

Wildlife and  
Countryside



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

Wildlife and Countryside Link

September 2003



British Ecological Society



THE HERPETOLOGICAL  
CONSERVATION TRUST



THE NATIONAL TRUST



PLANTLIFE



WOODLAND  
TRUST



## **Wildlife and Countryside Link response to the third consultation paper on the implementation of the EC Water Framework Directive**

### **Introduction**

Wildlife and Countryside Link brings together 32 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practice and advocate environmentally sensitive land management and food production practices and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of almost 7 million people in the UK.

Overall, we are very disappointed with the tone and content of this consultation, which reflects once more the Government's minimalist interpretation of what is considered the most important European Directive to date, and a unique opportunity to improve the way we manage our water and wetland resources. This consultation is a key opportunity to influence implementation of the Directive in England and Wales since getting the right Regulations in place is important for successful delivery of the benefits from the Directive. This presents a major opportunity to demonstrate the government's willingness to embrace the spirit as well as the word of the Directive. The Scottish Executive has already shown the way in transposing the Directive to a high standard thus achieving maximum benefits for people and nature, it is a pity that DEFRA have not followed their example.

The Directive is aimed at achieving sustainable and integrated water management across Europe, with mechanisms for trans-boundary co-operation between countries sharing the same river basins. Sadly, draft regulations from DEFRA for England and Wales compare very poorly with the Scottish Water Environment and Water Service Act, and the result is a two-tier system. Scotland has seized the opportunity provided by the WFD to modernise its water management system and promote sustainable flood defence and integrate wetlands into catchment plans. DEFRA on the other hand have consistently rejected NGO-led proposals for more active public participation, wetland restoration or integration with other areas of public policy like nature conservation.

The result of these differences may mean that DEFRA will be forced to introduce separate legislation to reconcile the different approaches in the cross boarder river basin covering the Solway and Tweed catchments. On one side, Scotland will protect its coasts to a 3 nautical mile limit, whilst England and Wales will extend WFD rules out to only 1 nautical mile. Another anomaly is that Scottish River Basin Authorities will identify and map their wetland resources, whilst only those wetlands designated under the EU Birds and Habitats Directive will receive automatic protection under the WFD in England and Wales. In Scotland, a wide-reaching Advisory Board, with representatives from NGOs and business, will have a statutory role in helping to prepare River Basin Management Plans. In England and Wales no such bodies will be formed. The result will be that the public in Scotland receives a higher quality transposition of the Directive than those in England and Wales.

To resolve this unsatisfactory and unfair situation and ensure that we protect our waters, we have identified six key areas where improvements on the draft regulations for England and Wales are vital:

Key Wildlife and Countryside Link demands for the final DEFRA regulations

1. The Regulations must open with a **general statement of purpose**, as does the Scottish Act, which simply repeats Article 1 of the Directive itself. A general statement would set out clearly the purpose of the new regulations, and crucially should refer to the wording of the Directive regarding protection of the water environment, including terrestrial ecosystems and wetlands. It must also acknowledge the no deterioration duty that the Directive imposes, and which is legally in force from the date of transposition. The omission of the general statement gives the impression that the role of wetlands is being deliberately downgraded in England and Wales.
2. One of the main principles of the Directive, and a statutory requirement, is the need for **public participation**. In Scotland, this is catered for through the statutory River Basin District Advisory Groups. The number and nature of the groups is left for SEPA to determine, but crucially their existence as a vehicle for public participation is enshrined in law. It is vital that an official vehicle for stakeholder participation is established in England and Wales, and this should be included in the regulations. Without such a mechanism, key stakeholders, many of whose lives will be materially affected by the new law, are unlikely to be able to access and affect the implementation of this important Directive. Mere consultation is not enough – there must be a body established to represent the public interest in a consistent, long-term and informed way in decision-making. Such a body would bring benefits in that the EA would have an identified group to work through rather than undertake lengthy and expensive searches for representative views at each turn.

In addition, Regulation 18 'Publication of Information' should include additional information for the EA to make accessible to the public free of charge through its website. This should include a summary of the Directive in simple terms, with an explanation of the main activities for implementation, including a table of key dates, and the Agency's Public Participation Strategy, including when and how organisations and individuals may participate in implementation of the Directive.

3. If the River Basin Management Plans required by the Water Framework Directive are to have any teeth at all, then they must have **strong links to land use planning and agriculture**. Recent flood events have demonstrated what can go wrong when water policy and planning policy are not properly co-ordinated. Without proper integration, the existing planning system will just continue with 'business as usual' and allow developments that may compromise the good ecological status required by the WFD. Regulation number 17 in the draft document imposes a 'duty to have regard to' river basin management plans and supplementary plans 'so far as relevant'. We believe that this wording is not clear or strong enough to ensure that water is considered during all stages of land-use

planning. Instead, the regulation should impose a duty to “further”, rather than simply “have regard to”, the aims and objectives of river basin management plans and supplementary plans. The regulation should also refer to Regional Spatial Strategies, which should also have a role in furthering the aims and objectives of the plans. In addition, the impact of the Mid Term Review of Agenda 2000 could lead to some major changes in the way the wider countryside is managed, and could help deliver WFD commitments. We believe further joined up thinking is needed from DEFRA to maximise the benefits from this.

4. In chapter 2 of the consultation, the Government states that there will be further regulations regarding powers to control diffuse pollution inputs. There is also a commitment to further consideration of “whether the existing regulatory framework is sufficient to ensure that hydromorphological conditions are consistent with meeting the relevant water quality objectives”. This means that consideration will be given to strengthening existing laws controlling dams, weirs, flood embankments and drainage projects, which can damage the physical condition of water bodies and put at risk their ecological status. Chapter 2 also raises the question of “whether additional controls in transitional and coastal waters are necessary to deliver WFD objectives”.

Unfortunately, the status of these proposals is unclear. The controls in question are statutory requirements of the Directive, without which it will not be possible either to meet Directive standards by 2015 or satisfy the legal requirements for transposition. We believe an explicit commitment to introducing such controls – and a timetable for doing so – is needed in the regulations themselves. In the Scottish Act, **enabling powers for further regulations** are included in the law itself. If the Government is committed to such further regulations in the above areas, then it should state this clearly in the regulations.

In addition, chapter 2 of the consultation states that there will be further consideration on the seaward limit of river basin districts. As discussed in the introduction, DEFRA are proposing to limit this to one nautical mile, while around the Scottish coast (which is two thirds of the UK's coastline) 3 nm will be covered. DEFRA's reasoning on this is inadequate and does not sufficiently consider the loss of opportunity to enhance ecological water quality in the 2-3 mile zone. The result would be inequity in the treatment of stakeholders in the coastal zones of two parts of the UK. This will create difficulties for the competent authorities responsible for the trans-boundary river basins.

5. The England Biodiversity Strategy talks about holistic thinking in terms of land management. The WFD offers an ideal opportunity to deliver holistic and joined up thinking, and put the wise words of the EBS into action. Indeed, in chapter 2, the Government states that it will be “very desirable to develop strong synergy between actions to deliver the Directive's objectives and ...other conservation goals.” Wildlife and Countryside Link very much welcomes this sentiment, but we would like to see a **link to biodiversity and other duties under the Countryside and Rights of Way Act (CROW) firmly established in the Regulations** themselves so that the sentiment is carried out in implementation of river basin management plans. We suggest that a suitable place to include this

aim is under regulation 16 on supplementary plans. Regulation 16.2.c could be amended so that a supplementary plan may relate to “a particular matter relating to, or aspect of, the water environment, including nature conservation duties under the Countryside and Rights of Way Act and Natura 2000 legislation.”

6. A crucial element of the Scottish Water Environment and Water Services Act, which is missing from the draft regulations, is an **explicit reference to the roles wetlands play in helping to achieve environmental objectives**. Wetlands have a vital function within the water cycle, storing and purifying water, providing recreational and other opportunities for local communities, and of course offering valuable wildlife habitat. The regulations should refer to these multiple roles – if they do not, the goal of protecting the water environment in its entirety may be undermined.

In addition, we have specific questions and suggestions on the following parts of the Regulations:

1. **Interpretation 2/River basin district management plans: public information and consultation 12 (5)** River basin districts that are partly in England and partly in Scotland are not mentioned. Chapter 2 of the consultation refers to combining the Tweed and Solway basins into one cross-border river basin. The Regulations should have a reference to this and discussion of how it will be administered jointly with Scotland.
2. **Interpretation.** We suggest that canals should be included in the definition of "watercourse", as well as in "body of surface water".
3. **SCHEDULE 2. 4 (b).** We suggest adding at the beginning of the sentence: "information on the scope and methods of monitoring;" as it is important to be able to check the validity of the methodology used.

This statement is supported by the following organisations:

British Ecological Society

Buglife, the Invertebrate Conservation Trust

The Herpetological Conservation Trust

The National Trust

Plantlife

The Royal Society for the Protection of Birds

Wildfowl and Wetlands Trust

The Wildlife Trusts

The Woodland Trust

WWF-UK