Strategic Planning and Corporate Services Group
Strategic Support Division

Department of
Agriculture, Environment and Rural Affairs
An Roinn
Talmhaíochta, Comhshaoil agus Gnóthaí Tuaithe
Depairtment o'
Fairmin, Environment an' Kintra Matthers
www.daera-ni.gov.uk

Your reference:
Our reference: ACP/26/255

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16 November 2026

Dear Janice,

Fisheries, Aquaculture and Water Environment (FAWE) Bill - response to proposed amendments and Committee queries.

Thank you for your letter of 11 November 2026, in which the Committee provided suggested amendments that it has received from stakeholders in relation to Clauses 4-9 of the Fisheries, Aquaculture and Water Environment Bill.

The Department welcomes the opportunity to consider these suggestions and outline how the matters raised are already covered in the Bill or are more appropriately addressed through other policies and legislation.

The Department will address each one individually below.

Clause 4: Duties of the Department

The Department has considered the concerns put forward by stakeholders regarding permitting the Department to depart from the Inland Fisheries Policy Statement. The

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reason for permitting the Department to move away from the policies contained in the Inland Fisheries Policy Statement, is to be able to adapt the Department's approach to matters where new information becomes available, where the actions of a government outside of the UK affect the aquatic environment, or in response to international obligations, as set out in clause 4(2).

Where any of the 'relevant changes' occur, the flexibility to move away from the Statement will also enable the Department to consider these changes and review the relevant policy within the Statement and amend if necessary.

An example of where the Department may need to depart from the Inland Fisheries Policy Statement could arise in relation to the management of Atlantic salmon. Salmon are migratory and, in catchments such as the River Erne, their effective conservation and management requires cooperation on a transboundary basis between Northern Ireland and Ireland. Decisions taken in one jurisdiction can therefore directly affect the Department's ability to manage salmon stocks and exercise its inland fisheries functions in accordance with the policies set out in the Statement.

For example, if a new conservation commitment were agreed through the North Atlantic Salmon Conservation Organization (NASCO), the Department may need to alter its approach to salmon management in order to respond to that commitment. The Inland Fisheries Policy Statement may not have anticipated the particular measures subsequently agreed internationally.

The River Erne also provides a practical illustration of the additional transboundary considerations involved. Salmon moving through the Erne system are affected by the operation and management of the hydroelectric infrastructure at Ballyshannon and Cliff in Ireland. Decisions taken, or measures not taken, in Ireland in relation to fish passage and the management of those hydroelectric stations can therefore affect salmon populations throughout the Erne catchment, including within Northern Ireland. In those circumstances, DAERA may need to adjust its management approach in response to decisions outside the United Kingdom in order to discharge its fisheries functions effectively and respond to relevant international conservation commitments. Requiring

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the Department invariably to follow an existing Policy Statement could constrain its ability to respond appropriately to such developments.

Clause 4(3) makes the Department publicly accountable for any move away from the Statement by placing a duty on the Department to publish a document describing the decision, the relevant change and how this change affected the decision.

The Department does not consider the flexibility afforded to it by clause 4(1) to be a "loophole". The same level of flexibility is available through the Fisheries Act 2020 when a decision relating to sea fisheries needs to be taken that is not in accordance with the UK Joint Fisheries Statement.

On the proposal by Fish Legal Ltd., the Department would agree with the Committee's view that it would not be usual to put defined outcomes on the face of a Bill. In response to a similar proposal by Ballinderry Rivers Trust and the Rivers Trust on the 'sustainability objective' regarding measurable outcomes (letter to Committee dated 3 November), the Department has highlighted the relevant legislation which the Department operates under and reports on and advises that measures and targets are more appropriately contained within plans and strategies. The Department will set out the links between these in the Inland Fisheries Policy Statement.

The Department has considered the proposed amendments by the British Hydropower Association (BHA) and considers these to be unduly prescriptive and to be in conflict with the aims of taking forward clauses 1 and 2 and acting in accordance with the published Inland Fisheries Policy Statement

The Department also considers that the proposed amendments cut across all other legislation that the Department operates under and that to include such amendments may have unintended consequences and not deliver their intended purpose.

The Department has noted BHA's suggested amendments regarding enforcement. The Department operates across a number of areas where it has a compliance/enforcement role. To ensure consistency across this function, the Department has set out its Enforcement Policy (https://www.daera-ni.gov.uk/publications/daera-enforcement-policy)

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which outlines the principles and framework it will follow to deliver consistent and proportionate enforcement and promote confidence in its enforcement process. As the Committee is aware, the DAERA Enforcement Policy is currently being reviewed.

Clause 5: Interpretation

With regard to BHA's comment on the definition of "fish and aquaculture activities", the Department can confirm to the Committee that this definition is directing the reader to the individual definitions of these activities and is included to remove doubt that the combination of both is a separate activity.

On the definition of "sensitive species", the Department would agree with the Committee's assessment and do not consider that the proposed amendment by BHA is required. The Wildlife (Northern Ireland) Order 1985 already makes provision to grant wildlife licences to control wild birds for the purpose of preventing serious damage to fisheries.

Clause 6: Power to make Regulations

The Department would agree with the Committee's view and its understanding of the Department's duties when developing policies and bringing forward subordinate legislation. The Department notes the proposals by BHA and is confident that these are covered under obligations placed on the Department by legislation, guidance, good practice and oversight by the Committtee, Assembly and other statutory bodies.

With regard to the proposed amendments covering sewage consents, water quality and monitoring, there are regulation making powers available for such purposes through the Water (Northern Ireland) Order 1999 and the Environment Order (Northern Ireland) Order 2002.

The wider water environment regulatory framework is principally set out through the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017. These regulations establish the requirements for the monitoring and classification of water bodies, setting environmental objectives for water bodies, and establishing a programme of measures. This information is published in River Basin Management Plans.

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The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 were made under section 2(2) of the European Communities Act 1972 which is no longer available following EU Exit. The Department is conscious there may not be sufficient provision to amend these regulations, and potentially other assimilated law that relates to the water environment, using the regulation making powers that are available through the Water (Northern Ireland) Order 1999 and the Environment Order (Northern Ireland) Order 2002. Defra is also considering this issue and depending on timings, it may be necessary to make provision for amendments either through this Bill or, subject to a legislative consent motion, the UK Government's proposed Clean Water Bill.

Part 2: Sea Fisheries Enforcement Powers

Clause 7: Enforcement Powers

To address the concern raised by ANIFPO and NIFPO about Northern Ireland registered fishing boats being subject to English and Welsh law when fishing in the Northern Ireland Zone, the Bill affords the relevant powers from the Marine and Coastal Access Act 2009 to our Sea Fisheries officers when applying NI sea fisheries legislation to boats fishing in the NI zone, and NI fishing boats wherever they may be.

Should an NI registered fishing boat be boarded by a British sea fisheries officer from another administration when fishing outside the Northern Ireland zone, they may be subject to the legislation applicable to that jurisdiction.

Section 30 of the Fisheries Act 1981 sets out the requirements for the enforcement of rules relating to sea fishing by any fishing boat within the Northern Ireland zone. The offences where forfeiture may apply are set out in section 11 of the Sea Fish (Conservation) Act 1967. This Bill does not make any changes to existing enforcement arrangements.

The Department notes the comment by an individual that legislation must include commitments regarding resourcing, surveillance and annual publishing of inspection reports. The Department does not consider placing such commitment on the face of the Bill would be appropriate. Such activities should be proportionate to the level of risk and

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flexible to address issues of concern as they arise. The policy intention is also to reflect the approach in the rest of the United Kingdom.

Clause 8: Interpretation

The Department has noted the comment by an individual on this clause. The proposed enforcement powers are on the face of the Bill and this section directs the reader to those powers which are contained in Primary legislation. The Department consulted on the application of these powers with 86.3% of consultation responses on this matter agreeing that DAERA should standardise enforcement powers for fisheries officers in Northern Ireland and bring these in line with the rest of the United Kingdom and Republic of Ireland.

There is no subordinate legislation being proposed. The phrase “with any appropriate modifications” is a common legislative term to refer to the necessary modifications to references needed for the legislation to relate to their application under clause 7, a similar use of this wording was included in section 39 of the Marine Act (NI) 2013. There is no changing of the powers being made available.

Part 3: Mode of Trial and Penalty for Offences

Clause 9: Mode of Trial and Penalty for Offences

Following ANIFPO and NIFPO giving their evidence to the Committee, officials subsequently met with representatives from these organisations and clarified that Section 7A of the Fisheries Act (Northern Ireland) 1966 continues to apply solely to inland waters.

They further clarified the sections in the Bill which pertain to Sea Fisheries are:

- Part 2 -sea fisheries enforcement powers
- Part 4 – s11(2)(g) – FPNs for offences in part 8 of the 1966 Act
- Paragraphs 7(1)-7(6) of Part 1 of the Schedule – Sea Fisheries amendments to penalties in the 1966 Act (for offences in s124,126, 127, 128, 129 of the 1966 Act)
- Paragraphs 10(1)-(3) of Part 2 of the Schedule – sea fisheries amendments to penalties in the Sea Fish Conservation Act.

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In relation to the maximum penalty levels, these have been updated to align with those in neighbouring jurisdictions. For offences prosecuted summarily in the Magistrates' Court, legislation in Northern Ireland must specify a maximum financial penalty. It is for a member of the judiciary to consider all relevant evidence before determining the appropriate penalty, considering aggravating and mitigating factors, as is their role.

With regard to the issue of the landing of undersize fish, departmental officials have clarified the position with the Producer Organisations in that the landing obligation (arising from Article 15(1) of Regulation (EU) No 1380/2013) requires that all quota species must be landed and counted against quota, unless exemptions apply. Fish below Minimum Conservation Reference Size (MCRS) cannot be sold for direct human consumption and therefore cannot attract normal prices for vessels. This size limit is in place to reduce catches of young and not fully developed marine species.

Undersized fish that have to be landed under the landing obligation must be recorded in the log book as a separate entry for each species. Any undersized fish landed must not be sold for direct human consumption. They may be sold for other uses including bait, fishmeal and cosmetics. This Bill does not change anything in the existing landing obligation.

The Bill does not amend section 127 of the Fisheries Act (NI) 1966 which provides that the Department may make an order subject to negative resolution to prescribe a minimum size of sea fish below which you are not permitted to land. For clarification, the Department has previously used this power for prescribing a minimum landing size of sea fish which are not subject to quotas, the most appropriate example being The Edible Crabs (Undersized) Order (Northern Ireland) 2020 (as amended) which prescribes a minimum landing size of 150mm.

Reference: New Clause 9A after Clause 9:
The Department has reviewed the proposed new clause by BHA and considers that the issue of how the Department conducts its enforcement responsibilities is best placed within its Enforcement Policy to ensure a consistent approach across this function of the Department.

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The Department does not consider that this amendment should be included in the Bill.

I hope this information is of assistance but should you require anything further please contact me directly.

Yours sincerely,



Paul McGranaghan
Departmental Assembly Liaison Officer

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NORTHERN IRELAND ASSEMBLY

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11 November 2026

Dear Paul

Re: Fisheries, Aquaculture and Water Environment (FAWE) Bill

At its meeting on 10 November, the AERA Committee continued deliberations of the FAWE Bill and considered the stakeholder evidence and suggested amendments received in relation to **Clauses 4 – 9.**

The Committee agreed to forward these matters to the Department for its comments and would be grateful for a response detailing any rationale the Department can see for not taking the proposed suggestions/amendment forward; whether the provisions in question are already covered sufficiently elsewhere in the Bill or could be potentially addressed elsewhere in the Bill; or are intended to be covered via delegated legislation or potentially statutory guidance. **Please see below**.

Clause 4: Duties of the Department

A number of stakeholders raised concerns that this Clause creates a loophole in allowing DAERA to depart from the policy statement if there are changes in circumstances. The Committee would welcome clarification on examples of circumstances that would require the Department to deviate from the Policy Statement.

Fish Legal Ltd proposed that the Clause 4 Duty should be capable of producing substantive and measurable outcomes and recommends that the statutory objectives and Policy Statement be linked to transparent priorities, measurable outcomes, periodic review, and public accountability.

The Committee would welcome confirmation that it would not be usual to put defined outcomes on the face of a Bill and that these would more likely be spelt out in regulations.

British Hydropower Association (BHA) suggest that Clause 4 should apply to the full range of regulatory and enforcement functions affecting inland waters and should set clear standards for evidence, proportionality, decision-making and written reasons. **They have provided 6 proposed amendments:**

- Expanding Clause 4(1) by inserting the following functions after the existing reference to aquaculture in inland waters: "the protection of the aquatic environment, the regulation of works in or affecting inland waters, the issuing of consents or permissions, and the investigation or enforcement of suspected offences relating to inland waters";

- Adding "(1A) When exercising a function to which subsection (1) applies, the Department must— (a) act on the basis of relevant and available evidence; (b) identify the statutory provision under which the function is exercised; (c) identify any environmental harm or material risk of environmental harm relied upon; (d) have regard to the nature, likelihood, scale, duration and reversibility of that harm or risk; (e) have regard to the economic, social, employment, heritage, energy-security, and climate consequences of the decision; (f) adopt the least burdensome measure capable of achieving the legitimate environmental purpose; (g) act consistently, transparently and within a reasonable period; and (h) give written reasons in accordance with subsection (1B)."

- Adding: "(1B) A written decision requiring consent, imposing a condition, refusing, or delaying an application, issuing an enforcement notice, or alleging an offence must state— (a) the statutory provision relied upon; (b) the material facts and evidence relied upon; (c) the environmental harm or risk identified; (d) why the requirement or action is necessary; (e) why the requirement or action is proportionate; 25 (f) any material evidence or representations submitted by the affected person and how they were considered; (g) any review, appeal, or escalation mechanism available; and (h) any applicable time limit."

- Adding: "(1C) Where material scientific or technical evidence is disputed, the Department must not determine the matter without giving the affected person a reasonable opportunity to respond to the evidence upon which the Department proposes to rely."

- Adding "(1D) The Department may not rely upon evidence obtained after a decision as retrospectively supplying the reasons or evidential basis for that decision, except where the decision is reconsidered and remade in accordance with this section."

- Adding a new Clause 4A: “Regulatory guidance and service standards 4A.— (1) The Department must prepare and publish guidance concerning the exercise of its regulatory and enforcement functions affecting inland waters. (2) The guidance must include definitions and illustrative examples of routine maintenance, repair, emergency works, improvement works and new works; (b) the circumstances in which consent is or is not required; (c) the information and evidence ordinarily required from an applicant; (d) the evidential and technical standards to be applied by the Department; (e) procedures for dealing with urgent safety, flood-risk or asset integrity works; (f) arrangements for resolving disputes between relevant divisions or public authorities; and (g) service standards for acknowledging, assessing, and determining applications and requests for regulatory advice. (3) The Department must consult persons likely to be affected before publishing or materially amending the guidance. (4) The Department must publish an escalation procedure to be used where— (a) a service standard has not been met; (b) delay may cause a seasonal environmental or construction window to be missed; (c) delay may prejudice public safety, asset integrity, renewable energy generation, or environmental protection; or (d) two or more public authorities have adopted inconsistent positions. 27 (5) Where the Department fails to determine an application within the applicable service standard, it must— (a) notify the applicant; (b) explain the reason for the delay; (c) identify any outstanding information; (d) provide a revised determination date; and (e) refer the matter to a senior officer independent of the original decision maker if requested by the applicant. (6) The Department must report annually on its performance against the service standards.”

Clause 5 - Interpretation

In relation to the definitions set out in Chapter 1:

BHA highlighted that the definition of “fish and aquaculture activities” is circular and therefore meaningless. However, the Committee would welcome clarification that the wording in the Bill is actually directing the reader to the definition of fish activities and aquaculture activities.

BHA also proposed an amendment relating to sensitive species.

> ***Sensitive species (c) should exclude those species of birds that are controlled by the Department or that are deemed to be a pest.***

In terms of definitions, the Committee would welcome clarification that tight definitions would not be usual on the face of a Bill as this would mean any future changes, due to matters of concern changing, would then have to be made through primary legislation.

Clause 6 - Power to make regulations.

The Committee noted that the potential for regulation gaps was raised in evidence, however, there may be some misunderstanding with stakeholders as to what the Department's usual duties would be in regard to regulation development.

BHA have proposed the following amendments:

- Amending the opening words of the substituted section 26(1) to provide: "The Department may make such regulations as are necessary and proportionate for any of the following purposes—" We propose adding: "(1A) Before making regulations under subsection (1), the Department must have regard to— (a) the nature and scale of the environmental problem to be addressed; (b) the available scientific and technical evidence; (c) whether the purpose could be achieved by guidance, voluntary agreement, or a less burdensome regulatory measure; (d) the effect of the proposed regulations on rural businesses, existing infrastructure, renewable-energy generation, heritage assets, and employment; and (e) the inland fisheries policy objectives.

- Adding: "(4A) Regulations under this section may not be made unless the Department has— (a) consulted persons likely to be materially affected; (b) published an assessment of environmental, economic, social, equality, rural, climate and regulatory impacts; and (c) published a statement explaining why the proposed provision is necessary and proportionate." Requirements carrying criminal or regulatory consequences should be contained in, or clearly authorised by, legislation.

- Adding: "(4B) Guidance issued by the Department may not extend the scope of a criminal offence or impose a requirement which is not contained in, or authorised by, a statutory provision."

One individual has proposed that the scope must be expanded to include stronger statutory protections, including the removal of legacy sewage discharge consents, legally binding water quality standards, independent environmental monitoring and public reporting, and safeguards to prevent restrictions on public recreational access to waterways.

A further individual would also welcome consideration, whether within this Bill or the wider water-environment regulatory framework, whether there is sufficient provision for environmental monitoring and evidence relating to the condition and impact on the receiving aquatic environment.

PART 2
Clause 7 - Power to make regulations.

A concern was raised by ANIFPO and NIFPO on how fisheries enforcement powers from the Marine and Coastal Access Act 2009 would operate in Northern Ireland.

"In relation to the fisheries enforcement powers of a British sea-fishery officer found in section 276 of the 2009 Act, under subsection (1) it states: "Any fish to which this section applies are liable to forfeiture under this section if, by virtue of the fish failing to meet requirements as to size, an offence under the law of England and Wales has been committed in respect of the fish".

It is not clear how these powers apply to law within Northern Ireland as stated in the 2009 Act. It does state in the fisheries bill under Part 2, 7(2)(a) that the fisheries enforcement powers under the 2009 Act will be exercised in the Northern Ireland zone **- Does this mean the NI zone will be subject to English and Welsh law under forfeiture or is this clarified elsewhere?**
This same clarification may be needed for other areas of these enforcement powers from the 2009 Act such as section 282 (2) etc. where there is reference to specific powers or authorities under English and Welsh law."

One individual has proposed that to make enforcement clear and effective, the legislation must include binding commitments to resource the Sea Fisheries Inspectorate, expand active coastal surveillance, and mandate published annual enforcement audit reports detailing physical inspection metrics, detected breaches, and actual prosecution rates across both commercial and recreational sectors.

Clause 8 – Section7: Interpretation

One Individual proposed that Statutory enforcement powers must be explicitly defined within primary legislation, and any modifications to imported powers must be subject to mandatory public consultation and affirmative Assembly approval rather than departmental discretion.

Clause 9 – Mode of trial and penalty for offences.

ANIFPO & NIFPO state there is a lack of clear division between what is applied to inland fisheries and to sea fisheries, for example, section 1 of Part 1 of the Schedule outlines the changes made to section 7A of the 1966 Act (permits etc.). There is no indication in this part of the Schedule or section 7A that this in fact only applied to angling as seen in section 7 of the 1966 Act.

They also highlight that the maximum fines proposed are excessive. They propose instead that fines to be set at a level that reflects the earnings of the vessel as some of the most successful NI fishing vessels may only earn £50k in a year.

They further highlighted that the landing of undersize fish is required under the landing obligation, and that this does not seem to be mentioned. Fishermen are legally required to retain undersize fish onboard but may then be liable for a fine and prosecution for following the rules.

BHA have proposed the following amendments:

New Clause 9A after Clause 9:
"9A.— (1) In determining whether to issue a warning, require remedial action, offer a fixed penalty, or refer a matter for prosecution, the Department must have regard to—

(a) the actual or reasonably foreseeable environmental harm;
(b) the culpability of the person concerned;
(c) whether the conduct was deliberate, reckless, negligent, accidental, or based on a reasonable interpretation of the law;
(d) any steps taken to prevent, mitigate or remedy harm;
(e) the person's regulatory history;
(f) whether the Department had provided clear and consistent guidance;
(g) whether the alleged breach concerns a genuinely disputed question of statutory interpretation; and
(h) the public interest in enforcement.

(2) The Department must publish and keep under review an enforcement policy addressing the matters in subsection (1)." This addition would ensure that the availability of increased penalties or alternative enforcement measures does not lead to an automatic or disproportionate enforcement response. It would require the Department to select the appropriate response by reference to the facts, evidence, harm, culpability, and wider public interest in each case.

The Committee would appreciate your comments on the various proposals and concerns and a response by Monday 16 November would be appreciated.

Yours sincerely

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Dr Janice Thompson
Clerk to the Committee for Agriculture, Environment and Rural Affairs