

Summary of responses to the Consultation on a Draft Statutory Instrument to amend provisions of the Water Resources Act 1991 for Water Protection Zones, and related Draft Statutory Guidance for the Environment Agency. (22 December 2008- 31 March 2009)

September 2009



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



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1. Introduction

A consultation document 'Consultation on Draft Statutory Instrument to amend provisions of the Water Resources Act 1991 for Water Protection Zones, and related Draft Statutory Guidance for the Environment Agency' was published by Defra, and on behalf of the Welsh Assembly Government, on 22 December 2008. The three month consultation period ended on 31 March 2009.

For the purposes of this summary document, the consultation will be referred to as 'the consultation'. The background to the consultation is set out in the consultation document, which is available on the Defra website at: <http://defraweb/corporate/consult/water-protection-zones/>

Stakeholders were asked to comment on

- The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals;
- Further extending the scope of WPZ so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused;
- A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices;
- Draft Statutory Guidance for the Environment Agency on the exercise of these powers.

The diffuse sources consultation was launched alongside a related series of consultations operated by the Environment Agency: 'Draft River Basin Management Plans consultation'. <http://www.environment-agency.gov.uk/research/planning/33106.aspx>

Separate consultation response summaries will be published for these consultations.

2. Overview of responses

A total of 31 responses were received. 28 responses were received by the 30 March deadline, with 3 responses received by 15 April. Late responses were accepted with advance agreement from Defra, or at Defra's discretion. All responses were recorded and acknowledged.

Defra and the Welsh Assembly Government are grateful to all those who responded with helpful, constructive and often detailed comments. In particular, Defra would like to thank all stakeholders who took time to send in a response to the consultation by the deadline.

A list of organisations and individuals who responded to the consultation can be found in Table 1 below.

Table 1: Response breakdown by interest group

Response	Organisation	Interest Group	Date Received
1.	Bournemouth and West Hampshire Water	Water Industry	23 January
2.	Private individual	Interested Individual	28 January
3.	Shellfish Association of Great Britain	Industry body	25 February
4.	Royal Yachting Association	Membership organisation	03 March
5.	Natural England	Non-Departmental Public Body	06 March
6.	Private individual	Interested Individual	18 March
7.	Crop Protection Association	Industry body	18 March
8.	British Waterways	Non-Departmental Public Body	15 April
9.	Countryside Council for Wales	Non-Departmental Public Body	24 March
10.	Anglian Water	Water Industry	25 March
11.	Royal Society for the Protection of Birds	Non-Governmental Organisation	25 March
12.	United Utilities	Water Industry	26 March
13.	Highways Agency	Govt Agency	8 April
14.	Association of Rivers Trusts	Industry body	30 March
15.	Salmon & Trout Association	Industry body	30 March
16.	Salmon & Trout Association (Wales)	Industry body	30 March
17.	Three Valleys Water	Water Industry	30 March
18.	Seafish Industry Authority (SIA)	Non-Departmental Public Body	31 March
19.	Associated British Ports	Industry body	31 March
20.	Water UK	Industry body	31 March

21.	Environment Agency	Government Agency	31 March
22.	Consumer Council for Water	Non-Departmental Public Body	31 March
23.	BPEX	Industry body	31 March
24.	WWF/Angling Trust	Non-Governmental Organisations	31 March
25.	Welsh Water	Water Industry	31 March
26.	Wessex Water	Water Industry	31 March
27.	United Kingdom Environmental Law Association	Non-Governmental Organisation	31 March
28.	National Farmers Union (NFU) /Country Land and business Association(CLA) /Agricultural Industries Confederation (AIC)	Industry bodies	31 March
29.	OFWAT	Government Agency	31 March
30.	Severn Trent Water	Water Industry	31 March
31.	Private individual	Interested Individual	02 April

3. Summary of responses to the consultation questions:

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The majority of the responses were generally positive, and approved of the proposed approach. Although there was general approval of the need for proposed WPZs to be evidence-based, there were concerns over the quantity and quality of evidence that would be required for an application. There were some concerns over the suggested designation process, and some recommended changes to the suggested list of priorities, and priority areas. Concerns were expressed over resourcing, and the capacity of the EA to deal with applications and evidence gathering, and there were also some comments on the definitions of ‘damage’ (in the context of hydromorphology), ‘manage’ and ‘managing’. The proposed appeal system was welcomed by most responses that offered an opinion.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The majority of the responses that expressed an opinion were strongly in favour of the use of WPZs to protect hydromorphology. None opposed the proposal. Two responses noted that ‘damage’ was not defined in the draft Regulation. One thought that the Regulation as drafted did not fully reflect the stated intention to provide tools to address hydromorphological pressures

(and diffuse pollution) and suggested they could be used to require fish passes to be built, while noting that this was covered by separate proposals. A few responses discussed the definition of controlled waters in terms of whether it excluded any water bodies that the provisions would need to address. It was noted that, although there were useful indicators as to direction, this area was not quite so fully developed as the rest of the WPZ proposals. A few thought, in relation to Works Notices, that there might be a risk of conflict with consenting regimes operated by EA and other regulators and with the statutory duties of other bodies, but several responses were very strongly in favour of the use of Works Notices.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The majority of those who responded to this question welcomed the removal of the nitrates exclusion. There were a number of points regarding the use of powers to deal with legacy pollution, existing consents, and potential clashes with other existing regulatory requirements.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

There were many technical drafting points raised by the responses, which will be considered by Defra's legal team, but in general the responses welcomed the commitment to consultation and the use of external evidence. There were a few comments that the existing guidance was focussed primarily on water quality and lacking in details on hydromorphology. There were concerns about the practicalities and resources needed for the necessary evidence gathering, and it was suggested there was a lack of clarity as to the scope and depth of the evidence required for a WPZ application. There were several comments regarding the use of WPZs at the catchment level, and the need to avoid problems with national boundaries.

Overall, several responses felt that the Statutory Guidance was lacking in detail.

4. Other relevant issues raised by stakeholders

There were numerous very specific points raised concerning the drafting of the Guidance, which will be considered, but one of the most significant other issues raised was in regard of the prioritisation for WPZs. It was noted by several responses that the Water Framework Directive (WFD) list of Protected Areas under Art 4.1(c) included areas designated under other Directives such as the Shellfish Directive. These other Directives will be repealed in 2013 and will be replaced by the WFD, which will guarantee at least the same degree of protection, but which would make references to these Directives in any Statutory Guidance obsolete.

In addition, some organisations with statutory responsibilities for land or water activities have asked that they should be required to be consulted prior to the application for the designation of a WPZ.

There were also several queries over what were seen as omissions from the list of Protected Areas, with recommendations made for the inclusion of Sites of Special Scientific Interest (SSSIs) and National Parks.

It was felt by several responders that the concept of 'damage' in hydromorphological terms would benefit from more development and definition.

5. Next steps

The Statutory Instrument will be redrafted and lodged in the Library of the House of Commons and laid before the National Assembly for Wales in the Autumn, and to come into force by the end of 2009.

The Statutory Guidance to the Environment Agency is not expected to be published alongside the Statutory Instrument, but the draft version in the consultation will be reviewed in the light of the consultation responses, stakeholder contributions and legal advice, and will be available to the Environment Agency in time to inform the pre-designation process for WPZs in the first River Basin Management Plan cycle.

As a result of legal opinion, stakeholder contributions and consultation responses, Defra and the Welsh Assembly Government have decided to make the following changes:

- The Statutory Instrument amending Section 93 of the Water Resources Act 1991 will be redrafted to take account of certain recommendations and changes from the consultation;
- The final Statutory Instrument will be a composite order made by both the Secretary of State and the Welsh Ministers and the draft will be amended to reflect this;
- The Statutory Instrument will include the earlier proposals to amend Sections 161 and Sections 161A of the Water Resources Act concerning Works Notices. Provisions in this consultation relating to hydromorphology will be carried forward, and a power for the Environment Agency to carry out improvements to hydromorphology of water bodies, which was subject to consultation with the Floods and Water Management Bill, may also be included in the SI.

For the statutory guidance in England:

- The general approach will be retained, but more clarity and detail will be added in some areas of the Guidance;

- The Statutory Guidance to the Environment Agency will be redrafted in concert with legal advisors and the Environment Agency, taking account of the consultation recommendations and stakeholder contributions. The final package is expected to be stronger on the details of requirements for evidence, will go into more detail on the requirements for local consultation and objection procedures, and will be more strongly defined in terms of the changes to allow WPZs to be used in controlling damage, as well as pollution.

The Welsh Assembly Government will be consulting separately on statutory guidance for Wales.

Defra will also be looking to draft internal Guidance to administer applications to the Secretary of State for a WPZ designation, and will be seeking the assistance of stakeholders in the near future in the development of this Guidance. Similar guidance will be developed by the Welsh Assembly Government and the Assembly Government will look to develop a common approach where appropriate to simplify the process for those involved. This will enable the approval of WPZ applications to be governed by a transparent process. This guidance should be available by 2011 in order to deal with the earliest predicted date for the first WPZs proposed through the RBMP cycle.

Annex 1: List of respondents

- Bournemouth and West Hampshire Water
- 3 Private individuals
- Shellfish Association of Great Britain
- Royal Yachting Association
- Natural England
- Crop Protection Association
- British Waterways
- Countryside Council for Wales
- Anglian Water
- Royal Society for the Protection of Birds
- United Utilities
- Highways Agency
- Association of Rivers Trusts
- Salmon & Trout Association
- Salmon & Trout Association (Wales)
- Three Valleys Water
- Seafish Industry Authority (SIA)
- Associated British Ports
- Water UK
- Environment Agency
- Consumer Council for Water
- BPEX
- WWF/Angling Trust
- Welsh Water
- Wessex Water
- United Kingdom Environmental Law Association
- National Farmers Union (NFU) /Country Land and business Association(CLA) /Agricultural Industries Confederation (AIC)
- OFWAT
- Severn Trent Water

Annex B: Summary of individual consultation responses

1. Bournemouth and West Hampshire Water

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

No comment.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

No comment.

2. Private individual

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The process should include a procedure where designation may be proposed by stakeholders and the general public. The response noted that National Parks were not on the current priority list.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

No comment.

3 Shellfish Association of Great Britain

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response fully supports the move to update the WRA 1991

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response noted that the use of WPZs to address failures in the Shellfish Water Directives may be superseded when these Directives are repealed when the Programmes of Measures under the Water Framework Directive River Basin Management Plans become operational.

4 **Royal Yachting Association**

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

This response considered that the definition of the term ‘damage’ to ‘controlled water’ was unclear.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

Response asked for clarification of ‘high risk activities’. Also expressed concerns that the proposals may not only fail to fully protect river ‘banks’, but could also have implications on public rights of navigation.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

No comment

5 **Natural England**

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response fully supports the approach, and recommends that SSSIs are added to the list of priority sites. The response noted that ‘controlled waters’ do not include self-contained lakes and ponds. As some of these sites are SSSIs, NE is planning on supplying a list of such SSSI sites with a view to them becoming ‘controlled waters’

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response suggests the Regulation should define ‘damage’. Alternatively, silt could be included in ‘pollution’.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**
The response suggests that NE should be a statutory consultee in the formulation of WPZ proposals.

6 Private individual

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**
The response suggests using farmer co-operatives to manage local areas as WPZs.
- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**
No comment
- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**
The response considers the draft SI considered to be clear, straightforward and fit for purpose.
- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**
The response identifies a need for explanation of the size of catchment or sub-catchments to which WPZs may be applied and how administrative and compliance resources will be applied. It was suggested that the Guidance should also explain under what circumstances Works Notices and/or prosecution would be invoked.

7 Crop Protection Association

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**
The response welcomes the 'evidence based' approach, but expresses concerns over what weight of evidence would be considered sufficient to justify designating a WPZ.
- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**
No comment
- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**
No comment
- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**
The response welcomes the consultation with stakeholders, and suggests CPA should be mandatory consultee if pesticides are involved.

8 British Waterways

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

No comment.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

- The response noted issues around the definition of ‘controlled waters’, and recommended that WPZ powers be modified to cover alterations to the hydromorphology of ‘lake, pond, river, watercourse or coastline.’ The response also recommended a clear definition of ‘hydromorphology.’ The response also noted that WN powers will need to be modified to take account of consents, and should also take account of stakeholders need to comply with statutory responsibilities.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response suggested that the new provisions would only apply to damage caused after the changes to legislation take effect, and should not be used to address legacy issues, in line with draft regulations based on the Environmental Liability Directive.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response noted that the Guidance makes frequent references to water quality and pollution, but lacks equivalent references to hydromorphology and physical damage. Response also suggested that the powers to protect hydromorphology should be ‘...exercisable in relation to a significant alteration to [...] hydromorphology...’ and that a definition of ‘significant alteration’ be included in the Guidance. British Waterways also recommends being a statutory consultee in WPZ applications due to its own statutory obligations.

It was suggested that the new provisions should be used solely in the context of achieving WFD objectives. It was noted that there were potential problems in regard to standards required under other Directives.

9 Countryside Council for Wales

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

No comment

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response noted that some Natura 2K and SSSI sites do not currently qualify as ‘controlled waters’, and this should be corrected, as the WFD does extend to these. A full review of ‘controlled waters’ was recommended.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**
No comment
- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**
No comment

10 Anglian Water

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**
The response generally supports the approach and the alignment with the RBMP planning cycle, but would like more information on the designation process and methodology. There was a question over the timescales that will be used to make assessments of the success of any measures used, which along with costs, should be included in the RBMP.
- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**
No comment.
- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**
- The response welcomes the potential use of WPZs within Nitrate Vulnerable Zones, and recommends resourcing be supplied to provide an adequate level of policing.
- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**
The response asks for early sight of the EA implementation process, but also suggests the inclusion of WFD Article 7 in the prioritisation list. It was also suggested that actions arising from WPZ enforcement should be in line with WFD aspirations.

11 Royal Society for the Protection of Birds

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**
The response agrees with the general approach. The response believes that WPZ controls should be brought in earlier than 2010 to meet WFD, Habitats Directive and Birds Directive requirements.
- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**
The response welcomes the extension of the scope of the legislation to protect hydromorphology, and that WPZs to protect hydromorphology should be designated where necessary. The response recommends clear direction to the EA on the use of WN where WPZ rules have been breached.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response considers the ability to control nitrate pollution within a WPZ inside or outside and NVZ to be a sensible proposal. The response welcomes a consenting or permitting approach within WPZs, in a risk based approach to selecting control measures.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response considers that the draft guidance requires greater detail and clarity to ensure consistent and effective delivery of WPZs. It was suggested that the EA should provide evidence that the package of control measures within a WPZ will be sufficient to achieve WFD targets, alone or in combination with other measures, and that the EA should consider evidence from water companies and environmental organisations. In addition, it was proposed that Defra should form a Working Group to inform the triggering of the designation process. SSSI waterbodies should be added to the list of priorities.

12 United Utilities

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response is generally supportive of the approach, but United Utilities asked for clarification of the time allowed for WN appeals.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

No comment

13 Highways Agency

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response is generally supportive of the approach suggested.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response suggests a clarification that noxious or polluting matter is actually shown to be causing damage before a Works Notice can be issued.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response considers the Guidance comprehensive, and approves of the use of Enforcement Notices. It also suggests a clarification of what constitutes 'damage' in the water environment.

14 Association of Rivers Trusts

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response stressed the need for sufficient resourcing for the EA to implement WPZs, the details of which need to be publicised in the River Basin Management Plans. The need for WPZs to be based upon catchments rather than political boundaries was noted. There was strong support for the requirements for the EA on evidence gathering and consultation.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response was very strongly in favour of the recognition of hydromorphological pressures as a significant obstacle to water bodies reaching good ecological status.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response supports the proposed changes to the Water Resources Act sections 93 and 161 but would like clarification of the EA's right to amend or remove existing consents granted prior to WPZ designation.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response is generally supportive, but suggests that WPZs be based on hydrological catchments, and not national or political boundaries. It was noted that the WRA does not apply in Scotland, so the response suggests that the EA is encouraged to develop working practices to allow WPZs to operate across national boundaries.

15 Salmon & Trout Association

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response strongly supports the concept and approach for using WPZs. The response raised the question of whether the EA would continue monitoring after WPZ designation, and therefore demonstrate not only improvement in condition, but improvement that has been achieved as a direct result of the WPZ. The response urged the EA to be bolder in testing the use of Works Notices in the future. The response was concerned as to the level of monitoring and/or certainty required to deem previous water quality actions insufficient, when

limited post-appraisal work of, for example, Catchment Sensitive Farming options, currently exists.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response particularly supports the extension of WPZs to address hydromorphology problems. This is seen as useful in tackling the issue of excess sediment reaching watercourses, particularly from poor land management practices, and is thought to have huge potential to address many other problems affecting the quality of aquatic systems.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response welcomes the proposed amendments relating to hydromorphology, and the proposal to make WPZs more flexible in order to achieve WFD e.g. through removing the Nitrates exemption, and including measures to deal with activities damaging to hydromorphology, as well as polluting activities.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response noted that the evidence gathering requirement was likely to be a large task, and wanted confirmation that they were practical for the EA to implement.

16 **Salmon & Trout Association (Wales)**

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response recommends a pragmatic approach to the evidence gathering requirements placed on EA Wales, recognising that whatever level of evidence is demanded, the process can only provide assurance against foreseen risks, and therefore the EA's monitoring and response resources must include a realistic allocation to cover unforeseen risks.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response feels that the concept of WPZs is entirely positive, and fully support the proposals to give the EA Wales powers to combat diffuse pollution and especially damage to hydromorphology. Although in practice there are limitations to what can be achieved by hydrological restoration actions, the response welcomes the proposal to use Works Notices to require restoration of those waters to their state immediately before the damage occurred.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response recommends that the WPZ regulations should prescribe standards for storage facilities for oil and other potentially serious pollutants with the aim of preventing water pollution and pollution of land and property. The response also urges that the use of WPZs as a measure to reduce diffuse pollution should be included in the Programme of Measures for the first round of River Basin Management Plans, which are due for completion and sign-off by the end of 2009.

17 Three Valleys Water

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response suggested that if the designation of WPZs will be used as a statutory pollution control mechanism where existing regulatory measures are insufficient to meet WFD objectives, then priorities should include Drinking Water Protected Areas (Article 7) and the EA should seek to apply WPZs to deal with point and diffuse source pollution where there is a high risk of failing Article 7 objectives. The response suggested that the WPZ approach to designation would be best placed within the river basin management planning process as the process will identify the risks, sources of pollution, and the likely impact of measures can then be used as the basis for identifying specific areas within the river basin districts where these powers will be needed. This would then mean that future consultation could be carried out under river basin management plan consultation rather than separately. The response agrees that the impact assessments and cost benefit analysis should be carried out as part of the consultation but again this could be incorporated within the river basin management plan consultation process.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response considers Annex C to be comprehensive and describes how the draft guidance would be applied. It notes that responses to the 2007 consultation included allowing other organisations to approach the Agency for WPZ designation.

18 Seafish Industry Authority (SIA)

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response welcomes the initiative from Defra to update the Water Resources Act and to provide a mechanism for the protection and improvement of the environment.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response notes that the intention is to enable the designation of WPZs for several purposes, including implementing the guidance standards contained within the Shellfish Waters Directive. However, it was noted that these guidance standards, and indeed the whole Shellfish Waters Directive, will be repealed in 2013. This would leave the industry, and these newly designated WPZs without any basis for protection, particularly from bacteriological contamination. The response considers it illogical to introduce new legislation on this basis.

Draft Statutory Guidance for the Environment Agency on the exercise of these powers.

No comment.

19 Associated British Ports (ABP)

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response notes that the draft Regulations seek to apply WPZ provisions to 'damage' within controlled waters, which is not defined in the draft Regulations. ABP take the view that, while the consultation and draft guidance indicate that the provisions are designed to provide a tool to address hydromorphological pressures and diffuse pollution, the draft Regulations do not circumscribe the power in this way. The response notes that although the provisions are being brought forward to seek to support achievement of WFD objectives, the draft Regulations are not limited to supporting only WFD objectives.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response expresses concern that the proposed extension of Works Notices to apply to 'damage' could overlap with existing controls under Part 2 of the Food & Environment Protection Act 1985 and Coast Protection Act 1949 in TraC waters. It also notes that the Works Notices powers would also provide EA with new powers to take action, if it so chose, on matters for which it is not the primary regulator. The response suggests that the proposal for TraC waters need to be rethought in line with the principles of better regulation.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response notes that the 'Supporting Information' that EA is required to provide to the Secretary of State required by Section 6 of the draft guidance includes references to 'pollution apportionment', 'water quality monitoring', 'catchment appraisal' and 'water quality modelling', but does not state what information EA should provide to support WPZs to address hydromorphological pressures. The response considers this a serious deficiency which must be addressed in the final guidance. The response suggests that the information requirements to support WPZ proposals are important and therefore they should be included in the statutory guidance to EA. In particular, the EA should be encouraged to collect evidence of the contribution of a damaging activity to any failure to achieve WFD objectives, before seeking to promote action through a WPZ.

20 Water UK

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response suggests that whole river basin districts could be designated as WPZs, within the RBMP process, avoiding the need for individual consultations. Indication of what evidence may be deemed sufficient would be helpful as it will provide clarity to all interested stakeholders on what actions to expect. The response supports the use of "other relevant evidence supplied from other bodies" and all organisations should be encouraged to gather and provide additional information, particularly on diffuse pollution.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response supports the proposal to enable the EA to use WPZs to manage and prohibit a specific set of high risk activities. In addition the response suggests that EA should have additional powers to deal with medium and low risk activities as well, although some guidance in relation to powers and related level of risk would be helpful. Evidence, impacts and measures relating to Hydromorphology are least understood to date. The response considers that it is therefore vital that clearer guidance is given to the EA on the minimum information and evidence requirements for designating WPZs and serving Works Notices.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response considers the proposals for Works Notices and an appeals process to be reasonable. The response supports the proposed amendment to remove the Nitrates exemption from Section 93 of the WRA 1991 to allow WPZs to tackle nitrates pollution, and considers that the SI should be clear about the circumstances that would warrant a ban of relevant activities.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response notes that to date and within the draft RBMPs no objectives have been set for Drinking Water Protected Areas in line with Article 7 of the WFD. The response considers this is a major issue which must be addressed as one of the purposes of WPZs is to manage or control diffuse pollution affecting Drinking Water Protected Areas. The response suggests that the guidance should address how Safeguard Zones for all Drinking Water Protected Areas will interact with WPZs.

21 Environment Agency

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The EA response proposes a small number of WPZs during 2010, all in England, and work is progressing in anticipation of the amended legislation and guidance. EA will need to assess the effectiveness of this first possible round of designations carefully before considering any wider roll-out.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The EA response suggests that where the cause of hydromorphological damage also results in pollution of controlled waters, the EA will, in future, be able to serve a notice under the provisions in s161 of the Water Resources Act 1991 to prevent the pollution recurring.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response states that EA would wish to see the proposed statutory guidance documents cover all aspects of the use of WPZs, for all purposes. The statutory guidance that forms part of this consultation currently only applies to England. The EA consider the WPZ tool to be a general measure with a site/catchment-specific consultation mechanism that can take account of local factors. Accordingly, EA hope that the final statutory guidance for England and Wales will be substantially consistent in approach.

22 Consumer Council for Water

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response considers that the legislation should lead to a positive change, but that the costs of work to remove pollutants should be borne by the polluters and not water customers.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of**

Works Notices to restore a water body where damage has been caused.

No Comment

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response believes that the EA needs to be proactive in addressing point source pollution before it becomes diffuse. It is also concerned as to the scope of the first round of WPZs, and whether the EA is sufficiently resourced to implement the legislation.

23 BPEX

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response considers the proposed approach and priorities to be reasonable as an outline, but the crucial detail will be contained in each individual enabling Act or Works Notice. The response would appreciate more detail and specific guidance at this stage of the process. The response notes that it is not clear how it is proposed to decide if a Works Notice or WPZ is to be issued. Concern is expressed that Works Notices will be much easier for the EA to implement and may be seen as an easier tool to employ, with the burden of costs falling on individuals or businesses and avoiding the transparency of public consultation. The response sees the provision of Works Notice as a tool in cases where the pollution source is clearly identifiable and confined to specific areas or activities within a wider area allowing these to be addressed whilst not incurring additional legislative and cost burden on all as would be the case if a WPZ is employed. The response is pleased to note that non-agricultural pollution, both diffuse and point source, is also to be tackled and that the Government is considering a number of other mechanisms for this.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response gives a useful steer but we have no indication as to how it will be interpreted and used.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response considers the Statutory Instrument to be very precautionary in its approach; it allows the SoS to prohibit or manage the carrying on of activities within an area. While it is thought reasonable for environmental protection to be enacted through the prohibition or management of activities and the response accepts that in many areas this can be an appropriate mechanism for point source pollution, it may be over-prescriptive for diffuse pollution from

agricultural sources. The response considers it to be right that there must be a sound evidence base before the powers of this proposed Statutory Instrument are enacted, and that there must be careful wording so that there is not a blanket prohibition of an activity, but scope to allow activities to continue where appropriate management programmes can be agreed with Regulators that will prevent diffuse pollution, and also to allow continued improvement, development and innovation by practitioners such as farming businesses.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response notes that the EA is responsible for data collection, but that the guidance is vague as to the scope and depth of evidence required. The response believes the Guidance would benefit from being more specific in requiring the emphasis of modelling and assessments to be forward looking, especially in relation to trends in factors such as livestock numbers and agricultural practice in order for the measures proposed to be relevant. The response suggests that the list of supporting information can be enhanced by including a subsection requiring a study of pending and potential EC legislation and policy such as that relating to agriculture and the general economy as a whole.

24 WWF/Angling Trust

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response welcomes the expectation that the EA needs to gather sufficient evidence, but notes that experience in relation to the River Basin Planning process is that the current Agency approach to monitoring is inadequate for such purposes and will need both clear intent and funding. It also recommends that EA accesses all available quality assured data from other sources including statutory, charitable and voluntary organisations. The response recommends that the expectation should be that where the risk of agricultural or other diffuse pollution is identified a process should be triggered which would lead ultimately to WPZ designation unless the source can be addressed.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response welcomes the focus on hydromorphological damage as well as direct water quality effects

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response welcomes the proposal to take account of time lag between action and improvement when reviewing WPZs as some problems will take years to disperse.

25 Welsh Water

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response suggests that the process of WPZ designation should begin at the point the EA recognises that other mechanisms are failing or it considers that such measures are unlikely to deliver agreed environmental objectives. The requirement to consult all stakeholders and provide impact assessments is welcomed. However, the response considers it essential that costs and benefits in the assessments are fully quantified and properly apportioned in accordance with the principle of “polluter pays”.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response approves of this measure.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response welcomes the proposal that the EA can use water company data, and if not already intended it is suggested that the EA should be able to take into account information from the statutory drinking water safety plans produced by water undertakers.

26 Wessex Water

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response welcomes the increased use of WPZs, and their focussed approach.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response supports the proposal to remove the exemption for nitrates from Section 93 of the WRA 1991.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response supports the Statutory Guidance. In terms of prioritisation the guidance should include an expectation that the catchments to public water supply sources should be included where pollution causes the raw water to exceed, or is predicted to exceed, the drinking water standards.

27 United Kingdom Environmental Law Association

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response considers that there are problems with the existing definitions of 'controlled waters' and 'damage'. The response also suggests that consideration could be given to the concept (as in the Netherlands) for farmer co-operatives with joint responsibility for the management of local sub-catchment areas as WPZs.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response raises some technical points over the uses of Works Notices.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response suggests that there needs to be a clearer explanation of the range of catchment/sub-catchment sizes to which WPZs could be applied (and how the administrative and compliance resource needed will be proportionate to size, especially in the period for consultation). The response recommends that something more tailored than the current EA policy on prosecution and enforcement in the guidance would be helpful to indicate to the regulated under what circumstances Works Notices and/or prosecution would be invoked.

28 National Farmers Union (NFU) /Country Land and Business Association(CLA) /Agricultural Industries Confederation (AIC)

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response felt that the scope of the consultation was unclear, especially in relation to the use of powers in areas with combined point source and diffuse pollution sources. The response welcomed the approach of working through advice and incentives, but asked for clarification of the circumstances in which regulation through WPZs might be made, especially if based on evidence from predictions as well as monitoring. The response has concerns if WPZs were used before other measures had been shown (in practice) to fail, especially as some areas do not have any alternative approaches available. There was also concern over the length of time allowed before non-regulatory measures are considered to have failed. The response asked for clarification on the use of WPZs or other mechanisms on achieving WFD requirements in Protected Areas. The response asked for clarification of the objection process. It also expressed concern over

the appeals process, which it was felt needed to be incorporated in the legislation.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response sought more detail on what measures were envisaged, and their impact on agriculture. It noted the inclusion of soil loss with hydromorphology, and asked for clarification of the approach to sediment. There is concern expressed over whether Works Notices will be used more widely to address Water Quality and diffuse pollution apart from hydromorphology. It was felt that the consultation does not address the relationship between WPZs and Works Notices.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response asks the Government to be clear in the intended use of the powers, and whether they are to be used only for diffuse water pollution and hydromorphology, or whether they might also be used for non-agricultural and point source pollution.

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response expressed concern that in comparison to the existing powers, which are administratively burdensome, the amended powers may be invoked more frequently. The commitment to requiring robust and clear evidence is welcomed, although there are concerns expressed over the validity of modelling to provide this. The use of individual Impact Assessments is noted, but also that there is no national Impact Assessment. The proposal to review WPZs is welcomed, but the response asks that criteria for revocations should be provided at the outset. Overall, the response believes that the Guidance lacks detail.

29 OFWAT

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response is generally welcoming to the approach.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

No comment

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response makes numerous technical suggestions for the Guidance, primarily on the process of amendment and repeal, and use

of cost-effective mitigation measures. It recommends that specific measures are included for pesticides.

30 Severn Trent Water

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response generally welcomes the approach, and that EA should provide evidence. The response recommends that designations should make use of the water companies' water quality data, investigation results, and modelling and risk assessments, and not solely rely on its own analysis. There were points raised over policing and enforcement costings.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response expressed concern over, and asked for clarification on, how WPZ status might be applied to Heavily Modified Water Bodies and that the guidance to the EA should be modified to reflect this, and that the guidance should take account of existing mitigation measures. There was also a question over the status of existing abstraction licenses in WPZ or Works Notice areas.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

No comment

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response is generally supportive, but has suggested that the EA make a preliminary Water Safeguard Zone designation prior to making a WPZ designation. It is also suggested that there be more detailed cost benefit analysis and the option for assistance for the adaptation for a period.

31. Private individual

- **The proposed approach for WPZ designations, the priorities for identifying WPZs, and the provisions for appeals.**

The response noted that the Section entitled 'Background and purpose of consultation' does not make it clear that WPZs are to be used only when there is evidence that other measures are insufficient. The response notes that this point has been emphasised time and again at stakeholder group meetings, etc. The response asked for clarification of whether, if WPZs can be designated (with notice) at any time, in those situations where the EA is content that a WPZ is no longer required, it is not clear why it cannot also be de-designated at any time? The response asked for clarification of whether WPZs apply to HMWBs/AWBs? Clarification was also requested on the relationship between WFD exemptions and the identified need for a WPZ.

- **Further extending the scope of WPZs so that they can be used to protect the hydromorphology of water bodies, and of the use of Works Notices to restore a water body where damage has been caused.**

The response made some comments as to apportionment of damage, and the use of Works Notices to deal with HMWB.

- **A draft Statutory Instrument amending relevant power in the Water Resources Act 1991 for the designation of WPZs and the service of Works Notices.**

The response correctly notes that there are presumably also other amendments not shown here (i.e. dealing with Sections 93 and Schedule 11).

- **Draft Statutory Guidance for the Environment Agency on the exercise of these powers.**

The response considered that it was not clear where the proposed amendments to Section 93 and Schedule 11 to the 1991 Act are set out. The response noted that stakeholders have been told that WPZs will not have been identified by the time of the publication of the first RBMPs later this year - not least because all possible measures will need to have been tried and shown to be insufficient. The response asked if the provisions for pollution apportionment are also intended to apply to damage apportionment. The response noted that if this was so then it should also acknowledge that there may be difficulties in establishing cause-and-effect relationships, and make clear that the required action will only apply to the particular structure(s) or modification(s) or physical activity(ies) causing the damage, and not to others which may also happen to be within the WPZ. The response questioned whether the provisions for risk assessment would also refer to damage, or if not, the response enquired as to whether there was an equivalent requirement for a risk assessment for damage. The response asked for clarification of the provisions for review and allowance for time lag for ecological recovery following action to restore or reverse damage.

Consultation instructions

The consultation was carried out in accordance with the Government Code on Consultations which is available at www.cabinet-office.gov.uk/regulation/Consultation/Code.htm

Consultation on Water Protection Zones

Water Quality Division, Defra

Zone A/B, 2nd Floor,

Ergon House,

Horseferry Road,

London,

SW1P 2AL

Respondents from Wales were asked to send their views to water@wales.gsi.gov.uk and to copy them to the Defra e-mail address above.

Respondents from Wales who were unable to respond by e-mail should use the following postal address (and should send a copy of their response to the Defra postal address above)

Consultation on Water Protection Zones

Water Team

Climate Change and Water Division

Welsh Assembly Government

Second Floor

Cathays Park

Cardiff

CF10 3NQ

This consultation document response is available online at:

<http://www.defra.gov.uk/corporate/consult/water-protection-zones/index.htm>

and through a link on the Welsh Assembly Government's website at www.wales.gov.uk. Paper copies can be obtained by writing to the above postal or e-mail address.