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Removal of fish by rod and line

National fisheries byelaw consultation

Starting Date: 22 June 2009

Closing Date: 14 September 2009

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Taking stock

Within the angling community there is a wide range of opinion about whether anglers should be allowed to take coarse fish that they catch. The law regarding fish removal is complex and, under the existing law, our powers concerning taking coarse fish and eels is limited. The Marine and Coastal Access Bill will improve our fisheries byelaw powers and allow us to bring in byelaws to control the removal of coarse fish. In doing this, we need to balance the need to protect fish stocks with the rights of fisheries owners and managers to decide how their fisheries should be managed. We need the views of the angling community to help us strike the right balance.

Eel stocks have declined sharply in recent years and we are taking action to reverse this through tighter regulation of commercial eel fisheries and by improving habitat for eels, and their access to it. Alongside these changes, we also need to consider controls on eel angling. We suggest that compulsory catch and release is introduced for eels.

The Marine and Coastal Access Bill also extends our byelaw powers to species that we are not currently responsible for. These include the two species of migratory shad, which are protected under conservation law. It is already illegal to fish for the rarest species, Allis shad, and it is likely that this will soon apply to Twaite shad. In view of this, we suggest that we use our new powers to ensure that any shad caught by rod and line are returned to the water. This will make it clear that any shad that anglers catch accidentally, must be returned alive.

These byelaws rely on changes to current fisheries legislation that government is proposing through the Marine and Coastal Access Bill. We will not be able to bring the new byelaws in until this Bill is in place.

We are also consulting on new byelaws to remove the close season for stillwater salmon and brown trout and to regulate commercial eel and elver fisheries. You can view these consultations at: <http://www.environment-agency.gov.uk/research/library/consultations/36989.aspx>. Together, these form part of a wider reform of fisheries legislation that we are calling '*Fish for the Future*'. This covers improvements to our licensing regimes, how we manage fishing effort, fish passage regulation, how we regulate live fish movements and specific measures to protect eel, salmon sea trout. You can find out more about '*Fish for the Future*' at www.environment-agency.gov.uk/fish.

Adrian Taylor

Fisheries Policy Manager

1. Introduction

What this consultation covers

This consultation only covers the removal of fish caught by rod and line. It covers coarse fish, grayling and some migratory fish. The removal of salmon, sea trout and trout is already regulated through national and local byelaws and is not included here.

Removing any fish by netting, trapping and electric-fishing is strictly controlled through licensing or other authorisation and is also not included here.

Sometimes fish are removed by rod and line for stocking into other waters. The subsequent stocking of fish is regulated separately, often referred to as "Section 30 consent". This consultation does not cover stocking.

Why are we consulting?

We believe that tighter and more consistent controls on the removal of fish by rod and line are needed. But, we would like to get the views of fishery owners, angling clubs, individual anglers and any other interested groups. We will use responses to help us shape new byelaws that will set out the rules for anglers on taking fish.

Why do we need new byelaws?

There has been mounting concern in the angling world that the removal of coarse fish by rod and line is damaging fisheries. We know that some coarse fish are taken to eat and there is evidence that specimen fish are taken for illegal stocking in other waters. What impact does this have, and do we need to introduce restrictions?

Generally, coarse fish are prolific spawners and breed rapidly, replacing losses quickly. Removal by rod and line is unlikely to threaten their existence, indeed sometimes removing larger fish can encourage smaller ones to proliferate. Within reasonable limits, taking coarse fish is unlikely to impact on overall numbers. But, it can affect the make-up of the stock and, as a result, have very serious effects on the fisheries they support. In particular, specialist or specimen coarse fishing places particular emphasis on large mature fish. The value of many of our coarse fisheries centres on the quality of the fishing provided by large fish, which may have taken many years to reach such a size. While the removal of these large specimens may not put the conservation of fish species at risk, it can seriously reduce the value of fisheries for anglers, and reduce income for clubs and owners.

There are some old local byelaws that limit removing coarse fish, but these are inconsistent and have a doubtful legal basis. Angling representatives have asked for national byelaws to regulate the removal of coarse fish, and we agree that these are needed.

Failings in existing fisheries legislation blocked our previous attempt to introduce national coarse fish removal byelaws in 1997. The Marine and Coastal Access Bill, which is expected to become law by autumn 2009, will amend our fisheries powers, allowing us to introduce new byelaws to prohibit or limit the removal of coarse fish. It will also extend our byelaw-making powers to some other migratory species. Shad in particular have high conservation status and so we must consider these within the scope of the byelaws.

Eel stocks have declined significantly since 1980. Although they have traditionally been taken by anglers to eat, we need to consider limits on eel removal to help reverse this decline.

In summary, national byelaws are needed:

- so that there are common rules;
 - to protect the value and importance of coarse fisheries;
- to conserve threatened species – eels and shad.

How to respond to this consultation

We would prefer you to respond online. This will help us to gather and summarise responses quickly and accurately. You can respond on-line at www.environment-agency.gov.uk/research/library/consultations/consultations.aspx.

However, if you would prefer to send your response by post, please send it to:

Adrian Taylor, Fisheries Policy Manager
Environment Agency
Rio House
Waterside Drive, Aztec West
Almondsbury, Bristol BS32 4UD

How we will use your information

We will use your information to help shape new fisheries byelaws.

We will publish all responses after the consultation has closed, unless you have specifically requested that we keep your response confidential. We will not publish names of individuals who respond. We will publish the name of the organisation for those responses made on behalf of organisations. Please indicate on your response if you want us to treat it as confidential.

If you respond online or provide us with an email address, we will acknowledge your response and send you a summary of responses after the consultation has closed. We will also publish the summary of responses on our website.

Confidential responses

We may publish or disclose information you provide in your response to this consultation, including personal information, in accordance with the Freedom of Information Act 2000 (FOIA). If you want us to treat your information as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request to disclose the information we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the Environment Agency.

Code of Practice on Consultation

We are running this consultation in accordance with the criteria set out in the Government's Code of Practice on Consultation.

If you have any queries or complaints about the way this consultation has been carried out, please contact:

Cath Beaver, Consultation Co-ordinator
Environment Agency, Rio House
Waterside Drive, Aztec West
Almondsbury, Bristol BS32 4UD.
Email: cath.beaver@environment-agency.gov.uk

2. The legal framework

The law regulates fish removal in three ways:

- (a) **Fisheries legislation (Salmon and Freshwater Fisheries Act 1975)** protects fish stocks, and the fisheries that these support. Byelaws made under this legislation can, subject to improvements made by the Marine Bill, be used to ban or limit the removal of fish by rod and line. This is based on the need to protect fisheries. We are responsible for enforcing fisheries legislation.
- (b) **The Theft Act 1968** covers fish in two ways. Firstly, while fish are generally regarded as wild and therefore cannot be stolen, there are exceptions to this. Fish that are confined within a stillwater, particularly if they have been stocked, are owned, and therefore can be stolen. In practice, fish in most stillwaters are owned and can be stolen. Fish in rivers are not owned, even if stocked by the fishery owner, and therefore cannot be stolen.
- (c) **The Theft Act 1968** also recognises that fishing rights are private property, and includes a specific offence to protect these. Without this specific offence, fishing in private waters would not be illegal unless fish were taken and it could be proven that they were stolen – and for rivers that is impossible. So, it is a Theft Act offence to *unlawfully take or destroy fish or attempt to take or destroy fish*. In practice, this means that fishing without a fishery owner's permission is a theft offence, even if no fish are caught. But importantly, it also means that taking them without the owner's permission is theft even if the fish are not owned (rivers, for example). It also means that where permission to fish is held, removing any fish caught is subject to the fishery owner's consent. Taking fish without that permission is theft.

This applies to all fisheries, with the exception of most tidal waters/estuaries, where there is a public right of fishery (for example, the Thames through London).

The Police are responsible for enforcing the Theft Act.

What does all this mean?

The legal framework is complex. Fisheries law, which is our responsibility, can be used to regulate removal of fish where it impacts on fish stocks, and the fisheries that they support. The Theft Act, which is the Police's responsibility, protects fishing rights, including removing fish without the owner's permission. Fishery owners have the right to insist that no fish are removed. Contravening fishery owners' rules is a matter of theft.

The interaction between these two laws limits the restrictions that we can make, and also means that a single rule for all waters is not possible. We consider below how rules might apply to different types of waters.

3. Different types of waters

Stillwaters

In most stillwaters the fish are owned by the fishery owner or occupier. They have the right to decide whether their fish may be removed by anglers who fish with their permission. It is common practice for owners of stillwater trout fisheries to set a “bag limit” for visiting anglers. Many stillwater coarse fisheries operate a zero limit, which means that no coarse fish may be removed. Others may allow a few fish to be taken, as set out in club or fishery rules. Breaking fishery owners’ rules on removing fish is theft and its enforcement is a police matter.

Applying Environment Agency byelaws to restrict fish removal in stillwaters presents a problem. It would conflict with the right of owners to decide if fish may be removed. The fish belong to the fishery owner, and so such a byelaw attempts to stop a person taking what they already own, or allowing others to do so with their permission. Stillwater fishery owners would lose the right to manage their fisheries as they wish.

Introducing byelaws that conflict with existing law and owners’ rights would not be allowed. So, we propose that coarse fish removal byelaws should not apply to stillwaters, although we may need to make an exception for eels. We deal with this below.

Rivers

River fisheries differ from stillwaters in two important ways.

- (a) Fish in rivers are not owned and can usually move freely between fisheries with different owners.
- (b) The actions of a fishery owner, in allowing fish to be taken, can damage neighbouring fisheries.

If a fishery owner allows fish to be removed, this may impact on the wider fish stock in the whole river. It may also affect the value and performance of neighbouring fisheries. Taking large numbers of fish can have an obvious impact on the stock. Taking prized specimen fish may reduce the worth of a fishery to anglers, its economic value to the fishery owner, and reduce breeding success.

These are sound reasons for introducing byelaw restrictions on removing coarse fish from rivers.

Other waters

Most tidal waters are “public” fisheries. This is usually downstream of the tidal limit, for instance Teddington Lock on the River Thames. These waters have no fishery owners and so the case for byelaw restrictions is even greater than for other waters.

There are some large stillwaters that are not owned by a single owner and where fish stocks may also be able to move freely into rivers linked to them. Lake Windermere and the Broads are good examples. We suggest that byelaw restrictions should apply, and that these waters are identified and named within the byelaw.

Some stillwaters have open links to rivers, for example boat marinas. They may have a single owner, but the fish are not owned as they are free to move between the stillwater and the river. There will be many waters like this and naming them within a byelaw is probably not practical. We suggest that the byelaw describes these stillwaters as “unenclosed” and that restrictions should apply.

Some canals might be regarded as enclosed stillwaters, while others form parts of rivers. We faced the same problem in deciding whether the coarse fish close season should apply to canals. The close season only applies to those canals that are rivers. We propose that we adopt the same approach and apply byelaw restrictions to those canals that form parts of rivers.

4. Why remove fish?

As a general principle fisheries legislation allows fish to be removed by law unless byelaws state otherwise. It follows that the basis for any byelaw restriction is to protect fish stocks and the fisheries they support. There are several issues to consider:

(a) Taking fish to eat

Up until the 1950s it was quite common for coarse fish be taken to eat, but nowadays this does not generally tend to happen. As coarse fishing became more popular as a recreational activity, attitudes changed and it has now become the norm for coarse fish to be returned.

Note that grayling, which are often taken to eat, are included within the scope of this consultation.

If fish are to be taken to eat, we need to be sure that this does not damage stocks or fishery performance and value.

(b) Taking fish for bait

Anglers fishing for pike or other predators have traditionally used small fish for live or dead bait. It is a legitimate and effective method of fishing and there is a strong argument that this should be allowed to continue. There is an equally strong case that the number and size of fish taken for bait should be limited so that it does not damage fisheries. Note that we are **not** considering the ethics of live-baiting in this consultation.

(c) Non-native fish

Zander have become established in some of our rivers. From time to time other non-native species turn up in rivers, for example Wels catfish and ide (orfe). Motherless minnows have colonised some drains where they have become pests. This is a difficult issue, because while some have become pests, the zander provides valuable fisheries in some areas. Certainly some non-native species should be removed when caught from rivers, although it would be unreasonable to insist that all non-natives must be removed when caught.

(d) Eels

Eels have declined seriously, and all European countries must now take action under the new European Eel Regulation. Much of our action will be focused on improving eel migration in rivers and constraining commercial eel fishing, but we must also consider recreational eel fishing as well. If we continue to allow eels to be caught by rod and line, we must report these catches to Europe alongside commercial catches. To do this, we would need to introduce a catch return system for anglers to report eel catches. Traditionally, eels have been taken "for the pot", but we believe that few are now taken. This is partly as a result of the decline in stocks. We propose a complete ban on removing eels by rod and line in any waters (catch and release will still be permitted). Please note that our responsibilities for eels extend seaward to six nautical miles and so this type of ban would include estuaries and coastal waters.

For eels we believe that applying a byelaw to stillwaters is justified. Any eels present in stillwaters will have arrived by migration from the sea as elvers and are part of a European stock to which they may ultimately contribute as spawners when they migrate back to the sea.

Comment [TE1]: "for the pot" - explain? No – this is fine.

(e) Protected and rare species

It is an offence under the Wildlife and Countryside Act 1981 to take or destroy Allis shad. Its more common cousin, the Twaite shad, is not protected in this way, but Defra/WAG are currently considering a recommendation from the Joint Nature Conservation Council (JNCC), that it should be. If it becomes illegal to take or destroy either species in all waters, it would help to make this clear to anglers by reinforcing this with a fisheries byelaw that bans them from being removed by angling. Even if the JNCC recommendation is rejected, a reinforcing byelaw makes sense because it is difficult to tell the two species apart.

(f) Removing fish for stocking

This is already regulated and does not need to be included in new byelaws. An Environment Agency consent is required to stock any fish into inland waters. In considering any proposal to stock fish taken from the wild, we will assess the potential damage to the source water. As a general rule, we do not allow fish to be taken from rivers for stocking, including fish taken by rod and line.

5. Summary and options

We do not think that a complete ban on removing coarse fish is realistic. For the reasons above, a ban or restrictions cannot be applied to most stillwaters. We suggest the following structure:

- All eels and shad caught by rod and line in any waters must be returned.
- All coarse fish (including grayling) caught by rod and line from rivers, streams, drains (and certain named large stillwaters) must be returned – with possible exceptions based on:
 - species/numbers/sizes
 - non-natives

The byelaw may need to define enclosed and unenclosed waters.

It is most important to recognise that whatever limits are set out in fisheries byelaws, these are still subject to the permission of the fishery owner. The fishery owner has the right to impose a tighter limit, or even a complete ban – with possibly the exception of certain non-natives that must be removed. But, it is also important to understand that if a fishery owner imposes tighter limits, or a complete ban, we cannot enforce these, as breaking these rules is a matter of theft. The same applies to any limits set by fishery owners on stillwaters.

6. YOUR RESPONSE

Please respond online by going to

<http://www.environment-agency.gov.uk/research/library/consultations/consultations.aspx>

If you prefer to respond by post, please complete the following form and return it to –

Adrian Taylor
Fisheries Policy Manager
Fish removal consultation
Environment Agency
Rio House
Waterside Drive
Aztec West
Almondsbury
Bristol BS32 4UD

Personal details

Name –	
Organisation (if applicable) –	
Address –	
E-mail –	
Your area of interest* –	Please tick (one only)
Angling – individual	
Angling – club	
Angling – representative organisation	
Fishery owner (non-club)	
Other fisheries organisation	
Conservation organisation	
Other NGO	
General public	
Other (please specify)	

Questions

1	Application to open waters	
1.a	Do you agree that fish removal byelaws should only apply to unenclosed waters (mainly rivers, streams, and drains)?	Yes/No
1.b	Please explain your answer.	
1.c	Can you suggest any specific stillwaters with multiple ownership or open river links to which the byelaws should apply?	Yes/No
1.d	Please explain your answer.	
2.	Coarse fish	
2.a	Do you agree that coarse fish (including grayling) caught by rod and line from unenclosed waters (mainly rivers, streams, drains) must be returned?	Yes/No
2.b	Please explain your answer.	
2.c	Do you support possible exceptions to this?	Yes/No
2.d	Please explain your answer. If you support exceptions, please list species/numbers/sizes and give your reasons.	
3	Non-natives	
3.a	Do you agree that non-native fish caught by rod and line from unenclosed waters must not be returned?	Yes/No
3.b	Please explain your answer.	

3.c	Do you support possible exceptions to this?	Yes/No
3.d	Please explain your answer.	
4	Eels	
4.a	Do you agree that all eels caught by rod and line from any waters (including estuaries and coastal waters) must be returned?	Yes/No
4.b	Please explain your answer.	
5	Shad	
5.a	Do you agree that all shad caught by rod and line from any waters (including estuaries and coastal waters) must be returned?	Yes/No
5.b	Please explain your answer.	
6	Other	
6.a	Please provide any further comments.	

7. What happens next?

We will publish a summary of responses to this consultation. Responses will help to shape our final byelaw proposals. After the Marine and Coastal Access Bill is passed in autumn 2009, we will advertise the proposed byelaws. Any objections can be made in writing. Following this, we expect to introduce the new fish removal byelaws early in 2010.

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