

Case ID: IESS.23.024

Description: Consideration of the measures taken to protect threatened bird species in Scotland

Scotland's diverse landscapes and internationally recognised habitats support a wide variety of resident and migratory wild birds. Crucial feeding, roosting and breeding sites for around 250 different bird species are found here, including summer seabird nesting areas, feeding grounds for migratory birds, and wintering sites for wildfowl and shorebirds. Many of these sites host habitats unique to Scotland, and are home to iconic birds including capercaillie, corncrake, sea eagle and osprey.

Despite there being 162 sites in Scotland designated specifically for the protection of wild birds, habitat loss and degradation are serious threats to their conservation. NatureScot's 2023 State of Nature report shows declining trends of biodiversity for bird species in Scotland, with climate change, intensification of farming and commercial forestry expansion given as drivers for decline.

The Birds Directive is the short name for Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds. It provides for the classification of Special Protection Areas (SPA) across a European network.

The Birds Directive lists 197 European birds requiring special conservation measures. SPAs must be classified for those species, as well as for other migratory birds, paying particular attention to the protection of wetlands of international importance.

Under the Birds Directive, classified habitats must be must preserved, maintained and re-established to ensure a sufficient diversity and area of habitats for all wild bird species. It provides legal protection for all wild birds, their nests, eggs and habitats within the European community.

The requirements of the Birds Directive were transposed into law in Scotland principally through the Conservation (Natural Habitats, &c.) Regulations 1994, as amended (the 'Habitats Regulations').¹ SPAs in Scotland are classified by Scottish Ministers, who must decide which sites to classify based on relevant scientific information and the criteria mentioned in Article 4 of the Birds Directive.

The Birds Directive is not prescriptive around the process by which SPAs are classified and there is a degree of discretion around SPA identification and classification. In the UK, this process is coordinated by the Joint Nature Conservation Committee (JNCC). The JNCC is responsible for advising Scottish Ministers (and the UK Government and other devolved administrations) on aspects of the classification and management of SPAs, publishing SPA Selection Guidelines and providing advice to nature conservation bodies, including NatureScot, in connection with their functions. It is also a member of a UK working group (the 'UK Special Protection Areas and Ramsar Scientific Working Group') which, along with other agencies and stakeholders, advises government and nature conservation agencies on scientific and technical issues regarding the SPA network.

Environmental Standards Scotland (ESS) received a representation concerning the implementation of the Birds Directive across the UK. The representation alleged that there has been a failure to comply with the Birds Directive in the following respects:

- the legal listing of qualifying species
- the adequacy of site boundaries
- SPA provision for those species for which this is lacking
- investigation of the causes of declines at specific sites and initiation of remedial management measures

¹ While the Birds Directive no longer has direct effect in domestic law following EU Exit, it remains relevant to the obligations arising under the Habitats Regulations in so far as the Regulations make reference to the requirements and obligations contained within the Directive. The Habitats Regulations were amended following EU exit to ensure they remained operable once the UK left the EU. The Habitats Regulations remain in force, including the provisions for the protection of SPAs. Any additional SPAs will now be designated under the Habitats Regulations.

- basic monitoring and population assessment for those species and sites where this is lacking
- and most recently, the apparent ‘collapse’ of the national co-ordination process, overseen by the JNCC, to ensure such measures are implemented

Specifically for Scotland the representation alleges that not all qualifying sites were chosen for SPA status meaning that the SPA network remains incomplete.

The scale of habitat loss and associated decline in wild bird biodiversity, the fragility of ecosystems supporting wild birds, and the pace at which change is required to halt biodiversity decline, requires that the authorities responsible for the classification and management of SPAs are clear in their duties and carrying them out effectively.

We have assessed the issues raised in the representation, and given the complex nature of the representation and existing uncertainties, we have determined that progressing to full investigation at this stage is justified.

Grounds of investigation

Our investigation will accordingly focus on the implementation of, and compliance with, environmental law in connection with the classification and adaptation of SPAs in Scotland; and the governance of recommendations made by the JNCC in respect of the classification and adaptation of SPAs.

ESS will provide regular updates on its website during the course of the investigation and will publish the outcome of this work once concluded.

March 2024