

Sustainable Water Network (SWAN)

- Response to Public Consultation -

Timetable & Work Programme for the Development of the Third Cycle River Basin Management Plan



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1. Introduction to SWAN

The Sustainable Water Network (SWAN) is an umbrella network of 24 of Ireland's leading environmental NGOs, national and regional, working together to protect and enhance Ireland's aquatic resources through coordinated participation in the implementation of the Water Framework Directive (WFD), the Floods Directive, the Marine Strategy Framework Directive (MSFD) and other water-related policy and legislation. SWAN member groups are listed in Appendix I. SWAN has been actively engaged in Water Framework Directive (WFD) and other water policy implementation at both national and regional/River Basin District level since 2004, representing the environmental sector in the past on WFD River Basin District (RBD) Advisory Councils, the South Eastern RBD Management Group and the Public Water Forum and currently on the Irish Water Stakeholder Forum and the National Water Forum.

SWAN has been fully committed to participation in WFD implementation for 15 years and has made 17 formal submissions specifically relating to WFD implementation during that time.¹ Regarding governance, implementation and public engagement in particular, SWAN has made 3 submissions, with detailed recommendations to the Department of Housing, Planning and Local Government: In 2013 we made the submission '*SWAN Recommendations for Public Participation Mechanisms in the Department of Environment Community & Local Government (DECLG) 4-Tier Water Governance Proposal*'² setting out comprehensive recommendations for public participation in WFD implementation. This was followed in 2015 with an updated submission, '*Delivering meaningful public participation in water governance and Water Framework Directive (WFD) implementation: SWAN Recommendations*', which was tailored to governance developments in the interim. In the interests of keeping our input timely and relevant, this was further refined and updated as '*Public Engagement in Water Framework Directive Implementation: A Review of Developments as of September 2016, with Recommendations*'.

¹ First cycle Article 5 Characterisation; Work Programme & Timetable; Monitoring Programme; Draft Plan, first submission: '*SWAN Submission in Response to 'Water Matters – Help Us Plan, Draft River Basin Management Plan'*'; Draft Plan, second submission: '*Review of 'Water Matters – Our Plan!' River Basin Management Plans for Ireland's River Basin Districts 2009-2015*'.

Second cycle WFD: Response to Public Consultation - Timetable & Work Programme for the Development of the Second Cycle River Basin Management Plans; SWAN Response to Consultation - Draft Significant Water Management Issues Report, December 2015; Sustainable Water Network (SWAN), Response to Consultation, Draft River Basin Management Plan 2018-2021

Other: Public Awareness Campaign on Water Blueprint; Submission on Surface Water Regulations; Joint recommendations with NI Freshwater Taskforce on All-Ireland WFD Implementation; Recommendations on Advisory Councils; Water governance proposal; 3-Tier Public Participation Proposal: '*SWAN Recommendations for Public Participation Mechanisms in the Department of Environment, Community & Local Government 3-Tier Water Governance Proposal*', August 2013; Public participation proposal, refined: '*Delivering meaningful public participation in water governance and Water Framework Directive (WFD) implementation: SWAN Recommendations*', July 2015; Public participation proposal, further refined & updated: '*Public Engagement in Water Framework Directive Implementation: A Review of Developments as of September 2016, with Recommendations - SWAN Submission to Department of Housing, Planning, Community and Local Government (DHPCLG)*', October 2016.

² The DECLG model subsequently became amended to a 3-Tier model. However, SWAN had responded to, and retained, the (in our view) preferable 4-Tier approach. It is included in full as part of this submission in Appendix II

2. Introduction to submission

SWAN welcomes the opportunity to comment on the *'Timetable & Work Programme for the Development of the Second Cycle River Basin Management Plans'*; the first phase of public engagement for the third cycle of river basin planning.

SWAN notes that due to the delay in the second cycle, and the fact that *"Only eight months have elapsed between the publication of the second cycle RBMP and the commencement of this consultation process for the third cycle"*, minimal change is being proposed in the consultation document and that *"The third-cycle Plan is considered as an evolution of the current RBMP"*. There is some lack of clarity in the consultation document regarding what exactly is being proposed, since much of the detail of implementation structures and approaches is set out in Section 2.2 'Current Plan'. What is being explicitly proposed for the third cycle, in fact, is quite limited, made up mainly, as we understand it, of the 'key principles proposed' on pg. 8. However, given the context of the document, we are taking it that what is set out in Section 2.2 is in fact also being proposed for cycle 3 since no changes to this are proposed in Section 3.

Although there is a view that this consultation is chiefly related to procedural matters regarding timelines etc., it is SWAN's view that its significance must not be underestimated; this is an extremely significant WFD milestone as it sets out the structures and systems which form the foundation and framework for WFD implementation for the third cycles of river basin management planning. It is important to emphasise that this is the final RBMP cycle before the ultimate WFD deadline of 2027.

In light of the importance of this consultation, SWAN would very much appreciate a follow-up meeting with DHPLG to discuss the content of our submission.

This submission is structured to address the following:

1. Key overarching issues in relation to water management and WFD implementation of relevance to the consultation
2. Response to the 6 consultation questions, referring back to relevant sections of the submission where appropriate

3. Taking a step back: What's being proposed in the context of developments in water management & lessons learned from first RBMP cycle

It is important that implementation in the third cycle is based on experience and lessons learned from the acknowledged poor implementation of the 2009-2015 River Basin Management Plans. The 2009-2015 River Basin Management (RBM) Plans themselves acknowledged that the water governance system was dysfunctional; stating that water management is *"fragmented along administrative lines"* and so does not *"facilitate analysis, identification and implementation of the most cost-effective solutions to manage water quality..."* The 201-2021 RBMP states, citing the EU Commission assessment of the first plans, that *"there was no single body having ultimate responsibility"* and also that *"fragmented institutional structures .. undermined the ability both to develop and to implement plans"*. In addition, the OECD has identified policy coherence and well-designed regulatory frameworks as key to effective water governance. (See

Section 5)

It is clear then from the above, that the **key questions**, in terms of lessons learned from the first cycle, and from international best practise, are:

- Do the new structures and arrangements, as set out in the consultation document, address these acknowledged weaknesses?
- Will the new structures and arrangements deliver the integrated, participative water governance required to deliver cost-effective water management and meet WFD targets?

It is in the context of these key questions that the current submission is made.

4. Timetable for preparing the updated RBM Plan

It is regrettable that the delay in the development of the second cycle was so far behind schedule that it minimises the opportunity of lessons from implementation of the second cycle informing the third. As already stated, SWAN supports the proposal that the effectiveness of the governance structures be reviewed and we recommend that associated improvements, where identified, be made during the second cycle and then informing the work programme for the third.

The timetable must allow time for authorities to closely review the responses to all three consultation phases in the 3rd RBMP, and to incorporate, as assessed appropriate, the outputs into final versions of each document. It is not clear from the consultation document whether it is intended to develop a revised Timetable and Work Programme and Significant Water Management Issues report of foot of consultations. SWAN seeks clarification on this as it may affect the timetable.

In particular, SWAN would like to clarify whether a final SWMI report will also be published or what the public engagement process will be in relation to competent authorities taking on board and refining the SWMI based on input from the public and how this will fit with the proposed timeline. SWAN recommends that at least 2-3 months should be allowed for this exercise if authorities propose considering and incorporating public responses in a meaningful way.

5. Governance & Implementation

APPROACH TO IMPLEMENTATION: PRIORITISATION

In relation to implementation, SWAN has very grave concerns arising from the fact that the first of the *"key principles proposed to be adopted for developing the Plan"* is *"Continuing to target priority Areas for Action"*. This will result in the majority of waterbodies which are currently failing WFD standards, or 'At Risk' of doing so, NOT being targeted with specific measures during the third RBMP and so continuing to fail. The WFD requires all waterbodies to reach good status by 2027, unless an exemption (under strict Article 4 criteria) is applied. It further requires (Art. 11) that where Basic Measures (mainly current

legislation) is inadequate, the 'Supplementary Measures' must be implemented (unless an exemption is applied, per Art. 4).

The most recent Environmental Protection Agency (EPA) report³ indicates that 44% of our river water bodies are below good status, and that there has been a 3% decline in water quality since 2015. All of these failing waterbodies should legally be subject to supplementary measures under the directive and yet the consultation document proposes just prioritising a sub-set of these for such measures. **This approach is clearly not in compliance with the directive.**

SWAN was given to understand by LAWPro and DHPLG officials at a SWAN RBMP workshop (May 2018) that this prioritisation approach, selecting a small percentage of waterbodies for improvement, was a short-term pragmatic solution only, in order to secure some 'quick wins'. However, we object in the strongest terms to this approach being continued into the third cycle because it means that a significant proportion of Irish waterbodies will fail to meet the requirements of the directive by the ultimate deadline of 2027. It would be indicative of a very low level of ambition and commitment on the part of the Irish government to protecting and restoring Ireland's waters, would expose Ireland to the risk of daily fines from the EU and in SWAN's view, it is unacceptable.

GOVERNANCE / IMPLEMENTATION STRUCTURES AND PROCESSES

As stated in the introduction, despite the lack of clarity, SWAN is making the following comments on the assumption that all structures and processes set out in the consultation document (pg. 2-4) are proposed to be continued into the third RBMP cycle.

SWAN welcomes the revised, more integrated administrative structures for water governance set out in the RBMP and outlined briefly in the consultation document and fully acknowledges the significant improvements in water governance since the first RBMP cycle. The significant additional cohort of staff in LAWPro and the EPA is also extremely welcome and SWAN recognises the commitment and work of a range of officials in securing these additional resources.

However, notwithstanding these strides, it is important that when assessing progress, this must be done objectively against best practise and in the context of learnings of the first RBMP cycle and findings from public engagement. As outlined in the introduction, one of the key weaknesses of the first cycle was the fact that of "*no single body having ultimate responsibility*" for implementation and this remains the case. Thus, while the proposed structures offer a significant improvement, many challenges remain.

It is important to emphasise that by 'governance', we are not focusing on general administrative arrangements such as technical working groups etc. What is meant is the governance structures where responsibility for decisions on the selection and implementation of WFD measures (at national and catchment level) resides. Water governance is wider than administrative arrangements; the OECD defines governance as including administrative systems, formal institutions (incl. laws & policies) and information

³ EPA (2018) Water Quality in 2017- An Indicators Report

institutions such as power relationships and practices.⁴ Also according to the OECD, “Solutions [to water management issues] will only be viable if **policies are consistent and coherent**; if stakeholders are properly engaged across levels of government, if **well-designed regulatory frameworks** are put in place, if capacity of institutions and stakeholders is strengthened, and if integrity and transparency are fostered. These goals are all about governance, and require **robust and agile institutions that can adapt to new conditions**, taking into account the specificities of each community and of its culture and history” (SWAN’s emphasis).⁵

Whilst what is proposed is certainly a more joined-up administrative system with clear benefits, there has been little progress towards the policy coherence and consistency recommended by the OECD and, in fact, agriculture and marine policy in particular, driven by the political imperative to increase productivity, is diverging further from the ecological goals of the WFD. Furthermore, in relation to agriculture, there is no evidence that current agricultural measures will ensure compliance with the Nitrates Directive or WFD and declines in water quality which correlate closely with increased dairy intensification on foot of Food Wise 2025 have been detected by the EPA and reported in their recent water quality indicators report.

Such lack of policy coherence, notwithstanding better cooperation between relevant government departments, is at odds with best practise water governance and is an enormous threat to achieving WFD standards.

In addition, neither the second RBMP nor the current consultation document, propose new measures to contribute to a ‘well-designed regulatory framework’, despite the commitment by the DHPLG to the EU Commission at least 6 years ago to introduce consolidated primary legislation to address the unwieldy and fragmented current legislative framework for water management and protection⁶.

Furthermore, traditional ‘present-and-defend’ top-down approaches are still very dominant in many agencies involved in water management (e.g. OPW) and new structures still very much rely on the goodwill of competent authorities to engage and on the building of personal relationships between officials. While welcome, this system is not resilient and does not necessarily represent the level of institutional reform required for effective catchment management.

Given the key elements of effective water governance set out above, which are missing in Ireland, SWAN believes there are significant challenges and impediments facing the new administrative system in delivering viable integrated water / catchment management solutions.

SWAN welcomes the proposal that *“The effectiveness of the new governance structure should .. be reviewed in the context of its operational success.”* In discussions on this consultation, SWAN members cited examples of significant water management issues from their field of work and expertise in the context of endeavouring to determine how the proposed new system would address the weaknesses of the old

⁴ OECD (2011) OECD Studies on Water: Water Governance in OECD Countries — A Multi-Level Approach. Organisation for Economic Co-operation and Development, Paris.

⁵ OECD (2015) Draft Principles on Water Governance. Public Governance and Territorial Development. Water Governance Initiative, Directorate Regional Development Policy Committee, Organisation for Economic Co-operation and Development, GOV/RDPC/WGI

⁶ Even where regulations have been mandatory under the directive since 2012 (e.g. for abstractions and physical modifications), they have still not been introduced.

fragmented system and deal with issues in a manner that the old system could not. SWAN would like to propose that DECLG, EPA, LAWPro & SWAN collaborate on examining the following proposed examples provided by SWAN members, as 'test cases', to work through how a significant water management issue would be dealt with under the new implementation system, in order to assess the 'operational success' of the governance structure.

1. Submission of a license application for a fin-fish farm in a coastal water-body classified 'high' status;
2. Report from a stakeholder group regarding observed water quality impacts in a water body of good or high status, from land-spreading of animal waste understood to be from outside the catchment;
3. Multiple documented incidences of unregulated riparian wetland drainage;
4. Physical Modification of a river water-body at good status by OPW flood protection works.
5. Permit sought for wind-farm in coastal water body of good status.

6. Public Engagement / Participation

SWAN comments on public engagement are based on extensive desk research on this subject over the course of nine years, and are submitted on the back of a series of detailed reports and recommendations submitted by SWAN to DHPLG since 2013⁷.

SWAN welcomes the establishment of the national Water Forum, which we first recommended in 2013 and which is evolving into a very strong forum for constructive discussion and collaboration between a diverse range of stakeholders. The potential of the Forum will be further developed with the appointment of additional staff to support increasingly comprehensive and mature policy inputs. We further welcome the appointment of 13 Community Water Officers.

SWAN is very concerned that the programme as proposed in the consultation document comprises primarily 'bare minimum' conventional written public consultation and no proposals for strengthening public engagement. SWAN takes issues with the fact that the timetable for developing the 3rd RBMP refers only to 'consultation' on both the Significant Water Management Issues report (SWMI) and the draft RBMP. It is crucial that this is changed to refer to 'public engagement'. Art. 14 of the WFD, requires more than consultation: "*Member States shall encourage the **active involvement** of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans*". The "*increased emphasis on participation and engagement in the current RBMP*" which is referred to in a general way in the consultation document should also be translated into concrete proposed actions within the RBMP development process. A mechanism for facilitating stakeholders at all levels (national; regional; local) to actively engage in the RBMP process must be developed and implemented, and a timeline and process for doing this set out.

⁷ SWAN Recommendations for Public Participation Mechanisms in the Department of Environment, Community & Local Government 3-Tier Water Governance Proposal, August 2013; 'Delivering meaningful public participation in water governance and Water Framework Directive (WFD) implementation: SWAN Recommendations', July 2015; 'Public Engagement in Water Framework Directive Implementation: A Review of Developments as of September 2016, with Recommendations - SWAN Submission to Department of Housing, Planning, Community and Local Government (DHPCLG)', October 2016.

In relation to stakeholder engagement, SWAN believes that there is now a significant deficit at regional level, which needs to be addressed. This has also been identified by LAWPro. This is critical because key decisions regarding catchment management are now made at this level, by the Regional Committees and there is currently no stakeholder participation or input to that process. While the consultation document states that *"the increased emphasis on participation and engagement.."* has led to the creation of the Regional Operation Committees (pg. 5), it is clear that this does not include the participation of non-statutory stakeholders.

Furthermore, while LAWPro are supporting community awareness and activity at local level, there is still no process for the public to participate in decision-making regarding water management, which is one of the core tenets of effective public engagement in Integrated Catchment Management. In addition, local stakeholder groups are solely relying on voluntary effort which, as highlighted at the 2018 Rivers Trust conference in Dublin, substantially limits the level of active engagement of the group. SWAN re-iterates its recommendation that state funding for staff for such groups.

At a basic level, SWAN recommends that information about implementation be more readily available. This should include the work, membership etc. of the bodies set out in Figure 2 and the work of LAWPRO and ASSAP in relation to the development of catchment management plans. Many SWAN members are asking what measures / actions are going to be delivered on the ground (within AFAs), who is deciding this and what the opportunities for public input are. Originally SWAN was told by LAWPRO that draft catchment management plans would be published, but this no longer appears to be the case. We believe this lack of information and engagement should be addressed.

Also in terms of the basic consultation process, SWAN seeks clarification as to whether a final Work Programme & Timetable and a final SWMI report will also be published on foot of the consultation and what the public engagement process will be in relation to competent authorities taking on board and refining the Work Programme and SWMI based on input from the public. SWAN believes that a clear mechanism for the consideration and incorporation of stakeholder input to all three RBMP stages, but particularly the SWMI and RBMP consultations, should be set out, including direct bilateral engagement. This should be set out in a revised Work Programme and Timetable.

Finally we re-iterate the SWAN recommendation for a national public awareness campaign on water.

7. International RBMs

SWAN notes that an International RBMP, as committed to as part of the second cycle was not published. Notwithstanding the uncertainties around Brexit, this lack of international co-operation is of serious concern. SWAN strongly urges that this is addressed in the third cycle. It is not enough to propose *"Maintaining and, where necessary, developing the existing mechanisms for North-South co-operation and engagement"*. Clear proposals for identifying cross-border water management issues and publishing and implementing an international RBMP should be set out or at least a commitment to do so and a statement of the challenges of so doing.

8. Response to Questionnaire

QUESTION 1: Did you engage with the consultation processes during the first or second cycle RBMPs? If so, do you feel your queries or concerns were addressed in the final RBMP?

No. Apart from a new section committing to research funding for Natural Water Retention Measures; a slightly expanded grant scheme for septic tanks and an acknowledgement that the Nitrates Action Plan alone will not address agricultural pressures on water, SWAN feedback was not reflected in the final Plan.

Question 2: Do you think the consultation timeframes and mechanisms outlined in this consultation document are sufficient? What other mechanisms would you suggest?

SWAN believes the timeframes are adequate but that significant improvements are needed in relation to proposals for public engagement. **See Section 6.**

Question 3: What are your views on the implementation structures outlined in the RBMP? Have you had any experience in dealing with any of the implementing bodies in connection with the RBMP, and if so, what was your experience?

See Section 5 for response.

Question 4: What are your views on the prioritisation of Areas for Action in the RBMP?

SWAN has extremely grave concerns about this. **See Section 5** for a full response.

QUESTION 5: Are there areas where you feel we should direct additional effort, outside of the Areas for Action and the measures identified in the RBMP?

Yes. The WFD requires that all waterbodies achieve 'good status' by 2027. Therefore measures should be targeted at all waterbodies that are currently falling below WFD standards, unless an exemption is applied in accordance with Article 4 criteria.

QUESTION 6: Have you any additional comments on the consultation steps and timetable set out in this document?

SWAN notes that the economic analysis required under Art. 5 of the directive is not mentioned as part of the work programme and strongly recommends that this is conducted.

We re-emphasises the need for a comprehensive programme of public engagement and strongly recommends that the prioritisation approach being implemented in the second RBMP cycle, which is non-compliant with the directive, is NOT continued into the third cycle.

APPENDICES

APPENDIX I

SWAN Member Organisations

SWAN National Groups		SWAN Regional & Local Groups	
1.	An Taisce	14.	Carra Mask Corrib Water Protection Group
2.	Bat Conservation Ireland		
3.	Birdwatch Ireland	15.	Cavan Leitrim Environmental Awareness Network
4.	Coastwatch Europe Network		
5.	Coomhola Salmon Trust Ltd.	16.	Celebrate Water
6.	Eco-UNESCO	17.	Cork Environmental Forum
7.	Friends of the Earth	18.	Cork Nature Network
8.	Friends of the Irish Environment	19.	Dodder Action
9.	Irish Peatland Conservation Council	20.	Longford Environmental Alliance
10.	Irish Seal Sanctuary	21.	Macroom District Environmental Group
11.	Irish Whale and Dolphin Group	22.	River Shannon Protection Alliance
12.	Irish Wildlife Trust		
13.	Voice Of Irish Concern for the Environment (VOICE)	23.	Save The Swilly
		24.	Slaney River Trust

APPENDIX II

SWAN Board of Directors

SWAN Board of Directors:	
Mark Boyden, Chair	Coomhola Salmon Trust
Mindy O'Brien, Vice Chair	VOICE
Karin Dubsky, Director	Coastwatch Europe
David Healy, Director	Friends of the Irish Environment
David Lee, Director	Cork Environmental Forum
Elaine McGoff, Director	An Taisce
Gerry Siney, Director	River Shannon Protection Alliance