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Thanks for your request for information regarding the protection of property provisions under the Fish and Wildlife Conservation Act, 1997. Tim shared your note with me following your telephone conversation with him. The Fish and Wildlife Conservation Act (FWCA) has provisions for protecting property from nuisance wildlife.

What are nuisance wildlife?

Nuisance wildlife are wildlife on your own land that you believe are damaging or are about to damage your property. In your case, we are dealing with birds of prey attacking your racing pigeons. More than the mere presence of an animal is required for the protection of property provisions to apply. The provisions essentially allow a person exemptions from various sections of the FWCA that they would normally be violating if they were to capture, harass, or kill a raptor that they believed was about to injure one of their racing pigeons.

Note also that the Act only allows a person to defend their property when the threat occurs on their land. In the case of your members who may be exercising birds on another person's property or public land, these exemptions do not apply.

The Act sets out specific ways of, and conditions for, dealing with nuisance wildlife.

Dealing with nuisance wildlife yourself

On your own land, you generally may capture, kill or harass wildlife to stop the wildlife from damaging your property. However, there are some exceptions:

- You may not destroy or take the nests or eggs of wild birds, except for American crows, brown-headed cowbirds, common grackles, house sparrows, red-winged blackbirds or starlings.
- You may not capture, kill or harass endangered species. Amongst raptors this includes Bald and Golden Eagles, Peregrine Falcons, and Barn Owls. Where possible, species of Special concern (includes Red-Shouldered Hawk and Short Eared Owls) should only be killed as a last resort.
- You may not cause unnecessary suffering to any wildlife. Use of cage type traps such as you described is permitted; however only designated persons may possess or use body-gripping or leg hold traps,

Releasing captured wildlife

If you live-capture a nuisance animal, and do not wish to kill it humanely, you must, within 24 hours, either release it in close proximity to where you caught it, as directed by MNR, or, if it is sick, injured, or immature, turn it over to a veterinarian or an authorized wildlife custodian.

Using an agent

You may hire or ask someone to deal with nuisance wildlife on your land. That person you hire or ask is your agent and must have authorization from MNR. The following four categories of people are authorized by the regulations to act as agents:

- A licensed trapper
- An employee or agent of the Ontario Society for the Prevention of Cruelty to Animals appointed under the OSPCA Act

- A member of your immediate family
- A person whose main business is removing nuisance wildlife

Other persons may act as agents, but will require individual authorizations before acting in protection of property situations. Contact your local MNR district office about this.

Use of "Bait"

You have suggested that some members have trapped hawks by setting out live pigeons that are used as "bait" to trap hawks that may be in the area. In this case, you may not be afforded the exemption from prosecution afforded by S. 31 as it may be interpreted that you have purposefully lured the nuisance animal onto your property.

I cannot speak to the insensitivity of the inspector that you referenced in your note regarding this matter. As a legitimate recreational activity, you are entitled to practice your hobby and to not lose valuable birds unnecessarily.

Interestingly, there is a chance (very remote) that the raptor that may be attacking your pigeons may also be someone else's valuable pet, with five figure prices for some raptors that are being flown by falconers. You may want to consider talking to your local falconer to see if they may offer some advice as to deterrents which may discourage birds of prey from striking your birds. In some cases where local discharge of firearms bylaws may prevent you from shooting birds under S. 31, deterrents may be a practical alternative. A falconer might also offer advice as to what types of improvements or modifications to either housing or management practices (eg., refraining from flying during certain parts of the day or in certain areas) might help mitigate any potential losses.

I am attaching a copy of the pertinent sections of the FWCA and regulations that apply to protection of property. Please feel free to contact me if you have any further questions in this regard.

Gary Martin

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FWCA

31. If a person believes on reasonable grounds that wildlife is damaging or is about to damage the person's property, the person may, on the person's land,

- (a) harass the wildlife for the purpose of deterring it from damaging the person's property; or
- (b) capture or kill the wildlife.

Agents

(2) The person may use an agent to harass, capture or kill the wildlife under subsection (1) if the agent has the authorization of the Minister or belongs to a class of agents prescribed by the regulations.

Exceptions

(3) Subsection (1) does not apply to,

- (a) a moose, caribou or elk;
- (b) a white-tailed deer, unless the person harasses or kills the deer in accordance with the authorization of the Minister; or
- (c) other wildlife prescribed by the regulations, unless the person harasses, captures or kills the wildlife in accordance with the authorization of the Minister.

Scope of authority

(4) A person who harasses, captures or kills wildlife under this section shall not harass, capture or kill more wildlife than is necessary to protect the property.

Unnecessary suffering

(5) A person who harasses, captures or kills wildlife under this section shall not cause it unnecessary suffering.

Certain provisions do not apply

(6) Sections 5 and 6, clauses 11 (1) (a) to (d), section 27 and such other provisions of this Act and the regulations as are prescribed by the regulations do not apply to a person who harasses, captures or kills wildlife under this section.

#### Night hunting

(7) Section 20 does not apply to a person who, under this section, harasses, captures or kills wildlife, other than white-tailed deer or wildlife prescribed for the purpose of clause (3) (c).

#### Capture and release

(8) Subsection 40 (1) and section 46 do not apply to a person who captures wildlife under this section and releases it in accordance with the regulations or in accordance with an authorization of the Minister.

#### Trapping bears

(9) Section 21 does not apply to an agent acting under subsection (2) who traps a black bear if the agent has the authorization of the Minister to trap black bears.

#### Disposal

(10) A white-tailed deer or other wildlife prescribed by the regulations that is captured or killed under this section shall be disposed of in accordance with the directions of the Minister. 1997, c. 41, s. 31. Ontario Regulation 665/98

132 The following provisions do not apply to a person who harasses captures or kills wildlife under section 31 of the Act:

1. Subsection 9 (1) of the Act in respect of a person who has an interest in land in a Crown game preserve or provincial park that entitles the person to possession of the land.
2. Subsections 36 (1) and (2) of the Act.
3. Parts I to XV, except sections 75, 82 and 83.
4. Ontario Regulation 667/98 (Trapping), except sections 17 to 26. O. Reg. 665/98, s. 131.

132. (1) The following classes of agents are prescribed for the purposes of subsection 31 (2) of the Act:

1. Trappers licensed under Ontario Regulation 667/98 (Trapping).
2. Employees or agents of a member of the Ontario Society for the Prevention of Cruelty to Animals under the Ontario Society for the Prevention of Cruelty to Animals Act.
3. Members of a landowner's immediate family acting on behalf of the landowner on the landowner's own land.
4. Persons whose business is primarily the business of removing nuisance wildlife if they harass wildlife or if they capture and release it if it is capable of being released.
5. Employees or agents of a municipality whose responsibilities relate to wildlife control. O. Reg. 665/98, s. 132 (1).

(2) An agent described in paragraph 2 or 3 of subsection (1) who is using a firearm must have the qualifications necessary to obtain an outdoors card under subsection 4 (2). O. Reg. 665/98, s. 132 (2).

(3) Despite subsection (1), if the Minister is of the opinion that a person is not harassing, capturing or killing wildlife in a humane way or in accordance with the regulations, the Minister may notify the person in writing that he or she shall no longer act as an agent. O. Reg. 665/98, s. 132 (3).

133. (1) A person who captures but does not kill live wildlife under clause 31 (1) (b) of the Act shall, not later than 24 hours after capture,

(a) release the wildlife as soon as possible into the area in close proximity to the capture site unless otherwise directed by the Ministry; or

(b) deliver any wildlife that is sick, injured or immature to a wildlife custodian described in section 44 of the Act. O. Reg. 665/98, s. 133 (1).

(2) A person shall not release wildlife under subsection (1) on private property without the permission of the owner. O. Reg. 665/98, s. 133 (2).