

It was held, however, that, having regard to the wording of Mr Glyn's invoice for the day in question, he was much more involved in the decision-making as to the nature of the treatment to be given than he claimed. Moreover, it was clear from Mr Glyn's own evidence that his duty to observe gave rise to a further duty to intervene to protect Anna if the proposed or actual treatment was in any way inappropriate. He rendered himself unable to judge whether the treatment was inappropriate by failing to ask what drugs were being injected or the dosage, and was therefore in breach of this duty.

Regarding Mr Grandiere, the judge found that there was no clinical justification for the treatment administered, and that he was therefore negligent. He should also have warned Mrs McGarel-Groves of the risk the treatment entailed.

Responsibility for Mrs McGarel-Groves' loss was apportioned between Mr Grandiere and Mr Glyn on an 85:15 basis.

## **Culling of non-native species**

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Alien species, more correctly identified as non-native species, have been around for centuries. Indeed, it would not be inaccurate to state that much of our common wildlife falls into this category. Mammals such as rabbits, grey squirrels and fallow and muntjac deer have all been introduced into Great Britain at various times. Currently, for a number of reasons, some non-native species are a major cause of concern.

Non-native species that become invasive will almost always raise concern as they may then cause problems which can be very serious. For example, coypus farmed for their fur in the last century escaped or were deliberately released into the wild

where they cause massive damage. Because of this, it was decided that they should be totally eradicated, which took two attempts over several years to achieve. A more recent example is that of the American bullfrog, a species imported into Great Britain as tadpoles to provide an interesting addition to garden ponds. Again there were escapes into the wild and further importation was banned in 1997. This article will use three case studies to illustrate different problems posed by alien species that have become invasive, and highlight the ethical dilemmas that arise when sentient creatures have to be controlled, in part because of the need to fulfil our legal obligations on biodiversity and conservation.

The first case study will examine the ruddy duck, an alien species that does not cause problems in Great Britain but presents such a threat to a critically endangered Spanish species that it is planned to eradicate the birds entirely from this country as well as any that have made their way to Europe.

### The ruddy duck

A North-American species, ruddy ducks were originally imported into Great Britain by the Wildfowl and Wetlands Trust, to their centre at Slimbridge from which, allegedly, three of the ducks escaped to produce, by 2000, an estimated 5,000 birds in the wild. There they do no harm as they have found and filled an ecological niche.

However, most years, a few ruddy ducks fly to Spain where they may come into contact with the white-headed duck, a critically endangered species teetering on the edge of extinction. Mating may take place, producing hybrids, some of which will be fertile because of the close genetic relationship between the two species.

The United Nations Convention on Biological Diversity<sup>22</sup> requires the white-

<sup>22</sup> Entered into force on 29 December 1993.

headed duck to be saved from extinction and that includes maintaining its genetic purity. Furthermore, the white-headed duck is listed as a “priority species” under the Habitats Directive,<sup>23</sup> that is, a species for the conservation of which the European Community has particular responsibility

To quote the Department for the Environment, Food and Rural Affairs (DEFRA): “Without control, ruddy ducks are ... expected to colonise continental Europe and threaten the white-headed duck with extinction, through hybridisation and competition”.<sup>24</sup> Therefore Birdlife International prepared an action plan, in line with the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats<sup>25</sup> and endorsed by the European Commission, which “highlights the need for control, and ultimately eradication, of both wild and captive populations of ruddy ducks (particularly the UK source population)”.<sup>26</sup> The Wildfowl and Wetlands Trust and the Royal Society for the Protection of Birds (RSPB) state that the cull must go ahead.<sup>27</sup> Other experts, such as Professor Christopher Smart of the Centre of Environmental History at St. Andrews University, argue that there is nothing wrong with hybridisation, hybrids being “the raw stuff of evolution”.<sup>28</sup>

The cull is going ahead. DEFRA has issued licences “to kill, or take ruddy ducks ... including the taking or destruction of their eggs”.<sup>29</sup> The licences have been granted because of the need to

<sup>23</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7.

<sup>24</sup> “Review of non-native species policy”, report of a DEFRA Working Group, 2003, p. 76.

<sup>25</sup> Entered into force on 1 June 1982.

<sup>26</sup> See footnote 24.

<sup>27</sup> Marren, P., “A question of breeding”, *Daily Telegraph*, 22 March 2003.

<sup>28</sup> Ibid.

<sup>29</sup> Under the Wildlife and Countryside Act 1981, Article 16, licence number WLF100106.

conserve flora and fauna.<sup>30</sup> Authorised persons can carry out the killing which must be done quickly and humanely and detailed records must be submitted to DEFRA so that essential details of the operation are collated and on record.<sup>31</sup>

Is this a rather extreme solution to a problem that could arguably be solved in less destructive ways? The birds are difficult targets, hard to kill, and the killing can cause much disturbance which is something that can in itself be illegal in certain circumstances.<sup>32</sup>

The second case study poses an entirely different set of problems. In this instance, the alien species is the hedgehog.

#### The hedgehogs in the Outer Hebrides

It is a matter of record that between 1974 and 1975 seven hedgehogs<sup>33</sup> were introduced onto the Uist Islands in the Outer Hebrides to catch slugs. However, the hedgehogs also ate the eggs of waders and other ground-nesting birds, some rare and endangered, found in internationally important breeding colonies on the islands. Under normal circumstances this would probably not have mattered, however on the Uist Islands hedgehogs are an alien species and, because there are no natural predators there, there has in effect been a hedgehog population explosion.

Because of the important implications for biodiversity, the Uist Wader Project was created and, after at least a year of negotiations, in 2001 it was agreed by Scottish National Heritage, the RSPB and

<sup>30</sup> The purpose for which the licence is granted.

<sup>31</sup> Under the terms and conditions of the licence.

<sup>32</sup> See, for example, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.4.1979, p. 1, Article 4(4).

<sup>33</sup> See footnote 24, p. 59. Seven hedgehogs were recorded but there could have been other, unrecorded, introductions.

the Scottish Executive that the hedgehogs should be totally eradicated from the islands.<sup>34</sup> Since then, an intractable dispute has arisen about how this should be achieved. The members of the Uist Wader Project have spent some three years trying to devise solutions other than culling the animals and have not come up with an answer, save that relocation is not an option. On the other side, various hedgehogs groups, The Peoples' Trust for Endangered Species and the European Hedgehog Research Group are firmly convinced that relocation is the correct answer.

The cull began in spring 2002, on North Uist where the hedgehogs were killed by lethal injection after they had been located using a spot lamp. No licence was necessary to authorise the killing because hedgehogs are not included in Schedule 5 ("rare animals") of the Wildlife and Countryside Act 1981 and are therefore not protected. By 2005, there were apparently so few animals left that the tactics had to be changed and it has now been decided that there will be an autumn cull in addition to the spring cull and that it will be carried out under the provisions of the Protection of Wild Mammals (Scotland) Act 2002 which entails flushing out the hedgehogs with dogs then shooting them.<sup>35</sup> Although the end result is the same, this method of killing is even less acceptable than lethal injections. Indeed, Scottish National Heritage did have discussions with the Scottish Executive to see whether there was a possible alternative to shooting, without success.

The final case study provides an interesting comparison with both the others. The American mink is a savage predator that causes problems on both mainland Britain and some Scottish islands, the Hebrides in particular.

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<sup>34</sup> Information given to the author by Scottish National Heritage.

<sup>35</sup> Section 2(1).

### The American mink

Like the coypus, the American mink was imported into this country to be farmed for its fur and, again, some of the animals escaped or were deliberately released. In the wild they flourished and have established a feral population throughout most of Great Britain. They are very successful hunters, killing birds and small animals, in particular the water vole.

The Convention on Biological Diversity requires the water vole to be protected and the Government's Biodiversity Action Plan for Water Vole "encourages humane control of mink where they pose a threat".<sup>36</sup> Water vole numbers have declined dramatically in recent years and they have become so endangered that there are now a number of breeding and reintroduction programmes in place. If, however, vole numbers are to recover, they will need some protection from, *inter alia*, American mink.

At present, Government policy aims for local suppression rather than complete eradication and it is for landowners and occupiers to decide whether or not they want to take action against mink on their land. Where this happens, the animals are live-trapped and humanely destroyed by lethal injection.<sup>37</sup> However, there is also the Hebridean Mink Project,<sup>38</sup> a pilot project the idea behind which is that, eventually, there will be total eradication of the animals on the Hebrides as they are home to such important breeding colonies of birds. Again, the culling method is live-trapping and lethal injection.<sup>39</sup> Interestingly, the legislation banning hunting with dogs does make provision for mink still to be hunted, flushed out by dogs then shot.<sup>40</sup>

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<sup>36</sup> Briefing paper given to the author by DEFRA.

<sup>37</sup> Ibid.

<sup>38</sup> Information given to the author by Scottish National Heritage.

<sup>39</sup> Ibid.

<sup>40</sup> See, for example, Protection of Wild Mammals (Scotland) Act 2002, Section 2(3).

In recent years, mink numbers have begun to decline in some areas and research suggests that in part this is due to an increasing population of otters, two commentators stating: “otters have permanently suppressed mink population growth”.<sup>41</sup> This is indeed a welcome finding because there is little or no need for human intervention where a native species holds an alien population in check.

### Conclusion

It will now be obvious that, in some situations, the presence of alien species can give rise to acute ethical dilemmas. In the examples given the alien species were introduced by human beings. In each case, they are a threat to biodiversity.

There are circumstances where arguably culling is a necessary evil both to comply with the law and with the need to retain biodiversity. However, where the target of the cull is a sentient creature, surely culling should be used as the last resort, and alternative solutions sought. Indeed, sometimes it is hard to accept that all other possibilities have been thoroughly explored and rejected. For example, while few would consider relocating mink, it does seem unfortunate that there is so much dissension about relocating hedgehogs, whose numbers are declining on the mainland,<sup>42</sup> where other species are being re-introduced. In this area there are no easy answers.

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<sup>41</sup> Bonesi, L. and MacDonald, D., “Otters versus mink”, *Mammals UK*, winter 2005, p.7.

<sup>42</sup> A survey being conducted by the Mammals Trust UK and Royal Holloway, University of London, which is now in its fifth year, indicates that regionally, hedgehog numbers are falling, although the survey needs to run for about ten years to properly establish long-term trends. An earlier study carried out in 1991 when compared with a similar study carried out in 2001 showed declines of up to 50% in some areas.

## **Import of dog and cat fur to the EU**

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Millions of dogs and cats are killed each year for their fur in Asia, principally in China. A 1998 investigation by the Humane Society of the United States (HSUS) and investigative journalist Manfred Karreman revealed the inhumanity of the living conditions of these animals and the methods of slaughter. In China, large numbers of dogs, including puppies under six months old, were kept in dark, windowless and bitterly cold sheds, chained by thin metal wires. Methods of slaughter included tying dogs tightly around the neck and then stabbing them, after which they were skinned, often while still alive. Cats were hung from wires while water was poured down their throats through a hose until they drowned. A subsequent investigation by Care for the Wild International, again in China, revealed workers in fur farms attempting to stun animals by repeatedly slamming them against the ground then beating their heads with clubs, after which they were skinned, again often still alive.<sup>43</sup>

The HSUS investigation led to a ban on the import and export of dog and cat fur in the US. After further investigations revealed dog and cat fur on sale in several EU countries, five of these countries (Belgium (temporary ban), Denmark, Italy, France and Greece) also introduced various bans. Despite these bans, the EU has become the major market for dog and cat fur since the US ban. Traders in China have stated that dog and cat fur is produced for the West.

The import of dog and cat fur is legal in the UK. Trade statistics separately identify imports of fur from 12 named animal species. However, 66 tonnes of “other fur” (the category into which dog and cat fur falls)

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<sup>43</sup> For further information on the trade, see [www.voice4dogs.org](http://www.voice4dogs.org).