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Wildlife and Countryside Act , 1981 - Invertebrates

The evolution of this Act has been complex and the events during its final stages confusing. Royal Assent has now been given. The statement below outlines the implications of the Act for entomologists and other invertebrate zoologists.

Species legislation

Earlier legislation affecting invertebrate species was embodied in the Wild Creatures and Wild Plants Act, 1975, which, together with various other previous legislation, has become absorbed within the new Act.

It is necessary to recall that the late Lord Cranbrook had tried to promote a Private Members Bill which entailed the definition of endangered and vulnerable categories. For the latter some collecting would be allowed but the legislative framework was unworkable. In the process he put up a list of about 150 Lepidoptera, which inevitably raised considerable consternation. Through the Joint Committee for the Conservation of British Insects, a list with a broader range of invertebrates was put forward in response, thus reducing the emphasis on Lepidoptera and including some less controversial rare species in groups which were not subject to collecting, but there was some scepticism that the Bill would ever get through.

When the Conservatives came to power they announced that there would be a government Bill. The Department of the Environment (without prior consultation with NCC) produced consultation papers to a wide spectrum of bodies but ignoring most of the invertebrate societies though invertebrates were included. NCC circulated these papers to the societies. The revised Cranbrook list of species had been adopted, the government having given assurance that it would include the list that he had drawn up.

Jumping a number of moves, the essence is that the distinction between endangered and vulnerable categories was lost, so all listed species would be subject to complete protection. A list of species was given endorsement by the Societies, albeit that some had hesitation on certain species. Among the qualifications was the need to adopt area listing, as opposed to GB listing with certain butterflies. The perspective kept shifting during the passage of the Bill. It became increasingly clear that adjustment in stance was required. Area listing was swept out since this did not suit those promoting otter conservation. As precedents for future species to go on the Act, there was concern that the snails should come out altogether but efforts to get an airing on these got stymied in the procedures of the Report stage. Among the 1,000 amendments were additional invertebrates for inclusion on the schedule where no consultation was possible. Purple Emperor was put up and NCC advised against so that one was out but the Swallowtail went in unexpectedly when NCC only had 20 minutes to react at a time when the staff who ought to have advised were not available. The New Forest Burnet sneaked in (at least a more sensible one) and NCC put in the spider Eresus niger with full backing from the British Arachnological Society. However, everyone concerned is now well aware of the difficulties in exercising influence over the Committee stages of a Bill, the more so when Parliament lacks people who are fully conversant with the special considerations affecting invertebrates.

The position in the Act is as follows:-

The previous Conservation of Wild Creatures and Wild Plants Act 1975 already prohibited the collecting of the Large Blue butterfly, Maculinea arion, and the Essex Emerald moth, Thetidia smaragdaria (the latter was added in 1979). After a complex series of manoeuvres, a further 17 invertebrates have been added:- 3 butterflies - Chequered Skipper (Carterocephalus palaemon), Heath Fritillary (Mellicta athalia) and Swallowtail (Papilio machaon); 4 moths - Reddish Buff

Moth (Acosmetia caliginosa), Black-veined Moth (Siona lineata), Barberry Carpet (Pareulype barberata), New Forest Burnet (Zygaena viciae); 3 Orthoptera - Field Cricket (Gryllus campestris), Mole Cricket (Gryllotalpa gryllotalpa) and Wart-biter (Decticus verrucivorus); 1 beetle - Chrysolina cerealis; 1 dragonfly - Aeshna isosceles; 2 spiders - Eresus niger and Dolomedes plantarius and 3 snails - Monacha cartusiana, Myxas glutinosa and Catinella arenaria.

NCC has a statutory duty to revise the list at five year intervals, though there are procedures for adding or removing species at any time. If there is strong feeling that any species should come off, then it is a tactical question whether this will be easiest to raise now as a special case before the list becomes entrenched or in five years time^{when} the procedure will seem less like special pleading. In some quarters the removal of butterflies, for instance, will be emotive with the challenge that entomologists only want them off the list so they can collect them, which proves that the list should not be altered. Thus any views should be entirely factual and based on the advice that would have been given had consultation procedures permitted comment before the Act went through in its present form.

The views of Societies on this list would be welcome. It seems unfair that the perspective has changed so much since views were last put forward. A new cool look is required. Any case for changes has not only to convince NCC (as government advisors), it has also to convince the Secretary of State for the Environment (currently Mr Heseltine).

In order to assist your deliberations, I offer some comments on the list which may help concentrate thoughts on the points which require consideration.

Butterflies

The Large Blue has to stay. No sighting accepted as authentic since 1979.

The Heath Fritillary was originally put forward for listing in the SW only - it is in serious trouble here being down to only two colonies (according to current information available to NCC). If we cannot have area listing, then there is a strong case for its staying on the Act, at least until a research programme (due to start in April¹⁹⁸²) clarifies the status and conservation prospects.

The Chequered Skipper was earlier agreed for listing as England only (not positively seen since 1975). With the passage of time, it seems more realistic to judge this one on its current Scottish status and vulnerability to collecting.

The Swallowtail was sneaked on apparently because it is pretty and MPs have heard of it. There are views both within NCC and outside that this butterfly is largely holding its own and collecting within its habitat is not likely to make serious impact. There are, however, other views that as a spectacular butterfly, it is a good flag-waver for attracting public interest in insects - in other words, now it's on, leave it on.

Moths

Species with small populations on single sites are Essex Emerald (there is unsubstantiated rumour of a small second colony but this hardly alters its critical status), Barberry Carpet, Reddish Buff and New Forest Burnet. It would have to be a very well argued case to get any of these off and my current view is that they deserve to stay put.

Orthoptera and Odonata

These are unlikely to cause controversy. The mole cricket is desperately difficult to find but all four are appropriate species in groups which are not, and should not be, subject to pure collecting.

Beetles

The so called rainbow leaf-beetle (Parliament has to have a common name for everything) is a rare colonial species in Snowdonia. The populations are small and ought not to be collected.

Spiders

Both are spectacular single site species. Since the British Arachnological Society has given full support, these species are not controversial.

Snails

There would be strong grounds for taking all three off. The sandbowl snail can only be identified by dissection and its main GB population is on an NNR where it is abundant. This is not a satisfactory precedent for candidate species. The Conchological Society has earlier expressed reservations. I tried to get all three off but in the chaos of parliamentary procedures, the issue was not resolved.

I have made enquiries on circumstances affecting entomologists, the following being my current understanding. The above species will be subject to complete prohibition against collecting, with fines up to £1000 per specimen (ie. even an egg). Specimens and rearing stock obtained before that date are in the clear, but the onus of proof is on the individual (the reverse of the normal legal position). Stock released onto a site (even where that species is not native) then becomes 'wild', so is equally subject to these provisions. To disturb these species is also illegal, but it is possible to capture or pick up a specimen in order to identify it providing one has just cause (ie. it is not necessary to capture a swallow-tail in order to identify it but with some moths this may be necessary). To 'take' a specimen from its immediate location is strictly illegal. These provisions apply to listed animals in general, so invertebrates do not have any special concessions. NCC is able to issue licences for the handling or taking of specimens, in practice applying to studies or conservation measures which assist the future of the species concerned.

Circumstances would arise where someone unwittingly took a protected species without realising the identification. Should this happen (the Reddish Buff Moth for instance is not terribly distinctive among the noctuid moths) then the best thing is to report the circumstances to NCC (via me) otherwise there may be the embarrassment of having an important new locality and being afraid to come out with the fact. However, it is reasonable to expect people to be aware of the identification of protected species and any specimen taken would be directed to a museum (or Society) collection so that no one can take advantage to acquire specimens for his own collection. Killer traps ought not to be used where it is known that protected species may be caught but there could be circumstances where unforeseen embarrassment arises. Again, it is best to come clean. This sort of legislation is not designed to trip up the innocent and sensible entomologist but it is there as a stand-by to deter and if necessary to punish selfish and irresponsible actions.

The new Act continues the 1975 provisions prohibiting trade of any type (including barter) in specimens of protected species - its not worth risking fines of £1000 per specimen.

It is now illegal to release or allow to escape into the wild any animal (includes invertebrates) of a 'kind' which is not resident in Britain or is not a regular visitor in a wild state. The word 'kind' was carefully chosen and will be interpreted as any genetic population derived from outside Britain. Thus to release species into Britain or to release foreign stock of a British species is unlawful.

It is worth a reminder that uprooting of wild plants is an offence unless the landowner has given permission. The list of totally protected plants, where even to pick a piece is unlawful, has been extended to 61 species (all of which are rarities).

One problem with all embracing legislation is its indirect pitfalls - literally. If one puts down pitfall traps (for say spiders or beetles) and you trap protected sand lizards, move those traps quick. All trapping of protected species is banned, a nice catch 22 situation since you might not know a protected species is there until you have trapped it. Anyway, the general philosophy of common sense and avoiding awkward circumstances which could reasonably be anticipated is all one can recommend.

Under normal circumstances (after the framework of legislation has been decided by parliament) it is NCC who advises on the species lists in such an Act. Thus species can be added or subtracted providing the Secretary of State for the Environment agrees to an order being placed before the House. It is clear that some tidying up of the species lists is required in order to straighten out some of the anomalies that have arisen.

I am as anxious as anyone to try to finish up with a sensible list which carries the support of the Societies as far as is possible. There is widespread apprehension that we are going down the slippery slope towards a ban on all collecting, or at least sufficient ban to make field work intolerable. NCC certainly does not support the concept of all embracing bans - administratively it is impractical anyway. More important it is recognised that collecting is a necessary part of field work for most invertebrate groups. The help that increasing numbers of entomologists are giving with the Invertebrate Site Register, as well as BRC schemes etc., is a very powerful reason why NCC should continue to resist unnecessary extension of species legislation. I hold the view that the best insurance entomologists have is by working with the conservation bodies, as with the Invertebrate Site Register, so that there is developed a proper level of understanding and co-operation. The synonymy in many minds between the entomologist and the kleptomaniac collector is best quashed in a practical way. At the same time it should be recognised that legislative lists, if properly chosen, can be of value as a deterrent for the unscrupulous collector.

HABITATS

Whilst the species side of things may be a mixed bag, on the habitat aspects of the Act things have worked out extremely well.

It is recognised that habitat conservation is the key issue, a truth which the government did not sufficiently recognise to start with. There were more letters to Westminster on this Bill than just about any other issue in modern times and there were concerted lobbying and delaying tactics which eventually led the government to change its position at the last minute. Whilst the Act covers a great range of countryside issues, much of the furore was over the future of Sites of Special Scientific Interest. SSSIs could not effectively resist pressures from modern agriculture and forestry. Nationally about 10-12% were damaged or destroyed in 1980, the figure for Dorset being 32%. The implications sank home and incredibly we have finished up with measures which are potentially stronger than on many NNR lease

NCC now has the legal requirement to inform all owners and occupiers of SSSIs of the scientific content of their land and to define what activities will require consultation. Should an owner wish to pursue damaging activities, he must give written notice. NCC has three months to decide on possible safeguard action; beyond this period an Order by the Secretary of State would be required if voluntary negotiation was unlikely to succeed. This would allow a further nine months for negotiation and the possibility of compulsory purchase as a last resort. The very last twist to the Bill made it compulsory for NCC to offer compensation to an owner or occupier if agricultural (probably forestry as well) grant is refused on nature conservation grounds (instead of grants to growing barley, farmers will be compensated for growing wildlife). The financial implications could be enormous, though the National Farmers Union (who were taking stance with NCC) and the Country Landowners Association are asking farmers to behave responsibly (otherwise more stringent measures may be forthcoming). Whether government will meet the financial needs remains to be seen, but it

is hardly likely that they can abandon SSSIs after totally committing themselves to the semi-voluntary process. What it amounts to is that all SSSI are virtually on the same plane of safeguard as NNRs except that NCC will not normally warden or manage them direct.

Whilst naturalists have rightly had a jaundiced view of SSSIs in the past, the status of an SSSI has now changed almost beyond recognition. It must also be recognised that the Act does nothing to reduce the rate of loss of non-SSSIs and provides no formal opportunity to influence management on otherwise safe land.

This places the future of invertebrate conservation very much into the hands of entomologists. Through the Invertebrate Site Register, the important sites and the management needs of those sites must be identified. It is then possible to confer on them a degree of safeguard far beyond anything possible before. Even on 'safe' pieces of ground it is possible to exert a considerable influence over future management. By means of SSSI prescriptions NCC can define in some detail the management activities which need to be discussed with NCC and for the legal machinery to go into action if necessary to ensure the wildlife interest is not damaged. It is now not simply a question of preventing a grassland being destroyed, it is now possible to avoid damaging grazing regimes. NCC has to advise all SSSI owners and occupiers of the necessary prescriptions by the end of 1982, which means information is needed urgently on the invertebrate faunas so that the wrong management prescriptions are not given (eg. what suits the botanical interest may not suit the invertebrate fauna). It will be much more difficult to change the prescriptions in the future, though clearly as new information comes forward this hurdle will have to be met. Also there may be new SSSIs which deserve designation for their invertebrate interest. In the meantime, heavy use is being made of the existing information in the Invertebrate Site Register (which is far from complete because many people have still not responded) and the general management prescriptions for all habitats will take account of general guidelines on invertebrate needs.

SOME OTHER POINTS

At long last, water authorities and drainage boards have a statutory duty to consult NCC over activities affecting SSSIs. It is to be hoped that they will also heed that advice.

Also, marine conservation, including marine reserves, is now officially within NCC remit.

The Act includes a vast array of other measures on a wide range of amenity issues including footpaths. It is still unclear what all the ins and outs are but no doubt there will be news on interpretations by bodies in this field. If anything of concern to entomologists emerges, I will at least consult the JCCBI.

CONCLUSION

This will be rather a lot to digest. As I write I have only just seen the final published Act and I have no doubt it will be several months before all the detail is absorbed and the implications from a whole variety of angles emerge.

However, it is clear that there is a great deal of benefit in the Act, particularly as regards habitat safeguard. It is now a question of maximising on these advantages. By comparison the disadvantages almost pale into insignificance, though they are real enough in some viewpoints, but there is a good chance of ironing out the more serious defects.

Advice and comments are welcome, preferably via the Societies in order to achieve some distillation of views.

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Nature Conservancy Council

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