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Convener, Rural Affairs and Islands Committee

The Scottish Parliament

Edinburgh EH99 1SP

By email: rural.committee@parliament.scot



10th July 2023

To the Convener and members of Rural Affairs and Islands Committee regarding the stage 1 evidence session for the Wildlife Management and Muirburn Bill on 21st June 2023

We strongly support the proposals by Scottish Government to licence grouse shooting as a meaningful deterrent to the illegal killing of birds of prey. We also support proposals by the Scottish Government to licence all muirburn and to restrict burning on peatlands. We thank the Committee for the opportunity to give evidence on 21st June in respect of both grouse moor licensing and muirburn, however there were a number of matters that arose during the round table discussions where we thought it would be helpful to provide additional clarification.

During the evidence sessions some land management interests gave the impression that the Bill was flawed and that it would have highly negative consequences for land managers. We take this opportunity to stress that the Bill, as it stands, already addresses many of these concerns raised in evidence. For example, with regard to muirburn, land management interests have raised the importance of being able to undertake muirburn for wildfire management. However, the Bill specifically allows land managers to apply for a licence to undertake muirburn for wildfire management, including on peatland.

We note too that the proposed licensing regimes for grouse shooting and muirburn are not dissimilar to the range of other licences already administered by NatureScot. NatureScot officials have provided significant

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reassurance that they can administer licensing for both grouse shooting and muirburn fairly and proportionately through their current administration processes and frameworks for licensing, and with various mechanisms for rights of appeal.

In summary, we feel that the Scottish Government has listened to land managers in advance of bringing this legislation forward and taken an approach which balances the need for a fair and workable approach to both licensing schemes with the pressing public policy requirements of addressing the climate and nature emergencies, especially providing a meaningful deterrent to the illegal killing of birds of prey on grouse moors.

Yours sincerely

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Appendix

Further background information on points raised in evidence at stage 1 of the Wildlife and Natural Environment Bill at the Rural Affairs and Islands Committee

Licensing of grouse shooting

There has been some misinformation around what we know to be the ongoing nature and extent of current levels of wildlife crime incidents on grouse moors and the specific link to grouse moors. Both Police Scotland and NatureScot have confirmed in evidence to the RAI Committee that crimes against raptors are a significant and ongoing issue impacting both the range and populations of certain bird of prey species, including the Golden Eagle, Hen Harrier and Peregrine. This is also our view based on our work on the ground supporting the Police and from wider monitoring of raptor populations working alongside bodies such as the voluntary Scottish Raptor Study Group.

- At its meeting on 14 June, the Committee and witnesses discussed raptor crime statistics, and RSPB's published reports of persecution incidents. For clarity, for over 20 years the RSPB has been the only organisation to collate and publish UK-wide raptor persecution data in its annual Birdcrime reports. We welcome the fact that since the enactment of the Wildlife and Natural Environment (Scotland) Act 2011, offences against birds of prey are now also reported on by the Scottish Government in its Wildlife Crime in Scotland annual reports. The RSPB and Scottish Government reports are based on the same crime figures – cases confirmed by government laboratory post-mortem analysis or credible witness evidence. All confirmed incidents in our reports are audited by the Police's National Wildlife Crime Unit.
- The raptor crime figures published annually by both the Scottish Government and RSPB do not contain much additional detail. However, RSPB Investigations staff routinely uncover such crimes; receive reports of them from members of the public; and are routinely asked to assist Police Scotland in their efforts to bring the criminals undertaking raptor crimes to justice.

We also meticulously document these incidents, including precise location information, allowing patterns of offending to be seen. Despite covering only 7-15% of Scotland's land area, since 2013 around half of all confirmed raptor persecution offences recorded in Scotland have occurred on or close to land being managed for grouse shooting.

There is no doubt that these crimes are being perpetrated by those employees of estates where the incidents occurred, and as they have vehicular access to the land; equipment such as firearms; and motive and opportunity. In contrast, there is no evidence whatsoever that the crimes against raptors (or trapping offences) for which sanctions, such as a conviction or General Licence revocation, have been imposed are the result of "*vexatious actions*" or "*sabotage*" by third parties.

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What there has been instead is a large number of incidents on grouse moors where birds of prey have been found or witnessed being shot; including six cases involving hen harriers; five involving red kites (including two this year); and five where goshawks were the victims. With respect to traps, and over the same time period, there have been many cases, where traps on grouse moors have been misused or set illegally, deliberately to target birds of prey, with victims such as Hen Harrier, Goshawk, Red Kite, Golden Eagle, Merlin, Long-eared Owl and Barn Owl (including a case this year) with victims sometimes suffering either horrific injury or being left to starve to death. Since the beginning of 2020, a White-tailed Eagle, a Golden Eagle and 2 Red Kites have been illegally poisoned, on four different grouse moors. These are just the victims that have been found.

The “Werritty Review” suggested that there are around 120 grouse shooting businesses in Scotland. Analysis of those where raptor persecution crimes have been uncovered confirms that these incidents are far from being the work of a tiny minority, with incidents uncovered on almost a quarter (29). Again, this is just where victims have been found. Satellite-tagged birds of prey have disappeared suddenly and suspiciously on a number of others.

- At its meeting on 21 June, it was suggested that raptor persecution “*has reduced by 75 per cent between 2007 and 2021*”. In challenging this comment, we accept and welcome the fact that the use of illegal poisons has declined over the last 10-12 years, largely due to the increasing use of satellite tag technology making such incidents more detectable and the enactment of vicarious liability legislation making employers more likely to be called to account for such incidents.

However, as Ian Thomson noted in our response to the Committee’s call for views, it is clear that those undertaking the illegal killing of birds of prey do not wish to be caught. Such activities are carried out in remote areas, often at night, where they are likely to remain unwitnessed and undetected. The perpetrators of criminal activity are aware that any illegal activities away from areas routinely accessed by the public will likely remain undiscovered. It is by sheer chance that evidence of some crimes has been found, with an increasing and substantial body of evidence, including video footage, showing that individuals who shoot or trap birds of prey invariably recover the body of the victim and dispose of it elsewhere. As mentioned by Professor Ian Newton in his evidence to the Committee on 14 Jun, the premise that detected raptor persecution cases represent the “*tip of the iceberg*” is well understood and accepted.

An accurate indication that persecution has truly declined would be the regular successful breeding on grouse moors of species such as Peregrine and Hen Harrier that have largely been extirpated from such areas and where suitable breeding habitat and prey are still available. This is far from the case. Therefore, added to the above, there is no evidence to suggest that raptor persecution has declined significantly over the last ten years.

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- We reiterate our view that the proposed list of relevant offences related to grouse moor management, such as the unlicensed killing of a wild mammal, or the unlawful use of a trap, and which would enable a licence to be modified, suspended or revoked, is entirely appropriate. Once again, we urge that offences under the Animal Health and Welfare (Scotland) Act 2006 also be included. While crimes against raptors tend to grab the headlines, it is our experience that such incidents are often symptomatic of a wider pattern of offending related to the eradication of any potential predators of grouse.
- In summary, an overwhelming and unequivocal body of evidence, supports our view that raptor persecution continues to be closely linked to intensive grouse moor management, and that despite laudable efforts to tackle it by successive government initiatives, the crimes persist. The licensing of grouse shooting, the main driver of these crimes, is an entirely proportionate step to take to finally address this issue, and we strongly support this provision.

Licensing of muirburn

In addition to our comments given in oral evidence, we would offer the following elaboration of our points:

- During the session on muirburn Duncan Orr-Ewing for RSPB Scotland referred to how the Muirburn Code is effectively treated as voluntary. He referred to a report in which we collated evidence of breaches of the current Muirburn Code including burning out of the nest sites of birds. This report can be found here: <https://www.rspb.org.uk/globalassets/downloads/nature-recovery-plan---scotland/rspb-scotland-report-muirburnlicensing-oct2021.pdf>
- Duncan Orr-Ewing referred to the increasing intensity of muirburn activity. We based this remark on the work of Douglas et al. 2015 (Vegetation burning in the UK Uplands is increasing and overlaps spatially with soil carbon and protected areas. Biological Conservation 191). This study found that the annual number of burns had increased by 11% per annum between 2001-11 as grouse moor management has intensified. Recent analysis by the Scottish Government in Matthews et al 2020 (Mapping the areas of moorland that are actively managed for grouse and the intensity of current management regimes), confirms that “*active burning in 2018 was...present for 79% of holdings (87% of area)*” and that “*there have been changes in the intensity of management between the (Douglas et al) analysis and 2018 with both increases and decreases*”.
- During the session Duncan Orr-Ewing referenced the Climate Change Committee’s 2020 report on Land Use which recommended a ban on burning on peatland soils. In response, reference was made by Ross Ewing of Scottish Land and Estates (SLE) to how the Climate Change Committee was reviewing its position on peatland, with the implication that it may retreat from its current advice to ban burning on peat soils. We refer to the most recent CCC Report entitled “[Progress in Reducing Emissions: 2023 Report to Parliament](#)”, which was published shortly after the session.

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Recommendation 2023-191 represents the most recent position on the use of burning management: *“Extend the policy requiring a licence for burning management to cover all protected peatlands, as a step towards limiting its use on all peat soils. Land managers wishing to use burning management must comply with the relevant standards (such as the Heather and Grass Burning Regulations in England and the Muirburn Code in Scotland) demonstrating its necessity in achieving stated land use outcomes as well as setting restoration plans”*.

- We would also like to take the opportunity to provide more information about some fires that have affected RSPB nature reserves. Land management interests may portray these incidents as somehow demonstrating that our policy stance is flawed or that our practical management is inappropriate. In the session on the 21st, comments were made about fire “engulfing places such as Forsinard, and Dovestone, which the RSPB manages”. To focus on Forsinard, land managers constantly refer to ‘the Forsinard fire’ in an attempt to imply that this fire event was closely connected to the RSPB’s management. This is misleading. The West Halladale fire (2019) was first reported to the Scottish Fire and Rescue Service (SFRS) at approx. 2200 on Sunday 12th May 2019 near the village of Strathy on the north coast of Sutherland. It burned for 2 days, mainly threatening the villages of Strathy and Melvich, before a change in wind direction pushed it 12km to the south and into the RSPB Scotland Forsinard Nature Reserve. Therefore, the wildfire did not start on our land and only arrived on our nature reserve after crossing other extensive landholdings. The total area of the reserve burnt was approximately 654Ha which was c.11% of the entire area burned in that fire event and c. 3% of the total Forsinard Nature Reserve area. In other words, nearly 90% of that fire took place on land managed by others. The repeated references to “the Forsinard fire” to give the impression that we were somehow at fault are misplaced and disingenuous.

This blog provides best RSPB commentary on the Stalybridge fire (so-called Saddleworth Moor fire) which impacted our Dove Stone Nature Reserve in England <https://community.rspb.org.uk/ourwork/b/martinharper/posts/the-saddleworth-fire-and-the-importance-of-restoring-our-peatland-habitats-in-tackling-climate-change>. You will note, as in the case of the Flows, that wet and recovering bog areas helped slow and halt the spread of the fire. Some degraded areas under restoration and some dry heath areas were badly damaged, but the main area of blanket bog was not burnt.

Whilst not fully evaluated yet we also know that the recent Cannich Fire in Inverness-shire in May 2023, which started on land owned by Forestry and Land Scotland and then spread to our land at Corrimony Nature Reserve has also been reported by eye witness accounts to have been limited by restored bog areas (Ariane Burgess MSP also mentioned in evidence).

- Reference in the evidence session was made to the benefits of rewetting peatlands. We draw the Committee’s attention to research by the University of Highlands and Islands looking at the impacts of the West Halladale fire and post-fire habitat recovery. That research—reported here <https://meetingorganizer.copernicus.org/EGU21/EGU21-9505.html> --provides evidence that in Scottish conditions peatland restoration is likely to improve resilience against wildfires and reduce wildfire severity. Their preliminary results showed that *“in near-natural and restored (drain-blocked) blanket bogs, the drought of 2018 led to a rapid surface compression that maintained near-surface moisture until 2019, in turn reducing the severity of the wildfire”*. Yet in *“drained and degraded blanket bogs, this mechanical feedback is absent, due to higher bulk density and differences in vegetation assemblages, notably reduced cover of Sphagnum mosses. In those areas, the 2018*

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drought led to a rapid and sustained loss of moisture in the upper peat layers, associated with higher burn severity and more pronounced fire damage on vegetation”.

These findings support anecdotal evidence from our own staff involved in fighting the West Halladale fire that it was easier to put out in areas that had been restored and harder to control in areas that had been degraded. This is one of the reasons why we put so much emphasis on restoring peatlands and also support the Scottish Government’s Peatland Action Fund programme.

- In the discussion about the definition of peat and the proposed definition using a 40cm depth, land management interests sought to suggest that burning on peatlands was a very minor issue with reference to events in England. Ross Ewing from SLE used data provided in a UK Parliament Written Answer and said: *“In England, the regulator has received 1,600 reports of illegal peatland burning, primarily on the back of a campaign headed by the RSPB. Those reports resulted in one warning letter, which was due to a technical breach, and one court case, which was due to a misunderstanding of the regulations. That is an attrition rate of 0.0625 per cent”.* This appears to suggest that the RSPB is galvanising a campaign against burning on peatlands for no reason.

We highlight that Defra, the regulator in England, will receive reports from a wide range of sources and not just from RSPB. We confirm that they are acting on the information that has been given, however a number of cases are still being processed, so the assumption that only a limited number of cases are being followed up by this public authority is incorrect. We point to the actual data that we collected for the 2022/23 burning season (in England) through our [Burning App](#). The RSPB received and submitted reports of 260 burns to Defra Investigations. Of these – 83 were on peat (>40 cm deep); 226 were on designated sites (SAC/SPA) with a total of 72 (28%) recorded on peat (>40cm deep) and inside SAC/SPA – thus, 28% of validated burns reported to RSPB were considered to be potential breaches of the new Heather and Grass Burning etc. (England) Regulations. In Scotland, while the current Muirburn Code is clear that muirburn on peatland (>50cm) should not be undertaken. In 2022-23 muirburn season our Muirburn Reporting App recorded 17% of burns on peatland deeper than 50cm (28/162 incidents).

- In the discussion about peat depths, the Convener asked why, given that muirburn burns only the vegetation and not the peat, a depth of 30cm or 40cm is important. We would like to raise two points. Firstly, we want to stress that the main issue in relation to burning on peatlands is not about the fire getting into the peat, rather it is more about the way that fire changes the nature of the peatland leading to degradation and the loss of carbon and biodiversity. Burning is an issue because it leads to a loss of the peat forming plants and a drying out of the peat, which in turn leads to a loss of carbon either to the air through oxidation or to rivers through erosion. 80% of our peatlands are degraded and one of the reasons for that degradation is burning, not because the fires have got into the peat, but because the peatland itself has changed as a result of the burning. Land management interests will point to some recent research which suggests that burning could be beneficial, but the consensus of scientific opinion is still of the view that burning is detrimental.

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Secondly, the suggestion for a lower (30cm depth) is simply made on the basis that it would have the effect of increasing the area of peatland that would be subject to tighter regulatory oversight. The Scottish Government has stated that with this Bill it is taking a precautionary approach to peatlands because of their importance in reaching Net Zero targets, yet in suggesting a higher depth (40cm) they will effectively be saying that shallower peatlands are not to be treated like peatlands. We have argued for a lower depth because it aligns more strongly with depth definitions elsewhere (eg. Peatland Code) and because it aligns better with the precautionary approach that Scottish Government says it is taking. Having said this, we fully acknowledge that a 30cm depth definition has the same drawbacks as any other depth definition and would acknowledge the important points made by the IUCN Peatland Programme that it makes most sense to start with the full extent of peatlands rather than imposing artificial depth criteria (see: <https://www.iucn-uk-peatlandprogramme.org/resources/briefings> - Use of Peat Depth Criteria: Accounting for the Lost Peatlands).

- We were asked about our thinking on the muirburn season. We stated that we believe that the season should end earlier (15th March) because the current season overlaps with the breeding season of some red listed species such as Hen Harrier and Curlew. We based this on the publication “[Bird Breeding Season Dates in Scotland](#)” in which NatureScot reference a range of moorland breeding birds which start nesting before 15th April the proposed Spring end of the muirburn season in the Bill. While we acknowledge the comments of Dr Nick Hesford of GWCT, who referenced work by the BTO which suggested that there is relatively little overlap between the current burning seasons and the nesting attempts of most upland birds, we propose a precautionary approach – similar to the approach to muirburn on peatlands – and in the context of the climate and nature emergency. Climate change is only going to make these issues more acute, and we know from the same BTO review that breeding dates for moorland birds are advancing by one day every 8-10 years. We have evidence that moorland bird nests are being burned out including those mentioned in the RSPB Scotland report “How to prevent nature and carbon going up in smoke: Licensing Muirburn” report above and there is a current ongoing case involving a Golden Eagle nest reported to Police Scotland in 2023.
- Although it is not in the draft Bill, there was discussion in the evidence session about the possibility of duty on land managers to manage fuel load. Whilst we consider that the Fire Danger Assessment by Scottish Fire and Rescue Service is helpful; as well as the need for Fire Prevention Plans and Risk Assessments as good practice; we do not think that a duty on all landowners to manage fuel load is either appropriate or desirable. Much of our upland vegetation and 80% of our peatlands are ecologically degraded due to centuries of burning and overgrazing by deer and domestic livestock. Historic land management has created vegetation monocultures of both heather and grasses which are vulnerable to wildfire. Over time, and to meet both the needs of the climate and nature emergencies, we need to create more diversity and resilience in our upland vegetation. **A duty on landowners to burn fuel load will result in more vegetation monoculture; further damage to already degraded peatlands; and create long term wildfire risk.**

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