

**1.1 Convention on the Conservation of
European Wildlife and Natural
Habitats**



COMPLAINT FORM

NB: Complaint forms must be submitted in electronic word format, and not exceed 3 pages, including the first administrative page. A maximum 5-page report can be attached. The Secretariat will request additional information on a case-by-case basis.

Please, fill in this form and send it to the attention of:

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On behalf of (if applicable):

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Date. 16 June 2014

Electronic Signature

1. Please state the reason of your complaint (refer also the Contracting Party/es involved and the Articles of the Convention which might be violated).

The United Kingdom has identified a significant potential issue, referred to here as *ecosystem perturbation*, from its large-scale predator removal programmes in south and west England 1998-present. Since 2012, if not before, the UK has failed to correctly carry out a self-regulatory duty to determine and to act on any negative impacts from such removals both within and outside designated international sites, upon species and habitats, contrary to the Articles of the Bern Convention including Articles 2-11.

The widespread removal and proposed further removal of Badger *Meles meles*, in England is a part of a Ministerial plan within the UK Government's Policy on Bovine TB and Badger Control in England 2011 [1]. A report by the UK government Food and Environment Research Agency (FERA 2011) [2] identified a range of outcomes from the culling of badgers that could result in disruption to ecosystems in designated sites and the wider 'Area Of Interest' (AOI) for future culling. The report was a specific and extensive account of the potential impact of the resulting change in abundance of other predator & prey species on a wide range of species and habitats. It listed over 1000 national designated sites (SSSI's) in the AOI including 119 SAC's and SPA's potentially impacted and indicated that screening exercises and Appropriate Assessments should be carried out where badger culling was proposed. The FERA report however, recommended deferring any proactive actions to investigate or to place advance considerations or appraisals with regards to changes in 'sympatric meso-predator abundance' and its implications. It concluded that the final actions to consider and manage such problems would be placed individually or jointly upon the culling contractors and the licensing body (Natural England), prior to any cull starting. The report also referred to the further need of EcIA and said;

"It is not desirable or possible at this stage to conduct a formal Ecological Impact Assessment (EcIA) given that no [badger culling] licence applications have yet been made. However it may be appropriate for potential applicants and NE to conduct such an EcIA before the determination of an individual licensing decision. It will be incumbent upon applicants and the relevant authorities to evaluate the appropriate course of avoidance or mitigation of impacts of the actions, and ensure the obligations arising from the various legislative provisions are addressed."

Further, reports for or by the Independent Expert Panel tasked with assessing the 2013 Pilot badger culls in England (IEP 2014) [3] (AHVLA 2014) [4], released in March 2014, show that the chosen methods to determine number of badgers present in a population at any given time are unreliable; being approximate estimates only and with wide confidence intervals. The method of assessing population size is therefore indiscriminate in character. This poses a threat both in terms of reliable bTB disease control, which is the stated purpose of the activity, but also and crucially for this complaint, to the rate and extent of changes to sympatric meso-predator populations and the resulting disruption or perturbation of species and habitats. Evidence is also now newly available in 2014 showing that an alternative 'satisfactory solution' is available for bTB disease reduction & that it is being successfully used in Wales and Northern Ireland (Welsh Government 2014, NI Badger Group 2014) [5, 14].

The UK government has failed to adequately consider, to research or to monitor trends and vulnerabilities to Bern Convention Appendix II species and their habitats from badger culling, despite its identified need, or to have put in place or to require, a system to base decisions on such required information. The lack of due diligence breaches or threatens to breach **Articles; 2** (failure to maintain populations of wild fauna and flora), **3**, (failure to have regard in its planning policy) **4**, (failure to protect e.g. Appendix II ground nesting/roosting birds including migratory species) **6**, (failure to take appropriate administrative measures to protect Appendix II fauna) **8**, (failure to prohibit use of indiscriminate means of capture and killing of an Appendix III species) and **9** (failure to use an alternative 'satisfactory solution' to avoid the negative indirect impacts). There should therefore be an immediate halt to the further licensed UK badger culling process in England.

Note: References for this complaint marked [n] are supplied with the further information sheets.

2. Which are the specific specie/s or habitat/s included in one of the Appendices of the Bern Convention potentially affected? (Please include here information about the geographical area and the population of the species concerned, if applicable)

The species and habitats concerned are very wide-ranging across **south west England and the West Midlands** and further information is provided in the attached *further information* document.

Examples of Appendix II species impacted:

The UK [2] has identified some protected species within the future proposed culling AOI, however we believe it to be only a small proportion of exposed species; **Lesser horseshoe bat *Rhinolophus hipposideros*, Greater horseshoe bat *Rhinolophus ferrumequinum*, Barbastelle bat *Barbastella barbastellus*, Bechstein's bat *Myotis bechsteini*, Great crested newt *Triturus cristatus*, Chough *Pyrrhocorax pyrrhocorax*, Corncrake *Crex crex*, European nightjar *Caprimulgus europaeus*, Hen harrier *Circus cyaneus*, Merlin *Falco columbarius*, Roseate tern *Sterna dougallii*, Stone-curlew *Burhinus oedipnemus*, Woodlark *Lullula arborea*, Dartford warbler *Sylvia undata*, Eurasian curlew *Numenius arquata*, Northern lapwing *Vanellus vanellus*, Song Thrush *Turdus philomelos* subsp. **Clarkei**. For many of these species the UK has indicated possible/probable impact following culling, from what it describes as 'an elevated fox population'. This is presumably either directly through predation or via reduced rabbit population and subsequent change to vegetation structure. Identified also are the plant Early gentian ***Gentianella anglica*** and the **Marsh Fritillary butterfly *Eurodryas aurinia*** a vulnerable invertebrate species. Past impacts from RBCT culling (1998-2005) and the 2013 onward Pilot cull areas includes those upon vulnerable eggs, fledglings, young and adults of a very wide range of Bern Appendix II-listed birds, some of which are migratory. During preparation of this complaint, the following species were identified in sample of 10% of SAC/SSSIs sites within the RBCT and Pilot cull zones; **Bewick's swan *Cygnus columbianus*, Bittern *Botaurus stellaris*, Common crane *Grus grus*, Corncrake *Crex crex*, Curlew sandpiper *Calidris ferruginea*, Dunlin *Calidris alpina*, Little grebe *Tachybaptus ruficollis*, Little stint *Calidris minuta*, Purple sandpiper *Calidris maritima*, Ringed plover *Charadrius hiaticula*, Sanderling *Calidris alba*, Shelduck *Tadorna tadorna*, Whinchat *Saxicola rubetra*, Wheatear *Oenanthe oenanthe***. Distribution and population information does not appear to have been collated or presented by the UK which would be part of an EIA/EcIA, screening and impact assessment/ HRA duties. Many of these species are heavily reduced and declining and have unsatisfactory conservation status, requiring strict avoidance of additional negative impacts. Several are strictly protected under EU legislation. There is a very wide range of coastal and inland habitats of vulnerable Bern Convention species exposed within and at the edge of the past and current pilot cull zones, including estuary, beach, reed-bed, grassland, scrub, woodland, moorland and heathland, within south west England and the West Midlands. The UK has identified some of the non-marine habitats but the FERA report [2] and recent Natural England FOI disclosures [6] show that the UK have failed to identify important habitat areas occupied by Bern species. It has overlooked by faulty screening most designated sites and completely overlooked species outside designated area boundaries. The above lists represent only a small fraction of the species and sites and undesignated species habitats that might be impacted, due to insufficient appraisal by the UK and its agencies. Full identification of the exposures would require detailed research and documentation in the usual way expected for permissions and licences.**

Protected Habitats Directive Annex 1-listed Habitats within the AOI, which are also protected habitats of species listed the annexes of the Bern convention, are shown below. The list of habitats is long but it is still incomplete due to lack of proper appraisal.

Northern Atlantic wet heaths with *Erica tetralix*, Temperate Atlantic wet heaths, European Dry Heaths, Dry Atlantic coastal heaths with *Erica vagans*, Juniperus communis formations on heaths or calcareous grasslands

Calaminarian grasslands of the *Violetalia calaminariae*, Semi-natural dry grasslands and scrubland facies: on calcareous substrates (*Festuco-Brometalia*), *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*), Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*)

Atlantic acidophilous beech forests with *Ilex* and sometimes also *Taxus* in the shrublayer, *Asperulo-Fagetum* beech forests, *Tilio-Acerion* forests of slopes, screes and ravines, *Tilio-Acerion* forests, Old acidophilous oak woods with *Quercus robur* on sandy plains, Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles, Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*, *Taxus baccata* woods

The FERA report [2] appears only to list habitats and species within Grade A and B designated European sites (SAC's and SPA's) but not the potential for disturbance and damage to European Protected Species and habitats outside these categories. This is also a major oversight by the UK. There is a suggestion that an EcIA could be produced for the entire Pilot cull 'Area of Interest' (FERA 2012) 'but the only attempt to assess the potential impacts appears to be a basic desk screening, and the very limited HRA exercise (Somerset only) by Natural England in 2012 which refers to 'limited information provided in the submitted details'[6].

3. What might be the negative effects for the specie/s or habitat/s involved?

Locally on a site basis, ecological perturbation altering meso-predator relationships, will likely result in changes to the herbivore populations & alter grazing pressures. Predators that interact with badgers and each other and that have been and are likely to be disrupted include stoat *Mustela erminea*, weasel *Mustela nivalis*, red fox *Vulpes vulpes*, hedgehog *Erinaceus europaeus* pine marten *Martes martes*, european polecat *Mustela putorius* and brown rat *Rattus norvegicus*. Changes in absolute and relative mesopredator densities may result in secondary alterations in populations of lower trophic species such as rabbit *Oryctolagus cuniculus*, culminating in changes in flora and associated successional processes. Direct damage via lowered population size/decline or localized species extirpation is also predictable. Because of the complexities and local variations in the relationships between ecosystem components, there is much uncertainty around the impacts of removal of badgers and subsequent release of sympatric meso-predators. DEFRA has identified the risk, but failed all but totally, in our view, to carry out the thorough and adequate procedures required to determine, assess and mitigate any risk, as is normally expected. DEFRA-funded prediction modelling of likely fox increase, of around 7% [7] needs to take account of published studies that show fox densities can double after culling [8]. This factor illustrates the lack of understanding and control of the situation that persists in the United Kingdom from its use of its current and proposed badger culling methodology.

4. Do you know if potentially affected species or habitats also fall under the scope of other international Conventions, (for instance: RAMSAR, CMS, ACCOBAMS, Barcelona Convention, etc) or if the area has been identified as a NATURA 2000/Emerald network site?

The Pilot cull zones and AOI include areas of England that are rich in nature protection areas and designated sites. Areas impacted or potentially impacted include the RAMSAR Severn Estuary Wetland of International Importance. Many of the areas are designated in the NATURA 2000 series and are SAC or SPA. An approximate 10% sample of the area of expected meso-predator change from past (1998-2005) and present (2013) cull zones checked for this complaint produced a wide range of vulnerable Appendix II species habitats, including 1 RAMSAR site, 4 Special Areas of Conservation, 2 Special Protected Areas, 1 Important Bird Area, 11 Sites of Special Scientific Interest, and 1 National Nature Reserve.

5. Do you know if there are any pending procedures at the national or international level regarding the object of your complaint?

Legal proceedings in the UK courts are currently under detailed consideration and may be underway by the time this complaint is made, or shortly after.

6. Any other information (existence of an Environmental Impact Assessment (EIA), size of projects, maps of the area, etc)

The matter in the UK court relates to insufficiency of SEA/EIA Directive, Environmental (Ecological) Impact Assessment (EIA or EcIA), &/or inadequate Birds/Habitats Directive related procedures such as screening, Habitat Regulations Assessment & Appropriate Assessment. Please see attached further information.