

## **Supplementary information from SNH**

Mr Rob Gibson MSP

Convener

Rural Affairs, Climate Change and Environment Committee

M4.06

The Scottish Parliament

Edinburgh

EH99 1SP

18 May 2015

Dear Rob,

### **Deer management and carbon savings**

When I met with RACCE Committee on the 22<sup>nd</sup> April I agreed to send forward some further information on progress with deer management at Ardvar and information on the general evidence base that SNH relies on to progress deer management. Briefing notes on both of these are attached to this letter.

I also said that I would provide a link to our 2013-14 Annual Climate Change Duties so that the Committee has more information on our overall approach and progress. This can be accessed at <http://www.snh.gov.uk/docs/A1433030.pdf>. Progress during 2014-15 has been good, with deeper carbon savings from energy use as new renewable energy systems come online and we share more properties with other bodies. We have had some challenges with ageing video-conferencing which has led to an increase in travel emissions but we are now investing in upgrading the video conferencing to address this issue.

I hope that this additional information is of value.

Yours sincerely,

SUSAN DAVIES

## **Ardvar Section 7: progress**

1. We have three main parties that we need to get signed up to an agreed management plan for Ardvar SAC - Ardvar Estate (Jim Payne); Assynt Crofters' Trust (ACT); John Muir Trust (JMT).
2. We received the final report from our contractor Victor Clements on 13 March 2015. This sets out a woodland management plan - the 'solution'. We agreed the proposed solution with FCS and sent the final report to the three main interested parties on 26 March 2015.
3. The Clements report proposes a number of woodland management measures to secure favourable condition. This has identified significant areas of established regeneration, largely at the west of the site around Loch Nedd, which will contribute to the area of woodland which can be considered 'recovering'. Options are proposed for enclosing other areas, in order to secure woodland regeneration and secure 'unfavourable recovering' condition across the whole site.
4. Ardvar Estate is amenable to the solution we have come up with and the owner is happy to proceed on this basis. Public funding will be made available for all work on Ardvar Estate, through SRDP or (where necessary) a Management Agreement with SNH.
5. The Assynt Crofters Trust (ACT) is also amenable to the proposed solution.
6. JMT remains opposed to fencing on a designated site in order to achieve favourable condition. FCS is meeting JMT on site on 17 June to discuss options on fencing/planting. If JMT retains its opposition to the woodland management plan, and we cannot reach agreement over method/timescales etc., we may need to take enforcement action via the Land Management Order (LMO) route. The LMO is the appropriate enforcement route as a S8 Order won't pay for fencing. Before we take any enforcement action SNH would need to have offered JMT a Management Agreement.
7. The JMT land within the SSSI forms part of the Unapool Common Grazings.
8. Wildlife Operations Unit is preparing a Deer Management Plan (DMP) for the whole of the Ardvar peninsula, which will be offered to all the relevant properties on the peninsula at the end of May. This will trigger a 6 month negotiation period with the key parties. If some of the properties refuse to sign up to it, then the SNH Board has indicated it will pursue the Section 8 route.

## **Evidence underpinning Section 7 and Section 8 Powers in the Deer (Scotland) Act 1996 (as amended)**

### **1. Background**

The Deer (Scotland) Act 1996 places upon Scottish Natural Heritage (SNH) a duty to take into account the impacts of deer on agriculture, woodland, the natural heritage and the threat to public safety.

SNH can take regulatory action on sites when we are satisfied that damage has occurred, is occurring, or is likely to occur.

### **2. Damage to Public Interest**

When considering the natural heritage, assessments of damage are generally made in the context of the legal protection offered to a site and the extent to which this allows private objectives to be overridden.

If objective information is unavailable, SNH will put in place baseline monitoring against which future change can be measured. This approach is evidence-based and transparent, enabling resources to focus on areas where deer can objectively be shown to be causing deterioration or where a site is not in favourable condition.

### **3. Use of Regulation**

The evidence based approach is beneficial as it ensures that any decision SNH takes about whether damage is occurring is robust and able to withstand challenge.

Measuring change from a baseline also ensures a reasonable approach in terms of engagement with land owners/managers in that damage is determined to be current and caused by deer (as opposed to historic and / or caused by other factors).

However, occasionally this approach can prevent SNH from taking early action or where it is impossible to clearly demonstrate deterioration from current condition because the current condition is so poor.

### **4. Interpretation of Impacts and Timescale**

Within the regulatory toolbox in the Deer Act, not all regulatory action involves compulsory action. Section 7 Agreements are voluntary and are often negotiated on the interpretation of one visit and an objective assessment of current impacts.

Where it is clear that deer are the main factor and as a consequence of ongoing impacts, changes are occurring or inevitable and we have failed to secure a voluntary solution, a one-off assessment could also be used as evidence of damage and lead to the use of Section 8. However, there are risks associated with this approach. If compulsory action is to be pursued, SNH need to be satisfied (and able to convince Ministers) that evidence is reasonable, proportionate and fit for purpose.

In the Deer (Scotland) Act, it also makes it clear that we cannot use Section 8 to enhance a site, only to remedy damage caused.

## **5. Risk Appetite**

This all relates to risk appetite. If we consider it important to maintain progress on delivering ecosystem health and our biodiversity aspirations for 2020, then we could seek to progress Section 7 Agreements and Section 8 Control Schemes on the basis of 'likely to' cause damage.

The question remains about whether a one-off assessment of current impacts will be sufficient evidence to underpin compulsory regulatory measures, due to lack of evidence that changes in habitat condition have occurred due to deer.

It will also be necessary to demonstrate that all practical alternatives have been considered (e.g. fencing, advice or incentives) in the stages preceding such compulsory action).