



Response to The draft river basin management plan for Scotland 2021 – 2027 (RBMP 3)

Section 3.1: Action to create healthier and more resilient communities

4. Do you agree with the approach outlined?

Yes

Not sure

No

Share your thoughts with us in the space below

We are delighted that SEPA acknowledges the importance of Scotland water environment as well as the impacts of a degraded water environment on declining species such as Atlantic salmon. However, we are disappointed that within the consultation, SEPA appears to prioritise the use of water as a resource over the protection of the water environment. In the light of the climate and biodiversity crises, a stronger emphasis needs to be placed on the mitigation of climate change, and protection and improvement of habitats. For example, a stronger focus on restoration of the riparian zone in upper catchments is crucial to the survival of fish and invertebrate species against a background of climate-induced warming.

We support efforts to restore rivers and creating attractive and accessible green river corridors. However, we are strongly of the view that the best way for SEPA to ensure that this happens is to place a stronger and more effective emphasis on delivering the core purpose of protecting the environment. If the aim is to connect people with the natural environment, the core objective needs to be restoring the natural environment as a functioning ecosystem. This means first achieving restoration followed by placing a focus on access to local communities as a secondary step. Ecosystem services are of huge value to local communities but only if they are a functioning ecosystem.

For these spaces to be valuable to both communities and the natural environment they will require clear management plans to ensure they are maintained in a way that is beneficial to the natural environment while also enabling access and service provision for local communities. To achieve this, they will need to be adopted by local councils / communities with clear commitments towards maintenance and upkeep. We are not sure that this falls within SEPA's remit.

We have received numerous reports before and during the recent lockdowns of discharges of both sewage and solid materials from combined sewage outflows. These discharges impact the same areas that SEPA are identifying as a priority for physical improvements. We do not support the proposed approach, which would allocate significant amounts of public funds to such projects, when other regulatory issues are not robustly dealt with. CSO discharges on some rivers have increased by

at least 23% and entail damaging nutrient additions and other sewage-related debris (sanitary towel, wet wipes, condoms etc.). These not only impact on the amenity value of an area but also are contributing to plastic pollution in our freshwater environment. These discharges are condoned by SEPA as part of the agreed CAR Licenses. SEPA's priority should be to address these long-standing regulatory issues as well as supporting other projects which enable the delivery of sustainable physical improvements. This in turn, would go a long way to making green river corridors more attractive.

The Water Environment Fund appears to be the funding mechanism for delivering these projects, but we are concerned that this is at the expense of restoration or improvement of the water environment in more rural areas. We do not support the decision that SEPA have taken to focus the Water Environment Fund on urban areas, or to award the funds 'to provide benefits to people and communities' rather than on the basis of environmental need. There are many projects which could make a significant difference to the water environment in rural areas that SEPA could and should support.

We recognise the importance of engaging with people to ensure that the protection and enhancement of our water environment is important to them. However, we do not consider that this is best delivered via very expensive urban restoration projects which have in some cases very limited ecological benefit. An equivalent sum could restore a significant length of river in tributaries and headwaters, providing considerable benefits to downstream urban areas. No mention is made anywhere in the document on how measures will be put in place for the restoration of headwaters of catchments which, bearing in mind the benefits for climate change adaptation, is a significant omission.

Currently SEPA is delivering with partners approximately ten urban projects every six years and therefore we consider the statements that 56 can be delivered in the next six years is unrealistic. We are concerned that the proposed focus could represent a significant opportunity cost, at a time when habitat restoration needs to be prioritised as part of efforts to address the wild salmon and wider biodiversity crises.

5. What issues do you see with us adopting this approach?

Share your thoughts with us in the space below

See our answer to question 4 above

6. Can you suggest any changes to the approach that will help us reach our goals?

Share your thoughts with us in the space below

See our answer to question 4 above

Section 3.2: Water supply and wastewater

7. Do you agree with the approach outlined?

Yes

Not sure

No

Share your thoughts with us in the space below

We support the sentiment behind this section, but it is frustrating to see such non-specific actions set out. The emphasis on SEPA 'helping', 'working with', 'encouraging' and 'supporting' should only be one part of the story. SEPA is a regulator and there are significant regulatory issues that need to be addressed in relation to water supply and wastewater.

Given Scottish Water's role in Scotland's domestic water supply and wastewater treatment, there should be a much stronger focus on how Scottish Water will improve their operations to increase efficiency, reduce abstraction and reduce wastewater pollution. Climate change will lead to increased frequency of severe flood events and localised intense rainfall associated with thunderstorms. Both scenarios will lead to increased frequency of Combined Sewage Overflow (CSOs) events. Although currently licensed it is unacceptable for raw sewage to be entering the river system especially during low flow summer conditions when severe damage could be caused to a system that is already under stress with high temperatures and low levels of dissolved oxygen. Significant investment is required in infrastructure to manage water before it enters the sewer system to reduce the frequency of these events. CSOs are currently justified as being acceptable by Scottish Water because they are licenced by SEPA when they should not be happening at all.

As an example, on the river Almond, West Lothian/City of Edinburgh, 4 of the 7 wastewater treatment works (WWTW), discharged 617 times in 2020. This was an increase from 501 discharges in 2019. The data also shows that one WWTW (East Calder) had defective monitoring equipment for part of the year and therefore the figures are likely to be higher. CSOs appear to be discharging more often due to lack of capacity within the system. This is either due to increased demand (housing, infrastructure) or due to increased rainfall (climate change). Some mitigation could be installed in catchments above these installations to slow run off and to manage river flows. This requires upscaling of 'buffer' zones and repairing morphologically damaged streams and tributaries. However, as discussed later, SEPA appears to have re-classified significant numbers of headwaters as HMWBs and not requiring improvement – we consider that this is a lost opportunity.

With a changing climate there is going to be increasing pressure on water supplies and wastewater disposal and improvements have to be made. More frequent drought events will put increasing pressure on river flows and abstraction needs to be reduced from current levels to protect river ecology and functionality. As the single biggest abstractor this requires Scottish Water to waste less water, increase efficiency and incentivise and educate the public to use less water. It will be necessary for other industries to be required to follow similar measures to increase efficiencies, store water and reduce abstraction particularly during low flows and under drought conditions. Abstraction licences have sometimes been in place for a considerable time, prior to water scarcity being identified as a significant issue. In this context, some existing licences also appear to be particularly generous, which is now inappropriate given future water scarcity predictions.

There also needs to be legislation and/or incentives for property owners with private domestic sewage tanks to improve and update their systems to improve the quality of outflow water. This could include funding for new sewage tanks, new soakaways, aeration devices and connection to mains sewers where possible. There are also too many clusters of houses being built with single independent sewage tanks that collectively are inefficient and putting unnecessary stress on waterways.

Although working with businesses and communities to reduce water usage is a good principle, the plan lacks detail as to how it will be delivered. There needs to be a combination of strict enforcement of abstraction licencing and a change of culture within Scottish Water and the public to reduce consumption and increase efficiency. Please see our comments on SEPA's Water Resources Management Plan consultation.

8. What issues do you see with us adopting this approach?

Share your thoughts with us in the space below

9. Can you suggest any changes to the approach that will help us reach our goals?

Share your thoughts with us in the space below

Section 3.3: Sustainable and resilient rural land use and management

10. Do you agree with the approach outlined?

Yes

Not sure

No

Share your thoughts with us in the space below

The consultation correctly recognises that the way we use and manage our land plays a crucial role in the health and environmental condition of our water environment. It also correctly identifies other important processes that need to mesh with river basin management plans, such as the climate change and plan, environmental strategy and regional land use partnerships. However, SEPA's role is to protect the environment and the role of the river basin management plan is to ensure progress towards meeting those agreed environmental improvements. In our view, SEPA has been subject to significant 'mission creep' in recent years, and this has resulted in the core purpose of protecting the environment being compromised.

'Promoting' a partnership approach to achieve sustainable land management, through the various mechanisms outlined on page 17 of the consultation document, is a laudable aim, but these should be seen as adding value to SEPA's core role, with the primary focus on using regulatory powers to achieve the required changes. Overall, we are strongly of the view that throughout this section, there is too little emphasis on SEPA's regulatory powers.

The approach to tackling diffuse pollution is characterised in the consultation document as a success story. However, we believe that this is actually an example of how the current regulatory system has failed, and we are not convinced that General Binding Rules work. If they did, SEPA would not have to invest massive human and financial resource in farm visits to improve practices. SEPA regularly state that 'compliance is non-negotiable', but this does not appear to be the case in relation to rural diffuse pollution. The consultation document states that SEPA's approach to diffuse pollution 'is backed up by strong regulatory support'. We have seen very little evidence of this. We are unaware of any regulatory action beyond warning letters which have been used by SEPA to address these

issues. Given that rural diffuse pollution is identified by SEPA as one of the key pressures on the water environment, it is surprising that SEPA's regulatory powers have not been utilised in a high-profile and public facing manner to address these issues. In our view, these issues will not be adequately addressed until and unless SEPA place a far greater emphasis on regular compliance monitoring and work with other sectors to ensure that breaches of GBRs are identified and addressed.

We recognise that the approach to farm visits in the first round of priority catchments did result in much higher levels of compliance (at least in the case of crop production – there remain significant issues regarding dairy farming). However, without regular inspection and oversight, it is the view of our members that these standards have slipped and will continue to slip. SEPA staff resources should also be sufficient to ensure that follow-up is consistent and timely, and we believe that water bailiffs could have a role to play here.

There are sections of river that suffer from mine inputs that are categorised as overall 'good', yet water quality is compromised (e.g. in Ayrshire). Our members have discussed this with SEPA officers and have yet to be provided adequate explanation of why certain sections of impacted river were raised from poor to good in the last RBMP round - this categorisation remains in the third cycle. We believe that there is a need for a greater understanding of the impact iron has on fish populations.

We are also concerned that the approach to many issues which impact water quality appears to be purely solely on meeting licence or GBR requirements, with little apparent reference to real improvements in environmental conditions. We would expect to see evidence that compliance with GBRs is linked to improvement in water quality and invertebrate indicators. With this in mind, we are concerned by the large reduction in monitoring by SEPA that has occurred in recent years, with many water bodies no longer being monitored and many more having only one or two samples taken per year. For example, the River Dee (Grampian) consists of 56 waterbodies; in 2020, only four were sampled and in 2019, eight were sampled. Poor water quality is likely going undetected.

It is also vital that the environmental standards that SEPA regulate under are responsive to predicted changes in climatic conditions. We are already seeing warmer, wetter, winters and drier summers. We welcome the recent consultation on slurry storage and spreading and we wish to see these proposals delivered, and crucially enforced, without delay.

The consultation document contains no detail of what actual practical work is planned on the ground or how these high-level targets are to be achieved. Of considerable concern to members of Fisheries Management Scotland is the fact that, within the Spotfire tool a large number of water bodies, particularly those that were previous classified as poor or bad for morphology, appear to have been reclassified. The following justification is given:

'The water body has been designated as a heavily modified water body on account of modifications that cannot be addressed without a significant impact on the drainage of agricultural land.'

This is an admission of failure of the river basin management plan process and one that we do not support. Whilst we accept that the improvements required to upgrade these water bodies to good or better status are very challenging, we are also strongly of the view that more can and must be done, as drainage from agricultural land is a key source of diffuse pollution and poor water quality. It appears that these changes in classifications have all come into effect between 2018 and 2019, suggesting the changes are not a result of considered research and investigation, but a procedural decision that has ultimately affected the results reported at the end of the 2nd RBMP. We are concerned that this change in status will also remove any incentive to undertake (and fund) habitat

improvements in these areas. Often it is the smaller tributaries and burns that have failed due to morphology as result of historical (and sometimes recent) dredging, straightening and construction of flood banks etc. These smaller tributaries are very important salmon and trout spawning burns and reclassifying them as “heavily modified” is likely sealing their fate to remain just that. They will be dismissed as straightened ditches and treated as such with continued dredging, straightening, and building of flood banks. We need to have a mechanism or driver to achieve restoration or recovery, even if this is not necessarily to the standards required to achieve good classification under WFD.

Such changes to designation status gives the impression that the status of water bodies in Scotland has improved when such re-classified water bodies have not improved at all. As an example, four water bodies in the Deveron catchment have been changed from bad or poor status to good, for no other reason than the morphological issues have been removed from the classification. This gives the impression that this waterway is in good environmental health when this is not the case. Furthermore, this gives an open licence for these degraded waterways to continue to be managed in this way and will lead to further degradation. We believe that the current classifications should remain, and SEPA should support any improvements that are possible. As highlighted above, other actions, such as increasing the width of riparian buffer zones, may also lead to improvements which are likely to be beneficial to our native fish, even if they fall short of upgrading the water body. In some places a helping hand might be required through the reintroduction of the larger substrate (often still on the bank from previous dredging) and Large Woody Debris placement. There are many good examples across Scotland where burns that have been left alone for multiple years have begun to recover with quite rapid improvements in habitat and fish populations. Strengthening SEPA’s approach to managing dredging in such water bodies could also lead to significant improvements. Light touch intervention is hinted at on page 18 of the consultation document, but such intervention should be available in all water bodies. It is simply not acceptable for SEPA to simply place these downgraded water bodies in the ‘too difficult’ box.

We support the basis behind the actions to promote the sustainable use of water, but again we believe that regulation of such activities has too low a priority. We recently responded to the consultation on the water resources management plan, in which we expressed our concern that the proposed approach was not sufficiently robust to protect the water environment and would not have prevented some of the significant water scarcity issues in 2018. We wish to work with SEPA to develop a suitable approach to addressing water scarcity. Once the appropriate criteria are agreed, we strongly support the inclusion and enforcement of hands-off flow conditions being added to licences during the third RBMP cycle.

11. What issues do you see with us adopting this approach?

Share your thoughts with us in the space below

See our response to question 10 above.

12. Can you suggest any changes to the approach that will help us reach our goals?

See our response to question 10 above.

Section 3.4: Removing man-made barriers to fish migration

13. Do you agree with the approach outlined?

Yes

Not sure

No

Share your thoughts with us in the space below

We agree that there is an urgent need to support migratory fish populations and build resilience where possible to counter the effects of the range of pressures that these species face. We also agree that addressing man-made barriers to migration is a priority. Unfortunately, table 1 demonstrates that SEPA's approach has at best stalled, and at worst failed to take the appropriate actions to address these barriers. To achieve 262 barriers in 6 years seems very ambitious and potentially unachievable given the current resources and speed of easements. However, ultimately they are all important and should be delivered, in addition to any barriers that have yet to be identified.

Like our position on reclassifying waterbodies for which SEPA consider that modifications cannot be addressed without a significant impact on the drainage of agricultural land, we do not support the principle of setting less stringent objectives on the basis of disproportionate cost. We do not believe that the process that SEPA use to determine disproportionate cost is appropriate. When compared with some of the removal projects occurring in other jurisdictions, such as USA, this reads as a lack of ambition.

It is important to emphasise again, that we fully support efforts to remove impassable barriers and we wish to work with SEPA to help facilitate this. Importantly, we wish to see early and regular consultation/ discussion with DSFBs at all stages of the consenting process for such works.

We remain concerned at the rate of action at weirs which do not currently have a CAR licence. It is challenging to identify very many weirs from which there is no economic benefit whatsoever. Without a CAR licence in place, there appears to be no clear mechanism to drive improvements. As an example, Knowes weir on the River Tyne, which is impassable to migratory salmonids, has no CAR licence. However, the weir serves a lade and water supply to wastewater treatment works. This is a major hotspot for illegal wildlife crime and anti-social behaviour which the Forth DSFB and Police Scotland have to resource as a consequence on an inadequate regulatory system. These issues need to be addressed.

We are aware of a number of CAR licenses which have been issued for the retention of impoundments which either result in a new fish pass or accept the retention of an existing one. Despite considerable public money being invested in the creation of new fish pass solutions (or in some cases continued use by an operator) no requirement exists for the responsible person to provide any continued assessment of the fish pass to demonstrate that it is functioning adequately and helping to support of fish populations. We remain concerned that SEPA's position is that concerned third parties needs to provide evidence that the solution is not adequate despite there being no requirement for SEPA to consult (including DSFBs) before accepting a proposed solution. There needs to be greater requirement from CAR licence holders to demonstrate that the solution in place is and remains effective to ensure compliance. If they cannot demonstrate compliance then SEPA should take enforcement action.

Please see our response to question 16 below in relation to fish passage at large impoundments.

14. What issues do you see with us adopting this approach?

Share your thoughts with us in the space below

See our response to question 13 above.

15. Can you suggest any changes to the approach that will help us reach our goals?

Share your thoughts with us in the space below

See our response to question 13 above.

Section 3.5: Summary of other actions to protect and improve the water environment

16. Do you agree with the approach outlined for the areas above?

Yes

Not sure

No

Share your thoughts with us in the space below

Overall, we are in broad agreement with the measures outlined in the table, however, across all areas SEPA needs to back up the existing legislation / regulation with stricter enforcement. Currently SEPA is too slow in responding to issues and when it does its response is too weak.

Preventing deterioration in the quality of the water environment

See our comments above in relation to GBRs – we do not consider that this approach is working. Many of the current CAR licenses have never been reviewed since the Water Environment (Controlled Activities) (Scotland) Regulations 2011 came into being. We have significant concerns about various elements of SEPA's regulatory approach, including lack of consultation with district salmon fishery boards, use and subsequent variation of method statements, inappropriate conditions and lack of robust enforcement. We have set these concerns out in a separate paper in the context of wild fish which can be viewed at the following link: <http://fms.scot/wp-content/uploads/2021/06/210616-SEPA-SEPA-role-in-addressing-high-level-pressures.docx>.

Hydropower

There remain significant outstanding issues relating to fish passage and flows and it is disappointing that there is not more detail about how SEPA will address these issues. Fisheries Managers across Scotland have contributed to a prioritisation exercise relating to downstream passage of smolts at large impoundments, but this process does not appear to have progressed over the last 18 months.

During classification exercises, SEPA identified numerous waterbodies subject to hydro water abstraction that were not at Good Ecological Potential. Scottish Ministers agreed that up to 2% of hydro electricity production could be cut to allow flows to be restored to improve ecological potential. Despite this having been a long-stated ambition from even the first RBMP, we are aware of flows having been restored to only very few water bodies. These are: Garry Dam, Garry Intake and

Allt Glas Choire Intake on the Perthshire Garry system and Pullaugh Burn on the Galloway Dee system. This process must be treated with a greater urgency, and we would expect that SEPA utilise the full 2% in hydro electricity production to allow flows to be restored to improve ecological potential.

As a specific example of these issues, the Spey Fishery Board recently commissioned Envirocentre to produce a revised update to their 2008 report on Spey water abstractions. This 2021 Report shows that of the 51 sites throughout the Spey catchment with active water diversions and abstractions licensed by SEPA, the two largest ones continue to be the diversions for hydro-electric power generation. Huge volumes of water are diverted to power the Fort William Aluminium Smelter and to supply Scottish and Southern Energy's Tummel Valley hydro scheme within the Tay system. Crucially, the Report highlights that the Spey valley has extensive sand and gravel deposits that now store less water than would naturally be expected, due to the lower river levels as a result of these diversions. This has then often been compounded by historic land management practices to limit flooding of agricultural land, which also limits the opportunity to recharge these groundwater resources from ponding floodwater. The net result of this reduction in natural flow is that it has reduced the resilience of the river Spey to adapt to low flow conditions and the ravages of climate change.

The huge water diversions in the upper Spey Catchment date back to the 1930's, when they were recognised as being state-of-the-art engineering, enabling the transfer of water from vast tracts of the Scottish Highlands. We now have a much wider portfolio of low-carbon energy sources, including onshore and offshore wind, solar and marine energy. Opportunities for ecosystem restoration exist by increasing the amount of water released back into the Spey in the upper catchment, which will provide benefits that will extend downstream throughout the entire river.

There are many such examples throughout Scotland, where diversions for hydroelectricity generation have had a devastating impact on whole river systems. By re-watering depleted waterbodies, we can provide nature-based solutions which will develop the ecosystem resilience catchments need to enable them to overcome the significant challenges we all face now and in the future with regard to the climate emergency.

Distilling

More consideration needs to be given to the cumulative impact of distilleries on one burn. As an example, in 2018 the temperature of the River Isla (Deveron DSFB district) was raised by 6°C by the cumulative discharges of three distilleries within 1.5km.

Aquaculture

The document states that, "Through the sector approach, SEPA is implementing a new strengthened regulatory approach for finfish aquaculture to protect the marine environment. The aim is to work with the sector to drive sustainable production." However, as we have regularly emphasised to SEPA, this regulatory approach, which allows greater biomass to be consented on sites, has been taken forward without considering the impacts of sea lice associated with the greater biomass. Rather than protecting the marine environment, this approach has permitted more fish to be farmed without considering the impact of this production on migratory salmonids. SEPA is well aware of this gap in the wider regulatory system but proceeded regardless.

We continue to work with SEPA and Marine Scotland to develop the spatial planning framework for managing sea lice interactions between farmed and wild fish. It is vital that this, and the

recommended changes to the regulatory system are put in place as soon as possible. In the meantime, SEPA should not consent any further biomass in Scotland without full consideration of the impact on wild fish, under their biodiversity duty.

Bathing Waters

See our comments above in relation to combined sewage outflows.

Invasive Non-Native Species

INNS are agreed to be one of the biggest impacts on biodiversity in Scotland with significant economic impacts. We consider that there should be greater inter-agency coordination in the management of this issue. As the lead on freshwater INNS, SEPA should ensure that a coordinated approach is taken to encompass enforcement of relevant legislation, coordinated work at a catchment scale and provision of appropriate support and investment to facilitate the use of species control agreements and orders.

17. What issues do you see with us adopting this approach?

Share your thoughts with us in the space below

See our response to question 16 above.

18. Can you suggest any changes to the approach that will help us reach our goals?

Share your thoughts with us in the space below

See our response to question 16 above.

Section 4: Summary of our objectives for Scotland

19. Do you support the aims set out in this plan?

Yes

Not sure

No

Share your thoughts with us in the space below

Overall, we are in agreement with the basis for the plan, but we have found the consultation process very challenging to respond to. It is very hard to see the evidence that SEPA is going to deliver on the priorities set out in the consultation document.

SEPA has a key role to play in improving the situation for Atlantic salmon across a range of pressures identified by Marine Scotland. The dire situation that Atlantic salmon face across their native range, and the need to do more to protect and enhance this iconic species, is now widely recognised. As part of our consultation response, we have developed a paper, which can be viewed on our website (<http://fms.scot/wp-content/uploads/2021/06/210616-SEPA-SEPA-role-in-addressing-high-level->

[pressures.docx](#)) in which we identify issues which relate, either directly or indirectly to SEPA's regulatory remit, and where we believe that SEPA can do more as part of their contribution to Scotland's Wild Salmon Strategy. Some, but not all, of these issues are covered in our response above.

As a broader point, we would like to see evidence that achieving good environmental status is good enough for fish. On a similar note, we would like to see evidence that meeting General Binding Rules is actually sufficient to achieve improvements in the water environment. More significantly, SEPA appear to be of the view that if nutrient levels arising from diffuse pollution are not affecting ecology (presumably through the use of SEPA's invertebrate tool) then there is no need to meet good status. In many such cases, fish populations remain poor or non-existent. This is not acceptable.

As outlined above, we do have some significant concerns about the ambition in the plan and we do not support the reclassification of water bodies as heavily modified or lack of action due to disproportionate cost. We have discussed this issue with a number of our members, and it is extremely disappointing that the first time that they heard about the proposals to reclassify these important waterbodies is through detailed examination of the Spotfire tool. District Salmon Fishery Boards have duties set out in law to protect and enhance fisheries, and it is not clear how they are expected to do so, if issues of major importance within catchments are proposed without consultation. It is fundamental that communication between SEPA and fisheries managers has to improve, and we continue to work with SEPA to achieve this.

There is a presumption throughout that many issues will be addressed by land managers, voluntary organisations, public bodies, yet there appears to have been limited discussion on an agreed strategy to address these issues. We would have expected to see early and meaningful consultation during the development of the RBMP, including with DSFBs in advance of publication of this consultation.

20. The consultation Spotfire tool is a draft update of the Water Environment Hub. It will contain the data on RBMP pressures, actions and objectives for the third cycle (2021 to 2027). Please provide any feedback you have on the tool below..

Share your thoughts with us in the space below

Feedback from Fisheries Management Scotland members has been mixed. Although it was broadly thought to be a useful tool, it is very slow to load, even with excellent fibre broadband speeds, and can be glitchy and slow to use. Overall, this made responding to the consultation a somewhat complex and difficult process. It was also challenging to use the Spotfire tool to compare with previous rounds of plans, which in the light of the significant changes in classifications highlighted above, was extremely frustrating. Comparison of the Spotfire tool against the current classification on the Water Environment Hub did not appear to be entirely consistent with how changes have been made.