



**Association of
Salmon Fishery Boards**



Comments on 'Better Environmental Regulation: SEPA's Change Proposals' February 2011

Introduction

The Association of Salmon Fishery Boards (ASFB) is the representative body for Scotland's 41 District Salmon Fishery Boards (DSFBs) including the River Tweed Commission (RTC), who have a statutory responsibility to protect and improve salmon and sea trout fisheries. The Association and Boards work to create the environment in which sustainable fisheries for salmon and sea trout can be enjoyed. Conservation of fish stocks, and the habitats on which they depend, is essential and many DSFB's operate riparian habitat enhancement schemes and have voluntarily adopted 'catch and release' practices, which in some cases are made mandatory by the introduction of Salmon Conservation Regulations. ASFB create policies that seek where possible to protect wider biodiversity and our environment as well as enhancing the economic benefits for our rural economy that result from angling.

Formed in 2005, Rivers and Fisheries Trusts of Scotland (RAFTS) is an independent freshwater conservation charity representing Scotland's national network of 24 rivers and fisheries Trusts and Foundations. Our members work across over 90% of Scotland's freshwaters to protect and develop our native fish stocks and populations by undertaking a range of activities including freshwater, river habitat restoration, fish and fisheries monitoring, research and education programmes. RAFTS is the membership organisation of the fisheries and rivers trusts operating in Scotland and is, itself, a charity and company limited by guarantee.

We welcome the opportunity to comment on 'Better Environmental Regulation: SEPA's Change Proposals'. We recognise and support the need for SEPA to make efficiency savings. However, it is important that any changes to SEPA's operations must not compromise the protection and improvement of Scotland's environment.

Specific comments

Question 1: We believe that the current system of environmental regulation is unnecessarily complex and more costly to operate than it might be and that we should develop a world class, simplified and integrated, system of environmental regulation. Do you agree?

In the absence of specific proposals for new or amended legislation it is difficult to comment on this proposal in any level of detail. While, at face value, it would appear sensible to simplify and integrate the regulatory system, any such simplified system must ensure that SEPA continues to fulfil its duties to protect and improve the environment. It is vital that the potential environmental consequences of any changes are fully assessed and described and the ultimate driver for change must be environmental outcomes, *not* improved customer service. Furthermore, simplification of the regulatory system must not compromise the potential for successful prosecutions where necessary.

We do not underestimate the complexity and scale of the task proposed and the resources necessary to achieve such simplification. The range of regulations applying across the environmental media will make the simplification process itself hugely challenging.

Question 2: SEPA is proposing a new regulatory model. A risk assessment process will be used to assess which activities should be regulated at what level. The aim is to ensure that the level of regulatory control is allied to risk and operator compliance. Do you agree?

We agree that the degree and level of regulatory effort applied by SEPA should be aligned with environmental risk of the activity considered. This principle is already enshrined in some of the more recent

legislation such as The Water Environment (Controlled Activities) (Scotland) Regulations 2005. What is not yet clearly apparent is the extent to which SEPA has driven environmental improvements from the application of such regulations against included activities. As part of this we would wish SEPA to retain a robust approach to the enforcement of regulatory requirements to activities or operators where compliance is not seen to be achieved.

In addition, we would seek clarification from SEPA as to how the potential cumulative effects of a number of perceived low risk activities would be assessed and ultimately made subject to regulation or proportionate control if required. Of particular concern to ASFB and RAFTS in this regard is the issue of diffuse pollution from agriculture. SEPA's recent work within diffuse pollution priority catchments has established that land managers are frequently breaching the diffuse pollution General Binding Rules (GBR), with rates as high as one GBR breach per kilometre of river. Whilst a single breach of a diffuse pollution regulation within a single field or farm might be considered low risk, the cumulative impact of many such breaches at a catchment scale could be extremely significant. We would encourage the regulatory bodies associated with agriculture to adopt a more robust approach to enforcement alongside the necessary education and incentive based schemes and initiatives in place to help to drive environmental improvement from this sector. We are concerned that the consultation proposals in their current form would not allow this issue to be addressed.

Question 3: SEPA believes that far greater use, where possible, could be made of statutory obligations (e.g. General Binding Rules), notifications and registrations for lower risk sites. We consider these to be more proportionate and that they can reduce costs. Do you agree with this approach?

We agree with and support the use of statutory obligations, notifications and registrations for lower risk sites and activities. However, the use of such instruments should not preclude or prevent SEPA from taking forward action when activities proceed outside the required standards and protocols. We would request and anticipate further external engagement and consultation to ensure that there is consensus on the activities that might be controlled via such instruments, particularly if activities currently controlled by more involved regulatory procedures are to be moved down any regulatory hierarchy.

In addition, we would be concerned if a greater reliance on statutory obligations resulted in a disproportionate reduction in monitoring of the water or other environments, and therefore a reduced information base on which to inform future regulatory decisions or enforcement actions. We agree with the use of such instruments but would not anticipate a reduction in environmental protection or enforcement when such obligations are breached. In fact, by reducing the overall regulatory and administrative burden we might anticipate increased activity when regulations are breached.

Question 4: We intend to change our approach to site inspections, aligning more closely to the generally lower levels found across Europe, developing an audit based approach and retaining the flexibility to increase the frequency of inspections if we feel we need to. Do you agree?

This aspect of the consultation appears somewhat contradictory. SEPA express the intention to "develop a *world class*, simplified and integrated, system of environmental regulation". However, this does not appear to be consistent with simply aligning more closely with the generally lower levels of inspections in other European countries. The concern would be that by reducing the number of site inspections, the result might be a weaker level of environmental protection and potentially a failure to deliver environmental objectives and meet EU requirements.

If this approach is to be adopted SEPA must ensure that reductions in SEPA inspections are at least accompanied by a requirement for increased self-monitoring by operators (subject to our concerns below) and that the results of such self-monitoring are reported to SEPA on a statutory basis. We would anticipate that SEPA might publish an inventory of site inspections to reassure the public that activities are being inspected on a frequent enough basis to ensure compliance due to the good practice of good operators and the fear of regulatory inspection in less well operated sites.

Question 5: We intend to explore the feasibility of more operator self-monitoring, where this is appropriate. Initially this will focus on the water environment. Do you agree?

We are generally supportive of SEPA exploring the feasibility of operator self-monitoring provided that any feasibility study fully considers the environmental consequences. Any such scheme must ensure that operators are required to adhere to strict quality control standards, which are robustly monitored. In addition, SEPA should carry out spot checks, in order to ascertain the veracity of any such self-monitoring and where discrepancies arise be willing to act on these. This will be of particular importance if SEPA places greater emphasis on statutory obligations, which presumably would not have the same requirement for operator self-monitoring.

We would anticipate that there would be a reporting protocol for self-monitored sites by which evidence of compliance is provided to SEPA for inspection. This protocol would confirm, for example, the frequency of reporting and the technical aspects and standards expected of these reports.

Question 6: Do you support our proposal to use risk assessment to inform how we use our monitoring resources, resulting in a better balance of effort, with less water monitoring and, where appropriate, increased air, soil and climate change monitoring?

We support efforts to avoid duplication of monitoring across the range of organisations that collect environmental data across the range of media. However, we are concerned that a reduction in water monitoring effort could compromise SEPA's ability to deliver WFD objectives or to sufficiently understand the state of the environment as reported in the River Basin Management Plans. Clearly the monitoring systems delivered by SEPA must be necessary and with a clear purpose and we support the on-going review of monitoring effort that this requires.

We are particularly interested in monitoring and assessment of the water environment and note for example that the fish classification tool is still under development and we would not support further reduction in monitoring effort in this area. The first River Basin Management Plans included incomplete classifications in respect of fish populations due to the absence of a robust classification tool for this quality element. As a result we look forward to the application of the new tool to further refine the currently published assessments on an on-going basis. SEPA should also be mindful that it may not always be cost effective or efficient for it to undertake all monitoring in all circumstances. As we have confirmed previously the network of qualified staff in the network of fishery trusts and boards could, for example, be engaged to deliver components of WFD fish monitoring as required and contracted. In addition, there may be potential for bailiffs employed by the District Salmon Fishery Boards to monitor and help report on compliance. The network of water bailiffs are used to gathering evidence to criminal standards and could be trained to take water samples and other evidence. It might be possible that, following discussion with SEPA to identify locations of specific pressures or regulated activities, bailiffs could report on breaches or regulation as part of their routine patrols.

While supporting the development of an efficient and targeted monitoring system we would, in addition, seek clarification from SEPA on how, for example, in the light of reduced water monitoring targeted upon existing pressures and activities, the effectiveness of implemented RBMP measures for existing pressures would be assessed and how new pressures would be identified. It might be anticipated that a reduction in water monitoring would reduce the detection of aquatic invasive non-native species (INNS). Early detection and rapid response to INNS is far more cost-effective than eradication once a species is already established. Therefore, in terms of INNS alone, it would most certainly be a false economy for SEPA to reduce water monitoring.

Question 7: SEPA is proposing to adopt a risk-based approach to regulation, featuring less intervention for high performing sites and operators, with reduced intensity of inspections for lower risk sites. We want to support this with enhancement of our enforcement activities and robust penalties for non-compliance. Do you support this approach?

We support proposals for stronger enforcement but we believe that the emphasis on reduced intensity of inspections for lower risk sites may result in non-compliance remaining undetected. We would again highlight our concerns about cumulative effects of a number of low risk activities (see answer to Q2 above).

We agree with SEPA that robust penalties are essential to deter and punish offenders and we feel that the Scottish judicial system must fully support SEPA by taking environmental crime seriously and imposing strong fines. Furthermore, we believe that it is crucial for Scottish Courts to have the necessary powers to force a person or company to remediate any damage to the environment if they are successfully prosecuted. The costs for any such remediation should be fully borne by the person or company required to undertake the remediation.

Question 8: SEPA's costs of enforcement are currently funded by grant-in-aid, whereas equivalent agencies in the UK can recover the costs of investigation from operators who have been successfully prosecuted. In addition, our work on developing cases for prosecution currently isn't chargeable. We consider that SEPA's costs for such work should be fully recoverable. Do you agree with this approach?

Yes, we fully agree that SEPA should be able to recover costs from those who have been successfully prosecuted.

Question 9: SEPA wants to move towards integrated permissions. This would include the use of single site licences (e.g. for sites currently requiring multiple permits) and operator or network level licences. Do you agree with this approach?

This approach would appear sensible but in the absence of information as to what legislation would require to be amended, or new legislation that would be required, it is difficult to judge at this stage. ASFB/RAFTS would expect to be fully consulted should this approach be taken further in order to ensure that no adverse effects on the water environment would result. In such situations it is not clear, for example, at what threshold regulatory non-compliance would be judged to be significant enough to stimulate enforcement actions. Therefore, these thresholds for each activity within the site should be clearly stated to allow transparency and confidence in the regulatory system and to support SEPA in its ability to take forward enforcement action for non-compliance in any part of the site activities.

Question 10: Do you agree that, to cover these costs, an annual charge should continue to apply to all operators deemed low risk or subject to simpler types of permits?

Yes, we feel that regardless of the level of activity undertaken by the operator a proportionate charge should be applied to each band of regulation. However, it must be demonstrated that such charges can be gathered in a cost-effective manner from those where lower level of permits or authorisation are in place. Such operators should make a contribution to the running of the system overall as opposed to simply covering the costs of charge collection. The retention of such charges will, in our view, help in the presentation of an equitable regulatory system where large operators and risky activities pay more but where all activities within the system make a contribution.

Question 11: Do you agree that we should offer and be able to charge for such services?

We have no strong views on the offer of such services provided that the fast tracking of some applications does not compromise SEPA's ability to process permit applications which are not fast-tracked in a reasonable and timely manner.

Question 12: We want to be more flexible in the use of our monitoring resources in order to effectively monitor emerging issues and respond quickly to incidents. Do you agree?

We support the proposal that SEPA will aim to improve its ability to detect emerging issues and respond rapidly to incidents. We have set out above (see Q6) the potential for fishery trusts and boards to contribute to monitoring of the aquatic environment as part of a collective responsibility to understanding out water environments. Due to the absence of public funding for these bodies such contributions would require to be on a contracted basis but can be effectively coordinated and targeted by SEPA to sites of particular interest of where appropriate SEPA resources are distant or not available.

We also are supportive of SEPA's "Citizen Science" initiative whereby a larger body of organisations and individuals might be mobilised to make effective contributions to our understanding of the water environment. Clearly there are many issues in respect of quality control and clarifying the purpose and use to be made of data and information gathered in such a way. However, we believe that, through the

application of standardised methods and protocols and supporting the development of a wider skills base, useful contributions could be made to environmental monitoring on a cost-effective basis.

Question 13: SEPA has a wide range of environmental expertise and we believe that we could charge for certain specialist and technical advisory services that are currently funded by grant-in-aid. Would you support SEPA charging for such services in the future?

We have no strong views on the charging model but we urge SEPA to give full consideration to the potential consequences of introducing charges for specialist and technical advice. We would be concerned if this resulted in operators not seeking essential advice simply to avoid the charges.

In addition SEPA must be careful as to the perception of its role generally if SEPA staff are deployed in such a way. Ultimately, if such services were available at rates attractive to the customer, then they would be very likely to be taken up and utilised. However, SEPA should be mindful of entering into what might be seen as commercial activities unless it is fully able to apply the true costs, including overheads etc., to its staff and services. Entering into such a “market” and applying anything other than full costs is likely to be unwelcome to the current suite of consultancy and technical service companies currently operating.

Question 14: We are proposing to apply SEPA’s charges proportionately, depending on the level of environmental risk posed by the regulated activity, on operator performance and on the regulatory effort required. Do you agree?

Yes, this would appear to be a sensible approach. However, please see our concerns about cumulative effects of a number of low risk activities (see Q2) and of the need to develop a system where the range of activities regulated across the spectrum of controls are seen to make fair and reasonable contributions to the funding of the system (see Q8 and Q10) and that payments can be gathered within a cost effective and efficient administrative system. Equally, the current CAR regime provides for the waiving of the application fee for an activity that is delivering an environmental service (defined as the carrying out, operation or maintenance of any activity which is, in the view of SEPA solely for the benefit of the environment, not being for commercial purposes or in implementation of a statutory duty) and we would wish to see this provision maintained.

Question 15: What are your views about the key features of a future funding model for SEPA?

- 1. Charging based on risk and performance**
- 2. Flexible use of funding**
- 3. Cost recovery**

The proposal to introduce higher fees for the most hazardous activities and poorest performing sites seems sensible and we fully support recovery of costs from operators who have been successfully prosecuted. The consultation recognises that actively regulating and monitoring fewer but better targeted sites has the potential to affect SEPA’s income and therefore it seems unclear as to how the overall package would result in increased or stable funding for SEPA.

We are concerned about the flexible use of funding if this flexibility extends to the cross-subsidisation of monitoring across media. We are supportive of income from regulatory charging schemes being used to support other activities within any environmental media which compliment regulation and support environmental improvement and protection e.g. the river basin planning system, education and awareness programmes and effective and specific campaigns and initiatives.

Question 16: Do you agree that SEPA should be able to cover its costs across its income streams to enable it to allocate effort on the basis of environmental harm, including tackling environmental crime such as ‘freeloaders’ (i.e. who operate illegally without a licence)?

We would not support, for example, income streams generated for water based activities to be reallocated to the tackling of environmental crime in other media. Ultimately, any harmonised system should ensure that the services and functions of each regulatory component are affordable from the source activities.

Question 17: Do you think that there are additional routes to deliver better environmental regulation that SEPA can explore over and above the changes that we outline in this consultation?

N/A

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