

Spey Fishery Board  
Meeting with Proprietors & Ghillies  
19<sup>th</sup> July 2018

**The Regulatory Aspects of  
Stocking**

by

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# The Regulatory Aspects of Stocking

- SAC Status
- Broodstock Capture
- Stocking – Planting Out
- The Appropriate Assessment





# The Regulatory Aspects of Stocking

- The River Spey attracts the highest level of environmental protection available under European legislation.
- The SFB has a policy of mitigation stocking; smolt rearing would raise this to enhancement stocking.
- The Scottish Government policy is likely to be a presumption against enhancement stocking. They are the licensing authority for broodstock capture and such a licence is highly unlikely to issue.
- The SFB is the Competent Authority for fish introductions – but needs to consult SNH to complete an Appropriate Assessment.
- SNH have informed us that smolt ranching on the Spey could affect internationally important natural heritage interests and .... they could not support the proposal.
- If this proposal proceeds, the Board could be liable to challenge.



# Special Area of Conservation Status

- **The River Spey and its tributaries are a Special Area of Conservation (SAC)** under the EC Directive on the Conservation of Natural Habitats and Wild Fauna and Flora 92/43/EC (**The Habitats Directive**). In addition, The River Spey is also a Site of Special Scientific Interest (SSSI).
- The four qualifying species include Atlantic salmon, otter, sea lamprey and freshwater pearl mussel.
- SACs and their qualifying species are afforded the very highest level of environmental protection available under European Union legislation. However, it is also a double-edged sword.
- Licence applications to take broodstock fish and stock juvenile salmon into the catchment require a Habitats Regulations Appraisal to be completed, leading to an Appropriate Assessment.



# District Salmon Fishery Board Powers

- Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003:
- **45 General powers and duties of district salmon fishery boards**
  - (1) A district salmon fishery board may do such acts, execute such works and incur such expenses as may appear to them expedient for—
    - (a) the protection or improvement of the fisheries within their district;
    - (b) the increase of salmon; or
    - (c) the stocking of the waters of the district with salmon.



# Fish Introductions

- **33A Unauthorised introduction of fish into inland waters**

(3) A person shall not be guilty of an offence if—

(b) the appropriate authority have previously consented in writing.

- (4) Where— (a) the fish concerned are salmon or the spawn concerned are salmon spawn, and

(b) the inland waters concerned are in a salmon fishery district for which there is a district salmon fishery board,

**the district salmon fishery board are the appropriate authority.**

- However, this does not “trump” other legislation – such as the Habitats Directive.



## Broodstock Capture

- The SFB currently has a mitigation stocking policy, planting out fed fry predominantly above man-made obstacles.
- We take broodstock fish (using an electro-net on the tributaries and rod & line on the mainstem) outwith the fishing season and so have to apply to the Scottish Government for a licence to do so.
- The licence application is made to Marine Scotland Science, who then consult Scottish Natural Heritage.
- The only consideration here is whether the river can supply sufficient broodstock. However, the SAC status of the Spey also requires a Habitats Regulations Appraisal to be undertaken, leading to an Appropriate Assessment in this case.



## Broodstock Capture

- **33B** (introduced in 2013) **Power to modify district salmon fishery boards' functions under section 33A**
  - (1) This section applies to the functions of the appropriate authority under section 33A(3) (b) and (3A) of this Act (the “consenting functions”) so far as the functions may be carried out by district salmon fishery boards.
  - (2) The Scottish Ministers may by regulations—
    - (a) provide for the consenting functions to be carried out by the Scottish Ministers instead of district salmon fishery boards in specified cases or circumstances,
    - (b) provide for applications made to district salmon fishery boards for consent under section 33A of this Act to be referred to the Scottish Ministers in specified cases or circumstances.



## Broodstock Capture

- We have consulted Scottish Government about a proposal to take broodstock fish for the purposes of smolt rearing, should the Board decide to proceed with this.
- Marine Scotland have told us that their aspiration is for the Scottish Government to be responsible for licensing introductions – both broodstock capture and stocking.
- An application for smolt ranching on an SAC river will be treated as an exceptional application and article 33B will be applied. It would be used to flag this issue to Ministers to determine policy.
- The Scottish Government's current thinking is a presumption against Enhancement Stocking. This would inform the decision over the licence application and it is highly unlikely a licence for this would issue.



## Stocking

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- **So the Spey Fishery Board is the responsible authority for fish introductions.**



## Stocking

- The SFB is currently stocking a relatively naturalised product (fed fry/autumn parr) under its Mitigation Stocking policy. The Appropriate Assessment for this is submitted to Marine Scotland Science with the broodstock licence application.
- Smolt stocking has been referred-to by SNH as “fish farming”. This would be a return to Enhancement Stocking and SNH have told us that this would raise our stocking activity to a higher level, which would attract much more stringent consideration and will require a separate Habitats Regulations Appraisal and, in this case, a subsequent Appropriate Assessment.
- The SFB, as a Competent Authority, is responsible for the completion of that Appropriate Assessment and must consult SNH for the purposes of undertaking it.



# The Appropriate Assessment

- The Appropriate Assessment aims to determine if a proposal will have an adverse impact on the integrity of a site and its qualifying species, by:
  - Identifying if proposals are necessary for, of value to or inevitable as part of the management of the site or its qualifying species.
  - Providing supporting information and clear rationale to justify the connection with the conservation objectives.
  - Including sufficient detail to demonstrate that the benefits from the proposed activities outweigh any negative impacts.
  - Providing details of any alternative, less damaging methods of implementing the proposed conservation measures.



# The Appropriate Assessment

- The Appropriate Assessment consists of two parts:
  - A scientific, reasoned appraisal.
  - A conclusion.
- The Competent Authority must not authorise a plan or project unless it can show beyond reasonable scientific doubt – using Appropriate Assessment – that the plan or project will not adversely affect the integrity of a Natura site.
- **Smolt ranching on the Spey could affect internationally important natural heritage interests and based on the information currently available we could not support the proposal.** For the avoidance of doubt we do not oppose the SFB's *current* stocking approach.
- On this basis, SNH advise that this proposal should not proceed.



# The Appropriate Assessment

- SNH have to be consulted and will provide advice.
- It is the Board, however, that is the Competent Authority for the Appropriate Assessment that needs to be undertaken for smolt stocking.
- The Board must decide whether or not to accept the SNH advice. If it does not accept it, and decides it wishes to stock smolts anyway, it must refer the case to Scottish Ministers for their determination.
- It also lays itself open to the liability of challenge from the European Commission, or from those opposed to the Board's decision.



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Brian Doran  
Chairman, Spey Fishery Board



# Spey Fishery Board Action Plan

Strategic Priority	Action and Description
<b>1. Engagement of professional Public Relations services to lobby Scottish Government for the promotion of salmon angling and maintenance of the local economy.</b>	<ol style="list-style-type: none"><li>1. Engagement of Public Relations/Lobbyist professionals, together with assistance from Fisheries Management Scotland (FMS), to encourage Scottish Government to facilitate a marketing campaign for the promotion of salmon angling on the Spey.</li><li>2. PR/Lobbyist professionals to engage with Scottish Government to secure support for the maintenance of employment on major salmon rivers.</li></ol>



# Spey Fishery Board Action Plan

Strategic Priority	Action and Description
<p><b>2. Development and implementation of a scientific strategy to prioritise and enhance the provision of evidence-based advice to the Board for its management of the fishery.</b></p>	<p>2. 1 Spey Scientific Committee to establish short- (5yr), medium- (10yr) and long- term (15yr) strategies for scientific research &amp; monitoring.</p> <p>2.2 Engage with Scottish Government and Fisheries Management Scotland (FMS) to develop and implement the Fisheries Management Planning Template.</p> <p>2.3 In conjunction with PR/Lobbyists and FMS, encourage the Scottish Government to take a leading role in developing understanding of the issues affecting Atlantic salmon migration in the marine environment.</p> <p>2.4 Encourage Marine Scotland and Marine Scotland Science to develop and maintain liaison with international salmonid research organisations.</p> <p>2.5 SNH paper on the importance of Atlantic salmon to the other 3 SAC designated species.</p>



# Spey Fishery Board Action Plan

Strategic Priority	Action and Description
3. Enhanced protection of Atlantic salmon from predation.	<p>3.1 Engage with Scottish Government and their advisers to review and refine the licensing system for piscivorous bird management.</p> <p>3.2 Expand Spey Piscivorous Bird licence to include principal tributaries as well as mainstem river.</p> <p>3.3 Utilise AST smolt tagging project (see 4.2) to provide evidence of the impact of piscivorous bird predation on smolt migration.</p> <p>3.4 Collation of evidence to lobby Scottish Government for the enhancement of Grey seal quotas and reintroduction of a Common seal quota.</p>



# Spey Fishery Board Action Plan

Strategic Priority	Action and Description
4. Development of our knowledge of smolt migration, both within the river and through the marine environment.	<p>4.1 Enhancement of the Tommore Burn Project to include the installation of an Adult Fish Trap as well as the Smolt Trap.</p> <p>4.2 In conjunction with the Atlantic Salmon Trust, tag salmon smolts leaving the Tommore Burn and the upper Spey to monitor and compare the migration of smolts originating from hatchery-bred fry and compare this to their wild-bred counterparts.</p> <p>4.3 Remove all rod-caught fin-clipped adult salmon from the fishery.</p> <p>4.4 Support the Atlantic Salmon Trust's Missing Salmon Project.</p>



# Spey Fishery Board Action Plan

Strategic Priority	Action and Description
<b>5. Continued programme of riparian and in-river habitat enhancement projects to improve the spawning and juvenile habitats for Atlantic salmon.</b>	<p>5.1 Sandbank Hatchery to remain in operation for mitigation stocking above man-made barriers.</p> <p>5.2 Work with the Scottish Environment Protection Agency and GFG Alliance to accelerate progress with ensuring upward and downward fish passage at Spey Dam.</p> <p>5.3 Continue to work closely with the Spey Catchment Initiative to expand its programme of removing barriers to fish migration and the enhancement of in-river and riparian habitat.</p>



# Spey Catchment Initiative : Reconnecting Side Channels Delagyle, near Aberlour





# Spey Catchment Initiative

## Kinchurdy: Riparian Enhancement





# TGLP: Barriers to Fish Passage





# Tamdhu Distillery Weir, Knockando Burn





# Spey Fishery Board Action Plan

Strategic Priority	Action and Description
6. Maximise the quantity and quality of water resources throughout the Spey Catchment.	<p>6.1 Work with the Scottish Environment Protection Agency and the Spey Catchment Initiative to ensure the effective and timely implementation of the Water Framework Directive.</p> <p>6.2 Utilise A9 dualling programme to provide mitigation works to enhance the Tummel Scheme (Rivers Tromie, Truim &amp; Cuaich).</p> <p>6.3 Lobby Scottish Government to ensure the maintenance of adequate water resources above impoundments to meet compensation flow requirements at all times.</p> <p>6.4 Actively resist attempts to increase water abstraction from the River Spey Catchment.</p>



Any Questions?