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Summary and Government Response to the Consultation on the Modernisation of Salmon and Freshwater Fisheries Legislation; New Order to Address the Passage of Fish - 16 January – 22 April 2009

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Introduction

The Environment Agency has the day-to-day responsibility for the management and regulation of all migratory and freshwater fisheries in England and Wales. The purpose of the consultation was to seek views on the Government's proposals to provide the Agency with more flexible powers to improve the free passage of fish to breeding, nursery and feeding grounds.

The Environment Agency already has some powers to require the provision of fish passes and screens. These are limited to:

- Enable the migration of salmon and sea trout only;
- New obstructions or those undergoing significant alteration.

However, other migratory and freshwater fish that need to access different parts of the aquatic environment are not covered by these provisions. The consultation proposed the following changes to the current legislation:

- Enable the Agency to require the installation of a fish pass or the placement of screens to facilitate the passage of all migratory and freshwater fish species;
- Give powers to the Environment Agency to require the introduction of a fish pass in extant obstructions whether or not works are underway;
- Require screens to be introduced for all water abstractions/discharges.

These amendments were informed by recommendations made in the Salmon and Freshwater Fisheries Review, published in 2000, and will contribute to the UK meeting its obligations under the Water Framework Directive 2000/60/EC (establishing a framework for Community action to improve the status of surface water bodies)¹, the Habitats Directive (Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora)², and the EU Eels Regulation (Council Regulation No 1100/2007 establishing measures for the recovery of European Eel Stock).³

The three options consulted upon for implementing measures were:

¹ The Water Framework Directive 2000/60/EC establishes a framework for Community action in the field of water policy. This is available at http://ec.europa.eu/environment/water/water-framework/index_en.html.

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, available at http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm.

³ Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European Eel, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:248:0017:0023:EN:PDF>

- Option 1: Do nothing
- Option 2: Implement measures in a prioritised, phased approach by 2015
- Option 3: Implement measures in a prioritised, phased approach by 2027

A total of 53 responses were received during the consultation period, which ran from 16 January 2009 to 10 April 2009. A list of organisations who responded to the consultation is at Annex A.

Figure 1 below shows the percentage of responses received from the respondent category.

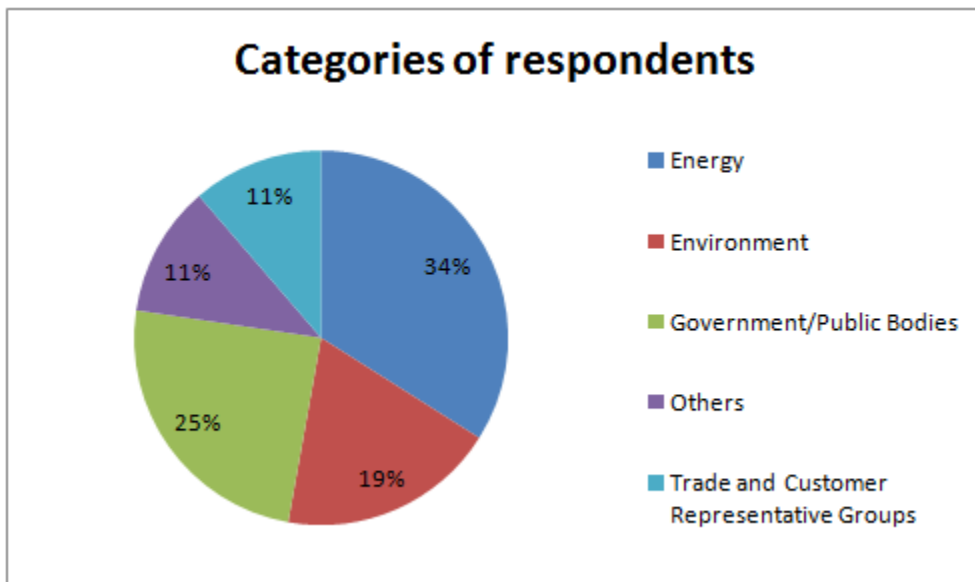


Figure 1: Category of respondents

Summary of responses

Set out below are the summaries of the consultation responses along with the Government's response. A further detailed overview of the proposed measures and other detailed information, with responses, is set out in Annex B.

The large majority of respondents (74%) supported the proposals as described in the consultation documents. Although these respondents suggested that further consideration may be required before implementation of the legislation (e.g. potential exempt structures, screening requirements, funding sources, evaluation of costing, etc), few (26%) considered that these proposals were unnecessary and should not be taken forward.

Options as presented in the consultation document

Responses to the options that were set out in the consultation document are categorised as follows, shown in Figure 2:

- Option 1: Those who supported maintaining the status quo;
- Option 2: Those who supported implementing measures identified by 2015;
- Option 3: Those who supported implementing measures identified by 2027;
- Option 4: Those who did not declare support for an option.

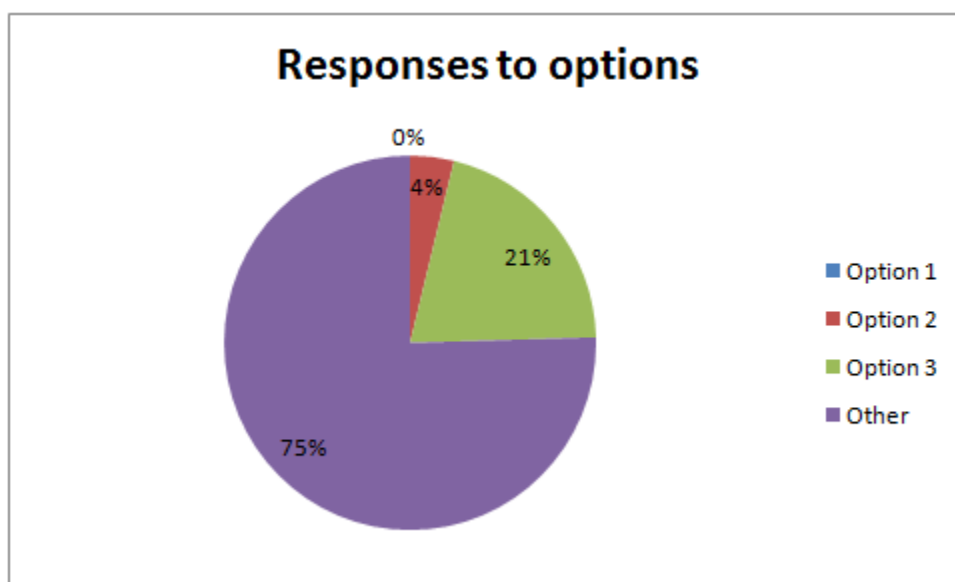


Figure 2: Response to options presented

The aim of the consultation was to seek the views of stakeholders on the measures proposed to enable free passage for all species migratory and freshwater fish. The majority of respondents (75%) whilst not declaring their preferred deadline for the delivery implementation, i.e. 2015 or 2027, provided comments on the measures themselves. Out of the two deadlines presented, most respondents (21%) declared their support for delivery of measures over the longer time period.

Government response

The Water Framework Directive requires Member States to make operational a programme of measures to prevent deterioration in the status of all surface water bodies by 2012, and aim to achieve Good Ecological Status or Good Ecological

Potential by 2015. The deadline can be extended to 2021 or 2027 if it is disproportionately costly or technically infeasible to achieve good status by 2015. As part of the measures identified to achieve Good Ecological Status, the costs of implementing this Order will be considered alongside other measures. If it is considered that overall the costs are disproportionately high then the UK may be able to secure an extension to 2021 or 2027; an analysis to assess the cost to benefit ratio is underway as part of the Water Framework Directive.

Fish passes

The large majority (83%) of respondents provided comments on the requirement to install a fish pass in any obstruction identified as impeding the migration of all migratory and freshwater fish. Although a number of respondents (55%) generally agreed with the principles and benefits likely to be derived from the installation and maintenance of fish passes, some (17%) considered that this was unnecessary as they believe that weirs etc have not contributed to the decline in fish stocks.

A number of respondents (17%) supported the provision for the Environment Agency to remove redundant obstructions, but recommended that careful consideration was needed before any action was taken. In particular the Agency would need to consider: the use of the water course, potential flood risk, sediment transport, and the loss of habitat.

Respondents (9%) recommended that a by-pass or channel should be installed, where possible, as an alternative to a pass. They suggested that such alternatives can be more beneficial in terms of minimising the impact on the function of the structure and allowing the passage of invertebrates both up- and downstream. A few respondents (11%) suggested that the Agency should also have consideration of other uses of the waters concerned by recreational groups, such as canoeists, when developing designs for fish passes.

Respondents (23%) considered that the costs of fish passes, as outlined in the Partial Impact Assessment, were under estimated. Although they acknowledged that costs will vary and are dependent on a number of factors specific to each situation, they suggested that further analysis should be undertaken to fully reflect the costs of implementing this measure.

Government response

All obstructions in rivers, such as weirs, are artificial structures that will have altered the aquatic environment of the given water body both up- and downstream. We recognise that some barriers may create new habitats and increase the diversity of fish stocks around the structure, but they will however also have an adverse effect on stocks more widely by preventing access to breeding, feeding and nursery areas. It is therefore essential that migratory and freshwater fish have access to the full length of the water course so that they can complete their life-cycle. The removal of barriers will also open up habitats for all species of fish, thereby improving the ecology of the water.

When assessing what works are required on any given obstruction, the Agency will undertake a full cost-benefit analysis and will consider the impact on the fish population and ecology of surrounding water before requiring the removal, installation or alteration of an obstruction.

The Agency will work closely with owners and occupiers of obstructions in developing an appropriate and fit-for-purpose design, which may include by-passes and channels. They will also take into account local factors, such as ecology and use of the particular water body, before approving a fish pass design.

The Government acknowledges the high costs for the installation of passes, presenting the higher end of the estimations in the Partial Impact Assessment. It should be noted that the Agency will prioritise critical obstructions, which will reduce the financial burden as not all owners or occupiers will be required to install a pass.

Fish screens

The large majority of respondents (58%) provided comments on the proposals in relation to the requirement to install screening at abstraction intakes and/or discharge outlets. A number of respondents (25%) were concerned with the measures as some screens will be difficult to install and maintain; e.g. cooling intakes are difficult to access, some are positioned in the seabed, and some screens can become easily blocked, thereby inhibiting the flow of water.

Although a number of respondents (40%) recognised the need for screening, they strongly recommended that all designs for screens (e.g. acoustic or noise) should be considered as potential solutions.

Respondents (6%) considered that screening at abstraction and discharge points will need to protect fish at all stages in their life-cycle. In particular, they should protect fish at the juvenile stage, which are vulnerable from damage at intakes and outlets in estuaries. It was suggested that the Environment Agency should also consider, amongst other innovative solutions, the inclusion of temporary screens for seasonal protection of fish movements.

As with fish passes, some respondents (21%) considered that the costs estimated for the inclusion of a screen in an abstraction or discharge point was an underestimation. It is considered that the costs can be significantly higher, particularly if alternative solutions to physical screens is sought, for not only installing the screens but also to maintain them and prevent any blocking.

Government response

Under the proposed measures for implementation, all intakes and outlets, not including abstraction of less than 20m³, will require screening to prevent the ingress and impingement of fish. Any exemptions given by the Environment Agency will be considered on a case-by-case basis and assessed against the potential threat to fish stocks. When requiring the installation of a screen, the Agency will work closely with the owner or occupier of an abstraction / discharge point to consider appropriate, pragmatic and innovative designs. This includes alternatives to physical screens, such as acoustics or temporary inclusion of screens during seasonal migration, although the owner or occupier will need to demonstrate that such screens are effective. It is acknowledged that screens need to be fit-for-purpose and address all of the operating needs of the relevant abstraction / discharge point.

Again, the Government acknowledges the high costs for the installation and maintenance of screens, presenting the higher end of the estimations in the Partial Impact Assessment. The Agency will consider all potential solutions for screening, which could potentially reduce the cost of installation and maintenance.

Funding

The large majority of respondents (58%) expressed concern with regards to funding of the implementation of the proposed measures. Many considered that the cost of installing fish passes in obstructions and screens in abstractions/discharge points, including ongoing maintenance, should be borne

by those who stand to benefit from it. As responses were received from a variety of sectors, those from the energy and water industry (17%) considered that recreational anglers and commercial fishers, who would benefit from the increase in fish stock, should pay for passes and screens. Conversely, those from organisations with environmental interests (26%) consider that owners/occupiers of obstructions and/or abstractions should fund the cost of installation. The general consensus across all sectors is that as a 'public good' can be derived from the increase in fish population, public funding should be used to implement these measures. A number of respondents (36%) suggested that to enable the Environment Agency implement these measures effectively, the Government should provide the necessary resources.

Government response

The Government acknowledges and recognises the potential financial burden this measure will have on business. Indeed, the Government has committed £10m over the next year for river improvement works undertaken under the Water Framework Directive⁴, a significant proportion of which will be used to install fish passes in various water courses. Further money may, in future, be made available for projects under the Water Framework Directive, and some fish pass schemes may be eligible for this funding.

The Government considers that owners or occupiers of obstructions and abstractions should bear the cost of the installation of a pass or screen, to offset the potential damage caused to fish populations. However, in seeking a compromise solution, the Environment Agency will only target critical barriers and will be seeking to work closely with owners and occupiers of those barriers to find pragmatic, simple and cost effective solutions. Such an approach has been used by the Agency in the past and will continue to be used in the future.

⁴ The investment was announced by the Minister on 29 June 2009, the press release is available at <http://www.defra.gov.uk/news/2009/090629a.htm>.

Next Steps

Defra is grateful to all those who responded to the consultation and for the information provided to assist in the finalisation of the proposals, all of which have been carefully considered.

The Better Regulation Executive has recently undertaken a review to consider all forthcoming regulations and the potential impact that these may have on business, in particular in light of the current financial and economic climate. Following this exercise, the Free Passage of Fish Order has been identified as a measure having significant impact on businesses, and it has therefore been decided not to proceed with this until at least May 2011.⁵

However, it has also been recognised that the measures required to meet the UK's obligation under the EU Eels Regulation, to be introduced through a separate Order, could not be delayed any further. This Order will give the Environment Agency powers to implement a number of measures throughout English and Welsh waterways, including close seasons, to meet the requirements under the Regulation.⁶ One of the key measures identified in the management plans is ensuring access for eels to feeding and nursery areas and escapement out to sea. Provisions on the construction of eel passes and installation of screens for eels will be included in the forthcoming Eels Order. Again, to ensure that the financial burden on owners or occupiers of barriers is minimised, the Agency will be prioritising and targeting only critical obstructions to the passage of eels. We consider that there are some 500 critical schemes, which involve between 10 and 20 obstructions per scheme, costing approximately £10,000 for each of the schemes. Similarly, the Agency will target effort for the installation of screens to areas of need, phasing implementation over a 5-year period. More information will be available soon on the Defra website.

⁵ The Government's Forward Regulatory Programme, 15 October 2009, available at <http://www.berr.gov.uk/files/file53203.pdf>.

⁶ 11 Eel Management Plans covering England and Wales have been submitted to the European Commission for final approval, available at <http://www.defra.gov.uk/foodfarm/fisheries/freshwater/fishman.htm#emp>.

Annex A – List of Organisations who responded

Category	Sub-Category	Organisation who responded
Energy	Hydropower industry/Mill owners	<ul style="list-style-type: none"> • South Somerset Hydropower Group • Mendip Power Group • Water Power Engineering • The Small Hydro Company • West Dorset Hydropower Group • Yorkshire Hydro LLP • Derwent Hydroelectric Power Ltd • The Lowwood Products Co Ltd • Derwent Hydro Development Ltd • Private individual • Private individual
	Water industry	<ul style="list-style-type: none"> • Thames Water • United Utilities • Wessex Water • Bournemouth and West Hampshire Water • Dwr Cymru Welsh Water • EDF Energy • Yorkshire Water
Environment	River Trusts/ Charity/ Non-profit organisations	<ul style="list-style-type: none"> • The Inland Waterways Association • Institute of Fisheries Management • Tyne Rivers Trust • Severn Rivers Trust • CPRE North Yorksire • The Countryside Alliance • The Wandle Trust

		<ul style="list-style-type: none"> • Salmon and Trout Association & Atlantic Salmon Trust • Wye and Usk Foundation
	Other	<ul style="list-style-type: none"> • Aire and Calder Rivers Group • South West Rivers Association
Public Sector	Quangos/Government Agencies	<ul style="list-style-type: none"> • Countryside Council for Wales • British Waterways • Environment Agency • Natural England • Advantage West Midlands
	Government Advisory Committees	<ul style="list-style-type: none"> • Regional Fisheries, Ecology and Recreation Advisory Committee - Anglian • Regional Fisheries, Ecology and Recreation Advisory Committee – North East • Regional Fisheries, Ecology and Recreation Advisory Committee – North West • Regional Fisheries, Ecology and Recreation Advisory Committee – Southern • Regional Fisheries, Ecology and Recreation Advisory Committee – South West • Moran Committee

	Local Government	<ul style="list-style-type: none"> • Middle Level Commissioners & Internal Drainage Boards • Ellingham, Harbridge & Ibley Parish Council
Trade and Consumer Representative groups	Trade Associations	<ul style="list-style-type: none"> • UK Major Ports Group & British Ports Association • Association of Drainage Authority • British Hydropower Association • Association of Electricity Producers • Water UK
	Consumer Group	<ul style="list-style-type: none"> • National Consumer Federation
Others	Academic/Research	<ul style="list-style-type: none"> • APEM Aquatic Scientists Ltd • International Centre for Ecohydraulic Research
	Recreational groups	<ul style="list-style-type: none"> • Canoe England - The British Canoe Union • The European Eel Anglers Association & Millom and District Angling Association
	Individuals	<ul style="list-style-type: none"> • Private individual

Annex B – Detailed overview of responses

1. A clear case for the implementation of the proposed measures has not been made.

It has long been recognised that the current state of fish stocks of some species, particularly salmon and eels, is in a seriously depleted condition within the inland waters of England and Wales. Salmon have seen a marked decline below their conservation limit as reported in the annual publication of the Environment Agency's and Cefas' 'Assessment of the Salmon Stocks and Fisheries in England and Wales'. Other species such as shad, smelt, and lamprey are also at historically low levels, and are protected to various degrees in European and national legislation; e.g. Wildlife and Countryside Act 1981. This also includes the Habitats Directive 92/43/EEC (on the Conservation of natural habitats and of wild fauna and flora) which lists some of these species, namely salmon, shad and lampreys, as those required to be subject to management measures. Eel stocks have declined by 95%, and under the EU Eel Regulation No 1100/2007 we are required to develop national management plans, for each River Basin District, with the objective of "permit[ting] with high probability the escapement to the sea of at least 40% of the silver eel biomass relative to the best estimate of escapement that would have existed if no anthropogenic influences had impacted the stock". Government intervention is therefore necessary to ensure that fish stocks are not allowed to decline further. One aspect of this is to address the passage of fish and, as current legislation is not sufficient to meet the requirements as stated above, this separate order needs to be introduced.

2. The measures proposed are not a requirement of the Water Framework Directive, as achievement of Good Ecological Status is only an aim, and fish are only one indicator.

The overall purpose of the Water Framework Directive is to ensure better protection of the quality of water and ensure restoration of the ecology of the water environment. Article 4 of this Directive requires Member States to prevent deterioration of the status of all bodies of water and to enhance and restore all surface water bodies with the aim of achieving good ecological status or, for heavily modified water bodies, good ecological potential. It is therefore clear from this that Member States are required to aim to **achieve** Good Ecological Status or Good Ecological Potential by 2015, and we would be in breach of this

Directive if we did not have sufficient legal controls in place to take the necessary steps.

As outlined in Annex V of the Directive, a key indicator used to classify Good Ecological Status and Good Ecological Potential is the 'composition, abundance and age structure of fish fauna'; i.e. fish stocks. If the expected range of species or stock levels is not present in a water body then it will fail its assessment due to the loss of this key indicator. Indeed, if any of the indicators defined under Annex V of the WFD fail, and considered relevant for the particular water body, then this will result in a failure of the overall assessment of the water body.

Therefore, in order to ensure that we meet our obligations under the Water Framework Directive, it is imperative that we implement the necessary measures to improve water bodies, which includes barriers to fish migration. Indeed, initial assessments suggest that many of the water bodies are at risk of failing to achieve good status as a result of barriers to migration. The Government therefore needs to ensure that such pressures on the ecological status are addressed.

It should also be noted that the loss of fish can change the ecology of a water body. Fish contribute across the full ecological range, providing food for predatory species while at the same time feeding on, and thus controlling, other species such as aquatic insects and plants. Permitting the further decline of fish species could therefore have a serious impact on the freshwater ecosystems and those reliant on them.

3. The measures proposed in the consultation document cannot be implemented by the 2015 deadline.

We agree that it will be difficult task for both the Environment Agency and businesses to implement the measures by 2015. However, all measures, of which hydromorphology is a part, will need to be assessed with further consideration given as to whether the overall costs for their implementation is disproportionately high. If this proves to be the case overall, then the deadline may be extended to phase implementation of identified measures to 2021 or 2027. It should be noted that extensions to the deadline based on disproportionate cost, or technical infeasibility, will be set out and explained in the river basin management plan, which will be scrutinised by the European

Commission. Work to consider the overall costs and implication to businesses is currently underway⁷.

4. Those who benefit from the introduction of a fish pass or screen should fund the installation and maintenance costs.

The Government recognises the cost implications of the introduction of fish passes in obstructions and screens in abstractions/discharges. It should be noted, however, that the fundamental principle of all environmental legislation, both domestic and international, is that the cost of addressing the effects of pollution should be borne by the party that causes it. Obstructions to the passage of fish impedes fish migration and hinders access to feeding and breeding grounds and, therefore, this principle must be applied here.

Given the significant financial burden these measures will have on businesses, the Environment Agency are developing a prioritisation scheme, as part of the River Basin Management Plans (<http://www.defra.gov.uk/environment/water/wfd/management.htm>), to target and prioritise **critical** obstructions. Each plan proposes objectives following an assessment of the status of the water bodies, identifies where pressures are impacting the ecological status and thereby what management solutions are required if the classification is less than 'good'. A cost-effectiveness analysis will then be carried out to assess the programme of measures for each river basin district. This will include the requirement for fish passes, ensuring that these are appropriate to meet the identified objectives and are not disproportionate to the costs of introduction.

Under this framework, the Agency have identified the obstructions that will need to be addressed, approximately at 2,500 sites. Going forward, the Agency will continue to develop a prioritisation scheme to enable better targeting of the critical obstructions, using the criteria set out in the Statement of Intent, thereby reducing the potential burden to owners and developers of obstructions, as not all will require a fish pass. We should emphasise that in all cases where a fish pass is needed, the Agency will work closely with owners and occupiers of obstructions to ensure that pragmatic solutions are found that will enable fish passability. Through this collaborative approach we consider that the costs of installing a fish pass can be kept to a minimum, for example, by completing the

⁷ For any further information on the Water Framework Directive and related work, please go to <http://www.defra.gov.uk/environment/quality/water/wfd/index.htm>.

fish pass as part of a repair or reconstruction of an existing obstruction or as part of a large build project.

5. The Environment Agency should also have regard for technical feasibility, as specified in the Water Framework Directive, when requiring the installation of a screen or pass.

The deadline for achieving Good Ecological Status or Good Ecological Potential can be extended to 2021 or 2027, if it is technically infeasible to achieve the objective within the timescale set out in the Water Framework Directive. A less stringent objective can be set if a specific water body is affected by human activity or its natural condition is such that it would be infeasible to achieve good status. As outlined in the River Basin Planning Guidance Volume 2⁸, the Environment Agency will consider it technically infeasible to achieve an objective only where:

- No technical solution is available;
- Difficulty in identifying a solution due to insufficient information on the cause of the problem;
- Practical constraints (e.g. gaining permissions) will hinder implementation by an earlier deadline.

However, it should be noted that where it is considered technically infeasible to achieve an objective, the Agency will be required to ensure that necessary action is undertaken to improve technical feasibility. This can include undertaking further monitoring and/or research to understand the problem and find solutions.

6. When considering the installation/removal/alteration of a fish pass, the potential impact on the spread of non-native and invasive species needs to be considered.

We agree that it is important to ensure that the spread of non-native, locally absent or invasive species is not facilitated through the provision of fish passes. The Environment Agency will be mindful of the potential risks when requiring work to be done, and will seek to manage them together with fish passage

⁸ Section 8 of the River Basin Planning Guidance Volume 2, August 2008, available at <http://www.defra.gov.uk/environment/quality/water/wfd/documents/riverbasinguidance-Vol2.pdf>.

improvement. The power for the Agency to refuse fish pass construction or to close an existing pass, either temporarily or permanently, has been provided to minimise the potential spread of these species. It should be noted that these powers will not be exercised to prevent the loss of legally stocked fish from one owner to another's fishery.

7. Many weirs etc have been in place for centuries and have therefore not contributed to the decline in stock levels, which have only occurred recently.

The Government recognises that there are many factors that impact on fish stocks and that have contributed to the declines in fish stocks in recent decades, whilst noting that the relative impact of these factors will vary between sites and for different species. We further recognise that the status of some fish species has been significantly impacted in recent decades by oceanographic and climatological changes (e.g. the reduced recruitment of juvenile European eels and the survival of salmon during their time at sea). However, while these broad-scale factors may have had a large effect on stocks of some species, this does not mean that other factors, such as barriers to migration, have not also played a part in regulating stock status both currently and in the past. Indeed, dams and weirs that have been in place for many decades are likely to have affected fish migration and impacted on populations throughout their existence, although their effects may have been less manifest in periods of relative abundance.

It should also be noted that it is very well established that barriers to fish passage are one of the major anthropogenic factors that affect the status of migratory and freshwater fish populations worldwide. Within Europe, experts have classified 67 of the 200 migratory and freshwater fish species as endangered (near extinction throughout all or much of their geographical range), vulnerable (species highly sensitive to environmental disturbance) or threatened (an intermediate category), and have estimated that the building of dams and weirs has accounted for 55-60% of the known causes behind these degrees of endangerment. The majority of affected species are either diadromous (i.e. species that move between marine and freshwater environments) or those that typically undergo smaller scale, in-river migrations. It is therefore self-evident that, for the many fish species that need to make such movements in order to complete their life-cycles, the presence of in-river barriers will pose an obstacle to migration. Consequently, this will have a potential constraint on the ability of these species to sustain healthy populations.

8. The measures proposed here will hinder the future development of renewable power generation, in particular micro-hydropower schemes.

The Government is fully supportive of the development of sustainable hydropower in England and Wales and recognises the potential contribution being made in reaching our renewable energy targets. However, any need for power generation must also be assessed against wider conservation and biodiversity concerns and an appropriate balance made between these.

9. Any diversion of water away from renewable power generation, i.e. hydro power schemes, for use in fish passes will reduce the output of electricity generation.

Current consenting standards do not enable a hydropower scheme to take all of the water passing through in a river, and therefore the residual flow would normally be adequate for an effective fish pass. However, the Environment Agency will consider the requirements of fish passes, and the type of facility needed, on a case by case basis. Full consideration will be given to the use of the structure and a pragmatic solution with owners/developers will always be sought before implementation. As previously stated, in order to fulfil the sustainable development obligation, hydropower schemes will need to address fish passage.

For all other types of obstructions/abstractions, the Environment Agency will work closely with the owner/occupier of the structure to ensure a pragmatic and fit-for-purpose solution is found, when requiring the installation of a pass, that balances the requirements to meet conservation and biodiversity needs with that of the function of the structure; ensuring it is not impeded or the impact is minimised.

10. If the aims of the proposals are to conserve fish stocks, then they need to take into account the impact recreational angling and commercial fishing have on the stocks.

The Government has an obligation to conserve the stocks of all species in water bodies across the UK, fulfilling EU and domestic commitments. We agree the recreational angling and commercial fishing can potentially have an impact on fish populations, and these need to be managed and regulated carefully. In this

regard, we are seeking to modernise and provide flexible tools for the Environment Agency through the Marine and Coastal Access Bill (Part 7, Chapter 3). This will enable the Agency to effectively manage fish stocks for all migratory and freshwater species, and better regulate recreational angling and commercial fishing.

11. The definition of obstructions should not include areas of excessive lighting at night or noise, particularly with regards to Ports.

There are many organisations which use such methods and their functionality will be maintained as much as possible. However, if they are known to be a problem, under the Water Framework Directive it would be expected that such an obstruction would be mitigated if there was no other alternative. Appropriate design of schemes would normally avoid any conflict. It should also be noted that Health and Safety considerations are already a key aspect of the Environment Agency's procedures.

12. The Environment Agency should consult with stakeholder when developing guidance that will outline implementation of the proposed measures.

The Agency will consult on the guidance that it will issue prior to implementation. It should be recognised however that the decisions to determine whether a fish pass, or screen, is needed will be largely driven by the requirements to achieve Good Ecological Status or prevent a deterioration in status as under the Water Framework Directive.

The Agency will also work closely with other organisations, .e.g. Natural England, when considering action in designated sites and finalising approach to implementation.

13. An appeals process has not been mentioned in the proposals.

We agree that an appeals process is necessary, and that this should be included in legislation and conducted by a third body. Currently, the Environment Agency conducts and hears all appeals made against any decision to install fish passes or screens.

We consider that all appeals should be logged within 28 days (56 days for a screen) of Notice of action sent by the Agency to the owner/occupier of any given structure. The appeals process will be undertaken by the Planning Inspectorate, who will assign an inspector to conduct the process. Their analysis may include an inspection of the structure to which work has been proposed and/or a request for further evidence from the Agency, the appellant or both. The inspector will decide whether the Notice stands, and therefore should be implemented and by a given date, or quashed.

During the appeals period, any work required under the Notice will be suspended pending the outcome of the decision by the Planning Inspectorate. However, it should be noted that in exceptional circumstances where it has been shown that works should not be delayed, Ministers may decide that suspension of the works is not appropriate, and require that works be undertaken whilst an appeal is being considered. If the Planning Inspectorate subsequently found in the appellant's favour, compensation would be awarded.

14. Under the Water Framework Directive, the primary use of heavily modified or artificial water courses is protected.

Most of the Heavily Modified Water Bodies are primarily used for flood protection, whilst a few are used for public water supply. Abstraction for public water supply is one of the largest abstraction uses, and the screening of their intakes will be needed in many circumstances in order to achieve Good Ecological Status or Good Ecological Potential. Even for Heavily Modified Water Bodies, the Water Framework Directive requires all reasonable measures to be applied and screening is such a measure. A majority of water companies already screen most intakes and there does not seem to be reason enough to make them exempt. Funding would be open for inclusion in Periodic Price Reviews and therefore the burden on the company profits is not likely to be adverse.

15. The requirements to ensure the free passage of fish should only extend to migratory species.

The Salmon and Freshwater Fisheries Review, 2000, stated that existing legislation is deficient in that it only covers migratory salmonids; i.e. salmon and migratory trout. Other diadromous species, for example eels, lamprey and shad, and freshwater species that also migrate considerable distances within rivers are

ignored by the legislation. Many coarse fish species show seasonal migration within rivers in order to spawn or to feed and they therefore need to be protected and included in this Order. In accepting the recommendations made in the Review, the Government undertook to rectify this deficiency and extend the Environment Agency's management and conservation duties to protect all migratory and freshwater fish.

This is also in line with other powers that will be provided through the Marine and Coastal Access Bill, which will extend the Agency's fisheries conservation and management duties to include all migratory and freshwater fish.

We would emphasise that the requirement to install fish passes will be prioritised for migratory fish, with only a few passes being installed for other fish when it is considered necessary and appropriate.

16. Abstraction of less than 20m³ should not be automatically exempt from screening as they too can be potentially damaging.

Taking a risk-based approach, we consider that any owners or developers of abstractions that take less than 20m³ of water over the period of a day should be exempt from these proposals; i.e. the requirement to install a screen. This is because the amount of water taken is minimal and therefore the risks to overall stock levels is very small. This is aligned with current measures whereby such abstractions are exempt from requiring an Environment Agency abstraction licence. It should be emphasised that the Agency will take a risk-based approach to requiring the screening of abstractions/discharges, and the exemption of 20m³ abstractions is within that remit.

17. Specific examples and offers to help shape the proposals further.

We are grateful to all respondents who supplied information and examples of relevant research or current practices in own areas. All information will be carefully considered and supplied to the Environment Agency to consider further when implementing measures.