POLICY NOTE

THE CONSERVATION OF SALMON (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/363

The above instrument is to be made in exercise of powers conferred by section 38(1) and 6(b) and (c) and paragraphs 7(b) and 14(1) of schedule 1 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. The instrument is subject to negative procedure.

Summary Box

The Conservation of Salmon (Scotland) Amendment Regulations 2022 amend the Conservation of Salmon (Scotland) Regulations 2016 ("the 2016 Regulations") which make provision for the conservation of salmon in Scotland. Regulation 2 amends the 2016 Regulations by substituting schedule 2 of the 2016 Regulations. The purpose of the current Regulations is to amend the 2016 Regulations to reflect the most recent stock assessment for the 2023 salmon fishing season.

Policy Objectives

1. 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.

2. In addition, the North Atlantic Salmon Conservation Organisation (NASCO[1]) 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, coastal and freshwater environment and there is an ongoing need to ensure and to demonstrate that any killing of wild salmon in Scottish waters is sustainable. In addition, greater protection of stocks will help to maximise the socio-economic benefits that flow from them.

[1] The Convention for the Conservation of Salmon in the North Atlantic Ocean is a multilateral agreement which came into force on 1st October 1983. Its aim is to promote the conservation, restoration, enhancement and rational management of salmon stocks in the North Atlantic through international co-operation. One of the measures in the Convention is the prohibition of fishing for salmon outwith the 12 mile zone in coastal States (article 2.2). It also makes general provision regarding the availability, and sharing, of statistics for catch as well as stocks and the provision of scientific data. NASCO, the North Atlantic Salmon Conservation Organisation, is the international organisation established by the Convention. Following the UK's withdrawal from the European Union the UK is now a full party to the Convention, having previously been represented through the EU.

3. The Conservation of Salmon (Scotland) Amendment Regulations 2022 amend the 2016 Regulations which make provision for the conservation of salmon in Scotland. The purpose of the 2016 Regulations is to ensure that the killing of Atlantic salmon in Scotland is managed by assessing and categorising specified areas of inland water in relation to their conservation status. The 2016 Regulations prohibit the retention of Atlantic salmon caught in any coastal waters in a salmon fishery district and in specified areas of inland waters. In addition, Ministers may agree a conservation plan with the local district salmon fishery board or salmon fishery proprietors, particularly in Special Areas of Conservation (SACs) where stocks have been identified as being in poor conservation status.

4. The 2016 Regulations placed a statutory duty on the Scottish Ministers to carry out an assessment of the stock levels for salmon in inland waters for the purposes of establishing the conservation status of salmon in defined areas. This assessment is carried out annually. Where an area of inland waters includes a SAC the Scottish Ministers must have regard to the conservation objectives of the SAC when carrying out their assessment. The purpose of the assessment is to determine whether killing of salmon is sustainable in the area in question. The assessment process entails the collation of information on population levels of salmon in each assessment area based on rod catch statistics and other data including information from in-river fish counters.

5. Since the introduction of the 2016 Regulations, Marine Scotland has engaged with the sector to develop and improve the annual conservation assessment process and the robustness of the data used in the assessment. Following scrutiny of the Regulations in 2018 by the Scottish Parliament's Environment, Climate Change and Land Reform Committee, the Scottish Government agreed that no significant changes would be made to the underlying assessment model for a period of at least three years, to provide stability and certainty to the sector. Each annual assessment is, however, based on the most recently available data from submitted catch returns and the fish counter network.

Legislative Context

6. Section 38(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 ('the 2003 Act') enables the Scottish Ministers to make regulations considered necessary or expedient for the conservation of salmon. The Conservation of Salmon (Scotland) Regulations 2016 were made in February 2016 and came into force on 31 March 2016. Subsequent Amendment Regulations, reflecting developments in the assessment process and the outcomes of the annual assessment, came into force on 1 April in each year since 2016. The purpose of the current Regulations is to amend the 2016 Regulations to reflect the most recent stock assessment for the 2023 fishing season.

The Regulations

7. The Conservation of Salmon (Scotland) Amendment Regulations 2022 amend the 2016 Regulations. Regulation 2 amends the 2016 Regulations by substituting schedule 2 of the 2016 Regulations. Schedule 2 describes the areas of inland waters where there is a prohibition on the retention of any salmon caught.

Consultation

8. In accordance with paragraphs 10 and 11 of schedule 1 of the 2003 Act, the Scottish 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 10 August to 9 September 2022.

9. A total of 211 written representations were received from individuals and organisations including angling clubs, district salmon fishery boards (DSFBs) and fishery owners. This year alongside the proposed river gradings, additional views were sought on a catch and release regime, which led to an increase in the number of representations received on the proposed river gradings. The representations 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. Representations that raised issues relating to the proposed river gradings have been considered in finalising the draft Amendment Regulations. Marine Scotland has responded to thirty of the submissions received, with a view to answering the points made.

10. In accordance with paragraphs 12 and 14(1) of schedule 1 of the 2003 Act, Ministers considered the representations and objections in relation to the proposals and determined to progress their original proposals. A number of representations indicated that they believed the proposed grades for their river/s of interest were incorrect, however none of these representations presented sufficient evidence to warrant a change to any of the proposed grades. As such, there are no changes affecting the Regulations as proposed.

11. A small number of stakeholders raised the issue of how the Covid-19 pandemic impacted fishing, particularly during the early parts of the 2020 and 2021 fishing seasons when fishing in inland waters was prohibited or restricted. In carrying out the latest conservation status assessment the Scottish Government has considered these potential impacts and has adjusted the assessment calculation for each assessment area individually. A detailed paper setting out the methodology adopted was published last year as part of the public consultation on the proposed river gradings for 2022. This was highlighted again as part of the public consultation on the proposed river gradings for 2023.

12. A submission was also 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. Marine Scotland will continue to engage with SNFAS on this issue going forward.

Impact Assessments and Financial effects

13. A **Business and Regulatory Impact Assessment** (**BRIA**) has been prepared for these Regulations.

14. The necessity to prepare other impact assessments has been considered, however in these circumstances only a BRIA is required for these Regulations.

Marine Scotland
December 2022