

Wildlife and
Countryside



**Response to DEFRA/WAG Second consultation Paper
on the Implementation of the
EC Water Framework Directive (2000/60/EC)**

Wildlife and Countryside Link

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"Bringing voluntary organisations in the UK together to protect and enhance wildlife and landscape, and to further the quiet enjoyment and appreciation of the countryside"

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Background

Wildlife and Countryside Link (Link) brings together environmental voluntary organisations in the UK united by their common interest in the conservation and enjoyment of the natural and historic environment. Taken together, Link's thirty-three members turnover more than £500 million per annum, employ 7,200 full-time staff and have the support of approximately 6 million people in the UK.

This statement is supported by the following organisations:

Buglife, The Invertebrate Conservation Trust
Herpetological Conservation Trust
The National Trust
Plantlife
Royal Society for the Protection of Birds
The Wildlife Trusts
Wildfowl and Wetlands Trust
Worldwide Fund for Nature

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Executive Summary.

1. Wildlife and Countryside Link (WCL) are disappointed by the bland and uninspiring tone of the document, and in certain respects does not believe it to be fit for purpose.
2. Concerns about "Gold Plating" have constrained thinking to such an extent that the scope for timely, cost effective and sustainable approaches to implementation has been severely curtailed.
3. WCL consider that integrating Water Framework Directive (WFD) implementation with the following six policy areas is essential if we are to achieve real benefits for people and the environment:
 - Planning policy reform
 - Agricultural policy reform
 - Biodiversity Policy
 - Flood Defence reform
 - Water Bill and Water Resource Policy
 - Periodic Review of water pricing
4. Many improvements to water status can only be achieved through better management of soils. Defra should make clear links between WFD implementation and its Soil Action Plan.
5. Pivotal elements of the Common Implementation Strategy (CIS) guidance documents should be tested through the Ribble pilot river basin project.
6. Defra and the Environment Agency (EA) must promote stakeholder involvement in work to define the meaning of good ecological status.
7. Government must take action to improve the condition of smaller water bodies, as outlined in the EA consultation document on WFD.
8. Government must invest adequate resources in developing the tools necessary to meet the technical challenges of the WFD.
9. Further assessments of the economic implications of the Directive are essential, and should focus on the following areas:
 - Testing different scenarios for the timing of implementation.
 - Employing more refined definitions of good status.
 - Linking WFD assessments with other legislative and policy instruments, including agricultural reform measures.
 - Valuing benefits more effectively.
 - Investigating the comparative costs of measures when adopted by different types of businesses, or businesses operating at different levels of environmental performance.
 - Investigating the cost effectiveness of different combinations of measures.

10. Transposition regulations should include a clear re-statement of the purpose the WFD, by including the full text of Article 1.
11. WCL is disheartened that Government continues to sanction the deterioration of the aquatic environment. The no deterioration principle should be applied immediately to all aspects of water status.
12. WCL support the proposal for statutory water objectives. Defra should commit to a 2006 introduction of the standards, which must include:
 - An assessment of each biological quality element.
 - Statutory standards for general physico-chemical elements.
 - A statutory system for the classification of groundwaters.
13. There is no provision within the WFD to apply cost/benefit assessments to all individual improvements. Every derogation will, however, have to be clearly justified in relation to the tests established in the Directive.
14. WCL support the extension of the seaward limit of coastal ecological status objectives from one to three nautical miles.
15. Sub-plans must be accessible, appropriately funded, consulted on in a cohesive way, and integrated with other plans both spatially and temporally.
16. River Basin Management Plans (RBMPs), as well as programmes of measures (POMs) should have a statutory basis.
17. Giving the EA sole responsibility for developing plans and co-ordinating programmes of measures will not, in WCL's opinion, deliver WFD objectives effectively.
18. Government must create the additional statutory duties and powers necessary to ensure all that relevant bodies contribute fully to WFD objectives.
19. WCL propose the creation of River Basin Management Authorities to develop RBMPs and POMs.
20. Defra must issue draft Statutory Guidance for the EA and other relevant bodies as a matter of urgency, to comply with the WFD implementation timetable.
21. Duties should be placed on relevant bodies to provide the necessary information for the RBMP process.
22. The costs of water services must be assessed taking into account all environmental and resource costs, not just the financial costs of environmental improvements.
23. Defra should make it clear that cost-effectiveness includes the assessment of environmental costs and benefits.
24. WCL does not believe that single, national economic analysis will allow the development of best and most sustainable solutions at a local scale.

25. Excluding sites designated under the Ramsar Convention from the Protected Areas Register is a direct contradiction of stated Government policy, to afford such sites the same level of protection as the Natura 2000 network.
26. RBMPs and POMs should be used to deliver the Government's existing targets for SSSIs and UK Biodiversity Action Plan species and habitats.
27. The Government must make adequate resources available for the development and implementation of new monitoring tools.
28. There is a clear case for a medium-term view of legislation and regulation covering the water environment, to provide flexible powers for the Environment Agency to control any activity likely to directly impact upon water status.
29. There is significant room for improving the equity, efficiency and sustainability of water use in the industrial, economic and agricultural sectors.
30. Reforms of the abstraction licensing system proposed in the new Water Bill must meet the needs of WFD transposition, by extending the duty to use water efficiently, and creating an effective mechanism for converting permanent to time-limited licenses.
31. Safeguard zones could provide a valuable and cost-effective tool for planners to improve water quality and deliver environmental improvements.
32. The exemption from licensing requirements, for abstractions undertaken either for land drainage or flood defence purposes, should be removed.
33. WCL welcome proposals in Water Bill to create a register of small abstractors.
34. The Government must define significant ecological damage from abstraction by explicit reference to WFD objectives.
35. The EA does not currently have comprehensive powers to modify impoundments. This may need to be addressed to meet WFD requirements.
36. The regime governing point source discharges must be linked to the land use planning system. Where new development would result in unsustainably high levels of discharge, the Environment Agency must be empowered to refuse consents.
37. A more wide-reaching power to review, vary and revoke discharge consents should be included within the transposition regulations for the Directive.
38. The Defra Diffuse Pollution Strategy should be issued for consultation at once, and should cover the following key areas:
 - An assessment of changes in land-use required to achieve relevant standards.
 - New regulatory powers.
 - Prompt consultation on an economic instrument to address nutrient pollution.
 - Development of the links between agri-environment measures and diffuse pollution.

- Stronger links between the planning process, drainage design and the ecological outcomes required by the WFD.
39. WCL welcome the proposal for a new power to control diffuse pollution. This should be brought into action in 2004, and include provision for General Binding Rules and more tailored action specific to high risk areas.
40. Article 11 (3) (i) requires the creation of a power enabling the EA to control physical impacts on the hydro-morphological elements of water bodies.
41. The current level of groundwater protection afforded by the existing Groundwater Directive must not be compromised by the implementation of the WFD or the daughter Directive.
42. Defra should ensure that the transposition of Article 11 (4), Supplementary Measures, makes it clear that these will form a key component of statutory POMs, and must be used where they are necessary:
- To meet the environmental objectives of the Directive (ie where basic measures are considered insufficient) and/or
 - To ensure the most cost effective combination of measures.
43. There is a clear opportunity to use the Planning and Compulsory Purchase Bill to link the land-use planning regime in to RBMPs.
44. Defra should also consider the following mechanisms for linking water and land-use planning:
- Ensuring consistency between land use plans and RBMPs by creating regulations that require plans to be consistent with the other.
 - Measures to achieve WFD objectives are incorporated in the new Regional Spatial Strategies or Local Development Documents.
 - The EA is made a statutory consultee in respect of the Water Framework Directive on Regional Spatial Strategies, plans and planning applications.
 - An obligation on local planning authorities to contribute actively to WFD requirements and objectives whilst exercising their functions.
 - Updates of relevant planning policy guidance (likely to be renamed Planning Policy Statements) and creation of new guidance on water.
 - Synchronisation of RBMPs with development plans on a six yearly cycle.
 - Removing the duty on water companies to provide water supplies and sewage treatment facilities to new housing.
45. WCL support the proposal to retrospectively apply transposition of Article 23 to existing legislative provisions.
46. Defra should follow the example of the Scottish Executive, and consider linking the definition of good status for surface waters with the prevention of significant damage to associated dependent wetlands.
47. Defra must ensure, that those administering RBMPs deliver a full process of public participation, including information supply, consultation and active involvement.

1 Introduction

Wildlife and Countryside Link (Link) is a collation of the UK's major environmental non-governmental organizations united by their common interest in the conservation and enjoyment of the natural and historic environment. Link acts as a forum for its members to develop their views on national and international issues affecting wildlife and the countryside and to work together to influence UK policy.

The members of Link have identified Water as an important issue and formed a Water Task Force which brings together expertise from a wide range of interested organizations. The Water Task Force includes organisations which reflect the broader interest in water issues which is key to the conservation of wildlife and the countryside. The Task Force also works with non-Link members such as the Ponds Conservation Trust, Policy and Research to ensure that Link work has a broad basis of support from the non-governmental community concerned with water issues. Together members of Link have considerable expertise in the field of water policy and management, both through their land holdings and advocacy work and much of this work has been used within this response.

Wildlife and Countryside Link believe that the Water Framework Directive represents a precious opportunity to restore and protect the ecological integrity of the water environment. However, if we are to make the most of this, we must take two crucial steps. Firstly, we must promote challenging as well as achievable standards for the water environment, so that the outcome of the River Basin Management Plans is demonstrable environmental gain. Secondly, we must acknowledge the technical and administrative challenges posed by the Directive, so that we can address gaps in our current understanding during the current period of planning and assessment. In taking both of these steps, it is vital that Government, regulators and stakeholders work together to develop common goals and share expertise.

2 Scope and direction of the Consultation.

The Wildlife and Countryside Link welcome the ongoing process of consultation on the implementation of the Water Framework Directive (WFD). However, we are disappointed by the bland and uninspiring tone of the document, and in certain respects do not believe it to be fit for purpose.

The consultation does not convey any sense of the benefits of effective implementation of the WFD. Instead, it presents a "gap analysis", comparing existing legislation to the minimum regulatory framework required for transposition.

The document fails to live up to the promise of the Government's strategy for water, *Directing the Flow*. This recognises the WFD as the most powerful tool available for achieving policy integration and sustainable water management. Yet faced with the task of implementing the Directive, Defra appear to have little concept of where it sits within the wider environmental, social and economic goals outlined in their own high-level plan.

It would appear that concerns about "Gold Plating" are constraining thinking to such an extent that the scope for cost effective and sustainable approaches to implementation is severely constrained. For example, the document limits proposals to use 'supplementary' measures, such as voluntary schemes, co-operative agreements and fiscal instruments, to situations where 'basic' measures (regulation) are insufficient to meet WFD objectives. This interpretation, in WCL's opinion, will create an over-reliance on regulation, at the expense of

more flexible solutions which might be more effective, more sustainable in the long-term, and more acceptable to stakeholders. It is difficult to reconcile this blinkered approach with the general aim of Government policy, to achieve smarter regulation, employed in tandem with more innovative and co-operative approaches.

WCL are also concerned that this minimalist approach to implementation will result in measures being put in place at the latest moment possible to comply with EU law. There are good reasons for believing that this will not deliver "best value" for UK plc. For instance, by waiting until 2012 to make the measures operational, all of the action that may be required of the water industry will be shoe-horned into a three year period. The industry itself has repeatedly warned Defra that such an approach threatens its ability to grow its businesses against a background of financial certainty. Such an impossibly short period for delivery will also discourage the landscape-scale management of nutrients, pesticides and other diffuse pollutants, since such solutions may take several years to produce results. Instead, we risk high short-term spending on end of pipe solutions, requiring ongoing energy and chemical inputs.

3 Policy Integration – Making Links.

WCL has become increasingly frustrated at Defra's failure to take integration opportunities with other policy areas. Recent initiatives have almost all been greeted with the 'gold plating' argument, despite Ministerial statements and documents (ie *Directing the Flow*) which actively promote integration. True to form, this consultation makes little effort to engage with other initiatives, and does not supply any real ideas of its own. The Big Six issues that need serious consideration for policy integration are:

- Planning policy reform
- Agricultural policy reform
- Flood Defence reform
- Water Bill and Water Resources Policy
- Periodic Reviews of water prices
- Biodiversity Policy

There are opportunities in every one of these areas now, to address conflicting policy objectives and develop cohesive policies.

3.1 Planning Policy Reform.

WCL is disappointed that no mention of planning is made in Chapter 2 (policy integration). Planning policy has major implications for water status. Many witnesses at the Efra Select Committee Enquiry into the WFD noted that appropriate links had not been made with planning policies, and that not enough effort had been made to engage local authorities, planners and the Local Government Association.

Neither the Government's Planning Green Paper *Planning: Delivering a Fundamental Change* (December 2001), the Deputy Prime Minister's Statement *Sustainable Communities: delivering through planning* (July 2002) nor the *Planning and Compulsory Purchase Bill* (December 2002) refer to the WFD or RBMPs. This is a serious omission. Revisions of existing Planning Policy Guidance Notes, the creation of a PPG for water, and formal links between the WFD and the *Planning and Compulsory Purchase Bill* should be considered by Defra and DPMO as a matter of urgency.

3.2 Agricultural Policy Reform.

The movement of water over and through farmland determines not only flow volumes and speeds, but affects the movement of particulate and soluble pollutants, and impacts on rates of aquifer recharge. The control of diffuse agricultural pollution, the protection of water resources, sustainable flood management, and the sensitive management of water levels, all therefore require integration of water and agriculture policies. Land management options for improving water status should, therefore, seek to deliver multiple benefits across this range of issues. They also offer opportunities of significant gains for biodiversity, historic landscapes and rural communities.

Directing the Flow notes that forming links between water management and agriculture policy is a ‘very high priority’, and promises to ‘pursue integration vigorously.’ Extolling the virtues of integration, however, means little if it is not accompanied by concrete proposals for action. Proposals in the following key areas would demonstrate that the creation of Defra has resulted in actual, as well as conceptual ‘joined up Government.’

- **Controlling Diffuse Pollution from Agriculture.** The current consultation document and Defra’s Strategy for Sustainable Food and Farming defer discussion on this issue to the forthcoming Defra Strategy on Diffuse Pollution. WCL is concerned that consultation on this document has been delayed for several months. Failure to address this problem is resulting in continued deterioration of the water environment, and costing water customers an estimated £120 million per year in clean up costs.
- **Managing Farm Water Use.** The DEFRA Strategy on Sustainable Food and Farming states that ‘Farm and land management practice will need to change to respond to increased pressure on water resources and changes in crop yields and types as well as pests and diseases.’ This is a welcome admission, but is barely reflected in the current consultation. To remedy this, Defra need to improve links between the WFD and proposals to modernise the abstraction licensing regime, and bring forward concrete proposals to incentivise efficient on-farm water use.
- **Farming and Floods.** The DEFRA Strategy for Sustainable Food and Farming (2001) recognises that agriculture policy has a role to play in flood amelioration, and promises that Government will explore opportunities for paying farmers to provide more land for flood storage. Unfortunately, there are no concrete proposals in the current document to take this forward.

The forthcoming reform of the Common Agriculture Policy (CAP) also represents a major opportunity to bring land management policies into line with the aims of environmental directives, including the WFD. However, the recently published proposals have been significantly weakened from earlier versions, under the influence of anti-reform member states and producer lobbies, to the extent that the two most powerful environmental protection mechanisms (cross-compliance and fund-switching to the Rural Development programme) will not deliver any real benefits. Full realisation of both these mechanisms is likely to be necessary in order to meet the objectives of the WFD. Despite pro-reform public rhetoric, the UK government has not succeeded in securing meaningful reform proposals in line with the Curry Commission principle that public support for agriculture must deliver public benefits. The mismatch between the CAP proposals and the WFD represents a lack of joined-up thinking at the very highest level in Europe.

3.3 Links with Flood Defence Policies.

The nature of the water cycle, the strong links between flooding and pollution impacts, and the effects of flood defences on hydrology and ecology mean that sustainable flood management must be an intrinsic part of achieving good status. WCL is pleased to see that Defra has started to make the links between the WFD and some elements of flood management policy.

The appropriate teams in Defra (ie water quality, agriculture, flood management) and ODPM (ie PPG 25) must now work together, to produce concrete proposals on how WFD transposition will affect flood management, and how flood management policies and practice may need to change to meet the requirements of the WFD.

Such a paper should consider, inter alia, adapting the guidance for Catchment Flood Management Strategies to ensure compliance with the WFD; mechanisms to achieve land use change, where this is contributing to flood damage and pollution; ensuring that local authorities follow EA advice on floodplain development; and securing payments for farmers to create wet and dry washlands for flood storage areas. Defra may want to look to the Parrett Catchment project as a pilot for developing this work further. Further detail of the WCL position on links between WFD and flooding policies are included as Appendix 1 of this document.

3.4 Water Bill and Water Resource Policy.

Water resource management is an integral part of the WFD. Hydrological regimes must to be managed to allow surface and groundwaters to achieve their environmental objectives, including the protection of terrestrial ecosystems which depend on groundwaters.

Since the droughts of 1995, there have been a number of reforms to the management of water resources in England & Wales. These include the publication of a water resource strategy for England & Wales, the development of Catchment Abstraction Management Strategies (CAMS) and proposals for reform of the abstraction licensing system in the Draft Water Bill, contained in this years Queen's speech.

Whilst Link members have generally welcomed these reforms, they fall some way short of enshrining the requirements of the WFD into domestic policy. For this reason, we do not feel the complacent line taken in the consultation is justified. We do not feel that the proposals contained in the Water Bill will meet the Directive's requirements for controlling abstractions or ensuring the sustainable use of water nor do we recognise that CAMS "*generally satisfy the requirements of the Directive with respect to water quantity*" (see section 11.6.5).

3.5 Links with the Periodic Review Cycle.

The current consultation includes no specific proposals for linking WFD implementation with the PRO. The Water Industry has repeatedly asked Defra for leadership in this matter, and proposed ways in which the PRO could be linked to the RBM planning cycle. In particular, they are seeking equitable distribution of costs between water companies and other sectors (including agriculture), and a predictable planning and pricing regime, to encourage investment.

WCL largely share their concerns, and see the integration of PRO and WFD as a pre-requisite to the delivery of more sustainable and cost effective water management.

3.6 Links with Biodiversity Policy.

Directing the Flow stresses the importance of integrating biodiversity objectives with other policies.

Similarly, the England Biodiversity Strategy states that ‘we will encourage links between catchment scale biodiversity targets and the River Basin Management Plans prepared by the Environment Agency for the Water Framework Directive through the development of pilot sub-plans linked with relevant Local Biodiversity Action Plans.

Sadly, the proposals in the current consultation do little to progress this idea, and to link the Government’s commitments to wetland biodiversity with WFD implementation. Chapter 9 (Protected Areas Register) rules out using the Directive’s planning mechanisms to deliver existing national obligations. In suggesting that the EA may be given the power to create sub-plans, it does not specify a link to biodiversity, and insists that such plans would contain more detail, but no additional obligations. Without a means of linking targets in such plans to the design and implementation of programmes of measures, and such mechanism would, in the opinion of WCL, be purely cosmetic.

3.7 Participation in the Common Implementation Strategy.

The consultation’s perfunctory description of the Common Implementation Strategy does not do justice to innovative nature of the process, the contribution of UK representatives, and the many useful products emerging from it, including the various implementation guidance documents. In order to get the best from the UK’s considerable investment in the CIS, it is important that some of the most technically challenging and pivotal elements of the guidance documents are tested in England, through the proposed pilot river basin on the Ribble. These include:

- The application of the **Coast and REFCOND** guidance documents, to assist in developing standards for environmental water quality, which reflect the holistic approach of the Directive, and are a sound basis for risk-assessment and economic analysis.
- The development and application of the **Wetlands Guidance**, to ensure that these vital components of the water cycle are fully integrated into the planning process, and role in Supplementary Measures is properly explored.
- Further **economic analysis**, based on the principles established in the **Wateco Guidance**. This should include appraisal of the cost effectiveness of different management scenarios, including landscape scale management change to control diffuse pollution.
- The development of a full process to ensure **public involvement** in the preparation and implementation of plans.

3.8 Links with EA Technical Consultation.

We are concerned that very few of the issues covered by the EA document have been linked to the Defra consultation. Whilst WCL recognise the need to avoid duplication, this principle should not result in the virtual de-coupling of two Government-sponsored consultation

documents on the same piece of legislation. In particular, we would like to see Defra emphasis the following points in future consultations:

- The urgent need to engage a wide range of informed stakeholders in defining more precisely the **meaning of good ecological status**.
- The need for measures to improve the condition of **smaller water bodies**, given that the environmental objectives of the Directive apply to all surface waters.
- Acknowledgement of the need to develop new tools and methodologies to address some of the **technical challenges of the Directive** (for example further development of CAMS).

3.9 Links with soil management.

Water and soil issues are inextricably linked. Many of our current water management problems have their roots in the poor husbandry of soils; for example, diffuse pollution from silts and nutrients, heightened flood risks and reduced aquifer re-charge rates can all arise from soil mismanagement, leading to increased rate and volume of run-off and associated erosion. Defra must link WFD implementation and flood management policies to its draft Soil Action Plan, to ensure that the proposals contained in that document contribute to the achievement of sustainable water management and WFD water status objectives.

4 Regulatory Impact Assessment and Costs and Benefits of Implementation.

It is important not to confuse the work of any future Regulatory Impact Assessment with the detailed economic analysis at a River Basin Scale, which is legally required as part of the WFD planning framework. Members of WCL have urged DEFRA on several occasions to update and improve the Regulatory Impact Assessment that accompanied the first consultation document on the Directive. However, the time available for more economic work on the national implications of the Directive is now very limited, and it is important that any additional work focuses on key areas, which were under-researched in preparing the original RIA. These include:

- **Testing different scenarios for the timing of implementation.** For example, assessing the possible costs and benefits of (in some cases) implementing measures before 2009, or of delaying implementation by the use of time derogations.
- **Using the increased understanding of water status emerging from European and national technical groups, to inform economic analysis.** In particular, it would be helpful to test different scenarios for good status, based on pressure thresholds such a levels of river modification and patterns of land use in relation to pollutant loads.
- **Linking economic assessments of WFD with other legislative and policy instruments, including agricultural reform measures.** The results of the current negotiations on the mid term review of the Common Agricultural Policy will have major implications for the costs of WFD implementation. These should be considered during further economic work. Such work should also take into account the implications of applying different combinations of measures to control diffuse pollution.
- **Valuing benefits more effectively.** A systematic approach is needed for identifying all types of benefits associated with the delivery of good status for water.

This should use Total Economic Value framework and take proper regard of the needs of future generations, as well as the multiple functions of ecosystems.

- **Investigating the comparative costs of measures when adopted by different types of businesses, or businesses operating at different levels of environmental performance.** For example, by an ‘average farm’, a farm undertaking ‘good agricultural practice’, and an organic farm. Such an investigation could also include costs to farms entered into the Entry Level agri-environment scheme. The results should help to distinguish genuine costs from those associated with business inertia.
- **Investigating the cost effectiveness of different programmes of measures,** for example by assessing the environmental, social and economic costs of land-use change in comparison with more conventional ‘end of pipe’ solutions. The proposed pilot river basin in the Ribble offers opportunities in this area.

5 Meeting Environmental Objectives.

One of the more worrying elements of this consultation is its failure to articulate the overall purpose of the Directive in relation to the water environment, and the likely benefits of implementation for that environment (there are, however, frequent and detailed references to costs).

WCL believe that the transposition regulations should include a clear re-statement of the purpose the Directive, by including the full text of Article 1. We refer Defra to the Scottish Water Environment Bill, which uses Article 1 (a) to set the context for the measures that follow. In our view, this makes the Bill both more robust and accessible.

5.1 The objectives.

The document makes no effort to describe good status in a meaningful way for stakeholders. This failure renders it, in our view, unfit for purpose. A description of **water status** should include the following:

- A brief explanation of the **waters to which the Directive applies.**
- An explanation of the **concept of ecological status**, highlighting ecosystem health as the key test of sustainable water management.
- An explanation of the **relevance of the groundwater objectives**, which are directed at securing the condition and long-term availability of drinking water supplies, and protecting habitats which depend on groundwater, such as surface waters and wetlands.

5.2 The principle of ‘no deterioration.’

The consultation is virtually silent on the different possible interpretations of the ‘**no deterioration**’ objective and their implications. Whilst the text may be a skilful gloss on the Defra position on this matter, to the uninitiated it conveys very little. Defra should make it clear that it is acting on legal advice, that further deterioration of the water environment may be allowed until 2012, without risk of infraction; and that the Government intends to follow this advice, in accordance with its principle of ‘no gold plating’. It should also make it clear that this legal opinion is not shared by all Member States, or endorsed by the European

Commission. Stakeholders would then be in a position to consider whether Defra has adopted an appropriate position.

WCL is thoroughly disheartened that Government, by taking this stance, is tacitly sanctioning the continued degradation of the aquatic environment. We do not believe that this position reflects the spirit of the WFD; and our own legal advice (made available to Defra) suggests that it puts the UK at serious risk of court proceedings and fines. We will continue to contest this point vigorously.

Government refuses to tackle rising pollution in rivers.

Environment Agency figures show that levels of phosphorous in many rivers have been rising since 1995. Although Government accepts that this is a serious threat to aquatic and wetland ecosystems, it does not intend to introduce measures to address the problem until possibly as late as 2012, claiming that a loop-hole in EU law allows them to do this.

What message does this send out about the Government's actual, as opposed to 'paper' commitment to the environment?

5.3 Setting statutory water status objectives in England and Wales.

Q: The Government proposes to include in its draft regulations a new power to classify waters, set objectives and impose duties for the purposes of the WFD. Do you agree with this approach?

A: Yes. WCL support and welcome this proposal. However, such standards will only reflect the adequately the requirements of the WFD if they include the following:

- **A requirement for an assessment of each biological quality elements identified in Annex V.** The Environment Agency's technical consultation made it clear that at present the majority of tools required to undertake such assessments do not yet exist, and that major technical investment will be required to address this.
- **Statutory standards for hydro-morphology, to protect sites at High Status.** WFD objectives require that the biological, hydro-morphological and general physico-chemical conditions of high status sites are protected from deterioration. In order to make this operational, this principle must be outlined in the regulations establishing statutory standards.
- **Statutory standards for general physico-chemical elements for surface waters.** The CIS guidance documents on Reference Conditions and Ecological Status for Surface Waters (REFCOND) and Coasts now enshrine the principle that in order to classify surface waters according to the technical requirements of Annex V, measurements of both biological and general physico-chemical elements of ecological status will be required. Since general physico-chemical standards will form part of the formal WFD classification system, therefore, these must be clearly identified and outlined in law. Without such a provision, it will be possible for water bodies to meet the statutory objectives established for them in the transposition regulations, but fail their status requirements under WFD rules. This is clearly a ludicrous position, which will confuse the public, and result in the

Environment Agency being unable to enforce key elements of the Directive's requirements in relation, for instance, to nutrient standards.

- **A statutory system for the classification of groundwater bodies**, reflecting the need to protect the long-term quality and quantity of drinking water supplies, and the health of dependent ecosystems.
- **A clear commitment to a 2006 date for the introduction of statutory objectives, linked to the 'no deterioration' principle.** WCL believe that the 'no deterioration' principle in WFD is applicable upon transposition. There is therefore a clear case for laying down standards in law as quickly as possible, to allow the principle to be applied clearly and efficiently. Defra should also take this opportunity to link statutory standards with the water needs of protected sites (discussed below), as a contribution to achieving the Government's PSA target for SSSIs. The obvious moment for applying the standards is on completion of the first phase of development of the WFD classification system. This is likely to be in 2006, when monitoring networks will be in place.

5.4 Derogations.

Paragraph 5.9 opens with the statement that 'Improvements cost money'. It is typical of this rather simplistic document that it fails to recognise that improvements can also have net benefits. The Directive requires consideration of the equal and in many cases greater costs imposed on society by pollution, habitat degradation, loss of amenity value and eroded quality of life. A distinction must be made between the redistribution of such costs from the public to the polluter, and the gross *additional* costs of implementation, which will be carried by society as a whole.

WCL also contest the basic assumption that derogations will be considered *as a matter of course*, for any improvement required to meet the Directive's obligations. The consultation states that improvements 'will need to be justified in each case in terms of the balance of costs and benefits.' This is not an accurate description of the Directive's provisions. Whilst the programme of measures arising from the River Basin Plan *will* be subject to a *cost-effectiveness assessment* (where measures of cost include social, economic and environmental considerations), there is no provision within the Directive to apply cost/benefit assessments to all individual improvements. Every derogation *will*, however, have to be clearly justified in relation to the tests established in the Directive. WCL would strongly contest the use of individual cost/benefits assessments to justify the widespread application of derogations.

This misleading impression, that WFD objectives are essentially discretionary, with an automatic right to the consideration of derogation, must be corrected in the next consultation issued by Defra. Allowing it to stay in place could generate a huge volume of complaints, appeals and non-compliance, place an impossible administrative burden on the Environment Agency, and jeopardise the water environment.

We are also concerned that there are no proposals for public participation in agreeing or rejecting proposed derogations. It is the intention of WFD that the River Basin Management Plan, including derogation proposals, should be open to public scrutiny and potential revision. This would give local people the chance to determine whether the costs of a particular water treatment facility were genuinely 'disproportionate', for instance, and whether other, more cost effective or environmentally desirable options might exist to achieve the proposed standards. The current proposals make no provision for such local determination, relying

instead on centralised consultees (such as Ofwat), with the final power of decision resting with the Secretary of State.

Finally, the consultation suggests that the extent to which derogations are likely to be applied will not be known until further work is done to define objectives for water bodies. Whilst this is obviously true to some extent, WCL believe that there is already a considerable amount of information available, to test different 'good status' scenarios, and hence develop a much clearer idea of the kinds of measures required to achieve these. Defra should be taking the lead in this work, to increase the level of confidence in economic assessments of the implications of implementation.

6 River Basin Districts Identification.

The Wildlife and Countryside Link have no objections to the proposed method of River Basin Identification. However we object to the inclusion of a map of biological river quality. It appears to have nothing to do with the information conveyed in section 6 and could be misinterpreted as an indicator of ecological status.

6.1 Seaward limit of river basin districts

WCL welcome the statement that Government has an open mind on the extension of the seaward limit of coastal ecological status objectives from one to three nautical miles. We unambiguously support this proposal because of the advantages it would bring, including:

- **Greater targeting and integration of the Environment Agency's existing pollution control powers and operational activity to the WFD's ecological objectives.** The Agency already has duties and powers to control coastal pollution out to 3nm. It would seem wasteful and pointless to duplicate the current monitoring effort by establishing a new range of protocols.
- **More clarity and regulatory certainty for stakeholders.** Placing the Agency's key coastal responsibilities on a common 3nm boundary will reduce the potential for confusion over what is and isn't regulated in the coastal zone, providing greater clarity for stakeholders and a sound basis upon which business can plan.
- **Greater confidence in environmental monitoring and measurement of ecological outcomes, the central objective of the Directive.** Because of the dynamic nature of the near-shore environment is subject to significant natural variability. This will make the setting of reference conditions extremely difficult. setting ecological status over 3nm will encompass more stable ecological communities allowing pressures and impacts to be identified with greater certainty.
- **Consistent implementation of the Directive throughout the UK.** If England and Wales choose not to follow the example of Scotland in extending the seaward limit of coastal obligations to 3nm this could complicate reporting to the EU. If Scotland was to operate under a different coastal zone to England & Wales this would also complicate the management of cross-border River Basin Districts e.g. Tweed & Solway.

There is little reason to believe that this proposal would place significant regulatory burden on the oil and gas industry as only two fields are marked on the Oil Publishing maps. The Lennox offshore oil field, off Formby, Sefton, has 2 oil and gas wells, and maybe an additional oil well with transfer of oil via a tanker loading offshore. The other is Wytch Farm in Poole Harbour; the offshore reserves are reached via an extended reach drilling from the

Goathorn peninsula, transported via the pipeline. All other drilling rigs and wells are further offshore.

We also believe that regulations should be flexible enough to extend the coastal zone beyond 3nm where there are compelling operational or ecological reasons.

7 River Basin Districts.

Q: Do you agree with the proposed provisions governing plan preparation and approval and the issuing of statutory guidance to the Agency?

A. No.

Q: Do you have views on possible opportunities to integrate river basin planning with other policy objectives?

A: Yes – but these are limited, given the lack of detail provided in the consultation, which has affected our ability to respond appropriately.

Q: Do you agree that the EA be given power to prepare sub basin plans on the basis that they may contain more detail but no further additional obligations than those contained in the main plan. The Secretary of State would not formally approve these plans but could direct that specified plans are prepared.

A: Partially. However, sub-plans must be accessible, appropriately funded, consulted on in a cohesive way, and integrated with other plans both spatially and temporally. The use of sub-plans to cover nature conservation objectives, for example, must reflect the full range of biodiversity-related objectives and be able to drive programmes of measures, if they are to have any value beyond the cosmetic. The integration of biodiversity objectives with WFD planning is discussed in more detail below.

7.1 The Defra model for RBMP implementation:

WCL are concerned that the current proposals raise as many questions as they answer. In particular, we would like to see further consultation address these issues:

- How will RBMPs influence other plans without statutory force?
- How will the Environment Agency need to change its current plans and practices to deliver more integrated water management?
- How will the current model make proper use of expertise from other sectors in the planning process?
- How will the Environment Agency ensure that other organisations carry out their duties in relation to the WFD, and monitor these activities? ¹
- What role should the Environment Agency have in bringing about change to non-regulated land use?
- When will Statutory Guidance be developed for the EA and will it be put out for consultation?

¹ For example, LAs have overruled EA advice on new developments on floodplains in the last year in 288 cases and IDBs consistently fail to meet their conservation duties under the Land Drainage Act

- Will there be Statutory Guidance for other organisations such as English Nature and Internal Drainage Boards?

7.2 Statutory basis for RBMPs

To have any weight in land-use planning, RBMPs must have a **statutory basis**. They cannot be simply a ‘useful reference document to other public authorities.’ Without a statutory basis, other organisations, such as local authorities and Internal Drainage Boards are likely to pay them lip service, rather than actively conforming to their requirements. This was the case with non-statutory Local Environment Agency Plans (LEAPs), which failed to deliver their aspirations on the ground. Many other non-statutory water-related plans, such as Water Level Management Plans and Shoreline Management Plans are not delivering objectives, have no ‘buy-in’, and lack funding. It is disingenuous of Defra to say that the programme of measures will be statutory, rather than the plans. *Both* need legal credibility.

7.3 The Role and Competencies of the Environment Agency.

WCL do not believe that giving the Environment Agency sole responsibility for developing plans and co-ordinating programmes of measures will deliver integrated catchment management in a democratic way. Whilst the WFD does not explicitly identify integrated catchment management (ICM) as its chosen model of delivery, its purpose, objectives, and spatial planning requirements would all be best delivered through this approach. To achieve it, both administrative and cultural changes are needed within the Agency; whilst other key players (including Local Authorities and Nature Conservation Agencies) must be given a clear statutory role.

The Agency has traditionally focussed on achieving *chemical* water quality, and thus has some way to go on incorporating the concept of *ecological* water quality into its thinking. This is illustrated in the way it currently measures river quality, which takes little account of the impacts of physical modifications to the floodplain on aquatic ecosystems. This approach is at odds with both WFD philosophy and mainstream academic thinking about riverine health².

The Agency has also traditionally set separate objectives for water quality, quantity, levels, flooding and wildlife, resulting in a plethora of plans that cover (approximately) the same waters, and yet fail to set or deliver integrated environmental objectives. To achieve the holistic approach required by WFD will require a considerable change from the current ethos and administrative arrangements.

Because of its historical role and powers, the Environment Agency also has little experience of producing plans with real influence over the land use planning system. Since local authority boundaries and regional government boundaries do not coincide with water catchments or Environment Agency organisational boundaries, there are further technical challenges in allowing these plans to ‘talk to each other’.

WCL would therefore prefer to see a model adopted which ensured that the Agency was adequately supported in its RBMP and implementation functions. A range of options for achieving this are described below, including the WCL preferred option of the creation of an

² See Ward, J. V., Tockner, K., Uehlinger, U and Malard, F, *Understanding natural patterns and processes in river corridors as the basis for effective river restoration*. Regul.Rivers: Res. Mgmt 17: 311 - 323 (2001) and Ward, J. V., Tockner, K., Arscott, D. B. and Claret, C. *Riverine landscape diversity*. Freshwater Biology (2002) 47, 517 - 539

executive River Basin Authority, which would act as the Competent Authority, and ensure a formal role for a range of key players in delivering the objectives of the WFD.

Finally, the Environment Agency has only limited expertise in actively engaging communities and citizens. Consultation on CAMS (catchment abstraction management strategies) has not been at a scale or scope that meets the WFD requirements. There is a strong case for making use of the greater experience of local authorities in this area, through engaging them at an early stage in the planning process.

7.4 Duties on other bodies.

Decisions and activities undertaken by other organisations, such as local authorities and English Nature, will have a major bearing on the success or otherwise of implementation. If the Agency is asked to take on the role of sole Competent Authority, without specific statutory duties being placed on these other bodies, it is almost doomed to failure. Government must create the additional duties and powers necessary to ensure that of each of these bodies contributes fully to the achievement of WFD objectives. This could be achieved in a number of ways (see below), but should include clear statutory duties within the transposition regulations, requiring the full participation of such bodies in both the RBMP process, and the implementation of the programme of measures.

7.5 Environment Agency and non regulated land use

In order to deliver their objectives, RBMPs will have to influence ‘non regulated’ land use. The uses of rural land (for example in agriculture and forestry), has profound impacts on water and wetlands, and the health of catchments in general. Impacts result from diffuse and point source pollution, over-abstraction of water in water scarce areas, and land drainage. However, there is no easy way to ensure that natural resource protection is integrated into rural land-use policy, since agricultural and forestry practices are not fully regulated through the planning system or other strategic planning mechanisms – unlike development and the use of land as defined in the Town and Country Planning Act 1990 (as amended – S. 55).

Opportunities do exist – for example through the development of a Diffuse Pollution Strategy, implementation of the Nitrates Directive, indicative forestry strategies and agri-environment schemes. Also, under new Regulations³, environmental assessments must be carried out for certain agricultural projects on uncultivated/semi-natural land.⁴ The links between these policy mechanisms and WFD should be vigorously pursued, now and in the future. However, none of them alone are likely to be sufficient to ensure that rural land-use is adequately streamlined with environmental objectives, in particular because practices on rural land are distorted by Common Agricultural Policy subsidies, and steeped in cultural norms.

This creates an urgent need for links at a national level between WFD planning and rural land use policies and practices. It also strengthens the case for giving the Environment Agency a clear role in encouraging, and in some cases, driving major changes in land use, where this is required to meet its environmental goals. However, if the Agency is asked to act alone, it is likely to alienate rural stakeholders, reducing the chances that more gentle, voluntary

³ The Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001 & the Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (Wales) Regulations 2001.

⁴ The requirement for environmental impact assessment of change of use from semi-natural habitats to intensive agriculture is being introduced, belatedly, for changes which are likely to cause significant environmental effects – in accordance with the requirements of the EU Directive on Environmental Impact Assessment. It is notable that the problems facing the ‘planning’ and administrative ‘control’ of agriculture have resulted in this late implementation of the Directive – primarily due to the lack of an extant decision making process for such a change of use.

approaches succeed in the long-term. A clear lead is needed from Defra, to ensure that the raft of policies affecting rural land use and development move onto a more sustainable footing – with the Environment Agency playing an important, but not an isolated role in that shift. Linking WFD implementation closely to the Strategy for Sustainable Food and Farming is an important first step.

A unique opportunity – but can we take it?

Managing water sustainably will drive sustainable urban and rural land use in sectors that are often difficult to reform, because of cultural and property rights issues. We will never again have such an opportunity to pursue sustainable development, with water management as the driving force. Defra's own *Directing the Flow* states that 'implementation of the EU WFD will provide the most important single means of taking forward the aims of this document' (p8). So why doesn't the Defra WFD consultation document take this opportunity?

7.6 The role of Statutory Guidance.

WCL accept that there is a role for Statutory Guidance in ensuring proper implementation of the WFD. Such Guidance represents an important opportunity to give a formal basis to many of the proposals in the Environment Agency's consultation on the technical aspects of the Directive, and the principles being developed and explored in Common Implementation Strategy guidance documents.

However, the lack of detail in the current consultation of the possible scope and contents of such Statutory Guidance is a considerable hindrance for those seeking to participate actively in developing the UK's transposition and implementation strategy. It creates an impression that, yet again, many of the key decisions about the Directive are either being 'ducked', deferred, or made outside of the public arena.

WCL call upon Defra to develop and issue draft guidance for consultation at the earliest possible opportunity, with a time-frame which will still allow it to have an influence over the early stages of the planning process (characterisation, pressures and impacts and economic analyses), due for completion in 2004. Because of the continuing development of guidance at the European level, provision should also be made for an early revision, to reflect refinements in standards and methods.

WCL also believe that there is a role for Statutory Guidance for other public bodies who have a key and complex role to play in implementation. In particular, improved planning guidance, ideally a PPG for water, might make a considerable contribution towards ensuring that the environmental objectives of the Directive are met efficiently and on time.

7.7 Alternative options for administering River Basin Management Plans.

There are a number of different administrative arrangements that could deliver RBMPs and related policy objectives. The following criteria should be used to select an appropriate model:

- It can deliver **all WFD requirements, including public participation**.
- It can ensure the most effective way of using **sub plans** under the RBMPs.
- It is **practical and achievable** and does not add to administrative burden in the long term.
- It **promotes integration** with related land management, biodiversity, flood defence, and water policies and legislation to ensure cost effectiveness.

WCL have considered a number of options:

OPTION 1: Environment Agency as sole Competent Authority, with guidance for relevant bodies.

Under this model, which is closest to the current Defra proposals, the EA would act as sole Competent Authority, with no river basin management Authorities or Boards. To make this model workable, statutory duties should be placed on planning authorities and other relevant bodies, and Statutory Guidance provided, instructing them to take account of the requirements, functions, aims and objectives of the RBMP, Programmes of Measures or the WFD. This would help to ensure the delivery of relevant programmes of measures via other plans and programmes, for example the development plan (e.g. in relation to housing allocation).

If the programme of measures is identifiable, transferable and relates easily to the spatial dimensions of the development plan then this ‘take account of’ requirement might be viable. However, given the disparity between the geographical areas of RBMPs and regional body and local authority (political) boundaries and the scale at which these will operate, there is very real concern that the ‘take account of’ option will be little more than a token gesture at the plan preparation stage. This could lead to unnecessary delays in the planning system, as the Environment Agency is forced to meet its obligations by challenging planning decisions on a plan by plan and case by case basis.

Strengths and Weaknesses.

WCL do not believe that this option will deliver best value, or ultimately be able to deliver the objectives of the WFD. It is ad hoc, and does not encourage other agencies and organisations to take responsibilities for their water-related activities. It would require the least administrative change in the short term, both for the Environment Agency and other bodies, but in the long term would substantially increase the casework burden for the Agency, which is already over-stretched in this area.

OPTION 2: Creation of River Basin Management Boards as Advisory Boards.

Under this model, the EA would be the sole Competent Authority, with a River Basin Management Board acting as its advisor in each River Basin District. The Board would be made up of key players representing the three pillars of sustainability – economic, social and environmental – and would include those with responsibilities for community involvement, flood management, fisheries, navigation, water abstraction, water levels, rural and urban land use and development plans and biodiversity action plans.

The Board would work closely with the EA in the development of RBMPs, either formally or informally. For example, the Board could be convened at key times during plan production and the design of programmes of measures, to advise on specific issues (eg flood management) and/or specific spatial areas (eg a set of catchments). Local Authorities could also provide a conduit for the public participation, given their expertise and experience in consulting on plans. The Board could co-ordinate the public consultation elements of the Directive, either at the River Basin District level (which is unlikely to be effective) or at the catchment level (likely to be more effective – particularly if based on the ‘drivers’ in that catchment, such as flood management or diffuse pollution).

In addition to their role within an Advisory Board, both the Environment Agency and other key public bodies would require the additional statutory duties and Statutory Guidance

outlined in Option 1, to ensure that, alongside their early and active participation in the planning process, they were formally obliged to deliver their contributions to implementation.

Strengths and weaknesses

The strengths of this model lie in the co-operation of a range of players who could bring valuable expertise, and a co-ordinating function for the EA in the development of RBMPs and programmes of measures. It could promote the integration, or at least coherence, of Advisory Board participant objectives, i.e. conservation, flood management and development – although this would be voluntary. This model is also likely to be supported by the EA. However, as noted in the Wise Use of Floodplain project results, unless the Advisory Boards had appropriate funds and incentives to fully participate in the process, the will may not be there to be as actively involved as necessary. Issues would arise over priorities and funding, and the EA may find itself operating alone – with the Advisory Boards simply providing ‘on paper’ assistance. However if, (as proposed on page 35 - bullet point 6), the Secretary of State placed bodies under a duty to participate (as well as duties to undertake their activities in accordance with the WFD), this hurdle would be overcome.

OPTION 3: River Basin Management Authorities as Executive Bodies.

In this model, supported by WCL, the River Basin Management Authority would be an executive body charged with developing RBMPs and the programmes of measures, and undertaking the public consultation in each river basin. It would be the Competent Authority – with the Environment Agency acting as an operating authority and regulator. There are international precedents for such a model. The Authority would be given the resources and powers to ensure the plans were delivered (pooled from current and future organisational responsibilities), programmes of measures designed and implemented with appropriate consultation, and links made to all relevant urban and rural land use activities. The Authority could be made up of key governmental organisations – such as English Nature, Defra regional staff, the Highways Agency, the Countryside Agency, regional and local governments. Non-public body members could be appointed by the Secretary of State. The Authority would benefit from a secretariat of experts in resource economics, hydrology, ecology, and social policy. It could also have a small headquarters in each district to provide a ‘one stop shop’ for stakeholders and communities.

Strengths and weaknesses

This model has the most potential to encourage real integration and co-operation, and would be transparent. In the long term, it is the most likely to deliver genuine integrated catchment management – as it would have the resources and powers to do so. Conflicting objectives would be highlighted, and potential conflicts identified at an early stage. Alongside new obligations (page 35- bullet point 6), this Authority would have real impetus and powers to make appropriate changes on the ground to achieve sustainable water management. However, it would require a change of culture amongst operating authorities and government agencies in terms of shared responsibilities and interdisciplinary working. It would also require an overhaul of current administrative structures and possibly a shift in regional government boundaries to match those of the RBMPs.

7.8 Catchment Boards

All three options could be supplemented by catchment bodies (i.e. boards or steering groups) that represent individual *catchments* in the *river basin districts*. This was a basic recommendation of the Wise Use of Floodplains project (www.floodplains.org). Catchment bodies would draw together the various sub-plans that operate at a catchment level – for

example catchment flood management strategies, catchment abstraction management strategies, shoreline management plans and coastal plans and any future catchment plans for biodiversity. A catchment officer could facilitate and drive forward the activities of these bodies.

Critical to the success of these bodies, no matter what their status, is the need to ensure that someone has a full time responsibility to co-ordinate and drive forward programmes and actions and that they are regarded as the 'mainstream' of water policy. Without this mandate, they would not be able to operate effectively.

7.9 What might need to change?

Depending on how the river basins and sub catchment administration arrangements are set up, (ie options 2 and or 3) this could involve some of the following organisational changes:

- **The transfer of the powers and responsibilities of the Internal Drainage Boards and the abolition of Internal Drainage Districts** (duties and responsibilities subsumed into the new catchment boundaries);
- **Transferring the remaining land drainage and flood defence duties and responsibilities of Local Authorities** (for example Critical Ordinary Watercourses – COWs – would be passed to the Environment Agency for management and control);
- **The transfer of relevant Environment Agency staff** in area and district office teams to the operational teams of the River Basin Management Authority or Board;
- **The recruitment or secondment of planning staff** into relevant Environment Agency offices;
- **Shifts and/or increases** in resources amongst the major players such as the Environment Agency and local authorities. Local authorities would require training and guidance on ecological water quality issues.

8 River Basin Districts: Characterisation, Review of Human Activity and Economic Analysis of Water Use.

WCL are extremely concerned by how little progress appears to have been made in characterisation, impacts and pressures analysis and economic assessments at river basin scale. These activities should be complete by the end of 2004. It appears unlikely, at the present rate, that we will meet this first deadline for implementing the Directive; this bodes ill for England's future performance.

In particular, we find it extraordinary that given the implementation timetable, no date is proposed for the production of, and consultation upon, **Statutory Guidance for the Environment Agency**, which is proposed in the current document as the major instrument for laying out Government policy in relation to Article 5 and Annexes II and III. It is urgent that Defra act as quickly as possible in 2003 to remedy this situation.

8.1 Characterisation.

The general points made elsewhere about the accessibility and relevance of the consultation document apply to this section. It fails to explain the purpose of characterisation, which is to

describe rivers, lakes, coasts and aquifers in a way which will allow us to assess the health of their biology. Without this context, the purpose of the legislation remains opaque to any non-specialised reader.

8.2 Review of the environmental impact of human activity.

Question: Do you agree that these parts of the article 5 and annex II (characterisation, review of human activity) should be transposed in this way?

Answer: No.

Like many of the questions in the document, this is singularly unhelpful in eliciting sensible views from respondents. Neither the context behind the decision making process, nor the possible policy options are elaborated. A duty of care and statutory guidance for the EA are proposed, but the implications of this are not explored in any way, nor are alternative approaches to transposition. No approach could be more calculated to stifle interest and prevent constructive engagement on the part of lay stakeholders.

The Section discussing administrative arrangements for River Basin Planning explains why WCL believe that the Environment Agency should not act alone in developing plans or devising programmes of measures. This analysis applies equally to the characterisation and analysis elements of the planning process.

8.2.1 Role of Statutory Guidance.

Whilst WCL accept that Statutory Guidance may play an important role in ensuring that the review is carried out according to the requirements of the Directive, without any clues as to the proposed contents, it is difficult for us to formulate a considered position on this issue. However, we would expect draft Guidance to cover the following key issues, and to make use, as far as possible, of the work already undertaken in developing the CIS IMPRESS (Impacts and Pressures) guidance:

- The impacts and pressures analysis should **first identify key impacts** (changes in nutrient status, changes to hydro-morphology for example), which put at risk the achievement of WFD objectives.
- The **list of pressures associated with these impacts should be developed in an inclusive manner**, to cover any activity likely to produce an impact, which will put at risk relevant objectives.
- **Water bodies for which further data are required** (perhaps because a particular pressure/impact relationship is insufficiently understood) **should be included in any initial at risk register**, in order to direct further monitoring.

8.2.2 Duty to provide information.

All the processes in this part of the planning process will require substantial amounts of information from a wide range of sources to allow them to be undertaken with confidence and rigour. In particular, in order to assess the likely contributions of different sectors and catchments or parts of catchments to diffuse pollution loads, the Environment Agency will require access to land use data, including data about the uptake of particular measures within agri-environment schemes.

To ensure that such analyses are undertaken on the basis of the best available information, WCL propose **that duties are placed on other relevant bodies, including Defra, land-use**

planning authorities and water companies to provide the necessary information to inform RBMPs.

8.3 Economic Analysis of Water Use.

8.3.1 Information in order to make calculations in relation to article 9.

WCL does not support the interpretation in paragraph 8.5, which suggests that analyses of the **costs of water services** will include the costs of environmental improvements, but not a more balanced and holistic assessment of costs in relation to the environment. In our opinion, the Directive requires that the costs of water services are assessed taking into account all environmental and resource costs, not just the financial costs of environmental improvements.

We also believe that it is essential that the economic analysis of **water uses** includes a full analysis of environmental and resource costs, in order to support assessment of the levels of cost-recovery. Such information will have added value for informing a range of policies in addition to WFD.

WCL believe that the link between environmental and resource cost data and the other requirements in article 9 (paragraph 8.6) is clear, with respect to the polluter pays principle. That is, in order to allocate environmental costs in accordance with the polluter pays principle, data on environmental and resource costs must be available to inform all relevant elements of article 9.

WCL agree that OFWAT is well placed to provide and analyse information in relation to article 9, but not in isolation. If OFWAT is given a duty to collect and collate such information, it should be in collaboration with the Environment Agency, English Nature and CCW, who should be required to provide data on the environmental costs of water uses and services. A duty on other bodies to provide information to support plan production (see above) could also be used to support economic analyses.

8.3.2 Information to make judgements about the most cost-effective combinations of measures under article 11.

The document is worryingly silent on some basic principles established in WFD and interpreted in the WATECO CIS guidance on economic analysis. In particular, DEFRA should make it clear that cost effectiveness includes the assessment of environmental costs and benefits, including, for example, additional benefits for biodiversity from sustainable solutions. For example, when comparing the costs of new water treatment facilities with the costs of achieving more extensive agricultural land use in a catchment, the likely social and biodiversity benefits of the both approaches should be assessed.

Question: Do you agree that responsibility for the economic analysis should rest with the Secretary of State and be based on information collected by OFWAT and the Environment Agency and any other relevant bodies, based on statutory guidance?

Answer: Not as currently proposed.

WCL have reservations about the proposals in paragraph 8.11, for the development of a single national analysis of the information required to assess the cost effectiveness of measures, as required by Article 9. Whether such an analysis would meet the requirements of the Directive depends upon whether the data is gathered at a scale that allows for the assessment of significant pressures (identified in the review of human activity). Analysis must be relevant to the scale upon which such pressures operate. For example, the pressure exerted by farming upon the local water environment will vary considerably from catchment to catchment,

according to soil type, existing action to protect designated sites, the availability and uptake of agri-environment measures, etc. Such information needs to be collated and applied locally to be meaningful in the context of the economic analyses required by WFD. Any single, national analysis would also need to be sufficiently flexible to account for significant pressures identified in the future. WCL is therefore concerned a single, national analysis may preclude finding the best and most sustainable solution at a local scale.

The proposal to give the Secretary of State the major statutory responsibility for economic analysis, using information supplied by EA and Ofwat, could, in our opinion, further reduce the likelihood of the development of sustainable, flexible solutions adapted to local circumstances. In order to avoid these problems, it is vital that the information which the Secretary of State receives from the EA and OFWAT should be available for public scrutiny. Since this will form part of the background documentation which will inform the River Basin Management Plan, there will be legal requirement that it will be available on request. However, it would be desirable to go further than this, and propose and promote a platform for public access to data, through engagement either at a national scale, or through the river basin or sub-basin planning process. The Secretary of State should also be able to request, and be open to receiving supplementary information from other stakeholders.

9 Register of Protected Areas.

Question: would it helpful to show nationally designated sites for information purposes on the river basin maps prepared for the river basin management plans?

Answer: Yes, but only if this is accompanied by other more tangible commitments to their conservation. Without a formal link between the water-related needs of such sites, and the river basin planning process and programme of measures, WCL are clear what benefit would accrue from merely recording their presence on maps. We are extremely disappointed by the failure to consider options to integrating national biodiversity obligations more effectively with WFD implementation.

Question: Should the Environment Agency be responsible for maintaining (for example, establishing and keeping under review and up to date) the register of protected areas required by article 6 of the Directive?

Answer: Not on its own. WCL believe that this responsibility should be shared with English Nature and CCW, who should be given specific statutory duties in this matter.

Question: In specifying the content of Article 6 registers, it will be necessary to have a power to extend the meaning of 'protected areas' to include new areas designated under new Community legislation. Do you agree?

Answer: Yes, but in an extended form. In our view, this section of the regulations should be include a power to include within the Register of Protected areas any sites designated under existing or future international, community or national legislation or policy.

Question: Specifying areas as protected areas is not a substitute for the repealed legislation under which the areas are afforded protection. It is not clear at present whether it will be necessary to designate fresh water fish and shellfish waters as protected areas once the relevant directives have been repealed in 2013. What are your views?

Answer: These areas should be designated, if the Directives in question establish objectives that are more stringent than those required to comply with the WFD. This will be necessary to protect them from possible deterioration.

9.1 Relationship between ecological status and other biodiversity commitments.

‘Good status’ (the main restoration objective of the WFD) will provide an important environmental baseline standard for surface and groundwaters, which will in itself contribute to supporting aquatic and wetland biodiversity. However, it would be unrealistic to expect this standard to deliver, by itself, the recovery of all water-dependent biodiversity, within the timescales required by existing national legislation and Government policy.

Protected sites such as the Natura 2000 network, may have specific and more demanding water needs. This is recognised within WFD, which provides for the establishment of a ‘Protected Areas Register’, enabling water planners to ‘overlay’ the different (and sometimes more stringent) needs of Natura 2000 sites or other protected areas upon WFD-specific objectives.

Exactly the same logic applies to the needs of sites designated under other international and national law and policies. Ramsar wetlands, sites included within the suite of Sites of Special Scientific Interest and Biodiversity Action Plan priorities also have water needs that may be different from WFD good status objectives.

9.2 Making use of RBMPs and Programmes of Measures to deliver national obligations.

The establishment of the River Basin Planning system, linking environmental objectives to the establishment of cost effective programmes of measures, is the ideal tool for achieving the Government’s own existing targets for wetland biodiversity. WCL recognise that in many cases these other obligations will need to be met sooner than the 2015 deadline required by the Directive. For example, the PSA target of achieving 95% of SSSIs in favourable condition has a deadline of 2010. The long lead-in time for WFD implementation means that many of the structures for River Basin Planning should be put in place during the next five years, and would therefore be available for use in this context.

In our view, there can be no reason for restricting the use of the this planning mechanism to sites designated under Community legislation, other than that Government intends to operate a ‘two tier’ biodiversity policy, which relegates the needs of nationally designated sites and priority habitats and species.

9.3 Government policy towards sites designated under the Ramsar Convention.

WCL has made its views known on the desirability (and possible legal requirement) of including all sites designated at a national level on the Register of Protected Areas. Our legal opinion on this issue has been made available to Defra.

Paragraph 9.4 states that *‘The Government is not proposing to include on the register sites that are designated under national legislation only. However, for information purposes, some sites that fall into this category might be included on the maps that must be provided as part of the RBMP.’*

For example, it is Government policy to afford Ramsar sites the same degree of protection as Natura 2000 sites and section 28 G of the Wildlife and Countryside Act 1981 places a statutory duty on all public bodies and statutory undertakers to further conservation and enhancement of sites of special scientific interest in the exercise of their functions

The document then goes on to say that such sites might be included on maps within RBMPs for information purposes only.

WCL believe that this is in direct contradiction of stated Government policy, which is to afford sites designated under the Ramsar convention the same level of protection as Natura 2000 sites. Under the WFD, programmes of measures must be designed to meet the water-related needs of sites within the Protected Areas Register. This is a specific and powerful commitment to delivering the conservation objectives of such sites, which Government does not intend to extend to Ramsar sites. WCL will be raising this apparent 'U' turn in Government policy with the European Wildlife Division of DEFRA.

10 Monitoring.

Q: Do you agree with the proposed approach to transposing the monitoring requirements of Article 8 and Annex V?

Answer: Yes, with specific conditions. WCL have no objection, in principal, to the proposal for giving the Environment Agency the duty to establish monitoring programmes for the purposes of article 8 and annex V.

We have made detailed comments on the monitoring requirements of the Directive in our response to the Environment Agency's consultation on the technical requirements of the Annexes II & V. Table 9.3 of that document shows that, at present, we have monitoring programmes to assess adequately only three of the 36 quality elements required by the Directive.

Put simply, current monitoring systems are simply inadequate for determining water body status. Government must make adequate resources available for the development and implementation of new monitoring tools if the Agency is to have any hope of delivering it's proposed new duty.

11 Programme of Measures.

11.1 Arrangements for preparing and approving programmes of measures.

Q: Do you agree with these proposed arrangements for preparing and approving programmes of measures?

A: No.

WCL does not agree with the proposed arrangements for preparing and approving the programme of measures. We believe that this process should operate through Regional River Basin District Authorities or, at the very least, Boards. In addition, there is no detail attached

to many of the bullet points on page 35, and so it is difficult to visualise how the proposed model might work.

11.1.1 Duties on other bodies.

WCL does support the scope for other bodies to be placed under a duty, or be directed, to exercise their functions in order to ensure that programmes meet the Directive's requirements (bullet point 6), but the form and content of these obligations need to be spelt out, in order to comment fully. A cynical consultee might suspect that this is a simple enabling duty, meaning that it will pass the scrutiny of the European Commission, but never be used. If these arrangements are to be used, it is likely that many of the new requirements will be developed in a piece-meal and ad hoc fashion, making it difficult for stakeholders to ascertain how they apply. To address this problem, all new statutory duties must be accompanied by information, for example in circulars to local authorities. Care must also be taken with the text of regulations. For example, simply using 'have regard to' is not strong enough in many cases. Text must be 'active' for example using the term 'contribute to' or 'promote'.

11.1.2 Reforming water law.

WCL are also not convinced that the current 'gap analysis' approach to the provision of additional powers for the Environment Agency and others is administratively efficient or compatible in the long term with the implementation needs of the Directive. The great complexity of existing water law, governing a whole range of water uses, is amply demonstrated in Chapter 11 of the document. WCL consider that whilst many of this existing law relates to activities covered by WFD basic measures, in many cases they are not sufficiently well-matched to the Directive's requirements to be fit for purpose.

The most efficient way to address this issue, instead of building further complexity into an already arcane and contradictory framework, would be to create a range of simpler and more wide-reaching powers, similar to those proposed in the Scottish Water Environment Bill, allowing the Environment Agency to control activities affecting the status of water bodies. Whilst WCL accept that the legal timetable for transposition will not allow a thorough revision of primary legislation at this stage, we suggest that Defra consider such a review in the medium term (between 2003 and 2006), including the creation of these more flexible and wide-reaching powers. One such power, to regulate physical modifications in and around the vicinity of water bodies, is proposed for immediate introduction in the transposition regulations, to meet the requirements of Article 11 (3) (i).

11.1.3 Links with the PRO Cycle.

By treating the current consultation as a regulatory 'gap analysis', DEFRA have lost the opportunity to ensure that the major planning mechanism for environmental quality in water is integrated with the major programme for managing the impact of the water industry on the aquatic environment, the Periodic Review Process (PRO)

The Water Companies themselves have continually asked DEFRA for leadership in this matter, proposing ways in which the PRO process could be linked to WFD delivery. In particular, they are seeking such links to ensure an equitable distribution of costs between water companies and other sectors (including agriculture) and a predictable and stable planning and pricing regime, to encourage investment.

WCL largely share their concerns, and see the integration of PRO with WFD planning cycles as a pre-requisite to the delivery of more sustainable and cost effective water management. In particular, DEFRA should be seeking to ensure:

- Streamlining of the PRO and WFD planning cycles to the same six year periods, to ensure that the environment programme is based on the risk assessment undertaken to determine sites likely to fail to meet their WFD objectives. Clearly, if other AMP environmental drivers, including the needs of SSSIs and Biodiversity Action Plan priorities were included within the same planning mechanism (see above), this would result in further business certainty and efficiency savings.
- A mechanism to ensure that the PRO programme becomes an integral part of the WFD planning systems. This will mean that the cost-effectiveness of PRO actions will be considered in combination with other proposed measures, to ensure the most sustainable outcome.
- Mechanisms to ensure that the information collected by Ofwat, Water Companies, the Environment Agency, English Nature, CCW and non-government organisations, all of whom currently contribute to the development of the programme of environmental improvements, is linked to the economic analyses required by WFD (see above), and that this is considered during the assessment of cost recovery required by Article 9.

11.2 Measures required under Article 10, and Annex VI 11(3) (a), Combined Approach.

The text of the consultation document seems accurately to reflect the requirements of paragraphs 1 & 2 of Article 10. However, it fails to expand on the implications of paragraph 3, which requires Member States to achieve water quality consistent with the ecological objectives of the WFD, even where this exceeds the requirements of existing European legislation or best environmental practices.

This may have serious implications for the control of point and diffuse sources of pollution. In some circumstances, certain activities may simply be inconsistent with achieving ecological status objectives and, therefore, may have to be prohibited. Further consideration must be given to how this provision can be made operational through the Agency's role as regulator and the implications this may have for the land use planning system.

11.3 Measures Article 9, Recovery of Costs of Water Services. 11(3) (b).

Q: The Government sees no need at present to alter charging policies to meet the requirements of the Directive. Do you agree?

A: No.

Only some 18-20% of domestic customers are metered in England and Wales; the rest are still charged by the rateable value of their home. There are low meter penetration rates for even water-scare areas like Portsmouth and Thames. With most customers NOT paying by volume used, it is difficult to understand how there can be adequate incentives to use water resources efficiently, as the consultation suggests.

Even in areas where the proportion of metered customers is higher, there has been little attempt by water companies to operate tariff structures that give customers incentives to use water efficiently.

Whilst it could be argued that public water supply customers (industrial & domestic) make an adequate contribution to the costs of water services through their bills (via the PRO process),

the same cannot be said for other abstractors and polluters (agricultural, industrial and household), whose "water use" may have a significant impact on the status of water.

11.3.1 Raw Water Abstraction Charging

The current charging scheme for abstraction licences allows weighting for season, loss to the environment and Agency regions, but not scarcity, environmental sustainability or the value of in stream uses.

Current raw water charging does not attempt to achieve full recovery cost recovery, as required by the Directive. Abstractors have little incentive to use water efficiently and for industry and large-scale irrigators, the costs of abstracted water are a very small part of the costs of production (see Table 1).

With the exception of spray irrigators, charges are based on licensed volume rather than volume used. Although this leaves a theoretical incentive to reduce authorised quantities where these exceed actual use, the perceived value of an abstraction right, and the marginal cost of raw water compared to the end use cost (Table 1), mean that in reality, few voluntary 'surrenders' take place.

Spray irrigators have special dispensation under s127 WRA (1991) to enter into an agreement with the Agency, whereby charges are calculated on licensed volume and actual use. The current "two part tariff" scheme bases 50% of the charge on licensed quantity and 50% on use. This, in theory, should drive down use; but as shown in Table 1, the raw water charge is only a small proportion of final costs, so the role played in driving down use is likely to be small.

Use	Raw Water Charge (£/m ³) *	Final Water Cost (£/m ³)	Contribution (%)
Public Water Supply	0.00649	0.77 [†]	0.85
Direct summer irrigation	0.01730	0.45 [#]	3.80
Winter Storage for irrigation	0.00173	0.63 [#]	0.27

Table 1 The costs of raw & treated water

*Midlands Region 2001/2002 charging scheme

[†]Severn Trent Water domestic customer metered charge, also subject to standing charge.

[#] Irrigation in England & Wales – the key issues, JW Knox and EK Weatherhead 2000, Cranfield University

Although the Government has directed the EA to review the water charging scheme, this is being done under the current cost recovery model, explicitly excluding the recovery of environmental and resource costs. Without raising the total price of water, charges to abstractors will remain marginal to production costs, and therefore will fail to provide incentives for more efficient use or promote the polluter pays principle as required by the Directive.

WCL has consistently called for charges to rise to reflect the full costs of abstraction with the money raised funding a Water Savings Trust (along the lines of the Energy Savings Trust), to impartially and independently promote sustainable water use to all users.

11.3.2 Water Pollution

Much of the cost of water provision comes from treating water to potable standards. This includes treatments to remove nitrates and pesticides and from drinking water; these pollutants are derived largely from agriculture, with some contribution from urban run-off.

The majority of these costs, therefore (which are passed on to the consumer through the PRO process), represent cross-subsidies from public water supply customers to agriculture and, to a lesser extent, industry /urban diffuse pollution sources. This situation clearly contravenes the Directive's objectives as laid out in the consultation, and a failure to amend policies to address this will run the risk of infraction.

11.4 Promotion of Sustainable and Efficient Water Use. 11 (3) (c).

Question: Do you think other measures to promote an efficient and sustainable water use are needed to fulfil the obligation in article 11(3)(c) of the Directive? If so, who should these additional measures be aimed at, and what form might they take?

Answer: Yes.

WCL members believe that there is significant room for improving the efficiency & sustainability of water use in the industrial, economic & agricultural sectors. The failure of the government to take forward proposals to require **all** abstractors to use water efficiently in the draft Water Bill is a missed opportunity.

It is disingenuous to suggest that section 38(2) of WRA 1991 allows the Environment Agency to "to impose water efficiency conditions on abstraction licences", when in reality it only allows conditions to be placed on a licence at the time of issue or variation.

The Agency has no power to impose conditions for the efficient use of water without varying a licence; a complex process, requiring the consent of the licence holder or the payment of compensation. This will not be addressed by the draft Water Bill, because proposals to remove the right to compensation will only apply to abstractions that are already causing significant environmental damage. This leaves no scope for applying precautionary or best practice requirements for efficient use on all licensees. The majority of the 50,000 abstraction licence holders are therefore free to use water without regard to efficiency, provided they stay within the licences amount. This risks 'tying up' valuable resources that could be redistributed to abstractors or to achieve environmental objectives.

The current economic regulation of the water industry also militates against the use of powers to restrict non-essential domestic use, because the introduction of hose-pipe bans is used as a negative performance indicator by Ofwat. As a result water companies have little incentive to use these bans to ensure more efficient use of water by their customers.

11.5 Safeguarding Drinking Water. 11 (3) (d)

Q: The Government does not consider that additional measures are necessary to protect sources of drinking water. It does not, therefore, propose to establish safeguard zones. Do you agree?

Answer: No.

The WFD offers a clear and unambiguous vision for the management of drinking water sources in Europe. It requires action to be taken to protect quality and reduce the need for water treatment. The consultation paper fails to take this forward, focusing instead on the how to maintain the status quo.

Safeguard zones for surface and groundwaters could provide a cost-effective tool for planners to improve water quality and deliver environmental benefits. For example, safeguard zones

for surface waters would allow River Basin District planners to act against sources of diffuse pollution that are not currently regulated, for example pathogens from agriculture which pose a risk to human health. Such zones could be linked to the operation of the proposed new power to tackle diffuse pollution, targeting appropriate measures to areas of most risk, or to the creation of 'co-operative agreements' between farmers and water companies, to achieve improvements in water quality. The water industry currently spends some £23 million per annum treating cryptosporidium which enters waters from animal slurry. Introducing suitable buffer zones to drinking sources could dramatically reduce the risk of pathogens reaching the consumer, without complex and costly treatment.

11.6 Controls on Abstraction 11 (3) (e) .

11.6.1 Prior Authorisation

Q: Should a scheme of "prior authorisation" be introduced to complement the existing formal licensing system? Or is the existing regulatory framework adequate? If a new system is needed what would its key features be?

A: No. WCL do not believe that a new system of prior authorisation should be introduced through secondary legislation. The Government has gone through a lengthy process of consultation on the reform of abstraction control, culminating in the announcement of new legislation in the Queen's Speech last November. This proposed new legislation must be made fit for purpose in relation to the requirements of the WFD.

11.6.2 Application of abstraction controls to "discrete waters".

The consultation document raises an important issue about bringing abstraction from "Discrete Waters" under licensing control. WCL support this additional control measure.

Whilst such a provision may marginally increase the regulatory burden, the number of truly discrete bodies, within the meaning of the 1991 WRA, will be very small. Indeed, despite the impression given in the consultation, most ponds, lakes and public water supply reservoirs cannot be considered discrete, as they interact with either surface or groundwaters and therefore are already covered by licensing control.

Discrete water bodies will generally be restricted to off-line reservoirs with an impervious liner, plus a very limited number of natural water bodies that fill purely from surface run-off.

By their very definition, discrete waters are isolated from other water bodies and therefore the impacts of abstraction will only have to be considered for the water body from which water is taken. For operational artificial bodies the Directive allows ecological objectives to be set that are consistent with best practice operation of the facilities. Environmentally responsible operators should not therefore face additional burdens. For natural discrete waters this additional level of protection should be welcomed.

11.6.3 Other exemptions

Q: Would removing the existing exemption for land drainage purposes have any environmental benefit? What would the implications be for removing this exemption?

Answer: Yes.

WCL welcome the proposal to remove this exemption. Land drainage has been a major factor in the destruction of our wetlands and the continuing decline of their wildlife interests⁵. By moving water out of a catchment with ever increasing efficiency in the winter months, the natural processes of interflow and aquifer recharge are short circuited, increasing the rate of river flow recession, reducing groundwater recharge and ultimately reducing water availability in the summer months both for abstraction and wildlife. This problem is considered real enough for at least one water company to have objected to abstractions from drainage channels because of the impact it might have on aquifer recharge and the long-term sustainability of public water supply abstractions.

Removing the exemption from licensing such abstractions would allow the Environment Agency to ensure that they are undertaken in a manner compatible with international, European and national obligations to the water environment. We are not convinced, however, that in practice it will be straightforward to distinguish flood defence and land-drainage activities from one another in the manner proposed. Nor do we think that to do so is in the best interests of administrative efficiency or the environment.

WCL would therefore prefer that **any** action affecting flow rates and water levels in water bodies should be subject to adequate control. This could be achieved by removing the current exemption for abstractions undertaken for either land drainage or flood defence purposes, and extending Environment Agency powers to control physical impacts on water bodies, as proposed later in this response. This increase in EA powers should be accompanied by the transfer of responsibility for critical ordinary water-courses from local authorities and Internal Drainage Boards to the Agency. Combined with reforms to flood defence administration, such re-structuring would create a water-planning regime capable of integrating flood management, land drainage and environmental objectives, under the umbrella of RBMPs. Only by assessing the full social, economic and environmental impacts of land drainage and flood management can truly sustainable decisions be taken. This could be our only chance for many years to take reforms forward.

11.6.4 Thresholds measured by volume

The current register of non-licensed domestic supply held by local authorities is in no way as comprehensive as the records kept by the Environment Agency. Many people are unaware of their need to register, and in many cases only the address of the household is recorded, not the point of abstraction.

We would question that *"in many cases such abstractors will notify the Agency to protect themselves from derogation"* really represents the situation on the ground. In reality, many such abstractions only come to light during investigations supporting an abstraction licence application.

WCL welcome proposals in Water Bill to create a register of small abstractors. Given our comments above we believe this will be essential if the requirements of the WFD are to be fully implemented.

11.6.5 Review of abstraction controls

The consultation document takes a complacent view of the effectiveness of the current and proposed legal system for reviewing the abstraction regime in England & Wales. Despite having the powers revoke or vary abstraction licences, the Agency, and its predecessors have

⁵ In the UK 19,000 hectares of wet grassland have been drained (RSPB *et al* 1997) while in low-lying Eastern England as much as 7000km² have been lost (Williams 1990). The loss of habitat extent and quality has led to the decline of bird species such as snipe (now confined to nature reserves in England) and lapwing (48% decline in the 1990's). Early results from recent surveys of breeding waders of wet meadows show that this decline has continued

consistently failed to act, a fact attributed largely to the requirement to pay compensation. As a result almost 40 years after the introduction of abstraction licensing no license has been revoked or varied without the consent of the licence holder.

Although the draft Water Bill will propose new powers to remove the requirement to pay compensation, this will only be applicable where significant environmental damage is occurring. Despite the Government's vocal commitment to policy integration, no links have been made between this damage test and the ecological requirements for water bodies under the WFD. This could potentially lead to a situation where the ecological objectives of the Directive cannot be met, but compensation is still required for the variation/revocation of an abstraction. To avoid this, the Government must make the link between achieving good status and the definition of considered significant ecological damage.

Under current proposals, where significant damage cannot be demonstrated, but variation would be desirable for resource distribution/efficient use, compensation will still be required. Given the historic reluctance to pay compensation for varying or revoking licences, it is likely that this will remain a significant barrier to change.

In our view, the consultation also overstates the significance of time-limiting for allowing the review of abstraction controls. Whilst WCL members support the time-limiting of licences, it must not be forgotten that the majority of the 50,000 licences in circulation were issued in perpetuity. As outlined above, current and proposed legal routes to convert such licences to time-limited status are inadequate, and, despite Governments optimism, there is no appetite for voluntary change⁶.

We are not convinced that CAMS are compatible with the achievements of good ecological status, or that they function appropriately in shaping abstraction in catchments that are dominated by permanent licenses. We must, therefore, reject the notion that CAMS "...generally satisfy the requirements of the Directive with respect to water quantity".

To reflect the objectives of the WFD we believe that CAMS need to look at the water requirements and abstraction impacts on all aquatic habitats within a catchment. This should include an assessment of the water needs of any proposed catchment restoration for the purposes of meeting biodiversity action plan objectives or achieving WFD objectives.

The methodology being used by the EA (the RAM Framework) derives an environmental need for water based on in-river ecological flow requirements. We do not consider that this can adequately assess the environmental need for water across a whole catchment. If CAMS are to 'satisfy the requirements of the Directive with respect to water quantity' then these fundamental weaknesses must be addressed. Additionally, we do not consider that the public participation elements of CAMS preparation (through stakeholder groups and traditional formal consultation) adequately reflect the Directives objectives for greater public participation in this area of public policy development.

11.6.6 Exemption from controls

Q: Do you agree that 20m3 per day should be the threshold below which an abstraction or impoundment will not need a licence, as a way of giving effect to the relevant part of article 11(3)(e).

⁶ In a response to a parliamentary question placed by Malcolm Bruce, Michael Meacher confirmed that no licence holders have voluntarily changed their licences from permanent to time limited status

The Wildlife and Countryside Link support proposals for the setting for a default 20m³ per day threshold. However, we believe that the issue of whether or not this should be varied downward to protect sensitive water bodies or terrestrial ecosystems should be addressed in the River Basin Planning process.

11.7 Controls on Impoundment 11 (3) (e)

Q: The Government considers that this implements the requirement, also in article 11(3)(e), for controls over the impoundment of fresh surface water, with the possible exception that “discrete waters”, which (as explained above) fall within the Directive’s definition of “fresh surface water”, are exempt from these controls. Do you agree?

A: No.

It is by no means clear that the current controls on impoundment are consistent with the delivery of WFD objectives. Whilst it is true that the current system allows the Environment Agency to exert control over the construction of impoundments, it only authorises the construction/alteration of a structure and has no ongoing relevance once works have been completed.

Unlike abstraction licences, a new owner/occupier of an impoundment cannot succeed to impoundment licences and no retrospective control can be exerted by the Environment Agency. The Environment Agency has sought to address this problem by requiring impoundment licence applicants to enter into legally binding management agreements that rest with the owner of the structure. However, this is a relatively recent development leaving the majority of structures outside the control of the Agency.

Therefore it would appear the Environment Agency does not have comprehensive powers, under water resources legislation, to modify impoundments. This leaves a real question about whether the owner of an impoundment structure can be compelled to alter operating procedures or remove the structure to comply with ecological objectives of the WFD.

Q: Although focused on abstraction, Catchment Abstraction Management Strategies will also consider the impacts of impoundments on the water resources position in each catchment and thus provide a review mechanism for impoundment controls. Do you agree?

Answer: No. The CAMS process is primarily concerned with the management of flow regime in watercourses, not the ecological impact of impoundments. Such considerations are not held within the Resource Assessment Methodology (RAM). It is unclear if technical specialists within the Agency are addressing this issue, or how external stakeholders are being engaged.

11.8 Prior Authorisation of artificial recharge or augmentation of groundwater bodies 11(3) (f).

Q: Do you agree that no further controls are required in relation to artificial recharge or augmentation of groundwater bodies?

A: Yes. WCL agree that the current system is flexible enough to control the artificial recharge of groundwater bodies. We trust that issues surrounding the use of this technique will be addressed in the RBMP process.

11.9 Controls on Point Source Discharges 11 (3) (g).

Question: The Government proposes that the Agency should continue to operate the consenting system in exactly the same way under the WFD but, once statutory status objectives have been established under the Directive for individual water bodies, to set consent conditions so that they are met. Do you agree with this approach?

Answer: Yes, but only if adequate links are made between this regime and the land-use planning system.

If used intelligently, the WFD planning cycle should enable the EA/River Basin Authority to alert planning authorities to situations where further development within a catchment or catchments poses a risk to the environment. This advice should inform development plan production at the earliest possible stage. If it is provided through River Basin Authorities or Boards, these would provide a forum for resolving potential conflicts between resource protection and development needs⁷.

In some cases, a presumption against granting discharge consents in the given area might be required, which would then act as a restraint on unsustainable development. In other situations that such consents would only be granted, where the development included provision for reducing pollutant loads, through the use of best available technologies.

Two elements of discharges from such development would need to be considered: discharges into the sewage network, and those resulting from diffuse urban sources, minor spills & leaks. Decisions on consents for treated sewage discharges should be based on a consideration of the impacts on the receiving water body; the total environmental impact of the treatment that would be required to meet environmental objectives; and the impacts of the latter upon the water-pricing regime. The RBMP process provides the ideal context in which to assess the total costs and benefits of such development (including the environmental costs). Where such an assessment results in EA advice that further development would be unsustainable, they must be empowered to refuse consent for the related discharge(s).

Discharges from run-off, minor spills and leaks are considered in more detail below, in responding to Defra proposals to further regulate diffuse pollution, and to address pollution from technical installations.

Question: Do you agree that periodic review of controls under article 11 (3) (g) does not require any changes to current legislation governing these matters?

Answer: No.

WCL believe that the current inflexible system, allowing for variation only where to meet an European obligation, restricts the Environment Agency's ability to manage the discharge regime to achieve long-term equity and sustainability at a catchment scale. This is clearly against the spirit of WFD, which is seeks to create to foster such strategic assessments. A more wide-reaching power to review, vary and revoke discharge consents is a pre-requisite of

⁷ The formal administrative arrangements for implementation, and their relationship with land use planning, are explored in Chapter xx of this response. WCL proposals would ensure early consultation between land and water planners via a RBM board or authority, and would place a duty on local and regional authorities, to exercise their functions to ensure that programmes of measures meet the Directive's requirements.

intelligent water management, and should be included within the transposition regulations for the Directive.

Question: Existing controls of trade effluent work well and provide a clear regulatory system. The Directive contains no provisions that require changes to this system. No proposals for changes are therefore being made. Do you agree?

WCL have no comments on this question.

11.10 Controls on Diffuse Pollution 11 (3) (h).

Question: Do you have any comments on this proposed new power to prevent and control diffuse pollution.

Answer: WCL welcome the proposal, and the intention to make the power as flexible as possible, by applying it to any action or combination of actions required to meet the objectives of WFD. The role of this regulation in the context of a wider strategy for addressing diffuse pollution is discussed below.

11.10.1 A Strategic Approach to Diffuse Pollution.

WCL welcome recent Government recognition of the severity of the diffuse pollution problem facing England and Wales.

Directing the Flow rightly recognises that ‘*Addressing diffuse pollution from agriculture is the single biggest future challenge for improving water quality.*’ Yet consultation on the Defra Diffuse Pollution Strategy has been delayed for several months, and crucial opportunities to link this with the Strategy for Sustainable Food and Farming have already been lost. Our failure to address this problem is resulting in continued deterioration of the water environment, and is costing water customers an estimated £120 million per year to clean up. The problem must be addressed at once.

We are also concerned that the consultation fails to address the issue of urban diffuse pollution. In Scotland, SEPA reports that 20% of water quality failures are due to urban runoff. Although no comparable figures are available for England and Wales, it seems likely that, with a higher density of population and infrastructure, the scale of the problem will be comparable or worse.

The Governments proposals to tackle accidental pollution only address individual sites (see below) and could only, quite rightly, be targeted at high-risk areas. However, by its very nature, diffuse urban pollution is the product of minor spillages, air pollution, road-runoff and any number of normal day-to-day activities, cannot always be traced to individual sites and is unlikely to be successfully tackled by tighter regulation alone.

Although traditional drainage systems may incorporate interceptors for silts and immiscible pollutants they cannot cope with the wide range of dissolved pollutants, emulsions or detergents in common use. By contrast the wide range of techniques, collectively termed Sustainable Drainage Systems (SuDS) can provide effective, low cost, treatment of urban runoff quality by trapping sediment/heavy metals and providing a medium for the biological breakdown of organic substances. Where SuDS systems incorporate ponds and wetlands they also allow the quick identification/containment of serious spills, allowing action to be taken before pollutants reach any receiving water body. Measures for promoting the installation of SuDS must form a component part of any future strategy. The proposed new regulatory power to manage diffuse pollution must include provisions for General Binding Rules, which

could, for instance, be applied to all new development in vulnerable areas. Alongside this, Government must tackle the issue of the future maintenance of SuDS, ensuring that this does not prevent their installation where this is clearly to the public benefit.

The current consultation does little to meet the need for a more strategic approach, since it is exclusively concerned with filling gaps in the current regulatory framework in order to meet the legal requirements of transposition, rather than finding useful solutions to real environmental problems. WCL would, however, like to use the opportunity afforded by the consultation, to lay out a framework of action on diffuse pollution, for inclusion in the forthcoming DEFRA strategy:

- An assessment of changes in land use required to achieve ecologically determined standards for nutrients and other diffuse pollutants. We are delighted by the proposal in the current document to develop statutory water standards. To meet the technical requirements of the WFD, such standards will be required to include values, or ranges of values, for nutrients⁸. WCL believe that there is a strong case for the early development of these values, based on current research to support implementation of the WFD, Conservation (Natural Habitats &c.) Regulations 1994 and Countryside and Rights of Way Act (2000) and Wildlife and Countryside Act (1981). A comparison of such values with existing data on nutrients in water bodies should inform analysis of the level of land-use change (rural and urban) required to meet them, and the choice of measures capable of bringing this about.
- **New regulatory powers.** WCL strongly support the proposals for the creation of a power in the current document, but believe that this must be supported by a Government commitment to its early adoption and use. The details of the proposal are discussed below in more detail.
- **Stronger links between the planning process, drainage design and the ecological outcomes required by the WFD.** Increased run-off and urban diffuse pollution from the built environment has the potential to impact the ecological status of receiving waterbodies. The Government must address current blockages to the use of SuDS to reduce urban diffuse pollution and reduce the number and impact of accidental pollution incidents.
- **Early consultation on an appropriate economic instrument** to reduce farm nutrient surpluses, and provide an incentive for more sustainable use of fertilisers, slurries and manures.
- **Continued development of the links between agri-environment measures and improved water quality.** WCL believes that there is considerable scope for linking the delivery of biodiversity and landscape gain with improvements in water quality, by the promotion of more extensive and sustainable land management practices. Assessment and promotion of such multi-purpose measures should be a priority.

11.10.2 Assessing the risk from diffuse pollution.

Paragraph 11.82 suggests that at present ‘it is not possible to identify the extent to which additional controls will need to be applied in practice to implement WFD’. It attributes this uncertainty in part to ignorance about the likely standards required by the Directive, and in part because other action will be required to meet other policy drivers, and may come about

⁸ See CIS guidance documents on REFCOND and COAST for technical background.

through the implementation of the Diffuse Pollution strategy. WCL do not accept this plea of ignorance as an adequate excuse for failing to carry out the basic analysis required to underpin decision-making. Information is already available within the technical community about the possible standards required to meet a range of policy drivers, including WFD, (see above).

11.10.3 Linking the strategy and new powers to other biodiversity obligations.

Secondly, a ‘joined up’ approach requires that the current proposals for regulatory powers are seen as part of a wider plan to meet the water standards required in a whole range of Government commitments, including WFD, Natura 2000, SSSIs and the UK Biodiversity Action Plan. If WFD transposition, and the creation of a new regulatory power, are seen in isolation from other environmental drivers and policy mechanisms, there is little hope that the Diffuse Pollution Strategy will live up to its name.

11.10.4 Links with the Nitrates Directive.

Paragraph 11. 81 refers to implementation of the Nitrates Directive. WCL do not believe that the recent extension of the NVZs to cover 55% of England will be sufficient to address diffuse pollution from nitrogen in the medium to long term, and that this deficiency will be exposed by the development of standards for the WFD. Nor has the strategy for implementation made any effort to promote the more sustainable use of manures and slurries on farms, as opposed to environmentally costly programmes of transport to areas not yet affected by nitrate pollution.

These two issues should be clearly addressed in the proposed Diffuse Pollution Strategy, and any proposals for additional measures to tackle this problem linked with subsequent reviews of the NVZ regime.

11.10.5 Proposals for a new regulation.

WCL welcome the proposal for new regulation, and the intention to make the power as flexible as possible, by applying it to any action or combination of actions required to meet the objectives of WFD.

However, to be used effectively and to avoid unnecessary bureaucracy, the Environment Agency should be given an opportunity to work with Defra now, to determine which elements of diffuse pollution management might best be delivered through General Binding Rules and Statutory Codes of Good Practice. Many pollution management activities are cost-neutral to businesses, and should be adopted as a matter of course by all practitioners. To attempt to impose such good practice on a piece-meal, risk-driven basis will create a major administrative burden, an unnecessary sense of inequity on the part of the regulated, and will not encourage the culture shift in farming and land-use planning practices, which is at the heart of the battle against diffuse pollution.

Such general rules should then be supplemented by powers for the Environment Agency to take action in ‘hot spots’ or vulnerable areas, where changes in land use, and not just management practice, are required. Defra must support this action fully, by integrating it with the future development of agricultural policy reform and land-use planning, so that the whole burden for such strategic environmental decision-making does not fall on the Agency.

Paragraph 11.85 states that the ‘*process for involving stakeholders in the development of the management plan would provide a mechanism for consulting generally on any proposed use of the power to address water quality in that catchment.*’ WCL is concerned that this may

give a misleading impression about the nature of stakeholder involvement in river basin planning. Whilst there is a clear and important role for the public in helping to select cost effective combinations of measures, there is no ‘power of veto’ over individual measures, where analysis shows that these are necessary to achieve the objectives established in the RBMP. It should therefore be made clear, that the use of the power within a river basin could only be ruled out where it could be demonstrated that these objectives could as cost effectively be met by other means.

Finally, robust, flexible and proportionate regulation is of no relevance if it is never intended to be used. The current consultation gives no re-assurance that the power will put into practice in time or with sufficient rigour to prevent further deterioration of the water environment, and comply with a range of existing and pending Government obligations.

Rising levels of nutrients in rivers demonstrate the urgent need for this power. WCL propose that the Government bring it into active use, as an element of the Diffuse Pollution Strategy, no later than early 2004. This would enable proper links to be developed with implementation of the DEFRA Strategy for Sustainable Food and Farming, the Soil Action Plan, the review of agri-environment schemes, and with reforms to the land-use planning system.

11.11 Other Significant Adverse Impacts 11 (3) (i).

Article 11 (3) (i) makes it clear that member states must have the power control any pressure identified during the process of river basin planning, which is likely to impact on the status of water. Article V and Annex II describe the process for analysing anthropogenic impacts, and include an indicative list of impacts. The following two elements of this list are of particular relevance in the context of Article 11:

Identification of significant morphological alterations to water bodies.

Estimation and identification of other significant anthropogenic impacts on the status of surface waters.

In order to determine whether an appropriate range of controls exist, DEFRA will need to consider the major groups of pressures likely to create a risk of failure of WFD standards. Assistance in this process is provided in the CIS Guidance on impacts and pressures analysis, IMPRESS. The following check-list of pressures, listed as either hydro-morphological or ‘other’, is provided in Chapter 4 of the guidance document. We have presented this information as a table, with a preliminary WCL assessment of where further controls may be necessary to meet the requirements of transposition and enable the Government and its Agencies to ensure full implementation of programmes of measures.

PRESSURE	PROPOSED ADDITIONAL POWER.
HYDRO-MORPHOLOGICAL.	
Flow regulation hydroelectric dams	Proposals to extend Environment Agency controls in relation to impoundments; would also be covered by power to regulate physical modification in a near a water body (see below).
Water supply reservoirs	Ensuring adequate controls on discreet waters.
Flood defence dams	Creation of power to regulate physical modification in a near a water body (see below).
Diversions	Largely regulated, but would be covered by power to regulate physical modification in a near a water body (see below).
Weirs	Creation of power to regulate physical modification in a near a water body (see below).
River management physical alteration of	Creation of power to regulate physical modification in a near a water

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channel	body (see below).
Engineering activities	Creation of power to regulate physical modification in a near a water body (see below).
Agricultural enhancement	Creation of power to regulate physical modification in a near a water body (see below).
Fisheries enhancement	Creation of power to regulate physical modification in a near a water body (see below).
Land infrastructure (road/bridge construction)	Creation of power to regulate physical modification in a near a water body (see below).
Dredging	Creation of power to regulate physical modification in a near a water body (see below).
Transitional and coastal management estuarine/coastal dredging	Creation of power to regulate physical modification in a near a water body (see below).
Marine constructions, shipyards and harbours	Creation of power to regulate physical modification in a near a water body (see below).
Land reclamation and polders	Creation of power to regulate physical modification in a near a water body (see below).
Coastal sand suppletion (safety)	Creation of power to regulate physical modification in a near a water body (see below).
Other morphological Barriers	Creation of power to regulate physical modification in a near a water body (see below).
OTHER ANTHROPOGENIC	
Litter/fly tipping	None proposed; existing regulations probably sufficient.
Sludge disposal to sea (historic)	Controls already present.
Mine adits/tunnels affecting groundwater flows	Controls already exist, but could be supplemented by creation of power to regulate physical modification in a near a water body (see below).
Exploitation/removal of other animals/plants	None in the current document; WCL advise that Defra make links with the provisions of the Wildlife and Countryside Act.
Recreation	Creation of power to regulate physical modification in a near a water body (see below).
Fishing/angling	Existing licensing regime should be integrated with WFD objectives.
Introduced species	None in the current document; WCL advise that Defra make links with the current review of legislation and policy affecting introduced species.
Introduced diseases	None in the current document; WCL advise that Defra make links with the current review of legislation and policy affecting introduced species.
Climate change	Policy links with action to address climate change should be pursued by Defra.
Land drainage	Creation of power to regulate physical modification in a near a water body (see below).

Question: Are the Agency's existing powers adequate to discharge obligations under article 11 (3) (i) (which refers to any other adverse impacts on status, in particular, measures to ensure that the hydro-morphological conditions are consistent with good ecological status or good ecological potential for artificial or heavily modified water bodies)? I not, should they be extended? If so, in what way?

Answer: The powers are not adequate. They should be extended.

WCL consider that the range of possible activities requiring controls is such that it would be administratively burdensome to create or modify a whole suite of regulations aimed at addressing each one. A more sensible approach would be to create a power enabling the Environment Agency to exercise controls over any physical modification in or near the vicinity of a water body, which would be likely to affect its status as defined in the WFD. In practice, the physical extent of such a power might be described by reference to the definition of a water body proposed in the CIS Horizontal Guidance on Water Bodies. This states that:

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a river water body comprises:

- (a) the hydromorphological quality elements, which include the water flow, the bed of the channel, that part of the land adjacent to the channel that's structure and condition is directly relevant to the achievement of the values for the biological quality elements (i.e. the riparian zone), and
- (b) the relevant biological elements.

In relation to wetlands, this means that those wetlands must be associated with a "water body", which are directly influencing the status of the related "water body". The boundaries of such wetlands must be drawn in a pragmatic way in order to meet the requirement of a "discrete" element.

Drawing on this definition, where the structure and condition of adjacent land (in particular either wetlands or former wetlands) is relevant to the achievement of the values for the biological quality elements, this land should be identified as being 'associated' with the relevant water body, and protected using the power proposed above.

In practice, it is likely that the major arena in which such a power would be employed is that of flood management and land drainage⁹. Land drainage and flood alleviation/defence activities, by changing run-off rates, sediment and nutrient loads, connectivity with the floodplain, and water levels, have a major affect on river condition, and hence on aquatic biology. The proposed power would enable the Environment Agency to regulate the activities of Internal Drainage Boards in particular, to ensure that WFD environmental objectives are met.

This proposal should also be seen in the context of suggested reforms to the current administrative arrangements affecting flooding and land drainage.

11.12 Prohibition of Direct Discharge of Pollutants into Groundwater 11 (3) (j). (RC)

WCL is keen to see that the level of groundwater protection afforded by the existing Groundwater Directive is not compromised by the implementation of the WFD or the daughter Directive required to make Article 17 operational. We are concerned that proposals for a new Groundwater Daughter Directive emerging from the European Commission will fail to provide an equal level of protection after the repeal of the current Directive.

Question: Pending specific measures under article 17, are you content that the proposed power to amend the list of substances under the Groundwater Regulations 1998, the proposal to give greater definition to the term 'pollutants', and the new power proposed in relation to diffuse pollution, are appropriate for the groundwater measures in article 11 (3) (j)? Are you content with the exclusions in 4(5)(b) of the Groundwater Regulations 1998 being made consistent with those set out in article 11 (3) (j) of the Water Framework Directive?

⁹Whilst existing administrative and funding arrangements for flood management are not designed to ensure sustainable solutions or promote integration between flood management and WFD objectives at a catchment scale, WCL consider that EA does have sufficient legal powers to regulate flood defence activities in the context of article 11 (3) (i).

Answer: We do not object to the proposal to make exclusions in 4(5)(b) of the Groundwater Regulations 1998 consistent with those set out in article 11(3)(j) of the Water Framework Directive. However, those activities require authorisation or, in the case of the construction industry, General Binding Rules. We would, therefore, seek further clarification about what form such authorisations and rules will take and what opportunity third parties will have to scrutinise the potential impacts.

It is also important to note that these exclusions are not universally applicable. Authorisations can only be granted where they do not compromise the environmental objectives for the groundwater body in question and each proposal must be considered in the context of the ecological outcomes. These ecological outcomes include the potential impact of pollutants on associated water bodies and/or wetlands.

11.13 Pollution prevention at technical installations and accidental pollution incidents 11 (3) (l).

The measures for the prevention of accidental pollution outlined in the consultation document takes a very narrow interpretation of Article 11(3)(l), focusing solely on measures to reduce risks from technical installations and, through works notices, sites that pose an identifiable risk.

However, as described in section 11.10, evidence suggests that accidental pollution from diffuse urban sources, minor spills & leaks, has a serious cumulative impact on the ecological quality of water bodies. WCL believe that these sources must be addressed if the requirements of Article 11(3)(l) are to be fulfilled. This can only be done through better integration of the land use and water planning systems.

As described in section 11.10, we believe that SuDS could play a vital role in providing cost-effective solution to the problem of diffuse urban pollution as well as providing an effective safeguard against major pollution incidents.

11.14 Supplementary Measures.

The WFD text article 11 text on supplementary measures states that:

2. Each programme of measures shall include the "basic" measures specified in paragraph 3 and, where necessary, "supplementary" measures.

4. "Supplementary" measures are those measures designed and implemented in addition to the basic measures, with the aim of achieving the objectives established pursuant to Article 4. Part B of Annex VI contains a non-exclusive list of such measures.

Member States may also adopt further supplementary measures in order to provide for additional protection or improvement of the waters covered by this Directive, including in implementation of the relevant international agreements referred to in Article 1.

Annex VI Part B states that:

The following is a non-exclusive list of supplementary measures which Member States within each river basin district may choose to adopt as part of the programme of measures required under Article 11(4):

- (i) legislative instruments*
- (ii) administrative instruments*
- (iii) economic or fiscal instruments*
- (iv) negotiated environmental agreements*
- (v) emission controls*
- (vi) codes of good practice*
- (vii) recreation and restoration of wetlands areas*
- (viii) abstraction controls*
- (ix) demand management measures, inter alia, promotion of adapted agricultural production such as low water requiring crops in areas affected by drought*
- (x) efficiency and reuse measures, inter alia, promotion of water-efficient technologies in industry and water-saving irrigation techniques*
- (xi) construction projects*
- (xii) desalination plants*
- (xiii) rehabilitation projects*
- (xiv) artificial recharge of aquifers*
- (xv) educational projects*
- (xvi) research, development and demonstration projects*
- (xvii) other relevant measures*

WCL do not agree with the interpretation of the use and purpose of supplementary measures offered in the current document. The river basin planning process will involve an assessment of both the range of measures necessary to achieve the objectives, and the cost effectiveness of those measures. There is a clear legal requirement to adopt supplementary measures where basic measures are likely to prove insufficient to meet the environmental objectives. However, we also believe in selecting the most cost effective combination of measures (where cost includes social and environmental as well as economic cost), RBM planners must consider where and whether supplementary measures offer a more sustainable and efficient means of achieving the objectives than basic measures alone. In particular, we believe that the provisions of the Directive in relation to supplementary measures are designed to promote the consideration of land management change, including extensification of land-use and wetland creation, where this offers greater public benefit at less cost (including environmental cost) than more conventional ‘engineered’ or chemical solutions.

Given that there will be legal obligations to identify and implement supplementary measures (i.e., that these are not ‘voluntary’ or ‘optional’), and that these measures will form part of the statutory programmes of measures, which place duties and confer powers on a range of public bodies, the current consultation is wholly inadequate. It fails to identify when supplementary measures should be used, what legal standing they will have within the programme of measures, and what powers the Competent Authority (whether EA or a River Basin Authority) will require to ensure that they are implemented.

WCL would welcome the opportunity to discuss with Defra and the Environment Agency the following options for transposing Article 11:

- Direct transposition of the WFD text on supplementary measures into the regulations, with a requirement to include them within programmes of measures where they are necessary either:

- To meet the environmental objectives of the Directive (ie where basic measures are considered insufficient) or,
 - To ensure the most cost effective combination of measures.
- Statutory Guidance issued to the Environment Agency and other relevant public bodies, making it clear that duties and powers in relation to the programme of measures apply equally to all measures, whether basic or supplementary.
 - Further exploration through the testing of the CIS Horizontal Guidance on Wetlands, of ways in which wetland creation and restoration can contribute to the achievement of the environmental objectives of the Directive.

11.15 Links to Land Use Planning System.

Q: Your views are invited on whether, and if so, why you think any additional duties should be placed on planning authorities and/or the EA to ensure that the environmental objectives of the Directive are met, and that the functions of the land-use planning system are provided for. If you think additional provisions are needed, what are they?

WCL is disappointed that Defra has not chosen to provide detailed options on how to integrate WFD implementation and land use planning. Policy integration may not have been attempted, because of its complexity and politically contentious nature, creating a reluctance to use current reforms in planning policies to pursue genuine joined-up thinking. This is a wasted opportunity indeed, as WCL believe that the co-incidence of timing between planning reform and WFD implementation, represents almost unique chance to link the three pillars of sustainability – development, environmental protection and social good – in these two major realms of public policy. In New Zealand, environmental policy, local government and planning systems were reformed at the same time – resulting in a streamlined environmental planning system where regional government is now based on catchments (Resource Management Act). We do not propose this for as a practical model for England now, but we fear that Defra’s narrow approach, as well as missing integration opportunities, may add another planning layer with its attendant bureaucratic burdens, while achieving little extra benefit.

11.15.1 How land-use affects water.

Many land use planning decisions affect the status of waters. These include water resource requirements for new housing, run-off from developments and infrastructure that can exacerbate flooding and cause pollution, building on functioning floodplains to the detriment of natural flood management, and point source discharges such as sewerage and down-pipes.

Regional planning bodies and local authorities therefore have a key role to play in achieving the WFD’s objectives. To do this effectively, statutory links need to be made between planning instruments, policy, and regulation, and the Directive’s policies and administrative structures. A greater common understanding must also develop between the EA and local authorities, of how to integrate objectives and address significant pressures on water bodies.

11.15.2 The Planning and Compulsory Purchase Bill.

Reform is needed, but opportunities to take the initiative seem to have been studiously ignored by Government. For example, there is a clear opportunity to use the Planning and Compulsory Purchase Bill (2002) to formally link the new planning regime (and new plans system) in England to RBMPs.

This Bill could be amended to ensure that opportunities are not lost or seriously delayed. One option that might be considered for an amendment is to incorporate key WFD objectives into the proposed sustainable development duty for development plans and Regional Spatial Strategies (clause 38).

11.15.3 Other policy options for securing integration.

There are a number of other possible mechanisms which should also be considered. These include:

1. Ensuring consistency between land use plans and RBMPs. Ideally, this should be done by creating regulations that require each set of plans to be consistent with the other. In practice, this would require the EA and other bodies involved with RBMP production to work closely with relevant land-use planning bodies in the development of their plans. If no such requirement were imposed, the Secretary of State would need to appoint a body or agency to arbitrate where there are conflicts between the plans. This would cause unnecessary delays, expenditure and conflict.
2. Government could ensure that measures to achieve WFD objectives are incorporated in the new Regional Spatial Strategies or Local Development Documents, by requiring these plans to help to deliver the objectives of the Directive insofar as they relate to the statutory land use planning system.
3. The Environment Agency could be made a statutory consultee in respect of the Water Framework Directive on Regional Spatial Strategies, plans and planning applications, to be consulted by the planning authority in all circumstances where the aims and objectives of the RBMP/programmes of measures may be relevant. Environment Agency objections to a development plan or individual application would prompt an inquiry *or* hearings and, where the planning authority was minded to include policies in a plan or grant permission contrary to Agency advice, the case would be referred to the Secretary of State by Direction for a potential call-in.
4. Government could create an explicit obligation on local planning authorities to contribute actively to WFD requirements and objectives whilst exercising their functions. The precedent for this is Regulation 3(4) of the Conservation (Natural Habitats...) Regulations 1994, which imposes a duty on all competent authorities to have regard to the requirements of the Habitats Directive in the exercise of their functions.
5. In addition to any combination of these mechanisms, there will need to be, at least, updates of relevant planning policy guidance (likely to be renamed Planning Policy Statements - PPSs). This must include PPG 25 (Development and Flood Risk) and PPG 13 (Transport), and probably PPG 1 (General Policies and Principles), PPG 11 (Regional Planning), PPG 12 (Development Plans) and PPG 23 (Maintenance of Structures over Water). WCL have consistently called for a Water PPG, and the advent of the Water Framework Directive makes this an even more compelling need.
6. It would be desirable ultimately to achieve synchronisation of RBMPs with development plans on a six yearly cycle.
7. Consideration should be given to removing the duty on water companies to provide water supplies and sewerage services to new housing. Water availability (as identified in the Environment Agency's Water Resource Strategies and CAMS) and water quality standards should be a material consideration in housing allocations. Presently,

Environment Agency views on water availability or the impacts on water quality are often ignored, and developments go ahead in water scarce or vulnerable catchments, with water companies obliged to provide infrastructure irrespective of sustainability. Increased abstraction, new reservoirs, and water transfers between catchments can have major impacts on the good status of water bodies, as can increased phosphorous loads from sewage, increased runoff/urban diffuse pollution from surface water drainage systems. This must be recognised when considering major new housing developments. Building water efficient properties, and applying the newest techniques for water treatment, whilst laudable, will not always be enough to counteract the problem.

12 Penalties.

Q: Do you agree that in order to transpose article 23 fully, it will be necessary to apply it to provisions which are within the scope of the Directive, but which pre-date the transposition of the Directive?

Answer: Yes, we support the proposal to retrospectively apply transposition of Article 23 to existing legislative provisions.

Q: Do you agree that penalties may take a variety of forms depending on the circumstances?

Answer: Yes. It seems entirely appropriate that a range of penalties should be employed provided they are truly "effective, proportionate and dissuasive". The issue of just what these penalties might look like are not touched on in this consultation and we hope that this will be addressed in the third consultation.

13 Wetlands.

Question: Do you agree with the Government's assessment of how the WFD will benefit wetlands and of how wetlands will benefit meeting the environmental objectives of the Directive?

WCL welcome the Government's increasing recognition of the vital role of wetlands in the water cycle. In particular, we welcome the restatement of the purpose of the Directive at Article 1a, the clear affirmation of the links between groundwater status and wetland health, and the acknowledgement that riverine wetlands should benefit from obligations to achieve good ecological status.

However, we are concerned by several remaining omissions and inconsistencies in the consultation. In part, we feel that these are a reflection of the fact that the Directive does not explicitly link wetland health to surface water status, as it does to groundwater status. We understand that considerable effort has been made in the development of the Water Environment and Water Services (Scotland) Bill to address this issue, in order to ensure that Article 1 (a) is fully reflected in national law. The outcome is an amendment to the Bill that links the definition of good status for surface waters with the prevention of significant damage to associated dependent wetlands.

WCL recognise that this is extension of the current technical requirements for assessing surface water status, but do not believe that it can be defined as 'gold plating' for two reasons:

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- It is the most effective way of fulfilling the clearly stated purpose of the Directive at Article 1 (a) in relation to dependent ecosystems.
- It is an efficient way to protect wetlands *already* identified as priorities under existing Government policy, including Ramsar, SSSIs and BAP priorities. As such, it should be considered in combination with the use of the Protected Areas Register, or any extended proposals for ‘nature conservation sub-plans’ (see section 9).

WCL believe that it will be a matter of public embarrassment, if the provision for wetland protection and enhancement in Scotland proves to be far more robust and cohesive than that in England and Wales, and hope that DEFRA will consider this issue seriously.

As well as this general point, we would like to make the following points on the detail of the current consultation text on wetlands:

- Paragraph 13.1 refers to the Ramsar Convention on Wetlands. The UK is a signatory to the Convention, and in its most recent report on implementation stated that implementation of the WFD would be a major mechanism for delivering its goals. Yet, despite the long-standing policy commitment to afford Ramsar sites the same level of protection within UK law as SACs, Government does not propose to include these within the Register of Protected Areas, or to ensure that River Basin Planning is geared to achieving their conservation objectives. This retreat from our historical commitment to wetlands does not reflect well the UK.
- Paragraph 13.2 refers to groundwater status. WCL support the interpretation of obligations to dependent ecosystems, including wetlands. However, implementation will require substantial investment in the identification of such ecosystems, and proper assessment of their needs. CAMS have not been designed to address the needs of wetlands (see section 11.6.5), and the technical tools are not currently available within the Environment Agency to achieve the Directive’s objectives in this area.
- Paragraph 13.3 states that the WFD ‘will...make an important contribution to the achievement of the Government’s biodiversity objectives and will be a significant strand in the implementation of the Biodiversity Strategy for England published in Autumn 2002.’ Yet the current consultation document does not contain a single positive proposal for ensuring integration between WFD planning cycles and objectives, and the targets and actions of the UK BAP. Detailed proposals of how such integration could be achieved have been proposed by WCL in Section 9 of this document.
- Finally, the box on page 56 either omits or only partially acknowledges the following important points in relation to wetland protection and enhancement via WFD:
 - The CIS Horizontal Guidance document on water bodies makes it clear that wetlands which directly influence the condition of surface water bodies should be included within the boundary of the water body as part of the hydro-morphological quality elements.
 - Protection of these elements is required as a basic measure under the provisions of Article 11 (3) (i).
 - The use of supplementary measures to ensure full and cost effective achievement of WFD objectives is a requirement of implementation, and may often lead to the selection of wetland creation and restoration in preference to

other more traditional ‘engineered’ or chemical solutions to water management problems.

14 Public Information and Consultation.

WCL is disappointed at the minimalist approach taken to public participation, which is not in the spirit of the Directive. The heading to chapter 14 refers only to the WFD requirements of public information and consultation, and not to active involvement of interested parties. The brief reference to “active involvement” (paragraph 14.2) refers simply to “good practice” and gives no examples. There is reference to a formal Government consultation code of practice - this is not representative of a public participation process as intended by the WFD.

14.1 What is public participation?

Public participation in the context of the WFD has been defined as:

“allowing people to influence the outcome of plans and working processes. It is a means of improving decision making to create awareness of environmental issues and to help increase acceptance and commitment towards intended plans”¹⁰

The WFD refers to three forms of public participation and clearly recognises the importance of them all. They are:

- information supply
- consultation
- active involvement

Together these constitute a full public participation process; they built on each other, and are not mutually exclusive. Consultation implies information supply and active involvement implies consultation. The WFD requires the first two, whilst member states “shall encourage” active involvement.

Defra, together with those organisations responsible for developing plans and co-ordination measures should ensure that they deliver a full process of public participation, including information supply, consultation and active involvement, allowing maximum potential for people to influence decisions at the earliest stages of the planning process.

14.2 Why public participation is important

Whilst WFD environmental objectives will be established in law, and will therefore not be determined by public participation at the River Basin Scale, the WFD makes it clear that public participation is central to effective implementation of the Water Framework Directive¹¹. Without a publicly understood vision for a river basin or sub-basin, and support for its management plan, it may be difficult to implement programmes of measures.

¹⁰ Final Draft EU Commission Guidance on Public Participation in relation to the Water Framework Directive” – October 2002. Common Implementation Strategy. European Commission- Environment. Contact marta-cristina.moren-abat@cec.eu.int

¹¹ Directive preamble – (14) “The success of this Directive relies on the close co-operation and coherent action at Community, Member State and local level as well as on information, consultation and involvement of the public including users”.

Only through a public participation process will long term widely acceptable solutions for river basin planning and wetland management be achieved. These solutions will be grounded in a range of opinions across a range of stakeholders¹² – from the public, to NGOs, community groups and Agencies. Participation allows areas of agreement and tensions to be identified early on and solutions sought that benefit communities, conservation and economies. Public participation is an investment avoiding implementation problems and associated costs long term.

WCL welcome the acknowledgement in Paragraph 14.1 of the importance of “a participative process” that is enriched by the “aspirations and knowledge of all those who care about the water environment”. However, we see no outline of how this will be achieved. Instead, the consultation offers a commitment by Government to take the minimum action required for consultation and information provision.

14.3 Timing of Public Participation

All forms of participation can be used from the earliest stages of the river basin planning process – from the Article 5 requirements (characterisation of the river basin district) to the Programme of Measures and the design of River Basin Management Plans.

The benefit of starting early is to allow maximum time for a range of participatory processes to be tested and used. This can best integrate ideas and input from stakeholders and so maximise the potential for a river basin management plan on which consensus can be achieved.

The DEFRA consultation document again reflects a minimum approach, referring only to the WFD requirement for consultation measures by “2006 at the latest” culminating in draft plans by 2009.

2006 is too late for participation to commence. Various methods need to be tried and tested to meet the differing requirements of the varying types of catchments in England and Wales (e.g. urban and rural, upland and lowland). Defra, with the Environment Agency and preferably with the support and guidance of local authorities, must start now designing and implementing participatory processes that allow early involvement of stakeholders in influencing and shaping river basin management plans for each of the eleven proposed River Basin Districts. This should include active measures to explain the rationale behind the Directive’s environmental objectives, and to identify the benefits of implementation.

14.4 Piloting Public Participation: who and how?

Designing a participation process does not mean talking to everyone everywhere and in person : a phrase sometimes called “participation exaggeration”. There is a wide range of methods that can be used to manage participation. Many involve techniques such as sampling opinion within a river basin district, focussing on a catchment, or using electronic means to access large numbers of people or representative groups (e.g. anglers). However, it will not be sufficient to put prepared RBMPs on the Internet for comment.

¹² Stakeholders is a term not used in the WFD but is recommended as being synonymous with “interested party” as referred to in Article 14 WFD. Stakeholder is defined by the CIS guidance from the EU Commission as: “any person, group or organisation with an interest or stake in the matter either because they will be affected or may have some influence on its outcome”. The public are included in this.

There is no blueprint for participation. The eleven River Basin Districts for England and Wales vary greatly in terms of their physical characteristics, urban/rural proportions and stakeholder composition and will require distinct approaches. Also, key issues will vary. For example, the participation required in an area where diffuse pollution from roads is a key issue (sampling/leafleting/survey) is unlikely to be the same as a more individual approach in a sparsely populated agricultural area prone to flooding.

Often participation will be most realistic and practical at a scale smaller than the River Basin District – for example at catchment level or more locally.¹³ Such sub-basin plans can then feed up into an integrated river basin management plan.

WCL have the following key recommendations for the process for ensuring a full participatory process:

- Defra should ensure that the Environment Agency sets a timetable for designing and running a pilot project, to test the CIS Guidance on Public Participation.
- Defra should ensure that the Environment Agency urgently works with NGOs, Agencies and other key stakeholders, in particular local authorities, in the design of the participation pilot.
- The participation pilot should aim to produce a menu of options for participation for those involved in planning participatory processes.
- Defra should encourage the production of basic “participation strategies” prior to 2006 by river basin planners within each River Basin District, based on lessons learnt from the pilot and the EU participation guidance. These strategies should aim to deliver the required programme of measures.

14.5 Paras: 14.4-14.5 Information Provision

WCL welcomes the commitment given to “give access to background documents and information used for the development of RBMPs”. But again, this seems to reflect the minimum required under Article 14 of the WFD. In the spirit of the Aarhus Convention, the new EC Directive on environmental information and the Freedom of Information Act 2000, the Government needs to show a stronger commitment to information provision early on in the RBMP process and well before RBMPs are drafted.

Information and awareness-raising are vital parts of the participatory process that should be starting in 2003. Information must be provided to enable active involvement of stakeholders and the public. Often, without some form of background information, participation and feedback will be less effective. It is especially important to present issues in an accessible way where input may be required on technical issues such as flood management.

WCL does not fully understand the reference to the Government allowing access to information under the WFD “without limiting the access granted under the environmental information regime”. This needs further elaboration.

¹³ This was a key finding of the Wise Use project – see www.floodplains.org or contact RSPB.

14.6 Awareness raising

This issue is inadequately dealt with in chapter 14 of this Defra consultation. Awareness-raising needs to start now, as part of the participation process. As with participation, there is no single blueprint for awareness raising. NGOs and local authorities have experience to offer in this area, and there are already leaflets and publications that seek to raise awareness of the WFD amongst stakeholder groups and the public. These could be used as examples¹⁴. Other methods of awareness-raising may also be appropriate – such as surveys, leaflets, radio and TV¹⁵. Already the public are hearing differences of opinion about implications of the Directive, such as a possible rise in water bills, yet they have not been given any direct information about it. WCL has the following recommendations in relation to information provision and awareness-raising:

- Defra must ensure that information about the WFD and the process of awareness raising is made part of the participation process from the moment enabling legislation is introduced. It cannot wait until 2006.
- Defra and river basin planners, including the Environment Agency and local authorities, should test various methods of providing information and awareness raising within a participation pilot.
- Defra and River Basin Authorities should work with NGOs and other organisations experienced in preparing material for the public and other stakeholders about the WFD.

¹⁴ Leaflets available from RSPB, VOICE, WWF, Somerset Levels and Moors Partnership – see references. Examples will be gathered together and summarised by WWF (WWF – in progress).

¹⁵ Methods were trialed in the Wise Use Project – see www.floodplains.org

Appendix 1: Links between Flood Management and the Water Framework Directive.

Article 1 in the Directive requires Member States to undertake measures that contribute to the mitigation of the effects of floods and droughts as part of their water management activities. Fluvial (river) flooding results from complex interactions between duration, intensity and timing of rainfall, the type of land it falls on and runs off, and the type and size of channels (such as rivers) within catchments. The prevention of flood damage must therefore be considered across the entire catchment – not just at a town where floods are likely to cause damage. While more research is needed, a sustainable flood management scheme will often include optimising land use throughout the catchment to reduce run-off, particularly on rivers prone to flash flooding. This can include the use of restored or created wetlands in many instances – in the upper catchment and on floodplains. Such wetland restoration not only delivers flood mitigation but can also help the Government meet UK Biodiversity Action Plan targets for wetland habitat (e.g. wet grassland).

The Directive requires Member States to go through a series of tests when assessing possible impacts on water status of both existing activities and new modifications. In both cases, there must be consideration of whether the benefits provided by the activity or modification could be delivered by other means which are ‘a significantly better environmental option’. For example, in the case of a proposed new engineering modification for flood defence, where this would result in *deterioration* of water status by affecting the habitat (morphology) and dependent biology, Member States must ensure there are no significantly better environmental options before permitting it to go ahead. These options may include the restoration of floodplains for flood storage, and the enhancement of catchment floodwater and run-off retention capacities in upstream areas.

In the case of an existing human activity which is preventing the achievement of good ecological status (e.g. a flood defence wall on a river), Member States must ensure there are no significantly better environmental options (such as the creation and restoration of wetlands) before they can designate a water body as ‘heavily modified’ under Article 4.3, or set less stringent objectives under article 4.5.

Sustainable coastal flood defence options can also contribute to meeting good status requirements for coastal waters. (insert any of Jo’s case study here??) Coastal wetlands such as saltmarsh operate as natural flood defences by dissipating wave power, particularly during storms. Intertidal habitats can also improve water quality in estuaries through entrapment and accretion of sediment. Such habitats, including saltmarsh, are being ‘squeezed’ between rising sea levels and hard artificial barriers such as sea walls, resulting in major loss of important wildlife habitats and increasing likelihood of the seawalls being damaged, threatening low-lying land. One sustainable solution is ‘managed realignment’ – a soft engineering technique involving the recreation of coastal habitat which then provides a home for wildlife, contributes to WFD requirements and helps to mitigate flood impacts. Coastal flood defence schemes such as these must be integrated into the River Basin Management process where appropriate.