

**Blueprint for Water consultation response to the River Basin
Management Plans**

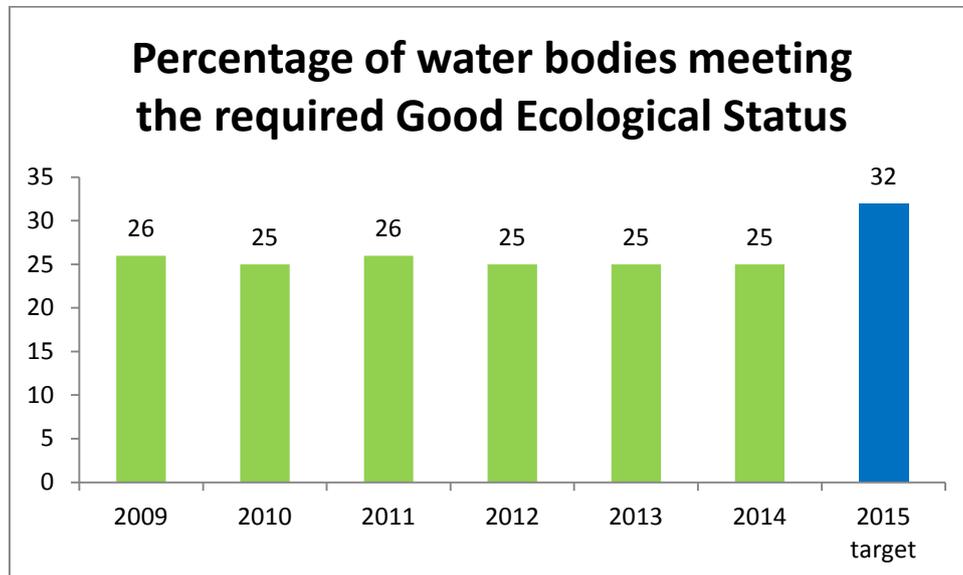
Contents

1	Review of delivery under the first round of RBMPs	3
2	Presentation and availability of information in the uRBMP consultation	4
3	Measures.....	5
3.1	Lack of clarity & consistency in the term “measures”	5
3.2	Lack of meaningful detail on proposed measures	5
3.3	Information available from Catchment Coordinators	5
3.4	Lack of evidence on effectiveness of existing measures & subsequent response	6
4	Objectives.....	6
4.1	Lack of objectives in uRBMP consultation	6
4.2	Inconsistency in objectives set for Natura 2000 sites & underlying water bodies.....	7
4.3	SSSI Objectives	7
4.4	Biodiversity 2020 and priority habitats.....	8
5	Natura 2000 Protected Areas	9
5.1	Poor performance and deferred objectives.....	9
6	Economics	12
6.1	Understanding the cost of inaction – comparing Scenario 4 & 5	12
6.2	Failure to integrate the polluter pays principle	13
7	Classification and monitoring	14
7.1	Issues arising from transition from Old and New Building Blocks	14
7.2	Changes to overall status that are attributed to an absence of monitoring	14
7.3	Small water bodies.....	15
7.4	Inaccuracies in Reasons for Not Achieving Good (RNAG) database	15
7.5	Information on chemical status	16
7.6	Third party data	16
7.7	Review of Artificial and Heavily Modified Water Bodies (HMWB)	16
7.8	Inconsistency of HMWB de-designation based on shellfisheries	17
7.9	Consideration of transitional and coastal water bodies.....	17
8	Transposition issues.....	18
8.1	Failure to make measures operational for public bodies	18
8.2	Lack of basic measures for diffuse pollution	18
8.3	Water abstraction exemptions	19

8.4 Sustainable Drainage 20

1 Review of delivery under the first round of RBMPs

In December 2009 the Government published the first set of River Basin Management Plans (RBMPs). These showed that 26% of water bodies in England and Wales were at Good status and set out measures intended to increase that to just 32% by 2015.



Our organisations were amongst many that expressed disappointment at this low level of ambition. However, as the Environment Agency (EA) figures taken from the 2013 Progress Update¹ and shared by the Environment Agency ahead of the release of the 2014 results² show, progress against these lacklustre objectives has stalled or even reversed: from 2009 to 2014 the percentage of water bodies at that status decreased from 26% to 24%.

The latest results using the New Building Blocks were recently released by the Environment Agency. These show that the number of water bodies in Good Ecological Status/Potential or higher shown in the above chart is optimistic and that currently only 17% of rivers are currently at Good or higher status (18% of all water bodies).

We acknowledge that this is not definitive evidence of deterioration but rather the result of more assessments being based on real data, especially for biological quality elements and more ecologically sound (tighter) standards particularly for phosphate. However, it does highlight the poor state of our water bodies and the magnitude and importance of the task ahead of us in achieving real improvements.

There has also been very little progress in meeting the target of having all wetland features of Natura 2000 sites in Favourable Conservation Status. 50% of underpinning wetland Sites of Special Scientific Interest (SSSI) units by area are not meeting their conservation objectives.

¹ Environment Agency (2013) Water Framework Directive Classification 2013 progress update.

² Calculated from information provided by Owen Lewis at the Environment Agency for each water body type

Although measuring compliance by area is a valid approach the condition of large Natura 2000 wetlands such as estuaries and blanket bog, mask the situation for smaller habitat types, which include core Water Framework Directive (WFD) habitats such as rivers. By contrast if we look at the number of wetland SSSI units underpinning Natura 2000 sites, 71% are not currently meeting the WFD objective, including 84% of SSSI units underpinning river and stream Natura 2000 sites. So although the nature of SSSI condition monitoring means that we do not have up to date information on the condition of units, based on the information available, it is clear that we are unlikely to get anywhere near the Natura 2000 Protected Areas objectives established in the first round of River Basin Management Plans.

There are a number of compounding ecological and technical reasons why progress might have been delayed for some sites but overall it is hard not to conclude that current management of our water bodies is failing even to maintain the status quo let alone deliver improvement.

Against this disappointing assessment of progress so far, we are very keen to work with the Environment Agency to ensure that the updated RBMPs (uRBMPs) set out a much clearer picture about how we will improve England's water environment and meet the objectives set out in the WFD.

2 Presentation and availability of information in the uRBMP consultation

Whilst the layout of information is an improvement on the 2009 plans, finding information is still not straightforward. The use of interactive pdfs is a useful way of illustrating the national picture but it does not offer the resolution needed to investigate the data at the water body scale. It would be more useful if the data that is provided on the interactive pdfs was available through the Catchment Data Explorer, the DEFRA mapping portal or made available to download on Geostore.

Our interim response goes into detail about several situations where information has not been included in the consultation. Key omissions include:

- No objectives set for water bodies for the next cycle up to 2021
- No centrally held database of measures for individual water bodies
- Reasons for Not Achieving Good (RNAG) database appears incomplete

The water body specific measures and mechanisms are a critical part of the consultation. Without them, consultees are unable to meaningfully comment on the long term objective and it becomes very difficult to respond to the Environment Agency's feedback pro forma, which asks for comments on measures and for stakeholders to identify how they might contribute to the delivery of the plan. It is not acceptable to have to contact each Environment Agency office separately and ask for bundles of measures to be provided for individual operational catchments and when we have done so we have received inconsistent responses and information from different offices. This information needs to form part of the national consultation.

When we have requested information it has usually taken several weeks to obtain. The complexity of the data and the internal data management systems used by the Environment Agency has often

meant that it has been difficult for the Environment Agency to articulate what data exists and present it in such a way that it can easily be interpreted by individuals from outside the organisation.

Whilst this is a criticism of how databases have been constructed and shared through the consultation, it is not a criticism of individual Environment Agency officers, who have in many cases gone out of their way to gather data and attempt to explain what it means.

3 Measures

3.1 Lack of clarity & consistency in the term “measures”

There is confusion in what is meant by the term ‘*measure*’. The economic appraisal interprets *measures* as being the intervention on the ground, as opposed to the ‘*mechanism*’ by which it is achieved. However, the national measures described in Part 2 include a mix of interventions that would classify as *measures* and *mechanisms* using this typology. Moreover the summaries of measures are too high level to understand how they would affect change on the ground.

3.2 Lack of meaningful detail on proposed measures

It is not possible to make any meaningful comment on the objectives that are presented in the RBMP (Scenario 4) and in the Catchment Data Explorer. Without a summary of *measures* and *mechanisms* stakeholders cannot understand what scale of change is being proposed, how likely it is to be delivered and, crucially, who will pay. As a result we cannot say whether the objectives proposed are appropriate.

Correspondence with David Baxter at the Environment Agency confirms that there is no single consolidated database of measures held at the national scale. We have contacted regional offices to get hold of bundles of measures and costs and the Final Appraisal Report for several operational catchments. As we understand it, the bundles of measures have been developed in different ways across the country. It is not clear if any quality control or benchmarking has been carried out or whether there is a risk that the different approaches might result in differences to the outcome of the economic appraisals and the probability of measures being discarded on the basis of them not being found to be cost beneficial.

Overall the lack of a timetable for delivery of the national measures, along with the omission of water body specific measures from the consultation, means that there is no way of understanding what is proposed and consequently commenting on them. If the same approach is adopted in the final plans there will be no way of assessing progress in delivering the plan or ensuring that alternative measures can be put in place if the current course of action is shown to be ineffective.

3.3 Information available from Catchment Coordinators

Some information on water body specific measures was made available through information provided by Catchment Coordinators. This included ‘Measures, Bundles and Costs Sheets’, ‘Appraisal Summary Tables’ and ‘Final Appraisal Reports’. However, these documents lack the detail that is required to understand what is proposed at the scale of the individual water body. Descriptions of measures such as ‘*improve floodplain connectivity*’, ‘*install nutrient reduction*’ or ‘*field and crop – arable soils*’ do not give sufficient information about what is proposed or how a cost has been assigned.

The Environment Agency note that was circulated in January 2015 'Economic appraisal documents: Information on measures' states that '*it should be noted that these documents were not written for the purposes of presenting information about measures*' and suggests that they should be read '*in discussion with local Environment Agency staff*'. Whilst local staff, especially the Catchment Coordinators, have been helpful in interpreting the information and providing the detail that is behind these summary documents, we believe that this is not an acceptable way of presenting information that should form a core part of the consultation.

More useful information was available through the local Water Body Action Plans that detailed specific measures with costs and were not constrained by the standard descriptions required in the 'Measures, Bundles and Costs' sheets. In most cases these spreadsheets were considered to contain potentially sensitive information and required a visit to the relevant Environment Agency office to talk through with the relevant officer. We feel that this information is important for people to access if they are to properly engage with the consultation and that suitably redacted versions should have been made available through the consultation.

Some Catchment Coordinators also shared the Catchment Evidence Summary and this proved a useful document in outlining the evidence base that has been used to identify the sectors behind specific pressures. This often provided a more useful level of information than the Catchment Summaries and should also have been shared more widely as part of the consultation.

3.4 Lack of evidence on effectiveness of existing measures & subsequent response

It is openly acknowledged that improvement objectives established in the first cycle of RBMPs will not be met. Despite this there has been no systematic review of the effectiveness of measures implemented during the last cycle to inform the update.

Such a review is critical in order to ensure that resources are targeted in the most effective way and that statutory measures can be put in place where voluntary measures have failed. This approach is in line with the commitment made in the Statement of Position.

In recent correspondence, David Baxter suggested that this need was met by the interim report on programmes of measures that was submitted to the Commission in December 2012, in accordance with Article 15(3). Whilst the interim report confirms whether measures have been made operational in each River Basin District, it does not assess the effectiveness of those measures in delivering or progressing towards stated objectives.

As such we do not believe the *interim report* provides a sound baseline against which respondents can make a judgement about the adequacy or otherwise of the proposed measures.

4 Objectives

4.1 Lack of objectives in uRBMP consultation

The consultation does not present a set of draft objectives for the period 2015 to 2021 and therefore we question whether what is presented constitutes a consultation on an updated RBMP.

The lack of proposed objectives has made it difficult to construct a meaningful response to the consultation on the updated management plans, as five possible scenarios are included without a commitment to any one of them.

Article 5 of Annex VII of the WFD stipulates that RBMPs must provide a list of the environmental objectives for surface waters, groundwaters and protected areas. However, the consultation only presents the objectives for each water body under Scenario 4, in which the long-term objectives are based on all measures being implemented when the Environment Agency's economic assessment expects the benefits of doing so to outweigh the costs.

The Economic Analysis states that Scenario 4 will not be implemented during the second cycle – and no decision has been made how far (if at all) spending by different sectors will go beyond the current funding and regulation summarised in Scenario 5. Moreover, there is no breakdown of how adoption of Scenario 5 would affect objectives at the water body level, nor of how these lesser targets for 2021 will affect the ability to meet the long-term aims of Scenario 4. Of all the scenarios presented, we consider Scenario 4 to be the one with an approach that comes closest to demonstrating compliance with the WFD (see 6.2 for comment on how the cost of Scenario 5 has been presented).

Altogether, these draft Plans do not present the government's proposed objectives for water bodies over the course of the next cycle – making it extremely difficult for us to respond constructively.

4.2 Inconsistency in objectives set for Natura 2000 sites & underlying water bodies

Targets for water quality and flow for Special Areas of Conservation (SAC) rivers have been locally agreed between Environment Agency and Natural England and have been published on Natural England's website with links from the Site Improvement Plans (SIP). However, in many cases long-term objectives set out in Scenario 4 in the uRBMP for those water bodies do not reflect the agreed targets. For example, the River Itchen SAC in the South East River Basin District (RBD) has a phosphate target of "Good" in the uRBMP, when the agreed SAC target linked from the SIP requires "High".

In the same RBD, the proposed targets for dissolved inorganic nitrogen and macroalgae for Chichester Harbour have been set as "Moderate" contradicting an agreement that we understand has been reached between Natural England and Environment Agency that they should be set as "Good".

Clearly having an objective for a Natura 2000 water body that is lower than would be required to meet the water dependent conservation objectives of the site would not comply with Article 4.2 of the WFD.

4.3 SSSI Objectives

There is a strong legal argument that all SSSIs should be identified as Protected Areas alongside Natura 2000 sites and treated accordingly. Notwithstanding this point we welcome the link that Part 2 of the uRBMP consultation makes between river basin planning and SSSI condition improvement. However it is not clear to us how or if SSSI designations have influenced objectives presented in the various scenarios.

We believe that the same approach of locally agreeing targets and corresponding objectives should be applied to non-Natura 2000 wetland SSSI water bodies when their conservation status is dependent on water quality targets being achieved. This would be consistent with the Government's aim of increasing the proportion of SSSIs that are in Favourable Condition by 2020.

4.4 Biodiversity 2020 and priority habitats

Part 2 of the uRBMP consultation acknowledges the contribution RBMPs could make to the achievement of habitat quality, creation and restoration outcomes under Biodiversity 2020 for priority water dependent species and habitats. However, there is little evidence in the individual RBMPs that they have recognised situations where priority water dependent species or habitats are present especially outside SSSIs, let alone the role that RBMPs could have in marshalling resources and driving positive management.

For example, the River Esk in the Humber RBD supports the only population of freshwater pearl mussels in Yorkshire and is one of only eleven rivers in England to support the species. There is no mention of the pearl mussel population in Part 1 of the Humber RBMP or in any of the summaries available on the Catchment Data Explorer. They are referred to in the Esk and Coast Catchment Summary, which recognises that the species '*will become extinct in the Esk unless immediate action is taken to halt its decline*'. The Summary goes on to state that '*it requires very clean water to survive which is why the WFD target for the Esk Operational Catchment is set at achieving high ecological status*'.

However, the entire population of pearl mussels is confined to one water body in the catchment, the Esk from Sleddale Beck to Ruswarp. In contrast to the commitment made in the Catchment Summary, this water body is currently at *Moderate* with an objective of *Good*. The opportunity to contribute towards biodiversity outcomes was recognised in the Catchment Summary but the process has failed to reflect this ambition in the proposed objective.

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 a bundle of measures that could deliver priority habitat and species benefit beyond the requirements of the WFD.

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.

Finally, the method for identifying priority rivers described in the RBMPs values 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 the failure to deliver on high level commitment to Biodiversity 2020 represents a clear failure of the current draft RBMPs.

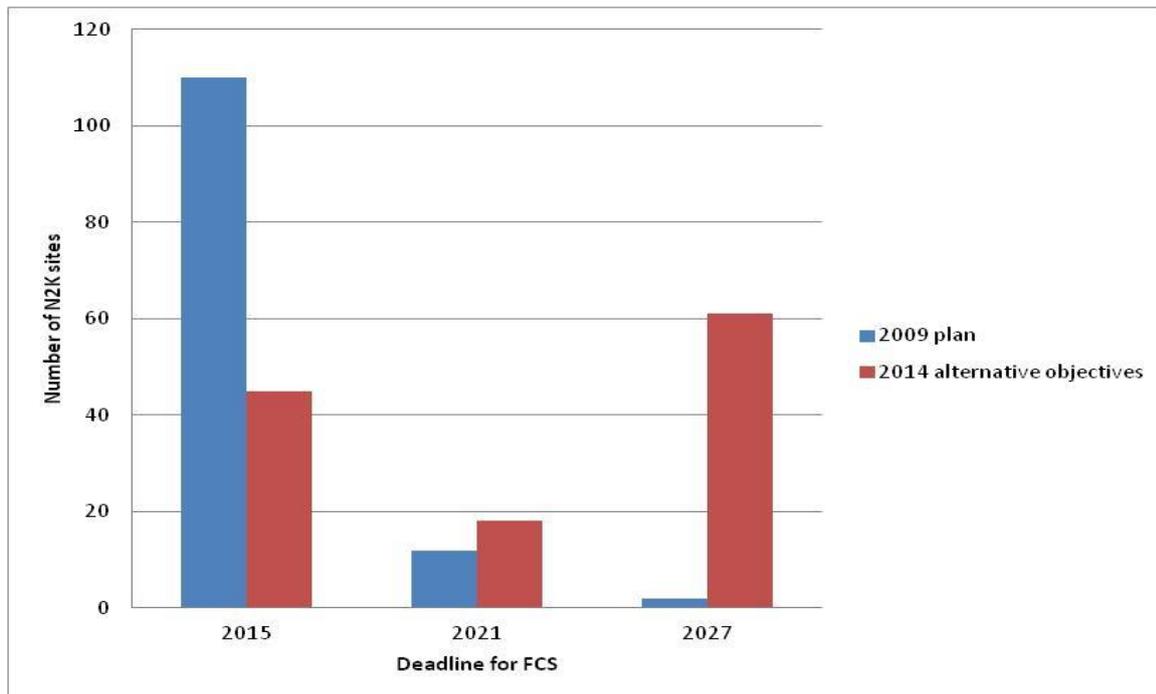
5 Natura 2000 Protected Areas

5.1 Poor performance and deferred objectives

DEFRA guidance to the Environment Agency ahead of the first round of RBMPs reflected the Department's position that objectives for Natura 2000 sites could only be extended where the protected area is coincident with a water body and only to allow phased implementation of the measures. This was reflected in Annex D of the last RBMPs, where deadlines were set for 124 Natura 2000 sites. 110 of these were expected to meet their objective by the December 2015 deadline, 12 were expected to meet the objective by 2021 and only two sites were not expected to meet the objective until 2027.

These objectives were clearly demanding but there was an expectation that money and resources would follow.

However the current consultation suggests a poor record of delivery with just 45 of those same sites expected to meet the December 2015 deadline. Moreover, of the remaining sites, 18 would be extended until 2021, whilst 61 sites would have their deadline extended until 2027.



Justification of these time extensions appears to rely on a significant change to DEFRA's original interpretation of the law² in their latest guidance to the Environment Agency³.

Notwithstanding the question of whether the application of time extensions to Protected Areas is legally permissible, we have serious concerns about how proposed time extensions have been justified.

² Welsh Assembly Government and DEFRA (2008) River Basin Planning Guidance Vol 2

³ Welsh Assembly Government and DEFRA (2014) Draft River Basin Planning Guidance, paragraph 10.26

By far the most frequently cited reason for extending a deadline is *‘Technical Infeasibility – Practical constraints of a technical nature prevent implementation of the measure by an earlier deadline’*. The description of this reason in the UK TAG guidance states that it *‘includes administrative constraints in terms of commissioning, gaining permission for, and undertaking the necessary works. It does not include constraints due to a lack of legislative mechanisms or of funding’*.

We believe this interpretation of *Technical Feasibility* is fundamentally unlawful. It is not supported by guidance on technical infeasibility in Common Implementation Standards (CIS) guidance 20. It is also inconsistent with a number of European Court of Justice rulings, including a recent ruling on the Urban Waste Water Treatment Directive which concluded that *“in accordance with settled case-law, a Member State may not plead practical or administrative difficulties in order to justify non-compliance with the obligations and time-limits laid down by a directive.”*⁴

We also have reason to doubt whether the justification has been applied in a way that is consistent with UK TAG guidance. In particular, the assertion that lack of funding and/or legislative mechanism has played no role in causing delays does not hold up to scrutiny.

For example the RSPB undertook a review of those sites listed under Annex D of the 2009 RBMPs that the organisation owned or was involved in managing. The view of people involved in managing the sites was that many of the measures identified in Annex D were unlikely to lead to the site moving towards favourable conservation status and/or have not been implemented. Our experience would suggest that contrary to the reasons given in the extended deadlines table, lack of funding has been a barrier in several cases.

More recently a letter to RSPB from Natural England gave more detail as to why extensions have been applied. This quite clearly states that:

Predictions of pollution reduction that can be achieved through these measures will be constrained by:

- *The level of environmental performance at which basic measures for cross compliance are set.*
- *Assumptions around the level of compliance with basic measures*
- *The amount of Rural Development funding available to underpin a Catchment Sensitive Farming type advice and capital grants programme.*
- *The amount of Rural Development funding available to underpin Countryside stewardship options and items aimed at soil and water*
- *Assumptions around levels of voluntary uptake of advice and options.*
- *The level of overlap between planned water company investment in catchment schemes and N2K DWP outcomes.*

We also note that Natural England have identified lack of landowner agreement as a barrier to progress on a number of sites. In most, if not all such circumstances Natural England are again

4 European Union Cases. Court of Justice. JUDGMENT OF THE COURT (First Chamber) of 18 October 2012 (*) in Case C-301/10.

proposing to justify time extensions on the grounds of Technical Feasibility – Practical Constraints. However we would suggest problems of landowner cooperation points to the lack of an alternative legislative mechanism being available or being implemented to meet the objective. As a result we believe that Natural England’s proposed use of the *Technical Feasibility – Practical Constraints* in such circumstances fails to comply with UK TAG guidance let alone EU law.

5.2 Fitness for purpose of the Site Improvement Plans

We understand that the updated RBMPs will adopt the Site Improvement Plans (SIPs) that Natural England has carried out or commissioned as part of the EU Life funded Improvement Programme for England’s Natura 2000 Sites (IPENS) as the summary of measures for Natura 2000 sites. The hope is that the SIP will identify the programme of work required for water dependent Natura 2000 sites to meet the WFD objective.

We have some concerns about the ability of the current SIPs to be used in this way that need to be addressed:

- As a statutory body, Natural England, must only “have regard to” the objectives of the RBMP and the Environment Agency have no way of securing compliance as set out in the WFD regulations (2003)
- The quality of SIPs is variable but most are high level, with insufficient detail about remedies
- It is not clear which ‘actions’ in the SIPs are ‘measures’ intended to deliver Favourable Conservation Status as defined by the WFD
- The SIPs contain a ‘timeframe’ for the implementation of actions but they need to include a clear timetable with a deadline that is consistent with that required by WFD (December 2015) or with the extended deadline provided with this consultation. Inclusion of such a timetable would allow SIPs to better explain the rationale for deadline extensions and how they comply with WFD obligations.
- They tend to avoid the use of regulation – we believe delivery actions should draw more on the full range of voluntary, incentive and **regulatory levers** available, including Water Protection Zones.
- They often refer to the implementation of other plans such as Diffuse Water Pollution Plans that are not yet in place or of sufficient quality to drive meaningful action.
- They refer to Diffuse Water Pollution Plans as a mechanism for implementing measures on the ground when the plans themselves have no powers or funding associated with them that would drive this implementation.
- Funding requirements have often been assigned to actions that should be core business for statutory agencies and receive core funding e.g. SSSI designation
- It is often not clear how the proposed mechanism will deliver an improvement in condition or what the review period will be in order to test efficacy and review the approach if necessary
- Many of the priorities have research listed as an action in order to identify a solution but no requirement for follow up. Each research action should be accompanied by an implementation action
- It is not always clear what the difference is between the lead body and the delivery partners. It is also not clear who is responsible for finding the necessary funds

- There appears to be considerable variation in the amount of consultation that has been carried out. Not all delivery partners appear to have been consulted on actions that they are down to deliver

6 Economics

6.1 Understanding the cost of inaction – comparing Scenario 4 & 5

We were pleased that the economic appraisal of Scenario 4 showed that getting 75% of water bodies to Good Ecological Status will also deliver more than £8.5 billion net benefits to society. We take this as a conservative estimate as the method used for the appraisal significantly underestimates the benefits and overestimates the costs. Benefits are undercounted by excluding many potential benefits from the analysis (e.g. all benefits to the water industry and from flood protection); the use of Willingness to Pay values that the Environment Agency's consultant states can '*be viewed as being a relatively conservative stance on the value of WFD improvements*' (Metcalf, 2012); and they are also underweighted through discounting where delivery of measures is uncertain rather than taking action to increase the likelihood of delivery. Costs, meanwhile, are potentially overestimated through optimism bias assumptions.

We note that on discounting in particular, Common Implementation Strategy Guidance Document No. 20 paragraph 3.2.3 states if there is uncertainty around the effectiveness of a measure then '*actions need to be taken to reduce the uncertainty*' rather than increase the chance of inactivity. It is not clear that the approach adopted for the economic analysis is consistent with this guidance.

We have also found it impossible to make more than an approximate comparison of scenarios 4 and 5 because i) they are discounted across different time periods (37 years for Scenario 4 and 6 years for Scenario 5) and ii) farm subsidies are treated differently with compensation to farmers appearing in Government expenditure in Scenario 5 but against farming in Scenario 4.

Altogether, Scenario 4 represents a set of measures that have *markedly* greater benefits than costs and we would expect draft River Basin Management Plans to set water body objectives that would achieve those benefits at the very least.

In contrast, Scenario 5 offers something very similar to a business as usual scenario. According to the figures presented in the economic analysis and by the Environment Agency in correspondence, Scenario 5 forfeits over £5.5 billion of net benefit (approximately £260 million *per annum*) by delivering only 7% of water bodies to Good Ecological Status (GES) over the baseline through this plan period. As a result it fails to deliver best value for people or the environment and fails to meet the overall aims or specific requirements of the Water Framework Directive. We note as well that the consultation's economic analysis expects the 'affordable' Scenario 5 to cost £545 million *per annum* between 2016 and 2021, while the more ambitious Scenario 4 would cost £440 million *per annum* over the same period. If correct, these figures highlight the excessive costs paid by some sectors of society – the water industry, central government and charities/NGOs in particular – to compensate for inactivity by other sectors.

If we end up with a scenario that defers the implementation of cost-beneficial measures beyond 2021- and therefore extends the deadline for meeting GES/Good Ecological Potential (GEP) to 2027 - the RBMP must set out a timetable of measures that will be needed to deliver GES/GEP by 2027 and

a clear explanation of how any barriers 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.

We note that many of the percentage figures above may change following the recent revision of water body classification. The overall impact on economics is uncertain given that the bottom up assessment of bundles of measures was built on a set of classifications results that were optimistic but understand that the general picture remains the same at a national scale.

6.2 Failure to integrate the polluter pays principle

The polluter pays principle is a central tenet of UK and EU law, of the Water Framework Directive specifically and is at the top of the hierarchy of funding mechanisms described in the RBMPs. However the updated RBMPs and available supporting documents do not provide enough detail to fully calculate the annual costs of measures in an easily comparable way.

The aggregate cost figures available (see table on p.19 of the economic analysis) suggest that under Scenario 4 - where water pollution and damage were stopped where the benefits of doing so outweigh the costs and polluters were not compensated except through existing agricultural subsidies, the distribution of costs to undertake WFD measures would be as follows: -

Sector	Annual cost	% of total cost	% RNAG assigned to sector
Water & sewage industry	£160M	41	38%
Agriculture	£180M	36	33%
Other industry	£40M	9	7% - 25%
Government	£60M	14	4% - 22%
TOTAL	£440M	100	100%

This distribution broadly aligns with the Environment Agency data on which sectors are causing damage (the Reasons for Not Achieving Good or RNAG). However, under Scenario 5, the business as usual scenario, the distribution of costs becomes: -

Sector	Annual cost	% of total cost	Annual change compared to Scenario 4
Water & sewage industry	£390M	72	+\$230M cost
Agriculture	£15M	3	-\$165M saving
Other industry	£40M	7	No change
Government	£100M	18	+\$40M cost
TOTAL	£545M	100	+\$105M cost

Business as usual under Scenario 5 sees the water industry facing far higher costs, in the region of £230 million extra (240% higher) each year until the middle of the century. Government also faces higher costs under this scenario, in the region of £40 million each year. By contrast, agriculture bears far lower costs than it would under a polluter pays system, avoiding £165 million a year in clean up costs, which equates to over 90% of the total clean up costs for agriculture.

Scenario 5 is presented as the ‘affordable’ option in the consultation – introduced with the statement that it ‘shows the effect of funding constraints on the rate of progress towards the objectives’, given that ‘[a]chieving all of these proposed objectives of scenario 4 in the short term is not feasible’. However, Scenario 5 is £110 million per year more expensive throughout the course of the next parliament – a detail that is masked by a miscalculation of the headline figure (confirmed to us by the Environment Agency) and only apparent to those who examine the tables with a fine tooth-comb. Because it fails to deliver the bulk of the benefits offered by the polluter-pays option of Scenario 4, it also forfeits over 80% of the river and coastal improvements and at least £5.5 billion in economic benefits.

This seriously undermines the credibility of the consultation, as many respondees will be misled by the miscalculation and the description of Scenario 5 as a less expensive and more realistic package of measures.

7 Classification and monitoring

7.1 Issues arising from transition from Old and New Building Blocks

We welcome significant improvements in the standards and monitoring approaches being applied to “New Building Block Classifications”. For example we are pleased to see tighter phosphate standards for rivers and a commitment to increasing the programme of macrophyte and phytobenthos monitoring. This addresses concerns that had been raised previously, in that these elements were often assumed Good in the absence of monitoring in the last cycle.

It has been well understood⁵ that assuming unmonitored elements were meeting their objective condition, when in fact their status might be worse than this, introduced an optimism bias in the classification of water bodies. The results for 2014 that were recently released by the Environment Agency confirm this as we now understand that only 17% of river water bodies are meeting GES, rather than the 23% that had previously been reported.

Changes to these ‘building blocks’ results in a shift in the baseline and no doubt mean that the projections for how many water bodies could meet GES under the scenarios presented in the RBMP will no longer hold true. It is vital that information on how this might affect the projections is made available to stakeholders to comment on as soon as possible.

7.2 Changes to overall status that are attributed to an absence of monitoring

We are concerned about the potential implication of dropping failing elements from the monitoring programme for specific water bodies. For example, Baldon Brook in the Thames River Basin District has been assessed as being in GES in the current consultation having previously been classed as moderate because of its phosphate result. However, the apparent improvement is a result of there

⁵Cunningham, R. (2012) Glass half full or half empty? Why 2009 Water Framework Directive classification results are over-optimistic about the state of rivers despite the One-Out, All-Out rule., RSPB.
<http://www.wfduk.org/sites/default/files/Media/Wildlife%20and%20Countryside%20Link%20The%20One-Out%20All-Out%20Pessimism%20Myth%20Final.pdf>

being no water quality monitoring since 2011, so the 2014 classification does not include phosphate and that element has been assumed Good in the absence of monitoring.

If after three years we get a return to the default position of Good in the absence of monitoring then this could also result in an erroneous recording of real improvement in our water bodies. We suggest that if an element has previously been monitored, then that result should be used in the assessment until an investigation determines whether the status of the element has improved.

7.3 Small water bodies

We have concerns about some aspects of the review of the water body network. In particular, the reduction in the number of river water bodies has seen a disproportionate number of coastal streams removed, whilst headwaters have been merged with larger sections downstream. We are concerned that the size criteria described in the UK Technical Advisory Group (UK TAG) 'Guidance on the identification of small surface water bodies' has been applied across the board with insufficient consideration given to whether some of the water bodies meet the criteria in 5.1 of that guidance that sets out how a smaller water body might be designated.

In particular the guidance under 5.1 (vi) to consider whether they should be monitored within the river basin management planning process '*to provide an overview of the general condition of small elements of surface water within the RBD*' needs to be considered. This is particularly relevant to RBDs such as those in the South West, which have a very significant proportion of small coastal stream catchments, very few of which are now captured for monitoring under WFD.

It is also unclear why SSSI ditch networks and wetland habitats associated with Natura 2000 sites are no longer considered to be water bodies under the WFD. They would meet the criteria set out in the UK TAG guidance as small surface water bodies. SSSIs do not form part of the Protected Areas network under the UK interpretation of the WFD so they are not picked up elsewhere. In addition, freshwater streams and wetlands associated with the mouths of river systems are in many cases proposed for deletion. This risks excluding important catchments, the management of which affects important wetland sites. For example deletion of water bodies around the Tees estuary has resulted in splitting the Teesmouth and Cleveland Coast SPA and given the nature of estuary development, potentially impacts significantly on the status of the associated transitional water bodies. We believe that these gaps should be reviewed and where there is no sensible way of including them in an adjacent water body, consideration should be given to creating a new water body in line with UK TAG guidance.

In general, the RBMP process is not currently monitoring or driving improvements in the health of smaller water bodies and the current revision renders it less able to do so. We accept many of the monitoring methodologies and assessment tools may be inappropriate for dealing with these. However, given their importance and the proportion of UK wetland biodiversity that is associated with them, it is important to ensure that we find a way of monitoring, reporting and improving the health of these wider wetland components.

7.4 Inaccuracies in Reasons for Not Achieving Good (RNAG) database

The RNAG database does not appear to be complete, with several water bodies omitted that are not currently classed as meeting GES or higher. Taking the Rye operational catchment in the Humber RBD

as an example, 23 water bodies do not currently meet GES but two of these (GB104027068280 and GB104027068530) do not feature on the RNAG spreadsheet.

7.5 Information on chemical status

Information on WFD chemical status is noticeably sparse. Whilst a brief reference to certain chemicals can be found, a comprehensive assessment of each of the priority substances (including those deemed to be hazardous) and specific pollutants (accepting that these fall under Ecological Status) is lacking. Moreover, the limited overview of the EA's risk assessment 'weight of evidence' approach to determining chemical status gives rise to a number of questions, and precludes the ability to provide a fully informed consultation response. In keeping with the plans more generally, measures to address a failure to reach good chemical status lack detail. Notably, those engaged within the wider issue of chemical status can find substantially more information through sources such as the European Pollutant Release and Transfer Register (encompassing emissions, losses and discharges of numerous chemicals, including their sources and relevant sectors) than is evident within the RBMPs.

7.6 Third party data

To date there has been no systematic attempt to use third party data to refine the assessment of water body condition. Whilst it is appreciated that new initiatives are currently being explored, there remains a lack of detail around how such data might be captured and used to support river basin management planning. The Environment Agency has developed and oversees one of the best environmental monitoring networks in the world but the scale of the WFD network and increasing strains on EA resources mean that third party local data and evidence can and must play a critical role in improving our understanding of the pressures, impact and status of our water bodies.

7.7 Review of Artificial and Heavily Modified Water Bodies (HMWB)

The review process for Artificial/HMWB, described in the RBMP supporting information document 'A/HMWB: Designation and Classification' seems sound and picks up on the key tests required under Article 4(3). However, we do not think that the test requiring it to be shown that there *'is no technically feasible alternative option for achieving the social and economic benefits delivered by the modification that is better for the environment and is not disproportionately costly'* has been properly applied in all cases.

We would consider the case of the Gilpin in the North West RBD and the Idle in the Humber RBD to be examples of where there is a better option for the environment that would respectively be cheaper than maintaining the modifications in their current form or be cost beneficial to implement. We would like to see some detail around how this test has been applied to several HMWBs.

We are also very concerned that *'due to resource constraints and limited data availability'* (quotations from the Environment Agency HMWB review) a much *'simpler designation process'* has been followed for the 400 plus water bodies that are newly designated as HMWB in Cycle 2. In our opinion, this process does not meet the requirements of the WFD; the review document suggests very little assessment has taken place, stating instead that *'[i]f there were extensive modifications present that had an associated specified use, then it was assumed they would meet the Article 4(3) tests and the water body could be provisionally designated as heavily modified.'*

There are several cases referred to in the supporting information where an Artificial/HMWB has been merged with an undesignated water body. In most cases (e.g. the merging of the Gilpin and River Gilpin) the new water body takes on the Artificial/HMWB designation. This effectively means that a water body that was previously at good ecological status is given a new objective of moderate ecological potential. We seek clarity on how deterioration would be recorded in these circumstances.

7.8 Inconsistency of HMWB de-designation based on shellfisheries

Whilst we welcome the de-designation of shellfisheries in the South West, there is no detail provided around why shellfisheries in other districts (notably the North West and Anglian) have not also been de-designated. The supporting information 'Artificial and Heavily Modified Water Bodies: Designation and Classification' refers to a concern that the *'higher aspiration of GES would require measures that would influence the industries negatively'*. We would have thought that for a fishery to be considered sustainable, it should be possible for it to operate in such a way that does not prevent a water body from reaching the standards required for GES. We welcome the commitment to review transitional and coastal water bodies designated as Artificial/HMWB during the next cycle and hope that it will be able to address this concern.

7.9 Consideration of transitional and coastal water bodies

The Estuarine and Coastal Waters National Engagement Summary, provided as a supporting update to the RBMP consultation, describes the establishment of an estuarine and coastal subgroup of the National Liaison Panel for England. We support the establishment of this group but question whether it is the appropriate scale for stakeholder participation on specific issues. Very few of these water bodies were considered as part of the Catchment Based Approach and it is not clear what, if any, local input there has been to the development of bundles of measures within the relevant RBMPs.

There is relatively little information on transitional and coastal waters (TraCs) in the Catchment Data Explorer. There seems to be little consistency around how they are considered in RBMPs, with some being considered as operational catchments, with individual estuaries and stretches of coast being classified as water bodies, whilst others are considered as water bodies in operational catchments that are otherwise made up of freshwater units. The latter approach often results in a water body that is far too large and diverse to meaningfully report on current condition, objectives or measures. For example, the single TraC water body Yorkshire North covers all of the coastal water and small estuaries between Flamborough Head and Hartlepool. This diverse coast includes the mouth of the industrial Tees, busy ports at Whitby and Scarborough, and numerous small ports, designated bathing waters, proposed Marine Protected Zones etc. We do not believe that this is an appropriate scale for reporting on condition and targeting action for a single water body.

Despite the size and diversity of many TraC water bodies, the current classification of many elements and components appears to have been based on expert judgement in the absence of data. As such we risk an incomplete picture of the state of the whole network and unambitious targets to improve water quality in these vital areas. We believe there should be continued development of appropriate monitoring of coastal water bodies in order to inform delivery of measures over time, not only for WFD but also for the Marine Strategy Framework Directive (MSFD).

This is of particular importance given the emphasis that has been placed, in the January 2015 consultation for the MSFD Programme of Measures, on RBMPs addressing relevant MSFD targets.

Given the strong links between the WFD and MSFD there is relatively little reference in this consultation as to how the proposed measures would also support MSFD, not only for Descriptor 5 (eutrophication), Descriptor 7 (hydrographical conditions) and Descriptor 8 (contaminants) but also other relevant areas, such as for Descriptor 2 (Invasive Non-Native Species) and Descriptor 10 (marine litter).

For example our concerns raised in this response around the ability of the proposed programme of measures to effectively tackle diffuse water pollution means that RBMPs may not be able to address marine pollution where this is attributed to land management, resulting in a failure to meet the objectives of the MSFD as well as the WFD. It is vital the final RBMPs to address this lack of coordination.

8 Transposition issues

8.1 Failure to make measures operational for public bodies

The Environment Agency has a general duty to exercise those functions listed in Schedule 2 of the Water Environment Regulations, 2003, to secure compliance with the WFD (under reg 3 of those Regulations). It follows from this duty that the way the Environment Agency exercises those functions should as far as possible ensure compliance with the objectives set out in the RBMP. Other public bodies – and the Environment Agency when exercising its other functions – only need to ‘have regard’ to the RBMP (reg 17), creating ambiguity over how such bodies might approach balancing the delivery of measures set out in a RBMP with other legal, financial and corporate objectives.

This causes problems in many areas and is particularly acute in places where the Environment Agency is handing over land drainage and flood management responsibilities and activities to other public bodies (e.g. Internal Drainage Boards) or to landowners (e.g. Rivers Babingley, Ingol and Heacham – Anglian RBD, River Gilpin – North West RBD) – either through de-maining or public service agreements. As a result, the Environment Agency is actively surrendering the ability to improve waterbody status and comply with the RBMP, to others who do not have duties to do so. We expect this to result in failure to implement measures necessary to meet GES/GEP.

8.2 Lack of basic measures for diffuse pollution

Article 11 requires Member States to introduce basic measures for diffuse sources liable to cause pollution, in order to prevent or control the input of pollutants. We believe that these should take the form of regulations which currently do not exist in England or Wales and ensure a precautionary principle is taken. Instead there is over reliance on voluntary measures such as the Campaign for the Farmed Environment (CFE) which, despite playing a vital role in increasing the uptake of voluntary measures by farmers is not delivering the scale of change required.

For example, DEFRA’s Summary of Evidence on the campaign, published in 2013, reported that support for the aims and approach of CFE amongst farmers did not translate into widespread uptake of the measures and that there was over reporting of activity. In addition, of farms visited by Food and Environment Research Agency (FERA) in 2012 there were 66.7 hectares of buffer strips next to water courses reported but field investigations found that only 46.5 hectares were delivered on the ground. In addition, only 32% of those buffer strips met the minimum standards expected. There is

clearly an important role for voluntary initiatives but uptake will not be sufficient and is unlikely to be where the greatest need is.

The issue of over-reliance on voluntary measures was highlighted in the Report from the Commission to the European Parliament and the Council on the implementation of the Water Framework Directive in the UK. The report identified that in England and Wales *'despite agriculture being identified as a significant pressure, no new mandatory measures have been agreed in the plans.'* The report goes on to say that *'UK authorities have clarified that statutory measures are available if voluntary measures fail and that the approach will be reviewed for the second cycle, also taking into account the potential disproportionate costs of statutory measures.'* In the case of meeting objectives for Natura 2000 protected areas, the conservation status of the site is often affected by activity outside the boundaries and we believe that the reliance on voluntary uptake of agri-environment schemes has prevented an improvement in condition in many cases and will continue to do so (see 5.1).

Where ongoing issues exist as a result of rural diffuse water pollution, preventing the achievement of WFD objectives, we see the following as an appropriate response:

1. New basic measures
2. Ensure compliance through surveillance and enforcement
3. Target advice and the provision of agri-environment support
4. Where 2 & 3 have been in place but have proved insufficient to drive change, we need to look to new legislation. This may be through the use of existing legislative mechanisms such as the establishment of Water Protection Zones. However, it should not rule out the introduction of new legislation.

There needs to be a clear timetable in place alongside all measures so that stakeholders are aware of when a review of progress will take place and when action will be scaled up from voluntary to mandatory measures.

8.3 Water abstraction exemptions

Article 11.3 (e) requires Member States to introduce measures for the regulation and control of water abstraction. We are concerned that the current approach to the control of water abstraction in England and Wales falls short of that required by WFD. For example

- We can find no explicit or implicit justification in the WFD for applying exemptions to controls for specific sectors. Despite this, trickle irrigation and other uses with significant environmental consequences are exempt in England and Wales.
- Water resources are significantly over-allocated in many catchments and 80% of licences have no environmental conditions attached to them, rendering the system incapable of preventing deterioration.
- Over abstraction by non-water company users is preventing water bodies from reaching GES and therefore a solution needs to be found through the RBMP process.

These represent a clear failure in the transposition of the WFD into domestic legislation and needs to be tackled as a matter of urgency through reform of domestic abstraction licensing system.

8.4 Sustainable Drainage

According to the Reasons for Not Achieving Good database, 750 water bodies in England are prevented from achieving Good Status by diffuse pollution resulting from urban or mixed drainage sources. A roll-out of ‘Sustainable Drainage Systems’ (SuDS) will be needed to address these problems. A concerted effort must be made to retrofit SuDS wherever they would contribute to WFD targets. In addition new developments must not be allowed to decrease the water quality of our water bodies through diffuse surface water pollution, which we believe is a risk given recent government decisions around SuDS. We remain critical of government decisions not to implement Schedule 3 of the Flood and Water Management Act (2010), not to include water quality requirements in the national SuDS standards and not to support SuDS retrofit on existing properties as recommended by the Pitt Review. We feel that the recent changes to the National Planning Policy Framework, introduced instead of Schedule 3, should be expanded to include all development and underpinned by a statutory requirement to include SuDS in new development.

Blueprint for Water coalition

The Blueprint for Water is a unique coalition of environmental, water efficiency and fisheries and angling organisations that is calling on the Government and its agencies to set out the necessary steps to achieve “sustainable water” by 2015. The Blueprint for Water is a campaign of Wildlife and Countryside Link. More information is available at www.blueprintforwater.org.uk

This briefing is supported by the following 16 organisations:

- Amphibian and Reptile Conservation
- Angling Trust
- Buglife - The Invertebrate Conservation Trust
- Freshwater Habitats Trust
- Friends of the Earth England
- Institute of Fisheries Management
- Marine Conservation Society
- National Trust
- Royal Society for the Protection of Birds
- Salmon and Trout Association
- The Rivers Trust
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April 2015



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