

Business and Regulatory Impact Assessment (February 2016)

Title of Proposal

The Tweed Regulation (Salmon Carcass Tagging) Order 2016.

Purpose and intended effect

- **Background**

The purpose of this legislation is to progress the powers conferred by article 43A of The Scotland Act 1998 (River Tweed) Order 2006 to create a statutory carcass tagging scheme in the Tweed district (introduced by The Scotland Act 1998 (River Tweed) Amendment Order 2015).

- **Objective**

The policy intention is to :

- diminish the availability of illegally caught wild salmon to the commercial market through the introduction of a mandatory uniquely numbered carcass tagging scheme.
- protect those companies operating legitimately in a commercial market.
- improve statistical data and to provide an additional layer of audit to the catch data currently provided to Marine Scotland.

- **Rationale for Government intervention**

Building on the success of the voluntary scheme currently in operation by members of the Salmon Net Fishing Association of Scotland (SNFAS), to place on a statutory basis the need for the tagging of wild salmon caught in Scotland which is to be sold or offered for sale. This will make it clear that any untagged fish would not be marketable and that any untagged fish being made available for sale had been illegally taken. While it is already an offence to sell or attempt to sell fish caught by rod and line in the Tweed district, this measure will provide a further disincentive for those who look to work around the existing legal framework.

Consultation

- **Within Government**

As part of the detailed consultation undertaken in late 2012/early 2013 that informed the development of the Aquaculture and Fisheries (Scotland) Act

2013 and also throughout the Scottish Parliament's detailed consideration of the introduction of the parallel power for the Tweed district in the Scotland Act 1998 (River Tweed) Amendment Order 2015, a significant amount of public engagement and consultation had taken place around the introduction and benefits of a carcass tagging scheme, as well as the impact of the schemes currently in operation in other parts of the UK.

Over the past 6 months the Scottish Government has conducted a series of [linked consultations](#), which included the Tweed district, specifically around licensing proposals for the killing of wild salmon, a component of which would be a carcass tagging scheme.

These consultations identified a range of key stakeholder concerns; perhaps the most common theme has been the request for a straightforward, clear and consistent system which can be effectively managed with minimal additional bureaucracy and cost. Scottish Ministers have listened to, and acted upon, these concerns while still retaining the fundamental principle that any killing of wild salmon - a protected species - must be sustainable and should not present a threat to vulnerable stocks. - <http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/licence>

Following the conclusion of the 28 day consultation period on the advertised revised proposals on 1 October 2015 and analysis of responses Minister's announced their intention to proceed the introduction of a carcass tagging scheme for the Tweed district and new conservation measures to prohibit the retention of Atlantic salmon caught in coastal waters (to be introduced by the Tweed Regulation (Salmon Conservation) Order 2016).

Public Consultation

- See above. During the passage of the Bill there was broad support among wild fisheries stakeholders for a carcass tagging scheme although opinion was often divided over how the scheme should operate and for what purpose. As a consequence, the provisions were drafted in such a way as to provide flexibility for Ministers to determine the detail of the scheme through secondary legislation. Parallel powers were then introduced for the Tweed district by way of an amendment to the Scotland Act 1998 (River Tweed) Order 2006.
- The Scotland Act 1998 (River Tweed) Amendment Order 2015 was debated and then approved by resolution of both Houses of Parliament and of the Scottish Parliament.
- The Tweed Regulations (Salmon Carcass Tagging) Order 2016 were notified to the European commission under the Technical Standards Directive (EU) 2015/1535 (replacing Directive 98/34/EU). The Regulations make provision regarding the nature and form of a salmon tag which are technical requirements and technical standards under the Directive.

Business

The Tweed Regulation (Salmon Conservation) Order 2016 will prohibit the retention of Atlantic salmon which is caught in coastal waters. This means that the proposed carcass tagging scheme is particular to commercial netting activities in-river and as such is arguably only relevant to a narrow and very specific group of stakeholders (very small in number) all of whom have, as previously noted, contributed indirectly and directly to the development of the Consultation papers, the draft Scottish statutory Instrument and the draft Regulatory Impact Assessment. Discussions continue with those who would be impacted by the introduction of the legislation, and those who would have responsibility for enforcement. In addition, discussions have taken place with the main representative bodies - the Salmon Net Fishing Association of Scotland (SNFAS) and the Association of Salmon Fishery Boards (ASFB) and the River Tweed Commission.

Options

Option 1: Do Nothing

Under this option, Ministers would not be progressing the powers under the Scotland Act 1998 (River Tweed) Amendment Order 2015. It is anticipated that the existing voluntary tagging scheme for net caught fish would continue to remain in operation if the scheme was not introduced.

Option 2: An unnumbered carcass tagging scheme for all wild salmon caught in the Tweed District for the purpose of selling.

This would in all intent and purposes place the existing voluntary scheme currently operated by some nets-men in the Tweed District on a statutory basis. While that would look to encompass all wild salmon caught in the Tweed district for the purpose of selling, it is likely that those nets-men not currently operating the scheme are also not working on a commercial basis.

Option 3: A numbered carcass tagging scheme (with the identifiable salmon fishery) for all wild salmon caught in the Tweed District for the purpose of selling.

With the same basis for option two, but with the added benefit of a tag with a unique number and the name of the salmon fishery which must remain attached until the fish is processed, thus meeting and fulfilling the three identified policy objectives.

- **Sectors and groups affected**

All those who fish for wild salmon, other than by rod and line, in the Tweed district.

- **Benefits**

Option 1: Do Nothing

With no change, the current voluntary scheme would continue to be in place and in operation, while the concerns around illegally caught salmon being made available on a commercial basis would continue to be addressed through existing enforcement powers. This would likely raise concerns from the Rural Affairs and Climate Change Committee and from a number of stakeholders. There remains a perception that a significant number of illegally caught salmon are entering the commercial market through a variety of sources and that in response the Scottish Government will take appropriate additional action for the benefit of legitimate industry, the seller and the consumer

Option 2: A Tweed district unnumbered carcass tagging scheme for all wild salmon caught for the purpose of selling.

The current voluntary scheme has been designed to augment the commercial value of legally wild caught salmon by providing the provenance of the catch, in terms of the fishery. However it does not look at present to address the availability of illegally caught salmon to the commercial market which looks to undermine the quality and commerciality of legally caught salmon. It is already illegal to sell a salmon caught by rod and line or to be in possession of salmon and believe (or in circumstances where it would be reasonable to believe) that an offence had been committed. This could apply in the context of a potential consumer or a netmen with direct access to the commercial market.

Placing the voluntary unnumbered carcass tagging scheme on a statutory basis would have demonstrable added value to the existing voluntary tagging schemes operating in Scotland and the Tweed district. However it would not go so far as to enable the clearer and concise rationalisation of catch statistics with the number of fish that currently make their way to market.

Option 3

Building on option 2 the addition of a numbered tag on the fish would help to address the problem of illegal taking of salmon within rivers and estuaries which is an acknowledged threat to the conservation and management of Atlantic salmon. It would also act as a further deterrent on the back of existing legislation for anyone who might be looking to push illegally caught wild salmon through the commercial market. Moreover those covered by the scheme would need to maintain records which would need to be rationalised with end year catch statistics provided to Marine Scotland. Such a process will address any perceptions that illegally caught salmon can be and in some instances are being processed through legitimate commercial companies. The addition of a unique identification number has some potential additional commercial value, provides increased confidence with the seller and purchaser, and proves the authenticity of the product.

- **Costs**

Option 1

There are no financial costs with regard to option 1. However Ministers have made a commitment that a scheme would be in place for the 2016 season and a draft SSI would be presented to the Scottish Parliament in time for the start of the season.

Option 2

There are no financial costs associated with Option 2. Any costs associated with the production of the tags and the detail required (with the fishery clearly identified) and the central administration would be met by the Scottish Government.. It is estimated that the total cost for the production of the tags would be in the region of £1000 (cost of tag estimated at 50p x 2000 fish. 2014 catch stats = 2001 salmon and grilse for net and coble). There is no intention to recoup the costs from the industry.

Option 3

As with two but with the addition of the unique number.

Every effort is being made to reconcile the record keeping requirements of the carcass tagging scheme with the existing legislative requirements to collect salmon and sea trout fishery statistics and where possible the purpose of the powers available through article 21(a) of the Scotland Act 1998 (River Tweed) Order 2006 which the River Tweed Commission have applied to collect data on a number of species. At this stage, the anticipated additional resource costs to the businesses associated with the placing of uniquely numbered tags and associated record keeping are considered to be low.

It is not anticipated that any additional labour costs incurred would be passed on to the consumer.

Scottish Firms Impact Test

Association of Salmon Fishery Boards

The Salmon Net Fishing Association of Scotland

The River Tweed Commission

Legal Aid Impact Test

There are no legal aid implications associated with this legislation.

Enforcement, sanctions and monitoring

Enforcement will be through the powers in the Scotland Act 1998 (River Tweed) Order 2006. This SSI includes a requirement to submit the records required to be maintained. This will contribute towards ascertaining whether the Order is being complied with. Failure to comply with the Order is an offence under article 43A(4) of the 2006 Order and a person, if found guilty, may be liable to a fine of up to level 4 on the standard scale on summary conviction.

Implementation and delivery plan

The Order will come into force on 31st March 2016, providing a sufficient lead in time for the production of the tags, and to ensure the appropriate administrative procedures have been put in place.

- **Post-implementation review**

It is envisaged that the scheme will be reviewed on an annual basis.

Summary and recommendation

In summary the progression to a statutory numbered carcass tagging scheme.

- **Summary costs and benefits table**

Table outlining costs & benefits of each option considered*

Declaration and publication

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that the business impact has been assessed with the support of impacted stakeholders in Scotland.

Signed:**Date:****Minister's name, title etc*****Dr Aileen McLeod, Minister for Environment, Climate
change and Land Reform****Scottish Government Contact point: Wild Salmon and
Recreational Fisheries 46236**