

Appendix 1

Byelaw Consultations – Removal of fish by rod and line

1. FERAC feedback

- 1.1 FERAC advice on taking coarse fish was mixed. At one end of the scale Wales did not support byelaws constraining coarse fish removal, though this was not unanimous. At the other end, Anglian urged that restrictions should apply to all waters. Committees were evenly split on the key question of whether byelaws should only apply to rivers and other open waters. A few members suggested that the ability to take fish is a fundamental basis for angling and that total catch and release invites criticism from animals rights lobby. There was recognition of the need to allow some fish to be taken, for example for bait, and for something to be done to improve the fish theft situation on stillwaters.
- 1.2 FERACs supported proposals for catch and release of eels and shad, though for eels their advice carried the caveat that we should restrict or even close the eel and elver net fisheries.

2. Wider Consultation feedback

- 2.1 Many urged a complete ban on taking coarse fish in order to protect stocks and that this should also cover stillwaters. Very few wanted to see **no** restrictions on taking coarse fish, though a few saw the right to take fish as being fundamental to angling. The consensus was that generally coarse fish should not be taken but with some exceptions, the most popular being the need to take small fish for bait. Others support limited removal for species such as grayling and pike, plus size limits for these.
- 2.2 Views on catch and release for eels and shad were similar to those expressed by FERACs.

3. Rationale for byelaw

- 3.1 There is no evidence to suggest that the current level of coarse fish removal by anglers is impacting on the conservation of coarse fish species generally. There may be some local stock conservation impacts, but the main impacts are on the social and economic values of coarse fisheries. We have clear duties to protect and enhance these.
- 3.2 Without a sound stock conservation argument, mandatory catch and release for all coarse fish could be open to challenge as the removal of a basic right. In view of this, there is no sound basis for a complete ban. At the other extreme unlimited removal is a risk to coarse fisheries. The regulatory regime needs to protect the interests of coarse anglers (the social value) and of clubs and owners (the economic value). Byelaws that allow some limited removal provide a way to achieve this.

4.0 Stillwaters

- 4.1 In our consultation document we proposed that stillwaters should not be covered by the byelaw because this would conflict with the right of owners to

decide if fish may be removed – bearing in mind that they usually own fish in their stillwaters. We also said that a single rule would not be possible for all waters because of this.

- 4.2 The consultation shows a clear consensus in favour of regulating coarse fish removal from all waters, based on the argument that coarse fish in all waters need protection and that a rod licence covers all waters. Some recognised the legal difficulty of including stillwaters but asked whether this can be overcome. Others suggested that if we are not able to include stillwaters in the byelaw, we must do something else to assist fishery owners and clubs enforce Theft Act provisions.
- 4.3 We have re-examined the options regarding stillwaters, taking advice from Environment Agency and Defra lawyers, and believe that we have arrived at a solution. It requires two key things. First, splitting the byelaw to cover stillwaters and rivers separately and differently. Second, allowing stillwater fishery owners/occupiers a choice, thereby avoiding conflict with their property rights as owners of the fish.
- 4.4. We propose a byelaw that **prohibits the removal of coarse fish from stillwaters, except with written permission of the fishery owner/occupier.**
- 4.5. In effect, this sets a zero limit as a default, enforced by us, which we believe many stillwater coarse fishery owners/occupiers will adopt, But it also enables owners/occupiers to “opt out” if they wish to allow fish to be taken; in doing so they must then rely on the Theft Act to deal with rule breakers.
- 4.6 Would such a byelaw mean that in effect we will be enforcing the Theft Act on stillwaters? Although there is a fine dividing line, the Theft Act protects only property, and although this includes fishing rights and fish stocks, it is not designed to protect the social and economic importance of stillwater fisheries; that is the role of fisheries legislation, including byelaws.
- 4.7 The enforcement implications of this proposal are covered below.

5.0 Rivers

- 5.1 While most consultees supported the general principle that coarse fish should not be taken by anglers, many wanted to see an exception to allow taking of a limited number of small fish for bait. A minority wanted to be able to take the occasional fish to eat. We propose that limited taking of coarse fish from rivers should be allowed. This needs to be constrained in such a way that it does not adversely impact on the social and economic value of our coarse fisheries.
- 5.2 Anglers should be allowed to take a limited number of small fish for bait. It is integral to predator fishing, an important element of coarse fishing. It is well established practice with no evidence of adverse impact on fish stocks. Limiting the number and size of fish taken for bait will ensure that stocks are not adversely affected. This leaves a question about whether we should restrict species permitted for bait – this is linked to a wider question below.

- 5.3 Exceptions put forward were that anglers should be allowed to take a limited number of grayling, primarily based on their good eating. Some also proposed exception for pike, based not only on eating but on the need for predator control in some circumstances. Very little was said in favour of taking other species for the table. This presents a dilemma. What is the rationale for allowing taking of some species, but not others? Also, why prevent taking of coarse fish when salmon and trout can be taken?
- 5.4 For grayling, evidence suggests that limited removal does not damage stocks. They are fast-growing with short life-span, and a rapid turnover of stock.
- 5.5 Evidence for pike is that removal, particularly of large pike, tends to result in proliferation of small pike. This does not put pike at risk as a species, but it can have a significant impact on pike fisheries, and suggests that a maximum size limit is needed to protect large pike and the important fisheries these support.
- 5.6 But what about other species? Most are generally not eaten but that in itself is not a sound basis for prohibiting their removal. Most of our coarse species, particularly the larger species are much longer-lived than salmonids, taking many years to reach specimen size and often maintaining that for many further years - during which time they may be caught by many anglers. It boils down to this - most of our coarse fish are worth more alive than dead. Not just in monetary terms, but in terms of anglers' enjoyment and fishing experience. While recognising that in principle anglers should be allowed to take some fish, we must protect the mature fish that provide sport for the majority.
- 5.7 We propose that limited taking of some species should be allowed; limits on number and sizes will be used to ensure that stocks are not damaged. We propose that anglers should be allowed to take a limited number of grayling per day, with a minimum size limit to protect juveniles and a maximum limit to protect the largest and most valuable fish. We suggest a similar approach for pike. We will seek further advice from the angling governing bodies and specialist groups in setting these limits. It is possible that limited removal of other species might be also allowed, and we would welcome views on this.

6.0 Canals

How should we cover canals? Most are effectively linear stillwaters, while a few are navigable rivers. In places canals join rivers but are separated by locks. We propose to mirror the approach used in the coarse fish close season byelaw, which has been shown to work well. In short, for canals with a close season, the "rivers" part of the byelaw will apply. Canals without a close season will be subject to the "stillwaters" part of the byelaw.

7.0 Non-natives

- 7.1 Non-native fish can be very damaging to our fisheries. The consultation asked whether we should **require** non-natives to be removed when caught – assuming that the byelaws would apply only to rivers. Views on this were wide ranging with many asking what the definition of non-native will be, and

pointing out that some species are native only to certain rivers. A key theme was that mandatory removal should only apply to those species that cause harm. In practice requiring removal on capture of non-native species will be difficult to implement on a national scale.

- 7.2 Our suggested solution for rivers is to neither require removal of non-natives nor place any constraints on taking them, allowing flexibility for anglers to take them where they are not wanted. We will tackle this by listing the native species to which the byelaw applies – these will be subject to constraints on removal. Removal of species not listed, i.e. non-native species, would be permitted.
- 7.3 Non-natives must be licensed under the Import of Live Fish Act 1980. If removal is appropriate from stillwaters, the licence conditions will require this and so it is not necessary for the byelaw to address this.

8.0 Fish “Not Naturally Resident”

- 8.1 Historically, many of our coarse fish species had a limited distribution. Legal and illegal introductions have increased distribution, sometimes producing valuable fisheries, sometimes damaging existing fisheries. Where adverse impacts have resulted, for example pike becoming established in a trout stream, there may be good reason to allow unlimited removal. We propose to include a byelaw provision that will enable us to give a written dispensation for specific fisheries where this is needed. We will need to develop sound criteria on which to base dispensations.
- 8.2 This issue arose in the context of Wales, but is not exclusive to Wales and so we suggest that the dispensation provision is available in both England and Wales.

9.0 Use of live baits

We made it clear that the consultation concerned only the removal of fish and not their subsequent use. However, we received many comments suggesting that the byelaw should specify that live baits should only be used in the water where they are caught. This is already required by an existing national byelaw which will remain in place.

10.0 Conservation species and sites

- 10.1 There was wide support for mandatory catch and release for shad. While also supported for eel, some saw this as inconsistent with continued commercial eel fishing. We are proposing new constraints on commercial eel fishing, and will consider closure if necessary. Given the wide support from the angling community we propose to progress with catch and release for eel angling.
- 10.2 We will consider whether there are other species with conservation status or conservation sites that also warrant catch and release.

11.0 Enforcement

- 11.1 Will we have the resources to enforce the byelaw? This is an important question, even more so if we include stillwaters within the byelaw.

- 11.2 The introduction of nationally consistent rules has value in itself, providing clarity for anglers and fishery owners. Communication of a new byelaw will be a critical part of this, and we will ensure that this accompanies introduction of any new byelaw. But we recognise that we may also need to increase our enforcement activity. Specifically we will need to be able to respond to reports of byelaw offences, and carry out investigation and prosecution. We are examining the implications of this byelaw for enforcement and resources that are needed, for both rivers and stillwaters.
- 11.3 It is clear that fishery owners, angling clubs and other organisations have an important role in helping us to enforce the byelaw effectively. It is also important to recognise that where a byelaw permits the taking of fish, this is still subject to the fishery owner/occupiers permission. We will need to communicate the byelaw carefully, providing guidance to owners/occupiers in meeting their roles and responsibilities.

12.0 Proposed way forward

- 12.1 We propose a byelaw for rivers that:
- prohibits the removal of native coarse fish (species to be listed) from rivers (and certain listed stillwaters e.g. The Broads) by rod and line but;
 - allows a limited number of small (maximum size limit) fish for bait, possibly of listed species;
 - allows a limited number of grayling with minimum and maximum size limits to protect immature and specimen fish;
 - allows a limited number of pike up to a maximum size;
 - possibly allows limited number of other species, subject to further discussion and technical advice;
 - allows taking of non-native fish (i.e. species not listed as native);
 - enables us to give written exemption from any of the above to specific fisheries.
- 12.2 We propose a byelaw for stillwaters that:
- prohibits the removal of coarse fish from stillwaters, except with written permission of the fishery owner/occupier.
- 12.3 We propose a byelaw for all waters that:
- requires all eels and shad to be returned
- 12.4 A schedule will list:
- native species
 - any canals that will be regarded as rivers (all others will be deemed stillwaters)
- 12.5 In addition to FERACs we will discuss our proposals with Angling Trust, Defra/WAG and operational colleagues within the Environment Agency, before progressing with statutory advertising in December 09/January 2010.

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