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Sir Jon Cunliffe
Chair, Independent Water Commission
c/o Department for Environment, Food and Rural
Affairs
Seacole Building
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By email only: WaterCommission@defra.gov.uk

Dear Sir Jon

We welcome the opportunity to respond to your Commission's call for evidence and thank you for the constructive engagement we have had so far. As we have said before, we see your work as reflecting a welcome commitment by government to carry out a much-needed systemic review and reform of the sector.

In this response, we set out our views on some of the key strategic issues you identify. We also provide additional comments in response to some individual questions in Annex 1.

Targets

You have asked for views on whether the 2027 target under the Water Framework Directive (WFD) Regulations¹ should be reformed.

There are various objectives under these regulations. Among the most discussed are those for surface water bodies to be in 'Good Ecological Status' (or 'Good Ecological Potential' for artificial or heavily modified bodies) by 2027. The government has set this objective for 77% of surface waters, with the remaining 23% subject to statutory

¹ Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

exceptions and extensions. However, there is now a widespread view, which we share, that these 2027 objectives will not be met for many of the surface water bodies in question.

The very recent Court of Appeal decision in *Secretary of State for Environment, Food and Rural Affairs v Pickering Fishery Association*² ('*Pickering*') supports our view that the expected failure to meet these targets is, at least in significant part, the result of a failure to produce and apply specific Programmes of Measures, rather than a failure in the design of the regulations themselves. The decision also highlights concerns about how statutory exceptions and time extensions have been applied to water bodies. This forms part of our recently launched investigation discussed below. In our view, had the regulations been implemented effectively over the 25 years they have been in place, there might have been significantly greater progress in improving water quality by now.

As long as the existing law applies, meanwhile, the objectives that have been set under those laws remain, and government and the Environment Agency must continue to strive to meet them. Where evidence indicates that existing steps are unlikely to meet the objectives, the WFD Regulations require the Secretary of State and the Environment Agency to take additional action to do so. We highlighted that requirement in our report on the implementation of the WFD Regulations in May 2024,³ hereafter referred to as 'our Report' and recommended that Defra and the Environment Agency act upon it.

So far, however, they have not set out any specific additional measures that clearly respond to this element of the regulations. You will also be aware that we have recently launched an investigation into possible failures by Defra and the Environment Agency to comply with the WFD Regulations. Our investigation aims to establish the extent of any such failures in order to support progress towards achieving environmental outcomes.

We believe we are uniquely placed to be helpful and informative to the Commission by seeking (through the investigation) to clarify the requirements of current law, to inform any changes or recommendations you may put forward. Informed by the recent *Pickering* decision, we hope that understanding the extent to which implementation issues identified in our Report represent non-compliances with the law will allow lessons to be learned for any future reforms the government may pursue following your recommendations. This matters because even the best designed laws will only deliver their intended outcomes where they are implemented well and complied with. In order for any reform to be effective, it is critical to understand therefore if failures to achieve intended outcomes arise from flaws in the law itself or from how it has, or has not, been used in practice.

² *Secretary of State for Environment, Food and Rural Affairs v Pickering Fishery Association and Environment Agency* [2025] EWCA Civ 378.

³ Office for Environmental Protection, 'A Review of Implementation of the Water Framework Directive Regulations and River Basin Management Planning in England' (2024) <www.theoep.org.uk/report/oep-finds-deeply-concerning-issues-how-laws-place-protect-englands-rivers-lakes-and-coastal> accessed 3 March 2025.

More generally, legally binding targets play a vital role in systems of environmental governance. They are crucial for directing where action should be taken, assessing progress and ensuring accountability.

Should you choose to recommend reform of the 2027 targets set by government under the WFD Regulations, or government wishes to propose such amendments, we would urge that any new approach follows the recommendations we made in our separate 'Taking Stock' report in 2022.⁴ That is, to set ambitious, long-term and legally-binding 'apex' targets that specify the environmental outcomes to be achieved, and SMART interim targets on the trajectory to meet those long-term targets. These should then be pursued through specific and timebound delivery plans, accompanied by review mechanisms.

Any such new targets could be set under the Environment Act 2021 and should be coherent with that Act's wider governance framework, including its provisions for interim targets and a statutory delivery plan (the Environmental Improvement Plan (EIP)) setting out steps to meet targets. Government would also need to make clear how multiple targets for the water environment relate to each other. This should demonstrate how targets, and their delivery steps, will work together to achieve a significant environmental improvement. We also note that the 'target of good status for surface waters under the WFD Regulations is one of the targets relied on to satisfy the significant improvement test under the Environment Act 2021.'⁵

The cycle of reporting on progress, including the government's annual progress reports, our own EIP progress assessments and government's responses, offers a mechanism for monitoring and reporting on targets.

If new water targets were set under the Environment Act 2021, there are aspects of the WFD Regulations which could valuably be carried over to any new system. Our Report highlights important elements of the current system. We suggest such elements would form an effective basis for any legislative regime to protect and improve the water environment, regardless of whether that is provided through the current WFD Regulations, their reform or a replacement system.

In particular, our assessment of the WFD Regulations found their underlying principles and structure to be both sound and flexible. Fundamentally, the regulations provide discretion, within specified constraints, for the Environment Agency to propose and the Secretary of State to approve the objectives to be achieved. They also provide for the identification of measures and the development of delivery plans to achieve those outcomes, and for ongoing monitoring to assess progress and allow the plans and objectives to be updated.

We also consider that any system will only be successful if it is effectively implemented. In particular, any target is only as good as the content and application of its delivery plan.

⁴ [Taking stock: protecting, restoring and improving the environment in England | Office for Environmental Protection](#)

⁵ [Review of environmental targets: Outcome of the Significant Improvement Test](#)

Your Commission therefore offers an opportunity to emphasise to government the need to develop specific, holistic and effective delivery plans, which have been absent so far, as we have noted in our reports and was also found in *Pickering*.⁶

The overarching framework for managing water

You set out a number of issues with the overarching framework for managing water and with the system of the WFD Regulations and River Basin Management Plans (RBMPs) in particular. You ask if there is a need for further strategic direction and whether there should be an integrated framework to improve the management of the water system across sectors and outcomes.

As we set out in our Report, these regulations set out an outcome-based approach to environmental law and specify processes to achieve those outcomes. The regime provides significant technical analysis and a vision for an improved water environment. It also already offers considerable discretion, as we discuss above.

However, the wider framework of law, policy and other plans in which the WFD Regulations operate is complex and fragmented. We agree there is a need to clarify how the WFD Regulations and wider measures relate to each other and ensure they do so coherently. Our view is that there is the opportunity to improve delivery and governance mechanisms in order to create the accountability needed to achieve intended outcomes across the wider framework for managing water.

This applies to all pressures on the water environment, not solely those from the water industry. Our latest EIP progress report found that progress and prospects are improved where delivery plans are in place, as they are for the water industry and pollution from mines. We therefore suggest that any revised regime should have mechanisms to address all major pressures, such as pollution from rural areas, physical modifications to water bodies, climate change, and emerging chemicals.

As we have noted above, effective implementation will be critical to any revised regime. We therefore suggest that those who must implement it should be closely involved in its design, with identification of clear and specific actions and accountabilities for each party.

Finally, and given the delays in taking effective action to date, it is important that any reform to the framework of laws and policies does not further delay physical action that can be taken now to protect and improve the water environment. Any such delay would push the desired outcome of a healthy water environment even further into the future. We have immediacy and the need for pace in mind, in pursuing the investigation I mention earlier. Action is needed now.

We wish you every success in the important, challenging and timely task your Commission is undertaking and would be pleased to discuss any of the points we raise in further detail.

⁶ *Secretary of State for Environment, Food and Rural Affairs v Pickering Fishery Association and Environment Agency* [2025] EWCA Civ 378, para 169.

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Yours sincerely

Dame Glenys Stacey
Chair of the Office for Environmental Protection

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Annex: responses to specific questions

Q10 Thinking ahead to what you would like the water system to look like in the future (e.g. in 25 years' time), what outcomes from the water system are most important to you?

While it is not for the OEP to determine what outcomes the water system should deliver, the system has a fundamental role in delivering environmental targets set by government and Parliament. In our view, the current targets are suitably ambitious.

The current Environmental Improvement Plan, adopted in 2023 (EIP23), includes a commitment to restore 75% of water bodies to good ecological status. This is directly related to the environmental objectives for water bodies set under the WFD Regulations. Achieving those environmental objectives will therefore be the foundation for delivering this current EIP23 commitment, and the associated outcomes under the EIP goal for 'clean and plentiful water'.

Furthermore, we view the outcomes to be achieved from the objectives set under the WFD Regulations as key to delivering the apex targets for biodiversity. Namely, these are the 2030 species abundance target to halt the decline in species abundance, and the Environment Act 2021 long-term biodiversity target to reverse that decline (so that the overall relative species abundance index by 31 December 2042 is higher than that for 31 December 2022 and at least 10% higher than that for 31 December 2030). Freshwater species account for a quarter of the species assessed through these targets.

More broadly, our view is that all the environmental outcomes listed in the call for evidence are important to a water system. We have previously set out the importance of certain aspects of these outcomes. With regard to the outcome of an improved water environment, much of the focus so far has been on water quality pressures, and often nutrients in particular. However, wider pressures equally require attention in order to achieve outcomes. For example, physical modifications can directly affect water quality and ecological responses to wider pressures as well as changing habitats in the water environment. Around 41% of water bodies have physical modifications as a significant water management issue.

Climate change is a further key pressure on achieving environmental outcomes. Our view, as set out in our Report, is that the Environment Agency has not fully considered the latest information in this area when developing the RBMPs. We have therefore recommended that the Environment Agency update its assessments of risks to water bodies from the pressures caused by human activities, including climate change as well as infrastructure and domestic and commercial development, when it next reviews them for the fourth cycle RBMPs.

With regard to the outcome of 'water bodies being safe for swimming and other recreational uses', our review of implementation of the Bathing Water Regulations 2013 in England identifies some room for improvement in a number of areas. Partly these concern the opportunity to update the regulations to better align with the requirements of today's water user, which Defra is now acting upon. But we have also highlighted a need for a

clearer, more ambitious and purposeful approach to setting and pursuing objectives for bathing waters. In particular, an outcome of 'excellent' or 'good' bathing waters should be strived for under the implementation of the current Bathing Water and WFD Regulations. However, the current approach in the RBMPs only appears to aim for the minimum standard of 'sufficient' bathing water quality.

Achieving outcomes also needs to adapt to emerging pressures and drivers. We have previously recommended that Defra determine how to approach the monitoring and regulation of new and emerging chemicals in reviewing the implementation of the WFD Regulations. In particular, we highlight the need for Defra to establish effective processes to replace the former EU chemicals 'Watch List' mechanism and for setting environmental quality standards for chemicals of concern. This should ensure the WFD Regulations can provide a continuing framework for addressing new and emerging chemical threats.

Question 12: Who do you believe should be responsible for making decisions about what outcomes to prioritise from the water system?

At the moment, the intended outcomes in RBMPs under the WFD Regulations are approved by the Secretary of State. We believe that, in principle, this level of decision-making authority for plans of such significance remains appropriate.

Public participation is a further valuable feature of the current WFD Regulations. It facilitates transparency and accountability as well as offering a mechanism for local priorities to be addressed. Greater public understanding of and participation in decision-making may help address the recent loss of public trust in the way the water environment is managed. Any new or modified framework for water management should enable and encourage the active involvement of interested parties. We have noted that many stakeholders have found RBMPs complex and hard to navigate, while also being incomplete in the information that they offer, which are barriers to effective and informed participation.

As we have discussed above, however, the decisions that have been taken have not been implemented effectively in practice to date. That is why, in our Report, we highlighted a need for stronger leadership and ownership by government of how the regulations are applied. We also called for involvement of all the main players in a more effective way, including Defra, the Environment Agency, Natural England, Ofwat, water companies, the farming sector and local, planning and highway authorities. There should be clarity about who is accountable, how decisions are made, and where investment is required to address all major pressures.

Question 14: Do you believe changes are needed to help reduce the siloed approach of water management across different sectors?

We believe that such changes are needed. Effective implementation of the existing WFD Regulations, or any new or updated regime, will depend on an approach that effectively looks at and addresses all pressures from all sectors. This is not currently happening. As

we have noted in our Report, for example, other major sources of pressure, such as agriculture and transport, are not yet receiving the same resources or attention as the water industry.

In addition, land and water management need to be better aligned to ensure an integrated approach and optimise the achievement of environmental outcomes. A wide range of stakeholders have raised the importance of increasing focus on local water outcomes and the means to pursue them. Further, the decision *Pickering* has confirmed that, to comply with the WFD Regulations, a Programme of Measures must identify a programme or scheme of actions for each water body in order to achieve the environmental objectives for that water body.

Some stakeholders have proposed that catchment level planning offers a way of managing the water environment in a more holistic way. Stakeholders we engaged with in our review of implementation of the WFD Regulations generally supported catchment-level improvements and collaborative planning. We also see value in catchment level planning to help reduce siloed activity. If it is given more prominence, however, we highlighted that it will also be important to clearly define its role and function and align it with transparent delivery plans.

Question 15: Do you believe there are barriers to money being spent more effectively and efficiently across different sectors to deliver the best outcomes for the water system?

Our Report presents our view, based on the available information, that there is a systemic failure to set out Programmes of Measures for, or link them to pressures at, the water body level, or even at the catchment or River Basin District levels. We consider that this is one of the most significant gaps in implementation of the WFD Regulations. The decision in *Pickering* has confirmed that this failure is unlawful.

This failure to set out specific measures means that monitoring and evaluation of progress in implementation are more difficult and there is a lack of transparency and accountability for actions at a water body or catchment scale. This inevitably will also present a barrier to the effective and efficient allocation of funds to deploy the measures which, if meaningfully identified, could deliver locally specific outcomes.

Agriculture, in particular, is an area where it appears likely that resources can be deployed more effectively for the water environment. Actions that enable landowners and farmers to reduce agricultural diffuse pollution and increase wildlife-rich waters are essential, and overdue. We consider that government has an opportunity to improve outcomes alongside more effective regulation through deploying advice and guidance services for land managers that help with spatial targeting while also strengthening the skills and motivation required for more ambitious Agri-Environment Scheme agreements.

The lack of a comprehensive monitoring and evaluation framework, to learn from previous delivery actions and course-correct policies and actions to improve outcomes, is a further barrier to money being spent more effectively and efficiently across different sectors. We have recommended that Defra develop and implement a coherent and nested monitoring

and evaluation framework for the state of the water environment and progress on measures to improve it. This should include a clear relationship between monitoring for individual water bodies, catchments and river basin districts under the WFD Regulations through to wider monitoring and evaluation of the water related goals and Environment Act 2021 targets.

Q17. Do you believe changes are needed to the WFD Regulations, including for 2027 onwards? If so, which areas would benefit the most from change?

The call for evidence states (in paragraph 44) that the Commission is seeking views on whether the WFD 2027 target should be reformed. We respond to this question by reference to the current commitment, derived under the WFD Regulations, for 77% of surface water bodies to be in Good Ecological Status or Potential by 2027.

We note that this commitment is not fixed in the regulations themselves. Rather, it was proposed by the Environment Agency and approved by the Secretary of State in the second cycle (2015) River Basin Management Plans (RBMPs), taking account of natural conditions, technical feasibility and costs. It was then carried over into and re-approved in the third cycle RBMPs.

A different commitment arises under the current EIP. This is to 'restore 75% of our water bodies to good ecological status'. While no deadline is given for this, we understand it is also closely derived from the implementation of the WFD Regulations.

Our answer to this question 17, therefore, is drawn from our review of the WFD Regulations. Fundamentally, we do not think the WFD Regulations should be looked at or considered for reform in isolation from the wider framework.

Rather, we have highlighted in our Report that the wider framework of law, policy and other plans in which the WFD Regulations operate is complex and fragmented. We have highlighted a need to clarify how the various elements of the current system relate to one another.

At the same time, we have found the fundamental underlying structure and approach of the WFD Regulations to be broadly sound. We therefore consider that a strong and effective legal regime can be built on the existing framework. Key aspects of the current regime that we suggest should be retained in any future system include:

- Integrated protection of all water body types to cover aquatic ecosystems as a whole.
- Provisions for the setting of ambitious Environmental Objectives based on strong scientific evidence. This should include retention of the 'No Deterioration' principle.
- Requirements for the development of Programmes of Measures and delivery plans to achieve those objectives (although as we have noted, practical implementation of this aspect of the current regime has been lacking)
- An integrated, multi-element approach to classifying water bodies and determining if overall Environmental Objectives are met, while providing for assessment and reporting of progress towards these objectives.
- Co-ordination across administrative and geographic boundaries.

- Public participation.

However, we have identified in our Report a number of gaps and areas where the current legislation could be improved. These cover a range of issues including the reporting and availability of data, a mechanism to gather data about substances of emerging concern to replace the EU 'Watch List', the setting of Environmental Quality Standards for various substances, and governance mechanisms to support the more effective implementation of RBMPs by a wide range of public authorities.

We also note that, alongside other aspects of the complex wider suite of plans and measures in which the WFD Regulations operate, the six-year cycle of RBMPs does not align with the five-yearly cycle of water company investment plans. This contributes uncertainty about the delivery of the Programmes of Measures.

Q19. Do you believe changes are needed to improve how we monitor and report on the health of the water environment? If so, what changes do you believe could lead to improvements?

Monitoring underpins implementation of the WFD Regulations. We refer to the importance of monitoring, evaluation and learning in our answer to question 15. Monitoring should also increase transparency concerning mechanisms to ensure the implementation of all measures in the approved Programmes of Measures and reporting on progress.

Our view, as set out in more detail in our Report, is that the monitoring approach adopted by the Environment Agency to date is pragmatic but has been constrained by budget reductions. In our 2022/23 EIP progress report, we recommended that government publish a transparent monitoring programme for the water environment, setting out how it will fulfil its monitoring obligations under law and maintain adequate monitoring of current and emerging major pressures and drivers. This recommendation has not been adopted to date.

Our latest EIP progress report further recommends that the government should ensure that the Environment Agency takes the action necessary to significantly increase rates of compliance with farming regulations. This should support the government in reducing water pollution and meeting the Environment Act 2021 target on agriculture water.

Effective implementation also requires policy evaluation. We are concerned that Defra does not appear to be filling gaps in evaluating the effectiveness of the RBMPs or realisation of the related EIP goal of 'clean and plentiful water'. We currently assess prospects of meeting the objectives of this goal to be largely offtrack.

Q52. Do you believe that legal and/or regulatory requirements would benefit from review or consolidation?

Our view is that the framework of water law and policy is complex and lacks coherence, which may create barriers to achieving wider environmental outcomes. Our review of the implementation of the WFD Regulations found a lack of clear alignment and consistency between the objectives set in RBMPs and the targets and goals of the Environment Act

2021 and EIP. We also found a lack of integration and effective interaction between different water management plans and the objectives they contain. We set out these points in detail in Chapter 5 of our Report.