Consultation on proposals to amend Schedule 9 and the use of an order made under Section 14A of the Wildlife and Countryside Act 1981.

A response from the Biodiversity Task Force, Scottish Environment Link

February 2007

Summary

1. Invasive non native species are threatening Scotland's biodiversity, economy and national well being.
2. Schedule 9, as the main legislative mechanism currently available to control the impact of these species is unenforceable and updating this schedule is a short term fix that does not address the problems posed by invasive non native species.
3. The Nature Conservation (Scotland) Act 2004 requires some changes that would introduce a duty to control and would clarify definitions of "the wild" for example.
4. No non native species should be released into the wild. For fish, birds, mammals and amphibians, licensed release should be restricted to a limited number of identified species.
5. For plants and invertebrates, the precautionary principle cannot be applied to the same extent. Schedule 9, as a list of plants that cannot be planted in the wild, or caused to grow, must be maintained and updated on a regular basis.
6. In addition, for plants an update to the Weeds Act (1959) should reinforce the implementation of this act beyond agricultural land to include all invasive non native plants that threaten priority native species and habitats. This Act should continue to place a duty on landowners to control the spread of these invasive species.

This response is supported by the following member organisations of the Biodiversity Task Force of Scottish Environment Link:

Plantlife Scotland
RSPB Scotland
Scottish Wildlife Trust
Scottish Raptor Study Groups
Royal Zoological Society of Scotland
Butterfly Conservation Scotland

Non native invasive species, the second biggest threat to biodiversity (European strategy on invasive alien species 2003), are causing significant problems for Scotland's biodiversity, economy and social well being, as they impact on native habitats, premises, land holdings and water courses. We urgently need effective legislation and action to help combat the problems these species are causing.
The Nature Conservation (Scotland) Act 2004, with Schedule 9, is the current legislation that is in place to tackle the impact of these species. However, as a piece of legislation, Schedule 9 is rarely enforceable. Its major problem for plants, for example, is that it is impossible to prove, in a court of law “planting or causing to grow in the wild”.

Revising Schedule 9 is a short term solution but is unlikely to have any major impact on the effects of invasive non native species in Scottish native habitats. Some legislative changes to the Nature Conservation Act as well as the Weeds Act (1959) are required before Schedule 9 could be effectively enforced and provide more effective, long term protection.

We believe that there should be a general presumption against releasing or planting any non native species into the wild, following the precautionary principle. For fish, birds, mammals and amphibians, no non native species should be released into the wild. This includes species that are not native to specific geographical areas, including Scotland’s islands. We agree that species not native to islands should not be released there, whether they are native or not to the Scottish mainland. Schedule 9, for these species groups, could therefore take the form of a list of exceptions to the release rule, ie non native species that require a licence for release. All other non native species should not be released into the wild.

However, the extension of the precautionary principle to this extent for plants and invertebrates is much more difficult. Non native plants are grown for a range of reasons and most provide, or did once provide, beneficial returns as food, other products, or as garden and horticultural plants. For plants and invertebrates, a list of plants that cannot be planted into the wild for example, as schedule 9, is a pragmatic and proportional response to tackling the current and potential impacts of non native invasive plants.

For plants, schedule 9 should include:
(i) plants that may not be planted in native habitats or in areas where they could spread to adjacent native habitats. This would include all managed landscapes.
(ii) plants that if already present in managed landscapes must be prevented from spreading to the wild, either through natural dispersal, including birds, or through aided dispersal along water courses or on tyres or footwear.

No plant listed on any part of schedule 9 should be planted in any native habitat or in planting schemes in managed landscapes.

In Scotland, we suggest that action against non native invasive plants should derive from the Nature Conservation (Scotland) Act and Schedule 9 of WCA as well as an updated Weeds Act (1959). The Weeds Act specifies those “injurious weeds”, whose spread onto adjacent land should be controlled. However current enforcement of the Weeds Act by SEERAD is limited to land in agricultural use (SEERAD 2003). We believe this interpretation of the Act is insufficient and outwith the intention of the Act, which specifies “injurious weeds to which this act applies growing upon any land...” In addition, the
biodiversity duty on public bodies, of the Nature Conservation (Scotland) Act 2004, means that all public bodies should act to prevent the spread of injurious weeds from their land in order to further the conservation of biodiversity. Listed plants originating from any land that are posing a serious threat to priority native habitats and species should be included in a revised Weeds Act.

Where plants that are listed on Schedule 9 are already growing in native habitats, Scotland needs a duty to control that can ensure no spread from that location. This needs to be enshrined in the Nature Conservation (Scotland) Act as well as through land management contracts and other grant schemes that should be contingent upon control of Schedule 9 plants.

Necessary changes to the Nature Conservation Scotland Act also include some clarification of terms. The following terms need clarifying so that Schedule 9 can actually be enforced:

- **Causing to grow:** in its most basic sense this means direct planting and dumping. However, causing to grow could be interpreted as allowing to seed or spread vegetatively. Spread could occur through natural dispersal agents, including wind, birds and along water courses, or though aided dispersal on tyres and boots for example. All reasonable action to prevent spread should be taken. This would include:
  - Removing seed heads before seeds are fully ripe
  - Preventing birds from eating seeds
  - Not planting these species adjacent to water courses, tracks, roads and footpaths.

- **In the wild:** this should be defined as any native habitat, defined through UKBAP broad habitats. Further clarity is required however on managed landscapes including estate grounds, country parks, road verges and roundabouts, communal ground including cemeteries and golf courses for example, which while obviously not wild, are a source of invasive plants to adjacent native habitats.

Definitions in relation to schedule 9 should protect all native habitats and should aim to ensure that all managed landscapes are managed with biodiversity conservation in mind. These should not therefore be planted with any non native invasive plants, listed on a regularly updated Schedule 9. This would be in line with the duty on public bodies to further the conservation of biodiversity and extends the spirit of that duty to the private sector.

- **Invasive non native species:** the definition generally in use for invasive non native plants is "a sub set of naturalised plants...that produce reproductive off spring often in very large numbers, at considerable distances form the parent plants and thus have the potential to spread over a large area". This definition however is not specific enough to enable identification of all non native invasive plants in Scotland. We would like to see objective assessment of all potentially and currently invasive non native species against a set of scientific criteria. This would enable the identification of a threshold, beyond which plants are listed on Schedule 9.

**Question 1:**
Yes we agree with the invertebrate species proposed for inclusion on Schedule 9.

**Question 2:**
As a stop gap measure, we agree that these amphibian species should be added to Schedule 9. However, we strongly recommend that changes to the Nature Conservation Scotland Act are made to make it an offence to release any non native amphibian into native habitats in Scotland.

**Question 3:**
As a stop gap measure, we agree that these fish species should be added to Schedule 9. However, we strongly recommend that changes to the Nature Conservation Scotland Act are made to make it an offence to release any non native fish into native habitats in Scotland.

We also agree that it should be an offence to release all fish species into fishless lochs.

**Question 4:**
As a stop gap measure, we agree that these mammal species should be added to Schedule 9. However, we strongly recommend that changes to the Nature Conservation Scotland Act are made to make it an offence to release any non native mammal into native habitats in Scotland.

**Question 5:**
We agree that mammal species that are not native to islands should not be released on those islands, irrespective of whether those species are native to the Scottish mainland.

**Question 6:**
As a stop gap measure, we agree that these bird species should be added to schedule 9. However, we strongly recommend that changes to the Nature Conservation Scotland Act are made to make it an offence to release any non native bird into native habitats in Scotland.

**Question 7:**
We agree that these plant species should be added to schedule 9. However, plants should not be added to Schedule 9 in species groups as this causes confusion and inconsistencies. All plants should be listed as specific species and where groups of plants have been suggested for addition, these groups should be broken down to list all those species within that group that are non native and invasive.

**Question 8:**
We agree that these algae species should be added to schedule 9 but as separate species. Algae should not be added to Schedule 9 in species groups as this causes confusion and inconsistencies. Where algae are listed as species but where sub species or varieties are relevant, these groups should be broken down to list all those sub species or varieties within that group that are non native and invasive.
**Question 9:**
Yes, although for plants we do not agree that genus groups should be listed. Individual species must be listed to avoid confusion and inconsistencies.

**Question 10:**
See answers to question 3 and 7.

**Question 11:**
Yes we agree that the plant species listed should be part of an order to ban their sale.

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