

Dr Adam Smith
Policy and Advisory Scotland
T: 01828-650543
E: asmith@gct.org.uk



Response by the Game & Wildlife Conservation Trust to the Consultation on the Review of Species Listed on Schedules A1 & 1A of the Wildlife and Countryside Act 1981.

The Game & Wildlife Conservation Trust is a wildlife research charity which promotes evidence-led decisions being used in the formation of policy which may influence the management of species and habitats affected by game conservation.

Whether or not the species listed in the consultation (Table 1) need the further protection (Schedule A1 [Nest protection] and Schedule 1A [Harassment]) should be informed by:

(a) What are 'recklessness' and 'harassment'?

Recklessness and harassment are not easy concepts to define or prove in any situation but are particularly difficult where the gathering evidence is time consuming and costly and actions are open to mis-interpretation, as in the case of outdoor activities. They are likely to be highly subjective positions which only case law can define, an unhelpful, costly and divisive way of setting out the meaning of legislation. The highly contextual nature of these possible offences mean persons conducting legal operations could be open to speculative accusations. We are not generally supportive of the use of these terms in the legislation without clear contextual definitions.

(b) Whether protecting nests from disturbance or species from harassment outside the breeding season will benefit the conservation status of the species population.

Our principle concern is that there has been little or no relevant peer-reviewed research conducted into the responses of the named bird species to disturbance or nest site loss outside the breeding season. Thus it is not clear whether they would derive any benefit from such protection. Providing there is a reasonable nesting habitat mosaic there is little evidence that the loss of an individual nest or nest sites will result in population scale effect for any bird species. Newton (1979, 1998) noted that the ranges of sites used by raptor species should not be regarded as static but as malleable within limits, according to changes in nest loss rates and development of new traditions. For example, the Trust's experience and expert opinion indicates that the destruction of a Hen Harrier and Merlin nest platforms during winter muirburn results in the pairs nesting in the next available stand of heather, not abandoning all breeding attempts. As far as we are aware the availability of suitable individual nesting habitat and sites are rarely limiting for any species in Scotland. Disturbance outside the breeding season is unlikely to affect any of these species as they are all highly mobile and unrestricted in foraging habitat.

Further, no research has been published identifying the likely causes of disturbance, their spatial scale, seasonal timing or duration. It is not therefore possible to assess the likely degree of risk that these species face.

Finally the rationale behind the species list is unclear as it includes species which appear to be nationally in favourable (non-SPEC) conservation status (Marsh Harrier, Goshawk, Merlin) along

with species with no meaningful Scottish breeding population (Snowy Owl) and non-residents outside the breeding season. A paucity of relevant research may also explain the choice of species on the list; many species with apparently similar conservation status, nesting requirements or experience of disturbance are absent from the list including the Short and Long-eared Owls, Dippers, Swallows, Martins and Swifts. A summary of the key factors for each of the named species is shown in Table 1.

Table 1: Summary of known species responses to the 2 key factors

Species	Limited nesting habitat	Non-breeding disturbance effects
Goldeneye	No – uses nest boxes	?
Eagle, Golden	?	?
Eagle, White-tailed	?	?
Osprey	No – uses many types	Not resident
Kite, Red	No	?
Merlin	No	?
Peregrine	No	?
Honey-buzzard	No	Not resident
Goshawk, Northern	No	?
Harrier, Hen	No	?
Harrier, Marsh	Yes	Not resident
Capercaillie	No & not site faithful	Some, but impact on population?
Owl, Barn	No – uses nest boxes	?
Owl, Snowy	Non-breeder	Not resident as a population
Kingfisher	No	?
Chough	No	?

(c) What the knock-on effects to restricting management activities are that could feedback to affect these and other species of conservation and economic value.

Many of the land management activities such as forest thinning, muirburn and grazing are large scale activities not realistically compatible with the protection of single nest sites less than 1m² in size. Furthermore, many raptors including Golden Eagles and Peregrine Falcons regularly use alternative nesting stations in alternating years, they potentially rendering very large areas of habitat unusable for human activity. Activities such as driven game shooting also take place at large scales and may temporarily disturb the species listed outside the breeding season but the effect of this over the winter season is not known.

However it is clear is that land management activities such as forestry harvesting, grazing and burning of heather moorland and rough grass pastures and low ground game bird shooting are known to support the populations of many birds of prey by providing nesting sites and increasing the availability of food through management of foraging habitat. The restriction of these beneficial and lawful activities over unspecified scales, in order to protect single nest sites and species from disturbance, could have more damaging long term consequences for the species being protected than the loss of individual nests.

We are also seriously concerned that the lack of research evidence as to the effects of losing an individual nest or how the listed species respond to disturbance outside the breeding season means that there is a lack of skilled knowledge within the statutory agencies to help ameliorate the impact. For example there is no information available to guide whether artificial nest sites may be used for many of these species if land management activities affected traditional nest sites or how to arrange activities so as to minimise disturbance.

Lastly, Article 2 of the Birds Directive which underpins the relevant UK and Scottish Acts states that the economic, cultural, economic and recreational requirements of member states must be considered in maintaining species at appropriate levels. Without reliable ameliorative strategies, the requirements of Article 2 are unlikely to be satisfactorily met.

In response to the specific questions in the consultation:

1. Do you agree that golden eagle and osprey should be included in schedules A1 and IA?

These two species are known to be site faithful in the UK and Golden Eagles should be considered for inclusion on Schedule A1. Protection of Golden Eagle nests outside the breeding season which have been in continual use for at least 3 years may be beneficial though the available evidence suggest that nest sites in Scotland are not actually in short supply.

The Osprey is known to have a catholic choice in nest locations, both in the UK and in the rest of its range. In Scotland its breeding numbers are increasing, suggesting nest sites are not limiting. It is difficult to see why this species should receive individual nest site protection outside the breeding season other than for cultural or economic reasons, notably the protection of investment in bird viewing facilities.

These species should not be included on Schedule IA as there is no evidence to suggest a risk to the Golden Eagle population from disturbance outside the breeding season or that reducing any risk would enhance the population of this species. Ospreys are of course not resident outside the breeding season in Scotland so would receive no benefit from this protection.

2. Do you support the SNH proposals for inclusion? In part, or in full? Or not at all?

We support the inclusion of the Marsh Harrier on Schedule A1 as this species nests only in reed beds in a few locations. The destruction of those beds outside the breeding season could result in population scale effects. We are satisfied that there is no Scottish reed cutting industry to be impacted on by this protection.

We do not support the inclusion of any of the other species on either Schedules A1 or IA for the reasons outlined above, in summary:

- a. There are no assessments of possible threats and no evidence of actual damage to any of the species
- b. No research has been done into the positive or negative effects on the species or land management of introducing such protection therefore...
- c. The statutory agencies have no skills or reliable information on ameliorative strategies therefore...
- d. The risk of compromising land management that benefits these species currently outweighs the benefits of reducing disturbance and protecting nests.

3. Do you think any other species should be included? If so, name the species and explain why.

No other species should be included in these schedules for the reasons outlined above.

In conclusion, the proposed protection of these species cannot in most cases be justified as the interpretation of the act will be unclear, the peer-reviewed evidence for need is absent; the risk of impeding beneficial land management too great. We would strongly support research being conducted into the effects of non-breeding season disturbance on Capercaillie and Barn Owl and into the importance of nest site fidelity in Merlin and Hen Harriers before further consultation.

References

Newton I (1979) Population Ecology of raptors. T&AD Poyser, London
Newton, I (1998) Population limitation in birds. Academic Press, London