

MORAN COMMITTEE

Chairman Lord Moran

MEMORANDUM ON THE DRAFT MARINE BILL

Introduction

1 The Moran Committee was established in 1998, under the chairmanship of Lord Moran, to provide input to the Government's independent Review of Salmon and Freshwater Fisheries. It brought together all the main national NGOs concerned with angling and fisheries, and submitted co-ordinated views and evidence to the Review on all the issues that it covered. The Committee has continued to provide the Government and the Environment Agency with its views on matters relating to salmon and freshwater fisheries legislation.

2 The Committee met on 21 May 2008, under the chairmanship of Lord Moran, to consider the draft Marine Bill, and this memorandum reflects the views of the following organisations: the Fisheries and Angling Conservation Trust, the Salmon and Trout Association, the National Federation of Anglers, the Anglers' Conservation Association, the National Association of Fisheries and Angling Consultatives, the Specialist Anglers Alliance, the Institute of Fisheries Management, the Association of Stillwater Game Fishery Managers, the Atlantic Salmon Trust, the Angling Trades Association, the Welsh Salmon and Trout Association and the Federation of Welsh Anglers.

The case for new legislation on Migratory and Freshwater Fish

3 Among the issues that the Joint Committee intends to examine is the suitability of including regulatory issues concerning inland waters within the Marine Bill.

4 We believe that there is a very strong case for including these issues within the Bill. Biologically, there is no clear, well defined boundary between sea and fresh water. In some locations it may be abrupt; in others, such as estuaries and salt marshes, it may be gradual and variable. Inter-tidal zones provide essential nursery areas for many marine fish species, and in estuaries marine and freshwater fish species may co-exist. The importance of the interaction between freshwater and coastal habitats is recognised in the Water Framework Directive, which covers not only watercourses but also coastal waters out to one nautical mile in England and Wales.

5 There are also, of course, diadromous fish species, such as salmon, sea trout and eels, which have evolved to exist, at different stages of their lives, in both freshwater and the sea. Because these fish are exploited at sea (most salmon and sea trout net fisheries are in coastal waters) and are vulnerable to illegal fishing there, the relevant legislation has long applied to both inland and coastal waters, and the Environment Agency is responsible for enforcing it out to the six mile limit. It remains essential that the sustainable management of these fish, and of associated fisheries, extends throughout their natural range.

6 We believe that these are strong arguments for using the Marine Bill both to modernise all fisheries legislation, wherever it applies, and also to improve the integration between the different categories of fisheries legislation. We therefore welcome the proposals to extend the Environment Agency's regulatory powers to cover lampreys, smelt and, potentially, specified marine fish when they are in fresh water, but are concerned that exclusion of shad from this list will not assist holistic management of diadromous fisheries.

7 We must also point out that it is now eight years since the Government undertook, in its response to the Review of Salmon and Freshwater Fisheries, to introduce legislation to update salmon and freshwater fisheries legislation at an appropriate opportunity. The Marine Bill provides such an opportunity.

General Comments

8 Overall, we strongly support the main provisions of the draft Bill that affect freshwater and migratory fish. Our views on the principal proposals are set out below. We also support the proposal to modernise inshore fisheries and environmental management arrangements through the introduction of Inshore Fisheries and Conservation Authorities (IFCAs), although we believe that they need strengthening in a number of respects.

9 There is one further general point we wish to make. The proposed changes would devolve significant powers to Ministers, IFCAs and the Environment Agency. There is an emphasis on flexibility to meet local conditions. This is welcome, but if it is to succeed, the Government and its subordinate bodies will need to ensure that the necessary resources are provided at local level, and that there is full involvement of local people in the decision making process. In turn, this will require a change of culture and practice in some of the bodies concerned.

Part 6: Inshore Fisheries and Conservation Authorities.

10 While we welcome the principle of modernising the regulation of inshore fisheries, it is essential that the changes do not weaken the protection currently afforded salmon and sea trout; to ensure this, and for wider reasons, we would like to see the proposals strengthened .

11 At present the Environment Agency acts as the Sea Fisheries Committee for estuaries of most major salmon and sea trout rivers. This helps ensure that controls are in place to stop fishing for sea fish being used as a pretext to take salmon and sea trout illegally (SFCs have powers, under the Salmon Act 1986 to make byelaws to prevent fishing for salmon and sea trout in the guise of fishing for sea fish). It is now proposed that this arrangement should cease, and that IFCAs should become responsible for the whole coast, including the estuaries of major salmon rivers. At the same time there are no plans to change the Agency's responsibility for the regulation of salmon and sea trout within the inshore zone.

12 In these circumstances, it is important that IFCAs exercise their powers to ensure protection for migration of **all** diadromous fish, especially where stocks are threatened and particularly in estuaries. Under **Clause 142**, IFCAs will have a duty to protect the marine environment from the effects of sea fisheries, and **Clause 169** makes it clear that the term 'marine environment' includes fauna 'associated with a marine or coastal environment'.

This appears to cover salmon, sea trout, eels and other diadromous fish, but should be more explicit.

13 As Clause 142 is currently drafted, the exploitation of sea fisheries resources must be carried out in a sustainable way and the protection of the marine environment has to be balanced against the social and economic benefits of exploiting sea fisheries resources. We would like to see environmental protection given much greater priority, with sustainability referring to maintenance of a healthy marine ecosystem. In our view IFCA's should have an unequivocal duty to further the conservation of the marine environment, although in doing so they should, of course, take into account the social and economic benefits of exploiting sea fisheries resources.

14 We would also like to see IFCA's given a duty to contribute to the attainment of the objectives of the Water Framework Directive. This would ensure that IFCA's worked closely with the Environment Agency, which will be responsible for implementing the Directive in England and Wales, including coastal and transitional waters.

15 We support the Environment Agency's continuing responsibility for the regulation of fisheries for salmon, sea trout and eels within the coastal zone and its extension to other diadromous fish. It is important, however, that the Agency and IFCA's co-operate in the holistic, sustainable management of these fish stocks, including enforcement of their respective regulations to ensure the most cost-effective use of limited resources. To promote this, we would like to see **Clause 157** amended to give IFC officers the power to enforce salmon and freshwater fisheries legislation and Environment Agency byelaws relating to fisheries. The Agency could, of course, issue the appropriate warrants to IFC officers (as is currently done for some SFC officers), but it would be simpler to provide IFC officers with the necessary powers in the Bill (as is done for Marine Enforcement Officers in Clause 206).

16 Our final comment on this Part of the draft Bill concerns membership of IFCA's. Under **Clause 140** members appointed by national authorities must be associated in some way with the local fishing community or be knowledgeable about the marine environment. Although national authorities have powers to vary these provisions, there is nothing in the Bill to require anyone to be appointed to represent the interests of recreational sea anglers. We consider that it is essential that there should be at least two such members on each IFCA to reflect the economic and social importance of sea angling as recognised in the Cabinet Office Policy Paper 'Net benefits'

Part 7: Migratory and Freshwater Fish

17 **Clause 187** introduces a new concept of '**licensable means of fishing**'. It will be an offence to take fish by any other means without specific authorisation from the Environment Agency. (Of course, it remains an offence to use a licensable means of fishing without a licence).

18 This closes a loophole identified by the Review of Salmon and Freshwater Fisheries. The list of prohibited instruments in s.1 of the Salmon and Freshwater Fisheries Act 1975 is not comprehensive, and if someone uses other methods the only option is to prosecute under s.27 of that Act for fishing without a licence. It is unclear, however, if this can be used to deal with a method of fishing that cannot be licensed. These proposals remove this problem, and they have our support. We also support the introduction of a power

to issue different types of licence for different types of fisheries, together with the repeal of the current provision whereby a licence to fish for salmon automatically covers fishing for trout and coarse fish, and the complementary provisions in **Clause 189** concerning Authorisation to Fish.

19 **Subsection (6) of Clause 187** explicitly provides for the Environment Agency to impose conditions on a licence to use a **historic installation**, the term used in the draft Bill to describe fixed nets and traps operated under Certificates of Privilege.. This is a new power which, for example, will enable the Agency to limit the number of fish that may be taken or set conditions for the design and operation of an historic installation. In addition, Clause 194(9) inserts a new sub-paragraph (5B) into Schedule 25 of the Water Resources Act 1991, making it clear that Agency byelaws may apply to historic installations.

20 We strongly support these changes. At present historic installations fall outside the Environment Agency's regulatory framework, even when they are used to take fish from depleted stocks. In Parliamentary Answers to Lord Dear on 25 March 2008, Lord Rooker recognised the deleterious effect that unrestricted fisheries operating under certificates of privilege can have on fish stocks and fisheries not meeting their conservation limits, and he acknowledged that putchers on the River Severn take fish returning to the Wye, which is a Special Area of Conservation and has salmon stocks well below their conservation limit. We agree with the Government that in such circumstances it is essential that the Agency has the power to limit catches by historic installations and to apply other conservation byelaws to them.

21 We are, however, concerned that on their own these changes may not be enough. Section 212 of the Water Resources Act 1991 provides for compensation to be paid to fisheries owners whose interests are adversely affected by a byelaw restricting the use or design of any instrument for taking fish. The Review of Salmon and Freshwater Fisheries was concerned that this provision might on occasion discourage the Environment Agency from proposing byelaws needed to conserve fish, and recommended that it be repealed, on the basis that compensation should not be paid for conserving a natural resource. This recommendation was accepted by the Government in its response to the Review, but it is not being taken forward in the draft Bill.

22 We fear that if this provision remains unchanged the Environment Agency will be reluctant to use its new powers to control exploitation by historic installations. The Government's failure to act appears to stem from concerns that repealing s.212 would conflict with the right to property under the Human Rights Act. In our view, these concerns are misplaced; as the Government's response to the Review states, 'measures restricting exploitation of salmon, sea trout or eels for conservation reasons would not deprive fisheries owners of their property rights, but rather regulate, in the wider public interest, how such rights should be exercised. Wild fish are a natural resource, not private property, and conservation measures are needed to ensure that this resource is managed in a sustainable way. Failure to take necessary conservation measures could lead to a collapse of the resource, which, among other things, would be to the disadvantage of those owning fishing rights'. The Response goes on to note that compensation is not paid when measures are introduced to reduce exploitation of sea fish, and it says that the Government believes that the same should apply here.

23 We must also point out that the right to compensation for fisheries owners under s.212

seems inconsistent with the optional compensation now being proposed for netsmen in Clause 188 (see below). We believe that compensation in both cases should be at the discretion of the Environment Agency and that s.212 should be amended to bring it into line with the new subsection (4) of s. 26 of the Salmon and Freshwater Fisheries Act 1975 being proposed in Clause 188. It should, however, be made clear, preferably in the Bill, that compensation will not be paid in cases where reduced exploitation is needed to meet conservation targets, such as conservation limits.

24 **Clause 188** makes two important changes to the system of **Net Limitation Orders (NLOs)** provided for in s.26 of the Salmon and Freshwater Fisheries Act 1975. It removes the requirement that Ministers **must** hold a public inquiry into a proposal to reduce the number of licences in a fishery if an existing licence holder objects, and the provision prohibiting Ministers from confirming an NLO if it would remove a licence from someone dependent on fishing for their livelihood.

25 We strongly support these changes. The existing provisions have remained essentially unchanged since their introduction in 1923; as the Review of Salmon and Freshwater Fisheries says, then 'the power to limit numbers was subordinated to the perceived need to protect the rights of existing netsmen. This limited (and continues to limit) the effectiveness of this mechanism as a means of reducing levels of exploitation.' As a result, it can be impossible to reduce licence numbers in a net fishery even if levels of exploitation are unsustainable. The changes being proposed would remove these constraints, making it possible to reduce net licence numbers where this is necessary to conserve stocks.

26 We are also in favour of the proposal to extend the use of NLOs to other licensable fisheries, other than rod and line and historic installations, so that NLOs can be used to limit numbers of eel nets.

27 We support the proposal to give the Environment Agency a power to pay compensation to licence holders who are wholly dependent on fishing for their livelihood and who lose their licences under these provisions, with the proviso, for the reasons set out above in relation to s.212 of the Water Resources Act 1991, that this power should not be used when it is essential to reduce licence numbers in order to conserve stocks.

28 **Clause 194** makes a number of changes to the Environment Agency's **byelaw-making powers**.

29 At present, byelaws can require fish below a minimum size to be returned alive, but they cannot set a maximum size. **Subsection (5)** changes this to permit both **minimum and maximum sizes to be set**. We support this change, but suggest that it would allow more flexible management if ranges of sizes could be set. Large salmon are multi-sea winter fish (i.e. fish which have spent more than one winter at sea before returning to their native rivers). Such fish are often comprise genetically distinct populations which are in a depleted state. Similarly, large sea trout are usually multiple spawning females which make a disproportionate contribution to sea trout stocks. Maximum size limits (which are used in many fisheries on a voluntary basis) will enable these valuable fish to be conserved, and could be used also to protect large fish such as carp in coarse fisheries. The ability to use size ranges would allow even finer tuning of management of stocks.

30 **Subsection (4)** gives the Environment Agency powers to provide for **close seasons and close times** for all fish species by byelaw. The draft Bill repeals the provisions in the Salmon and Freshwater Fisheries Act 1975 that require there to be close seasons for

salmon, sea trout and brown trout, and it contains a range of other rules concerning close seasons and close times.

31 We support these changes, which follow the recommendations of the Salmon and Freshwater Fisheries Review. As the Review concluded, close seasons and times continue to play a useful role in conserving salmon and sea trout stocks, but there will be advantages in giving the Agency flexibility over their timing and duration so that it can take full account of local conditions. The case for close seasons for other fish species is less clear cut, and again the Agency should be given the flexibility to take advances in scientific understanding and local conditions into account.

32 **Clause 196** gives the Environment Agency the power to introduce **emergency byelaws**. In an emergency, standard procedures are too slow to allow the Agency to take effective action. A prolonged drought, for example, might prevent salmon and sea trout entering a river and make them vulnerable to a net fishery operating in the estuary. In such circumstances, the Salmon and Freshwater Fisheries Review recommended that the Agency be given the power to introduce byelaws which would have immediate effect.

33 We support this new power. There are occasions when the Agency needs to act quickly to protect fish stocks, and the safeguards proposed seem adequate to prevent abuse. However there will be circumstances in which the emergency is short-lived and the byelaw no longer necessary. It would be helpful if the Agency, when making the byelaw, set out the circumstances in which the byelaw would be removed earlier than 12 months.

34 **Clause 197** broadens the coverage of s32 of the Salmon Act 1986, which makes it an offence to **handle salmon or sea trout in suspicious circumstances**, to cover all other diadromous and freshwater fish, and closes a loophole whereby someone could claim that he was not acting to the benefit of another person.

35 We support these changes, which could provide a useful means of dealing with the theft of other fish species, but we would like to see a further change: a person should be guilty of an offence if he handles a fish at a time when he believes or should suspect that an offence involving taking, killing, landing or **selling** a fish has been committed. The inclusion of selling would assist the Environment Agency to enforce the proposed byelaw banning the sale of rod-caught salmon and sea trout.

36 **The Environment Agency's fisheries duty** is set out in s.6(6) of the Environment Act 1995. **Clause 198** extends this to cover the wider range of fish that will be covered by the amended Salmon and Freshwater Fisheries Act 1975 and related legislation. However, the Salmon and Freshwater Fisheries Review recommended that this duty should be interpreted as a duty:-

- to ensure the conservation and maintain the diversity of freshwater fish, salmon, sea trout and eels and to conserve their aquatic environment;
- to enhance the contribution salmon and freshwater fisheries make to the economy, particularly in remote rural areas and in areas with low levels of income;
- to enhance the social value of fishing as a widely available and healthy form of recreation.

and that this should put on a statutory basis at the first available opportunity.

37 The Government accepted this recommendation, and the wording above is included in

the statutory guidance issued to the Agency on its objectives and contribution to sustainable development. We would now like to see this interpretation included in the revised s6(6). There is a parallel elsewhere in the Marine Bill in clause 142(2), which states how IFCA's are to interpret their fisheries duties.

38 **Clause 200** enables the Government to introduce comprehensive regulations controlling **the keeping, introduction and removal of fish**. The principles of the scheme the Government has in mind are described in the consultation document. The intention is to produce a comprehensive scheme covering both non-native fish (currently covered by regulations made under the Import of Live Fish Act 1980) and native fish.

39 We support the principles underlying these proposals. The current system for regulating introductions, based on s.30 of the Salmon and Freshwater Fisheries Act 1975, does not work well, and the Salmon and Freshwater Fisheries Review recommended comprehensive changes. Movements of fish can threaten the genetic integrity of stocks in the receiving water and threaten biodiversity. Fish movements can also spread disease and parasites. The latter are supposedly controlled by separate rules on fish health, but in reality fish movements pose multiple threats, and they need to be dealt with in an integrated way.

40 The proposals seem cover all the key issues, with the exception of enforcement. This will be critical; however well designed the new rules may be, they will not be effective unless they are enforced. This will require the Government to make the necessary resources available. Effective enforcement would also require the Environment Agency to have the necessary powers, but these do not appear to be contained in the draft clause. It is not clear that existing enforcement powers would be applicable or adequate.

41 A key feature of an effective enforcement regime should be provisions to ensure that fish transported from one location to another are accompanied by the appropriate documents (fish movements are best policed before fish are introduced into a new water, since after the event it can be difficult to prove that fish have been introduced into a water illegally). Such rules already exist for animal welfare and fish health purposes, and they will need to be extended to ensure that they cover introductions under these new regulations.

42 We are, however, concerned that the system the Government has in mind, as described in the Policy Paper accompanying the draft Bill, may be overly bureaucratic, although it is difficult to reach a final judgement on this until more details are available on the proposed implementing regulations. If the new arrangements are to be effective, they must be easy for fisheries managers (including the large numbers of volunteers who run angling clubs and waters). to understand and operate, and not place undue burdens on their (and other) businesses. It will also be important to ensure that these regulations and those on fish health and animal welfare are operated in an integrated and coherent way, so that fisheries managers are not faced with multiple inspections, conflicting requirements or several demands for the same information from different government agencies on different forms. In addition, the level of control needs to be in proportion to the risk. Stocking enclosed waters with native coarse fish poses few if any risks to biodiversity in most parts of the country, and should be permitted with minimal restriction under the proposed regulations. While in our view priority must be given to protecting biodiversity and where appropriate, the genetic integrity of fish stocks, this should not mean applying uniform levels of control for widely differing levels of risk.

43 There is a further issue we would like to see addressed in the draft Bill. *Gyrodactylus salaris* (**Gs**) is a parasite which can cause very high mortality in salmon. It has devastated salmon stocks on a number of rivers in Norway, and if it were ever introduced into the UK it could lead to the extinction of salmon in affected rivers. Measures are in place - such as a ban on the import of all live salmonids - to keep Gs out, and while we all hope that these will be successful, it is also essential to have all the powers necessary to control its spread or eradicate Gs if it ever is found here.

44 In this respect, there are weaknesses in the powers available to Ministers in England and Wales; in Scotland, they have addressed this problem; the Aquaculture and Fisheries Scotland Act 2007 provides Scottish Ministers with a range of additional powers. In particular, Scottish Ministers can designate areas specifically in connection with Gs and ban the movement of vehicles and specified materials into and out of such areas; introduce restrictions on movements within Scotland if there is an outbreak of Gs elsewhere in the UK; erect barriers to the migration of fish to prevent the spread of Gs; use chemical agents to eradicate Gs; and, where necessary, order the clearance of fish farms in designated waters. There is also a wide-ranging, general power enabling Scottish Ministers to take 'such other measures as they consider appropriate' to eradicate Gs or prevent or limit its spread in Scotland, together with a power to pay compensation in relation to the control and eradication of Gs.

45 Currently, Defra intends to use regulations implementing Council Directive 2006/88/EC on animal health requirements for aquatic animals to provide the powers needed to deal with an outbreak of Gs. We are concerned, however, that these will be significantly less wide-ranging than the powers now available in Scotland. In particular, it is not clear whether they will provide powers to restrict **all** movements into and out of an infected area and they will not include the enabling power available to Scottish Ministers. If necessary, we would like to see provisions similar to those now found in Scottish legislation included in the Marine Bill.