



11 July 2022

Secretary of State for the Environment, Food and Rural Affairs

By email

Dear Secretary of State,

Agri-environment regulations in England

Wild Fish Conservation (formerly Salmon & Trout Conservation) has been concerned for decades over the increasing impact on water quality in English rivers caused by agriculture.

We have commissioned scientific studies, highlighted the effects we see in rivers and alerted the Government to the need to move further and faster in reducing agricultural pollution if we are to protect English rivers.

We have argued strongly for more robust regulatory control of those aspects of agriculture that can pollute watercourses with silt, sediment, excess nutrients and cause oxygen depletion by allowing materials with high biological oxygen demand to enter watercourses.

Since the mid-1980s, what constitutes good agricultural practice has been clearly laid out by Government for farmers, published in various Codes of Good Agricultural Practice. In 1985, a Code of Good Agricultural Practice was issued under section 31(2)(c) of the Control of Pollution Act 1974. This was replaced in 1991 by the Water Code (Code of Good Agricultural Practice for the Protection of Water) 1991, itself revised in 1998, and finally, in 2009 by *Protecting our Water, Soil and Air A Code of Good Agricultural Practice for farmers, growers and land managers*, issued pursuant to section 97 of the Water Resources Act 1991.

Wild Fish Conservation (WildFish) provided a review of all these codes of practice to the Environment, Food and Rural Affairs Committee in the run-up to the recent Agriculture Bill.

We were therefore pleased in 2018 when, because of the obligations to which the UK signed up to under the Water Framework Directive, the basic content of these codes were themselves largely 'codified' into law as the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, what we now know as the 'Farming Rules for Water'.

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At the time, in support of the new Regulations, the Government wrote:

“Agriculture is now the industry sector causing most water pollution. This places a significant external cost to other parties such as water companies, recreational users of watercourses and members of the public. This is a market failure; in a free market there are limited incentives for farming businesses to adopt practices which would reduce water pollution. Government intervention is necessary to correct this market failure.

There is evidence of widespread agricultural diffuse pollution from phosphorus, nitrogen, sediment, other nutrients, pesticides, and faecal matter but no mandatory controls in place to tackle it. The new rules will address this in a way that minimises costs to the farming sector by focusing on resource efficiency in relation to nutrient and soil management. The rules will set a clear basic level of good practice for consistent agricultural land management across England and will contribute to improving the water quality of lakes, rivers streams and groundwater over time. The Environment Agency will be the regulator.

The rules will help us to meet our objectives under the Water Framework Directive...”

Of course, it was the open intention of the Government to implement the 2018 Regulations lightly to begin with, by way of ‘soft touch’ application and enforcement by the Agency. For the first two years following their entering into force on 2nd April 2018, the 2018 Regulations would be applied lightly – and they were. That is clear from supporting documents to the 2018 Regulations and from statements made, both at the time and since, by the Agency and others.

At the time, WildFish did not support that approach, for precisely the reason that what was required by the 2018 Regulations had, in very large part indeed, been the Government’s stated view (set out in the Codes above) of what constitutes ‘good agricultural practice’.

However, those two years have now long passed.

One thing we can be sure of is that there cannot be a responsible farmer in the country who is not aware of the obligations set out in the Farming Rules for Water, or indeed, as were previously laid out in the codes that preceded it.

Therefore, WildFish has been increasingly alarmed to note that the initial period of light-touch enforcement, as envisaged when the regulations were first laid, has effectively been extended.

The Agency is now guided by DEFRA only to deal with breaches by way of advice and guidance. It has precious little resource to inspect farms, even allowing for the recent announcement of an increase in Agency farm inspector numbers.

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We are also alarmed that the Regulations themselves are being undermined and potentially lined up for the Government's post-Brexit 'red tape' bonfire.

Last year, the Agency issued, under pressure from DEFRA and the water industry we assume, Regulatory Position Statement 252 in relation to manure spreading that undermined the 2018 Regulations effectively reversing, at a stroke, years of guidance to farmers in the codes on manure spreading.

WildFish challenged the Agency's Regulatory Position Statement 252, published last August and the Agency made slight changes.

Thankfully, RPS 252 is no more but, most recently, we had to challenge the Secretary of State's own March 2022 Statutory Guidance to the Agency on broadly similar grounds, because it encouraged unlawful acts as against the 2018 Regulations. DEFRA made slight changes.

However, the thrust and direction of travel remains clear and is deeply concerning.

DEFRA appears to be bending in the face of the lobbying pressure it receives from farming industry and other bodies such as the water industry with interests in dumping wastes to land to remove, blunt, effectively neuter or even repeal completely the 2018 Regulations.

Firstly, we do not consider those farming and other bodies are properly representing the interests of the environment and the public. This includes farmers who do comply with the Farming Rules for Water and have complied with the codes for years before, and who are now being short-changed.

Secondly, and more importantly, we see that DEFRA is, in practical effect, indicating to those farmers who wish to 'push the boundaries', that the Farming Rules for Water do not matter, will not be enforced robustly and can be ignored.

This is clearly going to have impacts on river quality, whether or not those impacts are detected by the increasingly threadbare monitoring of rivers conducted by the Agency.

It is hard to see how this weak approach squares with the Twenty-Five Year Environment Plan's (25YEP) commitments to achieve clean and plentiful water by improving at least three quarters of our waters to be close to their natural state as soon as is practicable and restore freshwater protected sites to favourable condition. How the Government will achieve this without robust enforcement of the Farming Rules for Water is far from clear.

At worst, it appears the 25YEP commitments on rivers are being ignored, because the Government knows that 25 years hence, they will not be there to judge or be judged.



Who, if anyone, recalls the myriad commitments and promises made for the aquatic environment almost twenty years ago by Ministers when the Water Environment (Water Framework Directive) (England And Wales) Regulations 2003 were first laid?

Progress towards the objectives of the Directive have been painfully slow and have stalled. However, DEFRA's latest attempts to undermine and blunt the 2018 Regulations, making enforcement by the Environment Agency near impossible, abandons the commitments inherent in the Farming Rules and in preceding codes to address pollution from agriculture. This will have wide adverse effects for nature and people now and into the future. It is clear that the current change of direction is a reversal of those former commitments.

We have noted that Minister Pow in her recent letter to Herefordshire Council stated that a review is underway of agri-environment regulations (the 2018 Regulations, as well as the Nitrate and Silage Slurry and Agricultural Fuel Oil Storage Regulations). We have sought information about that review from both the Agency and DEFRA under freedom of Information requests, but we believe we have been deliberately diverted, delayed and obstructed. It is completely clear that both DEFRA and the Agency (perhaps under instruction from DEFRA?) have been 'playing the game' under the Environmental Information Regulations 2004 to avoid disclosing information about that review process. You will know by now that we have referred part of those requests to the Information Commissioner's Office.

We have taken the view that the Government's overall attitude is so worrying, and that matters are moving so quickly against proper control of agricultural pollution of English rivers, that we should publish this letter as widely as possible. Our intention is to encourage DEFRA and particularly the Agency to come clean about what is at play here.

We look forward to your response.

Yours sincerely

Nick Measham, CEO