

Hen Harrier shot on the Cabrach Estate, Morayshire in June 2013.

There has been much discussion about this case on social media which centres on a Hen Harrier breeding attempt on the Cabrach Estate, Morayshire, Scotland in 2013. For those not well acquainted with Hen Harrier persecution in general, and this case in particular, it is worth reiterating that the Hen Harrier population is under severe threat in the UK. This is particularly so in England where the Hen Harrier has been on the edge of extinction as a breeding species for many years, even decades. It is also worth repeating that the primary threat to this species is persecution by individuals connected with the grouse shooting industry. Readers should be under no illusion that grouse shooting is an industry and that in some parts of the UK any raptor that is perceived to threaten the industry is routinely illegally killed.

After three years in the legal system this case was eventually prevented from coming to trial by the prosecuting authorities. For all intents and purposes in cases such as this, as far as England is concerned Scotland is a '*foreign country*' with slightly different wildlife laws and a very different application of what is basically a similar legal system. That being the situation, one may be tempted to ask "*what has this case got to do with The Northern England Raptor Forum*", which as the name suggests is primarily concerned with raptor persecution in England?

The RSPB [Scotland] and members of the Scottish Raptor Study Group [SRSG] are deeply involved in monitoring, conserving and protecting Birds of Prey. Both organisations abhor persecution and work tirelessly to bring those responsible to justice. NERF is comprised of English Raptor Workers who share these values. RSPB, [Scotland], and the SRSG are members of the Partnership for Action Against Wildlife Crime Scotland [PAWS]. The RSPB and NERF are members of PAW [England & Wales]. Not only do we share common values in respect of preventing and detecting raptor persecution we also share a common border which Birds of Prey do not recognise as they cross back and forth at will.

The English Hen Harrier population greatly increases over winter. Many of these birds originate from Scotland to where they return to breed. If the English population is to recover naturally it is highly probable that the current tiny, remnant, population will be bolstered by migrants from Scotland that remain and breed in the Pennines. It is self-evident that when birds are killed illegally in Scotland, over time, there will be a direct negative impact on the potential to naturally increase the number of breeding birds in England. Consequently NERF is inextricably linked with the outcome of this case.

The facts within this case, which is totally predicated on the admissibility of video evidence are not complicated to follow and are explained below:

- A Hen Harrier nest was located containing 4 eggs
- It is important to understand the motivation behind the installation of a long running camera at this site. Members of the shooting industry frequently blame the failure of Hen Harrier nests on the predation of eggs and young. Alternatively they blame the failure on desertion caused by licensed Raptor Workers visiting the nests or members

of conservation organisations making too many visits to maintain remote cameras. Whilst these allegations are clearly false, to remove any doubt it would appear that the RSPB decided to monitor this breeding attempt using technology only. Whilst making these outrageous allegations, at the same time, members of the grouse shooting industry publicly deny or downplay the significant impact that persecution has upon this vulnerable species

- It is clear from the RSPB statement that a remote covert camera was installed to monitor the breeding attempt. Why wouldn't they? Historically they have installed covert cameras for similar purposes in Scotland many, many times and when those cameras have unexpectedly recorded illegal activity the video evidence has been accepted by the courts
- The counter argument, eventually put forward by the Crown, is that in their opinion the covert camera was installed illegally to detect crime rather than for conservation purposes and therefore any criminal activity recorded by the camera was inadmissible. The RSPB have strenuously denied this assertion.
- We know from the subsequent video footage, released by the RSPB following the withdrawal of the case by the Crown, that a Hen Harrier was flushed from the nest and two shots were fired as the bird leaves the frame. A cloud of Hen Harrier feathers then blows back across the frame. A man with a shotgun appears in view, walks across the frame out of view and returns carrying a dead Hen Harrier. He then picks up the feathers and exits following his entry route
- We know that the suspect was identified and interviewed by the Police during which it appears that he denied involvement with the killing of the bird
- We know that the file was submitted to the prosecuting authorities by the Police and that they subsequently agreed that there was a case to answer
- We also know that the case went to court nine times before it was finally abandoned following further advice from the Crown. This debacle took three years from start to finish

The abandonment of this case by the Crown understandably caused consternation in some quarters of the conservation community, including NERF and understandable outrage in other quarters. There are several aspects of the case that are very difficult to understand. Why for instance if the video evidence would not be admissible in this case wasn't that decision taken when the papers first arrived on the Prosecutors desk. Similar video evidence, provided by the RSPB, has been accepted by the courts in previous cases. It would therefore seem reasonable that a Crown Prosecutor would follow precedent and rightly put the evidence before a court where the issue of admissibility could be fully and fairly debated.

Hen Harriers are a National Wildlife Crime Priority Species in both Scotland and England. The killing of the Hen Harrier at Cabrach, Morayshire in June 2013 is not a victimless crime; it is the killing of a UK priority species, the impact of which will be felt across the whole of the UK. The pursuit of this case by the Prosecutors is therefore clearly in the public interest. Justice must not only be done, it must be seen to be done. It is difficult to understand how justice was served in this case both for the victim and for that matter the accused.

In the pursuance of transparency and continued faith in the judicial system there are a number of questions that need to be answered by the Crown Prosecutors in this case:

- If it was suddenly decided that the video evidence was inadmissible after nine previous court appearances over a 3 year period why did it take so long to come to that conclusion and at what wasted financial cost?
- Why is there inconsistency in the decision making process between this and previous cases which relied on covert video evidence provided by the RSPB?
- What was the decision making process in this case; basically who knew what and when? Who changed the advice and on what basis? There are far reaching implications resulting from this decision
- Bird of Prey persecution, including that of Hen Harriers, and the unsustainable management practices within the shooting industry are high on the political agenda in Scotland, regrettably less so in England. It is therefore of paramount importance to know whether or not any political consideration or pressure was applied to effect the timetable to withdraw this case?
- It appears that the admissibility of the video was the main driver leading to the abandonment of the prosecution case. For the sake of clarity we should consider what would the decision have been if the scenario was slightly different. What if the video had recorded the killing of a Raptor Worker making a licensed visit to the nest rather than the Hen Harrier being killed? Would the same decision to reject the video evidence have been made? If so would there have been a public outcry? Of course there would. NERF suspects, indeed hopes that the decision would have been to present the video evidence to the court rather than to arbitrarily allow a murderer to walk free. The victims are self-evidently different in these two scenarios; however the application of the law should be the same in both. Offences such as the killing of the Hen Harrier in this case occur in extremely remote locations and consequently are almost impossible to detect. Clearly the admissibility of covert video evidence in Scotland needs to be dealt with as a matter of urgency. If an internal review by the Scottish legal system concludes that such evidence is not admissible then the Government needs to make the necessary changes to the application of the current legislation, or introduce new legislation without delay. Failure to do so is tantamount to giving a blank cheque to wildlife criminals to operate with impunity and with minimal chance that they will ever see the inside of a court.

If the Government fails or refuses to take this step then NERF believes that the prominent conservation NGOs operating in Scotland, including the RSPB should apply for a Judicial Review of the decision making process in this case. The current status quo is totally unacceptable.

NERF

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