

Abuse and Failure of existing Wild Bird Legislation in Britain and Europe

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It is arguable that the test of any criminal legislation lies in whether or not it achieves what Government intended. It most certainly cannot and will not attain that objective if the detection and apprehension of offenders is unduly difficult, or worse, impossible! Often, when faced with examples of their own poor legislation, governments, or the British Government at least, adopt a 'head-in-the-sand' approach and, ignoring the more obvious but politically unattractive solutions, opt for further increases in fines as their main answer. In doing so they turn the proverbial blind eye to the crucial fact that no penalty can be imposed if the offender cannot first be brought before a court. By such actions they arguably weaken rather than strengthen the statute, allowing the abuse to continue while at the same time tying the hands of those courts who do happen to deal with offenders and who find themselves both morally and practically unable to impose the theoretical fines of a quarter of a million pounds often available to them in wildlife cases.

In Britain, wild bird legislation is at the moment caught up in this very situation.

I would like to look briefly at the 1981 Wildlife and Countryside Act as it applies to diurnal birds of prey. This Act gives total protection to all birds of prey, their nests and eggs, which are protected with penalties of up to £2,000 per individual bird or egg. The Act prohibits the application of outmoded non-selective control measures, such as traps or poisons - even for that minority of passerine 'pest' species that may be otherwise controlled. Considering this, there ought not to be a bird of prey persecution problem. However, in the 15 years from 1971 to date, a total of 531 incidents of raptor destruction other than poisoning are shown on our records alone, many of which were pole trap incidents. Pole traps are nonselective! They are set mainly for raptors and owls and are designed to take the bird by its legs, which are usually broken.

In the early 1970s the RSPB ran an intensive enforcement campaign against pole trap use and the number of incidents fell by about 75% in three or four years. By 1983/84 the figure was back to its precampaign level, despite the fines climbing from £25 to £2,000 in between times.

A minimum of 655 raptors and owls were involved in those incidents, including 111 Common Buzzards, 104 European Kestrels, 90 ShortEared Owls and 76 Peregrine Falcons.

Deliberate poisoning is no better, with 223 incidents in the ten years 1975/84. A minimum of 314 raptors were involved from 11 species. Including 201 Common Buzzards, 18 Red Kites (from a population of around 30-40 breeding pairs), 27 Golden Eagles and 2 White-tailed Eagles (the latter birds from the current release project in NW Scotland).

These trappers and poisoners come from two main interests - gamekeepers and farmers, the latter mainly upland sheep farmers; in fact, our records show a clear correlation between the timing of upland lambing and the peak period of poisoning. Agreed, some farmers act out of ignorance, but the remainder and, in my view, all gamekeepers, know that what they are doing is illegal. They also know that the probability of their being detected is slight, and that a prosecutor must show the court not just that poisons or traps were set but that they were set by a named individual.

Changing the subject, illegal egg collecting still figures prominently in Britain today. We know of about 600 collectors who are active or who have been recently. Every year we discover others.

As you might expect, raptor eggs figure prominently among these collections. The collectors go to extreme lengths and eggs and data are often hidden. In one recent case, eggs of Golden Eagle, Peregrine Falcon, Buzzard, Osprey, Kestrel, Marsh and Montagu's Harrier were among many found hidden inside the roof lining of a private house. The man concerned was prosecuted by the RSPB for these and another 2,700 eggs he had. It was his fifth conviction! He is a good example of someone who is not deterred by the threat of heavy financial penalties. In my opinion a short sharp shock in the form of a prison sentence is the only chance he has of reforming. Regrettably Parliament, in their wisdom, removed from the 1981 Act the prison sentence option that existed under the 1954 Act. They wrongly took the view that the higher penalties would curtail these abuses! To give an idea of the size of the problem, in the two years 1984/85 we have seized a total of 12,500 eggs.

It is almost laughable that in 1954 Parliament saw fit to prohibit all taking, sale and exchange of eggs, but not to control possession. In the drafting of the 1981 Act they still did not accept the point and introduce registration of collections. Instead, they made it illegal to possess eggs taken after the passing of the 1981 Act. Were you to ask them how to tell the difference between pre- and post-1981 eggs they would not know!

For an even more nightmarish enforcement problem, we must look to captive breeding. Let me make it quite clear that neither I nor my organisation question the fact that birds of prey can and do reproduce in captivity. We merely question the ease and frequency sometimes claimed! Again, the 1954 Act is partly to blame for the abuse by placing its faith for control of captive breeding in a close-ringing scheme and then allowing uncontrolled access to the rings by anyone!

Since the implementation of the 1981 Act's registration scheme for birds of prey, the situation has improved somewhat. The level of Peregrine Falcon robberies, to pick just one species, has dropped from 60 to 80 nests in some years to a slightly more acceptable level. True, some of the thefts of raptor eggs can be attributed to egg collectors. However, egg collectors do not take broods of young. Interestingly, the number of Peregrine Falcons being bred in captivity has also fallen. One other thing that registration may have confirmed is a 'leakage' of British Peregrines out of the country.

Like any other enforcement agency, we have tried to keep abreast of modern techniques. Since the mid 1970s we have used light-reactive substances outside normal human vision to help identify eggs and young from wild nests. These are very simple to apply, but most effective. We are now looking at blood testing as an aid to parentage identification. In 1983 a falconer was visited by RSPB staff. We identified 4 Goshawk eggs in his incubator as being surplus to his breeding records. Under questioning the breeder attributed these 4 eggs to a particular pair of birds, which showed all the characteristics of birds from Northern Europe. When the young hatched and 'feathered-up' they were of the type from Central Europe. This evidence was accepted by the Magistrates Court and later by a Court of Appeal. The automatic outcome of such a prosecution is a 3 or 5 year prohibition on keeping birds of prey. However, such a deterrent is worthless if, as at present, the government department responsible accepts re-registration of birds in the name of the convicted person's wife.

There is every incentive to take birds from the wild and enter them into the system. Take an easily obtained bird like the Common Buzzard: in the 4 years from January 1981, 215 Buzzards were offered for sale in one popular avicultural magazine, at a combined value of £ 20,995, an average of £ 98 per bird.

The young Goshawks mentioned above highlight a more recent and worrying development. I refer to the fact that viable eggs can be and are being transported between countries, indeed, between continents, for hatching, either under foster parents or in that necessary evil, the incubator. It goes without saying that eggs are easier to smuggle than live birds.

What this development highlights is the need to think about wildlife legislation and its enforcement on an international basis in the way that Europe is finally doing - and in the way North America has been doing for a long time. I know that some of the abuses I have mentioned are common to other European countries and to North America. Despite this I identify two factors for which people in the USA should feel at an advantage over Britain: because the concept of private land and game ownership was never generally adopted there, the problems associated with full-time private game management did not develop. Instead, the concept of State ownership of game was established. This gave rise to the need for State-employed officers to control the hunter, not the game, and it appears that those early game departments quite logically and naturally found their responsibilities widened at both State and Federal level to encompass all wildlife and conservation legislation. The result of this was something I, for one, admire and envy: State and Federal officers and biologists charged with the responsibility of safe-guarding their country's natural environment. To my knowledge, no Western or Eastern European country offers a comparable system.

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