ENVIRONMENTAL CRIME AND JUSTICE

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THE ILLEGAL KILLING OF BIRDS OF PREY IN SCOTLAND

Ian Thomson gives the RSPB’s perspective

THE RSPB SCOTLAND INVESTIGATIONS UNIT exists to provide expert assistance and support to police, the Scottish Government, the Crown Office Procurator Fiscal Service and other authorities in assisting the detection and prosecution of wildlife crime offenders. It pays a key role in monitoring wild bird populations and identifying potential ‘problem’ areas on the ground, receives reports of potential incidents from members of the public, and exchanges secure information with the police and National Wildlife Crime Unit. RSPB Officers have no statutory powers, but have a long-established expertise, and are frequently asked by the police and others to contribute that to complex criminal investigations.

Scotland’s birds arguably have some of the best legislation aimed at their protection of any country in Europe. Since devolution, the Wildlife and Countryside Act (1981) has been strengthened by both the Nature Conservation (Scotland) Act in 2004 and the Wildlife and Natural Environment Act 2011. Despite this, however, the illegal killing of birds of prey continues to be a significant conservation issue, threatening the abundance and range of several species, as well as damaging Scotland’s reputation as a country that safeguards its wildlife.

One of the main reasons that the killing of our protected raptors has continued, seemingly unabated despite our very good laws, is that the odds are still stacked against the perpetrator being brought to justice. But just how common are these crimes?

Firstly, we can only deal with incidents that have actually been discovered. It is impossible to say what the number of actual incidents is: all that can be said is that the number detected is an unknown proportion of those crimes that were really carried out. Those criminals undertaking the illegal killing of birds of prey are not wishing to be caught; hence these 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.

Secondly, the search effort to uncover criminal activity related to raptor persecution is entirely ad hoc. Most victims are discovered by chance, by 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. With a highly variable search effort, making comparisons of the number of incidents from year-to-year is flawed.

Over the last thirty years, the RSPB has recorded all known incidents of wildlife crime targeting birds of prey, whether it is by poisoning, shooting, trapping or nest destruction and Science and Advice for Scottish Agriculture (SASA) has produced annual reports documenting poison abuse cases for many years. Other forms of raptor persecution have only been reported on formally by the Scottish Government, since 2012. Prior to this, there was no coordinated central record of these incidents.
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In December 2014, Galloway landowner Johnston Stewart became the first person prosecuted under vicarious liability legislation (section 18A of the Wildlife and Countryside Act 1981). At Stranraer Sheriff Court he plead guilty to being vicariously liable for crimes committed by his gamekeeper, namely: poisoning a buzzard, and having possession of prescribed pesticides and was fined £675. A six-figure sum from his Single Farm Payment subsidy for breach of Statutory Management Requirements (SMR’s) aimed at ensuring land is maintained in good environmental condition, had already been withdrawn. While there was no suggestion by the prosecution that Johnston Stewart instructed the commission of the crimes carried out by his gamekeeper, or that he was aware the offences were taking place, the court heard that he had not acted with due diligence regarding the running of the pheasant shoot on his estate.

On 12 January 2015, Aberdeenshire gamekeeper George Mutch was given a four month prison sentence, after being convicted of a number of charges related to the illegal use of traps and the killing of a protected bird of prey. The offences came to light during the review of footage captured by video cameras deployed by RSPB Scotland, as part of a project monitoring the use of crow traps, on the Kildrummy Estate in August 2012.

During the trial, it was heard that Mutch was filmed placing an illegal Jay decoy in a Larsen trap; killing a goshawk that was subsequently caught in the same trap; illegally taking a Buzzard in the same trap by failing to release it immediately; and illegally taking a Goshawk in a second trap by failing to release it immediately. Despite a challenge by the defence agent that the video evidence should be deemed inadmissible, Sheriff Noel McPartlin ruled that the footage illustrating the offences had been obtained as a by-product of a legitimate research project, and therefore could be used as evidence in the trial.

While maintaining his not guilty plea, Mutch, who had been a gamekeeper on the estate for twelve years, accepted that the film showed him using the Jay decoy, killing the goshawk, and bagging and removing the second trapped goshawk and the buzzard. He claimed that he had used the decoy in a bid to catch Jays that were eating food placed out for pheasants, that he had euthanised the goshawk because it had an injury to its beak, and that he had taken the second goshawk and the buzzard and released them some distance away from his pheasant pens.

Sheriff McPartlin, in announcing his verdict, said that Mutch was not a credible witness, described his attempt to justify the killing of the goshawk as ‘a convenient lie’ and added that that he was ‘far from convinced about the fate of the buzzard and the second goshawk’. At sentencing, the Sheriff said that ‘raptor persecution is a huge problem and offending is difficult to detect’ and that ‘a deterrent approach was appropriate’.

As mentioned earlier, these convictions are significant in that Johnston Stewart was the first landowner prosecuted under the ‘new’ vicarious liability legislation, while Mutch became the first person given a custodial sentence for the illegal killing of birds of prey.

RSPB Scotland welcomed these convictions and commends the work of Procurators Fiscal Kate Fleming and Tom Dysart respectively in securing these results. It can only be hoped that such verdicts send a clear message that those who continue to kill Scotland’s birds of prey, or allow, by their inaction, the illegal killing of protected birds, are likely to face prosecution, and may end up in prison. Landowners need to make sure their employees are not just aware of the law, but are complying with it.

Ian Thomson is head of investigations, RSPB Scotland.


Science and Advice for Scottish Agriculture (SASA)