridges they wish to release – with no legal requirement to report on bag totals. Crow traps are not registered to an individual, meaning identifying the operator where things go wrong is impossible, given the standard “no comment” response to police enquiries.

In the meantime, all someone intent on killing a bird of prey needs to do is to be careful – go out at night with a thermal imager or wear a balaclava – and neither he, his employer, nor his estate will face any comeback whatsoever. The only clues as to what is going on will be mysteriously failed nests, disappeared satellite-tagged birds and the local/regional absences repeatedly shown by population surveys. Nobody has been held to account for the killing of a single golden eagle or the disappearance of any of the tagged birds highlighted in the review.

All of us who care about Scotland’s birds of prey share a growing sense of frustration over the failure to protect them being slaughtered by an intensive driven grouse shooting industry where criminality seems systemic.

The recent establishment of the various “Moorland Groups” and the linked industry campaign “The Gift of Grouse” are a concerted attempt to improve the appalling reputation of driven grouse shooting. This is doomed to fail as long as some within the sector continue to trap, poison or shoot our eagles, kites and hen harriers. And, they will do that because they can, because it’s expected of them and because there is very little chance they will get caught.

Meanwhile, perfectly legitimately, mountain hares will be culled, predators will be controlled, and ultimately, hundreds of thousands of grouse will be shot for sport on a couple of hundred Scottish grouse moors. But, there is no requirement to report how many animals are killed to sustain this sport – grouse, mountain hares or predators; where or when burning has taken place; how much medication is being given to the grouse; how many traps have been deployed to catch predators; where tracks are being constructed etc.

Increasingly however, this status quo is being challenged. In the last few years, we have seen protest marches against raptor persecution; hundreds of people attending “Hen Harrier Day” events; parliamentary petitions challenging aspects of grouse moor management or its lack of regulation; questions, debates and ministerial statements on the floor of

10. Conclusions *continued*

the Scottish Parliament; public statements by MSPs; and, recently and perhaps most significantly, the setting up of an independent review to look at the environmental impact of grouse moor management and to recommend options for regulation.

The driven grouse shooting industry is having a disproportionate impact on our landscapes, our upland ecosystems and our wildlife, and has done so for many decades. It has also been responsible for the killing of huge numbers of protected birds of prey through poisoning, nest destruction, shooting and trapping.

RSPB Scotland is not opposed to grouse shooting. We do not believe that criminal activity is happening on every estate where grouse shooting takes place

– indeed some of these have a fantastic diversity of wildlife and regularly host and welcome a range of successfully breeding birds of prey. We commend these estates as a model for the way forward. These landowners should have no fear of regulation and a move towards improved standards and public accountability.

Many other sectors which harvest wildlife or remove “natural products”, such as deer management, fisheries, forestry and water, are subject to a licensing system, and it is now time for driven grouse moors to be similarly regulated to ensure the long-term sustainable management of our uplands for everyone.

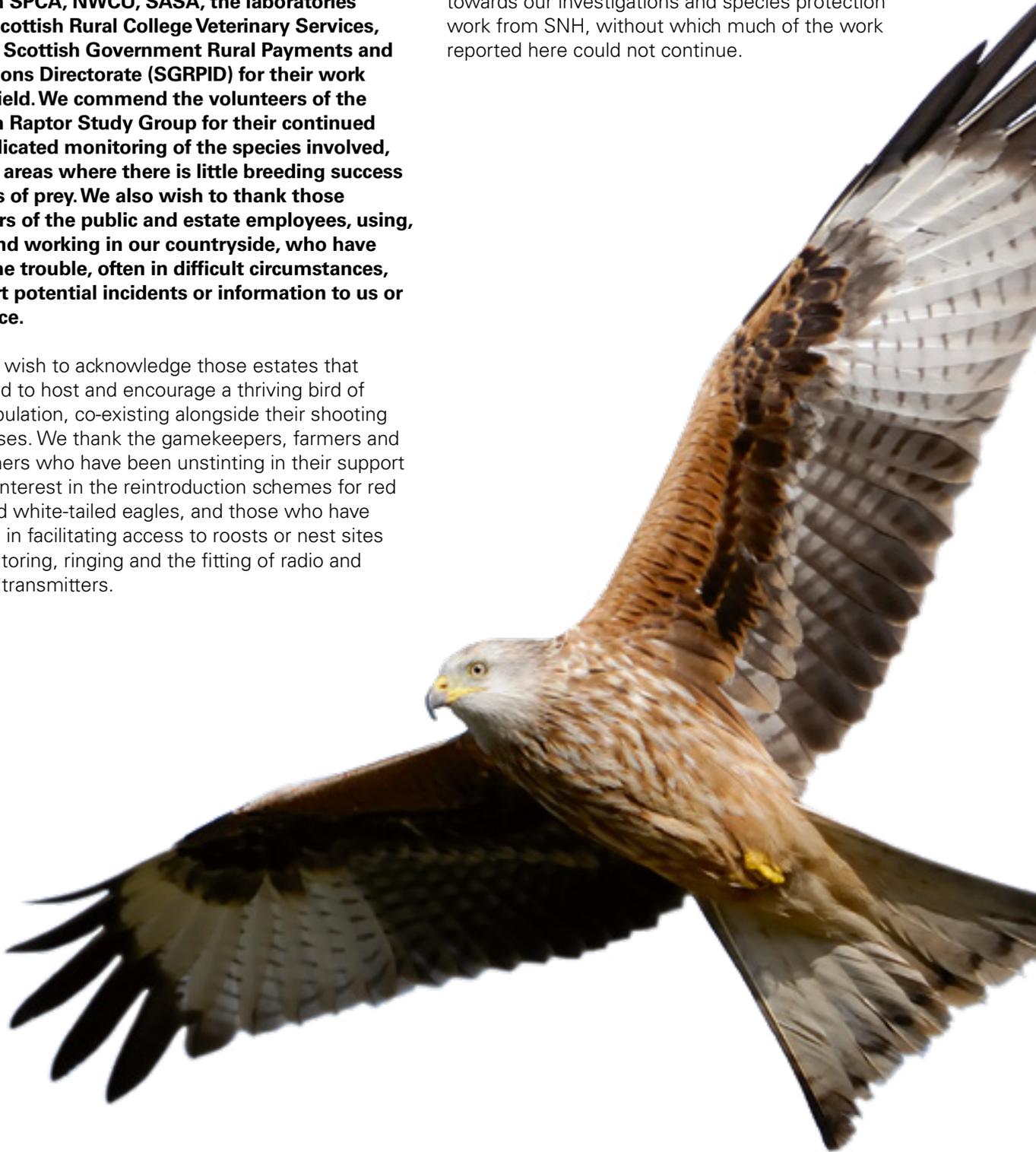


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Contact us

RSPB Scotland Headquarters,
2 Lochside View, Edinburgh Park
Edinburgh
EH12 9DH

Tel: 0131 317 4100

Email: rspb.scotland@rspb.org.uk

rspb.org.uk/scotland



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Images: cover poisoned satellite-tagged golden eagle in Glen Lethnot Angus, p2 peregrine (dreamstime.com), p3 Hen harrier by Mark Thomas (rspb-images.com), p4 golden eagle by Geoff Kuchera (istock.com), p6 common buzzard (istock.com), p7 ospreys (istock.com), p27 white-tailed eagle (istock.com), p29 golden eagle (istock.com), p30 red kite (istock.com) all other images by RSPB Scotland.

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