

MINUTE OF MEETING OF THE SPEY  
DISTRICT FISHERY BOARD IN OPEN  
SESSION held at the Craigellachie Hotel,  
Craigellachie commencing at 9.30 a. m. on  
Friday 20<sup>th</sup> November, 2015

**Present:-**

<b>Chairman</b>	Brian Doran	Craigellachie Fishings
<b>Proprietors</b>	Peter Graham Angus Gordon Lennox Toby Metcalfe Peter Millar Sir Edward Mountain, Bt Oliver Russell Dr CMH Wills Alan Williams	Roths & Aikenway and Laggan Brae Water Trust Crown Estate Orton Delfur Fishings Ballindalloch Knockando Carron Fishings
<b>Co-Optees</b>	Mel McDonald	River Spey Angling Association
<b>In Attendance</b>	Roger Knight Gavin Clark Brian Shaw Anne Anderson Douglas Ross William Cowie	Director SNH Biologist SEPA Moray Council Clerk
<b>Public Attendees</b>	Craig Mackay	River Spey Anglers Association

**1. INTRODUCTIONS AND APOLOGIES**

Apologies had been received from Grant Mortimer and the Chairman introduced Anne Anderson from SEPA who had been invited to attend the meeting.

**2. MINUTES OF PREVIOUS MEETING**

2.1 Minutes of Open Session Meeting held on 28<sup>th</sup> August, 2015.

Subject to an adjustment to the reported response by Gavin Clark the Minutes were approved.

Debate followed about the meaning of the response from Gavin Clark, with regard to the Spey Dam and in particular that, irrespective of the timing of the

designation of the Special Area of Conservation, SNH were aware that the Spey Dam was not compliant with the Water Framework Directive. Gavin Clark explained that this was because of a difference between the Natura Regulations and the Water Framework Directive and therefore his comment related solely to the river designation timing.

After debate, it was agreed that the phrase “distinct from the Water Framework Directive” be added at the end of the AOCB response from Gavin Clark on page 6 of the Minute.

### **3. MATTERS ARISING FROM PREVIOUS MINUTES**

#### **3.1 Spey Dam classification**

Following on from the discussion regarding SNH’s designation of the Spey Dam Anne Anderson was asked to advise the Board of SEPA’s position.

Anne Anderson responded by advising the Board:-

- Spey Dam had now been classified as “impassable” by SEPA
- Rio Tinto Alcan was now aware of the re-classification and it would be up to them to prove that they were in compliance. This provided SEPA with considerable leverage with regard to enforcement.
- Anne Anderson acknowledged that this change from the previous position would affect the classification of the Dam and the area above it, which followed a detailed examination of the data now held.
- She also noted that the Markie Heck was on a list of infrastructures to be improved by Rio Tinto Alcan, as well as the Crunachden Cut, which had issues with regard to the flow level.
- She reported that a meeting between the Spey Board and SEPA was to take place on the 8<sup>th</sup> December and her colleague, Steven McIntyre would be in a position to brief the Board in full at that time.
- Finally, she asked the Board to note that corrective action would be a fairly lengthy, involved process. The intention was to see this through by consensus, but it may involve enforcement action in due course.

The Chairman then invited questions for Anne Anderson from Board Members.

Q: Alan Williams enquired whether RTA would be required to comply with any action by the end of Phase 2 of the Water Framework Directive – i.e. by 2021?

A: Anne Anderson responded that this was indeed her understanding, in order to allow the river to recover.

Q: Angus Gordon Lennox enquired whether SEPA would also be looking at sediment?

A: Anne Anderson confirmed that this would all be part of the overall review, as the consequences of an impassable designation required that SEPA evaluate the ecological potential below the obstruction.

Q: Sir Edward Mountain welcomed the move in designation as a quantum leap forward, but asked that the Board direct a specific request to the Spey Foundation to seek help to investigate how to allow fish to pass Spey Dam in the interim, whilst the work to complete the compliance with the Water Framework Directive was undertaken.

A: The Chairman responded that this would be looked at in the meeting with SEPA and the Board on the 8<sup>th</sup> December and would be considered by the Foundation. Peter Graham commented that he would be resistant to assisting Rio Tinto resolving their obligations until a long-term plan had been secured from RTA, so as not to give them any space for inaction.

Anne Anderson advised that, if numbers rose above the dam by artificial means meantime, this would not affect SEPA's designation or enforcement procedures in any way.

The Chairman summarised matters and indicated that this was a debate for the Foundation to pursue in due course.

### 3.2 Bailiffing Review

The Director reported that they had undertaken a review and had agreed that the Biologists would also train as Bailiffs. They were also looking at student support with a training Bailiff and a possible apprenticeship to be offered. Peter Graham asked that the Director discuss the latter with him, if an apprenticeship was to be pursued.

## 4. DIRECTOR'S REPORT

The Director's Report was as appended to the Minute, but the following additional points arose, using the numbering ascribed to them:-

### 3.1 Wild Fisheries Legislation.

The Director explained that the "toolkit" for financing was to allow for all current funding methods to be included in the future i.e. including charitable donations for Trusts as well as the Assessment.

The intention was also to remove any antiquated legislation from the Statute Book, but it was noted that one of the Senior Civil

Servants who had been effective to date in moving things forward was due to depart and would shortly be replaced. This could mean that Alan Wells might have additional influence.

The Director was clear that the Government should impose a consistent constitutional format throughout Scotland and he advised Board Members that the approximate timetable might be as follows:-

- Draft Bill, February 2016.
- Parliamentary process commences in Autumn 2016 at the earliest.
- Earliest anticipated Royal Assent Summer 2017.
- Final implementation to follow thereafter, following a period of transition.

The Director invited questions on the Wild Fisheries Reform process to date.

Toby Metcalfe enquired who was to be in control of the cash?

The Director replied that this had not yet been decided, but many Boards were pushing strongly for local collection. He said that current Government thinking indicated that collection could be done either locally or nationally, at the preference of each local FMO. All Board Members agreed that they should continue to push for local collection and the Director noted that the Government's biggest issue was over finance, especially as the Bill was moving to an "all species" remit.

The Chairman felt that from a recent discussion with Andrew Henderson, it was possible that the Scottish Government were looking to large Boards for guidance.

Peter Graham commented that, if there was to be national coverage throughout Scotland, then the form an FMO should be based on a national model and be uniform.

Finally, Oliver Russell cautioned the Board against loss of control, highlighting the recent issues involving Universities where government control had potentially affected their charitable status.

#### 4.0 Carcass Tagging

In response to enquiry, Brian Shaw advised that the kill licences and carcass tagging proposals did not spell a permanent end to netting for salmon, which was a heritable right in perpetuity.

6.2 In response to enquiry, Anne Anderson of SEPA advised that Scottish & Southern Energy and representatives of the Tay Board had been in discussion regarding the Tummel Scheme CAR licence, but SEPA had not been invited to attend. It was noted that some of the Spey-related areas of this CAR licence scheme, such as a flow down the River Cuaich, had not yet been taken forward, but this would happen in due course.

Alan Williams enquired of Anne Anderson whether the Tay would be protecting the Spey's position in respect of the Cuaich? Anne could only respond that the Spey-related areas were not currently part of the discussions, although she would be involved in any discussions surrounding any matter relating to the Cuaich.

## 7.2 Seal Management

Oliver Russell enquired whether there were any figures on the increase of seal numbers within the last 30 years. The Director did not have details for the Moray Firth, but felt that Scotland-wide there may have been an increase of 5 to 10 times the number of grey seals, but a decline in the common/harbour seal populations, although it was noted that these figures were simply a "guestimate".

## 8. Ranunculus

It was noted that whilst there had been derogation for herbicide use in England, this was unlikely to happen North of the Border. Furthermore, this derogation had been for a "one-off" experimental application, rather than a programme of regular control.

## 5. **Spey Foundation Report**

5.1 Peter Graham informed the Board of recent Spey Foundation deliberations, which included:-

- A noted increase in the number of fry following surveys throughout the catchment.
- A good grilse run had taken place this year and the Biologist was hopeful that this would result in good numbers of multi-sea-winter fish the following year.
- A major part of the discussion had surrounded Conservation Limits and the MSS 30-page report was discussed at length. Part of this was the definition of what constituted "satisfactory" population, which was defined as "being capable of providing a conservation surplus". The

Foundation felt that there were some fundamental errors in the model of classification of grilse and salmon and the main areas of concern were on the indices relating to:

- (a) The wetted area of the Spey and
- (b) The number of eggs produced per pound of salmon, which the Foundation Trustees felt was highly variable.

The overall view of the skeleton report from MSS was that it had provided a starting point, but further work involving the Board's own Biologist and the Biologists from other Trusts would be required to develop it into something satisfactory.

## 5.2 Conservation policy

Following the review of Conservation Limits, the Spey had been declared a Category 1 River. Furthermore, the Board's policy continued to work well, with yet another increase in the catch & release rate, so the Foundation's recommendation was that there was no need to change the Conservation Policy, other than one sentence at the start. This followed the introduction of the Scottish Government Legislation which prohibited the killing of fish before the end of March.

Angus Gordon Lennox cautioned the Board against those who would use the good conservation status of Category 1 as a reason not to adhere to catch and release, or by the netsmen who would use it as a reason to reintroduce netting following the 3-year moratorium. Peter Graham, as Chairman of the Foundation, acknowledged this and said that it was vital to publicise the message widely.

## 5.3 Ranunculus

The Foundation debated the issue of Ranunculus at length particularly as there had now been derogation on the use of herbicides South of the Border. It was felt, however, that the Foundation had done all they could do on the matter and must pass the issue back to the Scottish Government to determine. It was suggested that the Board, rather than the Foundation, write to the Scottish Government to explain the Board's impossible position regarding compliance with European Regulations. It should also raise the clear issue of increased flood risk and of the failure to control an invasive species. The Board's letter should make it clear that the next step and the only option for the Board would be to refer matters to Europe for determination if action by the Scottish Government and its agencies was not forthcoming. It was noted that Sir Edward Mountain would also write to Douglas Ross at Moray Council to ask for support.

The Board all supported the writing of this letter which may be published as an open letter.

#### 5.4 Spey Catchment plan

This was to be reviewed to see whether aims had been achieved and then a revised plan would be produced.

#### 5.5 Re-establishment of Publicity Committee

The Foundation recommended the Board re-establish the Publicity Committee and enhance its work and output in this area.

The Chairman of the Board accepted this would be worth pursuing and it was suggested that Alan Williams would Chair this via a re-convened Publicity Sub Committee. The organisation of this would be remitted to the Chairman.

Peter Graham then invited questions on the Spey Foundation Report.

Sir Edward Mountain had some concern regarding double charging for surveys of fresh water pearl mussels. These had been carried out by the Board and then, following production of a report, a similar survey had been carried out by SNH. He felt that it was important to make clear to other organisations that the Foundation was a serious research organisation and that government departments should accept its findings and not duplicate efforts.

Anne Anderson of SEPA advised that, in respect of the particular research which related to pearl mussels in the Aviemore backwater, this had been carried out as a result of a flood mitigation application and SNH were under a duty to investigate it.

Peter Graham noted that in future there would be close liaison, to avoid duplication as far as possible and that as part of the forthcoming legislation, Fishery Management Organisations would be recognised as having national competence.

Anne Anderson agreed, and although there was always a requirement to build a complete picture of any particular application involving flood mitigation, she hoped that a more common sense approach to research might be adopted in the future.

Finally, the Chairman recorded an excellent relationship with SEPA's Biologists.

## 6. AOCB

### 6.1 SEPA

It was noted that SEPA had undertaken a review of water quality in the Spey, which had continued to improve over the last 10 years through various actions.

There had been diffuse pollution issues around the Rothes area which were being looked at. These were potentially a result of land management practices, rather than industrial activity.

As far as the Water Framework Directive, Cycle 2 was now in progress up to the end of 2021.

With regard to enforcement, SEPA would be changing their approach with regard to repeat visits. Hitherto there may have been 3 visits for compliance before enforcement action was taken; henceforth these would be reduced to 2 visits and ultimately down to 1 before action was taken.

## 6.2 Sediment Management

It was noted that sediment management would be a very important issue for the Board with regard to forthcoming major engineering projects, such as the dualling of the A9.

## 6.4 Ranunculus

As a follow-up to the Foundation discussion minuted earlier, it was noted that discussions were on-going regarding invasive species within the River Basin Management Plan. Those involved were working hard to establish a baseline survey for the second plan.

Alan William enquired whether it had been accepted that Ranunculus was detrimental to the Spey catchment, but in response Gavin Clark advised that this had not yet been resolved.

## 6.5 Diffuse pollution

In response to enquiry from Sir Edward Mountain, Anne Anderson advised that there was no intention to increase nitrogen vulnerable zones and it was not correct to state that the review was concentrating on enrichment of farming ground only. She also confirmed that increases in temperature were a permanent focus for their review.

## 6.6 Site Condition Monitoring

Gavin Clark reported that the results for the Site Condition Monitoring were expected in the next few days. There were no particular surprises within the results and it covered all SAC species.

## **7 Dates of next meeting**

Board meetings were to be held on:-

### 7.1 Board Open and Closed Sessions and AGM together with Tri-ennial Elections 19<sup>th</sup>

February, 2016

7.2 Board Open and Closed Sessions 13<sup>th</sup> May, 2016.

7.3 Board Open and Closed Sessions 19<sup>th</sup> August, 2016.

7.4 Board Open and Closed Sessions 18<sup>th</sup> November, 2016.

The Open Session then closed