

## THESE HILLS WERE MINE

It has been closed for over a century as a private boating lake for absentee landlords. Now Loch Morar in western Lochaber is set to enjoy the access provisions of the Scottish Parliament's Land Reform Act - but not before a final bout of landlord obstruction, chicanery and blackmail. Iain Fraser Grigor reports.

GLACIERS GOUGED the dark fjord which is loch Morar in west Lochaber - twelve miles of fresh and very deep water surrounded by rough and desolate mountains till the western end, where the slow rivers of ancient ice poured up and out into the shining crystal sea between the arms of Camus Ruadh and Keppoch's Back.

For much of the millennia that came afterwards, the shores of the loch were populated. Twenty or so settlements were there in Norse times, and almost as many until well into the 19th century, with no less than 40 people at the head of the loch alone in the 1840s. And until well into the last century there were little primary schools at Brinicory and Bracarina and Rifern and Swordlands, to cater for the children of the hamlets which still survived there.

To the north, Loch Nevis, is the peninsula of Knoydart, scene of the last land-raid (to date) in Scotland, against the Nazi Brocket, wealthy brewer-boy and Tory member of the House of Lord. And to the south is Arisaig and Moidart, to which green and soft country the Jacobite claimant to the throne came, in 1745, with his supporters.

But today the lands which border loch Morar are a wilderness, and teem with nothing but deer. The glens at its head, through which the Young Pretender and his party fled after Culloden, are empty. And the islands on the loch - once home to an early

seminary and later Jacobite refugees - are now the refuge of little more than a few rare birds: which appear to enjoy greater protection, and attention, and respect, than the natives of the district ever did.

And yet Loch Morar - at the very heart of the Rough Bounds, na Garbh Chrìochan - is by any standards a jewel in the crown of Scotland's natural and cultural heritage, deserving of interest and enjoyment on a national and international scale. Nor should the potential material benefits to the local community of such interest be overlooked, in terms of the regeneration of the increasingly fragile local economy.

Recent research has shown, for instance, that of the seventy-odd houses in the immediate area of Morar village, over 40% are either holiday homes or occupied by retired people. And while the village exists at the heart of a sea of public investment, it has itself, received next to nothing in the way of such investment.

But for years past the waters of the loch - that one priceless and unique asset at the heart of the community - have been effectively denied to the use of the people of the immediate locality, the visitors who come to it in summer, and to the wider population of Scotland in general, by a long record of wilful and determined obstruction, blackmail and chicanery.

How did this strange and malign situation come about? And are the means now at hand to at last overturn it for ever?

It is these questions which this article now addresses.

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The short answer, of course, is the absentee and sporting landlords whose estates border the loch: and the enduring

obsession of these 'riparian owners' that it be preserved as a private lake for their enjoyment, and their enjoyment alone for all time.

This obsession has a long history, first coming to public attention just over a century ago.

The riparian owners then included Gertrude Astley or Nicolson of south Morar - the matriarch of a cursed family with a ferocious history of clearance and eviction. Other estates bordering on the loch included those of Lord Lovat (his lordship was just six years old) and his mother Lady Lovat - the same family, that is, which had 'improved' much of the loch's northern shore into a 'deer-forest' in the preceding decades.

In the middle of the century, these landowners ordered local tenants with boats on the loch to take them off. With summary eviction from house and home and patch of land as the penalty for refusal, the order was observed - but not for long.

For throughout the 1870s and early 1880s a gigantic popular agitation - now known as the Crofters' War - had shaken the Highlands. It led in 1886 to legislation which at last gave crofters fair rents and freedom from summary eviction. Emboldened by this great victory, and by a recent extension of the right to vote in parliamentary elections, some crofters of south and north Morar went on the offensive.

A public meeting was held on July 14, 1888, under the chairmanship of Aeneas MacDonnell of Camusdarach. And one week later three MacDonald crofters - Angus, Donald and Ronald - gathered on the shores of the loch. Angus, of Bunacaimb, who had been clerk to the meeting on the 14th, read out a proclamation to the crowd of locals who had accompanied them, and also gave copies of it to Lovat's gamekeeper and bailiff.

As Charles Fraser-MacIntosh, radical MP for Inverness, later told the House of Commons, the Bunacaimb crofter began with the words, 'Take notice all people, in the name of the inhabitants of north and south Morar, and of all interested in the rights of way to Rhubana ford and access to loch Morar, and of the right to have boats on the loch, to launch, embark, to land, to moor and to draw and beach their boats and to fish on loch Morar .....'.

The response of the landlords was hysterical and immediate: an action was raised in the civil courts (for clearly no criminal offence had taken place) to interdict the three MacDonalds from going on the loch: men, that is, of a name which had been near-universal in the district for centuries.

In court, the men argued that the loch 'had for generations been a main line of communication in the district, and had in fact been a public thoroughfare'. The Scottish Rights of Way Society - not for the last time in the story of public access to the loch - offered its moral support for the men: but had no money to otherwise support them.

The outcome to the dispute arrived in January of the following year, and was extensively reported in the Scotsman. The three MacDonalds were interdicted from using the loch, but no other member of the public was, for - as Lord Young said - 'there is no such thing as an interdict against the public'.

A public right was also admitted to use specified places on the shore of the loch for launching and beaching boats without any restriction, stated or implied, on the means whereby such boats were to be propelled: a matter of some significance, for of course a boat under sail to windward cannot keep to any specified 'lane'.

According to the Scotsman, 'The public right to use boats on the loch was in effect admitted, and it was not decided whether the boats must keep to specified 'lanes' between the specified places, or had the liberty of the whole surface of the loch'.

And there - for the best part of the next century - the matter rested, while one generation of landlords eased into decrepitude and death, and was replaced by another.

One thing, however, was unchanged: their successive determination to preserve the loch as a private lake for their personal and exclusive use in that little part of the year when they were there: and to ensure, when they were not, that nobody used it at all.

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But in the late 1980s and early 1990s, the question of access to the loch came to the fore again. By now, most of the land to the south of the loch was in the hands of the Ferranti electronics family - of whom it had been suggested in the 'sixties that they had introduced to the gentle sport of deer-stalking the specialised skills of machine-gun and helicopter.

Ferranti on occasions would land on loch Morar in a flying-boat, but was otherwise never seen in the district, being usually represented in estate matters by his long term 'personal assistant' Miss Cecilia Ford.

Also on the south side, a second smaller estate was in the hands of one Malcolm Spence, an English lawyer of Ennerdale Road, Kew, in Surrey, whose father had been an eminent medical man. Spence Major achieved pre-war distinction in the controversial

field of endocrinology; but when Spence Minor also made it into Gonville and Caius college in Cambridge, he was to find that his particular tastes lay in the highly-lucrative fields of town-and-country planning law, and compulsory-purchase compensation.

On the north side of the loch, the Lovats had sold their deer-forest at the loch's eastern end to owners whose principal contribution to the local built heritage was to blow-up with explosives the one remaining house on their property, at the head of the loch.

Most of the western end, however, was still owned by Lord Lovat and his son Simon Augustine. And the rest of that western end was still in the ownership of Lovat's aunt, Margaret Stirling, mother of Irene, her brother Archie, of Keir and Cawder Estates in Stirlingshire, and her other brother, the proto-fascist adventurer David. (David was at this point setting-up his Country Guard: the skeleton of a rural para-military force at the command of the ruling, landlord class).

In respect of ownership, then, little had changed. But there was still the worrying thought that the power of the landlords to exclude the public from loch Morar was not as absolute as they would have liked.

And in the late 1970s, they saw their chance - and were not slow to take it.

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During the 'seventies, the Scottish landlords were to get through the parliament in London (there was then, of course, no 'devolved' powers to a Scottish parliament) a breathtakingly self-interested series of laws relating to salmon fishing. (The Act was

especially welcome in the House of Lords - of the 20 peers who spoke in the 'debate' there, at least 15 had vested interests as owners of salmon fisheries).

Under cover of this legislation, the landlords whose lands bordered the shores of loch Morar - the 'riparian owners' - saw a golden opportunity for all time to come: which was finally to exclude absolutely the public from the loch.

In an old tradition, a number of concerned locals formed a Loch Morar Action Group. It sought advice - as its forebears had in the 1880s - from the Scottish Rights of Way Society. In February, 1978, the Society wrote that the Group, 'would be right to resist any interference with the public right of passage, by boat .....specified in the settlement of the loch Morar case in 1889'.

Twice in the following months, the Society's secretary D. H. McPherson confirmed that, 'there is a public right to use boats on loch Morar, with landing and mooring rights' at seven specified places.

But the next year, 1979, the landlords nevertheless pressed ahead with plans - enabled by the legislation so gleefully welcomed in the English House of Lords - to establish a local District Salmon Fishery Board. They even sought the assistance of public money - from the Highlands and Islands Development Board! - to do so!

McPherson wrote at once to the Board (forerunner of Highlands and Islands Enterprise), and to the director of planning, Highland Regional Council (now Highland Council), saying that he would object to such a use of public funds, except on condition, 'that the public right to launch and haul up boats and use their boats between the seven named places should not be interfered with or challenged'.

But for the rest of the decade, the landlords slowly strangled public access to the loch by the subterfuge of 'allowing' boats onto it - but only boats which they had permitted to fish on its waters. This, of course, may not have been legal - but the landlords had very deep pockets, and their stratagem was not challenged in a civil court action which (as would subsequently be clear) might cost large sums of money and might go all the way to House of Lords: that same 'House' which had so joyously helped bring to perfection the 1976 Salmon Act!

But there was still the vexed question of absolute control: and towards the end of the 'eighties the landlords saw yet another chance.

After all, a common crofter - or God Forbid, a Glaswegian of any sort! - might still have a right to sail a boat on the loch between specified points. But whose land did he have to cross to get onto the loch in the first place?

In March 1989, a civil action was brought in Fort William Sheriff Court against one Pat Sweeney, of Airdrie, outside Glasgow. As well as Spence, the action was brought in the names of -

Simon Augustine Fraser, Beaufort Castle, Beauldy;

Miss Cecilia Ford, Meoble; and,

Archie Stirling, Keir and Cawder Estates

Sweeney was interdicted 'from unlawfully entering and trespassing upon the Pursuers' land and estates': or, in other words, that very narrow strip of land between the public road which runs along the side of the loch, and the waters of the loch itself. All costs were awarded against Sweeney.

This was the apparently decisive victory that the landlords had been waiting for - and they were quick to act upon it. Just a month

later, Simon Augustine wrote from his castle to the chairman of the Action Group, 'your assumption that there is a right of way for boats on loch Morar is not correct, and it has always been the case that boat users have required written authority from this estate for boats to cross the estate land, and moor'.

Four days later, Archie Stirling - Simon Augustine's second cousin - also wrote in triumphant tones to the Action Group's chairman, 'you appear to be operating under some misapprehension: there is no right of way on loch Morar. I do hope this does not come as too much of a shock to you'.

And a fortnight later, Stirling wrote again, in very clear terms. 'The legal situation is that the loch itself is privately owned by the six proprietors who own the surrounding land. To put a boat on the loch you are obliged, for your convenience, to cross our ground. Anyone who seeks to claim a 'right' to a boat upon the loch and who refuses to buy, at a small charge, a permit to do so, lays himself open to being sued for an interdict to restrain him from crossing our ground, just as Mr Sweeney was sued ..... I know Mr Malcolm Spence has written an excellent letter setting out the position quite clearly'.

The implications of this setback were not lost on the Action Group. Its secretary at once wrote to his members, 'What is clear is that we can expect a legal assault on the right of way on loch Morar. The preferred method seems to be to deny any right to cross the few feet of ground at Rhubana separating the boats from the road. Since Rhubana is the terminal point of a landward right of way we feel very concerned at this twist of events'.

And the Action Group's secretary was right to be concerned. Two months later, the Rights of Way Society caved in. There was, it conceded, certainly a right to navigate on the loch between the

terminii of the overland Rights of Way which ran down to the shores of the loch. But there might be no right to moor boats on the landlord's shore, there might be no right to even launch and haul boats on that sacred shore, and there might be no right to walk across a few feet of shoreline in pursuit of that right of navigation.

In other words, as Miss Cecilia Ford of the Ferranti estate at Meoble wrote, 'The only way access can be gained to Loch Morar is over land which is under the control of the Fisheries Board' (for of course the fisheries board, although established by Act of Parliament, was in effect under the exclusive control of the riparian owners - as scandalous a perversion of parliamentary democracy as can be imagined!)

The Rights of Way Society's new secretary, R. A. Dickson, wrote, 'It was considered that to argue a case for the establishment of a right to launch boats would be fraught with danger. It could well end in the House of Lords and would be most expensive for the successful, as well as the unsuccessful. In all the circumstances, therefore, we would advise against pursuing such a case'.

By 1990, therefore, the Morar District Salmon Fisheries Board was ramming home its advantage. It had appointed a 'superintendent' in the shape of a former fireman in Kent, one David de-Gernier (half of whose £10,000 salary appears to have been paid by the fish-farming company, Marine Harvest). As notes made at that year's AGM of the Fisheries Board suggest, de-Gernier attended, in the company of: Irene Stirling of Keir and Cawder; Malcolm Spence of Scamadale Estate; and Giles Foster of Lovat Estates.

Miss Ford, representing the Ferranti estate at Meoble, and Ian Bond, representing his own north shore 'deer-forest' estate, also

appear to have been present (although letters from each of them, dated that same month, claim that neither had anything to do with the Fisheries Board).

Spence sent the Inverness lawyers representing one of the members of the Loch Morar Action Group an 'Opinion'. In this, he felt free to assert, 'The entire loch belongs to the riparian proprietors and the solum of the loch belongs to each proprietor ..... there is no right of fishing and no right of boating': (although he does not assert that there is no right of passage for boats between the termini of those overland Rights of Way which come down to the shores of the loch).

And Spence, from his office in Lincoln's Inn, also wrote to one member of the Action Group. Oblivious to any legal implication of the geographic distinction he was making, he wrote, 'I think I should explain that the whole purpose of the proprietors is to preserve the loch for the benefit of the people of Morar [by excluding them from it, presumably] and to prevent people from Glasgow and the Central Belt from turning our loch into a loch Lomond'.

The landlords had one other card to play - a Protection Order, under the same old 1976 Salmon Act. Russell Johnson, then MP for the area in the parliament in England, took up the matter. In his reply to Johnson Lord Strathclyde, at the time a minister in the Scottish Office (and later Tory leader - in the House of Lords) jovially remarked about being, 'a little wary of advice by an English barrister on a point of Scots Law'.

But he added that a Protection Order, 'does not affect rights of way or passage ..... it does not prevent anyone from exercising fishing rights or any other rights'.

And Richard Cameron, director of planning at the Highland Regional Council, assured a member of the Action Group that the Protection Order, 'cannot be used as a means to restrict access over the loch while following a public right of way'.

The Superintendent, de-Gernier, however, soon gave the game away. The real point of the Protection Order was to arm the Fisheries Board with the powers of the criminal law. He wrote, 'the only real deterrent we have against people who fish without permission is to interdict them ..... under a Protection Order, they would be committing a criminal offence if they fished without written permission'.

And - somewhat confusing, it might be thought, his Awe with his elbows, or at least his Lomonds - de-Gernier went on, 'If we do not get this trout Protection Order, I can see loch Morar deteriorating to the same state of affairs as loch Awe'.

By 1992, however, the Kentish fireman ('I am ex-SAS, you know') had mysteriously disappeared from his tied house on the shores of the loch, amid persistent rumours of missing or unpaid monies, and a replacement was brought in from one of the river systems in the landlord-ridden west of Harris.

But that same autumn, the Secretary of State for Scotland - despite significant local objections - did indeed grant a Protection Order for loch Morar, which was, 'to run without limit of time'.

And there, for the next decade, the matter rested. With the exception of a handful of boats 'permitted' on the waters of the loch (and of course the landlords's own vessels) loch Morar - this jewel of Scotland's social and natural heritage - was effectively closed to all but the absentee landlords whose estates surround it.

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And then came the Scottish Parliament, and things began to change quickly. Under its Land Reform Act, major changes in the law relating to access to land and inland water are now imminent. Scottish Natural Heritage published in January of this year its draft Access Code, whose provisions will become law later this year.

These provisions have very significant implications for public access to the loch. Part One of the Land Reform Act gives everyone, whatever their age or ability, statutory access rights to most land and inland water. Access rights can be exercised at any time of the day or night. Existing rights, including public rights of way and navigation, continue.

Members of the public can exercise access in such places as rivers and lochs. These rights apply under water as well as on the surface. They can be exercised for recreational purposes, some educational activities and certain commercial purposes, as well as for crossing over land and water. Existing public rights of way will continue. Existing public rights of navigation will also continue, on navigable lochs and rivers.

And landlords' hirelings must not interfere unreasonably with the public exercise of these rights.

But how the landlords interpret 'reasonable interference' remains to be seen - though it must, of course, be exercised with full respect for the criminal law. In any case, most of those who helped interdict access to the loch in recent decades have now gone to the great sporting estate in the sky - where they will, doubtless, be untroubled by crofter, poacher, Glaswegian, or any other species of turbulent aborigine.

Lord Lovat is dead and his castle - in whose grounds poachers were once shot with impunity - is now in the ownership of a bus-conductress. Lovat's eldest son Simon Augustine is also dead. Mrs Stirling is dead too, along with her three progeny. Basil Ferranti and his mistress Cecilia have also left the scene.

Today, there are four principal landowners around the loch. Bond, the Gloucestershire 'gentleman farmer', is one. Lord Lovat's estate is now in the hands of the theatrical producer Cameron McIntosh (who has never shown himself to be inimical to local interests). The Ferranti family still owns the eastern end of the loch's southern shore, and Malcolm Spence (70 this month) the Scamadale estate at its eastern end.

(Relations between these last two are not cordial. Recently, Ferranti - in a communication intercepted by the Free Press - wrote to Spence: 'Thank you for your usual rude letter. Payment may be sent to you when I get round to it and when we receive an invoice. The law is if you don't know is not to threaten people unnecessarily. Polite letters always get attended to and if you write to all members in this vein you will not succeed').

But despite this animosity, the landlords - or some of them - may yet launch a final bid to strangle with regard to loch Morar the clear intention of the Land Reform Act's access provisions. Though they have for decades past routinely used on their deserted loch high-speed launches, landing craft and flying-boats (while until recently refusing even canoes on the loch without permission), the landlords may now try to bar the use of engines on boats navigating on the loch under the new laws.

For in an extraordinary incompetent omission, the access proposals exclude engines from their proposals (although the right to use them obviously exists under hitherto existing rights).

The effect of such an omission - if it is not corrected - will be to disenfranchise the loch from the very provisions which were intended to open it to public enjoyment.

After all, the provisions as drafted would appear to allow (with a considerable sense of history) a Norse longship, a Hebridean galley or a fleet of Redcoat longboats to be rowed or sailed on the loch, with non-propulsive power from an onboard diesel generator. But the same provisions would disallow a 10-year-old boy from enjoying the use of a little battery-powered model boat in 12 inches of its shoreline waters (and leave this same boy open to the intimidation and force granted to landlords' fisheries bailiffs under the existing fisheries legislation). And as drafted the proposals would seem to suggest that an Access Ranger's patrol and safety boat would not be engined - although the proposals would appear to allow a pedal-powered beach-toy for such a purpose: but would not, of course, outlaw the flying-boats, high speed launches and landing-craft of the 'riparian owners'!

This is an extremely important point. After all, the loch is twelve miles long, and perhaps one or two wide. There is therefore an immediate question of security, if people are to fully navigate across its waters in safety. Further, there is only public road access to one end of the loch - and to fully enjoy the full length and breadth of the loch, an engine is an almost certain requirement. And finally, without a clear admission that engines are included in the access code, then its provisions are likely to contradict their very letter and

spirit, with regard to age, disability and navigation during the hours of darkness.

In short, if the Access Code proposals are not clearly amended in the coming weeks and months - and the right to use engines on loch Morar and lochs like it very clearly established - then the agencies involved will be guilty of a staggering derogation of their duty to the interests of the public they claim to represent. Highland Council, Highlands and Islands Enterprise, Scottish Natural Heritage and the Scottish Parliament, their officials and their elected representatives, will be equally guilty of this shameful derogation.

And if they fail to reverse this oversight, they may yet live to regret it. For who is going to police the new access rights on the loch? And what sort of trouble might that lead to?

After all, the people of the Highlands took the law famously into their own hands over a century ago - and won the great victory of the Crofters' Act.

They took the law into their own hands again, in the time of the Knoydart Land Raid: immortalised in the great words of Hamish Henderson -

'You Highland swine  
These hills are mine  
This is all Lord Brocket's land'.

The same enduring conflict can be contested once more: this time, perhaps, under intense and diligent media scrutiny, along with mass visitations to the loch, its lands and its lodges, by the popular organisations of the Scottish people (in the company of our leading luminaries from politics and law).

As happened over a century ago, in other words, the Loch Morar Case can yet again be a test-case for the popular cause.

After all, access to the lands of Scotland represents - at long last - the settled will of those same Scottish people. The day has now come, then - and not a moment too soon - to implement that will, and to implement it without mercy and without delay.

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