



# WWF-UK and Angling Trust response to Defra's consultation on 'New rules to tackle diffuse water pollution from agriculture in England'

## Summary

1. We welcome the opportunity to comment on Defra's consultation which proposes seven 'new' mandatory requirements for farmers in an attempt to tackle agricultural pollution. The consultation makes clear that new mandatory measures to reduce phosphorous and sediment pollution are required to fully implement the Water Framework Directive in England and avert infraction proceedings, with *"evidence of widespread pollution from phosphorus and sediment but no mandatory controls in place to tackle them"*. This recognition by government that - the current regulatory framework in England relating to agricultural pollution is insufficient and causes significant burden to the environment, society and farmers - is extremely welcome. Proper measures to tackle pollution and protect the water environment are urgently needed.
2. The principle of introducing new mandatory requirements to control phosphorous and sediment in every catchment is very welcome and urgently needed. However, the seven 'new' rules that constitute Defra's proposal will have negligible impact even with high levels of take up (Defra modelling suggests reductions in phosphorous loading of just 2.4% and reductions in sediment loads of 0.3%).
3. We therefore believe that the proposals fall far short of what is needed *"to prevent or control the input of pollutants"* and thus we do not consider that they meet the requirements of Article 11.3h of the Water Framework Directive (WFD).
4. In our opinion, the proposals do not, therefore, fill the transposition gap and stricter controls are needed in order to avert infraction risk by the European Commission.
5. We note that agriculture needs to reduce phosphorus by on average 48% to meet WFD targets for this year. The consultation does not outline how the government plan to bridge the modelled reductions of phosphorus from the current measures (at 2.4%) with the 48% needed to still meet WFD chemical classification standards.
6. As an absolute minimum, Defra must look to implement all the measures proposed under option 3 in the consultation as mandatory controls (not as voluntary best practice as per the current Defra proposal). In addition, we would urge Defra to roll out all 17 measures that were proposed initially to the Water and Agriculture working group as mandatory controls or different measures that will meet the necessary phosphorus reductions still needed.
7. The proposal lacks detail on how the mandatory rules will be implemented and enforced; it is therefore hard to judge whether the proposal is workable. In particular we are concerned about



the lack of resources earmarked in the consultation document for Environment Agency enforcement. A significant step change in terms of Agency staff training and time spent on enforcement is needed if high levels of uptake proposed are to be reached. Without sufficient extra resources for education and enforcement, the new rules are unlikely to deliver even the modest improvements proposed.

8. We recognise that the proposed rules are to be the minimum measures needed in every catchment across the country, and therefore can only be considered as a baseline on which to build other measures – including other regulatory measures such as Water Protection Zones (WPZs) – as required in order to meet statutory environmental objectives. In the response to the consultation, Defra must set out how baseline and targeted regulatory measures, including WPZs, will be used together meet WFD objectives. This is particularly important in relation to Natura 2000 sites, given the court order to our recent Judicial Review to evaluate the effectiveness of Water Protection Zones alongside other regulatory measures.

## Introduction

9. We welcome the opportunity to comments on Defra's consultation on 'New rules to tackle diffuse water pollution from agriculture in England'<sup>1</sup>, as we have welcomed the ability to participate in the Water and Agriculture Stakeholder Group that supported its development.
10. We note that publication of the consultation was initially scheduled to be much earlier in order to reflect new mandatory measures in the River Basin Management Plans (RBMPs). We therefore urge Defra and the Environment Agency to comment, in the final policy documents, on the impacts of the new policy on the RBMPs.
11. It is important to note that the phosphorus (policy) gap, or the need for further measures to reduce agricultural phosphorus getting into watercourses, has been known for years. The EA has established the need to reduce the amount of agricultural phosphorus in England's rivers and wetlands by a 48%.<sup>2</sup> Significantly, the 2014 Catchment Sensitive Farming (CSF) evaluation report identifies that, in the seven years that CSF has operated this gap has not reduced. The report also acknowledged that existing measures were inadequate to achieve necessary reductions, noting that 85 - 90% would need to be delivered via other measures (ie these proposed measures or a WPZ).
12. We welcome the rationale set out in the consultation which shows that the current regulatory framework in England relating to agricultural pollution is insufficient and causes significant burden to the environment, society and farm businesses. The consultation makes clear that Defra consider that the status quo fails to comply with the Water Framework Directive stating that the aim of the consultation *"is to establish a clear set of regulatory baseline good practice actions that meet the requirements of the Water Framework Directive"* and that *"gaps in the current regulatory framework need to be addressed"*. Specifically, as part of the impact assessment supporting the consultation proposals, Defra state that *"at present in England, there is a mix of regulatory controls with no mandatory controls on phosphorus or sediment"* and consider this a risk of infraction under Article 11.3h of the WFD<sup>3</sup>. We agree with this analysis.
13. We note the figures presented in the consultation's impact assessment outline the significant impact agricultural pollution has on the wider economy. These costs are estimated at £758

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<sup>1</sup> The consultation is available at: <https://consult.defra.gov.uk/water/rules-for-diffuse-water-pollution-from-agriculture>

<sup>2</sup> Environment Agency. Catchment Sensitive Farming Evaluation Report - Phases 1 to 3 (2006 - 2014). August 2014.

<sup>3</sup> A requirement on Member States to put in place 'basic' measures – the minimum requirements to be complied with – to prevent or control the input of pollution from diffuse sources. *"Controls may take the form of a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation."*

million to 1.3 billion a year, and are borne by the water industry, the tax payer, angling groups, conservation groups, the shellfish industry and tourism. The very small impact of the current proposed measures confirms that these costs will continue to be borne by the rest of society through increased water and waste bills, for example.

***Q1. If we introduce new basic rules to reduce diffuse pollution from agriculture do you agree with the principles set out in paragraph 2.21? NO***

***What are the key reasons for your view?***

14. We understand that the new proposals are a response to pressure from the European Commission (EC) to put in place basic measures to tackle agricultural pollution in the face of very little progress to date. (For example, recommendations to impose mandatory measures on farmers were made in the EC's communication in March 2015; in October 2015, the EC issued a reasoned opinion to the UK government over failure to tackle negative water impacts). The impact assessment accompanying the consultation also makes this clear, arguing in support of the proposals on the basis that they “close out the infraction risk on Article 11.3h of WFD”.
15. In addition, new mandatory controls on farm pollution is urgently needed, given that:
  - a) A quarter of all failures in meeting Good Status can be attributed to diffuse agricultural pollution.<sup>4</sup>
  - b) Environment Agency analysis shows that the regulatory and voluntary measures currently in place could never be sufficient to address agricultural pollution to the extent needed to meet WFD objectives.<sup>5</sup> Particularly for phosphorus where the new measures have only a modelled reduction of 2.4% reduction which are significantly below the 48% reduction needed to reach WFD chemical targets.
  - c) Although government has a regulatory control in place that was designed specifically to tackle diffuse agricultural pollution – the Water Protection Zone – government has repeatedly emphasised the complexities and difficulties associated with using this tool: a *real difficulty of proceeding to propose a WPZ was the need to obtain sufficient evidence to justify that the measures in a WPZ were really needed, where other measures had not yet had time to have an impact.*<sup>6</sup> This could also amount to a transposition issue.  
  
We welcome the recent agreement by Defra to conduct evaluations of the effectiveness of:  
  
‘The potential for measures to be included in WPZ orders to achieve the protected area objectives in each Natura 2000 site and the effectiveness of delivering those measures through the WPZ mechanism. The results will be set out as soon as reasonably practicable in the Diffuse Water Pollution Plans and/or Site Improvement Plans as appropriate for each site, as amended from time to time.’<sup>7</sup>
16. While the principles set out in 2.21 should be adhered to if possible, it is crucial that diffuse agricultural pollution is addressed. The principles of 'polluter pays' and costs recovery, enshrined in the WFD, must also be included in the list of principles underpinning the basic rules. In light of this, we do not agree with government's proposal to rule out making the four

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<sup>4</sup> Environment Agency *Progressing towards WFD objectives – the role of agriculture* April 2014.

<sup>5</sup> Environment Agency *Progressing towards WFD objectives – the role of agriculture* April 2014.

<sup>6</sup> Skeleton argument on behalf of the Defendants: WWF-UK, the Angling Trust limited & Fish Legal -vs- the Secretary of State for Environment Food and Rural Affairs, the Environment Agency & Natural England. Robert Palmer, Monckton Chambers, 9 November 2015.

<sup>7</sup> Draft Consent Order: WWF-UK, the Angling Trust limited & Fish Legal -vs- the Secretary of State for Environment Food and Rural Affairs, the Environment Agency & Natural England. 26 November 2015.

additional actions mandatory (option 3) due to the potential for increased costs on farmers, given the evidence that such an option would *“improve England’s prospect of complying with the requirement in the WFD for all water bodies to reach good ecological status by 2027 and reduces reliance on voluntary and incentive-based approaches to achieve this”*.

***Questions on the list of proposed basic rules***

***Q2. Please tick those basic rules above that you consider most appropriate to add to the existing regulations in terms of safeguarding water quality and supporting competitive farming?***

***Q3. Do you have any comments on individual rules?***

***Q4. Do you have any comments on the proposed approach to verification?***

***Q5. Are there any additional rules or good practice which you feel should be added? Yes/No? If Yes please give details.***

17. The consultation proposes seven new mandatory rules for farmers, focus particularly on phosphorus *“as there are currently no rules that cover phosphorus and it is a significant pollutant”*. They are:
  - a) Locate field manure storage at least 10 metres from a watercourse - farmers meeting Nitrate Vulnerable Zone rules already compliant.
  - b) **Use a fertiliser recommendation system, taking into account soil reserves and organic manure supply.**
  - c) Spread fertilisers and manure accurately, e.g. by using calibrated and maintained machinery - farmers meeting Nitrate Vulnerable Zone rules already compliant.
  - d) **Use a feed planning system to match nutrient content of diets to livestock feeding requirements.**
  - e) **Livestock feeders must not be positioned within 10 metres of any surface water or a wetland.**
  - f) Avoid severe poaching where likely to pollute a watercourse - compliance already achieved if already adhering to cross-compliance (GAECs 4 & 5).
  - g) Take action to prevent soil erosion and run-off from tramlines, rows, irrigation and high risk sloping lands or those lands highly connected to surface water - compliance already achieved if already adhering to cross-compliance (GAECs 4 & 5).
18. We are disappointed that many of the measures originally shared with the Water and Agriculture stakeholder group have not been taken forward to consultation, and there is no explanation as to why they have been ruled out.
19. We note that, in effect, only three of the proposed 'new' rules are actually new (those in bold above). Farmers in Nitrate Vulnerable Zones (covering 58% England) complying with the mandatory rules under the Nitrate Pollution Prevention regulations would already compliant with proposed rule 1 and 3. Farmers in receipt of subsidies under the Basic Payment Scheme (95% of farmers) should already be compliant with rules 6 and 7. Given that Defra (and the EC) believe that there is a transposition gap under current arrangements, it seems implausible to believe that the gap will be filled by rolling out so very little in terms of new arrangements.
20. In addition, the consultation seeks views on four additional actions (including restrictions on

spreading fertilisers in winter and exclusion of livestock from watercourses). The government proposal being that these would be adopted by farmers purely on a voluntary basis as part of good practice. We urge Defra to, as a minimum, adopt these four additional actions as mandatory binding rules, particularly as they will more than triple the reduction of phosphorus loading from agriculture by 6.6%.

***Q6. Do you agree or disagree with the above approach to compliance and enforcement?***

**Agree and disagree**

***What are the key reasons for your view?***

21. While the approach to compliance and enforcement in general seems sound, there is insufficient information to enable stakeholders to consider whether the approach will be workable and effective.
22. We welcome the emphasis on ensuring compliance with the rules themselves. This will be a considerable step forward from the status quo, whereby impossible requirements are placed on Agency staff to demonstrate the impacts of pollutants in terms impacts of single events rather than by 'death by a thousand cuts'.
23. More information is needed on the advice and enforcement process. We would support a similar approach to that implemented by SEPA in Scotland (i.e. targeted visits to farmers, site-specific advice given, follow up to ensure it is being implemented, and warnings and fixed penalty notices given where not).
24. More information is needed on the roles and responsibilities of the various players involved in farm advice and enforcement. As identified in the 2011 Strategic Evidence Project report by the Rivers Trust (commissioned by Defra and WWF), the Environment Agency should have a clear enforcement role, supported by Natural England CSF staff, and water company and NGO staff involved where applicable to deliver farm advice.
25. In particular we are concerned about the lack of resources earmarked in the consultation document for Environment Agency enforcement. A significant step change in terms of Agency staff training and time spent on enforcement is needed if high levels of uptake proposed are to be reached. Without sufficient extra resources for education and enforcement, the new rules are unlikely to deliver even the modest improvements proposed.
26. Defra anticipates that regulations required to underpin the proposed rules would be laid in early 2016, with a common commencement date of 1 October 2016. Defra are also proposing to roll-out the new rules gradually, and are proposing a transition period to give businesses time to adapt. As an approach this seems sound, however, clarity is needed on when the proposals are intended to be fully operational.

***7. Do you agree or disagree with this approach to streamlining regulation?***

**Disagree**

***Please give reasons for your view.***

27. The proposal is to streamline all regulations for controlling agricultural pollution into a single set of regulations in order to bring together the majority of actions that farmers must take to reduce water pollution (i.e. the existing regulations together with the proposed new regulatory rules). Such an approach is welcome. However, there is a considerable oversight in the failure to refer to potential WPZs relating to 'targeted regulations in defined areas'. The final policy

document must make clear Defra's commitment to using WPZs where necessary to meet statutory environmental objectives for Natura 2K sites, consistent with the Court Order of 26 November 2015.<sup>8</sup>

28. We are surprised that WPZs are not mentioned in the consultation or supporting documents. While it is clear that, as a regulatory mechanism, WPZs fundamentally differ from the rules proposed in the consultation, it is important that use of new mandatory controls be viewed as a baseline upon which WPZs, and other measures, will be built in order to achieve statutory conservation objectives.
29. In considering filling the transposition gap related to diffuse agricultural pollution, we believe it is vital for Defra to consider how WPZs can play a more significant roll. Rather than a blanket approach to be rolled out everywhere, WPZs can be specifically tailored to local needs, in consultation with local stakeholders. They fill an important gap in the regulatory toolkit by allowing the Environment Agency and Defra to apply targeted regulatory controls on land managers and others that reflect the unique characteristics of a catchment, its land use and the sensitivity of the water bodies in question. It is this potential to tailor action anywhere it is needed, prevent damaging activity and ensure positive management that marks WPZs out from other regulatory measures and makes them essential in fulfilling obligations of Article 11.3(h).

***Q8. Do you have any further evidence it would be helpful for Government to consider as this policy is developed further?***

**NO**

ENDS/ Dominic Gogol and Mark Owen, 24th November 2015

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<sup>8</sup> Draft Consent Order: WWF-UK, the Angling Trust limited & Fish Legal -vs- the Secretary of State for Environment Food and Rural Affairs, the Environment Agency & Natural England. 26 November 2015.