CONFIDENTIAL REPORT TO THE COUNCIL OF THE ISLES OF SCILLY

BREEDING GULLS IN HUGH TOWN

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- This paper is for the attention of the Council of The Isles of Scilly.
- The paper discusses Herring Gulls in Hugh Town and the probable effect on their numbers of feeding by humans. More importantly, it draws attention to the recent commencement of roof-top nesting by Herring Gulls in Hugh Town. The paper also highlights a marked, country-wide increase in roof-top nesting in this and related species, emphasising the threat this behaviour poses to the local community in general and the tourist industry in particular. Current, limited, legal provisions governing control of gulls are discussed, together with relevant aspects of gull biology.
- The paper emphasises that recent research and our knowledge of gull biology both point to the problem increasing on an annual basis. Therefore the Council should keep uppermost in mind that this new behaviour carries with it a high risk of escalation. The longer the problem is left unattended the larger the number of birds involved, the greater the inconvenience, the higher the probable finical loss to the community and the more vehement any protests over action the Council finds itself forced to take eventually. Remedial action is recommended for the Council's consideration in response to this unfortunate development.
- Nothing in this report relating to gulls nesting in Gugh Town should be considered relevant to gulls breeding in natural colonies elsewhere in the islands. Arguments advanced here in favour of control of breeding gulls apply solely to roofnesting birds and are wholly inapplicable to birds in colonies elsewhere.
- As Herring Gulls will be incubating eggs during May some of the following recommendations requires urgent consideration if they are to be acted upon this year (1996).

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1 RECOMMENDATIONS

1.1 RECOMMENDATION 'A'

DESTRUCTION OF GULL NESTS. EGGS AND YOUNG - In year one (1996) any nests, eggs and young of roof-nesting Herring Gulls or other gulls on Council properties in Hugh Town should be destroyed. For this to be effective similar action should, as far as is possible, be taken in respect of Herring Gulls breeding on non-Council properties.

1.2 RECOMMENDATION 'B'

PROHIBITION ON FEEDING GULLS - The Council should act immediately and prohibit all feeding of gulls on St Mary's and the four offislands. This should be supported by appropriate publicity explaining the need for such action.

1.3 RECOMMENDATION 'C'

COLOUR-MARKING GULLS - The Council should arrange for the immediate commencement of individual colour-marking of gulls frequenting Hugh Town, enabling (a) the exact number of birds resident in the flock to be assessed and, (b) the identification of breeding and otherwise problematical individuals.

1.4 RECOMMENDATION 'D'

CULLING OF ADULT GULLS IN SUBSEQUENT YEARS — Should combined action under Recommendations A and B fail to resolve the problem by year three of breeding (1997), consideration must be given to culling breeding adult birds within Hugh Town. Such action will in any event become necessary, either once the number of pairs reaches (say) 10, or by year five of breeding, i.e. 1999, and will benefit from supporting action beforehand under Recommendation C.

2 SUMMARY

- 2.1 The three large gull species breeding in Britain are. Herring Gull Larus argentatus. Lesser Black-backed Gull Larus fuscus and Great Black-backed Gull Larus marinus. Normally nesting in recognisably maritime habitats, all three show a continuing. nation-wide trend towards roof-top nesting. All three species occur in Scilly.
- 2.2 Commencement of roof-top nesting by large gulls in Britain was first noted in the 1920's in south-west England. By 1976 a nation-wide survey conducted by Durham University (Monaghan and Coulson 1977) showed that the average rate of increase in number of gulls (mostly Herring Gulls) using buildings as breeding sites had increased by about 17% per annum, with an increase in the number of communities involved of around 9% per annum. By that time too several local authorities had begun taking action to control gulls nesting on buildings.
- 2.3 In 1994 a repeat survey showed a continuing increase in roofnesting gulls of around 7% per annum, again mostly involving Herring Gulls, regardless of a marked decline in the species' national population.
- 2.4 Complex and, sometimes, serious social and economic problems arise in communities where gulls take to roof-top nesting. All three large gulls are aggressive in defence of nest sites and readily attack intruders (including humans), particularly once young hatch. Often they bring an associated health hazard to occupants of buildings. Breeding pairs also interact noisily with conspecifics, particularly early in the morning.

 Additionally, unless handled carefully the need to implement control measures, including culling, can cause deep political and social divisions within communities.
- 2.5 Once gulls take to nesting on roof-tops the number of pairs involved can be expected to rise annually. The longer gulls are left to nest undisturbed the greater the number of pairs involved and the harder the problem is to resolve. The destruction of nests and eggs will only be effective in small new colonies of up to cc30 pairs, as inexperienced breeding

birds are more susceptible to disturbance. In larger colonies nest or egg destruction will not stop the number of pairs increasing, unless, possibly, it is carried out over several years. The only effective means of reducing numbers in large colonies is to cull adults (Kearsey undated), however the legal means by which adult birds may be killed are severely limited.

- 2.6 For several years a small resident flock of Herring Gulls has frequented mainly the Porth Cressa. Town Hall and Park areas of Hugh Town and observations by the author indicate that the same individual birds may be involved. Continuing incidents of food snatching by these gulls are doubtless encouraged by casual feeding both by visitors and residents. It is difficult to find biological justification for the artificial feeding of gulls, either in Scilly or elsewhere.
- 2.7 A probable recent increase in numbers of individuals in the Hugh Town flock (particularly in summer) may have its origin in a similarly recent increase in the local availability of 'fast food' for human consumption, e.g. fish and chips, with an associated increase in gull feeding (pers obs). Gulls have also been noted opening plastic rubbish sacks in town. and retrieving food from litter bins. Both activities spread rubbish and encourage similar action by other gulls, and rats.
- 2.8 In summer 1995 a pair of Herring Gulls fledged a single chick from a brood of at least two from a nest on the roof of Parade House (a Council property). A second pair that laid eggs on a building near the junction of Garrison Lane and Hugh Street were unsuccessful (pers obs).
- 2.9 The majority of seabirds species show a clear preference for the previous year's nest site, providing it was successful (Furness and Monaghan 1987) and Herring Gulls conform to this principal. It is therefore reasonable to expect breeding to occur in Hugh Town again in 1996 and beyond, and for additional pairs to become involved (Kearsey undated). It should also be noted that Herring Gulls breeding in towns may have higher than normal breeding success (Furness and Monaghan 1987).

- 2.10 Legal provisions relating to wild birds are contained mainly within the Wildlife and Countryside Act 1981. There is limited provision in the Act for land-owners and Local Authorities to control (among others) gulls nesting on roof-tops, and recent changes in procedure do not affect the Council's ability to act in this respect. However the wording of the statute is precise: it does not cover simple nuisance and seriously limits methods of destroying adult birds. Financial penalties for non-compliance are severe.
- 2.11 National concern over the decline in Herring Gull numbers may soon lead to the species being awarded special protection status, with probable further and more stringent limitations on controls in the type of situation under discussion.

3 THE NATIONAL SITUATION

- 3.1 Though gulls are often lumped under the general heading 'seagulls' some species, e.g. Black-headed Gull Larus ridibundas, spend most of their life inland. This though is not true of Herring. Great or Lesser Black-backed Gulls, all of which are truly maritime by nature and the off-shore rocks of Scilly are typical of breeding sites in general. Their feeding habits too are, for the most part, strictly marine orientated particularly so in the case of the last named. Although the 1950's and 1960's saw a country-wide move towards increased utilisation of rubbish tips by gulls for feeding purposes (particularly Herring Gull) that trend is now in decline, perhaps due to widespread changes in procedures for handling and disposing of human waste.
- 3.2 In 1976 a national survey (Monaghan and Coulson 1977) confirmed a nation-wide swing towards roof-nesting at coastal sites by all three species under discussion; an increase to 81 towns or villages in 49 Local Authority areas. In south-west England 207 pairs of Herring Gulls were recorded using buildings, although no Lesser Black-backed Gull pairs were found. Ten pairs of Great Black-backed Gulls on buildings in Newlyn was the only roof-nesting record of this species for Britain during the survey.
- 3.3 A repeat survey in 1994 recorded significant further increases in this behaviour. Numbers of roof-nesting Herring Gulls had increased overall by a mean of 7% per annum, with the southwest population rising from 207 to 1.378, and with large numbers in St Ives and Newquay. Although Greater Black-backed Gulls were again present at Newlyn breeding was not confirmed. Roof-nesting Lesser Black-backed Gull pairs in the Region had risen to just six (against an overall 13% increase for this species per annum).
- 3.4 As with most seabirds. Herring and Lesser Black-backed Gulls are colonial breeders, with numbers of nesting pairs at a given location expected to increase over time. In the case of roof-top colonies, birds may actually benefit from their association with man, both through protection from predators

and increased food availability (resulting in improved productivity). This last point may be particularly pertinent in the case of Herring Gull which, of the three, it is the most reliant upon coastal scavenging.

- 3.5 Concentrations of large, noisy and smelly gulls breeding in close proximity to numbers of people are an obvious recipe for conflict. The situation further deteriorates once young hatch and adults start bringing quantities of (often) unsavoury food items to the nest site (young are fed by regurgitation), giving rise to an increased probability of rat and other infestation. Adult gulls are extremely defensive of their young, even pressing home attacks in defence of unfledged chicks falling into pedestrian areas (the author confirms that attacking 1 kilo Herring Gulls can inflict a painful head injury!)
- 3.6 Such a situation can be expected to worsen, even to the point of affecting local economies, with visitors reluctant to return for a further year. Under the circumstances it may seem entirely reasonable if local authorities seek means of resolving what they justifiably considers a public nuisance. However, even though statutory procedures are in place (see below) for accomplishing that end (albeit indirectly) it is at this point that serious public disagreement may arises.
- 3.7 Within a community there will be some who view the birds' presence as defensible, perhaps even desirable: including those who's actions contribute to the birds' presence.

 Regardless, too, of any legal restraints, the position of nest sites may impose physical limitations on the means by which control may be accomplished. Experience has shown there is little chance of the public remaining unaware of what is taking place. Consequently gull control operations frequently become high profile events, with the predictable added involvement of the media.
- 3.8 The level of control required and the subsequent intensity of public concern can be expected to increase in proportion to the number of birds involved. In other words, early response may obviate a great deal of public anxiety in the long term.

Destroying a few nests may also appear more publicly acceptable than culling larger numbers of adult birds. which will almost certainly become necessary in due course. It cannot be over emphasised that the destruction of nests and eggs will only be effective in small, new colonies of around 30 pairs. Experienced breeding birds are not susceptible to this kind of persuasion, therefore nest and egg destruction will not bring about a reduction in pairs, with the culling of adults being the sole viable alternative (Kearsey undated).

3.9 Once a colony of roof-nesting gulls has begun, it may be expected to continue and to increase in size, unless controlled, or until most available nest sites are occupied by gulls (Kearsey undated).

4 THE LOCAL PROBLEM

- 4.1 Fifteen seabird species breed or attempt to breed in Scilly.

 more than at any other location in England or Wales. Several
 species occur in nationally important numbers, e.g. 10% of
 Britain's Roseate Terns (internationally threatened) nest here
 (Batten et al 1990, Lloyd et al 1991). Arguably, breeding
 seabirds form an important component of Scilly's overall
 tourist package.
- 4.2 Among Scilly's breeding seabirds are three Larid gulls:
 Greater Black-backed. Lesser Black-backed and Herring Gull.
 Though the point is made again in Section 5, it is important to appreciate there are well defined biological differences in feeding and breeding behaviour between species: all three have been the subject of numerous studies throughout their world range (e.g. Tinbergan 1953). Of an estimated combined Scillonian total of several thousand breeding pairs of these three (Robinson 1993), all breed on uninhabited islands or rocks, or at secluded sites on the off-islands. e.g. Gugh. Daymark.
- 4.3 The point should also be made that, like many seabirds, all three gulls show a high level of nest site fidelity. They also actively defend a nest site. Unlike the other two, Herring Gulls specialise in opportunist feeding, particularly around the inter-tidal zone.
- 4.4 Though individual adult Herring Gulls may be observed seeking food from picnicking humans at various coastal points about the islands, the event never the less qualifies as infrequent and is seldom (if ever) associated with 'violent' behaviour on the part of the gull(s): interestingly, it is possible to sit eating inside one of the large breeding colonies, e.g. Annet. and not be recognised as a potential food source. The one notable exception to this is the Hugh Town area of Porth Cressa and the Park.
- 4.5 A decreasing number of Herring Gulls frequent the St Mary's incinerator area and now have little access to rubbish.

 Deliberate and regular feeding takes place in the area of

Porth Mellon Beach and can attract numbers of gulls. however the problem is not thought to be as serious as in Hugh Town.

- 4.6 For the last decade, perhaps longer, a semi-resident flock of both sub-adult and adult Herring Gulls has frequented mainly the Porth Cressa and Town Hall area of Hugh Town, particularly during winter but increasingly in summer too. It seems unreasonable to deny a connection between this concentration and the popularity of Porth Cressa beach with humans visitors. or with the recent increase in locally available 'fast food'.
- 4.7 The author is unable to trace any record of gulls attempting to breed in St Mary's in recent historical times: with the single (1980's) exception of an unsuccessful attempt by a pair of Herring Gulls on the Duchy's Hugh House (W Wagstaff pers com).
- 4.8 In 1995 a pair of Herring Gulls built a nest on the roof of Parade House and fledged a single young bird from a brood of at least two: a second pair of birds laid eggs on a roof in the vicinity of Hugh Street and Garrison Lane. but were unsuccessful (pers obs). This was the first recorded incident of gulls breeding successfully in Hugh Town and, because gulls both favour previously successful sites and are colonial breeders, the event raises the clear probability of more pairs in Hugh Town in subsequent years.
- 4.9 Recent research clearly indicates that roof-top nesting in Hugh Town can be expected to increase, possible until most available nest sites are occupied (Kearsey undated). If so all of the problems associated with roof-nesting gulls (as outlined above) can be anticipated. A number of options are open to the Council in the event of (or even in anticipation of) this happening. These are described in Section 7.

- 5 SPECIES' BIOLOGY
- 5.1 Seabirds are among the most studied of the world's animals. not least for the insight they provide into the quality of marine environments. As the species under discussion are no exception we are able to make a number of statements about their behaviour, particularly breeding and feeding behaviour.
- 5.2 We know that Herring and Lesser Black-backed Gulls are strongly colonial when breeding, probably benefiting from the stimulus of other pairs. Although normally not strongly colonial, in Scilly Great Black-backed Gulls also form substantial colonies.
- 5.3 All three demonstrate a high degree of site/mate fidelity once they commence breeding, and like most seabirds, tend to remain faithful to a particular breeding site, especially if successful the previous season (Furness and Monaghan 1987).
- The majority of Lesser Black-backed Gulls are migratory, moving to southern Europe and north Africa in autumn. Although not migratory, both Herring and Greater Black-backed Gulls disperse away from colonies after breeding. All re-occupy breeding sites early in the year, with Great Black-backed and Herring Gulls on eggs in Scilly from about mid to late-April (Robinson 1992-1995). Two to three eggs are normally laid.
- 5.5 Lesser Black-backed Gulls are strict marine feeders, foraging far out to sea: in Scilly they are mostly seen either around the colonies or at sea. Great Black-backed Gulls find much of their food through predation of other seabirds (especially within colonies), fulfilling the niche of top predator. They are, however, extremely wary and (certainly on St Mary's) seldom risk close contact with man.
- Herring Gulls feed mainly around the shore line. They are natural scavengers and, of the three, are most likely to utilises rubbish accumulations given the opportunity. As with other scavenging animals, competition from conspecifics adds urgency to feeding behaviour and often results in the familiar frenzied group attack on any food source, including that

provided by humans. Paradoxically. numbers of Herring Gull have declined nationally and serious consideration is being given to providing the species with Red Data Book status (RSPB pers com) - qualifying it as in need of special conservation measures.

5.7 As already discussed, all three large gulls currently demonstrate an increasing tendency to nest on roof-tops, particularly within towns; e.g. St Ives, Newquay, Newlyn and, now, Hugh Town! Once started a colony can be expected to prosper and increase in size.

6 THE LEGAL SITUATION

6.1 Summary

- 6.1.1 Though all bird species are protected, automatic provisions exist for "authorised persons" to kill or otherwise control Scheduled species; this includes the three under discussion. Though the Council of the Isles of Scilly clearly qualifies as an authorised person in this context, the status does not carry with it right of entry to private property. Although provisions under 'non-bird' legislation may allow Councils this right, it seems doubtful they over-ride provisions of the 1981 Act regarding the killing of wild birds.
- 6.1.2 Although important restriction relate to means of control employed, even more important here may be the strictly limiting terms under which control measures are though justifiable under the 1981 Act. Nuisance is not itself a criteria for control. To qualify, the presence of the birds must pose a threat to (in this case) public health or public safety. Furthermore, any such claim may require the presentation of adequate supporting evidence in a court of law, should the Council's find its actions challenged. Financial penalties for non-compliance are high.

6.2 Detail

- 6.2.1 All three species of large gull are 'wild birds' within the meaning of Part I of the 1981 Wildlife and Countryside Act (which re-enacted and expanded the former 1954 Protection of Birds Act and associated Acts and Orders). The provisions of the 1981 Act extend to the Isles of Scilly.
- 6.2.2 Regardless of the above. Parliament included all three large gulls on Schedule 2. Part II of the 1981 Act. consequence they could be killed or taken, or their nests and eggs destroyed "by authorised persons at all times".
- 6.2.3 The Act defines an authorised person as (among others):

- (a) "the owner or occupier, or any person authorised by the owner of occupier, of the land on which the action authorised is taken:"
- (b) "any person authorised in writing by the local authority for the area within which the action authorised is taken:".
- 6.2.4 Qualification as an authorised person does not confer right of entry upon 'land'.
- 6.2.5 The European Court recently found against the British Government in respect of the legality of Schedule 2. Part II: consequently this provision is now covered by open General Licence (WLF 100088). However the general effect remains unaltered.
- 6.2.6 It is important to recognise that restriction contained elsewhere in the Act on the means used in controlling wild birds, place strict limitation on methods employed should the provisions of WLF 1000088 be invoked, e.g. no poisonous, poisoned or stupefying substances, no cruel traps, snares, dazzling devices or nets designed to catch birds in flight: though in certain circumstances licences may be obtainable for their use (see 6.2.9).
- 6.2.7 A reasonable interpretation of the above is that local authorities are empowered to kill Herring. Lesser and Great Black-backed Gulls and destroy their nests and eggs on Council property. e.g. Parade House, providing prohibited methods are not used. It also follows that action is limited to destruction of nests and eggs, or destruction of adults/young by lawful means: in effect shooting, cage trapping or hand nets.
- 6.2.8 A query also exists in respect of a Council's entry onto private property, which does not seem to be lawful: the writer knows of no case in which this point has been tested under the 1981 Act. Private landowners though may be agreeable to such a course of action in any event!

- 6.2.9 Licences may be obtainable to use stupefying substances by a Council or its agents (e.g. Rentokill hold an ongoing license) enabling stupefied gulls to be removed from the immediate area before being dispatched, with any non-target species involved being allowed to recovered. Although stupefying baits have worked well in the past there is no control over where a bird goes once a bait has been taken. Some particularly unfortunate incidents have resulted, involving stupefied birds falling among the general public, who, as a consequence, felt indisposed towards the Local Authority.
- 6.2.10The use of firearms in a public place is of course prohibited and if this option was to be considered further advice would need to be obtained from the police.
- 6.2.11Greatest attention however must perhaps be given to the circumstances under which control may be undertaken. General Licence (WLF 100088) is most specific in limiting action to ''-- the purposes of preserving public health or public or air safety --''. Nuisance alone is not sufficient justification.

7 OPTIONS FOR ACTION

7.1.1 Prohibit all direct and indirect feeding of gulls. either (a) in Hugh Town. (b) on St Mary's, or (c) throughout Scilly generally - RECOMMENDATION B.

Presumably by local by-law. By comparison with mainland towns such an order could be easily enforced and monitored: voluntary bans usually gain the support of those who are sympathetic in any event and are considered inappropriate here. Such a move might benefit from an associated information campaign. e.g. posters within the islands. at the Airports. on Scillonian III.

7.1.2 Destroying all nests, eggs and young gulls on roof-tops in Hugh Town - RECOMMENDATION A.

If promt action is taken in 1996 the number of nests, eggs or young birds involved will be minimal, but the scale of the problem will increase between years.

7.1.3 Culling all adult gulls breeding on roof-tops in Hugh Town - RECOMMENDATION D.

The sooner action is taken the fewer the number of birds involved, but with the scale of the problem increasing between years none the less.

7.1.4 Whether or not in conjunction with any of the above options. the permanent marking of individual gulls within Hugh Town (using coloured leg-rings or similar) would provide a means of establishing the exact number and identity of troublesome birds involved, including individuals opening plastic rubbish bags (this option may incur a small cost) - RECOMMENDATION C.

Should culling of adult birds eventually become necessary the Council could find any application to use prohibited means (particularly stupefying substances) viewed more favourably if the exact number of individuals involved (the target population) has been assessed with accuracy beforehand. Most

catching might be carried out early morning, probably in the Porth Cressa beach area.

Though both the author and W Wagstaff already hold licences to catch and mark wild birds for scientific purposes. these may need a specific endorsement before carrying out the suggested action.

- 8 ABOUT THE AUTHOR
- 8.1 The author is a self-employed ornithologist. Until 1990 he was employed by the Royal Society for the Protection of Birds (RSPB), serving for sixteen years as Senior Investigations Officer in the Species Protection Department.
- 8.2 The position of Senior Investigations Officer includes responsibility for monitoring nation-wide compliance with a range of national and international conservation legislation protecting not birds and their habitats.
- 8.3 One constantly recurring enforcement difficulty involves conflict between humans and what are sometimes referred to as 'problem species'. Although legislation may authorise limited control of an otherwise protected creature. in nearly every case important qualifiers apply, e.g. in relation to who is or is not an 'authorised person', or the exact circumstances applicable. Particularly serious problems arise when sufferers innocently resort to totally prohibited measures, e.g. use of poisons, or prohibited traps. Much of the author's time with the RSPB was employed in providing practical advice on this particular aspect of wildlife law, ideally before inappropriate action was taken.
- 8.4 Because of the level and extent of the RSPB's practical experience with, and implementation of, wildlife legislation, the Society is regularly involved in processes leading to the introduction of new or revised statutes. As part of his duties the author prepared RSPB's submissions for the consideration of legislators.
- 8.5 The author's unusual combination of practical experience in the formative stages of conservation legislation and, through his position as the RSPB's senior prosecutor, experience of the application and interpretation of those same statutes through to the courts, mean he is ably suited to advise on issues such as that which is the subject of this paper.
- 8.6 For the last four years the author has been contracted, to English Nature and then the IOS Environmental Trust, to

monitor distribution and productivity in a range of seabird species in Scilly, and to produce written reports. The author is also currently in receipt of an RSPB Research Grant to examine productivity and annual survival in Song Thrush Turdus philomelos populations on Scilly: part of a multi-agency investigation into the serious decline in Song Thrush numbers nationally.

- 8.7 The author holds a licence to catch and mark birds for scientific purposes, issued by English Nature on behalf of the government and in furtherance of provisions within the Wildlife and Countryside Act 1981.
- 8.8 The author is a Fellow and former Principal of the Institute of Professional Investigators. He is also a member of the British Trust for Ornithology, the British Ornithologist's Union and the RSPB.
- 8.9 He is author of the book 'Bird Detective' and various papers related to his present and former employment.
- 8.10 The author has worked extensively on bird-related field projects within Britain. Europe and elsewhere. e.g. East and West Africa.

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