

Salmon and salmon fisheries management: a brief overview of the legal framework

1. This paper has been commissioned from Marine Directorate officials by the Mixed Stock Fisheries Working Group at its first meeting on 12 November 2008. It aims to offer a brief overview of the legal framework for salmon and salmon fisheries in Scotland.

Principal Act

2. The primary legislation regulating salmon fishing and management in Scotland is the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 as amended by the Aquaculture and Fisheries (Scotland) Act 2007.

Fishing rights in Scotland

3. All salmon fishing rights in Scotland, including in the sea, are private, heritable titles, which may be held separately from any land and are subject to the Scots Law of Property. The European Convention on Human Rights apply to such rights. Salmon fishing rights in the sea extend out to 12 miles, but in practice the primary and subordinate legislation in place regulating fishing methods restricts fishing in the sea to methods operated from and attached to the coast. It is an offence for any person to fish for or take salmon unless they have the legal right or written permission from a person having such right. Other generally applicable legal obligations such as in the European Habitats Directive apply to the exercise of these rights and the management of the fisheries.

Permitted methods of salmon fishing

4. The permitted methods of salmon fishing differ inside and outside estuary limits. Estuary limits have been fixed for most rivers either by byelaws made in 1865, or by Regulation as provided for in section 36 of the 2003 Act. Where no such estuary limits have been fixed, as may be the case where smaller streams enter the sea, the estuary limits are the natural limits which divide a river (including its estuary) from the sea.

5. *Inside estuary limits*: the permitted methods of fishing for salmon are:

- a) - rod and line, and
- b) - net and coble (sweep net).

6. No person may sell in Scotland any salmon that has been caught by rod and line.

7. In certain locations, the use of cruives, certificated fixed engines and haaf nets may be used. Cruives are trap fisheries for which certain historical rights remain in existence. There are currently no cruive fisheries in operation, and a right of fishing may be exercised if, and only if, it was in existence before 10 May 1951. It is not anticipated that any cruive fisheries will be brought into operation.

8. Certificated fixed engines exist only in the Solway in south west Scotland, and the term means a fixed trap net certificated as privileged under section 5 of the Solway Salmon Fisheries Commissioners Act 1877.

9. The use of haaf nets is also restricted to fisheries in the Solway, and a right of fishing by this method may be used if, and only if, it was in existence before 10 May 1951.

10. Outside estuary limits: the permitted methods of fishing for salmon are:

- a) - rod and line,
- b) - net and coble, and
- c) – bag-net, fly-net or other stake-net.

11. A drift net fishery for salmon started in the early 1960s, but was prohibited in 1962, and the ban remains in force. Subsequent legislative measures were introduced to prohibit other methods of salmon fishing, including trawling and long lines, so that the permitted methods specified above remain the only lawful ways of fishing for and taking salmon.

Regulation of net fisheries

12. Netting is regulated by the Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992, as amended in 1993 and 1994. These regulations describe how net and coble and fixed engines may be operated.

13. For all nets, no part of any net shall be designed or constructed for the purpose of catching fish by enmeshing them, and no monofilament netting shall be used in the construction of any net used in fishing for or taking salmon. No net may have a mesh size of less than 90mm knot-to-knot (stretched mesh), and the minimum permitted twine thickness is 0.9mm.

Close times

14. Both net and rod fisheries are subject to weekly and annual close times. The weekly close time applies throughout Scotland and extends from 6pm on Friday until 6am on the following Monday. No fishing for salmon is permitted on a Sunday. Fishing by rod and line is permitted during the weekly close time except on Sunday.

15. The annual close time for fishing for salmon in Scotland (except in the Tweed district) is a continuous period of not less than 168 days and applies to all methods of fishing, except to the extent that provision is made for periods during the annual close time during which it is permitted to fish for and take salmon by rod and line. In practice, most annual close times extend from about the beginning of September until early or mid-February in the following year. Rod fishing is permitted in some salmon fishery districts until the end of November, and starts in some districts in mid-January.

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16. In the case of the Tweed, the annual close time is a continuous period of not less than 153 days from mid September until mid-February in the following year. The periods during the annual close time when fishing by rod and line is permitted extend until 30 November, and from 1 February.

Enforcement

17. Fisheries legislation is enforced by the police and by water bailiffs employed by District Salmon Fishery Boards (DSFBs) or appointed by the Scottish Ministers. In the case of unlawful fishing at sea in Scottish waters, in addition to the police and water bailiffs, the Scottish Fisheries Protection Agency (SFPA) enforces measures relating to fishing for or landing salmon made under sea fisheries legislation.

Effort

18. River-by-river management is undertaken by DSFBs, financed locally by the owners of salmon fishing rights, working within a legal framework specified in statute law.

19. Much of the management remains in the hands of the fishery owners. In the case of the net fishery, effort is regulated by the number of locations within any fishery where a net may be set, by the labour resources available for operating the fishery, and by the fishery owners' perceptions of the availability of fish. In many cases around Scotland, net fisheries have closed as a result of private buy-out initiatives.

20. In the case of the rod fishery, effort is regulated by the numbers of permits issued by the owners of the fishery, and the times when fishing is permitted. Many fishery owners apply conditions to their permits such that anglers may only use certain methods. In 19 salmon fishery districts, Regulations prohibiting certain baits and lures have been made by Statutory Instrument, and failure to comply with these regulations is an offence.

Management of Fisheries

21. The Scottish Government is supportive of the management of stocks on a catchment by catchment basis, using a proportionate precautionary approach. Scottish Ministers have statutory powers to close mixed stock fisheries through salmon conservation regulations and to alter weekly and annual close times.

22. Where evidence indicates that conservation measures are necessary or expedient for the conservation of salmon the Scottish Government will support this policy by:

- Scottish Ministers will take scientific advice from FRS and make salmon conservation regulations as they deem appropriate.
- Scottish Ministers will respond to applications from DSFBs for salmon conservation regulations

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- Scottish Ministers will support the policy of purchasing mixed stock, fixed engine stations, fisheries on a willing buyer/willing seller basis as a means of reducing exploitation and improving fishery management.
- In addition to their powers to make conservation regulations, Scottish Ministers may also alter close times (both weekly and annual) to restrict exploitation.

23. Scottish Ministers have no statutory powers to close mixed stock fisheries other than through salmon conservation regulations.

24. Where evidence demonstrates that intervention is required for the conservation of salmon, fishery managers, including DSFBs, may seek voluntary reductions in fishing mortality and apply to the Scottish Ministers for salmon conservation regulations made under the 2003 Act, such as those made in respect of the Annan and Esk Salmon Fishery Districts. Regulations may include effort limitation, mandatory catch and release and in extreme cases fisheries closure.

25. Where they deem it necessary or expedient, Ministers may make such regulations independently of the fisheries managers. Such regulations will only be made after consultation and will be based on evidence from statutory advisors. In addition, where application has been made by a DSFB, Scottish Ministers may alter the annual close time for the District in question, as well as the period within the close time when angling is permitted. Scottish Ministers may also, after consultation, alter the weekly close time, which applies throughout Scotland, to restrict exploitation.

Voluntary conservation measures

26. Measures such as the voluntary deferment of net fishing until 1 April by members of the Salmon Net Fishing Association of Scotland and the widespread voluntary practice of catch and release in the rod fishery have served to reduce levels of exploitation notably in the early months of the year.

Scottish Government: Marine Directorate
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