



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

AGENDA

26th Meeting, 2014 (Session 4)

Wednesday 29 October 2014

The Committee will meet at 10.00 am in the Adam Smith Room (CR5).

1. **Subordinate legislation:** The Committee will consider the following negative instrument—

South Arran Marine Conservation Order 2014 (SSI 2014/260).

2. **The Scottish Government's Wildlife Crime in Scotland - 2013 Annual Report:** The Committee will take evidence from—

Malcolm Graham, Assistant Chief Constable, Major Crime and Public Protection, and Robbie Allan, Detective Chief Superintendent (Wildlife Crime Portfolio Holder), Police Scotland;

Patrick Hughes, Head of Wildlife & Environmental Crime Unit, Crown Office & Procurator Fiscal Service.

Lynn Tullis
Clerk to the Rural Affairs, Climate Change and Environment Committee
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The papers for this meeting are as follows—

Agenda item 1

Note by the Clerk

RACCE/S4/14/26/1

Agenda item 2

Note by the Clerk

RACCE/S4/14/26/2

PRIVATE PAPER

RACCE/S4/14/26/3
(P)

Subordinate legislation cover note for SSI 2014/260

Title of Instrument:	South Arran Marine Conservation Order 2014 (SSI 2014/260)
Type of Instrument:	Negative
Laid Date:	30 September 2014
Circulated to Members:	24 October 2014
Meeting Date:	29 October 2014
Minister to attend the meeting:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee:	Yes
Reporting Deadline:	24 November 2014

Procedure

1. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

2. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Recommendation

3. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Purpose

4. The South Arran Nature Conservation Marine Protected Area Order 2014 made under the Marine (Scotland) Act 2010 ("the 2010 Act") designated that part of the Scottish marine area which is adjacent to south Arran as a nature conservation marine protected area ("MPA"). A range of marine habitats are protected features under the South Arran MPA, to include maerl beds.

5. This Order furthers the stated conservation objectives for the South Arran MPA insofar as they relate to maerl beds. It does so by specifying certain activities which are prohibited, and regulating the storage of fishing gear on fishing vessels, within those parts of the MPA which are described in the Order. Provision is made whereby activities carried out in those parts of the MPA for the purpose of saving life or for the purpose of securing the safety of a vessel, aircraft or marine structure are not prohibited under the Order.

6. The Order provides that the Scottish Ministers may issue permits authorising certain specified activities which would, apart from such permit, be unlawful under the Order. Provision is made under the Order for the procedure to apply in relation to the making of applications for permits and the determination of such applications.

7. A copy of the Explanatory Note and the Policy Note are included with the papers.

Delegated Powers and Law Reform Committee

8. At its meeting on 7 October 2014, the Delegated Powers and Law Reform Committee agreed to draw the attention of the Parliament to the instrument.

EXPLANATORY NOTE

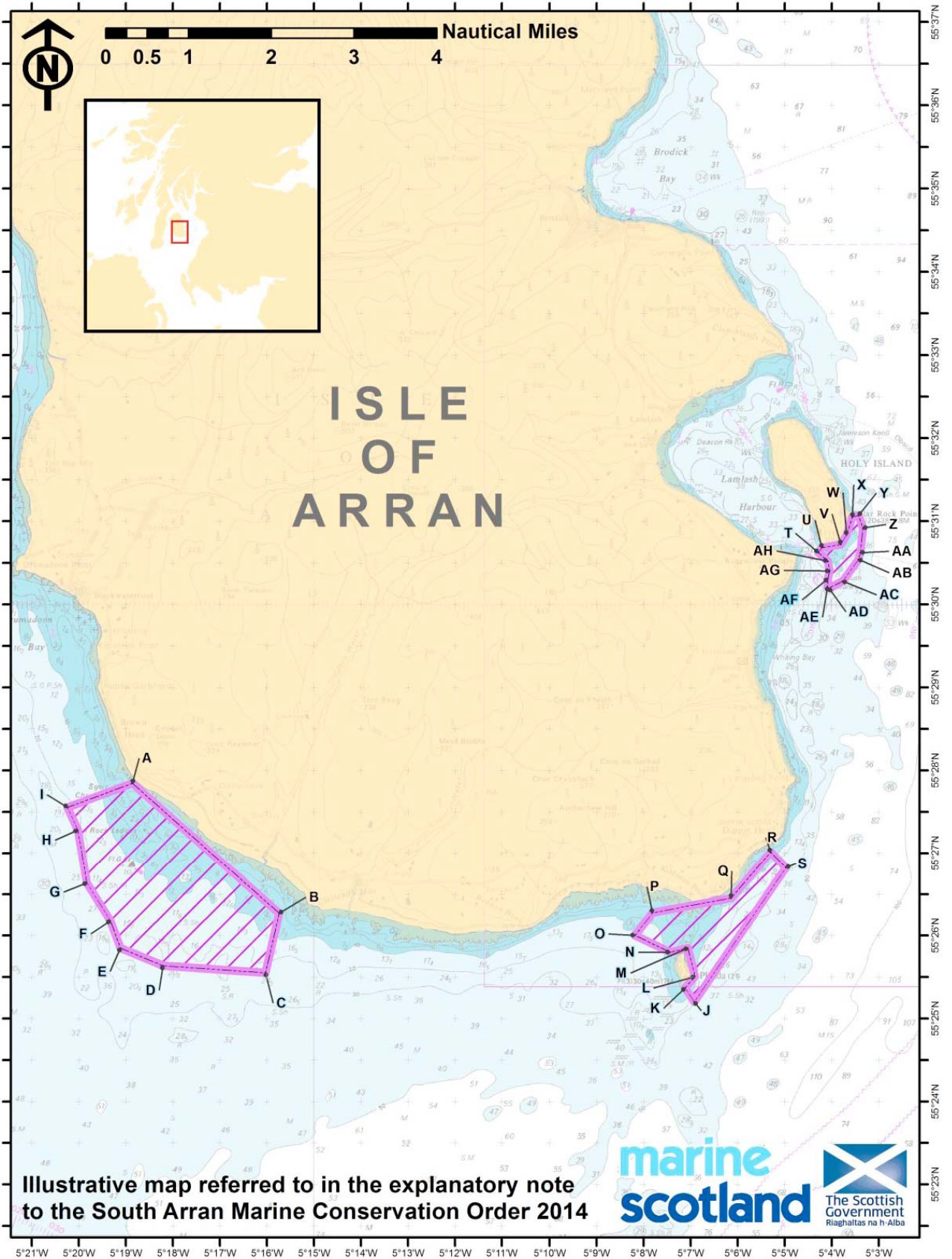
As per above purpose, and includes:

A person who contravenes a marine conservation order under section 94(1) of the 2010 Act commits an offence. Section 95 of the 2010 Act provides that, subject to certain exceptions specified in that provision, a person who intentionally or recklessly does a prohibited act in a nature conservation MPA which significantly hinders, or may significantly hinder, the achievement of the stated conservation objectives for the MPA commits an offence. Section 97 of the 2010 Act provides further exceptions to the offence provisions whereby a person is not guilty of an offence in certain specified circumstances. This includes where a person has acted under an authorisation granted by a public authority. The Order provides that this particular exception does not apply in relation to activities carried out under such authorisation in those parts of the South Arran MPA where the Order applies.

A Business and Regulatory Impact Assessment (“BRIA”) was undertaken for the designation of the South Arran MPA. The impact of this Order falls between the lower and intermediate estimates made in that document. The BRIA can be found at <http://www.scotland.gov.uk/Resource/0045/00456466.pdf>

An illustrative map showing those parts of the South Arran MPA in respect of which the Order applies follows:

The South Arran Marine Conservation Order 2014



NOT FOR NAVIGATION. Created by Scottish Government (Marine Scotland) 2014. gj0830. © Crown Copyright, All rights reserved. OceanWise License No. EK001-201404001. Projection: Mercator. Datum: WGS 1984. Standard Parallel: 55°30'0.00"N Scale 1:105,000

POLICY NOTE

The above instrument was made in exercise of the powers conferred by sections 85(1)(a), (2) and (4), 86(1) and (3), 88(1) and (2) and 92(1) and (5) of the Marine (Scotland) Act 2010. The instrument is subject to negative procedure.

Policy Objectives

The purpose of this instrument is to further the recover conservation objective of maerl beds, a protected feature of the South Arran Marine Protected Area ("South Arran MPA"). The designation of this Nature Conservation MPA took effect on 07 August 2014. Maerl beds are particularly vulnerable to physical disturbance. Scientific studies have shown that mobile fishing gears can significantly reduce the amount of live maerl in one pass.

Physical disturbance from other activities will also have an impact but to a lesser extent. Given the recover conservation objective there is a need to minimise the risk of negative effect from all activities that can interact with seabed habitats in the discrete areas that are important for maerl beds.

In recognition of the need to recover the maerl beds, and their sensitivity to fishing activity, a voluntary management arrangement was put in place when the MPA designation was made. Member Associations of the Scottish Fishermen's Federation, and the Scottish Creel Fishermen's Federation, as well the Western Isles Fishermen's Association, all of whose members are licensed to fish in the South Arran area, were party to this arrangement.

Information received by Marine Scotland showed that one fishing vessel was not adhering to the voluntary arrangement. This was considered to present a significant risk of hindering the achievement of the conservation objectives for the maerl beds.

Section 3 of the Marine (Scotland) Act 2010 provides that Scottish Ministers and public authorities must act in a way best calculated to further the achievement of the protection and enhancement of the health of the Scottish marine area. Scottish Ministers consider this Urgent Marine Conservation Order necessary to further the conservation objective to recover the maerl beds at the South Arran MPA.

The Order prevents any fishing activity taking place within those areas within the South Arran MPA considered essential to the recovery of the maerl beds. In addition, depositing or removing anything from these defined areas is prohibited. This will reduce the risk of human activity hindering the achievement of the conservation objective of the maerl beds to lowest possible level.

The Order will take immediate effect instead of waiting at least 28 days as doing so would leave the maerl beds exposed to potential continuing fishing activity during that time. As a consequence of this action section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with.

Consultation

Section 87 of the Marine (Scotland) Act 2010 sets out the normal consultation procedure for making a Marine Conservation Order. However, as this Order is being

made under powers to include section 88 of the Marine (Scotland) Act 2010 the section 87 consultation process is not required. Discussions have taken place with the Scottish Fishermen's Federation, Scottish Creel Fisherman's Federation, and the national liaison officer of the Inshore Fisheries Groups. They accept that making the voluntary arrangements into statutory provision is a necessary response to the issue.

This Order is time limited to 1 year, and the process to develop a permanent order is on-going. There will be a full public consultation this winter regarding permanent arrangements.

Impact Assessments

An equality impact assessment screening has been completed on the South Arran Marine Conservation Order. This concluded that there were no equality issues requiring full assessment as the Order applies equally to all types of fishing and other human activities that involve depositing or removing anything from the seabed.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed for the South Arran MPA designation order. In that document lower, intermediate, and upper scenarios were assessed. The impact of this Order will fall between the lower and intermediate scenarios.

APPENDIX 1

EXTRACT FROM THE DELEGATED POWERS AND LAW REFORM COMMITTEE'S 26th REPORT OF 2014

The purpose of this instrument is to prohibit specified marine activities in relation to three protected areas of maerl beds in the South Arran marine protected area.

Due to the urgent requirement to have this order in place this negative procedure instrument was laid on the same day as it was made (30 September 2014) and it came into force on the following day (1 October 2014).

The Scottish Government has provided a letter to the Presiding Officer, to explain the failure to comply with the "28 day rule", as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA"). The correspondence is reproduced at Annexe A.

The South Arran Marine Protected Area ("MPA") was designated in August 2014 by virtue of the South Arran Nature Conservation Marine Protected Area Order 2014. The designation was made under powers in the Marine (Scotland) Act 2010 ("the 2010 Act") and it sets out conservation objectives in relation to specified protected features within that area. The protected features include maerl beds.

The 2010 Act also contains powers enabling the Scottish Ministers to make a conservation order for the purpose of furthering the conservation objectives in relation to a particular MPA. This conservation order prohibits specified activities from taking place in relation to three designated protected areas within the broader

South Arran MPA. In its letter to the Presiding Officer, the Scottish Government states that the order was required to come into force immediately given that the Scottish Government considers there to be a significant risk at present to the conservation objective in respect of maerl beds in the South Arran MPA. This is because a voluntary management arrangement reached between various organisations with fishing interests in the South Arran MPA following the designation of the MPA in August has been breached.

The Committee draws this instrument to the Parliament’s attention on reporting ground (j) as there has been a failure to observe the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”). The instrument was commenced the day after it was laid, meaning that the requirement to leave a minimum of 28 days between laying and coming into force has not been complied with.

However, the Committee finds the Scottish Government’s explanation for breach of the ILRA requirements to be acceptable having regard to the terms of the letter provided by the Scottish Government to the Presiding Officer.

ANNEXE A

Letter to Presiding Officer: breach of laying requirements

The South Arran Marine Conservation Order 2014 has been laid before the Scottish Parliament today, and will come into force tomorrow 01 October 2014. As a consequence of this action it has not been possible to follow Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) on this occasion, in order to remove the risk of further potential impacts on the maerl bed habitat as soon as possible.

In accordance with section 31(3) of that Act this letter explains why.

Reasons for non-compliance

The South Arran marine protected area (“MPA”) was designated on 23 July 2014 using the powers in sections 67(1)(a), 68, 69 and 79(1) of the Marine (Scotland) Act 2010 (“the Act”). Under section 3 of the Act when exercising any function under the Act that affects the Scottish marine area the Scottish Ministers and public authorities must act in the way best calculated to protect and, where appropriate, enhance the health of the area. Scottish Ministers consider that this Marine Conservation Order, made on an urgent basis, is necessary to further the conservation objective, namely the recovery of the maerl beds at the South Arran MPA.

Upon designation of the South Arran MPA a voluntary management arrangement for the MPA was implemented by the Scottish fishing industry. The purpose was to protect the maerl bed habitat, which is particularly vulnerable to fishing impacts, as an interim arrangement until such time long-term statutory measures are implemented.

It has come to the attention of the Scottish Government that the voluntary arrangement has been breached. Therefore, this Order is being made to prohibit and regulate fishing and other activities which may have a negative impact upon the maerl bed habitat, on a statutory basis, and is to come into force without delay.

This is of an urgent nature as scientific studies have shown that mobile fishing gears, such as scallop dredging, can destroy significant proportions of this habitat type with just one pass. Maerl beds are particularly vulnerable to physical disturbance which is why all activities that involve potential contact with the seabed are also being regulated.

Where the Scottish Ministers consider that there is an urgent need to protect an area in respect of which a marine conservation order may be made then section 88 of the Act allows the Ministers to make a Marine Conservation Order on an urgent basis. In such cases the procedure set down for prior consultation under section 87 of the Act does not apply.

As the act of fishing presents a significant risk of the conservation objective in respect of maerl beds not being achieved there is a legal duty on the Scottish Ministers to intervene. Therefore the procedure at Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) is not being followed on this occasion. This is to remove the risk of further impacts on the maerl bed habitat as soon as possible.

We will endeavour to follow the procedure at Section 28(2) for other MPA management proposals.

Wildlife Crime in Scotland – 2013 Annual Report

Background

1. Section 20 of the Wildlife and Natural Environment (Scotland) Act¹, passed by the Scottish Parliament in 2011, introduced a requirement into the Wildlife and Countryside Act 1981² that Scottish Ministers must, after the end of each calendar year, lay before the Scottish Parliament a report on offences relating to wildlife.

2. The second of these reports, the *Wildlife Crime in Scotland - 2013 Annual Report*³ was published by the Scottish Government on 20 October 2014.

Wildlife Crime in Scotland - 2013 Annual Report

3. The report covers the calendar year 2013 and sets out data on recorded wildlife crime and prosecutions. It contains a chapter setting out the work of Police Scotland and one on prosecutions and convictions by the Crown Office as well as information on the National Wildlife Crime Unit and the work of the Scottish Society for the Prevention of Cruelty to Animals and its Special Investigations Unit.

4. The 2012 Report⁴ set out the UK and Scottish wildlife crime priorities for the following 2 years; they are again listed in the 2013 Report (in alphabetical order) as—

- badger persecution;
- bat persecution;
- convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) issues;
- Freshwater Pearl Mussel persecution;
- poaching (including deer poaching, hare coursing, fish poaching); and
- raptor persecution (including poisoning, trapping, egg theft, nest disturbance).

5. In his foreword the Minister for Environment and Climate Change (the Minister) reflected—

“One thing that is very clear is that wildlife crime is still taking place at unacceptable levels in our countryside. Crucially there is a real risk to the conservation status of some of our most important species”

¹ Wildlife and Natural Environment (Scotland) Act 2011. Available at: <http://www.legislation.gov.uk/asp/2011/6/contents/enacted>.

² Wildlife and Countryside Act 1981. Available at: <http://www.legislation.gov.uk/ukpga/1981/69/contents>.

³ Scottish Government (2014). *Wildlife Crime in Scotland - 2013 Annual Report*. <http://www.scotland.gov.uk/Resource/0046/00461141.pdf>.

⁴ Scottish Government (2013). *Wildlife Crime in Scotland - 2012 Annual Report*. Available at: <http://www.scotland.gov.uk/Publications/2013/09/2382/0>.

Committee consideration

6. The Committee considered the 2012 report at its meeting on 27 November 2013⁵ when it took evidence from the Minister. The Committee agreed as part of its current work programme to take evidence on the 2013 report from Police Scotland and the Lord Advocate and then from the Minister, and then to write to the Minister with its views.

7. A written submission from Scottish Natural Heritage can be found in the **Annexe**.

Timetable

8. The Committee's future consideration is set out below—

- evidence session with Minister on 5 November 2014;
- consideration of draft letter to the Minister on 19 November; and
- consideration of draft letter to the Minister on 26 November.

Clerks

**Rural Affairs, Climate Change and Environment Committee
24 October 2014**

⁵ Scottish Parliament, Rural Affairs, Climate Change and Environment Committee, *Official Report* 27 November 2013. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9035&mode=pdf>.

Update from Scottish Natural Heritage on General Licence Restrictions and other Wildlife Crime related work

Background

In 2013, Minister for Environment and Climate Change, Paul Wheelhouse, asked Scottish Natural Heritage (SNH) to '*examine how and in what circumstances we can restrict the use of General Licences to trap and shoot wild birds on land where they have good reasons to believe that crimes against wild birds have taken place*'.

General Licences represent a relatively 'light-touch' approach to regulation, allowing persons to carry out activities without the need of applying for a specific licence. The rationale behind imposing a restriction on the use of General Licences is that light-touch regulation should not apply in situations where the regulator has lost trust or confidence.

The Minister has now approved the framework by which we intend to take this forward. This was announced, and the framework published, earlier this month.

Key aspects of the proposal are summarised below—

- Restrictions can be imposed if there is evidence of crimes being committed against wild birds on an area of land in question.
- Decisions to implement restrictions will be made on the basis of evidence collected by the Police, which will be routinely shared with SNH (under the terms of an Information Sharing Protocol).
- Evidence of crimes that has been gathered since 1st January 2014 will be used in considering whether or not to implement a restriction.
- Restrictions will apply for three years, and can be extended if further evidence of offences is found.
- Restrictions will prohibit the use of General Licences over a specific area of land.
- Owners of the land in question will be notified of any intention to restrict the use of General Licences on that land and restrictions will be published on SNH's website.
- Potential restrictions will be discussed with the Police and Procurators Fiscal prior to implementation to ensure that they would not jeopardise ongoing investigations or judicial processes.
- There is an appeals process open to those affected by a potential restriction.

Further information on General Licences and the full details of the process for considering and implementing restrictions can be found at <http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/bird-licensing/general/>.

Other work

In 2013, SNH created the role of Wildlife Crime Project Officer to help the organisation deliver on its remit of wildlife crime prevention and education. Key to this role are the provision of organisational guidance and delivery of training for all lead contacts within SNH operational areas.

SNH are working closely with Police Scotland to deliver wildlife crime objectives. As detailed in the wildlife crime priority chapter on [Raptor Persecution](#) in the Wildlife Crime Report 2013, this includes the development of restrictions on the use of general licences.

Scottish Natural Heritage

21 October 2014