

**Final  
Business and Regulatory Impact Assessment**

**Title of Proposal**

The Conservation of Salmon (Annual Close Times and Catch and Release) (Scotland) Regulations 2014

**Purpose and intended effect**

Background

In acknowledging its international obligations, the Scottish Government has been considering what action it could take in response to the various data that is collected regarding adult salmon abundance and most particularly the recent report from Marine Scotland which provided an overview of the current status of Scottish Stocks [www.scotland.gov.uk/Resource/0044/00446406.pdf](http://www.scotland.gov.uk/Resource/0044/00446406.pdf)

It is clear from the latest analysis that across Scotland while reported rod catches in the summer and autumn have increased over the period 1952-2013, catches in the spring have generally declined, stabilising at a low level in recent decades. Within this trend there is some acknowledged regional variation, with some areas showing an increase in spring rod catches, some a decline and most showing no trend. However, catches in all areas are currently low when compared to levels throughout the period 1952-2013.

In addition to the science there is the key driver of the existing strong voluntary support across Scotland for catch and release and a general acceptance from the Salmon Net Fishing Association of Scotland, representing the majority of netmen in Scotland, that an absence of netting during this period will have demonstrable conservation benefits.

Section 38 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (the 2003 Act) enables the Scottish Ministers to make conservation measures in regulations . These regulations are made to protect early running spring salmon in Scotland.

Objective

The purpose of the conservation measure will be to replace and enhance the voluntary practices from previous years and to address concerns about early running spring salmon. Salmon face many pressures: weather conditions; habitat degradation; diffuse pollution; obstruction of spawning grounds; predation; and survival at sea. The measure would require the release of all rod caught salmon until 1 April together with a delay in the start of the net fishing season until 1 April across Scotland with the exception of the Esk Salmon Fishery District which would be 1 May.

The proposal fits with the Scottish Governments 'Greener' strategic outcome and national outcome number 12 'We value and enjoy our built and natural environment and protect it and enhance it for future generations' by protecting Atlantic salmon to ensure the economic and social benefits we enjoy from this resource can continue to be enjoyed for many years to come.

### General Effect of the measures

The general effect of this measure would be to ensure that no salmon is taken before 1 April [1 May in the Esk Salmon Fishery District] offering increased protection to salmon during the early part of the season. Certain exceptions apply in respect of the Annan and Eachaig Salmon Fishery Districts as outlined below. The measures will be achieved through:

- the extension of the end of the annual close time in each salmon fishery district (except the Esk and Eachaig Salmon Fishery Districts) in Scotland to 31 March.
- the extension of the end of the annual close time in the Esk Salmon Fishery District to 30 April.
- prescribing the period within the annual close time, for each district, within which it is permitted to fish by rod and line; these dates preserve the existing permitted periods but also allow rod and line fishing during an extra period during the spring to mirror the extended close time period; the Regulations do not apply this extended period to the Annan and Eachaig Salmon Fishery Districts (discussed below);
- the introduction of a mandatory catch and release scheme in respect of all rod caught salmon within the extended close time period (with the exception of the Annan and Eachaig Salmon Fishery Districts);

### The Annan Salmon Fishery District

A mandatory catch and release scheme for rod and line fishing during the spring season already applies in the Annan Salmon Fishery District by virtue of the Conservation of Salmon (River Annan Salmon Fishery District) (Scotland) Regulations 2012 which prohibit the retention of rod caught salmon during the period 25<sup>th</sup> February to 31<sup>st</sup> May in each year when the Regulations have effect.

### The Eachaig Salmon Fishery District

The annual close time for the Eachaig Salmon Fishery District currently runs from 1<sup>st</sup> September to 30<sup>th</sup> April and the period within that time when it is permitted to fish for and take salmon by rod and line is 1<sup>st</sup> September to 31<sup>st</sup> October. These Regulations therefore do not extend the annual close time for this district as fishing cannot occur there before 30<sup>th</sup> April. There is therefore no extended close time period during the spring and so no catch and release requirement is introduced as no fishing may occur during the spring in that area.

The effectiveness of the conservation measure will be monitored annually by Marine Scotland.

## Rationale for Government intervention

A nationwide voluntary agreement has been in place to delay netting activity until 1<sup>st</sup> April. Unfortunately that voluntary agreement ended this year with individual netmen and Boards negotiating at a local level. While the previous and existing voluntary measures are welcomed, it remains the case that the current status of stocks in Scotland requires protection to preserve existing levels, where these are stable, and to seek to achieve an increase in stock levels in areas where they are in decline. Spring stocks are of particular concern as this is the time when the salmon are at their most vulnerable. Data indicates that current numbers of spring stocks across Scotland are continuing to fall below the level required to maintain maximum smolt output. Statutory measures are required due to the ending of the voluntary agreement to protect the current stock status and, should there be any further decline, to have that appropriately assessed and attributed. This does not negate the ability to agree further voluntary measures that go beyond the statutory minimum. That very much remains within the gift of others. The Regulations will apply throughout Scotland as stock levels are in decline across the country. National measures are also required to encompass areas where there are known inactive netting stations to address previous concerns that these may become operative if the measures were focussed only on areas where netting currently takes place.

## **Consultation**

### Within Government

In accordance with paragraph 10 (as read with paragraph 9) of schedule 1 to the 2003 Act, this measure has been discussed at length with colleagues within Marine Scotland and Marine Scotland Science.

### Public Consultation

Under the requirements of schedule 1, paragraph 11 of the 2003 Act, notice of the general effect of the proposals must be undertaken, specifying the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposals may be made.

An advert was placed in three national newspapers on Thursday 9 and 16 October 2014. Anyone wishing to make any representations or objections with respect to the proposals was required to submit them in writing by Thursday 6th November 2014.

A total of 45 consultation responses were received from a range of interests including anglers, proprietors, representative bodies and conservation groups. The majority of respondents were supportive of the proposal however there was a clear view that the proposal did not go far enough. Many felt that that the conservation measure should remain in place until 1 June to offer full protection for spring stocks or at the very least should be extended to 1 May. A number of respondents recognised the need to balance conservation against any financial/socio-economic implications. The proposal was opposed by netmen and some interests.

There were a number of common themes from respondents from all groups. These included the view that the proposed conservation measures would fail to address what they perceived to be the real causes of declines in salmon numbers (coastal netting, marine mortality, aquaculture and seal predation) as well as some commentary that while the intent of the advert was clear, the mechanism to achieve it was less so and perhaps not as well publicised as it could perhaps have been (probably based on the arrangements for local measures requiring publication in two local papers as opposed to a national measure).

### Business

Since April 2014, we have been in discussion with a number of stakeholders, including representative bodies, in an effort to better understand their likely approach to the 2015 season, including the potential that voluntary measures might be in place and the estimated impact should the measures be implemented.

In addition, we have looked to utilise the advert to specifically request details on the financial implications for individuals/companies/associated beneficiaries of the angling/netting season as a result of a delay in the start of the season/mandatory catch and release.

A few angling interests highlighted that the proposal unfairly penalised them as the measure will have little effect in increasing salmon numbers as catch and release is widely practised and taking away the choice to retain fish may put people off fishing in Scotland. Conversely netting interests stressed that the proposal was inequitable and unjust as: angling proprietors will still be able to let their beats; the rod season is much longer and not as susceptible to poor weather; and spring fish not caught by nets will be available for anglers to catch later in the season.

Netting interests and a number of angling proprietors highlighted that the measure had financial implications however none was able to quantify the extent.

### **Options**

The options considered are:

- Option 1 – Introduction of Statutory Measures
- Option 2 – Rely on the continuation of existing voluntary agreements.
- Option 3 - Do Nothing

### **Sectors and groups affected**

#### Option 1 – Introduction of Statutory Measures

Netsmen will be unable to fish during the early spring resulting in a potential loss of income whilst angling proprietors will only be able to let their beats on a catch and release basis.

### Option 2 – Rely on the continuation of existing voluntary agreements

The majority of netsmen would likely voluntarily delay the start of the start of their season (some may receive compensation from their local DSFB) whilst angling proprietors would let their beats in line with local conservation policies.

### Option 3 - Do Nothing

Whilst netsmen and anglers would be free to catch salmon, data indicates that stocks may continue to diminish until they are at such a level as to threaten the long term financial viability of the businesses that rely on them to make their living.

## **Benefits**

### Option 1 – Introduction of Statutory Measures

Early running spring salmon is afforded an additional measure of protection to help mitigate the many additional pressures that salmon face ensuring our fisheries continue to provide economic benefits for years to come.

### Option 2 – Rely on the continuation of existing voluntary agreements

Allows local stock assessment and enables conservation measures to be tailored to local needs for early running spring salmon.

### Option 3 - Do Nothing

There is little benefit to be gained by opting to do nothing as whilst the majority of proprietors adhere to local conservation policies there is too a great risk to stocks as they may continue to decline. (as detailed in the background note).

## **Costs**

### Option 1 – Introduction of Statutory Measures

While we recognise that there is potential for some financial loss in relation to angling, our ability to quantify that has not been aided by the responses to the measure. However, as identified earlier, the voluntary practice of catch and release during this period is very high. It is not possible to be specific about the number of anglers who would be dissuaded from fishing as a consequence of this measure and the likely financial implications, if any, although from the responses received, it could be interpreted that this would be minimal For netting interests, the voluntary agreement involving members of the Salmon Net Fishing Association of Scotland had been in place for over a decade. While it is not possible to quantify the exact amount of voluntary compensation currently offered across Scotland (see Option 2), there remains no legislative requirement for it to be paid

### Option 2 - Rely on the continuation of existing voluntary agreements

We are aware that under the previous voluntary arrangements a number of netting companies received compensation ranging from a few hundred pounds to £10-30k. Voluntary compensation was agreed on a local basis with individual District Salmon Fishery Boards. It remains the case that the introduction of any statutory measures won't remove the ability for DSFBs and netmen to continue to agree payments but that it is for both parties to agree to and for Boards to pay on a voluntary basis]

### Option 3 - Do Nothing

While difficult to quantify financially - game and coarse angling supports 2,800 Full Time Equivalent (FTE) jobs and is worth £134m in expenditure to Scottish economy (Radford et al 2004) - it is self-evident that a failure to address the reality of diminishing stocks or at best to maintain them at current low levels would eventually force a closure to fishing by any method until such time that the stocks were able to return to a determined level.

### **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 conservation measure will restrict fishing in the Esk Salmon Fishery District for a further month than the remainder of Scotland.

Given that these measures are designed to replicate previous voluntary arrangements, the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

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

No new forms will be introduced.

### **Legal Aid Impact Test**

There are no legal aid implications.

**Enforcement, sanctions and monitoring**

For all options the enforcement, sanctions and monitoring would remain the same as those under at Part 5 of the existing 2003 Act (Water Bailiffs and Constables). Section 39 of the 2003 Act prohibits all modes of fishing for and taking salmon in a salmon fishery district during the annual close time. It is an offence under section 14 of that Act to fish for, or take, salmon during the annual close time except where provision has been made for periods within the close time during which fishing for and taking salmon by rod and line is permitted. There are specific offence provisions in section 38(7) of the 2003 Act in relation to option 1. Anyone guilty of an offence is liable on summary conviction to a fine of up to level 4 on the standard scale.

**Implementation and delivery plan**

Marine Scotland will publicise the measures on its website and draw attention to the requirements of the regulations as part of on-going communication with proprietors and the sectors representative bodies.

**Post-implementation review**

Marine Scotland will keep the status of the stocks under review and assess the effect of and continuing need, if any, for the statutory measures.

**Summary and recommendation**

Recognising the pressures on the early running spring salmon component, it is considered that a no kill policy for a limited period of 5 years (during which time the Regulations will be reviewed and may be amended if necessary)\_may allow the stocks to recover or at the very least maintain them at current low levels.

**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:**

**Paul Wheelhouse**  
**Minister for Environment and Climate Change**

**Scottish Government Contact point: Jeff Gibbons**