

## Eagle persecution, land management and the Cairngorms National Park

### Description



Smoke rising from Invercauld November 2020 viewed from Culblean Hill, north east of Ballater. The tors of Ben Avon are visible on the skyline. Photo credit Parkswatch reader.

News about yet another unlawful killing of a golden eagle in the Cairngorms National Park ([see here](#) for the latest list from Raptor Persecution Scotland), found poisoned on the Invercauld Estate in March, should surprise no-one. The Cairngorm National Park Authority's stated intention to eliminate raptor persecution ([see here](#)) will never work until it tackles the underlying land management issues that give rise to it. So long as estates like Invercauld ([see here](#)) are allowed to manage their land to produce as many red grouse as possible, it will never be in their interests to allow predators other than humans to kill those birds before they can be shot. The extensive muirburn on Invercauld, is not just bad for carbon capture and human health, it inevitably results in wildlife persecution.

### The limitations of law enforcement

While Police Scotland's strong statement about the poisoning ([see here](#)) is welcome, bringing those responsible for wildlife persecution to justice is particularly complex and not the fundamental issue.



At least in this case, the location of the crime is not much in doubt, unlike the dozens of cases where tagged raptors have gone missing. It is not a coincidence that this often occurs close to estate boundaries, which creates doubt as to which estate may have been involved and makes police investigations almost impossible. Even when the location of the crime scene can be established, however, that still leaves the problem of establishing who committed the crime, hence why the police conducted a series of raids on Invercauld on 4th May. The chances of them having found anything would appear very low, with those who illegally kill protected wildlife being only too aware of the need to cover their tracks.

These difficulties in proving who is responsible become even greater on large estates like Invercauld where a number of gamekeeping and other staff are employed. It was partly to tackle this issue that in 2012 a law of vicarious liability was introduced. This allows a landowner or their agent to be held responsible for the criminal actions of an employee. It well explain why the Estate Manager, Angus McNicol – who could be in line for being charged – decided to make news of the raids public before the police: he wanted to establish his good character. Mr McNicol was also quick to claim ([see here](#)):

*“The area where the bird was found is on a let farm in an area which is managed for sheep farming and is on the edge of an area of native woodland regeneration. It is not managed for driven grouse shooting”.*

Raptor Persecution Scotland has shown the second sentence is not true, the RSPB's Investigations Officer having confirmed that the poisoned eagle “*was found within an area of strip muirburn within 200m of a line of grouse butts*” ([see here](#)). If land in the area is let for farming, I can find no record of

such a lease on the Land Registry, although this could be recorded on the older register of sasines. But the point is that Mr McNicol was not just wanting to deflect moral responsibility onto some poor farmer – who almost certainly will be at the beck and call of the estate and bound to tolerate the incursion of gamekeepers onto the land they manage – it's that legal responsibility under the law of vicarious responsibility becomes more complicated on land that has been leased out. Should it be the leaseholder or the landowner who is held vicariously responsible? And, if the leaseholder, what happens where the land is leased out but the landowner retains the sporting rights?

The law on vicarious liability has only been successfully used on two occasions since it was introduced ([see here](#)). Although the location of this crime and therefore the landowner is known, the chances of anyone involved in managing the Invercauld Estate being brought to justice would appear low.

## **The CNPA and land management at Invercauld**

Following its silence last year about cases of raptor persecution, at least this week the CNPA issued a short statement about the golden eagle, though the headline refers to a “death”, not a crime:

### **Statement: Golden Eagle death**

5th May 2021

The Cairngorms National Park Authority has issued the following statement in relation to the death of a Golden Eagle in Deeside.

“The Cairngorms National Park Authority (CNPA) have been informed by Police Scotland that a golden eagle was found poisoned on Invercauld Estate within the Cairngorms National Park. The CNPA condemns this senseless and irresponsible behaviour in the strongest possible terms. Raptor persecution has no place in 21<sup>st</sup> century Scotland and no place in this National Park. We are working closely with Police Scotland, NatureScot and a range of other partners on an appropriate, coordinated response to this incident, and will continue to work in partnership to prevent incidents like this occurring in future. We cannot make any further comment on this specific case due to the ongoing police enquiry.”

This statement is issued on behalf of Xander McDade CNPA Board Convener and CNPA Chief Executive Grant Moir.

The focus of the statement, however, is about responding to the “incident”, rather than tackling what caused it, which is the way land on the Invercauld Estate is being managed. The Police investigation provides a convenient excuse for the CNPA to avoid having to say anything about how their partnership with the Invercauld Estate, which is part of the East Cairngorms Moorland Partnership, is

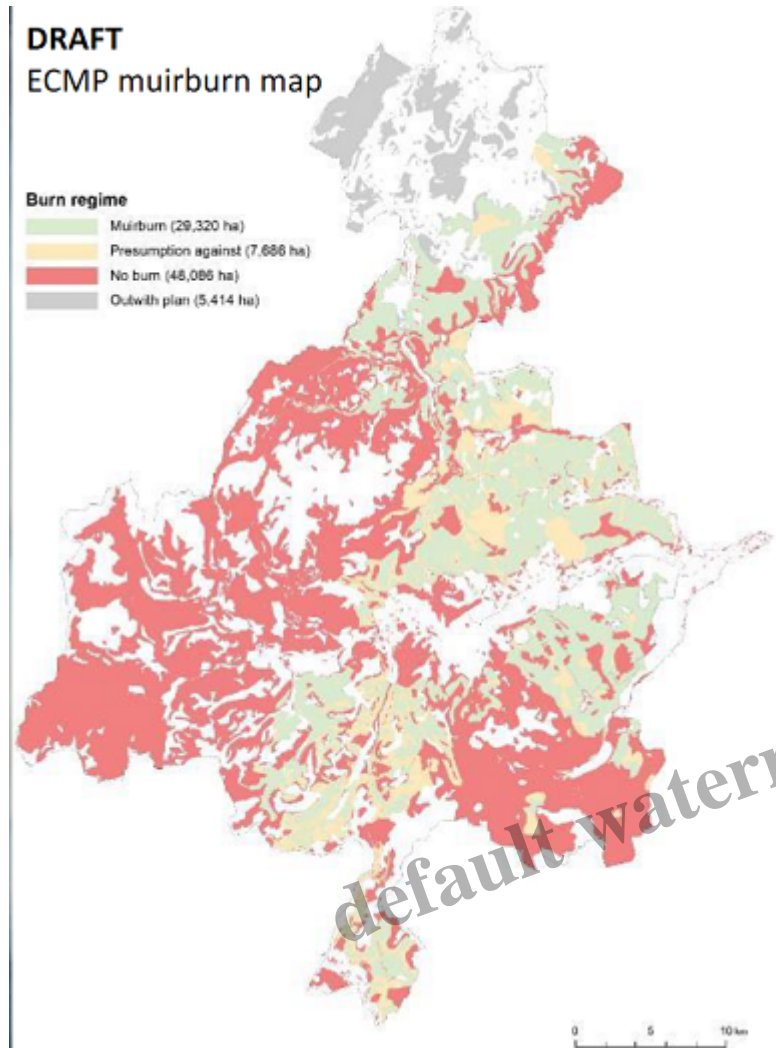
going. This is supposed to be setting new standards for moorland management and co-operation, but there is no transparency about what, if anything, has changed on Invercauld as a result. What we do know, however, is that Invercauld Estate left it to Police Scotland to notify the CNPA of this crime – some partnership that!

The sad truth is that Invercauld, along with most of the other estates in the East Cairngorms Moorland Partnership (ECMP), are using the CNPA to pretend they are doing good things for wildlife, while they continue to intensify the way they manage grouse moors. Invercauld has been particularly active in issuing propaganda about what it is doing for species that just so happen to pose no threat to shooting interests ([see here](#) for example). It has also made a point of deploying staff to search for missing wildlife ([see here](#)), when the chances are either some of those staff were responsible or knew who was. After the neighbouring estate of Delnadamph, owned by Prince Charles and a member of the ECMP, was shown to have been actively involved in slaughtering mountain hares ([see here](#)), Invercauld then used the CNPA to issue yet more propaganda about how the area was in fact a stronghold for mountain hares ([see here](#)).

The poisoned golden eagle was found not far from Crathie, where the Royal Family worship when in residence at Balmoral. Don't expect Prince Charles to speak out against this latest crime, however. When it comes to wildlife persecution, all these privately owned estates are joined in a common bond because of their shared pre-occupation with managing their land for field sports.

## What has the ECMP achieved?

Last May, the CNPA considered a report on the work of the ECMP ([see here](#)). While the ECMP has progressed a number of tokenistic projects, in the tradition of the postage stamp planting along the River Dee catchment ([see here](#)), when it comes to landscape scale conservation a large proportion of the progress is down to Mar Lodge Estate. This is managed by the National Trust for Scotland, and the conservation successes there would have happened whether or not the ECMP had ever been created. For example, NTS have committed to delivering 2,000 of the 2,500 – 3,000 hectares of forestry expansion planned over the next ten years -and that through natural regeneration, not planting. This is a consequence of their successful efforts to reduce numbers of red deer on their land and their decision to stop all muirburn.



For map of estates in this area see link to report above

What the muirburn map in the CNPA report suggests is that if it wasn't for the NTS (who own the land marked in red on the bottom left) very little has changed. While there is also little muirburn on much of the Balmoral estate (red area bottom right), that area has had some of the highest levels of red deer in Scotland. This is preventing natural regeneration of the land ([see here](#)). It is those red deer numbers, and the failure of the Royal Family to bring these under control, that explains the low levels of forest regeneration planned for Balmoral (80 ha at Glen Muick and 99 ha at Ballochbuie – both within fenced enclosures). As for the Glenavon Estate which includes the red area above Mar Lodge, while some areas are not being burned, almost certainly because of their remoteness, elsewhere destructive muirburn continues unabated:



Track and muirburn on the Big Garvoun, viewed across the River Avon. Credit parkswatch reader 2021.

It is little wonder that while such land practices continue, so does wildlife persecution. Most of the staff working on conservation issues in the National Park understand this, the problem is they are not free to say so and instead are forced to devote their efforts to tokenistic projects. Meantime, the land round about burns.

## **What needs to happen**

The poisoning of the golden eagle provides confirmation that the ECMP is a pointless exercise which has failed to protect wildlife. Why NTS goes along with this, when many of the raptors hatched on their land disappear when they move east ([see here](#)), is unclear. A large part of the solution to the problem lies in the CNPA using its conservation powers to ban the practices associated with intensive grouse moor management, which inevitably result in wildlife persecution.

Land owning interests are so powerful, however, that conservation byelaws on their own – just like the proposals to require grouse moors to be licensed – are unlikely to be sufficient to change the way the

land is managed. Landowners and managers are likely to continue to defy the law. If the CNPA therefore really does believe raptor persecution “has no place in 21st Century Scotland”, then it should ask the Scottish Government to help it take over privately owned land in our National Parks that is not being managed in the public interest. Invercauld would be a good place to start.

One way to help finance this would be for the Scottish Government to raise the penalties for failing to manage land in the National Park according to conservation principles (or, for land elsewhere, the requirements of the promised licensing scheme for grouse moors).

### **Category**

1. Cairngorms

### **Tags**

1. CNPA
2. conservation
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