TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

24th Meeting, 2002 (Session 1)

Wednesday 11 September 2002

The Committee will meet at 9.30 am in Committee Room 1 to consider the following agenda items:

1. **Items in Private**: The Committee will consider whether to take agenda items 3 and 6 in private.

2. **Water Environment and Water Services (Scotland) Bill (in private)**: The Committee will consider possible lines of questioning for witnesses.

3. **Highlands and Islands Ferry Services**: The Committee will consider possible lines of questioning for witnesses.

4. **Water Environment and Water Services (Scotland) Bill**: The Committee will take evidence at stage 1 on the general principles of the Water Environment and Water Services (Scotland) Bill from—

   - Richard Broadhurst, Policy Officer, Forestry Commission National Office for Scotland
   - Caroline Davies, RSPB Scotland, Scottish Environment LINK
   - Lisa Schneider, Scottish Wildlife Trust, Scottish Environment LINK
   - Rebecca Wells, WWF Scotland, Scottish Environment LINK
   - Andrew Wallace, Director, Association of Salmon Fishery Boards
   - Captain Antony Wilks, Chairman, Scottish Coastal Forum
   - Quentin McLaren, Manager, Tweed Forum
5. **Highlands and Islands Ferry Services:** The Committee will take evidence from Lewis Macdonald MSP, Deputy Minister for Enterprise, Transport and Lifelong Learning.

6. **Rail Inquiry:** The Committee will consider a paper by the Committee’s adviser on its inquiry into the rail industry in Scotland.

---

Callum Thomson  
Clerk to the Transport and the Environment Committee  
Room 3.5, Committee Chambers  
0131 348 (8)5208  
e-mail [Callum.Thomson@scottish.parliament.uk](mailto:Callum.Thomson@scottish.parliament.uk)

The following public papers are relevant for this meeting:

<table>
<thead>
<tr>
<th>Submission</th>
<th>TE/02/24/n</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission from the Forestry Commission</td>
<td>TE/02/24/1</td>
</tr>
<tr>
<td>Submission from Scottish Environment LINK</td>
<td>TE/02/24/2</td>
</tr>
<tr>
<td>Submission from RSPB Scotland</td>
<td>TE/02/24/3</td>
</tr>
<tr>
<td>Submission from Scottish Wildlife Trust</td>
<td>TE/02/24/4</td>
</tr>
<tr>
<td>Submission from WWF Scotland</td>
<td>TE/02/24/5</td>
</tr>
<tr>
<td>Submission from the Association of Salmon Fishery Boards</td>
<td>TE/02/24/6</td>
</tr>
<tr>
<td>Submission from the Tweed Forum</td>
<td>TE/02/24/7</td>
</tr>
<tr>
<td>Consultation Paper and Draft Invitation to Tender for Consultation on Proposals for Tendering Clyde and Hebrides Lifeline Ferry Services</td>
<td>TE/02/24/8</td>
</tr>
</tbody>
</table>
EVIDENCE TO TRANSPORT AND ENVIRONMENT COMMITTEE
WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL
FROM THE FORESTRY COMMISSION

General

The Forestry Commission serves as the department of forestry for the Executive and is the competent authority in respect of regulation of forestry activity. Commission staff have been involved in development of the draft legislation, and in the project managed by SEPA to produce a “shadow” River Basin Management Plan.

Forestry is a major land use in Scotland; there are 1.3 million hectares of forest, accounting for 17% of the land area. The area of Scotland’s national forests, owned by the Executive and managed by the Commission’s Forest Enterprise Agency, is just under 0.5 million hectares.

Forestry has the potential to make major impacts on the water environment – positive and negative. Arguably, the most significant of the negative effects are the potential for diffuse pollution through acidification and through sedimentation from ground disturbance. The impact of forestry became apparent in the light of large-scale afforestation during the second half of the twentieth century. As a result of this, the Commission has worked with SEPA (and its predecessors), landowners, local authorities and other stakeholders to develop processes to minimise these problems. The Forests and Water Guidelines (now in their third edition, with a fourth edition in draft) provide the main source of reference on this subject. Meanwhile, work is being undertaken to encourage forestry practices that will benefit the water environment; for example, the current proposals for a new Scottish Forestry Grant Scheme include specific support for the development of riparian woodlands.

Response to Committee questions

Questions 1 (river basin management planning) and 4 (framework for controls)

Implementation of these provisions will require additional regulatory effort, but the Bill also recognises the importance of allowing the flexibility and involvement of stakeholders that will be needed to achieve this successfully.

Question 2 (role of SEPA)

SEPA is the obvious body for taking the lead on river basin management planning, with its scientific and technical skill and its collective experience. The need for large-scale planning and consultation exercises will be challenging, and Commission staff will assist in any way they can.

Question 3 (transposition of Directive)

The Directive’s provisions regarding public participation appear to have been properly transposed. Such public participation will be an important element in successful implementation of the Bill.
**Question 5 (relationship with other policy areas)**

The Executive’s Scottish Forestry Strategy identifies the importance of the water environment in relation to forestry policy. There is close accord between the provisions of the Bill and the policies set out in the Forestry Strategy. The Commission looks forward to working closely with SEPA to ensure that forestry activity and planning are beneficial to the water environment.

**Question 6 (sustainable development)**

The Scottish Forestry Strategy has sustainability as its underlying principle and the Bill's provisions also appear to meet sustainable development criteria. In securing an appropriate balance between environmental, social and economic outcomes, it will be important to make full use of opportunities for public participation.
Scottish Environment LINK
Written Evidence on the Water Environment and Water Services (Scotland) Bill

Introduction
Scottish Environment LINK is the liaison body for Scotland’s environmental organisations, the members of which are supported by around 500,000 people. LINK welcomes the opportunity to provide evidence on the Water Environment and Services (Scotland) Bill. This Bill marks a historic move - implementing the Water Framework Directive (WFD) could secure the future of healthy waters in Scotland.

This submission highlights three key areas of interest to LINK member bodies:

- Integration of land and water use
- Natural systems, flooding and wetlands
- Active public involvement

The LINK member bodies listed below support this statement. We would welcome the opportunity to develop any of the points here either through oral evidence or through further written submissions. Submissions from individual LINK member bodies will supplement the information provided here.

A vital step for Scotland
We support the Executive’s stated aim – “to promote the sustainable management and protection of the water environment in Scotland” - through the introduction of a new statutory water planning system and new controls over water abstraction, impoundment, engineering works and pollution. This new system will bring significant benefits to Scottish business and communities. Healthy river systems are vital for safe drinking water, for public safety from flooding and for the well being of essential Scottish industries such as tourism and whisky. The role of a healthy environment and the diversity of species dependent upon it in supporting the tourism and recreation industry is greatly under-valued.

Scottish Executive research estimates that the short term costs of ensuring that water bodies meet ‘good status’ will be greatly outweighed by long term benefits to business and society of around £1.5 billion. However, while the Bill is a progressive piece of legislation there are significant gaps and missed opportunities that need to be addressed in this Bill in order to fully protect and enhance Scotland’s water environment. The three main areas of concern and our recommendations for how the Bill might be strengthened are detailed below.

1 Integration of land and water use
1.1 All land uses in Scotland impact either directly, or indirectly, on the state of water bodies and the water cycle as a whole. In designing a framework for the sustainable management and protection of the water environment, it is therefore essential that our water and land use policies are connected to the aims of the Bill.

1.2 The Bill highlights the need to align river basin management planning and development planning under the Town and Country Planning legislation. It also proposes a duty on Responsible Authorities to ‘have regard for the desirability of protecting the water environment’. This is encouraging; but the majority of land use in Scotland (such as fishing, forestry and particularly agriculture) lies outwith the control of the Town and Country Planning Act. It is essential that their contribution to good ecological status of water bodies is fully recognised in this important primary legislation. If it is not, we are in danger of wasting taxpayers’ money and setting up isolated and conflicting water and land use policies.

1.3 Policy join-up needs to be effective throughout land management and in the way in which it is planned. A strong system of Sub-Basin Plans for Scotland would help to integrate the existing plans within a particular catchment and ensure development with other initiatives such as Land Management Contracts. This would be truly ‘working smarter’ to ensure that we do not re-invent the wheel in an already complicated area of public policy. For example, we are disappointed at the lack of recognition of the Biodiversity Action Planning process in this legislation – a process that we consider should be fully integrated with River Basin Planning. This omission is alarming and suggests that a valuable opportunity to achieve biodiversity targets and to use targets to achieve WFD aims could be missed. Stronger emphasis on policy integration is essential if the Water Environment Bill is to be effective in implementing the WFD and meeting the sustainability objectives of the Scottish Executive. We recommend the following measures:

(a) A trigger to policy join up: There must be a strong duty on all Ministerial departments and all competent authorities, including those outwith the development planning system, to explicitly ensure that their land and water use policies comply with the requirements of the WFD. We urge the Committee to ask the Minister to
clarify how the Executive will ensure compliance with the requirements of the WFD across all policy and planning.

(b) A facilitator to policy join up: There should be a requirement for the establishment of a National River Basin Forum in Scotland – it will be essential to enable all stakeholders in land and water use to work together and ensure that policy join up is addressed. We urge the Committee to ask the Minister how policy join up and stakeholder dialogue (essential to implementation) will be secured through the primary legislation.

(c) ‘Working smarter’: the Bill should encourage the use of plans that we already have such as Biodiversity Action Plans (18 wetland BAPs have already been audited), coastal zone initiatives and the proposed land management contracts. This would reduce costs of implementation by avoiding the duplication of work and using resources that are already available or currently being developed. We urge the Committee to ask the Minister to ensure such a mechanism is included in the Bill.

2 Natural systems, flooding and wetland habitats

2.1 The web of life
Scotland’s characteristic landscapes and wildlife; lochs and beaches, ospreys, salmon and otters are evocative images, which make Scotland special to its residents and visitors. It is the well being of our water and wetland biodiversity that underpins these. The health of this environment is essential to the clean green image upon which many of Scotland’s industries depend and are marketed. The Bill should not merely achieve compliance with European legislation, but be an opportunity to maximise the benefits for Scotland’s people, environment and economy. The proposal to give SEPA powers to undertake restorative and remedial work in order to achieve the environmental objectives of river basin management plans is very welcome in this respect.

2.2 Flooding
Each year Scottish communities suffer the devastating impacts of flooding – often the result of inappropriate development on floodplains and intensive agricultural use. Climate change is predicted to, and indeed appears now confirmed to, greatly increase flood risk. 150,000 Scottish homes are currently at risk from flooding and current estimates of annual average damage from inland floods are around £20million. This could rise 115% by 2080. Loss of vegetation and the majority of natural floodplains has turned our rivers into fast track, flash flood danger zones.

Despite the severity of the issue, Scotland has no comprehensive systems in place to manage flooding and this Bill makes no proposals to tackle the currently fragmented system. One of the express purposes of the WFD is to mitigate the effects of floods, yet this Bill does not address flooding. We consider this a major omission. The European Committee’s recent report into the WFD recognises that there are good reasons why flood protection measures should be integrated into River Basin Management Plans, and not be dealt with through a separate planning regime. In contrast, England and Wales plan to link their Flood Catchment Management Plans with River Basin Planning. This Bill should prompt a review of our current unsustainable and fragmented flood policies to ensure that flood planning takes place at a catchment level, working with natural river systems, and is closely linked to River Basin Planning.

It also offers the chance to revisit how we deal with flooding. Concrete flood defences are not only hugely expensive to build and maintain but they transfer the problem elsewhere. Flooding can be effectively managed through the use of natural washlands to store floodwater; Insh Marshes on Speyside is a classic example. Aviemore would be prone to disastrous floods if the Insh Marsh was drained. In addition, saltmarshes and mudflats provide valuable coastal defence and their restoration can reduce the need to build and maintain expensive sea walls. The Bill should encourage the routine use of ‘soft’ engineering techniques to tackle flooding wherever possible, including the use of wetlands as natural flood ‘sponges’.

2.3 Wetlands
Whilst the Directive does not set environmental objectives for wetlands and floodplains in the same way it does for other waters, these are vital parts of the ‘life support’ system for healthy rivers and it should contribute to their protection and restoration. It is tempting to limit our approach to minimal, regulatory measures currently proposed, but this is folly. A more imaginative approach is needed which recognises the value that the widespread restoration and recreation of wetland habitats would bring.

The WFD identifies a series of supplementary measures that include the re-creation and restoration of wetlands, for example through agricultural support payments; negotiated environmental agreements; education and demonstration. These are not supplementary in the sense that they are optional extras – they offer a toolkit from which individual member states can use the tools most suited to their particular needs. Through the WEB much
could be achieved through the promotion and resourcing of such ‘supplementary’ measures in river management plans. The Bill appears to make no express provision for such initiatives. **The Bill should promote and resource ‘supplementary measures’ as a means of achieving the environmental objectives.**

### 3 Active public involvement

#### 3.1 Environmental damage brings social costs, and our water environment has suffered greatly from a lack of awareness and responsibility for its care. This Bill requires, for the first time, the ‘active involvement’ of the public and interest groups in managing water, a requirement which is echoed in the social justice agenda through the Aarhus convention and Strategic Environment Assessment Directive.

#### 3.2 Many environmental problems are the result of one interest impacting upon another. Whether pollution of rivers by farming affecting drinking water and angling interests, or one local authority acting to protect people from floods by building concrete defences leading to accelerated and increased flooding downstream onto other communities - it tends to be the disadvantaged and dis-empowered in our society who suffer most. This is social and environmental injustice. This is why the issue of participation and active involvement is so vitally important. We do not want participation for participation's sake - it is needed because it helps to balance out the power of interests, generate co-operation and mutual understanding between different stakeholders. If we can get this right in this bill we will have paved the way for less conflict, less damage to the environment and strengthened communities. It is an investment now to make massive savings later. **Active involvement should be seen as an investment that brings important social, environmental and economic benefits.**

#### 3.3 Active involvement in water planning needs structures, commitment and resources at local, regional and national level to ensure ownership of plans, workable decisions and support for local initiatives. Yet, this Bill stops short at one-way ‘consultation’ rather than encouraging active involvement. In order to be meaningful, participation has to be a two-way process. The proposed powers and structures in the Bill (as introduced) do not enable devolved decision-making. Consequently, there is a danger that transparency, cost-effectiveness, workability and enforcement will suffer.

#### 3.4 Where exactly does the Bill fall short in ensuring real involvement?

There are no provisions for involving and supporting existing local plans and initiatives that are delivering the Bill’s aims. There is no proposal for a Scotland-wide network of sub-basin planning to involve people directly at the local or regional level. SEPA can create sub-basin plans if it thinks fit, but there is no ‘level playing field’ involving interest groups at sub-basin level in action planning across Scotland. The proposed Advisory Groups appear to be merely advisory, with no clear input to decision-making. There is no commitment to a national strategy-setting River Basin Forum to involve interest groups at national level. We believe that the Bill should include provisions to establish structures to strengthen participation including:

- **A national River Basin forum** which helps SEPA prepare the national River Basin Plan and has input to national policy development on land and water;
- **A network of sub-basin plans** covering the whole of Scotland – these could be at regional or local level and should have decision making powers.
- **Strong links to support local initiatives and local catchment plans.** Sub-basin planning should link to these plans, like flood or biodiversity plans. Many of these already exist and this could enable them to maximise their delivery of WFD aims.

We need to plan early for active involvement, as many important decisions will be made before 2006, when Scotland has to demonstrate ‘active involvement’. Therefore the Bill must include a requirement for SEPA to **prepare and implement a strategy for participation** and undertake a stakeholder analysis. This will require sufficient support and resources for effective delivery on the ground.

### Conclusion

This Bill offers a unique opportunity to deliver much improved management of our water environment in Scotland. There is no doubt as to the value of this resource and how essential a healthy functioning system is to society as a whole, the industries that rely on the high quality of our water and the well being of the ecosystem. The Bill as introduced is step in the right direction, but it fails to address a number of key issues that will safeguard this resource and all that thrives upon it. It is essential we get this primary legislation right to enable good environmental management in the future. The issues identified here must be addressed if we are going to grasp this opportunity and generate benefits for Scotland’s society, economy and environment.
Summary of strengths and weaknesses in the Water Environment and Water Services (Scotland) Bill.

River Basin Planning

We strongly support the following in the Bill:

- The duties on Ministers, SEPA and relevant authorities to secure compliance with the WFD;
- Integration of River Basin Planning with the development planning system;
- Requirement for SEPA to prepare a Scottish Monitoring Strategy;
- Commitments to consult widely on the River Basin Management Plans;
- Creation of Advisory Groups to provide advice to SEPA on River Basin Planning;
- Coastal waters to extend to 3 nautical miles.

The following issues must be addressed:

- The Bill’s provision for integration with land and water policy outwith the development planning system, particularly farming, fishing and forestry and coastal zone management, is weak. It is essential that the objectives of this legislation are linked to biodiversity targets and other relevant government obligations.
- There is no duty to develop sub-basin plans, crucial to delivering catchment-based management of water bodies and to enable ownership and participation of the process at local level. The current provision, for sub-basin plans only to be created if and where SEPA perceives a need, is not sufficient for effective implementation of the WFD. There must be a duty and the necessary resources to develop sub basin plans.
- There is no provision for devolved, transparent and integrated decision-making. Instead the Bill takes a strongly regulatory approach with almost all powers and responsibilities in the hands of SEPA and the Minister. A ‘River Basin Forum’ at national level, should be set up, with broad stakeholder membership and input to other national land and water policies, complemented by River Basin Advisory Groups at local level with a clearer remit.
- The Bill should prompt a review of our current unsustainable and fragmented flood policies, including designation of a strategic, co-ordinating body to oversee flood management.

Delivering Environmental Objectives

We strongly support the following provisions in the Bill:

- Powers for Ministers to introduce new regulations to control abstraction, impoundment and engineering works (however control of engineering works in coastal and transitional waters appear to be excluded);
- Early phasing in of control regimes to allow industry and others to adapt;
- Powers to create regulations allowing SEPA to carry out habitat restoration work and recover the costs of this work.

The following issues must be addressed:

- The use of more sustainable and cost-effective ‘soft’ engineering techniques - working with rivers and coastlines to encourage habitat restoration and re-creation, to mitigate flooding and tackle pollution (often at less cost than ‘conventional’ techniques) should be encouraged. Triggers for this should be in the legislation.
- The Protected Areas register includes EC designated sites but excludes other designated sites. Therefore areas that have been identified as particularly unique or sensitive (such as SSSIs, Ramsar Sites and NNRs) are excluded. These should be included in the Protected Areas register. We urge the Committee to ask the Minister to ensure sites of national or international significance are not excluded from this register.
- There are few specific proposals to improve the regulation of aquaculture, for example through transfer of planning powers from Crown Estate to local authorities, as called for through the Scottish Executive’s Review of Regulations process and Ministerial Working Group on Aquaculture.
- There are no proposals for powers to control the harvesting of living organisms and the introduction of non-native species.
- It seems there is no general provision within the Bill for serious damage to the environment to be an offence. Perhaps the Committee could clarify with the Minister what punitive regime will be in place to cover serious damage to watercourses.
- The date from which ‘no deterioration’ of environmental quality will apply is not determined. This should apply immediately when the Bill receives Royal Assent.
This submission has been prepared by the LINK Freshwater Taskforce and is supported by the following member bodies:

The National Trust for Scotland
RSPB Scotland
Scottish Wildlife Trust
WWF Scotland

For further information please contact:

Caroline Davies, RSPB Scotland: 0131 311 6500 caroline.davies@rspb.org.uk
Rebecca Wills WWF Scotland: 01887 820449 rwills@wwfscotland.org.uk
George Baxter, WWF Scotland: 01887 820449 gbaxter@wwfscotland.org.uk
Lisa Schneidau, Scottish Wildlife Trust: 0131 312 4771 lschneidau@swt.org.uk
Jessica Pepper, Scottish Environment LINK: 0131 225 4345 jessica@scotlink.org

LINK members have been actively involved in work on water issues and have worked in partnership with the Scottish Executive in the lead up to this Bill, they;

- gave evidence on the Water Industry Inquiry and during Stage 1 consideration of the Water Industry Bill;
- in partnership with the Executive, organised a series of seminars focussing on three key areas – diffuse pollution, wetlands and participation;
- commented on SEPA’s consultation The Future for Scotland’s Waters regarding the guiding principles on the technical requirements of the WFD.

All the previous submissions and consultation responses are on the LINK website www.scotlink.org
RSPB Scotland Parliamentary Briefing

Water Environment and Water Services (Scotland) Bill
Submission to the Transport and the Environment Committee

Water is not a commercial product like any other but rather a heritage which must be protected, defended and treated as such (WFD recital, paragraph 1)

Introduction
RSPB Scotland welcomes this opportunity to submit views to the Transport and the Environment Committee on the Water Environment and Water Services (Scotland) Bill. Our submission concerns Part 1 of the Bill.

RSPB Scotland has some 70,000 members and employs over 120 staff to promote the conservation of biodiversity, especially birds. We have 70 nature reserves in Scotland, covering some 58,000ha where we manage land and water for conservation, practising sustainable farming and forestry methods in order to protect and enhance biodiversity. Our wetland reserves include Insh Marshes on Speyside, Lochwinnoch in Renfrewshire, Forsinard in the Flow Country, Ken-Dee Marshes in Dumfries and Galloway and Vane Farm near Kinross. We also manage coastal areas including Loch Gruinart on Islay, Mersehead on the Solway, Nigg Bay on the Cromarty Firth, Skinflats on the Firth of Forth, land on the Inner Clyde, Balranald in North Uist, and numerous sites in Orkney and Shetland.

We welcome publication of this Bill which represents a major step forward in the protection and management of Scotland's unique aquatic environment. However, we consider that major opportunities to improve Scotland's water environment have been missed. We urge the Parliament to redress these flaws during the passage of the legislation.

Water and Wildlife
The water cycle is the basis for all life and directly supports many of our important habitats and species. Our water and wetland biodiversity gives Scotland its characteristic landscapes and wildlife. Lochs, marshes, beaches and rivers support ospreys, salmon, otters, red throated divers, flag iris, sea thrift… all evocative images of Scotland that reflect our rich water biodiversity. Such images are the foundation of our tourism industry – protection of these habitats and species is vital to Scotland's economy.

The Scottish Biodiversity Group is responsible to Scottish Ministers for meeting UK and international obligations. 26 Habitat Action Plans are based in our freshwater and marine environments – for example, machair, saltmarsh, mudflats, fens, mesotrophic lakes and reedbeds. Many more of the 226 species for which Action Plans have been published rely on these aquatic habitats. The Scottish Executive has made firm commitments to achieving targets for biodiversity and to “building biodiversity into policy across the range”.

However, recent research commissioned by the Executive indicates that there is potential to make biodiversity a more central part of sustainable development policy. Biodiversity needs to be at the heart of government, and there remains great potential for biodiversity to be integrated further into

---

1 e.g. whale and dolphin watching brings an estimated £7.8million pa to the west of Scotland. Whale-watching in West Scotland. Report for DEFRA by the Hebridean Whale & Dolphin Trust, July 2001
2 Minister for Transport and the Environment in Action for Scotland’s Biodiversity, Scottish Biodiversity Group 2000
3 Biodiversity in Scotland: Progress Report, Scottish Executive Central Research Unit, 2002
national policies... To provide guidance for all types of land and water management. Further, the report recognises that farming, forestry and fishing are key, and sustainable natural resource use policies are critical to reaching Biodiversity Action Plan targets.

There is clearly much to be done to achieve sustainable water management. The Water Environment Bill offers a golden opportunity to proactively achieve biodiversity targets, but the proposals are disappointing in this respect – focusing mainly on new regulations rather than a more integrated land and water management system.

The opportunity to protect and enhance biodiversity

Whilst we welcome the introduction of the new regulatory regimes for controlling abstraction, engineering, and pollution where they damage the environment, we believe they should be backed up by stronger proposals for a more integrated system of river basin management. The Bill, quite rightly, focuses on the important synergy which will be needed with the development planning (Town and Country Planning) system, but pays little attention to the integration needed with agriculture, forestry, fisheries, flood defence, shoreline management etc. This will be fundamental to the achievement of ‘good ecological status’ for water bodies – and also for achieving wider biodiversity benefits which, we believe, encapsulates the spirit of the Water Framework Directive.

The Bill places a duty on Scottish Ministers and every public body and office-holder to have regard to the desirability of protecting the water environment in exercising any functions. The Committee should determine how policy integration with e.g. agriculture, forestry, fishery, flood and shoreline management will occur.

Widespread restoration of wetland habitats - use of ‘supplementary’ measures

We welcome the proposal for new powers to create regulations allowing SEPA to carry out restoration work and recover costs. However, we consider this proposal should be supported by measures with a more widespread effect. This could be achieved by promoting ‘supplementary’ measures - options set out in the Directive as a means of achieving environmental objectives where the basic regulations are not enough, or not the most effective method. Specifically these include:

- re-creation and restoration of wetlands – eg through agricultural support payments
- negotiated environmental agreements
- education, awareness raising, training, research and demonstration

Such measures would provide cost-effective ways of achieving the Directive’s objectives whilst also benefiting biodiversity, the wider environment and local communities. In this respect it is disappointing that the Bill does not make express provision for such measures.

The Bill should promote and resource ‘supplementary measures’ including those referred to in the Directive, as a means of achieving the environmental objectives.

The socio-economic value of wetlands

As well as helping to achieve good ecological status, restoring and creating wetlands and riparian vegetation can be a useful tool in achieving a whole variety of socio-economic benefits including:

i Flood management

River floodplains and coastal saltmarshes operate as natural flood defences. They hold water during times of peak flow and release it slowly, reducing the impact of floods on built up areas. Though hard-engineered defences will be appropriate in some circumstances we
should be moving away from these costly structures which are environmentally damaging and often simply transfer the problem elsewhere. Natural floodplains should be the basis of flood management throughout Scotland. Insh Marshes on Strathspey is the classic example of a floodplain which protects properties and farmland downstream from extensive flooding, and is also of international importance for wildlife.

Scottish Executive research\(^4\) indicates that 170,000 Scottish homes are currently at risk from coastal or inland flooding. Current estimates of annual average damage from inland flooding are around £20 million – this could rise 115% by 2080 as flooding is predicted to occur more frequently. However, despite the fact that one of the express purposes of the WFD is to mitigate the effects of floods, the Bill contains no proposals to tackle the fragmented system of flood management that operates in Scotland. We consider this a major omission; indeed the European Committee’s recent report into the WFD recognises that there are good reasons why flood protection measures should be integrated into River Basin Management Plans, and not be dealt with through a separate planning regime\(^5\).

In support of this, the Bill must establish a clear lead authority on flood defence in Scotland. The lack of any strategic, co-ordinating role for riverine and coastal defences has led to the current ad hoc system. It is now appropriate to designate SEPA as the lead authority to provide this much needed role.

\[\text{We consider that the Bill should prompt a review of our current unsustainable and fragmented flood policies and make strong links between river basin and flood management.}\]

\[\text{ii Nutrient stripping}\]

Nutrient run-off - for example from agricultural fields and golf courses, makes a significant contribution to the problem of diffuse pollution in Scotland’s water. On the premise that ‘prevention is better than cure’ we believe that the key to tackling diffuse pollution is a major shift away from intensive land management practices. Establishing good practice in this respect will require substantial backing from the Executive, and is not something that will happen voluntarily. Land managers will have to be given real incentives to change practices: we believe that reform of current agricultural support schemes towards environmental subsidies is essential.

However, the problems caused by diffuse pollution need to be tackled now. We advocate the use of reedbeds and riparian buffer strips which effectively trap sediments and remove nitrates and other pollutants. SEPA\(^6\) too recognises that artificial wetland re-creation may be an important and cost-effective means of controlling pressures from agricultural and urban activities. The proposal to make the use of Sustainable Urban Drainage Systems mandatory is very welcome in this respect. However, the proposals regarding the tackling of diffuse pollution from agricultural sources are weak and disappointing.

\[\text{Wetlands should be used as a mechanism for tackling diffuse pollution from agricultural sources.}\]

\[\text{iii Planning for climate change}\]

It is predicted that climate change will significantly affect the availability of Scotland’s water resources through changes in the pattern and timing of rainfall. There could also be increases

\[^{4}\text{Climate Change:Flood Occurences Review, CRU, 2002}\]


\[^{6}\text{The Future for Scotland’s Waters:Guiding principles on the technical requirements of the Water Framework Directive, SEPA, 2002}\]
in the severity and frequency of flood events. It is now widely accepted that rising sea levels will lead to important intertidal habitats being squeezed against artificial barriers and make it increasingly difficult to protect low lying land from flooding. Coastal wetlands can help to alleviate these problems by acting as a buffer against rising sea levels. This can be achieved through managed realignment of the coast - a soft engineering technique that can be used in appropriate areas to deliver habitat enhancement and flood management. This is being pioneered at the RSPB Nigg Bay nature reserve on the Cromarty Firth, and under consideration elsewhere. We believe that the Bill should facilitate the widespread adoption of managed realignment as a way of realising ‘good status’ in estuaries which have been modified by land claim and hard flood defence in the past.

The Bill should promote the widespread use of soft engineering techniques to tackle flooding and climate change and restore coastal habitats.

Conclusion
Scotland’s water and wetland resources are valuable assets, contributing to our quality of life and the state of our economy. We are now faced with a unique opportunity to protect and restore those that have been damaged in the past.

It is essential that SEPA and the responsible authorities are properly resourced in order to effectively implement the Bill.

The Bill as introduced is a progressive step towards sustainable water management; we welcome the principles of a new water management system and new regulatory regimes – but we believe that there are fundamental issues to be tackled if this Bill is to fully realise the potential of the Water Framework Directive for Scotland. We trust that the policy detail of the issues raised in this submission will be considered by the Committee and addressed in the forthcoming secondary legislation.

For further information please contact:
Caroline Davies, Wetland Policy Officer caroline.davies@rspb.org.uk
Andy Myles, Head of Advocacy and Media andy.myles@rspb.org.uk
RSPB Scotland, 25 Ravelston Terrace, Edinburgh, EH4 3TP Tel: 0131 3116500
Registered Charity Number: 207076 - August 2002
Scottish Wildlife Trust (SWT) welcomes the opportunity to submit evidence to the Transport and Environment Committee on this important legislation. Our evidence concerns Part 1 of the Bill. We look forward to presenting more detail to the Committee during the Bill’s passage through Parliament.

**SWT’s contribution to implementation of the Water Framework Directive in Scotland**

Scottish Wildlife Trust has over 21,000 members, 70 staff and many active volunteers. Our aim is to achieve a Scotland rich in wildlife, enjoyed by all. We manage 126 wildlife reserves, 36% of which include wetland habitats and 13 of which are primarily freshwater. SWT also has an indirect involvement in water management through identification of hundreds of wetland Wildlife Sites across Scotland. We are key players in the conservation of several freshwater Biodiversity Action Plan species and habitats, and we have initiated the Water of Leith and the River Almond Integrated Management Projects.

SWT has worked closely with the Executive and SEPA in development of Water Framework Directive (WFD) implementation in Scotland, both through our own work and through membership of Scottish Environment LINK. This has included three joint Scottish Environment LINK / Scottish Executive seminars for stakeholders and decision-makers late in 2001, on diffuse pollution, wetlands and participation. We will continue to contribute our expertise and experience to the successful implementation of the Water Framework Directive in Scotland.

**General comments on the Water Environment and Water Services Bill**

Scottish Wildlife Trust welcomes this important Bill. We believe that Part 1 of the Bill (the ‘Water Environment Bill’) presents an exciting and long-overdue opportunity to enhance and manage Scotland's waters in a truly sustainable way, where economic, social and environmental elements are considered together.

Scottish Wildlife Trust recognises that the Water Environment Bill is primary, ‘enabling’ legislation and that much of the detail of how the Water Framework Directive will be implemented in Scotland will be contained within secondary legislation. However, it is essential that the Bill is strong and robust enough to underpin effective implementation of the Water Framework Directive according to Scotland's needs.

Whilst we welcome much that is contained the Bill, Scottish Wildlife Trust remains concerned that the Executive’s approach to the Water Framework Directive pays too much attention to regulation, and not enough attention to land use policy and land management issues. The Water Framework Directive allows considerable scope for developing a ‘toolkit’ of provisions, tailored to Scotland’s needs, that will achieve integrated and more sustainable management of our water resources. Mitigation of damaging factors is a necessary part of this, but to be truly sustainable the ‘toolkit’ should also address catchment-based approaches that integrate with other land and water uses.

We consider that the Bill is weak in a number of areas, with a number of important opportunities that have been missed. SWT believes that the following issues must be strengthened in the Bill:

- Integration with other policy areas
- Ensuring the effectiveness of River Basin Management Planning at the local level
- Enabling use of the Water Framework Directive’s ‘supplementary’ measures, including use of natural systems as water management mechanisms

We strongly encourage the Transport and Environment Committee to redress these omissions as the Water Environment Bill passes through Parliament. Our suggestions are given below.
Integrating the Bill with other policy areas: Scotland can ‘work smarter’

SWT is extremely concerned that the current Bill may not be able to achieve integrated management of our waters to the level required by the Water Framework Directive. This is because the Bill does not adequately address many of the key land uses that impact on the health of Scotland’s water environment.

Water, and wetland habitats, are currently managed in a sectoral way in Scotland, through interests such as agriculture, forestry, fisheries, tourism, waste and transport. The Water Framework Directive demands an integrated, inclusive and transparent system for the management of our water resource. We welcome the Bill’s provision for close links with the development planning system in this respect; but the majority of land use impacts in Scotland do not fall under these controls. In a number of cases, the objectives of the Water Framework Directive are currently compromised in Scotland by the very nature of land use practice that is not regulated through the development planning process.

SWT is highly concerned that, unless there is a stronger provision in the Bill to integrate WFD objectives with all land and water policies in Scotland, different departments of the Executive will be promoting conflicting policies at the expense of the taxpayer and the environment, and the Executive’s sustainability remit promoted recently by the First Minister will not be achieved.

The Executive has considerable opportunity at its disposal to implement many of the aims of the Directive through existing land use policy in Scotland: ‘working smarter’ and using resources wisely. Below we outline three important opportunities where policy integration could be assisted by a stronger provision in the Bill.

(1) Integration of WFD objectives with agriculture

Over 75% of Scotland’s land is farmed. Agriculture is likely to be the single largest land management sector (by management impact) to implement both the ‘no deterioration’ and ‘restoration’ objectives of the Water Framework Directive. SEPA estimates that diffuse agricultural pollution alone will be the most significant contributor to water pollution by 2010. However, mitigation of diffuse pollution is not the only contribution that the farming sector can make to implementing the Water Framework Directive in Scotland. Farmers, as stewards of the majority of our land resource, play a key role in management of waters more generally. The increasing intensification of agriculture over the last 50 years has caused huge losses in ‘good ecological status’ of our aquatic resource in Scotland, through drainage and engineering works in addition to pollution.

A purely regulatory approach to the impact of agriculture will not be enough to mitigate its potential negative impact on the water environment. If implementation of the Directive is not actively integrated with agricultural policy, then the perverse situation may result whereby the existing potentially damaging operations in farming supported by one department of the Executive (SEERAD) are mitigated against with Water Framework Directive funding from another part of the Executive (SEPA): costing the taxpayer twice over.

It would be far more cost-effective and positive to review agricultural policy and financial instruments in the light of WFD requirements, and provide incentive or change in land use policy to ensure more sustainable farming practice is carried out. Farmers would also appreciate this approach far more than increasing burdens of regulation alone (witness the recent controversy over Nitrate Vulnerable Zones).

Farmers are already being encouraged to undertake more environmentally sensitive farming practices through recent changes and proposed new reforms to the Common Agricultural Policy. Mechanisms being considered by SEERAD now include additional funding towards habitat restoration; making subsidy payments conditional on good environmental practice; and the development of Land Management Contracts to integrate economic, social and environmental objectives in the management of a single farm unit. All these opportunities could contribute greatly towards the implementation of the Water Framework Directive, if the two policy mechanisms are developed together at an early stage.

SWT recommends:
- **a strong duty on Ministers to ensure that WFD objectives are integrated with all existing land and water policies, e.g. agriculture** (Bill Part 1, chapter 1, (2)).
- **a facilitator to policy join-up: the creation of a National River Basin Forum to enable all land and water use stakeholders to work together on WFD policy issues** (Bill Part 1, chapter 2).
(2) Integration of WFD objectives with SSSI management

As part of Scotland’s ‘toolkit’ for implementing the Water Framework Directive, we feel strongly that the register of Protected Areas should not only include European designations, but also relevant Sites of Special Scientific Interest (SSSIs).

SSSIs are exemplary places in Scotland for nature conservation; they require specific management actions, with related monitoring and reporting procedures, to ensure that their natural heritage value is maintained. SSSIs already receive a certain level of protection (through the Wildlife and Countryside Act (1981 and amendments)) and protection (through the work of Scottish Natural Heritage). However, there are indications that 45% of SSSIs are in ‘unfavourable conservation status’ that is still declining.

Scottish Wildlife Trust is disappointed that the current Bill does not propose inclusion of SSSIs in the list of Protected Areas. A number of advantages would result from integrating these two mechanisms:

- Maximising the use of resources available from both mechanisms for the restoration of SSSIs in unfavourable condition.
- SSSIs will benefit from increased monitoring against WFD objectives.

If SSSIs are not included on the list, there is a real danger of missing a wider catchment approach to River Basin Management Planning that included the detailed work, special prescriptions and landowner input developed for SSSIs. Instead, SSSIs may only be given insufficient attention as isolated units within the catchment. It is important that SEPA and SNH do not work in isolation over these issues and that an integrated approach is taken, to the ultimate ecological benefit of the water bodies in question.

SWT recommends:

- **inclusion of SSSIs on the List of Protected Areas within the River Basin Management Plan (s)** (Bill Part 1, chapter 2, (7)).

(3) Integration of WFD objectives with Biodiversity Action Planning

The UK Biodiversity Action Plan (BAP) was written in 1995 as the UK government’s commitment to the Biodiversity Convention, resulting from the Rio Earth Summit in 1992. It is a targeted, structured approach to ensure that priority habitats and species receive appropriate action across the policy framework. The BAP process is underpinned by a partnership approach with, ideally, involvement from individuals and all sectors of society. In Scotland, the process is driven by the Scottish Biodiversity Group, chaired by the Scottish Executive. Despite best efforts, SWT considers that the whole Biodiversity Action Plan effort in Scotland is both under-resourced and poorly integrated into other policy areas.

A large proportion of Scotland’s biodiversity depends on water bodies or associated systems. It follows that implementation of the Water Framework Directive could have important implications – and, we hope, benefits – for Scotland’s biodiversity in waters and some associated wetlands. In turn, implementation of the Water Framework Directive will benefit from the audits, plans and community participation that have all been benchmarks of the BAP process.

However, in order to achieve these mutual policy benefits, Scottish Wildlife Trust believes that the Biodiversity Action Plan process, and the priorities identified within wetland BAPs, should be related far more closely to the implementation of the Water Framework Directive in Scotland. We believe that a trigger is needed in the legislation to achieve this.

**SWT recommends:**

- **a recognition in the Bill that WFD objectives should be integrated with Scotland’s commitment to the biodiversity process** (Bill Part 1, chapters 1, 2 and 3).

---

River Basin Planning: Sub-basin planning is essential

River Basin Management Plans are not just about implementing regulation, but the management of Scotland’s waters and their restoration to good ecological status. For River Basin Management Plans to be managed successfully, and good ecological status for Scotland’s waters to be achieved, SWT is convinced that well-resourced planning at the catchment (sub-basin) level is essential. There is no other way that the requirements for water resource management strategies, effective public participation and integrated water body management could practically be achieved.

For a particular issue or control mechanism required by the WFD, sub-basin plans would facilitate:

- Planning of the resources required to comply with the Directive, in an integrated fashion
- Objective setting at the catchment level
- Participation in implementing the Directive
- Monitoring
- Reporting

SWT welcomes the provision in the Bill for sub-basin plans, but we would question the strength of this provision and the mechanism by which the need for sub-basin planning is determined by SEPA. We believe that a far more comprehensive approach to planning at the sub-basin level is required than that indicated by the Bill. It is important that the correct number and area of sub-basin plans for various issues is not constrained by a lack of resources or political will, whether at national or local level.

Through our own experience of catchment management plans, SWT recognises that river basin management does need time to develop: local support, funding and lack of strategic overview can all be restricting factors to the success of catchment management if they are inadequately catered for at the beginning of the process. Catchment management at the local level is most effective when the statutory agencies take a full level of ownership of the process, targets and outputs required.

SWT recommends:

- **Stronger provision for sub-basin planning within the Bill** *(Bill Part 1, chapter 2, (15)).*

Measures for protection of the water environment: the need for supplementary measures

SWT considers that the use of ‘supplementary measures’, in addition to mandatory measures, will be essential to effectively deliver the level of environmental protection required by the WFD. For example:

- Wetland restoration both helps to achieve good ecological status of water bodies and, in many cases, can be used as a management tool in itself (for example, to manage flooding). We endorse the Scottish Environment LINK and RSPB evidence to the Committee on these points.
- Adequately funded information and training provision will be an essential action for each type of regulation, taking into account that controls are likely to be activity-, rather than person-, specific.

The Bill’s Policy Memorandum (62-64) suggests omitting provision for such activities in the Bill, therefore implying they are non-statutory activities. This could severely restrict the effectiveness of the Water Environment Bill in effecting change through ‘supplementary measures’, through a lack of recognition and possible consequent lack of allocated resources.

SWT recommends:

- **Recognition of the important role of ‘supplementary measures’ in the Bill, with powers for SEPA and other relevant public authorities to utilise supplementary measures in RBMPs where appropriate** *(Bill Part 1, chapter 3).*

For further information please contact:

Lisa Schneidau, Policy Officer, Scottish Wildlife Trust  
email: lschneidau@swt.org.uk  
Cramond House, Cramond Glebe Road, Edinburgh EH4 6NS  
tel: 0131 312 4771
SUBMISSION FROM THE WWF

Why do we need Active Involvement?

- The WFD requires it!
- The UK is committed to ratification of the Aarhus Convention (1998) on public participation.

Active involvement is an investment that brings important social and environmental benefits:

- More transparent, creative and accountable decision-making
- Conflict resolution, better enforcement and more effective implementation
- Increasing public awareness of environmental issues and social learning from constructive dialogue
- Building in stakeholder knowledge, experience and initiatives to improve the quality and workability of river basin management.
- Strengthened public acceptance, commitment and support for decisions on the environment

What is Active Involvement in the Water Framework Directive?

In the Water Framework Directive (WFD), information, consultation and involvement are three different processes, all of which have a role to play at different stages of WFD implementation. In order for active involvement to succeed, good information supply is essential.

Information supply is essential to involving people, but information alone implies a one-way process, with decisions made by those providing the information.

Consultation also implies a one-way process, where parties can comment at various stages on published plans, but have not had a chance to shape the plans from an early stage. Their comments may or may not be taken into account.

Active involvement implies a two-way process. The draft European Common Implementation Strategy guidance on Public Participation defines it as follows:

‘…active involvement is more than the three phased consultation or information supply. Active involvement implies that stakeholders participate in the planning process to give their views and opinions and perception of problems as well as ideas for generating possible solutions. Essential to the concept of ‘Active Involvement’ is the potential for participants to influence the process.’

The WFD requires Member States to, ‘encourage the active involvement of all interested parties in the implementation of the Directive, in particular in the production, review and updating of the river basin management plans…’ (Article 14 1st sentence)

In addition it sets out a three phased consultation and information process:

‘Member States shall ensure that, for each river basin district, they publish and make available for comments to the public including users:'
a) a timetable and work programme for the production of the plan, including a statement of
the consultation measures to be taken, at least three years before the beginning of the
period to which the plan refers;
b) an interim overview of the significant water management issues identified in the river
basin, at least two years before the beginning of the period to which the plan refers;
c) draft copies of the river management plan, at least one year before the beginning of the
period to which the plan refers’ (Article 14 2nd sentence)

WWF believes that neither the administrative structures proposed by the Bill nor the
proposals for information provision are adequate to support active involvement

The legal position on Active Involvement

According to International Water Law Research Institute in Dundee, the Bill may fail to live up to both the European ‘active involvement’ requirement and standards of institutional accountability1. The following discrepancies have been identified:

- The administrative structure for river basin planning does not adequately incorporate local views; there is no obligation for SEPA to establish sub-basin plans, it merely has the power to do so.
- Ministerial power is too great, increasing the chances of arbitrary decision-making. There is no devolution of planning responsibilities to representative groups at national or regional sub-basin level.
- RB Plans will be provided for consultation only to those with an interest, and will be available for public inspection. Evidence suggests that merely having the information located at central points is no guarantee of actual access or usage by the public.
- It is unclear how individual applications for licences will be advertised. The information required under the WFD is complex and yet there is no provision for non-technical summaries.

Administrative Structure

The administrative structure proposed in the Bill is illustrated below. It is unclear how this top-down, regulatory approach will be unable to deliver ownership, active involvement or real integration.

1. Under the current proposals, SEPA takes on the main regulatory and consultative role and has almost sole control over the entire River Basin Management Planning (RBMP) process. SEPA writes and implements the RB Plan in consultation with the ‘Advisory Groups’ and other interests.

1 IWLRI’s full legal investigation of this point is available on request from WWF Scotland. This recommends a similar approach to that taken in the Financial Services and Markets Act 2000 (‘FSMA’), which provides a useful model, especially with regard to accountability.
2. The Minister has a broad range of powers. His/her duties to secure compliance and have regard to the RB Plan are welcome. However, a representative body at national level is needed to assist the Minister in exercising his/her powers.

3. There is nothing to encourage real involvement by the proposed ‘Advisory Groups’ or public authorities in planning. While the duty on the relevant authorities to have regard to the RB Plan is welcome, there appear to be no devolved decision-making powers and no clear links to, support, or guidance for sub-basin planning or other local initiatives that support the Bill’s aims. Unless the Advisory Groups are given real responsibility they are likely to become mere talking shops. Centralisation of decision-making powers in SEPA leaves no incentive for participation at sub-basin level nor mechanisms to encourage an integrated approach. No integrated body is given any real responsibility.

4. There is no link to national land and water policies. No integrated body at national level is given responsibility for considering such links and making recommendations to Ministers.

So what should be in the Bill?

WWF believes that it is possible to adapt the Bill to more effectively deliver environmental objectives by building integration and active stakeholder involvement into the system. The principles that should underlie any alternative, more integrated planning system, include:
1. The establishment of integrated bodies at national and regional level with planning and decision-making powers. These bodies must be able to influence integration of wider land and water use policy at national and regional level and to make links to civic society, for example through Community and Rural Development Planning.

2. A network of sub-basin plans covering the whole of Scotland. The scale of these sub-basins could be regional or local. Sub-basin planning should link to and support the diverse range of local catchment plans and initiatives, like flood and biodiversity plans, enabling them to maximise their delivery of WFD aims.

3. Early preparation and institutional and financial support for active involvement of stakeholders at all levels in planning and implementation of the WFD. This should ensure that SEPA prepares and implements a strategy for active involvement, including undertaking a stakeholder analysis and early establishment of a sound administrative structure.

The illustration below is one suggested option that could help to strengthen active involvement, as a basis for further discussion and exploration of the issues. It should not be seen as WWF’s final opinion.
In this scenario, active involvement in planning would take place from local to national level, with strong links to catchment planning and other local initiatives. Decisions would be made in an integrated way, involving representatives of all relevant bodies.

1. The permanent Advisory Groups, established at an appropriate catchment or regional scale, would form a network covering Scotland. Each could be empowered to prepare and implement a draft Plan for their area.

2. These Advisory Groups would have powers to initiate catchment plans, to draw on and support existing local plans and initiatives, and to support active involvement at local level. In WWF’s view, enabling these Groups to be involved in integrated decision-making would be a positive step. Equally, if the Groups are able to make strong links through policy and funding support to local catchment level planning this would provide an incentive for local action while allowing co-ordination of various water-related plans at regional level.

3. The Sub-basin Plans could be approved by SEPA in consultation with the national River Basin Forum (RBF). The national RB Plan could then be based on these plans and would be co-ordinated by SEPA with help from the RBF. As well as helping SEPA to complete the National Plan, the National RBF would act as a strategic planning forum. It could have the power to make recommendations to SEPA and to the Minister.

4. The RBF could influence policy changes outwith the narrow compass of the Bill that would assist in fulfilling the broader purposes of the Water Framework Directive.

5. The Minister would approve the national Plan and its implementation. The granting of licences, for example, could take place at the appropriate regional or local level.

WWF believes that the establishment of appropriate structures and support for active involvement and integration is an important first step. In parallel with this the lead authority should, with full government support, develop a strategy for active involvement and conduct a stakeholder analysis, so that people can be involved in the water planning decisions that will affect them as early as possible.

---

For further details, contact:
George Baxter, WWF Scotland: 01887 820449 / Gbaxter@wwfscotland.org.uk
Rebecca Wills, WWF Scotland: 01887 820449 / rwills@wwfscotland.org.uk
7 August, 2002

Water Environment & Water Services (WEWS) Bill

Dear Ms Wheeler

The Association of Salmon Fishery Boards (ASFB) welcomes the opportunity to comment on the above consultation. The ASFB represents the network of 50 Scottish District Salmon Fishery Boards (DSFBs) which are charged under the 1986 and previous Salmon Acts with the statutory responsibility to ‘protect and improve’ salmon fisheries (inc. sea-trout).

The Association has been involved in various aspects of the planning for the implementation of the Water Framework Directive (WFD) including involvement in: the Shadow River Basin Management Planning group; the Heavily Modified Waters (HMW) group; and groups convened to discuss river classification and issues surrounding the use of fish data. The ASFB has also been involved in discussions about the regulation of aquaculture and the way in which the WEWS Bill may provide regulatory underpinning of existing industry and other codes of practice.

The Association would be pleased to give oral evidence to the Transport and Environment Committee at their Stage 1 meeting on September 11’th.

Below we have made a few general comments in response to the headings outlined in your covering letter followed by further detailed comment on the Bill and accompanying papers.

1. General Comments

1.1 River Basin Management Planning (RBMP) - The Association is pleased to see that the Executive favours the concept of a single river basin plan for the large part of Scotland with the possibility of further plans to cover cross-border areas. Such a plan will provide an overall strategic view and direction for the management of fresh and coastal waters in Scotland.
As outlined in previous responses, we believe that a national strategy can only work when complemented by an effective mechanism for the delivery of strategic objectives at ground level and, in the case of freshwater, the catchment (or in the case of smaller catchments - groups of catchments) would appear to be the only logical way to proceed, through the development of sub-basin catchment plans. There is already precedent for this sort of approach (Spey, Dee, Tweed) and they appear to be effective ways of both identifying and resolving problems as well as encouraging diverse, and possibly competing interests for the water resource, into constructive dialogue. We believe considerable emphasis needs to be placed on the importance of catchment management planning as it is understood in Scotland, rather than in Europe. It is suggested that every catchment in Scotland may not require a sub-basin catchment plan but would suggest that there are few, if any, catchments where at least some problems could not be identified and assisted by the catchment management planning processes. We therefore believe that firm guidance from the RBMP will be required as to how these issues are to be addressed at a local level. Consideration will need to be given to the many existing approaches to these issues at catchment level that have been, and are being currently being, developed in Scotland.

We would also wish to raise the issue of cost and the funding required to meet the objectives of the Directive by 2015. The scope of the Bill and the obligations placed on, particularly SEPA, are very considerable. We have been concerned throughout the process that the issue of cost and resourcing the achievement of these objectives appears to have been given remarkably little consideration.

1.2 Role of SEPA – We recognise the need for a lead body for river basin management planning and agree that SEPA should fulfil that responsibility in conjunction with appropriate involvement from other ‘responsible authorities’ as defined in the Bill and any other appropriate bodies.

1.3 Public Participation – From our reading of the Bill we believe that sufficient flexibility has been given in the legislation for SEPA to draw up appropriate plans for public participation in river basin planning. However, we remain concerned at the large number of proposed bodies/forums being discussed at different levels. It is vital for The Executive and SEPA to appreciate that in order to encourage effective engagement with stakeholders, agencies, local government etc. that consideration is given to the plethora of forums, advisory groups, management agreements etc. already in place, all of which are time and resource intensive and many of which rely on voluntary effort. Whilst the concept of consultation fatigue is recognised in the Policy Memorandum, the concept of ‘Forum Fatigue’ is not and some thought needs to be given to this issue. This is a problem for the public as well as private sector especially in remote rural areas where staff or interested and informed people, who can participate in these discussions, may be thin on the ground. The Bill proposes groups at national, regional and possibly catchment level. It also suggest that groups may be convened on specific issues. Such bureaucracy may place a very considerable burden on those involved, especially as often they will be the same people. To take the coastal zone as an example. There currently are: sea-loch framework plans, bio-diversity action plans, area management agreements, coastal forums, and integrated coastal zone management plans and more. The WFD will undoubtedly have an influence
over all these as well as presenting an opportunity perhaps to rationalise some of these structures to make the best use of scarce resources.

1.4 Framework for control - We are content with the proposed framework for controls over abstraction and impoundment. We believe that, on the subject of engineering works, sensible thresholds need to be established above which practical planning controls need to be established and below which a simple registration process (as is suggested in the Bill) is set out. We believe that efficient, unambiguous and consistent decision making will be required to ensure compliance encourage confidence in the new regulatory system. The issue of pollution we have covered below under specific comments on the Bill.

1.5/6 Other Policy Areas and Sustainable Development Criteria - We are content with the Bill’s provisions to relate to other policy areas and regulations and that these provisions meet agreed sustainable development criteria.

2. Policy Memorandum - Water Environment & Water Services Bill

Section

7 Bullet 1 – the reference to ‘natural river basins’ we would interpret as being catchments (or groups of smaller catchments) as we understand them to be in Scotland. The WFD was designed with very much a European model of a catchment in mind (Rhine/Danube etc). As suggested in part 1, there is a cultural and geographical integrity to many Scottish catchments which make them logical units for both the identification and solution of problems and the resolution of conflicts between competing water users. It is at this level, with appropriate strategic guidance and regulation applied nationally, that the problems affecting Scotland’s freshwater resource will be resolved. Resources and careful thought will be needed to achieve this.

14 Bullet 2 – there is already a very considerable amount of monitoring of Scotland’s freshwater going on by public agencies and other organisations. There are considerable opportunities for rationalising the monitoring programme and reducing monitoring costs. Given the lead time required for such a reorganisation we would encourage efforts to be made to do this as soon as possible.

18 We believe careful consideration needs to be given to those cross border River Basin Districts and how the Directive will be applied between different regulatory systems. Some organisations have considerable experience of this working arrangement eg) Tweed Foundation/ Commissioners and should be consulted at an early stage on these issues.

20 We are encouraged to see the directive applied to 3 nautical miles from the territorial sea baseline.

30 We note that District Salmon Fishery Boards have been specifically identified for consultation under Section 11(6)e of the Bill. We welcome this and would also suggest that in many areas Fishery Boards have been extremely progressive in the development of catchment management planning supported by extensive monitoring programmes. This
profile and capability combined with their statutory function for the protection and improvement of salmon fisheries and the economic importance of many of these fisheries would suggest that they have an important role to play in the application of the WFD at catchment level and in informing policy.

32-35  See comments above under Section 1.3 regarding Forum Fatigue.

45/46  See Section 1.1 and comment on Section 7 above (Section 2).

53  Bullet 1 – See section 1.4 above.

   Bullet 2 - We are encouraged to see specific reference to the application of General Binding Rules to aquaculture. We believe it is essential that, as well as the control of specific discharges into the environment, both the cumulative impact of those discharges can be taken into account but above all there are opportunities to attach conditions of management to consents to ensure compliance by ALL operators in a given area with accepted industry or other codes of practice and vest available technology. It is through the application of these GBRs that we wish to see proper control of the management of the process of fish farming with all the benefits that will have in terms of reduction in disease and parasite burdens and harmful environmental effects. We would draw attention to the fact that, in its second report (Parliamentary Enquiry Into Aquaculture), the Transport & Environment Committee, while welcoming the commitment of the Executive to the underpinning of codes of practice by regulation, drew attention to its concern that the aquaculture industry may not be subject to regulation until 2005. We support this concern and note that the Bill does not lay down timescales for action on this issue. We would urge the need for early action to introduce regulatory measures aquaculture should again be emphasised during scrutiny of the WEWS Bill.

54  As above

3.  The Water Environment & Water Services Bill

Section 18 (2) – This section gives SEPA very considerable powers, apparently only limited by the issue of commercial confidentiality (18,6). As likely providers of data and information to assist in the implementation of the WFD, we have already discussed with SEPA the issue of data provision and assistance in monitoring and are, in general, likely to be very willing to make such data and information available. However, it must be recognised that the collection of this information comes at a cost and there appears to be no reference to any ability for SEPA to remunerate those from whom they are compulsorily acquiring information.

Section 20 (6)(b) – Pollution in this case refers to ‘the direct or indirect introduction, as a result of human activity of substances…’. We would wish to see a definition of the word ‘substance’ which is not made in the explanatory notes. We believe this should include pathogens and parasites discharged from aquaculture installations and that attempts to deflect this using the argument that the parasites occur naturally and that such discharges are the responsibility of fish health legislation are weak. Sea-cage fish farming is a ‘human activity’ and the levels of production of pathogens and parasites are artificially high and bear no resemblance whatsoever to the natural
background population. For the purposes of this legislation we believe such organisms should be treated as a discharge, controlled by SEPA and the proposed legislation.

Should you require clarification or further information on any of the above, please feel free to contact me at the above address.

Yours sincerely,

Andrew Wallace
Director, Association of Salmon Fishery Boards
WATER ENVIRONMENT AND
WATER SERVICES (SCOTLAND) BILL:

STAGE 1 EVIDENCE

Tweed Forum welcomes this opportunity to comment on the general principles of the Water Environment and Water Services (Scotland) Bill much of which is particularly relevant to our organisation and our current lead on the Catchment Management Planning initiative.

General Comments

Tweed Forum has a track record of 12 years of integrated catchment planning and management and as such feels it has much to offer through this experience. Although the consultation message has been that individual catchment initiatives are to be welcomed we feel that the work of Tweed Forum amounts to more than a “local initiative”. It is felt that due to the complexity of having a shared boundary between Scotland and England that the Tweed catchment should be a River Basin in its own right and we would urge the Scottish Executive to seriously consider this approach in the progression of the Bill.

The Forum has an excellent working relationship with SEPA at the local, and national level, and is very aware that the respective complementary competencies ie Tweed Forum is able to engage with the local community on a voluntary ‘honest broker’ basis and is working to achieve sustainable use of the river through best practice, demonstration projects, and co-operation. SEPA on the other hand has the technical expertise, and indeed clout through its statutory powers, to help the Forum deliver its Catchment Management Planning targets.

In particular there are a several areas of work where Tweed Forum is already delivering some of the Bill’s objectives :-

Public participation

We have already undertaken an extensive, and intensive, public participation exercise throughout the Tweed catchment as the initial stages of the Catchment Management Plan and would be pleased to share this experience with SEPA and others. It is respectfully suggested that such intimate public engagement is a new activity for SEPA and should not be taken on lightly if community interests are to be sensitively handled.

Riverworks
A Riverworks group has existed as part of Tweed Forum's armoury for 4 years. One of the first outcomes from the workings of this Group has been our Riverworks Leaflet, which is now undergoing its first update and reprint. This leaflet has been copied by other river catchment initiatives and indeed is echoed in the recently produced publication “Managing River Habitats for Fisheries” by SEERAD, SNH, SEPA, and the Fisheries Research Services.

The work of the Riverworks Group is now turning to the matter of the various types of riverworks themselves and in specifically identifying how best to educate the various river managers as to how to look after their riparian stretches in a sustainable and environmentally friendly manner.

**Flood Plain Management**

The question of riverworks blends seamlessly into the whole question of flood plain management, which the Forum is also addressing through the Flood Appraisal Group of Scottish Borders Council. Over the next year or so it is hoped that policies, procedures, and indeed action on the ground will help utilise this much abused resource in order to alleviate flooding in a sustainable way.

**Diffuse Pollution**

Tweed Forum has already completed Phase 1 of a “Demonstration catchment” project which is endeavouring to make the whole environment of several farms in a sub-catchment of the Tweed as good as they can be in terms of waste minimisation, nutrient budgeting, as well as the core business of habitat conservation. Working in partnership with FWAG, SNH, SEPA, Borders Forest Trust, SAC and others the Forum is now looking at ways of rolling out this project to the other farms in the sub-catchment and then on to all the rivers of the Tweed catchment.

**Impoundment**

As part of the public consultation process of the CMP the Forum has already set up a “Reservoir Release Management Group” designed to look at the operation of the various compensation, block release and statutory compensations on the reservoirs at the head of Tweed’s catchment. From this group it is hoped to generate an agreed ‘code of conduct’, which satisfies water quality/quantity, recreational, ecological, and fishery management interests.

**Water Abstraction**

The Forum is well aware of the differing regimes affecting water abstraction on both sides of the Border. Certainly abstraction was perceived to be an issue
during the public participation process of the CMP and although the hard data on this subject are yet to be gathered, this topic will be addressed as part of the CMP process.

Relation to other Policy areas and regulations

The Water Environment and Water Services Bill is not a stand-alone document. Its purposes support the conservation of the Tweed and the river’s status as an SSSI and cSAC. The direct consequences of the Bill will ensure higher water quality and quantity, which is in turn of immediate benefit to the targeted species under the SAC designation. Also the outputs of the Bill will be of benefit to the indicator species identified in the Local Biodiversity Action Plan as well as feeding into the Council’s developing Environmental Strategy as part of its Community Planning process.

Specific Comments

PART 1 – Protection of the Water Environment

Chapter 1 - Purpose, general duties and definitions

1(2) Tweed Forum endorses the underlying principles of Part 1 of the Bill, “Protection of the Water Environment” as outlined in subsection 2. These principles are also at the heart of the Tweed catchment management planning initiative that we are currently involved with.

2 Tweed Forum agrees that SEPA should be the competent authority responsible for delivering the WFD and that other “responsible authorities” will have an important role to secure compliance with the requirements of the Directive. However, it is vital that the work of SEPA as the competent authority and other “responsible authorities” is integrated and a partnership approach adopted. For this reason Tweed Forum suggests an additional subsection in section 2:-

“SEPA and the responsible authorities should adopt an integrated approach and work in partnership to ensure the most efficient and effective delivery of the Directive”

3 (5) Are wetlands included in this definition of inland water? It needs to be made clear if wetlands are included in the Bill. They were alluded to in 1 (2)a but are not mentioned again in this section.

Chapter 2 - River Basin Management Planning
Tweed Forum has concerns that the Bill gives no indication of how cross border catchments will be dealt with within the river basin district system. This needs to be addressed as soon as possible and Tweed Forum is very keen to be closely involved in any developments in this area. It is important when considering the subject of cross-border catchments that in the case of the Solway and the Tweed, there are already long-established, robust and formalised organisational vehicles (Tweed Forum and Solway Firth Partnership) involved with cross border river basin management.

While Tweed Forum agree that SEPA should have overall responsibility for preparing a monitoring strategy, it is vital that this in done in consultation with others so that areas of particular concern are recognised in this strategy. During a recent consultation carried out for the Tweed Catchment Management Plan there were a number of suggestions that could be usefully fed into the development of any monitoring strategy. We would therefore advocate that Scottish Ministers do make provision for this consultation as suggested in 3f.

The River Basin Districts (RBDs), central to the River Basin Management Planning proposal are large and strategic in nature. While we agree that there is a need for a strategic steer for the River Basin Management process, it is vital to recognise that many of the requirements of the WFD are unlikely to be delivered through River Basin Management Districts covering such large and varied areas. While Tweed Forum agrees that sub - basin plans should not be made compulsory across Scotland, we feel that the importance of working at the catchment scale must be recognised if the WFD is to result in actions on the ground. For this reason we propose that the Bill should clearly state that the purpose of the RBDs will be to provide an overarching strategic steer and that where specific issues are identified sub basin plans will be required to address these.

Tweed Forum has concerns that this section of the Bill does not outline how existing “sub - basin plans” will feed into the RBMPs. We feel it is vital that the value of current catchment management planning initiatives is not forgotten in the implementation of the WFD and provision needs to be made in the Bill as to how these will be part of the overall implementation process.

Tweed Forum has concerns that the Bill states that SEPA or any “responsible authority” can prepare a “sub- basin plan”. Tweed Forum through its catchment management planning initiative is currently involved with preparing a “sub basin plan” however, as defined in 2(8) is not a “responsible authority”.
Tweed Forum strongly supports the Bill’s provision for River Basin District Advisory groups. However, we feel it should be made clear that where appropriate initiatives exist, they should be worked with and built upon rather than creating additional groups. An extremely effective consultative forum already exists in the Tweed catchment through Tweed Forum which is there to be used.

**Additional Matters**

As far as other matters are concerned Tweed Forum was pleased to be invited (eventually) to be involved in the public consultation process carried out by the Scottish Executive and found the documents and associated information very helpful. It as also encouraging that Scottish Executive staff were willing to venture out into the provinces to meet partners on the ground to discuss the issues.

As ever the financial consequences of the Bill are immense, and obscure, for a huge number of agencies, operators, landowners riparian owners. Whilst most reasonable people would see the advantages of the Bill in terms of sustainable development the immediate financial implications on agencies such as SEPA, and not least Tweed Forum, require to be understood and carefully managed.