

Final Response to Bathing Waters Consultation - Dec 2024

As the National Governing Body for paddle sports, we welcome all efforts to improve the quality of the natural environment and protect the health of our community. While bathing waters should not become a prerequisite for a safe paddling experience, we warmly welcome all efforts to safeguard human health and give the public greater confidence in the quality of the water where they choose to enjoy their chosen activity.

(Questions 9/10): To what extent do you agree or disagree with the proposed removal of automatic de-designation from the Bathing Water Regulations 2013 for England and Wales?.

Paddle UK Agrees with the proposed removal of the automatic de-designation after 5 years from the Bathing Waters Regulations 2013. The current automatic de-designation process can hinder efforts to protect public health and act as a barrier to long term improvement by removing regulatory focus.

Paddle UK supports the OEP's assessment that the provision for automatic declassification is inflexible and may be counter-productive. Allowing up to five years to bring a site out of 'poor' status should not be used as a basis to delay improvements that could be applied over a shorter timescale. Furthermore, in some cases even five years may not be enough to identify, plan for and implement measures in the water industry sector, or elsewhere, to achieve the necessary improvements.

We believe that while it is reasonable to have legal provisions for declassification, as well as mechanisms for issuing short or long-term advice against bathing, the automatic declassification process undermines the objectives of the Bathing Water Regulations and the Water Framework Directive (WFD) by diminishing the motivation to achieve water quality standards. Such an outcome conflicts with the fundamental goal of improving water quality and safeguarding public health, especially in cases where remedial efforts are already underway or planned to meet these standards in the near future.

Paddle UK believes that removing automatic de-designation could help ensure a fairer, more balanced approach to water quality management. It would maintain accountability, protect public health, support communities, and align with environmental goals, while providing the flexibility needed to address site-specific challenges effectively.

Paddle UK recognises that the removal of automatic de-designation deadlines may risk allowing sites to remain 'poor' in perpetuity, without any incentive to solve the underlying issues. Therefore the removal of automatic de-designation must be replaced with a realistic and time bound plan that stakeholders can be held accountable to.

In the event that de-designation may be necessary, Paddle UK would strongly advocate for a transparent process allowing the community to understand the underlying issues that have caused it to fail. It would be important for Defra and the EA to provide an explanation on why the assessment criteria has not been met in the agreed timeframe.

Paddle UK also advocates for the introduction of an appeal process for de-designation decisions. This would allow new evidence to be considered without requiring a full reapplication, ensuring a more flexible and equitable approach to site designation.

Ultimately, where prolonged poor water quality leads to non-designation, the focus must be placed on identifying and holding polluters accountable for remediation, rather than simply discouraging public use.

Simply resolving to deter public use without addressing the root cause, fails both the public and the environment.

Paddle UK would encourage Defra to give consideration to the OEP's recommendation 11, to revisit the current approach to the declassification of bathing waters, which can result in successive 'poor' results leading to automatic declassification and loss of bathing water status even where improvements are in progress.

(Questions 11&12): To what extent do you agree or disagree that water quality, the feasibility to improve water quality to 'sufficient' standard, physical safety and environmental protections be considered before deciding whether to designate a site as a bathing water under the Bathing Water Regulations 2013 for England and Wales?

Paddle UK agrees that it could be reasonable for water quality, the feasibility of achieving a 'sufficient' standard, physical safety, and environmental protections to be considered when deciding whether to designate a site as a bathing water. However, we emphasise the need for transparency and clarity in how these factors will be assessed, scored, and balanced in the decision-making process. It is concerning that full details of the process and criteria by which such an assessment would be made are not included within this consultation.

Paddle UK believes it is reasonable for safety and environmental considerations, and feasibility to be reviewed as part of a pre application process (as the OEP cites as being successful in Germany). These assessments must however, be considered alongside proposed site management and improvement plans, so that good projects are not dismissed out of hand for not meeting the criteria.

With regards to the physical safety of a site, Paddle UK would want to understand the criteria upon which the Defra Bathing Waters Team would be making its assessments. We would express deep concern, should decisions related to safety be made without consultation with appropriate sector experts. Consultation with National Governing Bodies would allow for issues with an application to be properly assessed and sensible, practical mitigations considered.

Furthermore, given the potential for the definition of 'bathers' to be expanded, it would be important to acknowledge who the site is being assessed as safe for and what their particular needs are. As identified by the OEP, some countries around the world adopt a more flexible approach to setting standards for 'recreational waters' and different user group

types. We believe there is merit in Defra taking a closer look at how other countries assess waters, based on the type of user.

With regards to environmental considerations, again Paddle UK would want to understand the criteria by which suitability is being assessed. While we recognise the paramount importance of protecting the natural environment, it is important that a 'least restrictive approach' should be adopted and each site be assessed individually (rather than a 'one size fits all' methodology). In many cases, where potential environmental impact may be identified, practical mitigations can often be found.

Finally, Paddle UK would also express concern regarding who the burden of preparing any feasibility study would be borne by. Any requirement for a complex pre application feasibility study, would risk creating significant barriers for voluntary community groups, many of whom operate with limited resources.

(Q13): How should the public be notified that a site has been considered as a bathing water but not designated on the grounds that it is not feasible to improve water quality to a 'sufficient' standard?

- On site signage
- Notification on swimfo
- Notification on GOV.UK
- Notification on EA/NRW

Paddle UK would envisage all efforts are taken to secure new bathing waters, for any which are not, then full transparency is essential on why it is not feasible to improve water quality to 'sufficient' standard.

Paddle UK recognises it is important for the public to have relevant information to them available across relevant platforms to them. Efforts should also be focussed on providing real-time information for users.

(Q14&15): To what extent do you agree or disagree with the proposed increase in flexibility of Bathing Season dates prescribed in the Bathing Water Regulations 2013 for England and Wales?

Paddle UK strongly agrees with the proposal for there to be greater flexibility in bathing waters dates with the caveat that the monitoring period is not reduced as a result. We support the OEP view that the current approach is inflexible and out of step with how people use the water environment. We consider that an approach to bathing seasons that reflects public usage could help better protect public health. To that end, Paddle UK would welcome all year round testing to reflect the nature of participation in all water based sports.

Monitoring water quality during the current bathing season does not give a full picture on what is happening year-round at bathing sites. Meaning those entering a bathing water

classified as 'good' or 'excellent' out of season may be entering water that may not actually be that standard anymore.

The bathing water classification is calculated during the driest time of the year when CSO's generally discharge less frequently. Heavier rainfall during winter months means that untreated sewage is discharged more often via Combined Storm Overflows (CSO's).

In line with an extension to the testing regime, Pollution Risk Forecasts (PRF's) which only operate during the bathing season, should also be extended to operate all year.

Guidance on sampling practices and methodology should be kept under continuous review as innovative testing in this area continues to grow, to ensure best practice to protect public health is embraced, cost savings are made and steps closer to near real time testing become reality.

Q16. Are you content with the 9 proposed technical amendments listed above? *(required)*

Q17. Which of the 9 proposed technical amendments do you feel raises concerns or may have negative impact

Paddle UK has particular concerns with the following amendments:

- 2. Remove the requirement to take a sample to end short-term pollution (STP) events*
- 3. Remove the 7-day time limit in which a replacement sample under STP has to be taken*
- 4. Remove the requirement to take a pre-season sample*
- 8. Removing the requirement to replace samples during Abnormal Situations*
- 9. Amend regulation 5(1)(a) to specify a new target date by which all bathing waters should be classified as at least 'sufficient'*

Q18. *[If 'No' to Q16] What negative impacts do you foresee as a result of the technical amendment(s)?*

Paddle UK/CWSA do not foresee the need to reduce sampling as proposed in technical amendments 2,3,4 and 8 at a time when recreational users want to see greater protection of their health, more clarity and more transparency. Paddle UK would encourage the exploration of new technological advances in water quality testing to alleviate some of the challenges highlighted by the consultation in this area.

Paddle UK do not agree with a new target date by which all bathing waters should be classed at least 'sufficient' because this is allowing a missed target to be extended sending out the wrong message when the public are wanting to see the government, regulators and water companies to go further faster on this issue.

Questions on the Wider Reforms

(Q 27&28): To what extent do you agree or disagree that the government should pursue wider reform of the Bathing Water Regulations 2013 for England and Wales to include widening the definition of ‘bathers’?

Paddle UK strongly agrees that the government should pursue reform of the Bathing Water Regulations 2013 to widen the definition of ‘bathers’ to include other unpowered water sports such as canoeing, kayaking and paddleboarding. We think that this change should be applied now, rather than viewed as a matter of wider (and presumably later) reform.

Expanding the definition of ‘bathers’ to include water sports is a logical and necessary step to protect public health, reflect modern water use and encourage healthy living.

It is estimated that more than 7.5 million people participate in paddlesports each year in the UK. Canoeists, kayakers and paddleboarders come into direct contact with the water and at times, intentionally and unintentionally, can be immersed. The OEP report highlights research that shows that ‘impact immersion’ can present a heightened risk from ingestion of pathogens. It is known that certain groups of water users can just as equally suffer ill health effects when carrying out their activities, as swimmers.

It therefore makes little sense that activities which see people with a potential to be immersed, are excluded from consideration when it comes to pursuing the primary purpose of the designation, which is protecting public health.

Paddle UK does not advocate for bathing waters designation to ever be deemed a prerequisite for a safe paddling experience, however expanding the definition of ‘bathers’ at designated sites, will help to give greater confidence to recreational users.

Where Paddle UK would wish to express a degree of concern, is the impact that any widening of the definition of bathers could have on existing ‘access agreements’ / permissions in place at current designated sites.

It is our understanding that Bathing Water sites need to have landowner permission as part of the application process (this is discussed further in our response to Q32). Therefore, should the definition be expanded in future, permission that may already be in place at existing bathing water sites may need to be reviewed, renegotiated or, specify that it excludes other user types.

This could create a confusing picture for the public.

Should Defra pursue a widening of the definition of bathers, Paddle UK would encourage Defra to give further consideration to the issues and merits of adopting a ‘recreational water management’ approach, as seen in other parts of the world.

Paddle UK notes concerns raised by other stakeholders regarding the potential negative environmental impacts as a result of widening the definition to include other users. However, given the specific purpose of bathing water designation is to protect public health at sites already used by people – rather than to increase usage, or to introduce activity where

currently it is not already taking place, we feel that these concerns should not prevent other users of the water from being protected.

In summary, given the purpose of bathing water designation is protecting human health, we strongly support the OEP recommendation, that Defra consider not just those people whose express intention is to swim, but also those who have a greater likelihood of being immersed (such as paddlers or surfers) as well as other recreational users who may be exposed to polluted water.

(Q30&31): To what extent do you agree or disagree that the government should pursue wider reform of the Bathing Water Regulations 2013 for England and Wales to include the use of multiple monitoring points at bathing water sites?

Paddle UK would welcome the use of multiple monitoring points at bathing water sites to provide wider representation and greater transparency of the entire bathing water. In particular, additional monitoring points where there is a known source of pollution entering the bathing water, would be welcomed as these may pose a higher threat to public health.

Due to the nature of the sampling regime, where bacterial pollutants are measured through traditional lab-based microbiology culturing methods, monitoring relies on discrete spot-sampling at single locations on a weekly basis, at most.

This does not provide an accurate representation of the dynamic nature of water bodies such as rivers and coastlines, which are subject to multiple pollution inputs alongside other environmental variables which influence water quality.

Paddle UK supports the OEP view that *'a more flexible approach to determining the most representative sampling locations should be taken with an increase in the number of sample points on long stretches of identified areas; providing increased transparency and explanation of monitoring decisions so that people understand what is being done, when, how and why, also incorporating a response to cyanobacteria blooms'*

Paddle UK recognises that increasing the number and frequency of testing will place an increased burden on EA resources, at a time when they are already stretched. We therefore support the OEP recommendation that highlights the need for further research into new and emerging techniques to assess fecal indicator organisms, with nearer real-time applications.

(Q32) Please provide links to any relevant evidence that you have used to inform your views for this consultation. If there's anything else you'd like us to know or consider please add it here.

Public Rights of Way & Bathing Designation:

Beyond our coastal and estuarine waters, the 4500km of 'regulated' inland waters in England and Wales, where a clear statutory right of public access exists, broadly extends to include canals and a small number of major river navigations only.

Outside of the Lake District, access to lakes and reservoirs is very limited and primarily arranged under licence or permit for specified groups.

Places where people have a clear public right to be in or on the water are not distributed evenly across England and Wales. To that end, the present status quo with regards to access to inland waters limits opportunities for the public to use these areas for recreational activities like swimming or paddling.

Paddle UK understands that bathing water designated sites require public access to be granted by permission from the landowner upon application.

The very nature of permissive access means that access is not secured in perpetuity and therefore could be removed at the discretion of the landowner at any time.

Where access on and in the water at a designated bathing site is dependent upon the granting of permissive access and not secured in perpetuity, we see any major investment made by stakeholders into public amenity, facilities and capital improvements as risky and unprotected.

Where significant investment of time and money is being spent on improving public amenity, we believe that it is imperative this must be built upon a solid foundation of a clear right of access to, on and in the water, in perpetuity.

To our understanding, the only means access could be secured in perpetuity is by:

- Statutory Order (creation of a new PRN
- Dedication under S16 of the CRoW Act (2000)
- By an Access Order (REF 1949 National Parks & Access to the Countryside Act & Section 16 1968 Countryside Act – which defines inland waters within the definition of “open country”. I am not aware this has ever been used).

The permissive nature upon which bathing water sites are based is a potential weakness which Defra should look to address. A lack of clear and consistent rights of access should not be a barrier to protecting public health at sites popular with recreational users.

Other European nations, such as Germany, where bathing designations are far more prolific, do not share the challenges with public rights of access, given rights for recreation are extended to all inland waters.

To that end, Paddle UK believes that Defra should undertake a review of the wider question of access rights on inland waterways, particularly how the present status quo may present a barrier to future inland designations. In doing so, Defra should also review how landowner liability might be mitigated through reform. The Countryside and Rights of Way Act (2000) already provides a mechanism not only for dedicating access (securing it in perpetuity via S16), but also to limit landowner liability.

Requirement for 100 bathers:

Paddle UK supports the OEP view that Defra should base its identification of bathing waters on a properly representative assessment of current use and necessary protection of human health, rather than an arbitrary fixed number of bathers.

We would also encourage Defra to revisit the current bathing water application guidelines that exclude counting bathers on organised event days. It is on these occasions where the highest number of people may be exposed to pollution and increased risk of illness.

Paddle UK considers that an alternative approach to defining a 'large number of bathers' may be more appropriate than relying on a single numerical threshold.

Further to this, Paddle UK understands that bathing waters are primarily intended for sites where activity is already taking place. There may be popular locations around the country where activity is occurring, but fall short of the minimum threshold of 100 bathers per day during the bathing season.

Costs and new technology

Paddle UK recognises that there are likely to be cost implications arising from some of our responses given within this consultation, as well as from recommendations by the OEC, which we support. In particular, where we call for increased testing across the year and at multiple sites, we recognise this will increase the burden upon the EA.

The Clean Water Sports Alliance has been calling for the EA to be adequately funded and resourced to protect not only the environment but also human health. While we welcome the tightening of water sector regulation, it is imperative that the regulator is properly equipped to undertake its duties.

We strongly support the OEP recommendation that highlights the need for further research into new and emerging techniques to assess fetal indicator organisms with nearer real-time applications.

New Applications

New applications were put on hold in 2024. Paddle UK would like to see Defra reopen the application process at the earliest possible opportunity.