

***(Draft) Wildlife and Natural Environment Bill***

***A response by the Northern Ireland Badger Group***

**15 February 2010**

**Appendix 1**

**Snares - The Way Forward**

**Submission to DEFRA's consultation on snares and traps**

National Federation of Badger Groups

November 2003



# **Snares – The Way Forward**

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### **This paper is supported by the following organisations:**

Environmental Investigation Agency

Friends of the Earth

International Fund for Animal Welfare

League Against Cruel Sports

Woodland Trust

World Society for the Protection of Animals

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# 1. National Federation of Badger Groups (NFBG)

The NFBG is a registered charity which promotes the conservation, welfare and protection of badgers in Britain. We represent many thousands of people in more than 80 badger protection groups across the UK, who are committed to protecting badgers and the habitats in which they live.

We are respected as an authoritative voice for badgers and are recognized as a major player in the wider field of welfare and conservation in the UK. We also work with, and provide information and advice to, other conservation and welfare groups, the Police, statutory Government bodies, MPs, the public and others.

## 2. Supporting Organisations

This NFBG report is supported by the following organisations: Environmental Investigations Agency; Friends of the Earth; International Fund for Animal Welfare; Woodland Trust and the World Society for the Protection of Animals.

## 3. Executive Summary

This report focuses on the use of snares.

DEFRA's recent consultation on the use of traps and snares in England and Wales does not address the question of whether their use should now be entirely prohibited, focussing instead on improving their use.

There is no doubt that misuse occurs. There is also no doubt that large numbers of non-target wildlife, including numerous protected animals, are caught, killed and maimed by their use, with substantial consequences both for nature conservation and for animal welfare. The question is whether, as DEFRA appears to presuppose, this toll on biodiversity and animal welfare is adequately explained by misuse, and therefore adequately addressed by promoting good practice.

We consider it wholly unrealistic to suppose that improved voluntary codes of good practice will significantly reduce these consequences of the use of snares. Further, we consider that even the criminalisation of bad practice would do little to reduce those consequences, because in all practical use scenarios snares are inherently indiscriminate. Accordingly, we consider the only workable solution to be to prohibit all uses of snares.

Even with the simplification of the law which such a ban would bring, it should still be supplemented by provisions to address the acknowledged weaknesses in the existing enforcement regime for snares.

## 4. Introduction

This paper has been produced in response to DEFRA's consultation on the use of snares and traps in England and Wales, announced in September 2003. We welcome the consultation and believe that it is timely: the Scottish Parliament is currently consulting on its draft Nature Conservation (Scotland) Bill, which addresses snares (Scottish Parliament, 2003). In addition, concern is being increasingly voiced about the use of snares, by the public (NFBG, 2002a; 2002b, enclosed), parliamentarians (APGAW, 2002; Hansard, 2002), Government statutory nature conservation agencies (Scottish Natural Heritage, 2001) and a range of non-Governmental organisations (NFBG, 2002b; RSPCA, 2000; SSPCA, 2002; Woodland Trust, 2002).

The consultation identifies five issues on which DEFRA is particularly interested to receive views and suggestions, and all of these are addressed below. However, we are concerned that DEFRA appears to pre-judge the crucial question of whether the use of snares at all should remain lawful. In particular, we are concerned at five statements made in the consultation:

- The consultation states, "*legislative controls remain broadly effective*". What is DEFRA's evidence for that statement? All the available evidence, in relation to the use of snares, of which we are aware appears to suggest the contrary.

- The consultation states “*currently, we believe that snares and traps should remain available to land managers as a legal method of dealing with particular species*”. Is this a foregone conclusion, or is DEFRA open to accepting a case for the prohibition of the use of all currently existing types of snare? We make that case below.
- The consultation states “*we are aware of instances where bad practice has allowed [maiming or killing by free-running snares] to occur*”. We are concerned that DEFRA may be making the false assumption that, where a free-running snare maims or kills, this must be attributable to bad practice. Is DEFRA aware of cases where free-running snares have killed or maimed despite the use of good practice? Does DEFRA even know whether bad practice was used in the instances of which it is aware? What are those instances, and what is DEFRA’s evidence as to whether good or bad practice was used?
- The consultation states, “*it is important that until viable alternatives are available to land managers the humane use of traps and snares is improved*”. We consider that viable alternatives are already available, as discussed below. What is it about these alternatives which DEFRA considers unviable? And is not a ban on unacceptable trapping methods the best way to drive the development of viable alternatives?
- The consultation states “*The lack of information currently available leaves...enforcement authorities without clear guidance on when an offence has been committed*”. This is true - good practice would of necessity involve a detailed site-specific assessment to ensure that non-target species are not caught, and presumably the authority would often have to undertake the same exercise in order to demonstrate beyond reasonable doubt that good practice had not been used. But this is only one of the problems they face under the current law: among other things, the authority would also have to link the snare beyond reasonable doubt to a particular individual.

In addressing this issue, we believe that the Government should be guided by three key principles: the conservation of protected wildlife; high standards of animal welfare and compliance with national and international legal obligations.

In this paper, we therefore outline our specific concerns relating to the use of snares in the UK. We examine whether the UK Government is complying with its obligations under national and international legislation and discuss whether measures may be introduced to improve the protection of wildlife. We also discuss whether snares should be banned or more strictly regulated, and examine possible humane alternatives to snares.

## **5. The use of snares**

The UK is one of a minority of countries in Europe which permits the use of snares.

Snares are wire nooses set to trap wild animals. In the UK, snares are largely used by gamekeepers to control foxes and are used to a lesser extent by farmers and landowners to control rabbits. Snares are set in a variety of circumstances, but are usually placed along runs or pathways thought to be used by the target species. They are sometimes also placed over the entrances to rabbit burrows or fox earths.

## **6. Types of snare**

Several types of snares are used in Great Britain.

Free-running snares are legal and are intended to hold the target animal alive until the operator returns to humanely dispatch it, usually by shooting. The snare should tighten as a captured animal struggles, but relax when the animal stops pulling. Free-running snares can also have a ‘stop’ which prevents the noose from closing too tightly.

Self-locking snares are illegal in Britain because they are designed to kill the target animal. When an animal is caught in a self-locking snare, the noose tightens, but has a ratchet effect and does not

slacken off when the victim stops struggling. Animals are usually caught around the neck and die through strangulation or by dislocation of the neck.

Dual-purpose snares can act as free-running snares or self-locking snares, depending on how they are set. A relatively new type of snare has divided expert opinion on whether it is free-running (and therefore legal) or self-locking (and therefore illegal).

A more detailed outline of the types of snares used in the UK, including photographs, has been described previously (NFBG, 2002b).

## **7. Current legislation relating to snares**

### **7.1. Wildlife and Countryside Act 1981**

The Wildlife and Countryside Act 1981 (as amended by the Wildlife and Countryside (Amendment) Act 1991) seeks to implement one of the central pillars of the international law on nature conservation, the Bern Convention on the Conservation of European Wildlife and Natural Habitat. The Convention:

imposes an international law obligation on the UK Government, as a signatory, to take “*all appropriate and necessary legislative and administrative measures to ensure the protection*” of wild animals which are protected by the Convention. These include pine marten, polecat, badger and otter. This obligation is not discharged by having legislation and codes of practice in place – it requires the actual protection, on the ground, of the animals in question.

and to this end, prohibits the use of “*all indiscriminate means of capture or killing*” which capture or kill protected wild animals, and in particular, snares (which the Convention recognises as inherently indiscriminate and the indiscriminate (non-selective) use of traps.

The Wildlife and Countryside Act makes it an offence for a person:

to set a self-locking snare in such a way as to be calculated to cause bodily injury to any wild animal (this includes dual purpose snares set in the self-locking position), or to knowingly cause or permit the setting of a self-locking snare in this way;

to kill or take, or to knowingly cause or permit the killing or taking of any wild animal using a self-locking snare;

to set a snare (or other article) in such a way as to be calculated to cause bodily injury to any animal listed in Schedule 6 of the Act, or to knowingly cause or permit the setting of a snare in this way. (Schedule 6 species include badger, otter, pine marten, polecat, red squirrel and wild cat);

to kill or take, or to knowingly cause or permit the killing or taking of any animal listed in Schedule 6 of the Act using a snare;

who sets a snare, or knowingly causes or permits a snare to be set, to fail to inspect that snare (or have someone else inspect it) at least once every day;

to possess a snare for the purpose of committing any of the above offences (HMSO, 1981).

Case law on the term “calculated” (as in, “calculated to cause bodily injury”), in other equivalent legislative contexts, has established that it does *not* mean intended to cause such injury. It means likely to cause such injury.

### **7.2. The Conservation (Natural Habitats &c.) Regulations 1994**

These Regulations implement the EU Habitats and Species Directive and protects species of animals listed in Annex IV of the Directive whose natural range includes any area in Great Britain. The Regulations prohibit the use of various specified methods of taking or killing certain wild animals, including “traps which are non-selective according to their principle or their conditions of use”. The Regulations give full protection to European ‘protected’ species listed in Schedule II, including wildcat and otter. They also regulate the use of various specified methods of taking or killing wild animals listed in Schedule III. Animals in Schedule III include the mountain hare, pine marten, polecat and otter.

### **7.3. Other legislation**

Snares are also regulated by the Deer Act 1991, which makes it an offence to set a snare for deer, or attempt to do so (HMSO, 1991). The Protection of Animals Act 1911 and Protection of Animals (Scotland) Act 1912 make it an offence to set a snare to trap domestic animals (HMSO, 1911; HMSO, 1912).

## **8. Practical concerns and weaknesses in the legislation**

We believe that there are three key problems with the use of snares in the UK. Firstly, there is clear evidence that people using snares do not adhere to the legislation or voluntary codes of conduct. Secondly, weaknesses in the legislation allow the intentional abuse and accidental misuse of snares to take place unpunished. Thirdly, even legal snares, set in accordance with the law, are indiscriminate. Below, we outline our key concerns.

### **8.1. Snares are indiscriminate**

A large amount of information exists to indicate that non-target species (including protected wildlife) are often injured or killed in snares. This includes illegal snares, but also legal, free-running snares that have been set in accordance with the law.

For example, a trial on the use of snares as a means of taking foxes found that 155 foxes and 132 non-target animals were caught (Forestry Commission, 1997). And a report on snares by Lawyers for Animal Welfare (LAW) stated that: “upon challenge, a large proportion of gamekeepers whose snares have caught animals of protected species claim to have taken precautions against this outcome”. (LAW, 1999). The Burns Inquiry into Hunting with Dogs also expressed concern over the indiscriminate nature of snares. It received evidence that “About half of the captures made by snares are of non-target species...” (Burns, 2000).

Protected wildlife species that have been found trapped in snares - among them snares apparently used legally – include otter, pine marten, polecat, badger and mountain hare. (Ryedale Natural History Society, 1999; Paul Yoxon, pers com; Jefferies and Critchley, 1994; Birks and Kitchener, 1999; NFBG, 2002b). A wide range of other wild animals also fall victim to both legal and illegal snares, including deer, squirrel, stoat, partridge and mallard (RSPCA, 2000; Animal Aid, 2002).

It is also illegal to snare any bird. However, the capercaillie, an animal of significant conservation concern in the UK, is a frequent victim of snares set for foxes. RSPB Scotland has recently advised the Scottish Executive that: “In light of the perilous conservation status of this species, we recommend it should be an offence to use snares in woodland where capercaillie are known, to the “owner or occupier” or the “authorised person”, to be present. For the avoidance of doubt, SNH could be required to notify owners and occupiers that this is the case in areas where capercaillie are regularly found and these data are known to SNH”. (RSPB Scotland, 2003).

It therefore appears that - as recognised by the Bern Convention (see above) - snares are indiscriminate by their very nature.

### **8.2. Operators fail to comply with legislation and codes of practice**

The problem for protected wild animals is compounded by the fact that many operators fail to comply with legislation and voluntary codes of conduct. This may be either through lack of training (those using snares do not need to demonstrate competence or receive appropriate training) or simply due to a lack of respect for the law.

For example, a voluntary code of practice on fox snaring, produced by the British Association for Shooting and Conservation (BASC), advises that, “When setting snares every effort must be made to avoid the capture of non-target and protected species. A knowledge of the tracks, trails and signs of both target and non-target species is essential.” (BASC, 2002). It is likely that if all who use snares adhered to this advice, the situation would be somewhat improved.

### **8.3. Illegal self-locking snares are still used in the UK**

Despite being illegal, there is clear evidence that self-locking snares are still being used in Britain (NFBG, 2002b). It is currently illegal to use self-locking snares but it is not unlawful to possess such snares.

### **8.4. Legal snares are not defined by legislation**

Current legislation states that the use of self-locking snares is illegal. However, the law does not define self-locking snares and problems arise, particularly in court cases, in determining whether a snare is self-locking or not.

Lawyers for Animal Welfare (LAW) has proposed that if the general use of snares is to continue, the Wildlife and Countryside Act must provide a clearer description of unlawful snares. (LAW, 1999). Alternatively, it could be argued that a clearer description of what *is* legal should be provided, and that any snare not matching that description would, by default, be illegal.

### **8.5. Enforcement powers are weak and police resources limited**

Wildlife legislation, including that relating to snares, is extremely difficult to enforce for a number of reasons. Firstly, weaknesses and ambiguities in the legislation frequently hamper investigations by the police and other prosecuting authorities. Secondly, the use of snares is difficult to monitor when many are used on private land, in isolated locations and away from public scrutiny. Thirdly, enforcement powers available to the police are limited, compounded by the lack of police resources in many rural areas. Indeed, many police forces are coming under increasing pressure to divert resources away from wildlife crime to prioritise on offences that are notifiable. For example, In May 2003, the Force Wildlife Officer for Thames Valley Police was not replaced due to the force having other policing priorities (Thames Valley Police, 2003).

It is therefore essential that, once DEFRA has identified areas of concern, it improves the legislation such that it can be effectively enforced.

### **8.6. Specific practical concerns**

#### **8.6.1. Snares are set when protected species are present**

BASC's guidelines on fox snaring advise users of snares to: "Ensure that only foxes are using the site where snares are to be set" (BASC, 2002). However, the fact that protected species are frequently trapped in snares, indicates that both the law and voluntary guidance is either ignored or – in practice – impossible to apply effectively.

As an example of the guidelines being ignored, snares are commonly found at badger setts and even over sett entrances. In May 2002, the South Yorkshire Badger Group discovered three free running snares on entrances to a sett near Barnsley. The area around one snare was churned up and badger hairs found on the snare suggested that a badger had been caught previously and removed. Despite the badger group's extensive search of the area for more snares, a sow badger was found dead in a free-running snare, two days later in an adjacent wood. The snare had cut deeply into the badger's abdomen, resulting in part of its intestines spilling out of the body cavity (NFBG, 2002b).

#### **8.6.2. Snares are set on public footpaths**

Snares set on or close to public footpaths are a hazard to both domestic pets and wildlife. BASC guidelines advise that snares are not set, "on or near public footpaths, rights of way, or in areas used regularly for the exercising of domestic animals" (BASC, 2002), but examples exist of snares being set in such locations (NFBG, 2002b).

#### **8.6.3. Free running snares don't 'run free'**

It is very difficult to set a free-running snare so that it will remain free running (and, therefore, legal). Many snaring incidents involve the use of frayed or damaged free-running snares, which causes them to act as self-locking snares.



In addition, snares are often set such that as the captured animal struggles to escape, fur, skin, vegetation and tree branches become tangled in the snare and it becomes self-locking.

BASC advises that land managers “Ensure that snares run freely and are free of ‘kinks’” and to avoid setting snares where it is likely that entanglement will lead to the snare becoming self-locking. As noted above, it is an offence if the snare is likely, by becoming self-locking or otherwise, to injure a Schedule 6 protected species, but otherwise it is not currently an offence. The fact is that it is almost always likely to happen, but it is wholly impracticable to expect the prosecution to be able to show beyond reasonable doubt that it was likely in any given case. This gives DEFRA compelling reason to recognise this likelihood in the only practical way – by outlawing the use of supposedly free-running snares, and bringing UK practice into line with its international obligations.

#### **8.6.4. Snares are set on fence posts, fences, banks and walls**

In many instances, snares are set in circumstances and in particular locations that increase the risks of animals suffering when caught in snares. For example, so-called drag snares are attached to a heavy moveable object, such as a fence post, with the intention that a fox be snared and then exhausted by dragging the object in its efforts to escape from the snare. However, problems arise with this kind of snaring. Firstly, snares must be checked every day, but this is not always possible if the snare has been moved away from its original location and cannot be found. Secondly, foxes, badgers and other animals have strangled themselves while caught in such snares. Therefore this kind of snaring compounds the likelihood of the killing or injury of protected and other wild animals.

#### **8.6.5. Snare ownership is difficult to prove**

Current legislation does not require the users of snares to be registered or in anyway linked to the snares they are using. Therefore, unless a snare is observed being set or checked, it is usually impossible to discover who is responsible for setting a snare. This frequently results in the authorities being unable to prosecute those who commit offences with snares. For example, two snaring incidents in Cheshire in 2003 were investigated by the police, but the individuals who set the snares could not be identified. The Cheshire Crown Prosecution Service was therefore unable to pursue the case (PC Steve Hogarth, pers com).

#### **8.6.6. Snares are not always checked every day**

The Wildlife and Countryside Act 1981 requires that snares be checked “at least once every day”. This is usually interpreted as at least every 24 hours. However, as worded, the law technically allows for snares to be left unchecked for almost 48 hours without an offence having been committed. BASC advises that snares should be inspected “at least twice a day...” but numerous examples exist where it is clear that snares have not been checked daily - or even weekly. The animals caught in such snares will have died either as a direct result of their injuries, by infection of their wounds, or by starvation.

Unfortunately, it is usually impossible to prove in court that a snare has not been checked every day. Even the discovery of a long-dead corpse in a snare does not prove beyond doubt that it had not been checked on a daily basis. In such cases, when the person setting the snare is identified, it is often claimed that the animal was already dead when the snare was checked, and that it was then simply left where it was.

On many large estates it is likely that snares cannot be a suitable method of fox control, because it would never be possible for all snares to be checked according to the law. For example, the SSPCA have reported a case where a gamekeeper admitted having over 500 snares set over a vast area, but claimed that he checked each snare daily (SSPCA, 2003). In another case, the SSPCA discovered the systematic use of snares being used to trap and kill mountain hares on the Cawdor Estate in Scotland. Hundreds of home-made snares were found on paths clearly used by mountain hares. No markers were used to aid locating the snares and the isolated location and terrain would have made

it virtually impossible to check them regularly. Some snares contained the bodies of hares, some just a pile of bones on the path beneath the snare (NFBG, 2002b).

## **9. Alternative methods**

DEFRA states that, “*It is important that until viable alternatives are available to land managers the humane use of traps and snares is improved.*” This statement appears to assume that there are currently no viable alternative measures for the control of ‘pest’ species. However, a review of fox and rabbit control methods (NFBG, 2003) indicates that a range of legal and effective alternatives to the use of snares does exist. Moreover, most of them are already in use. We therefore urge DEFRA to investigate whether such methods are sufficiently effective and humane to be used instead of snares, and whether banning existing snares would be the most practical way of ensuring that these alternatives are actually used.

In addition, we understand that a leg cuff, currently being developed, may provide a satisfactory alternative to snares. MAFF conducted research on the padded ‘Rose cuff’ (MAFF, 1999) but has refused to publish the research because it was not completed. However, we understand that the Government is funding a new trial of the leg cuff, for trapping foxes, which is being carried out jointly by the Game Conservancy Trust and DEFRA (George Rose, pers com). This is welcome, but again a ban on the use of existing snares and traps would probably do more to bring forward a wider range of humane and non-indiscriminate alternatives.

## **10. Improve the operation of snares – or ban them?**

DEFRA has acknowledged that current legislation contains “weaknesses and ambiguity” (DEFRA, 2003). However, DEFRA makes clear that it is not considering a ban on the use of snares. There is also no indication that DEFRA is even considering legislation to tighten up existing laws on the use of snares. Instead, DEFRA states that “Where possible, we want to remove weaknesses and ambiguity by encouraging the legal and effective practice of snares and traps” and that there should be “robust guidance given to operators to ensure that they follow good practices”.

It will be clear from the foregoing that we believe it is unlikely that purely voluntary instruments will reduce the problems caused by snares. Guidance on the ‘proper’ use of snares is already widely available, for example BASC’s code of practice. But as this and other reports clearly demonstrate, such guidance is often ignored. Unless ‘misuse’ of snares is clearly defined and outlawed by legislation, there would appear to be little chance of ensuring compliance with any “good practices” which DEFRA’s review may identify.

Furthermore, we believe that it is a somewhat simplistic approach to assume that all problems with snares are simply a result of the ‘misuse’ of snares and ‘bad practice’, resulting from a lack of guidance and training. It is abundantly clear that ‘proper’ and legal use of snares is also causing unintended suffering and death on a large scale. We therefore contend that there is a more fundamental problem with snares: they are inherently indiscriminate.

DEFRA has therefore failed to address a more fundamental question: ‘Can snares be used non-indiscriminately and humanely?’ DEFRA must also then ask: “Are there viable alternatives to snares” and, if not, “Is it both legally and morally acceptable to continue to permit the use of snares in the interim?”

## **11. Conclusions**

At the beginning of this paper, we outlined the three key principles that should guide the Government when addressing snares: the conservation of protected wildlife; high standards of animal welfare and compliance with national and international legal obligations.

In this paper, we have demonstrated that:

- Protected wild animals are trapped in snares;
- Target and non-target animals are suffering in both legal and illegal snares;

- Snares are indiscriminate and trap a wide range of non-target animals, including protected wildlife;
- The evidence suggests that in practice most uses of existing snares – even using good practice - are likely to injure or kill protected species, and therefore illegal;
- Preserving the distinction between good and bad practice merely fosters the illusion – unsupported by any evidence of which we are aware - that good practice would solve the problem, and compounds the difficulties facing anyone seeking to prosecute for the misuse of snares; and,
- The UK Government may well be failing in its national and international obligations to protect wildlife.

We therefore recommend that the Government:

- Legislates for a complete ban on the use of all snares, and considers how to legislate to overcome existing enforcement difficulties associated with, for example, proving who used the snare in question;
- Investigates whether there are effective, humane and legal alternatives to snares;
- Funds research into effective, humane and legal pest control measures;
- Publishes information on research conducted on the ‘Rose leg cuff’.

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