

**WATER RESOURCES ACT 1991**

**THE WALES ROD AND LINE (SALMON AND SEA TROUT) BYELAWS 2017**

**THE WALES NET FISHING (SALMON AND SEA TROUT) BYELAWS 2017**

**DOCUMENT NRW/5**

**PROOF OF EVIDENCE**

**OF**

**RUTH JENKINS**

**HEAD OF NATURAL RESOURCE MANAGEMENT POLICY**

**on behalf of**

**NATURAL RESOURCES WALES**

**NOVEMBER 2018**

## **NATURAL RESOURCES WALES**

### **THE WALES ROD AND LINE (SALMON AND SEA TROUT) BYELAWS 2017**

### **THE WALES NET FISHING (SALMON AND SEA TROUT) BYELAWS 2017**

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#### **Proof of Evidence of Ruth Jenkins**

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#### **1 Personal background**

- 1.1 My name is Mrs Ruth Jenkins, and I am the Head of Natural Resource Management Policy (currently Acting Executive Director Evidence Policy and Permitting).
- 1.2 I am qualified to degree level in Environmental Science, with 30 years' experience in environmental policy and land management operations covering agriculture, forestry, water management and biodiversity and recreational access. I have worked for other public sector and non-government organisations
- 1.3 In my current role I oversee NRW policy and strategic planning work which sets out how we pursue the sustainable management of natural resources. My department works alongside Head of Evidence and Head of Permitting and Regulation and Head of Flood and Incident management to act as the Heads of Business for NRW.
- 1.4 The Natural Resources Management department consists of teams of functional specialists covering our natural resources (water, biodiversity, forestry, agriculture, inland fisheries and marine fisheries) working together and across the business to develop strategy and policy in relation to their function. These staff also work in a

senior advisory capacity to support our statutory functions, such as Marine Permitting, Forestry Licencing and the Stewardship of our own estate.

- 1.5 With regards to my involvement with the Wales Rod and Line (Salmon and Sea Trout) Byelaws 2017 and the Wales Net Fishing (Salmon and Sea Trout) Byelaws 2017 (together “**the All Wales Byelaws**”), I manage the fisheries advisors in my capacity as Head of Natural Resource Management and I lead the Strategic Fisheries Management Group across NRW which includes senior leads in national and operational management of fish stock and fisheries. Under my supervision, the fisheries advisors have led the work on developing the proposed case for amended byelaws and I have submitted and sponsored decision papers to the NRW Board.

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## 2 Scope of evidence

- 2.1 Capitalised terms used in this proof of evidence that are not defined in the proof are defined in the Glossary appended to the proof of Mr Gough.<sup>1</sup>
- 2.2 My evidence sets the legislative and policy context that underpins NRW's work more generally, as well as for the All Wales Byelaws. My evidence seeks to demonstrate the strategic context and policy for NRW's wider duties which support the sustainable management of fish stock and fisheries in Wales.
- 2.3 NRW's objectives for salmon and sea trout stocks are to restore the natural resources represented by these wild populations to a sustainable status so that the multiple benefits, including socioeconomic and wellbeing benefits, are secured and protected for future generations. The All Wales Byelaws are intended to preserve vital breeding resources whilst other matters suppressing environmental quality are addressed. Further evidence will be provided by colleagues on what we are doing, progress of actions and how this work supports sustainable fish stocks and fisheries in Wales, the technical evidence explaining why we seek to introduce the All Wales Byelaws to support our Sustainable Management of Natural Resources ("SMNR") and Biodiversity duties, and how the detailed technical case underpins this.

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<sup>1</sup>NRW/1D

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### **3 NRW's approach to conservation**

- 3.1 The wide suite of environmental legislation, policy and regulatory guidance under which NRW operates outlines and supports the functional duties that we deliver and provides a framework for our purpose, the way we work, the principles we apply, our values and public service duty.
- 3.2 NRW is required to use its public service position to best effect to facilitate the achievement of its purpose and this is explicit in its objective of pursuing the sustainable management of Atlantic Salmon and Sea Trout in Wales.

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## 4 Legislative context

- 4.1 The statutory purpose of NRW, as set in the **Environment (Wales) Act 2016 (“the 2016 Act”)**<sup>2</sup>, is to pursue SMNR. This represents a shift of focus away from just considering our many individual statutory functions in isolation from one another, towards a more integrated approach to addressing the pressures and drivers of ecosystem change, rather than just its effects.
- 4.2 This is why NRW was established and provides both the opportunity and the obligation to work in a more joined up way. SMNR, together with our duty in Section 6 of the 2016 Act<sup>3</sup> seek to maintain and enhance biodiversity, and the Nature Recovery Action Plan (“**NRAP**”)<sup>4</sup> which represents the biodiversity strategy for Wales, provide NRW with a renewed focus to exercise the full range of our functions so as to improve ecosystem resilience.
- 4.3 Section 2 of the **Well-being of Future Generations (Wales) Act 2015 (“the 2015 Act”)**<sup>5</sup> defines ‘sustainable development’ as the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principles, aimed at achieving the well-being goals.
- 4.4 The well-being goals set a shared vision for Wales for the public bodies in the 2015 Act<sup>6</sup> to work towards. For Wales to be sustainable it is important that we improve all four aspects of well-being. They are all equally important. Each public body listed in the 2015 Act must work to improve the economic, social, environmental and cultural well-being of Wales, set well-being objectives to maximise their contribution towards the goals and take steps towards meeting those objectives.
- 4.5 Within any sector or system, NRW may fulfil multiple roles. NRW will step into these different roles at different points in the decision-making process. The degree of flexibility and discretion open to NRW in fulfilling each role will vary, depending on the under-pinning legislation, Welsh Government (“**WG**”) policy and guidance. Understanding the different roles NRW plays, including that of leadership, will help

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<sup>2</sup> LEG/25

<sup>3</sup> LEG/25

<sup>4</sup> POL/17

<sup>5</sup> LEG/23

<sup>6</sup> LEG/23

make clear what needs to change, and how NRW's broad functions can interact to focus on pursuing SMNR.

4.6 Ensuring that natural resources are sustainably managed is a complex task, which requires NRW to apply its full range of relevant powers. Equally NRW would be neglectful of NRW's purpose and values if NRW's allowed issues outside our direct control to allow us not to pursue actions which work to address the risks and issue that are.

4.7 NRW has also corporately set out its key wellbeing objectives and framed its corporate plan around these objectives. This means that activity and resources are being aligned around our statutory duties under the 2016 Act<sup>7</sup> in the context of the 2015 Act<sup>8</sup>.

4.8 NRW's wellbeing objectives are as follows:

- Champion the Welsh environment and the sustainable management of Wales' natural resources
- Ensure land and water in Wales is managed sustainably and in an integrated way
- Improve the resilience and quality of our ecosystems
- Reduce the risk to people and communities from environmental hazards such as flooding and pollution
- Help people live healthier and more fulfilled lives
- Promote successful and responsible business, using natural resources without damaging them
- Develop NRW into an excellent organisation, delivering first-class customer service

4.9 Under each theme we have set out what we aim to deliver in the five year period.

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<sup>7</sup> LEG/25

<sup>8</sup> LEG/23

## **5 Sustainable Management of Natural Resources**

- 5.1 Part 1 of the 2016 Act<sup>9</sup> sets out an objective, the SMNR. This objective is about taking action to build resilience into Wales' natural resources and ecosystems so that the ecosystem services they provide are available now, for future generations, and so they contribute to the achievement of the well-being goals.
- 5.2 The definition is clearly linked to the sustainable development principle to reflect that Wales' natural resources and ecosystems underpin our well-being. Evidence provided on the application of NRW's general purpose to pursue SMNR in the exercise of its functions is a key means by which NRW may provide evidence on the implementation of the Sustainable Development duty in the 2016 Act<sup>10</sup>.
- 5.3 Section 4 of the 2016 Act<sup>11</sup> also sets out nine principles or ways of working which apply when working towards the objective of the sustainable management of natural resources, namely to:
- (a) manage adaptively, by planning, monitoring, reviewing and, where appropriate, changing action;
  - (b) consider the appropriate spatial scale for action;
  - (c) promote and engage in collaboration and co-operation;
  - (d) make appropriate arrangements for public participation in decision-making;
  - (e) take account of all relevant evidence and gather evidence in respect of uncertainties;
  - (f) take account of the benefits and intrinsic value of natural resources and ecosystems;
  - (g) take account of the short, medium and long term consequences of actions;
  - (h) take action to prevent significant damage to ecosystems;

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<sup>9</sup> LEG/25

<sup>10</sup> LEG/25

<sup>11</sup> LEG/25

(i) take account of the resilience of ecosystems, in particular the following aspects—

(i) diversity between and within ecosystems;

(ii) the connections between and within ecosystems;

(iii) the scale of ecosystems;

(iv) the condition of ecosystems (including their structure and functioning);

(v) the adaptability of ecosystems.

5.4 The principles of SMNR apply to NRW when exercising its functions including. NRW's State of Natural Resources Report 2016 ("**SoNaRR**")<sup>12</sup> and Area Statements, and to Welsh Ministers when developing and implementing the Natural Resources Policy.

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<sup>12</sup> POL/19

## 6 Biodiversity duty and lists

- 6.1 The 2016 Act<sup>13</sup> recognises the essential contribution biodiversity makes to the SMNR and to our well-being by putting in place the section 6 biodiversity and resilience of ecosystems duty. This duty requires public authorities to seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.
- 6.2 Section 7 of the 2016 Act<sup>14</sup> also requires that the Welsh Ministers prepare and publish a list of species and habitats of principal importance for Wales and take all reasonable steps to maintain and enhance those species and habitats and encourage others to take such steps. This section replaces the duty in section 42 of the Natural Environment and Rural Communities Act 2006. The Welsh Ministers will publish, review and revise lists of living organisms and types of habitat in Wales, which they consider are of key significance to sustain and improve biodiversity in relation to Wales. The Welsh Ministers must also take all reasonable steps to maintain and enhance the living organisms and types of habitat included in any list published under this section, and encourage others to take such steps. Part 1 of the 2016 Act<sup>15</sup>, including Sections 6 and 7, came into force on May 21, 2016.
- 6.3 Fish species are part of Wales' biodiversity and as such are a natural resource. This resource includes the genetic material which, after many generations of highly specific homing to natal rivers, show adaptation to specific catchment and regional characteristics. .
- 6.4 NRW's work on biodiversity is guided by the six objectives in part 1 of NRAP<sup>16</sup> which have been identified to contribute to reversing the decline of biodiversity in Wales.
- 6.5 The six objectives to maintain and enhance biodiversity are:
- 6.5.1 Objective 1: Engage and support participation and understanding to embed biodiversity throughout decision making at all levels.

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<sup>13</sup> LEG/25

<sup>14</sup> LEG/25

<sup>15</sup> LEG/25

<sup>16</sup> POL/17

- 6.5.2 Objective 2: Safeguard species and habitats of principal importance and improve their management
  - 6.5.3 Objective 3: Increase the resilience of our natural environment by restoring degraded habitats and habitat creation
  - 6.5.4 Objective 4: Tackle key pressures on species and habitats
  - 6.5.5 Objective 5: Improve our evidence, understanding and monitoring
  - 6.5.6 Objective 6: Put in place a framework of governance and support for delivery.
- 6.6 NRW therefore intends to:
- 6.6.1 embed biodiversity values and benefits into decision making.
  - 6.6.2 safeguard important species, habitats and protected areas.
  - 6.6.3 restore and create resilient ecological networks.
  - 6.6.4 use the best available evidence in decision making.

## 7 Other Principles which NRW applies to the conservation of biodiversity

- 7.1 There are other high-level principles which guide NRW's work and are applied specifically in certain areas of law. An example, which is pertinent here, is that of that of the Precautionary Principle.
- 7.2 The need to apply the Precautionary Principle (in terms of it being a high level and ultimately legal obligation, as opposed to a policy 'choice' or discretionary approach to decision making by NRW) arises from Article 191 of the Treaty of the European Union, ("**the TEU**")<sup>17</sup> which requires EU policy and action relating to the environment to embed the Precautionary Principle. The Precautionary Principle is essentially about how decisions should be made when there is uncertainty about the (environmental) consequences. Generally, the requirement to prove no harm overrides the requirement to prove harm.
- 7.3 Article 191 of the TEU doesn't define the Precautionary Principle, but in 2000 the European Commission ("**the EC**") issued a detailed 'Communication' explaining how the EC expects it to be applied. (I also note in passing that the draft Brexit EU withdrawal agreement published recently commits the UK to continuing to uphold the Precautionary Principle - along with the 'polluter pays' principle - as part of the agreement that there will be no UK changes to environmental standards post Brexit).

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<sup>17</sup> LEG/7

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## 8 The State of Natural Resources Report

- 8.1 **SoNaRR** sets out the national evidence base for the sustainable management of natural resources. It shows that no ecosystem in Wales is currently showing all the attributes of resilience, which is impacting on the ability of our ecosystems to provide benefits for people<sup>18</sup>. It also sets out how Wales' natural resources contribute to our well-being<sup>19</sup>. This evidence is used by WG to set natural resources policy.
- 8.2 NRW works to principles of integrity and objectivity which require us to take an evidence-based approach. SoNaRR<sup>20</sup> is used in a statutory capacity to support policy development in WG. More generally our evidence and evidence from others is used to support our decisions and influence the decision of others in line with our purpose.
- 8.3 SoNaRR<sup>21</sup> also addresses the current problems concerning the sustainability of salmon fisheries. In particular, it identifies that reducing exploitation by rod and net fisheries contributes to the active management of the populations. However, it also notes that salmon are vulnerable to climate change, and anticipates a likely future decline.<sup>22</sup>

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<sup>18</sup> Chapters 7 and 8, **POL/19**

<sup>19</sup> Chapter 1, **POL/19**

<sup>20</sup> **POL/19**

<sup>21</sup> **POL/19**

<sup>22</sup> Technical Annex for Chapter 3, p 19 **POL/19**

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## **9 Relationship between the two Acts**

- 9.1 The 2015 Act<sup>23</sup> and SMNR in part 1 of the 2016 Act<sup>24</sup> have been developed to work together because Wales' natural resources and ecosystems underpin our cultural, social, economic and environmental well-being.
- 9.2 Evidence shows that our natural resources, and the benefits that our ecosystems provide, are in decline. Stresses such as pollution, habitat fragmentation, climate change and over-exploitation are placing even greater pressure on them.
- 9.3 Action to build resilience into our natural resources and ecosystems, so that these benefits are available now – and for our future generations – is vital. In managing our natural resources wisely, we can provide solutions across all four pillars of sustainable development to support our economic, social, environmental and cultural well-being. This is the 'sustainable management of natural resources'.
- 9.4 NRW's strategy for the sustainable management of fish stocks and fisheries is set in the context of this legislation and the purpose of NRW, our evidence base and the principles of SMNR.
- 9.5 NRW is bringing its evidence base together at relevant scales across Wales to support its own and wider decision making across the public sector and supporting others in their decision making to deliver SMNR
- 9.6 One of the key ways NRW is doing this will be through Area Statements.

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<sup>23</sup> LEG/23

<sup>24</sup> LEG/25

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## 10 Area statements

- 10.1 NRW's Area Statements once in place will support place-based approaches linked to the challenges, opportunities and national priorities in the Natural Resources Policy<sup>25</sup>. They are a series of products which translate the national priorities into the action that can be taken across Wales. They set out a local evidence base for SMNR and identify the opportunities where working together can help us deliver the national priorities, build ecosystem resilience and make the most of the benefits Wales' natural resources and ecosystems provide for Well-being. Local Development Plans, Public Service Board Well-being Assessments, National Park and AONB plans must have regard to this evidence. Public bodies must provide NRW with information it requires for both SoNRR<sup>26</sup> and Area Statements. NRW can also ask public bodies to assist in addressing the priorities, risks and opportunities for SMNR identified in Area Statements.
- 10.2 Area Statements are relevant to the Inquiry because their evidence and the statutory requirement to use them shows the difference between the longer-term challenges to fix our failing ecosystems and the need to apply shorter term functions which safeguard species conservation. The All Wales Byelaws provide a mechanism for achieving desired outcomes at an appropriate spatial and temporal scale, and can ensure we maintain a resource while we work to fix other issues which impact on ecological resilience.
- 10.3 NRW's work, what we fund and how we apply our individual functional/statutory decisions must take account of these Area Statements and more generally we have a duty to take account of relevant evidence in our decision making. We aim to join up local place-based information and community evidence with national level evidence and will work on fixing the factors in the 'system' which drive unsustainable management, not just the initiatives to make site by site improvements.
- 10.4 It is all too easy to consider issues which impact on fish stocks and fisheries at the point at which there is direct impact, such as pollution directly entering a water course, but NRW has a duty to work to find solutions to problems at the earliest opportunity NRW aims to achieve this by, for example, looking at the factors that drive the

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<sup>25</sup> POL/22

<sup>26</sup> POL/19

problems occurring wherever they occur in the decision making chain, and addressing those issues at those stages.

## 11 Policy underpinning of the All Wales Byelaws

- 11.1 Our policy for managing fish populations and their biological diversity, including their genetic material, is to use our specific duties to restore salmon and sea trout stocks to sustainable levels and then maintain them while we manage the longer-term environmental challenges. Where there are known risks to biodiversity or uncertainty of outcomes from current interventions we will deploy actions to lower the risk.
- 11.2 NRW has specific statutory fisheries duties and has received further guidance on these duties from WG<sup>27</sup>. Further, a wider suite of duties recognises EU Directives and international obligations under various conventions<sup>28</sup>. Amongst the latter is the precautionary approach (as outlined above) that NRW would apply to the conservation, management and exploitation of natural resources.
- 11.3 The All Wales Byelaws are just one means by which we propose to carry out of our functional responsibility. This functional responsibility includes the regulation of inland fisheries in Wales, with a duty under section 6(6) of the Environment Act 1995 (“**the 1995 Act**”)<sup>29</sup> to maintain improve and develop fisheries. The Current Strategy for Sustainable inland fisheries in Wales-Agenda for Change sets out the long-term ambition and direction NRW is taking in the management of inland fisheries and sets out the challenges, evidence requirements and how we need to work to deliver sustainable fisheries in Wales. This includes the need for using the appropriate legislative and regulatory tools directly for fish and the management of the wider environment to support fish. In the case of fisheries management our purpose and duties in relation to the 1995 Act<sup>30</sup> are complimented by our functional duties and allow us to make critical evidenced interventions to sustain fish stocks.

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<sup>27</sup> Section 3, **NRW/1** and Paragraph 1.4 on page 20 of **APP/4**

<sup>28</sup> Section 3, **NRW/1** and Paragraph 1.5 on pages 21-25 of **APP/4**

<sup>29</sup> LEG/11

<sup>30</sup> **LEG/11**

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## 12 Other measures

12.1 As explained in the evidence of Mr Peter Gough<sup>31</sup>, NRW is proposing a number of responses to the depleting salmonoid stocks in addition to the All Wales Byelaws. NRW's additional suite of measures is addressed further in the evidence of Mr Robert Vaughan, but includes:

- Collaborate with land owners and managers to create a strategic integrated approach to managing land and water, focusing on managing protected sites towards favourable condition and valuing them as part of a larger network and essential component of the natural environment.
- Work with key partners to improve river habitats, collecting evidence and seeking funding to compile, prioritise and implement river restoration plans, working towards providing the best river habitats for fish and establishing salmon as an iconic species indicative of habitat quality across Wales.
- Bring water bodies into good ecological status by 2027 as per Article 4 of the EU Water Framework Directive<sup>32</sup>.
- Tackle pollution from abandoned metal mines to help restore 700 kilometres (435 miles) of affected rivers to good ecological status.
- Develop a reformed and sustainable abstraction licensing system and work with partners to ensure surface and groundwater catchments can cope with high and low flows in periods of flood and drought.

12.2 Collectively these specific actions and the range of other actions and general duties carried out by NRW are being designed to support SMNR in Wales, positively enabling appropriate land and water management practices by us and others so that environmental conditions in our rivers are restored. Whilst this happens, and recognising the uncertainty of timescales, it is essential that spawning reserves of fish are protected and maximised, which is the underlying objective of the All Wales Byelaws.

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<sup>31</sup> Section 7, **NRW/1**

<sup>32</sup> **LEG/16**

- 12.3 My colleague Robert Vaughan describes in his evidence how the land management measures are complimentary to the implementation of the All Wales Byelaws, but are insufficient without them<sup>33</sup>. The process of restoring ecosystems is a long-term one that faces unknown challenges. The All Wales Byelaws provide an effective and faster acting response to the severe problem of salmon and trout stock depletion in Wales<sup>34</sup>.
- 12.4 If the other measures were pursued in the absence of the All Wales Byelaws, there is a risk that ongoing catch and kill fishing increases the risk of further decline of stocks, as the ongoing depletion of spawning reserves would continue. As my colleague Peter Gough explains, this could theoretically bring stocks closer to a point of extirpation<sup>35</sup>. This risks compromising important genetic characteristics which make local stocks fitter through adaptation. In other words, without the implementation of the All Wales Byelaws, alongside the further full suite of complimentary measures aimed at improving the riverine environment, the fish stocks may not be in a sufficient state to be able to benefit from those improvements in the longer term.

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<sup>33</sup> Section 2, NRW/6

<sup>34</sup> Section 8, NRW/1

<sup>35</sup> Paragraph 9.44, NRW/1

## 13 SUMMARY AND CONCLUSIONS

- 13.1 In summary and in relation specifically to the All Wales Byelaws, NRW has a duty to apply its functions individually and in combination to the pursuit of sustainable fish stock as they and their genetic material form a component of Welsh biodiversity and as such are part of our natural resources.
  
- 13.2 NRW has a range of powers available to it and a myriad of duties which it must comply with, all of which must be considered in the context of a specific issue. NRW must identify which of these powers are relevant to the problem at hand and then deploy those which will have the best effect in order to take action which is proportionate to the scale and nature of the problem. NRW believe that the All Wales Byelaws are a proportionate and essential means of addressing the decline in salmon and sea trout stock in Wales.

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14 **Statement of truth**

14.1 I hereby declare that:

- I. This proof of evidence includes all the facts which I regard as being relevant to the opinions that I have expressed and that the inquiry's attention has been drawn to any matter which would affect the validity of that opinion;
- II. I believe the facts that I have stated in this proof of evidence are true and that the opinions I have expressed are correct; and
- III. I understand my duty to the inquiry to help it with matters within my expertise and I have complied with that duty.

**Ruth Jenkins**

Head of Natural Resource Management Policy

Natural Resources Wales