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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

40<sup>th</sup> meeting  
Strasbourg, 1-4 December 2020

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**Other complaints**

**Lack of protection of the Scottish Wildcat (*Felis  
silvestris*)  
(United Kingdom)**

**- REPORT BY THE GOVERNMENT -**

*Document prepared by the  
Department for Environment Food & Rural Affairs*

**Department  
for Environment  
Food and Rural Affairs**

Date: 31/07/2020

**Complaint 2020/05 - Lack of protection of the Scottish Wildcat (*Felis silvestris*) (UK)**

1. I refer to your request of 18 May 2020 for a response from the United Kingdom to the formal complaint by the law firm “Living Law” on behalf of Wildcat Haven Community Interest Company, about alleged breaches of the UK’s Convention obligations with respect to the conservation and protection of the endangered Scottish Wildcat (*Felis silvestris*).
2. Whilst the complainant alleges violations of Convention Articles 2, 3, 4, 6, 8 and 9, it does not clearly set out on what basis it is alleged the UK is breaching each of these provisions. The complaint also alleges that the UK is failing to adhere to several recommendations to parties to the Convention (No. 43, No.109 & No.173) as well as an unadopted guidance document (Guideline No.2). Whilst recommendations can be helpful tools, which the UK values and implements where it is appropriate to do so, none of these recommendations are legally binding on Parties to the Convention. The complaints process is about a Party’s non-compliance with its Convention obligations. Accordingly, the UK’s response focuses on our legal obligations under the Convention.
3. Additionally, in several key areas, the complaint strays beyond the UK’s obligations under the Convention. For example, it suggests non-compliance with obligations under EU law such as the Habitats Directive, the Environmental Impact Assessment Directive and the Strategic Environmental Assessment Directive. Assessing compliance with EU legislation is not within the remit of the complaints process under the Convention. The response will, therefore, only cover those issue that directly relate to UK compliance with the Convention.

**Background**

4. The UK range of wildcat (*Felis silvestris*) is limited to Scotland having been lost from England and Wales approximately 200 years ago due to combination of hunting and habitat loss. Wildcats are one of Scotland’s most endangered animals and their conservation and protection is of the highest priority. The first major attempt in developing a more strategic and planned approach to wildcat conservation was the Cairngorm Wildcat Project that ran from 2009-2012 (Hetherington & Campbell 2012<sup>1</sup>).
5. Informed by this work, over 20 partner organisations contributed to the production of the Scottish Wildcat Conservation Action Plan (SWCAP) in 2013 <https://www.nature.scot/sites/default/files/2017-6/Publication%202013%20%20Scottish%20Wildcat%20Conservation%20Action%20Plan.pdf>. The action plan set out the need to identify at least five ‘Priority Areas’ for conserving wildcats, to take forward conservation work in these areas, and work to underpin a wider conservation programme (such as the development of conservation breeding). A SWCAP Steering Group<sup>2</sup>, representing a range of

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<sup>1</sup> Hetherington D, and Campbell, RD. (2012). The Cairngorms Wildcat Project Final Report. *Report to Cairngorms National Park Authority, Scottish Natural Heritage, Royal Zoological Society of Scotland, Scottish Gamekeepers Association and Forestry Commission Scotland, 111pp.*

<sup>2</sup> SWCAP steering group members: Cairngorms National Park Authority; Forestry and Land Scotland; National Museums Scotland; Scottish Land and Estates; Scottish Natural Heritage; Scottish Wildlife Trust; The National Trust for Scotland; The Royal (Dick) School of Veterinary Studies, University of Edinburgh; The Royal Zoological Society of Scotland; The Scottish Gamekeepers Association; & Wildlife Conservation Research Unit (WildCRU), University of Oxford. Other SWCAP members: Aberdeenshire Council; Aigas; British Association for Shooting & Conservation; Chester Zoo; Highland Council; Highland Foundation for Wildlife; John Muir Trust; Loch Lomond & Trossachs National Park; National Framers Union Scotland; Royal Society for the Protection of Birds.

organisations, specialisms and interests, was established to take this work forward and has since implemented the multi-partner Scottish Wildcat Action (SWA) project (which ran from 2015 -2020)

6. SWA has carried out extensive survey and monitoring of cat populations in the Priority Areas, established a recording scheme for cats in the wider countryside, run trap-neuter-vaccinate-return (TNVR) programmes targeted at feral domestic cats and hybrids, made genetic assessments of hybridisation in the *in situ* and *ex situ* cat populations, used satellite collars to track wild-living cats, organised campaigns to promote responsible cat ownership, developed an education package, carried out a research study of rodenticide presence in cats, and worked with researchers on a range of other associated research projects. Additional wider and coordinated work to underpin wildcat conservation has also taken place, in particular the development of a conservation breeding programme that will form the basis of future releases.
7. In 2018-2019 the IUCN SSC Cat Specialist Group (CSG), following a request by the SWCAP Steering Group, carried out an independent review of SWA's work and other wildcat conservation activities in Scotland. This has informed the design of a new EU LIFE-funded project, 'Saving Wildcats', which runs from 2019-2025. This work will involve the further development of the conservation breeding programme in collaboration with breeders across the rest of the UK and Europe, the construction of purpose-built breeding facilities at the Royal Zoological Society of Scotland's (RZSS) Highland Wildlife Park, liaison with other European specialists who will be providing animals for the project, receptor site preparation such as TNVR, ecological survey, stakeholder engagement, the continuation of the campaign to promote responsible cat ownership, and the production of a new, updated wildcat action plan. Saving Wildcats is led by the RZSS in collaboration with Scottish Natural Heritage

**Alleged breach of Article 2 and Article 4(1).**

8. Article 2 to the Convention provides that - *'the Contracting Parties shall take requisite measures to maintain the population of wild flora and fauna at, or adapt it to, a level which corresponds in particular to ecological, scientific requirements, while taking account of economic and recreational requirements and the needs of sub-species, varieties or forms at risk locally.*
  9. The complainant alleges that the UK is in breach of this obligation as the Scottish Government has failed to designate protected sites (Sites of Special Scientific Interest) for wildcat. (See box 4 of the complaint form & paragraph 17 of the Annex). While Article 2 has a general obligation toward the conservation of species and habitats it does not require Parties to provide statutory protection for habitats. Given this, the extensive and highly regarded conservation programme for the species (summarised in paragraphs 4-7) and the fact the complaint provides no specific evidence or further grounds we do not accept the assertion that the UK is in breach of Article 2.
  10. Consideration of the UK's compliance with Convention obligations concerning the conservation of habitats are more appropriately considered in the context of Article 4(1). While complainant alleges a breach of Article 4(1) in the lists of Articles cited in the Annex, they do not directly offer any justification or evidence in support. We have inferred that the allegation made in respect to Article 2 also applies to Article 4(1).
  11. Article 4 (1) provides that - *Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in Appendices I and II, and the conservation of endangered natural habitats.* The UK complies with this obligation.
  1. Sites of Special Scientific Interest (SSSIs) can be notified in Scotland for certain species and habitats. The 2019 'Guidelines for the Selection of Biological SSSIs' <http://data.jnc.c.gov.uk/data/dc370754-e136-4fc3-82f1-1435ea1892a0/SSSI-Guidelines-16-Mammals-2019.pdf> states that at the population level most British mammals are dependent on 'wider countryside' conservation policies and legislative protection. This is particularly the case for low density, highly mobile species such as wildcat.
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2. The Guidelines specifically addresses the wildcat situation, noting that “...recent work carried out through the Scottish Wildcat Action project has led to the view that there is currently not a viable wildcat population in Scotland – the number of cats is too small, hybridisation too far advanced and the population too fragmented (Breitenmoser et al. 2019<sup>3</sup>)...Given their wide-ranging behaviour, current threats and status, a range of conservation approaches (in addition to the protection afforded by EPS status) will need to be applied to restore the species. In most cases at present, site designation will not be an effective conservation tool.”
3. Therefore, based on the recent, extensive research undertaken, the identification and designation of any specific site is not appropriate. However, the ongoing Saving Wildcats project aims to establish a localised, viable population of wildcats, so the feasibility and desirability of site designation will be kept under review.

### **Alleged breaches of Article 3(1)**

4. The complaint alleges the UK has breached its obligations under Article 3(1) (box 1 of the complaint form and paragraph 18 of the Annex). However, no specific allegation or evidence that the UK has breached its obligations under Article 3 (1) has been provided.

### **Alleged breach articles 3(2): Alleged planning failures Clashindarroch II**

16. The complainant raises concerns with the planned wind farm development at Clashindarroch II and alleges the Scottish Government has failed to properly consider the impacts on the wildcat population (part 2(b) Box 1 of the complaint form). It is not clear, from the complaint, which Convention Articles the UK is considered to have breached and why; no specific evidence has been provided to support these allegations. Our response will, therefore, consider this complaint in the context of Article 3(2) which provides that - *Each Contracting Party undertakes, in its planning and development policies and in its measures against pollution, to have regard to the conservation of wild flora and fauna.*
17. The proposed windfarm, Clashindarroch II, is located in Clashindarroch Forest, within the Strathbogie Wildcat Priority Area. It is close to the built windfarm Clashindarroch I consented by Aberdeenshire Council in December 2010 and operational since 2015. The Strathbogie Wildcat Priority Area covers 347km<sup>2</sup> of which 120km<sup>2</sup> is considered high quality wildcat habitat. Clashindarroch forest itself is 59km<sup>2</sup> and the combined windfarms area is 10.6km<sup>2</sup> or 3.1% of the Priority Area and 20% of the forest area.
18. The complainant estimates a population of at least 13 animals at Clashindarroch. We do not recognise the figures. Scottish Wildcat Action estimate, following intensive multi- year camera trap surveys, four to five wildcats regularly use the Clashindarroch forest area at any one time.
19. The development proposal recognise that the wildcat population is nationally important and appropriate mitigation is required to offset any potential impacts.
20. As stated in the Scottish Natural Heritage (SNH) consultation response to the proposed development (included in the complaint papers):

*The applicant’s ecologist has liaised closely with us [SNH] and species specialists in Scottish Wildcat Action and have prepared a Species Protection Plan and an outline Habitat Management Plan ... primarily aimed at mitigation measures to minimise risk and creating and enhancing habitats for wildcat.*

*...The combination of the species protection plan and the outline habitat management plan will afford the species protection and ensure practical positive conservation measures can be delivered within the forest to help support wildcat during a critical period in the species existence. The potential impacts of the wind farm proposal are mitigated and compensated for by the applicant’s proposed wildcat conservation measures. ’*

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<sup>3</sup> Breitenmoser U, Lanz T, and Breitenmoser-Würsten C (2019). Conservation of the wildcat (*Felis silvestris*) in Scotland: Review of the conservation status and assessment of conservation activities. IUCN SSC Cat Specialist Group, Bern, Switzerland.

21. It is a requirement of Scottish planning law that an equivalent area of forestry is established to match the net loss described. New woodland of equivalent size has already now been established within the Strathbogie wildcat priority area to compensate for this net loss and which will contribute positively to the conservation of the species. The project also proposes supporting a full-time wildcat project officer for at least 5 years to continue the work that has been done by SWA which would otherwise mostly cease in 2020.
22. The UK asserts the proposed measures set out above, fulfil our obligations under Article 3(2) to have regard to the conservation of wild fauna and flora in our planning policies.

### **Alleged breaches of Article 6**

1. The claimant alleges that UK is in breach of its obligations under Article 6 however they do not specify the precise nature of these allegations (box 1 of the complaint and paragraph 20 of the Annex). The complainant alleges generally that operations are being undertaken without sufficient measures in place to protect wildcats and that a Government agency is deliberately undertaking activities close to den and nesting sites in Clashindarroch forest (Box 1 of the complaint).
2. We have inferred that the complainant is alleging breach of Articles 6(b) and 6 (c) to the Convention. Article 6 provides: *Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. The following will in particular be prohibited for these species:*
  - b) *the deliberate damage to or destruction of breeding or resting sites;*
  - c) *the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of this Convention....”*
3. These Article 6 obligations with respect to wildcat are implemented in Great Britain through the Conservation (Natural Habitats) Regulations 1994 (Conservation Regulations) in Scotland which provide strict protection for the species.
4. While the species is not present in the wild in England and Wales it is also afforded equivalent protection under The Conservation of Habitats and Species Regulations 2017
5. Regulation 39 (1) of the Conservation (Natural Habitats) Regulations 1994<sup>4</sup> (the Conservation Regulations), which applies to Scotland, states it is an offence to deliberately or recklessly:
  - a. *capture, injure or kill a wild animal of a European protected species;*
  - b. *disturb any such animal (see Regulation 39(1)(b)(ii), (v),(vi) and (vii) for the specific types of disturbance that is unlawful);*
  - c. *take or destroy the eggs of such an animal; or*
  - d. *to damage or destroy a breeding site or resting place of such an animal.*
6. Regulation 39(1)(b) and 39(1)(d) implement Bern Articles 6(c) and 6(b) respectively.
7. A licence, from Scottish Natural Heritage is required to permit derogation from these prohibitions for the purposes set out in the Conservation Regulations.
8. If there is no licence, carrying out a prohibited activity is a criminal offence. The licensing purpose set out in Regulation 44 of the Conservation Regulations comply Article 9 of the Convention.
9. In respect of the general assertion about forestry operations (box1 of the complaint), all Forestry and Land Scotland's (FLS) forest management, including at Clashindarroch, is independently certified to international standards of best practice. All FLS's forest operations adhere to the principles of sustainable forest management outlined in the United Kingdom Forestry Standard. All work in Clashindarroch is planned and delivered according to these sustainable forestry management policies with significant consideration for wildcats. At the site level, all operations are carried out in accordance with the

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<sup>4</sup> <https://www.legislation.gov.uk/uksi/1994/2716/contents/made>

Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), and with Scottish Forestry's *Guidance Note 35d: Forest operations and wildcats in Scotland* (<https://forestryandland.gov.scot/images/corporate/pdf/epswildcat.pdf>), which details management policy for this European Protected Species. Through these actions FLS have consistently sought to avoid actions impacting negatively on wildcats.

10. Anyone undertaking forestry operations should assess the risk of coming across any protected species and apply for licences as necessary, in order to avoid committing an offence under the Regulations. FLS has taken steps, including the mitigation measures, noted above, to minimise the disturbance risk to any potentially breeding wildcats and has sought advice from SWA and SNH staff to ensure risks to wildcats are addressed, and the forest is managed in a way that supports optimum wildcat use over the longer term. Consequently, it has not proven necessary to issue licences to derogate from these protections. Furthermore, published and ongoing research indicates strongly that the mosaic of habitats resulting from well-planned forestry activities is beneficial for Scottish wildcats.
33. In respect to the assertion a Government agency is deliberately undertaking activities close to den and nesting sites the nature of this allegation is unclear. Moreover, it notably does not allege activities which amount to commission of criminal offences under Conservation Regulations which implement Article 6. If the complainant has evidence of offences committed under the Conservation Regulations these should be brought to the relevant UK enforcement agency to address.

### **Alleged breach of Article 8**

34. The complaint alleges the UK has breached its obligations under Article 8 (box 1 of the complaint and paragraphs 21 & 22 of the Annex). However, no specific allegation or evidence that the UK has breached its obligations under Article 8 has been provided.

### **Alleged breach of Article 9: No Satisfactory Solution**

1. The claimant alleges that UK is in breach of its obligations under Article 9 however they do not specify the precise nature of these allegations (box 1 of the complaint and paragraph 22 of the Annex). We have inferred that the complainant is alleging the UK is in breach of Article 9 by failing to apply the *no satisfactory solution* test when licensing trapping of wildcats for captive breeding. The complainant further alleges that this activity is *detrimental to the survival of the population* (paragraph 23 of the Annex).
2. Article 9 Convention obligations are implemented through Regulation 44 to the Conservation Regulations. Licences to take wildcat from the wild for captive breeding are issued, under the Conservation Regulations, for the purpose set out in Reg (44)(2) (C) - *conserving wild animals or wild plants or introducing them to particular areas*.
3. Reg 44 (3) of the Conservation Regulation states:  
*The appropriate authority shall not grant a licence under this regulation unless they are satisfied—*
  - a. *that there is no satisfactory alternative, and*
  - b. *that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.*
38. The IUCN Cat Specialist Group (CSG), the internationally recognised specialists in cat conservation, was asked to independently review the status of the wildcat in Scotland and relevant conservation activities. They concluded that:  
*“The number of wildcats is too small [in the wild], the hybridisation too far advanced and the population too fragmented. We therefore conclude that it is too late to conserve the wildcat in Scotland as a stand-alone population”.*
39. However, the CSG went on to recommend an alternative approach involving reintroduction/reinforcement and using appropriate sources of wildcats. The SWCAP Steering Group agreed with this conclusion and

recommendation. The work of the new EU LIFE-funded Saving Wildcats project is designed around these recommendations, involving a range of different interacting *in situ* and *ex situ* action.’

40. Scottish Wildcat Action partner, Royal Zoological Society for Scotland (RZSS), has been licenced to take small numbers wildcats from the wild into captivity to supplement the captive breeding population. The alternative to taking animals from the wild would have been to rely on solely on breeding from the existing captive population. However, the introduction of new animals was necessary to improve the genetic diversity of the wildcats to help ensure the viability of the programme. The SWA project explored an alternative to taking individuals from the wild, through a semen banking trial of wild individuals in 2017. This ultimately wasn’t successful because the individuals trapped failed genetic/pelage screening. SWA’s protocol was to take individuals from areas where no conservation work was being conducted. Given the high levels of hybridisation and the low numbers of wildcats, such individuals or their offspring would unlikely be breeding with other wildcats and so would likely contribute little to the future of the species in Scotland.
41. Expert opinion is that *Ex situ* conservation is critical to the conservation of the species. There is no satisfactory alternative to taking small numbers of animals from the wild to ensure the viability of these programmes and therefore, the UK asserts it is compliant with Article 9 to the Convention in this regard.
42. In total, 13 cats have been licenced to be taken from the wild under the conservation Regulations for the purpose of ‘*conserving wild animals ... or introducing them to particular areas*’ to provide animals for the captive breeding programme. Of the animals captured only **2** were retained based on pelage and genetic scores showing they were wildcats. Neither of these animals were from Wildcat Priority Areas.
43. Testing identified the remaining 11 animals as hybrids and not wildcats. RZSS protocol was to neuter and release the remaining animals if the landowner was willing to have them released back on their land. Otherwise, the cat would be euthanised because neutering followed by translocation would impact negatively on the welfare of the animal. Except for two kittens, which were retained and rehomed by welfare organisations, none of the landowners wanted the animals returned so all were euthanised by a veterinary surgeon.
44. Given that only small numbers of wildcats have been taken from the wild; only 2 of these have been shown to be true wildcats and the fact these animals have been taken outside Wildcat Priority Areas there is no evidence to indicate that these activities have had a detrimental impact on the conservation of the species. Therefore, the UK asserts that it is compliant with Article 9 to the Convention in that the taking of small numbers of wildcats is *not detrimental to the survival of the population concerned*.

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