

Draft provisions for a Wild Fisheries (Scotland) Bill/Draft Wild Fisheries Strategy: a consultation

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Ministerial Foreword

As promised in the Scottish Government's programme for Scotland 2015-16 I am very happy to launch this consultation on draft provisions for a Wild Fisheries (Scotland) Bill, alongside a draft Wild Fisheries Strategy which sets the context for a new fisheries management framework for Scotland.

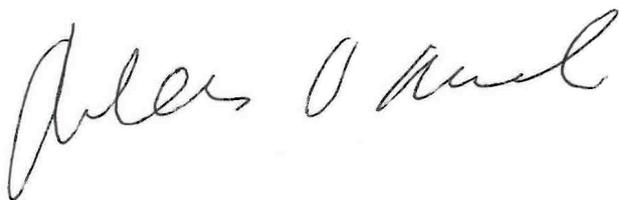
This consultation reaffirms this Government's commitment to modernise our fishery management structures and to establish the foundations for a more secure and sustainable future for this vital sector. Working with our stakeholders we have begun work on legislation that adopts an all species approach that acknowledges and promotes the key pillars of conservation, sustainability and access to all, and the Scottish Government's core purpose – to create a more successful country, with opportunities for all in Scotland to flourish, through increasing sustainable growth.

The draft provisions for a Wild Fisheries (Scotland) Bill and draft Wild Fisheries Strategy have been developed in a most collaborative way. They have been informed by the Report on the Independent Wild Fisheries Review; the earlier consultation on this Government's response to that Report, and with a substantial contribution made by the Stakeholder Reference Group (SRG) and Strategy Development Group (SDG) whose wide ranging membership are committed to ensuring that we collectively get this process right. In addition many of the representative organisations have been, and are, working together on several of the emerging themes from the consultation and the developing legislation.

I am hugely grateful to everyone who responded to the earlier consultation, and particularly to the members of SRG and SDG for working positively with the Government in developing these proposals. We are committed to retaining the incredible enthusiasm, professionalism and dedication within the wild fisheries sector. I want to ensure that we have committed appropriate resources to ensure that we are able to retain these key people and that they are able to continue to contribute to the process going forward.

It is important to recognise at this stage that this is very much a draft Bill and subject to change as a result of this consultation exercise. There are also some technical areas which require further development before finalising proposals. We therefore took the decision not to produce a Business and Regulatory Impact Assessment (BRIA) at this stage. A BRIA forms part of the package of any primary legislation put before Parliament and will be developed in line with the final proposals.

Consultations are by their very nature designed to tease out ideas and thoughts - nothing has been set in stone. This is your opportunity to help shape the future of the sector going forward and I urge you to grasp it.



Dr Aileen McLeod

Minister for Environment, Climate Change and Land Reform

Background

1. The Scottish Government has a manifesto commitment to support and protect Scotland's famous and valuable salmon and freshwater fisheries and to modernise the management framework.
2. Progress towards this commitment has been delivered in a number of stages:
 - Stage 1 was to update the governance of salmon fisheries via the Aquaculture and Fisheries (Scotland) Act 2013.
 - Stage 2 was to commission an independent Wild Fisheries Review, chaired by Andrew Thin, which published its report in October 2014 and made 53 recommendations for change¹.
 - Stage 3 was the consultation on the fundamental management principles² to guide development and design of the new system at all levels, and to seek views on broad options for taking forward the main themes identified in the Wild Fisheries Review report.
3. A Stronger Scotland: the Government's Programme for Scotland 2015-16³ commits Scottish Ministers to consult on draft provisions for a Wild Fisheries Bill before the end of the current parliamentary session (this consultation). In parallel we are also consulting on a draft National Wild Fisheries Strategy.
4. Through this consultation we are presenting a broad package of information which will allow stakeholders to see the developing Bill in the context of the draft National Wild Fisheries Strategy (Chapter 1).

Detail

5. It is recognised that fundamental reform of the fisheries management system is a large and complex subject. We have and will continue to work closely with our Stakeholder Reference Group⁴ to help inform the programme of reform including the change management implications going forward. During the consultation on broad principles we held 9 drop-in events and 35 meetings with stakeholders in order to hear and share views. There were over 200 responses to the consultation. The analysis of consultation responses has been published⁵ as part of the package supporting this next round of consultation. Detail on how the views of stakeholders have informed our thinking is included at Annex B.
6. A key recommendation of the Independent Wild Fisheries Review was that the future management structures should manage all species rather than just salmon and sea trout. We have therefore set out provisions for a management structure to manage salmon, sea trout and other freshwater fisheries. The system (national and local functions) will manage fish in our rivers and lochs as well as put-and-take fisheries in still waters.

¹ <http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreview/WFRFinal>

² <http://www.gov.scot/Publications/2015/05/7755>

³ <http://www.gov.scot/Resource/0048/00484439.pdf>

⁴ <http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/refgroup>

⁵ <http://www.gov.scot/Resource/0049/00492901.pdf>

7. Draft provisions for a new Wild Fisheries (Scotland) Bill are set out in Annex D. The draft reflects a structure as follows:

- **Part 1 - Administration and Management of Wild Fisheries**

- Chapter 1 - National Arrangements

- Chapter 2 - Local Arrangements

- Chapter 3 – Wild Fisheries Levy

- **Part 2 - Regulation of wild fishing and fisheries**

- Chapter 1 - Conservation Regulations

- Chapter 2 - Specific Conservation Measures

- **Part 3 - Enforcement**

- **Part 4 - General**

8. This consultation is designed to give stakeholders an opportunity to provide feedback on the approach currently being taken as we continue to develop the legislative provisions before a Bill will be introduced to the Scottish Parliament in the new Parliamentary session.

9. However, it must be emphasised that Annex D only includes those elements where sufficient development has taken place. The provisions do not represent the draft Bill in its entirety, and therefore it is important that the narrative included in the consultation document is considered in parallel when formulating a response. This is very much an opportunity for you to continue to help shape the way forward.

10. Chapter 2 provides an overview of the provisions for a draft Bill, including those areas which still need to be covered.

11. The Stakeholder Reference Group will continue to have a key role as we move from the current system towards the future management system. A transition plan will be developed to ensure effective transition planning and continuity of delivery of fisheries management. We understand the need to maintain momentum, confidence and investment in the day to day management of fisheries throughout the reform programme. We also wish to ensure the retention of key people and expertise within the sector, as we recognise that such expertise will form the foundation of the future management structures.

12. Information about the consultation process and how to respond is at Chapter 8. We invite comments on any or all parts of this consultation and hope to engage constructively with the full range of interested parties during the consultation process.

Chapter 1: National Wild Fisheries Strategy

13. The production of a wild fisheries strategy was a key recommendation of the Report of the wild fisheries review panel. In order to support the narrative underpinning the Wild Fisheries Bill, we have begun to develop a draft National Wild Fisheries Strategy which can be seen at Annex C. This document has been informed by the National Wild Fisheries Strategy Development Group⁶ comprising membership across the sector.

14. Since September 2015 the Group has been meeting on a regular basis to develop the Strategy which aims to provide:

- A long-term vision for managing and developing Wild fisheries in Scotland (The Strategy);
- An outline methodology for achieving that vision (a Governance and Accountability Framework which ensures that everyone operates within a clear and robust framework for decision making and accountability designed to achieve successful delivery of the purpose, aims, and objectives.);
- A structure for greater stakeholder involvement on the development and management of Wild Fisheries in Scotland.

15. In common with the provisions for a draft Bill, this Strategy will continue to be developed during the consultation process.

Q1. Are you content with the structure and content of the draft National Wild Fisheries Strategy?

Q2. Which of the current areas within the draft Strategy would you prioritise, and why?

⁶ www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/nationalstrategy

Chapter 2

Introduction to the Draft Wild Fisheries (Scotland) Bill

Introduction

16. The provisions for a draft Bill are published in Annex D and are split into 4 main parts:

- Part 1: Administration and management of wild fisheries
- Part 2: Regulation of wild fishing and fisheries
- Part 3: Enforcement
- Part 4: General

17. The draft provisions at Annex D **do not** represent a draft Bill in its entirety although they do reflect the considerations of the Stakeholder Reference Group to date. We are consulting on the core elements which outline the components of the new fisheries management system, in order to ensure that stakeholders have an early opportunity to provide feedback on the approach we intend to take when a Bill is introduced to Parliament. There are also a number of technical aspects which require further thinking and which are still under development.

18. The purpose of this chapter is to explain what is covered in the draft provisions and also to explain those areas that we still need to develop. Subsequent chapters provide further detail on the provisions and the anticipated future approach to those issues which have not been covered.

19. When considering your response to this consultation it is important that the narrative included in the consultation document is considered in parallel with the draft Bill provisions.

Part 1: Administration and management of wild fisheries

20. Part 1 sets out the framework for the relationship between the Scottish Ministers and local management. It sets out the Scottish Ministers' powers and responsibilities within the new system, and explains the process by which local management bodies, Fisheries Management Organisations (FMOs), will be established, in addition to a series of good governance requirements. It also sets out detail of the proposed plan-led approach, through local fisheries management plans and a National Wild Fisheries Strategy. Finally, Part 1 sets out powers to finance the new fisheries management system in relation to a wild fisheries levy.

Part 2: Regulation of wild fishing and fisheries

21. Part 2 establishes the regulatory framework. It prescribes the methods of fishing which are allowable, and includes powers to create conservation measures for all species of freshwater fish, controls on fishing, and a power to create a licensing scheme. Technical issues such as offences and authorisations for introductions and activities which would otherwise be illegal (such as electrofishing), are still under development.

Part 3: Enforcement

22. Part 3 sets out the measures to enforce the legislation. It will set out the appointment process and powers of water bailiffs and fishery wardens. We are consulting on a limited number of sections relating to the appointment of water bailiffs and fisheries wardens. The remainder of this part, which relates to the powers of enforcement officers, is still under development.

Part 4: General

23. Part 4 defines certain terms for the purposes of the provisions. You are encouraged to consider these before you look to comment on the specific questions. An important aspect of any new legislation is the transitional (change management) arrangements in moving from the current system to the future system. Additional work on this important issue will be progressed by a further working group reporting to the Stakeholder Reference Group.

24. As is the case with the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (the 2003 Act), the Wild Fisheries (Scotland) Bill will not apply to the River Tweed or the Upper Border Esk. The Border rivers, the Esk and the Tweed, are subject to separate legislative regimes created under the Scotland Act 1998 to allow a whole-river management system across Scotland and England. For the Tweed, the Scotland Act 1998 (River Tweed) Order 2006 confers functions on the Scottish Ministers and the River Tweed Commission. It is largely based on the 2003 Act. Any changes to the management system for the River Tweed, to maintain the current alignment with the rest of Scotland, will require a new or updated Tweed Order in due course. The Upper Esk is subject to bye-laws made by the Environment Agency by virtue of the Scotland Act 1998 (Border Rivers) Order 1999.

Chapter 3

Wild Fisheries (Scotland) Bill

Part 1 - Administration & Management of wild fisheries

Introduction

25. The purpose of this Chapter is to describe in more detail the provisions at Part 1, and to explain those areas where further refinement may be required.

Detailed provisions of Part 1

26. Section 1 places an overarching duty on the Scottish Ministers to promote the conservation of freshwater fish and best practice in the management of wild fisheries. Section 1 should be read in conjunction with Section 43 which defines 'conservation' and 'management'. Section 2 requires the Scottish Ministers to prepare a National Wild Fisheries Strategy and lay the Strategy before the Scottish Parliament. Section 3 sets out the process by which the Strategy should be reviewed and revised.

27. These are new elements of the fisheries management system which, alongside the sections relating to FMOs, set out the overall balance of powers and duties between national and local functions. Such duties in part reflect the Scottish Ministers' international obligations under the Habitats Directive and the Convention for the Conservation of Salmon in the North Atlantic Ocean.

Q3. Do you agree with the proposed high level duties on Scottish Ministers?

28. Section 4 sets out the powers for the Scottish Ministers to undertake research or inquiries and obtain information. Section 5 allows the Scottish Ministers to sample or tag fish for scientific purposes or for ascertaining whether an offence is being or has been committed. These sections reflect s64 and s64A of the 2003 Act.

29. Section 6 places a duty on the Scottish Ministers to divide Scotland into areas, to be known as Fisheries Management Areas (FMAs). This section allows FMAs to be identified by reference to a map. The number or geographical boundaries of FMOs will not be set in primary legislation.

30. We are working closely with our Stakeholder Reference Group and the wider sector to develop proposals for Fisheries Management Areas. This work is on-going, but we wish to give stakeholders a clearer idea of our current thinking. We recognise the importance of retaining local knowledge and buy-in, but equally we recognise that FMOs must be of sufficient size and capacity to deliver the ambitions of the sector and achieve economies of scale sometimes absent within the existing structures.

31. Current thinking suggest that this would result in a total number of FMAs in the region of 12 to 18. This is on the basis that below 12 is likely to result in over centralisation and loss of local input while above 18 is unlikely to deliver the rationalisation and critical mass that is both possible and required. These remain

working numbers and in no way reflect final thinking. The numbers set out above take into account a number of criteria, including: catchment units; biological and geographic factors; capacity, skills, resources and assets; local engagement; and the number and type of fisheries requiring management.

Q4. Do you agree that the criteria set out in paragraph 31 are the correct criteria for identifying the number of FMAs?

32. Section 8 sets out the process by which Fisheries Management Organisations will be designated. The policy intention is to invite FMO applications for FMAs rather than impose a requirement for an FMO in all areas. The basis for this is that we believe that becoming an approved FMO will carry significant advantages for local fisheries management, including access to a range of powers in addition to a number of responsibilities, as set out in subsequent chapters. We believe that this approach is preferable to imposing an FMO on a particular area. We consider that this approach will result in stakeholders seeing benefit in forming FMOs, ultimately covering all of Scotland.

Q5. Do you agree that the legislation should not include a specific requirement to have an FMO in every part of Scotland?

33. It is intended that prospective FMOs should submit an application to Scottish Ministers including a range of information as described in section 8 and an outline draft of a local fisheries management plan. The application process is designed to ensure that the Scottish Ministers can be satisfied that the prospective FMO is suitably representative of local interests and has the capacity, skills and experience necessary to deliver the objectives, priorities and policies of the National Wild Fisheries Strategy and local fisheries management plan. This is intended to reflect the principle of 'approved body status'. The draft provisions neither require, nor preclude, FMOs from being constituted as charities. We have considered the views of stakeholders and our Stakeholder Reference Group and the clear message is that form should follow function. Section 8 uses the term 'person' which is defined in the Interpretation and Legislative Reform (Scotland) Act 2010 and includes a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland.

Q6. Do you agree with the proposed approach to designation of FMOs?

34. Section 10 places a duty on FMOs to prepare a local fisheries management plan and to submit the plan to the Scottish Ministers for approval. We have suggested that this should be completed within 3 months of the FMO's designation. We are considering whether a degree of flexibility should be built into this timeframe but, because we consider the plan-led approach to be the cornerstone of the fisheries management system, we also consider that the plan should be prepared, agreed and approved as soon as possible after designation. We have also taken into account the fact that an outline draft plan will have been submitted as part of the original application process.

Q7. Do you agree with the proposed approach and timeline for approval of local fisheries management plans?

35. Section 9 describes the general duty of FMOs to promote the conservation of freshwater fish and best practice in the management of wild fisheries and to act in accordance with the National Wild Fisheries Strategy and the local fisheries management plan. This section places further emphasis on the plan-led approach.

36. Sections 11-17 set out the good governance requirements for FMOs and include a specific power for the Scottish Ministers to issue guidance. These sections largely mirror the good governance requirements detailed within the 2003 Act (introduced by the Aquaculture and Fisheries (Scotland) Act 2013). We believe that these requirements have been working well and reflect good practice.

37. Sections 18 and 19 set out the Scottish Ministers' powers to investigate the activities of an FMO and the action that the Scottish Ministers may take following such an investigation. Section 19 allows the Scottish Ministers to issue a direction to an FMO and, should the FMO fail to comply with that direction, Ministers may revoke the FMO's designation. Section 20 allows such a decision to be reviewed by an independent person.

Q8. Do you agree with the proposed approach to good governance and investigation of FMOs?

38. Financing the fisheries management system was one of the key issues raised during the consultation and it remains one of the most important elements of this process. There remains further work to do on this issue.

39. Section 22 sets out the framework through which we propose that the system will be financed in future. This will allow the detail of the system to be set out in regulations, which will be subject to further Parliamentary scrutiny.

40. Section 22 allows the Scottish Ministers to make provision for a wild fisheries levy on owners or occupiers of fisheries for all species. The purpose of the levy is to meet, or contribute towards expenditure incurred, or to be incurred, by the Scottish Ministers or FMOs in promoting the conservation of freshwater fish and their habitats, best practice in the management of wild fisheries and otherwise in performing functions under the Act. The intention is that the levy will be used to fund local fisheries management functions, and will not be diverted to national functions.

41. Subsection (5) will allow different provision to be made for different wild fisheries and different species of fish. Whether the wild fisheries levy will ultimately be extended to fisheries other than salmon fisheries has yet to be determined. We recognise the concern that salmon fishery proprietors should not be the sole source of funding for all-species management. We are also mindful of concerns raised by stakeholders that the potential income would not be significant, and that such an approach may have the potential to impact the ambition to increase angling participation, promotion and development. However, in recognition of the concerns expressed, particularly by angling clubs accessing fishing on minimal, peppercorn rents, subsection (4)(d) provides for additional flexibility in allowing exemptions, discounts, remissions or repayments.

42. Subsection (4)(j) allows functions relating to the wild fisheries levy to be delegated to FMOs. This will include determining the rates of levies and their administration, collection and enforcement. Sufficient safeguards remain within the draft legislation will be incorporated within any subsequent Regulations to address the management of such delegated authority.

Q9. We seek your views on the proposed approach to the wild fisheries levy.

43. The Scottish Ministers have an existing policy not to introduce rod licencing in Scotland. We recognise that Scotland is unusual in that there is no direct angler contribution towards management costs. This is in contrast to most other countries where anglers pay a fee directly to the management authority. These fees are usually in addition to a separate payment to the owner/manager of the fishery for permission to fish.

44. Whilst recognising that some stakeholders have previously expressed concern about the possibility of a rod licence, we have received a strong message across a range of stakeholders that they consider that the current level of finance within the system would not be sufficient to fully fund fisheries management across Scotland. The analyses undertaken by the SRG and the wider sector would support this assertion. We also recognise that there are parts of Scotland where the existing levy system (and probably a levy extended to fisheries for all species) would not adequately fund fisheries management.

45. The stakeholder reference group has recommended that a 'management and development levy', raised from persons who fish in wild fisheries, should be considered as an additional funding mechanism. Support for such an approach is dependent on such a levy to be set at a level that represents 'good value for money' for all anglers while raising sufficient funds to make a meaningful and identifiable contribution to support the delivery of management and angling participation, promotion and development objectives.

46. It is important to make clear that having identified that the current level of finance within the system would not be sufficient to fully fund fisheries management, the SRG have been looking at alternative means to fund the system. In recognition of the differing opinions on how this might be addressed we have not developed outline clauses in this respect but instead will explore this issue further through an online dialogue approach. This is an area where we would wish to engage directly with those who may be impacted.

Other Issues

47. One element of the designation of FMOs that we are still considering is whether the designation of FMO status should be reviewed from time to time to be sure of their effectiveness balanced alongside a degree of certainty required to make them an attractive proposition for would be applicants.

Q10. Should Scottish Ministers have the power to review the designation of FMO status?

Q11. If so, what would be an appropriate period for such a review?

48. During the consultation on broad principles, a number of respondents highlighted the importance of FMOs having an appropriate level of influence on planning of developments. In particular, concern was raised at the prospect of loss of the current statutory status that District Salmon Fishery Boards have in the planning process for fish farming. We are still exploring the issue of the role of FMOs in the wider planning process, but it is our intention to pursue an amendment to the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 to ensure that FMOs are statutory consultees for fish farming planning applications.

Q12. Do you agree that FMOs should be statutory consultees for fish farming applications?

Q13. Should we consider whether FMOs should be statutory consultees for any other types of development?

Chapter 4

Salmon & Freshwater Fisheries (Scotland) Bill Part 2 – Regulation of wild fishing and fisheries

Introduction

49. The purpose of this Chapter is to describe in more detail Part 2, and highlight the areas which we still need to develop further.

Detailed provisions of Part 2

50. Section 23 provides a power to make conservation regulations for or about the conservation of fish, the habitats of those fish, and for the protection and management of wild fisheries. Sections 24-32 make further provision about the use of such conservation regulations.

51. The approach to conservation measures is designed to simplify and consolidate a number of provisions from the 2003 Act including general regulations, close times, baits and lures regulations, carcass tagging and conservation regulations.

52. There has been considerable interest among stakeholders in the approach to, and the retention of, weekly and annual close times. Much of that has been in the context of its relevance and enforceability going forward and the compatibility of such an approach with other legislation. Section 24 allows conservation regulations to make provision for or about fishing for, taking or killing freshwater fish, including during a specified period or periods. We have asked our Stakeholder Reference Group to consider further the future approach to weekly and annual close times for all species, in the light of the wider themes of increasing access to fishing, the approach to conservation limits and the enforcement of any future regime, particularly in relation to coastal netting.

53. It is intended that, in addition to the power of Ministers to bring forward legislation in this area, local conservation measures implemented at the request of FMOs should also be possible. It is intended that such local measures would not be subject to Parliamentary scrutiny. National measures undertaken by the Scottish Ministers would continue to be subject to negative Parliamentary procedure.

Q14. Do you agree that local conservation measures, agreed by FMOs at a local level, could be made by the Scottish Ministers without being subject to Parliamentary scrutiny?

54. Section 28 (in combination with Section 27) would allow conservation regulations to make provision for licensing the taking and killing of freshwater fish.

Q15. Do you agree with the approach to conservation regulations?

Q16. We would welcome any specific comments you have in relation to section 23-32 of the draft provisions.

55. Section 33 makes provision for fishing without permission. We are suggesting that a consistent approach is taken across all species, whereby it would become a criminal offence to fish for, take or kill any species of fish without legal right or written permission.

56. Section 34 and Schedule 1 prescribe the lawful methods of fishing for or taking freshwater fish. This largely replicates the existing situation, with the exception of fishing for freshwater fish species (other than salmon and sea trout). Following discussion with stakeholders and the SRG, we propose that the only legal method of fishing for freshwater fish species (other than salmon and sea trout) will be by rod and line. The table in Schedule 1 sets out more clearly the different available methods according to species and geographical location.

Elements of Part 2 to be developed further

57. The remainder of the second chapter of Part 2 will deal with specific offences and powers to authorise introductions and activities which would otherwise be illegal (such as electrofishing).

58. Our policy intention is to take a consistent approach to all offences across all species. The existing offences and enforcement powers have evolved over a number of decades. As a consequence they can be difficult to understand and enforce. We wish to address these issues, whilst also broadening the offences to reflect the all-species approach being adopted throughout the legislation.

59. As currently drafted the provisions are deliberately silent on offences as we will look to tease out the enforceability of existing offences with the relevant bodies, including the Bailiff Development Group, and options for alternative forms of prosecution (for example fixed penalty notices). We are also looking at a more pragmatic rationalisation of the existing offences and commensurate levels of fines. Enforcement is a significant aspect of any legislation and we remain committed to develop this in partnership with practitioners and the wider sector.

60. It is our intention that the Scottish Ministers will be responsible for licensing introductions, and licensing fishing by otherwise illegal methods.

Q17. Are there specific examples of issues with the offences in the 2003 Act that we should be aware of in developing the framework for an all species management system?

Chapter 5

Salmon & Freshwater Fisheries (Scotland) Bill Part 3 – Enforcement

Introduction

61. The purpose of this Chapter is to describe in more detail Part 3, and highlight the areas which we still need to develop. The draft clauses in Annex D are limited to the appointment process for Bailiffs and wardens.

Detailed provisions of Part 3

62. Section 35 sets out the process for appointment (often referred to as ‘warranting’). The Scottish Ministers may authorise water bailiffs to operate in either a single area, or potentially, any part of Scotland. The draft also reflects the continuation of local and national appointment.

Q18. Do you agree that the appointment of water bailiffs/wardens could be for more than one FMO and potentially nationwide?

63. As highlighted in our previous consultation, we consider that water bailiffs should continue to be employed and managed at a local level.

64. The continuation of the ability to appoint bailiffs at a local level represents a change from the Wild Fisheries Review report. We have listened to stakeholders’ concerns about centralisation and we consider that the governance and accountability framework established in Part 1, will give Scottish Ministers the necessary assurances for such authorisation to take place at a local level. We will continue to keep this under review as thinking on the current and future powers for these roles develops.

Q19. Do you agree that the appointment of bailiffs and wardens should continue to take place at both a local or national level?

65. Section 36 is designed to complement the offence of fishing without legal right or written permission. Section 37 and 38 set out water bailiffs’ powers of enquiry and entry. The wider powers of water bailiffs are still under development.

66. A number of stakeholders have expressed a desire for the term ‘water bailiff’ to be changed for the new legislation. A number of suggestions have been made including ‘fisheries officer’, ‘fisheries enforcement officer’ and ‘river officer’.

Q20. Do you agree that we should consider a new title for the role of water bailiff?

67. Following advice from stakeholders, we have also suggested that the role of fishery warden is included in the draft provisions as an additional tier of enforcement officer, in addition to the role of water bailiff. The more limited powers of wardens are set out in section 39-41. It is anticipated that the role of fishery warden will be a

voluntary role, primarily focussed on checking the right of individuals to fish, but also providing a useful point of contact for anglers and other users of the resource. It should be emphasised that Water bailiffs will have much more extensive powers than wardens.

Q21. Do you agree that there are advantages in having a second tier of enforcement officer, primarily focussed on checking permits and providing information?

Elements of Part 3 to be developed further

68. As currently drafted the provisions do not cover the powers of water bailiffs beyond the specific powers of enquiry and entry set out in sections 37 and 38. We wish to look at the powers of enforcement officers in parallel with our work on offences referred to in Chapter 4. We will take this forward with the relevant bodies, including the Bailiff Development Group. Enforcement is a significant aspect of any legislation and we remain committed to develop this in partnership with practitioners and the wider sector.

69. Our policy intention is that the powers of water bailiffs will be broadly similar to the current powers, but will apply to offences relating to all species (rather than just salmon and sea trout).

Q22. What issues in relation to powers and enforcement do you consider are barriers to providing appropriate protection to our wild fisheries and fishing?

Chapter 6

Salmon & Freshwater Fisheries (Scotland) Bill Part 4 – General

Introduction

70. The purpose of this Chapter is to provide clarity on the terminology deployed throughout the draft provisions and its general interpretation.

Q23. Are the terms used throughout the draft provisions clear and unambiguous?

Chapter 7 - Assessing impact

Strategic Environmental Assessment

71. In accordance with the requirements of the Environmental Assessment (Scotland) Act 2005, the potential scope and content of the draft Bill provisions and the draft national strategy were reviewed against the statutory criteria set out in the Act, to ascertain whether they would be likely to have significant effects on the environment. It is worth noting that many of the freshwater fisheries management activities addressed by these draft policy instruments are already taking place in many areas of Scotland. However, they provide an opportunity to extend these to the whole of Scotland, across all freshwater fish species, and to provide improved integration and communication between the various agencies, organisations and stakeholders involved in freshwater fisheries management. Based on the evaluation against the statutory criteria, the Scottish Government has concluded that they may give rise to environmental effects. As a result, our view is that strategic environmental assessment is required at this stage.

72. A strategic environmental assessment has been undertaken and the results are set out in the Environmental Report that sits alongside this consultation document.

Business and Regulatory Impact Assessment

73. A detailed Business and Regulatory Impact Assessment (BRIA) will be developed as part of the accompanying documents for the Bill when it is laid in the Scottish Parliament. For the purposes of this consultation we have not looked to develop a draft BRIA, not least as we are still engaging with stakeholders around the makeup of the future legislation, much of which would not benefit from speculation at this juncture.

74. However to assist that process going forward we anticipate that we will be soon be in a position to publish our independently commissioned work on the economic and social value of all of Scotland's wild fisheries. This will provide up to date information on the value of Scotland's wild fish resources and help inform the development of policy in the future. We will do our best to ensure that this is available during the consultation period.

75. At this stage we want to invite information on the potential impact of the proposals outlined in this consultation.

Q24. What do you consider would be the key resource issues for an FMO under the proposed new regulatory structure?

Q25. What other information do we need to consider in developing a BRIA for the Bill when it is laid before the Scottish Parliament?

Chapter 8 – How to Respond

Scottish Government consultation process

Consultation is an essential part the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work.

You can find all our forthcoming, open and closed consultations online: <https://consult.scotland.gov.uk/>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

After a consultation is closed we publish all responses where we have been given permission to do so.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Responding to this Consultation

We are inviting responses to this consultation by **2 May 2016**.

Please respond to this consultation online (via Citizen Space) at: <https://consult.scotland.gov.uk/wild-fisheries-reform-team/draft-wild-fisheries-strategy>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the close date.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) to:

Wild Fisheries Reform
Area 1-B North, Victoria Quay, Edinburgh, EH6 6QQ

Or alternatively email:

wildfisheriesreform@gov.scot

Handling your response

If you respond using Citizen Space, you will be automatically directed to the Respondent Information Form at the start of the questionnaire. This will let us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** attached to the end of this document 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 we 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 would therefore have 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 they contain no potentially defamatory material, responses will be made available to the public at <https://consult.scotland.gov.uk/>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Wild Fisheries Reform, Area 1-B North, Victoria Quay, Edinburgh, EH6 6QQ or wildfisheriesreform@gov.scot.



The Scottish Government
Riaghaltas na h-Alba

RESPONDENT INFORMATION FORM

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

1. Name/Organisation

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

(a) Do you agree to your response being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

Yes No

(b) If you answered yes, please select an option below.

Please tick **ONE** of the following boxes

(c) Do you agree to your organisation's **details** and **response** being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

Yes, publish my response and details
 No, do not publish my response

Yes, make my response
and name all available

or

Yes, make my response
available anonymously

(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

CONSULTATION QUESTIONS – RESPONSE TEMPLATE

Q1. Are you content with the structure and content of the draft National Wild Fisheries Strategy?

Yes No Don't know

Comments

Q2. Which of the current areas within the draft Strategy would you prioritise, and why?

Comments

Q3. Do you agree with the proposed high level duties on Scottish Ministers?

Yes No Don't know

Comments

Q4. Do you agree that the criteria set out in paragraph 31 are the correct criteria for identifying the number of FMAs?

Yes No Don't know

Comments

Q5. Do you agree that the legislation should not include a specific requirement to have an FMO in every part of Scotland?

Yes No Don't know

Comments

Q6. Do you agree with the proposed approach to designation of FMOs?

Yes No Don't know

Comments

Q7. Do you agree with the proposed approach and timeline for approval of local fisheries management plans?

Yes No Don't know

Comments

Q8. Do you agree with the proposed approach to good governance and investigation of FMOs?

Yes

No

Don't know

Comments

Q9. We seek your views on the proposed approach to the wild fisheries levy.

Comments

Q10. Should Scottish Ministers have the power to review the designation of FMO status?

Yes

No

Don't know

Comments

Q11. If so, what would be an appropriate period for such a review?

Comments

Q12. Do you agree that FMOs should be statutory consultees for fish farming applications?

Yes

No

Don't know

Comments

Q13. Should we consider whether FMOs should be statutory consultees for any other types of development?

Yes

No

Don't know

Comments

Q14. Do you agree that local conservation measures, agreed by FMOs at a local level, could be made by the Scottish Ministers without being subject to Parliamentary scrutiny?

Yes

No

Don't know

Comments

Q15. Do you agree with the approach to conservation regulations?

Yes No Don't know

Comments

Q16. We would welcome any specific comments you have in relation to section 23-32 of the draft provisions.

Comments

Q17. Are there specific examples of issues with the offences in the 2003 Act that we should be aware of in developing the framework for an all species management system?

Comments

Q18. Do you agree that the appointment of water bailiffs/wardens could be for more than one FMO and potentially nationwide?

Yes No Don't know

Comments

Q19. Do you agree that the appointment of bailiffs and wardens should continue to take place at both a local or national level?

Yes No Don't know

Comments

Q20. Do you agree that we should consider a new title for the role of water bailiff?

Yes No Don't know

Comments

Q21. Do you agree that there are advantages in having a second tier of enforcement officer, primarily focussed on checking permits and providing information?

Yes No Don't know

Comments

Q22. What issues in relation to powers and enforcement do you consider are barriers to providing appropriate protection to our wild fisheries and fishing?

Comments

Q23. Are the terms used throughout the draft provisions clear and unambiguous?

Yes

No

Don't know

Comments

Q24. What do you consider would be the key resource issues for an FMO under the proposed new regulatory structure?

Comments

Q25. What other information do we need to consider in developing a BRIA for the Bill when it is laid before the Scottish Parliament?

Comments

Annex A: Consultation Questions

- Q1.** Are you content with the structure and content of the draft National Wild Fisheries Strategy?
- Q2.** Which of the current areas within the draft Strategy would you prioritise, and why?
- Q3.** Do you agree with the proposed high level duties on Scottish Ministers?
- Q4.** Do you agree that the criteria set out in paragraph 31 are the correct criteria for identifying the number of FMAs?
- Q5.** Do you agree that the legislation should not include a specific requirement to have an FMO in every part of Scotland?
- Q6.** Do you agree with the proposed approach to designation of FMOs?
- Q7.** Do you agree with the proposed approach and timeline for approval of local fisheries management plans?
- Q8.** Do you agree with the proposed approach to good governance and investigation of FMOs?
- Q9.** We seek your views on the proposed approach to the wild fisheries levy.
- Q10.** Should Scottish Ministers have the power to review the designation of FMO status?
- Q11.** If so, what would be an appropriate period for such a review?
- Q12.** Do you agree that FMOs should be statutory consultees for fish farming applications?
- Q13.** Should we consider whether FMOs should be statutory consultees for any other types of development?
- Q14.** Do you agree that local conservation measures, agreed by FMOs at a local level, could be made by the Scottish Ministers without being subject to Parliamentary scrutiny?
- Q15.** Do you agree with the approach to conservation regulations?
- Q16.** We would welcome any specific comments you have in relation to section 23-32 of the draft provisions.
- Q17.** Are there specific examples of issues with the offences in the 2003 Act that we should be aware of in developing the framework for an all species management system?

Q18. Do you agree that the appointment of water bailiffs/wardens could be for more than one FMO and potentially nationwide?

Q19. Do you agree that the appointment of bailiffs and wardens should continue to take place at both a local or national level?

Q20. Do you agree that we should consider a new title for the role of water bailiff?

Q21. Do you agree that there are advantages in having a second tier of enforcement officer, primarily focussed on checking permits and providing information?

Q22. What issues in relation to powers and enforcement do you consider are barriers to providing appropriate protection to our wild fisheries and fishing?

Q23. Are the terms used throughout the draft provisions clear and unambiguous?

Q24. What do you consider would be the key resource issues for an FMO under the proposed new regulatory structure?

Q25. What other information do we need to consider in developing a BRIA for the Bill when it is laid before the Scottish Parliament?

Annex B: Scottish Government response to the consultation on broad principles underlying wild fisheries reform

In May 2015 we consulted on broad policy options for a new management system. We published a full analysis of consultation responses in January 2016⁷.

Below we have detailed the key questions that relate to the development of the provisions for a draft Bill together with a brief summary of the responses we received, and an explanation of where we have taken these responses into account in the draft Bill provisions.

Please note that we have set out the questions in an order that corresponds to the clauses in Annex D, rather than the order they appeared in last year's consultation.

Wild Fisheries (Scotland) Bill

Part 1 - Administration and Management of Wild Fisheries

- We asked:** Do you agree that data collection priorities and processes for fisheries management at a local and national level should be predicated on a consistent approach and that this should be via a national research and data strategy?

You said: 23 respondents did not answer. The majority of respondents (73%) agreed with the proposal. Roughly equal numbers of respondents disagreed or were unsure/provided comments only (13% and 14% respectively).

We did: Section 2 of the draft provisions requires Scottish Ministers to prepare a National Wild Fisheries Strategy and lay the Strategy before the Scottish Parliament. The draft provisions will allow flexibility as to the content of the strategy. Annex C includes a draft National Fisheries Strategy, from which you will see that science and research is one of the four themes. In addition, Scottish national standards for the collection, storage, analysis, access, publication and use of data are one of the indicators within that theme. It is our intention that the Strategy will continue to be augmented both during and after the next consultation phase.
- We asked:** Do you agree that promotion of opportunities and access should be a central theme for the national strategy?

You said: 24 respondents did not answer. Just over half of the respondents (55%) agreed that promotion of opportunities and access should be a central theme for the national strategy. About 27% disagreed, with 10% unsure.

We did: Section 2 of the draft provisions requires Scottish Ministers to prepare a National Fisheries Strategy and lay the Strategy before the Scottish Parliament. The draft provisions will allow flexibility as to the content of the strategy. Annex C includes a draft National Fisheries Strategy, from which you will see that promotion is one of the four themes.
- We asked:** We are interested to hear views on how increasing opportunities and access to fishing can be embedded within the fisheries management system?

⁷ <http://www.gov.scot/Resource/0049/00492901.pdf>

You said: Respondents provided a number of suggestions. Some noted that opportunities exist already: there is a significant number of schemes with these aims run by organisations such as angling clubs and SANA, and they suggested that knowledge of these should be shared with others. Several considered that it would be best delivered locally, but supported by funding from the national unit. Others felt that a cross-government approach would be more appropriate, with partnership working between the national unit, the FMOs, angling organisations, Sport Scotland and Visit Scotland.

We did: As stated above, promotion is a central theme in the draft strategy. The Stakeholder Reference Group (SRG) has also identified fisheries development and promotion as a key aspect of the work of Fisheries Management Organisations (FMOs). Section 10 requires FMOs to prepare local fisheries management plans, which must be approved by Scottish Ministers. This section also requires the plan to contribute to the pursuit of the objectives, priorities and policies of the National Fisheries Strategy. This is with a view to ensuring that angling participation, promotion and development is a key element of the plan-led approach to fisheries.

4. **We asked:** Do you agree that the FMO network should cover the whole of Scotland?

You said: 18 respondents did not answer. About 10% of respondents were unsure about the coverage of the network. Of the remainder, the majority (65%) agreed that the network should cover the whole of Scotland; 20% disagreed.

We did: Whilst we consider that it is desirable for all of Scotland to be designated within a Fisheries Management Area (Section 6), and indeed that the fisheries management system should cover all of Scotland, the draft provisions do not include a specific requirement for FMOs (as distinct from Fisheries Management Areas) to cover all of Scotland. We recognise the importance that stakeholders place on decentralised and locally empowered management, and therefore we hope that local stakeholders will see benefit in working together to form FMOs covering all of Scotland.

5. **We asked:** Do you agree that Scottish Ministers, following discussion with stakeholders, should set the boundaries of FMO areas? What factors should be considered in determining the number and optimal coverage of FMOs?

You said: 23 respondents did not answer. Just under 15% were unsure as to whether Ministers should set the boundaries. The remainder were divided: 48% in favour and 37% opposed.

We did: Section 6 allows Scottish Ministers to designate areas of Scotland as Fisheries Management Areas. Scottish Ministers are keen that where possible informed solutions should be developed by the sector and therefore we have asked ASFB and RAFTS to coordinate the views of existing management organisations and liaise with the SRG to consider a range of factors (including delivery of functions, available budgets, geographical factors, and collaboration on certain functions) in order to develop draft proposals for Fisheries Management Areas. As these proposals develop, they will also be discussed and considered in relation to delivery of national priorities with our partners across Government, SEPA and SNH. We view this as being an iterative process undertaken in close partnership with the fisheries sector.

6. **We asked:** Do you agree that bodies wishing to become FMOs should do so through seeking approved body status from Scottish Ministers?
You said: 28 respondents did not answer. About 20% were unsure or only provided comments. Of the remainder, the majority (52%) agreed, with 27% disagreeing. More than half of those who answered “don’t know” were unsure of the definition of “approved body status”, or felt that more information was required before they could respond.
We did: Whilst the draft provisions do not use the term ‘approved body’ we believe that the application process set out in section 8 captures the principle of this recommendation. Once a body has been designated as an FMO they will then have access to a range of powers, and gain a number of responsibilities, as highlighted in Annex D.
7. **We asked:** Do you agree that in order to ensure appropriate governance and fitness for purpose, FMOs should operate to a model constitution?
You said: 24 respondents did not answer (~20%). The majority of respondents (60%) indicated that they agreed with having a model constitution. However, 25% of respondents disagreed.
We did: We have not set out specific requirements in the draft provisions for a model constitution. This, in part, reflects the fact that we believe that there should be flexibility around the specific type of bodies that FMOs may be, as long as they can satisfy the application process set out in section 8. The SRG has been developing thinking on FMO structure and functions and has examined the model constitution for a Scottish Charitable Incorporated Organisation (SCIO). Whilst the SRG do not believe that a SCIO is a suitable model for an FMO, they saw value in the two tier approach adopted in that constitution – a wide membership from which a Board of Directors (suitably representative of local interests) would be elected. We will further develop our thinking on this aspect of the reform process over the coming months and in light of the responses to this consultation exercise.
8. **We asked:** What do you consider is an appropriate balance of interests on the board and wider membership of FMOs
You said: Roughly 10% of respondents recommended that the model of the Tweed Commissioners and Tweed Forum should be followed. A few also suggested using the model of the Spey District Fishery Board.
- Several respondents set out clear aims and objectives for the composition of FMOs that echoed those set out in the consultation document: they should be membership bodies representing the full range of interests in wild fisheries and their management at a local level, including local authority and other public sector interests in addition to the owners and users of fishing rights.
- On the whole, in making their suggestions, respondents did not differentiate between who should be represented on the board and who should be included in the wider membership.
- We did:** This issue is not specifically covered in the draft provisions, but this work stream is being taken forward by the SRG – see above.

9. **We asked:** Do you agree that the cornerstone of the relationship between national and local management bodies should be the proposed plan-led approach?
You said: 19 respondents did not answer. The majority of respondents (60%) agreed with the proposal. About 23% disagreed, and the remainder did not know or made comments only.
We did: Section 2 sets out our proposals for a duty on Scottish Ministers to prepare and publish a National Wild Fisheries Strategy, and section 10 places a duty on FMOs to prepare, and submit to Scottish Ministers for approval, a local fisheries management plan. FMOs would also be required to act in accordance with the National Strategy and local fisheries management plan (Section 9) and report on the activities undertaken in pursuit of the objectives and priorities set out in the fisheries management plan (Section 11).
10. **We asked:** Do you agree that FMOs should be charitable bodies?
You said: 25 respondents did not answer (30%). The remainder of the respondents were divided in their views, with only a slight majority of respondents indicated that they agreed with the proposal.
We did: The draft provisions neither require, nor preclude, FMOs from being constituted as charities. We have considered the views of stakeholders and our Stakeholder Reference Group and the clear message is that *form should follow function*. The SRG has suggested that FMOs should be constituted as companies limited by guarantee – this model would allow FMOs to seek charitable status if desired. Analysis undertaken by the SRG suggests that a relatively small proportion of the resources currently available for fishery management across Scotland would only be available to charities. However, we also recognise that in some parts of the country, charitable funding is proportionally very significant.
11. **We asked:** Do you agree that the proposed package of measures in terms of constitution, governance and a plan-led approach provides an appropriate framework for decentralised delivery of fishery management functions?
You said: 20 respondents did not answer. Just over 20% of respondents were unsure. Many of these felt that they could not comment in the absence of detailed information about what is proposed for the constitution, governance and plan-based approach. The answers from the remainder of respondents were fairly evenly divided between agreement and disagreement (40% and 35% respectively).
We did: As set out above, the plan led-approach is set out in the Annex D and does not prescribe any requirement for FMOs to be constituted as a specific type of body. Section 9 sets out a general duty for FMOs, and sections 11-17 place a series of good governance requirements on FMOs. These largely mirror the existing good governance requirements on DSFBs which have existed since 2013. Section 18-19 set out powers to investigate FMOs and powers following investigation. These powers for Scottish Ministers also reflect the plan-led approach and the good governance requirements set out in the draft provisions.
12. **We Asked:** We asked a number of questions on finance in our consultation last year. We recognise that financing the fisheries management system was

one of the key issues raised during the consultation and it remains one of the most important elements of this process. The questions we asked are set out below:

- Do you agree that funding raised from proprietors should continue to provide the core strand of revenue for local fishery management?
- Do you agree that we should explore the potential for extending the responsibility for paying the levy to the owners of all fishing rights?
- Do you agree that responsibility for collecting and distributing resources from fisheries proprietors for the purposes of delivering the national strategy at a local level should rest with the national unit?
- Do you agree that we should explore the recommendation that redistribution of funds should form part of the new management system?
- If not, what other means might be used for funding local fisheries management at appropriate levels across the country?
- Do you agree that we should explore the recommendation of a two-tier levy system?
- Should funding for Angling for All come from a rod licence?
- Do you agree that a rod licence should only be used to fund Angling for All, rather than also being used to support wider management activity?

13. **You Said:** The response to these questions is summarised below:

- The majority of respondents agreed that funding from proprietors should continue to provide the core revenue for fisheries management (about 70%), while about 20% disagreed. Many of those who agreed did so on the proviso that money raised must be controlled and spent locally in the FMO area. Many of those who disagreed did so because they felt that salmon proprietors should not bear the cost of managing both migratory and non-migratory species.
- Many respondents considered that the new management system would result in increased costs, as a result of its wider scope and increase in duties. There were therefore concerns that the levy alone would not be enough to support fisheries management and that other sources would thus be needed.
- There were concerns that increased levies would result in increased charges to anglers - either in the situation where existing levies increase or where the levy is a new charge because no DSFB currently exists in the area. Many considered that increased costs would deter anglers from fishing, which would lead to the loss of angling clubs/associations and/or the closure of fisheries.
- About 12% of respondents were unsure about extending the levy. There was a majority in favour (51%), but not a strong one: 36% of respondents disagreed. Those opposed to the proposal considered that it was not practical – there are too many riparian owners (many of whom are

unknown), which would make the levy difficult to collect. Many felt that the administrative costs of collecting the levy would exceed the monies raised.

- Several respondents also noted that there are species of specific conservation value which have no commercial interest, but which will require resources to maintain and improve the status of these populations. They felt that this would increase costs overall.
- There was significant opposition to the idea that the national unit should collect and distribute resources, with nearly 60% of respondents disagreeing with the proposal. Only about 30% agreed; about 10% were unsure.
- A key concern was perceived centralisation. Some respondents were concerned that national collection and distribution would affect the harnessing of charitable and volunteer effort, and would result in the “drying up” of voluntary levy payments and donations. Several respondents considered that national collection would result in resources being diverted away from fisheries management into other uses.
- More respondents (48%) disagreed with the proposal to redistribute funds than agreed (36%); 15% were unsure. The key messages from those opposed to the proposal was that money raised locally should be spent locally; there is not and will not be a surplus of funds; the effectiveness of local fisheries management will be reduced; funders will disengage in general, and those paying a voluntary levy and/or charitable donations will cease to do so.
- The key message from those supporting the proposal was that the present system means that fisheries in the poorest health and in need of resources have the least to work with, and that the proposal would assist to redress this. Supporters felt that funding should be allocated on the basis of identified needs and priorities in the national strategy and local fisheries management plans
- Other means of funding local fisheries management were suggested and included a range of suggestions: national funding; EU/SRDP; lottery, landfill tax; SEPA; and charity. Several felt that there should be no change to existing funding arrangements.
- The majority of respondents (about 60%) did not agree that funding should come from a rod licence. Of these, half stated that this was because they oppose rod licences. About 10% considered that existing local programmes could be continued, with their existing funding sources, including the use of volunteers. A few were opposed to Angling for All on principle.

14. **We did:** As stated above, financing the system is an important element of the reform process and there remains further work to do on this issue. The SRG has looked at this issue in some detail, and we now have a far better understanding of the current income and expenditure within the system. Section 22 sets out the framework through which the system will be financed in future. This will allow the detail of the system to be set out in regulations, and which will be subject to further Parliamentary scrutiny. The key features are:

- A levy on persons with rights in a wild fishery will remain a key source of income.
- The purpose of the levy is set out in subsection (3), partly in response to the concern of some stakeholders that the levy would be used for purposes other than fisheries management. This allows the levy to contribute to towards expenditure both by Scottish Ministers and FMOs – this is necessary in order to ensure that fishery management can continue to occur in the absence of an FMO (for whatever reason).
- We recognise the concerns about broadening the levy to proprietors of other fisheries. Subsection (5) will allow different provision to be made for different wild fisheries and different species of fish. However, subsection (4)(d) provides for exemptions, discounts, remissions or repayments. Whether the wild fisheries levy will ultimately be extended to fisheries other than salmon fisheries has yet to be determined. We will further develop our thinking on these issues, in conjunction with stakeholders, prior to introducing a Bill to Parliament.
- We recognise the concern about national collection and distribution of resources. Section 22 will allow Scottish Ministers to collect levy income, but subsection (4)(j) will also allow determination of the rates of levies and their administration, collection and enforcement to be conferred on FMOs. We recognise that there are a range of challenges in setting a single national levy, and therefore subsection (5) also allows different provision in relation to different Wild Fisheries Management Areas. We will further develop our thinking on these issues prior to introducing a Bill to Parliament.
- We have not taken forward proposals for a two-tier levy. We believe there is sufficient flexibility within the proposed approach
- Whilst recognising that stakeholders are concerned about the possibility of a rod licence, we have received a strong message across a range of stakeholders that they consider that the current level of finance within the system would not be sufficient to fully fund fisheries management across Scotland. The analyses undertaken by the SRG and the wider sector would support this assertion. We also recognise that there are parts of Scotland where the existing levy system (and probably a levy extended to fisheries for all species) would not adequately fund fisheries management.
- The stakeholder reference group has recommended that a ‘management and development levy’, raised from persons who fish in wild fisheries, should be considered as an additional funding mechanism. Support for such an approach is dependent on such a levy to be set at a level that represents ‘good value for money’ for all anglers while raising sufficient funds to make a meaningful and identifiable contribution to support the delivery of management and angling participation, promotion and development objectives.
- It is important to make clear that having identified that the current level of finance within the system would not be sufficient to fully fund fisheries management, the SRG have been looking at alternative means to fund the system. In recognition of the differing opinions on how this might be

addressed we have not developed outline clauses for the Bill but instead will explore this issue further through an online dialogue approach. This is an area where we would wish to engage directly with those who may be impacted.

Wild Fisheries (Scotland) Bill

Part 2 – Regulation of Wild Fishing and Fisheries

15. **We asked:** Do you agree that Ministers should have powers to control killing of all fish species on the grounds of conservation and be able to do so in line with the precautionary principle?
You said: 18 respondents did not answer. The majority of respondents (58%) agreed with the proposal. However, this was not a strong majority: 35% disagreed. About 7% were unsure.
We did: Section 23 sets out powers for Scottish Ministers to make Conservation regulations, which may be made on the request of an FMO. Section 24 allows that these regulations may in particular make provision for or about fishing for, taking or killing freshwater fish, including by specified methods, using specified equipment, baits or lures, or in a specified area. Subsection 24 also allows specific provision to be made which would require mandatory catch and release, if appropriate.
16. **We asked:** Do you agree that annual and weekly close times should remain a key part of the management system for wild fisheries?
You said: 34 respondents did not answer. The majority of respondents (85%) agreed with the proposal to retain annual and weekly close times. Roughly the same number disagreed or were unsure (8% and 6% respectively). Respondents from the netting sector wanted a change to the weekly close times for nets, citing that such a change would allow them to work around the weather as well as complying with modern health and safety obligations. In contrast, other respondents felt that it was important to keep weekly close times for nets and rods.
We did: Section 23 sets out powers for Scottish Ministers to make Conservation regulations, which may be made on the request of an FMO. Section 24 allows that these regulations may in particular make provision for or about fishing for, taking or killing freshwater fish, including during a specified period or periods. We have asked our Stakeholder Reference Group to consider the future approach to weekly and annual close times for all species, in the light of the wider themes of increasing access to fishing, the approach to conservation limits and the enforcement of any future regime, particularly in relation to coastal netting.
17. **We asked:** Do you agree that the proposed local management organisations should have responsibility for considering such close times in line with the national strategy and the local fisheries management plan?
You said: 27 respondents did not answer. The majority of respondents (81%) agreed with the proposal. Only 10% said no; 8% were unsure.
We did: Section 23 allows FMOs to request conservation regulations for their FMA. We expect that such considerations will be an important part of the fisheries management planning process.

18. **We asked:** Do you agree that the purpose behind protection orders can be achieved via the design of the new management system in line with the fundamental principles set out in chapter 2?
You said: 37 respondents did not answer. The responses were fairly evenly distributed: 36% agreed; 30% disagreed and 30% were unsure. However, many noted that fishing without permission should be made a criminal offence for all species.
We did: We have not included protection orders within the draft provisions. We have taken a consistent approach to all species including, as set out in Section 33, providing equal protection for salmonid and non-salmonid fish species.

Wild Fisheries (Scotland) Bill

Part 3 – Enforcement

19. **We asked:** Do you agree that the principles of the existing bailiffing system should be retained, but with amendment to set compliance within an appropriate framework of accountability with warrants issued by the national unit?
You said: 26 respondents did not answer. The majority of respondents (65%) agreed with the proposal. About 12% disagreed and 15% were unsure.
We did: We recognise the importance of local enforcement of fisheries legislation and it is our intention to retain the principles of the existing bailiffing system. Section 35 will allow both Scottish Ministers and FMOs to appoint bailiffs. We believe that the framework of accountability set out in part one of the draft provisions will provide Scottish Ministers with sufficient assurance and safeguards, while at the same time reinforcing support for the existing framework and those who currently work within it. We wish to look at the powers of enforcement officers in parallel with the offences referred to in Chapter 4 of this consultation document.
20. **We asked:** Do you agree that, in the context of the wider proposals in this paper, the creation of an offence of reckless or irresponsible exercise of fishing rights should not be pursued?
You said: 31 respondents did not answer. The majority of respondents (70%) agreed with the proposal. About 17% disagreed; 12% were unsure.
We did: We have not taken this proposal forward. We consider that the proposed enforcement powers provide sufficient flexibility to address such concerns.

Annex C:

Scotland's draft National Wild Fisheries Strategy

'To protect, develop and enhance social and economic benefit from Scotland's freshwater fish and fisheries; and to promote access to fishing opportunities and participation.'

**Draft 8
January 2016**

Wild Fisheries in Scotland

Vision for all

'To protect, develop and enhance social and economic benefit from Scotland's freshwater fish and fisheries; and to promote access to fishing opportunities and participation'

Introduction

Wild Fisheries in Scotland has recently been subject to a fundamental review of how it should be managed and developed for this century and beyond. Working with our stakeholders and in parallel with the development of new overarching legislation, we have set out a structured vision for the future that reflects the move to an all species focus, that acknowledges the importance of conservation, sustainability and access for all and which reflects the Scottish Government's core purpose - to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.

Opportunities

There is a tremendous amount of enthusiasm, investment (personal and financial) and energy deployed within the wild fisheries sector. The challenge for the future is to garner and channel that contribution in a way which best helps to deliver collective ambition which all can all feel part of. Everyone recognises the need to maximise the potential of all parts of the sector so that it is best able to meet the challenges of today as well as of tomorrow.

The relationship between local and national bodies should be strengthened to implement a shared vision on a true partnership basis. Fisheries management should engage more proactively with all users of the shared resource. That should include a drive for evidence based fish and fishery management that is reflective and adaptive to changing needs. Most particularly, attention should be drawn to the good work that is happening already on a daily basis in every part of Scotland. All these ambitions are aimed at attracting more people to the opportunities that our freshwater environment provides.

Purpose

Scotland's climate, geology and geography provide favourable habitats for a wide variety of freshwater fish. As a result, angling provides a natural focus for outdoor recreation and, subject to identified harvestable surpluses, certain freshwater fish species are sustainable food resources. The National Wild Fisheries Strategy is intended to provide a framework against which all interested parties may measure proposals for action to enhance Scotland's freshwater fisheries.

The fisheries management structure that is introduced by the draft Bill carries with it the opportunity to improve fish stocks and fishing beyond what already exists. Through a combination of clear strategic direction, local management activity to

protect and improve, including local planning, and centrally provided scientific expertise and data storage, Scotland will have a responsible system that enables best fishery management practices to be applied.

Freshwater fish are important components of aquatic ecosystems. Better fish stocks provide more opportunities. More fish are a key factor to attracting more people and greater access to fishing opportunities, and with it the associated benefits for their physical and mental wellbeing. It engages more people with the natural environment, including visitors to Scotland. Not least, it creates business opportunities for providers of fishing, and for the wider supply chain of goods and services used by residents and visitors alike.

Three key overarching objectives are:

- Providing comprehensive protection and improvement of Scottish freshwater fish and the habitats they depend on.
- Promoting effective, evidence-based fishery management through integrated data gathering, research and dissemination.
- Identifying and maximising societal benefits from sustainable fisheries; and the promotion of angling as a recreational and tourism activity

Effective, transparent and accountable governance.

In reaching our vision and meeting these objectives the strategy aims to provide:

- A long-term vision for managing and developing Wild fisheries in Scotland (The Strategy);
- An outline methodology for achieving that vision (a Governance and Accountability Framework which ensures that everyone operates within a clear and robust framework for decision making and accountability designed to achieve successful delivery of the purpose, aims, and objectives.);
- A structure for greater stakeholder involvement on the development and management of Wild Fisheries in Scotland.

This list is by no means exhaustive but illustrates the need for a framework that compliments the developing legislation.

Deliverables

To assist the successful delivery of the objectives, we are developing a supporting strategic framework around the following four themes:

Theme 1: Protecting and growing the Resource	Indicator 1.1 National approach to the protection and restoration of habitats	Associated activities <ul style="list-style-type: none"> • Identify pressures on fish, their habitats and species and prioritise and take pragmatic action where sensible. • Integrate with existing national and regional processes, including the River Basin Management Planning, Habitats Directive objectives and the National Planning Framework.
	Indicator 1.2 Identification of national and local priorities for fisheries management through a coordinated system of management and conservation plans	Associated activities <ul style="list-style-type: none"> • Production of a comprehensive national management plan setting out clear and time-limited nationally prioritised actions. • Fishery management plans will set out clear and time-limited regionally prioritised actions. • Guidance on the optimisation of stocks for all species.
	Indicator 1.3 National Enforcement Regime	Associated activities <ul style="list-style-type: none"> • Maintenance of a professionally recognised Scotland wide fishery enforcement officer role (and support services) with specific responsibilities and accountability for ensuring compliance with relevant legislation. • Foster interaction with wider enforcement bodies and develop a partnership approach. • Continuous professional development with access to relevant training and learning opportunities. • Promotion of greater public awareness and confidence with the profession.

Theme 2: Science and research	Indicator 2.1 Memorandum of understanding defining the relationship between national and local science, including an agreed approach to the coordination and planning of research projects and priorities.	Associated activities <ul style="list-style-type: none"> • acceptable operating standards • principles of information archiving • principles of access to information • principles of science coordination and planning
	Indicator 2.2 Establish research and data collection priorities to meet local, national and international needs, to be reviewed and updated as part of the fishery management planning cycle.	Associated activities <ul style="list-style-type: none"> • Identify key knowledge gaps hindering effective management. • Develop a science delivery programme with partners to address knowledge gaps. • Ensure the Scottish Government is able to demonstrate that it is meeting or progressing towards achieving its international obligations. • Development of citizen science activities to empower wider participation, with the emphasis on transparency and openness.
	Indicator 2.3 Scottish national standards for the collection, storage, analysis, access, publication and use of data.	Associated activities <ul style="list-style-type: none"> • Set standards for appropriate training to promote consistent standards. • Ensure appropriate analysis. • Ensure data is publicly available and accessible. • Audit compliance with standards.

Theme 3: Partnership and Engagement	Indicator 3.1 Partnership working.	Associated activities <ul style="list-style-type: none"> • To further the partnership working already established between policy makers, stakeholders, and delivery agents for fisheries. • Detailed expectations around engagement at a local and national level, both within and out with the sector. • Development of opportunities for collaborative working.
	Indicator 3.2 Policy development.	Associated activities <ul style="list-style-type: none"> • Interaction between policy makers, stakeholders and the science community to facilitate focused research and evidence based policy development.

Theme 4: Promotion	Indicator 4.1 Marketing and promoting opportunities for angling across Scotland.	Associated activities
		<ul style="list-style-type: none"> • Promote angling to stakeholders of all ages. • Joined up approach to education and the promotion of classroom based activities designed to encourage and provide young anglers with a basic understanding of fish and the wider environment. • Develop and provide guidance for angling clubs on how best to encourage youth participation. • Develop and provide guidance on the concept of responsible access to angling for all species and fisheries management best practice in Scotland. • Liaise with all relevant interests on the development and promotion of a national and local angling tourism strategy. • Development plan with angling businesses to better understand the needs of anglers and to improve the associated facilities and infrastructure. • Positive community role – recognition of fisheries as a positive contribution to the communities of Scotland.

Conclusion

The Scottish Government National Unit (when established), Marine Scotland, SNH, SEPA and the FMO network will be key partners in delivering these strategic outcomes.

We can manage wild fisheries in Scotland for the better by working together to deliver national and local strategies that integrate with each other.

The strategy will be reviewed and updated no later than five years from the date it is published.

Every five years thereafter, the same process of review, consultation, revision, publication and laying before the Parliament will apply.

Provisions for a Wild Fisheries (Scotland) Bill

CONSULTATION DRAFT

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PART 1

ADMINISTRATION AND MANAGEMENT OF WILD FISHERIES

CHAPTER 1

NATIONAL ARRANGEMENTS

Scottish Ministers' overarching responsibilities

1 Promotion of conservation of fish and good fisheries management

- (1) It is the duty of the Scottish Ministers to promote—
 - (a) the conservation of freshwater fish in wild fisheries and their habitats, and
 - (b) best practice in the management of wild fisheries.
- (2) The Scottish Ministers may do anything that they consider is likely to assist in discharging their duty under subsection (1) including in particular—
 - (a) giving financial assistance to any person,
 - (b) entering into arrangements or agreements with any person,
 - (c) cooperating with, or facilitating or coordinating the activities of, any person.
- (3) Subsection (2)—
 - (a) does not affect the generality of the duty under subsection (1), and
 - (b) does not affect, and is not affected by, any other power or duty conferred or imposed on the Scottish Ministers by or under this Act or any other enactment.

National Wild Fisheries Strategy

2 National Wild Fisheries Strategy

- (1) The Scottish Ministers must, before the end of the period of 6 months beginning with the coming into force of this section—
 - (a) prepare a National Wild Fisheries Strategy, and
 - (b) lay the Strategy before the Scottish Parliament.
- (2) A National Wild Fisheries Strategy is a document setting out the Scottish Ministers' objectives, priorities and policies with respect to—
 - (a) the conservation of freshwater fish in wild fisheries and their habitats, and
 - (b) the management of wild fisheries.
- (3) The objectives, priorities and policies set out in the Strategy must contribute to the discharge of the Scottish Ministers' duty under section 1.

- (4) Before finalising the Strategy, the Scottish Ministers must—
 - (a) publish the proposed Strategy in draft form, and
 - (b) consult such persons as they consider appropriate.
- (5) After laying the Strategy before the Parliament, the Scottish Ministers must publish it in such manner as they consider appropriate.

3 Revision of the Strategy

- (1) The Scottish Ministers must, no later than the end of each 5 year period—
 - (a) review the National Wild Fisheries Strategy, and
 - (b) if they consider it necessary to do so, revise the Strategy.
- (2) If, following a review, the Scottish Ministers revise the Strategy, they must lay the revised Strategy before the Scottish Parliament.
- (3) If, following a review, the Scottish Ministers decide that it is not necessary to revise the Strategy, they must lay before the Parliament a statement to that effect.
- (4) A statement under subsection (3) must include a statement of the reasons for the Scottish Ministers' decision.
- (5) Subsections (2) to (5) of section 2 apply in relation to revision of the Strategy under this section as they apply in relation to preparation of the Strategy under subsection (1) of section 2.
- (6) In subsection (1), “5 year period” means—
 - (a) the period of 5 years beginning with the day on which the Strategy prepared under section 2(1) is laid before the Parliament, and
 - (b) each subsequent period of 5 years beginning with the day on which—
 - (i) a revised Strategy is laid before the Parliament, or
 - (ii) a statement under subsection (3) is laid before the Parliament,
 (as the case may be).

Scottish Ministers' other powers

4 Research, inquiries and obtaining information

- (1) For the purpose of discharging their duty under section 1 and carrying out their other functions under this Act, the Scottish Ministers may—
 - (a) conduct research, inquiries or investigations into any matter relating to or affecting—
 - (i) wild fisheries,
 - (ii) freshwater fish in wild fisheries,
 - (b) collect and publish statistics or other information relating to—
 - (i) wild fisheries (including in particular statistics or other information about the amount and means of fishing in the fisheries),

- (ii) freshwater fish caught in wild fisheries (including in particular statistics or other information about the numbers and species caught, their condition and the method and date of capture),
 - (c) require any of the persons mentioned in subsection (2) to provide them with any information that they may request in such form and manner as they may request,
 - (d) disclose any information obtained by them under this section, or otherwise, to any Fisheries Management Organisation.
- (2) The persons are—
 - (a) in relation to an Atlantic salmon fishery, an owner of the right to fish for Atlantic salmon in the fishery,
 - (b) in relation to any other wild fishery, an owner of the land to which the right to fish for freshwater fish (other than Atlantic salmon) in the fishery pertains,
 - (c) any person carrying out operations or activities in, or in the vicinity of, the fishery which the Scottish Ministers consider may have an impact on the condition or stock levels of freshwater fish in the fishery.
- (3) So far as necessary for the purpose of exercising the power under subsection (1)(a), an authorised person may—
 - (a) enter and take access to a wild fishery, and
 - (b) carry out operations there.
- (4) An authorised person seeking to exercise a power under subsection (3) must, if requested to do so, produce evidence of the person’s identity and authorisation.
- (5) A person commits an offence if the person—
 - (a) fails or wilfully refuses to comply with a requirement imposed on the person under this section,
 - (b) in responding to such a requirement, provides information that is false in a material respect, or
 - (c) obstructs an authorised person in the exercise of a power under subsection (3).
- (6) It is a defence for a person charged with an offence under subsection (5)(a) to show that the person had a reasonable excuse for failing or refusing to comply with a requirement mentioned in that subsection.
- (7) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) In this section, “authorised person” means a person authorised for the purpose of this section by the Scottish Ministers.

5 Sampling and tagging

- (1) An authorised person may—
 - (a) for a purpose mentioned in subsection (3), require a relevant person in relation to a wild fishery—
 - (i) to allow the authorised person to take and retain fish from the fishery,
 - (ii) to allow the authorised person to take samples of material from fish in the fishery,

- (iii) to provide the authorised person with fish, or samples of material from fish, in the fishery,
 - (b) fix a tag of such type and in such manner as the Scottish Ministers consider appropriate to any fish taken from a wild fishery for the purpose of tracking or monitoring the fish,
 - (c) enter and take access to a wild fishery so far as necessary for the purpose of—
 - (i) exercising a power under paragraph (a) or (b),
 - (ii) tracking or monitoring fish to which a tag has been fixed under paragraph (b).
- (2) In subsection (1), “relevant person” means—
- (a) in relation to an Atlantic salmon fishery, an owner of the right to fish for Atlantic salmon in the fishery,
 - (b) in relation to any other wild fishery, an owner of the land to which the right to fish for freshwater fish in the fishery pertains.
- (3) The purposes referred to in subsection (1)(a) are—
- (a) carrying out analysis of fish or samples by any method that the Scottish Ministers consider appropriate,
 - (b) ascertaining whether an offence is being or has been committed under this Act.
- (4) An authorised person seeking to exercise a power under subsection (1) must, if requested to do so, produce evidence of the person’s identity and authorisation.
- (5) A person commits an offence if the person—
- (a) fails or wilfully refuses to comply with a requirement imposed on the person under subsection (1), or
 - (b) obstructs an authorised person in the exercise of a power under subsection (1)(b) or (c).
- (6) It is a defence for a person charged with an offence under subsection (5)(a) to show that the person had a reasonable excuse for failing or refusing to comply with a requirement mentioned in that subsection.
- (7) A person who commits an offence under subsection (5)(a) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) A person who commits an offence under subsection (5)(b) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 3 on the standard scale (or both).
- (9) In this section, “authorised person” means a person authorised for the purposes of this section by the Scottish Ministers.

CHAPTER 2

LOCAL ARRANGEMENTS

*Fisheries Management Areas and their estuarial limits***6 Fisheries Management Areas**

- (1) The Scottish Ministers must by order divide Scotland into areas, each to be known as a Fisheries Management Area.
- (2) A Fisheries Management Area—
 - (a) must include an area of inland waters, but
 - (b) may not include any waters beyond the limit of 5 kilometres seaward from mean low water springs.
- (3) An order under subsection (1) may identify a Fisheries Management Area by reference to a map prepared for the purposes of the order.
- (4) The Scottish Ministers must publish the order, and any map prepared for the purposes of the order, in such manner as they consider appropriate.
- (5) The function of making an order under this section is not to be exercisable by Scottish statutory instrument.

7 Estuary limits

- (1) The estuary limits for rivers in a Fisheries Management Area are—
 - (a) the limits designated by the Scottish Ministers by order, or
 - (b) if not so designated, the natural limits which divide a river, (including its mouth or estuary) from the sea.
- (2) An order under subsection (1)(a) may identify the estuary limits by reference to a map prepared for the purposes of the order.
- (3) The Scottish Ministers must—
 - (a) publicise the making of an order under this section, and
 - (b) make copies of the order, and any map prepared for the purposes of the order, available for public inspection free of charge.
- (4) The function of making an order under this section is not to be exercisable by Scottish statutory instrument.
- (5) An order under this section may be combined with an order under section 6.

*Fisheries Management Organisations***8 Fisheries Management Organisations**

- (1) The Scottish Ministers may, on the application of any person (other than an individual), designate the person as the Fisheries Management Organisation for a Fisheries Management Area (an “Area”).
- (2) A person may be designated for more than one Area.
- (3) A person making an application for designation (“the applicant”) must include with the application—

- (a) an outline draft of the Local Fisheries Management Plan that the applicant would, if designated, propose to submit under section 10(1), and
 - (b) the information mentioned in subsection (4).
- (4) The information is—
- (a) the Area for which the designation is sought,
 - (b) information about the constitution, purposes and objectives of the applicant,
 - (c) a statement of the extent to which it represents or is representative of persons who have an interest in the management of wild fisheries in the Area,
 - (d) a statement of how, if designated, the applicant would propose to involve persons who have an interest in the management of wild fisheries in the Area in the preparation of the Local Fisheries Management Plan to be submitted under section 10(1),
 - (e) an estimate of costs the applicant would, if designated, incur in carrying out the functions of a Fisheries Management Organisation for the Area,
 - (f) evidence of the applicant's capacity to carry out those functions in the Area, including information about—
 - (i) the skills and experience of those who would be employed or otherwise engaged in carrying out those functions,
 - (ii) the assets (including financial resources) that the applicant has or would have, or to which the applicant has or would have access, for carrying out those functions,
 - (g) a statement of how, if designated, the applicant would comply with the requirements of sections 11 to 14.
- (5) The applicant must provide any other information that the Scottish Ministers may require for the purpose of considering the application.
- (6) The Scottish Ministers must notify the applicant in writing of their determination of the application.
- (7) If the Scottish Ministers grant an application under this section in relation to any Area they must publicise, in such manner as they consider appropriate, the fact that the applicant has been designated as the Fisheries Management Organisation for the Area.

9 Fisheries Management Organisations' general duty

- (1) It is the duty of a Fisheries Management Organisation to promote—
- (a) the conservation of freshwater fish in wild fisheries in its Area and their habitats, and
 - (b) best practice in the management of those wild fisheries.
- (2) In discharging that duty, the Organisation must ensure that it acts in accordance with—
- (a) the National Wild Fisheries Strategy, and
 - (b) the Local Fisheries Management Plan for its Area.

10 Local Fisheries Management Plans

- (1) The Fisheries Management Organisation for an Area must, before the end of the period of 3 months beginning with date of the Organisation's designation under section 8—
 - (a) prepare a Local Fisheries Management Plan for its Area, and
 - (b) submit the Plan to the Scottish Ministers for approval.
- (2) A Local Fisheries Management Plan is a document setting out the Organisation's views as to—
 - (a) the objectives and priorities with respect to—
 - (i) the management of wild fisheries in its Area, and
 - (ii) the conservation of freshwater fish in those areas and their habitats, and
 - (b) the activities that require to be undertaken in pursuit of those objectives and priorities.
- (3) The objectives, priorities and activities set out in the Plan must contribute to the pursuit of the objectives, priorities and policies set out in the National Wild Fisheries Strategy and the Plan must explain how they do that.
- (4) The Plan must explain how the Organisation proposes to carry out its functions under this Act in pursuit of the objectives and priorities set out in the Plan.
- (5) At the same time as submitting the Plan to the Scottish Ministers for approval, the Organisation must also provide to the Scottish Ministers a statement explaining—
 - (a) how the Organisation has involved those appearing to it to have an interest in the management of wild fisheries in its Area in the preparation of the Plan, and
 - (b) to what extent the Plan is consistent with the outline draft of the Plan included with the Organisation's application under section 8.
- (6) The Scottish Ministers may approve the Plan with or without modifications.
- (7) The Organisation must publish the Plan as approved in such manner as it considers appropriate.

11 Annual reports

- (1) A Fisheries Management Organisation must, at least once in each 12 month period—
 - (a) prepare and publish a report under this section, and
 - (b) send a copy of the report to the Scottish Ministers.
- (2) The report must set out—
 - (a) a summary of the Organisation's activities during the period to which the report relates,
 - (b) a summary of the activities that it proposes to undertake in the subsequent 12 month period, and
 - (c) information about complaints made to the Organisation during the year, including—
 - (i) the number of complaints, and
 - (ii) a statement of the nature of each complaint and how it was disposed of.

- (3) Before finalising the report, the Organisation must arrange for a draft of it to be considered at a public meeting of the Organisation held in accordance with section 13.
- (4) The activities referred to in subsection (2)(a) and (b) are the activities undertaken or to be undertaken in pursuit of the objectives and priorities set out in the Local Fisheries Management Plan for the Organisation's Area.
- (5) The complaints referred to in subsection (2)(c) are complaints about the way in which the Organisation has carried out, or proposes to carry out, its functions under this Act.
- (6) The report may include other information about the activities of the Organisation.
- (7) In subsection (1), "12 month period" means—
 - (a) the period of 12 months beginning with the date of the Organisation's designation, and
 - (b) each subsequent period of 12 months beginning with the day on which a report is published under subsection (1).

12 Accounts

- (1) A Fisheries Management Organisation must, in respect of each financial year—
 - (a) prepare a statement of accounts,
 - (b) arrange for the statement to be audited, and
 - (c) publish the audited statement.
- (2) Before publishing the audited statement, the Organisation must arrange for it to be considered at a public meeting of the Organisation held in accordance with section 13.

13 Annual public meetings

- (1) The Organisation must hold at least one meeting in accordance with this section in any period of 12 months (the "annual meeting").
- (2) Subject to subsection (6), the matters to be considered at the annual meeting are for the Organisation to determine, but must include consideration of—
 - (a) a draft of the report to be prepared under section 11, and
 - (b) the audited statement of accounts prepared under section 12.
- (3) Subject to subsection (4), the Organisation must ensure that—
 - (a) the annual meeting is open to the public, and
 - (b) business at the annual meeting is conducted in public.
- (4) The Organisation may, if there is a good reason for doing so, decide to consider any particular item in private.
- (5) Subsection (4) does not apply to consideration of—
 - (a) a draft of the report to be prepared under section 11, or
 - (b) the audited statement of accounts prepared under section 12.
- (6) The Organisation must ensure that persons who attend or propose to attend the annual meeting are given an opportunity—
 - (a) to propose matters for consideration at the meeting, and

- (b) to speak at the meeting.
- (7) The Organisation must ensure that, no later than 21 days before the day on which the annual meeting is to be held—
 - (a) a notice is published specifying—
 - (i) the day on, and time at, which the meeting is to be held, and
 - (ii) the place where it is to be held, and
 - (b) a copy of the notice is sent to the Scottish Ministers.
- (8) The Organisation must ensure that, as soon as practicable after the holding of the annual meeting—
 - (a) a minute of the meeting is prepared and published, and
 - (b) a copy of the minute is sent to the Scottish Ministers.
- (9) In this section, references to a meeting of a Fisheries Management Organisation are references to a meeting—
 - (a) of those with overall responsibility for the management and control of the Organisation, and
 - (b) at which business relating to the Organisation’s functions under this Act is considered.

14 Complaints procedure

- (1) A Fisheries Management Organisation must maintain, and keep under review, proper arrangements for dealing with complaints made to the Organisation by any person about the way in which the Organisation has carried out, or proposes to carry out, its functions under this Act.
- (2) The arrangements may make different provision in relation to different categories of complainant.
- (3) The Organisation must, as soon as practicable after making or reviewing arrangements under subsection (1)—
 - (a) publicise the arrangements in a manner appropriate in order to bring them to the attention of any persons who may wish to make complaints, and
 - (b) send a note of the arrangements to the Scottish Ministers.

15 Effect of governance requirements under other legislation

If a Fisheries Management Organisation is required under any other enactment (the “other requirement”) to do anything required by any of sections 11 to 14 (“the relevant section”), or to do it in a particular way—

- (a) the relevant section does not affect the other requirement, and
- (b) the requirement under the relevant section is taken to have been complied with if, and to the extent that, the other requirement is complied with.

16 Power to modify the governance requirements

- (1) The Scottish Ministers may by regulations—

- (a) modify any of the requirements of sections 11 to 14,
 - (b) modify this Act so as to impose further requirements on Fisheries Management Organisations.
- (2) Regulations under subsection (1) may only make such provision as the Scottish Ministers consider necessary for either of the purposes specified in subsection (3).
- (3) The purposes are—
- (a) ensuring that the Organisations' affairs are conducted in an open and accountable manner,
 - (b) ensuring that the Organisations' affairs are conducted to appropriate standards of propriety and good governance.
- (4) In subsection (3), the references to the Organisation's affairs are to those affairs so far as relating to its functions under this Act.
- (5) Regulations under subsection (1) may include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (6) Regulations under subsection (1) are subject to the affirmative procedure.

17 Guidance about governance

- (1) The Scottish Ministers may issue guidance to Fisheries Management Organisations about—
- (a) compliance with the requirements of sections 11 to 14,
 - (b) any other matter relevant to the purposes specified in section 16(3).
- (2) A Fisheries Management Organisation must have regard to any guidance issued under this section.

18 Power to investigate Organisations

- (1) The Scottish Ministers may carry out an investigation into any question whether a Fisheries Management Organisation—
- (a) is acting in accordance with—
 - (i) the National Wild Fisheries Strategy,
 - (ii) the Local Fisheries Management Plan for the Organisation's Area,
 - (b) is complying with the requirements of sections 10 to 14, or
 - (c) is otherwise properly carrying out its functions under this Act.
- (2) The Scottish Ministers may carry out the investigation—
- (a) on their own initiative, or
 - (b) following a complaint by any person.
- (3) The Organisation must provide the Scottish Ministers with such information as they may require for the purposes of an investigation.
- (4) In carrying out the investigation, the Scottish Ministers must ensure that the Organisation is given an opportunity—

- (a) to respond to any complaint in respect of which the investigation is being conducted, and
 - (b) otherwise to make representations.
- (5) Where an investigation is being carried out in relation to an Organisation, the Scottish Ministers may suspend the Organisation's designation as a Fisheries Management Organisation.
- (6) A suspension lasts until the Scottish Ministers decide otherwise.

19 Powers following investigation

- (1) This section applies if, following an investigation under section 18, the Scottish Ministers are satisfied that a Fisheries Management Organisation—
- (a) is not acting in accordance with—
 - (i) the National Wild Fisheries Strategy,
 - (ii) the Local Fisheries Management Plan for the Organisation's Area,
 - (b) is not complying with any of the requirements of sections 10 to 14, or
 - (c) is not otherwise properly carrying out its functions under this Act.
- (2) The Scottish Ministers may issue a direction to the Organisation requiring it to take such action as is specified in the direction by such time as is so specified.
- (3) If the Scottish Ministers consider that action needs to be taken urgently as a result of the Organisation's failure, they may—
- (a) take the action themselves, and
 - (b) recover their expenses in doing so from the Organisation.
- (4) If the Organisation fails to comply with a direction issued under subsection (2), the Scottish Ministers may, by notice in writing, revoke the Organisation's designation as a Fisheries Management Organisation.
- (5) A notice under subsection (4) must—
- (a) set out the reasons for the revocation,
 - (b) specify the date on which the revocation takes effect, and
 - (c) inform the Organisation of the right to seek a review under section 20.
- (6) The date specified under subsection (5)(b) must be no earlier than 28 days after the day on which the notice is given.

20 Review of revocation of designation

- (1) This section applies where the Scottish Ministers have issued a notice under section 19(4) to a Fisheries Management Organisation revoking its designation as such an Organisation.
- (2) The Organisation may, before the date on which the revocation takes effect, give the Scottish Ministers a written notice requiring a review of the decision to revoke the designation.
- (3) Where the Scottish Ministers receive a notice under subsection (2), they must—
- (a) appoint an independent person to review the revocation ("the reviewer"), and

- (b) notify the Organisation of the appointment and of the Organisation's rights under subsections (4) and (5).
- (4) The Organisation may—
 - (a) submit written representations about the revocation to the reviewer, or
 - (b) require the reviewer to hold a hearing for the purpose of making representations about the revocation.
- (5) The reviewer may hold a hearing in public if the Organisation so requests.
- (6) After having considered the Organisation's representations, the reviewer must—
 - (a) report to the Scottish Ministers, and
 - (b) send a copy of the report to the Organisation.
- (7) On receipt of the report, the Scottish Ministers must—
 - (a) decide whether to confirm or withdraw the revocation, and
 - (b) give the Organisation written notice of their decision together with a statement of the reasons for it.
- (8) The revocation is suspended during the period from receipt of the notice under subsection (2) until the giving of notice under subsection (7)(b).
- (9) For the purposes of subsection (3)(a), a person is independent if the person is not subject to the direction or control of—
 - (a) the Scottish Ministers, or
 - (b) any Fisheries Management Organisation.

21 Financial assistance

- (1) The Scottish Ministers may provide financial assistance (whether by way of grant, loan or otherwise) to a Fisheries Management Organisation for the purpose of assisting it in the performance of its functions under this Act.
- (2) The financial assistance may be provided on such terms as the Scottish Ministers may determine.

CHAPTER 3

WILD FISHERIES LEVY

22 Wild fisheries levy

- (1) The Scottish Ministers may by regulations make provision for the imposition of a levy on persons specified in subsection (2), to be known as a wild fisheries levy.
- (2) The persons are—
 - (a) in relation to an Atlantic salmon fishery, an owner or occupier of the right to fish for Atlantic salmon in the fishery,
 - (b) in relation to any other wild fishery, an owner or occupier of the land to which the right to fish for freshwater fish (other than Atlantic salmon) in the fishery pertains.
- (3) The purpose of a wild fisheries levy is to meet or contribute towards expenditure incurred, or to be incurred, by the Scottish Ministers or Fisheries Management Organisations—

- (a) in promoting—
 - (i) the conservation of freshwater fish in wild fisheries and their habitats, and
 - (ii) best practice in the management of wild fisheries,
 - (b) otherwise in performing functions under this Act or any other enactment relating to wild fisheries.
- (4) Regulations under subsection (1) may, in particular—
- (a) specify rates of levies, or provide for them to be determined, by reference to such factors or circumstances as may be specified in or determined under the regulations,
 - (b) make provision for the valuation of wild fisheries and for the entering of the values in the valuation roll,
 - (c) provide for levies to be imposed on an annual or other recurring basis,
 - (d) provide for exemptions, discounts, remissions or repayments,
 - (e) provide for the collection and enforcement of levies,
 - (f) provide for the charging of interest on overdue levies,
 - (g) provide for appeals in respect of any matter determined under the regulations,
 - (h) provide for income from levies to be retained by the Scottish Ministers or Fisheries Management Organisations,
 - (i) in relation to income from levies retained by Fisheries Management Organisations, make provision about—
 - (i) the particular purposes for which the income may be applied,
 - (ii) the accounting for the income and the expenditure of the income,
 - (j) provide for the delegation of functions to a Fisheries Management Organisation in relation to—
 - (i) the determination of the rates of levies and their administration, collection and enforcement, or
 - (ii) any other matter provided for in the regulations.
- (5) Regulations under subsection (1) may make different provision in relation to—
- (a) different persons,
 - (b) different Fisheries Management Areas or other areas,
 - (c) different wild fisheries,
 - (d) different species of freshwater fish.
- (6) Regulations under subsection (1) may—
- (a) include incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) modify this Act.
- (7) Regulations under subsection (1) are subject to the affirmative procedure.
- (8) In this section, “occupier” means—

- (a) in relation to a right to fish for Atlantic salmon, a tenant or sub-tenant or any person in actual occupation of the right,
- (b) in relation to land to which a right to fish for freshwater fish pertains, a tenant or sub-tenant or any person in actual occupation of the land, excluding a lodger or any person in the occupation as tenant of a furnished house let for a period of less than a year.

PART 2

REGULATION OF WILD FISHING AND FISHERIES

CHAPTER 1

CONSERVATION REGULATIONS

23 **Conservation regulations**

- (1) The Scottish Ministers may, whether on the request of a Fisheries Management Organisation (see section 30) or otherwise, by regulations make provision for or about—
 - (a) the conservation of freshwater fish,
 - (b) the conservation of the habitats of those fish, or
 - (c) the protection and management of wild fisheries.
- (2) Regulations under this section may—
 - (a) make provision delegating functions to Fisheries Management Organisations,
 - (b) make different provision for different purposes, including—
 - (i) different persons,
 - (ii) different Fisheries Management Areas or other areas,
 - (iii) different wild fisheries,
 - (iv) different species of freshwater fish,
 - (v) different periods or times of year,
 - (c) include incidental, supplementary, consequential, transitional, transitory or saving provision, and
 - (d) modify chapter 2 of this Part (including the schedule) or Part 3.
- (3) Regulations under this section—
 - (a) that modify this Act are subject to the affirmative procedure,
 - (b) otherwise, are subject to the negative procedure.
- (4) Subsection (3)(b) does not apply to regulations which implement a request by a Fisheries Management Organisation.
- (5) Sections 24 to 28 make further provision about the use of the power conferred by this section.
- (6) In this chapter, “specified” means specified in regulations made under this section.

24 Controls on fishing etc.

Regulations under section 23 may in particular make provision for or about fishing for, taking or killing freshwater fish including provision—

- (a) prohibiting or restricting fishing for, taking or killing fish—
 - (i) by a specified method,
 - (ii) using specified equipment, baits or lures,
 - (iii) in a specified area,
 - (iv) during a specified period or specified periods,
 - (v) by reference to the age, size or weight of the fish,
 - (vi) by reference to the numbers of fish taken or killed,
- (b) requiring that any fish caught (by whatever means) is returned to the water from which it was taken with the least possible injury,
- (c) prohibiting the return of dead fish to the water.

25 Fisheries, habitats and matters affecting fish health

Regulations under section 23 may in particular make provision for or about—

- (a) the construction and alteration of dams, lades, water wheels and other structures,
- (b) the alteration or removal of natural obstructions in rivers or estuaries,
- (c) the alteration of watercourses,
- (d) the protection of fish from predators, parasites or disease.

26 Collecting data and evaluating information

- (1) Regulations under section 23 may in particular make provision for or about the monitoring of freshwater fish and wild fisheries, research and the collection and evaluation of information relating to such fish or fisheries, including provision—
 - (a) for or about the taking of samples from live freshwater fish,
 - (b) requiring a Fisheries Management Organisation to—
 - (i) take such steps as are appropriate to monitor the stocks of fish or fisheries,
 - (ii) collect and retain specified information,
 - (c) requiring any of the persons mentioned in subsection (2) to provide specified information to a Fisheries Management Organisation.
- (2) The persons are—
 - (a) in relation to an Atlantic salmon fishery, an owner or occupier of the right to fish for Atlantic salmon in the fishery,
 - (b) in relation to any other wild fishery, an owner or occupier of the land to which the right to fish for freshwater fish (other than Atlantic salmon) in the fishery pertains.
- (3) In this section, “occupier” has the same meaning as it has in section 22(8).

27 Tagging fish

- (1) Regulations under section 23 may in particular make provision for or about the tagging of freshwater fish (whether alive or dead).
- (2) In particular, the regulations may make provision for or about—
 - (a) the nature, form and content of tags,
 - (b) the supply, issue and storage of tags,
 - (c) the affixation and removal of tags,
 - (d) the keeping of records in relation to tagging,
 - (e) the inspection and examination of tags and records,
 - (f) the seizure, detention and destruction of the carcasses of freshwater fish—
 - (i) which have not been tagged in accordance with the regulations, or
 - (ii) from which tags have been removed otherwise than in accordance with the regulations,
 - (g) the persons who are responsible for the enforcement of the regulations (so far as relating to tagging) and their functions,
 - (h) the imposition by the Scottish Ministers of charges for the recovery of any reasonable costs they incur in connection with the supply or issue of tags (including charges in relation to the administration costs associated with the imposition of such charges),
 - (i) exemptions and exceptions.

28 Wild fisheries licensing schemes

- (1) Regulations under section 23 may in particular make provision for or about a licensing scheme for the taking and killing of freshwater fish.
- (2) In particular, the regulations may make provision—
 - (a) prohibiting the taking and killing of fish without the authority of a licence or a permit,
 - (b) in relation to—
 - (i) the types of licence and permit that may be issued,
 - (ii) the persons who may apply for a licence or permit,
 - (iii) the process of applying for a licence,
 - (iv) the granting and refusal of a licence,
 - (v) the conditions to which a licence is or may be subject (including as to duration of the licence or the payment of any wild fisheries levy),
 - (vi) the amendment, suspension or revocation of a licence,
 - (vii) appeals relating to matters under the licensing scheme,
 - (c) providing for a fee to be payable in respect of a licence (which fee must not be in excess of the reasonable costs of the exercise of the functions in respect of which the fee is to be charged),
 - (d) allowing for—

- (i) the transfer of licences between persons,
- (ii) the issuing of permits by the holder of a licence,
- (e) providing for the keeping and maintaining of a register of applicants, licence holders and persons who have held a licence.

29 Consultation

- (1) The Scottish Ministers must, before making regulations under section 23, consult—
 - (a) any Fisheries Management Organisation which is likely to be affected by the regulations,
 - (b) such other persons or organisations as they consider appropriate.
- (2) This section does not apply to regulations which implement a request by an Organisation under section 30.

30 Requests for local measures

- (1) This section applies to a request by a Fisheries Management Organisation for the Scottish Ministers to make regulations under section 23 in respect of its Area.
- (2) The request must contain—
 - (a) the Organisation's proposals, including—
 - (i) the measure sought (for example, prohibiting fishing during a particular period or the use of certain baits or lures),
 - (ii) the species of fish to which the regulations are to apply,
 - (iii) the area in which the regulations are to have effect (which may be the whole of the Area or a part),
 - (iv) the period during which the measures contained in the regulations are to have effect,
 - (b) an explanation of the reasons for the request and the intended outcomes including, if appropriate, how the proposals are expected to contribute to the pursuit of the objectives and priorities in the Organisation's Local Fisheries Management Plan,
 - (c) a description of the consultation carried out by the Organisation in respect of the proposals.
- (3) The Scottish Ministers may—
 - (a) require the Organisation to—
 - (i) provide further information in relation to the request,
 - (ii) carry out further consultation in relation to the request,
 - (b) implement the request (and make the regulations under section 23)—
 - (i) without modification, or
 - (ii) with such modifications as may be agreed with the Organisation,
 - (c) decline the request.
- (4) Where the Scottish Ministers decline a request under this section they must provide reasons to the Organisation which made the request.

31 Monitoring and evaluation of local measures

- (1) This section applies to regulations under section 23 which implement a request by a Fisheries Management Organisation under section 30.
- (2) The Organisation must—
 - (a) monitor and evaluate the effectiveness of the regulations having regard to its reasons for requesting them and the intended outcomes as specified in the request, and
 - (b) provide the Scottish Ministers with such reports on the effectiveness of the regulations as the Scottish Ministers may request.

32 Contravention of conservation regulations

- (1) A person commits an offence if the person—
 - (a) acts in contravention of regulations made under section 23,
 - (b) fails to take any action required by the regulations.
- (2) It is a defence for a person charged with an offence under this section to show that the person had a reasonable excuse for the person's action or, as the case may be, failure to take required action.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person who commits an offence under subsection (1) may be convicted on the evidence of one witness.

CHAPTER 2

SPECIFIC CONSERVATION MEASURES

*Entitlement to fish***33 Fishing without legal right or permission**

- (1) A person commits an offence if, without having legal right or permission, the person fishes for, takes or kills—
 - (a) an Atlantic salmon or sea trout in—
 - (i) any inland waters, or
 - (ii) any part of the sea within 1.5 kilometres of mean low water springs, or
 - (b) any other species of freshwater fish in any inland waters other than those parts of a river or loch that are tidal.
- (2) For the purposes of subsection (1), “permission” means the express written permission of a person having legal right to fish for the species of fish being fished for, taken or killed in the waters in question.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section does not apply to the Lower Esk.

*Methods of fishing etc.***34 Lawful methods of fishing for freshwater fish**

- (1) The schedule sets out the lawful methods of fishing for or taking freshwater fish.
- (2) A person who fishes for or takes a freshwater fish otherwise than in accordance with the provisions of the schedule commits an offence.
- (3) A person commits an offence if the person attempts to commit or does any act preparatory to the commission of the offence mentioned in subsection (2).
- (4) A person who commits an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) A person who commits an offence under subsection (2) or (3) may be convicted on the evidence of one witness.
- (6) This section (and the schedule) is subject to regulations made under section 23.

PART 3

ENFORCEMENT

*Water bailiffs***35 Water bailiffs**

- (1) A Fisheries Management Organisation may appoint a person as a water bailiff for its Area.
- (2) The Scottish Ministers may appoint a person as a water bailiff for—
 - (a) such Fisheries Management Areas as the Scottish Ministers may specify when making the appointment, or
 - (b) each Fisheries Management Area.
- (3) A water bailiff is appointed on such terms and conditions as the Organisation or, as the case may be, the Scottish Ministers determine.
- (4) A Fisheries Management Organisation may suspend or terminate the appointment of a person appointed by it under subsection (1).
- (5) The Scottish Ministers may suspend or terminate the appointment of a person appointed—
 - (a) by a Fisheries Management Organisation under subsection (1),
 - (b) by the Scottish Ministers under subsection (2).
- (6) In this Act, references to a water bailiff are references to a person appointed under subsection (1) or (2).

36 Exercise of enforcement powers

- (1) A water bailiff may exercise the powers conferred by this Act for the purposes of enforcing Part 2 (regulation of wild fishing and fisheries) and any regulations made under it.
- (2) A water bailiff may exercise those powers in—
 - (a) a Fisheries Management Area for which the bailiff is a water bailiff, and

- (b) any Fisheries Management Area which is adjacent to that Area.
- (3) Where one or more persons are present at the time a water bailiff intends to exercise a power conferred by this Act, the bailiff may exercise the power only after complying with subsection (4) or, as the case may be, (5).
- (4) Where one person is present at that time, the bailiff must produce to the person evidence that the bailiff is authorised to exercise the power.
- (5) Where more than one person is present at that time, the bailiff must produce such evidence to the person who appears to the bailiff to have the greatest interest of those present in the exercise of the power, and is not required to produce it to any other person present.

37 Powers of enquiry

- (1) A water bailiff may—
 - (a) ask a person who is or has been fishing for, taking or killing freshwater fish if the person has authority to fish for, take or kill freshwater fish, and
 - (b) require the person to—
 - (i) give the bailiff the person’s name and address, and
 - (ii) produce written evidence of such authority within the period of 14 days beginning with the day on which the requirement is made.
- (2) In subsection (1), “authority” means—
 - (a) legal right or permission (within the meaning of section 33(2)),
 - (b) any authorisation required by regulations under section 23.

38 Powers of entry

- (1) A water bailiff may at any time enter and remain on land in the vicinity of a river or the sea coast for the purpose of—
 - (a) preventing an offence from being committed under Part 2,
 - (b) ascertaining whether such an offence is being or has been committed,
 - (c) finding a person who is committing, or has committed, such an offence.
- (2) In this section, “land” includes land covered by water but does not include—
 - (a) a building, or
 - (b) land associated with a dwelling house.

Wardens

39 Wardens

- (1) A Fisheries Management Organisation may appoint a person as a warden for its Area.
- (2) The Scottish Ministers may appoint a person as a warden for—
 - (a) such Fisheries Management Areas as the Scottish Ministers may specify when making the appointment, or
 - (b) each Fisheries Management Area.

- (3) A warden is appointed on such terms and conditions as the Organisation or, as the case may be, the Scottish Ministers determine.
- (4) A Fisheries Management Organisation may suspend or terminate the appointment of a person appointed by it under subsection (1).
- (5) The Scottish Ministers may suspend or terminate the appointment of a person appointed—
 - (a) by a Fisheries Management Organisation under subsection (1),
 - (b) by the Scottish Ministers under subsection (2).
- (6) In this Act, references to a warden are to a person appointed under subsection (1) or (2).

40 Exercise of enforcement powers

- (1) A warden may exercise the powers conferred by section 41 for the purposes of enforcing—
 - (a) section 33 (fishing without legal right or permission),
 - (b) any regulations under section 23 requiring authorisation to take or kill freshwater fish.
- (2) A warden may exercise those powers in a Fisheries Management Area for which the warden is a warden.
- (3) Where one or more persons are present at the time a warden intends to exercise a power conferred by section 41, the warden may exercise the power only after complying with subsection (4) or, as the case may be, (5).
- (4) Where one person is present at that time, the warden must produce evidence to the person that the warden is authorised to exercise the power.
- (5) Where more than one person is present at that time, the warden must produce such evidence to the person who appears to the warden to have the greatest interest of those present in the exercise of the power, and is not required to produce it to any other person present.

41 Powers of enquiry and entry

- (1) A warden may—
 - (a) ask a person who is or has been fishing for, taking or killing freshwater fish if the person has authority to fish for, take or kill freshwater fish, and
 - (b) require the person to—
 - (i) give the warden the person's name and address, and
 - (ii) produce written evidence of such authority within the period of 14 days beginning with the day on which the requirement is made.
- (2) A warden may at any time enter and remain on land in the vicinity of a river or the sea coast for the purpose of exercising a power under subsection (1).
- (3) In this section—

“authority” means—

 - (a) legal right or permission (within the meaning of section 33(2)),

- (b) any authorisation required by regulations under section 23,
- “land” includes land covered by water but does not include—
- (a) a building, or
 - (b) land associated with a dwelling house.

PART 4

GENERAL

Meaning of words and expressions used in this Act

42 Fish and fisheries: definitions

- (1) The section defines certain terms for the purposes of this Act.
- (2) “Freshwater fish” means fish that live in freshwater and includes (except where the context requires otherwise)—
 - (a) Atlantic salmon,
 - (b) sea trout,
 - (c) eels,
 - (d) the fry of eels,
 - (e) any other species of fish that migrate between freshwater and other waters.
- (3) “Fish” does not include shellfish.
- (4) “Wild fishery” means a fishery in which people fish for freshwater fish and includes a fishery into which freshwater fish have been put for the purposes of allowing people to fish for them.
- (5) “Fishery” means a fishing ground or area of water in which people fish, but does not include any fishing ground or other area of water beyond the seaward limits of a Fisheries Management Area.
- (6) “Atlantic salmon” means fish of the species *Salmo salar*.
- (7) “Sea trout” means migratory fish of the species *Salmo trutta*.
- (8) “Eel” means fish of the species *Anguilla anguilla*.

43 Conservation and management: definitions

- (1) This section defines certain terms for the purposes of this Act.
- (2) “Conservation” means—
 - (a) in relation to freshwater fish, the protection, restoration or improvement of the health or the stock levels of the fish, and includes increasing or decreasing stock levels,
 - (b) in relation to habitats, the protection, restoration or improvement of the condition of the habitat.
- (3) “Management”, in relation to wild fisheries, includes the protection and improvement of the fisheries, taking account of (amongst other things) their social and economic benefits.

44 Other definitions and interpretation

In this Act, unless the context otherwise requires—

“Area”, in relation to a Fisheries Management Organisation, means—

- (a) the Fisheries Management Area for which the Organisation is designated, or
- (b) where the same person is designated as the Fisheries Management Organisation for more than one Area, each of those Areas,

“boat” includes any craft or vessel used in fishing,

“certified fixed engine” has the meaning given in paragraph 6(1) of the schedule,

“cruise” is to be construed in accordance with any regulations made under section 23(1),

“dam” means any weir, dam, dyke, cauld, mill dam or other structure constructed in the bed of any stream, river or loch for the purpose of controlling, impounding or diverting water,

“estuary limits” is to be construed in accordance with section 7,

“Fisheries Management Area” is to be construed in accordance with section 6,

“Fisheries Management Organisation” is to be construed in accordance with section 8,

“fixed engine” means any engine, net or trap used for the taking of salmon or sea trout, other than a sweep net which when in use is hauled through the water continuously and is not allowed to be stationary in the water or to drift with the current,

“haaf net” is to be construed in accordance with any regulations made under section 23(1),

“inland waters” includes—

- (a) all rivers above estuary limits and their tributary streams, and
- (b) all waters, watercourses and lochs (whether artificial or natural) which drain (to any extent) into the sea,

“lade” includes any artificial channel through which water is diverted from any inland water in which freshwater fish are present,

“net and coble” is to be construed in accordance with any regulations made under section 23(1),

“river” includes tributaries and any loch from or through which a river flows,

“the Solway” means the waters to the east of a line from the Mull of Galloway to Hodbarrow point, so far as any of them lie within Scotland, and includes the rivers, streams and other watercourses running into it.

45 Border rivers

- (1) This Act does not apply to the River Tweed or the Upper Esk.
- (2) Accordingly, references in this Act to “Scotland” do not include either of those rivers.

(3) In this Act—

“the River Tweed” and “the River Esk” have the same meanings as in section 111 of the Scotland Act 1998 (regulation of Tweed and Esk fisheries),

“the Upper Esk” means the part of the River Esk lying upstream of a line drawn from a point at grid reference NY 3245 6632 on the western bank of the River Sark in a southerly direction to a point at grid reference NY 3245 6503 on the coast of Cumbria,

“the Lower Esk” means the part of the River Esk lying downstream of that line.

SCHEDULE

(introduced by section 34)

LAWFUL METHODS OF FISHING FOR OR TAKING WILD FRESHWATER FISH

1 (1) The table sets out the lawful methods of fishing for or taking wild freshwater fish by reference to the species of fish and the place that the fishing for or taking of fish is occurring.

(2) Paragraphs 2 to 7 make further provision about certain methods of fishing.

<i>Species of fish</i>	<i>Place of fishing</i>	<i>Lawful methods of fishing or taking fish</i>
Atlantic salmon	Inland waters	Rod and line (see paragraphs 2 to 4) Net and coble Cruive (see paragraph 5)
	The Solway	Certificated fixed engine (see paragraph 6) Haaf net (see paragraph 7)
	Any waters in a Wild Fisheries Management Area other than inland waters	Rod and line (see paragraphs 2 to 4) Net and coble Bag net, fly net or other stake net
Sea trout	Inland waters	Rod and line (see paragraphs 2 to 4) Net and coble Cruive (see paragraph 5)

<i>Species of fish</i>	<i>Place of fishing</i>	<i>Lawful methods of fishing or taking fish</i>
	The Solway	Certificated fixed engine (see paragraph 6) Haaf net (see paragraph 7)
	Any waters in a Wild Fisheries Management Area other than inland waters	Rod and line (see paragraphs 2 to 4) Net and coble Bag net, fly net or other stake net
Freshwater fish other than Atlantic salmon or sea trout	Inland waters	Rod and line (see paragraphs 2 to 4)

Rod and line fishing

- 2 (1) A person fishing by the method of a rod and line must—
- (a) not use a prohibited technique,
 - (b) not use a prohibited bait or lure,
 - (c) not use prohibited equipment, and
 - (d) comply with any applicable restriction specified in paragraph 3.
- (2) For the purpose of this paragraph—
- (a) a “prohibited technique” is—
 - (i) foul hooking, (that is, pointing or any other method of hooking or attempting to hook a fish other than by inducing the fish to take the hook in its mouth by reason of the bait or lure),
 - (ii) set line, (that is, leaving a fishing line unattended in the water and having attached to it one or more lures or baited hooks),
 - (b) a “prohibited bait or lure” is—
 - (i) fish roe,
 - (ii) live vertebrates,
 - (iii) light,
 - (iv) a bait or lure prohibited by regulations made under section 23,
 - (c) “prohibited equipment” is equipment prohibited by regulations made under section 23,
 - (d) “pointing” means the action of using the point of the rod as a means of hooking a fish.

Rod and line fishing: restrictions on number of rods etc.

- 3 (1) For the purposes of paragraph 2(1)(d), the restrictions are—

Restriction 1: fishing for salmonids otherwise than from a boat

A person who is fishing for or taking salmonids and is not doing so from a boat must—

- (a) use a single rod and line, and
- (b) hold the rod.

Restriction 2: fishing for any other fish otherwise than from a boat

A person who is fishing for or taking freshwater fish other than salmonids and is not doing so from a boat must use no more than 4 rods for that purpose at any one time.

Restriction 3: fishing from a boat

A person who is fishing for or taking fish from a boat must use no more than 4 rods for that purpose at any one time.

- (2) In this paragraph, “salmonids” means all fish of the family Salmonidae.

Use of landing nets when fishing by rod and line

- 4 Nothing in this schedule (or section 34) is to be construed as prohibiting the use of a landing net which has a mesh which is knotless and made of non-metallic material to assist with the taking of fish by rod and line.

Entitlement to use a cruive

- 5 (1) For the purposes of this schedule, a person is entitled to use a cruive only if—
- (a) the person is exercising a right to fish by cruive which was in existence before 10 May 1951, or
 - (b) the person has the permission of another person who is so entitled.
- (2) Sub-paragraph (2) applies if a question arises in any proceedings as to whether a person is entitled to use a cruive.
- (3) It is for the person using or seeking to use the cruive to show that—
- (a) the person is so entitled, or
 - (b) the person has the permission of another person who is so entitled.

Certificated fixed engines

- 6 (1) For the purposes of this schedule, a “certificated fixed engine” means a fixed engine certificated as privileged under section 5 of the Solway Salmon Fisheries Commissioners Act 1877 (“the 1877 Act”).
- (2) Sub-paragraph (2) applies if a question arises in any proceedings as to whether a fixed engine is certificated under section 5 of the 1877 Act.

- (3) It is for the person using or seeing to use the fixed engine to show that it is so certificated.

Haaf nets

- 7 (1) For the purposes of this schedule, a person is entitled to use a haaf net only if—
 - (a) the person is exercising a right to fish by haaf net which was in existence before 10 May 1951, or
 - (b) the person has the permission of another person who is so entitled.
- (2) Sub-paragraph (2) applies if a question arises in any proceedings as to whether a person is entitled to use a haaf net.
- (3) It is for the person using or seeking to use the haaf net to show that—
 - (a) the person is so entitled, or
 - (b) the person has the permission of another person who is so entitled.



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