POLICY NOTE

THE TWEED REGULATION AMENDMENT ORDER 2015

SSI 2015/11

Purpose of the instrument

1. The Tweed Regulation Amendment Order 2015 ("the 2015 Order") contains provision for the conservation of salmon within the Tweed District. The 2015 Order extends the annual close time, and the permitted period for rod and line fishing within the district, to 31 March but requires the release of all salmon within that extended period. The general effect of the Order is to ensure that no salmon is taken during the early part of the season.

Legislative context

2. Freshwater fisheries management and conservation in Scotland is largely regulated by the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 ("the 2003 Act"). Although fisheries management is generally devolved separate arrangements prevail in respect of the border rivers. Fisheries management in the Tweed District is regulated by The Scotland Act 1998 (River Tweed) Order 2006 ("the 2006 Order") which broadly mirrors the provisions of the 2003 Act. It consolidates the legislation which applies in the Tweed District and establishes the River Tweed Commission which is charged with the management of the Tweed and its fisheries.

3. The Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Regulations 2014 (SSI 2014 /327) extend the annual close time to 31 March (and to 30th April for the Esk Salmon Fishery District) in those salmon fishery districts which are regulated under the 2003 Act (with the exception of the Eachaig District)[1]. Those Regulations also require the release of all salmon during the extended close time. Parallel provision is required to extend this national conservation measure to cover the Tweed District. Article 36 of the 2006 Order enables the Scottish Ministers to set the annual close time for Tweed District. Article 54 of the 2006 Order provides that the Scottish Ministers may make an order where they consider it necessary or expedient to do so for the conservation of salmon.

4. In 2012 The River Tweed Commission applied for an annual close time and conservation order in terms of articles 36 and 54 of the 2006 Order. The proposal contained in the application was an extension of the annual close time to 30 April and a requirement to release all salmon within the extended close time. In accordance with paragraph 8 of Schedule 2 to the 2006 Order, Ministers consulted with such persons as they considered appropriate and requested additional information from the Commission. Regular discussions took place with the Commission about the proposals in the context of the national proposals as well as wider developments around carcass tagging.

[1] The annual close time for the Eachaig Salmon Fishery District is not extended as the annual close time already runs from 1st September to 30th April for that district.

5. As part of their wider consideration of potential statutory conservation measures, Ministers have re-examined the information supporting the original application together with the additional information provided by the Commission. In addition, Ministers also took into account all of the information provided in the course of the further discussions with the Commission as well as the Scotland-wide report on the status of salmon stocks and determined to alter the proposal (as outlined in paragraph 1 above) in accordance with paragraph 10 of Schedule 2 of the 2006 Order to reflect the annual close time for the rest of Scotland (excluding the Esk). In accordance with paragraphs 8 and 9 of Schedule 2 to the 2006 Order, Ministers consulted with such persons as they considered appropriate and gave notice of the general effect of the proposal by way of an advertisement in 3 national newspapers. Ministers considered 45 representations and objections in relation to the Scotland-wide proposal (including 2 responses specific to the Tweed) and determined to make the Order. A further advert specifying the proposals for the Tweed District only was then placed in 3 local newspapers on Thursday 18 and 25 December 2014 to which no further representations or objections were received.

Policy background

6. Spring salmon stocks within the Tweed District have stabilised in recent years albeit at a low level. As a consequence the Commission advocate a voluntary conservation code which encourages anglers to release any salmon caught until 30 June and asks netsmen to delay the start of their season until 1 July (with the offer of fair compensation). While the existing voluntary measures on the Tweed are welcomed it remains the case that the current status of stocks in Scotland requires protection to preserve existing levels of early running spring salmon, where these are stable (as is the case within the Tweed District), and to seek to achieve an increase in stock levels in areas where they are in decline. Spring stocks are of particular concern as this is the time when the salmon are at their most vulnerable.

7. In acknowledging its international obligations, the Scottish Government has been considering what action it could take in response to the various data that is collected regarding adult salmon abundance and most particularly the recent report from Marine Scotland which provided an overview of the current status of Scottish Stocks. www.scotland.gov.uk/Resource/0044/00446406.pdf

8. It is clear from the latest analysis that across Scotland, while reported rod catches in the summer and autumn have increased over the period 1952-2013, catches in the spring have generally declined, stabilising at a low level in recent decades. Within this trend there is some acknowledged regional variation, with some areas showing an increase in spring rod catches, some a decline and most showing no trend. However, catches in all areas are currently low when compared to levels throughout the period 1952-2013.

9. As a consequence it is considered that statutory measures are required following the end of the voluntary agreement in order to protect the current stock status and, should there be any further decline, to have that appropriately assessed and attributed. This does not negate the ability to agree further voluntary measures that go beyond the statutory minimum. That very much remains within the gift of others and will be encouraged

10. The policy intent is that the conservation measures apply throughout the Tweed District as well as the rest of Scotland as the scientific evidence demonstrates that stock levels are in decline across the country.

Consultation

11. In accordance with paragraph 8 (as read with paragraph 7) of Schedule 2 of the 2006 Order, Scottish Ministers discussed the conservation measure at length with colleagues within Marine Scotland and Marine Scotland Science and the Tweed Commission. Under the requirements of Schedule 2, paragraph 9 of the 2006 Order, notice of the general effect of the proposal was provided in 3 national newspapers (Scottish Ministers consulted on a national conservation measure Scotland wide). This was supplemented by a target email to a number of national representative bodies. However, while the provisions envisaged for the Tweed replicated that for the national measure, notice of the general effect of the proposals for the Tweed District was then undertaken separately.

12. An advert for the Tweed proposals was placed in three local newspapers on Thursday 18 and 25 December 2014. Anyone wishing to make any representations or objections with respect to the proposal was required to submit them in writing by Thursday 15 January 2015. No representations or objections were received following the local advertisement. However, a total of 45 responses were received from a range of interests including anglers, proprietors, representative bodies and conservation groups in relation to the national provision advertised on Thursday 9 and 16 October 2014. The responses to the Scotland-wide measures demonstrated that the majority were supportive of the proposal. However there was also a clear view that the proposal should have gone further although that observation offered no commentary on its wider socio/economic impact. We are aware that many anglers within the Tweed District practise catch and release well beyond 31 March in line with the local conservation policy. The operation of the 2015 Order will be reviewed on an annual basis taking into consideration Marine Scotland's annual stock assessment which is published alongside its national catch returns including the data for the Tweed District. The Order will underpin the current more extensive voluntary arrangements within the Tweed District.

13. Of the 45 responses received in respect of the national proposals the River Tweed Commission welcomed the proposals and highlighted that, whilst they were supportive they felt that the measure did not go far enough. The proposal was opposed by one netsman operating in the district, primarily on the basis that they considered the measures to be unjust and placed further restrictions on their business.

14. After due consideration of the representations and objections Ministers concluded that these did not outweigh the overwhelming case for statutory conservation measures, which was supported by the majority of consultees, and on balance the scientific data supports the assertion that this measure remains proportionate and necessary/expedient.

Impact and financial effects

15. We have engaged with the River Tweed Commission and representative bodies during the consideration of the application and specifically sought information on the potential financial impact of the proposed conservation measures during the statutory consultation. Those affected by the proposal range from small individual netting companies to larger sporting estates. Whilst one netsmen within the Tweed District, together with the other netsmen operating in other districts, highlighted that there would potentially be a financial loss to their business they were unable to quantify the extent or provide any financial information.

16. A single Business Regulatory Impact Assessment for the national conservation measure was completed and is available at: www.legislation.gov.uk/ssi/2014/327/contents/made.

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Salmon and Recreational Fisheries Team
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