

**By e-mail to:
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Response to consultation on Draft Flood and Water Management Bill

The Angling Trust is the single representative body for all coarse, game and sea angling in England. In particular we represent more than 1,000 angling clubs and private fisheries, many of whom own, lease and fish under licence still waters. This proposed Bill is therefore of major significance for our members.

Of immediate concern are the proposals to amend the Reservoirs Act 1975. We consider that the proposed changes have the potential to cause undue economic hardship to angling clubs and may result in the abandonment of some reservoir-based fisheries to which these proposed changes would apply. We suspect this is not the intention of the changes but it may well be the effect.

Further; there are implications in relation to implementation of the Water Framework Directive (WFD). In particular the proposed statutory nuisance for failure to maintain the flow of water through watercourses may prevent acknowledged aquatic conservation measures aimed at increasing available fish habitats, from being carried out as detailed in section 3. There needs to be an appropriate exemption for such activities.

This draft Bill generally fails to encourage environmental improvements to water bodies in concert with improvements to flood protection. We see this as a missed opportunity to build on progress that has been made in designing flood protection schemes which also improve environmental quality.

Angling is a sport which involves more than 3 million participants and contributes £3.5 billion to the economy. Environmental Agency research has shown that the impediments to increasing participation (and the consequent economic benefits) include a lack of facilities for people to go fishing. We believe that this proposed Bill has the potential to reduce the number of venues available for angling.

1. Overview

General impressions of this Draft Bill are that there has been a minimalist approach to use this opportunity to translate the EU Floods Directive requirements into domestic law. In addition opportunities have been lost in using this opportunity to integrate the WFD requirements into an area that has previously been identified during the exhaustive WFD consultation process as requiring a radical re-think in terms of present accepted practices.

2. Issues covered by Draft Bill provisions – response to questions

New approaches to Flood Risk Management

The Angling Trust has been concerned at the present approach to Flood Risk Management that sees environmental considerations as add-on mitigation measures to hard engineered solutions with policy based on the greatest cost: benefit in terms of risk reduction. Whilst government policy has taken considerable steps in setting out clear, integrated visions in such strategies as “Making Space for Water” and

“Future Water” most Flood Risk and Coastal Erosion Risk Management schemes (FCERM) have failed to follow suite.

This draft Bill goes a long way in enabling a wider portfolio of measures to be used to tackle flood risks as envisaged by “Making Space for Water”. However, by establishing general duties that specifically relate to risk management rather than river, flood plain and coastal erosion management we believe the draft Bill has missed an important opportunity to fully integrate the management of flooding and coastal erosion into the delivery of wider sustainable development objectives.

We believe a more coherent and robust approach would be to give the Environment Agency (the Agency) and lead local authorities a general duty of flood and coastal management with specific reference made to managing risk to people and property and furthering sustainable development objectives along the lines set out in “Making Space for Water”. This would embed sustainability and environmental delivery into the concept of what flood and coastal erosion management authorities are tasked to do by Government rather than perpetuate the split between risk-management and environmental delivery.

Future roles and responsibilities

The Agency’s strategic overview should reflect the Government’s broader suite of sustainable development objectives. Under our proposals we would expect the flood management strategy to include numerical targets/descriptions of the positive contribution the EA and other Operating Authorities will make to WFD objectives and UKBAP targets.

It is clear from the structure of the draft Bill that the proposed national strategy will be hugely influential in shaping the delivery of flood and coastal management across all levels of operating authorities.

We recommend recasting the general duty of operating authorities as flood and coastal erosion management, with reference to risk management and wider sustainability, to directly reflect the objectives of “Making Space for Water”.

We also recommend that Natural England is removed from the list of bodies that have to have regard to the Agency’s National Strategy on Guidance. We are concerned that requiring Natural England to have regard to this strategy will undermine its independence. Natural England plays a vital role in providing advice to Government and its agencies, as well as regulating activities that have the potential to impact designated sites.

The structure of the draft Bill gives the National FCERM Strategy huge influence in the policy and practice of flood management both nationally and locally. As a result, it will direct hundreds of millions of pounds of Government investment affect the lives and livelihoods of tens of thousands of people and have a profound influence on the environment, natural resources and ecosystems services.

Therefore, we believe it is vital that the public are not only consulted but also involved in its preparation. This reflects good practice and would help deliver the public engagement requirements of the EU Floods Directive.

We recommend that the power to carry out FCERM works should be expanded to allow the Secretary of State to direct the Environment Agency to deliver environmental works where operating authorities are failing to meet their obligations.

Local Flood Risk Management

We do not think that county and unitary authorities have the expertise or resources to take on a local leadership role for flood risk management. Indeed, we are concerned that perpetuating the split between “local” responsibility for non-main river, fluvial flooding and the Agency’s responsibility for main river, reservoirs and coast will not deliver the clarity of responsibility Sir Michael Pitt’s review sought.

Our preferred approach would be to create a statutory role for local authorities in the development of local flood and erosion management strategies but give ultimate responsibility to the Agency for their production.

This would ensure the public have one point of contact for flooding and offer an opportunity to create a much clearer link between local and national strategies as well as Flood Management Plans prepared under the EU Floods Directive. It would also enable local strategies to be developed along hydrological catchment boundaries. A radical re-think is also required by the Agency to ensure their internal teams are also able to operate on a catchment basis rather than the present county / local authority boundaries that, with the exception of the fisheries function, they now operate.

The Angling Trust supports the principal of having a strong local strategy that gives direction to the way in which local authorities and Internal Drainage Boards (IDBs) manage flooding within appropriate Strategic Environmental Assessment (SEA) frameworks. However, we believe the general duty should be recast to reflect wider sustainability objectives with the content defined on the face of the draft Bill in the same way as the National Strategy.

There is also a fundamental question as to whether the proposals to reinforce the split in responsibility between main and non-main river, surface runoff and sewer surcharge are relevant to a householder attempting to understand who to contact about flooding which may come from any number of sources defined in the draft Bill as local and national.

In light of these concerns, we believe the Agency should take on responsibility for developing local strategies along catchment boundaries with local authorities given a statutory role in their development. This approach would give absolute clarity of responsibility to the public; allow the plethora of plans and strategies to be developed along consistent hydrological sub-units while retaining a clear and legally defined role for local authorities.

We recommend the Agency should be given powers to regulate sea flooding works, to ensure compliance with the aims and objectives of the WFD.

Duty to co-operate and share information

We welcome the proposal to give all operating authorities a legal duty to share information and cooperate. However, we believe this should extend to the discharge of all of the operating authorities’ functions including reporting of environmental improvements and damage that are currently collated as part of the Agency’s general supervisory duty. To date the quality and coverage of reporting has been extremely variable making it difficult to assess what progress is being made.

Ideally, this broadening of reporting requirements would stem from a re-casting of the proposed general duty and subsequent amendments that reflect operating authorities' wider sustainable development duties in managing flooding rather than just managing risk.

Alternatively, the wording of clause 25 could be amended to make specific reference to environmental works undertaken by operating authorities not linked to risk management.

SUDS

The Angling Trust welcomes proposals to formalise the process of SUDS design, adoption and funding. This is a long overdue development.

We believe SUDS offer opportunities to:

- Improve the protection of people and property from flooding in the face of a changing climate;
- Restore and mimic natural hydrological processes, slowing down the movement of water to rivers and enhance groundwater recharge;
- Enhance biodiversity in the urban environment and give people the opportunities to enjoy wildlife on their doorstep; and
- Improve water quality in the rivers, lakes and ground waters that receive runoff.

However, these benefits cannot be assumed and we believe that the regulatory framework should play a key role in ensuring they are designed in at the earliest stage.

We also believe greater thought should be given to creating incentives for the retrofitting of SUDS into existing developments, particularly where people and property are at risk of flooding, or where urban runoff is causing a significant impact on receiving water bodies.

However, we do have concerns over the wording of SUDS in the draft Bill and thus what comes under the remit of the proposed changes and powers. We believe it could be unhelpful to try to deliver even more integrated solutions than it already has and we suggest leaving the scope for a later expansion or overlap.

Few treatment systems are designed to treat both above and below ground and few surface water SUDS can be shown to exclusively deal with only surface water runoff. The new national standards will help clarify this definition and where they can be combined, but the language of the draft Bill should not give undue emphasis to surface water SUDS as the only solution, or one independent from the dual role that water treatment systems can provide.

We have further concerns that developers could use this clause to avoid SUDS on space limitation grounds, particularly in an urban context. We believe there should be a clear definition of when sufficient space is actually available such that surface SUDS should be a first consideration. Clear guidance should be given as to how SUDS can fit into green space provision.

Regional Flood Defence Committees (RFDCs)

The restructuring of RFDCs provides an opportunity to align their existing functions with the needs of the EU Floods Directive. For example, new Regional Flood and Coastal Committees (RFCCs) could provide a strategic overview of the key steps in the development of Flood Risk Management Plans and work with River Basin Liaison Panels to help identify synergies between WFD and EU Flood Directive measures and objectives.

In order to capitalise on this opportunity RFCCs would have to be restructured along River Basin District boundaries. While these boundaries allow for a strategic overview, experience from WFD implementation suggests they are not appropriate for wider public engagement or the detailed planning of measures. Present boundaries follow Agency Regional boundaries and flexibility will have to be shown by the Agency as previously noted.

We recommend that RFCCs should be given a formalised role in the implementation of the Floods Directive and the boundaries of RFCCs should be amended to match those of River Basin Management Plan Districts.

EU Floods Directive

The Angling Trust has concerns about the scope and workability of the proposals set out in the draft consultation. We believe the draft Bill falls short of legal compliance with Floods Directive requirements and would fail to provide a useful planning tool to deliver domestic FCEM priorities. We have particular concerns on the following points:

- Clause 52 does not refer to assessment of floodplains as natural retention areas as required under Article 4.2(d).
- Clause 61 does not detail the elements the Flood Risk Management Plans should consider under Article 7.3 or non-statutory elements set out in Article 7.4.
- The draft Bill fails to set out measures to ensure the active involvement of interested parties, as required under Article 10.2 of the Directive.
- The draft Bill also entirely fails to set out any requirements to coordinate with the WFD or encourage public participation as required under Article 9 of the EU Floods Directive.

We have further concerns that the mix of responsibilities set out in the draft Bill also creates confusion between the Agency, lead local authorities and other operating authorities. This will be complicated further by the practical problem of incorporating local risk assessment, strategies and maps that have been developed along political boundaries into catchments or river basins, the basic reporting unit of the EU Floods Directive.

To overcome this, we suggest the Agency is made sole competent authority for implementation of the EU Floods Directive but that local authorities are given a statutory role in implementation.

We believe that local authorities are ill placed to make strategic decisions of significant risk at a catchment, river basin or national scale given their local political priorities. This has been amply demonstrated in the delays experienced in signing off CFMPs and Shoreline Management Plans (SMPs). As a result we recommend the Agency determines significance in light of information provided by local authorities.

The Directive clearly requires Member States to encourage the active involvement of interested parties in the production, review and updating of flood risk management plans (Article 10.2). This active involvement will be vital in both developing and testing assumptions and outcomes of risk assessments as well as ensuring public confidence in the results.

EU Water Framework Directive

The Angling Trust strongly supports the stated intention to ensure that all FCERM operational and consenting activities are consistent with the requirements of the WFD.

However, we do not believe clause 15 of the draft Bill delivers that intention. In particular, we are concerned that proposed caveat “have regard to the desirability of..” minimising detrimental effects makes it so weak as to be impossible to enforce at law, particularly when translated from national to local strategies.

We are also concerned that the phrase “*minimising detrimental effects*” implies that damage to the water environment is acceptable. This does not reflect the legal obligations of the WFD, which establish stringent criteria that must be met before deterioration in status is permissible.

The wording also suggests that damage is inevitable and so overlooks the potential for FCERM operating authorities to deliver improvements while exercising their FCERM function. As a result, the drafting misses an opportunity to identify synergies between FRM and WFD, a key requirement of the Floods Directive (Article 10).

Consenting and enforcement

We believe it should be possible to make consents subject to reasonable conditions. However, we are concerned that a combination of weak duties with relation to the WFD (see WFD section) and lack of conservation skills could undermine the ability of local authorities / IDBs to properly consider environmental impacts in their consenting regime.

Reservoir Safety

As previously stated these proposals have given rise to grave concerns and stated below are our proposals to remedy the situation together with a detailed background to the present situation.

Although many of our members hold rights on rivers and lakes, there are a considerable number who hold fishing rights on reservoirs, many of them over 10,000 m³ in volume.

With the proposed changes to the law, the two most worrying aspects would be the lowering of the threshold of relevant reservoirs from 25,000 m³ to 10,000 m³ and the categorical assertion of the responsibilities of leaseholders as “reservoir managers”.

Although we understand that there are clear cases where some of our members may purchase the freehold to a reservoir and, therefore, take on the responsibilities of reservoir manager, most of our members do not in fact own rights outright but hold their fishing and related rights subject to leases which are informal, sometimes unwritten and, very often, for short periods, especially where the landlord wishes to retain control.

It would therefore seem to us to be onerous for the responsibility to be placed on the shoulders of such a leaseholder or lessee angling club.

Understandably, those clubs which do lease the fishing are concerned that they may find themselves spending meagre budgets on expensive civil engineers in situations where they have little legal interest in the reservoir itself.

In very general terms, under the current law, where the operator/ manager is a utility, the Agency or a local authority, it carries the responsibilities for the upkeep. If the reservoir serves any other purposes, the undertaker/ user carries the burden of the upkeep. If there is no such use being made of the reservoir, then the responsibilities fall to the owner or lessee – which might possibly be a fishing club, but presumably only where the lease/ ownership covers the whole site including the crucial dam wall. The leaseholder does not take responsibility by default.

In the draft Bill, “undertaker” becomes “reservoir manager”, for which a general definition is given at section 105. The general definition in this section consists of, for the most part, exclusive sub-sections, including those where there is a lessee.

However, where in the 1975 Act, there was a logical ‘progression’ giving responsibility firstly to water plcs or British Waterways and only passing such responsibilities to angling clubs in relatively rare cases, the Bill provides for situations where there may be multiple reservoir managers with attendant responsibilities.

Clause 105 (6) of the Bill states boldly that “if the reservoir is let, the lessee is a Reservoir Manager” which appears to be a categorical confirmation of the leaseholder’s responsibilities, whatever the use, ownership or circumstances. For instance, if the reservoir is used for a commercial or other undertaking by its freehold owner, under a strict construction of the Bill, a lessee angling club could be a joint Reservoir Manager, irrespective of the nature of the lease.

This is far too onerous and may, for instance, catch angling clubs which lease their fishing on disused reservoirs or even where a non-utility owner continues to operate the reservoir.

We believe therefore that greater clarification is needed as to the meaning of ‘lessee’ as it appears in the draft Bill as a lease on a reservoir could in reality include:

- i) only non-corporeal hereditaments such as fishing rights;
- ii) short-term leases which are renewable on a yearly basis;
- iii) leases which are informal and unwritten; or
- iv) situations where the relevant lease contains a clause where, by agreement, the person taking responsibility is the landlord.

It cannot be reasonable to make angling clubs with non-corporeal rights only, or with mere annual leases (whether written or verbal), responsible for structural integrity and other aspects of reservoir safety. Equally, the law must recognise that such angling lessees may wish, for very practical reasons, to leave that responsibility with the freeholder. This option must remain open for the parties to such a lease to negotiate.

We believe for the above reasons that an interpretive or definitional clause should be added to exclude those lessees whose interest in the fabric of the reservoir in common law is minimal. We suggest that the following may be suitable:

“Nothing in this Bill (Act) has the effect of imposing duties as a reservoir manager on a lessee where that lessee is a fishing club or fishing syndicate holding only a lease to:

- i) the incorporeal fishing rights and any rights ancillary to fishing and/*
- or*
- ii) where the lease runs for less than 7 years.”*

With regard to the two options contained in the draft Bill re capacity then the Angling Trust recommends 10,000m³ rather than 5,000m³ be adopted as the minimum requirement but with the previously stated safe guards built in.

3. FCERM issues not covered by draft Bill provisions

Possible reform to the role of governance of IDBs

The Angling Trust recommends that the Secretary of State is given powers to publish statutory guidance on how IDBs should reform, setting out boundaries and a timescale for voluntary amalgamation after which compulsion will be used. We acknowledge the loss of small IDBs with progressive conservation policy presents local conservation risk (most notably on the Nene Washes). However, taken as a whole, we believe the benefits of amalgamation (greater accountability and use of professional biodiversity staff) outweighs the risk.

We therefore support giving the Secretary of State the ultimate sanction of compelling IDBs to amalgamate. This will create a real incentive to IDBs to reorganise voluntarily.

We have some concerns over adjusting the membership of IDBs, and removing the current restriction on the number of local authority representatives, as currently many local authority members fail to attend meetings, however we do support proposals to modernise IDB membership. Also the ideas outlined in the consultation do nothing to ensure representation of wider interests including biodiversity.

We believe that the current special Levy raising powers of IDBs is out of date and fundamentally flawed. The lack of transparency about how rates are set and what the money is spent on means there is a risk that local authority funds are used to cross-subsidise agricultural works. Also, the amount of Revenue Support Grant allocated to support the Special Levy is based on historic spend rather than an objective risk based assessment of need. As such, there is no guarantee that central Government money from CLG is being spent to maximum benefit.

We also recommend that local authority funding for flood risk management through revenue support be phased out and replaced by competitive bids to the central pot administered by the Agency. This would ensure a consistent, equitable and risk based approach to the way central Government money is allocated to all FRM operating authorities while leaving the option open for local authorities to ‘top-up’ funds where local priorities are identified.

We support the proposal of re-naming IDBs as Flood Risk Management Boards to better reflect the shift from defence and drainage to risk management.

Reducing property owners' and occupiers' impact on local flood risk

We are concerned that an emphasis on “maintenance” alongside a threat of enhanced legal sanctions could lead to over-zealous channel maintenance with devastating impacts on threatened and protected species, such as the water vole, as well as biodiversity more generally, often with little or no real drainage benefit. Therefore, it is vital that any move to increase awareness of riparian responsibilities includes information on statutory responsibilities and sensitive channel management.

The Angling Trust is also concerned that the threat of tougher legal sanction (Land Drainage Act 1991) could lead to widespread environmental damage. In particular, natural barriers to flow, such as woody debris create niche habitats and can play a vital role in enhancing the physical and biological diversity of watercourses. Watercourse habitat restoration projects where recognised in-stream techniques such as the installation of flow deflectors and large woody debris would be put at risk when applying for land drainage consents even though there is no additional flood risk.

4. Water: Issues covered by draft Bill provisions

Hosepipe bans

The Angling Trust supports the Bill's wording on non-essential bans, as it is essential that water managers are given the flexibility to respond to a variety of water uses into the future as we are unlikely to fully understand what future uses of water may be. We would certainly expect such a ban to apply to all use of hosepipes, sprinklers, pressure washers, in all domestic and commercial settings.

5. Water: Issues not covered by draft Bill Provisions

Time limiting of licences

Currently only 28% of abstraction licences are time-limited, 16,000 have no time limit and only 48% of the licensed volume from these sources is actually used – providing a large block to the fair distribution and sustainable use of water, and to the introduction of market mechanisms and competition. The Angling Trust strongly advocates a change to 12 year time-limited licences and fully supports the consultation's proposals. We hope that the consultation responses are processed quickly and that action can be taken promptly to incorporate these time-limiting measures into the draft Bill.

Competition and water pricing

Cave reported, at the end of April, that there was clear economic benefit to introducing competition to the non-household market and in 'unbundling' water company licences to create a 'network' licence and a 'retail licence'. In future, once the abstraction management system is placed on a sustainable footing, then there could be 'upstream' competition with licences given to new water suppliers to enter the market. The Angling Trust is broadly supportive of the Cave's reviews findings and would not object to clauses being added to the draft Bill to facilitate its recommendations.

Anna Walker is leading an independent review of charging and metering for water and sewerage services which has recently presented an interim report to Defra. This report supported full metering of all domestic consumers in England and Wales with help provided to vulnerable consumers who could be adversely affected. The Angling Trust fully supports metering, as a cornerstone of effective action on water and energy efficiency in the home. We would support the inclusion of facilitative clauses in a later version of the draft Bill.