

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Part 2

Salmon Fisheries, Etc

Management

Section 26 - Carcass tagging

70. [Section 26\(2\)](#) amends the 2003 Act by inserting a new section 21A to enable the Scottish Ministers to make regulations for or in connection with tagging salmon carcasses.
71. Section 21A(2) specifies the matters which may be provided for in regulations made under section 21A(1) of the 2003 Act, including the nature and form of tags and the keeping of records in connection with fishing for, taking and tagging of salmon. Section 21A(3) provides that regulations made under section 21A(1) may make different provision for different purposes and different areas, and may modify Part 5 (enforcement) of the 2003 Act. If the carcass tagging regulations seek to modify Part 5 of the 2003 Act then affirmative procedure will be required as provided for in section 68(4) of the 2003 Act (as amended by section 26(4) of the Act), which will require draft regulations to be laid before and approved by Parliament.
72. Section 21A(4) makes provision in relation to offences. Subsection (4)(a) of section 21A makes it an offence for a person to sell, offer or expose for sale, or to possess a salmon which has not been tagged in accordance with regulations made under section 21A(1) of the 2003 Act, or which has had a tag removed otherwise than in accordance with the regulations. Subsection (4)(c) makes it an offence for a person to fail to take action required of that person, or to comply with any requirement imposed on that person, by such regulations.
73. Subsection (5) creates a reasonable excuse defence for a person charged with an offence under section 21A(4)(c) of the 2003 Act. A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 4 of the standard scale (currently £2,500) and may be convicted on the evidence of only one witness (subsection (6)).
74. Subsections (3)(a) and (b) of section 26 makes technical amendments to section 30 of the 2003 Act (exemptions in relation to fish farming) in consequence of new section 21A.

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

75. [Section 27](#) amends the 2003 Act to insert a new section 64A, which provides the Scottish Ministers with powers to take fish and samples of fish for analysis etc, and to undertake tracking and monitoring of fish.
76. Subsection (1)(a) of section 64A provides that an “authorised person” may require a person having rights in a salmon or freshwater fishery to permit them to take and retain fish, and to take samples of material from the fish in the fishery or to have such fish or samples provided to them.
77. Subsection (1)(b) allows an authorised person to affix a tag in order to track or monitor fish (subsection 64A(2)(c)).
78. Subsection (1)(c) provides that an authorised person may enter a salmon fishery or freshwater fishery in order to exercise the powers mentioned in subsection (1)(a) or (1)(b) or in order to track or monitor fish which have been tagged further to the provisions of subsection (1)(b).
79. Subsection (2)(a)-(d) specifies the purposes for which an authorised person may take and retain fish, take samples or require that fish or samples of material from fish are provided to them. These purposes are: analysis of fish or fish samples; ascertaining whether an offence has been committed under section 33A of the 2003 Act (unauthorised introduction of fish into inland waters); tracking or monitoring of fish; and exercising the powers mentioned in subsections (1)(a) or (1)(b).
80. Subsection (4)(a) provides that it is an offence for a person having rights in a salmon fishery or freshwater fishery to fail or wilfully refuse to comply with a requirement made by an authorised officer under subsection (1)(a). Subsection (5) makes provision for a reasonable excuse defence for a person charged with this offence. A person who commits an offence under subsection (4)(a) is liable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale (subsection (6)).
81. Subsection (4)(b) provides that it is an offence for a person having rights in a salmon fishery or freshwater fishery to obstruct an authorised person in the exercise of their powers under subsection (1)(b) or (c). A person who commits an offence under subsection (4)(b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months, or to both.
82. Subsection (7) defines “a person having rights in a salmon fishery or freshwater fishery” by reference to section 64(3) of the 2003 Act, i.e. as meaning (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; (d) an occupier of such a right.

Section 28 - Power of the Scottish Ministers to conduct inquiries and obtain information

83. [Section 28\(2\)\(a\)](#) amends section 64 of the 2003 Act (power of the Scottish Ministers to conduct inquiries and obtain information) to insert a new subsection (1)(za), which requires persons having rights in a salmon fishery or freshwater fishery to provide information relating to the fishery to the Scottish Ministers.
84. [Section 28\(2\)\(b\)](#) amends section 64(1)(a) of the 2003 Act to enable Ministers to exercise their powers under that provision without expressly having to ensure no damage is done to the fishery or no interference is caused to the rights of the owner or occupier of the fishery. It is inevitable that the exercise of the section 64(1)(a) powers will give rise to interference with property rights. But the powers in the 2003 Act (which derive from the [Salmon and Freshwater Fisheries \(Protection\) \(Scotland\) Act 1951 \(c.26\)](#)), have and will continue to be exercised proportionately and in the vast majority of cases with the full co-operation of the owner, proprietor or occupier of such rights, for the wider public interest of protecting and developing salmon and trout stocks. Accordingly, the

amendments secure removal of text no longer considered to be significant as regards exercise of the power.

85. **Section 28(3)** amends section 64(2) of the 2003 Act to clarify that the provisions of section 64 of the 2003 Act apply to persons “having rights in a salmon fishery or freshwater fishery”. Section 28(4) of the Act inserts a new subsection (3) into section 64 of the 2003 Act to define that term.

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

86. **Section 29** amends sections 33, 37 and 38 of the 2003 Act to enable the Scottish Ministers to impose requirements to monitor and evaluate the effect of orders and regulations under those sections. The provisions give Ministers powers to ensure that, where measures are granted, appropriate monitoring and evaluation of the effects of such measures on salmon stocks can take place in a consistent manner across Scotland.
87. **Section 29(2)** amends section 33 of the 2003 Act, which enables the Scottish Ministers to make regulations (“baits and lures regulations”) prohibiting the use of specified baits and lures upon application by one or more DSFBs. New subsection (6A) enables Ministers, in granting an application for baits and lures regulations, to impose requirements on DSFBs to carry out monitoring and evaluation of the effect of the regulations on salmon stocks. For example, where regulations under section 33 of the 2003 Act prohibit fishing with barbed hooks, a DSFB may be required to monitor and record any incidents of fish mortality resulting from fish that were not effectively released after capture. Subsection (6B) makes it an offence for a DSFB to act in contravention of any requirements imposed under baits and lures regulations or to fail to take any action required of the DSFB under such regulations. Subsection (6C) provides that a DSFB charged with an offence under section 33(6B) is liable on summary conviction to a fine of up to Level 4 on the standard scale. Section 143 of the Criminal Procedure (Scotland) Act 1995 makes provision for the summary prosecution of organisations such as DSFBs.
88. **Section 29(3)** amends section 37 of the 2003 Act which provides for the annual close time for salmon fishery districts in Scotland. Section 29(3)(a) of the Act makes a technical amendment to section 37(2) of the 2003 Act to include a reference to section 38(5)(c) of the 2003 Act (which is inserted by section 29(4)(b) of the Act). This provision enables Ministers to specify in salmon conservation regulations both the annual close time for salmon for a salmon fishery district and a period during that close time in which it is permitted to fish for salmon by rod and line. As a result of these new powers, the qualification to the annual close times specified in section 37(2) of the 2003 Act is amended to include a reference to any period in which it is permitted to fish for salmon by rod and line specified in regulations made by Ministers in reliance of the new powers in section 38(5)(c) of the 2003 Act. A technical amendment is also made to section 37(3) of the 2003 Act in this respect by section 29(3)(b) of the Act.
89. **Subsection 29(3)(c)** amends section 37 of the 2003 Act to introduce new subsections (3A), (3B) and (3C). Subsection (3A) enables Ministers, in granting an application for a close time order, to impose requirements on DSFBs or proprietors to carry out monitoring and evaluation of the effect of the order on salmon stocks. For example, a DSFB or proprietors may be required to monitor the impact of a season extension (i.e. a period during the annual close time when it is permitted to fish for or to take salmon by rod and line). The programme of monitoring could include: scale sampling; redd counts; and rod catch analysis. Subsection (3B) makes it an offence for a DSFB or a proprietor to act in contravention of any requirements relating to monitoring and evaluation imposed under a close time order, or to fail to take any action required of the DSFB or proprietor by such requirements. Subsection (3C) provides that a DSFB or proprietor charged with an offence under section 37(3B) is liable on summary conviction to a fine of up to level 3 on the standard scale (currently £1,000).

90. **Section 29(4)** amends section 38 of the 2003 Act, which enables the Scottish Ministers to make salmon conservation regulations. Section 29(4)(b) introduces a new subsection (5)(c) into section 38 which gives Ministers powers to prescribe for any salmon fishery district the dates of the annual close time for salmon and the period(s) during which it is permitted to fish for or take salmon by rod and line during the annual close time. This is in line with the powers in section 37 of the 2003 Act and gives Scottish Ministers greater flexibility as regards potential options to best manage salmon stocks. Section 29(4)(c) introduces a new subsection (6)(ba) into section 38 which enables Ministers, in granting an application for salmon conservation regulations, to impose on a DSFB or proprietors requirements on monitoring and evaluating the effect of the regulations on salmon stocks as Ministers consider necessary or expedient. For example, Ministers may impose a requirement for a DSFB to assess the effect of catch and release measures on reported rod catches during the period any restrictions apply.
91. Section 38(7) of the 2003 Act makes it an offence, punishable on summary conviction by a fine of up to Level 4 on the standard scale, for a DSFB or a proprietor to act in contravention of salmon conservation regulations or to fail to take any action required of them under, or to fail to comply with any requirement of, such regulations. Section 38(8) provides that a DSFB or proprietor charged with an offence under section 38(7) may be convicted on the evidence of one witness.

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

92. **Section 30** amends the 2003 Act to clarify the scope of the Scottish Ministers' powers to vary by order the procedural requirements for applications for designation, estuary limits and close time orders, and conservation and baits and lures regulations set out in schedule 1 to the 2003 Act. Separate provision is made in relation to the variation of the procedures as regards regulations made under section 33 of the 2003 Act.
93. **Section 30(2)** adds a new subsection (8) to section 33 of the 2003 Act (baits and lures regulations). New subsection (8)(a) enables the Scottish Ministers to vary section 33(2) to (5) of the 2003 Act, which subsections contain provision in relation to who may make an application for regulations and what an application must comprise. New subsection (8)(b) makes similar provision for Ministers to vary the provisions of paragraphs 9B to 15 of schedule 1 to the 2003 Act, which also make provision for applications for regulations under section 33 of the 2003 Act.
94. **Section 30(3)** repeals section 35(4) of the 2003 Act. That provision provided Ministers with a power to vary, by order, certain paragraphs of schedule 1 to the 2003 Act. The effect of the amendments under section 30 is to clarify that Ministers' section 35(4) power was intended to extend to the procedural provisions in schedule 1 to the 2003 Act as regards all orders and regulations that could be made under sections 33 and 35-38 of the 2003 Act. Accordingly, section 35(4) is repealed and clarifying provision is made to amend the 2003 Act in section 30(2) and (4).
95. **Section 30(4)** amends section 39 of the 2003 Act to add new subsections (2) to (4). Subsection (2) provides that Ministers may by order vary the provisions of schedule 1 to the 2003 Act. The power will enable the Scottish Ministers to vary, for example, prescribed methods of advertisement or consultation to take account of developments in information technology.

Section 31 - Offence of fishing for salmon during annual close time

96. **Section 31** is a technical amendment to section 14 of the 2003 Act, which makes it an offence to fish for or to take salmon during the annual close time, and also provides for the circumstances in which the offence does not apply.
97. Section 14(1) of the 2003 Act makes it an offence, punishable on summary conviction by a fine of up to Level 4 on the standard scale, to fish for or take salmon by means of rod and line during the annual close time. Annual close time is defined in section 37

of the 2003 Act. Section 14(2) of the 2003 Act, as modified by section 31, clarifies the circumstances in which the section 14(1) offence does not apply, including where a person fishes for or takes salmon by rod and line during a period within the annual close time when such fishing is permitted by regulations in force in the salmon fishery district in question.

98. [Section 29\(4\)\(b\)](#) amends section 38 of the 2003 Act to enable the Scottish Ministers to specify in regulations under section 38, periods during the annual close time in which it is permitted to fish for or to take salmon by rod and line. In considering the effect of that amendment, doubt arose whether the reference to “regulations” in section 14(2) of the 2003 Act included a reference to regulations under section 38. The amendment in section 31 is intended to put the matter beyond doubt, and the section amends section 14(2) of the 2003 Act to clarify that the offence in section 14(1) of the 2003 Act does not apply where fishing for or taking salmon by rod and line during the close time is permitted under the measures specified in section 14(2)(a) to (e).

Section 32 - Consents for introduction of fish into inland waters

99. [Section 32](#) amends section 33A of the 2003 Act to ensure that, where introductions of fish or fish spawn take place, they are in line with prevailing good practice and that requirements as to record keeping and monitoring can be imposed. Section 32 also introduces new section 33B into the 2003 Act to enable the Scottish Ministers to modify, by regulation, DSFBs’ functions with respect to consenting to the introduction of salmon and salmon spawn.
100. [Section 32\(2\)\(b\)](#) amends section 33A of the 2003 Act to introduce new subsections (3A), (3B) and (3C). Subsection (3A) enables Ministers when granting consent to introduce fish or fish spawn to inland waters, and DSFBs when granting consent to introduce salmon or salmon spawn to inland waters within their district, to impose conditions and requirements on the consent. For example, conditions and requirements could include: record keeping; monitoring the impact of the species following its introduction; and bio-security measures. Subsection (3B) makes it an offence, punishable on summary conviction to a fine not exceeding Level 3 on the standard scale (section 33A(5) of the 2003 Act) for a person to act in contravention of any conditions or requirements imposed on a section 33A consent or to fail to take any action required under such condition or requirement. Subsection (3C) makes provision for a reasonable excuse defence for a person charged with an offence under section 33A(3B) of the 2003 Act.
101. [Section 32\(2\)\(c\)](#) amends section 33A of the 2003 Act to insert a new subsection (4A) which provides that the provisions of section 33A(4) apply subject to the provisions of any regulations made under section 33B of the 2003 Act, which is inserted by section 32(3) of the Act.
102. [Section 32\(3\)](#) inserts a new section 33B into the 2003 Act which gives powers to the Scottish Ministers to make regulations in relation to the functions of DSFBs under section 33A(3)(b) and (3A) of the 2003 Act. Section 33B(1), as read with section 33B(2), enables the Scottish Ministers to provide, in regulations, that they instead of a DSFB will exercise the consenting function under section 33A of the 2003 Act with respect to the introduction or possession of salmon and salmon spawn; for applications to be submitted to Ministers instead of a DSFB; and for circumstances in which an application referred to them will be determined by Ministers.
103. Section 33B(3) of the 2003 Act provides flexibility for the Scottish Ministers to, for example, restrict the application of regulations made under section 33B(2) to individual salmon fishery districts or specified inland waters. For example, it might be desirable for applications submitted to a DSFB under section 33A of the 2003 Act for a district which lies in a Special Area of Conservation to be referred to the Scottish Ministers for determination.

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

104. **Section 33** amends sections 27, 28 and 30 of the 2003 Act to enable Ministers to attach conditions and requirements to permissions and consents granted under those sections.
105. **Section 33(2)** amends section 27 of the 2003 Act to introduce new subsections (1A) to (1D). Section 27 of the 2003 Act provides for the circumstances in which a person is exempt from any offence in relation to salmon or salmon roe, where the act or omission otherwise leading to the commission of an offence is for scientific purposes; for protecting, improving and developing stocks of fish; or for the conservation of living creatures, and the person in question has the permission of a DSFB or the Scottish Ministers for the activity in question.
106. Section 27(1A) of the 2003 Act enables the Scottish Ministers, in granting permission for the purposes of section 27(1) of the 2003 Act, to impose conditions and requirements. Section 27(1B) makes it an offence for the holder of such a permission to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Section 27(1C) makes provision for a reasonable excuse defence for persons charged with a section 27(1B) offence, and section 27(1D) provides that a person guilty of an offence under section 27(1B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).
107. **Section 33(2)(b)** is a technical amendment in consequence of section 33(2)(a).
108. **Section 33(3)** amends section 28 of the 2003 Act to introduce new subsections (3) to (6). Section 28 of the 2003 Act provides for the circumstances in which a person is exempt from an offence in relation to contraventions of the provision mentioned in section 28(2) of the 2003 Act, insofar as fish other than salmon is concerned. Persons will not be guilty of an offence if the act leading to the contravention is for scientific purposes or for protecting, improving or developing stocks of fish and the person in question has the permission of the Scottish Ministers for the activity in question.
109. Section 28(3) of the 2003 Act enables Ministers, in granting permission for the purposes of section 28(1), to impose conditions and requirements. Section 28(4) makes it an offence for the holder of such a permission to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Section 28(5) makes provision for a reasonable excuse defence for persons charged with a section 28(4)(b) offence, and section 28(6) provides that a person guilty of an offence under section 28(4) is liable on summary conviction to a fine not exceeding Level 3 on the standard scale.
110. **Section 33(4)** amends section 30 of the 2003 Act to introduce new subsections (2A) to (2D). Section 30 of the 2003 Act provides for certain exemptions from the offences mentioned in section 30(1) of the 2003 Act if the act or omission concerned takes place within or in the course of the operation of a fish farm, and the Scottish Ministers have consented to the activity in question under section 30(2) of the 2003 Act.
111. New subsection (2A) enables Ministers, in granting consent under section 30(2) of the 2003 Act, to impose conditions and requirements. Subsection (2B) makes it an offence for the holder of such consent to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Subsection (2C) makes provision for a reasonable excuse defence for persons charged with a subsection (2B)(b) offence, and subsection (2D) provides that a person guilty of an offence under section (2B) is liable on summary conviction to a fine not exceeding Level 3 on the standard scale.