

## CONSULTATION ON RIVER BASIN PLANNING GUIDANCE VOLUME 2

### Response by Wildlife and Countryside Link

#### 1.0 Introduction

Wildlife and Countryside Link (Link) brings together 40 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of over 8 million people in the UK.

While we welcome the publication of this consultation, we are disappointed that it does not provide a clear, ambitious direction to the Environment Agency (EA) as to what Government expects to achieve in the first river basin planning cycle. As a result we are concerned that implementation will fall short of the legal obligations of the Water Framework Directive (WFD) and, by delaying action, will undermine Defra's ability to deliver its long-term vision set out in *'Future Water'* that a significant majority of water bodies will be at Good Ecological Status (GES) by 2030.

Taken as a whole the standards, compliance regime and questionable interpretation of 'disproportionate cost' and 'technical feasibility' appear to be an attempt to minimise change rather than maximise benefits. Such an approach will do nothing to increase the resilience of the water environment as it struggles to cope with the combined pressures of development, abstraction, pollution and climate change.

We hope that you find our comments useful and that in the final Guidance, Government will clearly state its commitment to the Directive and demonstrate an ambition to take action to meet its aims and objectives.

This response is supported by the following organisations;

- Anglers' Conservation Trust
- Association of Rivers Trusts
- Buglife – The Invertebrate Conservation Trust
- Froglife
- Pond Conservation
- Salmon & Trout Association
- The Wildlife Trusts
- Royal Society for the Protection of Birds
- WWF - UK

## 2.0 Overall comments

This document is difficult to read and requires a large amount of prior knowledge about many different ongoing processes. It refers to other documents from the UK Technical Advisory Group (UKTAG) and the Collaborative Research Project (CRP) without clearly identifying the specific papers that must be read. This unfortunately has made responding difficult and extremely onerous for many Link members. Given that the UKTAG consultation process was in itself flawed, we question whether this public consultation process meets the required standards.

It is essential that the final Guidance provides clarity and direction for the EA on their financing and the acceptable burden that might be placed on industry, farming and other potentially polluting / damaging economic sectors. There is currently no indication at all, about where the recommended £900m a year (Option 2) will come from, especially as the EA will only be contributing a maximum of £56 million (some of which may come from other agencies)<sup>1</sup>. We feel that this is not commensurate with the challenges facing the EA in implementing the Directive, hugely under-estimates the value people put on the water environment, and is unambitious if the default objectives of the WFD are to be met.

There is also no clarity about how the EA will be able to require the various sectors to play their part in implementing measures to meet WFD objectives. This applies both to the commercial sector and other government bodies. Unless the Government gives the EA the necessary powers to direct and enforce measures, and the political support / finance to ensure such powers are used, we fail to see how Government can be confident that the legal obligations of the WFD will be met.

We recommend that in the final Ministerial Guidance, the Government should reiterate its commitment to the principles and objectives of the WFD and make clear statements on ambitions and approach.

## 3.0 Standards

**Q1. Do you agree that the Secretary of State and Welsh Ministers should adopt all the new standards and environmental conditions limits recommended by UKTAG?**

No. We consider it is unreasonable to be asked to comment on and endorse standards that are not finalised until shortly before the consultation deadline, as is the case here.

The UKTAG process was closed to stakeholders and the review process did not meet the standards required for Government consultations. Despite this, Link members put in a huge amount of effort to commenting on the two UKTAG technical reviews on standards and environmental conditions. We refer to you our responses to the two consultations on these standards for our views on their strengths and weaknesses:

[http://www.wcl.org.uk/downloads/2007/Joint Links response to UKTAG Phase II consultation\\_9AUg07.pdf](http://www.wcl.org.uk/downloads/2007/Joint Links response to UKTAG Phase II consultation_9AUg07.pdf)

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<sup>1</sup> See section 2.1.5 on page 30 of the Regulatory Impact Assessment.

<http://www.wcl.org.uk/downloads/2006/Joint Links response to UKTAG 18Apr06.pdf>

Just two weeks before the deadline for this consultation, UKTAG released their “*Response to stakeholders’ submissions*”. This document was hugely disappointing to Link members, revealing that not a single comment made by us led to a direct change in the text of the final report on standards. For some issues (nitrates standards for lakes, water resources and temperature sections specifically) a commitment has been made to undertake further work in the next planning cycle, but without any specific details. This is clearly inadequate as a number of these issues are key to achieving ecological objectives by 2015 and should not simply be benched until the next plans are produced.

We also made comments on the draft UKTAG Good Ecological Potential (GEP) guidance, which have not been addressed in the final version. This is of particular concern as we feel strongly that the proposed mitigation checklists are not sufficiently detailed or ambitious.

Given our concerns about the standards and the process by which they were derived and consulted on, we cannot agree that the standards we have seen should be adopted by the Secretary of State and Welsh Ministers.

**Q2. Do you agree with the approach to the use of standards in classification and within the regulatory regime?**

A regulatory regime must be based on standards. No one would disagree with this, however, we remain dissatisfied with many of the standards that UKTAG has developed. Overall we have the impression that a desire to minimise change means that the UKTAG have sought to distort the interpretation of the WFD to fit their existing monitoring and classification schemes rather than change their business model to fit the fundamental challenge set by the WFD.

In particular we are concerned that the UKTAG approach seems to be over emphasising the weight of physico-chemical determinands rather than introducing new ecological and hydromorphological based standards to assess water body status, in line with the ecological approach of the Directive. We are also uneasy that proxies are being used for some biological quality elements where there is little ecological justification.

Greater clarity is required both on how these standards and conditions relate to standards for the biological quality elements, and how they relate to existing standards within the requirements of other directives.

The relationship between these proposed standards and conditions and the wider assessment of ecological status, including the ongoing intercalibration process, must also be made clear.

**Q3. Is the UKTAG classification guidance on how to report water body status (including the confidence in our classifications) adequate?**

We assume this refers to the UKTAG ‘*Recommendations on Surface Water Classification Schemes for the purpose of the Water Framework Directive*’, December 2007. However, this is not at all clear.

We do not agree with the UKTAG recommendation that only data on the condition of the quality elements most sensitive to the pressures placing a water body at risk are used in classifying that water body. This is of concern because it assumes a level of a-priori knowledge that may be unrealistic. As a result other quality elements could fail to meet standards and not be reflected in the final classification, especially if the risk assessment failed to pick them up.

While we agree that the EA should clearly indicate how they have arrived at a classification and state their overall level of confidence in it, we are not satisfied by the recommended approach to ascertaining a high, medium or low level of confidence. In particular, UKTAG recommends that confidence is considered as medium if there is more than 50% confidence that the water body is better or worse than its assigned class. Although the EA document '*Combining Multiple Quality Elements and Defining Spatial Rules for WFD Classification*' describes why this assumption has been adopted, it is still not clear how this is calculated in terms of sample size and distribution of monitoring points.

We find it very concerning that the UKTAG document states that;

*“for hydromorphological quality elements and certain chemical and physicochemical quality elements, achieving a high confidence of failure of environmental standards or condition limits will not necessarily be sufficient on its own to provide high confidence that the status of a water body is truly worse of good status.”* (Section 4.3, page 25)

It is unclear which chemical and physico-chemical quality elements this statement is considering but it does beg the question why set standards and then ignore them? We question how objective such an approach can be and would be interested to know how this will be reported to Europe.

We are also very unclear about how the use of only two aggregated classes - 'Confidence of Good or High' (CofGoH) and 'NotGood' - is consistent with the requirement to demonstrate “no deterioration” in a water body<sup>2</sup>. We seek clarification from Defra on this matter.

Our concerns are further exacerbated by the very one-sided approach outlined in the EA document '*Combining Multiple Quality Elements and Defining Spatial Rules for WFD Classification*'. As the following quote demonstrates, this document appears only to focus on the risks of wrongly identifying bodies as less than 'Good' and ignores the possibility of the classifying a failing water body as being in 'Good' status.

*“Not everyone, of course, will be happy about giving the benefit of the doubt to the polluter - but this is the economic and political reality of current environmental regulatory policy. Furthermore, the approach brings the important positive benefit that it controls the rate at which monitoring throws up false positives.”* (Section 3.1, page 13)

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<sup>2</sup> This aggregated approach is detailed in the EA document '*Combining Multiple Quality Elements and Defining Spatial Rules for WFD Classification*' but its relationship with detecting no deterioration is not mentioned.

The document also makes numerous references to the fact that the more quality elements being used means the higher the possibility of recording error causing a false negative (failing the water body). We do not contest this point, however, it fails to mention that the chances of a false positive (the water body being wrongly defined as CofGoH) will increase when fewer quality elements are used. The WFD establishes a broad range of quality elements and sets a 'one out, all out' approach to status classification. Ignoring this poses a serious infraction risk.

While we understand that hydromorphology only plays a supporting role for the biological quality elements and does not need to achieve a status of its own, it is still unclear why a failure in hydromorphology is not considered to affect the biology of a water body. We suggest UKTAG should reconsider their concept of GES and what 'slight deviation' from pristine conditions means. Scientific literature clearly shows the links between functioning hydromorphology and biological outcomes<sup>3</sup>.

The UKTAG approach also ignores the need to consider long-term deterioration of biology that may result from compromised hydromorphological functions, and is entirely incompatible with the 'one out, all out' approach.

We have had a number of problems with the rapid classification process for Heavily Modified Water Bodies (HMWB) and would like to see this Guidance reviewed in advance of the draft plans being completed. We see the setting of GEP at the water body level, using the mitigation checklists, as the most appropriate point to revisit the designation of these water bodies.

***Q4. Do the proposals in the UKTAG classification guidance adequately explain why a classification will not necessarily lead to a programme of measures?***

We are not satisfied with either the proposals on why a classification does not always lead to a Program of Measures (PoM), or the explanation.

As outlined in our response to Q2, Link members are unhappy with the process and outcomes of UKTAG standard setting. Given our concerns about the rigorousness of the standards, we are alarmed by the proposal to ignore failed standards in some cases. If UKTAG have confidence in their process and believe that standards reflect the status of a biological quality element (a position we do not share), then why ignore it when the standards are failed?

It is not acceptable to have to demonstrate ecological impact before action because the scale and frequency of biological monitoring is so poor that in many cases a direct impact will simply be impossible to demonstrate. The physico-chemical standards have in theory been devised to reflect the biological requirements of water bodies in the absence of biological monitoring so their failure should trigger necessary measures. Not doing this undermines the principle of the WFD.

UKTAG proposals require high confidence that action is needed, based on at least 95% confidence in monitoring data, and high confidence in modelling and sensitivity analyses.

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<sup>3</sup> Peacock, C. (2003) *Rivers, Floodplains and Wetlands: Connectivity and Dynamics*, Sandy, RSPB.

It is not clear from the Guidance how this will be accurately calculated in terms of sample size and distribution of monitoring points.

In fact we are very concerned about the ability of monitoring to establish such a high level of confidence. These concerns are substantiated by the following extract from the EA document ‘*Combining Multiple Quality Elements and Defining Spatial Rules for WFD Classification*’. It states that:

*“The discussion around this issue centred on one key concern. With the relatively modest monitoring programmes generally envisaged, there may be cases where it is not actually possible to demonstrate with sufficiently high confidence that a site was NotGood, however poor the true quality was. The view was expressed that, in these circumstances, it might be necessary to relax the confidence criterion. However, others felt that this would be unwise. If the monitoring signals contain too much statistical noise to be very useful, this is an important piece of feedback that should inform the future monitoring, rather than be ‘papered over’ by slackening the assessment criteria.”* (Section 3.3, page 14)

This is completely unacceptable. There is no reason to believe that relaxing the confidence criterion required to trigger action on water bodies, where it is known the monitoring is inadequate to meet 95% confidence, should undermine the fundamental requirement to improve the monitoring regime. Indeed, as the EA is already aware of this problem, changes to either the monitoring programme or the use of confidence levels should be put in place for the first river basin management plans otherwise unacceptable delays are being deliberately designed into the process.

UKTAG also sets out criteria to ensure only impacts affecting a significant proportion of the water body are used in classification. Link considers that having to prove a failure of GES in more than 15% or a river or lake is yet another unacceptable relaxation of the objectives that have no basis in the Directive. We question the scientific justification for such a threshold and how the EA would determine the proportion of a water body affected. Inevitably, it would come down to estimations of what proportion of a water body each monitoring station represents, even though significant parts of water bodies will be un-monitored.

**Q5. Are the consequences of the standards proposed by the UK Technical Advisory Group adequately reflected in the measures that have been identified in the Impact Assessment (as a result of the preliminary Cost-Effectiveness Analysis)?**

No. The Cost Effectiveness Analysis is not an adequate tool on which to identify the most effective measures.

This question requires us to read the entire output from the preliminary Cost Effectiveness Analysis (pCEA), which is the result of a huge amount of work by consultants and stakeholders on the Collaborative Research Programme over a period of years, and which is not even complete. We consider this an excessive request, but have hired a consultant to analyse a small part of the Impact Assessment (IA) and the pCEA.

Our review analysed the measures intended to address agricultural pollution and water demand reduction and efficiency. The key conclusions from this review are further elaborated upon in the response to Q20 and the full report is attached as an appendix to this response.

Within the diffuse agricultural pollution measures it identifies the following weaknesses:

- The location and timing of reductions in diffuse nutrient releases, and their relationship with pollution spikes, are not captured in the cost-effectiveness database.
- There is no discussion about the timing of expenditures in the cost-effectiveness database. While phasing is subject to local conditions, it could have a dramatic effect on pCEA results.
- More consideration is needed of interactions of WFD costs with agricultural subsidies, which could identify overlaps in funding that reduce the additional costs of WFD implementation.

Within the water industry measures, the following weaknesses were identified:

- The Water Industry's analysis, and the CEA chapter on water resources, appears to concentrate on engineered solutions, but are the basis of the overall Directive costs identified in the IA.
- The costs of potentially more sustainable demand management measures require clarification.
- Impacts in terms of reduced utility bills have not been thoroughly treated.
- There is no discussion on the timing of expenditures in the cost-effectiveness database. While phasing is subject to local conditions, it could have a dramatic effect on pCEA results.

Given these weaknesses and as we only analysed the above measures, it seems highly likely that the other measures may also face similar problems. As a result, it does not seem appropriate for the pCEA to be used to rule out options in WFD implementation. We seek assurance that Defra will examine the short-comings of the pCEA in detail.

The real test of whether the right measures have been identified to address problems in water bodies will be at river basin district and water body level, not at national level. This is where measures are required to meet the legal requirements of the WFD. Existing M1 and M2 measures may not be sufficient as they stand to reach GES. They need to be examined to see if they are fit for purpose and if not, be better integrated with WFD requirements.

We are concerned that this Guidance is not clear that the cost-effectiveness of measures is only a consideration when a number of measures are available that could all achieve the objective for the water body.

#### **4.0 Objectives**

We oppose the use of time derogations for all Protected Areas. A legal opinion from the Netherlands, which we attach with this response, has concluded that the wording of the

Directive is such that it is clearly not the intention that any alternative objectives or derogations apply to Protected Areas. Article 4 includes sub paragraphs referring to alternative objectives and derogations for surface waters and groundwaters (4.1(a) and (b)) but not Protected Areas (4.1 (c)).

Furthermore, it is unclear why the WFD would create an explicit deadline for Protected Areas if it does little to further the delivery of their objectives.

**Q6. *Should the guidance advise the Environment Agency to indicate levels of certainty with objectives?***

Yes, we believe that the EA should indicate how certain they are of meeting objectives. How can other sectors commit to actions and understand how important their contributions will be unless the confidence in Government-based measures is clearly expressed? If the EA were to exclude information on certainty / confidence, then it could seem that they were hiding their lack of ambition in achieving objectives.

Any 'confidence level' must show separately the EA's confidence in classification and its confidence about the effectiveness of proposed measures.

**Q7. *Should the guidance advise the Environment Agency that its preference should be to extend deadlines rather than setting less stringent objectives, where there is a choice between the two?***

Link welcomes the commitment to an extended deadline as the preferred derogation ahead of less than stringent objectives, although we seek assurance from the EA that the majority of water bodies will be aiming for GES by 2015 and time delays must not be an excuse for inaction. Contrary to the draft Guidance, we believe that strong reasons exist within the Directive to support this view.

Firstly, recital 29 clearly recognises the option for phased implementation. Secondly, failure to achieve the WFD objective of GES represents a de-facto more significant departure from the objectives of the Directive than achieving it over a period of time. The Guidance should be clear what it means when it states in s81 that the EA should propose a less stringent objective if it is "obvious" that it is necessary.

Contrary to comments from the Ports Authorities at the last WFD stakeholders meeting, this is still the recommended approach in European Guidance.

## **5.0 Policy trends**

**Q8. *Do you agree with this summary, from the WRC report, of policy trends that should be considered in river basin planning? If not, what changes would you suggest?***

We consider that the policy trend work needs to be revisited in the light of new and emerging trends / threats to the water environment such as the increase in biofuels, the loss of set aside, and the increase in basic food commodity prices. Such trends in farming bring into question the positive role of agri-environment schemes as funding for them cannot compete with high food commodity prices. Other major Government

initiatives, such as the Foresight study into ‘*Land Use Futures*’ should also provide an insight into the fit between the WFD and the wider role of land management and land use planning.

Existing policy trends that are considered in the pCEA as M1 and M2 measures should not be taken as set in stone and beyond the ability of River Basin Management Plans to influence. It may be possible to make small changes at a low cost to existing activities related to other policies, which will be effective in delivering WFD objectives. This would provide a much more joined up Government approach to WFD implementation, e.g. Catchment Sensitive Farming, Nitrate Vulnerable Zones.

***Q9. What, if any, further work should be done for England and Wales to improve confidence in the trends in urbanisation, industry and transport?***

As mentioned above, more work should be done to consider trends in agriculture. The implications of new laws on planning and major infrastructure projects should also be looked at.

## **7.0 Technical infeasibility**

***Q12. Are these the right grounds for justifying an alternative objective or defence on the grounds of technical infeasibility?***

No, Link does not believe the Guidance sets out the correct grounds for justifying an alternative objective with regard to technical feasibility.

The WFD uses the phrase ‘technical feasibility’ in three separate Articles, all of which have a slightly different context. The three uses of the phrase are as follows (as listed in paragraph 111 of the draft Guidance):

- Article 4.3 (b) relates to a heavily modified or artificial water body designation, and the setting of GEP as an alternative objective.
- Article 4.4 (a)(i) allows technical feasibility to be used as a reason to extend deadlines for the achievement of default objectives.
- Article 4.7(d) relates to justification for achieving less stringent objectives or failure to avoid deterioration, due to new modifications and developments.

The WFD only allows the derogation of technical feasibility to justify the setting of alternative objectives for heavily modified or artificial water bodies (4.3(b)). There are no articles of the WFD that allow technical feasibility to be used as a justification for the setting of alternative objectives for water bodies that do not qualify as artificial or heavily modified.

Technical feasibility can only be used to allow a time extension for meeting the default objective when it is not technically feasible to act until further information has been gathered, or when it is not technically feasible to achieve an objective in only one river basin planning cycle.

We believe that there is too much overlap and confusion between the two distinct justifications for technical infeasibility, one of which is only applicable to heavily modified and artificial water bodies.

Paragraphs 124 – 127 of the draft Guidance relate to a situation where further evidence needs to be gathered through monitoring to establish the cause of the problem. Therefore, it is appropriate to use reasons of technical feasibility to extend deadlines but completely inappropriate to derogate from the default objectives on the grounds of technical feasibility because this derogation does not apply in such cases. To reiterate, such derogations can only apply to artificial and heavily modified water bodies.

It is deeply concerning to Link members that such a misinterpretation has been made. To suggest derogating from GES due to lack of information could lead to infraction and reflects a very low level of ambition for the implementation of the WFD.

Paragraph 115 is of particular concern as it is confusing the derogations of technical feasibility and disproportionate cost. These two processes must be kept completely distinct. As the WFD allows a separate derogation under disproportionate cost, it is important that what is needed to achieve an objective is clearly set out and that the EA are transparent about the reasons for not achieving objectives.

***Q13. How should we interpret the term “infeasible” when compared with “technically infeasible”? Can you give examples of cases where it is not “technically infeasible” to reach an objective, but it is “infeasible” to do so.***

We are concerned about the reference to political infeasibility in paragraph 120 of the draft Guidance. This concept has no basis in the WFD or other European law and would seem to favour a ‘business as usual’ approach to implementation.

We note that Article 4.5 mentions ‘infeasibility’ in the context of natural condition and the test of a significantly better environmental option for achieving the socioeconomic or environmental need. This does nothing to suggest that political considerations have a legitimate role in applying the derogation but rather suggests that they should be used infrequently and considered on a case-by-case basis.

***Q14. Does the national evidence of technical infeasibility highlight the right list of problems – or should something be added or removed?***

Regarding the evidence for ‘no technical solution is available’, the WFD does not provide such an exemption. Indeed, the drafting of Article 10 - ‘*The combined approach for point and diffuse sources*’ - makes it clear that where the standards to be achieved require action to go beyond Best Available Techniques (BAT) or other community requirements, tighter emission controls should still be set.

So, if the application of BAT does not deliver the water quality objectives of the WFD, this does not provide a defence of technical infeasibility. Rather, the Directive requires action that goes beyond BAT, an obligation that could, ultimately, see certain damaging activities banned in sensitive locations.

Where further investigation needs to take place before a pressure can be identified and a measure developed, it might be appropriate to justify extending the deadline on grounds of technical infeasibility. Where the measure is demonstrated to be disproportionately expensive, other derogations may be justified. If standards are below limits of detection or monitoring, then further work is needed to develop detection methods. If this proves to be disproportionately expensive, an alternative objective can be set.

The same principle applies when data on the cause and extent of the pressure is lacking, and when scientific information about the impact of the pressure on ecological status is incomplete. Work on both these issues should continue throughout all planning cycles until GES is achieved.

***Q15. What further data and research is needed to overcome technical infeasibility in these cases?***

Technical feasibility can only be used to justify time extensions to deliver the default objective for water bodies, unless they are heavily modified or artificial. Therefore data gathering and research should focus on closing the gap in understanding that makes achieving the default objectives in the first round of river basin management planning infeasible.

## **8.0 Disproportionate cost**

We have serious concerns that the way disproportionate cost analysis is presented within the Guidance does not reflect the objective of the WFD and will undermine the ambitions outlined in Options 1 and 2.

It is stated in the paragraphs on economic efficiency that Ministers do not want overall WFD costs to exceed benefits. This is not a relevant consideration in the discussion of disproportionate cost where the word 'disproportionate' clearly indicates the intent of the legislation to only allow derogation from the default objectives when the costs of measures exceed benefits to a significant degree.

We do not believe that the current proposed approach to the incorporation of benefits into disproportionate cost assessment is acceptable, in particular, the proposal that non-use benefits should not be monetised (s140 and s159). While it may be impossible to monetise all non-use values it is our belief that a de-facto exclusion means that these key benefits will be excluded from the analysis when disproportionate cost assessments are undertaken. We can find no basis for the exclusion of these benefits, and note that equal and often greater margins of uncertainty accompany WFD cost assessments as with these benefit assessments.

We welcome the acknowledgement in s135 that the wider benefits of the WFD should be taken into account when choosing between measures. However, it is not clear how this principle will be taken into account when undertaking disproportionate cost analysis. The final Guidance must clearly state how this will be done.

**Q16. Is it relevant to take account of distributional issues when justifying use of an alternative objective or defence on the grounds of disproportionate cost?**

Link strongly opposes the use of distributional issues to justify alternative objectives.

The WFD makes no reference to distributional issues and their inclusion in considerations could threaten achievement of WFD objectives. The WFD is intended to restructure the management of the water environment for the long-term benefit of society. By making the necessary changes to current practices to achieve GES, there will of course be winners and losers. This is the consequence of society benefiting from improved water quality and habitats as a whole. Such distributional impacts must be accepted and managed sensibly. The Government must align public policy to WFD objectives, not seek to derogate from them in order to perpetuate unsustainable policies and practices.

Given that the UK Government signed up to the aims of the WFD, we are disappointed that it is now trying to derogate from the objectives on the grounds that some sectors will suffer. The polluter must pay. Those who are responsible for risks to the water environment will have to change their practices. If there are real issues of hardship or social equity the State should intervene to manage the necessary change. As recognised by the consultation, negative distributional consequences may only be transitory – business losses in one area may be compensated by increases in another.

We request that the whole disproportionate cost section is cut and replaced with these principles:

- Affordability should only be a legitimate issue for concern in so far as it impacts on vulnerable social groups or businesses in economically disadvantaged areas.
- Affordability should not be allowed to justify lower objectives (4.5), only time derogations (4.4).
- Affordability should only be allowed to justify a time derogation where it has been demonstrated that no alternative financing mechanisms exist.

**Q17. If so, do the four distributional arguments cover all the relevant issues? Are they double counting some issues?**

It is acceptable to consider the impact of the WFD on vulnerable social groups or businesses in economically disadvantaged areas. For example, the poorest households might not be able to afford higher water bills. However, this should not lead to an alternative objective being set. Instead, alternative funding mechanisms should be investigated, and in this case, an increasing block tariff could accommodate the problem. There would be no justification for an alternative objective.

We consider that all the other distributional arguments are unacceptable and have absolutely no legal underpinning in the Directive.

The second argument on deviation from the polluter pays principle cannot be used as an excuse for inaction. Obviously, it is preferable that polluters can be identified and made to pay, but where this is not possible, alternative funding mechanisms should be sought rather than alternative objectives. The state, which has signed up to the WFD, must be

prepared to fund some measures that cannot be clearly allocated to a sector. Pollution and damage to water bodies is a societal responsibility that is part of our economic legacy and we must remedy. The whole purpose of the WFD is to restore the water environment and unpick historical damage.

We welcome the recognition in s171 that costs arising due to failure to achieve industry good practice standards should be regarded differently. We believe that this principle is central to an understanding of the polluter pays principle and should be subject to much stronger Guidance.

The third argument on affordability for sectors is utterly unacceptable. Polluters do not have a right to maintain the scale and scope of their business, with guaranteed long term profitability, as implied here. To allow them to do so would mean society giving a cross subsidy to an unsustainable sector while bearing the costs of their environmental damage. At the core of any environmental regulation is an attempt to alter, over some period of time, the nature and structure of economic activity away from an unsustainable pathway. This will of course require that polluting firms alter the scope of their activities. Any suggestion that substantial alteration or cessation of polluting activities renders a measure 'unaffordable' is unacceptable.

The fourth argument on the scale of recent investment in environmental improvements already made is also unacceptable. There is a legal requirement to fulfil the objectives of the WFD and most of the investment in environmental improvements has been the result of other legal requirements to achieve the public good of a better water environment. Furthermore, it does not take account of the amount the sector has benefited historically from having the ability to pollute due to the lack of regulation. As recognised, this argument is only relevant insofar as it has consequences on vulnerable individuals and should only be used to apply for an extended deadline, not less stringent objectives.

***Q18. Do we have the right checks and balances on the use of distributional arguments to avoid them being applied incorrectly? (for example should we require an analysis of the benefits of avoiding distributional consequences given the benefits of meeting the default objective)***

This question highlights that there is no legal underpinning to the use of distributional arguments in the WFD. All derogations included in the Directive already require a clear justification for their application.

Please see our responses to previous disproportionate cost questions.

***Q19. Are there alternative funding approaches or mechanisms which would help reduce or avoid adverse distributional consequences?***

There are many ways in which Government policies could be aligned to WFD objectives and Link is disappointed this has not received more attention. The apparent lack of awareness and buy-in to the WFD across other Government departments, regulators, flood risk management operating authorities, local government, industry etc will inevitably make implementation more costly and painful than it need be.

A report commissioned by WWF in 2007 recommended that an occupancy-linked increasing block water tariff was the best option for water pricing in the UK<sup>4</sup>. This tariff allows for affordability concerns to be dealt with through the inclusion of a zero or low cost “basic use” tariff block. While *Future Water* has promised to review metering and water charging, we have concerns that a lack of ambition for metering could undermine the use of fairer more socially equitable charging schemes in the first round of river basin planning.

For agriculture, a long term approach would be to look at the subsidies currently given to farmers through the Common Agricultural Policy. These could be redirected to support the production of public goods including actions to improve the water environment or the restructuring of farm business so they can make the transition to a more sustainable model of land-use. Such an approach would mitigate the impact of the WFD on farmers who exercise good environmental practice, although it should not be seen as a way of paying farmers simply to obey the law.

## **7.0 Impact Assessment**

We do not think it is appropriate to use a cost-benefit analysis at the national level to decide the level of ambition for WFD implementation. The Directive clearly sets out that this should be decided through the objective setting process for individual water bodies, through the cost effectiveness analysis.

### ***Q20. Does the Impact Assessment represent a fair picture of the expected costs and benefits and other consequences of the options?***

The benefits in the IA are underestimated. Inadequate evidence was provided within the IA for truncating the range of benefits provided by the national survey of households. Link members involved in the Collaborative Research Programme did not agree to support the use of the lower end of the range. Not only is there no robust justification for responding to uncertainty in the benefits figures by choosing the lower half of the range, the conservative model referenced on pages 34-35 of the IA was not supported within the consultant’s final report due to its lack of standing within the economics literature. We strongly recommend the full range of benefits generated are used in the IA.

We have concerns over the accuracy of the cost estimates presented in the IA. The IA (p17) states that the data in the pCEA mostly forms the basis for the costs in the IA. However, the evidence presented does not allow the reader to follow the calculations made to move from the cost-effectiveness of individual measures to the aggregate costs.

A review commissioned for Link members<sup>5</sup> assessing the costing of the agricultural and water demand measures in the database has formed the basis of the response to this question.

The review concluded the following:

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<sup>4</sup> Herrington P. (2007) *Waste Not, Want Not; Sustainable Water Tariffs*. A report by for WWF-UK, Centre for Sustainable Energy, Bristol.

<sup>5</sup> This review was carried out by effec in April 2008. Key conclusions are reported here; the full review is attached in the appendix.

Weaknesses in the treatment of water demand management included;

- The Water Industry's analysis, and the CEA chapter on water resources, appears to concentrate on engineered solutions, but are the basis of the overall Directive costs identified in the IA.
- The costs of potentially more sustainable demand management measures require clarification.
- Impacts in terms of reduced utility bills have not been thoroughly treated.
- There is no discussion on the timing of expenditures in the cost-effectiveness database. While phasing is subject to local conditions, it could have a dramatic effect on pCEA results.

Regarding diffuse agricultural pollution measures;

- The location and timing of reductions in diffuse nutrient releases, and their relationship with pollution spikes, are not captured in the cost-effectiveness database.
- There is no discussion about the timing of expenditures in the cost-effectiveness database. While phasing is subject to local conditions, it could have a dramatic effect on pCEA results.
- More consideration is needed of interactions of WFD costs with agricultural subsidies, which could identify overlaps in funding that reduce the additional costs of WFD implementation.

These weaknesses may have led to an overestimate in the costs in the water industry and diffuse agricultural pollution measures. Given these problems, it would appear likely that similar unjustifiable assumptions have been made in the assessment of other measures.

While many caveats and uncertainties are mentioned, it can be argued that the broad cost ranges in the cost-effectiveness database do not justify specifying a single cost figure for each option, which could imply a level of certainty that is lacking in the analysis of individual measures.

The summary sheet in the IA states; "*When measures are brought in gradually, as in Option 2, they can be more effectively targeted, reducing overall costs.*" This caveat covers several of the longer-term timing issues discussed in preceding sections, but more evidence and guidance is needed on how phasing will reduce costs.

The attempt to assess impacts on greenhouse gas (GHG) emissions (p43) only recognises the costs of increases in water treatment and does not quantify any benefits. This selective use of figures is very misleading. It could be improved by taking account of:

- That while some savings in GHG emissions from agriculture will be displaced to the rest of the world, some net savings would be expected to the extent that domestic agricultural production becomes less carbon-intensive.

- Reduction in water pollution to water bodies that are used as abstraction sources (e.g. diffuse pollution to groundwater) should reduce the energy needed to treat water for public supply.
- The carbon savings from water resource conservation are recognised but not quantified.

Given these problems, the use of the database to rule out options in WFD implementation, either as not cost-effective or disproportionately costly, should be treated with caution. Given the ranges in the data, the burden of proof should be on those claiming that costs are disproportionate to demonstrate why the factors identified that could reduce costs were not applicable to their situation.

Some of the problems related to the IA are a reflection upon the difficulties of estimating costs at a national scale. It is likely that the costs for River Basin Management Plan analysis will be more accurate as each plan will be able to take into account local conditions, different timescales, and the factors that are difficult to capture at a national level.

We agree that an optimism bias of 0% is an appropriate figure to use given the clear uncertainties in calculating the costs of the WFD.

***Q21. Are there costs or benefits which have not adequately been accounted for or estimates which could be improved given readily available information.***

Yes, please see our detailed response to Q20 and the attached report by eftec (2008).

**Wildlife and Countryside Link  
May 2008**

**CONSULTATION ON  
RIVER BASIN PLANNING GUIDANCE VOLUME 2**

**Response by Wildlife and Countryside Link**

## **APPENDICES**

1. Notes on the Preliminary Cost Effectiveness Analysis and Associated Impact Assessment for the Water Framework Directive, Final Report, prepared by ettec, London, April 2008.
2. Opinion regarding the question whether it is possible to extend the term of 15 years, mentioned in Article 4, first paragraph, sub c, of the Water Framework Directive 2000/60/EC, prepared by J. Veltman, Wijnberg Advocaten, the Netherlands, November 2007.

Appendices to this response by Wildlife and Countryside Link are available on request from the Link Secretariat. Please contact Jodie Bettis at [jodie@wcl.org.uk](mailto:jodie@wcl.org.uk)