

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/1R
REBUTTAL PROOF OF EVIDENCE
OF
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on behalf of
NATURAL RESOURCES WALES

JANUARY 2019

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1 Introduction

- 1.1 Further to my Proof of Evidence (“**PoE**”) submitted on 21 November 2018 (“**NRW/1**”), and having considered the Objectors’ evidence submitted on 18 December 2018, I Peter Gough, present this rebuttal evidence in support of the proposed 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**”).
- 1.2 My rebuttal is limited to those matters which require the submission of additional written evidence and will not repeat evidence already before the inquiry.
- 1.3 My rebuttal evidence addresses the following key issues:
 - i. The likely effect of the All Wales Byelaws (covering both the effectiveness of the measures and the effect of a possible reduction in anglers)
 - ii. The All Wales Byelaws 10 year period and 5 year review
 - iii. Proportionality, judgement and balance (covering the contention that NRW is adopting a blanket approach and the socioeconomic impacts of the proposals)
 - iv. Enforcement
 - v. Differences in approach between Natural Resources Wales (“**NRW**”) and the Environment Agency (“**EA**”)
 - vi. Position in other jurisdictions

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2 The likely effect of the All Wales Byelaws

- 2.1 A number of Objectors have questioned whether the All Wales Byelaws would be effective in reducing the stock decline in salmon and sea trout populations. In short, some Objectors have suggested that the All Wales Byelaws would not make any difference.¹
- 2.2 As explained in NRW's primary evidence, NRW has proposed these byelaws to reduce the intentional killing of fish and thereby to maximise the number of fish that survive to spawn each year. It is essential that spawning stocks are maximised if populations are to have the best chance of recovery. Throughout the period of the All Wales Byelaws, NRW will continue to actively address all of those matters within its control (and covered by statutory duties) that adversely affect stocks.²
- 2.3 In large part the question of the likely effect of the All Wales Byelaws has already been addressed in NRW's primary evidence.³ However, the following additional points are made.
- 2.4 There is a range of factors that negatively affect salmon and sea trout populations. Some of these are relevant to freshwater conditions and others to the marine environment. The former is covered in the evidence of my colleague Robert Vaughan.⁴ The latter is, by its nature, much more difficult to address as the marine environment necessarily draws in issues of international policy and cooperation.
- 2.5 NRW shares the view of most other national bodies⁵ charged with management of the salmonid⁶ resource (and indeed the views also of much of the Welsh angling community⁷) that action is essential to conserve breeding populations, especially when stocks are depleted.
- 2.6 The observations that stocks have been in decline and are depleted, and that there is an ongoing reduction in uptake of angling for salmon and sea trout over the past decade or so appear generally to be a matter of agreement even amongst most Objectors to the proposals. Both decreased numbers of catches and lower participation in angling were occurring well before the current proposals were first derived.
- 2.7 However there is some disagreement as to NRW's proposals to prohibit the intentional killing of salmon and, in some cases, sea trout and to control, by statutory means, some of the methods used where they are not commensurate with maximum survival of fish after they have been caught and released. The majority of those

¹ See, for example, CPWF/2, paras 15-17 and 102-112; AOA/1, para 91; AR/1, paras 66-72; AR/1a, paras 67-69; and AN/1b, para 5.

² NRW/1, paras 7.1, section 8.

³ NRW/1, section 8.

⁴ NRW/6, section 11.

⁵ See POL/14.

⁶ An explanation of this and other technical terms is available at NRW/1d.

⁷ See by way of example the article which appeared in the Cambrian News on 3 January 2019 is appended at NRW/1Ra.

objecting to the NRW proposals would prefer such measures to be on a voluntary basis rather than compulsory.

2.8 A number of specific contentions have been made by Objectors, which are considered here in turn:

- (i) First, some Objectors contend that the All Wales Byelaws will not reverse the stock decline. In particular, some Objectors argue that previous examples of similar byelaws indicate that mandatory catch and release (“**C&R**”) will be ineffective.⁸
- (ii) Secondly, some Objectors have expressed concern that the All Wales Byelaws will deter anglers, and that their absence from river banks will in turn have a detrimental effect on the environment including the illegal targeting of salmon and sea trout stocks by poachers and maintenance of the riverine environment by anglers.⁹

The All Wales Byelaws will not be effective to reverse stock decline

2.9 Objector evidence relating to this topic centres on the contention that there is no evidence that the measures proposed will have the desired effect of arresting and reversing population decline. Some Objectors opine that recent experience of similar byelaws indicates that the All Wales Byelaws are unlikely to be effective. Objectors have referred to the National Salmon Byelaws (“**NSB**”) which they claim have been ineffective.

2.10 By way of background to this contention, the NSB were two consecutive 10-year byelaw measures applying to Wales and England that required, amongst other things, statutory C&R of rod-caught salmon prior to 16th June, with some statutory method controls, and statutory C&R by nets prior to 1st June.¹⁰

2.11 The NSB were made urgently in 1998 in response to the widespread decline in stocks of early-running multi-sea-winter (“**MSW**”) salmon evident at that time. They were then implemented in 1999 to reduce the levels of exploitation of this stock component. Such initiatives inevitably take time to have effect due to the comparatively long generation time of this salmon stock component (typically a cohort has a life span of 5 years).

2.12 Most net fisheries were prohibited from fishing for salmon before 1st June but a small number in Wales (Tywi, Taf, Nevern, Teifi and Dyfi) were allowed to continue as their targeted catch was predominantly sea trout. The generally low catch of salmon in these fisheries was required to be immediately returned to the water with the least possible injury.

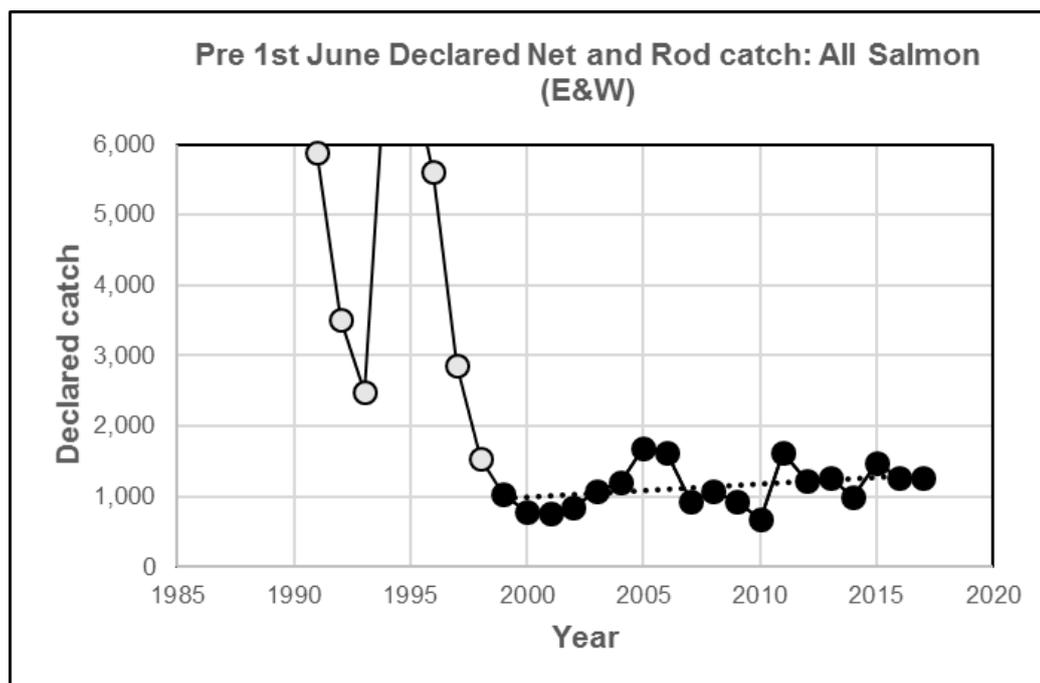
⁸ CPWF/1b, para 4; CPWF/2, para 106; STC/1; AR/1, paras 33-35; PGJ1; AN/1A; AN1/D; AN1/E; AT/1, para 6.

⁹ See, for example, CPWF1/B, para 24; AR/1 and BM/1, para 4.2.

¹⁰ Ibid.

- 2.13 The NSB also introduced mandatory C&R of salmon by rod fishermen prior to 16th June and imposed other method restrictions (notably, no bait fishing).
- 2.13 After further review and consultation, the NSB were renewed for a further 10-year period in December 2008. These subsequently expired on the 31st December 2018¹¹. The All Wales Byelaws now proposed are intended partly to continue the protections afforded by the NSB.
- 2.14 I now turn to respond to the contention made by Objectors, who have questioned the benefit of the NSB, that there has been no increase in spring salmon numbers.¹² In short, it is argued by NRW that the NSB coincide with a cessation of the earlier trend of decline and, in some rivers, there is evidence of an increase in abundance.
- 2.15 While numbers have not increased to pre-1990s levels (**Figure 1**), there has nonetheless been an increase in the last 7 years (**Figure 2**). It is not possible to attribute this solely to the NSB, given that salmon stocks are affected by so many factors. Nonetheless, the prevention of killing of spring salmon by nets and rods and the mandatory release of fish over the last 20 years has contributed to the evident stabilisation and improvement in spring salmon stocks.

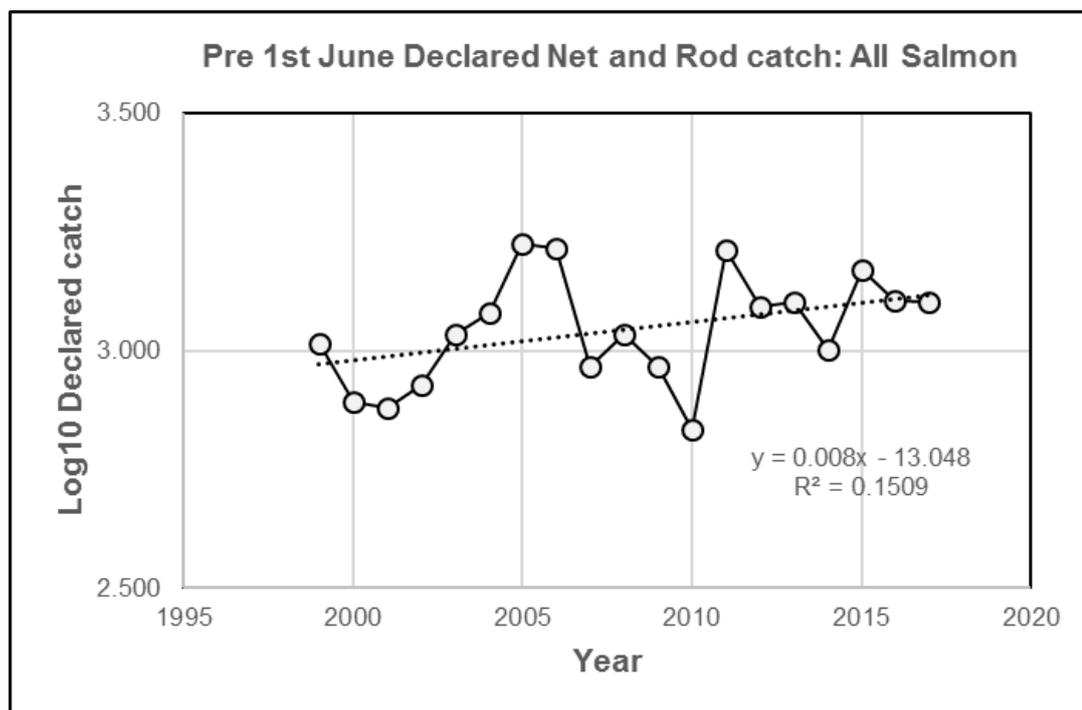
Figure 1



¹¹ Fuller details of the NSB and the emergency byelaws now in place to replace them are included in NRW/1e

¹² CPWF/1B para 4; AR/1 para 3 and 33; AN/1e paras 22 and 28.

Figure 2



- 2.16 Although there has been an increase in the abundance of spring salmon in the last 7 years there has, over a slightly longer period, been a decline in the abundance of the 1 sea-winter (grilse) component, which had previously represented a substantial proportion of the spawning stock in Wales.
- 2.17 Catches in England and Wales before June over the past 5 years (2013-2017) are now some 37% higher than in the 5 years before the measures were introduced (1999-2004). 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 of Wales
 4. An improvement in the marine survival for MSW in contrast to that of grilse.
- 2.18 The increase in MSW salmon spawner numbers has a disproportionate benefit to total egg deposition, given the higher fecundity of these larger, principally female, fish. However, the concurrent marked reduction of the grilse component poses a risk to the sustainability of salmon stocks in the future, as even relatively modest reductions in MSW salmon in future years would result in proportionally greater reductions in egg deposition from the low levels currently seen in many rivers.
- 2.19 So, while the MSW salmon stocks appear to have improved, they have generally not reached a level that would allow a surplus to be killed. All salmon stocks wholly within Wales, with the exception only of the River Usk, are currently in the 'At Risk' or 'Probably at Risk' categories, and there is no harvestable surplus in these stocks.

Conclusion regarding the likely effect of the All Wales Byelaws

- 2.20 The options for future stock management, whilst other actions are implemented to safeguard and optimise the freshwater environment, are to continue with the current opportunity for anglers to kill fish, or to prevent such killing through byelaw controls which will ensure survival of fish to spawn.
- 2.21 NRW is aware that a proportion of anglers declare that they currently kill all of the fish they catch, whilst the majority respond to current byelaw controls and voluntary initiatives to safely release the majority of fish that they catch. The burden of conservation angling is therefore not shared equitably between all anglers. In other words, if voluntary measures were maintained, there would remain a group of anglers who would not comply with them, and would continue to kill fish.
- 2.22 NRW considers that the elimination of uncertainty through mandatory measures for all is a fairer way to ensure that all salmon and, where required, sea trout are returned to guarantee that spawning reserves are maximised. It appears to be a commonly-held view by the Objectors to NRW proposals, that full C&R is a necessary objective, and NRW contends that this can only be achieved if all anglers are obliged to comply with it. This would be a 'level playing field'.
- 2.23 It is a matter of logic that saving fish through careful C&R fishing will increase the numbers of fish that survive to spawn and that this, in turn, will assist in addressing stock depletion. It is recognised that the habitats in which fish spawn and develop as juveniles must be in good condition if the outcomes of the proposals are to be realised.

The potential impacts of deterring anglers

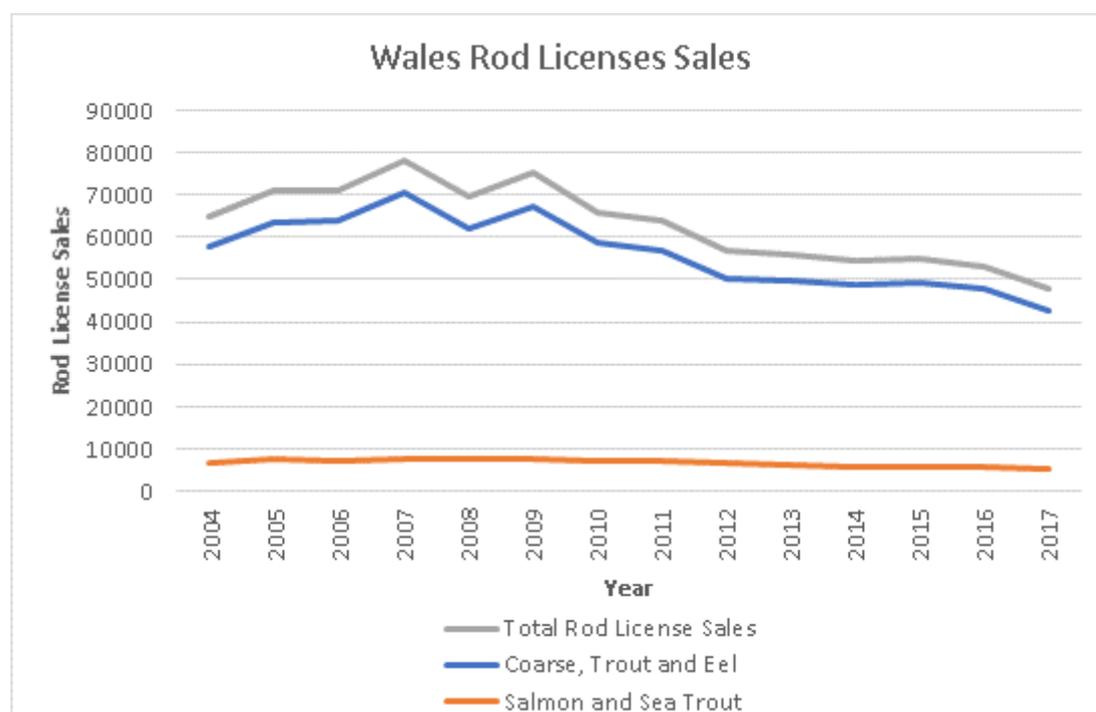
- 2.20 An argument made by some Objectors is that the All Wales Byelaws would deter anglers, and that this in turn would have a detrimental effect on the available catch data for the purposes of monitoring salmon stocks, the deterrence of illegal fishing, and on maintenance of the riverine environment.¹³ This raises two questions which are considered here in turn:
- (i) will the All Wales Byelaws deter anglers, and
 - (ii) what, in any event, is the role of angler numbers in monitoring and good maintenance?
- (i) *Will the All Wales Byelaws deter anglers?*
- 2.21 NRW is aware that any action to regulate fishing has the potential to reduce local participation in the sport. There is a risk, therefore, that anglers may opt to cease fishing, perhaps continuing their sport elsewhere where fish may still be killed. However, above all it is the availability and abundance of fish that determines the decisions made by individuals to go fishing and, therefore, the extent of fishing and

¹³ See, for example, CPWF1/B, para 24; AR/1 and BM/1, para 4.2.

its success. This obvious fact is observed, for example, in the evidence of Dr Guy Mawle.¹⁴

- 2.22 The Campaign for the Protection of Welsh Fisheries (“**CPWF**”) has noted that angling participation has been declining and that this is reflected in evidence of licence sales.¹⁵ NRW evidence is that more than 85% of licences sold to anglers in Wales are for ‘coarse, trout and eel’ (**Figure 3**), accounting for about 75% of rod licence sales income, and that the remaining minority is sold to anglers targeting migratory salmonids (salmon and sea trout). It is evident that the decline in sales started several years ago, and that there is a direct correlation between this decline in licenses and the reduced availability of fish (**Figure 4**).

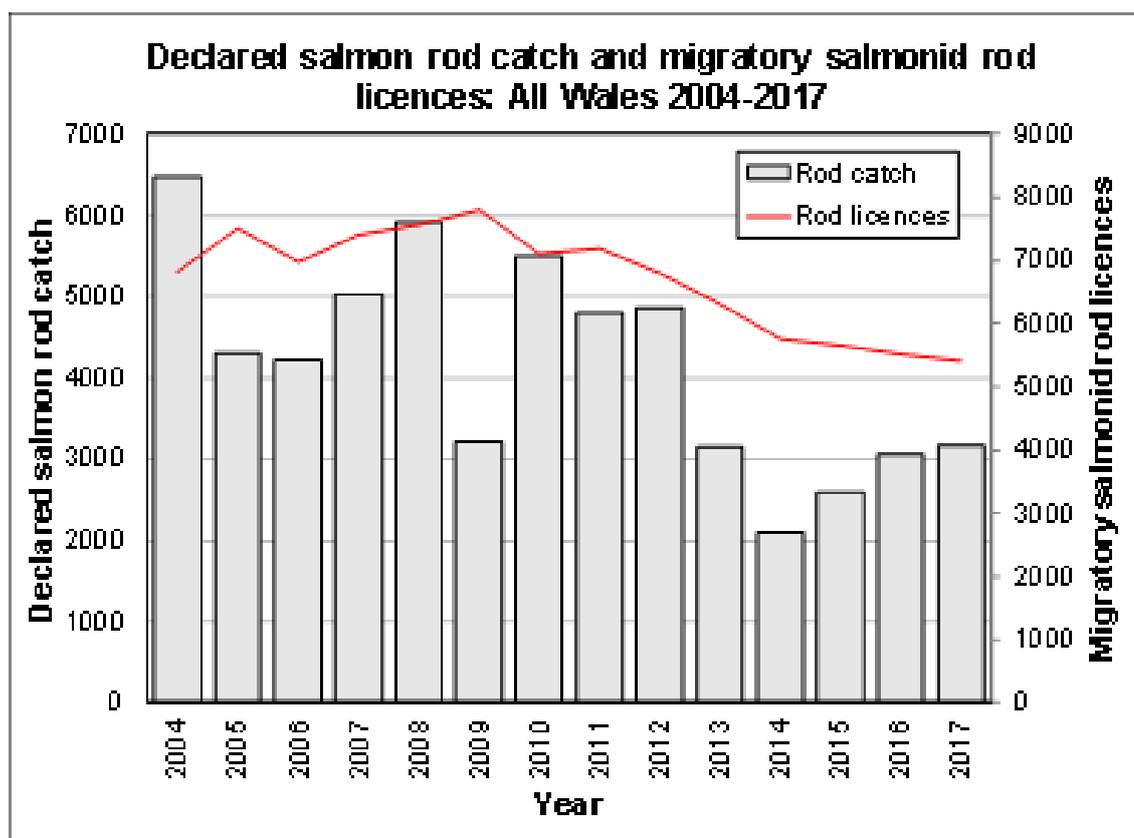
Figure 3



¹⁴ GM/1, para 5.

¹⁵ CPWF/2, paras 137 and 138.

Figure 4



- 2.23 NRW wishes to maintain and increase participation in all forms of angling in Wales and notes that inevitably, in the case of migratory salmonids, the status of stocks has a role in encouraging anglers to fish. It is therefore necessary to consider relevant and acceptable methods to arrest stock decline and, whilst these are in process, to conserve the vital breeding resources of these populations.
- 2.24 Whilst action to address factors operating at sea is difficult to influence and implement, NRW will ensure that constraining factors in the freshwater environment are managed to ensure that reproduction and wellbeing of juvenile fish is optimised. This is equally a requirement under the EU Habitats and Water Framework Directives.
- 2.25 In the medium to long-term, NRW's intention is that the proposed measures will contribute to re-building of stocks whilst instilling a principle of conservation-angling across all of Wales. In this scenario, potentially after an interim decline in angling for salmon and sea trout, a recovery of angler numbers would be expected. In his evidence, Dr Guy Mawle rightly notes that any impact on angler activity as a result of the All Wales Byelaws is likely to be 'small'. On the River Wye it has been reported by the Wye and Usk Foundation that an initial decline in salmon angling apparently due to the statutory C&R restrictions implemented there in 2012 was both small and transient, and was quickly reversed.

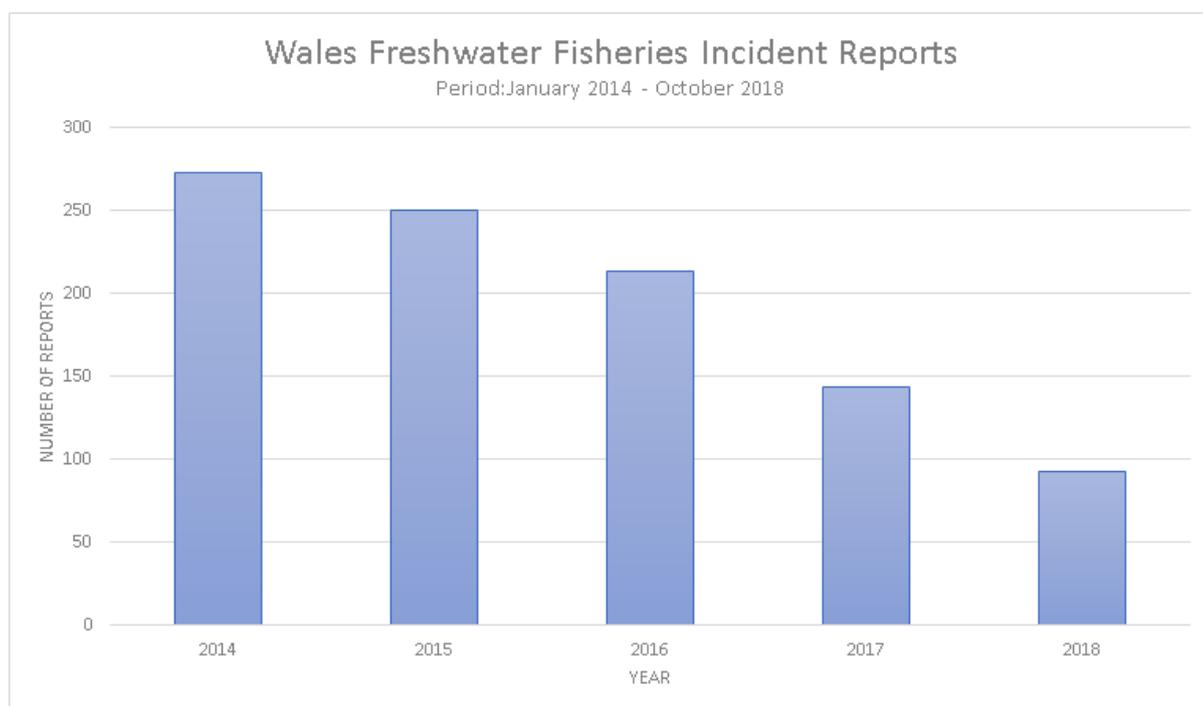
- 2.26 Many responsible anglers are already complying with the encouragement to return all fish alive¹⁶. Moreover, as observed in NRW's Technical Case, "*should some anglers elect not to fish, effective promotion of fishing opportunities has in some cases attracted a corresponding number of anglers to take their place.*"¹⁷ This occurred on the Wye, as noted above.
- 2.27 It is also important to note that although the proposals are intended to conserve stocks, they do not prevent fishing. The proposals are for sea trout fishing to continue unchanged in most rivers, with only early season controls in the minority plus an upper slot limit, and for salmon fishing to continue albeit with method controls with which many anglers already comply. Angling for other species of fish would be unaffected. As shown in **Figure 3** above, the great majority of angling is for fish that are not targeted by current proposals, including brown trout and grayling. Moreover, sea trout fishing would continue unchanged in some significant Welsh rivers (the Ogmore, Ogwen, Nevern, Llyfni, Dwyfawr, Clwyd, Rheidol, Dysinni, Conwy, and Mawddach and, under separate byelaw proposals, the River Dee) and changed to only a small extent in others (including the Teifi, Tywi and Dyfi).¹⁸
- 2.28 NRW therefore accepts that there is a small risk some anglers may opt not to fish in Wales as a result of these proposals. However, NRW considers that angling uptake would reduce anyway if no action were taken, as an ongoing response to the decline in status of salmon and some sea trout stocks. NRW considers that the All Wales Byelaws provide an important contribution to future stock sustainability. If nothing is done to eliminate the intentional killing of fish, whilst other initiatives to improve freshwater habitats continue, then the timescale of stock recovery will inevitably be prolonged. NRW's considered view is that all practical methods must be deployed to bring about the overall objective to cease stock decline and to progress towards future sustainability.
- (ii) *What, in any event, is the role of angler numbers in incident reporting, and good maintenance?*
- 2.29 Rod licences issued to anglers have a telephone number for the reporting of incidents, whether these are pollution incidents, fish-kills or for reports of illegal fishing. Promotion of the use of this reporting system is a routine part of stakeholder engagement including Local Fisheries Groups, and NRW is grateful to all anglers, and to others, who report issues that may lead to damage to fish populations.
- 2.30 The number of such reports has declined in recent years (see **Figure 5** below) despite observations from some experienced anglers on Local Fisheries Groups that occurrences of incidents continue. However, some anglers have told NRW staff that they have ceased to report incidents and some state that this is because they contend that there may be no response from NRW. NRW has expressed concern about this to anglers many times, as failure to report incidents results in near certainty that NRW cannot attend, rather than follow the normal risk-based decision to attend reported and prioritised incidents.

¹⁶ GM/1 para 5

¹⁷ APP/4 Technical Case, page 128, para 7.6.2.

¹⁸ APP/4 Technical Case, pp 111-13.

Figure 5



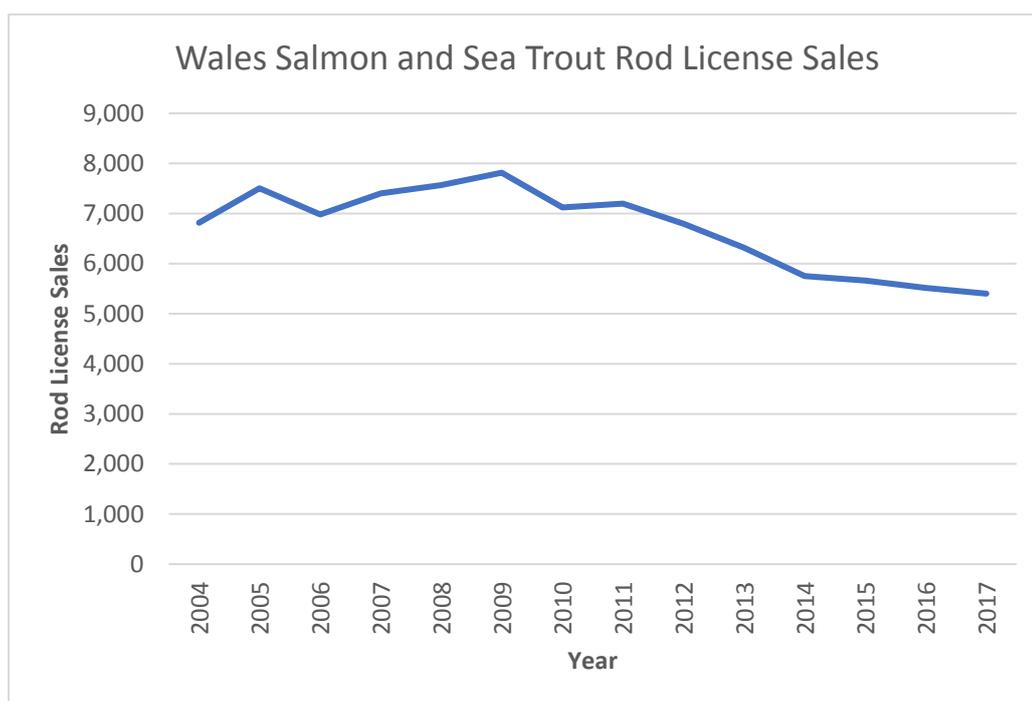
- 2.31 NRW is also aware that fewer anglers on the river banks would lead to a risk of reduction in the reporting of incidents by anglers. However, the preponderance of 'coarse, trout and eel' licenced anglers and other members of the public would still be on the banks and inclined to report incidents.
- 2.32 In relation to other positive factors which result from the presence of anglers, , NRW appreciates the contributions of anglers, angling groups, fishery owners and rivers trusts in supporting maintenance of river habitats and angling infrastructure including riverside access routes. NRW will continue to work with partners and to offer funding wherever it is possible and acceptable to do so.
- 2.33 NRW notes that most investment in fish habitat improvements is resourced through grant-in-aid budgets (public money provided by Welsh Government to support fisheries duties) and not directly from fishing licence income. This is because such investments usually deliver overall environmental improvements that also benefit other fauna as required by the EU Water Framework Directive.
- 2.34 Several Objectors note that a potential future reduction in angling activity might have an impact on the socio-economic value of salmon and sea trout angling in Wales.¹⁹ Their contention is that the All Wales Byelaws might lead to a loss of jobs in businesses related to angling activity and angling-related tourism. These issues are largely addressed in NRW's primary evidence.²⁰ However, I make the following additional points in rebuttal.

¹⁹ CPWF/1B, paras 19-24; CPWF/2, paras 86, 110 and 137-138; AOA/1, paras 6, 12, 27, paras 44-48; AAC/1, paras 17-22; PAAS/1, para 5; AC/1, para 13; CFF/1, paras 34-35; LAA/1, para 1; AR/1, paras 11, 30, 36, and 91; AN/1a, paras 39-40 and 85; AN/1b, paras 16-19 and 22; AN/1e, paras 13, 18 and 22; BM/1, para 3.

²⁰ NRW/1, section 9.

- 2.35 As shown in **Figure 3** above and **Figure 6** below, the number of anglers licenced to fish for salmon and sea trout in Wales has been in decline for several years. It has fallen by about 30% since the recent peak sales year of 2009. Existing benefits to local trades are occurring despite the intent of the majority (60-70%)²¹ of anglers to release their captures, as indicated by recent voluntary C&R performance. It is also noted that the great majority of angling is for fish that are not targeted by current proposals, including brown trout and grayling.

Figure 6



- 2.36 NRW has taken into consideration the possible socio-economic impacts of the All Wales Byelaws and has sought to ensure that the socioeconomic benefits of salmon and sea trout fishing are protected, so far as is commensurate with securing the savings and stocks required to reduce ongoing pressure on them.²²

Conclusion regarding the potential impacts of deterring anglers

- 2.37 NRW is aware that there is a small risk of some reduction in uptake of angling for salmon and sea trout in Wales, however this is the context of a steady decline over the past 10 years. Evidence from the River Wye is that a reduction in angling is, in some cases, transient. NRW also recognises that anglers, including salmon and sea trout anglers, have provided important incident reports in the past.
- 2.38 NRW is clear that a failure to respond to declines in both stocks and catches would not be an adequate response to ensure future resilience and sustainability. NRW is also clear that protection of spawning reserves must take place alongside investment to restore and optimise river habitats.

²¹ APP/4 page 95, and page 113, table 18

²² NRW/1, para 9.40.

3 The All Wales Byelaws 10 year period and 5 year review

- 3.1 Some Objectors express the following two concerns about the duration of the All Wales Byelaws and timing of the interim review. It is said that the proposed period for the All Wales Byelaws and the interim review periods are too long.²³ This matter is largely addressed in my primary evidence.²⁴ However, I make the following points in addition.
- 3.2 NRW reviews the reported rod and net catches of salmon and sea trout each year and assesses the status of stocks of both species using the statistical methods outlined in its technical case and reviewed in its evidence to this inquiry²⁵. The status of stocks is used in an annual review which informs decisions on necessary fishing controls. However, it is agreed that annual variability needs to be considered together with longer-term trends in stock status and typical generation lengths of each stock. These results have been presented to the Local Fisheries Groups for debate and in future will be debated at the new strategic Wales Fisheries Forum.
- 3.3 NRW considers that a 5-year interim review is appropriate, as this will give a minimum period of one generation of fish for the measures to take effect. The results of this would determine scope to adjust the term of the new fishing controls.

²³ CFF/1, AR/1, para 88; NH/1A, para 40.

²⁴ NRW/1, para 7.6.

²⁵ NRW/2A, NRW/3 and NRW/4

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4 Proportionality, judgment and balance

- 4.1 Objectors have made a number of contentions in relation to the proportionality of the measures, which I will address in turn:
- (i) First, some Objectors criticise the All Wales Byelaws as being a ‘blanket’ approach, and they argue that a ‘river by river’ approach should be employed instead.
 - (ii) Secondly, Objectors contend that NRW has failed to take the effect on certain stakeholders into account, and that the measures are not proportionate.

A ‘blanket’ approach to targeting action

- 4.2 Several Objectors continue to opine that a blanket approach to regulatory proposals is wrong and that there should be a ‘river by river’ approach.²⁶ This matter is largely addressed in NRW’s primary evidence.²⁷ However, I make the following additional points.
- 4.3 In short, NRW does not have a ‘blanket policy’ for its principal salmon rivers. The discrete stocks within each of the 23 principal salmon rivers are assessed, and their status (risk level) is classified on an individual stock basis. When most salmon stocks are at the same status, as is the case in Wales, the same management prescription results. Therefore, NRW does not accept the contention that the All Wales Byelaws constitute a ‘blanket’ approach. The same principle applies to NRW’s assessment of the status of sea trout stocks in the 33 main sea trout rivers in Wales.
- 4.4 NRW has stated that its stock assessments for both salmon and sea trout are carried out on a catchment basis. All salmon assessments, other than those for the River Usk and two of the cross-border rivers, which are not directly relevant to this inquiry, indicate that the stocks are either ‘At Risk’ (8 rivers) or ‘Probably at Risk’ (12 rivers). The majority are therefore considered unsustainable and to be in ongoing decline.
- 4.5 Following these assessments, the process followed is based on the Decision Structure (“**DS**”).³⁶ The DS is a consistent framework used by NRW and the EA to determine appropriate management responses for fishing of stocks at various levels of performance against their catchment-specific conservation limits and management targets.
- 4.6 The same level of stock performance (for example ‘At Risk’) therefore results in the same management prescription – this may appear to be a ‘blanket approach’ but it is not.
- 4.7 Moreover, NRW is also seeking to apply the All Wales Byelaws to the few remaining ‘non-principal’ salmon rivers across Wales, some of which support only very occasional salmon angling. This is because it is considered that the same pressures are inevitably at play there. This principle might give rise to the appearance of a

²⁶ CPWF/1A; AT/1; AC/1; AR/1; AN/1B para 7; AN/1E paras 10 and 17.

²⁷ NRW/1 para 9 – 9.49.

'blanket approach' in relation to those smaller non-principal rivers only. However, NRW contends this is justifiable both on a precautionary basis, and in recognition that these fisheries are occasional only, and very small.

- 4.8 Therefore, in conclusion, NRW is prepared to act on a 'river by river' basis where appropriate, as demonstrated by the proposals to protect sea trout stocks.²⁸

Consideration of likely effect on different stakeholder groups

Equity between stakeholders

- 4.9 The impacts of the All Wales Byelaws will be fair in respect of both rod and net fisheries. CPWF²⁹ refer to the draft Implementation Plan (2019-24), which is a plan to confirm how the UK Government will implement prior commitments to the North Atlantic Salmon Conservation Organisation ("**NASCO**")³⁰ and to its formal Agreements, for example, use of the precautionary principle in managing salmon stocks. The Implementation Plan is currently in preparation by multiple author groups (including NRW, EA and Cefas) that will be submitted by the UK Government to NASCO in 2019. The draft refers to "consideration to the likely effect on different stakeholder groups" of new regulatory measures.
- 4.10 NRW agrees that relevant stakeholder groups, in this case rod and net fishing interest groups, should be considered on an equitable basis and has sought to do this in the measures now proposed. NRW has sought to maintain fishing opportunity for both: rod fishermen may continue to fish but with certain new method restrictions proposed, and net fishing may continue albeit with season adjustments proposed to protect certain stock components of sea trout, whilst both sectors will be required to release any salmon caught.

²⁸ NRW/1, para 7.4; NRW/1C.

²⁹ CPWF/2, paras 6 and 7

³⁰ An international organisation established by inter-governmental convention in 1984 and to which the UK subscribes through its membership of the EU

5 Enforcement

- 5.1 A number of Objectors have questioned whether the All Wales Byelaws would be enforceable.³¹ In particular, Objectors have commented on the difficulty in enforcing the proposed measures and the shortage of fisheries enforcement staff. In large part, this matter has already been addressed in NRW's primary evidence.³² However the following additional points are made.
- 5.2 It is recognised that enforcing the All Wales Byelaws will be challenging. It is correct that there is ongoing pressure on enforcement resources as there is ongoing pressure on resources for all NRW grant-in-aid funded work.
- 5.3 However, this is not insurmountable. NRW already successfully enforces other similar fisheries byelaws and has taken action in recent years for offences such as fishing out of season and the use of nets and spears.
- 5.4 Fisheries regulation and enforcement is delivered by experienced, committed and professional officers, who recognise that the policing of any new restrictions will be an NRW priority. This is an essential requirement to make them purposeful and to ensure fairness to legitimate anglers. NRW Officers responsible for the regulation of fishing controls were involved in development of the All Wales Byelaws to ensure that they are enforceable.
- 5.5 Furthermore, it must be recognised that the way in which regulation and enforcement of fisheries is undertaken has evolved and differs to earlier times when resources were more plentiful. NRW uses intelligence to inform its decision making and to focus resources, has increasingly used technology as an aid and a source of evidence, and has sought to increase collaborative working with partners, such as Rural Crime Officers in North Wales Police and Dyfed-Powys Police. Moreover, given the declining trend in angler activity explained above, NRW recognises the importance of awareness raising with other river and river bank users, riparian and landowners and other partners in identifying and reporting suspicious activity.
- 5.6 NRW has, and will, prosecute individual cases where appropriate. Since its inception NRW has taken a number of prosecution cases against individuals for illegal netting (drift and fixed), illegally taking fish as by-catch, taking fish using illegal instruments (spears, gaffs), and having fish parts without reasonable explanation as to how these were attained. The analysis of mobile phones, use of social media, and covert surveillance activities are some of the tools used in achieving these results.
- 5.7 Finally, as rightly observed in the evidence of Dr Guy Mawle, despite the challenges, the All Wales Byelaws are likely to be adhered to, and *'transgression will be seen and resented, if not reported, by other anglers.'*³³
- 5.8 In its evidence, CPWF states that illegal fishing and poaching is not enforced and that the selling of poached fish is not dealt with by NRW. In support of a similar

³¹ CPWF/1b, para 32; CPWF/2, paras 105, 132-133, 147; AOA/1, paras 6, 20, 21, 24 and 90; AT/1, paras 9 and 30; PAAS/1, para 4(i); AR/1, paras 35, 80, 98, 100-103; AN/1a, paras 35 and 79; AN/1b, para 6; AN/1e, paras 2 and 24; BM/1, para 4.1; MO/1, para 2.

³² NRW/1, paras 8.50-8.59.

³³ GM/1, para 6.13.

contention, Mr Woodford makes reference to the results of a Freedom of Information request that reported zero prosecutions taken by NRW between 2013 and 2018 for the illegal selling of fish.³⁴ NRW focusses its efforts on deterring, preventing and detecting the illegal gain of fishing and will continue to do so, including taking action when specific details are received about the selling or buying of fish.

- 5.9 When considering the illegal selling of fish specifically, between March 2016 and December 2018, eight incident reports made to NRW mentioned the selling or buying of fish. Half of these reports named specific premises: two of these were found to be legitimate, one was found to be inaccurately advertising 'wild fish' (resulting in a prosecution case after referral to Trading Standards) and the fourth could not be further investigated due to insufficient information.
- 5.10 In the same time frame to which the FOI cited by Mr Woodford applied, 25 intelligence logs were submitted concerning possible illegal selling of fish. Compared to the number of reports submitted for activities such as netting this is very small.
- 5.11 NRW notes that the NSB has required all salmon from nets to be returned before 1st June, all salmon to be returned alive by rod fishermen before 16th June, and in addition the restriction of bait fishing for salmon before 16th June. During the 20 years of implementation and enforcement, it has been NRW's experience that compliance in both fisheries has been extremely high with few reports of any transgressions. This is also true of the C&R measures implemented on the rivers Wye and Taff and Ely that were introduced in 2012. NRW's enforcement activity implementing these measures has centred on NRW's normal day to day activities and has not required NRW to consider reallocation or reprioritisation of enforcement resources during this time.

³⁴ AOA/1, para 21

6 Differences in approach between NRW and the EA

- 6.1 Since the submission of NRW's evidence, on 18 December 2018, the EA announced it would be implementing new salmon and sea trout byelaws following confirmation by DEFRA.³⁵
- 6.2 A number of Objectors have raised comparisons between the approaches proposed by NRW and the EA.³⁶ This section of the rebuttal evidence therefore outlines, insofar as is relevant, the EA's approach, and responds to points raised by Objectors.
- 6.3 In particular, attention is drawn to the EA's decision to undertake a voluntary C&R approach to 'Probably at Risk' principal salmon rivers, whereas NRW are maintaining a mandatory approach on rivers of the same risk classification. Both NRW and the EA are proposing a mandatory C&R approach on 'At Risk' rivers. Moreover, the EA has not targeted sea trout. The following points are made to explain the context in which those differences to approach have arisen.
- 6.4 First, I briefly consider the differences in policy, legal and guidance between NRW and the EA. Secondly, I turn to the factual differences between the environment and status of salmon and sea trout stocks in England and Wales.

Policy, legal and guidance

- 6.5 NRW has stated its mission statement for the management of salmon and sea trout in Wales thus:
- "To protect, through the application of best-practice science and management, the sustainability of our natural resource of wild salmon and sea trout stocks in Wales."³⁷
- 6.6 NRW exists within a distinct legislative context. The Environment (Wales) Act (2016) and the Well-being of Future Generations (Wales) Act (2015) together create modern legislation for managing the natural resources of Wales and improving the social, economic, environmental and cultural well-being of Wales.
- 6.7 The new legislation is covered in detail in the primary and rebuttal evidence of Ruth Jenkins³⁸. This legislation does not exist in England.

Difference in approach to fish stock management in England and Wales

- 6.8 In relation to the relevant factual differences between the circumstances in England and Wales, I consider the following matters in turn:
- (i) First, the status and performance of salmon stocks compared to their management targets is markedly worse in Wales compared to England.

³⁵ Environment Agency Salmon and Sea Trout Protection Byelaws 2018

³⁶ AN/1a, para 117; AOA/1, paras 6 and 25; AT1/, paras 3 and 8;

³⁷ APP/22 page 2

³⁸ NRW/6 section 4 and NRW/6R

- (ii) Secondly, the EA has not targeted sea trout for management intervention in England. Sea trout have been recognised by some authors as the more important of the two species as they predominate within the majority of fisheries in Wales,³⁹ with notable exceptions of the rivers Wye, Usk and Dee. Wales has been renowned for its sea trout fishing.
- (iii) Thirdly, rivers in Wales are less diverse than those in England.

(i) Juvenile salmon and trout condition is worse in Wales than in England

- 6.9 Routine monitoring of juvenile salmonids in 2016 revealed that fry numbers, especially young salmon hatched in the spring of 2016, were at critically low levels on a number of principal catchments (notably, but not exclusively, the Clwyd, Tywi and Usk). These were rivers which previously produced consistent fry numbers.
- 6.10 When compared to the 5-year average, 29 of the 32 Welsh catchments surveyed in 2016 showed a decline in salmon fry, and 28 of these were reductions in excess of 40%.⁴⁰ The reduction in juvenile abundance of salmon was more extensive in Wales compared to England.⁴¹
- 6.11 The reduction in salmon fry was subsequently associated by further targeted monitoring to low parr densities in 2017. The majority of these fish would have become seaward migrating smolts in 2018, and it is anticipated that the main return of adult fish derived from these would be one sea-winter grilse in 2019 and two sea-winter fish in 2020.
- 6.12 The anticipated shortfall in returning adult salmon and, to a lesser extent, sea trout, is likely to be very serious in several catchments, but will be evident in most as a lack of abundance of fish.
- 6.13 This has led to proposals for statutory C&R in the River Usk fishery, even though the stock was assessed after 2017 as increasing from 'Probably At Risk' to marginally achieve 'Probably Not at Risk'. This proposal was debated with the Usk Local Fishery Group and Dr Guy Mawle, a member of that group and a recognised expert in such matters, has supported the proposal.⁴²

(ii) EA have not targeted sea trout for management intervention

- 6.14 Recognising the limitations in the historic approach in assessing sea trout stocks and the concerns of stakeholders in the reduction in stocks NRW has developed a new approach using biological reference points and a target-based approach.⁴³
- 6.15 The EA has not considered the performance of sea trout stocks in coming to their management proposals. In developing their regulations for further reductions in

³⁹ ACC/21

⁴⁰ ACC/14.

⁴¹ ACC/28.

⁴² GM/1.

⁴³ NRW/1, paras 4.4-4.7.

exploitation of salmon, the intention of the EA has been not to increase the level of sea trout exploitation in fisheries beyond the current typical level. Sea trout stocks will continue to be monitored and the need for any additional exploitation controls will be reviewed by the EA annually.

(ii) Difference between Welsh and English rivers

6.16 The EA has summarised this as follows:

“England’s rivers are more diverse than Wales [sic] and a single set of national byelaws is now felt to be too blunt an approach. Where specific concerns are found, they are better served by existing local byelaws or making new ones at a local and not at a national level.”

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7 What are other jurisdictions doing?

- 7.1 In developing our proposals for new fishing controls, we are also aware of how adjoining jurisdictions in the British Isles are approaching the same challenge of stock decline. This section serves to update the Inquiry as to developments in other jurisdictions that have occurred since the publication of NRW's Technical Case in August 2017. A synopsis of these are presented here.
- 7.2 In making its proposals NRW takes account of international guidance (e.g. NASCO Precautionary Approach⁴⁴; NASCO stock rebuilding programmes⁴⁵; NASCO Guidelines for the Management of Salmon Fisheries⁴⁶). NASCO observes that: -
- “Fishing on stocks that are below [Conservation Limits (“**CLs**”)] should not be permitted. If a decision is made to allow fishing on a stock that is below its CL, on the basis of overriding socio-economic factors, fishing should clearly be limited to a level that will still permit stock recovery within a stated timeframe.”⁴⁰.
- 7.3 There are therefore many commonalities in the stock assessment and management approaches among jurisdictions. Stock status is assessed annually based on estimated adult returns compared to CLs expressed in terms of eggs deposited and/or spawner abundance.
- 7.4 Requirements for compliance probabilities vary across jurisdictions, with stocks required to meet between 75–150% of their CL over varying time periods. Other jurisdictions use decision structures that assign stocks into conservation status categories and which determine the relevant management response. Each of the three other jurisdictions advertise refreshed assessments and proposed measures annually, and both NRW and the EA have aspirations to do this once development of appropriate methods is completed.
- 7.5 For instance, salmon stocks in Northern Ireland with at least a 125% average probability of meeting their CL in three of five of the most recent years are considered at full reproductive capacity with a harvestable surplus available for fishing exploitation. In contrast, stocks in Scotland with less than a 60% average probability of meeting their CL over a five-year period are deemed to be exploited unsustainably and mandatory C&R fishing is required for a year.

Republic of Ireland – decision for 2019

- 7.6 Inland Fisheries Ireland (the public body responsible for fisheries management of freshwater fish and coastal fish with 12 nautical miles of the Irish shore) has secured

⁴⁴ POL/11

⁴⁵ POL/12

⁴⁶ POL/14

ministerial approval for a suite of regulations and bye-laws that will govern the wild salmon and sea trout fisheries in 2019.

- a) 42 (29%) rivers will be open to fishing as normal, as a surplus of fish (over and above the management target) has been identified in these rivers;
 - b) 42 (29%) rivers are classified as open for C&R angling only; and
 - c) 62 (42%) rivers will be closed to salmon angling as they have no surplus of fish available for harvest.
- 7.7 In rivers that are “open” to salmon angling, a byelaw provides for an annual bag limit of 10 fish per angler (either salmon or sea trout) and further provides for a season bag limit of 3 fish in the period 1st January to 11th May, a daily bag limit of 3 fish from 12th May to 31st August and a daily bag limit of 1 fish from 1st September to the end of the season. The byelaw also stipulates the use of single or double barbless hooks and prohibits the use of worms as bait once the specified numbers of fish have been caught in the specified periods.
- 7.8 A byelaw prohibits the use of any fish hooks, other than single or double barbless hooks, and also prohibits the use of worms as bait in angling for all species of fish in the waters specified as C&R.
- 7.9 In “closed” rivers, a byelaw prohibits the taking or attempting to take by rod and line salmon and sea trout in the specified rivers.

Northern Ireland

- 7.10 In Northern Ireland, recreational fishing is permitted in rivers with a harvestable surplus, where there is at least a 115% average probability of meeting the CL in 3 out of 5 years. If there is less than a 115% probability, recreational fishing is subject to mandatory C&R until stock status improves or more data become available. Management measures are reviewed and applied annually.

Scotland

- 7.11 In general terms Scottish Regulations: -
- a) prohibit the retention of salmon caught in coastal waters;
 - b) permit the killing of salmon within inland waters where stocks are above a defined conservation limit; and
 - c) require mandatory catch and release of salmon in areas which fall below their defined conservation limit following the assessment of salmon stocks.
- 7.12 Assessments for the 2019 fishing season were made following further developments of the underlying models and incorporation of 2017 catch data. Out of the 173 areas assessed the classifications were: -

- Grade 1 rivers – 48 (28%): Exploitation is sustainable therefore no additional management action is currently required. This recognises the effectiveness of existing non-statutory local management interventions;
- Grade 2 rivers - 30 (17%): Management action is necessary to reduce exploitation: C&R should be promoted strongly in the first instance. The need for mandatory C&R will be reviewed annually;
- Grade 3 rivers - 95 (56%): Exploitation is unsustainable therefore management actions are required to reduce exploitation for 1 year i.e. mandatory C&R (all methods).

7.13 NRW notes that it has recently been reported in the press that some stakeholders are calling for stricter measures in Wales in view of the continued decline in salmon stocks⁴⁷.

Lessons from other jurisdictions

7.14 NRW notes that similar concerns on salmon stock status in these jurisdictions has led the bodies charged with stock management to take the difficult decisions to prohibit the killing of fish drawn from stocks that are performing poorly, and – in the Republic of Ireland – to close 42% of their rivers to salmon angling. These comparators help to place the NRW proposals, which do not involve the closure of any Welsh rivers to salmon angling, in their proper context, and serve also to emphasise that the measures sought are proportionate and appropriate to the actual level of risk facing Welsh fish stocks.

⁴⁷ Article in The Sunday Post (31 December 2018) appended at NRW/RD

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8 Conclusions

- 8.1 This rebuttal document, supported by those of my colleagues in NRW, provides observations on several points made in the primary evidence of some Objectors.
- 8.2 The majority of points made by Objectors repeat earlier observations. However, I present observations to re-assert NRW's views and to correct some statements made by Objectors on the following topics: -

The likely effect of the All Wales Byelaws

- 8.3 Objectors query whether the All Wales Byelaws would be effective in reducing the decline in fish stocks, suggesting they would make no difference, and offer observations on the potential deterrence of anglers.
- 8.4 NRW is clear that protection of the spawning resources of salmon and some sea trout in Welsh rivers is essential whilst other actions continue to be implemented.

The All Wales Byelaws 10 year period and 5 year review

- 8.5 Some Objectors state that the duration of the All Wales Byelaws and the interim review periods are both too long.
- 8.6 NRW explains that the status of salmon and sea trout stocks is assessed annually and will provide early warnings of the response of stocks to new measures but also existing and new pressures, but that the 5 year duration for typical cohorts of salmon means that time must be allowed for resilient changes to stock status to occur. NRW believes that 2 cohorts is the required duration, but will be prepared to take action that may be triggered by mid-term reviews.

Proportionality, judgement and balance

- 8.7 Some Objectors continue to criticise the All Wales Byelaws as a 'blanket response', rather than the 'river by river' approach that they commend, and that in failing to take account of effects on some stakeholders, the proposals are not proportionate.
- 8.8 NRW disagrees with this, noting that specific stock assessments have been undertaken for all principal salmon rivers and main sea trout rivers and that the proposals are a response to these. NRW has, however, commended the inclusion of the few non-principal salmon rivers in the All Wales Byelaws. The proposals for sea trout demonstrate that NRW will adopt river-specific proposals where these are warranted.
- 8.9 NRW is aware that there is a risk of a reduction in salmon and sea trout angling activity in Wales, but notes that this decline has already been ongoing for a decade or more in response to declining stocks and possibly also to the demographics of the angling population. Failure to address the underlying cause – which NRW contends is the poor and declining abundance and availability of fish – would not arrest this decline. NRW is clear that investment in stock conservation measures now will lead to better future stock sustainability.

Enforcement

- 8.10 Eight Objectors continue to express their view that the All Wales Byelaws could not be effectively enforced by NRW.
- 8.11 NRW is aware that enforcement is challenging as resources have progressively declined, however it notes that the existing suite of byelaws has seen good compliance. Enforcement activities have changed in response to changing circumstances and NRW will continue to adapt its enforcement work to these.

Differences in approach between NRW and the EA

- 8.12 In mid-December the EA announced that new salmon fishing byelaws for England had been confirmed by DEFRA. Three Objectors referred to the differences in approach between the EA and NRW.
- 8.13 NRW has a different legislative context to that in England as a result of bespoke legislation that focusses on sustainability of natural resources and the need to take action now to stop problems getting worse. This has been presented in evidence by Ruth Jenkins⁴⁸. Further, NRW has established in its Technical Case⁴⁹ and in primary evidence⁵⁰ that the performance of salmon stocks, notably including the status of juvenile salmonids, is worse in Wales than in England. This warrants a more precautionary approach.
- 8.14 NRW notes that the new byelaws in England will require statutory C&R fishing in each river where the salmon stock is assessed 'At Risk' and in rivers where salmon stocks are at very low levels and classified as 'recovering rivers'.

Position in other jurisdictions

- 8.15 Finally, it will be helpful to Objectors and to the Inspector to consider the responses by other jurisdictions in the British Isles to similar concerns for salmon stock status (noting that NRW alone assesses sea trout stock status using similar biological criteria to those used in assessments of salmon stocks).
- 8.16 In each of Scotland, Northern Ireland and the Republic of Ireland ("**ROI**"), mandatory C&R fishing and method restrictions (including restriction of hook patterns) are required for rivers where salmon stocks are at low levels. In the ROI, over 40% of their salmon rivers will be closed to salmon angling in 2019.

Conclusion

- 8.17 NRW is of the clear view that its proposals are appropriate and proportionate to the status and level of biological risk to the wellbeing of its salmon and sea trout stocks. Recent decline in stocks is ongoing, and taking no action to address this would be a failure of by NRW of its statutory duties.

⁴⁸ NRW/6 section 4

⁴⁹ APP/4, pp 48-61

⁵⁰ NRW/1; NRW/2; NRW/3; NRW/4

- 8.18 NRW wishes to improve stocks so that in future sustainable angling and net fishing may continue without placing undue risk on the stocks.
- 8.19 NRW is well aware that a range of important actions is required to restore the quality of our rivers so that the freshwater stages of the migratory salmon life cycle is safeguarded and the production of smolts is optimised. There is full commitment to do so, and NRW will ensure that this proceeds in partnership with all stakeholders who share that ambition.

9 Statement of truth

9.1 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.

Peter Gough

Principal Fisheries Adviser

Natural Resources Wales

January 2019