

# Implementing ELD in the UK

Progress towards implementation

# Where are we now?

- First consultation closed February 2007
- Implementation deadline April 2007
- EFRA hearing summer 2007
- Second consultation launched February 2008 with draft regulations, IA and draft guidance
- Regulations should be made around December 2008

# Particular areas of controversy

- Whether to extend protection to nationally protected biodiversity
- 'Permit' and 'state of the art' defences
- Extension of strict liability beyond annex III

# Headline decisions

- Extension to SSSIs
- No extension of strict liability
- Joint and several liability
- Adoption of all defences
- Retention of all existing legislation
- Application of the regulations only to damage caused by incidents after the coming into force date.

# Extension to SSSIs

- ELD applies to all EC listed species and habitats
- Conservation status test applies outside SSSIs
- ELD will also apply within SSSIs, where site integrity test will apply to all EC listed species and habitats and to all species and habitats notified under the Wildlife and Countryside Act 1981

# Remediation package

- For water and biodiversity damage, remediation will be a package
- Objective of the package is to achieve the same level of natural resource or services as if the damage had not occurred
- Package will include combination of primary and complementary, together with compensatory remediation to compensate for interim losses.

# Land damage

- No complementary or compensatory remediation
- Remediation consists of removal and control of relevant contaminants 'as a minimum'
- Damage assessed with reference to current or approved future use
- Remediation assessed with reference to wider criteria?

# Other features of the regulations

- Separate enforcing authorities to align with existing responsibilities
- Water damage threshold links to quality standards under the Water Framework Directive
- Operators must take steps to prevent or contain damage based on the likely level of damage

# Further features of the regulations

- Determination of responsible operator by enforcing authority.
- ‘defences’ such as the permit defence to be decided before service of a remediation notice
- Contents of remediation notice to be decided by enforcing authority with option for operator to propose measures

# Further features of the regulations

- Interested parties such as NGOs can request action
- Thresholds of damage for species and habitats in Schedule 1
- Permits capable of qualifying for the permit defence in Schedule 3
- Remediation package described in Schedule 4

# Next steps

- Consultation closes on 27<sup>th</sup> May
- Comments on regulations, guidance and IA are invited
- Analysis of consultation responses will be published
- Further drafting of regulations and guidance during the summer