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BY EMAIL ONLY

Dear Sarah

Proposal to amend General Licence (GL45) permitting the release of gamebirds on and within 500 metres of Special Protection Areas ('SPAs') in England: Natural England response to Defra formal request for advice

Thank you for the email, commissioning letter and accompanying documents received on 29 April 2024 which formally requests advice from Natural England on Defra's proposal to substitute the currently published General Licence GL45 (hereafter 'GL45a') with an amended version (hereafter 'GL45b')

GL45a, as published on 22 March 2024, permits the release of Common Pheasant and Red-legged Partridge ('gamebirds') on 30 specifically named SPAs and within their surrounding 500 metre buffers in England, with certain restrictions. This licence is valid during the period between 31 May 2024 - 1 February 2025.

We understand that the purpose of this new proposal is to substitute GL45a with another General Licence (GL45b) to permit the release of gamebirds on all but three SPAs in England, subject to fewer restrictions. GL45b would also be in force between 31 May 2024 – 1 February 2025. This proposal follows updated advice to Defra from the Animal and Plant Health Agency (APHA) published on 1 April 2024 (see [Updated Outbreak Assessment #51](#)) regarding the prevailing risk of transmission of Highly Pathogenic Avian Influenza Virus ('HPAIV') in wild birds. This advice states that "the wild bird risk level has been lowered from medium to low (rare but does occur)".

This advice is provided by Natural England in our role as the statutory adviser on natural environment matters and without prejudice to our own roles as a wildlife licensing and consenting authority. This includes not prejudging any individual licences determined, or advised upon, for the release of gamebirds in the same period as the proposed GL45b is valid. The decision whether to grant any licence or consent is an evaluative judgement for the decision-maker, in the case of GL45b, the Secretary of State.

This commissioned advice relates to the proposed GL45b only. Should APHA's advice change and the national wild bird HPAI transmission risk scenario rise to a medium or higher category, we anticipate that Defra will seek our advice again in relation to any proposal to amend GL45 again. Any previous advice concerning the issue of GL45 should not be relied upon if such an instance were to occur.

Our full advice is attached below but we would highlight the following general points:

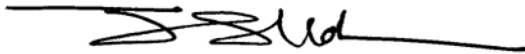
- Based on the current HPAIV context, and the mandatory conditions being proposed, Natural England agrees with the conclusions reached by Defra's HRA of the proposed GL45b.
- Our current advice recognises that the national wild bird HPAIV transmission risk level has been re-assessed as 'low' due to the generally low number of wild bird cases and decreased infection

pressure to poultry (although we note that this is based largely on passive surveillance of found-dead birds reported by the public). This contrasts with the national 'medium' risk level situation when we previously advised on licensing gamebird release on protected sites.

- NE welcomes Defra's application of the new 'Gamebird - Wild Bird Risk Assessment Tool' ('GWRAT') as an indicative tool to enable regular assessments of HPAIV risk to individual SPAs to be made. We recognise the influence that the change in national background risk status has had on its outputs.
- Due to the inherent uncertainties underpinning the GWRAT, we caution against reliance on this tool alone, and support the proposed inclusion of mandatory biosecurity conditions in GL45b. These conditions are used to mitigate the potential risk of ongoing background circulation increasing again later in the year during or following the peak period of gamebird releasing. These conditions should be clearly worded, practical and enforceable to ensure the intended risk mitigations are achieved. If in doubt, we advise that further measures, such as reducing maximum release-densities, should be re-considered by Defra.
- Natural England advises that Defra develops a contingency plan for implementation should the risk level be raised whilst GL45b is in place.

We hope you find this advice helpful. Should you have any queries about this advice please do not hesitate to contact my colleagues Steve Clifton (steven.clifton@naturalengland.org.uk) or Lucy Bellini (lucy.bellini@naturalengland.org.uk).

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Holmes', with a long horizontal line extending to the right.

JOHN HOLMES
Director, Strategy & Government Advice

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Natural England statutory advice to Defra – proposal to amend General Licence GL45

The advice is presented in three sections, each relating to a relevant part of the legislation that contains a statutory requirement to consult Natural England concerning this type of proposal.

1. Advice to Defra in accordance with section 16(10)(b) of the Wildlife and Countryside Act 1981 (the ‘1981 Act’): ‘power to grant licences’

It is Natural England’s view that the advice provided below on regulation 63(3) of the Habitats Regulations 2017, and section 28I of the Wildlife and Countryside Act 1981 may also serve as our advice under section 16(10)(b) of the 1981 Act and to the circumstances in which GL45b should be granted.

2. Advice to Defra in accordance with Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017 (‘Habitats Regulations’): ‘to ascertain that the plan or project will not adversely affect the integrity of any European site’.

Within the request package received on 29 April 2024, Defra provided an addendum to its previous HRA of GL45 (‘Addendum to Defra’s 2024 Habitats Regulations Assessment (HRA) and decision to issue general licence GL45’). A further version of this Addendum was subsequently provided on 7 May 2024 which included further explanatory information in Part D. This addendum, read in conjunction with Defra’s previous HRA of GL45, constitutes Defra’s HRA of the proposed GL45b.

We note that this HRA concludes, following appropriate assessment, that:

- Defra has ascertained that, based on available evidence, under the currently low national HPAIV risk level the project (the proposed GL45b) will not have an adverse effect on the integrity of 85 SPAs, either alone or in combination with other plans and projects. This conclusion has been reached taking account of the HPAIV transmission risk estimates generated by Defra’s GWRAT, the application of mandatory biosecurity measures as conditions of the proposed Licence, and in one case, a bespoke mandatory condition delaying any proposed release of gamebirds.
- Defra has not been able to ascertain that, based on available evidence, under a low national HPAIV risk level the project (the proposed GL45b) will not have an adverse effect on the integrity of 3 SPAs (Lindisfarne SPA, Northumbria Coast SPA and the Teesmouth and Cleveland Coast SPA). The reason being that these SPAs are characterised by both a locally elevated background HPAI risk, and significant populations of both ‘reservoir’ and ‘spill-over’ SPA species (as described by the GWRAT). These SPAs are being excluded from GL45b and any proposed releases would require an application for an individual licence.

Natural England welcomes the development and use of the GWRAT as an indicative tool to enable regular assessments of HPAIV risk to individual SPAs to be made. We recognise the influence that the change in national background risk status has had on its outputs, Natural England cautions against solely relying on its outputs.

Having considered the latest contextual information relating to HPAIV, and the mandatory conditions being proposed to mitigate the risk of significant adverse effects to SPAs, Natural England agrees with the conclusions reached by Defra for the current scenario.

We note that this GL45b proposal retains the biosecurity measures included within the current GL45. This aims to ‘further reduce the already negligible/very low risk to these sites and provide proactive mitigation against the risk of HPAIV incursion following autumn migrations of wild birds into England and a potential increase in risk level over time’ (p14). Natural England support the proposed inclusion of mandatory biosecurity conditions in GL45b. These conditions are used to mitigate the potential risk of ongoing background circulation increasing again later in the year during or following the peak period of gamebird releasing. These conditions should be clearly worded, practical and enforceable to ensure the intended risk mitigations are achieved. If in doubt, we advise that further measures, such as reducing maximum release-densities, should be re-considered by Defra.

Natural England supports this approach. Natural England considers that HPAIV is continuing to circulate,

unpredictably, amongst wild bird populations (albeit at greatly reduced levels compared to the last 2 years). The significant numbers of gamebirds that may be released within or in close proximity to SPAs constitute a means by which the ongoing risk of HPAIV transmission to SPA birds could be locally exacerbated. These mitigating conditions therefore provide an important function to initially guard against minor increases in risk whilst a General Licence may be in force. It will also be impractical, should risk levels start to rise, to modify a General Licence on a weekly or monthly basis based on the proposed frequency of monitoring, and it would be impractical for licence users to adhere to it.

The HRA states that 'the risk from avian influenza will continue to be monitored and reviewed over the licence period. Subject to any new evidence our conclusions on site integrity and/or the licence may be revoked or amended accordingly'. Should the national background risk of HPAIV transmission amongst wild birds increase significantly and return to a 'medium' or 'high' level following gamebird releasing, it is not clear how a Licence could be effectively modified to mitigate this change in risk once gamebirds have been released into the wild. We advise that Defra develops a contingency plan, which considers the range of powers potentially available to it, that could be implemented should this situation arise.

3. Advice to Defra in accordance with section 281 of the Wildlife and Countryside Act 1981 (the '1981 Act'): 'authorising operations that may damage a Site of Special Scientific Interest (SSSI)'

We note that Defra now proposes to permit gamebird release under GL45b on 85 SPAs that are wholly or partly within England. All land within SPAs that fall within the scope of the proposed GL45b will also be notified as Sites of Special Scientific Interest (SSSIs) under the 1981 Act.

Bird species and assemblages notified as special interest features of SSSIs may be the same as, or form part of, the qualifying features for which the overlapping SPA has also been designated. These SSSI features will therefore be covered by Defra's HRA of the proposal, and we note that Defra's HRA of GL45b also includes an additional section entitled 'SSSI considerations' (p25) to inform Natural England's consideration of its section 281 advice.

Natural England agrees with Defra's conclusion that the risk of HPAIV transmission to those SSSI features which are also SPA features, given the current low national wild bird risk level, will also be appropriately mitigated under the proposed conditions of the amended General Licence (GL45b).

There will be other notified SSSI features, including additional bird species, which are not covered by the HRA. Defra considers that these 'SSSI birds' can typically be categorised as 'spill-over' species (as defined in its GWRAT) which are generally considered to be at 'very low' and 'negligible' risk of HPAIV from gamebird releases at present. In addition, we note Defra considers that the proposed application of mandatory mitigating conditions requiring pre-release testing and biosecurity measures will further reduce the risk of HPAIV transmission, and that this mitigation applied as standard under GL45b can be considered sufficient to mitigate risk to these SSSI features (p25).

We acknowledge the exception of Northumberland Marine SPA, where an additional mitigation of a delayed release date for both common pheasant and red-legged partridge is proposed. We understand that this mitigation is applied on the basis of geography, and does not affect any other SPA listed on GL45b. Natural England therefore concludes that similar impacts on SSSIs underpinning other SPAs can be discounted.

Whilst some underpinning SSSI bird features may be more vulnerable than those of the overlapping SPA, overall, Natural England agrees that the mitigation measures proposed for retention within the GL45b proposal will also be sufficiently precautionary but proportionate in these situations. In Natural England's opinion, the proposed terms and conditions of GL45b derived to protect SPA bird features (as informed by Defra's HRA) are likely to provide the same protection to all SSSI bird features under the currently low background HPAIV risk.

Whilst we note that GL45b will not itself convey Natural England's SSSI consent to release gamebirds within SPAs, this is highly likely to exist for landholdings where this activity has previously occurred. Since previously granted consents which permit gamebird releasing are unlikely to include restrictions that reduce any heightened risk of HPAIV transmission, they will not include any necessary safeguards. The additional mitigation provided in the proposed GL45b, which will also apply to those SSSIs subject to previously granted consents, therefore remains an important precautionary safeguard.

In addition, we would highlight that any releases that may take place within the 500m buffer zone of a SSSI which is an SPA are not subject to SSSI consent and therefore the biosecurity requirements and other measures required by GL45b will provide the only regulatory mechanism to protect SSSI birds from the ongoing HPAIV transmission risk.