

The Public Release of Bird Data

Background

During our discussions about the provision and treatment of ornithological data at the Bangor meeting of the Scientific Working Group, we touched on some of the issues surrounding the public availability of data. This paper seeks to address this topic in a more considered way.

The issue

Historically, rare and sensitive species were protected by the ornithological community by keeping quiet about that interest – information would be passed on only on a need to know basis if at all. In recent decades, there has been a marked change in approach. Increasingly, it has been recognised that sites for such species are more likely to be harmed by inappropriate development (afforestation, agricultural change, built development etc) through ignorance of what is there, rather than by direct persecution. The conversion of disparate field data into accessible inventories for use by decision makers and land use planners has been an important part of this process, of which the SPA Review document is the most recent manifestation.

This transformation has not always been a smooth process. Much effort has been spent by scientific and conservation bodies in reassuring observers that liberalising data release is indeed in the interests of the birds concerned – for there are risks, some real, some more a matter of perception. And, as the RBBP paper noted, for some species this process is incomplete.

Developing and maintaining observer confidence is vital, as most of the huge level of knowledge gained about the status of birds in the UK has been provided by many individual volunteer recorders, supplemented by (many fewer) dedicated surveys carried out by paid staff of conservation bodies. Individuals have made the commitment because they believe the information gained will benefit the species concerned. If this contract between observer and those using the data is broken, then there is a clear risk that observers will unilaterally decide to simply cease surveying, or passing the data on to formal recording schemes. In effect, observers themselves will determine that the risk of persecution/disturbance through data release exceeds the benefits and protection given to the birds and habitats through SPA/SSSI protection or other conservation/land use planning measures.

An additional complication arises where landowners demand confidentiality as a condition of provision of access for surveying.

The threat to rare birds from persecution or disturbance

The release of data, however, can also give rise to threats to rare birds from persecution or disturbance. Three main issues can be identified:

1. The persecution by land managers. Release of information about some species of birds of prey is sensitive because of the risk that land owners/managers will persecute them. This is probably most serious for hen harrier, where land managers have become more aware of the hen harrier associated with their land through the SPA process. At some sites, this has led to intensified persecution. Table 1 provides data on the level of illegal persecution of birds of prey in the UK, published in the recent report of the DETR/JNCC Raptor Working Group.

Table 1: Confirmed reported incidents of the illegal killing of birds of prey in the UK: incidents 1990-1997 (as at 15 September 1999). These are minimum estimates of the actual kill of all species. Source: MAFF, Scottish Agricultural Science Agency Wildlife Incident Investigation Reports for poisoning; RSPB data for shooting, trapping & nest destruction. Note that there were no confirmed reported incidents involving Montagu's Harrier. Species placed in rank order of impact of illegal killing relative to the size of the breeding populations.

UK 1990-1997	Poisoning		Shooting, trapping & nest destruction		Totals all types of offence	
SPECIES	No. incidents	Min. no. birds	No. incidents	Min. no. birds	Total no. incidents	Total min. no. birds
Hen Harrier	7	8	95	123	102	131
Red Kite	33	33	5	5	38	38
White-tailed Eagle	1	1	1	1	2	2
Peregrine	21	23	113	134	134	157
Marsh Harrier	2	4	2	2	3	6
Honey Buzzard	0	0	1	1	1	1
Goshawk	2	2	15	16	17	18
Golden Eagle	9	9	5	5	14	14
Buzzard	150	182	138	151	288	333
Merlin	0	0	10	12	10	12
Osprey	0	0	1	1	1	1
Sparrowhawk	12	12	42	46	54	58
Kestrel	5	6	47	54	52	60
Hobby	0	0	2	2	2	2
Rough-legged Buzzard	0	0	1	1	1	1
TOTAL	242	280	478	554	720	834

Minimum number of birds involved in the shooting, trapping & nest destruction category are considered to be understated, in particular for the 1990-1994 period.

2. Egg collecting. The collecting of eggs of Britain's rarest and most vulnerable birds continues at a significant level, impacting on the population status of as many as 30 species (table 2). It is now estimated there are in excess of 300 active egg collectors in the UK; those ceasing this activity appear to be being replaced by "new recruits". Rarely are eggs taken and sold for monetary gain – they are usually kept as highly prized trophies. Information is the lifeblood of modern egg collecting. Internet sites, specialist publications and loose talk from birdwatchers are all ways in which information enters the "egg collecting grapevine". The control of sensitive information continues to be a key element in the protection of vulnerable breeding species.

Table 2: Species for which egg collecting may pose a population level threat to their survival, in descending level of risk, based on a variety of risk indices reflecting their vulnerability to collecting derived from population estimates, range size, and data on egg collecting from seized collections/intelligence between 1982-2001. For details see Thomas M, Elliott G, Gregory R 2001 “The Impact of Egg Collecting on Scarce Breeding Birds 1982-1999”. RSPB Conservation Review 13: 39-44.

Species	Annex 1	Non-annex 1 Regularly Occurring Migratory Species
Slavonian grebe	*	
Osprey	*	
White-tailed eagle	*	
Red kite	*	
Red-necked phalarope	*	
Black-necked grebe		✓
Little tern	*	
Red backed shrike	*	
Black-throated diver	*	
Goshawk		
Wryneck		✓
Temminck’s stint		✓
Stone-curlew	*	
Golden eagle	*	
Marsh warbler		✓
Golden oriole		✓
Bittern	*	
Peregrine	*	
Dotterel	*	
Roseate tern	*	
Honey buzzard		✓
Avocet	*	
Scaup		✓
Ruff	*	
Montagu’s harrier	*	
Woodlark	*	
Common scoter		✓
Cirl bunting		
Corncrake	*	
Black-tailed godwit		✓

3. Disturbance by birdwatchers. Public involvement in birdwatching has increased hugely, with some estimates suggesting participation of 4-5 m individuals. Birdwatching use of sensitive sites is increasing. Disturbance by well-behaved birdwatchers is minimal. However, there are regular instances of poor behaviour, such as birders beating areas to flush out capercaillie. In the South Peak birdwatcher disturbance was believed to be the main factor in the loss of the final black grouse lek, the elimination of a population already much reduced through land use change. A key approach to birdwatcher management has been the provision of “honey-pot sites” which can cope with high levels of public use, in an attempt to reduce pressure elsewhere.

Issues which arise from data release are as follows:

1. JNCC (DS) has confirmed that there has been a material change in policy and practice towards data release in relation to designated sites. In the past, legal documentation could allude to a non-specific “rare species” on a site without going into specifics (or not even mention this interest at all). Current legal advice is that SCOs need to be specific in stating that site x is designated for species y, even if this species is rare. In several cases, sensitive species have been given a measure of protection by aggregating locational data at site level. However, some landowners are now seeking data release at six figure grid ref level for their land (hen harrier), or for land owned by others (stone-curlew), using in part the HRA as justification. RSPB believes there are grounds for public bodies holding relevant data to resist release of such data under the Environmental Information Regulations 1992.

We are however concerned that the public consultation processes associated with new legislation, such as those relating to the exclusion or restriction of statutory access to open country (in England and Wales under Part 1 of CRoW 2000) to protect sensitive nature conservation sites, will also cause further sensitive information to be put into the public domain and thus, perversely, may act as an attractant.

2. If further information is put into the public domain as a consequence of the statutory/legal process then:
 - consideration will need to be given to how the confidence of volunteer bird recorders/observers etc is enhanced;
 - statutory resources directed towards nest protection and enforcement will need to be increased.

Implications for access provision

As a matter of policy, organisations such as RSPB and BTO urge observers to seek permission from the landowner/occupier to do surveys. Where survey or monitoring requires a S16 disturbance licence, the conditions attached to the licence make it clear the holder has to obtain landowners permission even where the land is *de jure* or *de facto* open access.

This introduces two difficulties:

1. Some landowners have demanded confidentiality as a condition for entering land for survey, because they fear data release will attract birdwatchers. Examples include the recent spotted crane survey and in the Broads, where individual sites for bitterns have been withheld at the insistence of the landowner and local EN staff.
2. Some landowners have denied access because they fear data may be used to support site designation. At one site, access has been terminated to RSPB stone-curlew teams, because data gathered by the project was used to designate the SPA (even though we were helping to prevent the same landowners from committing an offence by destroying nests through avoidable agricultural operations).

3. Some landowners appear to have denied access because they do not wish to have surveyors on their land – perhaps because it may limit illegal persecution of predatory birds and mammals. This has applied not only to controversial species such as hen harrier, but also apparently non-controversial species such as ring ouzel.

Issues which arise from this are:

1. Should the licence requirement to seek landowners permission be relaxed for sensitive species where persecution is widespread, especially where there is a *de jure* or *de facto* right of access in any case?
2. What instructions should be given to volunteers and contract/paid fieldworkers where landowners ask for confidentiality as a condition of access?
3. Where access has been denied unreasonably, to what extent should SCOs be prepared to authorise entry to land using their access powers to do survey and monitoring, so ensuring “Birds” Directive monitoring requirements are being met?

Endpiece

From an RSPB perspective, we are becoming increasingly concerned that measures intended to protect birds may result in the wider public dissemination of information which may prejudice them. As yet, it is unclear as to what balance may be struck between the landowners’ rights (e.g. to information concerning their land, to protection of their property) and the protection of data under, for example, the Environmental Information Regulations 1992 (which provides for non-disclosure of environmental information where disclosure would increase the likelihood of damage to the environment). As a Group, we need to recognise the outcome may not only impact on the species concerned directly, but also indirectly, by influencing data provision from volunteers.

We invite the SWG to address these issues; to consider what actions (if any) might be initiated by the Group; and whether any matters need to be referred for further consideration by the N2K Liaison Group.

Gwyn Williams
5 March 2002