

# Final Business and Regulatory Impact Assessment

## **Title of Proposal**

The Conservation of Salmon (Scotland) Regulations 2016 & The Tweed Regulation (Salmon Conservation) Order 2016

## **Purpose and intended effect**

### Background

The Conservation of Salmon (Scotland) Regulations 2016 ('the 2016 Regulations') and The Tweed Regulation (Salmon Conservation) Order 2016 ('the 2016 Order') make provision for the management of exploitation and the conservation of salmon in Scotland . This package of regulatory measures introduces a mandatory catch and release scheme in coastal waters and in specified areas of inland waters by prohibiting the retention of Atlantic salmon. Areas of inland waters are assessed for their conservation status and categorised according to stock levels. The intention is that this assessment will be carried out on an annual basis.

### Objective

The package of regulatory measures places a statutory duty on the Scottish Ministers to carry out an assessment of the conservation status of salmon in specified inland waters . Where areas include a Special Area of Conservation (SAC) Ministers must have regard to the conservation objectives for that SAC. The purpose of the assessment is to determine whether fishing is sustainable in the area in question.

As required by the Conservation (Natural Habitats, & c.) Regulation 1994 a Habitats Regulation Appraisal ("HRA") has been undertaken as part of the assessment of the conservation status of all the 109 areas and all SACs.

### Rationale for Government intervention

The report of the independent Wild Fisheries Review (WFR), [published](#) in October 2014, recommended that, in advance of consideration of the broader reform agenda for wild fisheries, Ministers take immediate action to conserve wild Atlantic Salmon by introducing as soon as practicable a ban on killing except under licence.

Salmon is a species native to protected habitats under the [Habitats Directive](#) . There is a need to ensure that any killing is sustainable. In addition, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them. Salmon continue to face many pressures in the marine and freshwater environment and the latest Marine Scotland Science stock status [report](#) for 2014 shows a decline in stocks over the last few years.

## **Consultation**

### Within Government

Discussions have taken place with Scottish Natural Heritage (SNH), Scottish Environmental Protection Agency (SEPA) and the Crown Office and Procurator Fiscal Service (COPFS) around the development of these Regulations, the Habitats Directive and the enforcement challenges presented by the Fishery Districts.

### Public Consultation

Significant public [consultation](#) has taken place since February 2015 around the developing Regulations. These have included an on-line dialogue with stakeholders and attendance at a number of drop in events. The package of regulatory measures reflects feedback and concerns expressed by stakeholders throughout this period. While we did not consult on a partial BRIA much of the earlier feedback was centred around concerns about the financial implication for proprietors and anglers in particular.

### Business

Throughout the consultation periods we have engaged with those sectors directly impacted by the measures, most particularly coastal netmen who are members of the Salmon Net Fishing Association of Scotland and who would be subject to the prohibition on the killing on Salmon outwith estuary waters, and in river commercial netmen.

Significant engagement has also been undertaken with angling clubs who might be impacted by a category 3 designation, about how they mitigate concerns around a potential reduction in membership.

The vast majority of discussion have taken place with individuals/businesses and MSPs. Details of the engagement undertaken to date is available of the [webpage](#)

## **Options**

### **Option 1: Do nothing**

Under this option Ministers would not be looking to respond to growing concern about Scotland's salmon stocks and would not be addressing concerns expressed by the European Commission about how it is applying the requirements under the Habitats Directive in relation to wild salmon.

### **Option 2: Place a greater emphasis on local voluntary conservation measures**

While local voluntary conservation measures have proved successful - the practice of catch and release is already widely observed in Scotland - 82% of the annual rod

catch was released in 2014 –they are by their very nature not consistent across Scotland and do not incorporate any evidence that they relate and/or meet the requirements of the Habitats Directive. In addition, the high nature of catch and release Scotland needs to be seen in the context of continuing concerns around our Salmon stocks and the need to take more proactive action to protect them for now and for future generations.

Article 6(1) of the Habitats Directive requires a Member State to establish necessary conservation measures which correspond to the ecological requirements of the natural habitat types and species which are protected. Such measures must be designed to maintain, or restore, at a favourable conservation status the natural habitats or species protected under the Directive.

### **Option 3: Introduction of statutory measures to manage the killing of wild salmon in Scotland.**

Salmon is a species native to protected sites which are adopted as special areas of conservation under the Habitats Directive, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them. Salmon continue to face many pressures in the marine and freshwater environment and the latest Marine Scotland Science stock status [report](#) for 2014 shows a decline in stocks over the last few years

#### **Sectors and groups affected**

**Prohibition on the retention of salmon outside of estuary limits** – this will impact on all the coastal netmen. There are currently around 30 active netting stations across Scotland. Four of those businesses account for 80%+ of the fish killed. The gross value of the net fisheries is around £1m per annum. We currently estimate that around 100 people (mostly on a temporary basis) will be employed either part or full time over a netting season.

Others involved more directly with commercial salmon protects have also expressed concern at the impact on their businesses as a consequence of the prohibition.

#### **Grade 3 categorisation – mandatory catch and release**

83 fishery districts and 3 SACS have been designated as category 3 status (mandatory catch and release). They account for less than 20% of the total reported rod

While we do not hold a record of the number of angling clubs (and there membership) in Scotland, some of these clubs have reported a decline in renewal of memberships because of the inability to kill a salmon (but still the ability to fish) and in spite of the current high levels of catch and release across Scotland.

We are also aware that some businesses have reported concerns about the potential impact on the local economy in some anglers chose to stay aware

## **Benefits**

### **Option 1: Do nothing**

While the voluntary conservation measures would continue to be in place, the current concerns around existing salmon stocks and the impacts of mixed stock fisheries would continue and would afford no protection to our special areas of conservation. There would continue to be greater scrutiny from the European Commission about our ability to demonstrate that we are meeting our responsibilities under the Habitats Directive and the extent to which we are applying the principles of NASCO which recommended 'that conservation limits and management targets be set for each river and combined as appropriate for the management of different stock groupings defined by managers' and 'that stocks be maintained above conservation limits by means of management targets'.

### **Option 2: Place a greater emphasis on local voluntary conservation measures.**

In common with option 2 while this may see an increase in the practice of catch and release, the impacts of mixed stock fisheries would continue unregulated and we would have no direct means to protect our special areas of conservation.

### **Option 3: Introduction of statutory measures to manage the killing of wild salmon in Scotland.**

The package of regulatory measures place a statutory duty on the Scottish Ministers to carry out an assessment on the conservation status of salmon in inland waters in defined areas. Where an area of inland waters includes a special area of conservation (a "SAC"), being an area where Atlantic salmon is identified as a species native to a protected habitat under the Habitats Directive, the Scottish Ministers must have regard to the conservation objectives of the SAC when carrying out their assessment. The purpose of the assessment is to determine whether fishing is sustainable in the area in question. The assessment process will entail the collation of information on population levels of salmon in each area based on catch statistics. It is intended that the assessment will be carried out on an annual basis.

The assessment will determine the conservation status for each area and SAC. The impact of fishing on the conservation objectives of each SAC and the ecological requirements of Atlantic salmon form part of the wider consideration of the likely significance of the effect netting/angling may have on our designated sites. Where there is a favourable conservation status for an area or SAC it will be accorded a grade 1 or 2 status. For those areas where there is no favourable conservation status for Atlantic salmon, a grade 3 status will be applied. Those areas listed in Schedule 2 to the 2016 Regulations, where retaining salmon is prohibited, are those areas which have been accorded category 3 status. The inland waters described in the 2016 Order for the Tweed district have been assessed as categories 1 & 2.

The package of regulatory measures are being progressed in response to growing concerns about Scotland's salmon stocks, the need to more ably demonstrate compliance with EU and international obligations; and the need to take action to ensure that they are protected for the future.

## **Costs**

### **Option 1: Do nothing**

There are no direct financial costs with regard to option 1 albeit the failure to tackle the concerns around salmon stocks could have a significant impact on the wider economy,

### **Option 2: Place a greater emphasis on local voluntary conservation measures.**

There are no direct financial costs associated with option 2.

### **Option 3: Introduction of statutory measures to manage the killing of wild salmon in Scotland**

The measures and most particularly the prohibition on the retention of salmon outwith estuary limits will have significant impact on coastal netting (see sectors and groups affected). Discussions have already begun with these individuals/businesses about potential mitigation./diversification, including their willingness to participate in a number of science projects directly and indirectly related to the conservation measures.

We are also aware of concerns expressed by a number of angling clubs within fishery areas classified as category 3 and who have suggested (and in some cases evidenced) a decline in their membership which they have directly associated with the inability to kill a salmon (even with the high evidence of voluntary catch and release already evidenced in Scotland). While it is not clear whether this decline is part of a wider concern for angling as a sport, Ministers have committed to work with angling clubs to better promote their fisheries going forward.

### **Scottish Firms Impact Test**

We have engaged with representative bodies and individual businesses during the consultation period and specifically sought information on the potential financial impact of the proposed conservation measures. Those affected by the proposal range from small individual netting companies to larger sporting estates. Whilst many respondents highlighted that there would potentially be a financial loss to their business they were unable to quantify the extent or provide any financial information.

From our catch statistics we know that there are currently around 30 active netting stations across Scotland. Four of those businesses account for 80%+ of the fish killed. The gross value of the net fisheries is around £1m per annum. We currently estimate that around 100 people (mostly on a temporary basis) will be employed either part or full time over a netting season.

### **Competition Assessment**

The measures will restrict fishing to a catch and release in many areas of Scotland.

### **Test run of business forms**

No new forms will be introduced

### **Legal Aid Impact Test**

There are no legal aid implications associated with this legislation.

### **Enforcement, sanctions and monitoring**

Enforcement will be through the powers within the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 and The Scotland Act 1998 (River Tweed) Order 2006. Failure to comply with the 2016 Regulations is an offence under section 38(7) of the 2003 Act. Failure to comply with the 2016 Order is an offence under article 54(7) of the 1998 Order. A person who is found guilty of an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

### **Implementation and delivery plan**

The new measures will come into force on 31st March 2016.

- **Post-implementation review**

The impact of the package of regulatory measures and the methodology supporting the categorisation will be reviewed on an annual basis.

### **Summary and recommendation**

In recognition of increasing concerns about salmon stocks and the many pressures that they face there is a need to ensure and be seen to be demonstrating that any killing is sustainable. The package of regulatory measures seek to protect the weakest stocks and introduce catch and release in a number of areas to allow stocks to recover or at the very least maintain them at current levels.

Scottish Ministers may agree a Conservation Plan irrespective of the conservation status with District Salmon Fishery Boards or proprietors under the 2016 Regulations and the River Tweed Commission under the 2016 Order. The purpose of the plan is to complement the application of a conservation status and to inform further management measures and actions that might be considered at a local and national level. It will summarise the options for the conservation, restoration, enhancement and management of wild Atlantic salmon stocks taking into account the best scientific evidence available. The conservation plan will include detail of existing and future local initiatives to address the current assessment of the fishery district; and identify (and where possible quantify) other factors that might have a material impact, such as marine renewable energy, predation, aquaculture and barriers.

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:****Date:**

**Dr Aileen McLeod**  
**Minister for Environment, Climate Change and Land Reform**

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