

Final Business and Regulatory Impact Assessment

Title of Proposal

The Conservation Of Salmon (Scotland) Amendment Regulations 2018

Purpose and intended effect

Background

The Conservation of Salmon (Scotland) Amendment Regulations 2018 amend the Conservation of Salmon (Scotland) Regulations 2016 ('the 2016 Regulations') which make provision for the conservation of salmon in Scotland. The regulations set out a mandatory catch and release regime for Atlantic salmon caught in coastal waters, and in specified inland waters by prohibiting the retention of salmon.

This is the third time that an annual assessment of conservation status has been undertaken. The assessment model for the 2018 fishing season categorised 171 rivers or assessment groups, including 17 Special Areas of Conservation (SACs), according to their conservation status.

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 each area.

Rationale for Government intervention

Salmon is a protected species under the EU Habitats Directive. In addition, the North Atlantic Salmon Conservation Organisation (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).

Salmon continue to face many pressures in the marine and freshwater environment and there is an ongoing need to ensure and be seen to be demonstrating that any killing of wild salmon in Scotland is sustainable. In addition, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them.

Consultation

Within Government

Discussions took place with Scottish Natural Heritage (SNH), Scottish Environmental Protection Agency (SEPA) and the Crown Office and Procurator Fiscal Service around the early development of these Regulations. In addition, Marine Scotland set up a Local Biologist Liaison Group to coordinate the involvement of local biologists throughout Scotland in refining the data and methods used to determine conservation status.

Marine Scotland and the Salmon Liaison Group (SLG) also have worked closely over the past year to develop and improve the assessment process and the robustness of the data used in the assessment.

Public Consultation

For the 2018 fishing season Ministers, as required by schedule 1 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, published notice of the general effect of the proposed regulations and invited representations and objections over a 28 period in September and October 2017. In addition, more than 1,500 individuals and organisations were alerted by e-mail to the consultation.

Some 192 written representations and objections were received from individuals and organisations including angling clubs, district salmon fishery boards (DSFBs), fishery owners and local businesses. Each of these has been considered in finalising the draft amendment regulations. Discussions have been held with those representing fisheries interests on a number of rivers or assessment groups.

Key concerns emerging from the consultation included some disagreement and misunderstanding about the assessment process; that the model relies on reported catch data, rather than using juvenile sampling to estimate salmon abundance; the fact that the modelling approach currently makes little provision for geographical or local differences and conditions; and that Category 3 status will lead to a downturn in club membership, with reduced income leading to fewer bailiffs and local conservation initiatives.

Business

For the 2018 season we have continued to engage with those sectors directly impacted by the measures, both through regular liaison group meetings and through the public consultation process. The majority of recent representations and discussions have taken place with angling clubs and individuals involved in angling. We did not receive any representations from the wider business sector.

Options

A detailed assessment of options was carried out prior to introducing the original Conservation of Salmon (Scotland) Regulations 2016.

The Conservation of Salmon (Scotland) Amendment Regulations 2018 give effect to the outcomes of the third annual assessment of the conservation status of salmon.

This has been undertaken to meet a previous Ministerial commitment to carry out such an assessment.

Option 1: Do nothing

Under this option the current regulations, as amended, would remain in force. These are now based on an out of date assessment. This would not meet Ministers' commitment to protect and conserve salmon stocks, and would not be addressing concerns expressed by the European Commission about how we are 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 had some success in the past - the practice of catch and release is already widely observed in Scotland with some

90% of all rod caught salmon released in 2016 – such measures are 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 should be seen in the context of continuing concerns around salmon stocks and the need to take more proactive action to protect them. 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 the 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 of Atlantic salmon 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.

Sectors and groups affected

Grade 3 categorisation – mandatory catch and release

A number of angling clubs have concerns about a reported decline in the renewal of club 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. While such concerns have been expressed in response to the recent public consultation, none of those responding provided a detailed assessment of such impact. In addition, this concern should be viewed against a long term trend away from annual membership and towards a more flexible “day ticket” approach to angling. To help mitigate the impacts of the conservation measures on angling clubs Ministers have provided funding of £100,000 over the period 2016-18 to support angling clubs through the promotion of catch and release as a sustainable and responsible practice through our partner organisation FishPal. To date, around 80 angling clubs have taken advantage of the service offered free of charge by FishPal, to promote their fisheries online.

Review of river “outflow points”

Outflow points for each river were defined in The Conservation of Salmon (Scotland) Amendment Regulations 2016. In general, the outflow points were set at a clearly identifiable point where the river widens, balanced with other factors including management of the relevant fisheries. Following dialogue with a number of stakeholders the Scottish Government has reviewed the outflow points for three rivers for the 2018 season. Following that review, Ministers are bringing forward changes to two areas, the Kyle of Sutherland and the Urr Water. These changes have the potential to open up commercial net fishing in at least one case, although the financial impacts of that are unknown at this point.

Benefits

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 inland waters. The purpose of the assessment is to determine whether fishing is

sustainable in the area in question. 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 designated sites. Where there is a favourable conservation status for an area 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.

Costs

The conservation measures, including the continuing prohibition on the retention of salmon outwith estuary limits, has given rise to concerns expressed by a number of individuals and angling clubs, a number of whom have suggested that a decline in their membership is 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 examining ways in which to support angling clubs going forward.

Scottish Firms Impact Test

We have engaged with representative bodies and individual businesses during the development of the conservation measures and, during the consultation period in 2017, specifically sought information on the potential financial impact of the proposed conservation measures. Those firms affected by the proposals range from small individual netting companies to larger sporting estates. Whilst some respondents expressed concern 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 regime 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. Failure to comply with the 2016 Regulations is an offence under section 38(7) of the 2003 Act. 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 2018.

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 continuing concerns about salmon stocks and the 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 seeks to protect the weakest stocks by requiring 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 consider that the package of measures set out in the 2016 Regulations, to be amended in the light of the most recent assessment of stocks, strikes the right balance between the interests of those who fish for salmon and the conservation of the species for the benefit of future generations.

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.

Signed:

Date:

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

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