

# Application for Salmon conservation regulations

15<sup>th</sup> July 2010

We (the undersigned) are writing in application for Salmon conservation regulations under section 38 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 and section 54 of The Scotland Act 1998 (River Tweed) Order 2006.

## General Description of the proposals

This proposal would introduce a mandatory, uniquely numbered carcass tagging scheme for all wild net-caught salmon offered for sale, whether privately or on the open market. A carcass tagging scheme has been in operation in England and Wales since January 2009<sup>1</sup>. Under that scheme, any salmon and sea trout caught by means other than rod and line (i.e. by licensed net or trap) must be tagged with a uniquely numbered Environment Agency carcass tag. This must be attached immediately after capture and remain attached until the fish is processed. Details of the fish and the tag reference numbers must be recorded in an annual log-book (supplied) and returned to the Environment Agency at the end of the year. Similar schemes have been in operation in the Republic of Ireland since 2001 and Northern Ireland since 2002. Carcass tagging has been considered both as a quality control measure and as a means to minimise the possibility of illegally caught fish reaching markets or dealers. In combination with the ban on sale of rod caught fish across the UK, any untagged fish would be made unmarketable and clearly identifiable as illegally taken.

Section 38 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, and section 54 of The Scotland Act 1998 (River Tweed) Order 2006 allow Scottish Ministers to make regulations/orders (Salmon conservation regulations/orders) if they consider it necessary or expedient to do so for the conservation of salmon. Schedule 1 of the 2003 Act and Schedule 2 of the 2006 Order allow Scottish Ministers to make such regulations either on application to them by, any district salmon fishery board (DSFB), The River Tweed Commission, or otherwise. The DSFB's listed below, thereby apply for a Salmon conservation regulation to introduce a mandatory carcass tagging system, using uniquely numbered tags, based on the Environment Agency system as detailed in the Appendix.

## Statement as to why applicant considers that the proposals are necessary or expedient

There is a continuing, significant problem of illegal taking of salmon within rivers and estuaries – a wildlife crime. During 2010, bailiffs employed by 28 of the 41 DSFB's across Scotland (including the River Tweed Commission) seized 166 illegal nets of which 49 were recovered in-river and 117 were recovered in estuaries/coastal waters. Marine Scotland Compliance<sup>2</sup> has noticed a recent upturn in illegal gill netting in Scottish inshore waters. Between June 2009 and August 2010, 17 illegal gillnets were seized by FPV Minna (average length 47m; range 11-87m). These illegally caught fish represent a significant threat to the conservation and management of Atlantic salmon and sea trout. It is of note that the Environment Agency has identified the absence of a mandatory carcass tagging system in Scotland as being a significant loophole in their system, which allows illegally caught fish from the rest of the UK to reach the market masquerading as Scottish produce.

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<sup>1</sup> See: [http://www.environment-agency.gov.uk/static/documents/Business/National\\_byelaw\\_-\\_carcass\\_tagging\\_and\\_log\\_book\\_\(as\\_confirmed\\_-\\_Jan\\_2009\).pdf](http://www.environment-agency.gov.uk/static/documents/Business/National_byelaw_-_carcass_tagging_and_log_book_(as_confirmed_-_Jan_2009).pdf)

<sup>2</sup> Alistair Beveridge talking at the 2011ASFB Bailiff's Seminar in Stornoway

There has been significant concern raised as to the state of the spring stock component in recent years. A detailed seasonal analysis of 17 Scottish rivers designated as SACs undertaken by Marine Scotland Science on behalf of the Mixed Stock Fisheries Working Group<sup>3</sup> suggests that there has been a decline in the salmon caught in the spring stock component (Jan-May) in the majority of these rivers since records started in 1952. Declared net catches for 2007-2009 (January-April) were 86, 80 and 145 respectively. However it is difficult to reconcile these figures with the amount of wild Scottish salmon reaching the market prior to the end of April. For example, the number of boxes of "Scotch Wild" salmon (containing on average eight, 10lb salmon per box) arriving at Billingsgate Market in London<sup>4</sup> suggests that approximately 300-1000 more Scottish salmon are sold than are declared according to the Statistical Bulletin. These figures are estimates as no records are kept as to whether the fish boxes are full to capacity. However, given that only 30-40% of Scottish spring salmon are estimated to be sold through Billingsgate, it is highly suggestive that illegally caught salmon reaching the market is a significant problem. The natural conclusion therefore is that the amount of illegally taken salmon is a threat to the conservation of the spring stock component in particular.

We have been informed by Marine Scotland that the introduction of a carcass tagging scheme would require primary legislation, on the basis that Section 21 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 would represent an occupied field. However, we have taken advice on this issue from Robert Williamson (former Inspector of Salmon and Freshwater Fisheries), which has been assessed by two independent legal advisors and we do not believe that this is the case. We maintain that Section 38 (1) is the correct and appropriate power under which Scottish Ministers should be asked to make carcass-tagging regulations. This is for the following reasons:

1. Carcass-tagging would apply only to salmon caught otherwise than by rod-and-line and it is the carcass of each individual fish that would be tagged. Section 21 of the 2003 Act requires that packages of salmon or trout be clearly marked "salmon", "sea trout" or "trout". But this relates to fish in a package, it does not apply to individual 'bare' fish. We do not believe therefore that the proposed tagging of the carcass of specified individual fish (*i.e.* each wild salmon caught other than by rod-and-line) could be considered a field already occupied by section 21 of the 2003 Act.
2. The proposed scheme (if on similar lines to the English scheme) would apply much more widely than to fish in a package consigned or sent by a common or other carrier: it would apply to every non-rod-caught wild salmon whether or not the fish was in a package consigned or sent by a carrier. And the proposed scheme would not apply to all salmon consigned or sent by a carrier: *i.e.* it would not apply to rod-caught salmon or to salmon taken in a fish farm. Therefore, the effect of the proposed carcass-tagging scheme would be different from the effect of section 21 of the 2003 Act in both scope and detailed purpose.
3. The [English] Salmon and Freshwater Fisheries Act 1975 has, in section 24, an exact equivalent of section 21 of our 2003 Act. This did not prevent the Environment Agency from introducing carcass tagging via the 2009 wild salmon and migratory trout tagging and log book byelaws.

#### **Statement as to the general effect of the proposals**

The Scottish Mixed Stock Fisheries Working Group examined the Environment Agency Scheme, amongst others<sup>5</sup> and came to the following conclusion on the operation of the scheme:

*The season finished at the beginning of September 2009 – log books will be returned in the coming weeks. The log book has a sheet to be completed each time fishing takes place with the start time and*

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<sup>3</sup> Mixed Stock Fisheries Working Group Paper (MSFWG0910)

<sup>4</sup> Official statistics supplied by the Chief Inspector of The Fishmongers' Company

<sup>5</sup> Mixed Stock Fisheries Working Group Paper (MSFWG0921)

*finish time entered – data on effort is therefore being collected. The number of tags issued is based on last years catch Netsmen can request additional tags to deal with annual variations. These will become clearer as the scheme progresses. The tags themselves have a built-in weak point and once broken cannot be used again.*

*Only one person has been reported as being in breach of the tagging regulations. There is not likely to be a prosecution. Because this is the first season a warning letter is likely to be issued. The EA are putting together a Frequently Asked Questions information sheet to be issued to netsmen for next season.*

*Feedback from the netsmen has been positive – they can sell fish to a premium market where the buyer can be confident about the source of the fish – the tags are also seen as a sign of quality.*

Further information on the EA scheme is included in the 2009 review of implementation of the Salmon and sea trout carcass tagging and ban on sale byelaws<sup>6</sup>.

As highlighted above, there are also potential benefits to the netting industry. In the light of the application to the EU for Protected Geographical Indication (PGI) status for 'Scottish Wild Salmon' it is in the interests of both the netting industry and the Scottish Government to ensure that any Scottish wild salmon reaching the market is traceable and of the highest quality. The quality of illegally caught fish, which would be unlikely to be stored appropriately, could not reach the standards required for PGI status. We are aware that there are a number of carcass tagging schemes, operated by individual netting operations. Whilst these are non-numbered schemes, operated purely for marketing purposes, the fact that such schemes are in operation demonstrates that these schemes are of value to the netsmen.

During the 2010 season the River Tweed Commission (RTC) introduced a voluntary carcass tagging scheme for netsmen, modelled on the compulsory scheme initiated by the Environment Agency (EA) in 2009. Based on the five-year average catch for all the netting stations (plus 25%) 7,000 tags were originally ordered. However, due to the exceptional Sea-trout run, an additional 4,000 tags were ordered but these also ran out days before the end of the season. On reflection, it was apparent that this voluntary scheme was ineffective as not all netsmen took part, and some failed to keep the appropriate records. Of the 7 netting stations in operation, 2 declined to take part from the outset and a further 2 either did not, or only partially, applied the tags issued to them. The required records were only received back from 3 netting stations. Without legal means to enforce the scheme on all netsmen the overall aim was lost and, as such, the Commission decided to discontinue the scheme in 2011. This example highlights that, unless such schemes are mandatory across Scotland and use uniquely numbered tags, the problems outlined above with regard to illegally taken fish cannot be addressed.

We believe that the reduction of illegal taking of fish, which would be greatly supported by significantly reducing the potential market for illegally caught fish, would have a significant conservation benefit for wild salmonids. Given the fragility of spring stocks in particular such wildlife crime remains a threat to the viability of those stocks and thus the measures are needed on conservation grounds.

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<sup>6</sup> Environment Agency (2010). Salmon and sea trout carcass tagging and ban on sale byelaws: Review of 2009 implementation.

This application is made by the following District Salmon Fishery Boards including the River Tweed Commission:

|                          |                         |                        |
|--------------------------|-------------------------|------------------------|
| Annan DSFB               | Eachaig DSFB            | Nith DSFB              |
| Argyll DSFB              | Esk DSFB                | North and West DSFB    |
| Ayr DSFB                 | Findhorn DSFB           | Northern DSFB          |
| Beaully DSFB             | Fleet DSFB              | Skye DSFB              |
| Bladnoch DSFB            | Forth DSFB              | Spey DSFB              |
| Brora DSFB               | Girvan DSFB             | Stinchar DSFB          |
| Caithness DSFB           | Helmsdale DSFB          | Tay DSFB               |
| Cree DSFB                | Kyle of Sutherland DSFB | River Tweed Commission |
| Cromarty DSFB            | Laggan and Sorn DSFB    | Urr DSFB               |
| Dee (Aberdeen) DSFB      | Lochaber DSFB           | Wester Ross DSFB       |
| Dee (Kirkcudbright) DSFB | Lossie DSFB             | Western Isles DSFB     |
| Deveron DSFB             | Luce DSFB               | Ythan DSFB             |
| Don DSFB                 | Nairn DSFB              |                        |
| Doon DSFB                | Ness DSFB               |                        |

## Appendix 1

Adapted from Environment Agency: Wild Salmon and Migratory Trout Tagging and Log Book Byelaws (Water Resources Act 1991).

### Carcass Tags

- (1) No person shall be in possession of any salmon or migratory trout taken, otherwise than by rod and line, within Scotland which does not have fixed to it the appropriate carcass tag issued by Scottish Ministers. Any person found in possession of such a salmon or migratory trout shall be guilty of an offence under s20 of the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003.
- (2) Carcass tags will be issued to the proprietor or occupier of any salmon fishery at the start of the relevant fishing season.
- (3) At the discretion of Scottish Ministers the number of tags issued shall be based on the number of fish caught in the fishery in the previous year.
- (4) Subject to any restrictions on the catch of fish, additional tags shall be issued to the proprietor or occupier of a salmon fishery on presentation of log book information showing that tags already issued have been used.
- (5) Carcass tags may only be affixed to fish that were caught by the proprietor or occupier of a salmon fishery to which the tag relates. Tags are not transferable between proprietors or occupiers of different salmon fisheries.
- (6) Carcass tags shall be attached through the gill opening and mouth and securely locked around the gill cover so that it cannot be removed without tampering with the lock, breaking or cutting the tag or without damaging any part of the fish.
- (7) Lost and accidentally destroyed tags must be reported as soon as possible to Scottish Ministers. Such tags may be replaced upon presentation of a signed declaration completed by the proprietor or occupier of the salmon fishery and countersigned by Scottish Ministers.
- (8) Subject to subsections (a) and (b) below carcass tags must be affixed as soon as possible after the fish is captured and remain in the fish until the carcass is processed.
  - (a) In the case of a fish caught from a boat, if not tagged before, it must be tagged before it is removed from the boat from which it was caught.
  - (b) In the case of a fish caught by hand held net, or a fixed instrument, where the captor by necessity enters the water during the fish operation, if not tagged before, it must be tagged immediately after the captor leaves the water for the first time after the capture of the fish. Where it is not necessary to enter the water during the fishing operation, if not tagged before, the fish must be tagged before the captor vacates the fishing station.
- (9) Any constable or water bailiff may examine any fish caught otherwise than by rod and line.

### Log Books

- (10) A log book shall be issued to each proprietor or occupier of a salmon fishery at the start of the relevant fishing season. Details of tags issued in pursuance of section (2) will be entered in the log book by Scottish Ministers.
- (11) Where an event has occurred in respect of which an entry is required to be made, the holder of the log book shall make that entry as soon as reasonably practicable and in any case before midnight on the day the event occurred.
- (12) The holder of the log book shall, on the form provided, make a record of:
  - (a) the time spent fishing
  - (b) the individual weight of any salmon or migratory trout caught even if the fish is released or, where no fish were caught, a statement to that effect, and
  - (c) the tag numbers attached to individual fish
- (13) The holder of a log book shall report any lost or accidentally destroyed log books as soon as possible to the Scottish Ministers.

A replacement log book will be issued for any log book that is reported as lost or accidentally destroyed. The holder of the lost or accidentally destroyed log book shall complete the replacement log book so as to cover all periods of fishing in the relevant fishing season to the best of the holder's knowledge and return the replacement in accordance with the instruction in the log book.

- (14) The holder of a log book shall deliver the log book correctly completed together with all unused tags issued to him or her to the Scottish Ministers by the date specified in the log book.
- (15) Any constable or water bailiff may examine any log book issued under these regulations.