FISH LEGAL LIMITED

Submission to the Committee for Agriculture, Environment and Rural Affairs

Fisheries, Aquaculture and Water Environment Bill

1. Introduction

Fish Legal Limited ("Fish Legal Ltd.") welcomes the opportunity to provide evidence to the Northern Ireland Assembly Committee for Agriculture, Environment and Rural Affairs on the Fisheries, Aquaculture and Water Environment Bill.

Fish Legal Ltd. is a not-for-profit membership organisation which uses the law to protect and restore fisheries and the wider water environment. We act on behalf of member angling clubs, fishery owners and other fisheries interests and have experience of matters involving pollution, damage to fisheries, regulatory enforcement and protection of the aquatic environment.

Fish Legal Ltd. supports the overall objectives of the Bill and, in particular, the introduction of a modernised statutory framework for sustainable management of inland fisheries, the intention to strengthen the enforcement framework for fisheries and water-environment offences, and a wider range of regulatory enforcement tools.

The Bill is particularly important because it recognises the relationship between healthy fish populations, productive fisheries and clean, functioning aquatic ecosystems. It is intended to support a whole-system approach to management of the water environment and applies to both commercial and recreational fisheries.

However, Fish Legal Ltd.'s Northern Ireland casework demonstrates that effective environmental protection depends not simply upon the existence of statutory powers, licence conditions and criminal offences. It also depends upon:

- applications being determined within reasonable timescales;
- appropriate and enforceable environmental conditions being imposed;
- statutory requirements and licence conditions being capable of practical application;
- objective monitoring and effective environmental inspection;
- timely investigation of suspected non-compliance;
- effective and proportionate enforcement;
- periodic review of licences, permissions, exemptions and conditions;
- remediation and restoration where environmental damage occurs; and
- transparent and reasoned regulatory decision-making.

Fish Legal Ltd.'s recommendations are informed by current and recent Northern Ireland casework involving abstraction, hydroelectric schemes, fish passage, aquaculture regulation, pollution and fish kills.

We refer to those experiences not to invite the Committee to determine the merits of individual cases, but because they provide practical evidence of weaknesses which the new statutory framework should be capable of addressing.

2. Clause 1 - Inland Fisheries Policy Objectives

Fish Legal Ltd. welcomes the objectives in clause 1, particularly the precautionary and ecosystem objectives. The precautionary principle—that insufficient scientific information should not justify postponing necessary measures to conserve fish species or their environment—should be reflected in the practical implementation of the regulatory regime.

Fish Legal Ltd. also strongly supports the ecosystem-based approach. Healthy fisheries depend upon functioning aquatic ecosystems and may be affected by multiple interacting pressures, including pollution and nutrient enrichment, wastewater and agricultural discharges, abstraction and impoundment, hydroelectric generation, physical modification of watercourses, altered flows, barriers to fish migration and degradation of spawning and nursery habitat.

Clause 1 itself recognises this wider context by defining the ecosystem-based approach by reference to the **collective pressure of human activities** and compatibility with the achievement of good ecological status. The significance of those pressures cannot always be assessed in isolation. Multiple abstractions, impoundments, hydroelectric installations or other regulated activities within the same catchment may have cumulative effects on flow, fish passage, habitat and ecological function which are substantially greater than the effect of any individual activity. Fish Legal Ltd. therefore recommends that implementation of the ecosystem objective expressly provide for the assessment of cumulative pressures where relevant.

There is, however, a potentially significant gap between that ambition and the legal reach of Part 1. DAERA describes the Bill as supporting a "whole-system approach to managing the water environment" and a "consistent and integrated approach from source to sea". Yet clause 4 applies the statutory duty when the Department exercises functions relating to inland fisheries, freshwater salmon fisheries, fishing in inland waters or aquaculture in inland waters. It does not, on its face, extend that duty to the Department's wider water-environment functions under the Water (Northern Ireland) Order 1999, including pollution control, abstraction and impoundment.

That distinction matters. The very pressures capable of determining whether fish populations and aquatic ecosystems can achieve or maintain good ecological status may therefore fall outside the direct reach of the clause 4 duty when regulated under separate water-environment legislation. Fish Legal Ltd. considers that this risks creating a material gap between DAERA's stated whole-system ambition and the operative statutory framework.

Fish Legal Ltd. therefore recommends that the Committee examine whether clause 4 should be widened, or an equivalent statutory duty introduced, so that the objectives in Part 1 genuinely inform the exercise of relevant water-environment functions on which healthy and sustainable fisheries depend. Without that connection, there is a risk that the Bill adopts an ecosystem-based objective in principle while different aspects of water regulation continue to be dealt with separately in practice.

Fish Legal Ltd. also recommends that the polluter-pays principle be expressly reflected in the statutory framework, so that those responsible for environmental damage bear the appropriate costs of preventing, assessing, remedying and restoring that damage. This is addressed in detail in relation to clause 20 below.

3. Clauses 2-4 - Inland Fisheries Policy Statement

Fish Legal Ltd. supports the introduction of an Inland Fisheries Policy Statement. Clause 2 requires the Department to prepare and publish a Statement setting out its policies for achieving or contributing to the clause 1 objectives and to keep it under review. Clause 3 provides for consultation, while clause 4 requires relevant Departmental functions to be exercised in accordance with the Statement unless a relevant change in circumstances indicates otherwise.

Fish Legal Ltd. considers that the legislation would be strengthened by requiring the first Statement to be published within a defined period following commencement and reviewed at specified intervals thereafter. A requirement to publish it only "as soon as reasonably practicable" risks leaving an important component of the new statutory framework incomplete for an extended period.

Consultation on the Statement and its review should be meaningful and include those directly affected by the condition of Northern Ireland's fisheries, including recreational angling clubs and organisations, fishery owners and occupiers, representative fisheries and environmental organisations, and others with a material interest in the health of inland fisheries and the aquatic environment. Subject to appropriate protection of genuinely confidential or personal information, consultation responses should be published together with a reasoned account of how material representations have been considered in reaching the final policy position.

Fish Legal Ltd. particularly welcomes the intention to support the sustainable management of recreational as well as commercial fisheries. Angling clubs, fishery owners and individual anglers may possess detailed, long-term knowledge of individual rivers, fish populations, spawning areas and changing environmental conditions and may be among the first to identify pollution, fish kills, abnormal flows, barriers to migration, habitat deterioration or apparent regulatory non-compliance. That knowledge can also contribute to structured citizen-science initiatives and help identify emerging problems requiring regulatory investigation. Recreational fisheries interests should therefore be meaningfully reflected in the preparation and review of the Policy Statement, not merely as users of the resource but as stakeholders in fisheries management, monitoring and environmental protection.

Fish Legal Ltd. recognises the need for flexibility under clause 4 and welcomes the requirement to publish reasons where the Department departs from the Statement, however, departure from an adopted statutory policy should be objectively justified and transparent. The Committee should consider whether departure should require a material change in circumstances and whether the Department should be required to demonstrate that any alternative course remains, so far as reasonably practicable, consistent with the statutory objectives in clause 1.

Finally, the Policy Statement and the clause 4 duty should be capable of producing substantive and measurable outcomes. Broadly expressed duties risk being demonstrated through individual projects or strategic initiatives without sufficiently clear assessment of whether they are improving fisheries outcomes. Fish Legal Ltd. recommends that the statutory objectives and Policy Statement be linked to transparent priorities, measurable outcomes, periodic review and public accountability. The purpose is not to prescribe particular projects, but to ensure that the statutory framework produces demonstrable results across the functions to which it applies.

4. Clause 6 - Regulation-Making Powers

Clause 6 is particularly important to Fish Legal Ltd.'s concerns. It would replace section 26 of the Fisheries Act (Northern Ireland) 1966 with a broad power to make regulations for purposes including managing, conserving, protecting and improving inland fisheries, conserving and

developing fish stocks, and protecting the aquatic environment from the effects of fishing, aquaculture and related activities.

Fish Legal Ltd. supports flexible regulation-making powers capable of responding to changing environmental circumstances and scientific knowledge, however, the breadth of clause 6 should not obscure its limits. The express environmental purpose in new section 26(1)(c) concerns protection of the aquatic environment from the effects of fishing or aquaculture in inland waters, or related activities**; it is not a general power** to regulate all pressures on the aquatic environment. Pollution, abstraction, impoundment and hydroelectric impacts would continue to depend substantially upon other statutory regimes. This reinforces the whole-system issue identified above. If the Bill is to deliver DAERA's stated integrated approach, the Committee needs to be satisfied that clause 6 and the wider water-environment regimes operate coherently, with no regulatory gap where harm to fish or fisheries arises from an activity which is not itself fishing or aquaculture.

A related issue arises from the continued operation of pollution offences under the Fisheries Act (Northern Ireland) 1966 alongside those under the Water (Northern Ireland) Order 1999. Those regimes are differently framed: Article 7 of the 1999 Order expressly applies to the discharge or deposit of polluting matter "whether knowingly or otherwise", while section 47 of the 1966 Act uses the formulation "causes or knowingly permits". The Bill proposes significant changes to the penalties applicable under both regimes but does not appear to clarify their respective regulatory roles or the circumstances in which one route should be used rather than the other. Fish Legal Ltd. considers that the Committee should seek clarification as to how these overlapping provisions are intended to operate coherently in practice, so that uncertainty as to the appropriate statutory route does not contribute to delay, inconsistent enforcement or regulatory gaps.

Fish Legal Ltd.'s Northern Ireland casework demonstrates the need for clear and enforceable protection in relation to matters including residual river flows and sufficient water for fish passage; abstraction and prevention of dewatering; fish-pass design, operation and effectiveness; screens and protection against entrainment or turbine injury; artificial pulsing or hydropeaking; flow and abstraction measurement; monitoring and maintenance requirements; conformity with approved plans; and cumulative effects within a catchment.

Where regulated activities or installations discharge pollutants to the water environment, the wider regulatory framework needs to be capable of imposing clear, scientifically justified emission limit values or equivalent enforceable limits where appropriate. These should reflect the sensitivity and environmental objectives of the receiving water body, relevant cumulative pressures and the need to prevent deterioration, supported by appropriate monitoring and enforcement.

Fish Legal Ltd.'s experience also demonstrates that regulatory flexibility must not become regulatory uncertainty. Requirements such as maintaining "sufficient water" for fish passage necessarily require some expert judgment: what is sufficient may vary according to species, season, river characteristics and prevailing flow conditions. Fish Legal Ltd. does not advocate reducing every environmental requirement to a single numerical standard, however, where legislation imposes a requirement for the protection of fish or fisheries, compliance must be capable of objective and effective determination. Regulatory judgment should be exercised by reference to the protective purpose of the provision, scientific evidence, technical expertise and relevant environmental conditions. Where terminology proves too uncertain to permit consistent enforcement, the necessary criteria should be provided through legislation, regulations, statutory guidance, technical standards or sufficiently precise licence conditions.

Flexibility must not become a reason for regulatory inaction. Uncertainty in terminology should be resolved in a manner which enables the underlying environmental protection to be enforced, rather than becoming an obstacle to enforcement.

5. Effective Regulation – The Complete Regulatory Cycle

A central weakness of the Bill is that it modernises regulatory and enforcement powers without imposing an equally clear framework for their effective exercise. Fish Legal Ltd.'s Northern Ireland casework demonstrates that regulatory failure may arise not simply from an absence of powers, but from failures of determination, monitoring, review, investigation, enforcement and regulatory follow-through. A Bill which expands regulatory and enforcement powers while leaving those systemic weaknesses substantially unaddressed risks modernising the appearance of regulation without securing better environmental outcomes.

Effective environmental regulation requires a complete regulatory cycle: applications must be determined in a timely manner; permissions must contain appropriate and enforceable conditions; compliance must be monitored; existing permissions must be reviewed where necessary; suspected breaches must be investigated; enforcement action must follow where appropriate; environmental damage must be addressed; and regulatory outcomes must be recorded and communicated.

Each stage matters. Stronger penalties have limited practical value if breaches are not identified or adequately evidenced; effective monitoring achieves little if findings are not acted upon; and successful enforcement does not, by itself, secure remediation or ecological recovery. Weakness at any stage can prevent the regulatory regime from achieving its environmental purpose.

Effective enforcement should not be understood as a choice only between informal advice and prosecution. The regulatory framework should provide proportionate means of requiring timely corrective action, securing a return to compliance and preventing recurrence, while preserving prosecution and stronger sanctions for offending which warrants them.

Fish Legal Ltd. therefore recommends that the Committee assess the Bill not simply by asking whether DAERA possesses sufficient powers, but whether the statutory framework supports their timely and effective exercise throughout the regulatory cycle—from initial authorisation and monitoring through to enforcement, remediation and demonstrable environmental outcome.

6. Timely Determination, Deemed Permissions and Continuing Regulatory Control

Fish Legal Ltd.'s casework has identified serious difficulties arising where applications and transitional or deemed authorisations remain undetermined for prolonged periods. This concern is independently reflected in the OEP's published intervention concerning abstraction from the River Crumlin, where an abstraction application submitted in 2007 remains undetermined. The OEP's assessment identified a wider issue involving abstraction and impoundment applications which had remained undetermined for significant periods, resulting in an action plan to address outstanding cases and secure future compliance.
This illustrates a broader regulatory problem. Administrative delay must not create a regulatory vacuum in which potentially environmentally harmful activities continue for prolonged periods

without effective determination, review or control. **Non-determination should not itself become a reason for non-enforcement.**

Fish Legal Ltd. considers that environmentally significant applications should be determined within appropriate timescales and that longstanding deemed or transitional authorisations should be brought systematically to determination. Pending determination, the regulatory framework must provide clear requirements and effective powers to intervene where significant environmental harm is occurring or reasonably anticipated. Persistent delays in environmentally significant cases should also be subject to transparent reporting and accountability.

Where these matters cannot appropriately be addressed through this Bill itself, Fish Legal Ltd. recommends that they be addressed through the relevant regulatory regimes, statutory policy or guidance, enforcement policy and administrative arrangements. The essential requirement is that an outstanding application or legacy authorisation must not prevent effective regulatory control or timely action to protect the water environment.

7. Periodic Review of Licences, Permissions and Exemptions

Environmental circumstances do not remain static. Scientific knowledge develops, infrastructure deteriorates, river morphology and flow conditions change, and monitoring may reveal impacts which were not apparent when a permission was originally granted. Licences, permits, deemed authorisations and exemptions capable of affecting the water environment should therefore not continue indefinitely without meaningful regulatory review.

Fish Legal Ltd. recommends that permissions and material environmental conditions should be reviewable where evidence of environmental harm or deterioration emerges; material or repeated non-compliance occurs; relevant infrastructure ceases to function effectively; scientific evidence materially changes; or cumulative pressures within the catchment alter significantly. Where necessary to protect the environment, regulators should have effective powers to vary, suspend or revoke the relevant permission.

A previous review or ordinary review cycle should not prevent further or earlier review where new or continuing evidence of harm, deterioration, non-compliance or materially changed circumstances makes reconsideration necessary. Regulatory review must be responsive to environmental risk rather than constrained by an artificial timetable.

The same principle should apply to exemptions from fisheries-protection requirements. An exemption should not become an indefinite means by which a statutory environmental protection ceases to have practical effect. Material exemptions should be evidence-based, properly reasoned and transparent, subject to appropriate conditions and, where appropriate, time-limited and periodically reviewed.

8. Environmental Monitoring, Inspection and Verification

Effective enforcement depends upon reliable evidence. Where compliance depends upon a measurable environmental condition, such as river flow, abstraction volume or water level, there must be an objective means of determining whether the requirement is being met. Monitoring arrangements should therefore provide, as appropriate, for reliable measurement, properly

maintained and calibrated equipment, retention of data, regulator access to underlying data, procedures for responding to equipment failure and independent verification where necessary.

Failure of monitoring equipment should trigger investigation and corrective action, not create an evidential gap which prevents meaningful assessment of compliance. Persistent or culpable failure, without reasonable excuse, to install, maintain, calibrate, repair or replace equipment or data systems necessary to demonstrate compliance should itself attract an effective regulatory response. The Committee should consider whether a specific offence or other enforceable sanction is required, particularly where such failure materially prevents or delays assessment of compliance.

Monitoring should not be confined to evidence that a regulated activity occurred or that operational requirements were met. Where an activity presents a material risk to a watercourse or fishery, the regulatory framework should also be capable of establishing its effect on the receiving environment.

Operational monitoring may establish, for example, that a discharge, abstraction or other event occurred and its duration or magnitude, but that information does not necessarily establish the resulting environmental consequences. Where appropriate, baseline and upstream/downstream evidence should be capable of demonstrating the nature and severity of any deterioration, its duration and subsequent recovery.

Receiving-water evidence, considered alongside operational, hydrological, laboratory and biological data, can strengthen assessment of causation and attribution, inform proportionate enforcement and assist decisions concerning remediation, restoration and post-incident monitoring. It can also help distinguish impacts attributable to the regulated activity from pre-existing conditions or other pressures within the catchment.

Monitoring systems should therefore facilitate appropriate interoperability between relevant regulatory, operator, research and quality-assured citizen-science data. Common approaches to matters such as timing, location, units, metadata and data quality can assist meaningful comparison without requiring the legislation to prescribe particular monitoring technologies.

Fish Legal Ltd. considers that appropriately designed citizen science can provide a valuable supplement to statutory monitoring and inspection. Angling clubs, fishery owners, anglers and other local river users may possess detailed, long-term knowledge of individual watercourses and may be well placed to identify changes in fish populations, flow, water quality, habitat condition, pollution, barriers to migration or other signs of ecological deterioration. Proportionate mechanisms should therefore exist for credible local evidence to be submitted, recorded and considered, supported where appropriate by standardised methodologies, training and quality assurance.

Citizen-science evidence must not of course substitute for adequate statutory monitoring or regulatory inspection. However, credible evidence supplied by affected fisheries or appropriately trained citizen scientists should be capable of triggering regulatory investigation or verification where warranted.

Monitoring requirements must also be verified in practice. Where a licence requires a monitoring plan, the regulator should establish that the plan is adequate, implemented and producing reliable data, and that identified problems are acted upon and the plan reviewed where circumstances require.

Similarly, inspection of environmentally protective infrastructure should assess substantive compliance rather than merely record that a site visit or structure exists. Where protection depends upon infrastructure such as abstraction structures, intakes and outfalls, water-control structures, screens, fish passes, sluices, turbines or monitoring equipment, inspection should establish whether it accords with approved requirements, is properly constructed and maintained, is operated as required and, critically, **performs the environmental function it is intended to provide**.

The existence of infrastructure, monitoring equipment or a monitoring plan should not itself be treated as evidence of compliance. The relevant question is whether it operates effectively in practice and whether the environmental protection for which it was required is actually being delivered.

9. Fish Passage, Abstraction and Hydroelectric Operations

Fish Legal Ltd. considers effective fish passage and the maintenance of ecologically sufficient river flows fundamental to the protection and restoration of inland fisheries. Regulation should focus on environmental function rather than the mere existence of infrastructure or compliance on paper.

A fish pass should not be regarded as effective merely because a structure described as a fish pass exists. Regulatory requirements should address, where appropriate, its design and construction, conformity with approved plans, maintenance, attraction flows, sufficient water through the pass, operation under relevant river-flow conditions and effectiveness for the species and life stages it is intended to protect. Where evidence demonstrates that a fish pass is ineffective, the regulator must be able to require timely corrective action.

Similarly, abstraction should not result in environmentally damaging reductions in flow or dewatering of river stretches. Where protection depends upon a residual or minimum flow, compliance should be capable of objective measurement and effective enforcement.

Fish Legal Ltd.'s casework concerning hydroelectric operations also demonstrates that maintaining a minimum residual flow may not, by itself, provide adequate protection. Rapid or repeated artificial fluctuations in river level or discharge can affect fish behaviour and migration, habitat availability and wider ecological function. The regulatory framework should therefore be capable of controlling, where environmentally necessary, the rate, magnitude and frequency of artificial flow changes, including pulsing or hydropeaking associated with abstraction or hydroelectric generation.

Regulation should also address cumulative effects. Where multiple abstractions, impoundments or hydroelectric installations operate within the same catchment, their combined effects on river flow, fish passage, habitat and ecological function should be assessed rather than considering each activity solely in isolation.

Finally, screens, grills and other protective infrastructure should be regulated according to their effectiveness. Appropriate requirements should seek, so far as reasonably practicable, to prevent the entrainment, injury and mortality of wild fish associated with turbines, abstraction structures, intakes, outfalls and related infrastructure.
Taken together, these protections should ensure that regulation addresses how an installation or activity actually affects the river and its fish populations in practice, rather than relying solely upon the existence of a structure, a minimum-flow condition or other formal requirement.

10. Part 5 – Aquaculture Licensing

Fish Legal Ltd. welcomes the modernisation of the aquaculture licensing regime in Part 5, however, modernising the form of the regime will not itself correct weaknesses in existing licences, monitoring or compliance arrangements.

This is particularly important because clause 17 automatically converts existing Fish Culture Licences into Aquaculture Licences subject to the same conditions. There is no requirement on the face of the Bill for an environmental compliance or conditions review before, or upon, conversion. That is a significant omission given the OEP's published intervention concerning Inland Fisheries' approach to monitoring compliance with Fish Culture Licence conditions, following which Inland Fisheries commenced a review of all Fish Culture Licences granted under the Fisheries Act (Northern Ireland) 1966.

Fish Legal Ltd. considers that the transition to the new regime should be used to address, rather than automatically perpetuate, any outdated or inadequate conditions and identified weaknesses in monitoring or compliance. Existing licences should therefore be subject to a proportionate review on conversion, including consideration of environmental performance, compliance history, monitoring requirements and whether existing conditions remain adequate to protect fish, fisheries and the receiving environment.

A similar issue arises under clause 18. Although the Department may amend a licence on transfer as it considers appropriate, the Bill does not expressly require consideration of environmental performance, outstanding non-compliance, monitoring adequacy or the continuing suitability of existing conditions. Transfer should not become a missed regulatory opportunity to address conditions which are outdated, ineffective or no longer provide adequate environmental protection.

Aquaculture licences should contain clear and enforceable environmental protections appropriate to the particular operation. Depending upon the circumstances, these may need to address abstraction and residual flows, prevention of dewatering, fish passage and entrainment, screens and other infrastructure, spawning and nursery habitat, discharge and water-quality impacts, monitoring and reporting requirements, and the condition and maintenance of environmentally protective infrastructure. Where conditions rely on expressions such as “adequate”, “appropriate” or “sufficient”, appropriate technical criteria or guidance should enable operators, regulators and affected fisheries to understand how compliance will be assessed.

The regime should also provide robust protection against escapes and unauthorised releases of farmed fish. Licence conditions and regulations should address appropriate containment standards and maintenance; prompt notification and recording of material escapes; investigation of their cause; recovery, mitigation and measures to prevent recurrence where practicable; and ecological or fish-health assessment and post-incident monitoring where wild fisheries or the wider aquatic environment may be materially affected. Deliberate unauthorised releases should attract appropriately serious enforcement.

Finally, conversion or transfer should not exhaust the Department's ability to intervene. Aquaculture licences and their environmental conditions should remain subject to effective

review, variation, suspension or other appropriate regulatory action where environmental harm, changed circumstances or non-compliance requires it.

11. Part 5 – Fish Health Inspections and Environmental Compliance

Fish Legal Ltd. considers it important to distinguish between aquatic animal-health inspection and environmental compliance inspection. This issue arises directly from experience under the existing Fish Culture Licence regime.

In information provided during the OEP process, DAERA explained that enforceable Fish Culture Licence conditions were checked during routine inspections by its Aquaculture and Fish Health Inspectorate, while also indicating that inspection frequency was determined by risk to aquatic animal health. Fish Legal Ltd. considers that any conclusions drawn about environmental compliance must therefore reflect the actual scope and methodology of the inspection undertaken.

An inspection regime designed primarily around aquatic animal-health risk cannot, without appropriate additional assessment, necessarily demonstrate compliance with environmental requirements concerning matters such as abstraction, residual river flows, fish passage, screens and protective infrastructure, impacts on wild fish or the wider aquatic environment.
This distinction is important: **the absence of identified non-compliance is not the same as demonstrated environmental compliance**. Compliance should only be regarded as established where the relevant environmental conditions have themselves been substantively assessed using appropriate evidence.

Inspection records should therefore provide a sufficiently clear audit trail of the environmental conditions examined, the evidence and measurements used to assess compliance, relevant infrastructure inspected, deficiencies identified and any remedial or enforcement action required. Where environmental compliance depends upon matters outside the scope of a routine fish-health inspection, appropriate specialist assessment or monitoring should be undertaken.

Fish Legal Ltd. considers this principally an issue for implementation of Part 5 and the future inspection regime rather than one requiring detailed prescription on the face of the Bill, however, the Committee should seek clear assurances from DAERA as to how environmental compliance will be independently and substantively assessed under the new aquaculture licensing regime.

12. Clauses 10-14 - Fixed Penalty Notices and Enforcement

Fish Legal Ltd. supports a proportionate range of enforcement tools and accepts that Fixed Penalty Notices (“FPNs”) may provide an appropriate alternative to prosecution for genuinely minor or moderate offending. However, FPNs must supplement rather than displace prosecution or stronger enforcement action where offending is serious, persistent, deliberate, reckless or materially environmentally damaging.

A significant weakness is that the necessary safeguards are not contained on the face of the Bill. Clause 12 permits regulations to provide for FPNs in respect of any offence under the Water (Northern Ireland) Order 1999 or subordinate legislation made under it. Clause 13 leaves the

offences, circumstances and penalty amounts to future regulations, while clause 14 provides that, where the fixed penalty is paid, the recipient may not be convicted unless the notice is withdrawn or prescribed circumstances apply.

Fish Legal Ltd. considers that a power capable of extending across the full range of Water Order offences is too important to depend solely upon future regulations and enforcement policy. The primary legislation should establish clear safeguards, or, at minimum, require regulations to exclude from routine disposal by FPN offences involving significant pollution or environmental damage, substantial fish mortality or material damage to a fishery, deliberate or reckless conduct, repeated or persistent non-compliance, substantial financial benefit arising from non-compliance, or failure to undertake appropriate remediation.

The availability of an administrative sanction must not result in serious environmental offending becoming simply a cost of doing business. Where the seriousness of the harm, the culpability of the offender, the persistence of the breach or the need for punishment, public accountability and deterrence requires prosecution, an FPN should not be treated as an adequate substitute.

Fish Legal Ltd. therefore recommends that the Bill provide stronger safeguards governing the scope of the FPN regime and that subsequent regulations and enforcement policy establish clear eligibility, exclusion and escalation criteria.

Information on the use and outcome of FPNs should also be published so that the Assembly, affected interests and the public can assess whether the regime is being applied consistently, proportionately and effectively.

13. Clause 20 - Remediation, Restoration and Polluter Pays

Fish Legal Ltd. welcomes the polluter-pays principle reflected in clause 20, however, considers the provision substantially too narrow. Clause 20 allows the Department, following conviction for the relevant river-bed offence, to undertake necessary remedial works and recover the reasonable expenses incurred from the offender, however, the provision is confined to unlawful interference with a river-bed. There is no persuasive environmental justification for that limitation. Serious pollution and other environmental offending may cause substantially greater and more enduring damage to fish, fisheries, aquatic habitats and the wider ecological functioning of a river.

Fish Legal Ltd. therefore recommends that the remediation principle in clause 20 be extended to significant environmental damage caused by relevant fisheries and water-environment offences. The polluter, rather than the public purse, affected fisheries or local communities, should bear the reasonable costs of assessing the damage and securing appropriate remediation and ecological restoration.

Criminal penalties – removal of the statutory cap

Fish Legal Ltd. welcomes the proposed increase in the maximum fine on summary conviction for pollution under Article 7 of the Water (Northern Ireland) Order 1999, however, Fish Legal Ltd. does **not** consider a £50,000 statutory ceiling adequate for serious water-environment offending and recommends that the statutory ceiling be removed.

This is particularly important because the Department has presented the increased penalties as strengthening deterrence and achieving greater parity with other UK jurisdictions. In England and Wales, comparable Environmental Permitting offences involving illegal discharges to air, land and water are punishable by an unlimited fine on summary conviction as well as on indictment.

Fish Legal Ltd. sees no convincing justification for retaining a £50,000 ceiling in Northern Ireland which may constrain the court precisely where environmental harm is greatest, culpability is highest or substantial financial benefit has been obtained through non-compliance.

For serious environmental offending, the court should be able to impose a penalty commensurate with the circumstances of the particular case. The financial consequences of offending must be capable of providing genuine punishment and deterrence and must not allow non-compliance to become an economically rational cost of doing business.

The Schedule also appears to create an unexplained inconsistency in relation to fish passage. While many fisheries offences would attract a £50,000 maximum on summary conviction, the offence concerning the construction of fish passes in dams under section 54(6) of the Fisheries Act (Northern Ireland) 1966 is subject to a £20,000 maximum. Given the potentially serious and long-term consequences of inadequate fish passage for migratory fish and river ecology, Fish Legal Ltd. considers that there is no clear justification for retaining this lower statutory ceiling. Consistent with our position above, the court should be able to impose a penalty which reflects the seriousness and circumstances of the particular offence.

Criminal fines and remediation are separate liabilities

Irrespective of the level of the criminal penalty, Fish Legal Ltd. considers it essential that the Bill distinguish clearly between **punishment of the offender** and **responsibility for the environmental consequences of the offence**.

A criminal fine punishes and deters offending. It does not restore a damaged river, replace lost ecological function or meet the costs of assessing and remedying environmental harm. Liability for the reasonable costs of ecological assessment, mitigation, remediation, habitat restoration, ecologically appropriate recovery of affected fish populations and proportionate post-incident monitoring should therefore be additional to, and **must not be capped by reference to, any maximum criminal fine**.

Clause 20 already accepts that principle in relation to the reasonable cost of remedial works following the relevant river-bed offence. Fish Legal Ltd. considers that the same principle should apply where serious pollution or other relevant environmental offending causes significant ecological or fisheries damage.

Practical experience – prosecution is not restoration

Fish Legal Ltd.'s recent Northern Ireland casework illustrates why this distinction matters. In one matter involving a substantial fish kill, regulatory investigation resulted in the successful prosecution of the polluter. Information subsequently obtained by Fish Legal Ltd. under the Environmental Information Regulations indicated, however, that no remedial works had been undertaken to the affected watercourse.

Fish Legal Ltd. refers to this example not to revisit the individual case, but because it demonstrates that successful enforcement against an offender does not necessarily result in restoration of the environment. A prosecution may conclude the criminal case while damage to the river, fish population, spawning habitat or wider ecological function remains unaddressed.
The regulatory response to significant environmental damage should therefore include an assessment of whether remediation or ecological restoration is required. Appropriate measures may include restoration of aquatic or riparian habitat, restoration of spawning or nursery areas, ecologically appropriate measures to support recovery of affected fish populations, ecological assessment and proportionate post-incident monitoring.

Active physical intervention will not always be environmentally appropriate and in some circumstances natural recovery may provide the better ecological outcome, however, that should be an **evidence-based regulatory decision**, not the consequence of the criminal proceedings simply having concluded. Where active restoration is considered unnecessary or inappropriate, the reasons should be recorded and, where necessary, supported by ecological assessment and monitoring.

Restoration should not necessarily depend upon conviction

Fish Legal Ltd. is also concerned that clause 20 is triggered only following conviction. The need to restore environmental damage does not necessarily depend upon the outcome of criminal proceedings. There may be evidential, procedural or public-interest reasons why a prosecution is not brought or does not result in conviction even though environmental damage capable of requiring remediation can otherwise be established.

Fish Legal Ltd. therefore recommends that the Committee consider whether the Bill should provide an appropriate mechanism, subject to fair procedural safeguards and an appropriate evidential threshold, through which necessary environmental remediation or restoration can be required independently of a criminal conviction.

Recommended amendment

Fish Legal Ltd. considers this an issue requiring amendment to the Bill itself rather than reliance solely upon subsequent policy or guidance.
The Bill should:

- remove statutory financial ceilings which may prevent courts imposing penalties commensurate with serious environmental offending;
- extend the remediation principle in clause 20 beyond the narrow river-bed offence to significant environmental damage caused by relevant fisheries and water-environment offences;
- make clear that liability for reasonable assessment, remediation, restoration and monitoring costs is separate from, and not limited by, any criminal fine;
- require the regulator, following significant environmental damage, to assess whether remediation or ecological restoration is necessary; and
- provide an appropriate mechanism for securing restoration where environmental damage is established but remediation cannot be pursued under clause 20 because there has been no conviction.

14. Complaints, Evidence and Regulatory Follow-Through

Fish Legal Ltd.'s experience demonstrates the importance of regulators **responding to the substance of credible environmental concerns rather than the administrative label attached to the correspondence**. Information indicating possible non-compliance or regulatory failure should not receive less substantive consideration merely because it is provided through an information request, general correspondence or something not formally designated as a complaint.

Similarly, an Environmental Information Regulations request concerning suspected non-compliance should not be treated as a substitute for considering whether the underlying environmental issue requires investigation.

Where credible evidence of possible non-compliance is provided, the regulator should determine whether investigation is required, consider relevant evidence, record its conclusions and identify any necessary enforcement or remedial action, giving appropriate reasons for its regulatory decision.

There must also be effective follow-through. Investigations should not remain unresolved indefinitely. Where monitoring equipment fails, further assessment is required or a report is commissioned, there should be appropriate timescales for completion and a recorded regulatory conclusion.

These matters may principally be addressed through regulatory policy, statutory guidance or administrative standards. However, they are relevant to the Committee's assessment of whether the Bill will deliver effective regulation in practice, rather than merely confer additional regulatory powers.

15. Transparency and Regulatory Accountability

Affected fisheries should be able to understand what a regulator has done with credible evidence of apparent environmental non-compliance.

Fish Legal Ltd. recommends that regulatory decisions should, where appropriate, identify:

- the alleged breach investigated;
- relevant evidence considered;
- inspections or monitoring undertaken;
- whether non-compliance was identified;
- what remedial or enforcement action was required;
- where no action is taken, the principal reasons for that decision; and
- whether further monitoring or review will occur.

This is particularly important where environmental concerns persist over prolonged periods. Transparency promotes regulatory confidence and enables affected fisheries and the wider public to understand whether environmental protections are operating effectively.

16. Measuring Regulatory Effectiveness

The success of the Bill should not ultimately be measured simply by:

- numbers of inspections;
- numbers of FPNs;
- numbers of prosecutions;
- numbers of licences issued; or
- numbers of complaints closed.

Those measures describe regulatory activity, but not necessarily regulatory effectiveness.

The more meaningful question is whether regulation results in:

- improved compliance;
- prevention of environmental damage;

- restoration where damage occurs;
- functioning fish passage;
- appropriate river flows;
- healthier fish populations; and
- measurable improvement in the condition of the aquatic environment.

Fish Legal Ltd. recommends that implementation of the Bill should be accompanied by transparent reporting capable of demonstrating environmental outcomes.

Independent OEP evidence and the Costa Beck principle

Fish Legal Ltd. considers that the Bill should be judged by whether its objectives and powers translate into specific, timely and measurable action at individual water-body level. This approach is consistent with the principle confirmed by the Court of Appeal in *Secretary of State for Environment, Food and Rural Affairs v R (Pickering Fishery Association)* [2025] EWCA Civ 378, concerning the Upper Costa Beck. Fish Legal Ltd. acted for Pickering Fishery Association in that litigation. The Court confirmed, in the context of the applicable Water Framework Directive regulatory framework, that programmes of measures must identify the measures required at individual water-body level to achieve the applicable environmental objectives. The Office for Environmental Protection ("OEP"), which intervened in the appeal, subsequently emphasised the significance of programmes of measures being tailored to individual water bodies.

The practical significance of that principle is particularly clear in Northern Ireland. The OEP's review of implementation of the Water Framework Directive Regulations in Northern Ireland concluded that, although the regulatory approach is broadly sound, it is not being implemented or delivering as it should. The OEP underlined the specific environmental objectives set under the legislation for all individual water bodies, which need to be supported by a tangible and detailed programme of measures capable of meeting those objectives in practice. Taken together, the Costa Beck judgment and the OEP's Northern Ireland findings underline an important point for scrutiny of this Bill: high-level objectives, generic measures and broad regulatory powers are insufficient unless they result in identifiable action capable of delivering the required environmental outcome for the individual water body within a specific (now imminent) deadline. The legislative deadline, after 24 years of river basin management planning, is in fact December 2027.

That concern is reinforced by OEP interventions already in the public domain which overlap directly with Fish Legal Ltd.'s Northern Ireland casework. In relation to the River Crumlin, the OEP recorded concerns about an abstraction application submitted in 2007 which remains undetermined and identified a wider issue involving abstraction and impoundment applications left undetermined for significant periods. Separately, following concerns about Inland Fisheries' approach to monitoring compliance with Fish Culture Licence conditions, the OEP recorded that Inland Fisheries commenced a review of all Fish Culture Licences granted under the Fisheries Act (Northern Ireland) 1966 which has still not concluded.

These examples demonstrate why the creation of additional powers, policy statements, licensing provisions or enforcement mechanisms should not, without more, be treated as evidence of effective regulatory reform: real action at the water-body level is necessary. Fish Legal Ltd. recommends a clear line of accountability from statutory objective to delivery: where an individual water body is failing or is at material risk of failing its environmental objectives, the regulatory framework should enable the pressures responsible to be identified, the measures required to address them to be specified, responsibility and timescales to be assigned, and delivery to be monitored, reviewed and, where necessary, enforced. The ultimate measure of the

Bill's effectiveness should be whether it produces demonstrable improvement in the water environment.

17. Matters on Which Fish Legal Invites Further Committee Scrutiny

Fish Legal Ltd. invites the Committee to seek clarification from the Department on the following matters.

Clauses 1–4 – Objectives and Inland Fisheries Policy Statement

1. How will cumulative pressures from abstraction, impoundment, hydroelectric generation and other activities within the same catchment be reflected in implementation of the ecosystem objective?
2. What timeframe will apply to publication of the first Inland Fisheries Policy Statement and to its subsequent review?
3. How will recreational fisheries interests be meaningfully represented in the preparation and review of the Statement, and how will the Department demonstrate that substantive consultation responses have been considered?
4. Should departure from the Statement under clause 4 require a material change in circumstances and remain, so far as reasonably practicable, consistent with the statutory objectives?
5. Given DAERA's stated whole-system approach, why does the clause 4 duty apply only to specified fisheries and aquaculture functions, and how will the statutory objectives inform the Department's separate functions concerning pollution, abstraction and impoundment under the Water (Northern Ireland) Order 1999?

Clause 6 – Regulation-making Powers and Fisheries Protection

6. Given that new section 26(1)(c) is directed to effects arising from fishing, aquaculture and related activities, how will clause 6 operate alongside the separate statutory regimes governing pollution, abstraction, impoundment and hydroelectric impacts so that the proposed whole-system approach does not leave gaps in fisheries protection?
7. How will the regulatory framework establish clear and enforceable requirements concerning residual flows, sufficient water for fish passage, prevention of dewatering, fish-pass effectiveness, screens, entrainment and turbine injury, and artificial pulsing or hydropeaking?
8. Where environmental requirements necessarily involve terms such as “sufficient”, “adequate” or “appropriate”, what scientific, technical or other objective criteria will enable compliance to be consistently assessed and enforced?
9. How are the pollution offences under the Fisheries Act (Northern Ireland) 1966 intended to operate alongside those under the Water (Northern Ireland) Order 1999, and what will ensure that overlap between the two regimes does not result in uncertainty, inconsistent enforcement or environmentally significant offending falling between regulatory routes?

Determination, Review and Continuing Regulatory Control

10. What mechanisms and timescales will prevent environmentally significant applications, including outstanding deemed or transitional authorisations, remaining undetermined for prolonged periods?
11. What regulatory controls and intervention powers apply while an application remains undetermined, so that non-determination does not create a regulatory vacuum where environmental harm is occurring or reasonably anticipated?

12. How will licences, permissions and material exemptions be reviewed, varied, suspended or revoked where environmental harm, deterioration, material non-compliance, infrastructure failure or materially changed circumstances subsequently arise?

Monitoring, Inspection and Evidence

13. Where compliance depends upon measurable conditions such as river flow, water level or abstraction volume, what objective monitoring, data-retention and verification requirements will apply?
14. What regulatory consequences will follow where monitoring equipment or data systems are not properly installed, maintained or repaired and the resulting evidential gap prevents or materially delays assessment of compliance?
15. How will regulators ensure that monitoring plans and environmentally protective infrastructure are not merely present or inspected, but are adequate, properly maintained and demonstrably performing their intended environmental function?
16. Where a regulated activity presents a material risk to a watercourse or fishery, how will monitoring establish its effect on the receiving environment, including the severity, duration and recovery of any deterioration, and how will that evidence inform attribution, enforcement, remediation and restoration?
17. What arrangements will enable credible and appropriately quality-assured evidence from affected fisheries, citizen-science initiatives and other relevant sources to trigger regulatory investigation or verification where appropriate?

Part 5 – Aquaculture

18. What is the current position in relation to the review of Fish Culture Licences commenced following the OEP's intervention, what issues have been identified to date, and how will the outcome of that review inform implementation of Part 5 and the transition to the new Aquaculture regime?
19. Why does clause 17 automatically convert existing Fish Culture Licences into Aquaculture Licences on the same conditions without requiring a proportionate environmental compliance and conditions review on conversion?
20. Should clause 18 require environmental performance, monitoring adequacy, outstanding non-compliance and the continuing suitability of licence conditions to be considered when an Aquaculture Licence is transferred?
21. How will the future Aquaculture Licence inspection regime distinguish between aquatic animal-health inspection and substantive environmental and fisheries-protection compliance assessment?
22. Why does clause 22 contain no long-stop date for commencement of Part 5, and what assurance can the Department provide that the new aquaculture regime will be brought into force promptly?

Clauses 10–14 – Fixed Penalty Notices

23. Given that clause 12 permits FPN regulations to extend to any offence under the 1999 Order or subordinate legislation made under it, why does the Bill contain no express safeguard preventing serious, persistent, deliberate, reckless or materially environmentally damaging offending from routine disposal by FPN, and what criteria will ensure that the regulatory response is capable of securing timely corrective action, a return to compliance and prevention of recurrence, while preserving prosecution where required for punishment, public accountability and deterrence?

Penalties, Clause 20 Remediation and Polluter Pays

24. Why should Northern Ireland retain a £50,000 maximum fine on summary conviction for serious water-environment offending when comparable environmental offences involving illegal discharges in England and Wales may attract an unlimited fine, and what justification is there for restricting the court's ability to impose a penalty commensurate with the harm, culpability and financial benefit involved?
25. Why is the remediation and cost-recovery principle in clause 20 confined to the particular river-bed offence, and should it be extended so that those responsible for significant pollution or other environmental damage bear the reasonable costs of assessment, remediation, ecological restoration and proportionate post-incident monitoring, separately from and without reference to any maximum criminal fine?
26. Why is the clause 20 remediation power dependent upon conviction, and what mechanism will secure necessary restoration where environmental damage is established to the appropriate standard but criminal proceedings are not brought or do not result in conviction?
27. What justification is there for retaining a £20,000 statutory maximum on summary conviction for the section 54(6) fish-pass offence, particularly given the potentially serious and long-term consequences of ineffective fish passage, and why should the court's ability to impose a penalty commensurate with the seriousness and circumstances of the offence be constrained by that ceiling?

Delivery, Accountability and Environmental Outcomes

28. How will the Department ensure that credible allegations of environmental non-compliance are considered according to their substance, irrespective of whether they arise through a formal complaint, information request or other correspondence, and that investigations are brought to a timely and recorded regulatory conclusion?
29. How will the Bill and its implementation framework ensure that statutory objectives and regulatory powers translate into specific, identifiable and measurable action for individual water bodies, including identification of the pressures responsible, the measures required to address them, clear responsibility and delivery timescales, and monitoring, review and enforcement sufficient to determine whether the required environmental outcome has actually been achieved?

18. Principal Recommendations

Fish Legal Ltd. supports the overall direction of the Fisheries, Aquaculture and Water Environment Bill. We welcome in particular its ecosystem-based approach, the modernisation of aquaculture licensing and the intention to strengthen the regulatory and enforcement framework, however, experience of the existing regulatory system demonstrates that additional powers and increased penalties will improve environmental outcomes only if accompanied by clear duties, enforceable standards, effective monitoring, timely decision-making, appropriate enforcement and meaningful remediation. Fish Legal Ltd. therefore recommends that the Committee consider the following.

1. **Whole-system legal reach.** Ensure that the Bill's statutory objectives and policy framework are capable of meaningfully informing the Department's wider water-environment functions, including pollution, abstraction and impoundment, so that DAERA's stated whole-system approach is reflected in the operative statutory framework.
2. **Individual water-body delivery.** Ensure that statutory objectives translate into identifiable, timely and measurable measures at individual water-body level, with clear responsibility, delivery timescales, monitoring, review and enforcement. High-level objectives and generic

measures should not substitute for the specific action necessary to achieve the applicable environmental objectives.

3. **Inland Fisheries Policy Statement.** Strengthen clauses 2–4 by providing appropriate timescales for publication and review, meaningful participation by recreational fisheries interests and other relevant stakeholders, transparency as to consultation outcomes, and appropriate constraints and reasons where the Department departs from the Statement.

4. **Cumulative environmental pressures.** Ensure that implementation of the ecosystem-based approach assesses the combined effects of abstractions, impoundments, hydroelectric operations, pollution and other relevant pressures within a catchment rather than considering regulated activities solely in isolation.

5. **Timely determination and continuing regulatory control.** Prevent environmentally significant applications and legacy, deemed or transitional authorisations from remaining unresolved for prolonged periods, and ensure that non-determination does not create a regulatory vacuum or prevent intervention where environmental harm is occurring or reasonably anticipated.

6. **Responsive review of permissions.** Ensure that licences, permissions, conditions and material exemptions remain capable of meaningful review, variation, suspension or revocation where environmental harm, deterioration, material non-compliance, infrastructure failure, new evidence or materially changed circumstances require intervention. An ordinary review cycle should not prevent earlier review where environmental risk requires it.

7. **Clear and enforceable environmental standards.** Ensure that regulatory and licence requirements are capable of objective and practical enforcement, supported where appropriate by scientifically justified technical criteria, standards, guidance or emission limits. Expressions such as “adequate”, “appropriate” and “sufficient” should not become obstacles to effective enforcement.

8. **Functional fish passage and hydrological protection.** Regulate fish passes and other protective infrastructure according to their environmental effectiveness rather than their mere physical existence, and provide effective protection concerning residual flows, abstraction, dewatering, artificial pulsing or hydropeaking, entrainment and turbine injury.

9. **Environmental monitoring and evidence.** Require reliable measurement and monitoring where compliance depends upon matters such as river flow, water level or abstraction volume, together with appropriate data retention, regulator access, verification and procedures for equipment failure. Persistent or culpable failure to maintain monitoring equipment or systems required to demonstrate compliance should attract an effective regulatory response.

10. **Receiving-water evidence.** Where a regulated activity presents material environmental risk, ensure that monitoring is capable of establishing its effect on the receiving environment, including where appropriate baseline condition, severity and duration of deterioration and subsequent recovery. Such evidence should be capable of informing attribution, enforcement, remediation and restoration decisions.

11. **Inspection and infrastructure compliance.** Ensure that inspections assess substantive environmental compliance, including whether environmentally protective infrastructure accords with approved requirements, is properly maintained and continues to perform its intended function. In the aquaculture regime, aquatic animal-health inspection should be clearly distinguished from environmental and fisheries-protection compliance assessment.

12. **Environmental evidence and citizen science.** Establish appropriate mechanisms for credible and quality-assured evidence from fisheries, local stakeholders, research and citizen-science initiatives to supplement statutory monitoring and, where appropriate, trigger regulatory investigation or verification, without displacing the regulator's own monitoring responsibilities.

13. **Aquaculture conversion and transfer.** Amend Part 5 so that existing Fish Culture Licences undergo a proportionate environmental compliance and conditions review on conversion to Aquaculture Licences, and require transfer decisions to consider environmental performance,

outstanding non-compliance, monitoring adequacy and whether existing conditions remain environmentally protective.

14. **Aquaculture escapes and releases.** Provide robust requirements concerning containment, prevention, notification, investigation, recovery and mitigation of material escapes, together with appropriate biosecurity, fish-health and environmental assessment and enforcement for accidental escapes and deliberate unauthorised releases.

15. **Fixed Penalty Notice safeguards.** Place appropriate safeguards on the face of the Bill, or require their inclusion in regulations, so that serious, persistent, deliberate, reckless or materially environmentally damaging offending is not routinely disposed of by FPN where prosecution or stronger enforcement is warranted. The wider enforcement framework should also provide proportionate means of securing timely corrective action, a return to compliance and prevention of recurrence. FPN outcomes should be appropriately transparent.

16. **Remove the statutory ceiling for serious water-environment offending.** Remove the proposed £50,000 maximum on summary conviction so that an arbitrary statutory ceiling does not prevent courts from imposing a penalty commensurate with the seriousness of the offence, culpability, financial benefit and environmental harm. The Committee should also require justification for the lower £20,000 summary maximum retained for the section 54(6) fish-pass offence.

17. **Polluter pays, remediation and restoration.** Expressly incorporate the polluter-pays principle and extend the remediation approach in clause 20 beyond the particular river-bed offence so that those responsible for significant environmental damage can be required to bear the reasonable costs of investigation, ecological assessment, mitigation, remediation, restoration and proportionate post-incident monitoring. Such liability should be additional to, and not capped by, any criminal fine.

18. **Restoration independent of conviction.** Consider a fair and proportionate statutory mechanism enabling necessary environmental remediation or restoration to be required where environmental damage is established to an appropriate evidential standard, notwithstanding that criminal proceedings are not brought or do not result in conviction. Following significant environmental damage, the regulator should be required to consider and record whether remediation or restoration is necessary.

19. **Regulatory accountability and follow-through.** Ensure that credible allegations of environmental non-compliance are considered according to their substance regardless of the administrative route by which they arise; that investigations, monitoring exercises and resulting reports are progressed within reasonable timescales; and that regulatory conclusions, enforcement decisions and remedial outcomes are appropriately recorded and communicated.

20. **Timely commencement of Part 5.** Provide a defined commencement period or other effective safeguard against indefinite delay in bringing the new aquaculture licensing regime into force.

Overarching Recommendation

The Committee should not treat additional regulatory powers, increased maximum penalties or new Fixed Penalty Notice powers as evidence, by themselves, of a stronger environmental regulatory regime. The Bill should be judged by whether it closes the practical gaps that have allowed environmentally significant authorisations to remain unresolved, protective requirements to go unenforced, investigations to remain incomplete, ecological damage to remain unrestored and affected fisheries to receive no clear regulatory outcome.

Effective reform requires a complete regulatory cycle: timely authorisation, clear and enforceable environmental conditions, effective monitoring and inspection, responsive review, investigation of suspected breaches, proportionate enforcement, remediation and restoration

where necessary, and transparent assessment of whether the required environmental outcome has actually been achieved.

Without those elements, there is a risk that the Bill modernises the regulatory framework without resolving the practical weaknesses that have limited environmental protection under the existing system.

19. Conclusion

The Fisheries, Aquaculture and Water Environment Bill presents an important opportunity to modernise Northern Ireland's fisheries and water-environment legislation, and Fish Legal Ltd. welcomes that opportunity.

However, Fish Legal Ltd.'s casework, together with the published findings and interventions of the Office for Environmental Protection, demonstrates that effective environmental regulation depends upon more than the existence of statutory powers. It requires those powers to be capable of practical application, supported by appropriate evidence, exercised within reasonable timescales and followed through to an effective environmental outcome.
An effective regulatory system must be capable of preventing environmental harm where possible; determining applications within reasonable periods; imposing clear and enforceable conditions; objectively monitoring regulated activities and their environmental effects; reviewing permissions as circumstances change; identifying and investigating non-compliance; intervening promptly where harm occurs; imposing proportionate and effective sanctions; and ensuring that environmental damage is assessed and, where necessary, remedied and restored.

The OEP's published interventions concerning the River Crumlin abstraction application and Fish Culture Licences illustrate the practical importance of those requirements. They demonstrate, respectively, the consequences of prolonged non-determination and the need for substantive monitoring and review of environmental licence conditions. The Bill should ensure that such weaknesses are not carried forward into the new regulatory framework.
Fish Legal Ltd. therefore invites the Committee to assess the Bill not simply by the powers it creates, but by whether the resulting framework provides a complete and effective regulatory cycle:

policy > licensing > monitoring > review > enforcement > remediation > environmental recovery

The ultimate test of the legislation should be whether it produces demonstrable improvement in the condition of Northern Ireland's rivers, fish populations, fisheries and wider aquatic environment. With the amendments and safeguards identified in this submission, Fish Legal Ltd. considers that the Bill could provide a substantially stronger framework for achieving that outcome and protecting Northern Ireland's aquatic environment for future generations.

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September 2026

Official and Public Sources

[1] Northern Ireland Assembly, Fisheries, Aquaculture and Water Environment Bill, NIA Bill 38/22-27, as introduced, including clauses 1–6, 10–18, 20 and 22 and the Schedule.
[2] Northern Ireland Assembly, Explanatory and Financial Memorandum to the Fisheries, Aquaculture and Water Environment Bill, as introduced, including paragraphs 22–23 and 35.
[3] Department of Agriculture, Environment and Rural Affairs, Minister Muir introduces Fisheries, Aquaculture and Water Environment Bill to Assembly, describing the Bill as supporting a "whole-system approach to managing the water environment" and a "consistent and integrated approach from source to sea".
[4] Sentencing Council, Organisations: Unauthorised or harmful deposit, treatment or disposal etc. of waste / Illegal discharges to air, land and water – Environmental Permitting (England and Wales) Regulations 2016. Maximum penalty: unlimited fine on summary conviction and on indictment. See also Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 85.
[5] Court of Appeal, Secretary of State for Environment, Food and Rural Affairs v R (Pickering Fishery Association) [2025] EWCA Civ 378, 2 April 2025.
[6] Office for Environmental Protection, OEP welcomes decision in Pickering Fishery Association case on water quality laws, 2 April 2025.
[7] Office for Environmental Protection, review of implementation of the Water Framework Directive Regulations in Northern Ireland.
[8] Office for Environmental Protection, NIEA's duties under the Water Abstraction and Impoundment (Licensing) Regulations (NI) 2006 – River Crumlin intervention.
[9] Office for Environmental Protection, Inland Fisheries duties under the Fisheries Act (Northern Ireland) 1966 – Fish Culture Licence intervention.
[10] Fish Legal, Costa Beck case study and Court of Appeal outcome.