



RIVERS & FISHERIES TRUSTS OF SCOTLAND
Safeguarding Scotland's Rivers & Lochs



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Wildlife and Natural Environment Bill Team
Landscapes and Habitats
The Scottish Government
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Dear Sir / Madam

**Wildlife and Natural Environment Bill Consultation
Response from Rivers and Fisheries Trusts of Scotland**

Thank you for the opportunity to respond to the above consultation.

The following joint response is provided on behalf of the Rivers and Fisheries Trusts of Scotland (RAFTS) and the Association of Salmon Fishery Boards (ASFB).

RAFTS is membership organisation for Fisheries and Rivers Trusts in Scotland. It has 22 members who work across over 80% of Scotland's freshwaters to protect and develop our native fish stocks and populations

The ASFB represents the network of 41 Scottish District Salmon Fishery Boards (DSFBs) including the River Tweed Commission (RTC), who have a statutory responsibility to protect and improve salmon and sea trout stocks and the fisheries they support.

RAFTS, and its member trusts, and the ASFB, and its member boards, work very closely together to support, inform and deliver effective fisheries management, research, monitoring, protection and education activities to Scotland's important freshwater fish and fisheries.

In addition to this reply from RAFTS and ASFB some of our respective member trusts and boards may respond individually to this consultation. As many of these have experience in working with Invasive Non Native Species (INNS) we trust that these will be considered fully as future policy and legislation is considered.

Before setting out our response to the specific questions asked by the consultation we can confirm that we have replied only to the INNS section of the consultation which is most relevant to us.

Recognising the importance of a strategic, coordinated and effective approach to the detection, management and control of INNS RAFTS initiated in 2008 a pan Scotland

“Biosecurity Planning Project” with financial support from our members, the Scottish Government, Scottish Natural Heritage (SNH), the Scottish Environment Protection Agency (SEPA) and the Esmee Fairbairn Foundation.

This project will deliver:

- A suite of biosecurity plans prepared by fishery trusts across Scotland;
- A template for these plans;
- A priority list of species to be considered in biosecurity plans;
- A local reporting and verification system so that new species records can be made known efficiently;
- A programme of training to fishery trust staff on a range of INNS issues;
- A website supporting the project (www.invasivespeciesscotland.org.uk); and
- Strong project management to the activities via RAFTS and supported by an effective Steering Group.

We feel that this project is already taking forward some of the policy objectives in the INNS consultation question in respect of coordination, early detection, eradication and treatment and control. As such it may provide a model to consider as future management options are developed.

Our response to the specific consultation questions presented is set out below:

Q39. Do you consider that providing definitions where the meaning is not clear is useful? Do you think the definitions provided through the CBD Guiding Principles should be used where they are available or do you wish to propose alternatives?

Response

RAFTS / ASFB strongly support the provision of definitions for clarification of ambiguous terminology that is hindering compliance and enforcement of the legislation. We also support definitions based on the CBD Guiding Principles.

Q40. Do you have any comments or suggestions relating to the proposed definition for the “wild”, or more appropriate ways this could be determined?

Response

RAFTS / ASFB recognise that the definition of “the wild” is problematic and is supportive of an alternative approach to defining situations from where INNS should not be released. We do not have specific proposals as to how this definition could be set out.

However it is important that the situations from where INNS should not be released must also be clearly defined and understood so that if an offence does occur it can be prosecuted if this becomes necessary. In our view a strong and robust definition of “the wild” is needed alongside clear recognition of such situations where this definition will be applied or excluded.

Q41. Do you have a view on the proposal to place a responsibility on an owner to ensure animals are kept in such a way as to prevent their escape and that a landowner would commit an offence if a non-native species spreads from their land or managed area?

Response

In general RAFTS / ASFB support this proposal but would recommend that there are clear definitions of both what would be recognised as:

- “owners”: so that those managing land or species on behalf of others are appropriately recognised, and

- “reasonable steps to prevent their escape”: so that clear expectations of actions or measures necessary to contain species are known to those who have such responsibilities at the outset.

In addition there remains a need to legislate against the deliberate introduction of species into areas outside their natural range. The translocation of species, such as many coarse fish, which might be considered native to the UK but which are not native to Scotland or parts of Scotland, is a concern to us and we do not consider that such fish movements are being appropriately controlled at present.

Another implication of this approach is that the proposed changes should also be reflected in existing legislation, regulations and procedures for the prevention of escapes or inadvertent transfers, for example, in aquaculture. Often accidental, but always affecting biological, ecological or biodiversity escapes from aquaculture installations are of significant concern to us. We would welcome the consideration and confirmation that any new legislation developed will apply to this sector as it might to others.

These are two major pathways for the introduction and spread of INNS to and in the aquatic environment.

Q42. Do you have a view on the proposal to remove the term “ordinarily resident”?

Response

RAFTS / ASFB strongly support the removal of the term “ordinary resident” as a means to help ensure that INNS remain subject to appropriate controls even after they have become established in one area. Currently, we agree that this term allows lesser levels of control and management of such species to the detriment of Scotland’s environment and biodiversity.

Q43. What are your views on the proposal that a no-release general presumption would provide a more effective and simpler framework?

Response

In general RAFTS / ASFB support the no-release principle as it is easily understood, theoretically more straightforward to apply in legislative controls and is a simple message for awareness and publicity related activities.

However, the exemptions to this presumption must also be simple, clear and not seen to conflict or reduce the effectiveness of the principle itself. In short, if the exemptions are not clear or become a list which is overly long or requires legal guidance to interpret then the value of the presumption will be much reduced.

Q44A. What are your views on the policy intention relating to animals?

Response

RAFTS / ASFB support the policy intention relating to animals.

We suggest that the exceptions are clearly defined as well as the definition of “expectation of re-capture”. Lack of clear definition of this term and the exceptions could lead to loopholes that will nullify the intention of the legislation and become difficult to ensure compliance.

In particular we, and our members, have significant concern as to the numbers of fish which regularly escape from aquaculture activities in fresh and saltwater. We would not wish such escapes and releases to be subject to exemption from this policy.

A refinement to the policy should also consider the risks to genetic integrity of native stocks and populations. For example, escapes of fish farm reared salmon may introduce the same species (Atlantic salmon) to waters but be of an entirely different genetic strain and structure to local populations. As such these escapes and releases can cause damage to native populations in terms of genetic integrity and biological functionality and fitness when / if interbreeding takes place. Clearly any policy refinement should consider and identify legitimate and, potentially, exempted stocking exercises whilst still recognising the undesirable nature and particular risks associated with, often, large scale unplanned releases and escapes from aquaculture

Q44B. Can you think of other exceptions that should be included?

Response

We suggest no further exceptions but set out in Q44A an exception that should not be made.

Q45A. Do you consider that this approach will provide a more precautionary approach for the release of plants?

Response

RAFTS / ASFB support the proposed approach and by avoiding the difficulty of defining the wild could provide a more robust system for defining what should and should not be done with non native plant species.

However, as with the case with animal species, the strength of this approach will be in the clarity of the exceptions and exemptions and the procedures for how they will be regulated.

Q45B. Can you think of other exceptions that should be included?

Response

RAFTS / ASFB have no suggestions for further exceptions.

Q46. What are your views on how information - on whether a species is native or non-native and what its natural range is - should be provided?

Response

Information defining the natural range of a species should be from an authoritative, accepted (by recognised authorities) and accessible source. The proposal that the definitive list should be hosted on the Scottish Government website is supported. Further dissemination of the list should also be considered by other approved websites although updating must be ensured if this is to be undertaken.

It is our view that the development of a clear set of authoritative information on species designation and natural range is essential. Such a list should also be used by regulators to ensure that legislation controlling fish movements is discharged in a consistent and appropriate manner. We are concerned that in some instances fish movements outside natural ranges may be authorised in Scotland due to the absence of such information.

One of the major difficulties anticipated by RAFTS / ASFB will be how climate change will “naturally” alter the range limits of some species and how such alterations will be resolved in the authoritative information published.

Q47A. What are your views on the proposal to introduce a power enabling specified bodies to take reasonable mitigating action to control, contain or eradicate non-native species or species outside their native range?

Response

RAFTS / ASFB strongly support the proposal to introduce a power enabling specified bodies to take control, containment or eradication measures for species outside their native range.

To date the absence of such a power has made it possible for INNS to spread in situations where they have been detected and reported to public bodies due to the lack of an appropriate response or legislative obligation on these bodies. However, the introduction of an enabling power in itself may not resolve this matter. It is essential that clear lines of responsibility across the specified bodies are agreed and made known. Without such clarification it is possible that the bodies involved may waste valuable time and resources debating who is responsible for leading control, containment or eradication measures when the target species becomes further established and widespread. The spread of the American signal crayfish across Scotland is perhaps one of the best examples of this legislative confusion and lack of focused action by public bodies.

The work of a number of RAFTS / ASFB members includes the undertaking of local survey and control activities in respect of INNS. The powers proposed would support such activities in, at least two ways:

1. Provide a legislative imperative for public bodies to act upon the verified reporting of INNS populations; and
2. Allow these public bodies to undertake reasonable and necessary control, containment or eradication without problems of access provision.

In addition to the powers proposed RAFTS / ASFB would also support their extension to specified bodies to monitor (or require monitoring in) locations where INNS are known to have occurred or have been controlled but could re-occur due for example to persistent seed banks or to uncertainty over the effectiveness of eradication activities.

Q47B. Which organisations should this be provided to?

Response

RAFTS / ASFB recognise and supports the need to provide and invest this power with public bodies, agencies or parts of Government. However, for this power to deliver any significant or effective control, containment or eradication measures, such bodies must be appropriately resourced and have staff trained to carry out these, often costly, tasks.

The named agencies and bodies already have significant other legislative obligations. It may, therefore, be difficult for them to respond adequately, or to give appropriate priority, to the growing number of INNS issues within existing resources.

We also retain concerns, set out in our reply to Q47A that it is essential that the bodies charged with such powers are clear as to their respective obligations in species, response or other terms.

Finally, there are positive examples of the private sector taking forward programmes of action in respect of the management of INNS. The Tweed Forum’s work on invasive

plants and the ongoing work of RAFTS / ASFB and our respective members under the "Biosecurity Planning Project" demonstrate that effective action can be taken in this area when strong and committed partnerships are developed to tackle a shared problem and common objective. The powers should be able to provide flexibility for the designated bodies to work with others, or to discharge these powers through activities undertaken by others, when this represents the most efficient delivery mechanism. In such situations this may provide a more cost effective or efficient approach to management and control, although the need for resources and trained staff would remain.

Q48. What are your views on the proposal to increase the remit of various inspectors to deal with invasive non-native species issues?

Response

RAFTS / ASFB agree with this proposal but as with the organisations above the effectiveness of the approach will depend on whether the Inspectors are also trained, resourced and have sufficient time to undertake this task.

Similarly, the mere inspection or identification of INNS in the field will not, in itself, be efficient in tackling the problems caused. Resources will be required to support the necessary control, containment and eradication measures which follow detection.

There are many examples of where INNS have been identified in Scotland but where the necessary management interventions have not taken place due either to lack of resources, or lack of legislative responsibility or obligation, or lack of willingness or motivation to tackle the problem.

Q49A. What are your views on the proposal to provide a power to Scottish Ministers to require individuals to control and remove non-native species contained on their land, site, or property (e.g. boat)?

Response

RAFTS / ASFB support this proposal as we recognise the essential need for control or removal action for eradication of INNS to become a reality. For this to take place a clear set of methods might usefully be developed to be applied to deal with the majority of species in a majority of occasions and situations. RAFTS / ASFB support, under certain circumstances, the power to require individuals to remove or control INNS when measures to do so exist.

However, in exercising such a power Scottish Ministers would require to strike a balance between being ambitious, in terms of the scale of control and removal they desire, against the recognition that, in some occasions, the application of such powers would be costly (perhaps disproportionately so) to the individual involved. As such some supportive funding package may be beneficial to develop to support such actions when required. The Restoration Fund currently being administered by SEPA as part of Water Framework Directive (WFD) implementation to restore water environments and achieve WFD objectives may provide one model for this worthy of consideration.

Q49B. How should this power be used?

Response

The use of such a power would require to be on a case by case basis as we feel it will be essential for some assessment of total cost, the availability of control or removal measures in the example being considered and the relative costs and benefits of treatment as a whole before robust decisions requiring owner action to be made.

However, we support such a power as a means of ensuring that action is taken in situations when the owner may not otherwise be prepared to do so. As such the power could be used to provide a “stick” to ensure action when a more voluntary approach has not been successful.

Further, it could also be used when an individual through their own action(s) has introduced or acquired the INNS to their land, water or property. We would be strongly supportive of such an approach in such instances as there are many instances where, for example, fish releases have taken place to fresh or salt waters where the subsequent resource intensive clean up, recapture or removal activities have had to be borne by individuals or organisations not involved in the original release or escape. In such situations RAFTS / ASFB would not normally support financial support being given to removal or control activities.

Finally, if and when such a power is used, monitoring by a competent authority may be necessary to verify that control and/or removal work has been undertaken and completed to necessary standards.

Q50. What are your views on the proposal that specified bodies should have powers to access land to investigate, survey and control (where access is denied)?

Response

RAFTS / ASFB strongly supports this proposal (see also Q47A) and would view this power as essential to ensure that INNS are appropriately identified, quantified and treated by specified bodies and without hindrance by uncooperative individuals or bodies.

Q51A. Do you consider that costs of any action should be able to be recovered?

Response

The power to apply and recover costs to persons / organisations found to be responsible for introducing new INNS or new occurrences of INNS would be a powerful deterrent to those contemplating such actions.

RAFTS / ASFB, generally, support the view that costs should be able to be recovered from un-cooperative parties or those that have been shown to be the cause of introduction of the INNS (see response to Q49A and Q49B). However, it should be acknowledged that, on occasion, a simple power to access land to treat INNS would be sufficient if applied by appropriate authorities. This may be the case when an INNS infestation, for example of riparian plants, is detected on a riverside but has not been introduced by the landowner but spread down stream through natural spread, seed dispersal and propagation.

We recognise that in some situations the cost of control may fall to owners not originally involved with the introduction of such species to their property or that confirming the current owner as responsible may be problematic. As such we would support the development of a public fund which supports the removal or control of INNS in certain circumstances.

Q51B. Do you have any views on how these powers should be used?

Response

RAFTS / ASFB consider that these powers should be presented as an incentive to voluntary participation in management and control activities i.e. the owner should cooperate with such initiatives and programmes, perhaps themselves lead by a public /

specified body or the legislative option of enforcement, often with out funding support available, would be applied.

Q52. What are your views on the proposal to provide an offence relating to cause and permit?

Response

RAFTS / ASFB agree with this proposal so that employers directing employees to undertake works leading to an offence are captured within the legislative and enforcement provisions.

Q53. What are your views on the proposals to ensure fish are treated in the same manner as other species? What is the best way of achieving this?

Response

RAFTS / ASFB strongly support the proposal to ensure that fish are treated in the same manner as other species in terms of penalties available. We also strongly support the removal of inconsistencies and overlaps in the fisheries legislation and the harmonisation of deterrents between fisheries and INNS legislation. In earlier question replies we have identified our concerns in respect of escapes from aquaculture in terms of biological and potential genetic impact to native fish populations. As such this proposal would, in part, deal with these concerns.

In terms of the existing provisions in respect of fish movements we have already set out or concerns that fish movements in Scotland may be approved which extend species distribution beyond their native UK range. This translocation of species we would wish to see being more clearly recognised as an important issue by the regulator applying the fish movement regulations. In particular we would wish to see a presumption against such fish movements in Scotland.

Importantly, RAFTS / ASFB is of the view that the current fish movement legislation could be used to further support the policy objectives of Government in preventing the further spread of INNS in Scotland. For example, we feel the strengthening of procedures and licences for the control of fish movements should include assessments of the possibilities of INNS transfer through water transfer. For example, fish movements from waters contaminated with American signal crayfish should not normally be approved unless stringent mitigating measures are applied by the applicant or the supplier of the fish to be moved. Currently we are not aware of such conditions being applied and are significantly concerned that the further spread of this crayfish species is likely in Scotland as a result.

Q54. What are your views on the proposal to extend the provisions of the Destructive Imported Animals Act 1932 to include greater numbers of invasive non-native species?

Response

RAFTS / ASFB support measures to control INNS and, in general terms, would support this measure. However, further details of how the measure would be implemented are required.

Q55. What are your views on the proposal to make an Order under Section 10 of the Destructive Imported Animals Act 1932 for Muntjac deer (*Muntiacus reevesi*) for Scotland?

Response

In general RAFTS / ASFB support measures to control INNS but have no specific comments on this issue.

Q56. Do you consider that an Order under Section 10 of the Destructive Imported Animals Act 1932 should be made for All Cervus species on the "refugia" islands (Outer Hebrides, Arran, Islay, Jura, Rum; and proposed refugia islands - Scarba, Lunga and the Garvellachs)?

Response

In general RAFTS / ASFB support measures to control INNS but have no comments on this specific proposal.

However, we would consider that the same principle should be extended to fish. The islands are also refugia for the native fish community of Scotland, which is fast becoming extinct on the mainland. The recent spread of minnows (*Phoxinus phoxinus*) to Lewis shows that even the islands are not secure from the spread of alien fish species.

Scotland, as a whole, is an "island" for freshwater fish as it never had a freshwater connection to the continent over which purely freshwater fish could cross. This limited our native fish community to species that have, or had at one time or another, an ability to cross salt water. There are no purely freshwater fish native to Scotland therefore, a point that previous legislation has failed to recognise, so that fish native to the south of England (which did at one time have a freshwater connection to the continent) have been regarded as native here as well.

The small and distinctive native fish community of Scotland is fast disappearing, due largely to the spread of minnows over the last 30 years, probably due to their use as live bait by anglers. Remote lochs in the Highlands commonly now have minnows and their invasion of Wester Ross has been documented by the fishery trust there. There are, already, probably no or very few places left where only the full suite of native fish species exist without at least one alien fish species as well. At the present rate, every water body on mainland Scotland will soon have at least one alien fish species and, therefore, no longer have the native community. The islands represent the last chance of keeping at least some water bodies for our native fish community and should be, on that basis be treated as refugia for them.

Q57. Do you have any comments on how a licensing system for the prospective orders under section 10 of the Destructive Imported Animals Act 1932 should work?

Response

RAFTS / ASFB have no comment to make on this proposal.

I trust these comments are clear and helpful in respect of this consultation. If you do have further queries or require further information in respect of our response do please contact me at any time. I can also confirm that RAFTS and ASFB are happy for this response to be made publicly available.

Yours sincerely

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