

Business and Regulatory Impact Assessment

Title of Proposal

The Conservation of Salmon (Scotland) Amendment Regulations 2021

Purpose and intended effect

Background

The Conservation of Salmon (Scotland) Amendment Regulations 2021 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.

Objective

The package of regulatory measures places a 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 for Atlantic salmon is sustainable in each area.

This is the seventh time that an annual assessment of the conservation status of Atlantic salmon has been undertaken. The assessment model for the 2022 fishing season categorised 173 assessment areas (primarily individual rivers and in some cases groups of rivers where fishery data cannot be assigned to individual rivers), according to their conservation status.

Rationale for Government intervention

Atlantic salmon is a protected species under the EU Habitats Directive. Following the UK's withdrawal from the European Union the Scottish Government is committed to continuing, to the greatest extent possible, to follow the principles and policies set out in the Directive; and will maintain, and where possible, exceed, relevant EU standards relating to the conservation and management of salmon.

In addition, the North Atlantic Salmon Conservation Organisation (NASCO) 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 to demonstrate that any killing of wild salmon in Scotland is sustainable. In addition, greater protection of stocks will help to maximise the socio-economic benefits that flow from them.

Consultation

Within Government

For the development of the 2016 Regulations, discussions took place with Scottish Natural Heritage (now NatureScot), Scottish Environmental Protection Agency and the Crown Office and Procurator Fiscal Service. 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 continues to refine and improve the assessment process and the robustness of the data used in the assessment.

Public Consultation

For the 2022 fishing season Ministers have consulted with such persons they considered appropriate and have given notice of the general effect of their proposals by way of an advertisement in three national newspapers. The consultation period ran from 11 August and 10 September 2021. In addition, more than 1,500 individuals and organisations were alerted by e-mail to the consultation.

A total of 18 written representations and objections were received from individuals and organisations including angling clubs, district salmon fishery boards (DSFBs) and fishery owners. These covered a range of issues, including questioning the assessment approach and methodology. Several of those responding have made similar representations in previous years. Recurring issues or themes raised in the comments also included a number of people commenting on issues relating to the accuracy or otherwise of catch returns submitted by anglers, predation by seals or piscivorous birds or to wider pressures impacting salmon stocks including climate change. Each of the representations has been considered in finalising the draft amendment regulations and Marine Scotland has responded to each of the submissions received.

Business

The majority of recent representations and discussions have taken place with DSFBs, angling clubs and individuals involved in angling. We did not receive any representations from the wider business sector during the most recent consultation.

One submission was received from the Salmon Net Fishing Association of Scotland (SNFAS) seeking a review, and annual reassessment of, the current prohibition on the retention of salmon caught in coastal waters, as set out in regulation 3(1) of the 2016 Regulations. Given the continuing downward trend in the number of salmon returning to Scotland's waters, and the commitment to reduce the risks posed by mixed stock fisheries, the Scottish Government does not propose to lift this prohibition, and no amendment to regulation 3(1) is sought. In 2016, and again in 2019, negotiations with the SNFAS and individual net operators were undertaken and an agreed financial compensation package was reached. The majority of those eligible to receive compensation, which acknowledged the likely loss of earnings from salmon netting up to the year 2028, have been paid in full and discussions continue with two remaining operators. We will continue to engage with SNFAS on this issue going forward.

Options

A detailed assessment of options was carried out prior to introducing the 2016 Regulations.

The Conservation of Salmon (Scotland) Amendment Regulations 2021 do not introduce any new or changed policies, but give effect to the outcomes of the most recent annual assessment of the conservation status of salmon.

Option 1: Do nothing

Under this option the current Regulations would remain in force, without amendment. Since those are based on an out of date assessment this would not meet Ministers' commitment to protect and conserve salmon stocks utilising the best available information and science.

Option 2: Place a greater emphasis on local voluntary conservation measures

Local voluntary conservation measures have had some success in the past - the practice of catch and release is already widely observed in Scotland with 93% of all rod caught salmon released in 2020. However, local measures are not consistent across Scotland and do not alone address the wider pressures on salmon and the continuing downturn in the numbers of returning fish and their conservation status.

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 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 and fishery proprietors have expressed concerns about a reported decline in the renewal of club memberships and the numbers of people engaged in angling because of the inability to kill a salmon. This is despite the fact that the proposed measures allow for the continuation of fishing and the current high levels of catch and release across Scotland. While such concerns have been expressed in response to recent public consultations, none of those responding have provided detailed evidence of such impact. In addition, this concern should be viewed against a reported trend away from annual club membership and towards a more flexible "day ticket" approach to angling.

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 effect angling/netting 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 are the areas which have been accorded grade 3 status where retaining salmon is prohibited.

Costs

The conservation measures have given rise to concerns expressed by a number of individuals and angling clubs, a number of whom have suggested that a decline in club membership is directly associated with the inability to kill a salmon (even with the high level of voluntary catch and release already evidenced in Scotland). No detailed financial or similar evidence has been submitted on this issue.

Scottish Firms Impact Test

We engaged with representative bodies and individual businesses during the development of the original conservation measures. During the recent consultation period we specifically sought information on the potential financial impact of the proposed conservation measures. Those firms potentially affected by the proposals range from small individual netting companies to larger sporting estates. Whilst some respondents have in the past expressed concern that there would potentially be a financial loss to their business they have not offered any specific evidence to quantify the extent of such losses.

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 2022.

Post-implementation review

The impact of the package of regulatory measures and the use of data in the assessment process is 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 to demonstrate, that any killing of wild Atlantic salmon is sustainable. These regulatory measures seek to protect the weakest stocks by mandating catch and release in a number of areas to allow stocks the best opportunity 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: GEORGE ADAM

Date: 8th December 2021

George Adam
Minister for Parliamentary Business

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