

ANNAN COMMON GOOD FUND – RETURN OF FISH CAUGHT 2006 SEASON

1. Reason for Report

The reason for this report is to provide Members with initial advice on;

- the catches for the 2006 fishing season;
- amendments sought to the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003; and
- Proposed delay in the start date to fishing for Sea Trout for netsmen.

2. Recommendations

Members are asked to:

- 2.1 Note the catch figures for the 2006 season (**Appendix 1**); and
- 2.2 Note that this report provides initial advice on the proposals to seek to repeal s26(2) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003; and
- 2.3 Agree to seek further information on the proposal to delay fishing for netsmen until August each year.

3. Corporate Plan Links and Contribution

The Scheme for Decentralisation is a statutory document as required by Section 23 of the Local Government etc (Scotland) Act 1994. The principles of the Scheme are in line with those contained in the Corporate Plan in terms of managing assets and decision making at the lowest possible level to ensure resources are used appropriately.

4. Resources/Value for Money Assessment

- 4.1 There are no cost implications associated with the catch figures.
- 4.2 There is the potential for reduction in income from Poke Net Licences (discussed in further detail in a report elsewhere on the agenda) and potential financial effect to the Stake Net Lease holder and income to the Common Good from this source in relation to the delay to the start of fishing for Sea Trout.

5. Risk Assessment

5.1 Repeal of Section 26(2) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

5.1.1 Repeal of s26(2) of the 2003 Act would not affect the netsmen on the Annan unless they were fishing without permission (i.e no licence).

5.1.2 Any repeal of this subsection would have the effect of making it easier to prosecute those fishing on the Annan for fish other than Salmon without a licence.

5.1.3 The repeal of Section 26(2) would mean that, in all waters flowing into the Solway without any exclusion, it would be an offence to take or fish for any fish other than salmon without legal right or permission. This may include the channels of rivers and streams which cross the foreshore. As Section 26(1) applies only to waters flowing into the Solway, the taking of or fishing for any fish other than salmon on the foreshore of the Solway (and not in the channels of rivers and streams) between the west bank of the River Sark and the east coast of the Lochar Water is not an offence under that sub-section.

5.1.4 If the netsmen licensed by the Common Good fish within the channels of rivers entering the Solway, and any landowner has a title which includes the foreshore, there is a possibility that the activity may be criminalised by the repeal of S26(2), as taking or fishing for fish other than salmon, without legal right or permission. If, however, the fishing undertaken by those persons licensed by the Common Good is all done on the Solway foreshore, and not within the channels of rivers, the repeal of Section 26(2) would not have the effect of rendering the fishermen liable to prosecution under S26(1) in respect of the non-salmon species.

9.2 Proposed Delay in the Start Date to Fishing for Sea Trout

There are several issues associated with the proposed revised start date for Sea Trout for the Poke Netsmen, the Stake Net Lease holder and the Common Good Fund;

(i) Poke Netsmen – the proposed revised start date for fishing for Sea Trout would have the effect of stopping fishing for all fish by this method up to August. Poke Nets are fixed and cannot differentiate between species of fish;

(ii) Stake Net Lease Holder – the proposed reduction in fishing time would almost certainly affect the viability of the Stake net operation.

(ii) Income to the Common Good – limiting the operation of the Poke and Stake Nets would have consequences for the income to the Common Good Fund.

6. **Authorities and Legal Implications**

The relevant legislation is detailed below:

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

Salmon Act 1986

Freshwater and Salmon Fisheries (Scotland) Act 1976

Salmon and Fresh Water Fisheries (Protection) (Scotland) Act 1951

Annan Fisheries Act 1841

Solway Act 1804

7. **Consultations**

The Group Manager Corporate Support and Governance and Group Manager, Legal Services have been consulted and are in agreement with the terms of this report.

8. **Background**

8.1 Catch Figures - collation and return of Catch figures are required by the Scottish Executive and presented annually to this Committee for information.

8.2 Proposal to amend s26(2) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 - A proposal to seek to amend the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 was tabled at the of the River Annan District Salmon Fishery Board held on 8/12/06 to annul/repeal s26(2) of the Act.

8.3 The River Annan District Salmon Fisheries Board Environmental Manager's Report - The Environmental Manager highlighted that the Sea Trout catch for 2006 was the lowest on record and recommended to the Board that netmen be encouraged not to fish for Sea Trout before August each year to ensure as many Sea Trout as possible survive to spawn.

9. Key Issues

9.1 Area Management has received detailed information from the River Annan District Salmon Fisheries Board's proposal to amend s26(2) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. This information has been initially assessed by Area Management but further clarification from the Council's Legal Services is being sought which could materially affect the advice contained in this report.

9.1.1 Section 26 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 reads as follows:-

- (1) Any person who, without legal right or without permission of a person having such right, takes or fishes for any fish other than salmon in any of the rivers, streams or other watercourses running into the Solway shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (2) This section shall not apply to the River Annan and in this subsection 'the River Annan' includes:-
 - (a) the rivers streams or other water courses running into the River Annan; and
 - (b) the coast of the Solway between the west bank of the River Sark and the east bank of the Lochar Water.

9.1.3 Section 26(1) of the 2003 Act makes it an offence to take or fish for any fish other than salmon in any water running into the Solway, without being the owner of the fishing rights or having permission from the owner. Section 26(2) disappplies the Section to the River Annan and effectively stops the fishing for fish other than Salmon in the River Annan (and its tributaries) being a *criminal* offence. This means that anyone fishing without permission (without a licence) on the Annan cannot be prosecuted in the criminal courts. Legal proceedings must be in the Civil Court and proprietors must obtain an interdict against individuals fishing without permission.

9.1.4 Repealing s26(2) would bring the Annan in line with other rivers on the Solway and make it easier for those fishing without permission to be prosecuted.

9.1.5 Section 6 of the 2003 Act makes it an offence, without legal right or written permission, to fish for Salmon (Sea Trout are defined as Salmon in s24(1) of the Salmon and freshwater Fisheries (Protection) (Scotland) Act 1951)

9.2 Proposed August start to fishing

9.2.1 The proposal to delay fishing by netsmen until August each year would have an adverse effect on the attractiveness of licences for Poke Net fishermen as the proposed delay would only leave around 5 weeks of fishing time available. This could potentially result in a drop in the annual income to the Common Good Fund.

9.2.2 The proposed delay could possibly stop the operation of the Stake Nets because the effort required to set the nets could outweigh the benefits of fishing for only 5 weeks. Catch figures for the Poke and Stake Nets indicate that Sea Trout are caught mainly in May, June and July.

9.2.3 It is theoretically possible for Haaf netting to continue as Sea trout caught inadvertently could be released.

9.2.4. The income to the Common Good Fund provided by the Stake Nets is disbursed as grant and the Annual Assessment paid to the River Annan District Salmon Fisheries Board for the Stake Nets is recovered from the tenant. If the proposed delay is implemented, the income to the Common Good Fund from the Poke and Stake nets for disbursement as grant could be reduced by up to half.

9.2.5 The longer term risks of losing the ancient skills and historical traditions of net fishing in the Solway should also be considered.

9.2.6 If the reason for the proposed delay is to preserve Sea Trout stocks, it is recommended that further information is sought from the River Annan District Salmon Fisheries Board on the reasons why only netsmen are being asked not to fish for Sea Trout until August, request evidence that net fishing is the cause for the low Sea Trout catches and information on possible alternatives to the proposed delay in start to fishing for Sea Trout.

9.2.7 A revised start date on the taking and killing of Salmon is in force until 1 May each year for netsmen. This later start date to the season has already reduced the time for operation of the Poke and Stake Nets for the same reasons.

9.2.8 The River Annan District Salmon Fisheries Board has proposed a reduction in the Annual Assessment as possible means of compensation but would not address the lost income.

9.3 The River Annan District Salmon Fisheries Board is holding a special meeting in early February to discuss the proposed delay in the start to fishing for Sea Trout.

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Background Papers

Corporate Policy Committee 3 October 2006

CATCH FIGURES 2006 AND PREVIOUS YEARS FOR COMPARISON

The catches for the 2006 season together with the previous two years and years ago for comparison.

2006 Season	POKE		HAAF	
	Number	Weight (KG)	Number	Weight (KG)
Salmon	103	486.61	135	726.89
Grilse	137	315.30	334	861.55
Trout	1	2.71	45	61.41

2005 Season	POKE		HAAF	
	Number	Weight (KG)	Number	Weight (KG)
Salmon	115	539.45	223	1,106.71
Grilse	180	550.42	550	1,568.32
Trout	0	0	144	200.84

2004 Season	POKE		HAAF	
	Number	Weight (KG)	Number	Weight (KG)
Salmon	32	157.98	83	412.19
Grilse	59	169.31	171	495.99
Trout	0	0	166	203.56