

“The badger cull is the biggest, planned, public-funded intervention in the British countryside in the past 50 years.”

Campaigners have taken out a Judicial Review against Natural England, which questions the processes that the public body followed in relation to the badger cull.

In mid-July, a High Court judge will hear two Judicial Reviews relating to the Government's policy of culling badgers in certain areas of the country to reduce levels of bovine tuberculosis (bTB) in cattle. What's at stake is more than the decision, which has courted controversy, to allow farmers and landowners to shoot badgers across 21 areas in the south and west of England in 2017. It could also potentially impact on the reputation of Natural England (NE), the official agency charged with protecting wildlife in this country.

The campaigners who are taking Natural England to court believe it has failed to follow rules laid down under both European and British legislation. Court scrutiny will also examine what some professional ecologists describe as a “culture of secrecy” within the organisation that forced them to take the matter to the Information Commissioner (ICO) and a regulatory court in order for certain evidence to be released.

Documentation was originally supplied in a heavily redacted form. Before a hearing with the ICO tribunal where he won access to the detail, ecologist Tom Langton said, “For all the use these documents are, the blacked-out assessments frankly might as well have been carried out in complete secrecy.”

In order for NE to grant licences for badger culling, it had to carry out Habitats Regulations Assessments, or HRAs, in any areas where proposed activity might impact on wildlife in a protected area such as a Site of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), or Special Protection Areas (SPAs).

From the autumn of last year Langton, who is heading a move to make NE's processes more transparent, has been working with Dominic Woodfield, who is the managing director of an ecological consultancy called Bioscan. He has carried out thousands of impact assessments, including HRAs, on behalf of commercial clients. “I wasn't involved

in the anti-badger culling campaign at the time,” he recalls, “other than having a general misgiving about it not being run on scientific principles.”

Langton asked Woodfield to help because of his HRA experience, and they set out to discover what NE had done in its HRAs to assess the possible side effects of badger culling.

“I was horrified by what I saw,” says Woodfield. “Appallingly bad practices, and it was clear to me that what I was seeing was a rubber-stamping exercise, and that came out especially in relation to the impact on birds.”

As an example, Woodfield cites the HRA carried out on the Dorset Heathlands SPA, which is protected under the European Birds Directive. The citation for the SPA specifically mentions the presence of both overwintering hen harriers – an estimated 20 individuals, representing 2.7 per cent of the British population – and 15 merlin.

Badger culling began in that area of Dorset from 2017, but before it did ►

Report by James Fair

Badgers sharing the UK landscape with livestock is seen as an issue by some, but the opposing view questions if their removal has an impact on wild mammals and birds.



“Natural England has failed to protect the habitats of sensitive birds from the impacts of shooting.”

Dominic Woodfield

Clockwise from top left: Mark Hamblin/2020VISION/NPL; Mark Bowler/NPL; Gary Schultz/Getty; Alex Mustard/NPL; Sebastian Kennerfnecht/Minidry/FLPA; Anup Shah/NPL; Malcolm Schnaj/FLPA

NE had to consider the impact it would have had on these two protected species and others. It failed to sufficiently comprehensively, according to Woodfield. “Natural England has said: ‘Which sites list them as occurring there?’ Not: ‘Where are they?’” he says. “By referring to local records, I’ve been able to demonstrate just how far they range. In effect, NE has failed to protect the known habitats of sensitive birds from the impacts of shooting taking place in the vicinity as part of the cull. The impacts, according to Woodfield, are that raptors could easily abandon a site

if sufficiently disturbed, and since there was to be shooting going on throughout the area, they would have had nowhere else to go. Anti-cull campaigners say there are more subtle impacts of culling badgers than scaring or disturbing wildlife. Ecologists believe that when you reduce the population of one species – particularly mid-trophic predators – you have a potentially huge, but difficult-to-predict, impact on other species with which they share their ecosystem, as a result of what is known as a mesopredator carnivore release effect (CRE). A paper published by the Food and Environment Research Agency (FERA)

looked into the impacts of the Randomised Badger Culling Trials (RBCT) on six other species – foxes, hedgehogs, hares, rabbits, skylarks and meadow pipits. The paper revealed that fox numbers had increased by up to 57 per cent over a two-year period in cull areas, probably because they were able to use badgers’ setts as breeding dens, while hare numbers decreased by 35 per cent. Not surprisingly as foxes prey more readily on hares, especially leverets.

Making the connection

NE, say Langton and Woodfield, had a duty under British and European laws to assess whether this trophic cascade might impact protected species – and it failed to do so. They cite the example of Bewick’s swans in the Severn Estuary SPA, that move between a number of sites, including Ashleworth Ham in the Gloucestershire culling zone. “Read the SSSI citation for Ashleworth Ham and it clearly identifies Bewick’s swans as an interest feature, but Natural England has failed to make any connection between those swans and ones within the wider Severn Valley area,” says Woodfield. “Let’s say shooting or the increased threat of fox predation resulted in swans wholly abandoning the site, that could lead to pressures on other sites.” He feels a Doomsday scenario could see this

10,886

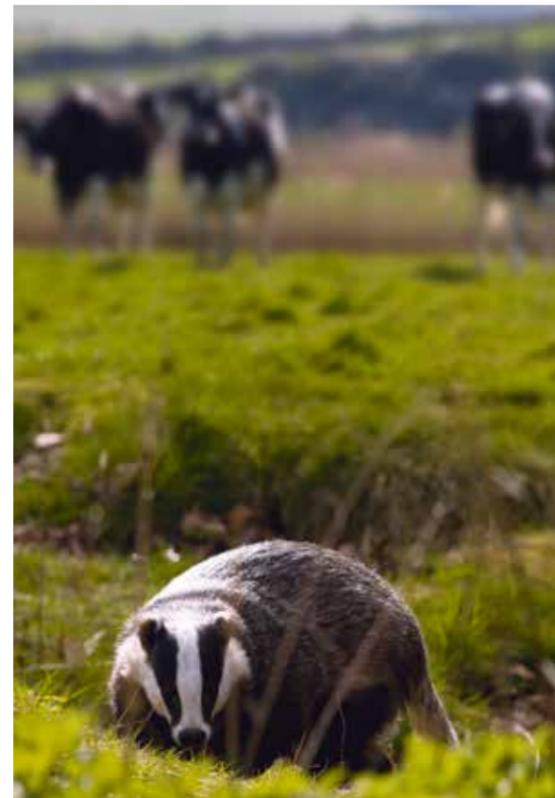
Number of badgers culled in 10 areas in England in 2016.

29,230

Number of cattle slaughtered due to bTB in England in 2016.

Left: there is evidence of hen harriers abandoning a roost due to human disturbance. Right: the

policy to cull badgers aims to reduce bTB levels in cattle. Below: Bewick’s swans inhabit a cull zone.



increasingly vulnerable migratory European swan diminishing rapidly in the area. Langton goes further on NE’s failings. “The wider question is why a government agency appears to be bending over backwards to help the government pursue a failing policy,” he says. “The badger cull is the single biggest, planned, public-funded intervention in the British countryside in the past 50 years, and one that over 80 per cent of the public rejects.” The problem, he continues, is we don’t know what the impacts of culling could be. “Could it mean more stoats and weasels, resulting in fewer rabbits and therefore changes in the environment and habitat, and that hits a species of, say, butterfly?” The second Judicial Review brought by Langton relates to the decision by Defra to allow eight months a year of ‘supplementary culling’ for five or more years in the 21 completed badger cull areas. Langton’s

view is there is no justification under the RBCT for this. “There is only twisted science and star gazing in this,” he says. “The RBCT says kill them quickly then leave them be. The wider point is the destruction of statute [in this case, the Protection of Badgers Act 1992] by stealth. How can you kill 200,000 mostly healthy badgers with public money just because you hope it might help a bit, when at the same time the tried and tested solutions to eradicating bTB are being avoided?” BBC Wildlife asked NE to comment on all the issues raised by the campaigners in these Judicial Reviews, and they gave this statement: “Bovine TB is one of the greatest animal health threats in the UK and has a devastating impact on our farmers. It is a slow moving, insidious disease which presents many challenges, and there’s no single measure that will provide an easy answer. That is why we are pursuing a wide range of interventions, including cattle movement controls and a cull of badgers in areas where disease is rife.” It would be inappropriate, it added, to comment further on this ongoing legal matter. ❏

FIND OUT MORE Courts and Tribunals Judiciary: <https://bit.ly/2szNdcM>; Natural England: <https://bit.ly/2JmR7Mk>; European Birds Directive: <https://bit.ly/1nahKR3>

Winners & losers

Studies on the impacts of losing carnivores from ecosystems.



WOLVES & COYOTES

It’s been known since the 1920s that when wolves decline, coyotes increase. Studies in Alaska have also found that greater numbers of coyotes in turn greatly reduce the survival rates of Dall’s sheep lambs.



SHARKS & CORAL

Reduced numbers of Caribbean sharks led to an increase in the grouper fish population, which in turn suppressed parrotfish numbers. The latter feed on algae, resulting in reefs in a poorer condition.



SEA OTTERS & KELP

A widely quoted study of how carnivore loss has a trophic cascade – the hunting of sea otters for their pelts led to an explosion in sea urchin numbers. The sea urchins fed on kelp, causing the seaweed to decrease.



LEOPARDS & BABOONS

The loss of lions led to an increase in baboon numbers, which led to increased transmission of intestinal parasites to humans.

What is a Judicial Review?

A Judicial Review can only be taken out against a public body, such as a local council or a government agency – in the subject of this article, Natural England. In a Judicial Review, the judge hearing the case is not being asked whether the organisation

made the right decision but whether it followed the right processes in reaching that decision. In these cases, the applicants are saying Natural England failed to carry out the mandatory Habitats Regulations Assessments (HRAs) correctly and wrongly

interpreted the conclusions of the Randomised Badger Culling Trial (RBCT). If a judge were to rule in the campaigners’ favour, it doesn’t mean badger culling will have to stop – it means that Natural England will have to do those processes again.