POLICY NOTE

THE CONSERVATION OF SALMON (SCOTLAND) AMENDMENT REGULATIONS 2023

SSI 2023/372

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 2023 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 2024 salmon fishing season.

Policy Objectives

1. 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.

2. The Conservation of Salmon (Scotland) Amendment Regulations 2023 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.

[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 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.

4. Since the introduction of the 2016 Regulations, Marine Directorate (formerly 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 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.

EU Alignment Consideration

5. Atlantic salmon is a protected species under the EU Habitats Directive (Council Directive 92/43/EEC). Following the UK's withdrawal from the European Union, the Habitats Directive became a part of retained EU law applicable in the UK.

6. The Conservation of Salmon (Scotland) Amendment Regulations 2023 aligns with the EU Habitats Directive by continuing to prohibit the retention of Atlantic salmon caught in any coastal waters in a salmon fishery district and in specified areas of inland waters. This maintains and advances the high standards that Scotland shares with the EU on environmental protection.

7. 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 2024 fishing season.

8. The Conservation of Salmon (Scotland) Amendment Regulations 2023 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

9. To comply with the requirements of 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 9 August to 8 September 2023.

10. As a result of that consultation, a total of 37 written representations 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. Representations that raised issues relating to the proposed river gradings have been considered in finalising the draft Amendment Regulations. Marine Directorate has responded to one substantive submission received, with a view to answering the specific points made. Additionally, an outcome report answering the general points raised across all other representations has been produced.

11. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website.

12. As a result of the substantive representation received, one proposed grading was raised from Grade 2 to Grade 1, for the River Beauly, although this change did not affect the Regulations as proposed.

Impact Assessments

13. A Business and Regulatory Impact Assessment (BRIA); Island Communities Impact Assessment (ICIA); and Data Protection Impact Assessment (DPIA) have been completed on the amendment regulations and the BRIA has been attached to these regulations. An Equality Impact Assessment (EQIA) has not been completed for these Amending Regulations as they do not impact on specific protected characteristics set out in the Equalities legislation. All individuals are still permitted to fish for salmon, it is only the retention of salmon which has been prohibited in certain inland waters.

14. A new Strategic Environmental Assessment (SEA) has not been completed in implementing these Amending Regulations as one was conducted in April 2015, when the Conservation Regulations were first implemented. However, these regulations continue to align with the following environmental principles:
    a. protecting the environment should be integrated into the making of policies
    b. the precautionary principle as it relates to the environment; and
    c. preventative action should be taken to avert environmental damage.

Financial effects

15. A **Business and Regulatory Impact Assessment** (**BRIA**) has been completed and is attached. The impact of this policy on business is minimal, as the measures will restrict fishing to a catch and release regime in many areas of Scotland.

Marine Directorate
December 2023