



Northern Ireland Biodiversity Group
Secretariat
89 Looiland Drive
Belfast
BT6 9DW

Tel: (028) 9045 5770
Fax: (028) 9094 2151
Email: NIBG@nienvironmentlink.org

10 February 2010

Sean McCann
Assistant Clerk
Committee for the Environment – Northern Ireland Assembly

Dear Mr McCann

Wildlife and Natural Environment Bill

Thank you for the opportunity to provide written evidence for the Committee Stage of the Wildlife and Natural Environment Bill. The attached response has been prepared by the members of Northern Ireland Biodiversity Group following due consideration.

As you will be aware NIBG is responsible for monitoring progress towards the objectives of the Northern Ireland Biodiversity Strategy. The group believes that this legislation represents an important step forward in providing increased powers to halt biodiversity loss. You will see however that the group has proposed some amendments. We recommend these to you as strengthening the legislation and as an important tool in meeting UK and international commitments on biodiversity.

May I acknowledge the valuable contribution of my predecessor in the NIBG Chair Dr Bob Brown in preparing this evidence.

Please contact me if you require any clarification or if you would like us to attend the Environment Committee.

Yours sincerely

Judith A Annett
Chair Northern Ireland Biodiversity Group

NORTHERN IRELAND BIODIVERSITY GROUP

Response to the Wildlife & Natural Environment Bill

General Introduction to NIBG its role and membership

The Northern Ireland Biodiversity Group is a non-statutory advisory body, set up to coordinate and monitor implementation of the Northern Ireland Biodiversity Strategy and its associated action programmes. The Group's 20 members are nominees of various sectors on Northern Ireland society including aquaculture, agriculture, education, environmental groups, industry, estates management, local government and construction. This response is provided based on detailed consideration of the Wildlife and Natural Environment Bill by the Group.

Main response:

Northern Ireland Biodiversity Group welcomes the Wildlife and Natural Environment Bill which contains many elements that are likely to assist in halting biodiversity loss and in achieving the objectives of the Northern Ireland Biodiversity Strategy. We would however like to draw your attention to the following issues and ask that you will consider amendments based on our considered comment:

Clause 1- Duty to Conserve Biodiversity

Whilst NIBG supports clause 1 we would like to see specific reference to the genetic component of biodiversity (i.e. diversity within species) within clause 1. The Convention on Biological Diversity defines biological diversity as “the variability among living organisms from all sources, including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.”

NIBG would also suggest the rewording of the biodiversity duty to read "to halt the loss of biological diversity, and to protect, restore, enhance and further the conservation of biological diversity, consistent with the exercise of their functions and policies".

Clause 1 (4)

NIBG believes the wording should be changed to ‘The Department will (or must) issue guidance’ as it is vital for guidance to be produced detailing what the biodiversity duty actually means for public bodies.

Clause 2 - The Biodiversity Strategy

NIBG broadly supports the proposals as outlined in 2(1), 2(2) and 2(3) as this enables Northern Ireland to contribute to obligations under Article 6(a) of the Convention on Biological Diversity which states that each contracting party shall “develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity...”. We would propose however that the Northern Ireland Biodiversity Strategy (NIBS) is the designated strategy under these proposals and that UK and Northern Ireland Species and Habitat Action Plans are

identified as the key mechanism to support and promote the conservation of species and habitats of principal conservation importance.

In relation to 2 (4) NIBG believes the proposal that Department must 'from time to time' publish a report regarding the implementation of the biodiversity strategy is wholly inadequate. We recommend strongly that such reports are published every three years as proposed in the original consultation and that the report should review work carried out by government and public bodies under the biodiversity duty. We also recommend that such reports are produced in a standard format, with the reporting schedule aligned to the national and international reporting rounds and commitments in relation to biodiversity. Such an alignment would also facilitate public understanding and contribute to efficiency savings

Clause 3 - Biodiversity Lists

NIBG supports this placing of a statutory duty on the Department to maintain lists of species and habitats of principal conservation importance and to support and to promote and support their conservation. NIBG recommends that such lists should take account of NI's responsibilities at a European level.

Amendments to the Wildlife Order

Clause 4 - Protection of nests of certain birds

NIBG strongly supports the introduction of this new schedule to protect the nests of birds which re-use their nests. NIBG fully endorses the view and reasoning expressed by the RSPB and Ulster Wildlife Trust in their submissions that Schedule A1 needs to be amended to include: peregrine, hen harrier, merlin, barn owl, chough, white-tailed eagle, osprey and red kite. The Group also recommends that consideration be given to the protection of swift colonies within buildings, many of which are currently destroyed during repair or development. Bat colonies have protection similar to that proposed, and we draw your attention to this.

Clause 5 – Offences: recklessness

NIBG fully supports the insertion of 'or recklessly' within the articles listed in 5(2). We do however believe that this should apply to all species, not just those identified on Schedules 1, 5 and 8 including Schedule 9 where reckless behaviour leading to introduction/dispersal of an invasive alien should be an offence). We assume this will also include damage to wildlife features such as nests (e.g. heronry) and roosting sites (e.g. bats) and not just to the species themselves. This amendment will overcome the difficulty of proving intent, where misidentification could be claimed as a defence.

Consideration should also be given to a requirement that someone undertaking an operation should have checked to ensure that no species on Schedules 1, 5, and 8 were present and likely to be affected by the operation. Ignorance of the presence of a species should not be an acceptable explanation for its destruction.

Clause 6 – Offences: causing or permitting unlawful acts

We welcome the proposal to make it an offence for a person to cause or permit another person to carry out certain acts against wildlife. NIBG is supportive of

RSPB's suggestion of the inclusion of legislation to make the employer liable for any offence committed by their employee. RSPB proposes that an employer should be guilty of an offence if a person in his/her employ commits an offence contrary to Articles 4, 6, 10 and 12 of the Wildlife Order, where the offence is in furtherance of the employer's commercial interest, e.g. the illegal killing of predators to protect game birds for shoots run by an employer. This measure is designed to discourage employers from providing tacit support for the illegal activities of their employees or indeed subcontractors. RSPB considers that this would have the potential to reduce significantly the incidence of persecution of raptors. NIBG would concur with this view.

Clause 7 – Defences in relation to offences under Article 4

NIBG is supportive of this proposal as it stands.

Clause 8 – Disqualification for registration

NIBG is supportive of this proposal as it stands.

Clause 9 – Protection of basking sharks from disturbance

NIBG supports the insertion of clause 4A after 10(4) of the Wildlife Order but would also wish to see this extended to seals, cetaceans and turtles. Codes of conduct are operated in many areas of UK and abroad. These can be enforced as a licence condition for commercial boat operators, and to control the conduct of private leisure craft where regulated. We suggest that in Northern Ireland, local authorities should be given this responsibility.

Clause 10 - Snares

NIBG is supportive of this proposal but would suggest that a 12-hour snare inspection regime would not be more humane.

Clause 11 – Protection of wild plants

NIBG is supportive of this proposal.

Clause 12 – Introduction of new species

NIBG is supportive of this proposal.

Clause 13 – Prohibition of sale, etc. of invasive, non-native species

NIBG supports this proposal but would like to see a duty of care being placed on anyone possessing, selling or advertising for sale a non-native species, underpinned by the Codes of Practice. In addition NIBG would also like to see the introduction of a requirement for landowners to control invasive species to protect both biodiversity and economic interests.

Clause 14 – Licences under Article 18

NIBG supports this clause apart from 14.7: "Article 10(4) does not apply to anything done for the purpose of any development if it is done under and is in accordance with the terms of a licence granted by the Department" NIBG cannot support this until the detail of the licensing procedure has been made available for scrutiny and until the term 'development' has been defined. If it has the same meaning in Article 18 (power to grant licences) as in Article 11 of the Planning (Northern Ireland) Order 1991, then 'development' means 'the carrying out of building, engineering, mining or

other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'. There are, however a number of excluded activities including use of land for agriculture or forestry and the carrying out of works affect only the interior or do not materially alter the external appearance of the building.

Clause 16 - Licences relating to deer

NIBG reserves judgement on these proposals. We consider that a more robust justification is required, and would propose that non-lethal methods of controlling deer should first be tried. Impact on native deer populations needs to be monitored to secure the favourable conservation status of these species.

Clause 17 - Offences: possession of articles for purposes of committing offences

NIBG fully endorses the inclusion of 24A. However, the Group also recommends that the Wildlife Order should be amended to include the text:

Any person who attempts to commit an offence under the foregoing provisions of this Part shall be guilty of an offence and shall be punishable in like manner as for the said offence.

Clause 19 – Powers of constable in connection with samples

Whilst welcoming these proposals, NIBG is concerned that the delay in obtaining a warrant may mean that police officers are unable to identify, observe and record offences.

NIBG proposes powers are extended to enable an officer to go onto, and remain on land without a warrant, where that officer has reasonable grounds to believe that Schedule 1 or 5 species are present for the purpose of ascertaining whether or not offences are being committed with regard to those species.

NIBG supports the remainder of the proposals in this section. It should be noted that additional and better powers do not constitute greater effectiveness unless they are accompanied by matching resources in terms of personnel and equipment. We consider that the Department will need to address this point when the proposals become law.

Clause 20 – Enforcement: wildlife inspectors

NIBG is supportive of this proposal but as outlined above additional and better powers do not constitute greater effectiveness unless they are accompanied by matching resources in terms of personnel and equipment, and the Department will need to address this point when the proposals become law.

Clause 21 – Time limit for prosecution of summary offences

NIBG is supportive of this proposal.

Clause 22 – Penalties

NIBG is very supportive of this proposal and believes it will increase public confidence that wildlife crime is taken seriously in Northern Ireland.

Clause 23 – Application to the Crown

We welcome this proposal and believe that the Crown should be seen to take a lead in protecting the environment and we therefore support the proposal to add 27A.

Clause 24 – Review of Schedules to the Wildlife Order

NIBG supports this proposal which should apply to all Schedules. The Group recommends that the reviews of the Schedules should be taken forward through public consultation. It also considers that there should be provision for both emergency additions and removals from the Schedules outside the 5 year cycles, to accommodate e.g. sudden concerns about any species arising from new information, research or disaster, and including the arrival of new alien invasive species. Such provisions should also be subject to consultation in all but the most extreme cases.

Clause 25 – Amendment to Schedules 1 to 9 of the Wildlife Order

Schedule 1

NIBG supports the proposal to amend Schedule 1 as outlined but would make the following comments: Consideration should be given to protection of golden plover for the same reasons as would apply to the proposed inclusion of curlew. Given the proposal for 5 yearly reviews, we suggest a study be undertaken to determine the merits of including golden plover, in time for the first review, but further that consideration be given to reviewing the status of all Schedule 1 (pt 2) and Schedule 2 species in the same timescale. We also propose the addition of the following species with outline reasons:

- Curlew (perilous conservation status)
- Bullfinch (conservation status)
- Reed bunting (conservation status)
- Whinchat (conservation status)
- Raven (risk of persecution)
- Lapwing and redshank should also be included because of recent large declines and risk of disturbance.

Schedule 2

Any revision of the quarry list must be based on sound science and the precautionary principle, as required under the Biodiversity Convention. We believe that the impact of shooting on the population status of all quarry species in Northern Ireland should be reviewed in time for the next review of schedules.

As detailed above, given its perilous local and global conservation status, NIBG strongly recommends that the Bill is amended such that curlew is removed from Schedule II and added to Schedule I, Part 1, as a matter of priority.

NIBG supports the inclusion of ruddy duck on Schedule 2, because of the threat inter-breeding poses to native duck populations and the ongoing UK programme to eradicate the species.

Schedule 4

NIBG believes that insectivorous birds (e.g. wagtail spp) should not even be considered because of the enormous difficulties of maintaining them in captivity. In relation to the other species, we would not be in favour of their introduction to the

Schedule until a proper case had been made for their inclusion, with appropriate research and discussion. Perhaps this also could be undertaken over the first 5 year review period.

Schedule 5

NIBG assume that bats have not been listed here because of their inclusion within the Habitats Directive regulations – this should be checked. The same point applies to some key fish species, e.g. pollan and the three species of lamprey.

NIBG supports the addition of the species listed to schedule 5. The Common skate (known as *Dipturus batis*) is severely depleted in Northern Ireland's waters. It has been on IUCN's Red List of threatened species since 2006. The European common skate has been subject to recent taxonomic investigation and it is now thought it is actually two species *Dipturus intermedia* (blue skate) and *Dipterus flossada* (flapper skate) both of which need to be listed on schedule 5 to ensure legal protection.

NIBG suggests the addition of the black skate (*Dipturus nidarosiensis*) the white skate (*Rostroraja alba*) and the long-nose skate (*Dipturus oxyrhincus*) to Schedule 5 on the following grounds.

- White skate - Under the OSPAR Convention it is defined as a species 'under threat and/or in decline for Region III Celtic Seas.
- Black skate have been assessed as 'near threatened' by IUCN.
- The long-nose skate is listed as near threatened by IUCN and the Shark Trust suspects it may even have disappeared from the Irish sea.

NIBG also believes that the angel shark is deserving of protection over the whole territorial waters. It is a species under threat for Region III Celtic seas (OSPAR Convention).

Schedule 6

NIBG members would like to query inclusion of the pygmy shrew, because we are not aware of evidence that trapping causes a serious problem for this species. If found to be the case we would agree the proposal.

NIBG supports the addition of the white clawed crayfish (*Austropotamobius pallipes*) and pygmy shrew (*Sorex minutus*) to schedule 6.

Schedule 7

Members agree the proposed deletion of fox.

Schedule 8

Members support the addition of native bluebell to the Schedule.

Schedule 9

Schedule 9; there are numerous complexities associated with this Schedule which the Department should address. The Schedule includes both widespread and common aliens that are already 'in the wild' with species that are not presently widespread but whose human-induced spread could be extremely damaging, (e.g.

zebra mussel). We suggest that consideration be given to a tiered approach with different categories subject to different measures. Consideration should also be given to acquiring powers to apply orders to landowners whose properties hold damaging species, particularly adjacent to designated sites like ASSIs, requiring them to remove or control invasive species.

NIBG welcomes proposals aiming to reduce the number and severity of introductions of non-native species to Northern Ireland. Although the current proposal to update Schedule 9 is a step in the right direction, the group believes that a more comprehensive review of the legislative framework relating to non-native species, in particular, Article 15 of the Wildlife Order, is necessary.

Clauses 27- 30 – Areas of Special Scientific Interest

NIBG broadly welcomes the proposals listed within clauses 27- 30. We consider they are essential if ASSIs, the keystone designations for conservation of priority species and habitats in Northern Ireland, are to be safeguarded, and there are clear recent examples of where damage might have been avoided or reduced had these measures been available to Environment and Heritage Service. NIBG would however recommend the following amendments:

- We are disappointed that temporary stop and reinstatement notices have not been included. We believe that these notices are necessary (alongside additional changes) to complete a comprehensive suite of methods to ensure protection and management of sites, from voluntary to compulsory measures. These notices should however not replace longer term solutions such as ASSI byelaws, or replace formal prosecution where this would be appropriate.
- We recommend additional changes to the Environment Order. There are no proposed opportunities for further amendments to the Environment Order other than via this Bill, and we feel it would be a missed opportunity not to take this chance to make small amendments to bring our legislation up-to-date. In particular, we seek provision for management agreements on land outside ASSIs since much of our biodiversity lies outwith these areas.
- We seek a new statutory purpose for the Department that refers to the need for a series of ASSIs that are 'representative of the diversity and geographic range' of natural features.
- We seek an extension of the protection afforded by the Environment Order to cover all Natura 2000 sites, which we believe is needed to comply with the provisions of the Habitats and Birds Directives.

Clause 31 - Abolition of game licences and game dealer's licences

NIBG agrees with the proposal to repeal game licensing laws. However, we are strongly of the view that serious progress should be made in the requirements to report on numbers and species of birds taken; this is a standard requirement in many European countries, and should be here also. We suggest reporting each season on birds taken could be enforced as a requirement for issuing a gun

license. Without this data and monitoring no agency can make a judgement on a 'sustainable harvest'. This is very important in all areas but particularly so where Government Departments hold the shooting rights, so that an example is set.

Other Comments –

Sites of Local Nature Conservation Importance

NIBG believe that legislative protection for Sites of Local Nature Conservation Importance (SLNCIs) should be included in this Bill. These sites are of major local importance and will contribute significantly to halting the loss of biodiversity and assist in the implementation of the Conservation (Natural Habitats, etc.) Regulations (NI) 1995 by protecting landscape features that are essential for the migration, dispersal and genetic exchange of wild species. The designation of SLNCIs and associated policies should also assist in the implementation of the Council of Europe Recommendation (Rec(2004)3) "on conservation of the geological heritage and areas of special geological interest" whereby member states through "sustainable development and restoration should respect and reflect the natural patterns and processes: the geology, the geomorphology and the soils." The identification and designation of SLNCIS in development plans does not and will not ensure their protection.

Protection for priority habitats on non-designated sites has not been addressed in the legislation. The loss of biodiversity in the wider countryside is a significant issue as outlined in recent EU communications.

Conclusion

NIBG welcomes the proposed Bill and supports most of the proposals, whilst offering suggestions for improvement in a number of cases.

Following the passage of this legislation we recommend that a strong information campaign is undertaken to inform the public of the new requirements, and that (subject to legal safeguards) a document explaining the new regulations and revised Schedules is published at the earliest opportunity.