



Sustainable Water Network (SWAN)

Response to Public Consultation on Proposed Additional Measures for the Fifth Nitrates Action Programme

4th December 2024

1. Introduction & Comment On Public Engagement Process

The Sustainable Water Network (SWAN)¹ welcomes this opportunity to make a submission to the consultation on the Proposed Additional Measures for the Fifth Nitrates Action Programme.

SWAN acknowledges the vital importance of the Nitrates Action Programme (NAP) in tackling agricultural nutrient pressures on water quality in Ireland and advancing the objectives of the Water Framework Directive (WFD). SWAN has consistently emphasised the need for significant reforms to the NAP to ensure its effectiveness.

The acknowledgment in the policy document, of persistently high nitrogen concentrations, particularly in the east, south, and southeast, along with the significant declines in the ecological health of Irish estuaries, and the absence of evidence pointing towards long-term improvement, highlights the urgent need for much stronger and more effective measures. As the next iteration of the NAP (the 6th NAP) is due to be prepared and published in 2026, SWAN takes this opportunity to highlight key issues pertinent to the proposed measures outlined in the policy document and also pertinent to the 6th NAP. Addressing these issues is essential to ensuring the 6th NAP supports Ireland's compliance with the WFD and broader environmental objectives.

Overall, it is SWAN's position that the proposed additional reductions, combined with the existing measures in the 5th NAP, are inadequate to halt over a decade of water quality decline and to achieve a sustained reversal.

Furthermore, it is our position that this consultation exercise is deeply flawed because it does not present the results of the Interim Review. This means it lacks transparency and provides no evidence

¹ SWAN is an umbrella network of 25 of Ireland's leading environmental NGOs, national and regional, working together to protect and enhance Ireland's aquatic resources through coordinated participation in the implementation of the Water Framework Directive (WFD), Floods Directive, Marine Strategy Framework Directive (MSFD) and other water-related policy and legislation.

for the measures put forward and therefore fails to facilitate meaningful engagement. (See section below, '**Absence of evidence base to support the proposed additional measures**')

We also believe that engagement on this issue is biased. The consultation document says that the NEG, when advising the Minister on the additional measures “..considered stakeholder responses provided through the DAFM chaired Agriculture Water Quality Working Group.” This is extremely unbalanced since the working group is comprised almost entirely of agriculture and agri-business stakeholders. Opportunity to respond to a flawed consultation is not balanced as against the detailed engagement and access to decision-makers provided to just two closely aligned sectors via the Agriculture Water Quality Working Group. Given the significance of escalating water pollution to all of society this inequitable consideration of only one range of perspectives is not right or appropriate.

While we value the opportunity to contribute to the consultation and acknowledge the DHLGH’s recognition that water quality improvements have not yet materialised, we must emphasise that a 30-calendar-day period for public consultation is inadequate. Many stakeholders, operating with limited resources, require more time to provide a comprehensive and well-considered response. We strongly recommend that development of the 6th NAP draws on continuous engagement with all stakeholders, including environmental networks such as SWAN, and that the public consultation on the development of the 6th NAP provides sufficient time, of at least eight weeks, to ensure early, effective, and inclusive participation from all stakeholders.²

SWAN is available to discuss any aspect of this submission with the Department and we look forward to engaging with the Department throughout 2025 on the next iteration of the NAP.

2. Absence Of Evidence Base To Support The Proposed Additional Measures

In previous submissions on the development of the NAP, SWAN, alongside other stakeholders such as the Environmental Protection Agency and An Fóram Uisce, has consistently highlighted the importance of grounding mitigation measures in a strong evidence base. The 5th NAP states that “*The purpose of the interim review is to undertake an assessment of the effectiveness of the Nitrates Action Programme measures and introduce any new measures that may be needed...*” Therefore, it is reasonable to expect that a report of the Interim Review, including the results of the assessment,

² The Water Framework Directive (2000/60/EC) and the Aarhus Convention require that public consultations allow for early, inclusive, and meaningful engagement, enabling stakeholders to contribute substantively to environmental decision-making. Best practices recommend consultation periods of at least six to eight weeks to ensure stakeholders with limited resources have sufficient time to analyse complex documentation, consult with experts, and develop comprehensive responses. A truncated consultation period undermines the spirit of these obligations, limiting the ability of stakeholders to influence policies aimed at addressing Ireland’s persistent water quality challenges. To meet legal requirements and build trust in the policymaking process, the Government must allocate adequate time for robust participation.

would be presented as part of the consultation, including any gaps in current measures, along with an assessment of the degree to which the proposed additional measures are projected to fill the gaps. Indeed, in order to provide meaningful feedback on the proposed additional measures, the anticipated effectiveness of these measures in addressing gaps and halting water quality decline is essential.

The accompanying pre-consultation Natura Impact Statement to the policy document strongly emphasised the complete absence of scientific rationale and evidence base for the proposed additional measures and their impact on water quality.³ The draft policy document and the wider NAP provide limited evidence that the proposed measures, either individually or collectively, are technically effective in delivering the sustained progress necessary to restore and maintain water quality at levels required to meet Ireland's obligations under the Nitrates Directive (ND) and the WFD.

The additional measures proposed in the policy document to limit stocking rates and chemical fertiliser use, and address overstocking lack clear scientific evidence to demonstrate that the threshold limits set are adequate to restore and maintain water quality. For instance, the proposed 5% reduction in the maximum allowable rate of chemical nitrogen fertiliser application on grasslands, rather than, for example, a higher figure, lacks a clear scientific rationale. The proposed 10-15% reduction falls significantly short of the scale needed for a significant number of catchments, as indicated by EPA catchment analysis⁴ and Teagasc modelling.^{5 6} Whilst the reduction in maximum stocking rates from 250kg N/ha to 220kg N/ha in areas designated on the DAFM Water Quality Implementation Map for 2024, along with the inclusion of additional areas identified using the EPA's Targeting Agricultural Measures map, is a step forward, there is insufficient scientific evidence to demonstrate that this level of reduction will be sufficient.

It is clear that land in all catchments is not equal in the context of the risk of pollutant loss and resulting water pollution. Instead of applying uniform national limits, each catchment requires tailored nitrate

³ Government of Ireland (2023) *Proposed additional measures for the Fifth Nitrates Action Programme: Public Consultation Document*. Available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/310817/9e2d2f33-15d2-4b45-904a-2975b4339695.pdf> (Accessed: 2 December 2024).

⁴ Environmental Protection Agency (EPA) (2021) *Assessment of the catchments that need reductions in nitrogen concentrations to achieve water quality objectives: WFD River Basin Management Plan – 3rd Cycle*. Available at: <https://www.epa.ie/publications/monitoring--assessment/freshwater--marine/Catchment-nitrogen-reductions-assessment--June-2021.pdf> (Accessed: 2 December 2024).

⁵ Teagasc (2021) *The impact of nitrogen management strategies within grass-based dairy systems*. Available at: <https://www.teagasc.ie/media/website/publications/2021/Nitrates-Modelling-Final.pdf> (Accessed: 2 December 2024).

⁶ Previous submissions from SWAN on the development of the NAP have pointed to the catchment analysis from the EPA which indicates that nitrogen load reductions exceeding 50% are required in some catchments in the south and southeast of Ireland. For instance, the most recent reduction requirements (2019) for the Barrow, Blackwater, and Boyne rivers were 52%, 20%, and 32% respectively. Similarly, in 2018, the Barrow catchment required a nitrogen reduction of just over 8,000 tonnes to meet environmental quality standards, while the Slaney catchment needed a reduction of nearly 6,000 tonnes during the same period. Analysis from Teagasc indicated that a 20% reduction in chemical nitrogen use resulted in a 7% decrease in nitrate loss. See: Sustainable Water Network (2021) *Fourth Review of Ireland's Nitrates Action Programme, Phase II: Response to Public Consultation*. (Accessed: 2 December 2024).

(and phosphate) limits based on its specific assimilative capacity and pollution impact potential.⁷ Despite the unequivocal scientific evidence to this effect and the policy document's acknowledgment of elevated nitrogen concentrations in specific regions, it is perplexing that the additional measures on chemical fertiliser reduction proposed in the draft policy document lack geographical or catchment specificity. They fail to address the diverse factors contributing to water quality issues across different catchments and sub-catchments.

It is urgently necessary to determine the percentage reductions in chemical fertiliser use required in catchments of concern where reductions of up to 52% of annual nitrogen load are needed, and the reduction levels included in the NAP must be adjusted to align with the requirements outlined in the EPA's catchment analysis.

As the development of the 6th NAP approaches, there is an urgent need for clarification on how nutrient loss from derogation farms is managed, particularly given that the current derogation requirements fail to account for physical and hydrological conditions.

SWAN again emphasises the need for reforms to ensure that derogations are granted only if it can be demonstrated that a catchment can absorb the total amount of nitrates applied without negatively impacting WFD water status. The NAP must mandate farm-level risk assessments for derogation applicants, incorporating catchment science (i.e., land suitability, topography, prevailing local climate conditions), and catchment-scale cumulative impacts, and require WFD-specific assessments for all intensive farms located in Critical Source Areas for nitrate pollution.

Also absent from the draft policy document is evidence to suggest that the existing measures outlined in the 5th NAP are being implemented or enforced consistently and comprehensively. This inconsistency creates uncertainty about their effectiveness and the potential effectiveness of the proposed additional measures and poses a significant risk to Ireland's compliance with multiple EU Directives, including the ND, the WFD, and the Habitats Directive. Without a robust evidence base, stakeholders cannot accurately assess whether the proposed measures will achieve the necessary reductions in nutrient pollution. This will have implications for the development of the 6th NAP.

As with the proposed regulatory measures in the policy document, proposed non-regulatory educational measures, such as the 8-Actions for Change, need to have a solid evidence base to allow for an evaluation of their impact, and be accompanied by measurable targets and timelines to ensure accountability.

⁷ Environmental Protection Agency (EPA) (2024) *Water quality monitoring report on nitrogen and phosphorous concentrations in Irish waters 2023*. Available at: <https://www.epa.ie/publications/monitoring--assessment/freshwater--marine/water-quality-monitoring-report-on-nitrogen-and-phosphorous-concentrations-in-irish-waters-2023.php> (Accessed: 2 December 2024).

3. Modelling

SWAN welcomes the commitment to establish under the Nitrates Expert Group a subgroup to undertake modelling on the impacts of agriculture and the NAP on water quality, and to develop a dedicated work programme. In the absence of additional detail about this subgroup in the policy document, we recommended the following:

- This work must be prioritised, with clearly defined objectives and expected outcomes, and the data-sharing agreement between DAFM, the EPA, and Teagasc is fully operational from the outset, with clear timelines and responsibilities to avoid delays.
- Prioritise integrating real-time data from the National Fertiliser Database and animal feed sales into modelling scenarios to provide more accurate assessments of nutrient flows and subsequently inform targeted interventions.
- Model and present the anticipated load reductions from the existing and additional measures in the 5th NAP before the development of the 6th NAP commences.
- The modelling should encompass a representative range of catchments across Ireland, reflecting variations in soil types, farming intensities, and hydrological conditions. Advanced geo-spatial modelling techniques should be incorporated to account for local hydrological conditions, soil types, and land use, enabling more accurate and location-specific policy recommendations.
- Establish mechanisms for revisiting and refining modelling assumptions based on new data or evolving environmental conditions.
- Publish the modelling inputs, assumptions, methodologies, and results in advance of any consultation on the development of the 6th NAP in 2025, to facilitate independent review. This will be essential to promoting transparency and the credibility of the policy framework.

As the modelling outputs will be fed into the development of the 6th NAP, SWAN urges the expert group to develop a plan for ongoing monitoring and review of the modelling-informed measures and build in the potential need for adaptation if and as new data becomes available.

4. Compliance and Enforcement

The level of compliance with the requirements of the Good Agricultural Practice (GAP) Regulations are generally low (non-compliances have been reported on more than 30% of farms inspected).⁸ EPA

⁸ Environmental Protection Agency (EPA) (2024) *Opening statement prepared for Oireachtas Joint Committee on Agriculture, Food and the Marine, Wednesday 10th July 2024*. Available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_agriculture_food_and_the_marine/submiss

analysis of local authority environmental enforcement performance revealed a 9% increase in inspections under the GAP Regulations in 2023 compared to 2022. However, during the same period, the non-compliance rate rose from 31% in 2022 to 37% in 2023. The primary causes of non-compliance were issues related to the storage and management of soiled water, farmyard manure, slurry, and discharges with potential negative impacts on water quality.⁹

The EPA has recommended that to address these issues, local authorities must significantly increase the number of farm inspections as per the allocations under the National Agricultural Inspection Programme (NAIP), with a particular focus needed on areas with higher relative risk to water quality, including issues such as slurry storage capacity, land spreading practices, and activities during the closed season for land spreading, as well as responding to complaints.

Therefore, the plan to resource local authorities to conduct at least 4,500 farm inspections annually using a targeted, water quality risk-based approach is a step forward, however, the number of inspections must reflect the scale of the problem and in particular, the annual inspection rate for Nitrates Derogation inspections should be a lot higher than 10%. This is especially important given that the current derogation control systems cannot ensure appropriate measures are in place prior to expansion or entry into derogation.

SWAN supports the coordinated approach involving DAFM, local authorities, and the EPA, to ensure inspection and enforcement campaigns are carried out alongside education efforts. For full transparency, the policy document would have been improved by including more detailed information on how a targeted approach will be implemented, as well as details on inspection follow-up, cross-reporting on non-compliance, and the resolution of non-compliances. In the absence of additional information on compliance and enforcement, SWAN recommends the following, the majority of which are a re-iteration of recommendations made in our response to the 5th NAP:

- Publication of the National Agricultural Inspection Programme (NAIP)
- Publication of an annual compliance assessment report of the above, which is publicly available, and which includes data on inspection and compliance rates, including parameters breached, and enforcement sanctions.
- Establishment a public engagement campaign in rural areas highlighting the requirements of the GAPP regulations and establish a '**See it – Say it**' type reporting mechanism for the public to report non-compliant activities, in particular in relation to slurry spreading.

[ions/2024/2024-07-10_opening-statement-dr-eimear-cotter-director-office-of-evidence-and-assessment-environmental-protection-agency-epa_en.pdf](#) (Accessed: 2 December 2024).

⁹ Environmental Protection Agency (EPA) (2023) *Local Authority Environmental Enforcement Performance Report 2023*. Available at: https://www.epa.ie/publications/compliance--enforcement/public-authorities/Local-Authority-Environmental-Enforcement-Performance-Report-2023_printable-PDF.pdf. (Accessed: 2 December 2024).

- To maximise the inspectorate role of local authorities, it is essential that they are adequately resourced to conduct inspections and enforce compliance. In addition to inspections and enforcement efforts focusing on critical source areas to enhance compliance in the region's most at risk, it should also involve targeted inspections tailored to the specific pollutants of concern (phosphorus, nitrogen, and organics), guided by the EPA's Pollution Impact Potential maps and Targeting Agricultural Measures map. This must be accompanied by an inspection and follow-up rate that is sufficient to address the scale of non-compliance.
- Implement additional spot checks, especially during the slurry spreading season, and conduct these spot checks without prior notification to ensure compliance with regulations.
- Ensure that DAFM online data systems (for e.g., recording the movement of organic manure) are easily accessible to Local Authorities to facilitate their ability to perform their statutory duties. Improvements are needed in DAFM's data management systems to facilitate the efficient and timely sharing of essential data on a continuous basis. SWAN welcomes the consideration of utilising automotive systems such as GPS tracking for enhancing compliance with manure movement regulations.

5. Water Framework Directive Assessments

SWAN echoes our member organisation An Taisce's view regarding lack of consideration of WFD objectives in the development of the additional measures and in the NAP process in its totality, and we refer you to their consultation response on this.

6. Pilot Project to inform development of the Sixth NAP

SWAN welcomes this pilot which will *"implement the Framework Measures as set out in the Table 8.1 of the Natura Impact Statement to inform the evidence base for the 6th NAP ..."* in principle, However, the NIS says that *"Unless these mitigation measures are implemented in full, adverse effects on the integrity of European sites will occur; contrary to the obligations of the EU Habitats Directive."* SWAN is very concerned about a policy being pursued, which outside the pilot area, is contrary to the obligations of EU law.