

# Response to the SEPA/EA Consultation on the Draft Second Cycle River Basin Management Plan.

From the Scottish Environment LINK  
Freshwater Taskforce

June 2015



The LINK Freshwater Task Force welcomes the opportunity to respond to the draft second cycle River Basin Management Plan for Scotland (RBMP), for which LINK is grateful. The consultation document asks a series of questions, and these are answered below. However, we first make some general comments.

It is unfortunately not clear from the consultation document what has and has not been achieved during the first 6-year RBMP cycle, and we feel this is needed to set in clearer context your future plans. We would like to see the missing information spelled-out in the final plan, using classification data from 2008 and 2014. The comparison will inevitably be complicated by changes to the waterbody network and classification scheme, but it should be possible to also indicate what effect these changes have had.

It is welcome that the consultation starts to recognise the special requirements of Natura and 'protected' areas, but those of wetlands require more consideration in section 4 on physical condition.

The Solway-Tweed area includes a relatively small number of estuarine and coastal waterbodies, but it is welcome that the current pollution problems and remedial measures proposed for several of these are detailed at an individual waterbody level.

However, as with Scotland's Second River Basin Management Plan, **we believe that this consultation fails to meet several requirements of the WFD:**

- Article 11 states that "*Each programme of measures shall include the 'basic' measures specified in paragraph 3 and, where necessary, 'supplementary' measures*" and that "*Basic measures' are the minimum requirements to be complied with...*" [to achieve at least good status/good ecological potential of

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all water bodies by 2027]. None of the scenarios presented will meet these conditions for all water bodies.

- Article 4, paragraph 5, outlines the conditions which must be met for less stringent targets to be justified. The consultation does not provide adequate information about the criteria used to set less stringent targets so it is unclear if the WFD conditions have been met.
- Article 14, paragraph 1 (c) states Member States must make available for comments to the public "*draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers*". SEPA and Environment Agency have only consulted on potential scenarios and the public will have no opportunity to know the actual level of ambition of the plans before they are published.

The river basin management plan is mainly river-focussed with little detail about measures to improve groundwater, and it fails to adequately consider the aim of the WFD to "*prevent further deterioration and protect and enhance the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems*".

## **Q1. Do you agree with the long-term level of ambition proposed for water bodies and protected areas?**

It is difficult to comment on the long-term level of ambition without knowing which scenarios will be taken forward. However, we are disappointed with the general level of ambition exhibited in the potential scenarios proposed. We believe that delivery of protected area objectives should be a priority, however this does not appear to be the case. The EA 'Scenario 4' and SEPA 'Step Change 2' ambitions used to illustrate possible future improvements, are still inadequate to fully meet the aims of the Water Framework Directive (WFD) by 2027.

However, they are presented as the best which is likely to be feasible.

The introduction of the somewhat limited 'scenario 5' for England, as a 2021 'stepping stone', rather clouds the long-term position, as we suspect that moving from 'scenario 5' in 2021 to the projected 'scenario 4' outcome by 2027 is not feasible.

## **Q2. Do you agree the correct approaches have been identified for:**

### **2.1 Rural diffuse pollution**

Recognition of problems caused by rural septic tanks is welcomed. It is agreed that more first time sewerage and action by householders is required, and must be delivered within a reasonable timescale.

In respect of other pollution arising from land use, excessive run-off of both bacteria and nutrients is recognised as a problem requiring engagement with,

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and action by land-owners and tenants. The key to achieving success in this is to have substantial, compelling evidence derived from environmental monitoring to convince the land managers that they are both responsible for, and able to correct, the pollution problems that they have caused. We are pleased to see that the polluting effect of waters draining from Scotland, on an English protected area, are recognised and highlight the need for concerted and consistent cross-border improvement programmes. Specific recognition of the problem of bacterial pollution from farm animals is particularly welcomed as this source of pollution must be curbed.

The 2013 'Current Condition and Challenges for the Future' report has shown that the course of environmental improvements is not always as smooth as hoped when plans are laid. For this reason it is clear that the actions specified as part of 'Scenario 4' must be followed so that there is time to adjust the actions in place if they are found to be not delivering the desired outcomes.

In the English area of the catchment, there has been overreliance on voluntary measures, which have not always proved sufficient. In such cases, it may be necessary to improve legislator powers to secure change.

## **2.2 Urban diffuse source pollution**

The consultation document correctly identifies that the scope of urban diffuse source pollution is still (as in 2009), inadequately characterised due to lack of monitoring data. The actions identified in the consultation document are required. They must be pursued in a timely manner to ensure that better progress is now achieved. It is disappointing that more was not achieved during the first plan cycle.

Sustainable Drainage Systems must be considered a vital part of dealing with urban diffuse pollution and sustainable drainage systems should be designed and managed to achieve multiple benefits such as biodiversity.

## **2.3 Physical condition of the water environment**

The 'Scenario 4' improvement proposals identified in the consultation appear reasonable, but continuing monitoring will be required to demonstrate that the anticipated ecological improvements are being delivered. Some positive steps are proposed, including a more coordinated partnership approach, new regulatory powers for SEPA and expanding the role of the Water Environment Fund to maximise impacts of improvements. However, SEPA must provide clear leadership and facilitate development of partnerships and projects and it is unclear if they will have the resources required to do so. The prioritisation process must not be used to justify lack of delivery in 'lower priority' water

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bodies and presence of protected areas must be a key consideration in the prioritisation process.

Short term, cheaper measures should not be prioritised in preference to long term larger improvement projects such as river restoration and habitat creation simply because they are quick fixes. Prioritisation decisions should be based on full cost-benefit analysis including monetised and non-monetised ecosystem services.

Site Improvement Plans published by Natural England for the River Eden SAC and River Tweed SAC outline some actions required to address physical modifications. However specific measures to address issues and where the funding will come from is unclear.

#### **2.4 Barriers to fish movement**

The consultation document identifies that barrier removal in England has made very much more progress than in Scotland. The proposed 'scenario 4/step change 2' further improvements, also taking into account potential impacts of climate change and continuing easement of barriers to eel and fish movement are agreed. Given the complexity of dealing with fish barriers and the time required to identify where action is required, engage with the relevant parties and carry out restoration work, SEPA/EA must opt for the most ambitious scenario if they are to stand a chance of meeting objectives by 2027.

It is welcome that the potential need for new barriers to prevent the further spread of North American signal crayfish is also recognised.

#### **2.5 Flows and levels**

Abstraction is presented as a relatively small problem in the English part of the area, and it is not indicated if the changes recently made to abstraction consents in the Eden catchment are anticipated to deliver the required ecological improvements. LINK believes that the plan to have all affected waterbodies up to 'good' status by 2027 should be implemented.

#### **2.6 Invasive non-native species (INNS)**

Recognition of the need for concerted, including EU, action to prevent or minimise the further spread of INNS is agreed. We agree with the plans outlined on p37 of the consultation, but there needs to be more awareness and education of the wider population about the threats posed by INNS, and actions they can take (or avoid!) to prevent further spread.

Although we agree that it is vital that strong biosecurity measures are put in place for those water bodies at risk of deterioration it is also important that we do not simply do nothing for those water bodies currently failing for INNS even if achievement of "Good" is not possible. It is important that the spread of INNS in these water bodies is reduced as much as possible to stop them from spreading

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up or down the catchment and into other catchments and also to eradicate them from any protected areas if possible.

The Scottish Government have a wide range of legislation predominantly laid out in the Wildlife and Natural Environment Act (2011) (e.g. species control orders and ban on sale) which could be used much more effectively than currently in order to help manage INNS in Scotland. It is important that INNS are tackled robustly through the RBMP process, not only for species that are directly causing water body failures, but to improve general health of water bodies.

Scottish options:

**Q3 For the Scottish scenarios outlined, which do you think strikes the most appropriate balance between effort and feasibility in addressing:**

### **3.1 Rural diffuse pollution**

Step change 2. Recognition of problems caused by rural septic tanks is welcomed. It is agreed that more first time sewerage and action by householders is required, and must be delivered within a reasonable timescale. In respect of other pollution arising from land use, excessive run-off of both bacteria and nutrients is recognised as a problem requiring engagement with, and action by land-owners and tenants. The key to achieving success in this is to have substantial, compelling evidence derived from environmental monitoring to convince the land managers that they are both responsible for, and able to correct, the pollution problems that they have caused. The box on p16 of the consultation does cover the sort of actions required. Rather than just stating 'engagement', point three should emphasise the need for 'continuing engagement' - experience has shown that it is necessary to check what they're doing and continue to provide updated environmental information to the land managers to show what effects their actions are having, both positive and negative.

The 2013 'CCCF' report has shown that the course of environmental improvements is not always as smooth as hoped when plans are laid. For this reason it is clear that the actions specified as part of 'Step change 2' must be followed so that there is time to adjust the actions in place if they are found to be not delivering the desired outcomes.

### **3.2 Physical condition of the water environment**

LINK has recently responded to a Scottish Government consultation on this issue ([Improvement of the Physical Condition of Scotland's Water Environment »](#)). This generally welcomes the proposed initiatives and new legislation. It is also concerned that there is insufficient consideration of the specific physical needs of ecologically healthy wetlands and coastlines. Both of these are required to meet WFD aims.

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### **3.3 Barriers to fish movement**

In respect of Scotland, for all three pressures, it is only the 'Step Change 2' scenario which comes anywhere close to achieving the objectives of the WFD, and this is therefore clearly the most favoured option. Anything less would be inadequate.

### **3.4 Acidification**

The consultation suggests that only 4 of the 24 affected downgraded waterbodies are expected to meet good standard by 2027. International and national controls on emissions are mentioned as the means of affecting improvements, but as yet these are not adequately seeking to reduce nitrogenous emissions from agriculture and diesel engines, which are afflicting air quality as well as increasing the acidity of precipitation and dry deposition. More effort is needed to minimise these emissions.

### **3.5 Annex 1a: HMWB changes**

The proposed changes appear reasonable. The HMWB provisions of the WFD exist for good reason, and it is recognised as likely that waterbodies which do and don't meet the necessary criteria will change as more information becomes available, and factors including technical progress, which affect affordability and feasibility, change.

English options (based on annex 2):

#### **Q4 Do you have any comments on the scenarios for England and how they have been produced?**

LINK recognises the funding challenge, and agrees with the funding hierarchy presented. Voluntary groups are mentioned, and the important part they could potentially play as a source of relatively cheap labour must not be passed by, as recognised in scenario 5. The proposals are not unreasonable, but the crystal ball of the future is inevitably cloudy, and even the tacit assumption of continued membership of the EU cannot be guaranteed. Net present value (NPV) projections over 37 years are inevitably subject to enormous uncertainty. The economic analysis is likely to underestimate benefits as many of these, including reduced treatment costs and benefits to ecosystem services such as flood management and carbon storage, have been excluded from the analysis. It is alarming that the current chemical status of waters cannot be assessed due to paucity of environmental monitoring information on potential pollutants including mercury, PAH and flame retardants, whose threat and presence has been well-known for decades. Without this basic information, it is inevitable that the cost and mechanisms required to achieve compliance are uncertain. Action, especially international controls on manufacture, usage and disposal methods

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(as are already being developed for some substances) need to be pursued with urgency.

There are huge benefits to the economy and society that could be obtained through delivery of Scenario 4 and the Government and Treasury need to acknowledge these benefits and adequately resource delivery.

**Q5 How could scenario 5 be developed to present a preferred option for the impact assessment?**

Scenario 5 makes no attempt to integrate the polluter pays principle into delivery costs and this scenario relies more heavily on public money. It relies heavily on voluntary measures, which have had limited impact thus far. Public spending should be based on the public benefit. The substantial decrease in achieving good status nationally from scenario 4 to scenario 5 is unacceptable. Scenario 5 fails to deliver best value for people or the environment. Therefore, we question whether Scenario 5 as it currently stands complies with WFD requirements.

Scenario 4 offers the best cost to benefit ratio and the best use of public money. With the spending proposed for Scenario 5 we cannot see how it could be developed in order to present a preferred option. In addition, by manipulating scenario 5 after public consultation it will not have been assessed against the other scenarios, and this is unacceptable.

Changes within the river basin district:

**Q6 Do you agree with the proposed changes to the river basin district and catchment, water body boundaries and artificial and heavily modified water body designations?**

It is noted that the EA is deleting small (<10 km<sup>2</sup>) waterbodies, in a move which will bring it into line with EU guidance, Scotland and many other countries. In general, the RBMP process does not adequately represent the health of smaller water bodies and the current revision renders it less able to do so. Considering many headwaters and coastal waters are considered "small water bodies" these valuable habitats become even more under represented than previously. We accept many of the monitoring methodologies and assessment tools may be inappropriate for dealing with these. However, given their importance, especially those that feed into protected areas and the high number of wetland species that are associated with them, it is important to ensure that we find a way of monitoring, reporting and improving the health of these important habitats.

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Criterion 5.1 of the UK TAG guidance sets out how a smaller water body might be designated, however, this does not seem to have been considered.

We believe that an exercise needs to be undertaken to consider which water bodies should be represented as part of a wider system. Decisions on designation should be based on ecologically appropriate criteria, and not just size. The RBMP process needs to be able to identify the most appropriate solutions to restore or prevent the loss or degradation of ecologically important smaller water bodies and there is no evidence that any provision has been made for this.

The HMWB provisions of the WFD exist for good reason, and it is recognised as likely that waterbodies which do and don't meet the necessary criteria will change as more information becomes available, and factors including technical progress, which affect affordability and feasibility, change.

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