

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/5R

REBUTTAL PROOF OF EVIDENCE

OF

RUTH JENKINS

HEAD OF NATURAL RESOURCE MANAGEMENT POLICY

on behalf of

NATURAL RESOURCES WALES

JANUARY 2019

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1 Introduction

- 1.1 Further to my Proof of Evidence submitted on 21 November 2018 (**NRW/5**), and having considered the objectors' evidence submitted on 18 December 2018, I, Ruth Jenkins, present this rebuttal evidence.
- 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 two key issues raised in objector evidence:
 - (a) First, there are a number of instances in objector evidence in which concerns are expressed that NRW is not appropriately applying its General Purpose or the Principles of the Environment (Wales) Act 2016 ("**the 2016 Act**")¹ and the Well-being of Future Generations (Wales) Act 2015 ("**the 2015 Act**")². I therefore provide here supplementary evidence to address these concerns.
 - (b) Secondly, I briefly explain the distinctions in the legislative and policy contexts that influence some of the differences in approach to salmon and sea trout in England, Scotland and Northern Ireland, which have been raised by Objectors.

¹ LEG/25

² LEG/23

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2 Sustainable Management of Natural Resources

- 2.1 An objection is raised that relates to NRW's application of, and compliance with, the Sustainable Management of Natural Resources policy ("**SMNR**"). In his evidence, Mr John Eardley of the Campaign for the Protection of Welsh Fisheries ("**CPWF**") contends that NRW should be pursuing voluntary solutions (rather than mandatory requirements prescribed in legislation), on the basis that such an approach would better accord with NRW's general purpose to pursue SMNR.³ Further, and similarly, Mr Reuben Woodford contends that NRW has not complied with the SMNR on the basis that it has failed to engage in collaboration.⁴
- 2.2 These matters are addressed in my primary evidence at paragraphs 5.1 to 5.4.⁵ I make the following additional points in rebuttal.
- 2.3 SMNR does not dictate that a voluntary approach is always to be preferred over an approach based on mandatory regulation. Rather, it requires an integrated approach where action is undertaken across sectors and across NRW functions, which will not necessarily involve merely voluntary measures. The current evidence and data in relation to fish stocks indicate that existing voluntary measures leave those stocks at a higher level of risk than is acceptable, but that mandatory controls coupled with a wider approach could assist in population recovery.⁶ In these circumstances, the mandatory measures comply with SMNR. Additionally, in accordance with the integrated approach required by SMNR, the mandatory All Wales Byelaws form part of a wider suite of measures.⁷
- 2.4 So far as collaboration is concerned, of course, NRW will continue to work collaboratively with willing partners on areas of shared interest and common purpose to deliver its wellbeing objectives for Wales. Where disagreement remains NRW will also continue to facilitate discussion.
- 2.5 For example, NRW is engaged with the fishing community across Wales at a number of levels including; local fishery groups, habitat and local catchment groups, such as the Carmarthenshire environment and habitat group. Local

³ CPWF/1B, para 33.

⁴ AOA/1, paras 76-78.

⁵ NRW/5.

⁶ NRW/1, paras 9.9-9.26.

⁷ See also NRW/6.

fisheries groups are highly valued by NRW and meet regularly to discuss place based and national issues. These groups have been used to discuss and debate the management of the rivers, threats to the fisheries and opportunities to promote and fund river and fisheries improvements. These groups have also enabled discussion of declining stocks and the need for action to address this. The issue of stocks, and the All Wales Byelaws specifically, have been regularly discussed and debated at these groups. NRW therefore considers that the All Wales Byelaws have been developed in accordance with the principles of collaborative working required by SMNR.

- 2.6 NRW also works proactively with Afonydd Cymru⁸ and individual rivers trusts through catchment groups to support practical and positive action to address sustainable management of freshwater ecosystems.
- 2.7 NRW recognises that it is important to continue to engage with the fishing community and intends to do so.

⁸ AC/1.

3 The State of Natural Resources Report (SoNaRR)

- 3.1 In his evidence, Mr Woodford submits that the proposed measures have not been developed in accordance with the SoNaRR Report⁹ process.¹⁰ In large part, this matter has already been addressed in my primary evidence.¹¹ I make the following further points in response.
- 3.2 The statutory purpose of SoNaRR is to track the extent to which Wales is making progress towards achieving SMNR and provide an evidence base to inform the Welsh Government's Natural Resources policy and the priorities and opportunities for action at local and national level.
- 3.3 It serves to demonstrate the risks to and benefits of natural resources. Its role is to establish what is required to keep those benefits flowing, though adaptive intervention.
- 3.4 SoNaRR involves the collection, review and analysis of evidence which sets out the state of Wales's natural resources and the identification of the risks faced by those resources. The aim of the approach is to make the natural resources more resilient.
- 3.5 The process of developing 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**") has taken an evidence based approach and has applied the principles of SMNR to deliver the objective of healthy and resilient ecosystems and the benefits they provide.

⁹ POL/19.

¹⁰ AOA/1, para 3.

¹¹ NRW/5, paras 8.1-8.3.

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4 The Well-being duty

4.1 Some Objectors have questioned whether NRW has complied with its well-being duty pursuant to the 2015 Act¹². For example, Mr Woodford contends that NRW has failed properly to assess the negative impacts the All Wales Byelaws may have on well-being, particularly in relation to the angling community.¹³ Abergwili Angling Club and John Eardley also both question the impact of the All Wales Byelaws on aspects of well-being. The requirements of the well-being duty are assessed in my primary evidence.¹⁴ However, the following additional points are made.

The applicable policies

4.2 NRW's general purpose under article 4 of the Natural Resources Body for Wales (Establishment) Order 2012 – as inserted by the 2016 Act¹⁵ - is to pursue SMNR and to deliver the SMNR objective set out in the 2016 Act¹⁶. The objective of SMNR is to maintain and enhance the resilience of ecosystems and the benefits they provide. High-quality natural resources and healthy and resilient ecosystems underpin social economic and cultural wellbeing. It is important that NRW takes decisions by understanding the links between our need for and use of resources, and ensuring their long-term sustainability. In doing this, NRW seeks to:

- (a) meet the needs of present generations without compromising future generations' ability to meet their own needs; and
- (b) make a contribution to the well-being goals¹⁷.

How are NRW complying with these policies?

4.3 First and foremost, although fishing can support well-being its continuation by current methods at the expense of resilient ecosystems would not deliver SMNR. In accordance with the goal of not compromising future generations' ability to meet their needs, it is therefore necessary to strike a balance between protecting

¹² LEG/23, Section 3 of Part 2; AAC/1, para 29(2); AOA/1, paras 8-10, and 64-88; CPWF/1B, para 33.

¹³ AOA/1, paras 9-10, 78-88, and 116.

¹⁴ NRW/5, paras 4.3-4.8; 5.1-5.2; 8.1; 9.1-9.3 and 10.1.

¹⁵ LEG/25, section 5.

¹⁶ LEG/25, Part 1

¹⁷ LEG/23, Section 4

well-being in the short-term, and securing and enhancing well-being in the longer term. The primary evidence of Peter Gough clearly demonstrates that if these measures are not introduced then the attributes of wellbeing are ultimately most harmed by stocks further depleting.¹⁸

- 4.4 Nonetheless, NRW seek to show how its wellbeing objectives support the goals more broadly. This may mean, for example, applying other activities or mechanisms to implement a wider suite of measures in the context of supporting well-being. For example, working with others to promote fishing and allowing greater numbers of people to benefit from fishing would align with NRW's wellbeing objective in relation to healthy lives, as does providing partnership funding support for improved facilities/infrastructure or providing directly improved access from the land NRW manage.
- 4.5 Moreover, the All Wales Byelaws will not lead to a loss of public access to rivers, as some Objectors contend. NRW is working proactively with Welsh Government, and a range of stakeholders through the National Access Forum for Wales, and the local access forums established by every highway authority and National Park authority in Wales, to seek improvements for appropriate public access to river and other environments as part of a suit of measures to increase activity, improve health and people's connection and care for the environment. NRW are also working strategically to support and influence education provision and the role of, and benefits to, the natural resources of Wales and would be happy to further collaborate with all sectors to advance these objectives.

¹⁸ NRW/1, para 5 and paras 9.1 – 9.27

5 Differences in approach between Wales and other jurisdictions

- 5.1 A number of Objectors draw comparisons between the All Wales Byelaws, and measures taken or proposed by the Environment Agency in England.¹⁹ In some cases, the differences in approach are based on the different data in each country, and the approach taken in Wales in these circumstances is addressed by the primary evidence of Peter Gough.²⁰ In addition, there are distinct policy and legislative contexts in each country that also inform differences of approach. I consider these below
- 5.2 The legislation set out in my primary evidence describes a specific legislative framework for Wales.²¹ NRW is established under the Natural Resources Body for Wales (Establishment) Order 2012, article 4 of which was inserted by the 2016 Act²² and requires NRW as its general purpose to pursue the SMNR with the objective to maintain and enhance the resilience of ecosystems and the benefits they provide and, in so doing:
- (a) meet the needs of present generations of people without compromising the ability of future generations to meet their needs, and;
 - (b) contribute to the achievement of the well-being goals in section 4 of the 2015 Act²³.
- 5.3 A set of nine principles drawn from the 12 principles established by the Convention on Biological Diversity (“**CBD**”)²⁴ reflect an approach that needs to be undertaken to work towards SMNR.
- 5.4 In addition, Wales has a duty of biodiversity and *must seek to maintain and enhance biodiversity and promote the resilience of ecosystems through the exercise of all its functions* (the 2016 Act)²⁵.

¹⁹ See, for example, AT/1, para 3; AC/1, paras 11-13; AR/1, paras 7-12, 54, AN/a, paras 1b and 1e.

²⁰ NRW/1, paras 5.1 – 5.5.

²¹ NRW/5, paras 4.1-4.9.

²² LEG/25, section 5.

²³ LEG/23

²⁴ Appendix 1, NRW/5Ra

²⁵ LEG/25, Section 6(1)

- 5.5 England does not have this legislation, and nor does it have one body covering this general duty or specific functional duties of NRW.
- 5.6 This legislation requires NRW to consider SMNR across all and between its functions, and to resolve conflicts where they occur. The Environment Agency is under no directly equivalent duty.
- 5.7 NRW must act within the context of this legislation framework, which emphasises on the fundamental importance of resilient ecosystems as the underpinning requirement of maintaining the services we get from nature as well as the intrinsic value of nature.

Statement of truth

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

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