



Policy on Biodiversity Data Access

Scope of This Policy

SWT holds a wealth of data on species and habitats, typically restricted to its reserves and Wildlife Sites. This policy sets out Scottish Wildlife Trust's views on the availability of its biodiversity data to other environmental bodies and the public. This policy will help inform specific access decisions and the preparation of access position statements for individual datasets held and managed by SWT¹.

Policy Headline

SWT will provide open access to its biodiversity data holdings. However, it will place necessary constraints on access to data which could result in damage to wildlife or are affected by issues relating to data ownership. Data will be disseminated to Local Record Centres (LRC's), the statutory countryside agencies, and made available to the public via the National Biodiversity Network (NBN) Gateway, an internet database.

Policy Statement

1 Data covered by this policy

- 1.1 SWT has gathered, and will continue to gather, a vast amount of habitats and species records. The majority of this data is confined to specific sites: SWT reserves or surveyed Wildlife Sites. A large proportion of these records are historical and have been collected since 1966, when the first reserve was acquired. Many of these have been donated to the Trust by volunteers.
- 1.2 SWT also acts as the custodian for collated datasets for wider-countryside work on particular species where we lead the LBAP partnership, such as the narrow-headed ant and small cow-wheat.

2 Summary of Principles

SWT applies the following main principles when providing access to its data:

- 2.1 SWT will provide open access to data it holds, wherever possible.
- 2.2 SWT will take necessary precautions to limit access to data on sensitive wildlife, wherever appropriate.
- 2.3 SWT is registered under the Data Protection Act 1998 and will comply with the provisions of the Act when supplying data.
- 2.4 SWT will comply with Copyright Law where this applies to others' data it holds.

¹ This policy is based on the NBN Data Exchange Principles⁽³⁾ and Lothian Wildlife Information Centre's Policy & procedures for controlling access to data. Version 1.0.6 August 2005. Sara Hawkswell & Bob Saville.

- 2.5 SWT will comply with the Environmental Information Regulations where these apply to data it holds. The guidance is currently incomplete as to whether EIR apply to SWT, but SWT will follow the principles behind the Regulations².
- 2.6 SWT will supply data within the terms of the agreements it has with owners of data to hold & supply their data.
- 2.7 SWT will use licences and written agreements to control access to data where appropriate.
- 2.8 SWT will not charge for access to data wherever possible, but reserves the right to charge a handling fee for the supply of data and information³.
- 2.9 SWT will safeguard the data it holds on computer systems by regularly backing up data. SWT will also reduce the risk of accidentally passing on data by destroying the hard disks of PC's/servers before disposing of them.

3 Use of biodiversity data

- 3.1 SWT's fundamental principle is to supply open access to wildlife information to all. This is based on the belief that access to good, comprehensive information will improve the quality of decisions taken by individuals and organisations. One threat to wildlife today is a lack of information and SWT believes that the benefits of making information widely available outweigh any risks of misuse of these data.
- 3.2 SWT recognise that some biodiversity data, if released into the wrong hands, could lead to damage to the natural environment. Understanding the probability and impact of risks allows us to manage this responsibly. We adopt a presumption in favour of allowing access to data and ensure that availability is restricted only when it is truly necessary.
- 3.3 The National Biodiversity Network Trust has produced a draft framework of principles for the exchange of wildlife information within the National Biodiversity Network⁴. This policy and all SWT's practices are within this framework.
- 3.4 Metadata (source information) provides valuable context to data, allowing users to build a greater understanding of the limits within which a dataset can be used appropriately. SWT will, wherever possible, ensure adequate levels of metadata are collated with the data. This information will be provided alongside data whenever they are made available to users.
- 3.5 SWT will pass on collated datasets to LRC's, the statutory countryside agencies, and the NBN Gateway (a web database with mapping capability for wildlife data, found at www.searchnbn.net). This wildlife data will be subject to controls as set out in this document.
- 3.6 All wildlife data enquiries made direct to SWT will be passed on to LRC's where they exist.
- 3.7 SWT will attempt to respond to specific requests for biodiversity data, but cannot guarantee to supply data within certain timescales or in specific formats.
- 3.8 SWT will aim to lodge its Wildlife Sites data with Local Record Centres under custodian agreements. These agreements will allow the LRC to use the data fully, and require the LRC to post and administer the data on the NBN gateway, where this is in line with the remainder of this policy.

4 Limiting access to sensitive data

- 4.1 Some wildlife data can be considered sensitive if, in the wrong hands, they may result in damage to wildlife. Often data that may be considered sensitive can also be critical in decision making. It is essential that SWT has proper controls to ensure that access to data relating to sensitive wildlife is controlled appropriately.

² The Environmental Information (Scotland) Regulations 2004 (SSI no. 520).

³ Refer to Scottish Wildlife Trust's *Charging Policy* for more information about our data handling charges.

⁴ Data Exchange Principles – A framework of principles for the exchange of wildlife information within the National Biodiversity Network
Version 3.1 October 2001 NBN Trust.

- 4.2 To ensure that the right balance is found SWT will evaluate all data for sensitive records (i.e. that where release of information poses a real risk that damage to the wildlife may occur) against defined criteria⁵.
- 4.3 SWT will maintain a list of habitat and species considered sensitive in Scotland⁶. This list will be reviewed by SWT with advice from its partners from time to time, when the status of species and habitats within Scotland and the UK is changed or when current legislation is reviewed or new legislation is brought in.
- 4.4 Sensitive records will be released separately under increased controls. Where these records are placed on the NBN Gateway, they will only be available to the public at low resolution (i.e. as 10km square references). If greater access to sensitive data is requested, SWT will evaluate whether these data can be supplied at a low resolution that will protect the wildlife but not constrain the user. If this is not the case then SWT will assess whether the user is an "approved person" to be allowed access to sensitive data.
- 4.5 If increased access is approved, this will be subject to agreements with SWT over the use of the data. These agreements may be time or use limited and will constrain the user from passing the data on to a third party.
- 4.6 "Approved persons" are individuals who will treat the data with the appropriate level of constraint. Identifying these people is a combination of who the individual is and why they want the data. In some instances the release of sensitive data to some individuals can enable the protection of, or prevention of damage to, habitat and species.
- 4.7 SWT will retain a list of people who are "approved" for access to detailed information on each species (or group of species) or habitat on its list of sensitive wildlife. Applications to become "approved" will be assessed on a case-by-case basis⁷. Automatically "approved" persons will include SNH area officers, local authority ecologists, police wildlife liaison officers, officers of relevant recording groups, and named consultants.

5 Constraints placed by data owners

- 5.1 Where the owner of a dataset has placed additional constraints on access to data these will be applied by SWT to all use of these data.
- 5.2 SWT will discourage data owners from placing unnecessary constraints on data they pass to SWT. If such constraints are seen by SWT to be unduly complex or restrictive then SWT may decide not to hold these data.
- 5.3 SWT holds a vast amount of biodiversity data, much of it historical. Historical submission of wildlife records has been based upon the presumption that the data would be made available to others. SWT feel that, as such, we have sufficient authority to use and disseminate this data. However, SWT will take reasonable and proportionate steps to gain permission from the original authors of these wildlife records.
- 5.4 All individuals submitting new data to SWT (i.e. volunteer recorders) will be referred to this data access policy. Our recording forms will contain an agreement to ensure that clear authority to make use of wildlife records is handed down with those records⁸.

Policy drafted by Gill Calder, SWT Survey & Monitoring Data Manager

References

For context and background notes to this Policy Statement, please see Appendix 1.

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⁵ Appendix 2: Criteria for assessing sensitive data.

⁶ The current list of sensitive data held by SWT is available on our website www.swt.org.uk

⁷ Appendix 3: Assessing approved persons.

⁸ Appendix 4: Standard Recording Form agreement.

APPENDIX 1

Background notes to SWT's Biodiversity Data Access Policy

1 Data covered by this policy

- 1.1 SWT holds a wealth of data on species, habitats and sites. The majority of species and habitats data is confined to specific sites: SWT reserves or surveyed Wildlife Sites. Other datasets include wider-countryside work on particular species where we lead the LBAP partnership, such as the narrow-headed ant and small cow-wheat.
- 1.2 The data is of 3 main types: incidental records of individual sightings; seasonal collations of records (warden or volunteer reports) and professional survey datasets, usually of specific taxonomic groups. An inventory of SWT biodiversity data is currently being collated.
- 1.3 It should be recognised that, at the present time, many datasets held by SWT have limited metadata. Creating metadata for all our existing data holdings will take time. Metadata for newly generated data is being documented as part of the data collation process.

2 Legislation covering biodiversity data

The guidance given by the NBN³ outlines those parts of legislation which cover biodiversity data & how they apply. These come under two main areas: Copyright Law and the Data Protection Act. There is also the possibility that SWT could be covered by Environmental Information Regulations.

2.1 Copyright Law

Copyright is a legal mechanism that exists to safeguard the intellectual property rights of individuals and organisations. The law is set out in the Copyright, Designs and Patents Act 1988, the Copyright (Computer Programs) Regulations 1992, the EC Directive on European harmonisation of copyright protection (93/C 27/09), and the Copyright and Rights in Databases Regulations 1997.

Copyright is one of a number of intellectual property rights (others include moral rights, patent rights, database right, and plant breeders' rights).

Copyright applies once information has been written down; the material does not have to be published, and does not have to have a copyright statement attached to it.

How this affects data can be summarised within the following framework:

- Biological records are covered by copyright as literary works (there is no requirement for 'literary merit').
- A person making an observation for their own purposes has the copyright to the observation (provided they write it down).
- If a person is paid (through employment or a specific contract) to make an observation, the copyright will belong to their employing organisation or client - unless there is a written agreement to the contrary.
- A person or body collating observations from many sources owns the copyright to the collation. They need to document their agreements with their sources over the purposes of the collation, the right to use the observations, and the way in which use of the information will be managed.
- Interpretations, summaries or recommendations are the copyright of the people or organisations making them.

In order to comply with copyright, volunteer recorders must give formal authority to SWT to use their records. The statement on recording forms (Appendix 4) covers this.

2.2 Data Protection Act

Data protection is a mechanism to regulate the use of personal data about individuals. It has a legal basis in the Data Protection Act 1998, which updates the Data Protection Act 1984 as a result of the EC Directive on Data Protection (95/46/EC).

- Data protection provides a legislative framework for the collection, storage and use of personal information held on manual and computer files.
- Data protection applies to living people, and therefore does not apply to corporate bodies.

2.2.1 The eight principles of good practice.⁹

Anyone processing personal information must comply with eight enforceable principles of good information handling practice. These say that data must be:

1. Fairly and lawfully processed
2. Processed for limited purposes
3. Adequate, relevant and not excessive
4. Accurate and up to date
5. Not kept longer than necessary
6. Processed in accordance with the individual's rights
7. Secure
8. Not transferred to countries outside European Economic area unless country has adequate protection for the individual.

2.2.2 The six conditions.

At least one of the following conditions must be met for personal information to be considered fairly processed:

1. The individual has consented to the processing
2. Processing is necessary for the performance of a contract with the individual
3. Processing is required under a legal obligation (other than one imposed by the contract)
4. Processing is necessary to protect the vital interests of the individual
5. Processing is necessary to carry out public functions, e.g. administration of justice
6. Processing is necessary in order to pursue the legitimate interests of the data controller or third parties (unless it could unjustifiably prejudice the interests of the individual)

2.3 Environmental Information Regulations

The Environmental Information Regulations 1992, which were amended in 1998, gave the public the right to ask for information which 'relates to the environment' and which was held by a 'relevant person'.

In 1998, the UK signed the Aarhus Convention from which an EU Directive was derived. The new Environmental Information (Scotland) Regulations 2004 ('the EIRs') ensure that Scotland complies with the Convention and the Directive. There are separate regulations for the rest of the UK.

2.3.1 The EIR's provide a right to environmental information held by Scottish public authorities. They are heavily related to the Freedom of Information (Scotland) Act 2002 (the Act).

A Scottish public authority is defined as:

- 1) body listed in Schedule 1 to the Act
- 2) publicly-owned company as defined by section 6 of the Act
- 3) body designated under section 5 of the Act

but also includes a non-public body "under the control" of one of the above bodies that is exercising functions of a public nature relating to the environment¹⁰. It is as yet unclear whether publicly funded charities, such as SWT are bound by the Act, but a review of the applications of the Act is currently underway by the Scottish Executive.

2.3.2 The EIR's state that public authorities have a duty to make environmental information available on request. The information should be in the format requested & be produced within 20 working days from the receipt of request. There are exceptions to these regulations and it is permissible to charge for the collation of this data.

APPENDIX 2

Criteria for assessing sensitive data

SWT will identify those species/habitats where one or more of the following statements apply and are therefore considered sensitive:

- The habitat/species is particularly sensitive to human disturbance (i.e. may be damaged by those simply visiting the location) and disclosing the location of the species or habitat is likely to result in increased disturbance.

⁹ Data Protection Act Factsheet, Information Commissioner's Office, www.informationcommissioner.gov.uk 2005.

¹⁰ Environmental Information Regulations web pages, Scottish Information Commissioner, <http://www.itspublicknowledge.info> 2005.

- Disclosing detailed information on the location of the species would make collecting of, or damage to, the species or its habitats more likely. This will normally apply to protected species, or those species which are identified as being severely threatened by such activities.
- Disclosing detailed information would substantially damage the ability of SWT to achieve a conservation objective. This includes compromising a scientific study, or damaging relationships with landowners etc.

A list of sensitive data will be posted on the SWT website (www.swt.org.uk) and reviewed regularly.

APPENDIX 3

Assessing approved persons

All those requiring greater access to sensitive data will be asked to provide:

- Details of the user's requirements for the data and how they will be used
- Internal records of the user's adherence to SWT's term and conditions in the past.
- References from SWT's contacts relevant to the data requested. This will include: SWT conservation staff; Scottish Natural Heritage; Local Authority staff; SWT Members Centres and other relevant organisations.

Each case will be reviewed on a case-by-case basis.

APPENDIX 4

Standard Recording Form agreement

The below text is to be included on all hard copy and electronic templates for the collation of wildlife records. This is to be disseminated to all volunteer recorders for SWT.

The statement has been developed by the NBN Trust to provide an alternative to the NBN model data collation licence as early experience suggests that the legally approved licence can be off putting to recorders.

IMPORTANT: By submitting information on this form I agree that it may be collated and disseminated manually or electronically, including the Internet, for environmental decision-making, education, research and other public benefit uses in accordance with Scottish Wildlife Trust's data access policy.