

Consultation on proposed conservation measures to introduce a licensing system for killing wild salmon in Scotland



**The Scottish
Government**
Riaghaltas na h-Alba

T: +44 (0)131 244 6236

E: salmonandrecreationalfisheries@scotland.gsi.gov.uk

Consultation on proposed conservation measures to introduce a licensing system for killing wild salmon in Scotland

Background

1. The report¹ of the independent Wild Fisheries Review (WFR), published in October 2014, makes 53 wide-ranging recommendations for change to the management system for wild fisheries in Scotland. The Scottish Government has committed in *One Scotland – the Government’s Programme for Scotland 2014-15*² to consult in Spring 2015 on broad policy options for a new fisheries management system followed by further consultation on a draft wild fisheries bill before the end of the Parliamentary session.
2. The WFR report recommended that, in advance of consideration of the broader reform agenda for wild fisheries, Scottish Ministers take immediate action to conserve wild Atlantic Salmon (*salmo salar*) by introducing as soon as practicable a ban on killing except under licence, accompanying regulations on fishing equipment and the use of carcass tagging as a tool to ensure compliance with the licensing regime. This consultation paper seeks views on that specific conservation proposal; wider issues on the policy and future management framework for wild fisheries will be considered in the forthcoming consultation to be published in spring 2015.
3. Atlantic Salmon face a number of pressures during their lifecycle, some of which may be alleviated by management measures. These include but are not limited to predation; poor water quality; disease and parasites; barriers to migration; poor physical habitat quality; food availability; and factors affecting survival issues while at sea (including the challenge of warming seas). The range and complexity of factors which influence the status of stocks therefore means the high level aim of healthy, sustainable Atlantic Salmon stocks cannot be delivered through any one management measure. A variety of actions tackling a range of challenges is therefore required: there is no silver bullet.
4. These proposals focus on improving the conservation status of salmon by managing the pressure of exploitation through fishing within Scotland’s domestic waters. They are designed to complement, not replace, other management activities being undertaken at local, national and international level in the interests of conservation. The objective of the measures is to ensure harvesting in Scottish domestic waters is sustainable and that fishing does not damage vulnerable stocks or cause damage to the network of Special Areas of Conservation in place across Scotland.
5. We accept that many might have wished to see the detail of how the licensing system and associated measures might operate before committing to a view on the proposed

¹ <http://www.scotland.gov.uk/Resource/0046/00460195.pdf>

² <http://www.scotland.gov.uk/Publications/2014/11/6336>

conservation measures. In an ideal world we would consult specifically on the detail of the legislation which delivers the scheme; however, given the time pressures associated with a wish to have the measures in place for the start of the 2016 season it is necessary to establish broad agreement to the principles while at the same time working up the detail.

6. In recognition of this, we propose using the consultation period to discuss both the principle of the proposals and how they might operate in practice and we encourage those with an interest in the proposals to respond. There will be a series of local events to support the consultation process at which views can be shared constructively and those directly affected by the proposals are able to assist in their design. Details of these events will be listed on the Scottish Government webpages³. In addition we anticipate holding meetings with the main representative bodies in the sector.

7. The WFR report recommended the introduction of the proposed conservation measures as soon as practicable. It is anticipated that the package of legislation required to deliver the measures be developed and informed by the consultation process and laid in the Scottish Parliament by the end of June 2015 with an accompanying Business and Regulatory Impact Assessment. Statutory guidance on the measures would then be developed during the summer and we intend to develop this through discussion with representative bodies and interested parties. To this timetable, the Scottish Parliament would consider the legislation on its return from recess in September, with the intention that the regulations come into force mid-October, allowing applications for licences to be received and assessed for the 2016 season immediately thereafter.

How to respond

8. Information about the consultation process and how to respond are at Annex A of this document. Specific consultation questions are listed at the end of the main paper and in addition to responding to these there is the opportunity to make further remarks about the proposed measures and provide suggestions and options for how they might be developed and operate in practice.

Wild Atlantic Salmon

9. Atlantic Salmon are an iconic, protected species and a valuable natural resource belonging to the people of Scotland. Due to its geography and climate Scotland hosts significant salmon populations: there are nearly 400 salmon rivers in Scotland, a level far exceeding those in other countries. Salmon makes an important contribution to Scotland's economy, environment and its bio-diversity. Management and conservation of the species is necessary in order to protect it for this and future generations.

Conservation obligations

10. Atlantic Salmon is a species whose habitats in the freshwater environment are afforded protection under Directive 1992/43/EEC (the Habitats Directive). Seventeen Special Areas of Conservation ("SACs") for salmon have been designated under Article 3 of the Habitats Directive. There is a general obligation to ensure that the conservation status of those SACs is understood and assessed in order that they are maintained or, where appropriate, restored at a favourable conservation status. The Directive lays down a general conservation regime for SACs to be achieved through conservation measures, management plans and assessments. It is important that the impact of activities on those SACs is understood and assessed as required by the Directive. Further, Atlantic Salmon is listed in

³ <http://www.scotland.gov.uk/Topics/marine/Salmon-Trout-Coarse>

Annex V of the Directive as a species likely to require management measures to ensure their exploitation is compatible with their being maintained at a favourable conservation status.

11. In addition to obligations under the Habitats Directive, the European Union is a signatory to the Convention for the Conservation of Salmon in the North Atlantic Ocean (the NASCO Treaty). The Treaty regulates harvesting of Atlantic Salmon in distant water fisheries and commits member organisations to manage homewater fisheries in line with agreed management principles⁴. Scottish Ministers therefore have obligations to the international community for the way in which salmon returning to Scottish waters are conserved and managed.

Wild Atlantic Salmon – Current Legal and Regulatory Framework

12. Salmon fishing rights are property rights in law. Wild salmon themselves are a public resource: they belong to no-one until they are caught and Scottish Ministers have responsibilities for their management and conservation. This legal framework places Scotland in a unique position in terms of developing appropriate measures to manage exploitation of stocks to ensure conservation obligations are met.

13. Property rights are protected under Article 1, Protocol 1 of the European Convention on Human Rights) “the Convention”. Atlantic Salmon are likewise protected by European legislation and there are obligations placed on Scottish Ministers for their management. Those rights which are protected under A1P1 comprise 3 related principles – 1. The right to peaceful enjoyment of property; 2. Non-deprivation of property (except in the public interest and subject to conditions provided for by law); and 3. State controlled use of property in the general interest (“control of use”). Any interference in these rights must be lawful, pursuant to a legitimate aim and proportionate. The Convention recognises that property rights may be restricted for legitimate aims. Environmental conservation is such an aim and legislation in Scotland already places restrictions on the exercise of property rights within these parameters.

14. Scottish Ministers have powers, principally through the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003, to regulate the management of salmon fisheries, including the taking of salmon in Scotland. There are a range of spatial, temporal and gear controls in statute which together regulate the killing of wild salmon. In addition, there are a number of voluntary agreements in place locally to promote, for example, catch and release or bag limits. The principal driver for these new conservation proposals is the need to protect vulnerable stocks and to help manage the species for the long-term benefit of the people of Scotland, including those who own or lease the right to fish.

15. While the location, time and methods of fishing for salmon are regulated in law, the existing legal framework does not provide a lever, at a national level, to control the number of fish which can be killed and taken. Subject to any local agreements or the terms of their fishing permit, those with a legal entitlement to fish may take as many as they can catch, whether fishing by rod and line or by net. This presents an unacceptable level of risk as Scottish Ministers, while having the accountability for management of stocks and conservation obligations, do not currently have an appropriate lever to exercise responsibility for ensuring that killing is undertaken on a sustainable basis and does not present a threat to vulnerable stocks.

⁴ NASCO Guidelines for Management of Salmon Fisheries:

http://www.nasco.int/pdf/far_fisheries/Fisheries%20Guidelines%20Brochure.pdf

NASCO paper CNL(98)46 - Agreement on Adoption of a Precautionary Approach:

http://www.nasco.int/pdf/agreements/pa_agreement.pdf

16. Scottish Ministers consider that this gap in the regulatory framework is not in the best interests of long-term sustainability of stocks nor does it enable evidence-based management of a natural resource and protected species. It is therefore considered necessary and expedient for the purposes of salmon conservation for an appropriate control mechanism to be put into law which can be used to ensure that killing of wild salmon is undertaken in accordance with conservation obligations and on the basis of demonstrating sustainability. The existence of such a lever will mean that management action can be taken at a national level in response to changes in stock status and also ensure that the impact of activity on SACs is assessed and decisions made within that context. This is particularly important in the case of those fisheries which take fish from a number of river stocks.

Conservation Proposals

17. Scottish Ministers are committed to protecting and enhancing Scotland's wild fisheries to ensure a long-term future for the species and the socio-economic benefits that flow from it. They are also committed to meeting their obligations to the EU and the international community: Atlantic Salmon is a migratory species which requires cross-governmental approaches to management and Scottish Ministers need to have appropriate mechanisms to manage stocks in Scottish waters.

18. In order to ensure that any killing of wild salmon - a protected species - is sustainable and does not present a threat to vulnerable stocks Scottish Ministers propose the following package of measures to conserve salmon. Taken together, we believe they represent a necessary and proportionate regulation of activity which will facilitate conservation and protection of the species now and in the longer term. The package aligns with the longer-term plan to reform wild fisheries management following the WFR and to promote evidence-based management.

Conservation measure under section 38 of the Salmon & Freshwater Fisheries (Consolidation) (Scotland) Act 2003 and Article 54 of The Scotland Act 1998 (River Tweed) Order 2006 which prohibits the taking of wild salmon – by any method – except under licence from Scottish Ministers.

19. Licensing systems for management of game and other protected species are a common control tool in place in Scotland and many other countries; they are specifically mentioned as an appropriate measure for management of Annex V species under the Habitats Directive. Introduction of this control mechanism would bring Scotland into line with other countries which host significant salmon populations and provide an improved framework for management of species in accordance with sound science and in accordance with EU law. Killing by any method would require to be undertaken within the parameters of a licence issued by Scottish Ministers. For anglers, this licence would not replace the need to have legal permission to fish (i.e. a fishing permit) from the proprietor of the fishery.

20. As the owner of the property right, it is proposed that responsibility for obtaining a licence to kill wild salmon in a particular fishery rests with proprietors. Should they wish to, proprietors would be able to apply annually to Scottish Ministers to catch and kill a certain number of fish in their fisheries for the forthcoming season. Licences would not be transferrable to other proprietors or other fisheries. Applications would be assessed and determined by Scottish Ministers and in line with similar licensing systems an appeals mechanism would be provided. Conditions would be capable of being attached to licences which might regulate, for example, the period within which the licence might be exercised or the size or weight of fish which could be taken. Should proprietors not wish to apply for a

licence, or where a licence is not granted, the law would require that fishing take place only on a catch and release basis: killing would be prohibited. Catch and release is a recognised mechanism to conserve salmon and has become increasingly common in Scotland and elsewhere in recent years; in the 2013 season 80% of the rod catch was released and levels were at 92% in the spring.

21. As the legislative vehicle for the ban on killing except under licence would be a conservation measure under section 38 of the 2003 Act, there is a requirement that the principal driver for decision-making by the system is the interests of conservation. It is proposed that applications are assessed with reference to a framework of policy drivers, legal requirements and the best available knowledge on stock levels. As discussed earlier in this paper, Scottish Ministers' policy on salmon conservation is driven strongly by obligations to NASCO and the EU; these obligations and requirements would be taken into account in the decision making-process. Scottish Ministers are required to act in a way that protects the weakest stocks and this policy driver would also inform the decision-making process. Licensing decisions would be subject to Habitats Regulation Appraisal in line with the Habitats Directive to ensure that the impact of proposed activities on SACs is known and assessed properly.

22. Where a licence was granted to a rod and line fishery, it is anticipated that proprietors would be able to pass to anglers the legal authority to kill salmon (as well as to fish) under the terms of their licence via the existing system of fishing permits.

Conservation measures under section 38 of the 2003 Act and Article 54 of the Tweed Order to specify the equipment which would be prohibited when fishing by rod and line

23. In order to support a licensing system as a key tool to ensure killing of fish is undertaken within a stricter regulatory framework and is sustainable, and the use of catch and release as a conservation tool, it is proposed that the accidental killing of salmon is minimised through prohibiting use of specific equipment. Fishing by rod and line is known to result in unintentional mortality of the catch; this can be in the region of 8-12% for Atlantic Salmon and is influenced by many factors, some of which can be controlled. Guidelines for anglers on catch and release have been produced by NASCO, Marine Scotland Science and a number of fisheries management organisations including the Association of Salmon Fishery Boards.

24. We will develop proposals on the specific types of equipment which would be prohibited for use when fishing by rod and line due to its higher potential to cause damage to the fish. There are a number of such prohibitions already in place in Scotland on a statutory and voluntary basis and these provide a helpful starting point. Barbed hooks are not allowed in a number of places due to their potential to cause mortal damage. As a minimum, we would suggest these are prohibited and invite views both on this suggestion and on what other gear might be considered to present a greater risk to the fish while fishing by rod and line.

Regulations under section 21A of the 2003 Act and the new Article 43a of the Tweed Order to make a carcass tagging scheme in support of the licensing system.

25. It is proposed that licences granted by Scottish Ministers would be issued to proprietors in association with individually numbered carcass tags which would be required to be attached to any fish killed under that permit. Carcass tagging would therefore provide a tool to track the killing and taking of fish against the terms and conditions of the licence, aiding compliance with the conservation regulation and other related legislation which

controls fishing activity. Any dead salmon to which an appropriately issued carcass tag was not affixed would be regarded in law to have been killed illegally and could not be retained. It is anticipated that un-used tags would be returned to the licensing authority at the end of the fishing season.

26. The introduction of carcass tagging linked to a licensing regime has the potential to provide a helpful cross check of data on catches. There are also broader benefits in terms of helping to enforce fisheries legislation more widely, particularly poaching offences.

Scope of the package of measures

27. The policy driver for this suite of measures is the improved regulation of exploitation in order to help manage and conserve Atlantic Salmon. As such the measures would apply to killing by any method: both rod and line and netting. In line with the recommendation in the Wild Fisheries Review report the proposals would apply only to salmon (*salmo salar*), not to sea trout (*salmo trutta*). It is proposed that the suite of measures apply to the geographical area for which Scottish Ministers have fisheries management responsibility: all of Scotland including the Tweed District (including those parts of the district which are geographically in England); but not the Upper Esk which is managed for fisheries purposes by the Environment Agency. It is proposed that the ban on killing come into force for the start of the 2016 fishing season.

Cost recovery

28. The WFR report recommended that the licensing system operate on a full cost recovery basis: those who ultimately benefit from the activity should pay for the ability to do so. There is an assumption within the public sector that licensing schemes in general operate on the basis of charging for the service provided.

29. It is currently envisaged in this case that any charging regime would encompass both the licence application and assessment process (including any appeal), the accompanying carcass tagging scheme and associated compliance activity. Any charging regime would need to be made by regulations under section 59 of the Aquaculture and Fisheries (Scotland) Act 2013. The regulation and accompanying documentation would provide full detail of the charging system with transparency a pre-requisite to demonstrate that the scheme is recovering costs for provision of a service and not seeking to raise additional revenue.

Impact Assessments

30. It is intended that the principal impact and objective of the measures will be a strengthened regulatory framework for management and conservation of a protected species. Scottish Ministers recognise that the proposed regulations represent a significant intervention in the regulation of salmon fisheries in Scotland. However, it is considered that the measures are necessary and demonstrably proportionate in the context of our conservation obligations and the need to manage exploitation of Scottish salmon stocks appropriately to help contribute toward their viability today and into the future.

31. This consultation primarily seeks views on the principle of introducing a package of measures to facilitate additional controls over the killing of salmon. The policy can be expected to have impacts on the environment, on businesses involved in salmon fishing and on individuals who fish or provide services to those who do. It is important in developing the policy that the impacts are identified correctly. For example, the impact of amending the

legislative framework to require a licence to kill salmon is linked to, but not the same, as the potential impacts of the decisions that the licensing authority might make. This consultation cannot and does not seek to pre-judge the volume or type of applications which might be received in any year to kill salmon, nor the decisions which might be made in relation to those applications.

32. In order to assess the environmental impact of the policy proposals a Strategic Environmental Assessment is being carried out in accordance with the Environmental Assessment (Scotland) Act 2005. Consultation on an Environmental Report will begin shortly and inform the development of the proposal and the resulting legislation.

33. A high level socio-economic assessment of the proposals has been commissioned from independent consultants PACEC as part of wider work being undertaken to understand the economic and social value of all of Scotland's wild fisheries. This study will also inform development of the policy and the licensing system.

34. Outwith these two assessments, Scottish Ministers want to invite views on the potential impact of the introduction of this package of measures. The impact is likely to be different on different parts of the sector, and on particular types of business as well as individuals. All legislation requires a Business and Regulatory Impact Assessment (BRIA) to be undertaken in order to demonstrate that impacts have been fully explored and decisions made which are informed by the information gathered.

Consultation Questions

- 1) Do you agree with the proposal that Scottish Ministers introduce, for conservation reasons, a ban on killing wild salmon by all methods except under licence? If you disagree, please provide suggestions for alternative measures which, within the context set out in the consultation paper, would deliver the objective of a more robust regulatory framework to control killing of salmon to enable conservation objectives to be met.
- 2) Do you agree with the basic outline of how the licensing system would operate? Please provide suggestions, and rationale, if you consider it should operate in a fundamentally different way.
- 3) Do you agree that the ban on killing and associated licensing system for Atlantic Salmon should be accompanied by regulations prohibiting use of certain fishing equipment which is liable to cause greater harm to the fish? What other equipment, other than that set out at paragraph 24, do you consider should be included and for what reason (please provide evidence for your suggestions if possible)?
- 4) Do you agree that a carcass tagging scheme should be made as an integral part of the licensing system to aid compliance? If not, please provide suggestions for methods of ensuring compliance with licences and their conditions.
- 5) What do you consider the main impacts of the package of measures to be? Where you are commenting on the proposed ban and associated licensing scheme, please identify whether the potential impact is a result of the principle of having a more robust regulatory system in place or is more connected to the potential decisions that might be made by the licensing system. Please provide any evidence that you consider should be included within the Business and Regulatory Impact Assessments that will be completed alongside the legislation required to deliver the package of measures. The BRIA helps us to use available evidence to find proposals that best achieve the policy objectives while minimising costs and burdens. It also ensures that any impact on businesses, particularly small enterprises, is fully considered before regulations are made.
- 6) Do you have any other observations about the proposals as conservation measures to help regulate exploitation of Atlantic Salmon? In the context of the legal framework in Scotland, do you have any suggestions or options for how they might operate in practice?

Annex A – Responding to this consultation paper

We are inviting written responses to this consultation paper by 30 April 2015. Please send your response with the completed Respondent Information Form to:

salmonandrecreationalfisheries@scotland.gsi.gov.uk

or

Jackie McDonald
Area 1-B North, Victoria Quay, Edinburgh, EH6 6QQ.

If you have any queries or require further information about the consultation please contact Valerie Lusk on 0131 244 6236 or salmonandrecreationalfisheries@scotland.gsi.gov.uk

It would be helpful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received. A template is provided which you may wish to use, but this is not compulsory.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of our website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system provides a weekly email containing details of all new consultations (including web links). It complements the Scottish Government distribution lists, and is designed to allow individuals and organisations to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form, which can be found at the end of this consultation paper, as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential and will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and therefore has to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that it contains no potentially defamatory material, responses will be made available to the public in the Scottish Government Library at Saughton House, K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD and on the Scottish Government consultation web pages within six weeks of the consultation closing date. You can make arrangements to view responses by contacting the Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please use the contact details above.

Consultation on proposed conservation measures to introduce a licensing system for killing wild salmon in Scotland



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode

Phone

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address



(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS – RESPONSE TEMPLATE

Q1 Do you agree with the proposal that Scottish Ministers introduce, for conservation reasons, a ban on killing wild salmon by all methods except under licence? If you disagree, please provide suggestions for alternative measures which, within the context set out in the consultation paper, would deliver the objective of a more robust regulatory framework to control killing of salmon to enable conservation objectives to be met.

Comments

Q2 Do you agree with the basic outline of how the licensing system would operate? Please provide suggestions, and rationale, if you consider it should operate in a fundamentally different way.

Comments

Q3 Do you agree that the ban on killing and associated licensing system for Atlantic Salmon should be accompanied by regulations prohibiting use of certain fishing equipment which is liable to cause greater harm to the fish? What other equipment, other than that set out at paragraph 24, do you consider should be included and for what reason (please provide evidence for your suggestions if possible)?

Comments

Q4 Do you agree that a carcass tagging scheme be made as an integral part of the licensing system to aid compliance? If not, please provide suggestions for methods of ensuring compliance with licences and their conditions.

Comments

Q5 What do you consider the main impacts of the package of measures to be? Where you are commenting on the proposed ban and associated licensing scheme, please identify whether the potential impact is a result of the principle of having a more robust regulatory system in place or is more connected to the potential decisions that might be made by the licensing system. Please provide any evidence that you consider should be included within the Business and Regulatory Impact Assessments that will be completed alongside the legislation required to deliver the package of measures. The BRIA helps us to use available evidence to find proposals that best achieve the policy objectives while minimising costs and burdens. It also ensures that any impact on businesses, particularly small enterprises, is fully considered before regulations are made.

Comments

Q6 Do you have any other observations about the proposals as conservation measures to help regulate exploitation of Atlantic Salmon? In the context of the legal framework in Scotland, do you have any suggestions or options for how they might operate in practice?

Comments



© Crown copyright 2015

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.scotland.gov.uk

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78544-093-9 (web only)

Published by The Scottish Government, February 2015

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS44444 (02/15)

w w w . s c o t l a n d . g o v . u k