

**COMPLAINT TO THE COMMISSION OF THE EUROPEAN COMMUNITIES
CONCERNING THE FAILURE OF THE UNITED KINGDOM (UK) TO COMPLY
WITH THE HABITATS DIRECTIVE (92/43/EEC) IN RESPECT OF THE
ATLANTIC SALMON (*Salmo salar*) IN SCOTLAND WITH PARTICULAR
REFERENCE TO COASTAL COMMERCIAL NETTING OF SALMON**

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**On behalf of
The Salmon & Trout Association
and
The Salmon & Trout Association (Scotland)**

Executive summary

The UK, through the vehicle of the Scottish Government, has failed to comply with the obligations on Member States under the Habitats Directive with respect to Atlantic salmon.

Seventeen Scottish rivers are designated under the Habitats Directive as Special Areas for Conservation (SACs), forming part of the Natura 2000 network, where the qualifying interests include the freshwater stages of Atlantic salmon (*Salmo salar*).

Recent studies for the Scottish Government suggest 8 of these 17 are still categorised as unfavourable recovering, with no real improvement in these proportions since 2005.

In particular, the spring stock component of Scottish populations of Atlantic salmon is either at historically low levels or in long-term decline, including in SAC rivers.

24,311 salmon were killed in 2013 in commercial coastal netting, including an unknown number of salmon from these 17 SAC river populations.

The Scottish Government has failed to put in place sufficient statutory controls to protect Atlantic salmon population in SACs in Scotland in respect of exploitation by commercial coastal netting of mixed stock fish.

Specifically, the Scottish Government has failed to comply with the requirements of both Article 6(1) and Article 6(2) by failing to establish a statutory licensing system for coastal netting stations to allow proper management of all run-time components of SAC stocks, including spring stocks, by way of a quota or limit on the number of fish from each component of SAC stocks that can be killed.

The Scottish Government has also failed to comply with the requirements of Article 6(3) by not treating the re-opening of long dormant or semi-dormant netting stations as new plans or projects as defined by Article 6(3) and by not therefore appropriately assessing, at that time, whether their operation adversely affects the integrity of the SACs in question in respect of Atlantic salmon.

The complainant - the Salmon & Trout Association (Scotland)

This complaint is made by the Salmon & Trout Association (Scotland). The S&TA was established in 1903 to address the damage done to UK rivers by the polluting effects of the Industrial Revolution. Since then, the S&TA has worked to protect fisheries, fish stocks and the wider aquatic environment for the public benefit. The S&TA has charitable status in England and Wales and in Scotland - see www.salmon-trout.org or www.salmon-troutscotland.org for more details.

The status of Special Areas of Conservation designated under the Habitats Directive for Atlantic salmon in Scotland

The Atlantic salmon is a protected species under the Habitats Directive.

In Scotland, the conservation of Atlantic salmon needs to be viewed in the context of a steep decline in salmon populations over the last 60 years.

Table 1 shows net catches in Scotland since 1992, when the Directive was agreed, with 1952, 1962, 1972 and 1982 included for comparison.

Table 1: Scottish salmon catch statistics from 1952 to 2013

Year	Net and coble	Fixed engine
1952	154358	189760
1962	228929	191876
1972	200916	208926
1982	116593	154956
1992	44947	56673
1993	32999	53767
1994	30130	76446
1995	31512	62387

1996	22241	42457
1997	10980	26085
1998	9854	21885
1999	7553	10291
2000	12521	22988
2001	7233	25041
2002	6796	16865
2003	7244	26003
2004	6402	20758
2005	8194	20943
2006	6161	18800
2007	6279	13618
2008	3957	11703
2009	4649	8206
2010	11738	15577
2011	6016	13802
2012	3646	12584
2013	7579	16732

In the context of catches, comparison is often made with rod catches by those parties seeking to justify net catches. It is important to note that while 100% of fish caught in nets are killed, overall between 80% and 90% of rod-caught fish in Scotland are released and, in many rivers, particularly those with vulnerable run-time components, this figure is 100%. Due to the widespread adoption of catch and release in the rod fishery, with caught fish being returned live to the river to breed, particularly where that is focussed upon the protection of vulnerable run components in each river, it would be wholly wrong to equate or compare the numbers of fish caught by nets and rods.

Against this backdrop of an overall declining salmon population in Scotland, 17 SACs have been designated for Atlantic salmon in Scotland, with salmon as either a primary or secondary feature for designation (see Table 2).

Table 2 – SACs designated in Scotland where salmon is a primary (p) or secondary (s) feature

Berriedale and Langwell Waters (p)	River Bladnoch (p)
River Borgie (s)	River Dee (Aberdeenshire) (p)
Endrick Water (s)	Grimersta / Langavat (p)
Little Gruinard (p)	North Harris (s)
River Morriston (s)	River Naver and Mallart Water
River Oykel (s)	River Spey (p)
River South Esk (p)	River Tay (p)
River Teith (s)	River Thurso (p)
River Tweed (p)	

Although the Scottish Government has recently concluded that, across Scotland as a whole *“available information suggests that the overall number of Atlantic salmon returning to Scottish rivers has increased over recent years”*, albeit from a historically low level, it has also recognised that *“there is variation in trends of abundance among components of the stock associated with particular regions and run times. Although overall numbers of spring-running salmon have generally stabilised over recent decades, they remain low and on occasion are insufficient to stock spring salmon tributaries to a level that maximises production of juvenile emigrants. Consequently, spring salmon stocks remain worthy of particular management consideration”¹*.

¹ Marine Scotland Science Report 02/14 Status of Scottish Salmon Stocks - <http://www.scotland.gov.uk/Resource/0044/00446406.pdf>

Indeed, the UK's Article 17 Report from 2013², covering Atlantic salmon in Scotland, also reported that *“the long term decline in the total rod catch of spring salmon suggests that the populations associated with this stock component may be particularly weak although there is some indication that spring salmon catch has stabilised in recent years”*.

Overall, the 2013 Article 17 Report reported that for the 17 SACs, population trends shown by average rod catch data in the years since designation were negative in at least one of three different components of the salmon populations in 13 of the 17 SACs, indicating that negative trends are not necessarily limited to spring stock components only.

Table 3 Trend of population size within the SAC network – taken from the UK's Article 17 Report 2013 (Y= increase in rod catch as against year of designation, N =decrease)

SAC	Spring	Summer	Autumn
Berriedale & Langwell	Y	Y	Y
Grimersta	Y	N	Stable
Little Gruinard	Y	N	N
Bladnoch	Y	N	Y
Dee	Y	Stable	Y
Naver	N	N	N
South Esk	N	Stable	Y
Spey	Y	Y	N
Tay	Stable	Y	Y
Thurso	Y	Y	N
Tweed	N	Y	Y
Borgie	N	N	N

² Third Report by the United Kingdom under Article 17 on the implementation of the Directive from January 2007 to December 2012 - http://jncc.defra.gov.uk/pdf/Article17Consult_20131010/S1106_SCOTLAND.pdf

Endrick	N	N	N
Moriston	Y	N	Y
North Harris	n/a	Y	Y
Oykel	N	N	N
Teith	Y	N	N

The Habitats Directive lays down that conservation status of a species listed in Annex II will be deemed to be favourable if it satisfies three criteria set out in Article 1. If any one of the criteria is not satisfied, then the species will not be deemed to be at favourable conservation status.

The three criteria to be satisfied are:

- i) the population dynamics data on the species concerned indicate that it is maintaining itself on a long term basis as a viable component of its natural habitat; and
- ii) the natural range of the species is neither being reduced nor is likely to be reduced in the foreseeable future; and
- iii) there is and will probably continue to be a sufficiently large habitat to maintain its populations on a long term basis.

Against these criteria, the Atlantic salmon of a number of Scottish SACs is considered to be at unfavourable conservation status. A recent report into site condition monitoring for SNH³ has suggested that overall only 9 of the 17 SACs are 'favourable' while 8 should be categorised as 'unfavourable recovering'.

³ Rivers and Fisheries Trusts of Scotland (2014) Data supporting Site Condition Monitoring of Atlantic salmon SACs - Scottish Natural Heritage Commissioned Report No 755

**Table 4: Suggested conservation status per RAFTS (2014) SNH
Commissioned Report No 755**

SAC	Favourable	Unfavourable - recovering
Berriedale & Langwell	x	
Grimersta		x
Little Gruinard	x	
Bladnoch		x
Dee	x	
Naver	x	
South Esk		x
Spey		x
Tay	x	
Thurso		x
Tweed	x	
Borgie	x	
Endrick		x
Moriston		x
North Harris	x	
Oykel	x	
Teith		x

It is worth emphasising that despite an apparent improvement in the overall picture between 2005 and 2011, this is largely due to the use of a different assessment method in 2011 adopted by RAFTS as against 2005. As the report makes clear in Appendix 2, when the new assessment method is retrospectively applied to 2005 data, there is no improvement at all in the number of ‘favourable’ as against ‘unfavourable – recovering’ SACs between 2005 and 2011.

Failure to manage commercial coastal netting of Atlantic salmon in Scotland

Despite the unfavourable assessment for approximately half Scotland's SACs and the recognised issue with the spring-run components of some SAC salmon stocks, the Scottish Government has failed and continues to fail to take measures for Atlantic salmon sufficient to restore this species to favourable conservation status.

This complaint focusses specifically on the failure to manage commercial coastal netting of Atlantic salmon in Scotland, where that netting will be impacting upon SAC stocks.

It is important to note that measures to be taken pursuant to the obligations under Article 2 of the Habitats Directive are to be taken outside the boundaries of a designated SAC, where the activities that require such measures are situated outside the SAC, but which have an impact on the favourable conservation status of the natural habitats and/or species for which the site was designated. This is, of course, particularly relevant where an SAC is designated for the protection of a migratory fish species which spends a significant proportion of its life cycle outside the SAC where it is subject to exploitation from commercial coastal netting.

The Scottish Government should therefore have taken measures to ensure that coastal netting of salmon from SAC stocks does not harm the integrity of those SACs or the salmon populations for which they have been designated.

However, it is widely recognised and accepted that the coastal netting of salmon in Scotland operates as a mixed stock fishery (MSF). For example, the fish caught by Usan Fisheries in nets near the mouth of the South Esk SAC - one of the most active coastal netting stations in Scotland - are said to be:

“wild salmon and sea trout ... the harvest of the mighty Tay, South Esk, North Esk, Dee and the Don”⁴.

Recent radio tracking by Marine Scotland Science of salmon caught and then released in the nets near the mouth of the South Esk SAC confirms the mixed stock nature of such nets.

The exploitation of MSFs is contrary to the objectives of good management practice. An MSF is defined by the multinational North Atlantic Salmon Conservation Organisation (NASCO) as a fishery that exploits a significant number of salmon from two or more river stocks. MSFs are considered by all interested northern hemisphere countries represented at NASCO to present particular difficulties for management and species conservation. The European Commission has also considered the question of MSFs. The Commission’s working document states that “in the present conditions MSFs for salmon are widely considered to be inappropriate because of the lack of information on the stocks being exploited make the conservation and rational management of individual river stocks very difficult. It is therefore widely agreed that there should be a general presumption against operating MSFs unless they can be shown not to contravene basic conservation policies”⁵.

The international consensus is clearly against the operation of MSFs. The current advice from the International Council for the Exploration of the Seas (ICES) suggests that an MSF should only be allowed where there is an exploitable surplus, on rivers which are shown to be above conservation limits⁶.

In response to pressure to address conservation concerns relating to Atlantic salmon MSFs still operating in Scotland’s coastal waters, in July 2008, the

⁴ www.usansalmon.com/about.htm

⁵ European Commission (2006) Report on mixed stock fisheries for salmon in Atlantic community waters” (SEC) (2006) 590, 4 May 2006

⁶ ICES (2004) Extract of the Report of the Advisory Committee on Fishery Management to the North Atlantic Salmon Commission. May 2004 pp23 – 24.

Scottish Government invited the formation of the Scottish Mixed Stock Salmon Fisheries Working Group in an independent capacity to examine the issue of MSFs generally. Unfortunately, the report of the Working Group noted that it was “highly regrettable that we cannot reach an agreed view on [the use of the precautionary principle to justify action] but considers that failure to agree is a consequence of the failure to reach a general understanding of the point at which information should trigger application of the precautionary principle”, but suggested that the question of MSFs should be addressed by the Government as a matter of policy.

This recommendation has yet to be given effect by Scottish Government.

Meanwhile, the legal obligations placed on the Scottish Government by the Habitats Directive have not and are not being met.

Most importantly, the Scottish Government cannot identify, with any confidence, whether there is a harvestable surplus for any given run-timing component of Atlantic salmon populations from Scottish SAC rivers, nor can it state with the necessary degree of confidence which coastal netting stations are catching fish from which SAC rivers and at what times of the year.

Despite this, a large number of salmon and grilse are taken each year by these nets, as shown below, which will include an unknown number of salmon and grilse from SAC stocks.

Table 5: Wild salmon numbers reported as taken by nets 2012

		February	March	April	May	June	July	August	September
Tweed	1 East	27	63	31	62	58	50	67	53
South Esk	4 North East				359	378	567	262	146
North Esk	5 North East	17	9	22	19	28	3	38	
Ythan	9 North East				25	19	25	35	18
Ugie	10 North East			1	8	13	11	2	2
Deveron	11 Moray Firth			5	14	173	351	86	
Conon	18 Moray Firth			7	27	13	87	33	
Kyle of St	20 North						11	6	
Thurso	27 North			3	56	210	229	89	
Halladale	29 North								
Strathy	30 North				74	223	524	174	
Sligachan	48 North West					2	3	2	
Sunart	63 West Coast						30	38	
Lochy	68 West Coast				16	15	18	13	
Fyne	82 Clyde Coast								
Cree	94 Solway					1			
Fleet (Kirkcaldy)	95 Solway						2		
Urr	97 Solway				2	6	3	9	
Nith	98 Solway			4	13	27	42	45	10
Annan	99 Solway				14	41	62	126	17

Table 6: Wild grilse numbers reported as taken by nets 2012

		February	March	April	May	June	July	August	September
Tweed	1 East				3	1	48	39	8
South Esk	4 North East				13	197	902	489	126
North Esk	5 North East						14	23	
Ythan	9 North East					9	16	33	4
Ugie	10 North East			2	2	2	7	1	1
Deveron	11 Moray Firth				1	59	394	102	
Conon	18 Moray Firth				5	7	371	105	
Kyle of St	20 North						169	96	
Thurso	27 North				8	72	615	175	
Halladale	29 North					12	83	70	
Strathy	30 North				11	156	1697	418	
Sligachan	48 North West					3	4	4	
Sunart	63 West Coast						42	23	
Lochy	68 West Coast				1	16	31	32	
Fyne	82 Clyde Coast								
Cree	94 Solway						2	2	
Fleet (Kirkcaldy)	95 Solway						5	4	2
Urr	97 Solway						4	5	
Nith	98 Solway			1	4	8	61	116	17
Annan	99 Solway			1	1	11	60	163	21

Table 7 below shows the extent of the fishing equipment deployed by active coastal netting stations in Scotland in 2012.

Table 7: Active netting stations by district, showing effort in 2012, summarised as median number of traps operated within a given district in any month⁷

		February	March	April	May	June	July	August	September
Tweed	1 East	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
South Esk	4 North East				8.0	8.5	9.5	11.0	10.0
North Esk	5 North East	2.5	2.5	2.5	2.5	2.5	2.5	2.5	
Ythan	9 North East				1.0	1.0	1.0	1.0	1.0
Ugie	10 North East			3.0	3.0	3.0	3.0	3.0	3.0
Deveron	11 Moray Firth			1.5	2.0	4.5	5.5	6.5	
Conon	18 Moray Firth			1.0	2.5	3.5	8.5	4.5	
Kyle of Su	20 North						1.0	1.0	
Thurso	27 North			2.0	5.0	5.5	6.0	6.0	
Halladale	29 North					1.0	1.0	1.0	
Strathy	30 North				3.5	4.0	5.0	5.0	
Sligachan	48 North West					1.0	1.0	1.0	
Sunart	63 West Coast						1.0	1.0	
Lochy	68 West Coast				1.0	1.0	1.0	1.0	
Fyne	82 Clyde Coast							1.0	
Cree	94 Solway		1.0	2.0	2.0	2.0	2.0	2.0	2.0
Fleet (Kirl	95 Solway						1.0	1.0	1.0
Urr	97 Solway		3.0	3.0	7.0	7.0	7.0	7.0	6.0
Nith	98 Solway		14.5	21.5	28.0	41.5	32.0	32.0	22.0
Annan	99 Solway			29.0	35.0	36.0	36.0	51.0	36.0

Recently-reported figures show that the number of salmon killed in nets in 2013 was 50% higher than in 2012, according to the official Scottish Government figures. The 2013 summer drought caused very low flows in most rivers and thus salmon were exposed to greater netting exploitation.

The 2013 net catch of 24,311 salmon compares with 16,230 in 2012 and 19,818 in 2011.

⁷<http://www.scotland.gov.uk/Topics/marine/science/Publications/stats/SalmonSeaTroutCatches/2012Final/FixedEngine>

The failure to put in place sufficient statutory control on netting exploitation – Article 6(1) and 6(2)

At present, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 allows only for partial management of coastal netting in Scotland for salmonids, through a combination of timing restrictions in the Act itself and by providing for powers for Ministers to bring forward secondary legislation to impose specific local restrictions on timing and allowable methods of fishing by commercial net fisheries.

Section 13 of the 2003 Act sets the weekly close time for salmon such that netting cannot occur from 6pm Friday to 6am Monday and that applies to nets throughout Scotland. Fishing equipment, known as 'leaders', should be removed to prevent fishing during what is known as the 'weekly slap time', but, in practice, leaders are often left in operation when health and safety constraints prevent their safe removal. Section 14 of the 2003 Act makes it an offence to fish for salmon during an annual close time. Netting cannot occur during this annual close time. The annual close time itself is set for each district pursuant to the process of application to Scottish Ministers laid down by Section 37.

Salmon conservation regulations may also place a limit on the number of nets deployed by the coastal net fisheries within a district, although in the absence of such regulations being made by Scottish Ministers, there are no restrictions on the maximum number of nets that can be deployed at each station.

Where evidence - such as site condition monitoring - indicates that conservation measures are needed for the conservation of salmon, in particular SACs, Scottish Ministers should take scientific advice from statutory bodies and make salmon conservation regulations or annual close time orders as appropriate.

Scottish Ministers may do this in two ways. Firstly, they may respond to applications from a district salmon fishery board for an alteration of the annual close time, under section 37, or for salmon conservation regulations under section 38 of the 2003 Act. Secondly, they may make section 38 regulations at their own initiative if – per section 38(1) – they find it “necessary or expedient to do so for the conservation of salmon”.

It is important to note that district salmon fishery boards do not have any ability in law to make any legal restrictions on the timing or intensity of fishing effort by coastal nets. It is only by application to, and with the agreement of Scottish Ministers that such restrictions can be imposed.

A variety of both annual close time orders and salmon conservation regulations have been made in the past (under predecessor legislation now re-enacted in the 2003 Act) but arguably these have been insufficient to protect SAC salmon populations from exploitation by commercial coastal netting operations. They certainly do not reflect the call from the Association of Salmon Fishery Boards for an end to all exploitation of salmon, by netting or by rods, before mid-May to protect spring stocks⁸.

Most significantly, there is no licensing system nor legal framework to allow Ministers to place any numerical restrictions or upper limits on the total or weekly number of salmon that can be killed by coastal nets during the period within which they are permitted to fish.

In practical effect, this means that Scottish Ministers have inadequate powers to exercise proper control over the exploitation of salmon stocks, including those from SAC river populations.

⁸ ASFB calls for zero exploitation of salmon before mid-May. ASFB Press Release 10th January 2014

Article 6(1) requires Member States to “establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites”.

In the absence of an enforceable licensing system which allows the imposition of a quota to manage the exploitation of SAC stocks, it is difficult to see how the Scottish Government has met its Article 6(1) obligations.

To re-iterate, in respect of the control of commercial coastal netting of salmon, the 2003 Act gives the Scottish Government some of the necessary statutory ‘levers’ it requires to comply with Article 6(1).

By making salmon conservation regulations at its own initiative, pursuant to paragraph 7(b) of Schedule 1 of the 2003 Act and by receiving applications from district salmon fishery boards for appropriate annual close time orders or salmon conservation regulations, it can exercise some control.

However, the Scottish Government has made insufficient orders or regulations, either at its own initiative or in response to applications.

Further and most importantly, despite the recent opportunity to rectify this situation presented by the passage of the Aquaculture and Fisheries Bill 2013 through the Scottish Parliament (an amendment to that Bill, drafted at the time by the complainant, can be found at Annex A to illustrate what form this could have taken), when the Scottish Government could have taken powers to regulate coastal netting by some form of licensing and quota system, the Scottish Government still has no licensing system for commercial coastal netting and

hence no legal method of controlling the numbers of salmon from each SAC stock being caught by commercial coastal netting stations.

The re-opening of long dormant netting stations without further licence and appropriate assessment – Article 6(3)

There is also a major threat to SAC stocks from long-dormant coastal netting stations off Scotland.

It is important for the purposes of this complaint to understand the ownership of salmon fisheries in the coastal marine environment of Scotland. The right to fish for salmon in the sea is largely vested in the Crown (in the form of the Crown Estate) and includes in all territorial waters outside estuary limits. About 30% of net fisheries which might, in theory, operate in the sea are owned by the Crown and administered by the Crown Estate. For conservation reasons, there are no coastal netting stations let by the Crown Estate at present and none is actively fished, although this might yet change.

Those remaining coastal netting stations are in private hands and were granted or the heritable title sold by the Crown Estate or its predecessor before the late 1980s. Many of these 'private' coastal netting stations have been dormant for a significant period of time, some for many decades before the Habitats Directive was made.

An analysis of the district assessors' valuation rolls shows that there are at least 129 dormant netting stations in Scotland which have the potential to come back into operation.

This presents a risk to the protection of Atlantic salmon. Currently, these dormant stations can be purchased, re-opened and operated without any license being

required or indeed any trigger that would require an appropriate assessment by any public or statutory body, under Article 6(3) of the Directive.

Article 6(3) requires a Member State to subject any plan or project that is not directly concerned with or necessary to the management of an SAC, but which is likely to have a significant effect, either individually or cumulatively, with other plans or projects, to an appropriate assessment in view of the site's conservation objectives. Even plans or projects that are likely to have only slight effects are caught by Article 6(3). As SNH notes, "*any plan or project which potentially has a small or greater effect...should be checked out through an appropriate assessment*"⁹. Only when potential effects are trivial or inconsequential are they 'insignificant'. Further, Member States shall only agree to a plan or project after ascertaining that it will not adversely affect the integrity of the site concerned.

The question arises as to whether the re-opening of a dormant coastal netting station is a 'plan or project'.

In the view of the S&TA(S), it is inconceivable that coastal netting, proposed *de novo*, would not be considered a plan or project likely to have a significant effect upon the conservation objectives of qualifying interests of an SAC.

However, as Scottish law currently stands, as coastal netting stations are effectively an inherited right to fish for salmon, which is not subject to any statutory permissions or licensing, any renewed coastal netting operations at dormant netting stations will not trigger Article 6(3) 'appropriate assessments' of this renewed netting.

As described above, there would be no limit on the number of fish that can be caught and taken during the open season by these renewed netting stations.

⁹ SNH (2006) Guidance for Competent Authorities when dealing with proposals affecting SAC freshwater sites; January 2006, para 3.2.

Nor is this a merely theoretical possibility. For example a number of dormant netting stations have been purchased recently by Scotland's leading netting company, Usan.

In 2011 Usan purchased the semi-dormant netting stations at Murkle and Castle Hill in Dunnet Bay (Caithness), close to the River Thurso SAC. Previously these nets were lightly and intermittently fished in the summer only. In 2010 the declared catch for this district was 55 (this figure includes the catch of one other station). In 2013 Usan's declared catch here was 1078 salmon and grilse.

In 2012 Usan purchased two netting stations with netting rights over nine miles of coastline by Gardenstown in north Aberdeenshire, east of the Deveron and the River Spey SAC. These nets had not been operated for some 20 years. In 2013 Usan's declared catch here was 2254 salmon and grilse.

In 2014 Usan purchased netting stations by the River Ythan (north of the River Dee SAC), which had not been operated since 1997. Usan intends to start netting here in 2015. Correspondence with the Minister concerning the Ythan nets is at Annex B but, although the Minister has acknowledged receipt, no substantive reply has yet been received.

It is the view of the S&TA(S) that the re-opening of a dormant or semi-dormant netting station clearly has the effect of introducing greater fishing effort and therefore should be considered a new plan or project caught by Article 6(3).

Further, as Article 6(3) states that an appropriate assessment is required if it cannot be excluded on the basis of objective information that a relevant project will have a significant effect, *either individually or in combination with other plans or projects*, any renewed netting at hitherto dormant or semi-dormant netting

stations must be considered in the light of all existing netting that may already be impacting upon SAC stocks to an unknown degree.

No such appropriate assessments have been carried out in Scotland and there is no statutory system in place that could trigger appropriate assessment under Article 6(3) where a dormant netting station is re-opened.

Conclusions

- 1) The Scottish Government has failed to comply with the requirements of Article 6(1) by failing to establish a statutory licensing system for coastal netting stations to allow proper management of all run-time components of SAC stocks, including spring stocks, by way of a quota or limit on the number of fish from each component of SAC stocks that can be killed.

- 2) The Scottish Government has failed to comply with the requirements of Article 6(3) in respect of SACs by not putting in place a system of licensing that treats the re-opening of dormant or semi-dormant net fisheries as new plans or projects as defined by Article 6(3) and by not therefore appropriately assessing such renewed netting to ascertain whether these netting operations adversely affect the integrity of SACs designated in respect of Atlantic salmon

Annex A

Amendment to Aquaculture and Fisheries Bill 2013

Clause XYZ Duties and powers in respect of licensing and regulation of coastal salmon netting

- (1) For the purpose of this section, 'coastal salmon netting' shall be defined as any fixed engine or other static equipment used for the capture of salmon in Scottish coastal waters and 'coastal salmon netting station' shall be construed accordingly.
- (2) It shall be an offence for any person to operate a coastal salmon netting station in Scottish coastal waters without licence, or in contravention of any conditions in any such licence, to be punishable -
 - (a) on summary conviction, by imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, by imprisonment for a term not exceeding two years, or a fine or both.
- (3) The Minister shall prescribe by order a system of licensing for coastal salmon netting with the aims of:
 - (a) conserving all salmon stocks generally;
 - (b) preventing the unsustainable exploitation of all salmon stocks;
 - (c) protecting salmon as required by the Conservation (Natural Habitats, &c.) Regulations 1994 or other international obligations; and
 - (d) in any salmon stock, ensuring a fair balance between the interests of operators of coastal salmon netting and the owners of freshwater recreational fisheries such balance to be based on the numbers of fish of that stock killed.
- (4) Without prejudice to the generality of section 44 of the Civic Government (Scotland) Act 1982 (c. 45) (power to designate additional activities as

subject to licensing and regulation) any order as respects coastal netting of salmon made under this section must –

- (a) provide that no licence can be issued for any coastal salmon netting station that has not been in operation for the period of 5 years to 1st July 2014;
 - (b) provide that no licence can be issued for any coastal salmon netting station that has been in operation for the 5 years to 1st July 2014 unless the applicant can demonstrate to the satisfaction of Scottish Ministers that such a licence will meet the purposes under (3) above;
 - (c) without prejudice to other provisions of this Act, require the licensing authority to place such conditions on any licence as to:
 - (i) limiting the timing and duration of any coastal netting;
 - (ii) specifying the location of any fixed engine or other equipment used for coastal salmon netting;
 - (iii) specifying the equipment the licence holder must have available to operate such coastal netting station in accordance with any licence;
 - (iii) specifying the type and limiting the number of fixed engines or other such coastal salmon netting equipment that may be used;
 - (iv) limiting the total number, type or size of fish that may be caught in any specified time period;
 - (v) placing any other such conditions as the licensing authority considers necessary or expedient so as to achieve the purposes in (3) above;
 - (vi) requiring the annual renewal of any licence;
 - (vii) providing powers of entry and search by water bailiffs or such other class of persons as the order may specify.
- (5) The Scottish Ministers shall have power by order to prescribe the fees, or the maximum amounts of the fees, which the licensing authority may determine and charge under sub-paragraph (1) of paragraph 15 of

Schedule 1 to the 1982 Act in respect of the licensing of coastal salmon netting and in that respect the licensing authority's powers under that paragraph shall be subject to the provisions of any such order.

Annex B

Text of letter to relevant Minister concerning Ythan nets

My ref GLA/STAS

17th March 2014

Paul Wheelhouse MSP
Minister for the Environment and Climate Change
St Andrew's House
Regent Road
Edinburgh EH1 3DG

Also by email to Nadine.Arber@scotland.gsi.gov.uk

Dear Minister

Ythan netting

I act for the Salmon & Trout Association (Scotland).

I enclose a press release issued on 8th March 2014 by Usan Fisheries announcing the re-opening of netting in the Ythan Estuary district.

There has been no active commercial netting in the Ythan Estuary district for two decades.

It appears that these nets can be re-opened without any domestic licensing process applying.

Further, there is no limit on the number of fish (both salmon and sea trout) that can be caught and taken during the open season by these nets.

In the view of the S&TA(S), this re-opening of netting in this district could present a risk to the protection of Atlantic salmon populations in SAC rivers.

It is highly likely that these nets will be taking fish from rivers designated under the Habitats Directive for the protection of wild Atlantic salmon.

Of course, despite the lack of a domestic licensing process, the Scottish Government has clear duties under the Habitats Directive, particularly under Article 6, to establish the necessary conservation measures which correspond to the ecological requirements of Annex II species such as Atlantic salmon.

Further, Article 6(3) lays down the procedure to be followed for any a new plan or project that might affect an SAC, in this case, those Scottish east coast rivers designated for Atlantic salmon and requires that any such plan or project likely to have a significant effect on a Natura 2000 site, either individually or in combination with other plans or projects, shall undergo an appropriate assessment to determine its implications for the site.

The relevant competent authority can only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned, meeting the test laid down in the European case of in Case C-127/02, the Waddensee case - that it is beyond reasonable scientific doubt that there will not be an impact on the integrity of the site.

Please would you indicate how the Scottish Government intends to undertake the required appropriate assessment, as required under Article 6(3) of the Directive, of the plan to re-open netting for salmonids in the Ythan district.

More generally, the Scottish Government will be aware that the district assessors' valuation roles show that there are at least 129 dormant netting stations in Scotland, all of which have the potential to come back into operation. The S&TA(S) would ask for confirmation that, where the intention is that any of these are brought back into operation, and where it is reasonable to expect that salmon from SAC rivers will be taken, any renewed netting will be subject to appropriate assessment under the Directive.

I look forward to hearing from you in due course.

Yours sincerely

Guy Linley-Adams
Solicitor to S&TA Scotland