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Our Ref: SCP211202.2

Re. Draft Fifth Nitrates Action Programme and SEA Environmental Report

Dear Mr Chadwick,

We acknowledge your notice, dated 16th December 2021, in relation to the Draft Fifth Nitrates Action Programme (the 'NAP') and accompanying SEA Environmental Report.

This submission is comprised of four parts, viz, this cover letter addressing high-level review observations, and three Appendices: with Appendix I providing specific comments on the SEA Environmental Report and overall SEA process; Appendix II providing specific comments on the NAP; and Appendix III referencing chapters in the recent [Ireland's Environment - An Integrated Assessment](#) (SOER2020) as considered relevant to the NAP.

The EPA is one of the statutory environmental authorities under the SEA Regulations. In our role as an SEA environmental authority, we focus on promoting the full and transparent integration of the findings of the Environmental Assessment into the Plan and advocating that the key environmental challenges for Ireland are addressed as relevant and appropriate to the plan. Our functions as an SEA environmental authority do not include approving or enforcing SEAs or plans.

Overview

The EPA recognises the importance of the agriculture sector to the rural economy. However, the evidence is irrefutable that the sector is putting significant pressure on the environment in Ireland and is causing pollution and damage to our surface waters, atmosphere, ecosystems and biodiversity.

The EPA further recognise the breath of measures proposed under the 5th Nitrates Action Programme. However, it is important to be reminded that the 4th Nitrates Action Programme has not delivered the required water quality outcomes: agriculture remains the most significant pressure with excess nutrients impacting on water quality and trends going in the wrong direction. The evidence shows that water quality problems are not just a concern for the more intensive farms but are relevant to all farmers. At the farm scale, it is not just farm intensity that drives water quality outcomes, but also soil type, climatic conditions and farm practice. A one size fits all approach will not be adequate to achieve the outcomes we need; measures need to be targeted specific to the soils and risks on the farm.

This submission should be read in conjunction with the previous submissions to Department of Housing, Local Government and Heritage (DHLGH) from the EPA in relation to the 5th Nitrates Action Programme, namely:

- [EPA submission on the 4th review of Ireland's Nitrates Action Programme - 2nd consultation](#) (September 2021)
- EPA Submission on the SEA scoping for the Nitrates Action Programme (June 2021)
- [EPA submission on the fourth review of Ireland's Nitrates Action Programme](#) (February 2021)

In addition to the above, the EPA has made a number of other key submissions in relation to the agriculture sector in Ireland and water management including the Common Agricultural Policy Strategic Plan ([December 2021](#)), FoodVision 2030 ([June 2021](#)) and the Significant Water Management Issues in Ireland Consultation ([August 2020](#)).

These submissions taken together have several common threads running through them are relevant to the ambition of the 5th NAP:

- Recognition of the relative importance of agriculture in Ireland for rural and national sustainable development;
- Agricultural and other land management practices are causing significant problems for water quality, air quality, nature and climate change and risking the reputation of Ireland as a food producing nation with strong environmental credentials;
- The current levels of non-compliance with existing minimum statutory standards is unacceptable (ASSAP, 2021¹). Achieving compliance with minimum standards should be a central tenet and precondition that underpins any interaction the sector has with the State or the State's financial resources, i.e. Basic Payment Schemes.
- Securing compliance with all existing and new regulations needs to be given priority. The full suite of enforcement tools should be utilised, including support and advice, incentives, penalties, and a strengthened enforcement and inspection regime;
- Measures need to be more targeted to achieve our water quality objectives. They must be joined up and aligned across agricultural and environmental policies to achieve multiple environmental benefits. These actions must be substantial and sustained with full accountability.
- Recognising the opportunities available for Ireland in getting it right and being able to prove its credentials as a world leader in sustainable, low carbon and environmentally friendly agriculture and land management.

The EPA State of Our Environment Report 2020 noted that the agriculture and food sector needs to demonstrate and validate its performance around producing food with a low environmental footprint. This will require an increased focus on capturing and recording farm activity data to help build the evidence base and understanding of what measures are working and where, so that the ask of farmers can be better targeted in the future. Better data are also important to support the greenhouse gas and air pollutant inventories.

¹ Interim report on the Agricultural Sustainability Support and Advice Programme (ASSAP)
<https://www.teagasc.ie/publications/2021/assap-interim-report-2.php>

The EPA is committed to working constructively and collaboratively with DHLGH and DAFM to provide the evidence base for assessing the impacts of agriculture on the environment, and to assisting the Departments in developing plans and programmes that will protect and restore Ireland's natural environment.

Integration

The key message relating to the Strategic Environmental Assessment Environmental Report (SEA ER) relates to the integration of the recommendations from the report into the NAP. While it is commended that the SEA ER recommends mitigation measures it is not possible to comment on the level of integration between the SEA and the NAP at present. The reason being that the mitigation measures proposed in the SEA ER relate specifically to various articles in the Good Agricultural Practice Regulations and not "*Ireland's Draft Nitrates Action Programme*". The Good Agricultural Practice Regulations were not published by DHLGH as part of this public consultation process. This somewhat reduces the level of clarity on the status, contents and implementation of the NAP. The mitigation measures and recommendations from the SEA ER should be incorporated into both the NAP and the Good Agricultural Practice Regulations.

A final point on integration is that as the Nitrates Action Programme is recognised as a key measure in the River Basin Management Plan and is intended to reduce nutrient pollution from agriculture in waters: it is essential that the objectives and outcomes of the NAP are aligned with, and assessed against, the objectives of the Water Framework Directive.

If you have any queries or need further information in relation to this submission, please contact Suzanne Wylde, Strategic Environmental Assessment Unit directly. I would be grateful if you could send an email confirming receipt of this submission to: sea@epa.ie.

Yours Sincerely,

A handwritten signature in black ink that reads "Eimear Cotter".

Dr Eimear Cotter

Director

Office of Evidence and Assessment

Appendix I: SPECIFIC COMMENTS ON THE SEA ENVIRONMENTAL REPORT

General Comments

The integrated assessment and conclusions documented in the SEA Environmental Report have been undertaken with reference to the proposed new Regulations on Good Agricultural Practice for Protection of Waters which will give effect to the 5th Nitrates Action Programme (NAP). However, the document that was made available alongside the SEA Environmental Report for public consultation is Ireland's Draft Nitrates Action Programme and not the draft regulations. Furthermore, the structure of the NAP (Table 2.1) refers to the structure of the current and proposed new regulations rather than the structure of the document available for public consultation. This reduces the level of clarity on the status, contents and implementation of the NAP. The mitigation measures and recommendations from the SEA Environmental Report should be incorporated into both the NAP and the Good Agricultural Practice Regulations.

Throughout the report, reference is made to "intensive" agriculture. Intensive agriculture has a specific meaning in national environmental regulatory legislation (large pig and poultry installations). The wider issue of livestock production and increased bovine population is the larger concern. This needs to be clarified in the NAP.

In addition, there are many of the figures and graphics in the SEA Environmental Report that are illegible and should be updated with clearer reproductions.

Alignment with Plans & Programmes

The DHLGH should ensure that the NAP aligns with key relevant higher-level plans and programmes and is consistent with the relevant objectives and policy commitments. The NAP should clearly show how it will be aligned with the Common Agricultural Policy Strategic Plan 2023-2027 and its guiding European legislation. The NAP should also be consistent with the Climate Action Plan 2021 and the draft River Basin Management Plan 2022-2027.

In addition, the NAP must be consistent with the National Planning Framework (in particular National Policy Objectives 21, 22 and 251) and the three Regional Spatial and Economic Strategies.

Furthermore, the SEA Environmental Report and the NAP would benefit from the inclusion of a schematic showing the plan hierarchy for EU and national agriculture related plans, e.g. Green Deal, Farm to Fork, CAP Strategic Plan, FoodVision 2030, Ag-Climatise. This would help identify areas which need closer coordination and integration.

Section 4.6.1 of the SEA Environmental Report (Other Relevant Policy Areas) would benefit from inclusion of reference to the national land use evidence review which commenced in 2021.

The discussion on the Code of Good Agricultural Practice for reducing Ammonia Emissions from Agriculture makes reference to the AgClimatise target which requires 90% of all slurry to be spread by Low Emission Slurry Spreading (LESS) as a means of delivering reductions in future ammonia emissions. However, it should be noted that the use of LESS alone will not be sufficient to meet future ammonia emission levels, and those measures envisaged for nitrogen fertilisers and other manure management options should also be acknowledged and discussed.

We welcome the inclusion and discussion relating to the UN Sustainable Development Goals (SDG) in the SEA Environmental Report. There is merit, however, in also considering Goal 3: Good Health and Wellbeing and the relevant links between the NAP and air, water, soil pollution and human health. With respect to air quality and SDG Goal 11 (Sustainable cities and Communities), clarity should be provided in terms of the relationship between agriculture and this SDG Goal. While there is no SDG relating to landscape issues, the SEA Environmental Report should be cognisant of the overall SDG tenet that land be appropriately managed to achieve social, economic and environmental objectives.

Relevant Aspects of the Current State of the Environment

Biodiversity

We welcome the proposed measures to enhance biodiversity as discussed in the document. However, the requirements are currently limited to farmers operating with a Nitrates Derogation from 1st January 2020 and, disappointingly, only requires *one measure* to be implemented from the All Ireland Pollinator Plan for making farmland more pollinator friendly. Greater ambition would be expected. A list of the relevant measures from the All Ireland Pollinator Plan should be included in the NAP.

The SEA Environmental Report includes references to EU wide biodiversity data which is useful. However, the data should be supplemented with relevant Irish data to create better context for the concerns at hand.

Air Quality

Table 5.2 refers to fertiliser use as the main source of ammonia emissions in Ireland. Manure management, including land spreading of manures, is the largest source of ammonia emissions – this point should be reflected throughout the document.

The discussion should clarify that the revised National Emission Reduction Commitments Directive (Directive 2016/2284/EU) assigns percentage emission reduction commitments rather than absolute value targets. The most up-to-date information should be referred to in the SEA Environmental Report. The relevant data for 2019 is available on the EPA website².

With respect to environmental pressures for air quality and climatic factors (Section 5.3.5.4) the SEA Environmental Report focuses on the transboundary emissions of ammonia. However, focussing on transboundary issues ignores more localised issues and, in particular, breaches in critical levels and critical loads at Natura 2000 sites across the country as a result of ammonia and nitrogen emissions. Breaches of these levels has potential to impact biodiversity and habitat health at these Natura 2000 sites. These Natura 2000 issues need to be recognised and assessed in the SEA Environmental Report.

Waste

The discussion on Waste & Circular Economy makes reference to animal manure as a “waste”. The *Communication from the Commission to the Council and the European Parliament on the*

² Ireland’s Air Pollutant Emissions 2019 (<https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/irelands-air-pollutant-emissions-2019-1990-2030.php>) and Ireland’s UNEC Submission 2021 (<https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/irelands-unece-submissions-2021.php>)

Interpretative Communication on waste and by-products (2007³) clearly states that animal manure is not a “waste”. The *Commission v Spain* (C-416/02 and C-121/03) held that manure will not be waste where it is used as soil fertiliser as part of a lawful practice of spreading on clearly identified parcels (regardless of whether the parcels are within or outside the agricultural holding that generated the effluent) and if its storage is limited to the needs of those spreading operations. The SEA Environmental Report needs to recognise the value of manures in the circular economy (when used appropriately) unburdened by a designation, or viewed, as waste.

Alternatives

The SEA Environmental Report includes a detailed assessment of the alternatives for the implementation of the NAP. It should be noted that part of the reason for considering alternatives is to reduce the potential of environmental impacts associated with the draft plan. The SEA Environmental Report notes that the assessment of alternatives in respect of the NAP has been a balance between the protection of the natural environment, in particular water quality, and the security of the agri-food sector. The analysis of the alternative stocking rates could present a less imbalanced scenario. In particular, the preferred alternative could discuss further environmental data to support the selection of the alternative to maintain the current stocking rates. Teagasc recently published a paper “*The Impact of Nitrogen Management Strategies within Grass Based Dairy Systems*” (Teagasc, 2021⁴) that may be useful to further inform the selected preference for the stocking rate.

In addition, the selection of the strategic alternative to seek a derogation for grassland farms would benefit from further justification on environmental grounds, for example reference to the benefits of the controls required under the derogation. The justification would also benefit from indicating where environmental baseline knowledge has improved to inform the selection of the preferred alternative, e.g. better evidence in relation to pressures such as water quality and biodiversity.

The discussion on alternatives refers (page 107) to the Teagasc National Farm Survey 2019. The 2020 survey has been published and should be reflected in the discussion⁵.

As per our comments at the SEA scoping stage, the analysis of the alternatives would have benefited from referring to the alternatives considered under the environmental assessment of the Fourth Nitrates Action Programme and how they differ to those considered under the current proposed iteration.

Finally, the alternatives should be assessed against the ‘Strategic Environmental Objectives’ identified in the SEA Environmental Report.

Mitigation

Chapter 8 of the SEA Environmental Report includes an extensive list of detailed mitigation measures. However, these mitigation measures specifically relate to articles of the draft regulations which are not available for consultation. Therefore, it is not possible to see if the mitigation measures recommended from the SEA have been integrated into the draft NAP.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0059&from=EN>

⁴ <https://www.teagasc.ie/media/website/publications/2021/Nitrates-Modelling-Final.pdf>

⁵ <https://www.teagasc.ie/publications/2021/national-farm-survey---2020-sustainability-report.php>

It is important that the recommendations of the SEA are fully considered in the NAP. This is particularly important given that the NAP is the key mechanism for controlling agricultural practices to protect water quality.

The NAP should also provide a clear indication of how these mitigation measures will be implemented, including the timely provision of adequate resources.

We welcome the proposed mitigation measure that recommends the Additional Good Agricultural Practice Measures be included in the River Basin Management Plan (RBMP) Agricultural Measures to strengthen the policy basis of these measures. This mitigation measure will assist in the implementation of both policies (NAP and the RBMP) and offer coherence and integration between the two. This will strengthen the implementation of both policies and contribute to mitigating the impacts of agriculture on water bodies.

The mitigation measures should reflect the significant resources that DAFM is placing in Earth Observations rather than placing the emphasis on other bodies such as EPA and Teagasc. A joined-up approach between all relevant bodies will ensure a comprehensive approach to filling knowledge gaps and create a better understanding of local environmental pressures.

Integration of SEA into the NAP

The mitigation measures and recommendations from the SEA Environmental Report should be incorporated into the NAP. It is not possible to comment on the level of integration between the SEA and the NAP at present as the mitigation measures proposed in the SEA Environmental Report relate to the Good Agricultural Practice Regulations and not “Ireland’s Draft Nitrates Action Programme” which was the document published by DHLGH as part of this public consultation process.

The NAP would benefit from the inclusion of a section or chapter related to “Environmental Assessment” showing how the assessment process and the SEA recommendations have been integrated into the NAP. In particular, the NAP should include clear commitments to implement the recommendations and mitigation measures identified in the SEA.

Similarly, the NAP should include an additional table related to how the findings and recommendations of the Appropriate Assessment have been reflected in the final plan.

Monitoring

The Monitoring Programme should be flexible to take account of specific environmental issues and unforeseen adverse impacts should they arise during implementation. It should consider and deal with the possibility of cumulative effects. Monitoring of both positive and negative effects should be considered. The monitoring programme should set out the various data sources, monitoring frequencies, responsibilities and reporting.

If the monitoring identifies adverse impacts during the implementation of the NAP, DHLGH should ensure that suitable and effective remedial action is taken.

The implementation of the NAP should include provisions for annual reporting on implementation of the NAP commitments. The NAP implementation, monitoring and reporting should be aligned with the environmental monitoring and reporting required under the SEA legislation. This will assist in evaluating the environmental performance of the Strategy.

Guidance on SEA-related monitoring is available on the EPA website at <https://www.epa.ie/publications/research/environmental-technologies/research-306-guidance.php>

Future Amendments to the NAP

Any future amendments to the NAP should be screened for likely significant effects, using the same method of assessment applied in the “environmental assessment” of the NAP.

SEA Statement – “Information on the Decision”

Once the NAP is adopted, an SEA Statement should be prepared that summarises:

- How environmental considerations have been integrated into the NAP;
- How the Environmental Report, submissions, observations and consultations have been taken into account during the preparation of the NAP;
- The reasons for choosing the NAP adopted in the light of other reasonable alternatives dealt with; and,
- The measures decided upon to monitor the significant environmental effects of implementation of the NAP.

A copy of the SEA Statement with the above information should be sent to any environmental authority consulted during the SEA process.

Guidance on preparing SEA Statements is available on the EPA website at the following link: <https://www.epa.ie/publications/research/environmental-technologies/research-306-guidance.php>

Environmental Authorities

In accordance with the SEA Regulations the following authorities should be consulted with:

- Environmental Protection Agency;
- Minister for Housing, Local Government and Heritage;
- Minister for Environment, Climate and Communications; and,
- Minister for Agriculture, Food and the Marine.

APPENDIX II: SPECIFIC COMMENTS ON THE DRAFT FIFTH NITRATES ACTION PROGRAMME

Environmental Pressures

The document needs to be more explicit in terms of the full suite of environmental pressures. For example, the introduction fails to address air pollution, specifically ammonia emissions, of which agriculture is responsible for over 99%. There is no reference of the role of the National Air Pollution Control Plan to address the issue of air pollution.

Ammonia and Other Emissions to Air

- It should be noted that the National Emissions Ceilings Directive as discussed in *Section 2.6: Ammonia and Other Emissions to Air* is now referred to as the National Emission Reduction Commitments Directive (Directive 2016/2284/EU). Furthermore, the Directive has set emission reduction commitments (percentage reductions compared to 2005 emission levels) rather than absolute emission levels as referred to in the document. The final documents should be updated to reflect these changes in the Directive.
- The NAP should refer to the most up to date EPA national emissions inventory data. The most recent submission can be found at [Monitoring & Assessment: Climate Change: Air emissions Publications | Environmental Protection Agency \(epa.ie\)](#) and [Monitoring & Assessment: Climate Change: Air emissions Publications | Environmental Protection Agency \(epa.ie\)](#).
- The policy context for ammonia and other emissions to air should include reference to the “Fit for 55” package, in particular the legislative proposals and policy initiatives relating to emissions reduction targets and Emissions and removals from land use.

Chemical Fertiliser Register

- There is a need to share details of the ‘slurry movement register’ and ‘Chemical Fertiliser Sales register’ with Local Authorities and also other Government departments and agencies who are tasked with protecting water quality (i.e. Local Authorities, EPA, IFI, etc.). This will assist with further assessing compliance with the requirements of the GAP Regulations but also other key environmental objectives such as the Water Framework Directive objectives.
- There is merit in considering expanding the model developed for the ‘slurry movement register’ or ‘chemical fertiliser sales register’ to include the recording of sewage sludge and industrial sludges so that all chemical and organic fertilisers are fully tracked and the information is available to DAFM, LAs, EPA, etc. A common, or similar system, would offer further opportunities for assessing compliance and analysing areas for targeting appropriate measures.
- It is useful to re-iterate at this point that the EPA’s control of organic sludges is limited to the control of the sludges that arise from licensable activities (Industrial Emission/Industrial Pollution Control Directives activities). The control is limited to regulation of the generation, management and storage of the sludges on the licensable sites and does not extend to the farms where it is used as fertiliser.

Compliance

- The agriculture sector is a vital cog in the rural economy. It is clear that farmers need to be supported and incentivised to carry out land management activities in an environmentally sustainable manner, while also providing for economically viable livelihoods. This will be implemented through the Common Agricultural Policy Strategic Plan. The NAP should recognise that achievement of environmentally sustainable farming and land management activities may require enforcement measures or penalties for poor performance. The NAP should offer a unique mechanism for this for the relevant enforcement authorities.
- It is clear from the earlier consultation on the NAP and the interim report on the ASSAP, that the current levels of non-compliance with the key agriculture legislation and policies is unacceptable and must be addressed as a matter of urgency. The full suite of compliance tools should be utilised by the relevant enforcement authorities, including support and advice, incentives, and a strengthened enforcement and inspection regime. Achieving compliance with minimum standards should be a central tenet and precondition that underpins any interaction the sector has with the State or the State's financial resources, i.e. Basic Payment Schemes.

APPENDIX III: KEY CHAPTERS OF IRELAND'S ENVIRONMENT – AN INTEGRATED ASSESSMENT 2020

Chapter 13 of the SOER2020 relates to the [Environment and Agriculture](#). The chapter addresses the level of pressure that Irish agriculture has on the environment in terms of greenhouse gases, water quality and biodiversity and highlights the risk posed to Ireland's reputation as a food producer as a result.

Chapter 7 of the SOER2020 relates to [Water Quality](#) and identifies agriculture as the most significant pressure on our waters. The chapter focuses on the stark and dramatic reduction in pristine waters from 500 in 1990 to 20 in 2020. It calls for tighter measures to be covered in the next River Basin Management Plan and the Nitrates Action Programme to mitigate the impacts from fertiliser spreading, slurry spreading and other nutrient losses.

Chapter 2 of the SOER2020 relates to [Climate Change](#). This chapter clearly states the scale and pace of greenhouse gas emissions reductions must accelerate. Reducing emissions requires far reaching transformative change across the whole economy, including in agriculture. Ireland's greenhouse gas emissions profile – with over one-third of emissions coming from agriculture – is particularly challenging. Ireland must also maximise the use of land as carbon stores, for example through grasslands, wetlands and forestry, to meet targets. These requirements must be balanced in the NAP with a need to ensure sustainable agriculture in Ireland.

Other chapters in the SOER2020 further address the pressures that agriculture places on the environment including air quality (Chapter 3), land and soil (Chapter 5) and nature (Chapter 6).

These chapters should be consulted along with the related Key Messages prior to finalising the NAP and the SEA process.