

# Final Business and Regulatory Impact Assessment

## **Title of Proposal**

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

## **Purpose and intended effect**

### Background

The Conservation of Salmon (Scotland) Amendment Regulations 2016 amend the Conservation of Salmon (Scotland) Regulations ('the 2016 Regulations') which make provision for the conservation of salmon in Scotland. A separate instrument, the Tweed Regulation (Salmon Conservation) (No.2) Order 2016, makes parallel provision for the Tweed district. 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. Whilst not a statutory requirement, it is intended that an assessment is carried out on an annual basis until such that it might be conceivable to undertake assessment for a longer period.

This is the second time that an assessment of conservation status has been undertaken. The assessment model for the 2016 fishing season categorised 109 fishery districts (including the Tweed District) and the 17 Special Areas of Conservation for Atlantic salmon according to their conservation status. This resulted in the introduction of mandatory catch and release in where stocks were below their conservation limit. For the 2017 fishing season this assessment has been further refined to separately assess, individual rivers or groups of rivers within the fishery district areas, where rod catch and counter data has allowed.

### 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](#). The North Atlantic Salmon Conservation Organisation Fishery (NASCO), to which the European Union is a party, provides guidance that makes it clear that fisheries are best managed on a single river stock basis and that action should be taken to reduce the risks posed by any Mixed Stock Fisheries (those fisheries exploiting salmon from more than one river). NASCO has 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'.

## **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. We set up the Marine Scotland and Local Biologist Liaison Group to coordinate the involvement of local biologists throughout Scotland in refining the data and methods used to determine conservation status and develop an agreed template for salmon conservation plans.

### Public Consultation

There has been significant consultation on the package of conservation measures to regulate the killing of wild salmon. The key concerns that have emerged about the assessment for the 2017 fish season centre around: 1) rivers which contain Special Areas of Conservation (SACs) where the main river has been categorised with a higher conservation status than the SAC; 2) the perceived overestimation of stock abundance for west coast rivers; 3) requests to downgrade/upgrade categorisations; 4) other pressures on stocks; 5) the limitations of the data used in the assessment; and 6) potential financial impacts.

To address the concerns over SACs Marine Scotland met with representatives from the Boards and Trusts to discuss the assessment and management options for rivers impacted by SACs. These constructive discussions have led to changes in categorisation for the River Ness, Forth District and Loch Lomond.

Marine Scotland received representation from boards and trusts and associations throughout area from West Sutherland to Argyll registering concern over the stock abundances estimated for these areas as part of the 2017. Further analysis of data from the Morar (which was not available to be included in the original assessment) and Awe counters both indicate that using data from all available counters in

Scotland may generally overestimate the number of salmon at these counter sites. While it is difficult to analyse data from these counters to inform a whole of the West Coast area perspective, and it is certainly more credible than applying data from an all-Scotland perspective, it may be more realistic than generalising from the all-Scotland information to this region. Consequently, that process has informed and evidenced a determination that 11 rivers should be recategorised.

### Business

Throughout the consultation period we have engaged with those sectors directly impacted by the measures.

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. As a consequence the Scottish Government has funded a two year programme of support for Angling clubs to promote catch and release.

The vast majority of discussion have taken place with individuals/businesses and MSPs.

### **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 - 84% of the annual rod catch was released in 2015 –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: Statutory measures to manage the killing of wild salmon in Scotland.**

There is an on-going need to ensure and be seen to be demonstrating 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 2015 continues to show a decline in stocks.

## **Sectors and groups affected**

### **Prohibition on the retention of salmon outside of estuary limits**

A prohibition on coastal netting was brought in through the Conservation of Salmon (Scotland) Regulations 2016 and it will be reviewed within 3 years. In this timeframe it is anticipated that meaningful data will be collected which will allow us to better understand the nature and potential impact our mixed stock fisheries have on SACs and other in-river fisheries and allow coastal netting to resume where the science can support it. In the meantime, it is appropriate for government to compensate those who, according to our records, are affected. Marine Scotland identified active netmen from the annual catch returns and this has been the basis for the compensation offers and award.

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

Many angling 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. To help mitigate this potential impact, up to £100,000 of support for angling clubs has been made available to promote catch and release as sustainable and responsible practice through our partner organisation FishPal. This practical support to ensure continued participation was considered to be a more productive way forward than direct aid to clubs, which would have been extremely difficult to assess on a club-by-club basis. Since the programme was launched there has been significant interest from angling clubs and around 30 have signed up to date.

We are also aware that some businesses have anecdotally reported concerns about the potential impact on the local economy of anglers choosing to stay away due to their inability to kill fish. This is being kept under review.

## **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: 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 determines 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 is accorded a grade 1 or 2 status. For those areas where there is no favourable conservation status for Atlantic salmon, a grade 3 status is 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 Tweed special area of conservation status has been accorded a grade 1 status. All remaining inland waters within the Tweed district have been accorded a grade 3 status.

**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 remain 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.

### **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 1 April 2017.

- **Post-implementation review**

The impact of the package of regulatory measures and the use of data in the assessment process will continue to 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. Work on the conservation plan template has been continuing through a joint Marine Scotland and Local fishery Biologist working group. It is intended that the template will be introduced to coincide with the enhanced river by river categorisations for the 2017 season.

### **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:**

**Roseanna Cunningham**  
**Cabinet Secretary for Environment, Climate Change and Land Reform**

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