



ASFB Briefing – January 2006

The Conservation of Salmon (Collection of Statistics) (Scotland) Regulations 2006

To all DSFBs and Fishery Managers

1. Introduction

As you know, the ASFB has been lobbying for some time to create a power to enable DSFBs to collect catch data from salmon fishery proprietors on a statutory basis. SEERAD have been working on this and regulations have now been approved by Parliament which will come into force on 1 January 2007. A copy of the regulations were circulated to all Boards previously and I attach again a copy for ease of reference at **Annex 1**. This will be a single regulation covering the whole of Scotland, which will allow any Board to gather information such as that described in 2. below.

2. The powers for Boards

The regulations have been made under Section 38(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. They are relatively simple in terms of what they provide, namely that a DSFB may require any proprietor or occupier of a salmon fishery in its district to provide catch statistics relating to the **number, species, description and weight and method and date of capture of salmon and/or sea trout caught or caught and released** in that salmon fishery for each calendar month.

The request for information will specify the period for which data is required and must be dated and submitted by post. The period cannot exceed 12 months immediately prior to the date of the notice and the request may be given at intervals of not less than 6 months.

So, for example, a Board would be entitled to write to all proprietors and occupiers on **30 June 2007** seeking catch data for say **January-May** inclusive to make an assessment of the spring catch. It could then only make the next request on **31 December 2007**, and this could, for example, seek information on monthly catches for the remainder of the year. It would then be possible to have a formal assessment of the annual catch at the turn of the year in time to consider whether any action is required to regulate further, relax or maintain existing catch effort. The key advantage to Boards is that they will be able to act relatively quickly with access to real time information, rather than relying on trends gathered through



the national catch data exercise which is published a year later, or on anecdotal information or data gathered on a voluntary basis.

3. Obligations of proprietors and occupiers

Once a DSFB makes a request for data, the regulations will place a legal obligation on proprietor or occupier of a fishery to provide the statistics required by the notice within 28 days of the date on which notice was given. Any person who fails to comply with the requirement under the regulations to provide data shall be guilty of an offence and liable to a fine not exceeding level 4 (£2500) on the standard scale. Given that this power will create a criminal offence, there will be a requirement by the Board to consider what might be realistic and proportionate and not to place undue pressures on proprietors and occupiers to provide information in unreasonable timescales or for no obvious management purpose.

4. Advice to DSFBs

There is no obligation on Boards to use this power. However, ASFB has been lobbying hard for these powers based on the need of DSFBs for better information. It is only logical that organisations which have a statutory responsibility to manage stocks of salmon and sea trout on a river catchment basis have ready access to data such as this. Accordingly, we would expect all Boards to consider how they might use this power.

On the basis that you propose to use this power, it is strongly recommended that your DSFB should write to all proprietors in your district providing advance warning of the introduction of this power and your intention to use it. For example, if you are intending to gather data from the middle of 2007 for the first half of the year, we would suggest that you advise all proprietors early in 2007. This advance notification should only be required once and you should state your intention as to the timing of future requests (ie June and December, once yearly or otherwise).

Whilst each DSFB will have different needs based on the nature of the fisheries in their district, we feel it would be useful to maintain some degree of consistency between Boards as to how they might wish to implement and use these powers. This will be especially useful if the information needs to be aggregated nationally through the ASFB, for example we may wish to publish the catch data at intervals on the ASFB website. We therefore make some suggestions at **Annex 2** as to how a formal notice might look. This can, of course, be adapted for different requirements.



5. Potential issues for DSFBs

Fishery Boards will be collecting data on a statutory basis and therefore it is possible that the data which is collected will be subject to various regulations relating to data collection, storage and use. We have taken legal advice on these issues and the only regulations that Boards will have to comply with are those contained within the **Data Protection Act 1998 (see below)**. There are other regulations, (see **5.2** and **5.3** below), however we have been advised that DSFBs do not fall within the scope of these regulations.

5.1 *The Data Protection Act 1998*

Requesting catch data from salmon fishery proprietors will result in the processing by the DSFB of the proprietor's or other individuals' personal data.

The Act gives an applicant a right of access to personal data which is held about themselves. Under this section, an individual is entitled to be informed by any '**data controller**' whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller.

'**Personal data**' is defined as being '*data which relates to a living individual who can be identified from that data or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller*'. It includes any recorded expression of opinion by or about the individual and any recorded indication of the intentions in respect of the individual.

'**Processing**' in relation to information or data is also defined. It means '*obtaining, recording, or holding the information or data or carrying out any operation or set of operation on the information or data, including-*

- *organisation, adaptation or alteration of the information or data*
- *retrieval, consultation or use of the information or data*
- *disclosure of the information or data by transmission, dissemination or otherwise making available, or*
- *alignment, combination, blocking, erasure or destruction of the personal data.*

A '**data controller**' is defined as being a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed. **To the extent that DSFBs processes an individual's personal data and carry out such processing, they will be 'data controllers' for the purposes of the Act.**

The Act makes it is an offence to process personal data without the data controller being registered with the UK Information Commissioner. DSFBs should therefore register



immediately as data controllers with the Information Commissioner (if this has not already been done).

Registration is very simple and can be done online at:

http://www.ico.gov.uk/tools_and_resources/register_of_data_controllers.aspx

There is an annual charge of £35.

5.2 *Environmental Information (Scotland) Regulations 2004*

Whilst we are advised that the collection of catch statistics would constitute 'environmental information' under the provisions of these regulations, given that the DSFBs do not appear to fall within the definition of a 'Scottish public authority' for the purposes of the 2004 Regulations, these Regulations will not apply to DSFBs.

5.3 *Freedom Of Information Acts (Scotland & UK)*

DSFBs are not listed in Schedule 1 of the above Acts, therefore they are not subject to the provisions of freedom of information.



Annex 1.

SCOTTISH STATUTORY INSTRUMENTS

2006 No.

RIVER

SALMON AND FRESHWATER FISHERIES

**The Conservation of Salmon (Collection of Statistics) (Scotland)
Regulations 2006**

Made - - - -

Laid before the Scottish Parliament

Coming into force - -

The Scottish Ministers, having had regard to representations made to them by those persons mentioned in section 38(3) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003⁽¹⁾ and complied with all necessary procedures as required by section 38(9) of, and Schedule 1 to, that Act [and having considered representations and objections made – amend if none are received,] in exercise of the powers conferred by section 38(1) and (5)(a) of, and paragraph 7(b) of Schedule 1, to that Act and of all other powers enabling them in that behalf hereby make the following Regulations:

Citation and commencement

1. – These Regulations may be cited as the Conservation of Salmon (Collection of Statistics) (Scotland) Regulations 2006 and shall come into force on [] 2006.

Power to require information

2.—(1) Subject to paragraph (2), a district salmon fishery board may by notice given by post require any proprietor or occupier of a salmon fishery situated in its district to furnish it with such statistics as it considers necessary relating to the:-

- (a) number;
- (b) species;
- (c) description and weight; and
- (d) method and date of capture

(1) 2003 asp 15.



of salmon caught or caught and released in that salmon fishery in each calendar month in such period, not exceeding 12 months, immediately prior to the date on which notice was given, as is specified in the notice.

(2) A notice under paragraph (1) may be given at intervals of not less than 6 months.

Compliance with a requirement under regulation 2

3. A proprietor or occupier of a fishery shall furnish the statistics required by a notice given under regulation 2 within 28 days of the date on which notice was given.

A member of the Scottish Executive

St Andrew's House,
Edinburgh
2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 38(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”) gives Scottish Ministers powers to make regulations if they consider it necessary or expedient to do so for the conservation of salmon. “Salmon” is defined in section 69 of the 2003 Act to mean all fish of the species *Salmo salar* and migratory fish of the species *Salmo trutta* and commonly known as salmon and sea trout.

These Regulations allow district salmon fishery boards to require proprietors or occupiers of salmon fisheries within their district to provide them with certain statistics. This is done by notice given by post. (Regulation 2)

The statistics which proprietors or occupiers may be required to provide relate to the number, species, description, weight and method and date of catch of salmon caught or caught and released in each calendar month. The notice requiring the information will specify the period for which this information is required. The period cannot exceed 12 months immediately prior to the date of the notice. (Regulation 2(1))

There must be at least 6 months between notices given under regulation 2. (Regulation 2(2)).

Regulation 3 requires a proprietor or occupier to comply with a notice to furnish statistics within 28 days of the date notice was given. In terms of section 38(7)(b) of the 2003 Act, any person who fails to comply with the requirement under the regulations to provide the statistics shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Section 69 of the 2003 Act defines “district”; “district salmon fishery board”; “fishery” and “salmon fishery”; “proprietor”; “salmon” and “salmon fishery district”.



Annex 2.

**Notice for request of catch data
30 June 2007**

Under regulation 3 of the above regulations, the DSFB requires the following catch information to be submitted **no later than 28 July 2007**. Please submit the information to the address overleaf. Please note that failure to comply with this request is an offence and any person who fails to comply with the requirement under the regulations to provide data, or provides erroneous information, shall be guilty of an offence and liable to a fine not exceeding level 4 (£2500)

1. Rod Fisheries

Month	Salmon (number)		Total Weight (pounds)	Sea trout (number)		Total Weight (pounds)	Farmed salmon Retained	Total Weight (pounds)
	Retained	released		Retained	released			
Jan								
Feb								
Mar								
Apr								
May								
Jun								

2. Net fisheries – Fixed Engine (*including Solway haaf nets*)

Month	Salmon (number)		Total Weight (pounds)	Sea trout (number)		Total Weight (pounds)	Farmed salmon Retained	Total Weight (pounds)
	Retained	released		Retained	released			
Jan								
Feb								
Mar								
Apr								
May								
Jun								

3. Net fisheries – Net & Coble

Month	Salmon (number)		Total Weight (pounds)	Sea trout (number)		Total Weight (pounds)	Farmed salmon Retained	Total Weight (pounds)
	Retained	released		Retained	released			
Jan								
Feb								
Mar								
Apr								
May								
Jun								