

Proposed byelaws on coarse fish removal by rod and line – a summary of the response to the public consultation

1. Purpose

In June 2009, we consulted with fisheries and other interests on new byelaws to regulate coarse fish, eel and shad removal by rod and line. In this document, we describe who and how we consulted and summarise the key issues raised in the consultation response. We also explain how we will use this information to develop the byelaws and what will happen next.

2. Background

Coarse fish are taken, often by rod and line, for various reasons – for live or dead-baits, for restocking other waters, for fishery management purposes (managing species and stock levels) and for the pot. Anglers and fishery owners are increasingly concerned about the numbers and types of coarse fish being removed (by legal and illegal means) and the impact this might have on fisheries.

Taking or attempting to take fish without the owner's permission is an offence under the 1968 Theft Act. However, enforcing this is a police responsibility and detecting and prosecuting offences must compete with other police priorities.

The Agency has byelaws in several regions that limit the numbers, size and species of coarse fish that may be removed. However, these are not uniform and may have doubtful legal basis. The Marine and Coastal Access Bill, which is expected to become law in November 2009, will allow us to make byelaws to prohibit or limit fish removal. These would apply in all regions.

Eel stocks have declined significantly since 1980. Although they have traditionally been taken by anglers to eat or to use as fishing baits, we need to consider limiting eel removal to help reverse this decline. We are proposing parallel controls over net fishing for eel and elvers.

The Marine and Coastal Access Bill also extends our byelaw-making powers to shad. Allis shad are rare and fully protected: Twaite shad are threatened and protected in certain rivers. We are proposing byelaws to require all rod-caught shad to be released, to aid their conservation.

This consultation has helped identify many issues that we need to consider in developing these proposals further. We are now seeking support from our statutory committees for our proposals, before formally advertising our intent to introduce new byelaws. We anticipate the byelaws will take effect in 2010. More detail on the next steps is given in section 6.

3. The consultation process

What we consulted on

On 22 June 2009, we launched a consultation document - *Removal of fish by rod and line*. This described the background to the proposals – why they were needed, the legislative context and how they could now be taken forward – and asked a variety of questions to help us identify the issues around our proposals. The document can be found at <http://www.environment-agency.gov.uk/research/library/consultations/108764.aspx>.

Specifically, we asked whether respondents –

- agreed that fish removal byelaws should only apply to unenclosed waters (mainly rivers, streams, and drains);
- could suggest any specific still-waters with multiple ownership or open river links to which the byelaws should apply;
- agreed that coarse fish (including grayling) caught by rod and line from unenclosed waters (mainly rivers, streams, drains) **must be** returned;
- supported possible exceptions to this and what these were;
- agreed that non-native fish caught by rod and line from unenclosed waters **must not** be returned;
- supported possible exceptions to this and what these were;
- agreed that all eels caught by rod and line from any waters (including estuaries and coastal waters) must be returned?
- agreed that all shad caught by rod and line from any waters (including estuaries and coastal waters) must be returned?

In each case, we asked respondents to explain their answer. We also asked for any additional comments.

How and who we consulted

Initially, we consulted our statutory Fisheries, Ecology and Recreation Advisory Committees (their responses are not included in the quantitative summaries below). This happened in June and July 2009.

We posted the consultation document (in English and English/Welsh) on our website and linked it to our new on-line consultation facility. The on-line facility allows people to view and respond to consultations directly over the internet. It also allows people to view other responses that have been made on-line (these responses are displayed anonymously).

We also invited people to respond by post or e-mail where this was more convenient. Hardcopies of the consultation document were available on request.

We wrote to the various national fisheries and conservation organisations, inviting them to view and respond to the consultation. A list is detailed in Appendix 1.

We included an article on the consultation in our e-mail newsletter which was sent to over 300 000 anglers who bought their licence on-line.

We publicised the consultation and how to respond through angling media, which covered the story over several successive weeks. One of the angling weekly publications ran an independent poll of its readers (see end of section 4).

We asked our local Fisheries teams to notify local fisheries interests and to circulate posters advertising the consultation to fisheries and tackle shops.

We also consulted our own officers who would be responsible for policing these proposals (their responses are not included in the quantitative summaries below).

4. The response

Overall response

We received a total of 827 responses, comprising 782 responses using the on-line system, 25 by e-mail and 20 by post.

This is a very high level of response and we are most grateful to all those who took the time to respond. We are especially grateful for the high level of use of the on-line system – despite some teething troubles, the majority of respondents indicated this was a useful development.

We received responses from the following –

Individual anglers –	704	(85.1%)
Angling clubs –	80	(9.7%)
Fishery owners –	13	(1.6%)
Other fisheries organisations –	13	(1.6%)
Conservation organisations/interests –	4	(0.5%)
General public –	8	(1.0%)
Other (not specified) –	5	(0.6%)
Total -	827	(100.0%)

How we have processed the responses

Our consultation document asked people whether they agreed or disagreed with specific proposals (or did not know) and to explain their answer. From this, we are able to gain a quantitative and qualitative response.

Whilst the quantitative response gives us an overall indication of the likely support for the proposals, analysing consultation responses must primarily be a qualitative rather than a quantitative exercise. The focus is on the evidence given by consultees to back up their arguments, rather than the number supporting a particular argument. This follows the Government's [Code of Practice on Consultation](#).

For each of the questions we posed in the consultation document, we have given the numbers of each response (“yes”/”no”/”don’t know” or did not specify). More importantly, in terms of informing our position, we have analysed and presented the key issues, arguments respondents have made.

What our statutory committees said

We received advice from our Regional Fisheries, Ecology and Recreation Advisory Committees (FERACs) at their June meetings. This is summarised here.

FERAC advice on taking coarse fish was mixed. At one end of the scale the EA Wales Committee did not support byelaws constraining coarse fish removal, though this was not unanimous. At the other end, the Anglian Committee 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 bait, and for something to be done to improve the fish theft situation on stillwaters.

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.

What respondents said

The following table provides the quantitative response to each question we posed in the consultation. It is important to read this in context of the qualitative overview, presented below.

Question	Yes	No	Don't know	Didn't specify	Total
1a - Should the fish removal byelaws apply to unenclosed waters only?	198	607	21	1	827
1c – Can you suggest any specific stillwaters where the byelaws should also apply?	233	398	-	196	827
2a – Do you agree that all coarse fish caught by rod and line should be returned?	762	60	4	1	827
2c – Do you support any exceptions to this?	386	395	36	10	827
3a – Do you agree all non-natives fish must <i>not</i> be returned?	334	366	117	10	827
3c – Do you support any exceptions to this?	386	292	134	15	827
4a – Do you agree all that eel caught by rod and line should be returned?	744	46	28	9	827
5a – Do you agree that all shad caught by rod and line should be returned?	655	15	150	7	827

The following section describes the response we received to each question from the wider consultation, in terms of the quantitative response and the key issues raised by respondents. We have necessarily aggregated individual comments, to give an overview.

The text of the responses we received from the key stakeholder organisations in reproduced in Appendix 2.

Questions 1a and 1b

1a. Do you agree that fish removal byelaws should only apply to unenclosed waters (mainly rivers, streams, and drains)? Please explain your answer.

Response	Number	Percent
Yes –	198	23.9
No –	607	73.4
Don't know –	21	2.5
Did not specify -	1	0.1
Total	827	100.0

Over 95% of respondents expressed a positive opinion. A minority (23.9%) agreed that we should only regulate coarse fish removal on rivers and other unenclosed waters. Their principal reasons included –

- Still-water fishery owners are responsible for their own stocks and the current legislation (the Theft Act) is adequate to control removal from these waters;
- The proposed byelaws would compromise still-water fishery owners' ability to manage their stocks – they would be unable to remove or permit others to remove fish they already own;
- There are no conservation reasons (in general) preventing still-water fisheries providing fish for the table, should they so wish;
- Fish stocks in unenclosed waters are more sensitive and more vulnerable to unregulated fish removal;

The majority (73.4%) disagreed that the proposed byelaws should be restricted to unenclosed waters. The principal reasons were -

- The rod licence covers all waters, enclosed and unenclosed alike. Those who primarily fish still-waters and still-water fishery owners could legitimately challenge why these fisheries are not afforded the same level of protection as other waters;
- All waters are at risk for illegal or unregulated fish removal and should, therefore, be afforded the same level of protection;
- Although the Theft Act may apply in principle to still-waters, it does not always work in practice – either where it is unlikely to be exercised (for example in public fisheries) or because the Police have other priorities and are unlikely to respond to reports of theft;
- Consistency between different waters is important to avoid confusion, especially when differentiating between fully enclosed and unenclosed still-waters;
- Consistency between waters would also encourage more anglers to report illegal fishing, because they would know it was an offence on all waters;
- A consistent byelaw would be easier to enforce, with offences easier to prosecute;
- If the byelaws only applied to unenclosed waters (primarily rivers, streams and drains), it could give the impression to those who wish to take fish

(either legally or illegally) that they are free to do so on still-waters. It may also push illegal fishing on to unenclosed waters;

Although they accepted that the current legislative framework made it difficult to extend the proposed byelaws to still-waters, several Environment Agency colleagues questioned whether this was insurmountable and suggested we looked for a way around the problem.

Others (external) respondents suggested that while the byelaws should apply across all waters, individual still-water fishery owners should be able either to –

- a) opt out of the byelaws, allowing them to take or allow others to take fish from their own waters;
- b) give permission to anglers fishing their waters to take fish.

1b Can you suggest any specific still-waters with multiple ownership or open river links to which the byelaws should apply?

Overall, 233 people stated they could suggest specific waters to which the byelaws should apply. However, on closer examination, most of these stated that the byelaws should apply to all waters or categories of waters, for example “all natural lakes” and did not specify specific waters. Of those that did specify specific still-waters where the byelaws could apply, the following waters were prominent –

- the Norfolk Broads (33 responses);
- the Lake District lakes and tarns (20 responses);
- Bala Lake/Llyn Tegid (5 responses);
- Bruney Lagoon, Oxfordshire (2 responses)
- The Shropshire/Cheshire Meres (2 responses);

A number (23) of respondents questioned the status of canals and/or that the proposed restrictions should extend to include canals.

Question 2a and 2b

2a. Do you agree that coarse fish (including grayling) caught by rod and line from unenclosed waters (mainly rivers, streams, drains) must be returned?		
Response	Number	Percent
Yes –	760	92.1
No –	60	7.3
Don't know –	4	0.5
Did not specify -	1	0.1
Total	827	100.0
2b .Do you support possible exceptions to this?		
Response	Number	Percent
Yes –	386	46.7
No –	395	47.8
Don't know –	36	4.4
Did not specify -	10	1.2
Total	827	100.0

Over 99% of respondents expressed a positive opinion on the principal question (2a). Almost 95% expressed an opinion on whether there should be any exceptions (2b).

Although the vast majority of respondents (760) agreed that all coarse fish (including grayling) should be returned, almost half of these (340) also supported possible exceptions.

The principal stated reasons for wanting to prevent all coarse fish removal included –

- To protect fish stocks and anglers' enjoyment of their sport. Linked to this, several respondents felt that not regulating fish removal could lead to reduced angling and ultimately reduce the contribution that angling makes to the economy;
- Taking coarse fish for food is no longer custom and practice in England and Wales. Fish are now more valuable as a recreational resource than for food. There are enough commercial outlets to provide coarse fish for those wishing to eat them;
- Fish stocks are already under pressure from natural predation and habitat loss. Natural recruitment is insufficient to redress the losses due to fish removal by anglers;
- A general ban, covering all coarse fish, would be consistent and easier to enforce;
- Fish stocks are a common good that need protecting for all to enjoy;
- Unregulated fish removal will upset aquatic ecosystems;
- Unregulated fish removal undermines the investment (habitat improvements, restocking, etc) carried out by clubs to protect and improve their fisheries;

Those who disagreed with the proposal to require all fish to be returned cited the following principal reasons –

- Anglers have a fundamental right to take the occasional fish to eat, subject to the owners' permission. A complete ban would be against the traditions of angling;
- Reducing fish to purely a recreational quarry will attract the attention of the animal rights lobby and threaten the future of angling;
- Anglers do little damage to stocks and, therefore, a complete ban is unnecessary and unreasonable;
- Fish removal should be allowed where stocks are sustainable;
- Coarse fish stocks are not under threat and there are no conservation reasons for banning the removal of coarse fish. To do so would leave an unjustifiable position where salmon and trout can be legally taken, but coarse fish can not;
- Coarse fish removal would be better regulated using bag and size limits, rather than via a blanket ban;
- Coarse fish should be returned where their conservation status gives cause for concern. This will further their conservation and help raise awareness of fish conservation within the angling community.

When asked what exceptions they might support, respondents suggested the following -

- A limited number of small fish to be taken for use as live and dead-baits for predator (pike, perch and zander) fishing. Some responses suggested maximum size limits and a range of species which might be applied;
- A limited number of fish to be taken for food. Some responses suggested a range of species, including grayling, pike, perch and carp, and that these should have specific maximum size limits;
- Removing fish for fishery management or scientific purposes, for example, removing pike from game fisheries, small fish from productive coarse fisheries, etc. Several respondents suggested this should only be with consent from the Environment Agency;
- Allowing anglers to humanely dispatch injured or foul-hooked fish;
- Where particular species are causing environmental harm or are damaging a fishery.

Those who disagreed with exceptions, ie. felt that all coarse fish should be returned, argued that –

- All coarse fish required protection;
- Exceptions would cause confusion over species identification;
- The reasons for and/or the fish (species and size limits) covered by these exceptions would be difficult to enforce;

NB. Many respondents referred exceptions including and excluding non-native fish species – these are considered below.

Question 3a and 3b

<i>3a. Do you agree that non-native fish caught by rod and line from unenclosed waters must not be returned?</i>		
Response	Number	Percent
Yes –	334	40.4
No –	366	44.3
Don't know –	117	14.1
Did not specify -	10	1.2
Total	827	100.0
<i>2b .Do you support possible exceptions to this?</i>		
Response	Number	Percent
Yes –	386	46.7
No –	292	35.3
Don't know –	134	16.2
Did not specify -	15	1.8
Total	827	100.0

Almost 85% expressed a positive opinion about not returning non-native fish. They were fairly evenly divided. Slightly fewer (82%) expressed an opinion on the question of exceptions, with a majority supporting exceptions for certain species and/or in certain situations.

The single argument in support of not returning non-native fish was –

- Helping to prevent the spread of fish disease and of damaging, invasive species, such as topmouth gudgeon. Anglers have a role in helping to restore a river's ecological integrity.

Those who disagreed felt that –

- Removing non-native species should be optional, ie anglers should be able to remove them, but not be required to do so. Moreover, Environment Agency should provide advice to anglers on which species pose a threat and could or should be removed;
- Angling is a recreational activity - anglers should not be required to kill fish (against their will). Any removal of damaging non-natives should be the Environment Agency's responsibility;
- Several non-native species have become naturalised and are a valuable angling quarry. Many respondents cited zander and catfish;
- It will be difficult to define what is considered non-native and for anglers to identify non-native species;
- Any requirement to remove non-natives should depend on the threat posed by a particular species/on a particular water;
- Eradicating non-native species (in this way) is futile. Far better to prevent them being introduced in the first place;
- It would reduce the public perception of angling.

When asked for exceptions, many reiterated that no non-native fish should be removed. However, those who suggested specific exceptions suggested –

- Zander, wels, ide and grass carp, on the basis that they were valuable target species;
- Any non-native fish in privately owned fisheries;

Question 4

<i>4. Do you agree that all eels caught by rod and line from any waters (including estuaries and coastal waters) must be returned?</i>		
Response	Number	Percent
Yes –	744	90.0
No –	46	5.6
Don't know –	28	3.4
Did not specify -	9	1.1
Total	827	100.0

Over 95% of respondents expressed an opinion on this question. There was overwhelming support for the mandatory return of rod-caught eel. The reasons for doing so included –

- Eel stocks are under threat – requiring all adult eel to be returned will help with species conservation;
- Eel are important prey for otters, which is important for otter conservation, as well as providing otters with an alternative prey to more valuable coarse fish;

A smaller number of respondents disagreed with the proposal. Their reasons included –

- Returning all rod-caught eel is inconsistent with current net fishing regulation;
- Anglers take insignificant numbers of eel, compared with net fishing;
- Eel are still plentiful – there is no evidence of a decline;
- Commercial net fishing should be stopped first;
- Anglers should be allowed to take a small number of eel for bait or for food;
- Eel are difficult to release unharmed - anglers should be allowed to take any that die on capture;
- Catches should be limited through size limits and/or guidance to anglers, rather than a ban on taking eel;

Other comments made in response to this question included –

- Should we introduce a ban, it should be temporary and reviewed periodically, eg after 5 years;
- A ban may be appropriate in freshwater, but should not extend to saltwater eel fishing;
- Sea anglers need to be educated against killing eel;
- Whilst a ban on taking rod-caught eel is necessary, net fishing should also be banned;
- Some consideration needs to be given to protecting lampreys, as pike anglers may increase their use as a substitute to eel.

Question 5

5. Do you agree that all shad caught by rod and line from any waters (including estuaries and coastal waters) must be returned?		
Response	Number	Percent
Yes –	655	79.2
No –	15	1.8
Don't know –	150	18.1
Did not specify -	7	0.8
Total	827	100.0

Over 80% of respondents expressed an opinion on whether shad should be returned. Many of those who did not (150) stated they did not know enough about shad to make an informed decision. However, the vast majority of those expressing an opinion supported the proposal to require the mandatory return of rod-caught shad.

The principal reasons included –

- Shad are under threat – this measure will enhance their conservation;
- Shad enter rivers to spawn and should not be disturbed;
- It is difficult to differentiate between the rare allis shad and the more plentiful twaite shad;
- They are of no value as food, yet are a valuable sporting fish.

Those disagreeing with the proposal stated –

- Anglers take very few shad and these measures will be ineffective. More work needs to be done to understand and remove the main pressures on their populations;
- National byelaws are unnecessary – local byelaws or guidance are more appropriate;
- Size and bag limits are more appropriate than an outright ban;

Again, several respondents stated that any restrictions should be temporary, until stocks recover, and that the byelaws should not extend to sea angling.

Other comments

We invited respondents to make additional comments on these proposals. These included –

Byelaws –

- Current byelaws are confusing and inconsistent. Any new byelaws must be unambiguous and enforceable;
- We must retain the option to review and, if no longer necessary, revoke the byelaw;

Enforcement –

- Introducing new byelaws is only part of the solution: we must respond to incidents of illegal fish removal and must enforce the regulations;
- Our enforcement officers must have the powers to enforce these byelaws effectively;
- The byelaws must have strict and meaningful penalties to deter would-be offenders. We must make magistrates aware of the value of fish;
- The current byelaws/ Theft Act are sufficient – we and the Police do not have the will to enforce them;
- We must petition the Police to take action over Theft Act cases;
- We should have a greater enforcement presence on the bankside to detect offences. We could employ more enforcement officers by increasing the rod licence fee;
- Illegal fishing methods are also a problem and need better regulating;
- These byelaws should not divert our resources away from enforcing other fisheries byelaws;
- We need to focus on urban waters, which are most vulnerable to illegal fishing.

Education/awareness –

- It is important that we publicise the proposed new byelaws widely to raise anglers' awareness. This is especially important among foreign national communities.

Other –

- This issue should not distract us from addressing the other more pressing issues affecting fish stocks – abstraction, habitat loss, water quality, predation, etc.
- We have not publicised these proposals sufficiently – the byelaws are being introduced through the back door;
- The proposed byelaws are a knee-jerk and disproportionate reaction to a minority view;
- Our decision over the proposed byelaws must not be based on media reports and lobbying, but on the strength of respondents' arguments;
- Banning fish removal weakens the case for angling, if anglers can no longer take fish for the table.

We received a variety of other comments not directly related to this consultation, but of value nonetheless.

Independent angling magazine poll of readers

One of the angling weekly publications ran an independent poll of its readers, specifically asking whether anglers should be allowed to –

- remove rod-caught pike?
- remove a number of baitfish (say six) each day?
- remove other rod caught coarse fish (ie: carp, tench, bream, barbell)?

The magazine reported that the poll elicited 984 responses and that –

- over 95 per cent agreed that all pike should be returned;
- fewer than 20 per cent agreed that anglers should be allowed to take a limited number of baitfish;
- fewer than 1 per cent agreed that other species of coarse fish should be removed.

This is useful supplementary information.

5. How we will use the feedback

This consultation has been a very positive exercise, both in terms of the quantity and quality of the responses. We will consider the various arguments for and against our various proposals, together with the feedback we receive from our statutory advisory committees. These will inform our eventual decision over the need for new byelaws to regulate fish removal, their scope and how they should be constructed.

Although it is too early to say how the proposals might be influenced by the consultation response, the consultation has raised a number of significant issues that we must take on board. These are summarised below –

Still-waters

There is clear support from the consultation for us to extend the byelaws to cover all waters, not simply rivers and other unenclosed waters.

In the consultation document, we set out the reasons why we believed the current law was sufficient to regulate fish removal from still-waters. Specifically, in most cases, fish in still-water fisheries are privately owned and removal without permission is a clear case of theft, which is a police matter. We also stated that prohibiting fish removal from still-waters would conflict with the owners' rights to manage their own property, and introducing such byelaws would be unlawful.

However, many respondents made sound arguments why, in principle, the proposed byelaws should extend to still-water fisheries, and several challenged whether the legal conflict between protecting stocks and protecting owners' rights was insurmountable.

We will look at this issue and consider whether the proposed byelaws should and could be extended to cover still-waters.

Exceptions

The vast majority of respondents support prohibiting coarse fish removal. However, many of these, as well as other who do not support a general prohibition, were in favour of exceptions for certain fish species, fish sizes and circumstances.

Live baits - Many predator anglers, including the Pike Anglers Club, made the case to allow them to continue to remove a limited number of small coarse fish to use a live and dead baits. This does not have a significant impact on stocks and is critical to the future of pike and zander fishing. Zander in particular do not take sea fish dead baits.

We need to consider the case for allowing limited numbers of small fish to be taken.

Fish for food - Coarse fish were traditionally taken for food, although the number and variety of fish targeted reduced considerably in recent decades.

However, there is a general perception that this has increased in recent years as a result of the increasing number of immigrant anglers fishing in England and Wales.

As we stated in the consultation document, there is little evidence that taking coarse fish by rod and line for food will impact on fish numbers. However, we recognise that fishing for food will target larger fish and this could affect the socio-economic value of fisheries, ie. spoil the fishing for other anglers.

We need to carefully consider the arguments on both sides, for prohibiting and allowing fish to be taken for food, and if so, how many of what species.

Non-native species - Non-native fish can damage our native fish stocks and aquatic ecology, and reduce fishery performance in certain waters. This is why we have controls over which species can be stocked where.

Of those respondents who expressed a positive opinion, a slight majority (52%) did not support our proposal that non-native fish species must not be returned.

Whilst many recognised that removing damaging species may be beneficial, many others argued that forcing rod-caught fish to be removed was unsound and/or unreasonable. In particular, there was a strong feeling that recreational anglers should not be required to kill a fish against their will. There were also practical considerations, specifically that anglers would be unable to identify certain non-native species, which could make the wider coarse fish removal byelaw unenforceable.

We need to consider this issue further.

6. What happens next?

If we decide to progress with these proposals, we would like to introduce them in 2010. Before they can be introduced, we must –

Stage	Expected timescale
Refine our proposals, taking into account the feedback from the consultation, as summarised in this report, and seeking legal advice on some of the substantive recommendations	September/ October 2009
Seek further advice from our statutory Regional Fisheries, Ecology and Recreation Advisory Committees, and uses this to finalise the draft byelaws	November 2009
Make the byelaws and advertise them, as we are required to do by law, for 4 weeks	December 2009
Respond to all objections to the advertised byelaws	January and February 2010
Apply to Defra and Welsh Assembly Government for confirmation.	February 2010
Defra and Welsh Assembly Government ministers consider the byelaws, their legality and justification, the objections made to the advertised byelaws and our response, and make a decision whether to approve them, with or without any amendments.	March 2009 -

7. Further information

For further information on these proposals, please contact Paul Lidgett at paul.lidgett@environment-agency.gov.uk or in writing to –

Environment Agency,
Rio House,
Waterside Drive,
Aztec West,
Almondsbury,
Bristol BS32 4UD.

Appendix 1

Fisheries and conservation stakeholder organisations

Angling Trust
Association of Rivers Trusts
Association of Stillwater Game Fishery Managers
Atlantic Salmon Trust
British Trout Association
British Trout Farmers Restocking Association
British Waterways
Centre for Environment, Fisheries and
Aquaculture Science
Coarse Fish Farmers and Traders Association
Countryside Alliance
Countryside Council for Wales
Federation of Welsh Anglers
Institute of Fisheries Management
National Anguilla Club
Natural England
Partnership for Action against Wildlife Crime
Professional Coarse Fisheries Association
Royal Society for the Protection of Birds
Salmon and Trout Association
Severn Elvermens Association
Wildlife Trusts
Wild Trout Trust

Appendix 2

The text of the Angling Trust response

Angling Trust is the national representative body for anglers in England. As such our membership will have widely differing views on the matters within this consultation.

Angling Trust welcomes the chance to comment on the proposed byelaws relating to the removal of fish by rod and line.

We should like to make the following general observations of this process and the proposals.

New byelaws in themselves will not significantly reduce the numbers of fish removed from fisheries by rod and line, nor by other methods. Improvements to and more investment in enforcement by the Environment Agency Fisheries department will make that difference when used in conjunction with existing and new national byelaws. In that sense we welcome the concept of national regulation regarding fish removals by rod and line which will bypass the present confusion about which fish and how many may be retained in the various regions of the Environment Agency.

If we are to regulate fisheries, those regulations should apply equally to all types of fishery, without exception, unless there is very good reason for a derogation for a specific fishery or type of fishery. Regulation and byelaws must naturally apply to enclosed stillwaters, inline stillwaters rivers, streams, drains and canals equally.

All coarse anglers are required to be in possession of a rod licence before they may use a fishing rod to angle with no differentiation of the waters they fish. Enclosed stillwater, inline stillwater and canal anglers all require the same licence and the waters they fish should be afforded the same level of protection under the byelaws as is suggested for rivers. If anything less were permitted under these new regulations there would be legitimate claims by anglers that they should not be subject to the rod licence regulations since other regulations from the same regulator do not apply to the waters they fish.

Whether all coarse fish taken by angling should be returned alive to the water is an emotive issue for anglers. Many will demand that all fish be returned regardless of size or specie. Some will fear that mandatory catch and release will increase the danger to the sport of angling from the animal rights movement. Some will feel, as anglers, that they have the right to remove some fish for the table as their forefathers did before them. The membership of Angling Trust is equally split in its view of the mandatory return of all fish caught, but research shows the majority will favour mandatory catch and release.

Any new byelaw needs to make provision for the retention of small numbers of fish by predator anglers to be used as bait at the water from which they were removed.

If mandatory catch and release is to be introduced some tolerance of the byelaw must be exercised in regard to non native species. In some waters fishery managers may wish anglers to remove and kill non native fish, which might have been introduced by any number of means.

Angling Trust considers that where non native fish have been introduced by the fishery owner or manager and with the consent of the Environment Agency they should have the same level of protection as native species. However where no such planning or permission was responsible for their presence then anglers should be permitted to take such fish with the permission of the fishery owner or controller or the Agency be empowered to remove the fish and destroy them.

The Angling Trust response to the proposed eel byelaw consultation makes plain that we are in favour of a complete cessation of the taking of eels and elvers and as such in this consultation we fully support the proposal that all eels taken by rod and line should be returned to the water from which they are taken as quickly as possible after capture, which has been common practice with the majority of eel anglers for many years now..

Angling Trust does believe that all shad should be returned to the water as quickly as possible after capture by rod and line.

The text of the Salmon & Trout Association response

We feel this consultation has neglected the basic policy issue of increasing numbers of people wanting to remove coarse fish for food, a phenomenon as seen across Europe, and likely to increase in the UK if not immediately by our native population but by some of our recent immigrants. This will alter the static system of stock and return, and therefore a very different structure for management will be required than that in existence at present. This will have fisheries management and ecosystem dynamic implications. Resources need to be made available to address this underlying issue.

Application to open waters

1a. *Do you agree that fish removal byelaws should only apply to unenclosed waters (mainly rivers, streams, and drains)?*

Yes

1b. *Please explain your answer.*

We agree with the Agency's analysis of the issue. In our view existing criminal legislation is adequate to deal with the illegal removal of fish. We agree that the use of fisheries legislation to control the removal of legally caught fish is only justified on unenclosed waters, for the reasons given in the consultation document.

We look forward to hearing more details and clarification about how the options will be applied to stillwaters.

Coarse fish

2a. *Do you agree that coarse fish (including grayling) caught by rod and line from unenclosed waters (mainly rivers, streams, drains) must be returned?*

No

2b. *Please explain your answer.*

In our view it is important to ensure that the same principles underlie all fisheries byelaws. The main purpose of fisheries legislation should be to conserve fish and their environment. However, legislation is also justified when it helps maintain the economic value of salmon and freshwater fisheries.

We are unaware of any conservation reason for banning the removal of all coarse fish taken by rod and line at the current time, and we could not support a measure which made it illegal to kill any coarse fish, including grayling, and so led to the situation whereby the only fish that could legally be taken by rod and line and killed were trout and salmon.

Where there are valid fisheries management reasons for controlling the removal of coarse fish in rivers and open waters, particularly large, more valuable fish, we are not opposed to a byelaw for this purpose. This could, for example, set maximum size limits, and possibly bag limits, for fish that may be removed. However, in waters managed primarily as

trout and salmon fisheries there may be good management reasons for removing pike and other predators taken on rod and line, and this should be permitted. We recognise that the removal of large coarse fish in some regions of the UK is exerting pressure on the health of the stock and depressing the economic worth of coarse fisheries in these areas, and that it is suggested this removal is correlated with the arrival of immigrants from the East of Europe and Asia. This issue does need addressing, but we feel this could be achieved through current legislation and the Theft Act, if resources are made available for better enforcement.

Given food shortages and financial dynamics the coarse fish food industry may well continue to grow in the UK. We therefore feel it is important that future management of stocks are planned, which will require sufficient resources to collect monitoring data.

Non-natives

3a. *Do you agree that non-native fish caught by rod and line from unenclosed waters must not be returned?*

We support in principle a requirement to remove non-native fish where these pose a risk to native fish stocks and the aquatic environment.

3b. *Please explain your answer.*

Specific problem fish, such as topmouth gudgeon, sunbleak, etc, require positive eradication measures, and in such cases anglers should be required not to return any of these fish to the water.

The spread of all non-native species (common carp, etc.) should be controlled due to their unpredictable but often deleterious impacts on fragile aquatic ecosystems with loss of the multiple benefits that society derives from them. There are many examples of disease introduction and disharmony with the local ecosystem that result from the spread of non-native species in our waterways. Measures to reduce the chance of non-native migration should be taken. These measures include the banning of non-native coarse fish taken for use as bait.

Eels

4a. *Do you agree that all eels caught by rod and line from any waters (including estuaries and coastal waters) must be returned?*

Yes

4b. *Please explain your answer*

The decline of the European eel population is a worrying development, perhaps reflecting wider environmental pressures on climate, marine, river and wider catchment systems. Addressing the 'symptom' by a proposed complete ban on removing eels by rod and line in any waters is to be welcomed. We are mindful of the many wider ramifications of the decline of this important species, and feel it is very important that the ban is accompanied by an increase in research funding to shed further light on the underlying problems affecting the species.

Shad

5a. *Do you agree that all shad caught by rod and line from any waters (including estuaries and coastal waters) must be returned?*

Yes, subject to the points made below.

5b. *Please explain your answer*

We support the protection of rare native species. Adding to the commentary in the Environment Agency document that hybridisation between Allis and Twaite shad further muddies the water endorses the need for a blanket ban on their removal in freshwater. We have reservations about extending this ban to estuaries and coastal waters, given the potential resource implications and the fact that the Agency's fisheries duty does not extend to shad.

To conclude we feel the same principles should apply to byelaws on all fish, regardless of whether they are categorised as coarse or game, and byelaws restricting anglers rights to kill fish must be justified on conservation or fisheries management grounds.

The text of the Atlantic Salmon Trust response

Our principal interest in this byelaw is in its implications for the conservation of trout and salmon. In our view it is important to ensure that the same principles underlie all fisheries byelaws. The main purpose of fisheries legislation should be to conserve fish and their environment. However, legislation is also justified when it helps maintain the economic value of salmon and freshwater fisheries.

We agree that any byelaw should only apply to unenclosed waters, for the reasons given in the consultation document.

It is clear that there is no conservation reason for banning the removal of all coarse fish taken by rod and line from unenclosed waters, and we do not agree that all such fish should be returned. We could not support a measure which made it illegal to kill any coarse fish, including grayling, and so led to the situation whereby the only fish that could legally be taken by rod and line and killed were trout and salmon. We do not believe that such a measure could be justified in law.

We accept that there may be valid fisheries management reasons for controlling the removal of coarse fish in rivers and open waters by byelaw, particularly large, more valuable fish, and we are not opposed to a byelaw for this purpose. We could also support, as a precautionary measure, a limit on the number of fish that could be retained. However, in waters managed primarily as trout and salmon fisheries there may be good management reasons for removing pike and other predators taken on rod and line, and this should be permitted .

We support in principle a requirement to remove non-native fish where these pose a risk to native fish stocks and the aquatic environment.

There are strong conservation arguments for requiring the return of all eels caught by rod and line, and we support this proposal.

We can agree to the proposal that all shad caught in freshwater should be returned, but we have reservations about extending this ban to estuaries and coastal waters, given the potential resource implications and the fact that the Agency's fisheries duty does not extend to shad.

The text of the Institute of Fisheries Management response

The Institute wishes to endorse the views of the Salmon and Trout Association, with which we worked on their reply. The sole exception to this is that the Institute does not consider it necessary to ban removal of eels from freshwater as these probably represent a very small percentage of the population present.

We do feel, however, that one of the most important implications of any decision to allow removal of coarse fish is that, once you permit such removal in general there will potentially be a tendency to use some of them for food, if not immediately by our native population but by some of our recent immigrants. This implies a very different structure for management than that in existence at present, with the real possibility of having to set catch limits, minimum permitted sizes and all the other regulations needed for conservation of stocks of desirable species (zander, perch, pike and carp) – alternatively the restarting of systematic stocking. That such a development is a real possibility is shown by the rapidity with which small scale fisheries for crayfish has spread across this part of the country (East Anglia) once it was realized that you could eat them. Thus a change in policy of this type may, by extension, imply a reorganization within the EA to establish a fishery management unit.

The text of the British Waterways response

1a. *Do you agree that fish removal byelaws should only apply to unenclosed waters (mainly rivers, streams, and drains)?*

Yes

1c. *Can you suggest any specific stillwaters with multiple ownership or open river links to which the byelaws should apply?*

No

2a. *Do you agree that coarse fish (including grayling) caught by rod and line from unenclosed waters (mainly rivers, streams, drains) must be returned?*

Yes

2b. *Please explain your answer.*

We believe that such a measure is important in order to safeguard fish stocks and fisheries.

2c. *Do you support possible exceptions to this?*

Yes

2d. *Please explain your answer. If you support exceptions, please list species/numbers/sizes and give your reasons.*

We believe that ILFA species should be removed. There is also a need to permit the taking of a small number of fish below a certain size for use in livebaiting.

3a. *Do you agree that non-native fish caught by rod and line from unenclosed waters must not be returned?*

Yes

3b. *Please explain your answer*

We believe that this is a sensible measure to protect native fish, although we note that the consultation paper suggests that some non-native species will need to be removed but that it would be unreasonable to insist that all non-natives must be removed but does not explain which species will fall into which category. We therefore need more clarity as to which species this will apply to.

We believe that zander should be included in the list of species that must be removed in order to prevent its further spread.

3c. *Do you support possible exceptions to this?*

Yes

3d. *Please explain your answer*

We are unclear at this time as to what species it is proposed will be covered by this provision but suggest that carp, catfish and rainbow trout should be exceptions. The exception for carp would be on the basis that

they have been present in our waters for many many years. There is no evidence that release of catfish causes environmental harm and rainbow trout are of commercial importance.

4a. *Do you agree that all eels caught by rod and line from any waters (including estuaries and coastal waters) must be returned?*

Yes

4b. *Please explain your answer.*

We believe that such a measure is necessary to prevent further decline in the number of eels.

5a. *Do you agree that all shad caught by rod and line from any waters (including estuaries and coastal waters) must be returned?*

Yes

5b. *Please explain your answer.*

We agree with the consultation paper that this will help to reinforce the protection for shad provided under the Wildlife and Countryside Act 1981.

6a. *Please provide any further comments.*

None.

The text of the Natural England response

1.0 Introduction

1.1 Natural England was established under the Natural Environment and Rural Communities Act 2006. It is a non-departmental public body. We are charged with the responsibility to ensure that England's unique natural environment including its flora and fauna, land and seascapes, geology and soils are protected and improved. Natural England's purpose as outlined in the Act is to "ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development".

2.0 Natural England's comments

2.1 Natural England supports responsible, environmentally-friendly angling as a recreation that can improve people's wellbeing and encourage more people, of all ages and backgrounds, to engage with the freshwater and wider natural environment. Many anglers and fishery managers also undertake work to conserve and improve the freshwater environment.

2.2 Natural England supports the initiative outlined in this consultation as many of the proposed new powers will help clarify and strengthen the regulation of freshwater fisheries (many of which are on SSSI estate) and may help further the conservation of native fish species.

2.3 As proposed, the new regulations could include exceptions that would allow the removal of some native fish species and that would require the return of some non-native species. Natural England opposes the removal of coarse fish species whose conservation status is a cause for concern (for example, BAP species). In addition, new regulations arising from this consultation should not conflict with existing legislation (for example, the Wildlife and Countryside Act) that prohibits the taking of some fish species. Natural England also opposes the return of non-native fish species to unenclosed (open) waters.

3.0 Detailed comments

Natural England's comments on specific questions:

1a. Do you agree that fish removal byelaws should only apply to unenclosed waters (mainly rivers, streams, and drains)?

Natural England believes that the removal byelaws should apply to any coarse fish species whose conservation status is a cause for concern (for example, BAP coarse fish species) wherever they are caught i.e. on both enclosed and unenclosed (open) waters. A requirement to return these fish will further the conservation of these species and help raise awareness of fish conservation within the angling community.

Removal bylaws arising from this consultation should not conflict with existing legislation (for example, the Wildlife and Countryside Act) that prohibits the taking of some fish species.

2a. Do you agree that coarse fish (including grayling) caught by rod and line from unenclosed waters (mainly rivers, streams, drains) must be returned?

Natural England does not have a view on the return of coarse fish beyond our responses to questions 1a and 3a.

3a. Do you agree that non-native fish caught by rod and line from unenclosed waters must not be returned?

Natural England agrees that non-native fish caught by rod and line from unenclosed waters must not be returned.

Natural England believes that the conservation or restoration of characteristic and sustainable communities of native fish in naturally-functioning rivers and stillwaters should be an integral aim of freshwater fishery management. The eradication of non-native fish species from these waters is an important part of this process and should include the removal of non-natives caught by recreational anglers.

Special consideration (e.g. exemption from the new regulations) should not be given to non-native species such as zander. Attempting to make a distinction between different non-native fish species is likely to confuse the issue and may hinder work being carried out to eradicate these and other freshwater non-native species. Although some non-native fish species might not currently be considered 'invasive' (i.e. their impacts appear to be low or negligible) their longer-term impact on the ecology of our freshwaters may be more serious, especially against a background of climate change.

4a. Do you agree that all eels caught by rod and line from any waters (including estuaries and coastal waters) must be returned?

Natural England believes that the exploitation of eel stocks should only be allowed to continue in an eel fishery if the fishery can be shown to be sustainable. It is unreasonable to make a distinction between eels caught by rod and line and those caught by licensed nets, traps etc. If an eel fishery is unsustainable the exploitation of eels (by any means) should cease, or be reduced to an appropriate level, to allow stocks to recover.

5a. Do you agree that all shad caught by rod and line from any waters (including estuaries and coastal waters) must be returned?

Natural England agrees that any shad (i.e. individuals of both *Alosa* species) should be returned if caught by rod and line from any waters. The Allis shad (*Alosa alosa*) and Twaite shad (*Alosa fallax*) are both BAP species but currently receive different levels of protection under the Wildlife and Countryside Act 1981 (as amended). Given the similarity between the two species, applying the new regulation to both will help

avoid the need to make a distinction between them and help increase awareness of their protected status amongst the angling community.

6. Other

Natural England is opposed to live baiting as it is one way in which native (and non-native) fish are introduced to waters beyond their natural range, often to the detriment of the ecology of the receiving waters. For example, it is believed that ruffe were introduced to Bassenthwaite SAC through live baiting. Escaped ruffe established a breeding population in Bassenthwaite and may have contributed to the local extinction of vendace (a BAP species protected by the Wildlife and Countryside Act) through predation and competition.

Live baiting is also one way in which fish diseases and parasites are introduced into new waters. It is also probable that the transfer of water (used to keep bait fish alive) between fishing venues can help the spread of invasive non-native freshwater species.

Current legislation prohibits the unauthorised transfer of fish between waters, meaning that an angler can legally use a fish as live bait only in the water it was taken from. However, in practise, it is generally impossible to tell the origin of a fish, meaning that an angler can transport live bait fish between waters with relative impunity.

In the absence of new fish removal regulations that prohibit the taking of all coarse fish species, opportunities should be explored to introduce legislation prohibiting the removal of fish for the purposes of live baiting.