# Response to the SEPA Consultation on the Draft Second Cycle River Basin Management Plan for Scotland

## from the Scottish Environment LINK Freshwater Taskforce

## March 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 about what is and isn't covered by the consultation document.

Prime concerns include:

- The consultation generally lacks transparency on the information used to inform the step change scenarios.
- The RBMP shows a complete lack of ambition, such that even in 2027, the aim of the WFD to bring all waters to at least good status will not be met. We do not believe the current explanation for this lack of ambition to be adequate. The plan needs to be more ambitious, with clear explanations where good status is not planned to be met.
- Lack of consideration of Scotland's biodiversity targets. These targets together with Natura 2000 sites merit further attention and should be considered when deciding upon measures to be undertaken.
- Incomplete consideration of both benefits and full costs of the proposals. Decision making must be based on full cost benefit analysis, inclusive of monetised and non-monetised ecosystem services. A breakdown of the economic analysis including how the costs within the consultation were reached should be provided either in the plan or somewhere accessible.
- The draft RBMP over-concentrates on rivers relative to lochs, tidal waters and groundwaters. The RBMP needs to include summaries, objectives and measures relevant to achieving good status for each of these water types.

**Introduction**

The 2013 characterisation report warned that the first cycle improvement plans were unlikely to be met. The RBMP fails to follow up on this and does not indicate what has or hasn't been achieved during the last 6 years. It would be useful to see where most improvements have been made, and which types of problem have proved to be most intractable and may require a different approach. This is not the only unexplained discontinuity relative to the 2009 plan. Another is the change in the number of waterbodies (WB) in Scotland. This

is presumably mainly due to the splitting of previous WB, rather than the creation of new waters. However, some information on the reasons why this has been done, and the extent of the changes, should have been included. It does raise the question of whether the number of WB, or their length/area is the better indicator of long-term status changes.

A further discontinuity arises from the classification schemes used. A year ago, there was consultation on proposed revised WFD quality standards, which have since been implemented. These were predicted to result in an overall upgrading to good or better of a net 9% of river waterbodies (WB), and 8% of lake WB (although at least one consultee, based on extensive knowledge and experience, did question this anticipated outcome). It is therefore disappointing that the draft RBMP does not include information showing the actual difference that the change in classification standards has had on measured quality outcomes. This would be done by simply classifying all WB using the two different classification standards on the same set of monitoring data. It is necessary to know the extent to which recorded changes since 2008 are due to real environmental quality changes, or the change in classification standards. The draft plan is totally silent on this important issue.

The purpose of the Water Framework Directive (WFD) is the protection and improvement of water quality such that all waters are of at least 'good' status at the latest by 15 years after the date of entry into force of the Directive, ie 2027. In addition specific standards and objectives for all 'protected areas' (such as bathing waters and Natura 2000 sites), are complied with by the same date[1]. The stated aims of the first cycle RBMP fell short of this target, and the draft second cycle plan appears to be aiming to achieve even less. It is appreciated that achievement of the WFD aim is subject to practical and financial constraints, but the low ambition of the draft second cycle plan is nevertheless disappointing.

We believe that there are a number of other ways which this consultation fails to follow the requirements of the WFD:

- We have only been given a four month consultation period rather than the six months specified by Article 14 of the WFD.
- We do not believe that the draft RBMP proposes an adequate set of basic measures to meet Article 11 of the Directive that "*each programme of measures shall include the 'basic' measures specified in paragraph 3 and, where necessary, 'supplementary' measures*", where 'basic measures' are the minimum requirements to be complied with [to achieve GES of all water bodies by 2027]. None of the scenarios proposed are ambitious enough to meet this minimum requirement.
- We would like to see the criteria used to determine when less stringent targets are put forward, with information to be available at water body level on why less stringent targets are proposed, and the evidence to support these decisions.

Although there is mention that measures to achieve GES will contribute to achieving Scotland's Biodiversity 2020 targets, there is little evidence within the

consultation (or SEPA's individual WB data-sheets) that situations have been identified where priority water dependent species or habitats are present, especially outside SSSIs, let alone the role that the RBMP could have. Not only do the RBMP objectives not appear to be influenced by the presence of priority habitats or species, there does not appear to be any way in which they would affect the relative importance that is placed on the measures. Assuming that whatever choice is made resources will be limited, it will be vital to target effort where the most additional benefits exist or where the risks of delaying action are greatest. This requires a consideration of the distribution of priority species and habitats and the opportunities for re-creation/restoration. The method for identifying priority rivers described in the RBMP does value naturalness, but does not appear to consider the rarity of the river type or the species assemblage it contains. This approach risks prioritising those rivers that have retained a high degree of naturalness on account of not having caused any problems and ignoring those that represent a very rare habitat type or a rare species assemblage but whose location or dynamic nature has rendered them more susceptible to modification over time. We believe this to be an important failure of the current draft RBMP.

Where costs are given, they appear to be only the financial costs accruing to SEPA, not the total costs and benefits. We are disappointed that a full cost benefit analysis was not made. An ecosystem services approach to cost benefit analysis should have been carried out to determine the best measures to take forward. This would give a more balanced approach to the consultation rather than simply giving the costs to SEPA. Measures to improve water quality can provide improved amenity, recreation, health and well-being objectives as well as flood alleviation, carbon sequestration and valuable wildlife habitat. It is hugely important that such overall benefits are not lost in the drive to find the cheapest solution to a specific issue. It is vital that those delivering the measures look at how delivery can optimise on multiple benefits including biodiversity and social benefits.

We are disappointed that the consultation concentrates mainly on river water bodies, with little mention of lakes, even less of groundwater and transitional and coastal waterbodies. In addition there is no mention of the connection of these water bodies to their surrounding habitat. One of aims of the WFD is 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*"[1]. We believe that this wider remit has been lost with over-representation within the RBMP on improving river water quality only. Article 5 of Annex VII of the WFD stipulates that RBMP must provide a list of the environmental objectives for surface waters, groundwaters and protected areas. The latter two are lacking from this consultation.

[1] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060

Coastal waters are both economically and environmentally important to Scotland, and the waters theoretically protected by the WFD abut those subject to the requirements of the Marine Strategy Framework Directive (MSFD). We are therefore disappointed that it is not clear where or even if the measures being considered will assist towards MSFD goals. Passive improvement is not in the spirit of the Directives and we believe that the RBMP needs to make clear which measures will be assisting towards MSFD compliance.

If we end up with a scenario that defers the implementation of cost effective measures beyond 2021 on the grounds of affordability, and therefore extends the deadline for meeting Good Ecological Status (GES)/Good Ecological Potential (GEP) to 2027, the RBMP must set out the measures that will be needed to deliver GES/GEP post 2021 and a clear explanation of how the affordability barrier will be tackled. This is particularly important as we would expect the cost of addressing many causes of failure will be significantly greater if there is no action taken during the next cycle.

Turning then to the specific questions raised:

## Rural diffuse pollution

**Q1. Which scenario do you consider to strike the appropriate balance between effort and feasibility in addressing rural diffuse pollution?**

Rural diffuse pollution has for many years been known to be the main water quality problem over large areas of Scotland. The primary methods of achieving improvements are also well known. The RBMP stated cost of implementing these improvement measures is significantly less than that of correcting physical condition downgradings. The improvements arising from the proposed 'step change' options are expressed in terms of numbers of 'priority catchments', 'focus areas' and, importantly, protected areas, rather than as WB numbers or length/area, but the RBMP indicates that the step change 2 option is feasible and "would more clearly fulfil our commitment to achieve good status by 2027." The relevance of this form of pollution to the improvement of downgraded 'protected areas' adds further to the good cost-effectiveness of the proposed 'Step change 2' actions. The Baseline scenario would fail to meet WFD objectives and is therefore not a valid option.

If ecosystem benefits were included in the assessment, we would expect that the cost benefit ratio of step change 2 would be greater than either of the other scenarios. It is therefore unfortunate that we are only presented with the costs. There is also no indication of what the costs of inaction would be. Thus for example, if only the baseline scenario were followed, would there be continued costs on Scottish Water for treating water; for farmers arising from continued leaching of nutrients from their soils; or for SEPA for continuing warning signage at failing bathing waters?

LINK therefore believes that as a minimum the 'Step Change 2 Scenario' should be followed. Even this will not achieve good status for all waters by 2027.

## Other water quality pressures

**Q2. Do you agree with the general approach for managing the other pressures on water quality?**

The key role of Sustainable Drainage Systems (SuDS) for new developments in preventing the further contamination and deterioration of urban watercourses should be highlighted in this section. The gains to be made through retrofitting SuDS designed to deliver and optimise multiple benefits should also be considered. Urban watercourses can be crucial for local wildlife, recreation and flood prevention corridors, and these benefits should be emphasised. The RSPB and WWT have produced guidance on designing and managing SuDS for people and wildlife[2]. WFD projects could include retrofitting SuDS into schools which would also offer children a connection to nature even in the most urban of environments.

In respect of toxic substances and persistent potential pollutants in general, much has been achieved through international assessment and environmental work, and controls on production and usage. This will no doubt continue and, along with the broad approach proposed for finding and reducing threats posed in Scotland, is supported. The toxin contamination problems found do emphasise the need to maintain adequate monitoring of both potential sources, and our environment, and also the following-up of adverse ecosystem findings at sites not subject to the full rigour of comprehensive chemicals monitoring. The RBMP should also commit SEPA to using the 'Scottish Pollutant Release Inventory' returns, which are made by all relevant industries, to monitor chemicals which may pose a threat to ecosystems and human health.

## Improving the physical condition of the water environment

**Q3. Which scenario do you consider to strike the appropriate balance between effort and feasibility in improving the physical condition of the water environment?**

We believe priority should be given to projects which achieve a significant long term change to the physical condition of water bodies including reconnection to surrounding habitat and re-meandering rivers. Action should not simply be taken for the easiest solutions, such as barrier removal, as this offers little additional benefit as opposed to habitat recreation projects. The baseline is not a satisfactory option and Scotland would risk being in breach of WFD if such an option was the one taken forward. We do understand the challenges of the other two options. It is again disappointing that the full benefits are not assessed against the costs, which makes choosing between the step change options difficult.

[2] Graham, A., Day, J., Bray, B. & Mackenzie, S. (2012) Sustainable drainage Systems: Maximising the potential for people and wildlife; A guide for local authorities and developers, RSPB, WWT. http://www.wwt.org.uk/uploads/documents/1400927422_Sustainabledrainagesystemsguide.pdf

## Barriers to fish movement

**Q4. Which scenario do you consider to strike the appropriate balance between effort and feasibility in addressing barriers to fish passage?**

The options presented are concerned only with those barriers which are not weirs or dams operated by public bodies or businesses. The latter are apparently included in 'Figure 12', but the numbers are not given. We would like to be informed of the progress SEPA anticipates that it will be "reasonably practical" to make in respect of those barriers which it actively licenses.

Emphasis is placed on the difficulty of constructing fish passes rather than on the alternative of barrier removal, though the latter may be the preferred option for many long-abandoned structures. Step change 2 is the only one compliant with the aims of the WFD, and on the basis of the costs presented appears to offer a good, low cost/benefit ratio. It is therefore considered to strike the most appropriate balance.

## Hydroelectricity generation

**Q5. Do you consider that our proposals strike an appropriate balance between the second and third cycles in terms of the water bodies prioritised for action?**

It is recognised that the total costs and benefits of hydroelectricity generation are far-reaching because of the environmental (and 'carbon') costs which this form of generation can circumvent and avoid. However, there is no evidence put forward to support proposals that 66% of water bodies affected by hydropower are given less stringent objectives. This is highly un-ambitious and we believe that despite the benefits of hydropower, the impact on the environment needs to be minimised and schemes that are causing water bodies to fail need improvement. The information provided by the consultation indicates a lack of understanding of the benefits of reaching good status or to factor these benefits into decision making. Lack of transparency over how less stringent objectives have been set and the lack of evidence around the decision making process does not allow us to understand whether these less stringent objectives are valid or whether too much priority has been given to hydroelectricity generation. As such we cannot help but conclude, given the information in the consultation, that giving 66% of water bodies affected by hydropower less stringent objectives lacks commitment and resourcefulness to find mutual ways forward.

Very many new small hydroelectric schemes are now being developed, mostly of the 'run-of-river' type, and it is important to ensure that mitigation measures are put in place through the Water Environment and Water Services Act (WEWS) licensing scheme to ensure that these do not cause any degradation in status of any water bodies. All further proposals for hydropower development need to consider impact on WFD standards from the outset, to ensure that environmental impacts are minimised and mitigation measures are incorporated.

## Invasive non-native species (INNS)

**Q6. Do you agree with the general management approach for pressures on the water environment from invasive non-native species?**

Recognition of the severe impact that INNS can have on the health of our water bodies is welcomed. To maximise the effectiveness of measures taken to prevent ingress or control them, a strategic, catchment level approach is essential. For example a water body may not be failing due to INNS, but they could be assisting failure for other reasons, for example by causing increased erosion. Thus, action on INNS could also help overcome other significant issues.

We welcome action on biosecurity to prevent deterioration of water bodies. When considering other measures for other purposes it is important to make sure that in carrying out these measures they do not themselves assist the spread of INNS.

There is no mention of the potential for new species to invade. We believe that biosecurity measures should be put in place not only in areas where there is potential for deterioration, but also any water bodies which are within protected areas. Measures put in place must be flexible and adaptable to be able to react to new threats.

Although the Clyde Forum is mentioned, the key threat from ballast water and fouling organisms brought into Scottish transitional and coastal waters by shipping from abroad is not even mentioned, and this should be corrected. What will be done to control INNS from these sources?

## Proposed changes to heavily modified water body designations (HMWB)

**Q7. Do you agree with our proposals for de-designation of certain water bodies?**

**Q8. Do you consider that our proposals to designate heavily modified water bodies are appropriate for:**

**a) purposes other than agricultural land drainage?**

**b) agricultural land drainage purposes?**

There is good reason for the HMWB provisions of the WFD, and it is important that these provisions are appropriately used. To do this requires substantial information about each WB concerned, and it is recognised that this bank of relevant information will continue to be built over time. It is therefore logical to expect that, in the light of additional information, there will be HMWB changes with each RBMP cycle in respect of agricultural land drainage and other purposes.

This response has been jointly prepared and edited by a range of environmental NGO involved in Scottish Environment LINK's Freshwater Task Force and is specifically supported by:

Amphibian and Reptile Conservation Trust
Badenoch and Strathspey Conservation Group
Buglife, The Invertebrates Conservation Trust
Froglife
Royal Society for the Protection of Birds
Scottish Badgers (SCIO)
Scottish Wild Land Group
Wildfowl and Wetlands Trust

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