An Taisce
The National Trust for Ireland

RBMP Consultation

Water Advisory Unit

Department of Housing, Local Government and Heritage

Custom House

Dublin 1

Sent by email to: rbmp@housing.gov.ie

31st March 2022

Re: River Basin Management Plan for Ireland 2022-2027

A Chara,

An Taisce welcomes the opportunity to comment on the draft River Basin Management Plan for 2022-2027. Where applicable we will refer to the relevant question posed as part of this consultation.

1. Ambition of the Plan

Question 1: What are your views on the proposed themes and the key actions for delivering an increased level of ambition for the third River Basin Management Plan?

We welcome the statement in the plan:

"*This plan must include a programme of measures to protect and where necessary restore each one of the 4,842 bodies of water so that they are at least reaching 'good' status or good potential by 2027*".

However, we note that there is no indication in the plan as to the number of waterbodies being targeted, and how many are expected to be restored. This is a huge oversight. Clearly stated ambition and specific targeted outcomes are central to any successful plan.

We are of the view that the current draft plan lacks targeted, outcome-based actions to restore and protect impacted waters and is not in line with either the Water Framework Directive or the Programme for Government.

Many of the actions proposed in this plan are variations on the plans and programmes which are already in place, with little indication of how they will deliver the necessary water quality improvements. We strongly disagree with the statement in the draft plan that *"The proposed new and enhanced measures contained in this draft plan reflect the additional measures considered necessary to deliver the objectives of the WFD in full"*.

Recommendation:

- The ambition for the River Basin Management Plan must be fully compliant with the WFD, as committed to in the Programme for Government.
- It must be science-based and must include a full set of targeted outcome-based measures, linked to pressures, necessary for every waterbody to achieve WFD objectives of at least good status by 2027,[1] with no deterioration.
- These actions must be specific, measurable and time-bound, with the responsible body assigned and accountable.

2. Second Cycle RBMP

Question 4: What are your views on the progress achieved to date under the second-cycle River Basin Management Plan?

[1] Except where a WFD- compliant exemption is applied, with the justification "set out and explained in the River Basin Management Plan" (Art. 4.4-4.7 , WFD)

Given the state of our water quality it is clear that progress has been poor. We would note that a full critique of the measures put in place during the second cycle was not included with the consultation documentation:

> "*a full report on the 86 measures* [from the second cycle] *will be published in the final plan..*"

and as such it is impossible for readers to competently answer this question. If the Department wants an honest opinion, then it is vital that the information is provided.

Based on the information provided, from the initial assessment presented in Table 10 of the draft plan, only 2 out of 10 'expected outcomes' have been completed successfully. Further, analysis by SWAN indicates an additional 3% more waterbodies are unhealthy now than in the last reporting period.[2]

While there has been some positive engagement with stakeholders via LAWPRO and ASSAP, the empirical evidence that these programmes are achieving water quality gains is sorely lacking, and given the scale of the problem voluntary measures can only achieve so much, particularly given that these supports are targeted at a small subset of our waterbodies. We would also agree with this statement in the SEA:

> *"However, it must also be acknowledged that LAWPRO and ASSAP have been established for some time now, as have many sustainability schemes and resources available, as well as regulations, but agriculture remains the most common significant pressure on water bodies.*"

3. Governance

Question 5: What are your views on the actions included in the draft plan to improve the governance structures for the management of our waters?

Irish water management continues to be fragmented and unclear despite a welcome increase in reporting. The governance actions proposed are not specific and do not recognise the absence of a central body or organisation responsible for and resourced to provide continuous operational management, oversight and monitoring of WFD implementation at national and catchment-level. An Taisce supports the Public Administration recommendation for "*A full-time project management secretariat to support the governance arrangements to focus on*

[2] This must be derived by the reader using the data in Fig. 12 of draft River Basin Management Plan, pg. 30

programme management, implementation, reporting, developing relationships with stakeholders, such as the Water Forum".

A lack of transparency and information regarding water governance at all levels, (including the Water Policy Advisory Committee (WPAC); the National Coordination and Management Committee (NCMC); the National Technical Implementation Group (NTIG) and the Local Authority Regional Committees and Operational Committees) leads to a lack of clarity on the bodies responsible for decisions about measures to address catchment pressures. A lack of formal engagement between these bodies and stakeholders is also evident.

Effective governance requires coherence in policy and well-designed regulatory frameworks. Policy responses "will only be viable if they are coherent" and "if well-designed regulatory frameworks are in place", according to the OECD.[3] Numerous crucial national policies including agriculture, arterial drainage and forestry are not only inconsistent with WFD objectives, but are indeed in conflict with WFD objectives. This clear conflict is not acknowledged by the draft RBMP and the draft plan does not propose measures to address it.

Exacerbating policy incoherence is the cumbersome nature of the current regulatory framework, incorporating multiple interrelated laws, implemented by numerous agencies and bodies with intersecting competencies, while lacking an ultimately responsible body. The EU Commission has highlighted this as an issue of concern. In the medium term, a consolidated Water Act, similar to the Climate Act, with budgets, timelines and sanctions in order to mainstream water protection in policy and decision-making across government must be instigated to address this. In the immediate term, the RBPM must clarify this in much greater detail.

Recommendations

- Water governance must be made transparent and participative, and must be brought into compliance with the Aarhus Convention. The make-up and work of WPAC, NCMC, Regional Committees, etc., must be readily accessible, including where, and on what basis, water management decisions are being made.
- Establish an appropriately resourced central, WFD/RBMP project management secretariat/unit which is responsible for oversight, monitoring and assessment of WFD implementation (RBMP and PoMs).
- Initiate the medium-term process of developing a consolidated Water Act, similar to the Climate Act, with budgets, timelines and sanctions in order to mainstream water protection in government policy alongside climate and biodiversity action and to fix the fragmented water governance system.

[3] Organisation for Economic Co-operation and Development (OECD) 2015. Principles of Water Governance. OECD Publishing, Paris, France. https://www.oecd.org/cfe/regionaldevelopment/OECD-Principles-on-Water-Governance-en.pdf

4. Areas for Action

Question 7: What are your views on the list of proposed Areas for Action that is included in the draft plan?

Selecting only certain areas for targeted action, as proposed by the draft plan, is wholly inadequate and is not compliant with the WFD. The draft plan does not adhere to the WFD obligations that require that pressures on all waterbodies are addressed with "supplementary" measures where necessary to achieve at least good status, and to prevent deterioration.

A lack of transparency in this regard further adds to An Taisce's concerns around the prioritisation process as it is unclear from the draft plan:

- the number of unhealthy and at risk waterbodies which lie within the proposed Areas for Action
- what actions will be carried out there
- whether the actions that will be carried out there will restore/protect them

An Taisce does not believe that this approach is legally compliant, nor ecologically adequate, and as such we do not support this approach. All waterbodies are required to reach good status by 2027 under the WFD, as such all waterbodies should be included in the areas for further action.

5. RBMP Actions by Sector

Question 5: What are your views on the actions included in the draft plan to improve the governance structures for the management of our waters?

We will answer this question by sector.

A. Agriculture

This RBMP does not address the policy conflict between agriculture targets and meeting the objectives of the WFD. Our current agricultural model is focused heavily on increased productivity and intensive livestock agriculture for export, with associated imports and losses of nutrients. This model is demonstrably unsustainable, and no credible evidence has been presented by government that it can be continued while protecting and restoring waterbodies.

Despite the failure of current regulation and policy in addressing the significant water quality pressure as a result of agriculture, the draft Plan proposes no additional systemic measures beyond reliance on the NAP and the CAP. An Taisce has already provided a detailed critique of the NAP as part of the public consultation on it, and how it is entirely insufficient to protect water quality from nutrient pollution. The Department will already have that on record and it should be read in tandem with this submission. In light of that, the first action in Table 11 'New Gap Regulations', will clearly not be sufficient.

Furthermore, the CAP is also insufficient for water quality protection, as outlined in the Environmental Pillar submission on the CAP strategic plan, which An Taisce contributed to. Additionally, the proposed action is general and contains no specific or targeted actions. It says, *"New Rural Development Programme Regulations under the National CAP Strategic Plan will underpin the establishment of a new green architecture that aims to deliver and reward positive environmental outcomes, including water, biodiversity and climate mitigation and adaptation objectives."* This provides no information as to how the CAP Strategic Plan will contribute to restoring waterbodies impacted by agriculture.

An Taisce supports the Nation Water Forum's recommendation that *"…an action is added to the final RBMP to do an independent review of the final CAP (both Pillar 1 and Pillar 2) to assess its strengths and weaknesses to meet the WFD objectives. This review of CAP should be carried out by an independent organisation with both ecological and legal knowledge, for example the EPA, to fully assess the Strategy. Where weaknesses are highlighted, the Department should outline how it will supplement the CAP to protect and restore water bodies."*

The remaining four proposed measures are rather vague, with no timeframes or clear deliverables. As such, it is our view that the measures proposed to address agriculture, the largest pressure on our water quality, are entirely insufficient.

Our recommendations for the measures needed in the RBMP to address agricultural water quality loss are:

- First and foremost, to address the inadequate protection offered under the NAP and GAP regulations. Any measures proposed should have been supported with an evidence base that they would provide the necessary reductions in nutrients. That was sorely lacking in both the NAP and the CAP. The Department is asking the public to take a leap of faith that the measures proposed will address the issue, in the face of repeated failures for previous NAPs to do so, and with no clear evidence for how much of a reduction they will provide, or why they will succeed where they have previously failed. While

the NAP has now been finalised, we understand there will be a review in 2 years' time, and it is vital that these weaknesses are addressed at that point, and regrettable that they are not already clearly addressed.

- Do an independent review of the final CAP (both Pillar 1 and Pillar 2) to assess its strengths and weaknesses to meet the WFD objectives.
- Introduce WFD-specific risk assessments for all intensive farms[4], including derogation farms, through a permitting/licensing system similar to pigs and poultry.
- Intensification, in particular to derogation stocking rates[5], should only be permitted if it can be demonstrated that it won't impact on the WFD objectives for associated water bodies.
- The RBMP must provide for the monitoring and strict limiting of total catchment imported N (fertiliser and feed) in catchments already saturated, based on EPA analysis.
    - Certain sub-catchments should be zoned ineligible for certain stocking rates, if necessary, based on catchment carrying capacity.
- For existing farms deemed to be a risk, regulatory, voluntary and combined measures should be implemented to reverse pollution impacts, including through herd reductions, with compensatory measures put in place to support this, where necessary.

B. Forestry

Forestry is a significant pressure on our water quality, particularly in our high status waterbodies, yet there are no specific targeted or new measures in the plan to address forestry impacts. The measures proposed rely on existing programmes, increasing uptake of current measures, and vague measures related to improving the licencing process. There is no indication how they will restore waters polluted or damaged by forestry.

There is a claim in the plan that *"significant changes"* as a result of legal rulings are having *"a significant effect in terms of further strengthening the protection of water from forestry-related sources".* An Taisce is a prescribed body under the Forestry Licencing regulations, and we have seen no evidence that this is the case. There is little evidence that WFD concerns are taken into account, and there is an over reliance on standard operating procedures. Given that forestry is such a significant pressure at present, with those measures already extant, it is clear that they are not sufficient, and reliance on those measures to protect water quality going forward will clearly fail to achieve a better outcome. This is not good enough. It is

[4] Defined by the Department of Agriculture, Food and the Marine as greater than 130 kg livestock manure nitrogen/ha

[5] Greater than 170 kg livestock manure nitrogen/ha

critical that as a priority specific measures are set out to address forestry related damage to waterbodies.

In tandem, there must be a requirement that all planting and felling is assessed specifically against WFD objectives; and that licences are only granted if it can be demonstrated that WFD objectives will not be compromised. This is sorely lacking in the current licensing process, and we have yet to see a sufficient WFD specific assessment in any of the hundreds of forestry licences we review annually.

In order to ensure "the right tree in the right place", it is important that a programme of catchment sensitivity mapping is initiated in order to identify the extent and location of suitable soil and other catchment conditions for various forms of afforestation. We agree with the Water Forum that *"These sensitivity maps would be a proactive measure for the protection of water from future afforestation activities."*

One of the measures in the plan is to:

> "*Deliver further training of Registered Foresters and Consultant Ecologists and of Department Forestry Inspectors and Ecologists, in relation to the design, assessment and implementation of forestry projects from the perspective of the protection environment, including water*".

An Taisce would recommend that EPA PIP maps form a fundamental part of this training. They are a key tool for establishing the sensitivity of particular sites and risk of run-off. These must form an integral part of the decision making process, and in order to use them effectively full training of decision makers and forestry inspectors should be rolled out, and facilitated by expert bodies - we would recommend the EPA.

In 2013, the EPA and COFORD supported a multi-sector co-operative project called HYDROFOR (commissioned by DAFM) to investigate the impacts of forestry operations on Ireland's freshwater habitats. This project provided robust policy recommendations in relation to forestry activities, which are yet to be implemented. We would observe that there is a distinct lack of clarity by the Forest Service as to what policy recommendations from the HYDROFOR report have been implemented, and this lack of transparency was apparent in a recent meeting of the Water Forum, attended by Forest Service officials. It is vital that the RBMP includes an action for the Forest Service to implement the policy recommendations presented in the HYDROFOR report in full, and does so urgently, in order to protect water quality. One key recommendation which has not been implemented is the cessation of afforestation on peat soils in acid-sensitive headwater catchments. In many instances these peat waterbodies will coincide with our high status waterbodies. It is imperative that this recommendation be implemented.

Legacy forestry is a significant issue for water quality. Much of our afforestation happened in areas which should never have been afforested. These forestry plantations are still extant, and continue to lead to degradation of our water bodies. Despite this, there are no sufficient measures in the RBMP to address legacy forestry. This should be one of the key actions in the RBMP, and given the pressure legacy forestry is having on our waterbodies, it can no longer be ignored. It will be impossible to achieve our WFD targets unless this is adequately addressed, and the Plan lacks credibility without measures to address this.

Recommendations:

- Incorporate a WFD specific assessment into the forestry licensing process for afforestation, felling and forest roads, including a comprehensive cumulative assessment approach.
- Initiate catchment sensitivity mapping in order to identify the extent and location of suitable soil and other catchment conditions for various forms of afforestation.
- Require specific mandatory training on EPA PIP maps and associated characterisation and assessment science, delivered by the EPA to all inspectors and decision makers, to support the inclusion of these maps as a layer in IFORIS.
- Implement the policy recommendations in the HYDROFOR report in full, and do so urgently.
- Include robust measures to address legacy forestry.

C. Urban Wastewater

The draft plan is far too weak in terms of measures to address urban waste water pollution. This is the main source of pollution in 208 waterbodies, yet the proposed plan does not set out measures to fix these by the WFD deadline of 2027. Instead, it says that the commitments on waste water treatment deliverables within Irish Water's next investment period 2025-2029 have yet to be agreed. This is simply not acceptable. It is imperative that the Irish Water Investment Plan, with additional state funding where necessary, includes measures to halt sewage pollution of these 208 waterbodies, at a minimum.

Further, EPA reports have outlined that Irish Water does not have clear time frames for improving treatment at many of the areas where wastewater is a significant threat to water bodies, and that there is ongoing uncertainty around plans to resolve some of the priority issues.

Not only is there no clear plan to address identified pollution in 208 waterbodies, there is not even a plan in place to fix the 42 priority areas where improvements are most urgently needed. This situation is most certainly not in line with the Programme of Government commitment to "Ensure that the State complies with the EU Water Framework Directive."

Regarding wider sewerage systems the EPA reports "*Irish Water does not have enough information on the frequency and extent of discharges of untreated waste water from collecting systems*[6]" stating that "[b]*y the end of 2020 Irish Water had assessed the performance of 1,508 of its estimated 2,400 storm water overflow outlets. Almost one quarter of those assessed did not meet the necessary standards*.[7]" The draft RBMP only provides for the "development of new standards for Combined Storm Overflows", failing to offer specific measures to address these shortcomings and failing to specify the number of waterbodies which are un-assessed and/or below the required standard.

The RBMP needs to clearly and transparently state specific waterbody measures related to pressures regarding wastewater. This requires an explicit provision detailing waterbodies where urban wastewater is a significant issue, the wastewater system causing the issue, and the action proposed to address this (accompanied by relevant timelines).

Recommendations

- The Irish Water Investment plan must include necessary work to halt sewage pollution from all wastewater treatment plants that have been identified as the main pollution source for 208 waterbodies.
- All other identified urban wastewater pollution pressures from smaller discharges and sewer overflows must also be set out with a programme of measures to fix them.

D. Coastal and Transitional Waterbodies

Specific targeted measures are needed to improve the status of the 21% of coastal waterbodies and 63% of transitional waterbodies which do not meet WFD standards according to the draft plan.

A significant concern for managing Irish coastal waters are the pressures and impacts caused by human activity which, increasing in range and magnitude, threaten the quality of Irish tidal

6 Urban Waste Water Treatment in 2020. EPA. p.12. https://www.epa.ie/publications/monitoring--assessment/waste-water/Urban-Waste-Water-Treatment-in-2020-report.pdf

7 Urban Waste Water Treatment in 2020. EPA. p.13. https://www.epa.ie/publications/monitoring--assessment/waste-water/Urban-Waste-Water-Treatment-in-2020-report.pdf

waters[8]. Deficient data on identified pressures in transitional and coastal (TRAC) waterbodies, and an associated dearth of directed measures to address these pressures severely hinders the chances of improving the statuses of TRAC waterbodies by 2027.

A chapter dedicated to TRAC waterbody issues, identifying the specific non-land use pressures and relevant targeted measures for TRAC issues, is of critical importance for the final plan. We support the SWAN recommendation to include the following pressures:

- Certain types of fishing practices e.g. hydraulic dredging.
- Offshore renewable energy infrastructure.
- Shipping.
- Marine litter.
- Seaweed harvesting.
- Any other activity judged to be contributing to the poor ecological status of TRAC waterbodies.

Declining and deteriorating coastal and marine environments must be restored. In addition, all protected sites must have a site specific management plan established. Currently, none of Ireland's 423 SACs have the necessary conservation measures in place with the majority of protected sites in our marine and coastal environment (approximately 2.1%) in poor condition with pressures from fishing, pollution and aquaculture contributing to this status.

Recommendation

- The final plan should include a chapter on coastal issues - identifying the pressures specific to transitional and coastal waterbodies and include targeted measures to address them.

E. Aquaculture

Question 23: What opportunities would you suggest to strengthen the links between the Aquaculture licensing process and the objectives of the Water Framework Directive?

We welcome the inclusion of aquaculture within the draft RBMP, but we do not believe that the proposed measures will address the potential pressures from aquaculture sites. We note the following measure:

8 https://www.epa.ie/our-services/monitoring--assessment/assessment/irelands-environment/water/current-trends-water/

"*to review opportunities to strengthen the links between the Aquaculture licensing process and the objectives of the WFD* and *the launch of an online mapping viewer of licensed sites".*

As a prescribed body for aquaculture licensing, we note that there is no WFD specific assessment as part of the licensing process for non EIA projects, yet there is a legal requirement to include WFD assessment, which we will now outline. Article 5 of the Surface Water Regulations 2009 requires a public authority, in the performance of its functions, not to undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water.

In Case C- 461/13 Weser the CJEU held: "*Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required*

— unless a derogation is granted

— to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."

As such, we submit that to be compliant with the WFD it is not possible to lawfully authorise any aquaculture development without a specific Article 4 WFD assessment. The proposal that opportunities to strengthen the links between the Aquaculture licensing process and the objectives of the WFD be reviewed is entirely insufficient and not up to the legal threshold required. It is imperative that the Department uphold the highest legal standards in the RBMP, and make clear that any development must be legally compliant with the WFD.

An Taisce is all too aware of the failures of the licensing and regulatory regime which has been heavily criticised, and this regime should therefore not be relied upon to ensure coherence with WFD objectives. According to a 2017 Independent Review of Aquaculture Licensing[9]

"*[t]here is … widespread consensus that the system is in urgent need of reform" and "a root-and branch reform of the aquaculture licence application processes is necessary ... [which] needs to be comprehensive in scope*".

Ireland also lacks an effective monitoring system to assess whether the waterbodies in which aquaculture sites are situated are compromised in terms of WFD compliance because of this

9 Report of the Independent Aquaculture Licensing Review Group (2017). http://www.fishingnet.ie/independentaquaculturelicensingreview2017/

aquaculture activity. Regarding finfish aquaculture, the Strategic Environmental Assessment (SEA) for the National Strategic Plan for Sustainable Aquaculture Development[10] has stated the monitoring programmes *"..do not specifically deal with risk to the wider water body as a whole",* and in the case of shellfish, *"there are no monitoring programmes that can define the impact on the level of a water body as defined by the WFD"*.

In relation to existing aquaculture, all licences should be retrospectively reviewed to assess compliance with WFD standards, and if necessary to amend conditions in a given licence to bring discharges in line with WFD objectives for the relevant waterbody. These conditions, if necessary, could then form part of the ultimate programme of measures for the relevant waterbody. Furthermore, we would highlight that many aquaculture licences are operating in a regulatory vacuum, due to a loophole in the regulations. Licensees, whose licences have expired but who have applied for renewal of their aquaculture licences have their continued aquaculture operations authorised by section 19A (4) of the Fisheries (Amendment) Act 1997. This allows aquaculturists, who have submitted valid renewal applications, to continue aquaculture activities, subject to the terms and conditions of their old licences, pending a decision on their renewal applications with no regulatory oversight. We are aware of licences operating in this regulatory vacuum for over a decade.

In regard to finfish, sea lice resulting from aquaculture activity have been shown to reduce sea survival rates of Wild Atlantic Salmon, which are a key indicator of healthy rivers. 2020 research revealed that rivers within 3-16 km of aquaculture activity recorded an average of 33% fewer smolts in the years following high sea lice levels in nearby salmon farms.[11]

Faecal and other excretory wastes along with food waste from finfish farming results in nutrient enrichment of the surrounding environment which may instigate or accelerate algal blooms of phytoplankton or algae, leading to fish and aquatic organism mortality. Benthic community structure has been found to be modified, with decreased diversity below fish cages of a salmon farm in Mulroy Bay, Co Donegal due to this nutrient enrichment.[12]

All future aquaculture licence applications should include a WFD compliance assessment. An ecosystem-based approach must form the basis of any assessment of existing or future aquaculture sites. Such an approach should take account of the receiving environment's

10 DAFM (2015) Strategic Environmental Assessment of the Draft National Strategic Plan for Sustainable Aquaculture Development https://www.agriculture.gov.ie/media/migration/seafood/marineagenciesandprogrammes/nspa/NSPASEAEnvir181215.pdf

11 Shephard & Gargan (2020) Wild Atlantic salmon exposed to sea lice from aquaculture show reduced marine survival and modified response to ocean climate. ICES Journal of Marine Science, https://doi.org/10.1093/icesjms/fsaa079

12 O'Mahony C., Kopke K., Twomey S., O'Hagan A.M., Farrell E. and Gault J. (2014). Integrated Coastal Zone Management in Ireland - Meeting Water Framework Directive and Marine Strategy Framework Directive targets for Ireland's transitional and coastal waters through implementation of Integrated Coastal Zone Management. Report prepared under contract for (SWAN).

carrying capacity to ensure appropriate location of sites, and should ensure that there is no negative impact on the ecosystem.

Additionally, we join SWAN in the call for an independent legal review of NPWS guidance on the licensing of aquaculture activities within Natura 2000 sites to be carried out. The guidance[13] advises that impacts likely to cause continuous disturbance to protected community types are non-significant up to an area threshold of 15%. The source of this 15% threshold is unknown. The Commission framework on which it is allegedly based has not been included in the application documents, and it has not been possible to examine it. More fundamentally, it is not referred to in Article 17 of the Habitats Directive. It is also not referred to in Article 6(3) of the Habitats Directive which sets out the obligation for Appropriate Assessment. And it is not anywhere referred to in the case law of the EU Court of Justice. On the contrary, several judgements of the Court of Justice set out very clearly very specific requirements in relation to site specific considerations and the thresholds of scientific certainty required for each of the different tests required to be addressed under Article 6(3) as clarified by the CJEU.

An inter-departmental management review (considering inter alia robustness of available scientific knowledge, future site requirements, etc. and taking an ecosystem-based approach) should be conducted prior to the issuing of any further aquaculture licences. We argue strongly that there is no legal basis for any area-based threshold for activities likely to cause continuous disturbance. Any activity that has the potential to disrupt or negatively impact the conservation objectives of a Natura 2000 site must be in line with legal requirements, in particular Article 6 of the Habitats Directive 92/43/EEC.[14]

Recommendations

- Review of all aquaculture licences for compliance with Water Framework Directive (WFD) and include an ex-ante WFD-specific assessment in all new licence applications to ensure that the proposed/existing farms do not compromise the meeting of WFD objectives for the relevant waterbody, taking into account cumulative impacts of other pressures in the waterbody.
- To support this, establish an independent monitoring programme as part of expanded coastal characterisation to fill data gaps, and assess the risk posed by each farm to achieve WFD standards in the relevant waterbody.

13 According to NPWS guidance drawing from the principle outlined in the European Commission's Article 17 reporting framework that disturbance of greater than 25% of the area of an Annex I habitat represents unfavourable conservation status; the Department have taken the view that licensing of activities likely to cause continuous disturbance of each community type should not exceed an approximate area of 15%. Thereafter, an increasingly cautious approach is advocated.

14 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0043

- Carry out an independent legal review of NPWS guidance on the licensing of aquaculture activities within Natura 2000 sites (15% threshold for likely disturbing activities).

F. High Status Waterbodies

The significant loss of Ireland's most pristine highest status sites in the last 35 years is of great concern to An Taisce, and we submit that the draft RBMP is not adequate in terms of its ambition or sense of urgency for the restoration and protection of these sites. As reported by the EPA "*the dramatic reduction in the number of our most pristine rivers, which has fallen from over 500 sites to only 20 sites in 30 years*".[15]

This declining trend has continued over the past two RBMP cycles; from 324 high status sites at the start of the first cycle, to 290 at the start of the second cycle, to now just 230 high status sites at the start of the third cycle. Addressing the decline in high status waters was a key objective of the second RBMP, but a 20% decline since 2018 has been recorded, nonetheless.

As these sites are extremely vulnerable, urgent action is needed to prevent further deterioration and to restore lost high status sites. While programmes such as the 'Blue Dot' and Waters for LIFE are welcome, there remains a lack of urgency and focus in implementing on-the-ground measures with associated and relevant timelines.

Furthermore, according to the plan, only 62% (238 of 384) of waterbodies with a high status objective[16] are in areas targeted for action and it is unclear whether action plans will be developed for the remaining 38% of high status objective waterbodies (146 of 384). Sub-catchment management plans with targeted measures, an assigned responsible agency and strong stakeholder engagement are urgently needed for waterbodies with a high status objective. As recommended by the EPA report on high status waters[17], these plans must incorporate improved controls on unregulated activities.[18]

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[15] Environmental Protection Agency – Ireland's Environment – An Integrated Assessment 2020. https://epawebapp.epa.ie/ebooks/soe2020/6/

[16] Water Bodies either currently at high status or requiring restoration to high status.

[17] Ní Chatháin B., Moorkens E. and Irvine K. (2012) Management strategies for the protection of high status water bodies. Environmental Protection Agency.

[18] Such as land drainage, cultivation of previously unimproved land, significant changes in livestock density, water abstraction, livestock or machinery entry to watercourses.

The integration of high status sites to planning and licensing controls to ensure applications are reviewed to determine if they are in the catchment of a high status site, followed by a WFD-specific assessment where necessary to ascertain whether the development would compromise the high status waterbody, will be of critical importance for high status sites.

In order to save the critically endangered freshwater pearl mussel, the 2009 sub-basin plans for these must be updated and legally published. These are legally required, and no action has been taken to further progress these since 2013. This is simply unacceptable.

Recommendations

- Include a commitment for the urgent development of dedicated integrated sub-catchment management plans, with targeted measures, for ALL high status site waterbodies.
- These should follow the 'Threat Response Plan' approach and include emergency response plans to save the 20 remaining pristine waterbodies.
- Update and legally publish the sub-basin plans for the critically endangered freshwater pearl mussel as a matter of urgency.

G. Abstraction

Of concern to An Taisce is the omission of abstraction as a pressure in the draft plan, which fails to outline or address the associated impacts adequately. Abstraction is generally referenced in the plan in terms of setting alternative objectives such as exemptions. This raises particular concern for an Taisce due to the projected increases in instances of drought in Ireland as a result of climate change. The plan states that all registered abstractions and associated waterbodies will be assessed to "determine if they are meeting WFD objectives" but this will leave many abstraction waterbodies un-assessed since many abstractions fall below this threshold.

While abstraction is currently not the dominant pressure on our waters at a national level[19], SWAN research[20] has identified significant threats in this regard:

19 According to the River Basin Management Plan for Ireland 2018 - 2021, 6% of waterbodies are at risk from abstraction. This still comprises 254 waterbodies and almost 10% (9%) of all monitored lakes.

20 Craven, K. Emerson, E.,Kenny, J.,McLoughlin, N., O'Reilly, C. (2020) Water Abstractions Interactions with the Water Framework Directive & Groundwater Directive and Implications for the Status of Ireland's Waters. Prepared under contract for SWAN

· Significant local risk to vulnerable waterbodies, and adjoining natural habitats such as groundwater-dependent wetlands, and rural domestic wells.

· Impacts on hydrology and ecology of waterbodies, including reduced base-flows in rivers, fluctuating lake water levels and declining groundwater levels.

· Significant impact on certain sites even through small abstractions, which is exacerbated where there are multiple abstractions from the same waterbody.

· Impacts vary greatly across seasons and will be exacerbated by climate change. The EPA predicts[21] extended drought periods potentially increasing by almost 50% by mid-century. This calls for a futureproofing of our water management system.

Increased abstraction pressures are likely due to increased economic growth, including agricultural intensification and proliferation of data centres. To manage these abstractions and particularly, the cumulative effects of increased and multiple abstractions, an accurate insight into the number of abstraction points, their location, and the volume of water being abstracted is required. According to research *"Progress on evaluating the current status of abstraction for Irish rivers…was severely hampered by the lack of an integrated national database of abstraction "*.[22]

Neither the draft plan nor the proposed Water Environment (Abstraction) Bill will address this, primarily due to the excessively high current threshold of 25m^3 for registration and the proposed threshold of 2000m^3 (and 250m^3 where deemed significant by the EPA) for licensing being proposed in the legislation. Under the Bill as currently set out, only very substantial abstractions (250m^3 is equivalent of approximately 420 households or 2000 dairy cows) will not be exempt from licensing[23].

Recommendation

- The plan should include (as a minimum) measures for all waterbodies at risk from abstraction and should include a commitment to the establishment of a comprehensive, publicly accessible National Abstraction Register which

21 Nolan, P (2020) Ensemble of regional climate model projections for Ireland. EPA Research Report No. 159. http://www.epa.ie/pubs/reports/research/climate/research159ensembleofregionalclimatemodelprojectionsforireland.html#.VlwLUt_hCEJ

22 Webster K.E., Tedd K., Coxon C. & Donohue, I. (2017). Environmental flow assessment for Irish rivers. Environmental Protection Agency Research Report 2014-W-DS-21. https://www.epa.ie/pubs/reports/research/water/EPA%20RR%20203%20final%20web-3.pdf

23 See SWAN's Opening Statement to the Joint Oireachtas Committee on Housing, Local Government & Heritage on the Water Environment (Abstraction) Bill for more on this.

includes all abstractions greater than $10m^3$/day and a licensing regime for all abstractions greater than $20m^3$/day, in line with Northern Ireland.

H. Domestic Wastewater

Question 15: What do you think are the main barriers to people accessing the grants available to upgrade domestic waste water treatment systems?

The draft plan acknowledges the high failure rate in the domestic wastewater treatment systems national inspection programme: *"nearly half of the systems assessed failed to meet the required standards"*. However, of further concern, An Taisce also notes that 24% of systems that failed between 2013 and 2020 have not been fixed.[24]

It is unclear from the draft plan the extent to which the national inspection plan and the grant scheme will, or will not, serve to restore the 188 waterbodies *"that have a significant impact from domestic waste water"* as outlined by the draft plan.

Recommendation

- The RBMP should set out specific measures to restore the 188 waterbodies *"that have a significant impact from domestic waste water".*

I. Hydromorphology & Land Use Planning

Question 10: What are your views on the development of a new Controlled Activities for the Protection of Waters regime to address pressures on the physical condition of waters? And

Question 25: What are your views on the measures proposed in the draft plan to address issues relating to land use planning? And

24 EPA (2021) Review of the National Inspection Plan for Domestic Waste Water Treatment Systems 2018-2021.

Question 11: What are your views on the establishment of a restoration programme to mitigate the negative impact of past construction in or near water bodies? And

Question 18: What are your views on the proposed measures outlined within the draft plan to address the impacts of peat on water quality?

The second greatest pressure to all at-risk waterbodies is physical modifications, with channelisation causing the greatest impact due to the significant ecological damage and disturbance caused by clearance activities including in-stream dredging.[25] Waterbody hydromorphology can be affected across a broad range of scales by hydromorphological alterations with associated impacts that can change hydrology, hydraulics, geomorphology and surface and groundwater interactions.

Despite a 2012 deadline, a lack of regulation on these activities, continues to cause a breach of the WFD. The commitment to develop a new Controlled Activities for the Protection of Waters regime *"to address pressures on the physical condition of waters"* which will include a *"new authorisation system for instream engineering works"* and will also *"strengthen controls of land drainage practices and their enforcement"* is therefore welcomed by An Taisce.

We also welcome the commitment for Water and Planning Guidelines, and amendments to planning legislation to give effect to these. While these guidelines are not explicitly detailed, An Taisce urges that the guidelines stipulate the requirement for a WFD-specific assessment in advance of any works or development being carried out to ensure that a development will not "*cause a deterioration of the status of a body of surface water or … jeopardise*[s] *the attainment of good surface water status.."* as per the Weser Ruling.[26] This must include dredging, drainage, river maintenance and flood protection, and should be supported with comprehensive training and robust enforcement.

We would note that the legal landscape in regard to WFD is ever changing, with national and European jurisprudence in flux. As such, it is imperative that there be iterative training by legal professionals for local authority staff. As a prescribed body we would observe that many of the local authority staff may not be fully abreast of the most up to date case law, and this

25 EPA presentation to national water forum, February 10th, 2022.

26 Case C-461/13 Bund für Umwelt und Naturschutz Deutschland http://curia.europa.eu/juris/documents.jsf?num= C461/13. Extract: Extract: "Article 4 (1)(a)(i) to (iii) of [the WFD] must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Directive."

is leading to flawed decisions being taken and delays in the planning system. While guidelines are welcome, the training needs to be done using the most up to date information, with a clear explanation of the ramifications of the latest legal judgement in regard to planning/licensing decisions. We have seen a lot of jurisprudence on the Habitats Directive to date, and we foresee a similar substantive shift coming down the track in regard to WFD in an Irish context.

The draft plan is unclear as to which works and development will be subject to WFD prior authorisation under the proposed Controlled Activities for the Protection of Waters regime, and which activities will fall under the new water and planning guidelines. Clarification is needed in this regard in the final plan. As the aim of the Combined Activities primary legislation is to address the current "disparate" and "complicated" legislation, it is critical that this fragmented system is addressed through the new legislation and that it provides for the elimination of multiple competent authorities, ensuring confusion is removed, and that gaps or 'grey areas' between the two regimes are resolved. In recognising the critical need to restore our waters, is it also crucial that works or development which have already taken place are also subject to a WFD/water status assessment.

An Taisce welcomes the commitment that the land drainage regulation *"will be enhanced and improved"* and that the new regime *"will deliver multiple benefits for water, nature and biodiversity, and climate mitigation and adaptation".* Along with addressing water pollution and reversing biodiversity loss, restoration of wetland, including peatlands[27] will be imperative to an effective catchment-based land use and land use change (LULUCF) strategy for climate mitigation and adaptation. Given our emission reduction obligations under the Paris Agreement[28] the elimination of further greenhouse gas (GHG) emissions from degraded peatlands must be a priority. Peatlands cover 20% of Ireland's land area, but 82% are degraded meaning they are releasing GHGs, are undergoing a decline in biodiversity, and are polluting rivers and streams. The draft plan specifically highlights that peatland extraction and drainage impacts on 106 waterbodies. While the focus of the RBMP must be the status of our waters, the existential threat of climate change and the transformative change needed in Irish land use policy in order to both mitigate and adapt in the face of the inevitable climate system changes which are already 'locked in', cannot be ignored.

The plan presents various projects which are largely unconnected in this regard, and while the projects are welcome, they are not adequate in the face of the systematic, strategic and landscape scale change required. Extensive and wide-ranging unregulated drainage of

27 Article 1 of the Ramsar Convention on Wetlands states that wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres. Ramsar Handbook 5th Edition. An Introduction to the Ramsar Convention on Wetlands. https://www.ramsar.org/sites/default/files/documents/library/info2007-01-e.pdf

28 UNFCCC Paris Agreement 2015. https://unfccc.int/sites/default/files/english_paris_agreement.pdf

wetlands for various land and extractive uses must be ceased. An Taisce calls for a complete cessation of such drainage and for a legislative prohibition on such drainage of wetlands, including peatlands.

Similarly, An Taisce is greatly concerned with arterial drainage impacts. The draft plan lacks analysis on the significant damage caused by arterial drainage to rivers, lacks any assessment of the compatibility of the national dredging and maintenance programme with WFD objectives, and is devoid of any measures to address its impacts. Arterial drainage includes dredging to increase the conveyance of the river, raising embankments, clearance of riparian vegetation and structural elements. These works have significant adverse impacts on the physical characteristics and ecology of rivers. The OPW's 'National Arterial Drainage Maintenance List of Activities'[29] recognises the threats that arise from arterial drainage:

> "*siltation, disturbance of spawning habitat, changes in water quality, connectivity in flood plains and associated habitats, changes to sediment regime, connectivity to wetland and coastal habitats, alteration of conveyance".*

The Arterial Drainage Act 1945[30] which mandates ongoing maintenance of 11,500km of waterways represents the thinking of a previous era. A complete review of how arterial drainage is managed is needed, including emphasis on multifunctional floodplain management. Furthermore, case law highlights that EU legislation takes precedence over national legislation. There is a very clear conflict between the requirements of the WFD and the Habitats and EIA Directives, and those of the Arterial Drainage Act. The latter must be set aside where it conflicts with relevant EU legislation.

An Taisce strongly supports the establishment of a national water and wetland restoration programme. However, we believe the proposed priority concerns of mitigating impacts only of "construction in or near water bodies", and the proposal to place initial focus on barriers (e.g. weirs) only is wholly inappropriate and should not form the basis of the programme. There must be a far greater emphasis on restoration of lateral connectivity of rivers with their floodplains, not least to build resilience to climate change and to 'slow the flow'. Restoration of our waterbodies requires a much more holistic approach and should be considered at the catchment-scale, incorporating adequate and meaningful consideration and action to the wider riparian corridor, floodplain and peatland restoration, including a cessation of drainage. The Water Quality and Water Services Climate Change Adaptation Plan[31] recognises the importance of ecosystem and habitat restoration as part of a catchment management approach to climate change adaptation:

29 OPW (2017) 'The National Arterial Drainage Maintenance List of Activities 2016-2021' Volume I- Final Non-Technical Summary February 2017

30 https://www.irishstatutebook.ie/eli/1945/act/3/enacted/en/html

31 Government of Ireland (Undated) Water Quality and Water Services Infrastructure Climate Change Sectoral Adaptation Plan

"*Restoration of degraded peatland is key to ensure that… resilience… to the impacts of climate change is maintained and enhanced*."

This should reflect the EU-wide target of restoring 25,000km^2 of river length *"into free-flowing rivers by 2030 through the removal of primarily obsolete barriers and the restoration of floodplains and wetlands."*[32] Such a restoration programme that encompasses riparian wet woodland and ensures the right native trees in the right place should incorporate the much-warranted proposal to develop 2,500km of riverside interception measures" including 12,500ha of native woodlands..

This is particularly important in regard to Freshwater Pearl Mussel, particularly the top 8 catchments. In those catchments there must be a return to open peatland habitat, and any riparian planting may be detrimental to the survival of the species. As such, it is vital that any such planting be rigorously assessed to ensure there are no unintended consequences.

6. Nitrates Derogations

It is of significant import that the NIS for the RBMP contains the following recommendation in Section 6.5.4.1:

> *"In the context of nitrates derogations, it is noted that where a farm has a derogation and has an eco-hydrological pathway to a European site, there is potential risk to the favourable conservation status objective of those European sites. The derogations will be decided as part of the NAP process. However, it is estimated that over 5,000 farms within the state would seek to avail of the derogation status, covering significant land areas. The list of farms and /or their location is not available. From a precautionary perspective it is assumed that some of these farms and their activities have eco-hydrological pathways to European sites and that some of these European sites are within the landholding. Therefore, there is significant potential for adverse effects on maintaining and achieving conservation objectives and therefore integrity of European Sites with respect to these derogations both individually and in combination with other derogations, plans and projects.*
>
> *Given the scale of derogations under previous cycles of the NAP, the potential for in-combination effects is significant.* ***It will therefore be vital that any derogations***

32 https://eur-lex.europa.eu/resource.html?uri=cellar:a3c806a6-9ab3-11ea-9d2d-01aa75ed71a1.0001.02/DOC_1&format=PDF

***which emerge from the NAP will be subject to AA; which should include a robust assessment of in combination adverse effects**."*

The NAP has just been finalised and no such site specific assessment is required in the NAP or the GAP regulations. As such, the potential for adverse impact remains extant, with no mitigation provided. While this should have been addressed as part of the NAP process, it must be noted that no WFD assessments are carried out on individual derogations either. As such, if the risk for eco-hydrological pathways exists for Natura 2000 sites, and has not been mitigated for, by extension this has very serious ramifications for achieving WFD status in these same waterbodies. As clearly elucidated in the SEA for the RBMP:

> *"Eco-hydrological pathways between derogation farms and water dependant ecosystems have the **potential to result in nutrient enrichment and eutrophication effects**, negatively impacting on habitats and species. A risk assessment and screening for appropriate assessment are essential to avoiding impacts of derogations in highly sensitive areas."*

We would note that the rigour of assessment required under the WFD is equivalent to that required under Article 6(3) of the Habitats Directive, and as such a failure by the RBMP to include a measure to address this lack of site specific assessment for derogation farms is a significant oversight, and leaves open a considerable pathway for pollutants to enter the waterways.

The only national environmental safeguards in place on derogation farms are those provided by the GAP regulations, with no requirement for a site level assessment. Recent ECJ case law confirms that the Irish procedure in not in compliance with Article 6(3) of the Habitats Directive, the judgement on Cases C-293/17 and C-294/17 held:

> *"Article 6(3) of Directive 92/43 must be interpreted as precluding national programmatic legislation, such as that at issue in the main proceedings, which allows a certain category of projects, in the present case the application of fertilisers on the surface of land or below its surface and the grazing of cattle, to be implemented without being subject to a permit requirement and, accordingly, to an individualised appropriate assessment of its implications for the sites concerned, unless the objective circumstances make it possible to rule out with certainty any possibility that those projects, individually or in combination with other projects, may significantly affect those sites, which it is for the referring court to ascertain."*

Article 5 of the Surface Water Regulations 2009 requires a public authority, in the performance of its functions, not to undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water.

In Case C- 461/13 Weser the CJEU held:

> *"Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required*
>
> *— unless a derogation is granted*
>
> *— to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."*

Further to that, the SEA Statement accompanying the Final Nitrates Action Programme said, in response to the An Taisce submission outlining that site specific Article 4 WFD assessments were required for Derogation farms, the following:

> *"As noted above, the assessment undertaken was a plan level AA and SEA and the Water Framework Directive requirements have been accounted for within this analysis. Site level Article 4 WFD assessments have not been undertaken and it is not proposed to undertake same."*

There is no legal basis for this assertion that site specific derogations are not required to be subject to an Art 4 WFD assessment. This is clear from the caselaw. As the Court of Justice of the European Union stated in Case C- 535/18 *Il and ors v Land Nordrhein-Westfalen* at para 74 et seq.:

> *"Article 4 of Directive 2000/60 not only contains more long-term planning requirements provided for by management plans and programmes of measures, but also concerns specific projects to which the prohibition of deterioration of the status of bodies of water also applies. A Member State is consequently required to refuse authorisation for a project where it is such as to result in deterioration of the status of the body of water concerned or to jeopardise the attainment of 'good status' for bodies of surface water or groundwater, subject to the derogations also provided for in Article 4 (see, to that effect, judgment of 1 July 2015, Bund für Umwelt und Naturschutz Deutschland, C-461/13, EU:C:2015:433, paragraphs 47, 48and 50).*

More specifically, as the Court has held, when a project is liable to have adverse effects on water, consent may be given to it only if the conditions set out in Article 4(7)(a) to (d) of that directive are satisfied. Without prejudice to the possibility of judicial review, the national authorities which are competent to authorise a project are required to review whether those conditions are satisfied before the grant of such an authorisation (see, to that effect, judgment of 1 June 2017, Folk, C-529/15, EU:C:2017:419, paragraphs 36and 39);

It follows from the foregoing that, during the procedure for approval of a project, and therefore before the decision is taken, the competent authorities are required, under Article 4 of Directive 2000/60, to check whether that project may have adverse effects on water which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of surface water and groundwater. That provision therefore precludes such a check from taking place only after that time."

There is no doubt that the application to land on a holding in any year of livestock manure in excess of the amount specified in Article 20(1) of the GAP Regulations constitutes a 'project' as considered by the CJEU, including by reference to Cases C-293/17 and C-294/17. Consequently, where the conditions as described in the case law on Article 4 of the WFD are made out, where there is a hydrological connection from the lands upon which such livestock manure is to be applied in accordance with the GAP Regulations, then an Article 4 assessment is required. Accordingly, any site specific application for a Derogation must be subject to AA Screening and Article 4 WFD assessment.

As such, the Departmental NIS and SEA has identified that a lack of site specific assessments for derogations will have potential impacts on Natura 2000 sites via hydrological pathways, and will likely lead to nutrient enrichment and eutrophication effects. The NAP provides no mechanism for site level assessments, either for AA or WFD, and makes clear that it does not intend to carry these out for the purposes of Article 4 of the WFD. The impact on the Natura sites will clearly also have WFD impacts, and will put the objectives of the RBMP at risk. There is an obligation on a public authority *'not to undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water.'* We would argue that given the risk has been clearly identified in the NIS and the SEA, the lack of a specific measure in the RBMP calling for a site level assessment of a derogation is a dereliction of duty by the Department, in contravention of Article 5 of the Surface Water Regulations 2009. It is imperative that this be an explicit action under the Agriculture section of the RBMP.

7. NIS Concerns

There are a number of mitigation measures proposed in the NIS for specific sectors which do not translate into actions in the RBMP itself. For example, for forestry our recommendation is that legacy forestry be dealt with. This is in keeping with the mitigation measures proposed for Forestry 6 in the NIS, which states:

> *"DAFM to identify areas where conservation forestry practices will be required as a response to existing forestry pressures on known QI/SCI effected by historic forestry activity"*

Or for Forestry 1:

> *"DAFM to develop a risk matrix in relation to forestry impacts on QI/SCI to inform sensitivity analysis."*

In order to provide a more robust RBMP, the mitigation measures and recommendations proposed in the NIS should be incorporated as actions in the RBMP itself, where relevant. The above are just 2 such examples of where mitigation measures could, and should, be clearly included as action points. Few will read the NIS once the final RBMP is published, and it is vital that any robust mitigation measures be included in the plan itself. It is not sufficient for them to be included only in the NIS where they will undoubtedly be overlooked. They need to be front and centre in the RBMP in order to translate into actionable measures.

We note the following statement in Section 6.4.4.3 which outline a potential pathway for damage to Natura 2000 sites:

> *"Broadly restoration measures are positive, however, there is potential for adverse effects on European sites, their QI/SCI and site integrity where connectivity to these sites and their conservation objectives under the Habitats Directive and Birds Divertive are not recognised and accounted for in the restoration measures proposed. Actions could lead to impacting on the ability to maintain and restore the favourable conservation status of QI/SCI habitats/species, changes in population dynamics, spread of invasive species and reduced ecological connectivity etc."*

The mitigation proposed is as follows:

> *"To avoid adverse effects on any European site resulting from the proposed restoration works, works programmes and projects the DHLGH will develop a process to ensure*

that support, funding and coordination of such works and projects undergoes a risk assessment (carried out by LAWPRO or similar) with regard to likely significant effects on any European site, alone or in combination with other plans and projects. The risk assessment will include the requirement to ***engage with the AA process.***

Given that this is locally driven ***the most appropriate stage at which to undertake risk assessments is at the LAWPRO level*** *where ecological expertise to support communities is in place to undertake the assessments. The DHLGH will ensure that there is awareness raising and training associated with any restoration works, works programmes and projects to ensure the potential for effects on any European site are understood more widely."*

We would express significant concern at this proposal. Firstly, the wording 'engage with the AA process' is vague, and it should be clearly indicated that this is a legal obligation. Furthermore, while LAWPRO do indeed have water quality expertise, that does not make them experts in assessing risks and pathways to Natura 2000 sites, nor are they likely to be aware of the very high legal threshold required for screening out any potentially damaging activity. Therefore, any such restoration measures must be subject to the full rigour of the AA process, with any screening out based on robust evidence and expert opinion, and it should be fully transparent and include public participation as required under the Aarhus Convention.

Is mise le meas,



Elaine McGoff, PhD

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