

River basin management plans: use of strategic environmental assessment screening

Blueprint for Water Response: May 2021

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Blueprint for Water, part of Wildlife and Countryside Link, is a unique coalition of environmental, water efficiency, fisheries and recreational organisations that come together to form a powerful joint voice across a range of water-based issues.

This response is supported by the following Link members:

- Angling Trust
- British Canoeing
- ClientEarth
- Institute of Fisheries Management
- Marine Conservation Society
- RSPB
- Salmon and Trout Conservation
- The Rivers Trust
- The Wildlife Trusts
- WWF

Blueprint for Water notes the Environment Agency's view that Strategic Environmental Assessment (SEA) is not required for the third round of river basin management plans ('RBMP3') as set out in its policy paper.¹ We question the justifications for this approach: including that the majority of waterbody objectives have not changed; the actions that will be delivered to achieve those objectives have not changed or will result only in "minor modifications" to earlier plans; and that both - objectives and actions - were assessed via the previous SEA.

Level of ambition and environmental effects

The Agency's rationale concerns us: it appears somewhat 'back-to-front'. As recognised by the Environment Agency in its policy paper, the Environmental Assessment of Plans and

¹ Environment Agency, '[River basin management plans: use of strategic environmental assessment screening](#)' (30 March 2021).

Programmes Regulations 2004 (the ‘SEA Regulations’) apply to RBMPs by virtue of Regulation 5(2). The exemption set out in Regulation 5(6) of the SEA Regulations applies to the scale of environmental impact, not the scale of the change to the plan or programme. The two are clearly distinct but it is not clear from the Environment Agency’s announcement that this distinction has been properly taken into account. Further, given the vertiginous improvement in water quality that the plan must deliver (in light of the requirements of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the ‘WFD Regulations’) (including the requirement to secure compliance with the Water Framework Directive²)³, we can only infer that the “minor” changes to the plans will in fact deliver significant improvement on the ground – thereby rendering SEA obligatory.

However, the Agency’s current position seems to be that the objectives, actions and measures contained within RBMP3 will fail to engender significant environmental benefit. This is deeply concerning. If that is so, RBMP3 requires significantly greater scrutiny than seems to be envisaged with a view to making it more ambitious. In order to deliver the change our rivers clearly need, the consequences of these plans being delivered must result in significant positive environmental effect - again, thereby rendering SEA obligatory. We consider objectives, actions and measures in more detail below.

Value of considering reasonable alternatives

Separately, the SEA process, in requiring alternative approaches to be considered and their effects to be assessed, is likely to help in establishing that greater level of ambition and identifying methods of delivery. For example, the process would require the identification, description and evaluation of the likely significant effects on the environment of “reasonable alternatives”⁴, facilitating exploration and determination of routes for furthering the required recovery of the water environment.

Appropriate assessment

We note, as an aside, that the Environment Agency is yet to carry out its screening of the RBMPs for *likely significant effects* on European sites and their species to determine the need for an appropriate assessment under the Conservation of Habitats and Species Regulations (2017 (as amended) (the ‘Habitats Regulations’). If an appropriate assessment is required, SEA must also be carried out pursuant to regulation 5(1)(b) of the SEA Regulations. Almost 250

² Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

³ As set out in Regulation 3(1): The Secretary of State...the Agency...must exercise their relevant functions so as to secure compliance with the requirements of the WFD...” and Regulation 3(4) “The Secretary of State...the Agency...must exercise their relevant functions in relation to each river basin district so as best to secure that the requirements of the WFD...for the achievement of the environmental objectives...are coordinated for the whole of that district.”

⁴ Regulation 12(2)(b) SEA Regulations.

Special Protected Areas ('SPAs') and Special Areas of Conservation ('SACs') fall within the England-only river basin districts ('RBDs').

The need for ambitious measures and objectives in RBMP3

a. The need for new measures.

With Good Ecological Status for surface waters remaining stubbornly low at ~16%, and all waters failing Good Chemical Status targets, we need a different, more ambitious and effective approach to turn around the state and fortunes of our waters. In addition, we know that [at today's pace it will take 200 years](#) to achieve the objectives for water set out in the 25 Year Environment Plan. Whilst there have been improvements in some of the underlying elements that comprise Good Status, these too have not seen *significant* upticks, suggesting that although delivery to date has helped to prevent further deterioration of the water environment, it has not been effective at bringing about *recovery*. A series of sub-groups set up under the Water Leaders Group ('WLG') are currently considering some of the potential reasons for this – for example, identifying a need for large-scale restoration approaches that restore natural ecosystem function to help counter the impacts of physical modification. The role of nature-based solutions and Payment for Ecosystem Services ('PES') Schemes are also being discussed. Blueprint for Water would expect that adoption of these approaches would result in a new suite of measures being added to RBMP3, and so seek reassurance that the WLG's recommendations are due to be incorporated into the refresh of the plans. Such approaches have the scope to deliver significant wider environmental benefits, such as the recovery of freshwater biodiversity as a contribution to the aspiration of reversing biodiversity's decline.

b. The objectives for around 25% of waterbodies remain at odds with the WFD Regulations requirements

Around a quarter of all waterbodies currently do not have an objective of Good Status. Under Regulation 17 of the WFD Regulations, the setting of less stringent environmental objectives is allowed where achievement of Good Status (the default objective under Regulation 13) would be infeasible or disproportionately expensive. Section 4.1 of the Environment Agency's policy paper on use of SEA for RBMP3 explains that whilst some waterbody status objectives are set to change, the scale of change for RBMP3 is insufficient to trigger the need for a SEA. This means that less stringent objectives are set to *remain* for the majority of these more challenging waterbodies. Justification for a large number of these less stringent targets include:

- "Disproportionate burdens",
- "Unfavourable balance of costs and benefits" and
- "no known technical solution is available".

As delivery progresses over successive RBMP rounds, Blueprint for Water would expect to see a steady increase in the number of waterbodies for which an objective of Good Status

can be set, as new techniques are developed, new approaches adopted, and new ways of working embraced. For example, ‘no known technical solution’ commonly relates to macrophyte and phytobenthos and / or phosphate failures, which are the subject of the majority of newly-considered WINEP measures; considering this, it is surprising that increased investment through the WINEP will lead only to a small increase in the proportion of waterbodies aiming to achieve ‘good’ status objectives. We therefore question whether the review has gone far enough in considering the use of alternative measures, for example nature-based solutions, to enable more cost-effective action to be taken regarding phosphate pollution. We would expect to see innovative nature-based solutions being used to deliver positive outcomes and driving more ambitious objectives, across the suite of pressures facing our water environment.

Further we have seen evidence of deterioration in the status of certain water bodies (see for example the River Axe in the South West⁵) which would render any such setting of less stringent objectives unlawful (Regulation 17(5) of the WFD Regulations). We remind the Environment Agency of the need to give careful consideration to evidence of deterioration arising during the current RBMP period before deciding whether to set further less stringent objectives in relation to such waterbodies going forward.

Concluding remarks

RBMP3 must set us on the most ambitious and effective route in order to support the achievement of GES and GEP for as many water bodies as possible, and to reap the wider environmental benefits that this will bring. Plans delivering this step-change - this level of environmental effect - will require SEA and SEA may help to identify routes for delivering the ambition needed.

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⁵ [Final-Axe-Regulatory-Report.pdf \(salmon-trout.org\)](#)