

Implementing the WEWS (Scotland) Act 2003:

Principles for the objective setting for the River Basin Management Plan

LINK Freshwater Task Force (FTF) response to the consultation by the Scottish Executive

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Introduction

Thank you for the opportunity to comment on the above document. The consultation document was written well and in an easy to follow style, and we therefore congratulate the Scottish Executive on explaining such complex issues in such easy to understand language. The environmental objectives for WFD are the core of this ambitious piece of European legislation. Setting appropriate objectives should ensure sustainable water management in Scotland on the basis of high level of protection of the water environment.

The discussions about the objective setting process have been very intense and largely driven by those water users who significantly contribute to the failure to achieve WFD objectives. These operators and industries are naturally concerned about the cost implications of implementing measures to achieve compliance with the Directive. However, as a result of this, the nature and the ambition of WFD and the benefits of achieving WFD objectives, such as improved environment, amenity and way of life for many individuals and society is often neglected. Socio-economic considerations are fully addressed in WFD through 'exemptions' and cost-effectiveness analysis. The objective setting process must protect against the unnecessary degradation of environmental objectives, and ensure appropriate use of economic tools to guide the objective setting process. The principles for setting environmental objectives are given in Article 4 of the WFD, which also describes the procedure for 'exemptions'. The agreed objective setting process is outlined in the Common Implementation Strategy (CIS) for the WFD '*Environmental objectives under the WFD*', endorsed by the Water Directors in June 2005. This document describes the Article 4 of the WFD, and discusses key issues in the objective-setting process. All EU Member States have agreed this guidance as a principle for common implementation.

Our concerns about the Draft Policy Statement are given below:

Section 1: Introduction to the draft policy statement

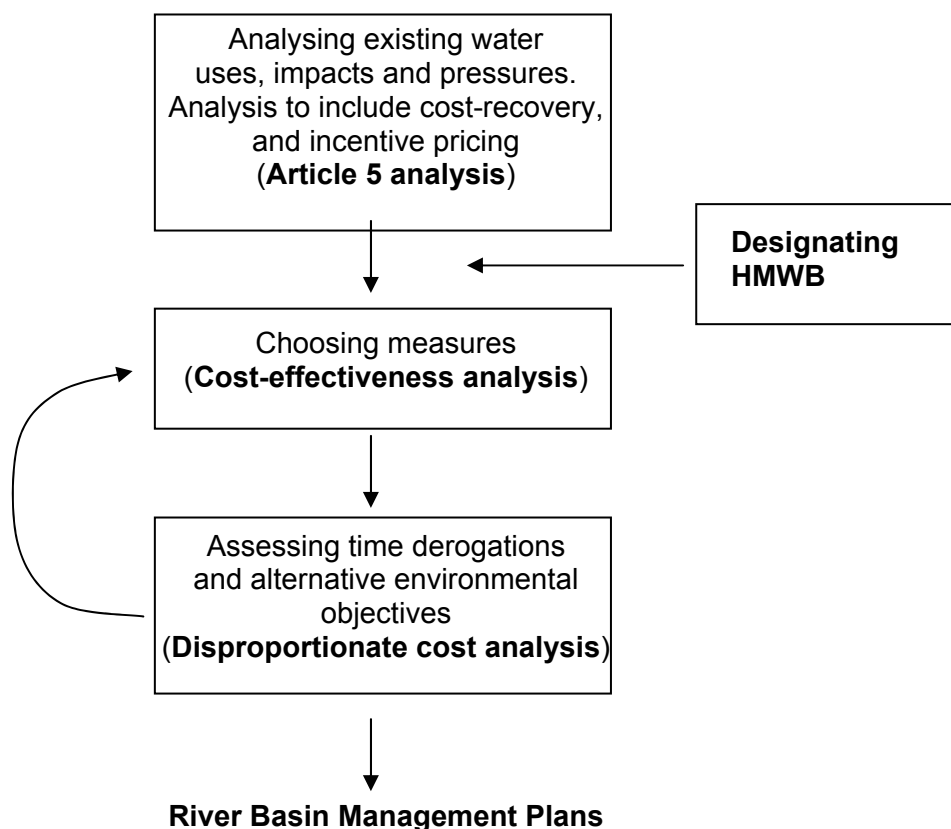
Explaining the role of economic analysis in setting appropriate environmental objectives

We are concerned that the document fails to explain the important role of WFD economics in setting environment objectives – and so places too much emphasis on SEPA as the main decision makers. The policy statement needs to make clear that there are certain provisions within the WFD which must be taken into consideration and for which a set of given procedures has to be followed. These include cost-effectiveness analysis (CEA) and disproportionate costs analysis (DCA). Both of these processes together with an agreed position on objective setting process as set out in the Common Implementation Strategy (CIS) are outlined below.

The role of economic analysis in the WFD

Economics are at the heart of the Water Framework Directive (WFD), and will play a uniquely central role in determining how and to what extent the WFD is implemented across Europe. The economic analysis within the WFD can provide powerful justification for major beneficial changes in the management of freshwater in Europe. For example, well applied cost-effectiveness analysis may be able to conclusively demonstrate that land-use change and the restoration of wetlands are more appropriate measures than end of pipe solutions. Equally, many of the changes required to meet WFD objectives are likely to encounter significant political resistance, and this can be countered with the robust use of economic arguments.

While economics will play a role on a number of occasions within the WFD timeframe, in particular:



Cost effectiveness analysis (CEA) will be one of the key mechanisms used to select which measures will be used to achieve good status. Properly implemented, CEA should identify the best approaches to meeting good status and provide important support to innovative approaches. For example, we can reduce phosphates in a catchment area by building a water treatment plant or by focusing on land-use practices.

Disproportionate Cost Analysis (DCA) can be used to justify alternative objectives to the achievement of good status by 2015. Well applied, it can ensure equitable, fair and even-handed implementation of the Directive. If abused, however, disproportionate cost analysis has the potential to significantly thwart and undermine the objectives of the WFD.

The WFD is about achieving good status in European water bodies. A wide range of different possibilities exist for achieving this objective. CEA helps select among these possibilities and choose a programme of measures that need to be put into place to achieve good status in those water bodies at risk. It gathers information on the costs and effectiveness of combinations of measures, and identifies which combination of measures achieves good status at a lower cost. However, the uncertainties associated with many land-based mechanisms may lead to a bias in favour of engineering-based, end-of-pipe solutions, even where land-based solutions may be more effective.

We therefore propose that one of the aims of the Policy Statement should be the explanation of the appropriate use of economic analysis in the objective setting process.

Section 2: The legislative framework and principles

We strongly disagree with the statement on page 4 of the consultation document that states the '*Objective setting process is about deciding where the use of alternative objectives is appropriate and what those alternative objectives should be*'. **Objective setting process is about deciding the appropriate environmental objective for a given water body.** The default objective is the achievement of good ecological status. Objective setting process is not about identifying water bodies which may qualify for alternative objectives.

WFD and the CIS guidance clearly state that main environmental objectives are manifold and include the following elements:

- ensuring no deterioration in status
- achievement of good status by 2015 (or potential), good chemical status for surface waters and groundwaters and good quantitative status for groundwaters.
- And other objectives as specified in Annex A of the consultation document

Where more than one objective relates to a given water body, the most stringent will apply, irrespectively of the fact that all objectives must be achieved. Some water bodies may not achieve this objective. Only under certain conditions, WFD permits the assignment of a less stringent objective, extend timescales for achieving a particular objective, or designate a heavily/artificially modified status.

Less Stringent Environmental Objectives. Less stringent objectives may be pursued where the achievement of good status objectives would be disproportionately expensive (*Art 4.5*).

Extended deadlines. Extension of the deadline from 2015 for one or two further updates of river basin plans (i.e. until 2021 or 2027) is permitted where achievement of the objectives by 2015 would be disproportionately expensive (*Art 4.4*).

In these two cases, the costs of the proposed measure or measures are compared against environmental benefits to decide if they are disproportionate. Alternative approaches to the achievement of the relevant environmental benefit should be investigated. The conditions for setting 'less stringent objectives' require more information and in depth assessment of alternatives than those for extending deadlines.

Designating Heavily Modified Water Bodies. A water body may be designated as heavily modified when the beneficial objectives served by the modified characteristics cannot be met by alternative means that are not disproportionately costly (*Art 4.3*).

New Modifications. New modifications that cause status deterioration are permitted when the beneficial objectives served by the new modification cannot be met by alternative means that are not disproportionately costly (*Art 4.7*). (Such new modifications must also satisfy a series of further conditions, including that they be of overriding public interest).

In these two cases, the costs of alternative environmental objectives are only permitted if not only the activity in question but also all alternative approaches are disproportionately costly. Associated with all these exemptions are strict conditions, which must be met, and its justification must be included in the RBMP. The assessment of socio-economic impacts (including the environmental and resource costs and benefits) is key when considering alternative objectives and exemptions.

Disproportionate cost analysis (DCA) plays a central role in determining when these alternatives can be justified, and should take place following cost-effectiveness analysis if it is to be used. Where DCA justifies an alternative environmental objective, this must be specified in the River Basin Management Plan.

We furthermore disagree with the statement that '*flood defence often depend on substantial alterations to water bodies that may be incompatible with the achievement of good status*'. This statement would apply to the 'traditional' approach to flooding based on the 1961 Flood Protection Act. On the contrary, **we see sustainable flood management and the appropriate design of flood defences/management of flood processes, as an opportunity for restoration of morphological condition of rivers, wetlands and floodplains.** Sustainable flood management should be recognised as an opportunity, and not as a threat to good ecological status. Furthermore, the replacement of existing, traditional schemes with sustainable flood management will lead to environmental benefits, secure the achievement of WFD objectives and reduce maintenance costs.

We further oppose the statement that water bodies used for flood defence or hydropower generation should automatically be named as heavily modified without any prior application of economic instruments. This gives a misleading impression that all such water bodies will be automatically designated as heavily modified. It is unlikely that any water bodies with flood defences will qualify for HM status.

Section 3: Characterisation and identification of risks and pressures

As members of Area Advisory Groups, we questioned SEPA's methodology for determining 'significant issues'. SEPA appears to have designed a method by which significant issues are those, which impact over 15% of river length or 20% of water body areas for lochs, transitional and coastal areas. Current methodology does not appear to take into consideration the level or the intensity of damage caused by these activities. For example, impact of non-native species, which may be individually significant, but is often localized, will not be taken as 'significant', unless the damage extends to over 15% of water length, or 20% of water body area. We find this unacceptable, and whilst we questioned the origins of this methodology, we have not had satisfactory answers to our questions.

Heavily modified and Artificial water bodies

HMWB and AWB are a specific category of a water body. They have a separate environmental objective, which is not an exemption, but which reflects their level of their physical modification. HMWB are those whose physical characteristics have been changed by human activity to a degree that they are unable to achieve 'good ecological status'. The designation is **not an opportunity to avoid achieving demanding ecological and chemical objectives**. There is a stepwise approach for the designation of HMWB and AWB, which is given in the CIS for the WFD: Identification and designation of Heavily Modified and Artificial Water Bodies.

Section 4: Environmental quality standards and ecological status classes.

Good ecological status is an ambitious target which is set relative to reference condition, or undisturbed status. As the consultation document rightly states 'good ecological status' means *'that human activities have had only slight impact on the ecological characteristics of the plant and animal communities that live in the water body'*. It is about keeping the environmental in a state which maintains these conditions where they exist, and achieves good status where it is required.

As stated in our response to Environmental Standards consultation (UK TAG and Scottish Executive) we are concerned that this is not how environmental standards have been developed by the UK agencies. Too much emphasis is being placed on chemical and physical parameters without applying these to ecological elements such as plant and animal communities. We do not believe that these standards have been developed with the best scientific knowledge or with expert advice.

Our concerns over the environmental standards and the process involved are given in a separate response.

Section 5: Objective setting for the River Basin Management Plan

The main, and unquestionable objective of WFD is the achievement of good ecological status of the water environment. However, where this is not possible, due to disproportionate costs or any other reason, alternative objectives may be used, if all conditions of exemption tests are met. These exemption tests allow Member States to take full account of socio-economic considerations. Exemption tests should not be used to drive the setting of environmental objectives, but together with the economic instruments be used to account for socio-economic consideration.

Good status and less stringent objectives

The WFD CIS guidance states that preference should be given to time derogations rather than objective derogations. Furthermore, designating a less stringent objective does not mean that other quality elements are allowed to deteriorate, or the potential improvement for other quality elements can be ignored. Alternative objectives can only be set for the quality element which has been shown to be infeasible or disproportionately expensive to achieve.

Technical infeasibility and disproportionate costs

The setting of exemptions requires that a number of conditions must be met. These include tests on disproportionate costs, technical feasibility, the existence of a significantly better environmental option, and contribution to sustainable human development. These terms are difficult to interpret and some advice should be drawn from the SEA which already has a legal framework to assess these aspects.

Using regulation innovatively

We strongly support action by which operators of a significant activity are encouraged to find solutions to significant problems. We believe that such behaviour should be actively supported.

Section 6: Programme of measures

The Scottish Executive rightly states that regulation alone will not be enough to achieve WFD objectives. Other measures, such as education, awareness raising, economic instruments and promotion of good practice are just as important as regulatory instruments. We therefore welcome the proposals to use a wide range of measures to achieve the Directive's objectives.

Section 7: Roles in RBMP

We very much support the participatory approach and desire to fully engage stakeholders in river basin planning. This is certainly the best way to find resolution over any difficult management issues. However, SEPA needs to make sure that stakeholders are able to meaningfully contribute to the process. This will require full engagement in writing the significant issues report, the draft and final RBMPs. AAGs must not be there just to 'rubber stamp' documents produced by SEPA. A genuinely cooperative way of working will help to diffuse conflicts in the longer term, even if the documents take longer to write.

12/12/2006