

# Consultation

## General licences under wildlife legislation in England



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## Introduction

1. Natural England works for people, places and nature to conserve and enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas. This includes conserving and enhancing the natural environment for its intrinsic value, the wellbeing and enjoyment of people, and the economic prosperity it brings.
2. Natural England was formed in October 2006 by bringing together English Nature, the landscape, access and recreation elements of the Countryside Agency and the environmental land management functions of the Rural Development Service.
3. Natural England seeks to be a distinctive public body committed to conserving and enhancing the natural environment whilst complying with other drivers such as the Government-wide better regulation agenda. The broad purpose of this agenda is to ensure that regulatory bodies undertake their activities in ways which are: consistent, proportionate, transparent, targeted, and accountable. The *Regulators' Compliance Code: Statutory Code of Practice for Regulators*<sup>1</sup> ('the Code') in effect enshrines adherence to the better regulation principles by placing a statutory duty on all bodies with regulatory functions, including Natural England, to 'have regard' to the Code and the principles within it.
4. Our principle focus for regulation is the protection and enhancement of England's natural environment, securing better environmental outcomes for the benefit of present and future generations. Regulation is one of the five primary levers, along with advocacy, advice, incentives and direct delivery that Natural England has at its disposal to secure these outcomes. Issuing derogations under wildlife legislation (commonly referred to as licences) is one of our regulatory functions. These licences permit actions or activities that would otherwise be unlawful, and are issued under the following legislation:
  - Wildlife and Countryside Act 1981 (as amended)
  - Conservation (Natural Habitats &c.) Regulations 1994 (as amended)
  - Protection of Badgers Act 1992
  - Deer Act 1991 (as amended)
  - Conservation of Seals Act 1970
  - Destructive Imported Animals Act 1932
5. Licences are only issued for specified purposes which are set down in the relevant legislation and only if certain specific criteria are met. Natural England applies five general principles to all its licensing activities; these are:
  - a. There is a genuine problem to resolve or need to satisfy for which a licensing purpose is applicable;
  - b. There are no satisfactory alternatives;

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<sup>1</sup> 1 . <http://www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html>

- c. The licensed action will contribute to resolving the problem or meeting the need;
  - d. The action to be licensed is proportionate to the scale of the problem or need;
  - e. The licensed action will not have an adverse effect on the favourable conservation status of any habitat type or species within its natural range.
6. The provision of derogations (principally in the form of licences) is well established in international law and is enshrined in the European Directives and conventions which UK wildlife law transposes (i.e. the Birds Directive, Habitats Directive and The Bern Convention). The licensing regime operated by Natural England ensures that the conservation status of all native species subject to licensing is not adversely impacted by activities carried out under these licences.
7. Licences can be issued to individuals, organisations and, under some legislation, more widely thereby allowing any person satisfying certain stated criteria to rely on the licence. These more widely applicable licences are typically referred to as 'General' licences. The key features of a general licence are:
- a. The issuing authority has decided that there is sufficient justification to issue a licence without seeking evidence on a case by case basis.
  - b. They are issued to a class of persons (e.g. 'all landowners or occupiers' or 'educational establishments') who do not need to seek individual permission to act under the licence. The user of such a licence is responsible for ensuring that they qualify to use the licence and that they meet the terms and conditions.
  - c. They are suitable for low risk situations (in terms of species conservation) where there is good evidence that the licensed activity is justified, subject to conditions, in all appropriate situations.
  - d. They are used in situations where an activity would routinely be approved and a person would find applying for a specific licence an overly burdensome and bureaucratic task. They can be an effective means of removing burdens on both the public and the regulator.
8. In 2007, Natural England was authorised by the Department for Environment, Food and Rural Affairs (Defra) to issue general licences. Prior to the issue of our first series of licences on 1 January 2008 we reviewed the licences with the help of a group of stakeholders. This review led to a number of changes, primarily to aid clarity and improve understanding of the conditions attached to the licences. We also introduced a number of new general licences. The current consultation reflects our commitment to continuous regulatory review and improvement.
9. A full list of Natural England general licences (with links to each) is available online at: [www.naturalengland.org.uk/conservation/wildlife-management/licensing/genlicences.htm](http://www.naturalengland.org.uk/conservation/wildlife-management/licensing/genlicences.htm)

## Scope

10. Wildlife licensing is a devolved matter and this consultation concerns only the arrangements for licensing in England.

## Consultation Purpose

11. Natural England is committed to regulating in a proportionate way that reflects the aims of the legislation, and takes account of the risk of the activities licensed and the conservation status of the species concerned. In meeting our obligations we seek to strike a balance that ensures the protection of species and sites whilst reducing any unnecessary burdens on those we regulate. To this end we are committed to an ongoing process of review and improvement.
12. The purpose of this consultation is to seek the views of consultees and others on a series of proposals relating to the 'General' licences issued by Natural England under wildlife legislation. We will take account of all responses received when deciding what changes, if any, will subsequently be implemented.

## Consultation instructions

13. Natural England would welcome your comments on the proposals set out in Table 1 of this consultation paper. The consultation period will last 12 weeks, closing on Friday, 13 March 2009.
14. The consultation paper and supporting documents are available online at [www.naturalengland.org.uk/consultations](http://www.naturalengland.org.uk/consultations)
15. In line with Natural England's Access to Information Statement ([www.naturalengland.org.uk/pdf/foi/NEaccesstoInformationStatement.pdf](http://www.naturalengland.org.uk/pdf/foi/NEaccesstoInformationStatement.pdf)) we may publish at the end of the consultation period all information contained in your response, however this is received, for others to see. If you want the information that you provide to be treated as confidential, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on Natural England.
16. We will respect personal privacy, whilst complying with access to information requests to the extent necessary to enable Natural England to comply with its statutory obligations under the Environmental Information Regulations 2004, and the Freedom of Information Act 2000.
17. We have formulated a consultation response form (in Microsoft Word format – see Annex B) which we would be grateful if you could complete and return to us.
18. Please send responses to: [wildlife.consultation@naturalengland.org.uk](mailto:wildlife.consultation@naturalengland.org.uk). We would prefer responses to be submitted electronically but if you wish to respond in writing please submit your response to: Natural England General Licence

Consultation, c/o Dr Edel McGurk, Natural England, Government Buildings, Otley Road, Lawnswood, Leeds. LS16 5QT.

19. If you have any comments or complaints about the consultation process, as opposed to the content in the consultation paper, please e-mail [simon.baker@naturalengland.org.uk](mailto:simon.baker@naturalengland.org.uk) or write to Simon Baker, Block 3, Government Buildings, Burghill Road, Westbury-on-Trym, Bristol, BS10 6NJ.

## The Proposals

The following table sets out the proposals covered by this consultation. Please use the reference numbers given in the first column when providing comments.

**TABLE 1**

Ref	Licence type and catalogue number (if applicable)	Summary of Proposal & Explanation and rationale
		<b>THEME: Obligations to Protected Sites</b>
1	Bird take/kill licences: (WML Gen-L05, 06, 07 & 08)	<p><b>Summary</b> – Addition of a note clarifying the duties of statutory undertakers in respect to Section 28G of Wildlife and Countryside Act 1981 (“the Act”).</p> <p><b>Explanation and Rationale</b>            Natural England is a statutory licensing authority and as such has a duty to ensure that activities carried out under derogations (licences) do not have an adverse impact on protected sites: this duty applies to general, as well as individual, licences. The Wildlife and Countryside Act 1981 (as amended) places a legal obligation on owners and occupiers to gain consent for ‘operations-likely-to-damage’ <u>on</u> protected sites, and the general licences do not exempt users from meeting this obligation. In last year’s review of the licences we amended the Notes attached to appropriate licences to make that obligation explicit and unambiguous<sup>2</sup>.</p> <p>In this consultation, Natural England is seeking views on further measures to make sure that activities carried out under its general licences do not have a detrimental impact on the features for which the sites are protected, even if they are undertaken outside of the protected site boundary. There are processes in place to address this issue when applications are considered on an individual basis; however, general licences are issued without prior knowledge of specific instances where the licence will be used and without direct contact with the potential user.</p>

<sup>2</sup> The relevant note states “This means that owners and occupiers of sites designated as Sites of Special Scientific Interest are obliged to seek the consent of Natural England if they propose to carry out an activity on the site that is listed on the protected site notification as an ‘operation likely to damage’ “

	<p>We do not consider this to be a problem for the majority of species covered by the general licences, but there are scenarios where this may be a potential cause for concern.</p> <p>Natural England is fully committed to retaining general licences as a straightforward and proportionate means of facilitating low-risk species management activities; however, this is only justified if we have confidence that detrimental impacts can be avoided.</p> <p>Having assessed the types of activities undertaken using these licences we consider the most significant risk to be associated with the large-scale control of gulls, typically for reasons of public health and safety. While such control may be necessary and justifiable, it could also impact negatively on protected sites for which the gulls are an interest feature, even if carried out a considerable distance away. Having considered a range of options, we believe that this concern is most effectively addressed by drawing attention to the existing obligations on statutory undertakers to consult Natural England.</p> <p>Under this proposal we would add an explanatory note to the 'take/kill birds' licences flagging this duty. For ease of reference, the text of Sections 28G and 28H are provided in Annex C. The draft wording of the proposed note is as follows:</p> <p style="padding-left: 40px;">Statutory undertakers (as defined under Section 28G of the Act) are reminded that they are obliged under Section 28H of the Act to give notice to Natural England before carrying out operations likely to damage any of the special interest features of a Site of Special Scientific Interest (SSSI) and this obligation applies even where the operations are carried out on land not included in the SSSI. To identify SSSIs and the features for which they are designated, refer to <a href="http://www.magic.gov.uk">www.magic.gov.uk</a>. Consult the site notification for details of 'operations likely to damage', and consider whether your activity is likely to have an impact. Advice may be sought from Natural England's regional teams (<a href="http://www.naturalengland.org.uk/contact/default.htm">http://www.naturalengland.org.uk/contact/default.htm</a> or Telephone <b>0845 600 3078</b>)</p> <p><b>Question 1: Do you agree with Natural England's proposal to address this concern by drawing attention to the existing obligations on Statutory Undertakers?</b></p>
	<p><b>THEME: Non-Native Species</b></p> <p>In May 2008 the Invasive Non-Native Species Framework Strategy for Great Britain was launched*. This country-wide initiative aims to galvanise efforts to combat the threat posed by invasive alien species to native wildlife and</p>

	<p>other interests. The cornerstone of an effective strategy to tackle non-natives is prevention, and where this fails, early intervention. Natural England has a lead role in realising the goals of the strategy in England, and to support this endeavour we are proposing to embed the principles of prevention and early intervention into our policy for general licensing with proposals relating to our general approach to non-natives and to the list of species covered by licences. Further measures relating to the sale of non-native species are covered in the Sales proposals.</p> <p>* Link to Framework Strategy:  <a href="http://www.nonnativespecies.org/documents/Invasive_NNS_Framework_Strategy_GB_E.pdf">www.nonnativespecies.org/documents/Invasive_NNS_Framework_Strategy_GB_E.pdf</a></p>
2	<p><b>Summary</b> – Proposal to adopt a presumption to permit, under general licence, actions to control invasive non-native wildlife species where these species threaten native habitats, flora or fauna, or human interests.</p> <p><b>Explanation and Rationale</b>  The Wildlife &amp; Countryside Act protects all wild birds, but where invasive non-native species become established in the wild this creates the perverse outcome whereby these species are also protected. We propose to adopt, as a principle, a presumption that regulatory controls, including general licences, be used to support the control and (where appropriate) eradication of any non-native species that are considered a threat to native habitats, flora or fauna, or to legitimate human interests. The Risk Assessments** produced by the GB Non-native Secretariat, where available for the species concerned, will be used as the principal source of reference for decision making; species with a ‘medium’ or ‘high’ risk rating being considered for appropriate regulatory measures, such as inclusion on relevant general licences. However, early intervention is critical and to ensure a prompt response to newly identified threats a decision may be taken in the absence of a Risk Assessment if there is reason to conclude that a species will cause harm (e.g. from the experiences of other countries). This decision will be reviewed if a risk assessment subsequently concludes that the risk is low.</p> <p>Decisions made in line with this proposal will not be based exclusively on the threat rating, but will take account of other relevant issues, such as the conservation status of the invasive species in its native range or its importance in current ecosystems in the UK.</p> <p>Licences may only be issued for purposes set down in legislation and only where justified, and the derogation of any protection will be linked to the threat that a species poses (e.g. if the non-native species threatens a native bird, then it will be included on the general licence permitting action for the purpose of conserving wild birds). Where licences permit measures because of the risk posed by a non-native species, non-lethal methods may not be considered a satisfactory alternative to licensed action.</p> <p><b>** Risk assessment is a key tool in the armoury against invasive non-native species. It is a vital part of any</b></p>

		<p><b>comprehensive prevention strategy. It can be used to aid prioritisation, to help enable effective rapid responses and for underpinning decision-making. The GB Non-native Species Risk Analysis Mechanism was established in December 2006. Within this mechanism risk assessments on non-native species are carried out by independent experts and these are reviewed by one peer reviewer and the risk analysis panel of experts.</b> Further details and a list of published assessments are available from the <b>GB Non-native Secretariat</b> website at: <a href="http://www.nonnativespecies.org">www.nonnativespecies.org</a></p> <p><b>Question 2: Do you agree with our proposal to use regulatory measures to facilitate the control or invasive non-native species?</b></p>
3	Licence to Kill/take birds to <b>conserve wild birds</b> (WML Gen-L08)	<p><b>Summary</b> – Proposal to add certain non-native bird species, namely:</p> <ul style="list-style-type: none"> <li>• Ring-necked Parakeet <i>Psittacula krameri</i>;</li> <li>• Monk Parakeet <i>Myiopsitta monachus</i>;</li> <li>• Canada Goose <i>Branta canadensis</i> and</li> <li>• Egyptian Goose <i>Alopochen aegyptiacus</i></li> </ul> <p>to the licence permitting the killing/taking of birds, nests and eggs <b>to conserve wild birds.</b></p> <p><b>Explanation and Rationale</b> – Applications to take action against these species are currently dealt with on an individual basis. Natural England is considering adding these four species, all of which are non-natives, to the general licence. This proposal is in line with Natural England’s support of the GB Invasive Non-Native Species Framework Strategy, which promotes a more precautionary and proactive stance in combating the potential threat from invasive non-natives.</p> <p><u>Ring-necked and Monk Parakeets</u></p> <p>When we consulted stakeholders on this proposal in 2007, a number of stakeholders questioned whether there was sufficient evidence of impacts on native birds species to warrant adding these species to the general licence. The risk assessment recently published by the GB Non-native Species Secretariat states that the potential for impacts on native species of bird is <b>moderate</b>.</p> <ul style="list-style-type: none"> <li>○ For Ring-necked Parakeets, the assessments states <i>‘it has also been demonstrated that introduced populations can have a negative association with native secondary cavity nesters.’</i></li> <li>○ For Monk Parakeets, the assessment states <i>‘Although there is unlikely to be competition with native birds for nesting sites, competition for food may be an issue since Monk parakeets are known to dominate feeding areas and act aggressively to competitors.’</i></li> </ul> <p>Natural England believes there is <u>potential</u> for a negative impact, especially if populations expand in numbers and</p>

		<p>range as predicted in the coming years. The proposal to add these species to this licence is entirely consistent with the robust <b>precautionary</b> policy on invasive non-native species recommended in the Invasive Non-native Species Framework Strategy for Great Britain. We know from past experience that it is often too late to achieve effective control if action is delayed until the adverse impacts of an invasive non-native species become clearly evident. The inclusion of these species on the general licences will enable a proactive approach to anticipated problems.</p> <p><b>Question 3.1: Do you agree with our proposal to add Ring-necked and Monk Parakeets to the general licence issued for the purpose of conserving wild birds (s.16(1)(c) of the Wildlife and Countryside Act 1981)?</b></p> <p><u>Canada Geese &amp; Egyptian Geese</u></p> <p>Natural England issues a number of individual licences to enable the control of these species for the purpose of conserving wild birds (25 licences in 06/07 and 12 licences in 07/08). Adding these species to the general licence is consistent with the robust precautionary approach to non-native species advocated in the Invasive Non-native Species Framework Strategy for Great Britain. It is also consistent with the principle that general licences are appropriate in situations where the issue of a licence would be a routine matter (see criteria set out on page 4, paragraph 7)</p> <p><b>Question 3.2: Do you agree with our proposal to add Canada Geese and Egyptian Geese to the general licence issued for the purpose of conserving wild birds (s.16(1)(c) of the Wildlife and Countryside Act 1981)?</b></p>
4	Licence to kill/take birds to prevent serious damage to crops (fruit) and disease. (WLM Gen-L05)	<p><b>Summary</b> – Proposal to issue a licence permitting killing/taking of</p> <ul style="list-style-type: none"> <li>• Ring-necked Parakeet <i>Psittacula krameri</i> and</li> <li>• Monk Parakeet <i>Myiopsitta monachus</i></li> </ul> <p>to <b>prevent serious damage to crops or disease</b></p> <p><b>Explanation and Rationale</b></p> <p>The populations of parakeets in this country are expanding. Evidence from other countries indicates that these species have potential to cause significant agricultural damage. Already, Natural England has received applications to issue individual licences to enable action to prevent serious damage to crops. Adding these species to the general licence signals our commitment to support a proactive approach to emerging problems with rapidly-expanding populations of invasive non-native species. This is consistent with the precautionary policy on non-native species advocated by the Invasive Non-native Species Framework Strategy for Great Britain.</p>

		<p>The risk assessments recently published by the GB Non-native Species Secretariat state:  <i>'Ring-necked Parakeets are considered a serious agricultural pest in its native range and have shown signs of causing significant damage to crops in the risk assessment area. They may additionally carry several diseases which could be harmful to poultry, native fauna and humans.'</i></p> <p><i>'The Monk Parakeet is considered an agricultural pest in its native South American range, although recent reports indicate that damage is severe locally, but less significant regionally. It is also reported to be an agricultural pest in some areas of the United States and could damage fruit and grain crops in the risk assessment areas [GB] if very large populations are allowed to establish themselves. There is potential for disease transmission to wild native birds, poultry and theoretically to humans.'</i></p> <p>As explained on page 3/4 (paragraph 5), Natural England applies five general principles in deciding whether the issue of a licence is appropriate; these include determining that there are no satisfactory alternatives. The current general licence issued for preventing serious damage or disease includes a condition requiring anyone relying on the licence to satisfy themselves that non-lethal methods of control such as scaring and proofing are either ineffective or impracticable. In the case of invasive non-natives, Natural England believes that activities that could lead to increased dispersal (such as scaring) cannot be regarded as a satisfactory alternative to licensed action. The Non-Native Species Secretariat has advised that further spread is a very undesirable outcome, and a licence condition that might encourage increased dispersal is not appropriate. We therefore propose to limit the application of this condition for invasive non-native species to non-lethal alternatives that will not encourage their dispersal (e.g. physical proofing). For the sake of clarity and to allow licence conditions and accompanying advice to be tailored appropriately, we are proposing to issue separate licences for native and invasive non-native species.</p> <p><b>Question 4.1: Do you agree with our proposal to permit the killing/taking of Ring-necked and Monk Parakeet species for the purpose of preventing serious damage to crops and disease (s.16(1)(k) of the Wildlife and Countryside Act 1981)?</b></p> <p><b>Question 4.2: Do you agree with our proposal to issue a separate licence for this purpose for invasive non-native species?</b></p>
5	Licence to Kill/take birds to preserve	<p><b>Summary</b> - Proposal to issue a general licence permitting the killing/taking of Monk Parakeet <i>Myiopsitta monachus</i> for the purpose of <b>preserving public health and public safety</b> in order to address anticipated problems caused by damage to energy infrastructure.</p>

<p>public health and safety (WML Gen-L07)</p>	<p><b>Explanation and Rationale</b></p> <p>Monk Parakeets have become a pest species in many parts of their global geographic range. They are colonial nest builders and studies from the United States have reported that their tendency to build large nests on artificial structures like energy infrastructure (pylons/transformers) often causes major electrical supply problems.</p> <p>The risk assessment recently published by the GB Non-native Species Secretariat refers to risks of <i>'increased power outages in colonised areas due to damage to utility structures caused by nests'</i> and concluded that damage to artificial structures as a result of colonial nest-building is likely. Although the populations of monk parakeet are currently small here, evidence from similar temperate countries indicates that <i>'they can establish large self-sustaining populations in time'</i>.</p> <p>As in proposal 4 above, Natural England believes that non-lethal activities that could lead to increased dispersal of invasive non-natives (such as scaring) cannot be regarded as a satisfactory alternative to licensed action. The Non-Native Species Secretariat has advised that further spread is a very undesirable outcome, and a condition that might encourage increased dispersal is not appropriate. Again, we therefore propose to limit the application of this condition for invasive non-native species to non-lethal alternatives that will not encourage their dispersal (e.g. such as physical proofing). For the sake of clarity and to allow licence conditions and accompanying advice to be tailored appropriately, we are proposing to issue separate licences for invasive non-native species.</p> <p><b>Question 5.1: Do you agree with our proposal to permit the killing/taking of Monk Parakeet species under a general licence for the purpose of preserving public health or public safety (s.16(1)(i) of the Wildlife and Countryside Act 1981)?</b></p> <p><b>Question 5.2: Do you agreed with our proposal to issue a separate licence for this purpose for invasive, non-native species?</b></p>
	<p><b>THEME – Review of species listed</b></p> <p>Species may be listed on general licences where they satisfy the criteria set out on page 4 (paragraph 7). As the status of any species can and will change over time, so their suitability for licensing in this way must be subject to periodic review. In particular, the licensing authority needs to give consideration to the conservation status of licensed species.</p> <p>In 2005 Defra removed two species, the house sparrow and the starling, from the general licences for killing and</p>

		<p>taking. This followed concerns about declines in the population of both species. Faced with such declines the licensing authority reasonably concluded that killing under the limited control of those general licences was no longer a low risk activity and, had the licences been considered on an individual basis, licences may not have been routinely issued (criteria c and d).</p> <p>In this consultation we are seeking views on the proposed exclusion of two species of gull from certain general licences to kill or take birds and the addition of several new species to a new public health and safety licence.</p>
6	<p>Licences to kill/take birds to prevent serious damage and disease, to preserve public health and safety &amp; to conserve wild birds (WML Gen-L05, L07, L08)</p>	<p><b>Summary</b> – To exclude Great Black-backed Gull and the Herring Gull from certain kill/take general licences</p> <p><b>Explanation and Rationale</b></p> <p><u>Great Black-backed Gull, <i>Larus marinus</i></u>  This is a scarce breeding species in England with a breeding population of approximately 1,500 pairs: this is less than half the number of some species that receive special protection under the Act (such as the Barn Owl and Kingfisher). We are not aware of any evidence that this species causes widespread problems and we believe that only a small number are killed each year under the existing licences. In view of the relative scarcity of the species and the absence of evidence of significant problems, we suggest that continued presence of this species on all but the air safety general licence (WML Gen-L06) is unwarranted.</p> <p>Therefore, we propose to retain this species on the air safety general licence <u>only</u>. An individual licensing approach will remain available for resolving all other problems caused by this species.</p> <p><u>The Herring Gull, <i>Larus argentatus</i></u>  The Herring Gull breeding population in Britain has declined by more than 50% in the last 25 years. As a result, it is now listed as a BAP priority species and meets the qualifying criteria for red listing as a bird of conservation concern.</p> <p>Acknowledging the scale of the decline in the Herring Gull population, we are proposing the removal of this species from the majority of general licences: similar action was taken in response to declines in house sparrow and starling populations in 2005.</p> <p>Herring Gulls can cause serious problems for public health and public safety in some urban areas. Such problems are typically managed by destroying eggs and nests where these are found in the urban environment. As part of this consultation we are seeking views on a proposal to <u>continue</u> to permit egg and nest destruction under the terms of a general licence for the purpose of preventing risks to public health and public safety.</p>

		<p>The proposals for the species are:</p> <ul style="list-style-type: none"> <li>○ To retain this species on the air safety general licence (unchanged from present), and</li> <li>○ To permit the destruction of eggs and nests for the purpose of preserving public health and public safety</li> </ul> <p>An individual licensing approach would be available for all other problems caused by this species.</p> <p><b>Question 6.1: Do you agree that <u>Great Black-backed Gull</u> should only be listed on the general licence permitting take/kill birds for the purpose of preserving air safety? Please provide evidence in support of your view.</b></p> <p><b>Question 6.2: Do you agree that the <u>Herring Gull</u> should only be listed on the general licences permitting</b></p> <ol style="list-style-type: none"> <li>a. the killing/taking of birds for the purpose of preserving air safety, and</li> <li>b. the destruction of eggs and nests for the purpose of preserving public health and public safety?</li> </ol> <p><b>Please provide evidence in support of your view.</b></p>
7	Licence to kill/take birds to preserve public health and safety	<p><b>Summary</b> – To issue a new licence permitting small numbers of House sparrow <i>Passer domesticus</i>, Starling <i>Sturnus vulgaris</i>, Robin <i>Erithacus rubecula</i> and Blackbird <i>Turdus merula</i> to be taken or killed for the purposes of preserving public health and public safety where birds have become trapped within premises used for the storage, processing or sale of foodstuffs for human consumption.</p> <p><b>Explanation and Rationale</b></p> <p>Natural England receives over 140 applications per year for licences to permit the removal of house sparrows, starlings, robin and blackbird in situations where there are public health and safety concerns; many of these concern birds trapped in commercial premises involved in food handling or production. These applications have been dealt with on an individual basis since the house sparrow and starling were removed from all general licences in 2005 due to conservation concerns.</p> <p>We have reviewed the current regulatory regime for the food premises against the criteria set out on page 4 (paragraph 7) and have concluded that this situation is a suitable candidate for a limited general licence.</p> <p>It is proposed to issue a new licence specifically tailored for use in specified food premise situations. The conditions of the licence would oblige those relying on it to employ suitably qualified/experienced persons to undertake the action (e.g. professional pest controllers, BTO authorised mist net users etc). The licence would incorporate strict conditions, obliging the food premise in question to have installed adequate proofing and/or deterrent measures. The food premise must also have followed a clear sequence of actions (set out below):</p>

		<ol style="list-style-type: none"> <li>1. To use all appropriate legal, non-lethal options (including leaving doors open and turning lights off) for a defined period of time to resolve the problem;</li> <li>2. Only if these measures are unsuccessful, the licence may be used to permit the use of a suitable cage trap and/or mist net, again for a defined period. All birds caught by these methods are to be released alive and unharmed.</li> <li>3. If still unsuccessful, as a last resort, the bird(s) may be shot.</li> </ol> <p>It is proposed that anyone relying on this licence must register their first use of the licence with Natural England to enable compliance checks in a sample of cases. Where the licence is used, it will be necessary to maintain a detailed written log of action taken and to submit an annual report of action taken to Natural England.</p> <p>We do not believe that this proposal represents a risk to the conservation status of the species. In 2007/08, very small numbers of birds of these species (in the order of tens) were actually taken or killed under licence in these circumstances; such numbers do not cause concerns about a conservation impact.</p> <p>We have not included a draft of the proposed licence in this consultation because the detail requires further work to ensure that the licence and conditions are drawn appropriately.</p> <p><b>Question 7.1 Do you agree with our proposal to issue a limited general licence permitting the taking/killing of House sparrow, Starling, Robin and Blackbird in food production/handling premises for the purpose of preserving public health or public safety (s.16(1)(i) of the Wildlife and Countryside Act 1981)?</b></p> <p><b>Question 7.2 If such a licence is issued, do you agree that it is appropriate to require users of the licence to register their first use of the licence with Natural England and to submit written records of action taken under the licence?</b></p>
		<b>THEME – Sales of birds</b>
<b>8</b>	Bird Sales Licences: (WML Gen-L21, 22, 23, 24 & 25)	<p><b>Summary</b> - Consolidation of the five licences permitting sale of birds so that there is: one for live captive-bred birds, and one for dead birds and derivatives.</p> <p><b>Explanation and Rationale</b> – At present there are three licences permitting the sale of captive-bred live birds and a further two for the sales of dead birds (and derivatives). The licences are as follows:</p> <ul style="list-style-type: none"> <li>• GL21 – Licence permits the sale of <b>dead Schedule 3 Part 3 wild birds</b> (at certain times of year not already</li> </ul>

		<p>permitted under the Wildlife and Countryside Act 1981 as amended)</p> <ul style="list-style-type: none"> <li>• GL22 – Licence to sell <b>dead birds</b> (except those covered by the licence above).</li> <li>• GL23 – Licence permits sale of <b>certain species of captive bred wildfowl</b> (and their eggs), none of which are required to be ringed in order to be sold</li> <li>• GL24 – Licence permits sales of <b>most other captive bred birds</b> (rings required)</li> <li>• GL25 – licence permits sale of <b>Annex A birds</b> providing an <b>article 10 certificate</b> is held for that bird.</li> </ul> <p>These arrangements result in confusion and with careful wording of the conditions we believe that these licences can be consolidated to two sales licences: one for live birds and one for dead birds. This will be simpler and clearer. Drafts of the two new licences are attached at Annexe D. Note, these drafts also reflect the detail outlined in Proposals 9-11.</p> <p><b>Question 8.1: Do you agree with the proposal to consolidate the sales licences?</b></p> <p>In respect of the new licence for the sale of <u>live</u> birds, we intend to <b>retain</b> an appendix, listing birds (primarily wildfowl) that do not require a ring to be sold under the licence. We have waived the normal ringing requirements for captive-bred specimens in the case of the species listed in the annex, which are commonly kept as ornamental birds, due to the practical difficulties of capturing and ringing wildfowl that are parent-bred on large ponds and lakes. The licence will also permit the sale of the <u>eggs</u> of the species listed on this annex.</p> <p><b>Question 8.2: Do you agree with the proposal to continue to allow the birds listed on the appendix (and their eggs) to be sold without a ring?</b></p> <p><b>Question 8.3: Is the list of species that are exempt from ringing correct (see draft licence for list)? If you disagree, please state why and provide evidence.</b></p>
9	Captive <b>live</b> birds Sales Licences: (WML Gen-L23, 24 & 25)	<p><b>Summary</b> To amend the list of species <u>excluded</u> under the general licence permitting sale of live birds (described above).</p> <p><b>Explanation and Rationale</b> The general licences for sales were drafted many years ago, and it is now uncertain why certain species are permitted to be sold under the licences and others are not. Natural England has now</p>

reviewed the licensing of sales and possession of protected species, and based on this review, we propose to amend the list of birds excluded under the sales licences.<sup>3</sup> Reasons for **excluding** a species from sale under the general licence considered in our review were:

- A. To reduce the risks to the conservation status of vulnerable species arising from illegal taking from the wild
- B. To reduce the risks of establishment/spread of invasive non-native species

The current licences for sales of live captive bred birds exclude the following species:

- Egyptian Goose *Alopochen aegyptiacus*
- Brent Goose *Branta bernicla*
- Goldeneye *Bucephala clangula*
- Long tailed Duck *Clangula hyemalis*
- Bewick's Swan *Cygnus columbianus*
- Mute Swan *Cygnus olor*
- Velvet Scoter *Melanitta fusca*
- Common Scoter *Melanitta nigra*
- Goosander *Mergus merganser*
- Red-breasted Merganser *Mergus serrator*
- Ruddy Duck *Oxyura jamaicensis*

In reviewing this list, Natural England has considered whether any species should be removed or added to the list of exclusions.

**A. To reduce the risks to the conservation status of vulnerable species arising from illegal taking from the wild**

The general licences only permit the sale of birds that are **captive-bred** and appropriately ringed. Sellers are also required to have appropriate documentary evidence that the birds are captive bred. Given these circumstances, Natural England does not believe that the trade in captive bred birds permitted by this general licence is likely to fuel the illegal taking of birds from the wild, which if significant, could have an adverse impact on their conservation status. In the absence of evidence to the contrary, we consider that requiring individual licences for the sale of captive bred birds would be a regulatory burden without benefit for conservation or enforcement. Therefore, we propose that **no species** should be excluded from this licence on conservation grounds.

<sup>3</sup> Note that individual licences can still be sought to permit the sale of species not covered by the general licences. However, Natural England does have a presumption against issuing sales licences for certain species e.g. Ruddy Duck

**Question 9.1: Do you agree with our proposal that no species be excluded from sale under the general licence on the grounds of risks to their conservation status from illegal take from the wild? If you disagree, please provide grounds and evidence for your position.**

**B. To reduce the risks of establishment / spread of invasive (or potentially invasive) non-native species**

Natural England recognises that some invasive non-native bird species are regularly traded/sold. In considering whether tighter controls on sale are appropriate, we are seeking views on the likely impact on trade and the regulatory burden that such controls would impose. These factors will be considered against the conservation gains potentially accrued from tighter regulation. We are also contemplating innovative approaches that will deliver conservation outcomes without undue burdens on trade, for example by adopting a registration scheme approach that will allow us to monitor the trade, to undertake compliance checks and to respond appropriately to reported escapes or releases.

In this section of the consultation, we invite views on the licensing regime for the sale of non-native birds; we are interested in views on both this concept and the range of species that might be subject to greater control in respect of sales.

B1. Natural England proposes that the following species be excluded from the proposed general licence on the basis that their establishment or further spread poses a potential threat to native wildlife. This position is consistent with the precautionary approach to non-natives advocated in the GB Invasive Non-Native Species Framework Strategy.

- Ruddy Duck *Oxyura jamaicensis*
- Egyptian Goose *Alopochen aegyptiacus*
- Canada Goose *Branta canadensis*

Note: individual licences can still be sought to permit the sale of species not covered by the general licences; however, Natural England will have a presumption against issuing sales licences for these species.

**Question 9.2: Do you agree that Ruddy Duck and Egyptian Goose should continue to be excluded from the general licence permitting sales on the grounds of potential risks to native species, and that Canada Goose should be added to the list of exclusions?**

B2. Natural England proposes that sales of the following species continue to be permitted under the general licence

but that all sales are registered with Natural England. Escapes of Eagle Owl have become more frequent in recent years (reportedly as many as 28% of captive eagle owls are lost) and there is evidence of breeding in the wild. The registration of sales will allow the trade to be monitored and targeted compliance checks undertaken. A simple registration scheme is envisaged (e.g. number of birds sold, and contact details of seller and purchaser). This position is consistent with the precautionary approach to non-natives advocated in the GB Invasive Non-Native Species Framework Strategy.

- Eagle Owl *Bubo bubo*

**Question 9.3: Do you agree that sales of Eagle Owls under the general licence should be subject to a registration scheme on the grounds of potential risks to native species?**

B3. Excluding species from the general licences enables Natural England to exercise greater control on how non-native and potentially damaging birds are traded and kept. Next year, following the outcome of Defra's consideration of a ban on sales of certain species, we will be considering whether we should regulate more closely the sales of other non-native bird species. Once again, individual licences may still be sought for birds that are excluded under the general licence, but the individual approach enables us to set appropriate conditions and monitor licensed activities. Some non-native species are so well established that regulating sales may not deliver a conservation benefit. However, for certain species, such an approach may make a difference. Possible candidates for addition to the list of exclusions are as follows:

- Barnacle Goose *Branta leucopsis*
- Red-crested Pochard *Netta rufina*
- Snow Goose *Anser caerulescens*
- Monk Parakeet *Myiopsitta monachus*
- Sacred Ibis *Threskiornis aethiopicus*
- Eagle Owl *Bubo bubo*

The wildfowl species are usually kept outdoors where there is greater risk of escape into the wild and further spread and establishment. Monk Parakeets are normally kept in aviaries. Although populations of Monk Parakeets are currently restricted geographically, escapes are identified by the Non-Native Species Secretariat risk assessment as a key factor that is likely to contribute to further spread and establishment of this species.

**Question 9.4: Do you believe that other bird species should be added to the list of exclusions on the grounds of potential risks to native species? Please consider the possible candidates suggested above;**

		<b>you may suggest other species and explain why, providing evidence.</b>
<b>10</b>	Sale of <b>dead</b> birds licence (WML 21 & 22)	<p><b>Summary</b> - To remove unwarranted exclusions from the licence permitting sale of <b>dead birds</b>.</p> <p><b>Explanation and Rationale</b> - Under the current licence permitting sale of dead birds, Barnacle Goose <i>Branta leucopsis</i> and White-fronted Goose (Greenland race) <i>Anser albifrons flavirostris</i> are listed as exclusions. There appears to be no rationale for this exclusion on conservation grounds; White-fronted Goose is already excluded under this licence as it is listed on Schedule 2 Part 1 of the Act. In view of this we propose removing these species from the list of exclusions. Following this change, it will be possible to sell dead specimens of these species under the licence, providing the terms and conditions of the licence are met.</p> <p><b>Question 10: Do you agree with our proposal that sales of dead Barnacle Goose and White-fronted Goose (Greenland race) be permitted under the general licence?</b></p>
<b>11</b>	All general licences relating to captive bred birds (includes sale, competitive showing)	<p><b>Summary</b> - To provide guidance on what constitutes documentary evidence of captive breeding</p> <p><b>Explanation and Rationale</b> - Many general licences include the following condition, which includes a provision relating to documentary evidence:</p> <p style="padding-left: 40px;">‘Any bird sold under this licence must have been bred in captivity. A bird shall not be treated as bred in captivity unless its parents were lawfully in captivity when the egg from which it hatched was laid. Documentary evidence of captive breeding must accompany any sale, hire, barter or exchange.’</p> <p>The onus is on the person relying upon the licence to secure suitable documentary evidence that birds sold have been captive-bred, and in the event of a legal challenge, it would be for the courts to decide whether the documentary evidence provided is acceptable evidence of captive breeding. Notwithstanding the primacy of the court in deciding this matter of law, we propose to provide a guidance note on what might be considered acceptable. The following text would be added the Notes section of the relevant licences:</p> <p style="padding-left: 40px;">‘Persons intending to rely on the general licence must be able to demonstrate that birds are legally held and captive-bred, and are advised: to only purchase birds from breeders who are able to satisfactorily demonstrate that they are complying with the relevant regulations; to confirm, insofar as they are able, the bird's identification and age are correct; to check that the bird is correctly ringed, and to always obtain signed and dated written documentary evidence of captive-breeding from the breeder. Documentation should cite the bird's species, ring number and any other identification mark (e.g. microchips), hatch date,</p>

		<p>along with similar details for the parent birds, and the breeder's full contact details.'</p> <p><b>Question 11.1: Do you agree that Natural England should provide guidance on what might constitute suitable documentary evidence?</b></p> <p><b>Question 11.2: Do you agree that the wording we propose is appropriate? If not, please provide alternative wording.</b></p>
		<p><b>THEME – Understanding and awareness of the general licences &amp; their conditions</b></p>
12	<p>Bird take/kill licences: (WML Gen-L05, 07 &amp; 08)</p>	<p><b>Summary</b> Natural England is seeking views on (a) the awareness amongst users of general licences of the conditions applying to their use and (b) the extent of compliance with these conditions.</p> <p><b>Explanation and Rationale</b> Three licences permitting the taking/killing of certain birds contain a condition stating:</p> <p style="padding-left: 40px;">This licence can only be relied on in circumstances where the authorised person is satisfied that appropriate non-lethal methods of control such as scaring at either ineffective or impracticable.</p> <p>This condition is included in certain general licences to help ensure that Section 16 of the Wildlife and Countryside Act is satisfied; this stipulates that:  "(1A) The appropriate authority—  (a) shall not grant a licence for any purpose mentioned in subsection (1) unless it is satisfied that, as regards that purpose, there is no other satisfactory solution;"</p> <p>In respect to decisions regarding general licences, the licensing authority makes a general assessment of alternatives prior to issuing a licence. Where appropriate, the licensing authority may also make it a requirement of the conditions of a general licence that potential users take steps to satisfy themselves that there is no alternative before taking any action upon which they rely on the licence. This condition ensures that the licence is only used in appropriate situations, and allows the licensing authority to issue a licence without knowing the details of each occasion in which it may be used.</p> <p>Some stakeholders have expressed concerns that the level of awareness of this and other conditions amongst people relying on the general licences is low, and as a result conditions of the licence are being breached. Where conditions are breached the licence can no longer be relied upon, and an offence may be committed. Natural England is committed to raising public awareness of the General Licences and the conditions under which they</p>

	<p>must be used. Furthermore, a general licence approach is only justified if we are satisfied that non-compliance is the exception and that misuse or abuse of the licences will not result an adverse impact on the conservation status or welfare of any protected species.</p> <p>We are therefore seeking stakeholder views and gathering evidence relating to the level of awareness of and compliance with, conditions associated with General Licences.</p> <p><b>Question 12.1 Do you believe that there is sufficient widespread understanding of the General Licences, the circumstances in which they may be used and the conditions that apply? Please provide evidence in support of your answer where possible.</b></p> <p><b>Question 12.2 Do you have any suggestions as to how we could raise the level of awareness?</b></p>
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## **Implementation of proposals**

20. We will renew the existing general licences on 1 January 2009 and we do not intend at that point to implement changes in respect of any of the matters covered in this consultation.
21. All consultation responses will be considered in reaching our final decision on the proposals. We recognise that some of the proposals represent substantive changes to current licensing arrangements and in view of this, if adopted, there will be a suitable period of time to communicate the changes prior to their implementation.