

# **FISH PASSAGE Briefing Paper on behalf of Salmon & Trout Association and Atlantic Salmon Trust**

## **Current Legislation**

Under the Salmon and Freshwater Fisheries Act 1975 the Environment Agency may require any one

- who constructs a barrier in a salmon or sea trout river
  - who alters an existing barrier to increase the obstruction to these fish, or
  - who rebuilds more than half of an existing barrier
- to install a fish pass. The design of the fish pass must be approved by the Agency and it must be properly maintained.

The Act also requires the installation of screens on abstraction points and intakes etc to prevent salmon and sea trout being drawn in, and also to prevent the escape of farmed fish.

## **Government Proposals**

The Water Framework Directive requires member states to implement a programme of measures to improve the ecological status of all water bodies. They must ensure that the ecological status of water bodies does not deteriorate, and aim to reach Good Ecological Status (GES). One of the indicators used to assess GES is fish stocks (both the number of species and stock levels in a particular water), and initial assessments suggest that many waters in England are failing to achieve good status because of barriers to migration. These affect fish of a number of different species, not just salmon and sea trout. Many fish species migrate within rivers, and eels, shad and lamprey migrate between rivers and the sea.

The WFD requires member states to achieve GES by 2015; the deadline can be extended to 2021 or 2027 if it is 'disproportionately expensive or technically unfeasible' to achieve GES by 2012.

The Government published a consultation document in January 2009 proposing a number of changes to existing legislation. The key changes proposed would:

- 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 intakes and outlets.

The Government has now published a summary of the responses it received to the consultation paper, together with its own response to the points made; this also sets out the Government's plans to take this matter forward. Some 75% of respondents supported the proposals, although there were concerns about points of detail and about the cost. The Government confirms that it is 'essential that migratory and freshwater fish have access to the full length of the water course so that they can complete their life-cycle', and that measures to facilitate fish passage are thus necessary if GES is to be achieved.

**However, it goes on to state that the fish passage measures have been identified by BERR's Better Regulation Executive as ones that could have a significant impact on**

**businesses, given the current economic and financial climate, and that it has therefore been decided not to proceed with them until at least May 2011.**

The most potentially costly elements of the package are the power for the Agency to require the owners of barriers to install a fish pass, even if no work was being undertaken on the barrier, and the requirement to screen all intakes and outlets. In its response, the Government says that the Agency will work with owners to develop pragmatic, simple and cost-effective solutions, but reaffirms its view that owners should in principle bear the cost of the installation of a pass or screen, to offset the potential damage caused to fish populations. The Agency will target critical barriers, and will consider cases for exempting outlets and intakes from the screening requirement where this will not damage fish stocks.

**Eel stocks** are in a critical state, and action to restore these is required by a separate EU Eel Regulation. In view of this, the Government response states that it will proceed with a statutory instrument implementing this regulation which will include provisions on the construction of eel passes and installation of screens for eels.

### **AST/S&TA View**

- It is extremely disappointing that the Government has decided to postpone the introduction of these proposals. The Government has confirmed that they are essential if England is to meet its obligations under the Water Framework Directive. While the Directive allows completion of measures needed to achieve Good Ecological Status to be delayed if they are disproportionately expensive or technically unfeasible, it is difficult to see how this can be used to justify delaying the **introduction** of these measures.
- while there may be a case for delaying action on existing barriers where substantial costs would fall on their owners, this is not a good reason for delaying changes needed to remedy defects in the existing legislation. The Environment Agency should be given the power to require the installation of a fish pass whenever a new barrier is constructed or an existing one modified. It makes no sense to let people construct or modify barriers now but subsequently give the Agency a power to require them to install a fish pass retrospectively.
- the same arguments should cover screens for new outlets and intakes.
- the Environment Agency's licensing powers enable it to set conditions on new abstractions and impoundments. It should use these to require the installation of fish passes and screens wherever necessary; this is particularly important for new hydropower schemes