NATURAL RESOURCES WALES
CYFOETH NATURIOLCYMRU

December 2017

STATUTORY CONSULTATION: NRW PROPOSALS FOR NEW ROD AND NET FISHING BYELAWS IN WALES (EXCLUDING CROSS-BORDER RIVERS)

COMPILED NOTE ON RESPONSES TO REPRESENTATIONS

The above statutory consultation followed liaison with many fisheries stakeholder groups on the difficult matters of fishing controls over the past 2 years prior to this consultation. We remain very grateful to all who considered our developing analyses and proposals and offered comments and advice. We valued all comments received. These helped us to formulate the proposals that have been the subject of the recent statutory consultation.

The proposals for Wales (excluding the cross-border rivers Dee, Severn and Wye) were published, together with associated documents, on 22nd August and the consultation lasted for 12 weeks before closing on 14th November.

The consultation resulted in approximately 540 representations made to Natural Resources Wales (NRW). We have carefully reviewed and responded to all those who provided contact details, but unfortunately nearly 200 responses were made either anonymously or without address or email details. We have not therefore been able to contact these responders.

This generic response is intended as a statement, based on other responses. It will hopefully be helpful and informative for those who have not received a reply, for the reasons given above. It may also serve to advise those who did not make any response.

We are very grateful for all responses received to the consultation on the proposed new fishing byelaws in Wales.

This statement refers to representations received on either the net or rod fishing byelaw proposals (or both), but not the cross-border rivers (Dee and Wye) byelaw proposals which are the subject of a consultation currently ongoing until February 5th.

This statement consists of statements on the following topics. These are presented here in the order of frequency with which they were raised as matters of concern by respondents to the consultation. This document should be viewed with the Frequently Asked Questions that accompanied our consultation.

CONTENTS

NRW and the consultation process

NRW follows the following principles in carrying out our consultations: -

http://naturalresources.wales/guidance-and-advice/environmental-topics/consultations/information-about-consultations/?lang=en

About consultations
Consultation is just one way for you to have your say on developments in Natural Resources Wales. Your ideas and suggestions will help us improve the way we make decisions about many aspects of our work. We welcome feedback from anyone who has views and comments on our current consultations.

Why we consult
Consultation helps us to understand how our work affects you, as we go about fulfilling our remit, providing services to you and undertaking our activities. It helps us to find out your views and to hear any ideas or suggestions you might have.

Valuable input
We consult because your input helps us to improve our ideas and to shape our work. It enables us to be more effective in the work we do. We also consult on certain types of permit applications.

How we consult
Consultations can take a variety of forms, ranging from formal written papers to public meetings, focus groups and questionnaire exercises. When a new consultation is launched, we make the relevant documents available to organisations and individuals who have an interest in that particular field.

We also publish details of each formal consultation on our website so that anyone with an interest can access the documents.

Setting clear timetables
There is no set time period for consultations, although most last around 12 weeks. When we seek your views and comments on permit applications, the time period will usually be around four weeks. All consultations will have clear start and end dates.

What happens after the consultation closes
As part of the process, we read every response and consider every opinion. We then publish a summary of the responses, or the individual responses themselves, on our website and hold copies in our records. These records are anonymised on request. Alongside this, we also publish details of how the consultation will be developed and taken forward.

Some responders have stated that the current consultation on fishing controls proposals had very little promotion, consisting only of a website and a few area meetings. It is unfortunate that some interested parties evidently missed hearing of the consultation process as we: -

- Placed a national advert in the London Gazette
- Advertised the process in Wales through the national daily newspaper (Western Mail)
- Sent e-mails to:
    - all migratory salmonid licence holders for whom we had an e-mail address
    - All representatives on 9 Local Fisheries Groups (LFGs)
    - All Assembly members and Members of Parliament in Wales
- Held meetings over a 2-year period with 9 LFGs and representative groups of netsmen
- Wrote to angling retailers
- Issued press releases (that were picked up in responses published in Trout and Salmon and in Fly Fishing and Fly Tying magazines.
- Maintained a clearly accessible landing page on the NRW website with all relevant documents easily available through this. We recorded the following statistics: -

Total 'hits' on our catch controls website: -

English	3,677
Welsh	11

Downloads of: -

net byelaws	58
Rod byelaws	118
NLO	36
Executive summary	43
Technical case document	185
FAQs	114

In our Technical Case, we note that NRW is aware that many pressures are acting on our rivers and their ecology and that this is also having an effect on fish. The purpose of this section is to set out those pressures and to explain what NRW is currently doing to address them. We think that whilst these actions are agreed and implemented, it is essential to preserve the vital spawning stocks of fish.

We covered many issues and pressures affecting fish stocks in our technical case and in our FAQ document: -

FAQ - Q36

Other issues are threatening fish abundance what are you doing to tackle these?

Answer

It is acknowledged that catches are not the causative issue around poor and vulnerable stocks. However, killing of fish whilst stocks are unstainable cannot be allowed to continue and threaten stocks further.

We have therefore followed international advice on managing fish stocks. Section 5, "Challenges to stocks" gives more information on the factors affecting stocks and how we are tackling them. They are considered to illustrate that we acknowledge their importance, and that we have considered these issues in formulating our proposals for catch controls.

The challenges considered are: Marine survival of salmonids, Water quantity, Water quality, Agricultural pollution, The Wales Land Management Forum, Forestry, Predatory birds, Disease and Parasites, Illegal fishing.

This note sets out responses to all themes and subjects raised in consultation responses. We welcome any further questions that may arise as a result of this note. Any responses should be made to this email address: -

Fisheries.wales@cyfoethnaturiolcymru.gov.uk

1. PREDATION

We refer to FAQ 36.

The issue of predation was raised in many representations. We refer to the technical case supporting our proposals: -

https://naturalresources.wales/media/682258/technical-case-structure-final.pdf

in which, on page 77, we cover this issue together with other environmental issues that might be constraining fish stocks.

Predation on our fish is of course a natural phenomenon. For example, predation at sea by dolphins and sharks is known to occur and the quantitative impact of this is included within our marine survival estimates from the index River Dee in North Wales. Predation also occurs in our rivers, for example by otters, however it is generally the emotive issue of predation on young salmonids by cormorants and goosanders that concerns fishermen.

As we note in our technical case: -

> We recognise that there is considerable concern by many anglers and fisheries interests that both cormorants and goosanders are damaging our fish stocks through direct and un-sustainable predation.
>
> We have a duty under section 6(6) of the Environment Act 1995 to maintain, improve and develop fisheries for salmon, trout, eels, lampreys, smelt and freshwater fish and: -
>
> - to ensure the conservation and maintain the diversity of freshwater and migratory fish, and to conserve their aquatic environment
> - to enhance the contribution migratory and freshwater fisheries make to the economy, particularly in remote rural areas and in areas with low levels of income
> - to enhance the social value of fishing as a widely available and healthy form of recreation

We are also the species licensing authority in Wales, and therefore we determine applications received from fisheries interests for licences to shoot birds which damage fisheries. The legal background to this is found in the Wildlife and Countryside Act 1981 (Section 16 (1) (k)).

As NRW is an evidence based organisation, we seek to ensure that our strategies, decisions, operations and advice are underpinned by sound and quality-assured evidence. We recognise that it is critically important to have a good understanding of our changing environment.

Our procedures for dealing with licence applications is set out on our website: -

https://naturalresources.wales/permits-and-permissions/protected-species-licensing/uk-protected-species-licensing/bird-licensing/?lang=en

where all appropriate documentation may be found. The application form requires evidence from the applicant on the number of birds present and the non-lethal deterrent methods currently in use together with an estimate of the economic impact on the fishery in question (e.g. fish losses, lost income from permit sales, etc.).

Our position is that licences to shoot piscivorous birds are granted as an aid to scaring in order to ensure that birds are deterred from feeding at the fishery in question. We have encouraged applications to be made on a large geographic scale, such as whole river catchments, to maximise the effect of deterrent measures at a broader scale. Our fisheries officers work with fisheries interests to help advise on how to conduct surveys to collect evidence of bird numbers, how to help protect fish from predation by habitat manipulation, the range of methods available for deterring birds, and the application process itself.

We are well aware of the contentious nature of this subject. Informed by published evidence on the potential scale of avian predation in some locations, NRW has initiated a review of the subject and of its roles and responsibilities. This will include consideration of the statutory protection and designations of both birds and fish, and the action we must consider to discharge our duties.

2. Net fishing

We refer to FAQs 13 – 18.

A number of different points were made about net fishing.

Issues raised include: -

- Ban all nets
- Close nets where stocks are poor
- Closing net fisheries by default
- Why let some nets continue when rods have to adopt statutory C&R?
- C&R from nets not possible
- Heritage
- Blackrock
- Compensation
- Reduce licence fees
- Vires not sound

<u>NRW should ban all nets / close nets where stocks are poor</u>

The total catch of salmon by Welsh nets is low, and on average over the last 5 years is less than 200. The net fisheries mainly target sea trout of which the average catch is around 1,600.

Our overall position is that only sustainable stocks may be fished and management must seek to ensure that they remain sustainable. Our approach is that we urgently need to reduce exploitation to zero for salmon whilst stocks are 'At Risk' or 'Probably At Risk'
Our primary concern is the status of our salmon stocks, all of which give serious cause for concern. Whilst we also have concerns about many of our sea trout stocks they are not presently as vulnerable as those of salmon, and therefore some harvest can take place. However, many need to be restored to sustainability and so some control is required.

In considering our overall approach, we have attempted to treat both rod and net fisheries equitably, in line with past Welsh Government requirements.

We have proposed measures to contribute to a return to sustainability. Under these:

a. all salmon would be released
b. the delay in season opening until 1st May would protect early running generally larger multiple spawning sea trout. Salmon which would have been caught and released will not now be caught at all.
c. all netting would cease on 31st July, after which the catch of salmon has been generally similar to the low number of sea trout caught.

Closing both rod and net fisheries is an option we have considered; however, we are mindful to maintain the socio economics associated with these fisheries.

<u>You are effectively closing fisheries by making season so short</u>

The Water Resources Act 1991 gives NRW the power to make byelaws which prohibit or regulate the taking of fish. More specifically, paragraph 6(2)(aa) of Schedule 25 to make byelaws specifying close seasons or times for the taking of any fish.

As set out in the technical case, the byelaws specifying the close season are being introduced as a result of declining stocks of salmon and sea trout. As netsmen will still have the ability to fish (albeit for a reduced period), the reduction in the close season is considered to be a necessary control to prevent any further deterioration in stock levels.

Why let some nets continue when rods must adopt full C&R?

The total catch of salmon by Welsh nets is low, and on average over the last 5 years is less than 200. The net fisheries mainly target sea trout of which the average catch is around 1,600.

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C&R from nets is not possible

If handled appropriately survival of fish caught in nets can be high.

Salmon and sea trout used in tracking studies on the Tywi and Dee in the 1980's and 1990s were caught by licenced nets men in the estuary. These fish survived and were tracked throughout the river system to the spawning season commenced.

It has been suggested that coracle fish are 'gilled' and won't survive. However, coracle nets are more similar to trammel or tangle nets designed to tangle around the fish. As such the risk of injuries are less, but there is still a risk of suffocation associated with the operculum being covered, if the fish is not retrieved quickly.

Once a fish is in the net, it is retrieved to the coracle, and is not left in the net where it may become meshed and might suffocate.

Recent published studies suggest a mortality rate of 24% for Pacific salmon from tangle net fisheries with reported similar mesh sizes from the Western United States. A 95.4% immediate survival and 80.1% long term.

It is also important to note that some of the coracles and seine nets have been practicing C&R since the introduction of the National Spring Salmon Byelaws in 1999, from which a number of net fisheries were exempted. This is an important precedent, and we have no evidence to suggest that C&R fishing has been unsuccessful. We also have no observations of fish mortalities, either immediately within nets or through fish succumbing to their injuries later in fresh water.

Heritage value of some netting operations

NRW recognises that some ancient fishing methods may represent traditional activities and therefore have heritage value. These fisheries include the well-known coracle net operations on the Tywi and Teifi, but also the Cleddau compass nets and the Black Rock Heritage lave net fishery near Chepstow. This view has been supported in a report commissioned by the Environment Agency: -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/290639/scho0904bidf-e-e.pdf

and has previously received some support from Welsh Government.

NRW believes that clarity is required on the heritage value of fisheries in Wales, and will continue to seek this. This is also justified by the ambition to maximise the economic value of fish stock resource in Wales.

Black Rock Lave Net Fishery should be closed

This fishery does not fall under the NLO considered as part of the current package of proposed measures. However, a small number of responders queried the position on this small fishery.

The Black Rock Heritage Lave Net Fishery is one of several net and fixed engine fisheries operating within the Severn Estuary. The fisheries extend from the Black Rock site operating within the Wye Fishery just west of Chepstow, to the lave net, seine net and putcher fisheries operating in the English Severn Estuary and extending east to Gloucestershire. The fisheries in England have been demonstrated to exploit a mixed stock of salmon comprising fish destined to return to the rivers Severn, Wye and Usk. However, no such study of fish caught at Black Rock has been done. Although this fishery operates close to the estuary of the Wye, it is feasible and likely that salmon caught there might be from any of the 3 stocks referred to above.

NRW acts on the principle that sustainable stocks may be exploited by both rods and nets – we do not seek to end net fishing on principle. We also seek to act consistently and in the respect of Black Rock this means that we need to take account of the regulation of net and trap fisheries operating elsewhere in the estuary.

Implementation of full catch and release fishing on the River Usk, matching it to the existing regime on the Wye, will achieve an increased spawning escapement. However, it is important to note that C&R does result in a low level residual mortality of fish. These are fish

that may be badly hooked, may have been played for a long time, or may have been caught during environmental conditions that do not support good survival rates, e.g. high water temperatures. We estimate that up to 20% of fish returned might die after release, depending on the quality of the C&R experience.

The estimated angling-related residual mortality of fish has been used to set an allowable catch in the upper Severn Estuary net and putcher fisheries. This principle underpins the arrangements for ongoing operation of the Black Rock fishery, where the catch has been limited under the terms of the lease. This is both consistent with arrangements elsewhere in the estuary, and represents a degree of equity between rods and nets whilst allowing the acknowledged heritage operation to continue. If it was deemed necessary to reduce rod exploitation to zero, for example in a scenario where stock status warranted rod fishery closure, then there would be no such residual mortality and therefore there would be no justification to maintain a net fishery.

Net fishermen would prefer voluntary C&R

We expressed increasing concerns about salmon stocks over the past two years and called for all salmon to be returned voluntarily in both the rod and net fisheries. Whilst notably all the netsmen in the Teifi coracle fishery responded admirably, reporting they released all the salmon caught in 2017, some 95 salmon in total, few other netsmen have responded similarly. It is worth noting that Tywi coracle netsmen did also release a small number of large sea trout. We have therefore concluded whilst acknowledging the efforts of some netsmen, that statutory controls would be more appropriate.

Compensation

Please see section 12.

Will we reduce net licence fees?

NRW does not propose to reduce licence fees for either rods or nets as a result of any proposal to amend fishing byelaws. This is because the costs of the fisheries service are not reducing.

Vires is unsound

Please see section 12.

3. Enforcement

We refer to FAQ 34.

The following issues were raised in consultation responses.

- Illegal fishing a major issue
- Enforcement resources
- NRW could not enforce new regulations
- NRW cannot currently respond to incidents and intelligence reports

Illegal fishing is a major issue

Many people have raised the issues of enforcement, mainly referring to the resources available to NRW to undertake this work.

The term illegal fishing is broad, covering many activities ranging from organised illegal netting to unlicensed rod and line fishing by a single angler. We take a risk based approach to our enforcement work, focussing on the activities which present the biggest threat to our wild fish stocks. In recent years, we have successfully taken several prosecutions for netting and the use of illegal instruments which have the capability to take large numbers fish.

The present conservation status of salmon and sea trout means that any illegal fishing with the capacity to catch several fish represents a substantial threat for those species. Intelligence, incident reports and past and recent cases show that there is a level of illegal activity taking place across Wales. However, we contend that the level of this activity is significantly less than in the 1980s and 1990s.

Our team of Fisheries Enforcement Officers are passionate, proactive and committed to tackling the problems which remain, but are heavily reliant on information from the public in alerting them to the various forms of illegal activity taking place. Unfortunately, it is still the case that many suspicious activities are still not reported to our hotline, and we would remind everyone of the importance of doing so.

Enforcement resources

In 2017, the staff resources available to us was the equivalent of 16.4 full-time officers delivering fisheries enforcement across Wales. This compares to approximately 60 such officers in the early 1990s, although their work then was more diverse and included other fisheries work.

NRW, along with the wider public sector, has been subject to significant financial pressures which have impacted on the delivery of all services funded by Government Grant-in-Aid. This includes fisheries enforcement. We realise that our stakeholders would like to see more bailiffs patrolling the coastline and rivers of Wales. The reality is we are unlikely to return to the numbers of decades' past. However, the way we target our effort is evolving, and we are making the best use of the resources available. We identify and review the key risks to our fish stocks regularly and adapt our work to address them applying a consistent response across Wales.

In early 2018 we will be providing training to warrant a further four staff under SAFFA. These officers will not be solely focussed on fisheries matters, but will provide resilience and contribute to succession planning of for this area of work.

We have, and will continue to explore ways of disrupting illegal activity and working better with partners such as the Police and Welsh Government. Upon apprehending those committing fisheries crimes, we will use our powers to prevent and deter further offending.

NRW maintains ongoing review and prioritisation of its enforcement work.

NRW could not enforce new regulations

NRW wants to create a fair environment for legitimate anglers and net licence holders. We invest resource in checking rod licences and compliance with byelaws. We recognise that some anglers without licences are likely to be ignorant of the byelaws designed to protect, preserve and improve fish stocks, therefore presenting an increased risk to the survival of our vulnerable species.

Ensuring those active in our net and rod fisheries comply with byelaws is one of our key fisheries enforcement priorities. Reports of illegal activity relating to the proposed new exploitation control measures have already been identified as constituting a 'high' level incident meaning that wherever possible we will respond to these occurrences. We will take a robust approach where byelaws have been contravened resulting in the loss of, or likely loss of migratory fish. In addition, we will ensure that we utilise our communication tools to promote our work as we recognise that this can provide a significant deterrent to anyone considering illegal activity.

NRW cannot currently respond to incidents and intelligence reports

Many of our enforcement cases result from our response to incident reports, or our actions resulting from intelligence received. It is not always possible for us to respond to incidents, especially out of hours, and the safety of our officers must be our top priority at all times. Every incident reported is assessed and if a response is not possible it will still contribute towards the wider intelligence picture. This in turn informs how we best allocate our resources. Our responses are to some extent limited by resources but it is important to note that every report is valuable and we strongly encourage the continued support from our stakeholders in tackling illegal fishing.

Intelligence that we receive is graded and the lower graded material (e.g. anonymous information) must be treated with a degree of caution. It is therefore not always possible for us to respond to individual intelligence reports. However, in many instances we have been able to corroborate intelligence and have subsequently executed search warrants and undertaken surveillance activity to catch those committing fisheries offences. There is further scope in disrupting and preventing illegal activity in the first place, therefore affording the best level of protection for our salmonids.

4. Evidence and data

We refer to FAQs 1 - 11

The following issues were raised in consultation responses.

- Catch statistics are unreliable
- Catch statistics may get worse
- New sea trout stock assessment methodology
- Why not use 2017data?
- Juvenile data
- Fish counters
- Measures should be river-specific
- Marine survival issues

Catch statistics are unreliable

It is a statutory duty for anglers and netsmen to submit catch returns. The rod data is used to assess the status of stocks of both species, but there is a perception that the data is flawed because of the low return rate.

The number of rod licencees submitting a return from 2010 to 2014 has averaged around the 60% mark. This has declined over the past decade or so and NRW is working with the Environment Agency to consider how this might be addressed.

In using these returns to assess compliance with Conservation Limits we are of course aware they are incomplete, and we therefore raise the declared catch figure to account for under-reporting. This process includes adjustments for returns from different types of licence holder. For example, anglers who purchase more than one short-term licence but make only one catch return, and junior licencees who catch very few fish.

Accounting for the catch contribution of different types of licence holder, a national catch correcting factor of 1.1 (raising the declared catch by 10%) has been devised and used to raise the declared rod catch since the mid-1990s. Additional adjustments have been applied in the last couple of seasons to account for reporting issues linked to the on-line catch recording system. The latter have resulted in a revised overall catch correction factor of approximately 1.3.

Not all types of licence carry equal weighting for adjustment and hence the apparent problems represented by a low catch return is not as great as it seems. It is routinely corrected for in the assessment process.

We would refer specifically FAQ 2: -

https://naturalresources.wales/media/682256/faqs-english-final.pdf

This provides more information on the value of catch statistics to stock and fishery assessment (we note that England and Wales has one of the best catch recording system in Europe) and the need to maintain the quality of catch returns into the future.

Catch statistics may get worse

National systems operate for the collection of catch statistics across England and Wales. These include: -

i. for net fisheries, a logbook and carcass tagging system introduced in 2009 to control the sale of illegally caught fish and
ii. for rod fisheries, a single national licence and catch return and reminder system operating in a largely consistent manner since 1994.

Both systems replaced a series of regional and river based systems of variable quality – some of which extend back to the 1900s or even earlier.

When assessing compliance with Conservation Limits, declared rod catches have been raised to estimate total catches on each river. In most years, a (national) catch declaration rate of ~90% (a correction factor of 1.1) has been applied for this purpose, although higher correction factors (~1.3) have been used in the last couple of years to account for reporting issues linked to the on-line catch recording system. These correction factors are a different value to the ~60% of rod licence holders that make a catch return each year - because not all types of licence holder (e.g. full, short-term, junior) carry equal weighting in rod catch reporting.

On this basis, catch statistics are considered to provide good indicators of the numbers of adult salmon and sea trout returning to our rivers. This is further evidenced by: -

i. the common patterns present in sometimes disparate catch records collected over many years, and
ii. the strong relationships that exist between rod catches and fishery-independent estimates of run size obtained on our rivers with traps or counters.

As such catch records can and do provide unique historical insight into the abundance and composition of salmon and sea trout stocks (e.g. required to explore and understand the effects of long-term processes – such as climate change – which may play out over decades). They are also clearly vital to current stock assessment procedures.

It is important however that our catch recording systems are regularly scrutinised and adequately resourced to maintain the quality of the catch statistics we collect. This routinely happens. We recognise a risk that if stocks continue to decline, or if anglers become more reluctant to submit their catch data, the quality of that data (on which our stock assessments are so dependent) would deteriorate. To address this, and to strengthen the evidence base which underpins our assessments and subsequent decision making, we and others (the Environment Agency, Cefas and ICES) are exploring ways to improve our assessment procedures - including making better use of juvenile electrofishing data as a catch-independent source of information.

New sea trout methodology

There are a number of difficulties associated with the modelling of sea trout populations and assessing the status of stocks – including potential issues around anadromy and straying into non-natal rivers.

In the Technical Case, we have applied a new assessment procedure for sea trout based on modelled (river specific) stock-and-recruitment (SR) relationships and utilising compliance assessment procedures which have direct parallels with those used in salmon – including use of the same statistical trend procedures.

We consider this SR method to be a more biologically meaningful and technically robust approach than the rod CPUE based method used previously to evaluate sea trout (fishery) performance. However, given this is the first broad scale application of the SR method, and that further scrutiny and development of this approach is anticipated, we have been cautious in our interpretation of the outputs (more so than in the case of salmon where the assessment procedures are well established). Hence proposed regulatory measures for sea trout (on nets and rods) in response to risk status have been moderated compared to those applied to salmon. In the case of both species, however, annual stock assessment will continue post-implementation of any regulatory change to ensure that stocks continue to be adequately protected.

We note that this new approach has been welcomed by key NGOs.

Why are we not using 2017 data for stock assessment?

The stock assessments presented in the Technical Case include catch data and juvenile electrofishing data collected up to 2016.

2017 data have not been used in the assessment because they were not available for analysis at the time the Technical Case was prepared (spring/summer 2017). In particular, the rod catch statistics required to assess compliance with Conservation Limits are still being collated several weeks after the end of the angling season. This is because: -

i. it takes time for anglers to submit the data (in some cases returns are made several months after the season ends, and only after a first or even second reminder has been issued), and
ii. processing the data – including the entry of paper records onto computer databases and the QA of those data – is time consuming.

Because of this, the definitive set of catch statistics is rarely available until March of the following year – when it is used to prepare the annual assessment report for ICES on the status of salmon stocks and fisheries in England and Wales (including the assessment of compliance with Conservation Limits). The definitive set of catch statistics is not usually published until the summer.

Why are we using juvenile data (Usk) or not using it (Conwy)?

Juvenile data (from electrofishing surveys) are examined for all 23 principal salmon rivers in Wales – including the Usk and Conwy. We would refer to Annex 3 of the Technical Case: -

https://naturalresources.wales/media/682244/annex-3-catchment-rod-and-net-statistics-and-juvenile-data-final.pdf

However, the Technical Case focuses on Conservation Limit (CL) compliance as the primary means of assessing the status of salmon and sea trout stocks. The outcome of that

assessment – including the likely need for additional regulation of the fisheries, is summarised (for both species) in Tables 11 and 12 of the Technical Report: -

https://naturalresources.wales/media/682258/technical-case-structure-final.pdf

The salmon stock on the Conwy is classified as 'Probably at Risk' in 2021 with a moderate downward trend in the most recent 10-year series of egg deposition estimates, and a 5-year average egg shortfall equivalent to ~30% of the Management Target (see Table 11). In line with the Decision Structure, additional regulatory measures are required to protect the Conwy salmon stock.

For the Usk salmon stock, assessment of performance against the Conservation Limit is more favourable. The stock is classified as 'Probably not at Risk' in 2021 with a slight upward trend in the most recent 10-year series of egg deposition estimates, and a slight 5-year average egg surplus equivalent to approximately 6% of the Management Target. However, additional (precautionary) regulatory measures are proposed for the Usk because of the stark decline in abundance of juvenile salmon identified from the 2016 electrofishing survey, and the implications it has for adult returns in forthcoming years. That decline is summarised in Table 1 of Annex 3 of the Technical Case, and although apparent elsewhere, is particularly marked on the Usk. Here for example, salmon fry numbers fell by 97% on the previous 5-year average. Such a decline is not confined to the Usk. Similar marked declines were evident on many rivers in Wales (and England) in 2016 – including the Conwy where salmon fry numbers fell by 80% on the previous 5-year average (see Table 1 of Annex 3 of the Technical Case).

What about fish counters?

We agree that it would be ideal if fishery independent measures of the salmon (and sea trout) run could be available on all of our rivers, or at least for all rivers that we assess as being 'At Risk' or 'Probably at Risk'. Fish counters have been quite widely used, including several trial sites in Wales, however, they require a great deal of resource to manage effectively. Currently this is unaffordable, however we do propose to continue with the existing counters on the Teifi and Taff and the index river trapping operation on the Dee.

Measures should be river specific

Those who reviewed our consultation papers will have noted that, taken together with the ongoing consultation on proposed byelaws for the cross-border rivers (Dee and Wye), NRW is proposing statutory C&R fishing for salmon across the whole of Wales (including maintaining existing C&R measures on the Wye).

One suggestion made by some is that river-specific measures should have been promoted. However as noted in the Technical Case, 20 of the 23 principal salmon rivers in Wales are assessed as either 'At Risk' (8 of 23 rivers) or 'Probably at Risk' (12 of the 23 rivers) of failing to achieve their targets until at least 2021. All but four of our stocks (Wye, Usk, Taff and Dysinni) are also projected to continue to decline.

The exceptions to this are the Usk, where serious risk has been identified for juvenile salmon, the Wye (where an existing package of measures is already in place) and the

Severn (for which the Environment Agency take the management lead, with proposals from them anticipated in January).

We are therefore responding to the broad extent of failing rivers across Wales in arriving at our proposed set of measures. All 21 of our rivers (excluding the Wye and the Severn for reason noted above) are performing poorly. It is also logical to assume that salmon stocks in smaller non-principal salmon rivers in Wales are also performing poorly in response to the same pressures, and we have therefore extended our proposals to these rivers. A river-specific approach has therefore identified the same concerns across Wales and this has resulted in a consistent set of management proposals.

We have demonstrated that we are prepared to consider river-by-river differences in our proposals for sea trout, where 6 rivers are excluded from the early season statutory C&R proposals as their stock vulnerability is considered to be low.

Marine survival

The issue of marine survival of salmon and sea trout, both post-smolt and for maturing adult fish, is critical. We note that current estimates of marine mortality from most European index rivers, including the Welsh Dee, are at a historic high level. We also note that factors contributing to such estimates begin immediately after marked smolts are released, often in lower river reaches or estuaries.

The progressive decline in the survival of salmon at sea over the last ~30 years is probably the most significant (and universal) challenge faced by the species - not least in this part of the Atlantic range (see Section 5 of the Technical report).

The causes of that decline are unclear, but are likely to be driven by climatic changes and environmental conditions in the North Atlantic. In practical terms, the consequence has been that for every 100 salmon smolts leaving our rivers today ~5 or less return compared to ~15 fish in the 1980s.

Within that return, there have also been recent changes in the sea age composition of our stocks. Namely a sharp decline in numbers of grilse evident from index river monitoring programmes (e.g. on the Dee) but some improvement in the return of MSW salmon - although, in most cases, not sufficient to make up the shortfall in egg numbers.

There is little evidence that marine fisheries are having much effect on the abundance of Welsh salmon and sea trout.

High seas fisheries at Faroes and West Greenland which have exploited salmon originating from rivers in Wales and England in the past (the latter estimated at 10-20% in the late 1980s) are, through significant quota reductions, no longer considered to be having a notable impact (exploitation levels are believed now to be less than 1%). Information on the status of stocks in England and Wales is an important contributor to international assessments and the provision of catch advice by ICES required to regulate the activities of these high seas fisheries (via the work of NASCO, to which the UK is currently represented by the EC).

There is also little evidence that any other fisheries are a major cause of salmon mortality at sea. Mixed stock fisheries such as the Irish drift net fishery, which exploited Welsh and English salmon (mainly from south and south west coast rivers), closed in 2007 following a review of evidence (including that from tagging studies conducted on some Welsh rivers).

Concerns about the by-catch of post-smolts in large pelagic fisheries continue to be investigated (including initiatives by the Atlantic Salmon Trust using eDNA techniques) but have not currently produced evidence of any significant impact.

The area where NRW is likely to have greatest influence is that of maximising the number (and quality) of salmon (and sea trout) smolts leaving our catchments. The starting point is ensuring that adequate numbers of fish escape to spawn - and Conservation Limits and associated assessments are a key part of that process.

However, we also need to ensure that the progeny of those spawning fish have the best chance of surviving to the smolt stage and beyond, and that requires effective environmental management (e.g. access, water quality, flow, habitat complexity, etc.). This includes estuarial and inshore waters as well as freshwaters.

In marine and coastal environments NRW will continue to scrutinise and influence proposals for marine renewables and other developments to ensure they do not damage fish stocks. This includes working with others (e.g. as we did for the Celtic Sea Trout Programme) to better understand the migratory behaviour of fish at sea and how they are likely to respond to such developments.

Overall however the actions we can take to counter the underlying environmental change in the ocean, including climate change and ocean acidification that result in changes in marine survival are limited. NRW continues to raise awareness of this with Welsh Government.

5. Relationships

We refer to FAQs 35, 38 and 39.

Decline in licence sales

NRW is aware that the proposed controls may lead to a reduction in fishing activity. However, it is important to note that it is the killing of salmon (and, in some rivers, sea trout) that we propose should end, and not a prohibition of fishing itself. A reduction in uptake of fishing was observed when the Wye mandatory catch-and-release byelaws were introduced, however this was temporary and was reversed after a year or so.

Nevertheless, it is possible that there will be a reduction in fishing. NRW recognises this but is firmly of the view that this risk must be offset against the risk that stocks may further decline unless action is taken to maximise spawning escapement.

On the question of compensation raised by some respondents, NRWs view is that the byelaws fall outside of our power to compensate under section 212 of the 1991 Act.

NRW is aware of the importance of fishing and visiting anglers for local economic benefit, and we will do what we can to minimise the risk of this. We are currently considering proposals to facilitate clubs to promote their fishing opportunities to a wider audience, should they wish to do so. We hope to be able to launch this initiative before the 2018 season begins.

We will continue to monitor both sales and fishing effort annually, and will include reports on this in our mid-term review.

The consultation is a done deal, you are listening

Please see section about consultations on page 3

Consultation helps us to understand how our work affects you, as we go about fulfilling our remit, providing services to you and undertaking our activities. It helps us to find out your views and to hear any ideas or suggestions you might have.

Your ideas and suggestions help us improve the way we make decisions. We welcome feedback from anyone who has views both supportive and critical alike.

We consult because your input helps us to improve our ideas and to shape our work and approaches. It enables us to be more effective in the work we do.

We read every response and consider every opinion. We then publish a summary of the responses, or the individual responses themselves, on our website and hold copies in our records. These records are anonymised on request. Alongside this, we also publish details of how the consultation will be developed and taken forward.

The consultation is on the proposal we have made to implement new byelaws to protected threatened and vulnerable fish stocks. Our proposals were informed by more than 2 years of dialogue with our fisheries stakeholder groups (Local Fisheries Groups) and with representative bodies (Afonydd Cymru, Salmon and Trout Conservation Cymru, etc.).

Our statutory consultation is seeking representations on these which will be fully considered before we seek our Boards approval to apply to the Cabinet Secretary for new byelaws to be formally approved. The proposals as published may therefore be amended:

- We have amended our proposals following our review of responses,
- Our Directors and/or Board may require amendments,
- The Cabinet Secretary may approve our final application or may make amendments to the proposed measures.

Reduced NRW income and resources: Angling participation

As many have pointed out participation has declined since 1995, however it appears that this has been ongoing for longer. We note that this pre-dates the introduction of early season statutory C&R fishing in 1999. We believe that this is much more about the abundance of fish and the scale of rod catches than a C&R regime. If there are few fish, then the numbers fishing for them will decline.

Our proposals represent an investment in the future: if we do nothing then we will likely see ongoing declines in stocks and further attrition of rod fishing. To continue to kill fish in the scenario of heavily depleted stocks makes little sense and this is why we must maximise the numbers of fish surviving to spawn. It is of course essential that the environmental conditions conducive to survival of juvenile fish and maximising smolt output are also in place.

We are aware of the risk that angling participation may reduce if the proposals are introduced. However, it is very clear that it would also increase if the projected further declines in stocks occurs. Our proposal is for a set of measures to seek to prevent ongoing decline and to reverse it.

There are many anglers who will still fish in a full C&R regime. This is clear from uptake of angling on the Wye, although we are of course aware that the Wye may not be representative of all rivers in Wales. We are prepared to support clubs and associations who might wish to promote their fishing opportunities to those who would be happy to visit for C&R fishing. We hope to announce an initiative for this very soon.

6. WATER QUALITY

Forestry and water

The issue of forestry was raised in only a few representations. In the first instance, we would refer to the technical case supporting our proposals: -

https://naturalresources.wales/media/682258/technical-case-structure-final.pdf

in which, on page 75, we cover this issue together with other environmental issues that might be constraining fish stocks.

Many of the source areas for river catchment in Wales are afforested, reflecting past management regimes but also the Welsh Government strategy for Woodlands for Wales:

http://gov.wales/topics/environmentcountryside/forestry/our-strategy/?lang=en

NRW has many roles with respect to forestry and water. We manage, on behalf of Welsh Government, approximately 40% of the Welsh forest resource, which supplies about 60% of marketed Welsh timber. Further, we regulate the control of all felling and replanting of woodland, including new woodland creation, deforestation and tree health through the granting of permits and licences. We regulate these activities, and are prepared to take enforcement action when necessary.

The Welsh Government's strategy for woodlands acknowledges the role that woodlands play in contributing to water and soil management. The related policy and action plan requires the effective implementation of the UK Forestry Standard 'Forests and Water' and 'Forests and Soil" guidelines' together with other best practice guidance on planning and operations. Compliance with the standard is an important part of accreditation and, as this underpins marketing opportunity, it is considered likely that most forestry organisations will recognise that they need to comply with it.

There are actions required by NRW to implement forestry issues, but action is also required of other private forestry managers and stakeholders.

NRW has reviewed all matters relating to forest management and its significance for water quality and this can be viewed here:

http://www.naturalresourceswales.gov.uk/guidance-and-advice/business-sectors/forestry/forestry-and-water/overview-key-issues-requirements-and-progress/?lang=en

Acidification and liming

The issue of acidification of some source areas of Welsh rivers has been raised.

This typically has resulted from combinations of local geology, past atmospheric emission of sulphur and nitrogen, and the role of coniferous forestry plantations. It is also noted however that there are areas of naturally low pH and any action to address surface water acidification must take account of this.

Amongst priority actions to address river quality has been the production and publication of a clear position statement on liming of afforested catchments. Following many years of local liming schemes, most of which have been implemented by rivers trusts but with some action also by NRW and its predecessors, there is sustained interest by angling groups and trusts to extend this. Liming is intended to redress low pH, which constrains fish production and survival, and there is evidence of its success (e.g. work by the Wye and Usk Foundation and partners, including NRW, on the River Irfon: -

http://www.wyeuskfoundation.org/isac/

NRW and others recognise that a sustainable position to address acidification would be for the full implementation of the Forest Water Guidelines, but we also recognise that this would take time and that in the meantime some ongoing schemes should continue. Our position statement on this will be published shortly, and it will clarify how and under what circumstances NRW will permit future liming schemes. This has already led to a good outcome in at least one site in SW Wales.

Pollution from agriculture

The issue of water pollution from agriculture was raised in many representations. We would refer to the technical case supporting our proposals: -

https://naturalresources.wales/media/682258/technical-case-structure-final.pdf

in which, on page 70, we cover this issue together with other related environmental issues that might be constraining fish stocks.

NRW takes the recent examples of water pollution arising from agriculture very seriously, and indeed has always done so. Recent incidents, primarily arising from slurry management, have featured prominently in the media and this has raised the profile of the Wales Land Management Forum sub-group. The group consists of farming unions and other representatives, Welsh Government and NRW and is chaired by a NRW Board member (Zoe Henderson). It represents a multi-stakeholder co-production approach (including representation from fisheries interests) to address a range of agricultural pollution problems. The forum is focussing on key areas including better advice, better regulation and promotion of innovative approaches to key areas of agriculture.

Members of the sub-group have successfully bid for additional resources to be allocated under the Welsh Government's Farming Connect programme. The immediate intention is to focus on preventing agricultural pollution in 25 catchments deemed to be at greatest risk. Evidence from both NRW and Welsh Water is being used to develop and deliver bespoke frameworks of information provision and support for farmers, including workshops, farm visits, one-to-one advice clinics and signposting to the relevant investment measures. At the same time, a new national campaign will encourage all farmers to think about how they plan and invest to prevent pollution from happening. The initial Farming Connect bid is now being worked up by Welsh Government's contractors ('Menter-a-Busnes') with a view to starting work on the Delivery Plan as soon as possible.

The work of the sub-group is set to continue into 2019 and probably beyond as further work on the new Farming Connect delivery plan progresses together with investigation of the role of Farm Assurance schemes, and exploration of new regulatory approaches such as that now being pioneered by the Food Standards Agency.

NRW believes this is a substantive expansion of the focus on risk associated with agricultural activities, with a clear intention to improve the environmental quality of our rivers. Although the current focus is especially relevant to south-west Wales, newly-developed principles will apply across Wales.

Nitrate Vulnerable Zones (NVZS)

Welsh Government receive 256 responses to their consultation on NVZs. The level of response was undoubtedly linked to increased awareness about agricultural pollution incidents and water quality issues across Wales.

There is also considerable concern in the agricultural sector of the impact of NVZ regulations, especially the costs associated with slurry storage and closed periods for the spreading of manures and slurries

We understand from Welsh Government that a summary of responses has been completed and will be published on the Welsh Government website in the New Year.

The Cabinet Secretary, Lesley Griffiths, has said “I am minded to introduce a whole Wales approach to tackling nitrate pollution from agriculture…….. I will work with stakeholders to get the right balance of agricultural measures voluntary initiatives and investments. I intend to explore options to provide land managers with flexibility, where these would achieve the same or better outcomes than a regulatory approach’’

NRW supports this approach. We believe that a combination of a voluntary approach underpinned by regulation will deliver more than regulations alone.

NRW plays a major role in the work of the Wales Land Management Forum (WLMF) Sub-group on Agricultural Pollution. The WLMF and other stakeholder groups. will be instrumental in developing the suite of measures necessary to meet the objectives identified by the Cabinet Secretary.

Sewage pollution

The periodic review of water industry prices is determined every 5 years by OFWAT. This determines prices charged by water utilities to finance service delivery and compliance with national legislation and European Directives. In the past this process has seen significant improvements to water quality. The current round will facilitate new ways of working as set out by Welsh Ministers on the well-being of Future |Generations Act 2015, and the Environment (Wales) Act 2016. This will include attention to water industry assets that cause water quality problems in our rivers, and utility assets that might represent barriers to fish migration (of most relevance in South Wales valley rivers).

7. Hatcheries and stocking

We refer to FAQ 37.

The issue of artificial rearing and stocking of fish as a means to address current low levels of stocks has been raised.

A full review of stocking and its impacts and potential risk was carried out by NRW in 2014 and the conclusion was that all salmon and sea trout stocking in Wales should end. In taking this decision we were mindful of growing concern around risk associated with stocking, and the significance of new WG policy and legislation centred upon the Sustainable Management of Natural Resources. The Environment Agency came to a similar conclusion on stocking in rivers designated as Special Areas of Conservation under the EC Habitats Directive (Council Directive 92/43/EEC).

The objective of NRW for management of salmon and sea trout is: -

- Sustainable and productive wild salmon and sea trout stocks in Wales

No further stocking schemes, other than those confirmed to be required for closely specified and targeted research and, in very extreme cases, restoration will be permitted.

Noting the concerns expressed by some to this decision, NRW hosted a workshop in September 2015 to which those expressing greatest concern were invited. The event included contributions from 2 recognised leading academic experts in the field (Professor Carlos Garcia de Leaniz and Professor Phil McGinnity). Their concluding remarks included: -

- stocking does not increase catch or protect populations
- un-stocked rivers are not worse-off
- stocking is inherently risky
- stock resilience and fitness ("the ability to pass genes to the next generation") are important considerations
- NRW is not alone in considering this and that in many other cases stocking is being stopped.
- hatcheries are damaging, and that
- there is an opportunity to brand all our stocks and fisheries in Wales as 'natural'.

NRW noted at the time, and continues to firmly contend that: -

I. although there is no single study that absolutely replicates the management issues we seek to address, there is an increasing consensus that hatcheries do not achieve any meaningful outcome in the context of our management obligations
II. contemporary publications support the thesis that stocking is unsuccessful as a strategy to improve stocks
III. removing wild broodstock, with unknown spawning destinations, to supply an artificial rearing programme is damaging for a number of reasons, including the loss of wild spawning itself and the risk of damage to, or loss of, local adaptations
IV. the best technical advice is not to adopt a hatchery strategy when there is a viable wild stock present.

Finally, we refer to a theme-based Special Session held at the annual meeting of NASCO in June 2017: -

> Understanding the risks and benefits of hatchery and stocking activities to wild Atlantic salmon populations

The conclusions, recently published by NASCO included: -

> " these are challenging times for the Atlantic salmon, not least because of the uncertainty associated with a changing climate. ICES advises that environmental and genetic adaptation can facilitate adjustment to changing environmental conditions if the rate of change in the environmental conditions does not exceed the capacity of the organism for genetic adaptation. Maintaining the genetic diversity present in the wild stocks is therefore vital and stocking programmes need to be carefully considered with that in mind…..
>
> Given the substantial information presented at the Theme-based Special Session, the Steering Committee believes that if the genetic integrity of wild salmon is a management priority, stocking of hatchery fish should only be contemplated after careful evaluation of the risks and benefits and only after other alternatives have been considered. There should be a strong presumption against stocking for socio-political reasons….."

8. Habitat restoration

River habitat restoration

Maintenance and improvement of river habitats is of fundamental importance to the wellbeing of our juvenile fish populations.

Actions to improve river habitats have been underway in Wales for at least 25 years. These have been undertaken by NRW and its predecessor bodies, but increasingly over the past 10-20 years by partner organisations, notably the rivers trusts. This has been developed further in some parts of Wales than others, for example the Wye and Usk Foundation has just noted 25 years of action in this area.

Habitat quality has declined over the past century or so as a result of increasing development and diversification of river and land use. For example, barriers were constructed in rivers for a range of uses, including the support of abstraction for a range of purposes. The intensification of land use for agriculture, livestock and arable, has resulted in deterioration of riparian zone quality in many cases. Taken together these and other factors have resulted in a decline in river quality and this has added to the risks of declining and poor fish populations.

Actions to address these factors, and to promote river restoration are required for fisheries purposes, but they also address other challenges for a range of fauna and flora. River restoration therefore has multiple beneficiaries and the work required now is closely aligned with today's concept of SMNR.

The main challenge is to increase recognition of the overall concept and need for action to address the range of objectives, from fisheries to WFD and HD. Restored rivers performing at their optimum potential will lead to increased numbers of fish and ultimately to the optimisation of salmonid production and smolt output.

River Restoration Plans

A constraint to planning for river restoration is clarity on the extent and nature of work required within each of our key river catchments. Although much information on required actions exists, it is often dispersed and not in a coherent form that can facilitate planning.

In order to address this, NRW has awarded a contract to Afonydd Cymru to compile all sources of habitat pressures into single whole-catchment action plans. The significance of this is that these will incorporate all NRW, rivers trust and angling association sources of intelligence into a single catchment-based plan. These will be used to seek realistic funding for investment in river restoration, and represents a similar approach to that successfully followed for the resourcing of metal mine remediation in Wales.

The first commissions under this initiative will be for the Teifi and Tywi and these should be completed before the end of 2017/18 with the plans being shared thereafter as we seek new resources to implement the findings.

One other potential source of funding to address priority actions is the grant fund that NRW disburses each year. NRW will shortly publish its Commissioning Plan: -

https://naturalresources.wales/about-us/news-and-events/events/nrw-s-new-commissioning-approach-for-funding/?lang=en

We hope that fisheries interests will play a full part in this process by bidding for funds to implement improvements that will benefit fish stocks and fisheries.

9. Rod fishing comments, including hooks and baits

Worm: Why have you not banned bait fishing for sea trout?

Listening to the feedback we received from some of our public engagements, we are aware that many fisheries are primarily focused on sea trout. They may be difficult to fish with other methods such as fly and spinning except in high flows, and in several cases the stocks they are fishing for are sustainable. Our proposal is to allow bait fishing to continue, and it is acknowledged that there will be some bycatch of salmon, with an associated potential mortality. It is therefore a compromise to allow these methods to continue.

We believe that introducing measures to restrict the size of hook and to a single worm will help reduce, though not eliminate, the bycatch of salmon. This will allow sea trout fisheries to effectively continue for sea trout whilst reducing the risks to salmon.

Prawn/shrimp - Why exclude prawn from permissible bait fishing rules?

Through discussions and feedback with stakeholders and evidence gathered, we acknowledge the majority of fish caught on shrimp or prawn are hooked in the front of the mouth and therefore have a high probability of survival once released.

However, we are also mindful that shrimp/prawn fishing can be particularly effective in low water conditions during the summer when water temperatures may be above 18 degrees Celsius.

Physical injury caused by hooking is the most important predictor of post-release fisheries mortality, followed closely by water temperature and length of exposure of the fish to the air.

Salmon caught during the summer when water temperatures reach or are above 18^{o}C have a significantly reduced probability of surviving C&R.

Barbless

Barbless or de-barbed hooks can help in minimising handling time when releasing fish, and reduce the physical damage associated with unhooking especially deeply hooked fish. We would interpret de-barbed hooks as those where the barb has been squashed, crimped or filed down.

Reducing the mortality associated with angling by requiring barbless or de-barbed hooks is an important decision. Doing so can increase survival of juvenile and adult fish by reducing handling time required to take out the hook, and injury from handling as well as exposure to the air.

When there is a conservation concern for a wild salmon population each fish is valuable for its potential contribution to recovery of the population.

In a review carried out after the introduction of the National Spring Salmon Byelaws, the use of barbless/de-barbed hooks was much lower than would be hoped and may be influenced by a perception that this hook type will reduce the catch rate.

In a review carried out by the Atlantic Salmon Federation hook removal time was significantly longer when barbed hooks were used compared to barbless hooks. Mortality was also higher for fish caught with treble hooks compared with single hooks, due to the

increase in hook-point penetrations increasing the probability of injury to critical locations and associated bleeding. Their findings are summarised as: -

- "…fish caught on barbed hooks had higher mortality rates than fish caught on barbless hooks.
- "…the mortality rate for fish caught with barbed flies or lures is almost double the mortality rate of fish caught with barbless flies or lures.
- "The overall average mortality rate in these 18 studies was just under 12%. Under the best conditions, with barbless flies or lures, the percentage dropped to under 3%."

Even a slight reduction in hooking injuries and less handling time are two important benefits to consider in support of a regulation change or promotion of measures for catch and release fisheries.

Treble hooks

We note a very recent scientific review on the subject of hook patterns and C&R survival (Lennox et al, 2017), quoted in the Technical Case (where the full reference is provided): '*Physical injury caused by hooking is the most important predictor of post-release fisheries mortality*'.

The use of fewer hooks, or single hooks generally, reduces the potential injury and unhooking times. Treble hooks, and particularly when more than one set of hooks is used on lures, are likely to represent the greatest risk of injury in deeply hooked fish. To reduce both the risk of injury and delay in release in order to reduce post release mortality we maintain that prohibition on the use of trebles will substantially improve C&R survival and embed accepted good practice.

We refer you to the Technical Case for more information (pages 115-118).

Sea trout - Why is there a 60cm slot limit (maximum landing size) proposed for sea trout?

A sea trout of 60cm is just under 6lbs, and these are normally fish that have survived to spawn on more than one occasion. They are therefore considered to be fit fish and important contributors to spawning. Using the Future Lifetime Egg (FLE) method, developed as part of our approach, these fish can be seen to be a valuable component of the spawning stock.

- Reducing the kill of these fish in the rod fishery is proportionate with the proposed reductions in the net fisheries.
- It also targets the fish that have been saved as a result of the reductions in net catch.

It is accepted that a 60cm limit will not affect many rivers, and it has been suggested that 50cm may be more appropriate in some catchments. We wanted to propose an all Wales measure for all sea trout stocks that would reflect the general concerns about spawning stocks. A 50cm limit would disproportionately target rivers such as the Dyfi, saving approximately 200 fish, however our assessments suggest that the Dyfi sea trout fishery is

performing well and no further measures are currently required to maintain spawning stocks. Fisheries may of course voluntarily introduce their own more stringent measures.

The current minimum size for brown trout and sea trout is 23cm (9 inches), and it has been suggested that this should be increased to 30cm (12 inches) to protect a greater proportion of the whitling stock. We would suggest that this measure is not currently warranted and would make a limited difference to any spawning stock principally due to: -

- Anglers already release a high proportion of these sized fish in particular
- There is a much higher proportion of males in this size/age range of fish compared to the larger ones.
- The Future Lifetime Eggs contributions from this size of fish would suggest that it is not as effective as a contribution as the larger fish which we have targeted for measures

We have sought to introduce a suite of balanced measures that with a common basis where possible. Clubs, Associations, private fisheries and catchment groups may of course voluntarily introduce their own more stringent measures to further contribute to the sustainability of their fisheries.

Bag limits and carcass tags.

Why are we not proposing bag limits?

Why couldn't you introduce a tagging system and allow one tag?

A number of responders suggested a tagging scheme, however this would not only be administratively costly but would imply to anglers that there is a sustainable harvestable surplus that may justifiably be killed. This is not the case: all of our salmon stocks are unsustainable and need their spawning reserves protected.

Bag limits can in some circumstances help to ensure our fish resources remain sustainable for future generations. However, while bag limits assist in sharing the resource, our current evidence is that none of our salmon stocks are currently in a state to sustain any harvestable surplus.

It would be difficult to issue tags with the current rod licence system which covers England and Wales, and we would need to consider a separate system.

Issuing a single tag would give the impression that stocks were sustainable and that there is a surplus of spawners. We do not believe that any of the salmon stocks currently have a harvestable surplus and therefore a bag limit of even one fish would not fulfil our commitments and objectives.

Introduction of a bag limit can give the impression that there is an acceptable take or harvest of fish and create a target to aim for, potentially therefore encouraging more fish to be killed.

Arrangements in Ireland

We note that Ireland has an often-quoted carcass tagging scheme. Ireland has a classification system based on an annual review that designates rivers as:

1. Open for fishing

2. Fisheries open to C&R fishing only
3. Rivers that are closed to fishing

Bag limits and tags are only issued for 'Open rivers'.

On rivers where catch and release is permitted

- anglers may not use worms,
- anglers must use single, barbless hooks,
- the fish must be handled carefully and should not be removed from the water prior to release.

On "Closed rivers" angling for salmon and sea trout is prohibited.

The Regulations also prohibit the use of worms, prawn, shrimp or any other crustacean or artificial forms thereof as bait and any fish hooks other than single barbless hooks.

It is likely that none of the rivers in Wales would meet the Irish criteria of being open and would probably be classed at Category 2 - Fisheries Open to C&R only – with commensurate method restrictions to improve the survival of released fish.

<u>Catch and Releases won't make any difference, for example there is no evidence that the national spring salmon byelaws have worked.</u>

The National Spring Salmon Byelaws were put in place in 1999, and then refreshed in 2009, to halt the decline in the numbers of spring salmon in our rivers. The measures arose from recognition that when stocks, or specific stock components, are below their conservation limit, a reduction in exploitation by fisheries will help towards more sustainable fisheries in the future.

The 1999 spring salmon measures were aimed at large multi sea winter (MSW) salmon running in the early part of the season. Since the measures came in, rod catches and abundance of these fish have ceased to decline and in some cases improved. Some rivers are showing a slight increase in the number and proportion of spring fish returning (for example the Dee, Severn and the Wye), indicating that the measures have been a success.

Overall across England and Wales catches before June are now some 50% higher than in the 5 years before the measures were introduced. Several factors have undoubtedly also contributed to the improved abundance of MSW salmon: -

1. Improvements to habitat and connectivity brought about by rivers trusts and NRW
2. Reduced exploitation in the Greenland and other high seas fisheries
3. Other reductions in legal and illegal fishing off the coast and estuaries
4. An improvement in the marine survival for MSW in contrast to that of grilse.

<u>Returning wounded / moribund fish</u>

What should anglers do with a dead or dying fish?

It is unfortunately an inevitability that there will occasionally be a mortality from angling. This is an accepted consequence, although we hope that the frequency of this will be very low – especially given the requirements of method control.

Our experience on the Wye is happily that mortality of rod-caught fish is low.

The risks around keeping rivers open and allowing fishing to continue maintains the social and economic benefits whilst trying to protect stocks in the river.

If a fish dies after capture the fish should be left in the river and the angler should phone our customer care centre (0300 0653000). If we can, we will collect the carcass from the river. We may be able to get valuable biological information from the carcass.

Rivers once in measures, will not come out
Define what will get rivers out of measures /no belief that once measures are introduced they will ever be lifted).

The proposed measures have a 'sunset' clause of 10 years with a built-in review after 5 years.

The 10-year period relates to two full life cycles for the principal age of salmon and is consistent with the approach previously taken for the National Spring Salmon Byelaws and more recently the Wye C&R Byelaws.

If stocks improve, such as they are 'Not at Risk' we would look to maximise fishing opportunities which would include the relaxation of fishing controls

Our ambition in future will be to further explore the legal and technical issues around an annual stock assessment and management methodology. In this way, we could explore options to implement required management change, potentially on an annual basis (similar that seen in Ireland and Scotland).

Voluntary vs statutory: Why compulsory – surely voluntary measures would be best?

We have been voicing and discussing the concerns about stocks and the number of returning adult salmon and in some cases sea trout for several years, impressing the need for urgent voluntary measures.

During this time, there has been an increase in the number of fish being returned. There are some good examples where individual fisheries and some rivers have made significant efforts. However only a limited numbers of clubs and fisheries across Wales appear to have taken up the challenge to promote C&R. There are notable examples where this is not the case, and where clubs have maintained high bag limits or suggested that they would only adhere to the current byelaws. On some of our 'At Risk' rivers, voluntary C&R rates are less than 60%.

Discussions and feedback suggest that many clubs have taken voluntary measures as far as they can and it is up to NRW to bring in further measures if required and to provide a 'level playing field'.

We also note that some responses have suggested more stringent restrictions may be required especially for size limits around sea trout. It should be noted that there is nothing preventing fishery owners taking additional more precautionary measures, and we certainly applaud the efforts of those that have already done so.

Our own experience of introducing C&R measures on the Wye has not resulted in the collapse or decline of angling participation in the catchment. Indeed, in recent years there would appear to be an increase in demand because there are more fish to be caught. A suite of measures including habitat improvements, improving connectivity, addressing water quality and exploitation measures have taken affect. While we would accept that each river is managed differently in terms of its angling access there are more similarities than differences with a mixture of clubs, syndicated stretches, private and day ticket fisheries available.

Finally, we note that under a voluntary regime the option to kill a fish often means uncertainty for anglers as there will always be suspicion that other anglers elsewhere are killing fish. A statutory regime means that this uncertainty is addressed – everyone knows that release is required and that to kill fish would represent a chance of enforcement action being taken.

Discriminating against disabled anglers

We believe our proposals do not discriminate or victimise any particular group or sector of anglers as described under the Equality Act.

The Equality Act 2010 provides that when exercising its functions (which includes our power to make byelaws), we must have due regard to the need to:

i) eliminate discrimination, harassment, victimisation
ii) advance equality of opportunity between people who share a protected characteristic (which includes disability) and people who do not share it
iii) foster good relations between people who share a protected characteristic and people who do not share it.

It has been suggested that banning bait fishing potentially disenfranchises both young, old and disabled anglers. The proposed suite of measures does not prevent bait fishing for sea trout, which supports the main catches of fish on bait. We have proposed measures to limit the use of bait to reduce the risks to salmon being accidentally caught on bait, as these fish once released have a poorer chance of surviving to spawn.

However, we have undertaken an Equality Impact Assessment and some amendments to our proposals are partly there to address the outcome of that.

Why let nets continue where rods must practice C&R?

You should ban nets.

Our approach is that there is no place for killing fish whilst stocks are ‘At Risk’. Only sustainable stocks may be fished and that even then some constraint or limitation may be required to ensure sufficient spawning escapement.

Our approach now is that we urgently need to reduce exploitation to zero for salmon whilst stocks are ‘At Risk’ or ‘Probably at Risk’

The total catch of salmon by Welsh nets is low, and on average over the last 5 years is less than 200. Welsh net fisheries mainly target sea trout of which the average catch is around 1,600.

Whilst we also have concerns about many of our sea trout stocks they are not presently as vulnerable as those of salmon, and therefore some harvest can take place. However, many need to be restored to sustainability and so some targeted control is required.

In considering our overall approach, we have attempted to treat both rod and net fisheries equitably, ensuring both fisheries can continue where stocks can sustain a harvest of fish. The measures we have proposed are intended to contribute to a return to sustainability.

Under these proposals: -

- all salmon are to be released
- the delay in season opening until 1st May will protect early running generally larger multiple spawning sea trout. Salmon which would have been caught and released will now not be caught at all.
- all netting will cease on 31st July, after which the catch of salmon has been generally similar to the low number of sea trout caught.

Closing both rod and net fisheries is an option we have considered; however, we are mindful to maintain the socio-economic benefits associated with these fisheries.

Duration of measures - How long will the proposals last for?

We have proposed that the new measures should be in place for 10 years, with a review after 5 years. The 10-year period is approximately equal to 2 full generations of salmon and is consistent with our approach we have previously used, on the National Spring Salmon Byelaws (1999 and 2009) and the Wye Catch and Release Byelaws (2012).

We propose to work with the Environment Agency and government advisors to explore options in the future to implement more flexible changes to regulations as in Ireland. This might mean an annual assessment leading to fishing controls potentially changing on a more frequent basis.

10. Management in other jurisdictions

To give context to the NRW proposals for stock management, we present here the current position in other jurisdictions in the British Isles.

England: Environment Agency (EA) decision on statutory consultation for new fishing controls for salmon and sea trout

The EA follows the same management procedures for salmon, and they have now reached the end of their pre-statutory consultation preparations. Their announcement in December 2017 is that they will now launch a statutory consultation on: -

Nets:

- Closure of drift net fisheries in 2018 (the focus is on the very large mixed-stock fishery in the North East of England, but also those on the rivers Lune and Ribble)
- All other net fisheries on 'At Risk' and 'Probably at Risk' rivers that take salmon to close in 2019. (This will exclude the River Severn as this stock is currently 'Probably Not at Risk'
- Fisheries targeting some sea trout stocks will continue, but with statutory C&R of salmon

Rods

- statutory C&R of salmon in all rivers deemed 'At Risk' (10 of the 42 rivers) in 2018
- Voluntary C&R in 28 'Probably at Risk' rivers at levels to exceed 90% from 2018 or, if targets are not met, a byelaw for statutory measures to be introduced)
- Renewal of national spring salmon byelaws (requiring statutory C&R in all rivers from start of season to 15th June)
- Angling method restrictions.

NRW's observations regarding the EA are: -

- The status of salmon stocks is generally worse in Wales: -

CLASSIFICATION (RIVERS)	NUMBER OF STOCKS	
	WALES*	**ENGLAND**
'At Risk'	8 (36%)	10 (24%)
'Probably at Risk'	12 (55%)	27 (64%)
(stocks in decline	10	23)
'Probably not At Risk'	2 (9%)**	5 (12%)
'Not at Risk'	0	0

* excludes River Severn

** rivers Wye and Usk

- NRW follows a different legislative regime following the principles of SMNR and adopting the wellbeing goals. They require greater precaution in managing our natural resources.

- We have appealed for full C&R rod fishing through voluntary means for many years with very variable results. Analysis of C&R data taking account of figures for the existing statutory period (prior to June 16th in each year) demonstrates that current voluntary C&R rate is sometimes as low as 60%.
- Feedback from some fishing organisations is that no further improvement can be made through voluntary means.

When stocks are sustainable and can support exploitation, we seek an appropriate equity of approach between net and rod fisheries.

Ireland: Inland Fisheries Ireland (IFI) - management of the wild salmon fishery 2018

IFI management and regulation of fishing for salmon and sea trout has been significantly amended over the past 5 years. Fishing for salmon is managed through a system of stock assessment that determines stock status and triggers management decisions for each river. Crucially this is done at the end of each annual season in time to influence the determination of management rules for the following year. This is overseen by an independent Standing Scientific Committee on Salmon, comprising scientists from a range of organisations.

On 29th December 2017, the Irish Minister with responsibility for the inland fisheries sector announced new byelaws to be implemented on 1st January 2018.

Of their 146 salmon rivers: -

- 78 rivers open for angling, of which 42 fully open for catch-and-kill
  36 open with statutory C&R fishing
- 68 rivers closed for salmon angling as there is no surplus of fish

Further regulation of salmon fishing, and fishing for sea trout, is achieved through a system of bag limits and carcass tagging. Under this scheme: -

- There is an annual limit of 10 salmon or sea trout, under which there are daily and seasonal apportionments of the limit
- Tags and logbooks are issued to anglers to regulate the bag limit
- Where C&R fishing is permitted, anglers may not use worms and must use only single barbless hooks
- A prohibition on sale of rod-caught salmon

Full details may be seen here: -

http://www.fisheriesireland.ie/Salmon-Regulations/salmon-regulations.html#angling-regulations

Scotland: Scottish Government - conservation measures to control the killing of wild salmon

The Conservation of Salmon (Scotland) Regulations 2016: -

- Prohibits the retention of salmon caught in coastal waters
- Permits the retention of salmon caught in rivers where the stocks are above a defined conservation limit
- Requires mandatory C&R fishing where stocks fall below their conservation limit

Details are available here: -

http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/licence

Northern Ireland: The Department of Agriculture, Environment and Rural Affairs (DAERA) - angling regulations for salmon and sea trout

DAERA states that: “As salmon stocks are declining across all North Atlantic countries there are limits on the number of salmon that may be retained.”

Management advice is based on the probability of each river meeting its conservation limit in 3 out of 5 years. If the probability of this is below a specified level, then statutory C&R fishing is imposed until stock status improves.

There is therefore a requirement for C&R to apply to all salmon and sea trout caught at any time in the DAERA licensing area (except in Lough Melvin, and in rivers where there is a surplus of fish above the conservation limit).

Bag limits (5 fish per year in rivers, 2 in Lough Melvin) is regulated through a carcass tagging scheme (fishing may continue after the limit is reached but on a statutory C&R basis).

Details are available here: -

https://www.nidirect.gov.uk/articles/angling-regulations-rules

11. Water quantity

Abstraction, restoring Sustainable Abstraction (RSA) & Habitats Directive Review of Consents (RoC) process

A number of concerns have been raised in this process around abstraction and its potential impact on salmonids.

A Restoring Sustainable Abstraction (RSA) programme was set up to solve environmental risks or problems caused by licensed water abstractions in order to meet the requirements of environmental legislation, including the EC Habitats Directive and the Countryside and Rights of Way Act (2000). NRW (and predecessor bodies) has worked with abstraction licence holders through the RSA programme to reduce the amount of water taken from the environment, and to enable a conclusion that any abstraction licence does not compromise site objectives. We have also worked with licence holders through this programme to prevent and reduce damage to the environment in other ways, such as by:

- Seeking alternative solutions that use water more efficiently and less harmfully.
- Ensuring only water that is needed may be taken. This prevents damage to the environment, for example by removing risk to designated sites.
- Placing conditions on licences that allow water to be taken at times when it is least likely to harm the environment.
- Working with other organisations and local groups to solve abstraction-related problems.
- Restoring physical processes, for example through gravel management and habitat improvement.

Under the RSA programme we: -

- identify, investigate and work to solve environmental risks or problems caused by unsustainable licensed water abstraction across Wales.
- consider the level of environmental impact abstractions are causing or could cause.
- work with all abstractors whose abstractions may be having an environmental impact, to find effective solutions.

The changes we are making will restore water levels in rivers, streams, lakes, wetlands and marshes. They will improve wildlife habitats and protect endangered species. They will also provide more opportunities for recreation.

Investigations under the RSA programme have helped us identify improvements that will contribute to meeting the UK's objectives under the Water Framework Directive (WFD). This came into force in December 2000 and became UK law in December 2003.

RSA contributes to work improving WFD water bodies where ecology may be at risk due to unsustainable abstraction. Water in rivers, estuaries, coasts and aquifers will improve under measures set out to deliver the WFD such as in our River Basin Management Plans.

Under the Habitats Directive we are required to ensure that we do not consent to an activity within our remit which adversely impacts (or carries a risk of adverse impact) on the integrity of a European designated site. To ensure all existing abstraction licences are compliant, we undertook a process referred to as the Habitats Directive Review of Consents.

When a licence change is needed, it is done through either a voluntary change (section 51 of the Water Resources Act 1991), or a compulsory change (section 52 of the Water Resources Act 1991).

RSA progress

Since 2008, the RSA programme, has prevented damage (or the risk of damage) to 12 HD sites in Wales. Over 40 abstraction licences have been modified or revoked to reduce risks of impact to the environment. Licence variations have included adding hands-off flow conditions, confirming requirements for abstractions to be screened to prevent fish entrainment, and reducing abstraction volumes. These changes benefit the following designated rivers: Dee, Wye, Usk, Teifi, Tywi, Gwyrfai and Eastern and Western Cleddau.

Variations to a small number of licences are still being progressed to meet the requirements of the HD and should be modified under the RSA programme by 2020.

Through working with licence holders, we have also made changes to several licensed abstractions affecting non-designated/local sites to restore sustainable abstraction. These have involved changes such as reducing abstraction and some civil engineering solutions. We continue to investigate abstractions through the RSA programme to determine whether they will require licence changes.

There are good examples of the RoC outcome for the Rivers Wye and Usk, both of which are designated under the HD as SACs largely for their assemblage of migratory fish, particularly salmon, shad and lamprey species. The rivers and many of their tributaries also support UK Biodiversity Action Plan (BAP) species, many of which are at risk from abstraction. These include otter, water vole, twaite and allis shad and many others

The Usk and Wye Abstraction Group was established a number of years ago to progress protection of the sites, largely under the Review of Consents (RoC) process. The members of the Group include Dŵr Cymru Welsh Water (DCWW); Wye & Usk Foundation; Canal & River Trust and Severn Trent Water. The group has been working with NRW and the Environment Agency to explore the optimum solution that would provide the best available environment for the rivers and their protected species and habitats, whilst minimising the impact on water company supplies and allowing the Monmouthshire and Brecon canal to remain open as much as possible. A number of abstraction licences have been varied under the RoC process in these two catchments to protect the sites.

The improvements being progressed for the rivers Wye and Usk include:

- increasing releases from reservoirs to support abstractions at low flows
- extra reservoir releases during and after spates to reinstate natural flows and encourage fish migration
- reductions in abstractions
- less daily river level fluctuations from abstraction

The same principles have been applied to other designated sites in Wales.

Ending water abstraction exemptions

Water abstraction in Wales has been raised by a small number of respondents. Abstraction is of course an essential part of society's needs and many river catchments are carefully

managed to secure this. However, it is essential to ensure that this does not have an adverse impact on fish populations. Most recently abstractions (alongside other permissions) in all rivers designated under the EC Habitats Directive have been reviewed and, where necessary, licence amendments identified to ensure they do not adversely affect the site and its features (which often incudes salmon). These will be implemented during the ongoing and future water industry investment cycle.

Over the past couple of decades, the existence of abstractions that are exempt from the need for licencing has been flagged-up as a potentially damaging activity to rivers. These have included abstractions to ports and canals.

The UK Government response to the 2016 joint Defra/WG/NRW/EA New Authorisations (NA, removal of water abstraction exemptions) consultation was published on 31st October by WG and Defra. It outlines the final policy position on bringing significant exempt abstractions under licensing control together with details on the next steps. There will a two-year application window for those abstractors now needing to apply for licences, to cover previously exempt activities. This starts on 1st January 2018, closes on 31st December 2019 and will be followed by a three-year (01/01/2020 to 31/12/2022) determination period.

The activities that will be impacted by the changes include: -

- Water transfers from one inland water to another in the case of, or as a result of, operations carried out by a navigation, harbour or conservancy authority
- Abstractions into internal drainage districts but not including land drainage activities
- Dewatering of mines, quarries and engineering works, where the water is mostly groundwater rather than rain
- Warping (abstraction of water containing silt for deposit onto agricultural land as a fertiliser)
- All forms of irrigation (except for spray irrigation which is already licensable) and the use of land drainage systems in reverse (including transfers into managed wetland systems) to maintain field water levels
- The majority of abstractions by Crown and visiting forces exemptions
- Abstractions within previously geographically exempt areas

NRW expects up to 300 applications from previously exempt abstractors in Wales. In some cases, this is likely to result in improvements to water environments.

Hydropower

NRW regulates hydropower development in rivers through a permitting process - see: -

https://naturalresources.wales/guidance-and-advice/environmental-topics/energy/hydropower-scheme-licences/?lang=en

NRW has already responded to concerns about juvenile salmonid stocks, as detected in 2016, by amending the levels of protection afforded to important habitats through our Water Resources licensing process for hydropower.

We are also adding to our enforcement responses where we find hydropower licence holders operating in breach of their licence conditions, so that we can refer cases to OFGEM for them to consider suspension or withdrawal of Feed in Tariff accreditation (subsidy payments).

We are also considering how we can balance HEP development with the commensurate removal or modification of barriers elsewhere in catchments.

12. Legal matters

Some respondents have questioned the legal background and basis to the proposals we have made. The notes that follow are intended to clarify some of the more frequent issues raised.

Proportionality

In considering any claim that the proposals as they currently stand are disproportionate, the Court would consider: -

i. whether the objective (i.e. the protection of salmon and sea trout stocks) is sufficiently important to justify limiting existing rights;
ii. whether the measures designed to meet the objective are rationally connected with it;

whether the means used to impair the right are no more than is necessary to accomplish the objective,

NRW is aware that any final decision it may come to must be proportionate, i.e. there must be a reasonable relationship between the objective which is sought to be achieved and the means used to achieve that end.

In order to meet this test, NRW believes that it have demonstrated in the technical case and supporting papers the real threat faced by salmon and sea trout populations and how the proposed measures will meet the objective of protecting them.

Representations have been made in the consultation that lesser measures may also meet the objective of the byelaws. NRW will give these representations due consideration as part of its final decision making process. NRW does however note that case law has held that although the means used to impair a right should be no more than is necessary to accomplish the objective, there is no need for a public body to adopt the least intrusive measure provided an appropriate balance has been struck.

Case law has also shown that in addition to the 3 stage test above, there is a need to balance whether a fair right has been struck between the rights of the individual and the public interest. With regards to the byelaw proposals, this would be the balance of the public interest in protecting fisheries against the impact on anglers/fishery owners. NRW notes that the introduction of the byelaws would not prevent people from being able to fish for salmon and sea trout and therefore fish for sport/recreation provided that they then return the fish to the river.

Potential compensation - Section 212 Water Resources Act 1991

The question of compensation under the Water Resources Act 1991has been raised by some respondents, NRW's position is that the byelaws fall outside the power to compensate under section 212 of the 1991 Act. More specifically Section 212 gives NRW a discretionary power to pay compensation only in respect of the impact of certain specified fishery byelaws.

As the rod and line byelaws are being made under the following paragraphs of Schedule 25 of the 1991 Act:

i) paragraph 6(1)(b) for the better protection, preservation and improvement of salmon and sea trout fisheries;

ii) paragraph 6(2)(b) prohibiting or regulating the taking of salmon or sea trout of a size greater or less than such as may be prescribed by the byelaw; and
iii) that part of paragraph 6(2)(d) regulating the use, in connection with fishing with rod and line, of any lure or bait specified in the byelaw

NRWs position is that the power to pay compensation under section 212 of the Act is not triggered.

The same position applies to the net byelaws but instead of paragraph 6(2)(b) and part of 6(2)(d), we refer to the following paragraph of Schedule 25 of the Water Resources Act 1991

i) paragraph 6(2)(aa) specifying close seasons or times for the taking of any fish

Human Rights Act

Some respondents have claimed that the introduction of the byelaws without compensation would be a breach of their rights under Article 1 of the First Protocol to the European Convention of Human Rights. In addition, it has been claimed that as section 6 of the Human Rights Act 1998 prevents NRW from acting in breach of the Convention, any such breach would make the byelaws unlawful.

In considering any claim that the introduction of byelaws without compensation is a breach of a fishery owner's human rights, a Court would consider: -

(i) whether the objective, i.e. the protection of salmon and sea trout stocks, is sufficiently important to justify limiting the existing right;
(ii) whether the measures designed to meet the objective are rationally connected with it;
(iii) whether the means used to impair the right are no more than is necessary to accomplish the objective; and
(iv) whether a fair right has been struck between the rights of the individual and the public interest.

NRWs current position is that there would be no grounds for compensation under human rights legislation as long as the tests are met. Due consideration will however be given to representations made in the consultation that lesser measures may also meet the objective of the byelaws.

With regards to a comment on the "right to take a fish", the Water Resources Act 1991 gives NRW the power to make byelaws which prohibit or regulate the taking of fish for the better protection, preservation and improvement of salmon and sea trout fisheries.

Further specific points raised were: -

- an unalienable right to take fish for table
- the right to use methods that we propose to ban
- ethics of fishing when you can't kill catch

Our responses to these points are: -

i) An unalienable right to take fish for table

Some respondents have referred to an "unalienable right" to take fish for the table. In fact, there is no such legal right.

The Water Resources Act 1991 gives NRW the power to make byelaws to prohibit or regulate the taking of fish for the better protection, preservation and improvement of salmon and sea trout fisheries.

ii) The right to use methods that we propose to ban

The Water Resources Act 1991 gives NRW the power to make byelaws to prohibit or regulate the taking of fish for the better protection, preservation and improvement of salmon and sea trout fisheries and to regulate the use, in connection with fishing with rod and line, of any lure or bait that might be specified in the byelaw. The declining stocks of salmon and some sea trout has led to the proposed restrictions on bait and methods in order to improve the prospects of survival of released fish. This is described more fully in the Technical Case: -

https://naturalresources.wales/media/682258/technical-case-structure-final.pdf

iii) The ethics of fishing when you can't kill what you catch

We presume that this refers to a potential ethical issue relating to fishing for recreational purposes rather than fishing for 'the table'. We are aware that some groups have lobbied against fishing with the express intent to return fish alive to the water. We understand the point, but note that approximately 90% of rod fishing licences are sold to anglers who habitually return all the coarse fish that they catch. It is not a role for us to judge the ethics of this.

iv) The ethics of returning wounded fish
We refer to FAQ 41.

Vires

NRW's powers to make fisheries byelaws are contained in section 210 and Schedule 25 of the Water Resources Act 1991. The technical case at pages 99-102 provides further detail as to NRW's vires –

https://naturalresources.wales/media/682258/technical-case-structure-final.pdf

Local Fisheries Groups (LFGs)

Statutory regional and local fisheries advisory committees were abolished in Wales by the Natural Resources Body for Wales (Functions) Order 2013. In addition to abolition, the 2013 Order repealed the duty contained in the Environment Act 1995 on NRW to consult with local advisory committees.

Although these groups have been abolished, NRW recognises there remains an important duty to maintain, improve and develop salmon and sea trout (etc.) fisheries and to

communicate to stakeholders how this is being done. This resulted in the ongoing role for non-statutory LFGs to assist in stakeholder engagement.

Potential inquiry or judicial review

The statutory procedure relating to fisheries byelaws made by NRW is set out in Schedule 26 of the Water Resources Act 1991. This provides that byelaws made by NRW are not valid until they have been confirmed by the Welsh Ministers. When determining whether to confirm, modify, or refuse any byelaws submitted to them by NRW, the Welsh Ministers have the discretionary power to either make that confirmation decision themselves or to hold a local inquiry if they consider one necessary.

Judicial Review is a process by which the Courts can review the legality of a decision made by a public body. This review is generally limited, to grounds that any decision might be: -

i) So unreasonable that no sensible body would have arrived at the same decision; or
ii) Illegal, e.g. the public body has exercised a power wrongly, or improperly applies a power that it does not have; or
iii) procedurally improper e.g. the public body has failed to observe statutory procedures or natural justice.

NRW's position is that its decision to make these byelaws does not meet any of the 3 grounds.

Issues of disability

Some respondents have concerns around the future ability of disabled and elderly anglers to continue to fish.

The Equality Act 2010 provides that when exercising its functions (which includes our power to make byelaws), NRW must have due regard to the need to:

i) eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act
ii) advance equality of opportunity between people who share a protected characteristic (which includes disability) and people who do not share it
iii) foster good relations between people who share a protected characteristic and people who do not share it.

'Advancing equality of opportunity' means that NRW needs to have 'due regard' to the need to: -

i) remove or minimise disadvantages faced by people who share a protected characteristic
ii) take steps to meet the needs of people who share a protected characteristic
iii) encourage people with protected characteristics to take part in public life or in other activities where their participation is low.

The public-sector equality duty means that, as a public body, NRW must consider equality when it makes decisions.

13. Canoes and access

Damage to redds

Anglers generally appreciate the importance of protecting spawning fish and young fish in order to promote a healthy fishery. Section 2 of the Salmon and Freshwater Fisheries Act (SAFFA) offers protection in a number of important ways – It is for example an offence to wilfully disturb any spawn or spawning fish. The inclusion of the word 'wilful' requires that the act of disturbance should be deliberate and intentional.

In 2000, the Environment Agency published an R&D technical report in the Effects of canoeing on fish stocks and Angling it concluded: "The general conclusion from the study is that canoeing is not harmful to fish populations, therefore the main area of conflict between Anglers and canoeists centres around the disturbance of angling, which to a greater or lesser degree is dependent on the intensity and duration of the canoeing activity. Disturbance is in turn allied to the concept of exclusivity with its attendant financial implications for riparian interests and anglers."

Mindful of the sensitivities around access, we will continue to promote Voluntary Access Agreements, where appropriate help identify areas, such as spawning areas where fish may be of higher risk of disturbance and look to further educate and inform other river uses of potential issues to help protect out fisheries

Next Steps

We have responded to all those for whom we have sufficient contact details. We have analysed the issues and points raised and have taken account of these in amending and refining the proposed measures.

We will at the next opportunity seek the approval of the NRW Board to apply to the Welsh Government Cabinet Secretary for confirmation of new byelaws. The Cabinet Secretary may, after due consideration, approve our application or may decide to approve with amendments required by Welsh Government, or may decide not to approve the proposals.

Once we have a decision we will publicise this as soon as practicably possible. At that we will set out what the decisions mean for each river so there is clarity for all.

We are sure that you will agree that the health and sustainability of our important stocks of salmon and sea trout must be the important focus of our efforts. This is a good example of our statutory roles as set out by Welsh Government in their Natural Resources Policy: -

> http://gov.wales/topics/environmentcountryside/consmanagement/natural-resources-management/natural-resources-policy/?lang=en

Although our consultation has focussed on the protection of adult fish during their migration to spawn and re-populate rivers with their progeny, it is the environmental conditions in the river that must be the focus of our efforts going forwards. Saving fish so that they may spawn only makes sense if the conditions in the river are of sufficient quality for survival of their progeny. Our ambition must be for each river to be optimised for smolt production (thereby securing benefit and the wellbeing of all fish species and other river fauna). NRW takes this extremely seriously and has been greatly dismayed by the well-publicised pollution incidents that have damaged populations of young fish. We hope you will see in our response to the concerns expressed in the consultation process, and in our future action, that NRW is actively addressing these matters using the resources available to us. Anglers will be key partners among those who scrutinise what we do.

The measures we are proposing are a key part of the strategy which is to safeguard and maximise the numbers of fish that survive to spawn. This action will safeguard these iconic species for the benefit of future generations.