

Response to the  
8 Farming Rules for Water DEFRA Regulatory Review

**The Sustainable Soils Alliance (SSA) was launched in 2017 to address the current crisis in our soils. Its aim is to campaign to restore UK soils to health within one generation by seeing soil health elevated to where it belongs as a priority alongside clean air and clean water. The SSA is a non-profit organisation (CIC number 10802764).**

**1. To what extent (if at all) do you think the Farming Rules for Water have been effective in reducing nutrient pollution from agriculture?**

We remain concerned that so little data seems to have been gathered and/or made publicly available, about the implementation of the Farming Rules in terms of – awareness, behaviour change, incidents, prosecutions etc, that might act as proxies for their environmental impact. This makes it challenging to answer this question in any meaningful way.

However, the [continued decline in the health of our rivers](#), the result of both point and diffuse pollution, should be seen as a clear indicator that the existing regulatory framework is failing to ensure land managers are maintaining their soils – and are in urgent need of reform.

**2. What is your view about awareness of the rules among land managers?**

Again, without robust data (e.g. surveys), we don't have any tangible information to illustrate changing awareness of rules among land managers.

What is clear, however, is that the government is missing a number of opportunities to improve awareness and implementation of the rules – achieved via both dissemination and explanation. This is especially true of those relating to soil erosion (Rule 5), and the 'Reasonable Precautions' expected of farmers to comply with the legislation.

- Both the 1ha rule and 'reasonable precautions' are subjective and open to interpretation. They appear only in text format – many of the helpful diagrams and images are hidden within the accompanying long-format documents. Their impact could be enhanced by more detailed descriptions, infographics, visual case studies etc. This will help all stakeholders (including inspectors) identify and remedy soil erosion and loss before it gets too serious.
- Many of the fundamental messages about soil assessment and categorisation are not easily accessible, but hidden within an online hyperlinked paper-trail on the relevant DEFRA pages. They signpost a variety of supporting documents developed by 3<sup>rd</sup> party organisations that address different aspects of soil management and interpretation.
- These pages use language that blends expectations, advice and obligations – from one website to the next it isn't clear what is a requirement and what is best practice. This needs clarification. Specifically the 'Reasonable Precautions' need to be understood more widely as the fundamental building blocks of soil management, rather than simply actions taken by farmers to avoid regulatory interventions. Similar, sound

foundational advice is included in the [Guidance on How to do the SFI actions for soils](#), and the two need to be better integrated.

- To resonate with farmers, the rules must focus as much on the business case as the environmental rationale for better soil management. Degraded soil results in increased input costs, lower yields and productivity and increased vulnerability to climate change. Following last year's droughts, farmers will be particularly responsive to the message that healthy soils store more water.

To support the implementation of the fundamental building blocks of soil management referenced above, there is a clear role for a more universally-applicable approach to the assessment, interpretation and measurement of soil. A regulatory approach to this would add weight to existing tools and support their widespread uptake.

This should bridge the gap between the Farming Rules (which requires cultivated land to be tested for soil chemistry) and the SFI which pays farmers to test for soil organic matter. Mixed messages behind this dual approach is central to the confusion among farmers as to why they should measure their soils in the first place.

### ***3. Can the rules be improved to better meet the above aim of reducing nutrient concentrations in water and providing a proportionate baseline for all farmers?***

The above on a 'proportionate baseline' is extremely relevant – reflecting an increasingly urgent need for the Farming Rules to be more widely understood where farmers receive both public and private money for soil improvement measures. Again, the challenge here is to improve the rules' application, rather than the rules themselves.

**Public:** Through ELM, and specifically the SFI farmers receive public money for the delivery of public goods via the 3 SFI soil-specific actions. Neither the Treasury nor the public should accept payments going to farmers who are in breach of environmental regulations – or for public funds paying for measures that are required by law. The Rules should be embedded as a baseline of SFI payments – providing a clear demarcation of what can/can't be incentivised – using the polluter pays principle as a starting point.

However, awareness and enforcement of existing regulations are currently very low and an overly punitive model will dis-incentivise participation in SFI at this early stage. As a result, there is room for flexibility in how some of these rules – especially any new ones – are introduced. In some instances, ELM should be used as a transitional vehicle to advise and drive awareness/understanding of, and later compliance with these rules.

**Private:** The knowledge gap around soils is being filled by advocates of regenerative farming (from NGOs, advisors, industry), and the growing market in environmental services. This can be problematic because the advice provided is skewed towards biodiversity/carbon enhancement outcomes and one-size-fits-all practices, rather than overall soil health. It often blends technical with abstract knowledge, and favours overarching principles over context-specific management advice.

A widespread example is farmers adopting minimum tillage and direct drilling while ignoring compacted subsoils - leading to runoff and surface water flooding – and increased nutrient concentrations.

This is a good example of how/where the regulatory 'message' regarding soil erosion identification and prevention needs repeating to a new audience – 'progressive' farmers, the community of regenerative advocates and even rewilding/nature projects where fundamental issues (subsoil compaction) have not been resolved, and remedial cultivation to improve water infiltration is needed.

The rules should be employed as a proportionate baseline before soil enhancement should be considered and rewarded. Their inclusion as a pre-condition of any payments will be reassuring for all stakeholders:

- For food retailers/manufacturers, a regulatory baseline provides a level of quality assurance that is desirable for consumers.

- For private investors (soil carbon markets), a regulatory baseline ensures that the assets they are investing in are not being compromised by poor practices. This can be reflected in the legal additionality tests that schemes have to pass.

#### **4. *What is your view about compliance with the rules among land managers?***

The only evidence we have relating to compliance is connected with that enforcement (below).

#### **5. *Are there any gaps in the rules that are causing an impact on water quality?***

As we have previously said, the 8 FRfW rules are for water and were designed to achieve national compliance with the EU Water Framework Directive. Their impact on soil has always been a secondary consideration – essentially making soil health a by-product of water health. However, by neglecting soils and all the functions they deliver, water quality will be negatively affected.

The rules need to be understood in terms of overall soil health - with three critical outcomes in mind:

1. **Restoration** of damaged soils;
2. **Prevention** of damage and degradation occurring in the first place through the adoption of sound management principles and a widespread understanding of soil characteristics;
3. **Enhancement** of soils to maximise the services they deliver, especially soil carbon and biodiversity.

A range of policy mechanisms are available to achieve these outcomes – regulations, incentives, guidance, monitoring etc. These need to work in harmony with one another, and alongside other 3<sup>rd</sup> party drivers – assurance schemes, sustainable farming initiatives, advisory services, corporate support etc.

As it stands, the policy landscape is confusing. The demise of cross-compliance and the introduction of ELM and the farming rules for water means that there are both gaps and overlaps between different soil policies, and blurred lines between the outcomes they are trying to achieve.

As a result, the gaps are not so much in the Farming Rules but in the overarching legislative framework which fails to link the individual policy mechanisms or give soil the policy focus it needs. In the context of the government's ambition to reform farming regulation by 2027, we would like to explore and promote a more ambitious use and application of the rules-based approach to English soils - one that drives and connects all three outcomes listed above.

A soil-focused regulation would also send the clear message about soil's importance, and the need for it to be protected for its own sake – not just as precondition for payments, or because of its impact on other environmental indicators (water), as is currently the case.

#### **6. *What are your views on the current enforcement regime?***

Our knowledge of enforcement/inspections levels is drawn from 3<sup>rd</sup> party stakeholders' data, including that generated by the Environment Agency.

We understand that, since 2021 the EA has undertaken more than 7,000 farm inspections, resulting in over 11,400 improvement actions, but only one landowner has been successfully prosecuted under the Farming Rules for Water (although the EA says a number of investigations remain ongoing). 31% of farms inspected were unable to 'demonstrate adequate soil testing' under FRfW, and in 2022-23, 40% of farms were non-compliant with at least some of FRfW regulations. The Agency now has a target of inspecting 4000 farms per year (4% of all farms).

Analysis by Salmon & Trout Conservation UK (now WildFish) revealed that farmers can expect to receive an inspection from the regulator just once every 263 years, and despite the recruitment in 2022 of 50 new

agriculture regulatory inspection officers, the regularity of inspections increases to only once every 50 years (River Action UK).

This level of inspection is clearly inadequate, and we agree with the [final report](#) from Parliament's EFRA Committee Inquiry into Soil Health which stated (p.42): "*visiting just 4% of farms every year will not act as a deterrent to bad actors, nor help the farmers that could benefit from the "supportive" approach*".

Whilst we are supportive in general of the EA's preventative/advice-led approach (improvement actions) when it comes to soil erosion (Rule 5), the [recent judicial](#) review granted by the High Court into how the Environment Agency (EA) has allegedly failed to protect the River Wye from agricultural pollution is indicative of the need for more stringent interventions in areas of critical need. A [study](#) by Lancaster University published in May 2022 found 60-70% of the river's phosphorus now comes from agriculture - 3,000 tonnes of it are entering the river every year.

A good example is [The Angling Trust's](#) first annual Water Quality Monitoring Network (published this year) which demonstrated that 83% of English rivers have evidence of high pollution from sewage and agriculture – but was unable to distinguish them. [Analysis](#) of Environment Agency data found that pollution from agriculture affects 40 percent of Britain's rivers and lakes compared with 36 per cent that are damaged through pollution from untreated wastewater run-offs.

More of this type of research is needed to understand the effectiveness of the rules – and specifically the ability to disaggregate nutrient pollution from farming, and that from water companies. This would be key to identifying those areas where regulatory intervention is most needed. The Environment Agency told the 2023 EFRA Committee that they 'focus on farms most at risk of impacting protected areas', investigating 10% of fields 'if time allows'.

Finally on the enforcement regime, we would like to highlight a lack of transparency about how inspectors are assigned around the country and how regulations are enforced, specifically the circumstances or protocols that might lead inspectors to take an advice-led approach, and what action (or lack of action) might trigger stricter penalties (fines). A [2018 report](#) by the Rivers Trust, WWF and the Angling Trust estimated that the cost of enforcing existing legislation for agriculture would be as little as £6m a year.

### ***7. Any further points – or indeed identification of any questions Defra is not asking but ought to be.***

**Point 1: Whether the Farming Rules Adequately Protect Soils:** As explained above, the Farming Rules for Water represent the only regulatory mechanism available for the protection of English soils. The question that needs to be asked is a) whether they provide adequate nationwide soil protection as they are, or b) whether a new policy instrument is needed.

We have outlined how the protection of English soils might be enhanced through the optimisation of the Farming Rules, rather than necessitating statutory change. This reflects the need for urgent action, and the current absence of political ambition for soils (the renegeing on a promise for a Soil Health Action Plan for England).

However, a dedicated soil protection policy, enshrined in statute, would enhance these protections – both by filling the existing regulatory gaps and putting long-term soil health on a firmer statutory footing, e.g. by:

#### *Filling Regulatory Gaps*

- o In parts of the country, wind erosion is an important cause of soil loss. This is not covered by the Farming Rules for Water.
- o Some soil damage is caused by water, however because the results of the erosion do not enter watercourses, the EA's ability to intervene using the 8FR as a justification is limited.
- o Circumvent disjointed jurisdiction, where the same runoff may be the responsibility of different government agencies according to where it reaches.
- o Other soil functions (soil carbon storage, biodiversity) are not covered by existing protections.

### *Long Term protection*

- o Securing long term nationwide soil health investment.
- o Holding the government to account for proxy soil outcomes over and above its commitment to ensure 60% of agricultural soils are sustainably managed by 2030.
- o Extending the remit of the 8FRfW and enforcement agencies to regulate other critical players – e.g. the food supply chain.
- o Establish a dynamic instrument – against which to evaluate progress and the need to review on a regular basis.
- o A mechanism to extend soils protection beyond farming to other areas where they are threatened (construction etc.).

**Point 2: Impact on the Food Supply Chain:** Any new regulatory approach should be created in a way that explicitly recognises the role and responsibility of the food supply industry. Supply chain contractual pressures are one of the major drivers of soil and water degradation. Indeed, Environment Agency inspectors report informally of farmers knowingly damaging their soils (e.g. harvesting in wet weather) because they fear breaching the delivery terms of a customer agreement.

Research carried out by the Sustainable Soils Alliance in 2021 revealed that the Farming Rules for Water are not reflected in contractual relations between farmers and their clients. Defra (via the Environment Agency) needs to better understand these pressures through the enforcement and communication of the Farming Rules, and identify mechanisms to help safeguard farmers against undue pressure. Protecting and improving soils comes at a cost, and with a degree of risk for farmers which their customers should help them share. Note that the Certification schemes (LEAF, Red Tractor) can help drive a consistent and transparent approach, but should not be used as a substitute for regulation.

As well as delivering for soil health, such a regulatory approach should be seen as beneficial for farmers, giving them peace of mind, clarity and confidence in a clear, consistent and fair system. It should be presented as a source of support, not a bureaucratic/financial burden for farmers – helping them engage with their customers, bring down costs, unlock economic benefits, overcome fragmented/contradictory advice and generate usable data.