



NatureScot

SCIENTIFIC ADVISORY COMMITTEE

Scottish Fossil Code review – Information paper

Purpose

1. This paper briefs the Committee on our plan to undertake the second review of the Scottish Fossil Code.

Action

2. The committee is asked to note our undertaking this statutory requirement.

Preparation of paper

3. This paper was prepared by Dr Colin MacFadyen.

Introduction

4. The Scottish Fossil Code, published in 2008, was the Scottish Government response to perennial irresponsible fossil collecting activity. SNH was given the legislative duty to prepare and promote the Code and to review and revise it if required. The Code was reviewed in 2012 and was found to be fit for purpose requiring neither modification nor augmentation. However the review highlighted the need for a promotion plan which was pursued in part.

5. Instances of non-adherence to the Code have occurred since 2012 including further damaging fossil collecting activity, where the boundary between collecting for commercial and research interests has become blurred. In light of this and other issues, including the signing of the Skye Nature Conservation Order (NCO) to protect vertebrate fossils, it is timely to undertake the second review of the Code.

Legislative Background

6. Large-scale irresponsible fossil collecting was the impetus behind The Nature Conservation (Scotland) Act 2004 directing SNH to prepare the Scottish Fossil Code. This voluntary Code would set out “recommendations, advice and information relating to fossils” and “promote awareness and understanding of it. To determine a measure of success the 2004 Act also empowered SNH to “review the Code from time to time” and “following such a review, revise it”.

Preparation and ethos of the Code

7. Guided by the legislation in preparing the Code SNH constituted an external advisory team, known as the *Fossil Code Working Group*, which consisted of fossil specialists

(including researchers, museum curators and BGS staff), fossil collectors (including a commercial fossil collector and dealer) and a landowner. The Fossil Code Working Group, chaired by Professor Nigel Trewin and managed by Colin MacFadyen, was consulted on the content and structure of the draft Code and contributed text. An extended Fossil Code Working Group comprising around 30 individuals and organisations was convened to advise on an initial draft of the Code. Responses received from these 'key consultees' directed the Code's further development resulting in the preparation of a draft Code for public consultation.

8. Following public consultation in September 2007, the Scottish Fossil Code was completed and then launched on 11th April 2008 by the Scottish Government Environment Minister at Cromarty. Cromarty was chosen as the location to announce the publication of the Code being the birthplace of Hugh Miller.

9. The fundamental intention of the Code was to help bring about an end to 'reckless' collecting whilst fulfilling a 'can do' function promoting an awareness and interest in fossils and encouraging a responsible approach to collecting. The overall message of the Code is: "If collecting fossils in Scotland, please do so responsibly and follow the advice on best practice in the collection and storage of fossil specimens outlined in the Scottish Fossil Code. The Code may be viewed and downloaded from: www.nature.scot/scottish-fossil-code."

Promotion of the Code

10. The Code was promoted widely in the UK by means of various publications with stakeholder groups that have an interest in the Scottish palaeontological resource being targeted directly. Opportunities were taken to promote the Code to the general public at palaeontological themed events with the dissemination of postcards and posters. A major promotional success was ensuring that the main UK-based website that listed fossil locations, encouraging collecting, carried information on the Code and links to the Code on the SNH website. Efforts were also made to contact geological and palaeontological groups and societies in Germany and the Netherlands, with German, Dutch and Spanish language versions of key promotional material again being made available on the SNH website.

The first review of the Code in 2011/2012

11. A review of the Code was undertaken in 2011/2012 on limited resources. It was based on information derived from three sources was largely qualitative and unavoidably subjective:

- i) Owners of palaeontological SSSI were sent a questionnaire to establish the approach taken by collectors to the fossil resources to ascertain inter alia if permission was being sought to collect and if collecting was being undertaken responsibly. It followed an earlier questionnaire circulated prior to publication of the Code;
- ii) Museums were asked about enquiries concerning fossil finds made by the public and levels of specimen donation; and
- iii) Vulnerable fossil localities with histories of irresponsible collecting activity were visited to determine if large-scale collecting still represented a challenge to their conservation.

12. The review, restricted as it was, revealed that the Code was well regarded and was not deficient in the best practice guidance offered in the collection and care of fossil material. It indicated that fossil collecting was being undertaken more responsibly with fewer instances of large-scale and damaging activity taking place. Despite the encouraging findings it was

clear there is either unwillingness or inability by collectors to seek permission from landowners to access land for the purpose of collecting which is the first 'essential element' of the Code. Therefore it may be argued that, by definition, irresponsible collecting was, and probably is, still widespread. Understandably, however, as has always been the case, a family group or young person keen on collecting fossil material is not necessarily resourced to ascertain who has legal title to the geological resources on an area of land.

13. Crucially a key measure of success centred on the number of instances of large-scale damaging collecting that occurred following the publication of the Code. These were fewer in number and not as severe as those that gave rise to the legal duty to prepare the Code.

Action and output following the first review

14. The review resulted in a refreshed "Code Promotion Plan" with Code non-adherence to be addressed through renewed, better and more targeted promotion. The identified actions and resulting activity are as follows:

- i) Continued general promotion of the Code (**this was at best ad hoc and restricted to paper leafleting at events**);
- ii) Promotion of the Code to 'land managers' that have particularly vulnerable fossils and fossil-bearing sites, to help them distinguish between responsible collectors who cause minimal site impact, and collectors whose irresponsible and reckless activities cause serious damage. (**undertaken as and when the opportunity arose and involved producing additional guidance for owners of ORC 25 SSSIs**); and
- iii) A highly targeted promotion of the Code amongst those most likely to collect recklessly. Promotion of the Code to that collector grouping to emphasise the risk of prosecution for non-adherence to the Code. (**not undertaken – as reaching overseas audiences, where some of those that undertake irresponsible collecting in this country are based, was too problematical and potentially challenging politically**)

Key issues concerning fossil specimen collecting arising since 2012

15. The ongoing issues and key matters that have arisen since the first review in 2012, concerning Scotland's palaeontological resource, that have implications for conservation management, and hence the future content of the Code, are as follows:

- i) Occasional industrial-scale collecting has occurred which would appear to be commercial in aspect such as Yesnaby on Orkney, Achanarras in Caithness, Shiel Burn in south Lanarkshire and Berreraig Bay, Skye.
- ii) Remote sites continue to be the most vulnerable to damaging collecting.
- iii) Awareness and interest amongst owners of palaeontological SSSI about the fossil resource appears to remain low.
- iv) The main UK internet platform that promotes collecting at Scottish fossil localities (including SSSI) has been expanded to include a greater number of locations.
- v) Some visitors from overseas appear to be unaware of the Code and offences that may be committed if best practice guidance is not adhered to. This has resulted in significant damage to palaeontological resources in some SSSI (see i above).
- vi) SNH developed new guidance for some owners of sites where *Operation Requiring Consent* No. 25 applies that could be applied more generally to "ORC 25 sites".
- vii) The Skye Nature Conservation Order has come about to protect Jurassic vertebrate fossils. This is an approach not used before in Scotland to assist with managing fossil resources.

- viii) Instances have come to light where the boundary between collecting for research and for commercial interest has become blurred with the final destination of excavated material being obscure.

Proposal to undertake a second review of the Code in 2021

16. The effort to manage Scotland's palaeontological resources benefits from the existence of the Code in terms of perpetuating best practice guidance in the collecting and care of fossil material. There is evidence from the review undertaken in 2011/2012 that there is adherence to the Code. Given emerging and ongoing issues since the last review it is appropriate to undertake a second review, subject to resource capacity, in 2021.

Likely changes to the Code

17. Areas and issues that have been identified currently which are likely to result in additions to, or modifications of, the Code are as follows:

- i) Additional guidance for fossil locality owners – especially associated with ORC 25.
- ii) Better articulation of guidance to counter industrial collecting for commercial purposes.
- iii) Allied to point ii is to encourage greater use of existing collections rather than further exploitation of finite resources.
- iv) Guidance for proprietors of websites that promote fossil collecting.
- v) Issues surrounding the purchasing of fossil material via the internet.
- vi) Reference to the Skye NCO.
- vii) Additional guidance on the issue of establishing where to collect.
- viii) Removal of the simplified geological map and timescale.
- ix) Potential shortening of the Code document may be appropriate with certain information accessible instead through provided links.
- x) Rebranding the Code as a NatureScot production available for download.

Structure and methodology of the review

18. A re-run of the methodology of the first review is unlikely to be any more productive and helpful now as it was then. The following five stage framework for the review represents a return to the original largely consultative process that produced the Code in 2008:

- i) Reprise of the Fossil Code Working Group this time in a review capacity. The Fossil Code Review Working Group, Review Group being the abbreviated synonym, will work to TOR prepared in discussion with the Chair. In the first instance the group will identify and discuss views on the effectiveness of the Code and current issues associated with palaeontological specimen collecting and storage in Scotland. Areas of the Code that require adjustment, deletion and augmentation will be identified.
- ii) The output of the Review Group, including proposed changes to the Code, will be circulated to a wider group of stakeholders. Concurrently, news of the review and invitation to take part in the review process will be advertised more widely utilising NatureScot social media platforms, inviting feedback from the public.
- iii) Feedback, from what will in effect represent a stakeholder and wider public consultation, will be processed and distilled with the results being fed back to the Review Group. The group which will agree upon a draft revised Code to be presented to NatureScot.

- iv) SLT would approve the final draft Code with the Board being informed of the action taken.
- v) Completion, publication and promotion of the revised Code.

TOR for the Review Group:

19. TOR for the Review Group (to be confirmed)

- i) Identify and discuss views on the effectiveness of the Code and current issues associated with palaeontological specimen collecting and storage in Scotland.
- ii) Identify areas of the Code that require adjustment, deletion and augmentation.
- iii) Advise upon and approve the wider consultation process.
- iv) Comment on the feedback received through the consultation.
- v) Contribute, if required, to the revision of the Code document and agree the final draft.

Composition of the Review Group

20. Those comprising the Review Group would bring together wide and varied experience of palaeontological collecting, research, curation, education, resource ownership and the commercial aspect of fossil collecting in Scotland. Its composition will be decided by the Chair of the Review Group.

Timings

21. Note: Confirmation received from SG on 20th January 2021 that there is no impediment to NatureScot commencing the review.

22. The proposed indicative timescale of the key stages involved in undertaking the review:

Date	Key stages of the review
January – February 2021	Chair for the Review Group sought and Review Group constituted.
March - May 2021	Review Group considers the issues affecting palaeontological collecting in Scotland today, and consequently, identifies areas of the Code that require attention/revision.
June - August 2021	Output of the Review Group collated and circulated to a wider group of stakeholders with public comment and opinion sought.
September – October 2021	Analysis of feedback with revision, if required, of the Code.
November 2021	Final draft Code prepared and approved internally by SLT with Board advised of progress.
January 2022	Promotion of revised Code.

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