

The River Deveron District Salmon Fishery Board

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SERAD
Land Reform Branch
Room 106
Pentland House
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Dear Mr Taylor

Re: Draft Land Reform Bill – Access

The RDevDSF Board welcomes the opportunity to comment on the draft Land Reform Bill. We respond in two sections covering firstly the Bill as it relates to access, and secondly on the crofting communities right to buy (CCRTB). These are appended.

Yours sincerely

R J G Shields
RDevDSFB Chairman

SECTION A - Access

The Deveron Board wish to draw the Executive's attention to the following issues with regard to the proposed right of access for water and river margins and its potential effect on the sustainable management of the River Deveron District's waters.

- We have a fundamental concern that uncontrolled access will result in a reduction of visiting anglers to the region with the concomitant diminution of tourist income
- Access should be at "own risk"
- Access without some form of control will reduce available funds for habitat works
- Access without restrictions will damage spawning Redds
- Night time access is not compatible with the sustainable management of a fishery
- Canoeing in the Deveron is not practicable except under certain conditions. Canoeists will damage spawning Redds at any other times other than in high water.
- Commercial access is not acceptable

Our comments are divided into the following sub-sections:

- a) Access by the public
- b) Access by canoeists
- c) Night time access
- d) Commercial access

a) Access by the public

Unrestricted access by members of the public to the riverbank inevitably conflicts with the quiet enjoyment of the angler and his or her fishing. Part of the angler's enjoyment is the solitude of being on a riverbank and the ability to observe undisturbed river wildlife at close quarters. Indeed, many anglers visit from outwith Scotland solely for the peace and quiet that can be enjoyed in the Highlands.

The Bill, as proposed, allows for members of the public to swim, paddle, play and picnic by the river. It is unfortunate that in many instances the best areas to do this and fish frequently coincide. In all likelihood this will be a main pool on a beat where fish are most frequently taken. It is then all too easy to foresee the conflict that might occur even though angler and visitor may not be simultaneously present. If the result of the unrestricted access means less fish being caught, then this will result in a downward spiral of fishing activity, therefore less income, therefore less rateable value and therefore less monies available to sustain Board activities.

The River Deveron Board, along with many other River Boards, are progressing with detailed environmental habitat studies and management plans for their catchment areas. The implementation of results of these studies are ensuring protection and restructuring of the riparian zones that give a sustainable habitat for all fish. In many instances, the actions of the Board give protection to threatened species such as water voles and allow increased biodiversity in the riparian zone. All these activities cost substantial monies. These monies ultimately come from the visiting angler. For example this forthcoming year the Deveron Board on behalf of the Deveron proprietors will be contributing some £65,000 to the local economy. We employ three full-time people.

We do not see that the proposed right of access will contribute to the maintenance of a sustainable river system. Indeed, the reverse is true. Unrestricted access for the public, the walker and his dog and the canoeist will result in an increase of liability to the riparian owner with the result being less funds available for managing the river system. The decline in salmon is well recognised. Many River Boards are working hard at reversing this decline. Whilst acknowledging the majority of problems for Salmon and Sea Trout exist within the marine environment, River Boards are seeking to ensure that the in-river and burn environments are managed to best practice. Any diminution of funds whether by angler not wishing to fish due to the competing access or the riparian owner being less able to contribute to the River Boards, will threaten this on-going environmentally beneficial activity.

Access for the public creates very serious issues of safety. A non-exhaustive list might be as follows.

- Members of the public being caught on the back cast by anglers
- Children being caught in soft sands or by collapsing river banks
- Swift rises in water heights in instances such as flash flooding
- Duty of care for unsupervised children
- Duty of care of safe access along the riverbank
- Care of bridges and casting platforms and alike that are currently used by anglers, who are insured, but under the proposed legislation could well be used by the public
- Litter. This inevitably will result in costs. There will be a cost in litter retrieval and a cost to the environment as well as to birds and mammals.

The above safety issues will give rise to additional costs to the riparian owner. These additional costs cannot simply be transferred to the visiting angler in the current environment of severe drops in numbers of rod and line caught fish. The angler will simply go elsewhere. These increased costs may well result in either job cuts of ghillies or a reduction in the ability to contribute to River Board activities.

The Bill codifies a right of access for recreation. In-river recreation, by which we mean swimming, paddling, exercising dogs etc, are at variance with the objectives of a sustainable fishery and interfere with the natural life cycle of both Salmon and Sea Trout. These problems simply cannot be resolved via the Access Code. Unrestricted access by the public also raises profound concern with respect to the transfer of diseases between catchment areas. We deal with both these matters again in the section below on canoeing.

We request that access by the public should be at their own risk such that the liability is not transferred to the riparian owner and thence by increased costs to the angler, putting beneficial environmental works at risk.

We further request that any access pathways created under the legislation are done so in manner that is sympathetic to the needs of the angler.

b) Access by canoeists

The River Deveron in current common law is not navigable. In a practical sense, at normal summer level it is just not possible to canoe the river without getting out of one's canoe as one passes from salmon pool to salmon pool. And this is the case for much of its length. Thus if canoeists wish to canoe the River Deveron at an ordinary height of water there is no option but for the canoeist to get out of his canoe as one passes from pool to pool. This is in contrast to many of the larger rivers where the polite canoeist can simply pass on the other side of the river from the angler and out of the pool. This raises important issues for anglers. In a small river such as the Deveron a canoeist cannot pass through a pool without disturbing the fish. Fish will be disturbed and will not calm down again for a while. In almost all cases anglers will have paid for their right to fish and the canoeist will not have done. There is little doubt that this will cause grounds for dispute and friction between the parties. It is easy to foresee angler's lines being tangled with canoes. The potential for injury with either hook or weighted metal spoons or devons should not be ignored.

Canoeists frequently canoe in parties of more than one canoe. Consideration needs to be given to the issue of car parking and the access for the canoeists to the river. Almost all River Boards are now going to great lengths to protect their banks from erosion and degradation. Unrestricted access for canoeists and their vehicles is simply not compatible with these aims. Would canoeist organisations be prepared to restrict access to designated sites?

Salmon and Sea Trout frequently spawn in those areas of pools where the water goes from one pool to the next. Unfortunately these are the exact points at which canoeists would choose to get out of their canoe to carry their canoe into the next pool. Disturbance of these Redds, quite aside from being an offence under various Salmon Fishery Acts, is at complete variance with the objectives of creating a sustainable fishery. It is essential that these areas are protected.

Canoeists invariably do not restrict their activity to one river system. This raises profound concerns with respect to transfer of disease between river catchments. Indeed, many canoeists canoe abroad and therefore the potential for transfer of disease is exacerbated. Currently, anglers who have fished abroad and wish to use their tackle in a river system commonly disinfect their equipment against *Gyrodactylus salaris*, a pernicious ectoparasite. This is standard practice and backed up by an advertising campaign with Scottish Office brochures. As it is intended that canoeists have free access to the rivers how is transfer of disease to be controlled and who is to police it?

It must be recognised that in a small river such as the Deveron unrestricted access by canoeists will cause damage to fishing interests however well meaning and innocent the canoeists are. Whilst the Deveron Board have not consulted riparian owners, a compromise of interests might be reached at certain heights of river when the Deveron could be canoed without causing disturbance to either Redds or the fish.

Furthermore, it will be recognised that an influx of canoeists, where hitherto there had been none, represent a substantial increase on the burden of risk assessment for those that manage the riparian zone. There will certainly be an increase of liability. Who is to pay for this? In a world becoming increasingly litigious it is easy to foresee litigation being pursued between canoeist and a riparian owner who may innocently have an obstruction in the water which may have caused injury. An example of this might be barbed wire across a river brought down by a flood.

We do not believe that, were access to be agreed between parties, this should extend to commercial activity. It is completely unacceptable for a group of canoeists to pay another organising party, whilst making no contribution to the maintenance of the river system.

All rivers are different, holding different attractions to canoeists. A countrywide granting of access to canoeists is inappropriate for many rivers. It will give rise to considerable conflict.

We do not see these conflicts being resolved by land access forums as proposed unless they are done on a river by river basis with all other interests fully represented and in particular, Scottish Natural Heritage. Even within a single river system the nature of any river changes and whilst access for canoeists might be appropriate in a particular part, it may well be most inappropriate and damaging in other parts of the same river on grounds of natural heritage alone.

Allowance must be made within the Act to close off areas for conservation measurers.

c) Night time access

The current proposal within the Bill is for unrestricted night time access. We urge the Executive to consider this matter again. The Deveron Board employs two Bailiffs whose time, for the most part, during the summer and autumn months are engaged in ensuring that poaching does not take place. This is not poaching by an individual angler by a rod and line but the catching of large groups of fish on their way up to spawn. At certain times of the year, and at certain water heights, it is quite possible for poachers to lift substantial quantities of the fish that are returning to spawn within the river system. As the number of fish returning to the river system is recognised to be in decline, predominately for reasons in the marine environment, it is more essential than ever that greater numbers of fish are allowed to return to the headwaters to spawn. Substantial amounts of effort by the Board are directed towards this to ensure that the juvenile salmonids have the right environment in which to grow. Anglers have recognised this and are voluntarily catching and releasing substantial numbers of fish. In our own case, the Deveron came fourth in Scotland in the number of fish returned to the system.

Poaching for the most part is done at night time. The whole activity of the bailiffs and their efforts to stop poaching will be compromised by this current proposal.

Any legitimate riverbank walker at night time would surely use a torch. The River Deveron is primarily a Sea Trout river and the majority of Sea Trout fishing is done at night time. A member of the public using a torch can simply ruin the fishing in a particular pool for that entire night. Furthermore, those fishing for Sea Trout in the dark could easily unintentionally catch a member of the public on the back cast. The risk to eyesight should not be ignored.

We ask the Executive to consider restricted access along riverbanks to within the hours of dawn and dusk.

d) Commercial Access

The Deveron Board consider that any access granted by the proposed Bill should be for informal access only. It should not be for formal groups or commercial activities that do not contribute in any manner to the on-going welfare of the river system.

In sum, the Deveron Board feel that the implications of unrestricted access are extremely serious. For the Executive's proposals to work as regards the riparian zone, the Deveron Board believe that Access Impact Assessments need to be done on a catchment by catchment basis. These assessments will inform the local access forums. The Deveron Board note proposals exist for discussions with local authorities under Section 12 of the proposed Bill and in particular, under Section 20 and 24 local authorities are empowered to create paths. However, river catchment areas do not necessarily adhere to local government boundaries and such proposals need to be tailored to each river system.

We ask the Executive to consider doing Access Impact Assessments on a catchment by catchment basis involving SEPA, SNH and District Fishery Boards to better inform access forums.

We ask the Executive in any event, to consider restricting access along riverbanks to within the hours of dawn and dusk and away from sensitive angling areas.

We further ask the Executive to consider that access by the public should be at their own risk to ensure that increased costs do not result in reductions of on-going habitat works.

Section B – Community Crofting Right to Buy (CCRTB)

No part of the River Deveron catchment area is in a crofting county and the proposed legislation is thus not applicable to the River Deveron or its tributaries. However, the proposed legislation will affect fishings outwith the crofting counties and as such we have duty to comment.

The proposals within the Bill will stimulate the resurrection of dormant netting rights. It is internationally recognised that interceptory netting as might be practiced is highly damaging to fish stocks. Government at Westminster has recognised this and has contributed £750,000 towards the funding of the purchase of the drift nets off the north east of England. This will benefit the rivers in the south east of Scotland. The balance for the funding of their purchase will be made up by the North Atlantic Salmon Fund. The NASF have been instrumental in funding or assisting the purchase of netting rights elsewhere to the great benefit of Scotland. To put this funding at risk at a time of declining fish stocks runs contrary to all accepted best practice and must not be allowed to happen.