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The Fisheries Act and associated European legislation

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This research paper describes the provisions made by the Fisheries Act (Northern Ireland) 1966, particularly regarding the granting of licences for salmon fishing at sea. The relationship between the Act and relevant European legislation is also described, and the DCAL commitments under the Convention for the Conservation of Salmon in the North Atlantic Ocean outlined. An indication is provided of the likely process required for undertaking changes to the Fisheries Act.

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Key Points

- The Fisheries Act makes provision for the development and improvement of fisheries in Northern Ireland, setting out the role and responsibilities of the Fisheries Conservancy Board, the functions of which were absorbed within the Department of Culture, Arts and Leisure in 2009.
- Many of the specific details of fishing regulations are set out in the Fisheries Byelaws (Northern Ireland) 2003.
- Four pieces of European legislation have affected the Fisheries Act since its creation: the Nitrates Directive, Habitats Directive, Water Framework Directive, and a European Eel Regulation. Statutory Rules have been introduced in Northern Ireland to make the necessary amendments to the Fisheries Act.
- In particular, the Habitats Directive is intended ‘to help maintain biodiversity in the Member States by defining a common framework for the conservation of wild plants and animals and habitats of Community interest’.
- The Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 updates Northern Ireland legislation and addresses the interface with the Habitats Directive. Atlantic salmon is *not* listed in Schedule 2 of the 1995 regulations which details those European Protected Species native to Northern Ireland.
- However, the Atlantic salmon *is* listed in Annex 2 of the Habitats Directive, and is therefore a ‘species of community interest whose conservation requires the designation of special areas of conservation’. There are currently five special areas of conservation in Northern Ireland which feature populations of Atlantic salmon.
- It should be noted that while the Habitats Directive seeks to conserve Atlantic salmon as a protected animal (albeit in specific areas), the Fisheries Act provides for the catch and sale of salmon as a leisure and food resource (albeit with restrictions).
- The UK is a party to the North Atlantic Salmon Conservation Organisation (NASCO), and signed the 1983 Convention for the Conservation of Salmon in the North Atlantic Ocean.
- The *Atlantic Salmon Management Strategy for Northern Ireland and the Cross-border Foyle and Carlingford Catchments 2008–2012* sets out DCAL’s commitments under the convention. It is stated in the strategy that ‘the national policy in both jurisdictions (Loughs Agency and DCAL) is to phase out all mixed stock interceptor fisheries and to introduce legislation to control all other commercial fisheries where they impact on rivers not achieving Conservation Limits’.
- Finally, since the Fisheries Act (Northern Ireland) 1966 was enacted by the Parliament of Northern Ireland, and as fisheries are not specified as an excepted or reserved matter under Section 4 of the Northern Ireland Act 1998, any new or amending legislation would be within the competence of the Northern Ireland Assembly.

Executive Summary

This research paper describes the provisions made by the Fisheries Act (Northern Ireland) 1966, particularly regarding the granting of licences for salmon fishing at sea. The main elements of relevant European legislation are also described, and the DCAL commitments under the Convention for the Conservation of Salmon in the North Atlantic Ocean outlined.

The Fisheries Act makes provision for the development and improvement of fisheries in Northern Ireland, consolidating amendments to the previous Fisheries Acts from 1842 to 1954. The Act also sets out the role and responsibilities of the Fisheries Conservancy Board, which was abolished and its functions absorbed within the Department of Culture, Arts and Leisure in 2009. The current version of the legislation was substantially amended in 2001.

Many of the specific details of fishing regulations are set out in the Fisheries Byelaws (Northern Ireland) 2003. These byelaws cover aspects such as the costs of licences for each type of fishing engine, closed seasons, the size of takeable fish, and the nature of the licence issue process.

The Fisheries Act only covers the areas under direct DCAL control, with the Loughs Agency responsible for Carlingford and Foyle under the Foyle Fisheries Act (Northern Ireland) 1952, and the Foyle and Carlingford Fisheries (Northern Ireland) Order 2007.

Four pieces of European legislation have affected the Fisheries Act since its creation: the Nitrates Directive, Habitats Directive, Water Framework Directive, and a European Eel Regulation. In the case of each of these pieces of European legislation, Statutory Rules have been introduced in Northern Ireland to make the necessary amendments to, and interfaces with, the Fisheries Act.

In particular, the Habitats Directive is intended ‘to help maintain biodiversity in the Member States by defining a common framework for the conservation of wild plants and animals and habitats of Community interest’. The Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 updates Northern Ireland legislation and addresses the interface with the Habitats Directive. Atlantic salmon is *not* listed in Schedule 2 of the 1995 regulations which details those European Protected Species native to Northern Ireland. However, the Atlantic salmon *is* listed in Annex 2 of the Habitats Directive, and is therefore a ‘species of community interest whose conservation requires the designation of special areas of conservation’. There are currently 56 special areas of conservation in Northern Ireland, with five featuring populations of Atlantic salmon.

It should be noted that while the Habitats Directive and the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 seek together to conserve Atlantic salmon as a protected animal (albeit in specific areas), the Fisheries Act provides for the catch and sale of salmon as a leisure and food resource (albeit with restrictions).

The UK is a party to the North Atlantic Salmon Conservation Organisation (NASCO), and signed the 1983 Convention for the Conservation of Salmon in the North Atlantic Ocean. NASCO can make recommendations, including the ‘enforcement of laws and regulations’, and ‘the undertaking of scientific research’. The Convention also imposes a duty on signatories to make an annual statement of the actions they have taken.

The *Atlantic Salmon Management Strategy for Northern Ireland and the Cross-border Foyle and Carlingford Catchments 2008–2012* sets out the Department for Culture, Arts and Leisure’s commitments under the convention. The core concept expressed by this strategy is to establish conservation limits at a river and regional level, and to ‘ensure that in most rivers in most years sufficient adult salmon are spawning to maximise output of smolts from freshwater and to monitor the river or catchment for salmon numbers and where levels are not attained to identify and address the problem’.

It is stated in the *Atlantic Salmon Management Strategy* that ‘the national policy in both jurisdictions (Loughs Agency and DCAL) is to phase out all mixed stock interceptor fisheries and to introduce legislation to control all other commercial fisheries where they impact on rivers not achieving Conservation Limits’.

Finally, the process for making any potential further changes to the Fisheries Act (Northern Ireland) 1966 is described briefly. The Fisheries Act was enacted by the Parliament of Northern Ireland and since fisheries are not specified as an excepted or reserved matter under Section 4 of the Northern Ireland Act 1998, any new or amending legislation would be within the competence of the Northern Ireland Assembly.

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1 The Fisheries Act (Northern Ireland) 1966

1.1 Overview

The Fisheries Act (Northern Ireland) 1966¹ was originally designed to extend the functions of the Ministry of Agriculture in relation to fisheries and to make provision for the development and improvement of fisheries by that Ministry. It consolidated amendments to the previous Fisheries Acts, extending from 1842 to 1954. The Act also established the Fisheries Conservancy Board (FCB) and defined its functions and responsibilities. The FCB was established in 1966 with responsibility for the conservation and protection of the salmon and inland fisheries of Northern Ireland, other than those which fall within the responsibility of the Loughs Agency. The functions of the FCB included the issuing of fishing licences, enforcement of fishing regulations and byelaws, and assisting in the investigation of pollution incidents which involve fish kills. The FCB was abolished in 2009 and its functions passed to DCAL.

The structure of the Act is as follows:

Part	Brief description
1	Functions of the Ministry of Agriculture: including their role in the supervision and protection of fisheries, and in fostering the establishment and development of fisheries.
2	Fisheries Conservancy Board: sets out FCB's role in enforcing the Act, liaising with the department and any other relevant bodies, and making byelaws where necessary.
3	Fishing licences: includes the use of rods and fishing engines, the keeping and inspection of catch records, and the enforcement of fines for illegal fishing.
4	Protection of fisheries: includes the protection of young and breeding fish, the prohibition of pollution or poisoning of freshwater, and the prevention of trade in under-sized fish.
5	Regulation for fishing of salmon, eels and freshwater fish: covers the prohibition of certain fishing techniques, penalties for contravention, and the regulation of nets, traps and weirs.
6	Times of fishing for salmon, trout, pollan and eels: prescribes the existence of a closed season for the catching of these types of fish.
7	Restrictions on dealings in salmon, trout and eels: covers the prohibition of any kind of sale of illegally caught fish, the prohibition of any salmon, trout or eel sales at certain times of the year, the granting of fish trading licences, and the clear labelling of packages containing these types of fish.
8	Sea-fishing: includes the overall regulation of sea fishing, the registration of boats, the prohibition of certain forms of fishing engine or gear, and the setting of seasons.
9	Shell-fish and marine fish licences: covers the issuing of the various forms of licence, and activities deemed an offence, such as damage to, or dredging of, a shell-fish fishery.
10	Miscellaneous offences: these include the obstruction of lawful fishing, and unauthorised entry onto private or restricted fishing areas.
11	Authorised persons: prescribes the role of police officers and Fisheries Conservancy Board staff, and outlines procedures by which private water bailiffs are appointed for the protection of fisheries. The role and powers of private water bailiffs are also set out.
12	Supplemental provisions: covers such subjects as forfeitures, penalties, forms of evidence required, and the role of the Appeals Commission.

¹ Fisheries Act (Northern Ireland) 1966: <http://www.legislation.gov.uk/apni/1966/17/part/VIII>

Two aspects of the Fisheries Act (Northern Ireland) 1966 are now covered in more detail.

1.2 Regulation for fishing of salmon, eels and freshwater fish

Part 5 of the Fisheries Act sets out the powers that DCAL has in establishing regulations for the prohibition of certain methods of fishing, including the use of nets, cross lines, or damming. With regard to the use of nets for the catching of salmon in the sea or the ‘tideways’, the legislation states that a net with a mesh size of 4.4cm⁽²⁾. Furthermore, nets cannot be used to catch salmon within 805m of the mouth of a river (in any direction). However, these restrictions do not apply to the ‘owner of a several fishery’.

This part of the legislation also sets out the powers of ‘the Board’ (ie the Fisheries Conservancy Board, the functions of which were absorbed into DCAL in 2009), regarding the use of drift nets for the taking of salmon in the sea:

- (1) *Where the Board are satisfied that it is expedient to control the use of drift nets for the taking of salmon in the sea, they may make byelaws prohibiting, restricting or otherwise controlling—*
 - (a) *the use of such nets for fishing for salmon in the sea;*
 - (b) *the landing of salmon taken by means of such nets;*
 - (c) *the having in possession of salmon taken or landed in contravention of the byelaws.*
- (2) *Byelaws under this section restricting or otherwise controlling fishing for salmon may prescribe—*
 - (a) *the classes of persons to whom there may be issued fishing licences in respect of nets to which the byelaws apply;*
 - (b) *the classes of boats which may be used for the working of such nets;*
 - (c) *the maximum number of fishing licences which may be issued in any year in respect of such nets;*
 - (d) *the manner in which such licences shall be allocated in any case where the number of valid applications for such licences in any year exceeds the number prescribed under paragraph (c) in respect of that year.*
- (3) *If any person contravenes any byelaw made under this section, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.*

² This mesh size has been in the legislation since 1983.

The legislation also sets out restrictions on the use of nets in fresh water, fishing weirs and fixed engines, and penalties for affecting the flow of water.

1.3 Sea-fishing

Part 8 of the Fisheries Act sets out the powers that DCAL has in establishing regulations for the ‘management, conservation, protection, improvement or increase of sea-fisheries’. Regulations may be made for purposes such as the registry of sea-fishing boats, the regulation of fishing, and prohibiting the taking of sea-fish of particular kinds, at certain times, in certain areas, or by certain methods.

This part of the Act provides DCAL with powers to make regulations for ‘the conservation or enhancement of the natural beauty or amenity of marine or coastal areas’, and for ‘the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal environment’.

If any person contravenes a regulation made under this section, a fine of up to £1,000 can be imposed. The legislation also prohibits the landing or sale of any fish caught in contravention of regulations set by the Department, with a fine of up to £1,000 imposed if a perpetrator is found guilty.

Provisions are made for regulations regarding the landing or sale of undersized fish, with the Department able to set and change the minimum size. Again, a maximum fine of £1,000 can be imposed. An ‘officer of a market authority’ may seize sea fish which contravene the regulations provided for in this section of the legislation.

1.4 Fisheries Byelaws (Northern Ireland) 2003

Many of the specific details of fishing regulations are set out in the Fisheries Byelaws (Northern Ireland) 2003, which replaced a previous version in 1997 and its subsequent amendments. These byelaws cover the costs of licences for each type of fishing engine; the dates, times and locations of closed seasons; the size of takeable fish (including trout, pollan, perch and pike); the nature of the licence issue process, and a number of specific restrictions relating to Lough Neagh and Lough Erne. Minimum mesh sizes are given for different forms of net, as well as the maximum length of the net, and the minimum distance which must be observed from the mouths of specific rivers. As an example, it is stated that a drift net at sea for catching salmon can be up to 1375m in length, must be operated from a boat not more than 12.2m in length, cannot operate between 16 September and 17 March, and must not take salmon with a net from either Strangford Lough or Dundrum Inner Bay.

The issue of draft and drift net licences to commercial operators is specified in Part 2 of the byelaws. Byelaw 14 states that ‘the Board shall issue a drift net licence to any person who has held a drift net licence in any one of the 3 calendar years immediately preceding his application for such a licence’. There are a set number of licences in each case, so that when a licence holder dies or retires, a licence shall then be issued

to the longest serving crew member of the same boat. Licences are no longer issued for anyone who has been (a) paid compensation by the Department, (b) fails to use it for three years or does not notify the Department that it will not be used in any given calendar year, or (c) commits an offence under the Fisheries Act.

Part 3 of the byelaws sets out the process of appeal against the Board if a fishing licence is refused. Byelaw 25 states that,

Where the Board proposes to revoke a fishing licence or refuse to issue or renew a fishing licence, it shall give the licence-holder or the person applying for issue or renewal of a fishing licence at least 14 days prior notice in writing of its intention so to do...

The applicant or licence holder will then be informed of their right to appeal. However, there are no further details stated of the grounds on which a licence may either be refused or successfully appealed.

The Minister of Culture, Arts and Leisure provided an answer to an Assembly question on 10 January 2012 that³:

Departmental officials have written to all DCAL licensed commercial fishermen operating coastal fishing engines asking that they do not apply for renewal of their licences in 2012. If they agree to do so this would result in a temporary voluntary cessation of commercial coastal salmon fishing.

The Department awaits the responses of the operators and will consider the way forward in light of those responses.

The quantities of salmon catch returns were also set out in a recent response to an Assembly question:

Net name	2005	2006	2007	2008	2009	2010
North Coast	1068	673	680	427	482	437
North Coast	24	32	176	nil	64	26
Ballyteerim	1167	891	881	740	420	636
Torr Head	871	788	888	748	550	783
South Eastern coast	24	35	22	20	21	23
South Eastern coast	nil	nil	nil	nil	nil	nil
Carrick-a-rede	nil	nil	nil	nil	nil	nil
Total	3154	2419	2647	1935	1537	1905

Table 1: Commercial salmon catch returns from fishing engines licenced by DCAL since 2005⁴

³ Response to written question to the Minister of Culture, Arts and Leisure: AQW 6226/11-15.

⁴ Response to written question to the Minister of Culture, Arts and Leisure: AQW 6224/11-15.

2 European legislation and the Fisheries Act

2.1 Habitats Directive

The Habitats Directive⁵ was introduced in 1992 and updated in 2007. It is intended ‘to help maintain biodiversity in the Member States by defining a common framework for the conservation of wild plants and animals and habitats of Community interest’. The Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995⁶ updates Northern Ireland legislation and addresses the interface with the Habitats Directive. Further amendments were provided in the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007. Together, these two pieces of legislation make provision for the various departmental responsibilities in Northern Ireland, including the Fisheries Conservancy Board.

The species listed in Schedule 2 of the 1995 regulations are those species listed in Annex 4 of the directive which occur in Northern Ireland, often described as European Protected Species, including all species of bat and dolphin, and the common otter. However, this list does not include the Atlantic salmon (*Salmo salar*). The Atlantic salmon is offered protection as a feature of a number of designated sites in Northern Ireland, and under the provisions of the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995, the Department of the Environment has responsibility for its conservation within such sites. The Atlantic salmon is also listed in Annex 2 of the Habitats Directive, and is therefore a ‘species of community interest whose conservation requires the designation of special areas of conservation’. There are currently 56 special areas of conservation in Northern Ireland, with five featuring populations of Atlantic salmon. These are⁷:

- River Faughan and Tributaries
- River Foyle and Tributaries
- River Roe and Tributaries
- Lough Melvin, Fermanagh
- Owenkillew, River Tyrone

This compares with salmon in special areas of conservation elsewhere as follows:

Northern Ireland	5
England	9
Scotland	17
Wales	6
Ireland	26

Table 2: Special areas of conservation with Atlantic salmon present

⁵ European Commission: Environment. Habitats Directive: <http://nia1.me/qu>

⁶ Statutory Rule 1995 No. 380: The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995. Office of Public Sector Information: http://www.opsi.gov.uk/sr/sr2009/nisr_20090008_en_1 Accessed 28.9.10.

⁷ Joint Nature Conservation Committee. ‘Special Areas of Conservation: 1106 Atlantic salmon *Salmo salar*’: <http://nia1.me/qt> Accessed 8.2.12.

Furthermore, the Atlantic salmon is listed in Annex 5 as a species ‘whose taking in the wild and exploitation may be subject to management measures’. This is reflected in the salmon’s inclusion in Schedule 3 of the 1995 regulations. These regulations also set out the prohibited methods for capturing or killing those species in Schedule 3.

It could be argued in broad terms that a degree of policy scrutiny may be required in that the Habitats Directive, and Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995, seek together to conserve Atlantic salmon as a protected animal (albeit only within specific areas), while the Fisheries Act (Northern Ireland) 1966 makes some provision for the catch and sale of salmon as a leisure and food resource.

2.2 Eel regulation

In 2007, a new eel regulation was approved by the European Council, intended to implement measures ‘for the recovery of the European eel’. Council Regulation (EC) No 1100/2007⁸ sets out the following measures:

- Each member state must introduce an Eel Management Plan for each eel river basin within their region. These should be subjected to evaluation by the Scientific, Technical and Economic Committee for Fisheries (STEFC).
- Special measures must be taken to increase the numbers of eels less than 12 cm in length released into European waters as well as for the transfer of eel less than 20 cm in length for the purpose of restocking.
- By 2013, 60% of eels less than 12 cm in length caught annually should be reserved for restocking.
- Catches of eels on the seaward side of river basins should be reduced by at least 50%.
- A control and monitoring system should be established.
- Measures to ensure control and enforcement of imports and exports of eel.

As a result of this EU regulation, DCAL introduced an Eel Management Plan in June 2010, along with a Statutory Rule⁹ to amend the current Northern Ireland legislation.

2.3 Water Framework Directive¹⁰

This directive was introduced in 2000, replacing and harmonising seven previous directives. In essence, the directive sought to achieve seven key aims:

⁸ Council Regulation (EC) No 1100/2007 of 18 September 2007, establishing measures for the recovery of the stock of European eel', *Official Journal of the European Union*: <http://bit.ly/bYotHH> Accessed 27.9.10.

⁹ Statutory Rule 2010 No. 166: Fisheries – Eel Fishing Regulations (Northern Ireland) 2010. Office of Public Sector Information: http://www.opsi.gov.uk/sr/sr2010/nisr_20100166_en_1 Accessed 1.10.10.

¹⁰ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy: <http://bit.ly/bCF5Gu> Accessed 22.9.10.

- expanding the scope of water protection to all waters, surface waters and groundwater
- achieving ‘good status’ for all waters by a set deadline
- water management based on river basins
- a ‘combined approach’ of emission limit values and quality standards
- ensuring correct water pricing based on ‘true costs’
- promoting greater public involvement
- streamlining legislation by rationalising seven European directives into one

As a response to this, a Statutory Rule was introduced in 2003 which sets out the responsibilities under the directive for the relevant departments. DoE acts as the lead department in implementing and regulating the necessary measures.

Other departments are also named as having a direct responsibility under this legislation, with the Department of Agriculture and Rural Development, the Department for Regional Development and the Department of Culture, Arts and Leisure required to ‘exercise their relevant functions in a manner which secures compliance with the requirements of the Directive’¹¹.

Given that four government departments are involved in the implementation of the Water Framework Directive, this may raise concerns about the complexity of governance arrangements and effective coordination of implementation and practice on the ground.

2.4 Nitrates Directive

The Nitrates Directive¹² was introduced in 1991 with the aim of protecting water quality across Europe from pollution from nitrates produced through agricultural processes¹³. Under this Directive, member states have a responsibility to develop a mandatory Action Plan and are required on a four year basis to monitor and report on nitrates concentrations within their water, eutrophication (the process where water bodies receive excess nutrients that stimulate excessive plant growth, such as algal blooms), and an Assessment of Action Programme impact.

Statutory Rule 2004 No. 419, The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland)¹⁴ came into force in 2004. Since 2007, Nitrates Action Programme Regulations¹⁵ have been in operation across Northern Ireland.

¹¹ Statutory Rule 2003 No. 544: The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003. Office of Public Sector Information: <http://www.opsi.gov.uk/sr/sr2003/20030544.htm> Accessed 29.9.10.

¹² Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources: http://ec.europa.eu/environment/water/water-nitrates/index_en.html Accessed 27.9.10.

¹³ Allen, M. 2010. ‘A brief overview of the EU Nitrates Directive and its impacts on Northern Ireland’, Northern Ireland Assembly Research & Library paper.

¹⁴ Statutory Rule 2004 No. 419, The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2004. Office of Public Sector Information: <http://www.opsi.gov.uk/sr/sr2004/20040419.htm> Accessed 19.9.10.

¹⁵ Statutory Rule 2006 No. 489: The Nitrates Action Programme Regulations (Northern Ireland) 2006. Office of Public Sector Information: <http://www.opsi.gov.uk/sr/sr2006/20060489.htm> Accessed 28.9.10.

These regulations set out detailed requirements to prevent water pollution by nitrates from a range of agricultural sources. The regulations cover issues such as when fertilisers can be sown, storage requirements for animal manures and also set out the types of records that will need to be kept by farmers to prove their compliance with the regulations.

A key component of the Nitrates Directive was the need for national governments to monitor the potential for eutrophication of watercourses. A joint scientific report commissioned by DoE and DARD and carried out in 2002¹⁶ sought to establish the environmental aspects and impacts of the Nitrates Directive in Northern Ireland. This report concluded that the majority of rivers and lakes in Northern Ireland were being enriched by agriculture-derived nitrates and that as a result there was a risk of eutrophication.

The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) and Nitrates Action Programme Regulations do not specifically mention a role for either the Fisheries Conservancy Board or DCAL, though it is stated that DoE, DARD and DRD have specific responsibilities.

2.5 Infraction proceedings

The European Commission states that 'each Member State is responsible for the implementation of EU law (adoption of implementing measures before a specified deadline, conformity and correct application) within its own legal system'¹⁷. Powers which allow the European Commission to carry out infraction proceedings are provided for in Articles 258 and 260 of the Treaty on the Functioning of the European Union (EU).

Anyone may lodge a complaint with the Commission against a Member State for any measure (law, regulation or administrative action) or practice attributable to a Member State which they consider incompatible with a provision or a principle of EU law.

Infraction proceedings may progress according to the following steps:

- **Article 258 letter:** this is the first formal stage of the process. The letter informs the Member State that the European Commission considers it may be in breach of EU law. The Member State is normally given two months to reply.
- **Article 258 Reasoned Opinion:** This is a formal determination by the European Commission that the Member State is in breach of its legal obligations. The opinion requires the Member State to comply with its EU obligations within a given time limit, normally two months.

¹⁶ DoE-DARD Scientific Working Group. 2002. Report on the Environmental Aspects of the Nitrates Directive in Northern Ireland.

¹⁷ European Commission. 'Application of EU Law': <http://nia1.me/qg> Consulted on 1.2.12.

- **Court of Justice referral under Article 258:** if the Member State fails to comply with a reasoned opinion within the prescribed period, the European Commission can apply to the Court of Justice for a ruling that the Member State is in breach of the Treaty. If the infraction is due to **late transposition** the European Commission can now ask the Court to issue financial penalties on the Member State at this stage.
- **Article 260 letter:** If a Member State has received a ruling from the Court of Justice and taken no action to comply with it, the European Commission will issue this formal notice indicating that it has failed to comply with a judgment of the Court of Justice. The Member State will be given a set timescale to make the necessary changes.
- **Court of Justice referral under Article 260:** If the Member State fails to meet the Article 260 deadline the European Commission can refer them back to the Court of Justice for financial penalties.

3 North Atlantic Salmon Conservation Organisation (NASCO)

3.1 Convention for the Conservation of Salmon in the North Atlantic Ocean

The North Atlantic Salmon Conservation Organisation (NASCO) came into existence as a result of the Convention for the Conservation of Salmon in the North Atlantic Ocean which entered into force in 1983¹⁸. The core objective of NASCO is to ‘promote the conservation, restoration, enhancement and rational management of salmon stocks in the North Atlantic Ocean through international co-operation’, and to do this through ‘consultation and co-operation...taking into account the best scientific evidence available to it’. NASCO therefore acts as ‘a forum for the study, analysis and exchange of information among the Parties on matters concerning the salmon stocks’.

NASCO can make recommendations, including the ‘enforcement of laws and regulations’, and ‘the undertaking of scientific research’. The Convention also imposes a duty on signatories to make an annual statement of the actions they have taken to implement regulatory measures. They are also required to provide catch statistics according to commonly agreed standards, to provide ‘any other available scientific and statistical information which it requires’, and to notify the NASCO Council of ‘factors within its territory and area of fisheries jurisdiction which may significantly affect the abundance of salmon stocks’.

A key concern of NASCO is the *anadromous* nature of salmon, whereby they are born in fresh water, migrate to the open ocean, but then return to fresh water to reproduce. Consequently, catches made at sea by one party can impact on the viability of the salmon in the rivers belonging to another party.

¹⁸

Conservation of Salmon in the North Atlantic Ocean. 1983: <http://www.nasco.int/convention.html>

3.2 Atlantic Salmon Management Strategy

The Department of Culture, Arts and Leisure is responsible for the implementation of a strategy entitled the *Atlantic Salmon Management Strategy for Northern Ireland and the Cross-border Foyle and Carlingford Catchments 2008–2012*¹⁹. This strategy covers Northern Ireland's responsibilities under the Convention for the Conservation of Salmon in the North Atlantic Ocean. The core concept expressed by this strategy is to establish conservation limits at a river and regional level, and to,

...ensure that in most rivers in most years sufficient adult salmon are spawning to maximise output of smolts from freshwater and to monitor the river or catchment for salmon numbers and where levels are not attained to identify and address the problem.

Conservation limits have been established for a number of rivers. Levels of egg deposition and numbers of adult salmon returning to spawn each winter are used to monitor the percentage of compliance. For example, the percentage compliance for a number of rivers within the DCAL administered area is as follows²⁰:

River	Fishery year								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
Blackwater	55	39	45	38	32	n/a	n/a	n/a	n/a
Main	46	40	50	54	42	96	170	68	61
Glendun	57	45	73	42	57	77	96	33	64
Moneycarragh	68	17	57	45	38	73	n/a	n/a	n/a
Shimna	53	16	87	61	43	47	40	12	76

Table 3: Percentage compliance with conservation limits for rivers in the DCAL area

Figures are also available from the river catchments administered by the Loughs Agency (those rivers which feed into Carlingford and the Foyle).

River	Fishery year								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
Mourne	162	152	128	117	117	n/a	n/a	105	n/a
Finn	106	119	70	158	106	76	n/a	n/a	25
Roe	298	223	105	159	81	293	268	167	197
Faughan	536	387	357	531	453	n/a	n/a	n/a	228

Table 4: Percentage compliance with conservation limits for rivers in the Loughs Agency area

Other objectives stated in the *Atlantic Salmon Management Strategy* include²¹:

- Continuing research into the life cycle and dynamics of the Atlantic salmon, carried out at the River Bush Salmon Station;

¹⁹ *Atlantic Salmon Management Strategy for Northern Ireland and the Cross-Border Foyle and Carlingford Catchments to meet the Objectives of NASCO Resolutions and Agreements 2008–2012* <http://nia1.me/q5>: p5.

²⁰ D. Ensing, R. Kennedy, W.W. Crozier & P Boylan. 2011. *Summary of Salmon Fisheries and Status of Stocks in Northern Ireland for 2010, Working Group on North Atlantic Salmon*. International Council for the Exploration of the Seas.

²¹ *Atlantic Salmon Management Strategy*: p5.

- Optimising the social and economic value of the salmon resource in Northern Ireland's coastal and freshwaters whilst ensuring sustainability;
- Considering the social and economic impact on communities of restrictive management measures.

Section three of the strategy assesses the nature of threats to salmon stocks²². The quality of the estuarine and freshwater habitat is cited, including such issues as the use of nitrates and phosphates, and the quality of sewage treatment, but also potential barriers to migration caused by flood protection schemes and drainage maintenance. The strategy describes other potential risks including land use changes, future development pressures, increased renewable energy sources, climate change, and diseases and parasites.

It is stated in the strategy that²³:

The national policy in both jurisdictions is to phase out all mixed stock interceptor fisheries and to introduce legislation to control all other commercial fisheries where they impact on rivers not achieving Conservation Limits.

More specific future management priorities are then set out in section four of the strategy, and monitoring and evaluation activities in section five.

4 Amendments to the Fisheries Act 1966

4.1 Amendments to date

Since 1966, a number of (largely minor) amendments have been carried out to the Fisheries Act. The most significant of these occurred in 2001 when the Fisheries (Amendment) Act (Northern Ireland) was passed which created amendments to the following areas:

- Regulation of sea-fisheries in Northern Ireland inshore waters
- Enforcement of regulatory powers in relation to sea-fisheries in inshore waters
- Disturbing spawning beds
- Charges for fishing permits
- Power of Board to make byelaws
- Reduced duties for Fisheries Conservancy Board licences
- Reinstatement of polluted waters

²² *Atlantic Salmon Management Strategy*: pp29–35.

²³ *Atlantic Salmon Management Strategy*: p27.

4.2 The process for making further changes to the Fisheries Act

The Fisheries Act (Northern Ireland) 1966 was enacted by the Parliament of Northern Ireland. Since fisheries are not specified as an excepted or reserved matter under Section 4 of the Northern Ireland Act 1998, any new or amending legislation would be within the competence of the Northern Ireland Assembly²⁴. To date, the process followed in order to carry out amendments to the Fisheries Act has been either to amend the primary legislation, or to create or amend the byelaws associated with the legislation.

The Department of Culture, Arts and Leisure has indicated its intention to ‘introduce a range of salmon conservation measures, which will include consideration of provisions relating to bag nets and drift net licences’²⁵.

Responsibility for the Fisheries Act (Northern Ireland) 1966 was passed from the Department of Agriculture to the Department of Culture, Arts and Leisure in 1999²⁶.

²⁴ Northern Ireland Act 1998: Section 4 – Transferred, Excepted and Reserved Matters:
<http://www.legislation.gov.uk/ukpga/1998/47/section/4>

²⁵ Minister of Culture, Arts and Leisure. Response to Assembly Question AQW 6935/11-15.

²⁶ Statutory Rules of Northern Ireland. 1999. No. 481: Northern Ireland Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999: http://www.legislation.gov.uk/nisr/1999/481/pdfs/nisr_19990481_en.pdf