

# Office of Environmental Protection Draft Strategy and Enforcement Policy

Response from National Parks England

16 March 2022

## 1. Introduction

1.1 National Parks England (NPE) exists to provide a collective voice for the nine English National Park Authorities and the Broads Authority. It is governed by the Chairs of the ten Authorities. Our response to the Office of Environmental Protection (OEP) consultation represents the collective view of officers who are working within the policies established by the National Park and Broads Authorities. Individual National Park Authorities and the Broads Authority may submit separate responses, which will draw on the specific issues for their area.

1.2 We welcome the arrival of the OEP, and the opportunity being provided to input into the development of its first strategy and enforcement policy. National Parks are established under the *National Parks and Access to the Countryside Act 1949*, and for the Broads, by the *Norfolk and Suffolk Broads Act 1988*. They are to represent our finest countryside and in more modern terms deliver a host of eco-system services over 10% of the country. Alongside Areas of Outstanding Natural Beauty (AONBs) this accounts for approximately 24.5% of the land area of England. The OEP's Mission to 'protect and improve' the environment has strong synergies with our own statutory purposes to 'conserve and enhance' these areas and we look forward to forging a close working relationship. We make some specific suggestions on how we might do this in Section 8 below.

1.3 We also welcome the recognition within the Foreword to the Strategy that the environment is crucial for health, prosperity, and wellbeing. We strongly support the commitment made by the Chair in the Foreword to act independently 'without fear or favour'.

1.4 We make some overarching comments first that are relevant to the organization as a whole rather than individual functions, objectives, or ways of working. Where included references to individual pages are to the pages in the draft strategy.

## 2. Integration and Prevention as guiding principles

2.1 Two very important principles that underpin environmental law and policy that are highly relevant to the functions of the OEP are that of environmental integration and adopting a preventative approach. Both were highlighted in the Government's consultation on [Environmental Principles and Governance after EU Exit](#). NPE would like to see more clearly how these principles will be translated into the priorities and programmes of the OEP. These are relevant to all four functions of the OEP.

2.2 Frequently environmental policy responses or legislation are proposed to address harm to the environment from a particular activity which is already underway. These end of pipe-solutions, whilst important, are reactive and often less efficient than were the environment to be properly considered up-stream in policy making. Our concern is that environmental law is often a response to a problem, so undue focus on environmental law risks prioritising end of pipe solutions too heavily (Page 15). This is also relevant where the OEP will be looking at consistency between different environmental laws. The

source of inconsistencies may be generated not by the environmental laws themselves, but by the societal or other policy decisions that gave rise to those environmental laws in the first place (page 27-28). This is then amplified by public bodies charged with implementing those environmental laws.

2.3 An example from the South Downs National Park illustrates the issue, though the principles raised by it will apply in many National Parks as well.

**Box 1 – An example of underlying problems facing environmental improvement in National Parks**

The state of rivers and aquifers in the South Downs National Park is poor and the condition of nearly half of the SSSIs within the boundary is unfavourable. This illustrates two problems. The first is that there is no requirement on other public bodies (In this case the Environment Agency and Natural England) to deliver a higher standard of protection within a protected landscape than elsewhere. The second is that the poor condition of these natural assets arises from a complex inter-connected set of factors including diffuse pollution from agriculture and highways, the changing economic status of livestock farming and the demands for water created by development. The solutions lie not just with stronger enforcement of environmental law but in a systems approach which addresses the resources and priorities of multiple organisations.

2.4 To better integrate environment improvement into policy and legislation earlier on we would recommend clarifying the following within the OEP Strategy:

- That the OEP will use its powers to proactively assess the potential impact on the environment of other legislation (eg. planning, transport) proposed by other government departments, not just environmental legislation per se (page 8);
- That the OEP move beyond providing advice to other government departments (not just Defra) to the establishment of formal mechanisms to ensure that the environmental implications of the work of OGDs can be robustly and regularly scrutinized, held to account and reported on (page 33); and
- Seeing the primary relationship in Parliament being with the Cross Departmental Environmental Audit Committee, as well as departmental specific Select Committees (pages 32-33).

### **3. Sustained Environmental Improvement – defining ‘goals’ (Strategic Objective 1)**

3.1 The Strategy helpfully includes a description for key terms used within it, expressions that are defined within the *Environment Act* 2021. These include definitions of the natural environment, environmental improvement plan, and targets. NPE believes that the final Strategy should include a definition for ‘Environmental Goals’ (page 10). These are included within the EiP yet are not clearly defined, making their monitoring, accomplishment and ultimately enforcement difficult. Including environmental goals is also important to avoid just focusing on issues that are solely quantitative in nature.

3.2 When the OEP critically assesses Government progress towards its ambitions, it is important that it can draw on international research/ comparators (page 12). This was something that the European Environment Agency, for example, was able to do very effectively thereby creating a driver for continuous improvement. This would help Ministers, Agencies, and the public better understand how progress in the UK can be benchmarked against international good practice. For this to happen, the OEP will need to build up links with relevant research, monitoring, and enforcement bodies abroad and should be resourced to do so. It should also be able to draw upon good practice examples from Wales and Scotland and share best practice.

#### **4. Better Environmental Law, Better Implemented (Strategic Objective 2)**

4.1 NPE welcomes Strategic Objective 2. We would seek clarification that the OEP is able (and would wish to proactively) draw on its monitoring and expertise to suggest the strengthening of existing environmental law, not just comment on new draft bills (page 14).

4.2 We also welcome reference in the draft Strategy that the OEP will make recommendations for the practical application of environmental law given it is not always legislation that is at fault or needs reform. The hybrid nature of National Park Authorities means we can contribute to national policy debates based on practical experience of what works on the ground. Based on this experience we think the 6 Ps (see below) could help when assessing whether environmental laws are achieving their desired purpose.

##### **Influencers on Outcomes**

<b>P's</b>	<b>Examples</b>
People	Is there sufficient understanding of the new law, are the people who need to implement it provided with the skills to enable this to happen?
Politics	Is there political leadership on the issue to ensure solutions are driven forward?
Processes	Are there robust processes in place to ensure the legislation can be implemented and monitored?
Pounds	Is there sufficient investment to enable the desired outcome to be achieved?
Partnerships	Are the partnerships in place to enable different bodies to work together coherently to deliver the intended goal?
Places	Is the objective sensitive to place and how this will be achieved in different geographies?

4.3 We welcome Strategic Objective 3 which aims to protect people and protect and improve the environment through improved compliance with environmental law (page 16). We welcome too, that the OEP will seek to enhance learning overall in terms of compliance promotion. The National Park Authorities work with a range of public bodies to achieve our statutory purposes. It may be that we can assist the OEP in sharing some of the learning from any early monitoring or enforcement that the OEP undertakes, where it relates to the landscape, wildlife, or heritage of our National Parks.

## **5. Resources need to be sufficient (Section 1.3)**

5.1 The consultation does not specifically ask about resources and NPE recognizes that the OEP is still in its infancy. We welcome the needs-based assessment that will be undertaken to assess the level of resources the OEP will require in the longer term to fulfil its statutory obligations. Without wishing to pre-empt that exercise we imagine even at this early stage that the OEP will need more resources to deliver its remit. It is vital that the OEP can undertake its activities without fear or favour, as advanced by the Chair. This commitment should not be constrained by lack of resources, in particular by hampering the OEP in scrutinizing the performance or undertaking enforcement activity of other public bodies because a lack of resource means it is over-reliant on those same bodies for expertise and data.

5.2 The Strategy explains that the allocation of resources against its four functions may change over time as requirements shift (Section 3.3). It will be important that the OEP has sufficient resources to achieve an effective minimum standard of performance in each area. This will be particularly the case when the Government is preparing its next Environmental Improvement Plan, so that at times when this is being prepared – ironically environmental enforcement isn't weakened due to a strain on OEP resources.

## **6. How we will prioritise – embedding a spatial dimension (Section 3.2)**

6.1 NPE welcomes the consideration given to prioritising the OEPs programmes, and the transparency with which this is to be achieved. We would like to explore with the OEP how this might be achieved spatially, as well as thematically. Multiple environmental issues interact in a given geographical space. Our National Parks and AONBs are no exception. They are designated to represent our finest countryside, and arguably should be places where environmental improvement is achieved most rapidly. It is not clear from the Government's 25 Year Environment Plan whether the Government shares this intention, or whether it has adopted a "improve everything everywhere" approach. Whilst we acknowledge that all environments are important for people, there could be a reasonable expectation that public bodies will work exceptionally hard to deliver improvement within some of our finest landscapes – namely our National Parks and AONBs.

## **7. How we will work with others – Agencies (Section 3.8)**

7.1 The Draft Strategy is clear that the OEP seeks to work closely with other public bodies, including those that it may take enforcement action on. This will be a tricky balancing act and will require mature relationships. But if the OEP is to add value, then it is important it holds those other agencies to account.

7.2 Several Memoranda of Understanding (MoU) are proposed. We believe an early agreement should be made with Natural England given the importance of clarity over monitoring and enforcement on nature related targets and those covering landscape. As just one example, Section 62 of the *National Parks and Access to the Countryside Act 1949* (as amended) places a duty on all public bodies to have regard to the purposes of National Parks when making decisions that might affect them. A similar duty exists for public bodies to have regard to the statutory purpose of AONBs. Monitoring of these duties has been poor in the past. We would like clarity on whether this will continue to be the responsibility of Natural England, or will the OEP have a role given that S.62 is a piece of environmental law, targeting public bodies?

7.3 We expect detailed discussions will already be underway with the Environment Agency given its significant existing enforcement role for the water environment. But we would add to the list:

- Forestry England (for example with regard to felling licenses) and
- Heritage England (given the inter-connect between cultural heritage and the natural environment).

7.4 Ensuring clarity of roles, powers and priorities between these different Agencies will be crucial for place-based organisations such as National Park Authorities as they rely on the combined actions of all of them to achieve environmental improvements within the National Parks.

## **8. How we will work with others – National Parks (Section 3.8)**

8.1 As highlighted above, the statutory purposes of National Parks were laid down in Parliament and apply to all public bodies. Scrutinising the degree to which these purposes are being furthered (or undermined) is therefore a very legitimate role for the OEP. We therefore wish the OEP every success in its work and welcome your intention to be a listening and learning organization. We believe that the knowledge and experience of National Parks may be helpful to the OEP. At this stage we think a formal agreement is unlikely to be needed. However, we would flag some areas where closer working/ engagement may be valuable:

- An annual meeting between the CEO and senior leadership team of the OEP with the CEOs of the National Parks to track trends and consider how the place-based experience of National Parks can provide insight to the OEP's work
- A discussion on how the OEP will inter-act with the Government's proposed national landscapes partnership, which will bring together National Parks, AONBs and National Trails, alongside Government
- The place of National Park Partnership Plans (statutory documents under the *Environment Act* 1995 that include commitments from multiple public bodies) and the targets therein, for achieving environmental improvement.

## **9. Objectivity, impartiality, proportionality, and transparency**

9.1 NPE welcomes the OEP's intentions regarding objectivity, impartiality, proportionality, and transparency which are befitting of a modern public body.

### **For further information**

Please contact Paul Hamblin, Senior Projects Officer via [paul.hamblin@nationalparksengland.org.uk](mailto:paul.hamblin@nationalparksengland.org.uk)