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Blueprint for Water position paper on proposals to alter the consenting regime for dredging associated with Main River

July 2013

The Blueprint for Water coalition strongly opposes the use of a Regulatory Position statement (RPS) to de-regulate maintenance of Main River. We do not believe there is any evidence it will provide answers that help address the issue. Instead we strongly advise:

- Working to improve the existing approach through the provision of integrated advice;
- Pursuing reform through the current Water Bill to introduce risk-based consenting for all activities (including river restoration) for all watercourses (main and ordinary).

If the Environment Agency and Government choose to ignore our advice we believe it will be vital to trial rollout with a design that includes:

- Trialling “fast-tracking” of land drainage consents for all land drainage activities (including river restoration) as a comparator to deregulation using an RPS;
- Budget for agricultural extension services that focus on minimising runoff and soil loss;
- Setting clear environmental, economic and agricultural success criteria against which delivery of the pilots can be assessed; and
- Robust monitoring and enforcement that goes beyond the Environment Agency’s “business as usual”.

However, we remain concerned that such a course of action risks significant and avoidable damage to the environment, the reputation of the farming sector as well as falling foul of domestic and European legislation; all for uncertain benefit.

1. Summary

The Blueprint for Water coalition welcomes the opportunity to comment on the draft Regulatory Position Statement (RPS) ‘Undertaking dredging work on main river watercourses’. However, we are concerned by a report in Farmers Guardian that a deal has been struck before the deadline our coalition was given for comment.¹ This adds to the sense of frustration felt by environmental NGOs who initially found out about these proposals through leaks and innuendo rather than formal communication. Collectively, our engagement in the process has fallen far short of good practice as detailed in Cabinet Office guidance and has served to hinder productive dialogue.

Wetland wildlife is in crisis, despite the range of legislation designed to protect and enhance it. Data from Environment Agency reason for failure database and catchment walkovers suggest widespread non-compliance with legislation is at the root of many of the runoff, siltation and pollution problems facing our rivers and wetlands. We are concerned that the RPS proposal relaxes controls further and, in doing so reinforces the view that environmental protection is a burden that

¹ www.farmersguardian.com/home/latest-news/farmers-to-be-allowed-to-carry-out-flood-maintenance/56701.article.

can be ignored at will, rather than a tool that helps control flooding and protects our natural heritage and wildlife for the benefit of all.

That said, we appreciate that the excessive rain of 2012 caused many landowners hardship, and brought misery to hundreds of households across England. Unfortunately, as a recent Met Office meeting has pointed out, this kind of climate chaos may well become the norm in future years. It is therefore vital that we learn the lessons of last year and collectively make informed decisions about how to adapt our land and water management practices to improve the resilience of farming systems in a way that is environmentally sustainable and socially equitable.

We do not believe that a return to ad-hoc and uncoordinated river “maintenance” has a role to play in this future. Such a move is diametrically opposed to the spirit of the Catchment Based Approach launched by Richard Benyon in June this year and it risks causing significant environmental damage and exacerbating flooding impacts in downstream communities.

We cannot see any environmental up-side to this proposal, which exclusively deals with those seeking to clear river channels and does nothing to help those looking to restore and enhance impoverished river habitats – ignoring the fact that these objectives are entirely legitimate and given legal weight by UK and European. Our analysis has led us to reject the RPS because while the risk to the environment is obvious, we do not believe the need/effectiveness for deregulation of dredging has been proven. It is, therefore, important to note that if the Government/ Environment Agency go ahead with the RPS they do so against our wishes and advice.

2. Background

The Blueprint for Water coalition has considerable experience of managing landscapes, rivers and floodplains, of engaging with the current flood consenting process and of observing and recording the often devastating impacts of inappropriate land management and drainage and flood defence activities on wetland habitat and wildlife. Our wetland wildlife heritage is precious, and has suffered much over the previous decades, often needlessly. This loss has been quantified in the recent State of Nature report which found that 57% of freshwater and wetland species for which we have sufficient data have declined, and 29% have declined strongly.²

Such losses are not entirely due to river engineering and maintenance. However, according to Environment Agency figures morphological damage has been identified as the most common reason for water bodies not achieving Good Ecological Status, with 20% of these failures attributed to rural land use.³

Our legal obligations towards rivers and the wildlife they support reflect the strong economic and moral case for stemming and reversing the decline of wildlife, a view most recently endorsed by the Government when it became a signatory of the Aichi Convention on Biodiversity (which is made operational through the England Biodiversity Strategy). Moreover, the Government, Natural England and the Environment Agency have all committed to work with the third sector and others through a long-term coordinated approach to catchment management.

We believe any proposals to alter the protective regime currently applied to Main River should be publicly assessed in light of these obligations and commitments.

3. Main Points

- 3.1.** Our members work closely with landowners to enhance rivers and streams for fish and invertebrates, for example by retaining and improving in-stream vegetation and encouraging

² www.rspb.org.uk/Images/stateofnature_tcm9-345839.pdf.

³ Environment Agency briefing pack on impacts of Physical Modification, June 2013, www.geostore.com/environmentagency/Physical_Modification_Evidence_Summary_v2_1_external.pdf.

the retention of woody debris. The relaxation of Environment Agency river maintenance works over recent years reflects a growing recognition of the need to re-naturalise our rivers. Although it is still early days, we have seen some rivers and their wildlife responding to that reduction in maintenance. This attempt to reduce red tape will undo much of that good work, paving the way for a return to the 'old ways' of channelling water from A to B as quickly as possible, treating watercourses as a problem, not an asset, to our landscape.

- 3.2. No evidence has been presented to suggest that the proposals set out in the RPS would have had any significant impact on the flooding seen in 2012. We understand that, in some instances, greater conveyance volumes from the land via ditches and/or rivers will reduce water levels at a local scale. However, numerous studies – including those undertaken by the Environment Agency in 2010 – demonstrate that such changes tend to benefit those high frequency minor storm events, not the extremes that were witnessed in 2012.⁴ We have to conclude therefore that the flooding experienced by landowners throughout 2012 was caused by excessive and unprecedented volumes of rainfall, and not by the nature of the current consenting process or levels of drainage activity on Main River.
- 3.3. By contrast, Defra research has concluded that there is significant evidence that damage to soils is exacerbating runoff generation and local flooding; problems that are closely linked to pollution by silt, excessive nutrients and pesticides.⁵ There are no national studies to confirm how widespread this problem is, but field studies undertaken by the Environment Agency in South West England have concluded that 50% of soils are degraded and 30% pose increased runoff risk.⁶ Elsewhere, Environment Agency catchment walkover surveys report finding 2-6 issues per kilometre, many of them linked to poor management of riverbanks and agricultural soils.⁷
- 3.4. Experience from Catchment Sensitive Farming and other farm extension programmes suggests that farmer engagement on soil and water matters requires significant long-term investment to make even modest progress. We note the Environment Agency has not committed to undertake such work as part of the trials/roll-out of the RPS. Rather, by signalling a desire to make dredging easier, the Government risks undermining efforts to spread messages of good practice that are vital in preventing runoff and associated flooding in the first place. It would also be contrary to the advice given by the European Commission under its Blueprint to Safeguard Europe's Water Resources.⁸
- 3.5. We are unaware of any Defra/ Environment Agency projects specifically designed to review evidence of the downstream impacts of channel modification on flood risk. However the authors of FD2114 did touch on the issue, concluding, '*When viewed alongside the impacts of land use management on flood generation, most channel modification works in the UK would be expected to lead to increased peak discharges downstream, with the impacts dependent on the extent and locations of works within the channel network*'.⁹

⁴ http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/LIT8309_cb6a4e.pdf

⁵ Review of impacts of rural land use management and management on flood generation, DEFRA (2004)

http://evidence.environment-agency.gov.uk/FCERM/Libraries/FCERM_Project_Documents/FD2114_2197_TRP_pdf.sflb.ashx.

⁶ www.swo.org.uk/sotsw2010/environment/soils/.

⁷ Environment Agency (2013) *The Catchment based approach and enforcement: Narrative on experience with current regulatory framework to better control rural diffuse pollution*, p.3

⁸ Brussels 14.11.2012 COM (2012) 673 Communication to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions.

⁹ Appendix F - Review of impacts of rural land use management and management on flood generation, DEFRA (2004) <http://sciencesearch.defra.gov.uk/Default.aspx?Menu=Menu&Module=FJPPProjectView&Location=None&ProjectID=10718&FromSearch=Y&FieldOfStudy=12&SearchBy=3&SearchText=2114&ShowDocuments=1&SortString=ProjectCode&SortOrder=Asc&Paging=10&FJP=1>.

- 3.6.** The available evidence also suggests that were certain parts of the landscape to be managed in a different and more sustainable way, as part of a catchment based approach which assesses cause and effect across the whole hydrological unit, the recent flooding could have been significantly reduced. In order to adapt to a changing climate in which such events as the flooding of 2012 will become more regular, we must look to more sustainable solutions. Any initiative to investigate short term solutions should be set within a longer term strategy and framework that considers the contribution that different land management practices could make to individual river catchments and the management of flood waters.
- 3.7.** We are concerned at the level of knowledge that landowners will be required or assumed to have in order to undertake effective, sensitive and legally compliant dredging activities on Main River under this proposal. The current process requires landowners to adhere to a range of legislation that protects against, for example, harm to wildlife, and causing flooding up or downstream of the dredging site. The Environment Agency, which currently oversees the consenting of this kind of dredging on Main River, has extensive knowledge on such matters and endeavours to ensure compliance both at the front end during the application stage, and through post-activity monitoring.
- 3.8.** We believe it is highly unlikely that a landowner would be able to provide all of the same checks and balances, or have the technical knowledge required to ensure compliance. For example, whilst the majority of farmers know their NVZ status and the impact of the regulation, a quarter of respondents to a 2011 survey did not know what the new NVZ regulations were and had not assessed the regulations' impact on their farm. Of those that did know the requirement, there was widespread non-compliance; of the farmers surveyed, 45% did not have enough slurry storage to comply with the five month storage requirement.¹⁰ The RPS sets out an approach which puts additional pressures on farmers to fully understand additional legal requirements, for example relating to protected species and protection of designated sites. The NVZ experience demonstrates that the provision of guidance material will not be enough to guarantee farmer compliance with the law when undertaking dredging activities without flood drainage consent.
- 3.9.** We are also concerned that landowners will not be able to ensure that there are no protected species in the area that could be damaged or harmed by dredging works. In addition, the requirement that landowners take 'reasonable steps' to identify which, if any, protected species may be present, does not constitute a robust process for assessing the area for protected species. Identifying the presence or absence of protected species such as water vole or white-clawed crayfish requires training, skills and access to relevant local data. We are therefore highly concerned that damage will be done to species that are already declining (which are often found outside SSSI boundaries), and the habitats that support them. This will, in turns, undermine the work that has been done by Natural England and the NGO community in developing best practice for works that may impact on protected species living along rivers and river banks.
- 3.10.** We believe the RPS also poses significant legal risks to the UK Government and should be treated as a *Plan or Project* for the purpose of the Habitats Regulations. As such, the RPS should be appropriately assessed to determine whether or not there is a significant risk of damage to Natura 2000 sites, including wetlands whose water levels are dependent on in-stream water fluctuations, and protected species. There is settled case law that has determined that where there is risk of impacts from operations some distance from the geographic boundary of protected sites, those too must be considered. Therefore, any *Appropriate Assessment* must go beyond the boundary of the Natura 2000 network to include those waterbodies which are functionally linked to the features/species of interest –

¹⁰ NFU Dairy NVZ Survey February 2011.

including small ditch networks and wetlands that are functionally related to Natura 2000 sites.

- 3.11.** We believe that the proposed change in the permitting regime poses significant risk to the environmental objectives of water bodies designated under the Water Framework Directive (WFD). Article 11.3(i) of the Directive requires Member States to have measures in place to aim to meet those objectives – in essence to prevent morphological damage so as to protect aquatic ecosystems from further deterioration and restore them to Good Ecological Status/Good Ecological Potential (GES/GEP). We understand that UKTAG criteria have been used to set thresholds for the scale of maintenance riparian landowners will be allowed to undertake in any one year. These criteria were intended to screen those places where GES/GEP was unlikely to be met for classification purposes; they were never intended to provide a threshold or upper limit of acceptable damage for new operations, and as such we have no confidence they will be suitably protective.
- 3.12.** We are concerned that the RPS will be unenforceable. The Environment Agency has indicated there will be no new resources to ensure compliance with the RPS. This is alarming given that recent information suggests that the Environment Agency is already struggling to attend fish kills, one of the most serious and obvious type of incident.¹¹ Even if dredging incidents were to be found, we would have no confidence that anything other than the most serious habitat destruction would trigger action under the Environment Agency's existing enforcement policy. This view has been given weight by recent information from catchment walkovers, which suggest that thousands of non-compliance issues that cumulatively impact water bodies are being dismissed at an individual level because they do not fit the Environment Agency's thresholds for action.¹²
- 3.13.** Whilst there is a requirement in the RPS not to undertake dredging during times of salmonid spawning, no such restrictions are placed on cyprinid spawning periods and removal of vegetation will have a high impact on cyprinid populations. Failures for fish are at a high level amongst WFD failures, and the proposed actions will increase water body failure for fish, risking infraction. Removal of vegetation cover will also increase predation on fish.
- 3.14.** Much has been made of the similarity of the RPS to that adopted in Scotland. While this might superficially be the case, it is important to be aware that our counterparts in Scotland objected to recent relaxation rules. Moreover, the Scottish system operates in a fundamentally different way since no distinction is made between "Main River" and "ordinary watercourse", and the consenting process administered by the Scottish Environment Protection Agency is primarily designed to protect the environment rather than prevent flooding, as was originally the case for Land Drainage Consents. The focus on river maintenance consenting in England raises questions as to whether the existing Land Drainage consenting regime is fit for purpose and/or legally compliant with Article 11.3(j) of the WFD.
- 3.15.** At a time of public spending cuts it is more vital than ever that the public understand the costs and benefits of the RPS proposals and where the costs will fall. So we would like to see estimates of costs and to know whether resources will be drawn from the already stretched FCERM pot, and if so, what other activities/investments will be shelved.
- 3.16.** Our analysis has led us to reject the RPS because while the risk to the environment is obvious, we do not believe the need/effectiveness for deregulation of dredging has been

¹¹ www.fishlegal.net/page.asp?section=940§ionTitle=Environment+Agency+Fails+to+Investigate+Fish+Kills.

¹² Environment Agency (2013) *The Catchment based approach and enforcement: Narrative on experience with current regulatory framework to better control rural diffuse pollution*.

proven. It is, therefore, important to note that if the Government/ Environment Agency go ahead with the RPS they do so against our wishes and advice.

3.17. Notwithstanding the above, if Government does choose to go ahead it is vital that proposals are trialled using a design that includes:

- Trialling “fast-tracking” of land drainage consents for all land drainage activities (including river restoration) as a comparator to deregulation using an RPS;
- Budget for agricultural extension services that focus on minimising runoff and soil loss;
- Setting clear environmental, economic and agricultural success criteria against which delivery of the pilots can be assessed; and
- Robust monitoring and enforcement that goes beyond the Environment Agency’s “business as usual”.

Blueprint for Water coalition

The Blueprint for Water coalition is a unique coalition of environmental, water efficiency, fishing and angling organisations which call on the Government and its agencies to set out the necessary steps to achieve “sustainable water” by 2015. The Blueprint for Water is a campaign of Wildlife and Countryside Link. More information is available at www.blueprintforwater.org.uk.

This response is supported by the following seven organisations:

- Angling Trust
- Royal Society for the Protection of Birds
- Salmon & Trout Association
- The Rivers Trust
- The Wildlife Trusts
- Wildfowl & Wetlands Trust
- WWF-UK

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