

Sustainable Water Network (SWAN)

- Response to public consultation on the designation of heavily modified waterbodies for the third cycle River Basin Management Plan



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Introduction & overarching comment

1. SWAN welcomes the opportunity to respond to the consultation on the designation of heavily modified waterbodies for the third cycle River Basin Management Plan and appreciates the extended deadline.
2. However SWAN believes that this process is fundamentally flawed and is not in line with Art. 4 of the WFD. While this is being presented as a technical exercise, in fact, the process whereby a very significant number of waterbodies are re-assigned as *'heavily modified'* is in fact a socio-economic policy decision. This decision must be supported by appropriate analysis which has not been conducted.
3. SWAN does not believe that the designation should take place until this appropriate analysis is conducted and supporting evidence presented and that this process should be run by the Department of Housing Local Government and Heritage (DHLGH) with full public engagement.

Technical analysis v's policy decision

4. While it is appropriate for first phase of the process, the *'six-step technical assessment'* to be conducted as a technical exercise and run by the EPA, i.e. *the "Characterisation steps"*, it is wholly inappropriate for the second stage i.e. the *"designation tests"* to be treated as such. This is not a technical exercise, rather a socio-economic policy decision.
5. According to the consultation document, the second phase in the process comprises *"designation based on a series of tests on measures, alternative options, feasibility and costs"*, the EPA is the technical lead for this¹ and *"the EPA will ... make a recommendation to the Minister for Housing, Local Government and Heritage on the waterbodies that meet the designation criteria"*. It is not appropriate for the EPA, as a scientific body, to lead or make recommendations on these complex socio-economic policy matters as they are not qualified to do so.

Lack of supporting evidence and appropriate analysis

6. SWAN notes that this designation process lacks an objective exploration and analysis of alternative *"significantly better environmental"* options² and further that a thorough analysis was not conducted on which to base the designations. This analysis must be conducted and should include a disproportionate cost analysis (DCA), including environmental and resource costs, of all options.

¹ According to the consultation document *"The EPA is the technical lead for all three parts of the process"*

² Art. 4.3 (b) of WFD

7. Such disproportionate cost analysis should include not just the impacts of restoration measures on specified uses, but also the wider environmental, recreational, heritage and other the benefits.
8. The marked lack of systematic analysis is then compounded by the fact that the EPA based the designation decision heavily on feedback from the 'specified use owners', who clearly bring a singular and subjective perspective. This is not in line with Art. 4.3 of the WFD which requires analysis which demonstrates that *"the beneficial objectives served by the artificial or modified characteristics of the water body cannot, for reasons of technical feasibility or disproportionate costs, reasonably be achieved by other means, which are a significantly better environmental option."*
9. SWAN is also concerned that, while the 'Characterisation' stage was done on a waterbody-by-waterbody basis, the designation stage was not. It was grouped by specified use. E.g. all the dams were considered together; likewise all arterially drained rivers etc., based primarily on input from specified use owner. This is not in line with Art. 4.3 of the WFD which specifically refers to designation of *"a body of surface water"* It is clear then that this designation and the supporting analysis must be done for each waterbody. In addition to this legal requirement, such an approach is also in line with integrated catchment management (See next point).

Arterial Drainage

10. We draw attention to the case of Arterial Drainage, both as an example of poor and inadequate analysis but also a situation of grave concern to SWAN members, in light of the significant number of river waterbodies proposed for re-assigned status. To analyse whether *"the beneficial objectives served by"* by arterial drainage, could be achieved *"by other means, which are a significantly better environmental option."*, taking into account *"technical feasibility or disproportionate costs"*, the consultation document states that,

"The specified use owner .. the OPW, has indicated that on the basis of the best available information, the required restoration measures could not be implemented without impacting on the specified use. It is not technically feasible to maintain these land uses without these schemes in place, so there are no technically feasible alternative options."

However, there is no supporting evidence or analysis to back up this general and subjective contention, nor is there an attempt at taking an integrated policy and catchment management approach. There needs to be far better integration of the designation decision with wider land use policies e.g. exploring the option of incentives for farmers to rewet high C soils, or integration of existing such schemes under CAP. Likewise designation cannot be considered in isolation from climate policy: it is likely that Irish national climate targets will require a cessation of all peatland drainage, and

a blanket continuation of arterial drainage, as facilitated by this proposed designation, runs contrary to land use approaches to climate mitigation AND adaptation and is a clear example of policy incoherence.

In relation to flood management, modelling or other supporting analysis must be presented to demonstrate the flood management benefits of the AD schemes.

11. The point made by the OPW that they are legally obliged to continue maintenance of arterial drainage schemes is not legally robust, since legally EU law takes precedence over national law (in this case the WFD, though the Habitats directive will apply for certain rivers also)

Conclusion and Recommendation

12. It is SWAN's position that the designation process presented is both flawed and premature and, while we recognise the thorough 'characterisation' exercise conducted, we reject the designation process as set out.
13. SWAN calls for a full policy analysis, run by the DHLGH, as set out above, with effective public engagement, which:
 - a. fully considers all better environmental options
 - b. is conducted taking an integrated catchment management approach to climate mitigation & adaptation and habitat restoration.
14. We do not believe any of the proposed new waterbodies should be re-assigned a heavily modified status until the above is carried out.