



# Bailiffing in Scotland

Reference manual on legislation, practical operations and court procedures



*Minor revisions June 2016*

# Table of Contents

	<b>Chapter</b>	<b>Page</b>
<b>1</b>	<b><a href="#"><u>Introduction</u></a></b>	<b>6</b>
<b>2</b>	<b><a href="#"><u>Definitions</u></a></b>	<b>8</b>
<b>3</b>	<b><a href="#"><u>Relationship with fishermen</u></a></b>	<b>9</b>
	3.1 Enforcement of laws and rules	
	3.2 The bailiff's role	
	3.3 The Warden's role	
	3.4 The keeper/ghillies role	
	3.5 Demeanour	
	3.6 Gratuities	
	3.7 Fishing	
<b>4</b>	<b><a href="#"><u>Appearance &amp; Equipment</u></a></b>	<b>12</b>
	4.1 Health & Safety at work	
	4.2 Appearance	
	4.3 Vehicles	
	4.4 Radios	
	4.5 Mobile telephones	
	4.6 Viewing aids	
	4.7 Camera	
	4.8 Small equipment	
<b>5</b>	<b><a href="#"><u>Routine</u></a></b>	<b>18</b>
	5.1 Work routine	
	5.2 Confidentiality	
	5.3 Local knowledge	
	5.4 Working alone	

<b>6</b>	<b><u>Enforcement tactics</u></b>	<b>21</b>
	6.1 Value of planning	
	6.2 Intelligence	
	6.3 Planned surveillance	
	6.4 Positioning	
	6.5 example of positioning at night	
	6.6 Apprehension	
	6.7 Spawning season duties	
	6.8 Estuaries and coastal fisheries	
	6.9 Personal comfort	
<b>7</b>	<b><u>Use of the Notebook</u></b>	<b>37</b>
	7.1 General	
	7.2 Offence Report forms	
	7.3 Recorded Information	
	7.4 When to use a notebook	
	7.5 Information to be recorded	
	7.6 Notebook rules	
	7.7 The note book as evidence	
	7.8 Making the entries (See example at Appendix)	
	7.9 Diary	
<b>8</b>	<b><u>Bailiff's powers and their implementation</u></b>	<b>44</b>
	8.1 Introduction	
	8.2 Persons entitled to enforce legislation	
	8.3 Definition of fish	
	8.4 Tweed, Solway and Border Esk	
	8.5 Jury service	
	8.6 Offences	
	8.7 The Warrant or Authority to Act	
	8.8 Powers of bailiffs	
	8.9 Powers of entry	
	8.10 Powers of search	
	8.11 Powers to seize fish, fishing gear or other articles	
	8.12 Powers of arrest	
	8.13 Obstruction of water bailiffs	
	8.14 Powers of entry and search	

	8.15 powers to seize fish, fishing gear and other articles	
	8.16 powers of arrest	
	8.17 Obstruction	
	8.18 Permission to undertake unlawful acts	
<b>9</b>	<b><u>Wardens appointed by Scottish Ministers</u></b>	<b>58</b>
	9.1 General	
	9.2 Limitations	
	9.3 Conduct	
<b>10</b>	<b><u>Arrest - Powers &amp; Procedures</u></b>	<b>61</b>
	10.1 Arrest	
	10.2 Grounds for Arrest	
	10.3 Information to be given on arrest	
	10.4 Power to use reasonable force	
	10.5 Conduct of a search	
	10.6 Use of restraints	
	10.7 Statement by a person under caution	
	10.8 Statement by a witness	
	10.9 Offences by children and young persons	
<b>11</b>	<b><u>Evidence</u></b>	<b>71</b>
	11.1 The nature of evidence	
	11.2 Circumstantial evidence	
	11.3 Inadmissible evidence	
	11.4 Burden of proof	
	11.5 Continuity of observation	
	11.6 Custody of real evidence	
	11.7 Intent	
	11.8 Relevance	
	11.9 Corroboration	
	11.10 In conclusion	
<b>12</b>	<b><u>Dealing with offences</u></b>	<b>78</b>
	12.1 Techniques and procedures	

12.2	Offence procedure	
12.3	Questioning	
12.4	Recording	
12.5	Confirmation of identity of suspect by a bailiff	
12.6	Collection of forensic evidence	
12.7	Witnesses	
12.8	Warnings	
<b>13</b>	<b><u>Reports and their preparation</u></b>	<b>87</b>
13.1	Introduction	
13.2	Types of reports	
13.3	Offence reports - basic information	
13.4	Offence reports - back-up information	
<b>14.</b>	<b><u>Court procedures</u></b>	<b>90</b>
14.1	Court Layout	
14.2	General Court Procedure	
14.3	Giving Evidence	
14.4	Penalties	
	<b><u>Appendix 1: List of offences &amp; guide to 2003 Act</u></b>	<b>98</b>
	<b><u>Appendix 2: Specimen Notebook Entry</u></b>	<b>111</b>
	<b><u>Appendix 3: Example of a simple statement</u></b>	<b>113</b>
	<b><u>Appendix 4: Glossary of terms</u></b>	<b>116</b>

# 1. Introduction

This manual has been revised to take account of changes since the main body of legislation, the Salmon & Freshwater Fisheries (Scotland) (Consolidation) Act 2003 was introduced; this manual has been updated generally, and there is an important annex which reflects the legislative changes and new offences introduced since the 2003 Act. It is important that you consider these new offences and changes in the context of this training literature.

- **Fisheries Law - general**

The law relating to fisheries and fishing in the British Isles is complex, and the position is not made easier by regional differences. England and Wales, Scotland and Northern Ireland all have unique and different fishery management structures and legislation. There is, however, a common theme running through all the legislation - the conservation, protection and management of fish and fisheries. The wording may be different but the intentions are the same. For the legislation to be effective it must be understood and correctly interpreted by water bailiffs, ghillies, keepers and other persons authorised to do so - but no person should be given this responsibility until they have been trained for the task.

- **Policy on water bailiff appointments**

It is now a policy requirement in Scotland that all prospective bailiffs, whether appointed by district salmon fishery boards (DSFB), or where there is no DSFB, Scottish Ministers, must successfully complete this bailiff training course before they are formally appointed as a water bailiff. This will ensure, as far as possible, that those who are granted the powers of arrest, seizure, entry and search, fully understand the extent of their power and the appropriate circumstances under which they may be exercised. The purpose of this manual is to provide guidance on the legislation, appropriate procedures and skills needed to meet this requirement in

Scotland, and to enable bailiffs to carry out their duties in a professional manner.

The manual focuses on standard practice and practical procedure **but it must be stressed, the need to amend, vary or add to it in order to meet changes in legislation, local requirements or an employer's policy must be recognised and accepted.**

- **The 2003 Act & 2007 Act**

The ability to access the various pieces of legislation relating to salmon and freshwater fisheries in Scotland has been considerably improved through the **Salmon & Freshwater Fisheries (Consolidation) (Scotland) Act 2003** (hereinafter referred to as the '2003 Act') which has brought together almost all the relevant Scottish salmon and freshwater legislation into a single Act; Since the 2003 Act came into force, further legislation has been passed in Scotland, and the provisions covered by the Aquaculture and Fisheries (Scotland) Act 2007 are included in this manual.

## 2. Definitions

"Water bailiff" - a person appointed by a DSFB under the 2003 Act to enforce the provisions of current salmon fisheries legislation anywhere within that DSFB's district or adjacent districts. Scottish Ministers may also appoint persons as water bailiffs and these are normally appointed in relation to specific districts or parts thereof where a DSFB is not in place. The legal term "water bailiff" is generally abbreviated by the angling and fishing fraternity as 'bailiff' - the term which will be used throughout this book refer to any person appointed by a statutory body (i.e. a DSFB or Scottish Ministers) to enforce national fishery legislation, including local regulations, orders and byelaws. It should be noted, however, that according to strict legal definition, a "bailiff" is an officer of the courts who has little, if anything, to do with fisheries or fishing. People involved in fishery management in Scotland may have a specific job title such as "fishery manager", "ghillie", "superintendent" "keeper" etc, and may either be employed or act voluntarily on behalf of a DSFB, fishery owner or angling association. Regardless of their job title, that person is still a "water bailiff" in relation to their powers of enforcement under the legislation if they have been appointed formally as a water bailiff by the DSFB or Scottish Ministers.

"River keeper/ghillie/boatman" - a person employed either by a private individual, a syndicate or angling club etc to supervise and manage a specific fishery or fisheries.

"Offence" - any action, deed or omission which contravenes the provisions of any of the Acts or, where appropriate, any regulation or order made under them.



## **3. Relationship with fishermen**

### **3.1 Enforcement of laws and rules**

Laws, bye-laws and rules, as they apply to fish and fishing, are made for purpose of regulating fisheries and protecting and preserving fish stocks. Water bailiffs, wardens and keepers are employed to see that they are observed: they are, therefore, directly or indirectly protecting the interests of anglers and commercial fishermen - a fact that is not always appreciated and sometimes leads to a bailiff or keeper being regarded in a less than positive way. This reputation is not helpful but it can be dispelled to a large extent if the individual concerned builds up a good relationship with those with whom he comes into contact during the course of his duties.

### **3.2 The bailiff's role**

A bailiff is employed to enforce the fishery laws and regulations in the area in respect of which they are appointed. Their role in this context is virtually that of a policeman - indeed a bailiff is vested with many of the powers of a police constable - and because of this, the nature of their work and the large area they are responsible for, they cannot always establish close personal relationships with those with whom they come into contact. Nevertheless, a bailiff should get to know by sight all the regular fishermen and be able to address them by name. Any wider information about the fishery, such as fly hatches, fish runs, water conditions, catches etc. which is able to be passed on is often appreciated and can lead to reciprocal information about illegal fishing or the presence of strangers on the water.

In the course of duty a bailiff should avoid becoming too familiar with fishermen, spending too long a time with any one angler or interest could potentially compromise the bailiffs impartiality, however requests for assistance should not be refused if the bailiff thinks it would not compromise his position or delay him unduly in his work.

Persons appointed as bailiffs by a DSFB may also be required to undertake other duties in relation to the salmon stocks and fisheries in the district, and the enforcement function may be but one element of a wider fishery management role.

### **3.3 The Warden's role**

The 2003 Act empowers Scottish Ministers to make a Protection Order (PO) which, in simple terms, makes it an offence to fish for **brown trout and other freshwater fish** (excluding salmon or sea trout, which have their own legal protection) without legal right or written permission in an area to which the order applies. This might be a whole river catchment or just parts of it. It will also only apply to inland waters and therefore any water below the tidal limit of the river will not be covered. The Act also provides that Scottish Ministers may appoint Wardens for the purpose of enforcing the provisions of a PO. These Wardens are nominated by the owners or occupiers of the fishing rights in the area covered by the PO and are issued with a letter of appointment (Warden Warrant Card). Protection Orders are regularly reviewed and each Warden should be fully aware of the extent of the area covered by the order as their powers are limited to the area detailed and much more limited than those powers held by water bailiffs.

### **3.4 The keeper/ghillies role**

A keeper has a wide variety of duties to perform in serving the interests of their employer. An important one is to ensure that all who fish do so legally and in accordance with the rules of the fishery; as they deal with fishermen who are either their employers, their guests or tenants, they also have to make certain that they enjoy their sport by taking on the role of guide and mentor and this can lead to more personal and friendly relationships than those which can be enjoyed by a bailiff.

### **3.5 Demeanour**

A successful bailiff, warden, ghillie or keeper should be tactful and firm but fair in his dealings with fishermen. Loss of temper or rudeness is a sign of weakness and needs to be avoided at all times. If it is necessary to take action against anyone it must be polite, firm, decisive and correct. In the appropriate circumstances, a sense of humour is also a valuable quality to have as a joke or witty remark can often defuse an otherwise fraught situation. The threat of arrest should never be made unless one is fully confident that it is appropriate and necessary and is prepared to carry it out; force should never be used except as a means of self-defence or to help arrest an offender, and then only within the provisions required by law.

### **3.6 Gratuities**

An angler will often show his gratitude to a ghillie or guide who has helped them by providing a tip. This is normal practice and, unless barred by the employer, is quite acceptable. On the other hand, a bailiff who helps an angler, if offered a tip, should decline it with thanks. Tips can be misinterpreted as bribes, especially if received by a person with statutory powers and duties to enforce the law, and a bailiff who received one would be compromised - they must at all times be seen to be above suspicion.

### **3.7 Fishing**

If a bailiff is given the opportunity to fish on a fishery they should only accept if they are satisfied that by so doing they would put them self under no obligation to the person making the offer. In all such cases they should discuss the matter with their manager before taking up the offer.

## **4. Appearance & Equipment**

### **4.1 Health & Safety at work**

All employers should provide a general policy statement, with the stated intention:

- 1.** To ensure as far as reasonably practical, the health and safety of employees at work, and the freedom from risk of the tasks upon which they are engaged and the places in which they are performed.
- 2.** To comply with all statutory requirements relating to the health and safety of employees while at work.
- 3.** To review and record, on a regular basis, the operating procedures, safety measures and availability of safety equipment provided, with a view to their proper observation, maintenance and improvement.
- 4.** To provide periodic instruction and training in health and safety matters for employees.
- 5.** To collect information relating to any accidents at work, with the view to minimising the incidence of accidents.
- 6.** To encourage consultation among employees on safety and health matters in order to discharge the health and safety responsibilities imposed on the workplace.
- 7.** To ensure that all members of staff are aware of any risks they face at work and the relevant precautions to take in order to minimise the risks.
- 8.** Informing staff of this policy and any subsequent changes, is the responsibility of the H&S officer or equivalent and details of named persons shall be included in the policy statement.

- **Employee's responsibilities**

All employees have a legal responsibility to take reasonable care of their own health and safety and others who may be affected by their actions. This includes their colleagues, visitors and members of the public.

In complying with this obligation all employees are to observe the relevant safety and fire precautions detailed in the policy and displayed in the workplace.

No employee should undertake any task for which they have not been trained and in particular, they must ensure that they read and comply with any and all relevant "safe systems at work" and manufacturer's instructions where applicable.

Where protective clothing is provided for a particular task it is to be worn. If any employee is aware of hazards not covered under the policy he/she should bring this to the attention of the safety officer for a decision on the appropriate safety measures and their inclusion in the policy.

- **Risk assessment**

Risk assessment is nothing more than a careful examination of what, in your work, could cause harm to people, so that you can assess whether you have taken enough precautions or should do more to prevent harm. The aim is to make sure that no one gets hurt or becomes ill.

**HAZARD** means anything that can cause harm (e.g. chemicals, water, electricity, working from height etc.) and **RISK** is the chance, great or small, that someone will be harmed by the hazard.

Whilst all the known major risks may have been addressed by a policy it is the responsibility of all employees to continually assess the tasks they do and bring to the attention of their employer or manager, any new hazards, and the level of risk. In this way a policy can be continually updated in order to provide you with a greater level of protection at work.

The Health and Safety Executive leaflet - "A guide to risk assessment requirements" should be consulted if there is any doubt about requirements under health & safety law.

## **4.2 Appearance**

A bailiff or keeper is their employer's representative on the waterside and as such should create a good impression on all those with whom they come

into contact. Their demeanour is important but so also is their personal appearance - a scruffy person does not inspire confidence whereas one who is neatly dressed will always create a good impression.

Whenever engaged upon duties which bring them into contact with the general public, a bailiff or keeper should always be neatly dressed, unless engaged upon a particularly dirty task when old clothes or overalls should be worn. Most employers now either supply uniforms, protective clothing or give a clothing allowance so there should be no excuse for being on formal enforcement duty in an unkempt condition.

### **4.3 Vehicles**

If issued with a vehicle it should be kept clean, regularly serviced and driven in a responsible manner. Any accident or deficiency should be reported immediately and any records relating to the use of the vehicle which the employer requires to be kept, should be completed at the end of each journey or as frequently as required.

Some employers allow vehicles to be used for personal travel by the driver and their family while others specifically forbid it. A driver who has any doubts about their own position should seek clarification, otherwise they might find that, if involved in an accident, they are not covered by their employers insurance and liable for any damage or injury caused.

### **4.4 Radios**

Many employers now issue two-way radios to their staff to help them in their duties. They are operated under a licence issued by the Home Office and to ensure that its terms are complied, the employer normally issues comprehensive instructions which relate to use, maintenance, call-signs and operating procedures to be adopted. A frequency, or frequencies, is allocated to each licence holder which ensures a certain amount of security for transmissions, but this is valueless if an unauthorised person, who knows the operating frequency, is able to listen to the traffic being passed.

Most radio systems operated by DSFBs and other enforcement agencies work between a base station and various mobile or portable units; this can prove useful if assistance or information is urgently needed. The radios used by bailiffs also provide the facility for direct communication between individuals - this is invaluable for enforcement and surveillance work.

A few basic rules need to be observed by all radio users when engaged on any protection or anti-poaching work, these include:

- ensuring that the set is working before starting out;
- having a spare fully charged battery readily available;
- keeping to agreed operating procedures and call-signs;
- keeping conversations to a minimum and using prearranged code words to protect security; and
- remember that efficiency, reception and range of operation is affected by terrain.
- There is little doubt that in recent years the increased and correct use of radio has led to much greater efficiency and to quicker responses to reported incidents.

#### **4.5 Mobile telephones**

Most bailiffs are now issued with mobile telephones. The basic rules that apply to the use of radios also apply to the use of mobile telephones. Some employers may allow the private use of the mobile telephone: in this event the bailiff should be quite certain what the rules for private use are. Bailiffs must be extremely wary about giving out their mobile telephone number as it can be anything from compromising to dangerous if a mobile telephone starts to ring during an enforcement operation.

#### **4.6 Viewing aids**

Binoculars or a telescope should form part of every bailiff or keeper's personal equipment. The use of either greatly increases the range of observation and enables a person or incident to be observed from a distance without the danger of the observer being seen.

The "night-sight", which uses the process of light intensification, enables observations, photography, and video recording to be carried out in the dark. The equipment is expensive and therefore needs careful handling but is well worth the investment for recording evidence where illegal night-time activities are being observed.

#### **4.7 Camera**

A small digital camera is essential for recording situations and events. Video equipment can also be valuable. Bailiffs should be aware that there are privacy issues relating to the photographing of people, and there may well be particular requirements if they are to be used as evidence.

#### **4.8 Small equipment**

Every bailiff and keeper should carry with them when on duty certain items of equipment which they will find necessary or useful at some time or another. These include:

- a means of identification: for a bailiff or warden this will be a formal warrant card of appointment;
- notebook and pen/pencil;
- a watch;
- spring balance and tape measure;
- pocket knife (folding blade should not exceed 3 inches);
- assorted plastic bags and pieces of string;
- whistle for use in emergency to summons assistance;
- torch;
- GPS system or compass;



- a waterproof bag to carry the above items in;
- documentation, e.g. specimen permits, production labels, map, receipt book etc;
- any other equipment supplied by your employer.

## **5. Routine**

### **5.1 Work routine**

For obvious reasons, persons engaged in illegal activity should not be able to anticipate the movements of a bailiff, warden or keeper; a set routine is unavoidable for certain duties, e.g. hatchery management, but provided that they can be carried out at times when, or in places where, one is not easily seen the risk is minimised.

An important part of any bailiff, warden or keeper's, work is patrolling a specific area to ensure that no one is fishing illegally or poaching and here lies the risk of movements being anticipated. To lessen this possibility, patrols should be planned on a random basis to vary routes and times of starting and finishing each day.

The whole of a beat or larger stretch may need to be covered in a given period, say a week, but the main effort should be concentrated on those areas where, and at times when, activity is most expected; experience will probably show that early morning and late evening are the periods of greatest activity. This does not imply that patrolling at other times should be reduced or ignored; it is essential if contact with anglers - a likely source of information - and other riverside contacts is to be maintained.

Weather and water conditions can dictate the pattern of a day's work; a sudden flood may alter plans at short notice. These factors, and a correct interpretation of their effect upon angling or poaching activities, play an important role in deciding where and when to patrol or what duties to perform.

A major problem in a particular area could necessitate the use of a team involving several bailiffs or keepers (and sometimes both) - and perhaps the police - acting under the direction of a senior member. For this type of

operation to be successful requires confidentiality and any person asked to participate should be particularly careful not to jeopardise it by unintentional breaches of confidence (see 5.2 below).

## **5.2 Confidentiality**

While it is important to be as discrete as possible in ones physical movements in an area, it is equally important never to divulge any information relating to future enforcement, surveillance or general monitoring activity to anyone other than those also involved in the exercise: this is most important where one is entrusted with a task of a confidential nature or if engaged on an operation to try and apprehend persons suspected of poaching.

## **5.3 Local knowledge**

Unless the bailiff has an intimate knowledge of the beat, the patrols or other duties they perform can be both ineffectual and valueless. It is important, therefore, that when taking over a beat the first priority must be getting to know it, its problems and inhabitants; this will require a detailed study to be made of, and information gleaned on, the following subjects:

- The topography and nature of all the water courses
- the ownership and boundaries of each fishery
- The species of the fish, insect life and vegetation associated with the fishery
- The sources of potential pollution, the location of all discharge points where effluents enter the river or stream and the action which has to be taken if a pollution occurs
- The location, function and operation of every dam, screen, grating and fish pass
- The names and addresses of all regular anglers and local angling club officials

- The name and address of every person fishing commercially or operating a fish farm
- The names, addresses and telephone numbers of persons such as the police, keepers, bailiffs, farmers etc. to whom one can turn for reliable information or help
- The telephone numbers of other people whom they may wish to contact in the course of their duties; this may include local offices of SEPA and SNH the names address, addresses, habits, vehicle numbers and associates of all known or suspected poachers living in, working on or frequenting the area
- Local activities, public opinion and any other subject which could have a bearing on their duties.

#### **5.4 Working alone**

When bailiffs work alone in isolated locations a system is needed for dealing with incidents and emergencies. As a minimum, a check must be made by the head bailiff, superintendent or manager at the end of each work period to make sure that all bailiffs have returned safely. Where a bailiff is a sole employee they should make their plans and whereabouts known to someone that they trust, such as a family member, an employer, a neighbour or the police. In the event of an incident, an accident or illness, it is vital that a bailiff's whereabouts is known and that they have the means to communicate either by radio or mobile telephone. When it is not safe to carry out particular tasks alone, arrangements must be made to ensure that an assistant is available.

## **6. Enforcement tactics**

### **6.1 Value of planning**

There are no set methods of conducting operations. The following are a consensus of basic principles. In the majority of cases minor offences are encountered and dealt with in the course of normal patrolling and, as such, do not require advanced planning or special deployment of personnel.

Any person seen fishing should not be immediately approached. If possible he should be kept under observation from a place of concealment to try and determine exactly what he is doing, the method he is using and the species of fish he catches. If he is seen to do anything that appears suspicious the details should be entered in the notebook. When satisfied that further observation is unnecessary the approach is then made and the persons permit asked for. When particulars have been verified, question them about their actions and if the response contradicts what was observed they can be presented with the evidence gained during observation.

This sets the position out very simply but the essential element is to remember that observation is vital and in general, more wrongdoers have "got away with it" through premature action than for any other reason.

Conversely, the apprehension of the perpetrators of major offences frequently depends upon forward planning and the use of bailiffs working as a team. Certain factors and considerations are common to most offences in this category and these are dealt with below. It is particularly important that bailiffs should develop a sound working relationship with their local police force. Most of the forces in Scotland now have full-time Wildlife Crime Officers (WCOs) and it is strongly encouraged that good liaison with these officers is established.

## 6.2 Intelligence

This is taken to mean "information or observations which lead one to suspect that an offence has been, is being, or is about to be, committed"

Information can come from a number of sources such as anglers, keepers/ghillies, bailiffs, wardens, police or members of the public. Some bailiffs and keepers cultivate their own private sources from among persons who operate on the periphery of the poaching fraternity but these require very careful selection if their reliability is to be trusted and their involvement in poaching is not to rebound on the person relying on them.

Details about the registration numbers and makes of cars of known poachers, given to the police or colleagues in neighbouring areas, can prove invaluable if, when they are seen, the information relating to the passengers and direction of travel is passed back to the appropriate quarters thereby giving a much appreciated early warning. Similar cooperation with other types of information such as the names and addresses of known poachers, suspected purchasers and carriers of illegally caught fish, suppliers of poisons and local poaching contacts can prove fruitful. However, in passing on this type of information care must be taken to ensure that it is done in such a way that it does not leave either the informant or his contacts open to a charge of slander. Similarly, all information received must, if possible, be checked before it is acted upon to determine the feasibility of what is alleged.

Observations direct or by a third party, frequently indicate that poaching can be expected - provided that a correct interpretation can be placed upon the facts. A run of salmon into a recognised spawning tributary, numbers of fish congregating below a weir, footprints on the river bank, tyre marks, unfastened gates can all indicate to an astute observer that poaching may be expected in a particular place and, allow them, with the assistance of colleagues, to take action.

If a major offence is observed by a bailiff and they are unable to get assistance they should not attempt to deal with it on their own: observation should be kept from a safe distance and record every piece of detail about the incident that he can including the make and number of any vehicle, the number of persons involved, descriptions of each person and the way they are dressed, the method being used, any fish seen taken, the location of the offence and any other relevant information. They should then pass the information on to the police as soon as possible with a request that the vehicle be stopped and searched giving also the direction in which it was travelling if this is known. The importance of recording all this information becomes apparent when required by the police to identify the suspects if the vehicle is stopped. If possible, before taking action to deal with an expected poaching incident one should always consult with their manager or colleagues to plan the tactics for dealing with the situation as they envisage it will take place, based upon the known facts. This may reveal that another source of information indicates that a second incident can be expected at another location at about the same time .as the first - it is then up to the senior person to deploy the available personnel as they see fit to meet both situations but, in such circumstances, the offence likely to have the greatest environmental or economic impact must be given priority.

### **6.3 Planned surveillance**

If large scale poaching is known, or suspected, to be taking place regularly in one particular area and the location or circumstances are such that immediate counter-measures are ruled out it may be possible to resolve the situation eventually by using planned surveillance over a period. This uses the services of a number of observers, either acting simultaneously or on a roster basis whose sole purpose is to covertly watch and record all that is happening. Secrecy is important and even if an offence is witnessed no action should be taken other than to record in detail what has been

observed. Each observer's notes are "collated" and at the end of the surveillance period which could last for several weeks, are used to determine:

- the magnitude of the problem
- the numbers and identities of those taking part
- the time and place most favoured for committing the offence
- the nature of the offence
- the type of equipment being used
- the most favoured part of the tidal cycle (if relevant)
- where fish are landed
- how they are transported away from the water
- the registration numbers and descriptions of any vehicles used, their owners and where they are parked
- the number and descriptions of any boats used, their owners and where they are berthed; (boats and vehicles used in poaching may not belong to the poachers)
- the locations and signals used by any "look-outs"
- the favoured routes for coming to and leaving the water; and the outlet for the disposal of the fish etc.

This information will allow the person responsible for the counter-measures to decide upon the best strategy to adopt e.g. whether to catch the poachers as they are taking the fish or to wait and apprehend them as they are moving away with both fish and instruments. It will also help avoid undue wastage of time by planning the operation to coincide with observed timed pattern of behaviour and to optimise the deployment of bailiffs and resources.

In order to have a tactical advantage when dealing with an incident, those concerned must have a good prior knowledge of topography of the area where the incident is expected to occur and to use this constructively. As



many incidents occur at night suspected areas should be surveyed beforehand in daylight to help determine the following:

Landmarks such as bridges, buildings, large trees and hedges are invaluable, particularly at night, for guiding one to a required target area. Vantage points which give a wide field of vision of the area yet allow rapid access to the waterside. Landmarks, easily seen in daytime from a vantage point, which could help decide upon the exact location of a light or persons, may not be discernible when seen at night and so should be pinpointed beforehand by using GPS or taking a compass bearing on each. Comparison with a bearing taken at night on a suspicious observation will place it near a landmark.

Consider routes to the river for both personnel and vehicles, provided they can be negotiated without being observed.

Water depths -if this is known for different lengths of river it can help predict whether poachers are likely to wade or not and make apprehension easier.

All information gained about water depths, landmarks, vantage points and routes together with all compass bearings taken should be recorded on an Ordnance Survey Map as a permanent record of the area. This will be of great help on future occasions and invaluable to a bailiff working in the area for the first time.

### **Important Note - surveillance**

The conduct of surveillance operations is a difficult issue in the light of modern day human rights legislation. With the introduction of the Human Rights Act in 1998 and subsequent legislation in the form of the Regulation of Investigatory Powers Act 2000 (RIPA) (and the Scottish version RIP(S)A), strict controls were introduced on when surveillance operations are

permitted and how they are to be conducted. Whilst these regulations only apply to public bodies such as the police and customs, it is nonetheless important that water bailiffs are aware of these regulations and the restrictions they impose.

Directed or covert surveillance that might infringe on an individual's right to privacy is only permitted for *"the prevention of disorder or crime"*. Targeting a known poaching 'hot-spot' obviously falls into this category. Whilst observing a location on the river causes no problem, observing an individual without his/her knowledge could lead to a defence that his/her rights had been breached under the terms of Article 8 of the Human Rights Act. This is why CCTV cameras in towns and speed cameras are clearly advertised. For a public authority to conduct surveillance operations the authority of a senior officer is required, certain criteria stipulated and the use of any information gathered is strictly controlled. The regulations contained in RIPA also cover the situation where lawful surveillance of a location leads to observations of an individual or individuals. Simply put, such surveillance is not covered by the regulations if it could not be foreseen or was as a result of a direct response; *"Does not include covert surveillance carried out by way of an immediate response to events or circumstances which, by their very nature, could not have been foreseen. For example, officers would not require authorisation to conceal them self and observe a suspicious person who they come across in the course of their normal duties"*. However, the regulations go on to state; *"However, the longer the observation continues, the less likely it would be considered to be an immediate response."* This clearly has implications for the majority of bailiff operations.

Whilst it would appear that on the face of it the regulations contained in RIPA make it virtually impossible for water bailiffs to go about their enforcement duties it should be remembered that DSFBs are **not** regarded as public bodies for the purposes of RIPA. That said, to avoid any

prosecution difficulties, it is appropriate to suggest that bailiff operations are conducted within the spirit of the regulations. The test that is usually applied to such instances is to gauge what is a fair and reasonable response to a given situation. Watching a poacher on the riverbank engaged in taking fish is obviously totally different from parking up outside his house watching him through the window with binoculars. It would not be advisable to lead any case against this individual with evidence gathered in this way. The basic rule is that observation of an individual(s) actually committing an offence and the recording of the details is both fair and reasonable as long as the information is kept securely and not used for any other purpose than an intended prosecution. It would be for the defence to prove that the individual's rights had been abused by virtue of unreasonable action. The professional and sensitive conduct of surveillance operations will avoid this being the reason why a prosecution is dismissed.

#### **6.4 Positioning**

Whether setting out to apprehend an individual poacher or a gang, those employed in the task should know the local terrain well and take advantage of this knowledge to position them self in such a way that the chances of escape are reduced to a minimum.

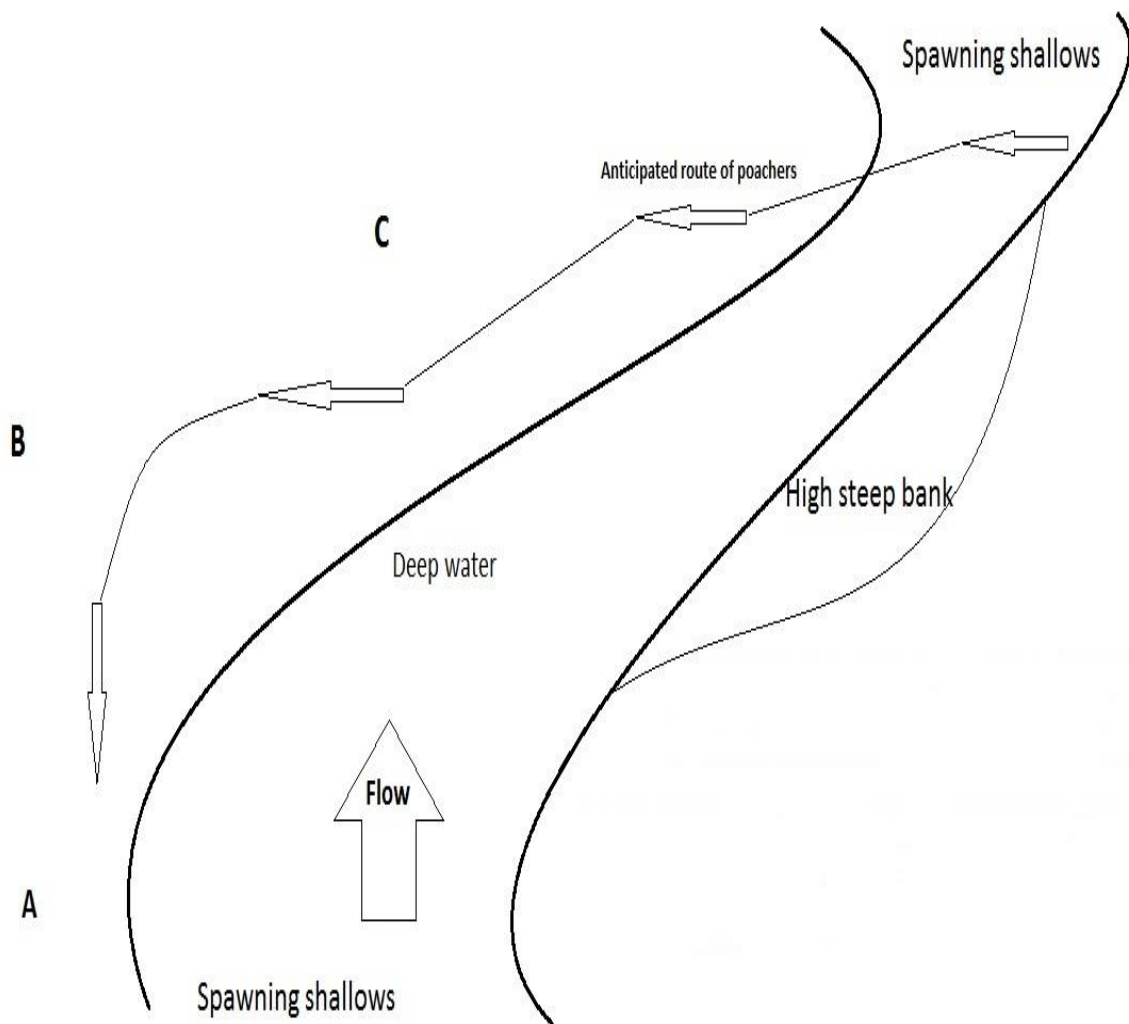
The golden rule to be observed particularly when dealing with gangs, is "let them come to you" which applies in all cases from dealing with illegal tidal waters offences to spawning season poaching: it requires the intelligent interpretation of observations made on, and anticipation of, the suspects' movements so that the bailiffs can get into position and lie in wait until the suspects come within easy range for capture. If the bailiffs attempt to approach the suspects the chances are that they will be seen before they can reach them and any illegal instrument used or fish taken will be hidden or thrown away - also the suspects, if up to no good, are unlikely to wait for the bailiffs to arrive before taking to their heels.

## 6.5 example of positioning at night

To illustrate this consider the following hypothetical case (& refer to figure 1 overleaf):

*Observation of an area has revealed that someone had been walking along the banks of a salmon spawning river early that morning (this is later confirmed by an informant who names a well-known poacher) and shows that a large number of fish are present. From this information the head bailiff deduces that the river is likely to be poached that night and that those involved will be the person seen earlier and at least one other, as he is known not to work alone. The head bailiff decides to take action and arranges for a team of three bailiffs to keep observation on the area from a vantage point. Soon after dark lights are seen shining on the river. The team leader, having satisfied himself as to their approximate position by reference to some landmark, and whether they are moving upstream or down, deploys his team so that they position themselves on the river bank in advance, and in the poachers anticipated path. At the point selected the river becomes too deep for wading and anyone coming up river will have to use a bank but as one bank is high and un-climbable the other will have to be used. It is here that the bailiffs set up their ambush.*

**Figure1. Example of positioning to meet anticipated movements**



**'A' who is the leader, conceals himself as near the river as possible in the anticipated path of the gang. 'B' conceals himself some distance away from the river downstream of 'A'. 'C' is concealed further downstream and also away from the river. The distance between 'A' and 'C' does not exceed 30 yards.**

**As lights approach 3 figures are made out – 2 are in the water holding torches and gaffs while a 3<sup>rd</sup> person is on the bank holding a sack. When the gang reaches the deep water it is forced to move along the left bank as the right one is too steep. 'C' watches the gang pass him, taking careful note of how many persons there are and what each is carrying. When all**

**members have passed him he moves quietly towards the river bank and follows up behind them.**

A poacher who is quick thinking may react rapidly to any form of restraint and throw away any incriminating evidence, such as a gaff, before he is physically restrained. If such action is observed or suspected the immediate area should be searched before releasing the suspects and anything found recovered in their presence.

If the poachers are at all experienced they will be looking out for bailiffs and will search the surrounding area with their torches as they move along the banks: it is important, therefore, that the bailiffs remain hidden. Large trees or bushes are not essential for this at night as even a hollow in the ground, small shrub or clump of grass can provide excellent concealment from the beam of a torch - provided that the person in hiding remains perfectly motionless.

The above example illustrates the way in which one of the more traditional methods of poaching can be dealt with but no two incidents are ever alike and each has to be tackled according to circumstances. This applies particularly to poaching by an organised gang where, in addition to the numbers of persons and vehicles actually involved, other non-participating - accessories such as look-outs and carriers of the fish also may have to be apprehended. This may be more than the local bailiff force can cope with unaided and the assistance of the police has to be sought. With close liaison, good intelligence and careful positioning the two forces should be able to close up any loopholes which would otherwise arise.

## **6.6 Apprehension**

When a person is apprehended the bailiff doing so must identify himself immediately by saying "I am a water bailiff" and, if necessary, seize them to prevent escape. The warrant of appointment must be produced and the

approach by the bailiff must be firm and professional without being aggressive. They should do nothing to give the person any cause or excuse to be violent.

Some poachers, especially those operating in gangs, are quite prepared to use violence to escape capture and will strike out without provocation - a situation that a bailiff must always be prepared for and, if it occurs, take action to overcome using the minimum force necessary.

A person who is suddenly confronted by bailiffs at night is often shocked and reacts instinctively to any form of restraint by striking out or attempting to run away, but once he realises his position usually adopts a more normal attitude. A tolerant approach is desirable if it appears that the action was instinctive and not malicious.

If the person is aggressive without offering violence the bailiff must make it quite clear that they are not prepared to tolerate any abusive or threatening behaviour and that the attitude adopted will only make matters worse: in the majority of such cases persuasive but firm argument will have the desired effect of calming the situation.

When it is deemed necessary to arrest a suspect the person making the arrest must be thoroughly conversant with their powers and the formalities to be adhered to: to arrest anyone wrongly or ignore the formalities could place the person making the arrest in a most difficult legal position.

## **6.7 Spawning season duties**

Elsewhere, reference has been made to salmon and trout spawning and the need for special protection duties. This needs explaining in more detail to put the subject into context.

When ready to spawn salmon and trout move into the headwaters and tributaries of rivers where they seek out fords and shallows in which to deposit their eggs in the gravel. Here they become easy prey for poachers, especially at night, when salmon or trout appear to be mesmerised by any light shone on them and can be easily caught - usually by being gaffed or speared. The fish eggs are taken to prepare illegal bait known as "salmon paste" or "putty", while the carcasses are sold cheaply to unsuspecting clients.

Spawning usually occurs during the months of November and December - but could be earlier or later depending upon the river and area - when the prime duty of bailiffs and many keepers is to protect the fish to make certain that it is uninterrupted and that future stocks for the river are assured.

On most rivers total protection is impossible because of the size of the area and limited manpower: it becomes of great importance, therefore, to concentrate effort on those places where the numbers of fish and the possibility of poaching is greatest. This calls for regular daily inspection of all potential spawning areas so that priorities can be worked out and surveillance organised. If fish are seen in an area they will probably remain there for several days and surveillance should be carried out for at least three consecutive days at any one location.

## **6.8 Estuaries and coastal fisheries**

Estuarial and coastal fisheries are also monitored by the Scottish Fisheries Protection Agency. Most commercial salmon and sea trout fishing is carried out using nets (net & coble, fixed engine) in estuaries and along the coast by netsmen who are subject to statutory controls and regulations enforced by the DSFB.



Where illegal fishing is widespread the bailiff will need to build up a comprehensive picture of suspects, to include methods of fishing, known associates, boats used, landing places, outlets for sales etc. so that when a person is caught it will be easier to prove that he fished with the intention of taking salmon. This underlines the importance of a bailiff being able to establish whether a fish is taken accidentally or deliberately.

The monitoring of these fisheries calls for specialised knowledge and experience in addition to the general expertise which all bailiffs have for dealing with offences: this includes the following:

### **Boat handling and seamanship**

This is essential if inspections of boats and nets while in use are to be carried out. The presence of a fast patrol boat manned by an efficient crew is a strong deterrent to would-be poachers.

### **Knowing the coastline**

Landing points, both recognised and unrecognised, where fish could be brought ashore need to be determined, from which likely places to be used can be deduced in the light of wind and water conditions.

### **Tide experience**

The height, set and state of the tide, which can vary with climatic conditions, will affect the place and way in which boats fish and knowledge of the pattern of fishing which these conditions can influence is essential.

### **Use of a compass & GPS**

The exact position of a boat or net engaged in fishing can be determined from the shore if two bailiffs take compass bearings on the boat or net simultaneously from different positions and mark these off on a map. Where the two intersect will give the position. This requires that in addition

to the use of a compass in the context of boat handling, bailiffs also have to be competent in the use of a hand-help compass: this is easily acquired by practice, by reading elementary surveying books or by instruction. Even better, modern GPS aids are very efficient and cost-effective. These should be considered as a key piece of equipment for bailiffing.

### **Observation technology**

There are a number of technical innovations on the market today which can be of great help in obtaining evidence to help convict. Night sights greatly enhance the capability of an observer during darkness, cameras with long range telescopic lens linked to recording apparatus provide a permanent record of an event and pressure operated alarm pads which give warning of a person's presence are examples of some of the equipment now available.

However, all this can be of little use if it is used by an inexperienced person or wrongly operated. The lesson here is that if such equipment is available those who use it must be properly trained and fully conversant with its capabilities.

### **Netting techniques and net construction**

A bailiff who monitors commercial salmon fishing operations must be fully conversant with the methods of fishing used in the area (including fishing for sea-fish), the law as it effects them and the types and construction of the instruments used.

If, as a result of their actions, a case comes to court, in all probability they will be examined by the defence on their knowledge of these matters. An inability to answer fully and with authority may prejudice the rest of their evidence.

## **6.9 Personal comfort**

Surveillance and the detection of certain offences often require long periods of waiting, frequently in uncomfortable locations and inclement weather. To help overcome any unpleasantness that this can cause the following are suggested:

Morale can be quickly affected by wind and rain - so always try to find some shelter from both. In open country haystacks and bracken can be used to provide windproof observation points.

An extra pullover and a light waterproof nylon suit, to be slipped on when needed, and carried in a plastic bag are always useful additional items to have with one. If the possibility of getting "soaked to the skin" is envisaged then a completed change of clothing should be considered.

Hot drinks and food should be carried when necessary. Under no circumstances should an alcoholic drink be taken as, in addition to making one sleepy, its smell on the breath when an offender is caught may give the impression that the bailiff or keeper was drunk and this will almost certainly referred to if the case comes to court.

Some form of communication such as two-way radio or telephone to summons assistance helps to dispel any feeling of isolation. In the past whistles were carried to summons help and one could do a lot worse than to do likewise. Having a colleague with you helps relieve monotony but the need for continuity of observation discussed in Section 11.5 must be borne in mind.

The foregoing may appear obvious, but if by any chance it is overlooked, discomfort and misery could be the result.



## **7. Use of the Notebook**

### **7.1 General**

When any bailiff is issued with, and required to use, a notebook in connection with their day to day activities it forms part of the official documentation of the employer and as such the officer has to comply with certain rules as to its use. These have general application but may have local variations.

Notebooks should be individually numbered and signed for by the persons to whom they are issued. When a notebook is full and is no longer required it should be returned to the issuing body and the fact recorded in the current notebook held by the bailiff.

Although the following relates to bailiffing requirements a keeper is advised to keep and use a notebook in the way described as if they have to give evidence in Court the entries in it can be of great benefit.

### **7.2 Offence Report forms**

If special forms are provided to be issued in cases where persons have committed some offence, or in connection with the non-production of written authority to fish these should not be regarded as a substitute for a notebook but as an integral part of the recording process and used in conjunction with any notebook entry.

### **7.3 Recorded Information**

An accurate record of an employee's day-to-day observations and activities is required by many employers and the prime source from which the relevant information can be obtained is a well kept notebook. This also provides the principal source of reference for making a report or giving evidence in court - when the only notes allowed to be referred to by a

witness are those made at the time of the incident or as soon after as practical.

Notes correctly entered in a notebook should be more comprehensive than the basic information contained in an offence report form and enable a witness, when giving evidence, to supplement the information contained in the offence report form and to refresh his memory as to events preceding and following the incident which may be a vital point at issue in the prosecution.

#### **7.4 When to use a notebook**

A person who carries out part of their duties indoors should not be expected to record everything that happens to them during this time - it should be sufficient at the commencement to simply enter the date, time commenced and the location. However, other matters relating to possible legal action such as relevant telephone calls made and received, together with the time, should also be noted. At the end of the duty a simple record to the effect that they were "Off duty" at a specified time will suffice.

The notebook comes into its own where the bailiffs duties take them outside, when a number of different events will occur in the course of the day. As a bailiff has no way of knowing at the time which of the events or observations they observe or experience in the course of their duty will be of relevance later, it follows that they should get into the habit of recording as fully as possible a chronological record of activities and observations each working day.

#### **7.5 Information to be recorded**

Among the items of information it is desirable to include, the following are examples:

- the day and date

- the time the duty started and, later, the time it finished
- the time and location of each place visited and the purpose of the visit
- the time of each relevant event and action taken e.g. detecting and reporting a pollution incident
- names of people met, e.g. colleagues, - some employers require this to be accompanied by the initialling of each other's notebooks
- details of permit demand forms issued and offences detected with a note on the action taken
- if issued with a vehicle, the mileage reading and amount when fuel is taken
- special duties performed, e.g. attendance at court with details of the offender and any penalty imposed
- water and weather conditions
- Other information which may be required on a regular basis could include the numbers of permits inspected and details of river gauge readings

With experience, and in particular in the context of report writing and the giving of evidence in court, the relevance of the type and amount of information that needs to be recorded in respect of each incident will become apparent. Initially, perhaps not enough will be noted - and its absence could prove an embarrassment; alternatively the notebook could be filled with a lot of irrelevancies which could make the provision of clear evidence in court more difficult. Eventually, however, recording just what is required becomes second nature and its value appreciated all the more.

Although on first sight it might appear that making entries in the notebook takes up a lot of time, in practice the actual time forms a very small part of the day's activities, and even this can be reduced if the bailiff develops their own "shorthand" and/or abbreviations.

The benefit that can accrue to the bailiff from keeping an accurate record far outweighs any inconvenience it gives rise to. It should be realised that as a record of the bailiff's working day it can be used to justify any action he has taken, and in the past, notebook entries have helped absolve bailiffs of any wrongful allegations or complaints about their whereabouts and conduct.

## **7.6 Notebook rules**

The value of a well-kept notebook becomes apparent when the bailiff is required to write a report on an incident that may have occurred several days or even weeks earlier as the information it contains should enable them recall quite clearly not only the general tenor of the subject but also more detailed items.

Unless the entries in the notebook are clear and unambiguous they can, in the hands of an astute lawyer, help to discredit the evidence given by the witness. To avoid this happening certain rules need to be observed when making the entries and those which were developed by the police are a valuable guide.

These are as follows:

- that the book is used to record original notes only and under no circumstances are notes which have been made elsewhere to be copied into the book - if such notes have been made they must be carefully preserved for later production if required
- all notes entered must be made at the time of the incident, or as soon afterwards as possible, while the facts are fresh in the mind
- no erasure should be made or any page torn or removed
- there should be no over-writing between lines



- should an error be discovered before any other words have been added it should be neatly crossed out so that the original is still visible, and the correct word written
- if an error is discovered after other words have been written it should be crossed out so that the original is still visible and the letter "A" inserted over it. At the end of the record the letter "A" should be written with the correct wording following; and any omission should be dealt with as in (f) above

### **7.7 The note book as evidence**

Although a bailiff may have prepared a comprehensive report on an incident, should they be required to give evidence in court about it they would not be allowed to refer directly to the report in order to refresh their memory. Only notes made at the time of an incident or as soon after as is practicable may be referred to - and these notes should be in the notebook - hence it is only the notebook (and/or an offence report form) that can be used for this purpose.

Should it be necessary to refer to the notebook in court one should only do so with the permission of the Court, and if this permission is granted it means that the notebook becomes part of the evidence and as such may be inspected by the defence.

(To prevent other details in the notebook being examined by the defence all the pages immediately before and after the relevant ones being used to refresh the memory should be secured by elastic bands).

### **7.8 Making the entries** *(See example at Appendix 2)*

In addition to the rules shown above there are others relating to the content of the entries that should be observed, e.g:

- write the day and date at the start of each days duty

- note the time when each entry is made; the use of the twenty-four hour clock is preferred
- entries must be legible and accurate - but legibility can be sacrificed in the interests of accuracy if or -when the speed of recording is important
- when an entry finishes part way along a line insert a dash to prevent further or later entries being made in the unused space
- whenever a person is cautioned for a suspected offence make a note to this effect - this can be simply the letter "C"
- abbreviations are permissible provided that they are standard to the individual, e.g. lt. = left, rt. = right, U/S = upstream, D/S = downstream, C.= caution issued, etc. In time most people develop their own personal set of abbreviations
- the actual words used should be written in inverted commas
- names, addresses and words with difficult or ambiguous spelling should be written in capital letters
- the important details relating to an offence such as the name, address, age and occupation of an offender, and anything said by them can be written down first while in their presence. A narrative relating to other facts, including the role of the bailiff, a description of the offender, etc. can be written immediately after leaving them and before any other entries are made
- if a person wishes to make a short statement it can be recorded directly into the notebook which they are then asked to sign or initial indicating that it is correct

If two bailiffs are present during an interview one can conduct the interview while the other records the details. At the end of the interview the interviewer should sign the record made by his colleague. In court both bailiffs can refer to the one record as it was made at the time of the interview in the presence of both.

A notebook completed in accordance with these rules will give rise to little adverse comment if examined in court as it will be evident that no attempt has been made to hide or distort any matter.

## **7.9 Diary**

The notebook should be regarded as the official record of the bailiff but the keeping of a separate diary is also an extremely useful practice. In it private matters and more important or unusual observations and events of each day work can be entered. This is a personal record which will contain subjects and information that it may be inappropriate to include in the notebook, and which forms a permanent source of reference for future occasions.

## 8. Bailiff's powers and their implementation

### 8.1 Introduction

This section describes, in layman's terms, the statutory powers of water bailiffs and wardens to enforce the provisions of the Scottish salmon and freshwater fisheries Acts. It is not a legal interpretation of the Acts and should not be quoted as authority for any particular power; in case of doubt reference should be made to the relevant Act which is quoted in each case. For brevity, the Acts are cited by reference to the year only, eg "2003 Act". The titles of the relevant Acts are:

- Aquaculture & Fisheries (Scotland) Act 2007
- Salmon & Freshwater Fisheries (Consolidation) (Scotland) Act 2003
- Sea Fish (Conservation) Act 1967
- Inshore Fishing (Scotland) Act 1984

The key provisions and offences are described in this section, and [Appendix 1](#) provides a summary table for quick reference to the most common statutory provisions. New provisions have been introduced since the 2003 Act took effect and these are included in Appendix 1. Most of these are insertions into the 2003 Act. However, in addition to the above primary legislation, several regulations have also been made which have national application, for example the national prohibition on the taking of eels. A brief description of these are also included due to their scope and application.

All acts, regulations and orders can be searched for and viewed online at:  
[http://www.opsi.gov.uk/legislation/about\\_legislation.htm](http://www.opsi.gov.uk/legislation/about_legislation.htm)

### 8.2 Persons entitled to enforce legislation

There are three main categories of persons appointed **specifically** to enforce salmon and freshwater fisheries legislation: water bailiffs appointed by DSFBs; persons authorised by Scottish Ministers under the 2003 Act to exercise similar powers; and wardens appointed by Ministers under the 2003 Act in relation to Protection Orders. The powers of each are separately described in this manual. In addition, the Police may also enforce the salmon and freshwater fisheries legislation and British Sea Fishery Officers also have some powers in relation to salmon fishing offences at sea: their powers are not described in this booklet.

A water bailiff is defined in the 2003 Act as any person appointed as such under the Act by a DSFB or by Scottish Ministers. The production by a bailiff of his or her warrant card, is sufficient authority for the exercise of their powers.

A water bailiff appointed by Scottish Ministers has the same powers as those appointed by DSFBs but the exercise of those powers extends only to such district(s) or part of a district as is specified in the instrument of appointment – unlike a DSFB bailiff there is no automatic power to operate in any adjoining district. This is the only practical difference between the powers of the two classes of water bailiff.

### **8.3 Definition of fish**

In most Scottish fisheries legislation, sea trout fall within the meaning of the term salmon and, in this booklet, all references to salmon include sea trout. Similarly, the word trout means brown trout and does not include rainbow trout or brook trout); and freshwater fish means any fish living in freshwater, including trout and eels, but excluding salmon and fish such as flounders etc which migrate between the open sea and tidal freshwater. The word fish, if unqualified, means all kinds of fish.

### **8.4 Tweed, Solway and Border Esk**

Due to their position on and across the border with England, the River Tweed, Border Esk and Solway have long had their own local legislation in addition to the general Scottish provisions. The 2003 Act has pulled the majority of these local differences into a single, consolidated piece of legislation but some local provisions still remain.

In brief, the Solway and Border Esk come fully under the 2003 Act with conditions applied, or additional legislation provided for law enforcement in those parts of the rivers that lie in England. The River Tweed is not covered by the 2003 Act at all and has separate legislation under the Scotland Act 1998 which covers both the Scottish and English portions of the river catchment. Whilst this is separate legislation to the rest of Scotland, the format of this legislation, brought about as part of the overall freshwater fisheries law consolidation process, is very similar to that of the 2003 Act and contains the same offences and powers for water bailiffs. Therefore, whilst the references in this manual do not apply to Tweed water bailiffs, the guidance given is still applicable.

### **8.5 Jury service**

Water bailiffs, whether appointed by a DSFB or the Scottish Ministers, may fall within the description "persons employed in any capacity by virtue of which they have the powers and privileges of police constables" and thus be ineligible for jury service under Group B in Part I of Schedule I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980. A water bailiff, if called on for jury service, should therefore draw the circumstances of their appointment to the attention of the appropriate Sheriff Clerk.

### **8.6 Offences**

An annotated list of offences against the Acts is provided at [Appendix 1](#).

### **8.7 The Warrant or Authority to Act**

The document authorising a bailiff to exercise his statutory powers under the 2003 Act is the "warrant". This is issued to the individual on their appointment. It must be carried at all times and produced whenever they purport to exercise these powers e.g. when asking to inspect a permit; when dealing with a person who has committed, or who is suspected of committing, an offence; or when challenged by a fishery owner or land owner when on their land. It should become second nature for a bailiff to produce the warrant card whenever they introduce themselves in the course of duty.

The authority should never be handed over to anybody; if someone wishes to inspect - it, it should be held out so that it can be read. The reason for this is that an abusive or obstructive person could, if it was handed to them, dispose of it so that it was not recoverable thereby depriving the bailiff of proof of authority until it was replaced.

The loss of a warrant card should always be reported to your manager or appointing authority immediately. This will allow a replacement to be issued and frustrate the effort of anyone finding the original and purporting to act illegally, as a bailiff.

### **8.8 Powers of bailiffs & specific offences**

A water bailiff is defined as "any water bailiff or other duly appointed officer of a District Board". They are appointed by DSFBs or, for the Tweed, by the River Tweed Commission. The production by a bailiff of their letter of appointment, or any badge or device indicating their appointment, is sufficient authority for the exercise of their powers. **[2003 Act s.45, s.55]**

A water bailiff has various powers of entry, search, seizure and arrest. These extend to the whole of the district of the Board which appointed them and to any adjoining salmon fishery district. The area of a district is either the area designated as such by Ministers under section 34 of the

2003 Act or, if no designation has been made, the catchment area of all the rivers flowing into the sea within the coastal limit of the district as defined by bye-law under section 6 of the 1862 Act and seaward for 5 km from mean low water springs. Although the statutory duties of the DSFBs relate to salmon and sea trout, their bailiffs have some powers in relation to the enforcement of trout fishing law **[2003 Act s.34]**

### **8.9 Powers of entry**

A water bailiff may, at any hour, enter and remain on land in the vicinity of a river or the sea coast for the purpose of preventing a breach of the Acts or for detecting persons guilty of a breach of those Acts. However, the owner or occupier of the land can ask the bailiff to go and, if he refuses, the bailiff may be proceeded against as a trespasser unless he can prove to the court that they had reason to believe that an offence had been or was about to be committed. **[2003 Act s.54]**

A water bailiff may enter land for the purpose of examining a dam, fixed engine, obstruction or lade. In this context: fixed engine means an engine, net or trap for taking salmon other than a sweep net; lade means an artificial channel through which water is diverted from inland water in which salmon or trout are present; and land includes land covered by water but does not include a dwelling-house or any associated yard, garden, outhouse etc. **[2003 Act s.55]**

A water bailiff may also, on the authority of a warrant from a sheriff or justice of the peace:

- enter any premises where it is suspected that there has been a breach of the provisions of the 2003 or 2007 Act or that any illegally-taken salmon or illegal nets or instruments are concealed; and
- enter, by force if necessary, any premises or vehicle in which there is reasonable ground to suspect that evidence of an offence against the



2003 Act, or against any salmon-related order made under the 1967 or 1984 Acts, may be found. **[2003 Act s.52, 1967 Act, s.18 & 1984 Act s.7]**

For the purpose of performing duties under Diseases of Fish Act 1937, any person, if authorised in writing by a District Board, may enter any land within the District provided that it is not part of a fish farm, and it is an offence for any person to refuse to admit them, or intentionally obstruct them, in carrying out those duties. This power may be exercised by a water bailiff but they would have to be authorised specifically (appointment as a bailiff is not, in itself, sufficient). Any person (including a water bailiff) suspecting an offence against the 1937 Act may, with a warrant from a justice of the peace, enter any land (including any inland or marine fish farm) to seize any fish, fish eggs, foodstuff or articles suspected of having been imported, removed or about to be removed in contravention of the Act or any licence, order or notice made under it. **[see 1937 Act, S.6(1) & (4)]**

### **8.10 Powers of search**

A water bailiff may stop and search any boat which is used in fishing or any boat which there is reasonable cause to suspect of containing salmon or trout; and they may search and examine nets or other instruments used in fishing or any basket, pocket or other receptacle which there is reasonable cause to suspect of containing salmon or trout illegally taken; the reference to "pocket" does not imply an authority for a water bailiff to search persons. In addition, where a bailiff has reasonable grounds for suspecting that evidence of an offence against the 2003 Act, or against any salmon-related order made under the 1967 or 1984 Acts, is to be found in a vehicle on private land adjoining water or in a stationary vehicle on a public road adjoining such land or water, the bailiff may search that vehicle. **[2003 Act s.55, 1967 Act, S.18 & 1984 Act, s.7]**

The powers of entry under warrant, described at paragraph 11 above, are for the purpose of search. The warrant provides authority to search for the purpose of detecting offences against the 2003 Act or finding concealed fish, articles etc. If a bailiff has a warrant under section 52 of the 2003 Act to search premises or a vehicle, they may also search every person found in those premises or vehicle or any person who they have reasonable ground to believe has recently left or is about to enter them. **[2003 Act s.55]**

In any search authorised by section 55 of the 2003 Act, no female should be searched except by a female and this may be taken to mean also that no male should be searched except by a male. **[2003 Act s.52]**

A water bailiff may open any package consigned or sent by common or other carrier (or brought to any place to be consigned or sent) which is suspected of containing salmon or trout, with a view to establishing whether the package is properly marked or is being dealt with contrary to law. **[2003 Act s.21]**

### **8.11 Powers to seize fish, fishing gear or other articles**

A water bailiff may seize any fish, instrument or article, boat or vehicle liable to be forfeited under the 2003 Act. This power of seizure has been extended to cover fish, instruments or articles (but not boats or vehicles) liable to forfeiture in connection with salmon offences under the 1967 or 1984 Acts. Bailiffs may also seize any illegally taken salmon, illegal nets, engines or other instruments found in the course of any search made under a warrant from a sheriff or justice of the peace. **[2003 Act s.55, 1967 Act, s.18 & 1984 Act, s.7,]**

If a water bailiff suspects that salmon or trout which they have found in any package consigned by common or other carrier has been dealt with

contrary to law, or if the package is not properly marked, they may detain the package and contents pending proceedings for an offence; and if the fish become unfit for human food they may destroy them. **[2003 Act s.21]**

A water bailiff may sell any fish that has been seized as being liable to forfeiture under the 2003 Act. The net proceeds should be kept safely pending the outcome of the case and they are liable to forfeiture in the same way as the fish sold; but a bailiff is not required to sell such fish and is not liable on account of any failure to do so. This power is also available to bailiffs in respect of fish seized under the 1967 or 1984 Acts. **[2003 Act, s.60, 1967 Act, s.18, & 1984 Act, s.7]**

Water bailiffs are exempt from the offence of removing dead salmon or trout from the water (including the sea within one mile of low water mark). They are also protected from committing an offence against sections 8 & 20 of the 2003 Act (possessing salmon which has been illegally taken, killed or landed) in respect of anything done preventing or detecting crime.

### **8.12 Powers of arrest**

A water bailiff may, without warrant, seize and detain any person found committing an offence against any provision of the 2003 Act or any salmon-related offence under the 1967 or 1984 Acts. **(But none of the powers of a water bailiff extend to policing a Protection Order made under s.48 of the 2003 Act).**

### **8.13 Obstruction of water bailiffs**

It is an offence for any person to refuse to allow water bailiffs to exercise the powers conferred by the 2003 Act or to obstruct them in the exercise of those powers. This applies also to their powers in relation to salmon-related orders made under the 1967 and 1984 Acts.

### **8.14 Powers of entry and search**

A water bailiff may examine any dam, fixed engine or obstruction or a lade and for that purpose enter on any land, stop and search any boat which is used in fishing or any boat which there is reasonable cause to suspect of) containing salmon or trout, and search and examine nets or other instruments used in fishing or any basket, pocket or other receptacle which there is reasonable cause to suspect of containing salmon or trout illegally taken; the reference to "pocket" does not imply an authority for a water bailiff to search a person. **[2003 Act s.55]**

In this context: fixed engine means an engine, net or trap for taking salmon other than a sweep net; lade means an artificial channel in which water is diverted from inland water in which salmon or trout are present; and land includes land covered by water but it does not include a dwelling house or any associated yard, garden, outhouses etc. These powers of entry and search are not restricted to the enforcement of the 2003 Act and are available for the policing of any salmon and freshwater fisheries legislation including, for example, any salmon-related orders made under the 1967 or 1984 Acts. A bailiff is not explicitly empowered to enter and remain on land as District Board bailiffs are under 2003 Act.

Where a water bailiff has reasonable grounds for suspecting that evidence of an offence against the 2003 Act, 2007 Act or against any salmon-related order made under the 1967 or 1984 Acts, may be found in a vehicle on private land adjoining water, or in a stationary vehicle on a public road adjoining such land or water, they may search the vehicle. **[2003 Act s.55, 1967 Act, s.18 & 1984 Act, s.7]**

If there is reasonable ground to suspect that evidence of an offence against the 2003 Act, 2007 Act or against any salmon-related order made under the 1967 or 1984 Acts, will be found in any premises or vehicle, a bailiff, if authorised to do so by a warrant obtained from a sheriff or justice of the peace, may enter the premises or vehicle, by force if necessary, for the

purpose of detecting the offence; and they may also search any person found in the premises or vehicle or who they have reasonable grounds to believe has just left or is about to enter them. **[2003 Act s.55, 1967 Act, S.18 & 1984 Act S 7]**

Any person (including a bailiff appointed by Ministers) suspecting an offence against the 2007 Act Diseases of Fish Act 1937 may, with a warrant from a justice of the peace, enter any land (including any inland or marine fish farm) to seize any fish, fish eggs, foodstuff or articles suspected of having been imported, removed or about to be removed in contravention of the Act or any licence, order or notice made under it. **[see 2007 Act 1937 Act, s.6(1)]**

### **8.15 powers to seize fish, fishing gear and other articles**

Water bailiffs may seize any fish, article, boat or vehicle liable to be forfeited under the 2003 Act. This power of seizure has been specifically extended to cover fish, instruments and other articles (but not boats or vehicles) liable to forfeiture in connection with salmon-related offences under the 1967 and 1984 Acts. **[2003 Act s.55, 1967 Act, s.18 & 1984 Act, s.7]**

Water bailiffs may sell any fish they seize as being liable to forfeiture. The net proceeds should be kept safely pending the outcome of the case and they are liable to forfeiture in the same way as the fish; but the bailiff is not required to sell such fish and is not liable on account of any failure to do so. If the bailiff is specifically authorised to open packages etc they may destroy any salmon or trout seized under that authority if it becomes unfit for human consumption. **[2003 Act s.60]**

Any person may be specifically exempted by the First Minister from what would otherwise be the offence of removing dead salmon or trout from the water (including the sea within 1.5 km of low water mark). Water

bailiffs are usually authorised under this section so that they may lawfully collect dead salmon as evidence. (District Board bailiffs, constables, persons authorised by a District Board and any person with a right to fish in the relevant waters (and his agents) are also exempt from the offence). Water bailiffs and others are protected from committing an offence against section 20 (possessing salmon which is suspected of having been illegally taken, killed or landed) in respect of anything done preventing or detecting crime. **[2003 Act s.8 & s.20]**

### **8.16 powers of arrest**

Water bailiffs appointed by the First Minister have the same power of arrest as District Board water bailiffs; ie they may, without warrant, arrest any person found committing offences against the 2003 Act, 2007 Act or, in relation to salmon fishery offences, under the 1967 or 1984 Acts. **[2003 Act s.55, 1967 Act s.18 & 1984 Act s.7]**

### **8.17 Obstruction**

It is an offence for any person to refuse to allow or to obstruct a water bailiff in the exercise of his powers. **[2003 Act s.58, 1967 Act s.18, 1984 Act s.71)]**

### **8.18 Permission to undertake acts which are otherwise unlawful**

In addition to the statutory powers discussed above a bailiff (or indeed any other person) may be given authority by a DSFB or Scottish Ministers to do certain things which would otherwise be illegal under the provisions of the various Acts. These may include:

- the use of certain unlawful methods ( i.e. electro-fishing equipment or nets)
- the taking of unseasonable or immature fish (i.e. for gathering brood-stock)

These activities should not be deemed to be granted automatically to a bailiff because they hold a warrant. The necessary written permission to carry out these acts should be obtained from the DSFB, or in some cases, the Scottish Government At all times, the permission of the fishery owner must be sought beforehand. If a bailiff is in any doubt about their own position they should check with their employer.

It is worth summarising various new key provisions and offences created by the 2007 Act and inserted into the 2003 Act. There are also several new regulations which came into force since the training manual was last revised. These are all summarised below. If in doubt, please consult the relevant legislation. The table of offences at **Appendix 1** should also be consulted.

- **Use of gaffs, tailers and knotted mesh landing nets**

**Section 3 of the 2003 Act** now only permits the use of landing nets made from knotless, non-metallic mesh as an auxiliary to the taking of fish by rod and line. This has the effect of legally prohibiting the use of gaffs, tailers or landing nets with knotted mesh when landing fish.

- **Number of rods that may be used**

**A new section 3A has been inserted into the 2003 Act** - this defines further fishing by rod and line as follows:

- Anglers not fishing from a boat may only use single rod and line when fishing for salmonids (all fish of the family *salmonidae*)
- Anglers not fishing from a boat and fishing for other freshwater fish (excluding salmonids) may use up to 4 rods
- Anglers fishing from a boat may only use up to 4 rods when fishing for salmonids or other freshwater fish.

- **Foul hooking of any fish is prohibited.**
- **The use of live vertebrates as bait is prohibited.**
- **The use of set lines are prohibited (unattended fishing line with lures or bait).**
- **Pike gags and keep nets**

**A new section 5A has been inserted into the 2003 Act** - this prohibits the use of pike gags and keepnets made from knotted or metallic mesh. “Pike gag” means a device used for the purpose of keeping the jaws of a fish open by inserting it into the mouth of the fish.

- **Close times**

**New sections 17A and 17B have been inserted into the 2003 Act.** These create powers to allow Ministers to make orders specifying weekly close time for freshwater fish, and annual close time for freshwater fish other than trout. These are enabling powers and would require specific consultation with interested parties before new proposals or changes could be made. At the time of going to press, no orders have been made.

- **Conservation regulations**

**A new section 51A has been inserted into the 2003 Act** to allow Ministers to make regulations for the conservation of freshwater fish – Ministers powers to make regulations for conservation of freshwater fish. This includes powers to apply different measures to different species, prohibit certain baits or lures and the times and places where these provisions might apply. Again, these are enabling powers and would require specific consultation with interested parties before new proposals or changes could be made



- **Introducing live fish or eggs**

**A new section 33A has been inserted into the 2003 Act** which creates an offence of intentionally introducing any live fish or live spawn of fish into inland waters, and an offence of possession of live fish or live spawn of fish with the intention of introducing it into inland waters. The offences do not apply to introduction into the waters of a fish farm or where the Scottish Ministers or, in the case of salmon, the relevant DSFB have consented in writing.

## 9. Wardens appointed by Scottish Ministers

### 9.1 General

It is an offence to fish without legal right or permission in any area covered by a Protection Order (PO) made under the 2003 Act. The Act also provides that Scottish Ministers may appoint wardens to enforce local POs. These wardens are nominated by the owners or occupiers of freshwater fishing rights in the area covered by the PO. They have no powers in relation to other sections of this Act. The powers of a warden may be exercised in the area covered by the PO. Some of the powers apply only in the vicinity of water. Production of the warden's letter of appointment is sufficient authority for the exercise of the powers conferred on them. **[2003 Act, Part 4.]**

The main powers given to a warden by the Act are:

A warden may enquire as to the legal right or written permission of any person to fish in the area if they have reasonable cause to suspect that the person has no such, right and can require the person to produce written evidence of such right or permission within 14 days; **[2003 Act s.49]**

If there is reasonable cause to suspect that a person is fishing without legal right or permission, or is attempting to or about to do so, they may seize any equipment being used or about to be used. **[2003 Act s.49]**

In this context the term "may enquire" can be construed as allowing a warden to ask for proof of identity to help in any subsequent identification. The warden can also stipulate that the written evidence of right or permission to fish should be produced to whoever it is reasonable that such production is made, for example to the proprietor or occupier of the fishings or to the warden himself.

Any equipment seized by a warden under section 49 would be taken for the purpose of evidence but could also eventually be forfeited under section 436 of the Criminal Procedure (Scotland) Act 1975.

Wardens have the right to enter land in the vicinity of water for the purposes of exercising their powers or to prevent or detect persons fishing without permission. They may also enter land to fix copies of orders and notices. Land, in these contexts, does not include buildings on the land.

**[2003 Act s.50]**

Any person who wilfully obstructs or refuses to allow a warden to exercise their powers and rights is guilty of an offence. **[2003 Act s.50]**

## **9.2 Limitations**

The powers of persons appointed as Wardens are limited to Part 4 of the 2003 Act and do not include any of the powers of bailiffs. The powers of a water bailiff do not extend to policing POs. However, it is possible for a water bailiff to be nominated and appointed as a warden and therefore to exercise the powers of both: but this is done in each of these separate capacities.

Wardens have no powers of arrest or to charge an offender and any suspected offences should be brought to the attention of the criminal authorities at the earliest opportunity. This could be the police or Procurator Fiscal.

### **9.3 Conduct**

There are a number of basic principles that will stand any Warden in good stead.

- The Wardens Warrant Card should always be carried when on duty or you are likely to be in the vicinity of the water. It is good practice to carry it at all times as a matter of course
- In dealing with anglers or possible offenders the Warden's approach should be tactful, firm and fair
- This is made easier if they are fully conversant with the extent of their powers and the regulations pertaining to the fishery.

It is necessary to carry some form of notebook to record the details of any incident. This will assist in passing information to the relevant authority and also serve as a memory aid. It can also be helpful to carry some form of Permit Production Slip so that a formal notification can be given to a permit offender and a copy kept as a reminder of the due date.

It is of paramount importance that Wardens maintain a good relationship and communication with other Wardens, Water Bailiffs, local police and, of course, members of the angling public.

## **10. Arrest - Powers & Procedures**

### **10.1 Arrest**

An arrest is the apprehension of a person and restraining them from their liberty. In a criminal sense it is the apprehension and restraint of a person in order that they shall be available to answer to an alleged or suspected offence. The powers of arrest which can be exercised by water bailiffs stem from Statute. Once arrested, you have a legal obligation to hand over the detained person into police custody as soon as possible. Once you have made an arrest you become responsible for that person and have a duty of care to the detainee. Someone should therefore remain with the detainee until the police arrive and during this time care must be taken to prevent the detainee from escaping or disposing of evidence. They may attempt to distract you by friendly conversation or violence.

It will not normally be appropriate to question a suspect after arrest, before the police arrive. Any questioning may later be inadmissible, if not carried out in compliance with the statutory rights that an arrested person has.

The powers of arrest must not be abused or wrongly used.

### **10.2 Grounds for Arrest**

As arrest is the last resort when dealing with any incident, consideration must be given as to the advisability of arrest instead of some other action. The matters to be considered include:

- the gravity of the charge and the likelihood of the accused absconding
- the interests of the accused e.g. for their own protection
- the interests of the public e.g. to remove a public danger

- the ends of justice e.g. to prevent the disposal of evidence
- the need for corroboration about the physical condition of the accused
- where the service of a summons is likely to be ineffectual
- to obtain evidence e.g. where a search might reveal evidence, and to obtain evidence e.g. to verify identity of accused.

Not all of these would be applicable in fishing cases but nevertheless would have to be considered. The grounds on which a person can be arrested for a fishery or fishery-related offence are strictly limited and defined under the Acts and under Common Law.

To arrest anyone outside these limits or to arrest a person using the powers granted or delegated under one Act for an offence committed under another may be difficult to justify in law and could invalidate the arrest. Under certain circumstances it could even be an offence placing the arrester in jeopardy.

The various circumstances under which an arrest can be made lawfully are discussed below.

A water bailiff may without warrant arrest any person found committing an offence against the 2003 Act, 2007 Act or a salmon related offence under the 1967 or 1984 Acts. **[2003 Act s.55, 1967 Act, s.18, 1984 Act, s.7]**

Bailiffs appointed by Ministers have the same power of arrest as district board water bailiffs; ie they may, without warrant, arrest any person found committing offences under the 2003 Act or, in relation to salmon fishery offences, under the 1967 or 1984 Acts. **[2003 Act s.55, 1967 Act, s.18 and 1984 Act, s.7]**

When making an arrest, and afterwards, certain formalities must be observed if the arrest is to be legal. Once the arrest has been made the bailiff must immediately caution the suspect and confirm their identity by again producing their warrant, instrument or badge of office for inspection.

Caution is:- ***"You are not obliged to say anything, but anything that you say will be noted and may be used in evidence"***

If a suspect is not cautioned, this will not automatically preclude a prosecution but any subsequent conversations or statements made by the defendant will be disallowed.

### **10.3 Information to be given on arrest**

Where a person is arrested the arrest is not lawful unless the person arrested is informed that they are under arrest and the basic grounds for the arrest as soon as practicable after the arrest.

This applies regardless of whether the fact or the grounds for the arrest is obvious.

It is not a requirement to inform a person as above if it is not reasonably practicable to do so by reason of them having escaped from arrest before the information could be given.

### **10.4 Power to use reasonable force**

Apprehending a person committing an offence, particularly at night, has its pitfalls. If the person is not recognised and the offence is of a serious nature e.g. gaffing salmon, it is obviously important that they should not escape and to prevent this, the bailiff will try to seize and restrain them until they can be identified. The act of seizure involves the use of force, (this could be as slight as the mere placing of a hand on the suspects shoulder), which could be considered to be a technical offence and leave the bailiff open to a charge of assault. However, provided that there are grounds for an arrest,

if the bailiff identifies them self and tells the suspect that they are under arrest as they make the seizure, they are protected as the use of reasonable force in order to effect the arrest is permitted but only sufficient force should be used for the purpose - any excess force used could invalidate the protection given to the bailiff.

### **10.5 Conduct of a search**

A water bailiff may stop and search any boat where there is reasonable cause to suspect fish have been illegally taken. A search and examination of nets and other instruments, or any basket, pocket or other receptacle may also be undertaken, again where there is reasonable cause to suspect fish have been illegally taken. The use of the word "pocket" does not infer there is an authority to search actual persons. The authority of a formal warrant would be required in this instance.

The formalities described below can often be avoided by encouraging the suspect to volunteer disclosure of the contents of his bag or pockets. A simple polite request to the suspect such as "Can I please examine your bag?" in most cases meets with compliance. Although, strictly speaking, a bailiff has no powers to examine a fish, if fish are revealed, there is nothing to stop cursory examination which may reveal immature fish or fish with net or wound marks suggesting they have been taken illegally.

If the suspect refuses to co-operate every reasonable effort must be made to reduce to the minimum the embarrassment that they may experience during a search.

Although force may only be used as a last resort, reasonable force may be used if necessary to conduct a search or detain a person or vehicle for the purposes of a search. A compulsory search may be made only if it has been established that the person is unwilling to co-operate (e.g. by opening a bag).



The length of time for which a person, vessel or vehicle may be detained will depend upon the circumstances, but must in all circumstances be reasonable and not extend beyond the time taken for the search. As a search of a person in public should be a superficial examination, such searches should normally be capable of completion within one minute or so. The search must be conducted at the place where the person, vessel or vehicle was first detained or nearby.

As stated above, the authority of a formal warrant would be required to undertake a search of a person. There is no power to require a person to remove any clothing in public other than an outer coat, jacket or gloves. Where on reasonable grounds it is considered necessary to conduct a more thorough search this should be done out of the public view (e.g. in a van or nearby police station if there is one). Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear may only be made by an officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex.

## **10.6 Use of restraints**

If your appointing authority has equipped you with and authorised you to use handcuffs, great care should be taken when considering what circumstances these are used. Any bailiff authorised to carry and use handcuffs should be trained in their use, and the onus for this lies with their employer or appointing authority. They should **never** be used without just cause and a key to release them must always be carried by the person applying them so that the person can be released from restraint as soon as the need no longer exists. A person who has been arrested may resist violently any attempt to take him to a police station. If absolutely necessary he can be restrained by the use of handcuffs which can either fasten both his wrists together or fasten one wrist to that of the person escorting him.

The person making the arrest has a duty of care to the prisoner. Handcuffs are a last resort.

### **10.7 Statement by a person under caution**

A person under caution may wish to make a statement in writing, which they are entitled to do. They can either write it them self or get someone to write it for them at their dictation. Although the content may be the same in each case the procedure will vary according to the method they opt for.

- **if written by the person**

They shall be invited to write down them self what they wants to say and if they agree they shall be asked to write out and sign, before writing what they want to say, the following:

***"I make this statement of my own free will. I understand that I do not have to say anything but it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence"***

A person writing his own statement shall be allowed to do so without any prompting except that the bailiff may indicate to them which matters are material or question any ambiguity in the statement.

- **If written by a bailiff**

If a person says that they would like someone to write it for them a bailiff shall write the statement, but, before starting they must ask the person to sign or make their mark, to the following:

***"I (insert the person's full name) wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything but it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence"***

Where a bailiff writes the statement they must take down the exact words spoken by the person making it and they must not edit or paraphrase it. Any questions that are necessary (e.g. to make it more intelligible) and the answers given must be recorded contemporaneously on the statement form.

When the writing of the statement by the bailiff is finished the person making it shall be asked to read it and make any corrections, alterations or additions they wish. When they have finished they shall be asked to write down and sign, or make his mark to, the following certificate at the end of the statement:

**"I have read the above statement and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will"**

If the person making the statement cannot read, or refuses to read it, or to write the above mentioned certificate at the end or to sign it, the senior officer present shall read it to them and ask them whether they would like to correct, alter or add anything and to put their signature or make his mark at the end. The officer shall then certify on the statement itself what has occurred.

This procedure must be adhered to especially where a case is complicated or when a number of persons are involved but in a simple case, no formal statement is normally required, or made, of what the suspect said on being

told they would be reported for an alleged offence. In such a case, provided the suspect has been cautioned, the notebook entry, made at the time, which records anything said which is relevant, is usually sufficient - but this does not preclude a person exercising their right to make a formal statement if they so wish. A suspect can always be asked to initial a notebook entry indicating that they agree with it.

### **10.8 Statement by a witness**

Any person whose information can contribute to an investigation of an incident should be asked to provide a statement as to what they saw or heard. They can write this themselves or someone can write it at their dictation but the way in which it will be recorded will depend upon the purpose to which it will be put.

If it is to be used purely to assist an enquiry but not for the purpose of placing on record what the witness would later be expected to say in court it can include anything that the witness says which is or may be useful, without having regard to the rules of evidence. This is a "non-evidential" statement.

If it is to record the evidence that the witness may be required to give in court the rules of evidence apply and the witness must be required to sign the statement to the effect:

**"What I have said is true to the best of my knowledge and belief and I know I will be liable to prosecution if I wilfully state anything known to be false or not believed to be true"**

### **10.9 Offences by children and young persons**

Where children and young persons are concerned in fishery offences or are required to act as witnesses the action which a bailiff takes differs from

that they adopt when dealing with an adult. The position and actions are summarised below:

In Scotland there are two Acts which define 'children':

Under the Age of Legal Capacity (Scotland) Act, those under the age of 16 are referred to as children.

Under the Children (Scotland) Act 1995, S1(2) (a) & (b) provide that a child is someone under the age of sixteen except where 'guidance' is concerned and then it includes those up to age of 18.

It is assumed in law that no child under the age of ten years can be guilty of an offence.

As far as practicable, children and young persons (whether suspected of a crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person of the same sex as the child who is not a police officer.

A child or young person should not be interviewed at school if such action can possibly be avoided. Where it is found to be essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher or his nominee.

To give effect to this when a child or young person acting alone, or in the company of other children or young persons, is suspected of an offence the bailiff or keeper concerned will only take the names and addresses of those involved and seize anything liable to seizure. They should then take the suspect to his or her home and carry out the interview in the presence of a parent or guardian. If a parent or guardian is not immediately available the bailiff should inform the suspect of the time when they will return to

carry out the interview and reinforce this by leaving a note to this effect at the house. No child or young person should be carried in any vehicle unless they are accompanied by another adult. If an adult cannot be found for this purpose the bailiff or keeper should tell the suspect that they will be calling at their house later to talk to their parents.

If a child or young person is involved with an adult in committing an offence they may be interviewed in the presence of that adult provided that the adult is the same sex as the child or young person.

Whether involved with others of the same age group, or with an adult, the suspects' parents must be advised as soon as possible of the circumstances relating to the incident.

All interviews and enquiries relating to children and young persons must be carried out with circumspection and diplomacy taking care that, as far as possible, persons unconnected with the enquiry are not informed of the suspect's role in the alleged incident.

A young person/child should only be released into the care of a competent adult, parent or guardian or police officer.

# 11.Evidence

## 11.1 The nature of evidence

Evidence is the means by which facts are proved. The "rules of evidence" are rules of law concerned with the proof of fact in a court and are designed to determine who is to prove the facts, what facts must be proved, what facts, that could prejudice the minds of the Court, must be withheld ( e.g. details of previous convictions) and how the proof is to be used. Three kinds of evidence are recognised by law; these are:

**Oral evidence** -this is given by a witness under oath or affirmation with the object of informing the court of the facts as the witness saw or heard them. However, a person unconnected with the actual incident, such as a fishery scientist, who has specialised knowledge about technical aspects of the case which the ordinary member of the public does not possess, can be called as a "expert witness" and is entitled, and bound, to give his opinions on the matter under consideration.

**Documentary evidence** - this is the evidence contained in documents. Documents can be either "public", such as statutes, registers, maps etc., or "private", which are documents made for a private purpose such as letters, receipts, statements, tape recordings etc. All private documents must be shown to be genuine or "proved" and usually must be produced in the original.

**Real evidence** - this is provided by the production of objects of importance to the case e.g. a gaff, fish, etc. or, in certain circumstances, by an inspection of the scene of the offence by the court.

## 11.2 Circumstantial evidence

If the evidence which a bailiff presents to the court is usually based upon what they actually saw and heard e.g. they came across a man fishing who

tells them that they do not have a permit - in court they can give a first hand account of the incident based upon knowledge gained at the time.

In some cases, however, there may be no actual witnessing of the offence at the time it occurred but facts may later come to light from which it can be deduced with more or less certainty that an offence had been committed. An example of this would be where a car is stopped at night in June driving along a road near a well known salmon river. It is found to have two occupants both wearing wet clothes. The boot of the car reveals an un-inflated rubber dinghy, two wet nets and four salmon. The evidence in this case would be "circumstantial" or "presumptive" for although the actual taking of the fish was not witnessed and none of the observations or items, looked at in isolation, can be regarded as an offences, from the combination of all the factors and circumstances it can be presumed that the men were returning from a poaching expedition. Alternatively, the occupants could be charged with a possession offence under the 2003 Act.

It is always more difficult to prove a case by means of circumstantial evidence than by direct evidence as the defence will always come up with an innocent explanation of the circumstances relating to the evidence. A successful prosecution will depend upon all the evidence being shown to be clearly and directly related to the place and time of the offence.

### **11.3 Inadmissible evidence**

Certain kinds of information are inadmissible in a court and when giving evidence or preparing a statement to be used in court proceedings care must be taken not to include the following:

**Hearsay** - this is anything said relating to the offence not in the hearing of the defendant e.g. "Smith told me that Jones had been fishing without a licence", however the statement "Acting on information received" would not constitute hearsay.



**Prejudicial matters** -anything not related to the offence which could prejudice or influence the court in reaching a verdict e.g. details of a person's previous activities or convictions (unless the accused agrees to its disclosure). Information about a person's previous convictions will may, in certain circumstances, be given to the court after they have been found guilty and where they are present in court or has been served with a notice of intention to cite previous convictions if they are found guilty.

**Opinion** - a witness cannot give evidence based upon what they thought or surmised happened - this is deemed to be an opinion. However, an "expert" is allowed to give an opinion (see 11.1.(a) above)

#### **11.4 Burden of proof**

As it is impossible to establish any case by "absolute proof" the burden of proof is deemed to have been discharged when the facts presented to the court demonstrate the truth of the accusation "beyond reasonable doubt". This has been defined as "the degree of certainty a man would seek to reach before making a important decision in his own life". In any case the prosecution must establish every fact to this degree of certainty - if it fails to do so at any point the accused is usually entitled to be acquitted.

This, perhaps more than any other single factor, emphasises the need for attention to detail and accuracy of evidence by a bailiff when dealing with an offence.

#### **11.5 Continuity of observation**

As stated above, if a case is to be proved beyond all reasonable doubt, a bailiff must be accurate in his observations and correct in their actions to ensure that there are no loopholes or omissions in their evidence. This requires that the evidence should be continuous and logical: if a person under observation disappeared from view for a short period, the observer

cannot say what they were doing during this time - although they may have a good idea - which gives rise to a discontinuity, If the incident came to court this could be used by the defence to cast doubt upon the rest of the evidence, especially if the question of identity is being challenged, and the case could easily be lost because of this omission.

If a situation is likely to arise where detailed observations of a suspect or suspects are required in order to bring a prosecution at least two observers will be needed with each viewing the incident from a different position so that what goes on is always visible to at least one of them. There could be a discontinuity if either observer's view of the incident as a whole was impaired but, provided the suspect was under continuous surveillance by one or the other during the whole period of the incident, the requirement would be satisfied.

### **11.6 Custody of real evidence**

The concept of continuity must be observed in respect of any item seized, from the time of its seizure to its production in court. To meet this requirement an accurate record must be kept of each item's movements and the person held responsible for its custody at any particular time. If this is not done the following situation could arise. A bailiff seizes a fish from an angler on the riverbank, they take it to the head bailiff who agrees to take it into the laboratory for examination. At the laboratory it is handed to one of the office staff as there is no one in the laboratory at the time. It is eventually examined by one of the laboratory staff who issues a report on it, it is then put into cold store with other fish until needed for court. On the day of the hearing another bailiff who is at the laboratory is asked to deliver it to the first bailiff so that he can produce it as evidence! Obviously if the defence knew the full extent of the handling of the fish it could easily throw doubt on its identity and show that there was no evidence to prove that the fish produced was the one seized in the first instance. This

situation must never be allowed to arise; to prevent it the following should be observed:

- each item seized as evidence must be clearly labelled at the time
- when an item passes from the custody of one person to another the person handing it over must obtain a receipt for it and the recipient must enter the fact that they have received it in their notebook
- if necessary all person having temporary custody of an item may be required to give evidence to this effect

It follows from the above that the fewer persons who handle evidence the better it is.

### **11.7 Intent**

The wording of certain sections of the fisheries legislation requires that not only the facts relating to the offence be proved but also that it was the intent of the accused to take or attempt to take certain species of fish.

In tidal waters, for example, drift and seine nets can be used for the taking of sea-fish which, when used for this purpose may not require formal permission and may be governed by few, if any, legal restraints: however, such nets can and do take salmon and migratory trout both by accident and design as these species of fish frequent the same waters. If a person who is not permitted to take salmon is to be successfully prosecuted for fishing for salmon by means of one of these nets, it is necessary to prove that they used the net with that intention.

The proving of intent in such cases is often the most difficult part of the prosecution's task but it can be made easier if the bailiffs who instigate the action by apprehending the accused, can obtain supporting evidence to help prove this intention. If they are found in possession of salmon the case is very strong but salmon scales found on the net or in the boat used to fish

the net will help show that at some time the net has been used to take salmon.

Expert evidence can be used to show that from the method of fishing used by a suspect, if related to the known species of fish found in the area, the probability of one selected species (e.g. salmon) being caught is greater than for other species - this type of evidence has been accepted by the courts.

The need to prove intent must always be in the forefront of a bailiff's mind when dealing with an offence - even the relatively simple ones. For example, a person fishing without permission and using fishing tackle capable of landing salmon or sea trout,, may claim that they are fishing for fish other than salmon or sea trout. The bailiff may suspect that the person's intention is to catch salmon or sea trout but before they can take any action they have to be satisfied that if the case comes to court they have to prove their suspicion.

### **11.8 Relevance**

Evidence, as a general rule, should be confined to the facts which prove (or disprove) the matter in dispute - in other words it must be relevant. However; seemingly irrelevant matters can assume major importance under certain circumstances. Normally such a thing as the colour of a suspect's trousers may seem unimportant to a bailiff who is dealing with an offence but, if the case came to court, the success of its outcome may depend entirely on the bailiff being able to describe accurately what the defendant was wearing at the time of the incident. This emphasises the need for a witness to be a good observer and have a good memory or to have noted both relevant and seemingly non-relevant observations in his notebook. Do not disregard information or articles that at first glance may appear irrelevant. Unnecessary evidence can be discarded if not required at a later date. There is no substitute for good observation and note taking.

## **11.9 Corroboration**

If possible, after a witness has given evidence, other witnesses (preferably independent), should be called to give evidence which supports that given by the first witness. Such evidence is known as "corroborative" and helps establish the validity of that previously given. The rules in Scotland require that each element of the charge should be corroborated. It should also be noted that there are some fishery offences in Scotland where only one witness may be sufficient, for example the 'illegal possession' offence (section 20 of the 2003 Act).

## **11.10 Conclusion**

From the foregoing it should be obvious that even the most successful anti-poaching operation will not lead to a successful prosecution in court if the evidence presented fails to fulfil the requirements discussed above. It is therefore imperative that the rules relating to evidence are fully understood and acted upon.

## **12.Dealing with offences**

### **12.1 Techniques and procedures**

The prime role of a bailiff is to detect and deter offences being committed and to deal with the offenders. The way in which this is carried out will vary according to the skill, attitude and character of the individual but there are certain basic techniques and procedures that are common to most which, if properly used, can make the task more effective and efficient. Some of these are discussed below.

### **12.2 Offence procedure**

The apprehension of an offender is the first stage in a sequence of events that may eventually lead to his prosecution: this is referred to as the "offence procedure" and has four stages:

- the incident
- a report of the incident submitted by witnesses
- a decision on whether to prosecute or not based upon the facts contained in the witnesses' reports; and
- in the case of an affirmative decision, the prosecution of the offender with the witnesses giving evidence

Each stage is dependent upon information provided by, or decisions taken on, the preceding stage and if there is a weakness or discontinuity anywhere along the way the final outcome may be affected.

As the whole arises from the first it is incumbent upon the person dealing with the offence that his actions are correct and complete.

### 12.3 Questioning

The questioning of a suspect to establish their identity, motives, the reason for their actions and other facts is a most important feature when dealing with an offence.

Very few people have the natural ability to question a person in such a way that accurate information can be quickly and effectively obtained. The skills of a good interrogator cannot be learned from a book - but they can be acquired by listening to an experienced craftsman at work and putting into practice the lessons learned. If this is not possible the following can provide a useful basis on which to develop one's own skills:

Never ask a question that can be answered simply by a "yes" or "no" (unless such an answer is specifically required). To do so limits the answer to the confirmation, or otherwise, of the subject of the question. If information on the method of travel by which an angler came to a fishery is sought, asking "Did you come by car? By bus? By train?" will be answered with a "No" in every case until the correct mode of transport is included in the question. By re-phrasing it and asking "How did you travel to the fishery?" the answer must give the information sought e.g. "By car" - but it often produces an extra bonus when the angler adds something like "It's the blue Mini parked by the bridge." This was not specifically asked for in the question but the form in which it was put prompted it.

Questions which start with the interrogatives "What", "When", "Where", "Who", "Why" and "How" cannot be answered by a simple "yes" or "no".

Having asked a question, wait for an answer and do not be too keen to follow a non-response by another question. The waiting will often produce more information than that asked for when the answer eventually comes.

Gaining the confidence of person and encouraging them to talk about themselves can result in the maximum of information for the minimum of questioning.

A bullying or aggressive approach to questioning is frequently counter-productive by causing the person being questioned to "clam up".

Answers given should be checked and corroboration sought from other, preferably independent, sources.

Questions relating to an offence should not be directed solely at the suspect - any witness or other person who may be able to contribute something towards the facts of the case should be questioned.

## **12.4 Recording**

When a prosecution takes place and the bailiff is required to give evidence they will find that questions will be put on matters of detail not covered by their prime testimony or even in the report they submitted; unless they have an exceptionally retentive memory or has made notes at the time of the incident they may not be able to answer them. This emphasises that note taking to provide an accurate record of all the things said and done at the time is essential as original notes made in the notebook can be used to refresh ones memory (see section 7.0)

In a complex or unusual incident it is quite possible for some important facts to be overlooked; to prevent this happening the person dealing with it should mentally break down the incident into stages - containing a logical sequence of events - and ask themselves questions about each, the answers to which would form the basis of their notes. To illustrate this consider the case of a person found with a gaff and light on a game fish



river at night; the stages and events in each that may need to be subject to record could be as follows:

**Scene** - date? Time? Location? Name of the river? Weather? Visibility? Water conditions? Reason for being there? Colleagues? etc.

**Observation** - who was seen? Which bank were they on? How long were they observed? From where was the observation made? What were they doing? How were they dressed? What instrument were they seen to use? Were any fish taken?

**Approach** - did the suspect attempt to escape? Was any force needed to restrain them? Was the warrant produced? Was the suspect told that the person was a bailiff? What did the suspect do and say? Was the caution issued? What was said by the suspect?

**Formalities** - what was their name and address? Was this verified and how? What was seized? Was a receipt issued? What reason was given for their actions? What did they say? Was the suspect arrested? If so what were they charged with? Which police station were they taken to, if applicable?

**Back-up information** - Who owns the fishery? How were fish known to be spawning there? What happened to the items seized?

Notebook entries form the basis on which a report of an incident would be prepared for submission to ones senior officer or manager. If a report can be prepared immediately after the event from memory, and notes made, its use may be allowed in place of the notebook to refresh ones memory in court; this is not always possible as reports are rarely written on the spot but prepared sometime later from notes made at the time, in which case only the original notes could be referred to by a witness.

During darkness, or inclement weather conditions, immediate detailed recording of what occurred may be difficult or impossible. The names and addresses of any offenders must be taken down at the time - if it is pouring with rain the use of a large clear plastic bag in which the notebook entries can be made in the dry is a useful tip - but, as soon as possible after the incident while the details are fresh in the memory, each member of a team should write up in their notebook their own account of what role they performed in the operation. A small portable tape recorder, if available, will assist in the recording of actual observations of, and conversations with, offenders and can act as an aid to the memory when the notebook is made up immediately afterwards.

In the course of a season's work a bailiff may deal with many offences and report many people for committing them and it would be virtually impossible for them to remember every detail of each incident, perhaps months later, when the cases eventually come to court. The note-book, properly used overcomes this problem and the importance of recording information at the time cannot be over-emphasised and a bailiff should develop the habit of note-taking to such an extent that it becomes automatic.

### **12.5 Confirmation of identity of suspect by a bailiff**

Documentary proof in the form of a driving licence, official personal documents, or correspondence giving both the person's name and address is as good a way as any of checking. However it should not be overlooked that a person or persons engaged in major poaching may come prepared with false documents. A cheque book with the owners name printed on it, a cheque card, or credit cards can be accepted as proof of identity but not of address. Where a cheque book is produced make a note of the bank, the address and the account number so that the address can be traced later - provided that the owner authorises the bank to reveal this information, which it is very unlikely to do.

If two persons are fishing together and there is doubt about the identity of one of them ask the other out of earshot of the first what their colleagues name is. This can be effective provided that the persons concerned have not prepared for such a situation by agreeing beforehand what names they will give if asked.

The registration number of a vehicle driven by a suspect is no guarantee that they are the registered owner of the vehicle - nevertheless the number, make and colour of a vehicle known to be used by a suspect at the time of the incident should always be recorded. In the event of a wrong name and address being given this information may help trace them.

### **12.6 Collection of forensic evidence**

An article which is liable to forfeiture, or is relevant to the facts of a case, should be seized, or taken into possession, and a receipt given. In addition to the more obvious items other pieces of evidence that could be overlooked by an inexperienced investigator, could form an important link in the overall case if subjected to forensic examination. Examples of this that should be looked for include:

Fish scales found on a net, boat, vehicle or clothing - even if the fish are not found - indicate that at some time fish had been in contact with the item on which it was found. The examination of the scale by an expert can provide much information about the fish from which it came. Scales should be carefully eased off the surface to which they adhere with the blade of a knife and placed in an envelope which is sealed and labelled. If scales are taken from more than one article or from more than one location each must be sealed and labelled separately. The person taking the scale samples should, as far as possible, avoid coming into contact with any other item unconnected with the incident likely to have scales on it. If this precaution is not followed any evidence given in court relating to the

finding of scales could be questioned and doubt thrown onto the actual source of the scales which may result in an adverse verdict.

Blood stains either fresh or dried (when they are almost black in colour) should be carefully collected in a small glass phial and sent for examination. An expert can tell if they came from a fish or some other animal and, in the former case, can often tell the species or genus of fish.

Fingerprints can help prove that an article was actually handled by an individual. If it has a hard smooth surface it is possible that it may have prints on it-in which case it should be carefully placed in a paper container and handed to the police with a request that any prints found are isolated.

If an angler is suspected of using an illegal bait, such as fish roe, the stomach contents of any fish they have in their possession can be examined using a long-handled spoon to obtain a sample. If an illegal bait is discovered, the contents should be placed in a small bottle of alcohol and sent for more detailed expert examination.

All items seized for forensic examination must be clearly labelled with the name and address of the suspect, a description of the exhibit, the date and place of seizure and the name of the person making the seizure.

When these items are to be produced in court as evidence they must each be given an individual "exhibit number" and if they have been subjected to expert examination they will need to have the expert or a written report prepared by them available as supporting evidence. Remember, rules regarding continuity of evidence must be observed at all times.

## **12.7 Witnesses**

When dealing with an offence the presence of an independent witness to the incident can be an asset if that person is prepared to make a formal

statement about what they saw (see Section 10.6). Some people appear to be reluctant to do so but a sympathetic approach by a bailiff or keeper can often overcome any reticence. To help achieve this, the following steps are advised:

- make certain that no other person who will be required to make a statement is present
- make the witness feel at ease
- get them to tell you their account first - this will enable the statement to be prepared in sequence and help avoid omissions
- question the witness on points which need clarifying and to obtain relevant information
- record the statement in writing
- start the statement with the witness's name, address, age and occupation
- use the actual words used by the witness
- include all relevant matters in the statement whether they be for or against the accused'
- read the statement over to the witness and also let them read it
- carry out any corrections: if a correction is needed put a line through the words to be corrected so that they can still be read, then write the correction above and get the witness to initial it
- get the witness to sign directly under the last line of the statement
- A witness should be invited to sign their statement at the end of the text.

In the case of minor offences, and sometimes in a major incident where perhaps the time or circumstances make the taking of a formal statement impracticable, noting what a witness says in the notebook is often sufficient and its validity is enhanced if the person will sign their name under the entry made to indicate that what was said was true. Should a witness who has not made a formal statement be required to give evidence

they would find it difficult to change their evidence if they had already indicated, through their signature in the bailiff's notebook, that the entry was correct.

### **12.8 Warnings**

Some offences may seem so trivial that they are not worth bothering with, nevertheless they should be reported as the person involved, who may be a stranger to the bailiff, could have a record of similar actions elsewhere in the area which would be known to the bailiffs superior and which would influence any action taken.

A relaxation of this approach is permissible in the case of juveniles, particularly where it is obvious to the bailiff that the offence was committed in ignorance when, if time allows, they could help the youngster to avoid further transgressions by giving friendly advice.

In other cases if a bailiff considers that a warning is an appropriate way of dealing with an offender they should recommend this course of action in their report, but they should never take it upon themselves to warn or not to report.

## **13. Reports and their preparation**

### **13.1 Introduction**

When considering the way in which an incident should be recorded in the notebook emphasis was placed upon the desirability of breaking it down into a sequence of logical events and regarding the entries made as a series of answers to questions. This practice should also be followed when writing a report, based upon the notebook entries, to provide a clear and concise account of the subject.

### **13.2 Types of reports**

Reports fall into two categories:

those that contain information of a general or specific nature and which are not constrained by the rules of evidence. They can be about offences - but would not necessarily be admissible as evidence - or about other subjects unconnected with an offence such as details of an electro-fishing operation etc. - this is a "non-evidential" report;

and

those that contain subject matter which is to be given, or could be given, by a witness in court and which have regard to the rules of evidence - the "evidential" report also called a "witness statement".

### **13.3 Offence reports - basic information**

Any report dealing with an offence must contain certain basic information which will include:

- The name and position of the person making the report. Length of service may be advantageous.

- The full name of the offender or offenders including any alias' known to be used but not a shortened version, nicknames or initials. Names should be written in capital letters. Details also recorded should include age, D.O.B., place of birth. Details of parent/guardian when dealing with juveniles
- The full permanent address of the offender, together with any temporary address is known, and details of how the name and address was verified
- Description including clothing worn, physical appearance and any physical defects.
- Details of the alleged offence - these can be obtained from the 2003 or 2007 Acts, Sea fish Acts or from the regulations. If in doubt consult a superior
- Details of the exact location of the offence including the name of the river or pond, the bank on which the offender was standing ("left" or "right", determined when facing downstream), and the nearest identifiable landmark to the incident (a grid reference can be substituted). A sketch map showing the main features of the area and the positions occupied by all involved is a valuable addition
- the date and time of the incident
- What was seen, done and said by all persons involved including the offender. This is where the notebook entries prove invaluable
- Descriptions of any fish, instruments or apparatus seized
- Names and addresses of any witnesses
- A copy of any formal statement made by the offender or witnesses
- Whether the offender was charged or told they would be reported
- Weather and water conditions

Some DSFBs may have a standard format for offence forms.

### **13.4 Offence reports - back-up information**



There is often a need to provide additional information which is not directly concerned with the incident but which will help decide what action to take. This can be submitted either as a foot-note to the main report or as a supplementary report and will include such details as:

- Details of who owns the fishery and of the fish found in it
- What happened to any items seized
- If the offender has any physical or mental disability
- Where appropriate a recommendation that the matter be treated by a warning and giving reasons for this

Where events have occurred but might not necessarily lead to a prosecution an incident report may be of value in the future. Examples of a simple witness statement and supplementary statement can be found at **Appendix 2.**

## 14. Court procedures

### 14.1 Court Layout

When circumstances demand, a fishery offence will result in the offender being prosecuted in the District or Sheriff Court. Cases in the Sheriff Court can be summary, dealt with by a Sheriff, or solemn, tried by the Sheriff and a jury. The decision as to court and procedure is entirely one for the Crown.

The layout of a courtroom and the procedures used for dealing with the accused, whether it be Sheriff or District Court, are similar and a prior knowledge of these is helpful in putting at ease anyone who is required to give evidence for the first time.

A Sheriff or District Courtroom includes the following features and individuals:

**The Bench** - this is the elevated position at one end of the room behind which sits the judge facing the body of the Court.

**The Sheriff or Justices** - The Sheriff sits alone in the case of summary cases. District Courts are presided over by Justices of the Peace. There are either one or three Justices who sit to decide the case. The Sheriff or Justice listens to the evidence and decides whether the accused is "guilty" or "not guilty". They can also find the case "not proven", which still means that the accused is acquitted. In solemn cases, the Sheriff sits with a jury of fifteen. They deal with all questions of law and the jury determines all issues of fact and decide the verdict. District Courts do not deal with solemn cases. If the verdict is one of "guilty" the Sheriff or Justice then impose the sentence.

**The Clerk of Court** - who sits below the Bench facing the body of the Court, and who is responsible for controlling the proceedings but who takes no

part in the decision-making of the Sheriff or Justice, apart from advising them on points of procedure.

**The Court Officer** - whose responsibilities include the maintenance of order, calling witnesses and passing documents and labels (exhibits) between the parties involved, the Bench and the Clerk.

**The Area for the Accused** - this faces the Bench and the table. The Accused is required to stay while their case is being heard, particularly if they are brought to court in police custody.

**The Witness Box** - this is another enclosure, usually raised, to one side of the Court, from which all witnesses give evidence under oath or affirmation.

**The Table** - this faces the Clerk of the Court and the Bench. The Procurator Fiscal, solicitor for the Crown usually sits on the left of the table with the solicitor or solicitors for the accused on the right.

**The Public Seats** - usually at the back of the Court, where the public can sit to listen to the cases being heard.

## **14.2 General Court Procedure**

**A] The case is called and the accused confirms his identity.**

**The accused may:-**

- appear in person and/or
- be represented by a solicitor or Counsel

- respond to the Court on the appropriate form enclosed with their citation; or not reply in person or in writing, in which case the Court will either:
1. **adjourn the case** and fix a new date - this happens, for example, if the Procurator Fiscal has any doubts that the citation was properly effected or if the accused wishes the case continued without pleading or
  2. **issue a warrant** for the accused's arrest.

**B] If the plea is, "guilty", then:-**

If the accused is in court and they have been served with a Notice of Previous Convictions, the Prosecution then gives details of their past record and provides the court with a narrative of the Crown case.

If the accused is present, the Court asks them if:-

- they agree with the details of any previous convictions
- they have any comments to make on the facts of the case as given by the Crown
- they have anything to say by way of mitigation or explanation
- The Court proceeds to sentence.

**C] If the plea is "not guilty" then the court will fix an intermediate diet and a trial diet. The accused requires to attend the intermediate diet. The purpose of this hearing is to find out the state of preparation of the defence and the prosecution and to establish if any facts can be agreed between the parties.**

**D] At the trial diet** It is usual for witnesses only to enter the courtroom when they are needed to give evidence but they may remain in the court after their evidence has been heard.

The Court can either adjourn the case until a later date, which might occur if the plea is unexpected or difficult to fit into the current timetable, or proceed with it.

The first witness for the prosecution is called and is sworn in:

***"I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth"***

If a witness objects on religious or other grounds to taking the oath, they may make a solemn affirmation:

***"I do solemnly, sincerely and truly declare and affirm that the evidence I shall give will be the truth, the whole truth and nothing but the truth"***

They then give their evidence.

**The Prosecution** examines the witness on their evidence in order to bring out or emphasise any specific points and to help clarify anything which is in doubt.

**The Defence** (the accused or his legal representative) cross-examines the witness on the evidence and on the answers given to questions put during the examination.

**The Prosecution** may re-examine on answers given during cross-examination.

The process is repeated for any other witness called by the prosecution.

The Sheriff may also question a witness in order to clarify the position for their own benefit. It is the duty of the Prosecution to bring to the notice of the Court all relevant facts which will help it reach a verdict.

**E]** The Defence may make a submission at this point that, in view of the evidence presented by the Prosecution, there is no case to answer. If the Court, after deliberating on the matter, upholds the submission, the case ends and the accused is dismissed. If the submission is rejected, the case continues.

The accused has two options on the way they will present their case:-

- to give their evidence under oath
- to say nothing

If the accused gives evidence on oath, they may be:

- examined on it by their solicitor if represented
- cross-examined by the Prosecution
- re-examined by their solicitor

Witnesses for the Defence can be called when procedure in B] is repeated.

After the last witness has given evidence, the Defence can address the Court and make any submissions or pleas on its behalf.

**F]** The Court now considers the evidence, having heard both sides, and reaches a verdict.

If the Court finds the accused guilty:

- It announces its verdict

- The Procurator Fiscal will move for sentence and pass up a list of any previous convictions, which will have been served on the accused with the complaint
- it can ask for details of the accused's finances and responsibilities before it announces the penalty.

If the verdict is "not guilty" or "not proven" the accused is discharged from the court.

### **14.3 Giving Evidence**

Anyone who is regularly required to give evidence should aim to do so in a professional and confident manner, as this can create a good impression on the judge and help give more credence to their testimony. To this end, the following guidelines should be observed:-

- Always be neatly dressed, preferably in a uniform if one is issued
- Stand up straight, speak clearly and address all remarks and answers to questions to the Bench
- Do not refer to a notebook without first asking the Court's permission to do so
- Speak slowly in order to give time for the words to be written down by the judge or jury
- Be concise and never use two words where one will do - the shorter and more concise evidence is, the less there is to be cross-examined on
- Use simple phrases and avoid the terminology with which the Court may not be familiar
- Avoid ambiguity and misunderstanding by carefully preparing beforehand all descriptions which they may be required to give relating to location, instruments, methods of operation or action (this can best be effected when the initial report or statement relating to the incident is prepared)

- Initially refer to persons by their full names and addresses and by their surnames subsequently
- When referring to time, be consistent in the way it is presented. Some people may not be familiar with the 24-hour clock and therefore the conventional system of AM and PM may be preferable
- When being questioned by either the Prosecution or the Defence on their evidence, a witness should not rush into giving an answer but think carefully before replying
- A witness should be calm and not lose their temper. If they feel they are being unjustly treated under examination, they can appeal to the Court
- All documents and labels (exhibits) to be produced as evidence by the witness should be clearly labelled and easily accessible. This is particularly important when the witness is involved in more than one case on the same day
- The witness must avoid giving evidence of facts which have not been included in their report or statement or discussed previously with the solicitor
- The witness should only give evidence about what they have seen, heard or knows to be fact and which is pertinent to the case. If they do not know the answer to a question, they should say so
- The witness must always be aware that if they say anything by way of evidence which is untrue and it is subsequently shown that they knew it was untrue when they said it, they can be charged with perjury.

## **14.4 Penalties**

### **(A) Discharge and Admonishment**

If a Court, having found a person "guilty" of an offence, decides that a punishment would be inappropriate, it can admonish the accused, which is still a conviction. More unusually, the judge can grant an "absolute



discharge", which is not regarded as a conviction, but which can be listed in a schedule of previous convictions.

### **(B) Fines**

The Court can impose fines of up to a maximum laid down in a standard scale for various types of offence and which is revised from time to time.

### **(C) Imprisonment**

The judge can impose a prison sentence of up to six months if the accused is tried under summary procedure and up to three years if the matter is tried under indictment. A fine may be imposed in conjunction with a prison sentence.

### **(D) Community Service**

The judge may decide that the interest of the community would be better served by requiring the accused to carry out a required number of hours work for the benefit of the community under strict supervision.

### **(E) Confiscation**

The Court can order the confiscation of any fish taken illegally or of any instrument used in the commission of an offence. Confiscation applies only in relation to certain offences.

## Appendices

### Appendix 1

#### **List of fisheries offences and links to provisions in Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003**

This guide **1)** provides a summary list of salmon and freshwater fisheries offences which may be useful for general reference, and **2)** directs Boards and other interested parties to the various sections of the 2003 Act, which consolidated the vast majority of the Scottish salmon and freshwater fisheries law into a single Act. The 2003 Act is the key governing legislation for Scotland's district salmon fishery boards, and it sets out the provisions for the constitution, composition and financing of the boards. It is also the framework for a number of other important regulatory areas, including legal methods of fishing and offences, close times, local regulatory measures, protection of juvenile and spawning salmon, passage of salmon, and general powers relating to appointment of water bailiffs and enforcement of salmon and freshwater fisheries law. A number of amendments were made to the 2003 Act by the Aquaculture and Fisheries (Scotland) Act 2007, and the 2007 Act should be consulted separately to see the effect of any amendments. This guide is not a legal document and does not provide a legal view on any of the provisions. If there are any inaccuracies or omissions in this, we would be glad to hear of them.

#### **1) General list of salmon and freshwater fisheries offences**

This list is intended as a general guide to current offences relating to salmon and freshwater fisheries in Scotland. It is not a definitive guide, but simply a resource to point to the relevant Acts, Orders and Regulations for

those involved in law enforcement. It is worth using the search function at [legislation.gov.uk](http://legislation.gov.uk), if there is a particular provision that is not listed below. This will be particularly useful for local orders and regulations. The legislation relating to freshwater fisheries will change in the coming years, further updates will be included as they happen.

### **The Salmon Carcass Tagging (Scotland) Regulations 2016**

Requirement to affix carcass tags to any salmon caught within inland waters (excluding fish caught by rod and line). See specific provisions [HERE](#)

### **The Conservation of Salmon (Scotland) Regulations 2016**

Prohibition on retaining salmon in specified districts and out-with inland waters

See specified areas and specific provisions [HERE](#)

### **The Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Regulations 2014**

Prohibition on retaining salmon prior to 1 April (created via amendments to annual close times, district – by – district). See regulation [HERE](#)

### **Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003**

This should be read in conjunction with the Aquaculture and Fisheries (Scotland) Act 2007 which inserts a number of amendments and new offences into the 2003 Act. See the full Acts here [2003 Act](#) and [2007 Act](#)

Section	Offence	Note
<b>1 (1)</b>	Fishing for salmon in inland waters other than by rod and line or net & coble or – in	

	certain circumstances – cruive, haaf net or certificated fixed engine	
<b>1(2)</b>	Fishing for salmon in the sea other than by rod & line, net & coble or bag net, fly net or other stake net	
<b>2</b>	Fishing for freshwater fish in inland waters other than by rod & line	
<b>3A</b>	Using a rod not held by hand for salmonids (not from a boat) Using more than 4 rods not held by hand for non-salmonids (not from a boat) Using more than 4 rods on a boat to catch fish	Inserted by 2007 Act
<b>4</b>	Use of roe, fire or light as a bait or lure; Use of live vertebrates as bait*; foul hooking*;	*Inserted by 2007 Act
<b>5</b>	Use of explosives, poisons or electrical devices to take or destroy fish	
<b>3</b>	Use of gaffs, & tailers	Inserted by 2007 Act
<b>5A</b>	Use of pike gags and knotted or metallic mesh keep-nets	Inserted by 2007 Act
<b>6</b>	Fishing without written permission or legal right (salmon)	
<b>7</b>	Fishing contrary to ss. 1, 2 or 6 of the 2003 Act by two or more persons acting together	

<b>8</b>	Removing dead salmon and trout from water	
<b>9</b>	Illegal possession of salmon, trout, and articles where there is suspicion that fish have been, or are about to be taken unlawfully	Convictable on evidence of a single witness
<b>10</b>	Taking or preventing passage of salmon through a fish pass	Convictable on evidence of a single witness
<b>11</b>	Fishing without permission or legal right (stanks & loch owned by one person).	
<b>12 &amp; 48</b>	Fishing for brown trout and freshwater fish without legal right or written permission in an area covered by a Protection Order.	
<b>13 (2)</b>	Fishing for or taking salmon on a Sunday	Convictable on evidence of a single witness
<b>13 (3)</b>	Fishing for or taking salmon during the weekly close time other than by rod and line	Convictable on evidence of a single witness
<b>14</b>	Fishing during the annual close time except as allowed for by byelaw, regulation or licence	Convictable on evidence of a single witness
<b>15</b>	Failure to remove boats & nets within 36 hours of start of the annual close time	Convictable on evidence of a single witness
<b>16</b>	Possessing, buying or selling salmon during the period when the annual close time is in force in every salmon fishery district	Convictable on evidence of a single witness

<b>17</b>	Fishing for, taking or possessing trout during the annual close time for trout	Convictable on evidence of a single witness
<b>18</b>	Fishing for, taking, possess, buy, sell or expose for sale unclean or unseasonable salmon	Convictable on evidence of a single witness
<b>19</b>	Possessing, buying, selling or exposing for sale salmon roe	Convictable on evidence of a single witness
<b>20</b>	Possessing salmon which have been illegally taken, killed or landed	Convictable on evidence of a single witness
<b>21</b>	Consigning salmon or trout in an unmarked package	
<b>21 (5)</b>	Obstruction of any person authorised under s.21(6) to check unmarked packages (consignment of fish in an unmarked package)	
<b>22</b>	Size limit for buying or selling trout (under 20cm) Sale of any trout between 1 Sep-31 March	
<b>23(1)</b>	Knowingly taking, injuring, destroying, buying, selling or exposing for sale smolts, parr, salmon fry or alevin or use of any device to obstruct the passage of young salmon	
<b>23(2)</b>	Knowingly injuring or disturbing salmon spawn; or disturbing spawning bed, bank or shallow	

<b>23(3)</b>	Obstructing the passage of salmon to spawning grounds during the annual close time	
<b>25</b>	Use of un-certificated fixed engine in Solway	
<b>26</b>	Fishing without legal right or permission for any fish other than salmon in the rivers running into the Solway Firth (excl Annan)	
<b>31(1)(d) &amp; (7)</b>	Fishing for salmon with net of mesh size less than 90mm (stretched mesh)	Also refer to SI 1992/1974 regulation 6
<b>as above</b>	Fishing for salmon with a net of twine less than 0.9mm thick	As above, regulation 8A
<b>as above</b>	Use of monofilament netting in the construction of nets used in fishing for salmon	As above, regulation 8
<b>33(A)</b>	<p>Introduction of salmon or salmon spawn in inland waters without the consent of a salmon fishery board (or Scottish Ministers where no board exists)</p> <p>Introduction of other live fish or spawn in inland waters without consent of Scottish Ministers</p>	Convictable on evidence of a single witness
<b>38(7)</b>	Contravention of any salmon conservation regulation	Convictable on evidence of a single witness

<b>50(3)(a)</b>	Obstruction of a warden in the exercise of their powers under the Act (s. 49 & 50)	
<b>50(3)(b)</b>	Obstruction of any person appointed by Scottish Ministers under the Act (s. 50(2)) in the exercise of their powers under that subsection	
<b>58</b>	Obstruction of a constable or water bailiff in the exercise of their powers under the Act	
<b>64</b>	Failure of a proprietor or occupier to provide information or statistics, or to allow access to a fishery for related purposes	
<b>The Freshwater Fish Conservation (Prohibition on Fishing for Eels) (Scotland) Regulations 2008</b>		
<b>SI 2008 no 419</b>	Fishing for or taking eels except under licence	Made under S. 51A of 2003 Act
<b>The Conservation of Salmon (Prohibition of Sale) (Scotland) Regulations 2002</b>		
<b>SI 200 no 418</b>	Sale of rod-caught salmon	
<b>The Sea Fish Conservation Act 1967</b>		
<b>5</b>	Fishing for salmon from a boat in the sea by drift net or other gill net, trawl net, seine net (other than fishing from the shore by net & coble), troll or long line.	Also refer to SI 1973/207, as varied by SI 1983/60
<b>6</b>	Landing of salmon caught in contravention of an order made under the 1967 Act	Also refer to SI 1972/1966, as varied by SI 1983/58



<b>The Inshore Fishing (Scotland) Act 1984</b>		
<b>1</b>	Fishing for salmon in the sea with any gill net within half a mile of the shore	SI 1986/59
<b>2</b>	Carriage of monofilament gill net of mesh size less than 250mm in any British fishing boat	Also refer to SI 1996/1907
<b>3</b>	Fishing with trawls or other moving gear within half a mile of a fixed salmon net	

## **2. Link to the 2003 Act sections**

Click on the part number or section number below to link to the relevant section of the 2003 Act.

### **Part 1 methods of fishing and offences related to fishing**

#### **Methods of fishing**

1. Methods of fishing: salmon
2. Methods of fishing: freshwater fish
3. Use of gaff, tailer or landing net
4. Meaning of “rod and line”

#### **Offences related to fishing for salmon and freshwater fish**

5. Prohibition against using explosive and other noxious substances for the destruction or taking of fish
6. Fishing for salmon without right or permission
7. Illegal fishing by two or more persons acting together
8. Taking of dead salmon or trout
9. Illegal possession of salmon or trout

10. Offences in relation to passage of salmon
11. Fishing in waters where fishing rights owned by one person
12. Contravention of protection order

### **Close times for salmon**

13. Weekly close time for salmon
14. Fishing for salmon during annual close time
15. Removal of boats and nets during annual close time
16. Buying and selling salmon in close time

### **Close time for trout**

17. Annual close time for trout

### **Offences related to sale, purchase and possession of salmon and trout**

18. Unclean salmon
19. Salmon roe
20. Possessing salmon which have been illegally taken, killed or landed
21. Packages of salmon or trout to be marked
22. Size limit for selling trout

### **Protection of young salmon**

23. Young salmon and spawning beds
24. Unauthorised introduction of salmon or salmon eggs into certain waters

### **Offences in relation to the Solway**

25. Fixed engines in the Solway
26. Fishing without legal right in the Solway

### **Exemptions**

27. Exemption from certain offences in respect of acts done for scientific and other purposes: salmon
28. Exemption from certain offences in respect of acts done for scientific and other purposes: fish other than salmon
29. Exemption from certain offences in respect of certain acts in relation to salmon
30. Exemptions in relation to fish farming

### **Regulation of salmon fisheries**

31. Salmon fishing: general regulations
32. Exception from regulations with respect to the construction of dams, lades and water wheels
33. Salmon fishing: regulations as to baits and lures

## **Part 2 Administration of salmon fisheries**

### **Salmon fishery districts**

34. Salmon fishery districts
35. Designation orders
36. Estuary limits

### **Conservation measures**

37. Annual close times for salmon
38. Salmon conservation regulations

### **Procedures**

39. Procedure for making orders and regulations under section 33 and this Part

## **Part 3 District salmon fishery boards**

### **Proprietors of salmon fisheries**

- 40. Qualified proprietors and upper and lower proprietors
- 41. Sole proprietor in a salmon fishery district

### **Mandatories**

- 42. Mandatories

### **District salmon fishery boards**

- 43. District salmon fishery boards
- 44. Financial powers and duties of district salmon fishery boards
- 45. General powers and duties of district salmon fishery boards
- 46. Proceedings of district salmon fishery boards
- 47. Tenure of office

## **Part 4 Administration of freshwater fisheries**

- 48. Increased availability of, and protection for, freshwater fishing
- 49. Appointment of wardens to secure compliance with protection order
- 50. Powers of entry and obstruction of wardens etc.
- 51. Financial contributions towards organisations developing freshwater fisheries

## **Part 5 Enforcement**

### **Powers of constables and water bailiffs**

- 52. Grant of warrant to search premises or vehicles
- 53. Powers of constables
- 54. Powers of constables and water bailiffs to enter land
- 55. Powers of water bailiffs
- 56. General enforcement provisions not to apply in relation to protection orders

### **Further provision as to offences**

- 57. Offences by bodies corporate
- 58. Offences in relation to obstruction

## **Powers of court**

- 59. Power of court in trial for an offence to convict of another
- 60. Forfeiture
- 61. Defences
- 62. Jurisdiction in respect of offences committed on sea coast or at sea
- 63. Disqualification of justices

## **Part 6 Miscellaneous**

- 64. Power of Scottish Ministers to conduct inquiries and to obtain information
- 65. Additional powers in respect of licensing and regulation of salmon dealing
- 66. Application of Leases Act 1449

## **Part 7 General**

- 67. Application of this Act to the Crown
- 68. Orders and regulations
- 69. Interpretation
- 70. Consequential amendments, repeals and revocations
- 71. Short title, commencement and extent

## **SCHEDULE 1**

### **Designation orders, estuary limits orders, annual close time orders and regulations under sections 33 and 38**

- 1. Designation orders
- 2. An application under paragraph 1 above shall be accompanied by...
- 3. Estuary limits orders
- 4. An application under paragraph 3 above shall be accompanied by...
- 5. Annual close time orders

6. An application under paragraph 5 above shall be accompanied by...
7. Salmon conservation regulations
8. An application under paragraph 7(a) above shall be in writing...
9. In the application of paragraphs 10 to 15 below to...
10. Common provisions with respect to orders
11. (1) Before making an order or, as the case may...
12. At any time, the Scottish Ministers may alter the proposals...
13. Making of designation, annual close time or estuary limits order or salmon conservation regulations
14. (1) If any representation or objection duly made is not...
15. After considering the report of the person appointed to hold...
16. Applications under this schedule may be communicated and stored electronically....

## **SCHEDULE 2**

### **Election and co-option of members of district salmon fishery boards**

#### **Part 1 Meeting of qualified proprietors**

1. Calling of meeting
2. (1) At a meeting of proprietors called—
3. (1) In accordance with the following provisions of this Part...
4. (1) In the co-opting of representatives of salmon anglers and...

#### **Part 2 Membership**

5. (1) The members of the committee shall be members of...

## **SCHEDULE 3**

### **Provisions as to making, variation and revocation of protection orders**

1. Making of protection order
2. The notice to be given under paragraph 1 above shall...
3. The Scottish Ministers may direct that, in addition to publication...
4. If no representations or objections are duly made, or if...

5. (1) If any representation or objection duly made is not...
6. After considering the report of the person appointed to hold...
7. As soon as may be after a protection order has...
8. Paragraph 7 above shall apply to an order varying a...
9. (1) Before the Scottish Ministers make an order revoking a...
10. The Scottish Ministers shall cause to be published each year...

## **SCHEDULE 4**

### **Consequential amendments, repeals and revocations**

## Appendix 2

**Specimen Notebook Entry** (*numbers in brackets relate to abbreviations – see note at end*)

### Wed 7 Feb 2011

- 0800 On Duty. Mobile to lower river for FP(1) RtB(2) The Dirtpot Hole
- 0820 Saw poacher Charley McFud in grey Ford Escort, Reg F123 LRS. Pass on info to Insp. No other persons onboard.
- 0840 Arrived at the Dirtpot Hole. Parked vehicle out of sight. No fresh marks in to field. FP to Burn Bridge.
- 0910 Sighted rod on Lt/B opposite The Dog's Cleft. Took up obs(3).
- 0930 Rod fishing fairly. Resumed FP.
- 1000 Met dog walker on f/p (4) He reported he'd seen 2 men in camo clothing, one with large red cock below Burn Bridge the prev day. Thought they were bailiffs but seemed a little strange. (Check with Insp for other bailiffs movements. Poss Obs for tomorrow if water drops).
- 1015 Two persons sighted 500yds down from Humper's Rock. One fishing the other sitting back. Appeared suspicious so quiet approach.
- 1025 App, ID, Warr, (5) Asked to see permit. "Didn't know I needed one" No fish caught. First time on river. Advised to stop fishing until permit obtained. Directed them to the PO to purchase Resumed FP. Lt/B clear to Chain Br. Returned to vehicle.
- 1115 In to Pol Stn to see Sgt Black. Discussed plan for Op (6) this pm. Confirmed traffic car available. Phoned Insp to relay. Arranged team up for 2100.



- 1210 Checked back @ Humper's Rock. Both persons away
- 1240 VP(7) to H/waters. Checked @ Bawbag & Bender's Bridges for fish. Water still dirty & unlampable.
- 1405 Met shepherd at top of Fell's Crag. Reported he had not seen any strange vehs on the road but that there had been a lot of fish pass over the ford in the last few days. Checked it. Nothing vis (8)
- 1520 RTB (9). Off Duty. Prep for night Pat.

### **Abbreviations used**

- (1) Foot Patrol
- (2) Right Bank
- (3) Observations
- (4) Footpath
- (5) Approached, identified & Produced Warrant Card
- (6) Operation
- (7) Vehicle Patrol
- (8) Visible
- (9) Return to Base

## Appendix 3

### Examples of a simple witness statement and supplementary statement

#### STATEMENT of JAMES HENDERSON

My full name is James Henderson and I am years of age. I am the Fishery Manager for Nith District Salmon Fishery Board, 37 George Street, Dumfries.

I state that on 24<sup>th</sup> August 2000 the River Nith was subject to drought conditions and a great number of salmon trying to ascend the river were trapped in tidal pools. They were an obvious target for poachers. I had instructed the Bailiffing Team for the District Salmon Fishery Board to take up surveillance on the lower reaches of the river to combat any potential poaching. Sunday evening, 24<sup>th</sup> August 2000, I led a team of Bailiffs on lower reaches of the River Nith. Accompanied by Senior Bailiff, Barry Young, I took up the position on the east bank of the River Nith at a part known as Kelton Bank. At approximately 11.25 p.m. I noticed two men coming down the river with a net stretched between them. I saw one person walking on the banking beside the men who were in the water. I took cover and observed through image intensifier four times magnification and could clearly see fish struggling in the net suspended between the two men and the water. The man on the banking walked past Bailiff Young and I instructed Bailiff Thomson who was on mobile patrol to join us. When Bailiff Thomson joined us we followed the men with the net downstream for approximately 200 metres. At this point we could gain access to them relatively easily. Their backs were turned to us, they were engaged in taking fish out of the net and we made our approach across the sand. The man on the banking remained standing on highest part of the banking. As we neared the men at the net they realised our presence and I shouted identification and produced my warrant card. Both men fled and were

quickly captured. I recognised both men one as Mr. David Bloggs and one as Mr. Kenneth Jones. They were arrested and the net that they had been using was seized along with a quantity of salmon. The Police were contacted and a rendezvous point arranged at Kelton Bank. The Police arrived at Kelton Bank and we handed over Bloggs and Jones to the Police along with the salmon and the net. I later attended at Dumfries Police Station to give a statement. I also signed labels for eight salmon, I double armoured trammel net and two wet suits. I can identify Bloggs and Jones.

#### SUPPLEMENTARY STATEMENT by JAMES HENDERSON

Background Information for Poaching Case on 24<sup>th</sup> August 2000  
Edgar and Wilson

Drought conditions had persisted on the River Nith for many weeks. Many beats on the river had cancelled fishing permits in order to protect stocks of fish from over exploitation. It was felt by many anglers that fishing legally to this captive audience of fish was very unsporting and therefore they did not participate.

Numbers of salmon have been dropping over recent years. Management schemes to assist stocks of salmon in the Nith Catchment include £250,000 spent on habitat restoration in headwaters. The employment of four full-time Fisheries Management staff. The introduction of a Hatchery programme to release 750,000 salmon fry annually. The Nith District Salmon Fishery Board adopts a serious approach to anti-poaching. It is viewed that poaching can have a serious impact on salmon stocks and the economy of the catchment.

Salmon fishing on the River Nith is worth £2.2 million to this rural economy. Such actions from poachers lead to vastly reduced numbers of fish both

available to spawn, regenerate and for angling. The loss of these fish could potentially be experienced for years to come.

## **Appendix 4**

### **Glossary of terms**

#### **tailer**

Device consisting of a wire noose, which when closed is used to land or capture salmon by the tail. It was once used as an alternative to a landing net for landing fish. It is now an unlawful instrument.

#### **gaff**

A large hook, fixed to the end of a handle, used for landing large fish. It was once used as an alternative to a landing net for landing fish. It is now an unlawful instrument.

#### **dam**

artificial man-made construction used to retain water in a watercourse.

#### **baggot**

informal term to describe a female salmon which has failed to spawn.

#### **rawner**

informal term to describe a male salmon which has failed to spawn.

#### **estuary limits**

legally defined limit within a salmon fishery district. Certain methods of fishing are permissible, whether within or outwith estuary limits.

#### **fish pass**

man-made structure which facilitates the passage of migratory fish over an obstacle.

#### **fixed engine**

any device, net or trap used for taking salmon other than a sweep net.

#### **foul hooking**

hooking a fish other than in the mouth. Intentional foul hooking is unlawful.

#### **gill net**

a net designed to enmesh fish in the gills

#### **heck**

an artificial barrier in a watercourse designed to deliberately prevent fish ascending – usually associated with watercourses harnessed for hydro-power generation

**inland waters**

Waters within estuary limits.

**kelt**

a fish that has spawned and not yet fully recovered from spawning

**lade**

artificial water course which diverts water from an off-take or dam for a specific purpose (mill, hydropower, water supply etc). A lade will also return water to the watercourse.

**Monofilament**

single strand material used for constructing nets or fishing line

**off-take**

point at which water is drawn from a watercourse, usually for a mill, hydropower generation, water supply etc

**otter**

a board, stick small boat or other instrument used to run a line out from the bank or shore. Unlawful instrument.

**Parr**

juvenile salmon before they start their migration to the sea

**rod & line**

one of the legal methods of fishing in inland waters and the sea

**salmon**

migratory fish which spends its juvenile hatching and growing phase in freshwater, migrates to sea to feed and returns to freshwater to spawn

**Sea trout**

migratory trout which spends its juvenile hatching and growing phase in freshwater, migrates to sea to feed and returns to freshwater to spawn

**Screens**

bars or mesh used at an intake, offtake or outflow to prevent fish access

**set line**

a fishing line, with hooks or lures, left unattended in the water

**Smolt**

juvenile salmon migrating, or ready to migrate to the sea

**unseasonable (in relation to salmon/sea trout)**

A fish on the eve of spawning, ie when eggs or milt can be expressed by gently pressing the belly of the fish

**weekly close time**

period during which it is not permitted to fish for salmon or sea trout –  
18.00 Friday to 06.00 Monday.