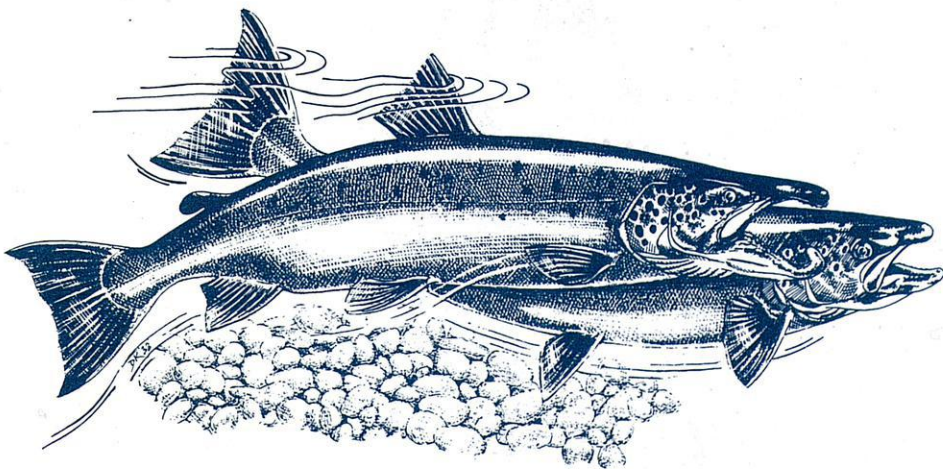




**THE ANTI-POACHING MEASURES
CONTAINED IN
THE SALMON ACT 1986
Report of the
Salmon Advisory Committee**



**Ministry of Agriculture, Fisheries and Food
Scottish Office Agriculture, Environment and Fisheries Department
Welsh Office Agriculture Department**

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1. INTRODUCTION

The Salmon Advisory Committee was established by Fisheries Ministers in October 1986. Its membership is shown at Annex A.

The terms of reference of the Committee are:

‘To examine and report on those matters relating to the conservation and development of salmon fisheries in Great Britain which are referred to it by Fisheries Ministers.’

One of the matters referred to the Committee was that, after an appropriate period of time, it should look at the effects of the measures to combat poaching that were contained in the Salmon Act 1986 (the 1986 Act).

This report reviews these measures in the context of other factors which affect poaching and it also makes some recommendations about further legislation.

2. GENERAL BACKGROUND

Amongst all wild animals found in Britain, the salmon must surely be the focal point of the most comprehensive range of legislation enacted over centuries for the purpose of controlled exploitation of any species. The complexity of the many Acts which have regulated the taking of salmon are a consequence of the life history of salmon and the high value placed upon it both as a source of food and particularly, in recent times, as a sporting quarry.

Before the Industrial Revolution salmon were abundant in rivers throughout Britain in numbers difficult for us to imagine today. Industrial development led to the pollution and the obstruction of rivers, and runs of salmon declined, as borne out by catch statistics. Recognising the vulnerability of the species, arising particularly from its migratory habits, additional legislation was introduced to prevent over-exploitation of a valuable natural resource. A comparative description of the present salmon fisheries regulations in Scotland and in England & Wales is attached at Annex B.

To this day the wild salmon is recognised by fishermen as the most prized of fish and, so long as salmon survive in our rivers and around our coasts, attempts will be made to take them both legally and illegally either for commercial profit or for sport.

3. ANTI-POACHING MEASURES

The measures available to enforcement agencies to restrict illegal fishing for salmon are contained in a confusing variety of statutes, and differ in their application in England & Wales as opposed to Scotland. Whilst we were asked specifically to review the effects of the anti-poaching measures contained in the 1986 Act we believe that it is only by considering the entire range of anti-poaching measures currently available that this subject can be addressed in a useful way. We therefore attach, as Annex C, summaries of the anti-poaching provisions that were available to enforcement agencies in England & Wales, and in Scotland, before the introduction of the 1986 Act. The measures introduced by the 1986 Act are listed in Annex D.

4. REVIEW OF THE ANTI-POACHING MEASURES IN THE 1986 ACT

With the 1986 Act, important and valuable new legislation became available to the enforcement agencies in England & Wales and in Scotland. The anti-poaching provisions of the Act are set out fully in Annex D and here we refer in detail only to the significant new measures that were introduced in the 1986 Act. These new measures are each considered in detail below.

4.1 SECTION 32: HANDLING SALMON IN SUSPICIOUS CIRCUMSTANCES (ENGLAND & WALES)

Section 32 of the Act created, in England & Wales, the offence of handling salmon in suspicious circumstances, i.e. where the possessor knows, or where it would be reasonable for him to suspect, that the fish had been taken unlawfully.

The application of this legislation is believed to have had a significant impact on the trade in illegally caught fish, as dealers now either refuse to buy such fish or offer a greatly reduced price. This has been reinforced through a campaign with the issue of 'buyer beware' leaflets which explain the law and penalties of handling salmon in suspicious circumstances. In the north-west of England the application of section 32 and associated publicity is said to have 'knocked the bottom out of the market'. A further benefit has been to support existing legislation prohibiting the *taking* of salmon by laying section 32 as an alternative charge. Should the evidence relating to taking the fish illegally be insufficient, the defendant still has to account for his possession of the fish under section 32.

As ever, some poachers and dealers have devised strategies to protect their illegal operations, notably the use of a rod fishing licence to account for their possession of fish and also the laundering of illegally taken fish within batches of legitimate fish for which *bona fide* receipts are held.

4.2 SECTION 22: POSSESSION OF SALMON IN CIRCUMSTANCES WHERE THE POSSESSOR KNOWS, OR IT WOULD BE REASONABLE FOR THE POSSESSOR TO SUSPECT, THAT THE FISH HAD BEEN TAKEN UNLAWFULLY (SCOTLAND)

This measure was introduced because, until 1986, it was not an offence to possess, buy or sell salmon even if it was known that it had been illegally taken. As in England & Wales, it is considered to have been a most effective provision. A number of early prosecutions, backed up by a similar 'buyer beware' campaign, have had a lasting effect on curtailing the trade in poached salmon. Scotland does not have rod and net licences so these documents cannot be produced to legitimise the sale and allay the purchasers' suspicions.

4.3 SECTION 23: POWER OF A SCOTTISH COURT, IN A TRIAL OF ONE OFFENCE, TO CONVICT OF ANOTHER

Section 23 of the 1986 Act specifies several Scottish salmon fishery offences and provides that a person charged with any of them may be convicted of one of the others if the court is satisfied that the accused is not guilty of the offence charged but is guilty of one of the other offences. The offences all relate to illegal possession of salmon – either possession during the close time or possession under suspicion that the fish had been taken illegally or had been the subject of theft (there are five different offences in all).

The provision was made in association with section 22 of the Act; the main purpose was to ensure that a person accused of possessing salmon in circumstances in which he ought to have suspected that the fish had been illegally taken (in the fishery sense) could not escape conviction by claiming that he was indeed suspicious of the origin of the fish but that he thought they had been stolen or were possessed in an otherwise illegal way. If an accused now attempts that kind of ‘defence’ he would immediately make himself liable to be found guilty of one of the alternatives even though he had not been charged with it. Section 23 does not itself create any new offence but its existence discourages attempts at a contrived technical defence and is thus helpful to the prosecuting authorities and the courts.

4.4 SECTION 21: PRESCRIPTION OF THE ONLY LAWFUL SALMON FISHING METHODS IN THE SEA (SCOTLAND)

Previously it was necessary to enact specific prohibitions against each method that was to be outlawed. The arrangement under section 21 of the Act means that the lawful methods are directly prescribed and defined, thus making it more difficult for poachers to find ways of defeating the intentions of the legislation.

4.5 SECTIONS 33 AND 37: PREVENTION OF FISHING FOR SALMON IN THE GUISE OF FISHING FOR SEA FISH (ENGLAND AND WALES)

These sections created, in England & Wales, provisions designed to ensure collaboration between the authorities who regulate coastal fisheries, thereby closing a loophole in the law and combating the illegal netting for salmon under the guise of fishing for sea fish. Sea Fisheries Committees (SFCs) were enabled to promote byelaws within their districts to protect salmon and to prevent interference with their migration by construing salmon as ‘sea fish’ within the Sea Fisheries Regulation Act 1966. They were also enabled to make byelaws allowing the placing and use of fixed engines for taking sea fish within their districts. In both cases the consent of the National Rivers Authority (NRA)* is required. At the same time the NRA was enabled to make byelaws allowing the placing and use of fixed engines for taking salmon and freshwater fish throughout the area of its jurisdiction, although the consent of the local SFC is required.

* It should be noted that with effect from 1 April 1996 the duties and functions of the National Rivers Authority (NRA), which are referred to throughout this report, were taken over by the Environment Agency.

The combination of these measures forces a debate in which SFCs and the NRA have to agree a byelaw package which governs the totality of fishing within the SFC district and which fully takes into account the protection of salmon. Such packages have been agreed throughout most districts in England & Wales; in some cases they require sea-fishermen to be authorised to fish and to provide catch returns so that a more informed debate can be had at the next byelaw review about the importance of the sea fishery. By using both spatial and temporal zoning it has been possible to provide reasonable protection to salmon whilst preserving some important sea fisheries.

In the South-West region, the Tamar, Camel and Fowey estuaries – once the subject of heavy ‘incidental’ exploitation – are now effectively closed to sea fishing other than angling. A similar position exists in many other estuaries, notably in the Welsh Dee and Severn estuaries where the NRA is the SFC *de facto*.

Problems can occur in policing the SFC byelaws as NRA bailiffs are not empowered to do so other than for fixed engines operated outside the terms of the byelaw. Although NRA bailiffs can be appointed as SFC enforcement officers, it would be simpler if they were specifically empowered to police SFC byelaws regulating sea fishing for the protection of salmon. This would strengthen the policing activities of the SFC officers, who often work alone and away from support and can be subject to intimidation and threats of violence.

4.6 SECTION 35: INCREASED PENALTIES (ENGLAND & WALES)

Section 35 of the 1986 Act removed the differential penalties applicable to persons acting together and those acting alone and also extended the penalties available to lower courts to include up to three months imprisonment. There is no information that this penalty has been imposed; in general more serious cases are referred to a higher court.

Penalties imposed on poachers rarely, if ever, approach the maximum available and the incidence of repeat offending suggests that those penalties which are imposed are insufficient as a deterrent. Where heavy penalties, particularly imprisonment and the forfeiture of vehicles and vessels, have been imposed, they are thought to have had a significant deterrent effect in that locality.

4.7 SCHEDULE 4, PARAGRAPH 10: REMOVAL OF RESTRICTION ON POWER OF SCOTTISH COURTS TO IMPOSE FORFEITURE OF VEHICLES AND BOATS

Prior to the 1986 Act, the Scottish courts could direct the forfeiture of vehicles and boats following conviction of certain salmon fishery offences only if the case was taken on indictment. The amendment made by paragraph 10 of schedule 4 removed that restriction and thus allows forfeiture of vehicles and boats in relation to cases taken under summary procedure. This is a useful enhancement of the deterrent effect of the forfeiture provisions and has been welcomed by Procurators Fiscal. The provision for forfeiture has also been extended to cover offences under section 15 of the Salmon Fisheries (Scotland) Act 1868.

4.8 SECTIONS 20 AND 31: DEALER LICENSING

Sections 20 and 31 of the 1986 Act introduced legislation enabling the establishment of licensing schemes for salmon dealers in England & Wales and in Scotland. The government proposed that under this legislation it should be made an offence for any person other than a licensed dealer to buy salmon except from a licensed dealer. The licensed dealer would be expected to keep records of his purchases and sales.

As a result of consultations, the government concluded that a simple comprehensive scheme including all salmon and all salmon traders would be a substantial burden on the existing legitimate trade (including the large trade in farmed salmon and the many retail fish outlets), and that it was unacceptable.

Thought was therefore given to the possibilities for a more restricted scheme that would exempt various classes of fish and fish traders. A proposal was considered under which farmed fish would be included (because it was not easy for members of the general public to distinguish between farmed fish and wild) but that retailers, hoteliers and restaurateurs would be exempted. It became clear, however, that a scheme with such exemptions would still be a significant burden on the legitimate trade but would contain sufficient loopholes that determined poachers could find a way of avoiding its intended effects – the just would suffer for the sake of minor inconvenience to the guilty. The government therefore concluded that it was not appropriate to implement the proposals to establish a dealer licensing scheme.

It has recently been suggested that it might now be easier to develop a scheme because there are more sophisticated ways of distinguishing wild salmon from farmed. However, that does not change the critical point. Although it may now be easier to prove in court whether a fish was farmed or wild, it is still no easier to prove that the *accused* knew that the fish was a wild one. If anything it could now be more difficult to prove that the possessor must have known that the fish was wild, or that it was not farmed, because of the improved quality and appearance of the farmed product; it is the possessor's assessment that is critical.

5. ENFORCEMENT AGENCIES

Enforcement of salmon fisheries legislation is the responsibility of a variety of agencies in Great Britain. The police have power throughout the country but generally act in a supportive role assisting the specific enforcement agencies: the NRA in England & Wales, and the District Salmon Fishery Boards (DSFBs) in Scotland. Several other organisations have powers in England & Wales or in Scotland or throughout Great Britain to enforce aspects of salmon fisheries legislation. These agencies are listed in Annex E.

We sought views from the enforcement agencies as to the present extent of illegal fishing for salmon and the effectiveness of the measures currently available to them to prevent salmon poaching. As might be expected, opinions varied. However, almost all agencies confirmed our view that the incidence of illegal fishing for salmon has declined since the introduction of the 1986 Act but not necessarily as a consequence of this legislation. In certain areas of the country, often close to centres of population but also in some remote areas, illegal fishing still remains a serious problem. It would appear that the extent to which illegal fishing occurs is closely related to the abundance of fish, the ease with which they may be taken and local custom. Thus, while poaching may not generally be as prevalent as it was 10 or 20 years ago, it is still necessary for a very significant proportion of the resources available to DSFBs or of the fisheries expenditure of the NRA to be applied to the prevention of illegal fishing. Some of the agencies made detailed comments and we have taken these into account in preparing this Report.

6. EFFECTS OF THE ADMINISTRATIVE PROCESS ON ENFORCING THE ANTI-POACHING LEGISLATION

Deployment of bailiffs by enforcement agencies deters the majority of those who might contemplate fishing illegally for salmon. Despite this, a significant number of poachers are arrested and charged each year and if the anti-poaching measures available to these agencies are to be effective it is important that procedural arrangements for prosecuting offenders operate reliably.

In England & Wales the majority of salmon poaching cases are brought to court by the legal staff of the NRA who have a special interest in and knowledge of the appropriate legislation and who are able to prosecute independently of other agencies such as the police and the Crown Prosecution Service. As a result, the NRA achieves a high proportion of convictions in the cases it brings to court and generally expresses the view that it experiences no significant administrative problems other than the general delays encountered in the judicial system.

In Scotland matters are very different. All criminal prosecution in Scotland is the responsibility of the Crown Office and, in practice, almost all salmon fishery offences are taken by Procurators Fiscal in the Sheriff Court. Enforcement agencies must depend on Procurators Fiscal to agree to proceed with a prosecution and there is evidence of widespread dissatisfaction as a result of the unwillingness of some Procurators Fiscal to proceed with some cases.

The staff of many DSFBs rely heavily upon local police officers to prepare cases for submission to the Procurator Fiscal. We have been told that in some areas Procurators Fiscal will only agree to take cases which are referred to them by the police.

It is evident that, to a significant extent, DSFBs are reliant upon having a good working relationship with their local police force and that it is very much more likely that salmon poachers will be properly brought to court and be convicted if both the Procurator Fiscal and the local police force develop an interest in matters relating to the enforcement of salmon fisheries legislation. It is regrettable that shortage of court time often leads to sound charges not being proceeded with. Of those which get to court, charges are often lost through plea bargaining. It often appears that salmon poaching is treated as a trivial matter and cases are not pursued with the determination they deserve, to the justified frustration of DSFBs' bailiffs.

7. THE CROSS-BORDER ARRANGEMENTS

The differences in legislation and in the methods of enforcement of legislation between England & Wales and Scotland lead to particular difficulties in the prevention of poaching in the catchments of the rivers in the vicinity of the border.

7.1 THE BORDER ESK

For fisheries purposes the River Esk falls entirely within the jurisdiction of the NRA, however its powers are limited to the river, its banks and tributary streams. Unfortunately this creates a 'blind spot' for water bailiffs in relation to enforcement of the new possession handling offences (sections 22 and 32 of the 1986 Act) and also in relation to their powers of search and arrest away from the river bank. This problem has been solved by a provision in the Environment Act 1995 which gives the Environment Agency (the NRA's successor) enforcement powers in the whole catchment area of the river.

7.2 SOLWAY

The salmon fisheries of the Solway Firth are regulated by both English and Scottish legislation. This creates very considerable difficulties for the agencies responsible for the prevention of poaching and in the prosecution of those who fish illegally because the border has not been authoritatively determined. From Sarkfoot and Rockcliffe down to the open sea the Solway fishery is subject to the following management difficulties.

- Fishing for salmon in the sea and tidal estuaries in England is generally a public right but with controls on the number of licences issued to operate fishing instruments. In Scotland, salmon fishing, even in the sea, is a private right with no licensing.
- Different fishing methods are allowed in each country and the extent of the various salmon fishery provisions in the Solway is not comprehensively and unequivocally defined by statute or otherwise. The boundary between the English and Scottish regulations is therefore uncertain.
- The boundary between the national judicial jurisdictions is uncertain. The Sheriff Court in Scotland has dismissed cases because of uncertainty whether the alleged offence occurred within its jurisdiction (even though the activities complained of were close to the Scottish shore of the Firth). On the other hand, the Court of Session decided that the part of the Solway Firth defined in the Annan Charter was in Scotland regardless of the position of the main river channel at the time; but it is doubtful if English courts would take the same view.
- Custom and practice relating to the common fishing methods indicates a fishery boundary based upon the middle or deepest point of the low water channel of the Solway; however the position of the channel is constantly shifting.

- The powers of enforcement officers are limited to their native jurisdictions, as are the powers of courts to try offences. This requires certainty of the location of an offence relative to the position of the various boundaries and it creates difficulties for associated actions such as search and seizure if boundaries have been crossed.

These problems have vexed successive management organisations on both sides of the border for well over 100 years.

7.3 TWEED

The River Tweed runs through both Scotland and England and, in parts, forms the boundary between them. The whole river, and part of the sea at its mouth, are subject to Scottish salmon fisheries legislation.

However, unlike the Border Esk and the Solway, there have been few insoluble difficulties relating to the border in the Tweed district. This is because of two major differences between the east and west coast: firstly, the whole of the Tweed catchment and the adjacent sea is treated as if it was in Scotland (whereas, for the Border Esk, it is only the river and its banks that are uniformly treated as if they were in England); and secondly, on the east coast, unlike the Solway, the border between Scotland and England meets the sea on a section of open coast, as does the border between the Tweed district and the rest of Northumberland. There is therefore much less scope for disputes in boundary areas.

Although the whole of the Tweed catchment is subject to Scottish salmon fishery legislation, offences that occur in the English part of the district must be prosecuted in English courts according to their rules of procedure. There have sometimes been problems of the Crown Court at Newcastle being unfamiliar with the Scottish salmon fisheries legislation but it does not seem to be a serious difficulty. The River Tweed Commissioners cannot themselves prosecute for offences in Scotland but they do so in England.

The Tweed is largely subject to the general Scottish salmon fishery legislation, but there are special Tweed Acts which cover the election of River Tweed Commissioners, the appointment of officers, collection of revenue, etc. There are also some relics and differences from the days when the Tweed was entirely governed by its own Acts. One of these sometimes causes problems: a Tweed water bailiff has powers to enter lands to prevent or detect offences under the Fisheries Acts but, unlike district board bailiffs in the rest of Scotland, he does not have the power to enter *and remain* upon lands at any time of the day or night for the purpose of preventing or detecting a breach of the Act.

8. FURTHER LEGISLATION REQUIRED TO CURTAIL SALMON POACHING

The regulation of the taking of salmon has been assisted to a considerable extent by the new measures introduced in the 1986 Act. There remain however certain areas of weakness where further legislation would lead to more effective application of existing statutes or would restrict the market in poached salmon. Furthermore it should be noted that the 1986 Act included enabling powers to establish measures such as the licensing of dealers in salmon which to date have not been implemented.

Although enforcement of salmon fisheries legislation is achieved by different means in England & Wales on the one hand and Scotland on the other, there was an interesting consensus of opinion between the principal enforcement agencies north and south of the border as to some of the additional measures required to curtail salmon poaching. Equally, agencies operating under each of the legislative systems proposed additional measures particular to their own circumstances. From the representations made by the enforcement agencies and our own personal experience, the further measures that might usefully be introduced can be summarised as follows.

8.1 APPLICABLE IN GREAT BRITAIN AS A WHOLE

8.1.1 Re-examination of dealer licensing

It is widely regarded that dealing in salmon without having to keep records of purchases and sales provides a market for poached salmon which enforcement agencies find difficult to control. It is recognised that a licensing scheme would have to provide that such records be kept and would have to regulate the sale of both wild and farmed salmon; but it is not accepted that introduction of dealer licensing would necessarily impose an unreasonable administrative burden upon the existing legitimate trade.

8.1.2 Salmon carcass tagging

In this context, salmon carcass tagging is the process of attaching a uniquely numbered plastic tag to salmon immediately they are killed. For a salmon tagging scheme to be effective as an anti-poaching measure it would be necessary for possession of an untagged salmon to be an offence. Tags would be issued to legitimate fishermen and to fish farmers, and any unused tags would have to be returned. In addition to providing a measure to curb poaching, a carcass tagging scheme would be useful to fisheries authorities in improving catch statistics and, through limiting the number of tags issued, could provide a mechanism for management of fisheries through setting enforceable catch quotas.

8.1.3 Prohibition of the sale of rod-caught fish

Few anglers nowadays sell rod-caught salmon and there is also evidence of

widespread support for a prohibition of the sale of rod-caught fish. At a time when the salmon netting industry is declining significantly, this measure could prove valuable in association with sections 22 and 33 of the 1986 Act in denying poachers a market for salmon taken illegally. Such a measure should also make it easier to establish and manage a dealer licensing scheme.

8.1.4 Increased penalties

Concern has been frequently expressed as to the inadequacy of penalties imposed upon many of those convicted of salmon poaching. Reasonable penalties are available for most offences under existing legislation but application of these penalties varies widely. Introduction of realistic *minimum* penalties would be greatly welcomed by the enforcement agencies. More consistent use by the Courts of the upper range of available penalties and, in particular, fuller use of the provisions for forfeiture would be appropriate and would be welcomed.

8.1.5 Resolution of the territorial problems of the Solway Firth fishery

The nature of this unsatisfactory situation is detailed at section 7.2 of this report and possible solutions are discussed in section 9. The weaknesses of present legislation have frustrated enforcement agencies for many years and have been well known and exploited by poachers. The establishment of a Solway Fisheries Commission to address this would seem to be justified.

8.2 APPLICABLE IN ENGLAND & WALES

8.2.1 Withdrawal of the right of convicted poachers to be granted a rod or net licence

It is considered that this action would be a useful deterrent to poachers and additionally would remove the possibility of such people using fishing licences as a cover for the possession of fish which have been taken illegally.

8.2.2 Extending the life of a warrant issued under section 33 of the Salmon and Freshwater Fisheries Act 1975 (the 1975 Act)

Enforcement agencies regularly obtain warrants under section 33 of the 1975 Act to search poachers' houses and other premises. The increased use of covert operations and surveillance of poachers and their premises has highlighted the inconsistency of the life of a warrant, presently valid for one week, under this legislation when compared with that of one month for a warrant under section 16 of the Police and Criminal Evidence Act 1984 or an unlimited warrant period under Schedule 20 of the Water Resources Act 1991.

8.2.3 Amendment of section 34 of the 1975 Act to give powers of arrest by day for fishing offences (other than angling) and handling offences

Although daytime poaching is prevalent, powers of arrest under this legislation are at present confined to the hours of darkness. An extension of this power would be

desirable, logical and consistent with the powers of the police.

8.2.4 Extending the power of NRA bailiffs to enforcement of SFC byelaws

In some SFC districts co-operation between the NRA and SFC extends to cross-warranting which enables NRA bailiffs to enforce those SFC byelaws which relate to salmon. Unfortunately co-operation to this extent is not always forthcoming and full cross-warranting may not be acceptable to some SFCs, possibly because the scope of such warrants cannot be constrained to the enforcement of particular byelaws only. It would be preferable and simpler if NRA bailiffs were specifically empowered to enforce those SFC byelaws regulating sea fishing for the protection of salmon.

8.3 APPLICABLE IN SCOTLAND

8.3.1 Consolidating legislation

In Scotland, salmon and salmon fishing has been subject to a large number of statutes. A limited number of sections in these Acts remain in force as originally enacted; the majority are repealed, partially deleted or amended. The following is one illustration of the complexity that results from the multiplicity of inter-related salmon fisheries' Acts:

- Any breach of regulations made under section 3 of the 1986 Act is an offence, but only by reference to a provision in an Act of 1868; the penalty for the offence is in another salmon fisheries Act (1976) and the relevant powers of entry and search are in yet another (1951) – four separate but interacting and much-amended Acts spanning a period of more than 100 years.

There is clearly a need for a Consolidating Act. Such a Consolidating Act would assist all concerned with enforcement of legislation. [England & Wales have had the benefit of regular consolidation of their salmon fishing legislation. This regular updating of statutory provisions has made a further English Consolidating Act less necessary at this time.]

8.3.2 Retention of any foul-hooked fish should be made an offence

Whilst it is presently illegal to deliberately attempt to foul-hook salmon, difficulty can often be encountered in obtaining conviction of poachers who frequently resort to this method of taking fish. If the killing and keeping of foul-hooked fish were to be made an offence, the commonly used cover for poaching – that fish were accidentally foul-hooked – would no longer be an acceptable defence.

8.3.3 Widening of the range of subjects which may be regulated by orders made by the Secretary of State for Scotland upon application of DSFBs

Although largely directed towards management of fisheries as opposed to prevention of illegal fishing for salmon, existing legislation provides little opportunity to DSFBs to pursue purposeful fisheries management policies. The 1986 Act provides a mechanism by means of Orders whereby the Secretary of State, on petition, can regulate some fishing activities within individual District Board areas. There would be merit in enabling DSFBs to petition the Secretary of State to make a wider range

of Orders to regulate salmon fisheries than presently provided for in terms of the 1986 Act, both in the interest of more effective anti-poaching measures and, more particularly, to provide mechanisms for improved fisheries management.

8.3.4 Extension of the powers to prevent illegal fishing in the Salmon Fisheries (Scotland) Act 1868 to the Tweed

It appears anomalous that bailiffs employed by the River Tweed Commissioners should have less power to detect or prevent offences than their counterparts employed by DSFBs. It would be logical to extend the powers of Tweed bailiffs to enable them to remain on land to prevent or detect breaches of the law.

8.3.5 Other points

Recent cases in the Sheriff Courts have led to suggestions that the term 'unseasonable' (used in the offence of possessing unclean or unseasonable salmon) should have a statutory definition. However, in January 1995, the High Court decided that, in this context, 'unseasonable' meant 'on the eve of spawning' (*Brady v. PF (Stonehaven)*: High Court, 13-1-95). It considered that the phrase 'about to spawn' (used in the English statutory definition) was too vague and could cover fish that were still 3-4 weeks from spawning, and that it therefore did not provide the precision necessary in relation to a criminal offence. The Court agreed that the simple objective test would be to gently press the belly of the fish towards the vent; if eggs or milt are discharged, the fish can be considered to be on the eve of spawning. It is doubtful whether anything more satisfactory could be devised by way of a statutory definition (given the need for objectivity and avoiding damage to the fish). There is, therefore, now an up-to-date judicial definition of the term; but it should be noted that the statutory provision against taking unseasonable fish does not provide a mechanism for preventing the killing of fish that are coloured but are not on the eve of spawning.

We are aware that the Association of Scottish District Salmon Fishery Boards has recently undertaken a review of the legislation which currently regulates the management of salmon fishing in Scotland, and has put forward to the Scottish Office recommendations for new legislation both in the short and medium term which includes some of the points made above.

9. DISCUSSION

In the course of preparing this Report, we consulted widely, seeking the views of the agencies that contribute towards the enforcement of the legislation against salmon poaching in Britain. The quality of the responses varied markedly. It is not surprising that there is evidence to suggest that the effectiveness of legislation to control poaching of salmon may be significantly influenced by the enthusiasm with which individual agencies apply the various measures available to them and by their knowledge of the legislation in question. The extent to which enforcement agencies are willing or able to co-operate with others active in this field may be of crucial importance in determining the effectiveness of the anti-poaching measures contained in the 1986 Act and other legislation.

It would seem that, overall, the incidence of salmon poaching is not as prevalent as at times in the past and, to an extent, this is the product of the new measures contained in the 1986 Act and other legislation.

During the last 10 years there has been a dramatic increase in the production of farmed salmon in Britain. The total output in 1993, over 48 000 tonnes, far exceeded the declared catch of about 550 tonnes of wild salmon taken in the same year by anglers and commercial netmen combined. As a result of the hugely increased quantity now available to the market, salmon now command a much reduced price as a food source and are no longer regarded as a luxury commodity. Salmon taken illegally are usually sold at a price below the normal market value. Poachers often incur little expense in taking fish illegally but nevertheless the decline in today's price of salmon, in real terms, has undoubtedly made salmon poaching less remunerative than in the past.

Typically, illegal fishing now appears to be the province of a comparatively small number of persistent offenders, and then generally only taking place when salmon are relatively abundant.

Despite this apparent reduction in illegal activity, poaching can remain a serious threat to certain vulnerable salmon stocks or stock components and it remains necessary for enforcement agencies, especially DSFBs in Scotland, to devote a very substantial proportion of their physical and financial resources to the protection of salmon stocks from poaching. It is a matter of considerable concern that the NRA, the principal enforcement agency in England & Wales, has responded to a reduction in fisheries grant-in-aid (government funding) by reducing bailiff staff.

On the whole, the poaching of salmon appears generally to be undertaken by persistent offenders who also engage in other criminal activities, often of a more serious nature, and frequently associated with drugs or alcohol abuse. These poachers readily resort to violence when confronted by bailiffs and this reaction requires the enforcement agencies to provide more equipment and training than, say, 20 years ago; and may place upon some of these enforcement agencies, for example the DSFBs, demands that their resources cannot meet.

The NRA is able to prosecute suspected poachers independently of other agencies and is generally capable of applying legislation without having to rely upon the support and co-operation of other authorities. In Scotland, however, DSFBs rely entirely upon Procurators Fiscal, and often also on the police, if convictions for poaching are to be obtained; here effective co-operation between the enforcement agencies, which may not always be forthcoming, is essential. Understandably, very considerable frustration is felt by DSFB bailiffs when a suspected poacher escapes conviction through lack of co-operation, knowledge or determination on the part of others upon whom the achievement of a conviction for poaching depends.

In one significant area, in relation to the illegal netting for salmon in the guise of fishing for sea fish in England & Wales, the NRA has to work in co-operation with the SFCs. The 1986 Act provided for the first time the opportunity, by means of powers to make byelaws, to prevent the taking of salmon both accidentally and deliberately during sea fishing.

Prior to the passing of the 1986 Act there was widespread and flagrant illegal fishing for salmon and sea trout under the guise of fishing for sea fish, often in waters where there were few sea fish worth fishing for. In some areas these new byelaw-making powers have been a major advance in salmon conservation. In Devon and Cornwall, for instance, following thorough surveys to provide evidence, the estuaries of the rivers Tamar, Camel and Fowey have been effectively closed to sea fishing other than by rod and line. Similar restrictions now apply to many estuaries in Wales, most notably those of the Severn and Dee. In some instances the process has been helped by the historic circumstance of the NRA also happening to be the SFC *de facto*, but in others there has been effective co-operation between the NRA regional offices and the local SFCs.

The decline of illegal salmon netting in the Severn estuary offers a striking example of the effectiveness of the new measures. In 1987, trammel netmen working out of Newport were conservatively estimated to have illegally taken between 4000 and 8000 salmon: one Newport fishmonger stated (off the record) that he had handled over 10000 salmon in a season for which there was a declared legal catch of less than 2000. Enhanced, but quite unsustainable, enforcement effort gradually reduced activity to a 'hard core' of poachers while evidence to support byelaws was collected. The introduction of these byelaws in 1992 effectively closed this major illegal fishery in a manner that had not been possible before the passing of the 1986 Act. We are aware of similar examples in England & Wales.

In certain other areas, however, the situation is less than satisfactory. There is evidence that there are still considerable by-catches of salmon and sea trout taken by static (anchored) gill and trammel nets around the coast and, in the north-east of England, by drift nets ostensibly being used for mackerel. In theory at least, these problems could be eased by determined, close co-operation between the NRA and the various sea fisheries interests but we have been made aware that such an approach is neither universal nor seemingly in prospect where it is presently lacking. Indeed, we are conscious that SFCs still resent the introduction of sections 33 and 37 of the 1986 Act and believe that 'salmon interests' should not be allowed (as they see it) further to inhibit sea fishing activities. We were concerned that we did not

elicit a full response from the Association of SFCs and some of their members to questions put to them on this subject. There remains, therefore, a situation in which, given goodwill, legislation can effectively be brought to bear to resolve a problem but, where relationships are strained, the old difficulties fester to the extent that even cross-warranting of enforcement staff cannot be agreed.

The prevention of poaching in the vicinity of the border between England and Scotland is of particular concern in the Solway Firth. Here the lack of definition of the border gives rise to uncertainty as to the extent of the jurisdiction of enforcement agencies, including matters extending far beyond the implementation of salmon fisheries legislation. Although these difficulties may be resolved as a result of a general review of cross-border legislation, in respect of salmon fisheries the basis of any solution of the territorial problems of the Solway fishery must fall within one of two major options: to define the border, or to remove the significance of it.

Define the border. There is currently no agreed position on the whereabouts of either the national boundary or the fishery boundary within the Solway. Whilst different definitions can be argued on their various merits it must be clearly stated that *any* definition with legal standing would be better than the ambiguity which currently impedes satisfactory enforcement activities. In fixing a border, there is no absolute requirement for the national boundary to coincide with the fishery boundary; however, upstream of Annan, salmon fishing is probably of greater economic importance than general navigation (one of the other factors which may determine the fixing of national borders in estuaries and bays). If a boundary was fixed this could be done either by reference to channel characteristics, e.g. the centre of the low water channel, or by means of some fixed reference points such as anchored buoys. However the boundary is defined, there would still remain the problem of the powers of enforcement officers which are only applicable in the area of their issuing jurisdiction. Real problems ensue when trying to investigate offences occurring in one place when the offender has removed himself to another. This is particularly relevant in respect of fishing boats operating out of Annan harbour which are licensed to fish English waters.

Remove the significance of the border. This would require the creation of new legislation which would harmonise the fishing rules and regulations throughout the Solway (as has been done for the Tweed). Private and public rights of fishing could still be maintained but it would be necessary to define their seaward limits (another border?). Illegal fishing, i.e. that falling outside permitted or licensed systems, would be an equal offence throughout the area. Officers' powers would be effective throughout and offences detected anywhere could be tried in either jurisdiction. A common management body would need to be established to administer the system. Such a step would require careful handling of the related political and financial arguments. A special working party or Commission would be required to develop the idea and should take account of the work of earlier Commissions and studies.

Either of these options would be preferable to allowing the *status quo* to prevail. The establishment of a Solway Commission and adoption of a common management system for the entire Solway area would seem to offer the more comprehensive solution.

10. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

10.1 EFFECTIVENESS OF MEASURES IN THE 1986 ACT

- 10.1.1** The 1986 Act introduced measures which have been greatly welcomed by all agencies responsible for enforcement of salmon fisheries legislation and these measures have on the whole proved to be very effective.
- 10.1.2** Generally, salmon poaching is not as prevalent as at times in the past but it is not possible to assess the extent to which recent improvement has been due to the effectiveness of the anti-poaching measures contained in the 1986 Act or, instead, to the fact that salmon may be less abundant and poaching is not as lucrative as it has been previously.
- 10.1.3** Salmon poaching, however, remains a serious problem in some areas and may significantly threaten the survival of some salmon stocks or stock components. The majority of salmon poachers appear to be persistent offenders and any relaxation in intensity of anti-poaching activity on the part of the enforcement agencies may be expected to lead to an increase in illegal activity and, in time, to damage to salmon stocks and fisheries. The cost of employment of bailiffs required to protect salmon from illegal fishing represents a very significant part of the expenditure of the NRA and the Scottish DSFBs. Any saving of expenditure that might be achieved through reduction in the number of bailiffs could be expected to give rise to a significant increase in salmon poaching which might, once again, pose a serious threat to salmon stocks.
- 10.1.4** Sections 22, 32, 33 and 37 of the 1986 Act appear to have been particularly effective but it should be noted that a system for licensing of salmon dealers, provided for at sections 20 and 31, has not been implemented.
- 10.1.5** It is apparent that effective enforcement of anti-poaching legislation often depends upon co-operation between two or more agencies working together; such co-operation is often but not always found. In Scotland considerable frustration is caused, not as a result of deficiency in the anti-poaching measures available, but rather as a consequence of the system of general administration of criminal legislation whereby all prosecutions are taken by Procurators Fiscal. Cases are often dropped or charges reduced following plea bargaining. We conclude that this is in part due to the complexity of the legislation and the many inter-related Acts.
- 10.1.6** Both north and south of the border, the maximum penalties are considered satisfactory. Less so, however, is the fact that penalties actually imposed are variable and often insignificant. Greater use of the powers of forfeiture of vehicles, boats or other equipment used by poachers would be a particularly effective deterrent. More consistent use by the Courts of the upper range of available penalties and fuller use of the provisions for forfeiture would be appropriate and would be welcomed.

10.1.7 The lack of an authoritatively determined border between England and Scotland in the Solway Firth seriously limits the effectiveness of the measures to prevent poaching in this area.

10.2 RECOMMENDATIONS FOR FURTHER LEGISLATION

10.2.1 There is no immediate need for major new legislation to prevent illegal fishing for salmon. However, we are of the view that there would be advantage in some new measures; they are described at 9–15 below.

10.2.2 The various inter-related and much amended Scottish Salmon Acts of the last 125 years should be consolidated in a single Act for ease of reference and use by staff of the enforcement agencies and by the courts.

10.2.3 The retention of foul-hooked salmon should be an offence in Scotland as it is in England & Wales.

10.2.4 Water bailiffs of the NRA should have powers of arrest in relation to poaching offences in the day time (at present they may only arrest at night).

10.2.5 The maximum period of validity of search warrants granted to NRA water bailiffs should be increased.

10.2.6 NRA water bailiffs should have powers to enforce those byelaws of SFCs that are made for the protection of salmon.

10.2.7 Water bailiffs in the Tweed District should be given powers to enter and remain on land adjacent to water to prevent or detect offences against the Salmon Acts, as water bailiffs elsewhere in Scotland can.

10.2.8 The range of subjects on which the Secretary of State for Scotland may make regulations on salmon fishing should be extended (and we note that the Association of Scottish DSFBs has made a similar recommendation to the Scottish Office).

10.3 RECOMMENDATIONS FOR DEALER LICENSING AND FOR THE SOLWAY FIRTH

10.3.1 Schemes for the licensing of salmon dealers and carcass tagging of salmon should be prepared for further consideration as measures to prevent the marketing of illegally-taken salmon, and a ban on the sale of rod-caught salmon should be considered in that context.

10.3.2 A Solway Commission should be appointed to consider and develop a common system of salmon fisheries regulation for the Solway Firth.

ANNEX A

MEMBERSHIP OF THE SALMON ADVISORY COMMITTEE

Chairman: Professor G M Dunnet*

Mr G H Bielby	Dr L Laird
Mr C G Carnie	Mr I Mitchell
Mr R M Clerk	Mr M Owens
Mr J H Ferguson	Mr D R Paton
Mr D Heselton	Dr D J Solomon

*Professor Dunnet was Chairman of the Salmon Advisory Committee from its inception in 1987 until his death in September 1995. This report was prepared under his chairmanship. The new Chairman is Mr R M Clerk.

PREVIOUS REPORTS BY THE SALMON ADVISORY COMMITTEE

- *Information on the Status of Salmon Stocks* published in September 1988 (Ref. No. PB 2021, price £3).
- *The Effects of Fishing at Low Water Levels* published in March 1990 (Ref. No. PB 0176, price £3).
- *Factors Affecting Natural Smolt Production* published in May 1991 (Ref. No. PB 0535, price £3.95).
- *Assessment of Stocking as a Salmon Management Strategy* published in September 1991 (Ref. No. PB 0641, price £1.50).
- *Factors Affecting Emigrating Smolts and Returning Adults* published in May 1993 (Ref. No. PB 1270, price £4).
- *Run Timing of Salmon* published in June 1994 (Ref. No. PB 1797, price £4.95).

Copies of these reports may be obtained from: MAFF Publications, London, SE99 7TP.

ANNEX B

BACKGROUND PAPER ON THE STATUTORY PROVISIONS RELATING TO SALMON FISHING IN SCOTLAND, AND IN ENGLAND & WALES

R.B. Williamson, SOAEFD
C. M. Newton, NRA, Warrington

March 1990 (*revised May 1995*)

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B1 INTRODUCTION

B1.1 Background

The purpose of this paper is to describe the statutory provisions which regulate fishing for salmon in Great Britain. It covers fishing in inland waters, the territorial sea, the exclusive economic zone (200-mile limit) and fishing by British fishing boats beyond that limit. It does not cover non-fishing provisions such as fish pass regulations, measures designed to prevent trade in illegally taken fish, etc. It should be considered as a descriptive index; it is not a formal interpretation of the statutory measures nor a substitute for reference to them: it should not be quoted as an authority for any particular provision.

Salmon, because of their migratory habits, are valuable and especially vulnerable to over-exploitation. It is therefore not surprising that salmon fisheries have been regulated since the early Middle Ages (and no doubt before that) and were the subject of the earliest fisheries legislation in both Scotland and England & Wales. The ancient provisions covered fishing in rivers and estuaries. More recently these have been augmented to cope with the development of fishing for salmon on the coasts and in the open sea, and to cover modern inventions such as electro-fishing.

The fisheries are now governed by several different statutes and regulations. These reflect the chronological development of the law and administrative convenience at the time of enactment, rather than a rational classification of the subjects. It is therefore not very helpful to describe the legislation statute by statute and, in this paper, the various measures have been grouped by their characteristics rather than by statute. A list of the titles of the Acts and Orders is given at Appendix BI; references in the text and marginal notes are abbreviated to year (e.g. 1975 Act, s.2) or Statutory Instrument Number (e.g. SI 1973/207).

B1.2 Acts, Orders and Byelaws

There are three main classes of statutory provision:

Acts of Parliament, which are made after a full sequence of parliamentary debates and can usually only be revoked or amended by another Act; it may however be provided that parts of an Act can be amended by a subsequent Order;

Orders, which are made by, or on behalf of, Ministers under powers given in an Act; Orders may be subject to approval by Parliament (but without the need for the full sequence of debates an Act requires) or be liable to parliamentary veto, or not be subject to any parliamentary process; and

Byelaws, which are rules made by, for example, water authorities or other statutory bodies; these may or may not be subject to Ministerial approval.

B1.3 Differences: Scotland and England & Wales

The law of salmon fishing in Scotland differs from that in England & Wales and, even where similar measures are imposed in both jurisdictions, it is usually by separate provisions. This reflects some real underlying differences in the development of salmon fishery law but does not mean that compatible policies or similar measures cannot be established. With regard to illegal and legal fishing, the similarity between the jurisdictions is greater than the difference, but often it is the difference that is most noticed.

The main part of this paper is divided into two parts, dealing respectively with Scotland and England & Wales. The arrangement of sub-headings within each part is designed for ease of comparison between them, e.g. paragraph B2.1 for Scotland is directly comparable with B3.1 for England & Wales, B2.2 with B3.2 and so on.

The provisions for local administration of the fisheries are also different; the two arrangements are briefly described in the next paragraph.

B1.4 District Boards and the NRA

Scotland is divided into 101 salmon fishery districts. If the owners of salmon fisheries in a district form an association and elect a committee in the way set out in the Salmon Act 1986, that committee is a District Salmon Fishery Board (DSFB) and has statutory powers to protect and develop salmon fisheries in the district.

In England & Wales, the National Rivers Authority (NRA) was established under the Water Act 1989 and is responsible for the fisheries functions previously exercised by ten Regional Water Authorities (RWAs). The NRA has a regional sub-structure, based on the old RWA areas, but the statutory powers and duties to maintain, improve and develop salmon fisheries now rest with the national body. The NRA will be subsumed by the Environment Agency which will come into being on 1 April 1996.

B1.5 Border rivers

Much of the border between Scotland and England follows the line of rivers. There are statutory provisions to ensure that these rivers are dealt with as a whole. In general, the whole of the Tweed is treated as if it were in Scotland and the whole of the Border Esk as if it were in England. For the River Tweed see paragraph B2.8 and for the River Esk see paragraph B3.8. There is at present no special arrangement for the Solway Firth and some uncertainty about the exact position of the border in the Solway.

B1.6 Definition of salmon

In Scotland, salmon and sea trout are treated the same for almost all legal purposes and in the Scottish Salmon Acts the term 'salmon' includes sea trout. The two

species are defined separately in the English salmon fisheries legislation and in the British sea fisheries legislation, but for most practical purposes both are treated the same. In this document the word 'salmon' should be read as including sea trout unless otherwise indicated.

B1.7 Glossary

An annotated list of names of fishing methods and other items is given at Appendix BI.

B2 SCOTLAND

B2.1 Permission to fish

All salmon fishing rights in Scotland are privately owned, whether in inland waters or on the sea coast (and up to 12 miles offshore). It is an offence to fish for salmon in inland waters or in the sea out to one mile from the shore (Mean Lower Water Spring, MLWS) without the permission of the owner of the right.

1951 Act s.1

B2.2 Licensing of fishermen

There is no provision for licensing salmon fishermen or salmon fishing gear. Salmon fishing rights are private, even in estuaries and on the sea coast. Access to the fisheries is through these marketable rights; fishermen (and others) can buy or lease the exclusive right to fish for salmon at a particular site.

B2.3 Lawful fishing methods

Historically, the basic position was that in inland waters the only lawful methods were net and coble or rod and line but in the sea any method was lawful unless it had been expressly proscribed. The position in inland waters has not changed but, since 1992, the only lawful netting methods in the sea within the three-mile limit are net and coble or bag net, fly net or other stake net. However, some direct prohibitions still have effect in the sea, so the two different areas are considered separately below. In this context, inland waters include the estuaries of rivers. To avoid uncertainty, statutory estuary limits were set for all the main salmon fishing rivers in the 1860s. The whole of the Scottish waters of the Solway Firth, seawards as far as the Mull of Galloway, are effectively treated as inland waters. In any dispute where no statutory limit has been set, a court would have to decide whether a particular site was inland water or part of the sea.

1951 Act s.24

1986 Act s.7

1951 Act s.7B

1986 Act s.9

B2.3.1 Inland waters

The only lawful method of fishing for salmon in inland waters is by rod and line or by net and coble but there is a proviso that any right of fishing for salmon in existence when the 1951 Act was passed may continue to be exercised. This proviso effectively preserves any remaining cruive rights and, for example, the certificated fixed engines of the Solway (for notes on cruives and certificated fixed engines see Appendix BII).

1951 Act s.2

Net and coble is a restricted form of beach seining in which the net is shot and hauled as quickly as practicable so as to surround the fish that are within the ambit of the sweep and draw them to the shore. The net is not allowed to be held stationary to obstruct (except momentarily) the passage of the fish. These various requirements were previously set by judicial decisions but are now incorporated in a statutory definition made by order in 1992. (For fuller description see Appendix BII.)

1957 Act s.2(2A)
SI 1992/1974

Rod and line is defined as meaning single rod and line with such bait or lure as was lawful at the passing of the 1951 Act and is not prohibited under a local Baits and Lures Regulation. The awkwardness is that it assumes knowledge of what was prohibited under the Acts repealed by the 1951 Act; but it is generally well known in Scotland what is allowed and what not (fuller description at Appendix BII). A gaff, tailer or landing net may be used as an auxiliary in fishing by rod-and-line.

1957 Act s.24
1968 Act s.8

1951 Act s.2(3)

These provisions are reinforced by additional measures which provide enhanced penalties if two or more people act together to fish illegally. There is also an illegal possession offence which provides that if a person is found in possession of salmon, or instruments etc. that could be used for taking salmon, and there are reasonable grounds for suspecting that he had committed an illegal fishing offence (or was about to), then he can be convicted and punished as if he had been convicted of the illegal fishing offence.

1951 Act s.3

1951 Act s.7

B2.3.2 The sea

Under a provision inserted into the 1951 Act by the 1986 Act, the allowable methods in the sea within the three-mile limit are rod and line, net and coble, or bag net, fly net or other stake net. The provision also allows the Secretary of State to define what is meant by fishing or taking salmon by net and coble, bag net, fly net or other stake net and he has done so. The definitions are reproduced at Appendix BIIC.

1951 Act s.2(1A)

1951 Act s.2(2A)
SI 1992/1974

Beyond the three-mile limit it is, in theory, lawful to fish for salmon in the sea by any method that is not expressly prohibited. However, the list of prohibited methods is designed to prevent any fishing except by rod and line, net and coble, and bag net, fly net or other stake net. (The prohibited methods are listed at paragraph B2.4.2).

B2.4 Unlawful fishing methods

It is unlawful to fish for salmon with any monofilament net or any net with mesh size of less than 90 mm (stretched mesh) or twine thickness of less than 0.9 mm. Otherwise the arrangements for inland waters are different from those for the sea. The two areas are therefore considered separately below (for description of the boundary between 'inland waters' and the sea, see paragraph B2.3).

SI 1992/1974

B2.4.1 Inland waters

All methods except rod-and-line or net-and-coble (see paragraph B2.3.1) are unlawful unless expressly permitted under provisions made for scientific investigation, fish culture, ranching etc., or covered under the saving provisions in relation to ancient cruive rights and other anachronisms. There are enhanced penalties for fishing with poisons, explosives or electricity. It is also prohibited to fish in a fish pass.

1951 Act s.2
1986 Act s.27, 28
1951 Act s.2
1951 Act s.4, 5
1868 Act s.15(6)

B2.4.2 The sea

Within the three-mile limit all methods except rod and line, net and coble, or bag net, fly net or other stake net are unlawful (see paragraph B2.3.2) unless expressly permitted under provisions made for scientific investigations, fish culture, ranching etc.

1951 Act s.2(1A)
1986 Act s.27, 28

There are long-standing express prohibitions on the use of poisons, explosives and electro-fishing equipment. More recently, British fishing boats have been prohibited from fishing for salmon beyond the 12-mile limit; any fishing boat from fishing for salmon in the sea within the 12-mile limit by drift-net or other gill-net, trawl net, seine net (other than beach seining or fishing from the shore by net-and-coble), troll or long line; and any person from using a gill net to catch salmon within a half a mile of the shore (MLWS). For all practical purposes, the position beyond 12 miles is now governed by European Commission Regulation which prohibits retention of salmon on board any fishing boat.

1952 Act s.4
SI 1973/189
SI 1973/207
SI 1986/59
EC Reg 3094/86
article 6

The prohibition on the use of drift nets etc. is reinforced by an offence of landing salmon caught in contravention of that prohibition and by a ban on the carriage of monofilament gill nets by any British fishing boat within the Scottish six-mile limit.

SI 1972/1966
SI 1986/60

The net effect of all these prohibitions is that all the practically usable methods of salmon fishing in the sea beyond 1300 m of low water mark are prohibited.

B2.5 Juvenile and breeding fish

There is a prohibition on taking or destroying juvenile fish (i.e. fry, smolts etc.) or fishing for or taking gravid fish or kelts (see also paragraph B2.6 below). There is a prohibition on the use of nets with a mesh size of less than 90 mm stretched mesh. The original purpose of the mesh restriction was to ensure that salmon nets do not enmesh or block the passage of parr or smolts; the current regulation still has that effect.

1868 Act s.19
1868 Act s.20
SI 1992/1974

B2.6 Annual close time

The minimum annual close time for salmon fishing is 168 days. The dates are set by byelaw or order and may vary from district to district. Angling is allowed to continue for a few weeks after the commencement of the annual close time and, in some districts, for a short period before it ends: these dates are also set by order or byelaw. The annual close time includes the period during which the salmon spawn.

1986 Act s.6(1)
1986 Act s.6(2)
1986 Act s.6(3)

There are supporting provisions which require that gear be removed from the vicinity of fishing stations at the beginning of the annual close time.

1868 Act s.23

B2.7 Weekly close time

There is a weekly close time of 24 hours (Sunday) for salmon angling and of 60 hours (6.00 pm on Friday to 6.00 am on the following Monday) for all other forms of salmon fishing. This is backed up by regulations directing how the fixed trap nets should be put out of fishing order during the weekly close time.

1951 Act s.13(1)

1951 Act s.13(2)
SI 1988/390
1868 Act s.24
Sch. D
1986 Act s.3

B2.8 BORDER RIVERS

1951 Act s.13(2)
SI 1988/390
1868 Act s.24
Sch. D;
1986 Act s.3

B2.8.1 Tweed

The provisions for the River Tweed are very similar to those in the rest of Scotland but some are provided in the Tweed Fishery Acts 1857–59 rather than in the general Scottish legislation. There are, however, some unique Tweed provisions. The minimum annual close time is 153 days (rather than 168). Net fishing boats have to be numbered. There is a prohibition on the use of cleeks (gaffs) from 15 September through to the end of the rod fishing season. The southern boundary of the Tweed District is at Lindisfarne in England and the statutory ‘estuary’ includes an area of sea five miles seawards from the coast adjacent to the mouth of the river.

1859 Act s.6
1986 Act s.10
1857 Act s.53
1859 Act s.16

B2.8.2 Esk

Only one element of the Scottish salmon fishery legislation applies to the Scottish waters of the Border Esk (which is otherwise covered by the English salmon fisheries legislation, see paragraph B3.8): it is the offence of fishing for salmon without permission which is extended to the Scottish part of the Esk because the English equivalent makes use of the Theft Act 1968 which does not extend to Scotland.

1951 Act s.1,
21(2)

B2.9 Exemptions

It is provided that the Secretary of State and, in specified circumstances, a DSFB, can exempt a person from contravening the various prohibitions described above if the act is for a scientific purpose or for the purpose of protecting, improving or developing stocks of fish or for the purpose of conserving any creature or other living thing. There is, in addition, a provision whereby the Secretary of State may exempt a person from any act or omission relating to fishing for salmon if he is satisfied that consent has been obtained from the proprietor of every affected salmon fishery in the relevant salmon fishery district and from the district board (if there is one). The purpose of this latter exemption is to allow salmon ranching or single-trap

1986 Act s.28

1986 Act s.27

fisheries for salmon, the rational development of which would require contravention of the ordinary salmon fishery legislation. There are also specific exemptions to allow fish farmers, within their fish farms, to possess, buy, sell, etc. salmon in circumstances that would otherwise be unlawful; and in relation to the possession, sale etc. of fish produced by fish farming.

1976 Act s.7
1981 Act s.33(5)

B2.10 Offences

The criminal offences related to the prohibitions are usually stated within the provision but not always and are sometimes in a different Act and may have to be searched for (for example, breach of a regulation made under section 3 of the 1986 Act is an offence under section 15(7) of the 1868 Act).

1986 Act s.3(7)

B2.11 Penalties

The provisions for penalties are scattered through the legislation but many have been grouped in Schedule 2 to the 1976 Act. The maximum fines have been standardised and up-rated under provisions made in the Criminal Justice Act 1991. In most cases any fish or fishing equipment is liable to forfeiture and, in some cases, boats or vehicles also. A table showing the present penalties is at Appendix BII.

1951 Act s.19,
1868 Act s.31
1967 Act s.11(2)

B2.12 Authorised enforcement agencies

Several organisations have powers to enforce the salmon fisheries legislation or parts of it.

B2.12.1 DSFBs (and the River Tweed Commissioners)

These are empowered to appoint water bailiffs with substantial police powers in relation to salmon fishery offences.

1986 Act s.16
1857 Act s.36

B2.12.2 The Secretary of State for Scotland

The Secretary of State for Scotland has the power to appoint persons as water bailiffs with similar powers to the DSFB bailiffs. A limited number of persons are appointed, including the Inspector of Fishmongers Company (see below), particularly in districts for which DSFBs cannot easily be formed.

1951 Act s.10(5)

B2.12.3 The Police

Police Forces have general duties to enforce the law and devote some resources to salmon fisheries enforcement depending on the seriousness of the problem in the area and other demands on their time.

B2.12.4 The Scottish Fisheries Protection Agency (SFPA)

This is part of the Scottish Office Agriculture, Environment and Fisheries Department, which operates a fleet of ships and aircraft which enforces fisheries legislation at sea especially, in relation to salmon, the prohibition on the use of gill nets etc.

B2.12.5 The Royal Navy

The Royal Navy fisheries squadron is sometimes deployed on salmon fishery protection.

B2.12.6 Sea Fisheries Inspectors

These are shore-based officers of the SFPA, based at the principal ports. They have powers of British Sea Fishery Officers and can enforce salmon fishery measures made under the various Sea Fisheries Acts.

B2.12.7 The Fishmongers Company (London)

The Company employs a full-time Salmon Fisheries Inspector in Scotland to help in ensuring compliance with the salmon fisheries law. The Company has no statutory position in Scotland but the Inspector is warranted as a bailiff by the Secretary of State and acts as a roving water bailiff, especially in districts where there is no active district board.

B2.13 Powers to change the law

In inland waters and within the three-mile limit the lawful methods of fishing for salmon are fixed in primary legislation. In the sea beyond the three-mile limit, the various prohibitions are made by order and can be amended by the Secretary of State or, in some cases, by Ministers in Scotland, England & Wales and Northern Ireland acting jointly. The Secretary of State has a power to define the lawful netting methods, net and coble and bag net, fly net or other stake net.

1984 Act s.1, 2
1967 Act s.5, 6
1951 Act s.2(2A)

On application from a DSFB the Secretary of State may make an order prohibiting the use of specified baits or lures for rod and line fishing in the district.

1986 Act s.8

The Secretary of State can make regulations to amend the weekly close time. On application by a DSFB, he may alter the annual close time in the district or change the statutory description of estuary limits of a river. He also has powers to make regulations on the meshes, materials and dimensions of nets; on the construction and use of cruives and on arrangements for the due observance of the weekly close time.

1986 Act s.3(3)
1986 Act s.6
1986 Act s.7
1986 Act s.3

In districts where there is no DSFB constituted, applications for changes to the annual close times and estuary limits may be made by any two proprietors of salmon fishings in the district.

1986 Act s.6, 7

The primary legislation can only be changed by Act of Parliament, except that section 13 of the 1951 Act (weekly close time) can be amended by the Secretary of State by order. The powers of the Secretary of State to make regulations under section 3(2) of the 1986 Act includes a power to amend certain specified sections of the Tweed Fisheries Act 1857-59 and his power to make an annual close time order for the Tweed includes power to amend sections 6, 10 and 11 of the 1859 Act.

1986 Act s.3
1986 Act s.10(6)

All changes in legislation affecting fisheries in the sea have to be notified to the European Commission and may require its approval; and all must be compatible with EU law and in conformity with the common fisheries policy. The Commission itself makes the regulations that apply beyond the 12-mile limit.

B3 ENGLAND & WALES

B3.1 Permission to fish

Private rights of fishing for salmon exist in all non-tidal waters and it is an offence to fish for salmon without the owner's permission.

1968 Act, Sch. 1

A public right of fishing exists in the tidal parts of rivers and the territorial sea, except where the Crown or an individual has acquired a private right pre Magna Carta (1225) or where an enactment restricts the public right.

B3.2 Licensing of fishermen

All fishing for salmon is regulated by a system of licensing. This system is supported by provisions which make it an offence to fish without a licence or to fail to produce a licence on the request of an authorised person.

1975 Act s. 25(1)
1975 Act s.27
1975 Act s.35(3)

Possession of a licence does not give the licence holder a right to fish where a private right of fishing exists without the prior permission of the owner of that fishery.

B3.3 Lawful fishing methods

With the exception of certain prescribed modes of taking or destroying fish which will be described in paragraph B3.4, all other methods of fishing are capable of being conducted lawfully, providing that the restrictions governing the use of that method are adhered to.

1975 Act s.1, 5

In practice all salmon fisheries are heavily regulated by the use of orders and byelaws, with the regulations being more restrictive in inland waters.

B3.3.1 Inland waters

Regional variations exist between authorised methods of fishing and, within regions, rivers can be treated differently. Rod-and-line fishing is a lawful method throughout. Certain fixed engines in use prior to 1865 and so certified and some which were in use during the open season of 1861 still operate, as do some fishing weirs and fishing mill dams in use prior to 1861. (For notes on authorised fixed engines and authorised fishing weirs and fishing mill dams, see Appendix BIIIA.) Another provision controls the use of boxes or cribs in fishing weirs or with dams. Nets licensed by the NRA can be used, but have been severely curtailed by orders and byelaws. A minimum mesh size of 2 inches knot to knot exists unless otherwise specified by byelaw and the practice of placing two or more nets one behind the other to reduce the effective mesh size is prohibited.

1975 Act s.6, 7, 8

1975 Act s.16

1975 Act s.3(4)

B3.3.2 The sea

As with inland waters there are regional variations between these authorised methods and, within regions, there may be different regulations concerning particular zones of the sea.

Rod and line fishing is a lawful method in all tidal waters. Certain fixed engines in use prior to 1865 and so certificated still operate (for notes on certified fixed engines see Appendix BIIIA). Virtually all commercial net fisheries in England & Wales are controlled and limited by order. The types of net which can be used within the terms of these orders include drift nets, seine or draft nets, heave or haaf nets and lave nets. The licensee must be present when the net is used. Seine or draft nets cannot be shot or worked across more than three-fourths of the width of the water.

1975 Act s.6

1975 Act s.26(1)

1986 Act s.36

1975 Act s.3(1)

All nets are subject to the minimum mesh size restriction of 2 inches knot to knot. Byelaw provisions can specify larger or smaller minimum mesh sizes as well as defining the permitted dimensions of the instrument and its manner of use.

Fishing for sea fish within the area of the NRA by means of a fixed engine is only lawful if authorised by byelaw. Within the area of a Local SFC such byelaws are made by the SFC, subject to the consent of the NRA.

1975 Act s.6

1986 Act s.33

1986 Act s.37

B3.4 Unlawful Fishing Methods

B3.4.1 Inland waters

The use of an instrument not licensed by the NRA is unlawful. Certain methods of fishing are prohibited which include firearms, set lines, otter lath or jack, wire or snare, spears and barbed gaffs, snatches and lights. It is also an offence to be in possession of such instruments with intent to use them for taking salmon. It is prohibited to throw or discharge any stone or other missile for the purpose of taking or facilitating the taking of salmon.

1975 Act s.27

1975 Act s.1

Unbarbed gaffs may be used as an auxiliary to angling, but in some regions this practice is prohibited by byelaws for all or part of the fishing season.

1975 Act s.25(4)

The use of prohibited modes of taking fish can be lawful only if done for the purpose of the preservation or development of a private fishery and with the previous permission in writing of the NRA.

1975 Act s.1

The use of poisons, explosives and electrical devices to take or destroy fish is prohibited as is the taking of fish by destroying or damaging dams, flood gates and sluices.

1975 Act s.5(1),
s.5(3)

Fishing near artificial obstructions other than with rod and line is not allowed, and in many instances this provision has been extended by byelaw to include rod and line. Fishing is not permitted in fish passes.

1975 Act s.17(1)

1975 Act s.12(3)

B3.4.2 The sea

All the prohibited methods described in paragraph B3.4.1 apply equally to the sea. Only instruments licensed by the NRA can lawfully be used to take salmon.

1975 Act s.27

Beyond six miles of baselines the NRA has no jurisdiction, but there is no lawful fishing for salmon.

From 6–12 miles all fishing for salmon is prohibited. EU regulations operate to effectively prohibit fishing by prohibiting the retention of salmon on board, this applies beyond 12 miles. Beyond 12 miles fishing is also covered by an order which prohibits British boats from fishing in specified north-east Atlantic waters.

SI 1973/188
SI 1973/207
EC Reg 3094/86,
article 6
SI 1973/189

This legislation is backed up by restrictions on the landing of salmon caught in north-east Atlantic waters beyond 12 miles and within the 12-mile limit off England & Wales unless caught within six miles under NRA licence.

SI 1972/1966
SI 1975/639
SI 1983/58

Within the areas of SFCs, which can extend to six miles, it is within the power of the SFCs to make byelaws for the purposes of protecting salmon and preventing any interference with their migration. Such byelaws require the consent of the NRA. This provision, when utilised, allows the restriction and prohibition of instruments which are being used to take sea fish, but which nevertheless are interfering with the migration of salmon.

1966 Act s.5
1986 Act s.37

B3.5 Juvenile and breeding fish

There is a prohibition on taking immature fish (which is defined as a fish below the takeable size specified by Act or byelaw – 12 inches for salmon) and a similar prohibition on taking fish which are unclean (i.e. fish which are about to spawn or have just spawned). These offences are backed up by provisions which prohibit the possession or trade in eggs, immature or unclean fish.

1975 Act s.2(2)

1975 Act s.2(1),
s.2(2)

There is a prohibition on the use of nets with a mesh size of less than 2 inches knot to knot, unless otherwise specified by byelaw. This is to ensure that salmon nets do not enmesh or block the passage of immature fish. Downstream migrations of smolts and kelts are protected by a provision which prohibits, before 25 June in any year, the hanging, fixing or use of any baskets, nets, traps or devices for catching eels or any device whatsoever to catch or obstruct any fish descending the river.

1975 Act s.21(1)

B3.6 Annual close time

Regions of the NRA have a duty to make byelaws fixing the annual close season for fishing by any method for salmon and trout and all have done so. Minimum close seasons are specified which can be extended by byelaw. Close seasons for rod and line are shorter than those for other methods.

1975 Act Sch. 1

During the close seasons, which include the period during which salmon and trout spawn, it is an offence to take or kill fish.

1975 Act s.20(1)
1975 Act s.22(1)

There are supporting provisions which require that fixed engines be removed or rendered incapable of taking salmon or trout or obstructing their passage at the commencement of the annual close season. Subject to certain exceptions, it becomes an offence during the annual statutory close season to buy, sell or have in possession for sale any salmon or trout, or to export or enter for export any unclean salmon caught during this period.

1975 Act s.23

B3.7 Weekly close time

Regions of the NRA have a duty to make byelaws fixing the weekly close time for fishing by any method for salmon and trout. The minimum weekly close time is 42 hours and unless varied by byelaw is the period between 6am on Saturday and 6am on the following Monday. It is an offence to fish for salmon other than with rod and line or putts and putchers during the weekly close time. It is an offence to fish for migratory trout other than with rod and line during the weekly close time. This is backed up by regulations which require fixed engines to be put out of fishing during the weekly close time.

1975 Act s.19(2)

1975 Act s.19(4)

1975 Act s20(1)

B3.8 BORDER RIVERS

B3.8.1 Tweed

The whole of the River Tweed, including the adjacent coast as far south as Lindisfarne, is treated as if it were in Scotland. (see paragraph B2.11.1)

B3.8.2 Esk

All the legislation described above applies to the whole of the River Esk as if it were entirely in England. In addition, the Scottish provision of fishing for salmon without permission is extended to the Scottish part of the Esk because the Theft Act 1968 does not apply in Scotland.

1975 Act s.39(1)

1951 Act s.1 & 21(2)

1975 Act s.19

There is a provision which prevents the minimum mesh size for nets specified on the English side of the Solway being greater than that which applies in the Solway within Scotland.

1975 Act s. 39(2)

B3.9 Exemptions

It is provided that the NRA, and in some cases the Minister, can exempt a person from contravening the various prohibitions listed above if the act is for a scientific purpose or for the purpose of protecting, improving or developing fish stocks. There are specific exemptions for the taking of salmon and the use of instruments within fish farms.

1975 Act s.1(2), 2(5), 5(2), 19(3), 22(3)

1981 Act s.33

B3.10 Offences

The criminal offences related to the prohibitions are stated within each provision.

B3.11 Penalties

The provision for penalties are largely contained in Schedule 4 of the 1975 Act, read together with the amendments contained in the 1986 Act. A table showing the relevant penalties is at Appendix BIII. 1975 Act Sch. 4
1986 Act s.35

Rod and line offences are dealt with summarily and subject to Level 4 fines on the standard scale (£2500).

Other offences are triable either way and the penalties differ with the mode of trial elected. Offences heard on indictment carry a penalty of up to two years' imprisonment or a fine or both. Offences heard summarily are usually subject to a maximum fine of £2000. However, the Salmon Act 1986 provides the alternative penalty of three months imprisonment for offences which concern the use of prohibited instruments and unlicensed instruments (other than rod and line). 1986 Act s.35

Fish, instruments, bait or other things (including vehicles and vessels) used in the commission of the offence may be forfeited by Order of the Court.

If a person is convicted of an offence against the 1975 Act, a court may order the forfeiture of any fishing licence held by him and may disqualify him from holding and obtaining a fishing licence for up to five years. 1989 Act Sch. 17,
para. 7(15)

B3.12 Enforcement agencies

The prime agency concerned with the enforcement of salmon fisheries legislation is the NRA. The NRA can appoint Water Bailiffs who have the powers to investigate and secure evidence and to apprehend offenders. Persons appointed by the Minister have similar powers. Both these categories of persons are deemed to be Constables for the purposes of enforcing the 1975 Act. 1975 Act s.31
1975 Act s.36

The Police Forces and Police Constables can be involved in the enforcement of the legislation. Owners or lessees of fisheries can take action against persons fishing in their waters without permission. 1968 Act Sch. 1

Fisheries Officers under the 1966 Act could be involved in enforcing byelaws made to protect salmon as facilitated by section 37 of the 1986 Act. 1986 Act s.37

Sea Fisheries Inspectors who are shore-based officers of the Ministry of Agriculture, Fisheries and Food have the powers of British Sea Fishery Officers and can enforce salmon fishery measures made under the various Sea Fisheries Acts.

The Fishmongers Company has powers relating to sales during the annual close season within the City of London.

B3.13 Powers to change the law

Significant variation from primary legislation is possible by the use of byelaws which can be made by the NRA for those purposes given in the 1975 Act. Compensation may be payable. 1991 Act Sch. 25,
6-7

Byelaws can be made under sea fisheries legislation for the purposes of protecting salmon and preventing any interference with their migration. 1966 Act s.5

By way of an Order confirmed by the Minister, the NRA may limit the number of fishing licences (other than rod and line) in any area for a period not exceeding 10 years. The Order may also provide for the selection of applicants. 1975 Act s.26

On request by the NRA, the Minister may by statutory instrument make an Order modifying the 1975 Act, section 156 of the 1991 Act or any provision of a local Act relating to fishing in the relevant area; and with effect from September 1995, section 42 or paragraph 6 or 7 of Schedule 25 of the 1991 Act. 1975 Act s.28 & Sch. 3

The Minister has the power to define the limits of the Solway Firth in those cases where a provision of the 1975 Act or any byelaw prescribes a minimum size of mesh of net which is greater than that which can lawfully be used in the Solway Firth within Scotland. 1975 Act s.39(3)

The NRA may alter the duty payable for fishing licences subject to Ministerial approval and the right of public objection. 1975 Act Sch. 2

The Authority may issue temporary licences to use an instrument for fishing in specified circumstances for a period not exceeding 14 days. 1975 Act Sch 2

All changes in legislation affecting fisheries in the sea have to be notified to the European Commission and may require its approval; and all must be compatible with EU law and in conformity with the common fisheries policy. The Commission itself makes the regulations that apply beyond the 12-mile limit.

APPENDIX BI: General

A. Chronological list of Acts and Orders

Primary legislation

Solway Act 1804
Tweed Fisheries Act 1857
Tweed Fisheries Amendment Act 1859
Salmon Fisheries (Scotland) Act 1862
Salmon Fisheries (Scotland) Act 1868
Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951
Sea Fisheries Regulation Act 1966
Sea Fish (Conservation) Act 1967
Theft Act 1968
Salmon and Freshwater Fisheries Act 1975
Freshwater and Salmon Fisheries (Scotland) Act 1976
Fisheries Act 1981
Inshore Fishing (Scotland) Act 1984
Salmon Act 1986
Water Act 1989
Water Resources Act 1991

EC legislation

EEC Reg. 3094/86 Council Regulations laying down certain technical measures for the conservation of fishery resources

Subordinate legislation

SI 1972/1966 Salmon and Migratory Trout (Restriction on Landing) Order 1972
SI 1973/188 Salmon and Migratory Trout (Prohibition of Fishing) Order 1972
SI 1973/189 Salmon and Migratory Trout (North-East Atlantic Order) 1973
SI 1973/207 Salmon and Migratory Trout (Prohibition of Fishing) (No. 2) Order 1972
SI 1973/210 Salmon and Migratory Trout (Enforcement) Order 1973
SI 1975/639 Salmon and Migratory Trout (Restriction on Landing) Amendment Order 1975
SI 1975/844 Salmon and Migratory Trout (Prohibition of Fishing) Amendment Order 1975
SI 1983/58 Salmon and Migratory Trout (Restriction on Landing) (Variation) Order 1983
SI 1983/59 Salmon and Migratory Trout (Prohibition of Fishing) (Variation) Order 1983
SI 1983/60 Salmon and Migratory Trout (Prohibition of Fishing) (Variation No. 2) Order 1983
SI 1986/59 Inshore Fishing (Salmon and Migratory Trout) (Prohibition of Gill Nets) (Scotland) Order 1986
SI 1986/60 Inshore Fishing (Prohibition of Carriage of Monofilament Gill Nets) Order 1986
SI 1986/2090 Sea Fishing (Enforcement of Community Conservation Measures) Order 1986

- SI 1988/390 Salmon (Weekly Close Time) (Scotland) Regulations 1988
 SI 1992/1974 Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992, as amended by SI 1993/257 and SI 1994/III

B. Glossary of fishing terms

Brief explanations of some technical words used in the text.

bag net	a fixed, floating fish trap used for salmon in Scotland; consists of a curtain of netting, the 'leader', which leads salmon towards a trap or 'pocket' at its seaward end
beach seine	a net set from, and drawn to, the shore in such a way as to encircle and capture fish
cleek	a gaff (q.v.); also part of a bag net (q.v.)
close time	a period when fishing is not allowed
cruives	see Appendix BIIA
drift net	a form of gill net (q.v.) released from, or attached to, a boat and allowed to drift with wind and tide
electro-fishing	use of an electric current to attract and/or stun fish
fixed engine	any fixed net or other fixed device for catching fish, and, in England & Wales, any unattended net
fly net	a fixed salmon trap set on stakes on a beach
foul-hooking	hooking a fish other than in the mouth
gaff	a large hook fixed to the end of a handle, used for landing large fish; it is lawful to use a barbless gaff as an ancillary in rod-and-line fishing
gill net	a net designed to enmesh fish
gravid	ready, or very nearly ready, to spawn
haaf net	a framed bag-shaped net – used in estuaries and held against the tide until a salmon enters it, then lifted to catch the fish
inland waters	for Scotland, see paragraph B2.3; for England & Wales, includes bays, creeks and arms of the sea
monofilament net	a net whose meshes are made from continuous single filament fibre (as opposed to twine or yarn)
net and coble	see Appendix BIIC

otter, lath or jack	a board, stick, small boat or other instrument used to run a line out from the bank or shore
putchers	trumpet-shaped traps, made of willow or hazel, usually set in double lines
putts	a four-part conical basket-work filter trap, laid in large sets; used in the Usk
poke net	as used on the Solway, a form of fixed entangling net which operates on the same principle as a trammel net
set line	a fishing line, with hooks or lures, left unattended in the water
snatch	a device used for foul-hooking fish
stake net	a fixed salmon net set on stakes on the beach
territorial waters	the waters of the sea within the 12-mile limit
whammel net	a term used in the Solway and north-west England for a sort of drift net
yair	an ancient sort of fixed engine, now used only in the estuary of the Solway Dee

APPENDIX BII: RELATING TO SCOTLAND:

A. Cruives

A cruive is an ancient form of fish trap, operated in rivers and estuaries, consisting of an enclosure of stakes or wicker-work and sometimes set in a rubble dyke. As developed for salmon fishing they consist of a more-or-less rectangular box trap, with inscales, set in a stone dyke across a river. The use of cruives in estuaries has been firmly prohibited since the 14th century.

Cruives can only be operated under special grant from the Crown and no new grants have been made for many years. Several cruive fishing rights still exist but none is operated as such. It is illegal to use a dam or other artificial obstruction in net and coble fishing (see Appendix BIIC) but net-and-coble may be used in a pool downstream of cruives; the presence of the cruive dyke contributing to the productivity of the net fishery. Several cruives were used for that purpose before falling into complete disuse.

There have been many law suits over the use of cruives and regulations were eventually made in 1865 with respect to their construction and use (see 1868 Act Schedule F). Cruives are now so scarce and dilapidated that it has been suggested that they, rather than the salmon, are in need of conservation.

B. Fixed engines in the Solway

During the wars and border disputes between England and Scotland in the 15th and 16th centuries, the Scottish conservation legislation, which prohibited fixed fishing nets in estuaries, was disappplied to the Solway and its rivers. It was not until the 1870s that attempts were made to regulate the proliferation of stake nets etc. that resulted. Commissioners were appointed in 1877 to certify as privileged all 'fixed engines' which they considered had been lawfully used in certain qualifying years. All others were to be cast down and the sort and siting of fixed nets in the Scottish Solway thus permanently limited.

The Commissioner issued certificates in respect of certain stake nets, poke nets and bag nets; and these are all recorded and recognised. They did not issue any certificates in relation to whammel nets (a sort of drift net); and, since 1962, use of these nets has been held to be unlawful in the Scottish waters of the Solway. Neither did they issue any certificates for haaf nets (framed, bag-shaped nets held against the tide and lifted when a salmon enters them); these nets are still used in the Solway, including the Scottish waters, but there is some doubt about their lawfulness in the Scottish part.

C. Definitions of fishing methods

Rod and line

The term rod and line is used in the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 and is defined in that Act as follows:

'rod and line' means single rod and line with such bait or lure as is lawful at the passing of this Act and, in the case of fishing for salmon in an area to which and at a time during which regulations made under section 8 of the Salmon Act 1986 apply, is not specified in such regulations in respect of that area and time.

The Act also provides that nothing in it renders legal any method of fishing that was or would have been illegal at the date of its commencement (section 24(2)). Various lures and methods of using a rod and line were

expressly prohibited by statutes that were in force when the 1951 Act was passed and the terms of section 24 ensured that these prohibitions still exist even though the explicit prohibiting provisions were themselves repealed by the 1951 Act. The awkwardness is that to know the full meaning of rod and line, it is necessary to know not just the 1951 Act but also the terms of the statutes which were repealed by it. The various prohibited methods include:

- use of any fish roe as a lure (formerly proscribed by section 18 of the Salmon Fisheries (Scotland) Act 1868);
- double-rod or cross-line fishing, use of set-lines (even if the line is attached to a rod), use of an otter or striking the fish with a hook (section 1 of the Trout (Scotland) Act 1860);
- striking salmon with a hook (sniggering or dragging) (section 17 of the 1868 Act);

One test often applied with regard to the use of lures is that the lure must be taken by the fish rather than vice versa; but passing that test is not enough, on its own, to indicate that the method is lawful. It will be noted that the definition in the 1951 Act refers to regulations that might be made under section 8 of the Salmon Act 1986. That section provides that the Secretary of State may, on application from a DSFB, specify baits or lures that may not be used for salmon fishing in the district.

Net and coble

Before 1951 there was a succession of Acts which, among other things, prohibited the use of various more or less passive methods of fishing for salmon in inland waters. The 1951 Act replaced these provisions with one which made it an offence to fish for salmon except by net and coble or rod and line. The Act also provided that this change would not make lawful any method of fishing that was illegal at the time the Act came into force. Thus the old provisions about unlawful nets, and the judicial decisions based on them, were carried forward by the 1951 Act in the simple phrase: net and coble. The term was not defined in the 1951 Act, but it did not just bear its ordinary meaning. It was, in effect, a shorthand description for the method which the courts had found to be lawful in inland waters in Scotland and which was called by them 'fair net and coble'.

The principles of what constituted fair net and coble were set out in the famous Bermoney Boat case (*Hay v. Magistrates of Perth* 1863). In the decision on that case it was said: that it is illegal to fish for salmon with any net which is at all fixed or permanent even for a time; that the net is to be used by hand, and is not to quit the hand, but is to be kept in motion during the operation of the fishing; that the operation, in order to be effectual, must of necessity be as rapid as possible; and that the net should take a grasp of a portion of the river during such time only as is required for the boat to row round [with] the net. In a later case (*Atholl v. Glover Inc.* 1899), the dictum that the net must not leave the hand was interpreted as meaning 'the net must be under the effectual command and control of the fisherman and be kept in motion by him for the purpose of enclosing the fish within the sweep'. In a further case (*Oswald v. McCall* 1919) it was held that the practice of using a net to obstruct the whole width of the river for any length of time (even if the net was kept in motion) or of using it to drive fish to a different part of the river before completing the sweep, was not fair net and coble and was therefore unlawful.

However, under the Salmon Act 1986, the Secretary of State was given a power to make a statutory definition of net and coble and he has done that: (The Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992. The definition closely follows the judicial one described above and is as follows:

'Fishing for or taking salmon by net and coble means the use of a sweep net, paid out from a boat, and worked from the bank or shore or from waters adjacent to the bank or shore, whereby the salmon are surrounded by the net and drawn to the bank or shore, provided that:

- (i) the net and any warps are not made or held stationary, nor allowed to remain stationary, nor allowed to drift with the current or tide but are both paid out and hauled in as quickly as practicable and kept in unchecked motion by and under the effectual command and control of the fisherman for the purpose of enclosing the salmon within the sweep of the net and drawing them to the bank or shore;
- (ii) no stakes, dykes, other obstructive devices or other nets are used in association with the net;
- (iii) the water is not disturbed by throwing of stones or other objects, or splashing or other activity in order to drive the salmon into the area to be swept by the net;
- (iv) the net shall not come within 50 metres of any other such net already being paid out or hauled until the last mentioned net has been fully hauled into the bank or shore; and
- (v) the net is not designed or constructed for the purpose of catching fish by enmeshing them.'

Bag net, fly net or other stake net

The Salmon Act 1986 also provided that the Secretary of State could make regulations defining the meaning of 'bag net, fly net or other stake net'. This was because the Act provided, for the first time, that bag net, fly net and stake net would be one of two lawful classes of net allowed in salmon fishing in the sea adjacent to the Scottish coast. The definition reads as follows:

'fishing for or taking salmon by bag net, fly net or other stake net means the use of a fish trap (including the use of a landing net to remove salmon from such a trap) consisting of one or more fish courts and associated inscales and wings, together with a leader net designed to lead the salmon into the trap; the whole of which is fixed or moored to the shore or seabed; provided that:

- (i) no part of the bag net, fly net or other stake net except mooring warps and anchors shall extend seawards beyond 1300 metres from the mean low water mark; and
- (ii) no part of the net or trap is designed or constructed for the purpose of catching fish by enmeshing them.'

D. Maximum penalties for salmon fishing offences in Scotland

All offences may be tried summarily: if taken on indictment, there are higher maximum penalties for those offences that are marked with an asterisk (unlimited fine and/or two years in prison).

Brief description of the offence	Act and section	Penalty (Index level given in brackets)	Fish and equipment etc. liable to forfeiture
Fishing without permission	1951 Act s.1	£1000 (3)	Yes
Fishing in inland waters by illegal method	1951 Act s.2	£2500 (4)	Yes
Fishing in the sea within three miles of MLWS other than by prescribed method	1951 Act s.2(1A)	£2500 (4)	Yes
Use of explosives, poisons or electrical devices	1951 Act s.4	£5000 or 3 months	Yes
Illegal fishing by two or more persons acting together	1951 Act s.3	£5000 or 3 months	Yes
Using net of illegal mesh size	SI 1992/1974	£400 (3)	Yes
Using a net with illegal hanging ratio or meshes of illegal twine size	SI 1992/1974 (as amended)	£1000 (4)	Yes
Use of gill nets, trawls etc. from a boat in the sea within 12-mile limit	1967 Act s.5 SI 1973/207	£50 000	Yes (but not boats or vehicles)
Fishing between 12- and 200-mile limits	EC Reg. 3094/86	£5000	Yes (but not boats or vehicles)

continued

Brief description of the offence	Act and section	Penalty (Index level given in brackets)	Fish and equipment etc. liable to forfeiture
Using nets made with monofilament fibre	SI 1992/1974	£2500 (4)	Yes
Carriage of monofilament gill nets on fishing boats within the six-mile limit	1984 Act s.2 SI 1986/60	£5000	Yes (but not boats or vehicles)
Use of gill nets in the sea within half mile of MLWS	1984 Act s. 1 SI 1986/59	£5000	Yes (but not boats or vehicles)
Fishing in annual close time other than by rod-and-line	1866 Act s.15(1)	£2500 (4)	Yes
Fishing in annual close time by rod-and-line contrary to byelaw	1868 Act s.15(3)	£1000 (3)	Yes
Fishing during the weekly close time	1951 Act s.13	£2500 (4)	Yes
Failing to observe the weekly close time arrangements for fixed nets	1868 Act s.24	£2500 (4)	Nets only
Fishing in a fish pass	1868 Act s.15(6)	£2500 (4)	Yes
Taking juvenile fish, smolts etc.	1868 Act s. 19	£1000 (3)	Yes (but not boats or vehicles)
Taking unclean or unseasonable fish	1868 Act s.20	£1000 (3)	Fish only

APPENDIX BIII: RELATING TO ENGLAND & WALES

A. Fixed engines, fishing weirs and dams

‘T’ nets and ‘J’ nets

These fixed engines are stationary nets set from the shore of the north-east coast of England. They are intercepting nets which deflect fish to their seaward end to the head of the net where they are either gilled or trapped. The status of these nets as fixed engines has been disputed due to their tendency to move with the current or swell of the tide as their anchors shift. They were made legal as stationary nets by Orders made by the former Yorkshire and Northumbrian Water Authorities, and their use is now authorised by byelaw.

Privileged and historic fixed engines and fishing weirs and dams

These ancient forms of fishing are only perpetuated today where they are protected by the provisions of the 1975 Act which relate to their historic usage. In the case of fixed engines, this means:

- a fixed engine certified in pursuance of the Salmon Fishery Act 1865 to be a privileged fixed engine; or
- a fixed engine which was in use for taking salmon or migratory trout during the open season of 1861, in pursuance of an ancient right or mode of fishing as lawfully exercised during that open season, by virtue of any grant or charter or immemorial usage.

A fishing weir or a fishing mill dam is unauthorised if it was not lawfully in use on 6 August 1861 by virtue of grant or charter or immemorial usage.

‘Fishing mill dam’ means a dam used or intended to be used partly for the purpose of taking or facilitating the taking of fish, and partly for the purpose of supplying water for milling or other purposes.

‘Fishing weir’ means any erection, structure or obstruction fixed to the soil either temporarily or permanently, across or partly across a river or branch of a river, and used for the exclusive purpose of taking or facilitating the taking of fish.

‘Fixed engine’ includes:

- a stake net, bag net, putt or putcher;
- any fixed implement or engine for taking or facilitating the taking of fish;
- any net secured by anchors and any net or other implement for taking fish fixed to the soil, or made stationary in any other way; and
- any net placed or suspended in any inland or tidal waters unattended by the owner or a person duly authorised by the owner to use it for taking salmon or trout, and any engine, device, machine or contrivance, whether floating or otherwise, for placing or suspending such a net or maintaining it in working order or making it stationary.

There are no fishing weirs or fishing mill dams in operation within the area of the NRA. The fishing mill dam on the River Derwent at Salmon Hall Weir was operated until recently, the lease is now held by the NRA who do not operate it.

Several forms of fixed engines continue to operate either by certificate of privilege or by virtue of immemorial usage prior to 1861. These are listed below.

River Lyn fixed engine. An L-shaped structure constructed in the estuary consisting of a fence made out of woven brushwood which strands fish on the ebb tide.

Ravenglass garth. A woven fence set in the estuary of the River Esk, Cumbria which strands fish on the ebb tide.

Basket trap, Conwy. This is a metal basket similar to a putcher (but smaller) set between two boulders.

River Eden coops. A series of sandstone buttresses spanning half the River Eden in Cumbria, the gaps between the stone pillars contain box-like traps or coops made of wood. These trap fish by means of a downstream inscale and an upstream grating.

Putchers. Putchers were described by the Commissioners of 1861 as:

‘...baskets of wickerwork, erected upon stages. The stake or framework is about 13 or 14 feet high, firmly fixed on the shore, in two parallel rows of various lengths from high-water mark seaward. These are bound together by cross barons, on which rest the . . . putchers, placed one above the other with the side mouth up or downstream, as they are intended to take fish on the ebb or flow of the tide. The putchers themselves are long conical baskets, with a mouth from 3 to 5 feet wide, and end in a narrow point that will prevent a fish of moderate size passing through. They are set upon the stake stages one above the other, some stages having as many as three, four or even five hundred several putchers. Some fishermen possess above one thousand putchers.’

Some putchers are now made from plastic-covered steel wire, but otherwise have changed little over the years. Most putcher ‘ranks’ are set to fish the ebb tide. Putts are similar to putchers, but larger and more complex in design. Ranks of up to 800 putchers still operate in the Estuary of the Rivers Severn and Parrett.

B. Summary of methods licensed by the NRA

All the certificated and privileged instruments listed in Appendix BIIIA are required to be licensed before they can be worked. There is a further category of instruments which are those which can be used by any person who purchases the appropriate licence. This unrestricted usage applies only to fishing by rod and line and the East Anglian coastal net fishery for migratory trout. Elsewhere, the number of instruments which can be licensed is limited by Order or the instrument may be prohibited by byelaw.

Instruments other than rod and line which are licensed include:

Drift nets

These are gilling nets fished at the surface of coastal waters. A sheet of netting hangs from a floated head rope to a weighted foot rope. The use of monofilament is prohibited except in Northumbria and Yorkshire regions. The dimensions of the nets differ between places of use and the method of use is prescribed by byelaw. Regional names include hang, whammel and sling nets.

In use in Northumbria, North-West, South-West, Welsh and Yorkshire regions.

Trammel nets

An entangling net similar to a gill net but 'armoured' with larger mesh netting on one or both sides. A fish striking the net pushes the small mesh net through one of the large meshes and is caught in the resultant pocket. When worked between two coracles, they are referred to as coracle nets.

In use in Welsh region.

Wade nets

A small gill net operated by being drawn through the water by two fishermen wading at right-angles to the shore.

In use in Welsh region.

Seine nets

Probably the most widely used netting method in England & Wales. The net consists of a wall of netting with weighted foot rope and floated head rope which is shot from a boat to enclose an area of water between two points on the shore. The net is then retrieved and those fish contained within it are drawn up onto the shore. Dimensions of nets and their manner of working are prescribed locally by byelaw.

In use in North-West, Welsh, Severn-Trent, Southern, South-West and Wessex regions.

Haaf nets

Also called heave nets, these are in use in various estuaries in the North-West, notably the Solway Firth. Operated by one person but frequently in a line or 'gang' of similar operators, the net is suspended from a wooden frame with a crosspole of up to 5.5 metres wide and three 'legs' formed by the centre pole and side arms at each end of the crosspole. The net is held into the tide and lifted out when a fish is felt to strike.

In use in North-West region.

Lave nets

Hand nets used to scoop out fish running in shallow water. A Y-shaped frame has a bag of netting attached to it and is attached to a hand staff at the apex.

In use in North-West, Severn-Trent and Welsh regions.

Dip nets

Essentially similar to lave nets, these nets are used in the estuary of the River Parrett.

In use in Wessex region.

Compass or stop nets

These nets are operated from boats made stationary against the current. A net is hung between two long poles lashed together in a V-shape and held over the side of the boat so that the net streams out underneath the boat. When a fish strikes the net, it is pivoted upwards with the aid of counterbalancing weights.

Although not regarded as a fixed engine as the nets are operated by hand, some Certificates of Privilege were issued to stop nets in 1866.

In use in Welsh region.

C. Maximum penalties for salmon fishing offences in England & Wales

Provision of the Act relating to the offence	Description of offence	Mode of prosecution	Punishment
1975 Act Section 1	Fishing with certain instruments for salmon, trout or freshwater fish and possessing certain instruments for fishing for such fish	(a) Summarily (b) On indictment	3 months and/or £2000 2 years and/or fine
Section 5 (1)	Using explosives, poisons, noxious substances or electrical devices to take or destroy fish	(a) Summarily (b) On indictment	£2000 2 years and/or fine
Section 5 (3)	Destroying or damaging dams etc., to take or destroy fish	(a) Summarily (b) On indictment	£2000 2 years and/or fine
Section 19 (2)	Fishing for salmon during the annual close season or weekly close time	Summarily	£1000
Section 19 (4)	Fishing for trout during the annual close season or weekly close time	Summarily	£1000
Section 21	Prohibition on use of certain devices at certain times	Summarily	£1000
Section 27	Fishing for fish otherwise than under the authority of a licence and possessing an unlicensed instrument with intent to use it for fishing	(a) If the instrument in question, or each of the instruments in question, is a rod and line, summarily (b) In any other case: (i) Summarily (ii) On indictment	£1000 3 months and/or £2000 2 years and/or fine

continued

Table continued

Provision of the Act relating to the offence	Description of offence	Mode of prosecution	Punishment
Section 32 Schedule 1 Theft Act	Taking or destroying fish without lawful permission in water which is private or in which there is a private right of fishery (does not apply to anything in the daytime)	Summarily	£400, or in the case of a second or subsequent conviction, 3 months and/or fine not exceeding £400
	Angling in the daytime without lawful permission in water which is private or where there is a private right of fishery	Summarily	£50

NOTE

£2000 is the Statutory maximum fine; £1000 is the Level 4 fine on the standard scale (both these fines are periodically updated).

ANNEX C

STATUTORY ANTI-POACHING PROVISIONS BEFORE THE 1986 ACT CAME INTO FORCE

A list of measures which assist the enforcement of the law relating to fishing for salmon. This list does not include measures which change the basic laws of salmon fishing. It is intended as background to the list of anti-poaching provisions introduced in the Salmon Act 1986 (see Annex D).

C1 ENGLAND & WALES

Fishing without permission: *Schedule 1 of the 1968 Theft Act*

This applies to all waters where there is a private right of fishing, including all inland waters and some estuarine waters and parts of the sea. It creates the offence of taking or attempting to take salmon without permission. Injunctions have been successfully sought against persons persistently offending at a particular fishery.

Fishing without a licence: *section 27 of the 1975 Act*

All fishing for salmon is regulated by licence. It is an offence to take or attempt to take salmon with an unlicensed instrument. Licences have to be carried when fishing and produced for inspection on request.

Prohibited fishing methods: *sections 1 and 5 of the 1975 Act*

Certain instruments and methods of fishing are prohibited entirely and cannot be licensed. It is an offence to use these methods to take or attempt to take salmon. These are:

- firearms, otter, lath or jack, wire or snare, cross-line or set-lines, spear, gaff, stroke-haul snatch or other like instrument, stones or other missiles;
- poisons, other noxious substances, electrical devices;
- the destruction of any dam, floodgate or sluice.

Restricted methods: *sections 6, 7 and 8 of the 1975 Act*

Certain methods are generally unlawful unless specifically authorised by ancient privilege or byelaw. These are:

- fixed engines
- fishing weirs
- fishing mill dams.

Limitation of fishing licences: *section 26 of the 1975 Act*

The use of licensed fishing instruments can be constrained by limitation orders which limit the number and type of instruments that can be used in the area specified within the order. This power is used for all instruments other than rod and line.

Limitations of use for licensed instruments: 1975 Act

Section 3: place controls on the mesh size and method of use for seine nets.
Further controls are usually exercised by byelaw.

Section 12: prevents fishing in fish passes.

Section 16: regulates the placing of boxes and cribs in weirs and dams.

Section 17: places restrictions on the taking of salmon above and below an obstruction or in mill races.
Byelaws often add to this provision.

Section 19: establishes statutory close seasons and close times. These can be, and usually are, further modified by byelaws.

Section 20: requires fixed engines to be made incapable of fishing or obstructing the passage of fish during close seasons and times.

Section 21: prevents the use of baskets, nets, traps or devices in inland waters frequented by salmon before 25 June each year. This is a measure to prevent the taking of smolts.

Schedule 3 (now Schedule 25 of the Water Resources Act 1991):

Byelaw making powers are used extensively to create subordinate legislation. Purposes for which byelaws can be made are attached for reference but in essence are used to determine:

- where fishing can take place
- the type and dimensions of instruments
- the period of use
- size limits
- use of lures and baits
- labelling on nets and boats
- prohibiting the carriage of unmarked nets
- the use of gaffs.

Powers of entry, search, seizure and arrest

Powers of seizure and arrest are conferred on all persons in pursuance of the protection of private rights of fishing. Water bailiffs have powers of entry, search, seizure and arrest as stated in sections 31, 32, 33, 34, 35, and 36 of the 1975 Act (and subsequently the Water Resources Act 1991). Powers of entry, search, seizure and arrest are also contained within the Police and Criminal Evidence Act 1984. Taken together these powers are very comprehensive. Forfeiture of fish, instruments, baits, unlawful substances or devices, vessels and vehicles may be ordered by the courts. Offenders may be disqualified from holding or obtaining a licence.

Fishing without permission: *section 1 of the 1951 Act*

This applies to inland waters and the sea within one mile of low water mark and makes trespass on the private right of salmon fishing a statutory offence.

Prescription of netting method in inland waters: *section 2 of 1951 Act*

Net and coble is prescribed as the *only* lawful method of net fishing in inland waters, thus reinforcing the old statutes prohibiting any kind of fixed engines which, in turn, are considered to be declaratory of the common law of fishing for salmon in Scottish rivers.

Removal of gear during close season: *section 23 of the 1868 Act*

Net fishermen are required to remove and secure all gear within 36 hours of the start of the annual close time. This is to make enforcement of the annual close time provisions easier.

Observance of the weekly close time: *1868 Act, Schedule D byelaw*

Regulations about making salmon fixed engines ineffective during the weekly close time. This is to make the enforcement of the weekly close time provisions more effective.

Mesh size of nets: *1868 Act, Schedule E byelaw*

A mesh size was fixed to prevent the taking of smolts (which is prohibited under section 19 of the 1868 Act).

Illegal possession of salmon (or trout): *section 7 of the 1951 Act*

This section provides that if a person is in possession of salmon, trout or fishing equipment in circumstances where there is reasonable grounds for suspecting that he had them as a result of, or for the purpose of, committing an offence against sections 1–4 of the 1951 Act, he can be convicted of unlawful possession.

Carriage of monofilament gill nets: *Statutory Instrument 1986/60*

This prohibits the carriage of any monofilament gill net on any British fishing boat in Scottish inshore waters, and is intended to make it easier to enforce the prohibition on the use of gill nets for salmon fishing made under the Salmon and Migratory Trout (Prohibition of Fishing) (No. 2) Order 1972.

Powers of entry, search, seizure of gear etc. and arrest: *sections 26, 27 and 29 of the 1868 Act; sections 10, 11 and 12 of the 1951 Act*

The Acts give Water Bailiffs various powers of entry, search, seizure and arrest.

Conviction on evidence of a single witness: *section 28 of the 1862 Act; section 30 of the 1868 Act; section 7 of the 1951 Act*

Persons accused of offences against the 1868 Act and section 7 of the 1951 Act can be convicted on the evidence of a single credible witness.

Estuary limits: *1868 Act, Schedule B regulations*

These regulations are intended to help in distinguishing the line dividing inland waters from the sea (where different methods are lawful).

ANNEX D

ANTI-POACHING PROVISIONS IN THE SALMON ACT 1986

A brief description of those provisions in the Salmon Act 1986 which are directed at preventing illegal salmon fishing or making detection and enforcement easier or more effective. (Measures which merely replace provisions in repealed legislation are not included.)

D1 ENGLAND & WALES

Salmon dealer licensing: *section 31*

This section provides powers for establishing a system of licensed salmon dealers in England & Wales.

Handling illegally-taken fish: *section 32*

This section creates an offence of handling salmon in circumstances where it would be reasonable for the possessor to suspect that the fish had been unlawfully taken.

Changes in penalties: *section 35*

A provision which removes differential penalties for some English salmon fisheries offences according to whether the offender acted alone or with another: this effectively resulted in an up-rating of the penalties.

Powers relating to sea fishing: *sections 33 and 37*

While not directly anti-poaching measures, these sections allow the control of sea fishing and the incidental capture of salmon that goes with it. Sections 33 and 37 allow byelaws to be made for:

- the placing and use of fixed engines by amending section 6 of the 1975 Act; and
- constraining the use of other instruments to protect salmon and prevent interference with their migration by amending section 5 of the Sea Fisheries Regulation Act.

D2 SCOTLAND

Forfeiture of fish, instruments, articles, vehicles or boats: *section 5(2)(c) and Schedule 4, paragraph 10*

The forfeiture provisions of section 19 of the Scottish 1951 Act are extended to include offences under section 15 of the 1868 Act; and forfeiture of vehicles and boats is no longer restricted to trial on indictment.

Salmon dealer licensing: *section 20*

This section provides additional powers in relation to establishing a salmon dealer licensing scheme.

Net fishing methods in Scotland: *section 21*

This directly specifies the lawful methods of fishing for salmon in the sea on the coast of Scotland, and contains an enabling power for the Secretary of State to make definitions describing those methods.

Possession of illegally-taken fish: *section 22(1)*

This section creates an offence of possessing salmon in circumstances where it would be reasonable for the possessor to suspect that the fish had been unlawfully taken.

Powers of search: section 22(2)

The powers of a Water Bailiff to search without warrant are extended to cover offences against sections 1, 2 and 7A of the 1951 Act (previously just sections 3 and 4) and also to allow the searching of stationary vehicles on roads near water.

Power to convict on an offence other than the one charged: section 23

A provision whereby, in relation to the various Scottish 'possession' offences, a person can be convicted of any of them (provided of course that the court is satisfied that he is guilty) even if he had been charged, and was being tried for another one.

Fishing without permission in the Border Esk: section 26

A provision which applies the Scottish offence of fishing without permission to the Scottish part of the Border Esk (which is otherwise covered by English salmon fishery law but which is not covered by the English Theft Act).

ANNEX E

ENFORCEMENT AND PROSECUTION AGENCIES

E1 ENGLAND & WALES

The National Rivers Authority (NRA)

The NRA is the prime agency concerned with the enforcement of salmon fisheries legislation in England & Wales. They can appoint Water Bailiffs who have the powers to investigate and secure evidence and to apprehend offenders. Persons appointed by the Minister have similar powers. Both these categories of persons are deemed to be Constables for the purposes of enforcing the 1975 Act.

Sea Fisheries Inspectorate (England & Wales)

Sea Fisheries Inspectors are shore-based MAFF officers, based at the principal ports. They have powers of British Sea Fishery Officers and can enforce salmon fishery measures made under the various Sea Fisheries Acts.

Sea Fisheries Committees (England & Wales)

Fisheries Officers under the 1966 Act could be involved in enforcing byelaws made to protect salmon as facilitated by section 37 of the 1986 Act.

Association of Chief Police Officers (ACPO)

Police Forces and Police Constables can be involved in the enforcement of the legislation. They have general duties to enforce the law and devote some resources to salmon fisheries enforcement depending on the seriousness of the problem in the area and other demands on their time.

Fishmongers Company

The Fishmongers Company has powers within the City of London relating to the sale of salmon during annual close times.

Crown Prosecution Service (CPS)

The CPS is the state's prosecution service and handles all cases which arise from police investigations, including any fisheries cases. The vast majority of fishery prosecutions are brought by the NRA who do not use the CPS.

Others

The Royal Navy's fisheries squadron is sometimes employed on salmon fishery protection. Owners or lessees of fisheries may also take action against persons fishing in their waters without permission.

District Salmon Fishery Boards (DSFBs), and the River Tweed Commissioners

These agencies are empowered to appoint Water Bailiffs with substantial police powers in relation to salmon fishery offences in inland waters and the sea.

Association of Chief Police Officers (ACPO)

The police have general duties to enforce the law and devote some resources to salmon fisheries enforcement depending on the seriousness of the problem in the area and other demands on their time.

The Secretary of State for Scotland

He has powers to appoint persons as Water Bailiffs with similar powers to the DSFB bailiffs; a limited number of persons are appointed, including the Inspector of the Fishmongers Company (see below), particularly in districts for which a DSFB cannot easily be formed.

The Scottish Fisheries Protection Agency (SFPA)

This agency is part of the Scottish Office, which operates a fleet of ships and aircraft which enforces fisheries legislation at sea especially, in relation to salmon, the prohibition on the use of gill nets etc. The SFPA also deploys Sea Fisheries Inspectors at the principal fishing ports; officers of the Agency have powers as British Sea Fishery Officers and can enforce salmon fishery measures made under the various Sea Fisheries Acts.

The Royal Navy

The Navy's fisheries squadron is sometimes deployed on salmon fishery protection.

The Fishmongers Company (London)

The Company employs a full-time Salmon Fisheries Inspector in Scotland to help ensure compliance with the salmon fisheries law. The Company has no statutory position in Scotland but the Inspector is warranted as a bailiff by the Secretary of State and acts as a roving Water Bailiff, especially in districts where there is no active district board.

Crown Office and Procurators Fiscal

Crown Office is responsible for all prosecutions in the Scottish Criminal Courts. The Procurators Fiscal are the public prosecutors in the District and Sheriff Courts. They have absolute discretion as to whether or not to prosecute, subject to the general guidance and control of the Crown Office.



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