



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 2

SALMON FISHERIES, ETC.

Management

26 Carcass tagging

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) After section 21 insert—

“21A Salmon carcass tagging

- (1) The Scottish Ministers may by regulations make provision for or in connection with tagging the carcasses of salmon.
- (2) Regulations under subsection (1) above may, in particular, make provision—
 - (a) about—
 - (i) the nature and form of tags,
 - (ii) the information which tags are to contain and the nature and form of that information,
 - (iii) applications for, and the supply, issue and storage of, tags,
 - (iv) the persons or descriptions of persons who may supply and issue tags, including provision about registration of such persons,
 - (v) the method of affixing tags to carcasses and the circumstances in which, and the time at or by which, they are to be affixed,
 - (vi) the circumstances in which, and the time at or by which, tags may be removed,

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- (vii) the steps to be taken in the event of loss of, or damage to, tags,
 - (b) for or about the keeping of records in connection with fishing for, taking, and tagging of salmon to which the regulations apply (including the form and content of such records),
 - (c) for or about the inspection or examination of those records, or the information contained in them, by persons or descriptions of persons mentioned in paragraph (e) below, by such methods as the regulations may specify, and the steps to be taken in the event of loss of, or damage to, the records,
 - (d) for or about the inspection or examination of tags by persons or descriptions of persons mentioned in paragraph (e) below, including provision about the retention of tags after their removal,
 - (e) for or about persons, or descriptions of persons, responsible for enforcing and ensuring compliance with the regulations (including the appointment and functions of such persons),
 - (f) for or about the seizure, detention and destruction by persons, or descriptions of persons, mentioned in paragraph (e) above of salmon
 - (i) that have not been tagged, or
 - (ii) from which a tag has been removed otherwise than, in accordance with the provisions of the regulations,
 - (g) for or about the imposition by the Scottish Ministers of charges for the recovery of any reasonable costs they incur in connection with the supply or issue of tags (including charges in relation to the administration costs associated with the imposition of such charges),
 - (h) for exemptions and exceptions to the regulations and for matters in respect of which the regulations do not apply.
- (3) Regulations under subsection (1) above may make—
- (a) different provision for different purposes and areas,
 - (b) incidental, supplemental, consequential, transitional, transitory or saving provision,
 - (c) such modifications of Part 5 of this Act as the Scottish Ministers think fit.
- (4) A person commits an offence if the person—
- (a) sells, offers or exposes for sale, or has in the person's possession, any salmon—
 - (i) that has not been tagged in accordance with regulations under subsection (1) above, or
 - (ii) from which a tag has been removed otherwise than in accordance with such regulations,
 - (b) acts in contravention of such regulations, or
 - (c) fails to take any action required of that person or (as the case may be) fails to comply with any requirement imposed on that person by such regulations.
- (5) It is a defence for a person charged with an offence under subsection (4)(c) above to show that the person had a reasonable excuse for failing to take any action or comply with any requirement as mentioned in that subsection.

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- (6) A person who commits an offence under subsection (4) above—
 - (a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale,
 - (b) may be convicted on the evidence of one person.”.
- (3) In section 30 (exemptions in relation to fish farming)—
 - (a) in subsection (1), after “under” insert “ section 21A or ”,
 - (b) in subsection (5), after “18(1)(b)” insert “ , 21A(4)(a) or (b) ”.
- (4) In section 68 (orders and regulations), in subsection (4), after “under” insert “ subsection (1) of section 21A of this Act that make modifications such as are mentioned in subsection (3)(c) of that section, or under ”.

Annotations:

Commencement Information

II S. 26 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

27 Powers to take fish or samples for analysis, etc.

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) After section 64 insert—

“64A Powers in relation to salmon and freshwater fisheries: sampling, etc.

- (1) A person authorised by the Scottish Ministers (an “authorised person”) may—
 - (a) for a purpose mentioned in subsection (2)(a) or (b) below, require a person having rights in a salmon fishery or freshwater fishery—
 - (i) to permit the authorised person to take and retain fish from the fishery,
 - (ii) to permit the authorised person to take samples of material from fish in the fishery,
 - (iii) to provide the authorised person with fish, or samples of material from fish, in the fishery,
 - (b) for a purpose mentioned in subsection (2)(c) below, affix a tag of such type and in such a way as the Scottish Ministers consider appropriate to any fish taken from a salmon fishery or freshwater fishery,
 - (c) for a purpose mentioned in subsection (2)(d) below, enter on a salmon fishery or freshwater fishery.
- (2) The purposes referred to in subsection (1) above are—
 - (a) carrying out analysis of the fish or samples by any method that the Scottish Ministers consider appropriate,
 - (b) ascertaining whether an offence has been committed under section 33A of this Act,
 - (c) tracking or monitoring the fish,

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- (d) exercising the powers mentioned in paragraphs (a) and (b) of subsection (1) above, or tracking or monitoring fish tagged under paragraph (b) of that subsection.
- (3) An authorised person seeking to exercise a power mentioned in subsection (1) above must, if requested, produce evidence of identity and authorisation.
- (4) A person having rights in a salmon fishery or freshwater fishery commits an offence if the person—
 - (a) fails or wilfully refuses to comply with a requirement under paragraph (a) of subsection (1) above, or
 - (b) obstructs an authorised person in the exercise of any of the powers under paragraph (b) or (c) of that subsection.
- (5) It is a defence for a person charged with an offence under subsection (4)(a) above to show that the person had a reasonable excuse for failing or refusing to comply with a requirement as mentioned in that subsection.
- (6) A person who commits an offence—
 - (a) under subsection (4)(a) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale,
 - (b) under subsection (4)(b) above is liable on summary conviction—
 - (i) to a fine not exceeding level 3 on the standard scale,
 - (ii) to imprisonment for a term not exceeding 3 months, or
 - (iii) to both such fine and such imprisonment.
- (7) In this section, references to a person having rights in a salmon fishery or freshwater fishery are to be construed in accordance with section 64(3) of this Act.”.

Annotations:

Commencement Information

I2 S. 27 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

28 Power of Scottish Ministers to conduct inquiries and obtain information

- (1) Section 64 of the Salmon and Freshwater (Consolidation) (Scotland) Act 2003 (power of the Scottish Ministers to conduct inquiries and to obtain information) is amended in accordance with this section.
- (2) In subsection (1)—
 - (a) before paragraph (a) insert—
 - “(za) require a person having rights in a salmon fishery or freshwater fishery to provide the Scottish Ministers with such information relating to the fishery as they may reasonably request;”,
 - (b) in paragraph (a), the words from “, provided” to the end of the paragraph are repealed.
- (3) In subsection (2), for the words “Any proprietor or occupier of a fishery” substitute “Any person having rights in a salmon fishery or freshwater fishery”.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, Cross Heading: Management. (See end of Document for details)

(4) After subsection (2) insert—

“(3) In this section, a “person having rights in a salmon fishery or freshwater fishery” means—

- (a) a proprietor of a salmon fishery;
- (b) an occupier of such a fishery;
- (c) an owner of land to which a right of fishing for freshwater fish pertains; or
- (d) an occupier of such a right.”.

Annotations:

Commencement Information

I3 S. 28 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

29 Monitoring and evaluation of the effects of orders, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (6) insert—

“(6A) Regulations under subsection (1) above may impose requirements on district salmon fishery boards in relation to monitoring and evaluation of the effect of the regulations on salmon stocks.

(6B) A district salmon fishery board commits an offence if the board—

- (a) acts in contravention of any such requirements; or
- (b) fails to take any action required of the board by any such requirements.

(6C) A board which commits an offence under subsection (6B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(3) In section 37 (annual close times for salmon)—

- (a) in subsection (2), after “below” insert “ and to section 38(5)(c) of this Act ”,
- (b) in subsection (3), at the beginning insert “ Without prejudice to section 38(5) (c) of this Act, ”,

(c) after subsection (3) insert—

“(3A) An annual close time order may impose requirements on district salmon fishery boards or proprietors of salmon fisheries in relation to monitoring and evaluation of the effect of the order on salmon stocks.

(3B) A district salmon fishery board or proprietor commits an offence if the board or proprietor—

- (a) acts in contravention of any such requirements; or
- (b) fails to take any action required of the board or proprietor by any such requirements.

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- (3C) A board which or proprietor who commits an offence under subsection (3B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.
- (4) In section 38 (salmon conservation regulations)—
- (a) in subsection (4), after “subsection (5)(b)” insert “ and (c) ”,
 - (b) in subsection (5), after paragraph (b) insert—
 - “(c) subject to section 37(1) of this Act, prescribe for any salmon fishery district the dates of the annual close time for salmon and the periods within that time when it is permitted to fish for and take salmon by rod and line.”,
 - (c) in subsection (6), after paragraph (b) insert—
 - “(ba) impose on district salmon fishery boards or proprietors of salmon fisheries such requirements as the Scottish Ministers consider necessary or expedient in relation to monitoring and evaluation of the effect of the regulations on salmon stocks;”.

Annotations:

Commencement Information

I4 S. 29 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

30 Power to vary procedures for orders, etc. relating to certain fisheries

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (7) insert—
- “(8) The Scottish Ministers may by order vary the provisions of—
 - (a) subsections (2) to (5) above;
 - (b) paragraphs 9B to 15 of schedule 1 to this Act as they apply to the making of regulations under subsection (1) above.”.
- (3) In section 35 (designation orders), subsection (4) is repealed.
- (4) In section 39 (procedure for making orders and regulations under section 33 and Part 2)—
- (a) the existing text becomes subsection (1) of section 39,
 - (b) after that subsection insert—
 - “(2) The Scottish Ministers may by order vary the provisions of schedule 1 to this Act.
 - (3) An order under subsection (2) above may make different provision for different purposes.
 - (4) Subsection (2) above is without prejudice to section 33(8)(b) of this Act.”.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, Cross Heading: Management. (See end of Document for details)

Annotations:

Commencement Information

I5 S. 30 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

31 Offence of fishing for salmon during annual close time

In section 14 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (fishing for salmon during annual close time), in subsection (2), for the words from “by”, where it second occurs, to the end of the subsection substitute “in the district in which the fishing occurs—

- (a) by the regulations or byelaws in force in that district;
- (b) by a designation order made in respect of that district;
- (c) in accordance with the provisions mentioned in section 37(2)(b) of this Act as they apply in respect of that district;
- (d) by an annual close time order made in respect of that district; or
- (e) by regulations under section 38 of this Act that make provision as mentioned in subsection (5)(c) of that section in respect of that district.”.

Annotations:

Commencement Information

I6 S. 31 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

32 Consents for introduction of fish into inland waters

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33A (unauthorised introduction of fish into inland waters)—

- (a) in subsection (3), for “this section” substitute “ subsection (1) or (2) above ”,
- (b) after subsection (3) insert—

“(3A) The appropriate authority may, in granting consent for the purposes of subsection (3)(b) above, impose conditions or requirements.

(3B) A person shall be guilty of an offence if the person—

- (a) acts in contravention of any such condition or requirement; or
- (b) fails to take any action required of the person by any such condition or requirement.

(3C) It is a defence for a person charged with an offence under subsection (3B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.”,

- (c) after subsection (4) insert—

“(4A) Subsection (4) is subject to provision made in regulations under section 33B of this Act.”.

(3) After section 33A insert—

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“33B Power to modify district salmon fishery boards' functions under section 33A

- (1) This section applies to the functions of the appropriate authority under section 33A(3)(b) and (3A) of this Act (the “consenting functions”) so far as the functions may be carried out by district salmon fishery boards.
- (2) The Scottish Ministers may by regulations—
 - (a) provide for the consenting functions to be carried out by the Scottish Ministers instead of district salmon fishery boards in specified cases or circumstances,
 - (b) provide for applications made to district salmon fishery boards for consent under section 33A of this Act to be referred to the Scottish Ministers in specified cases or circumstances,
 - (c) in relation to an application referred to the Scottish Ministers by virtue of provision made under paragraph (b) above, provide for the Scottish Ministers—
 - (i) to determine the application and to carry out the consenting functions in relation to the application, or
 - (ii) to issue directions to the district salmon fishery board to which the application was made about the determination of the application and the carrying out of the consenting functions in relation to the application.
- (3) Regulations under subsection (2) above may—
 - (a) make different provision for different purposes, including different provision for—
 - (i) different district salmon fishery districts, or
 - (ii) different inland waters or parts of such waters,
 - (b) include incidental, supplemental, consequential, transitional, transitory or saving provision.
- (4) In subsection (2) above, “specified” means specified in regulations under that subsection.”.

Annotations:

Commencement Information

I7 S. 32 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

33 Offences exempted by permission or consent: power to attach conditions, etc.

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In section 27 (exemption from certain offences: salmon)—
 - (a) after subsection (1) insert—

“(1A) In granting permission under subsection (1) above, a district salmon fishery board or (as the case may be) the Scottish Ministers may impose conditions or requirements.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, Cross Heading: Management. (See end of Document for details)

- (1B) A person commits an offence if the person—
- (a) acts in contravention of any such condition or requirement; or
 - (b) fails to take any action required of the person by any such condition or requirement.
- (1C) It is a defence for a person charged with an offence under subsection (1B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.
- (1D) A person who commits an offence under subsection (1B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
- (b) in subsection (3), after “permitted” insert “, any conditions or requirements imposed under subsection (1A) above”.
- (3) In section 28 (exemptions: fish other than salmon), after subsection (2) insert—
- “(3) In granting permission under subsection (1) above, the Scottish Ministers may impose conditions or requirements.
- (4) A person commits an offence if the person—
- (a) acts in contravention of any such condition or requirement; or
 - (b) fails to take any action required of the person by any such condition or requirement.
- (5) It is a defence for a person charged with an offence under subsection (4)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.
- (6) A person who commits an offence under subsection (4) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.
- (4) In section 30 (exemptions in relation to fish farming), after subsection (2) insert—
- “(2A) In granting consent under subsection (2) above, the Scottish Ministers may impose conditions or requirements.
- (2B) A person commits an offence if the person—
- (a) acts in contravention of any such condition or requirement; or
 - (b) fails to take any action required of the person by any such condition or requirement.
- (2C) It is a defence for a person charged with an offence under subsection (2B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.
- (2D) A person who commits an offence under subsection (2B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

Annotations:

Commencement Information

I8 S. 33 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

Changes to legislation:

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